

Judicial Precedent and Summary Justice: Bridging Legal Gaps Versus the Spectre of Instability

الاجتهاد القضائي وقضاء الاستعجال: بين سد النقص القانوني وهاجس عدم الاستقرار

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Abstract :

Summary jurisdiction (urgent justice) is a vital mechanism established by the Algerian legislator to provide quick, temporary protection for rights threatened by imminent danger, using simplified procedures that differ from complex substantive proceedings. This framework, detailed in the Civil and Administrative Procedures Code, requires two essential conditions: urgency (imminent, irreparable harm) and non-prejudice to the merits of the right. Beyond statutory provisions, Supreme Court precedents play a crucial, binding role in defining and resolving urgent cases. However, the study focuses on a central dilemma: the instability and divergence of the Supreme Court's jurisprudence. This inconsistency raises questions about the adequacy of current legal stipulations and the reliability of precedents for protecting citizens' rights through swift, effective judicial intervention.

Keywords: Summary Jurisdiction, Merits of the Right, Instability, Judicial Precedent, Urgency.

ملخص:

قضاء الاستعجال (أو القضاء المستعجل) هو آلية حيوية أقرها المشرع الجزائري لتوفير حماية سريعة ومؤقتة للحقوق المهددة بخطر وشيك، وذلك عبر إجراءات مبسطة تختلف عن الدعاوى الموضوعية المعقدة. يتطلب هذا الإطار، المفصّل في قانون الإجراءات المدنية والإدارية، شرطين أساسيين: توافر الاستعجال (الخطر الداهم الذي لا يمكن تداركه) وعدم المساس بأصل الحق. بالإضافة إلى النصوص القانونية، يلعب الاجتهاد القضائي للمحكمة العليا دوراً جوهرياً ومُلزماً في تحديد وفصل قضايا الاستعجال. إلا أن الدراسة تركز على إشكالية محورية: تذبذب وتعارض اجتهادات المحكمة العليا. هذا التضارب يثير تساؤلات حول كفاية النصوص القانونية الحالية وموثوقية السوابق القضائية في حماية حقوق المواطنين عبر تدخل قضائي فعال وسريع.

الكلمات المفتاحية: قضاء الاستعجال، أصل الحق، عدم الاستقرار، الاجتهاد القضائي، الاستعجال.

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Introduction:

Summary jurisdiction (also known as urgent or interim justice) has become the most frequently used means of protecting rights that are likely to be compromised. It provides simplified procedures for ruling on certain cases, unlike substantive jurisdiction, which is characterized by complex rules and lengthy proceedings. The specialized jurisdiction of courts, as judicial bodies ruling on the substance of a case, is subject to complex and protracted procedures.

For the smooth functioning of justice and the protection of rights and legal positions threatened by an imminent danger—and without prejudice to the merits of these rights—the Algerian legislator established a system of summary jurisdiction to find quick solutions through flexible and temporary procedures. This is done while awaiting the final ruling on the subject matter of the dispute, which is entrusted to the competent judge. Urgency is defined as any immediate danger that causes harm that cannot be remedied in the future.

The Algerian legislator addressed the provisions related to summary jurisdiction, ensuring the protection of rights from loss, in Articles 299 to 305 of Law No. 08-09 on Civil and Administrative Procedures, as amended and supplemented¹. It stipulated the case of ordinary urgency, requiring two essential conditions to be met, and also outlined the case of extreme urgency, which necessitates different deadlines for judgment than those set for ordinary urgency. The legislator also mentioned other cases where the summary judge is constrained by the necessity of adhering to the text of the law when issuing a ruling.

In addition to the stipulations of the Code of Civil and Administrative Procedures, there is another category of urgent cases, which does not significantly differ from the previous ones in terms of defining the concept and procedures of urgency. In this category, the jurisprudence (precedents) of the Supreme Court and the Council of State play a role in resolving urgent cases and are binding on lower judicial bodies, particularly through decisions published in judicial journals².

This latter area—the application of urgency in light of the Supreme Court's precedents—is the subject of our study.

It is noteworthy that the Supreme Court issued numerous decisions under the old Code of Civil Procedure that remain relevant under the current amended and supplemented Code of Civil and Administrative Procedures. This is due to the similarity of the criteria used to determine the element of urgency which grants competence to the summary judge³. However, a broad debate has arisen among legal practitioners regarding the reliance on the Supreme Court's precedents in resolving both ordinary and urgent cases, due to the instability, divergence, occasional contradiction, and alteration of the content of these precedents⁴.

The research encountered several obstacles and difficulties, some inherent to the nature of the topic itself, and others related to the research process. These include the scarcity of academic references and research on urgency based on judicial precedent, in addition to the fact that most studies focused on the provisions of the aforementioned Code of Civil and Administrative Procedures. Nevertheless, the importance of the topic justified pursuing the research, focusing on the selected central problem, which can be summarized as follows: What is meant by urgency in light of the Supreme Court's jurisprudence? And are the urgency cases stipulated by the legislator insufficient, necessitating the addition of the Supreme Court's precedents?

To answer the research problem, clarify the study axes, and fully cover the topic, the descriptive-analytical methodology was adopted throughout most research stages, as it is the most suitable approach for the nature of the study.

To present the research in its final form, a binary division was adopted: Chapter One addresses the concept of urgency in light of judicial precedent through its definition, characteristics, and elements, which are not different from those established in the amended and supplemented Code of Civil and Administrative Procedures. Chapter Two is dedicated to studying urgency in judicial precedent and the problem of judicial instability.

Section I: The Concept of Urgency in Light of Judicial Precedent

The expansion of the scope of transactions between individuals has led to a legislative renaissance that keeps pace with their activities in various fields. Summary jurisdiction, being a superior type of judiciary, preserves rights and legal positions affected by imminent danger. Delay in obtaining judicial protection can consequently result in harm to the rights holders.

Summary jurisdiction is not based on the principle of comprehensive justice but on urgent protection, the essence of which is to prevent the waste of rights and the prevention of their acquisition. While the summary judge rules on legal protection in a temporary capacity, they may touch upon the merits of the right in reality in cases where the litigants are placed in a position where resorting to substantive jurisdiction becomes futile, thereby making the temporary legal protection granted by the summary jurisdiction a final protection in effect⁵.

The judiciary does not differ from jurisprudence in defining the concept of urgency, through its definition and constituent elements: it is any immediate danger that causes harm that cannot be remedied in the future. Furthermore, the law cannot enumerate all cases of urgency, and consequently, it is difficult for the judge to assess these cases and rule on them easily⁶.

We shall therefore outline the cases of urgency in two sections: the first dealing with the definition of urgency in judicial precedent and its elements, and the second covering the characteristics and procedures of the urgent lawsuit.

Section One: Defining Urgency in Judicial Precedent and Its Elements

Urgency has jurisprudential, legal, and judicial definitions that share the common core of preserving rights and legal positions threatened by danger. Summary jurisdiction is merely a form of judicial protection, but it is distinguished from substantive jurisdiction by the availability of two conditions: urgency and non-prejudice to the merits of the right. This will be detailed below.

Subsection One: Defining Summary Jurisdiction

Most legislations have not defined summary jurisdiction, leaving the task to legal jurisprudence, which defines it as follows:

Some have defined it as: "A temporary ruling on disputes where the passage of time is feared, which does not affect the merits of the right, but rather dictates the taking of a temporary measure binding on both parties, with the aim of preserving the existing situation, respecting apparent rights, or protecting the interests of the litigating parties"⁷.

Others define it as: "The real, imminent danger threatening the right to be preserved, which must be averted with a speed not typical of ordinary litigation, even if its deadlines are shortened. Urgency is present in every case where the urgent procedure is intended to prevent certain harm that cannot be undone if it occurs." Another opinion by some jurists defined it as: "A temporary jurisdiction aimed at temporary judicial protection"⁸.

The Algerian legislator did not define the term "urgency" but instead limited itself to specifying the types of lawsuits that warrant such a classification, a common practice in most Arab legislations. However, the French Court of Cassation stated: "Urgency is only present in cases where delay results in harm that cannot be remedied"⁹.

Another group defined urgency as: "The necessity that cannot tolerate delay or the direct danger that cannot be averted by filing a lawsuit through ordinary means, even with shortened deadlines"¹⁰.

It has also been defined as: "The real, imminent danger threatening the right to be preserved, which must be averted with a speed not typical of ordinary litigation, even if its deadlines are shortened"¹¹.

Another definition states that it is: "The necessity of obtaining urgent legal protection that cannot be achieved by following ordinary litigation procedures due to the presence of circumstances that pose a danger to the opponent's rights or entail harm that may be difficult to remedy or repair"¹².

Subsection Two: Elements of Summary Jurisdiction

Summary jurisdiction is considered a judicial act and a form of judicial protection, while another group considers it a voluntary jurisdiction due to its independent procedures that distinguish it from the proceedings related to the substantive lawsuit¹³. Although summary jurisdiction sometimes aims to prevent a future dispute—similar to some voluntary acts—there is a difference between them: a voluntary act creates a new legal position, while summary jurisdiction relates to a pre-existing legal relationship whose existence is probable, and aims to ensure its protection temporarily¹⁴.

Summary jurisdiction aims to achieve quick and temporary judicial protection for rights and legal positions threatened by imminent danger. The urgent order is issued with urgent measures that do not prejudice the merits or subject of those rights or legal positions. Thus, it is distinguished from substantive jurisdiction by several characteristics depending on the elements it relies upon. This will be detailed below.

Two essential conditions must be met in the urgent lawsuit for the summary judge to be competent to hear it; otherwise, the competence is absent. The element of urgency in the dispute is the first of these two conditions, stipulated in Article 299 of the C.C.A.P. (Algerian Code of Civil and Administrative Procedures), which indicates that the state of urgency remains a matter of the judge's discretionary power, inferred from the facts of the case. The second element is non-prejudice to the merits of the right, stipulated in Article 303 of the C.C.A.P.: "The urgent order shall not prejudice the merits of the right." This will be detailed as follows:

First: The Element of Urgency

Undoubtedly, the state of urgency must be present from the time the lawsuit is filed until a judgment is issued regarding it. The disappearance of urgency, whether at the first or second instance, would lead to a lack of competence. However, if the element of urgency becomes available after the lawsuit is filed before the summary judge, he retains competence to hear the lawsuit, even if it was not present at the time of filing. This is because the summary judge's assessment of the conditions for his competence to hear the lawsuit should not be restricted to a specific time, but rather to what emerged from the parties to the lawsuit at the time of judgment¹⁵.

The litigants' demand for immediate execution (enforcement) in urgent cases or the inclusion of such a provision by the judge in the urgent order is, in fact, begging the question, as this constitutes a violation of the law. This is because one of the characteristics of the urgent order is that it is immediately enforceable, with or without security, despite all avenues of appeal¹⁶. Furthermore, the urgent order can be executed by virtue of the original copy even before its registration, according to Article 303/2 of the C.C.A.P.

Second: Non-Prejudice to the Merits of the Right

The principle of non-prejudice to the merits of the right does not restrict the summary judge from examining the documents of the litigants related to the subject of the lawsuit. For this purpose, the judge may examine them for the purpose of guidance when taking the temporary measure¹⁷.

Article 299 of the C.C.A.P. does not stipulate the competence of the head of the judicial authority for urgent lawsuits, as is the case in Article 183 of the C.C.A.P.¹⁸. which means that any judge of the court can be assigned competence to hear urgent cases.

Section Two: Characteristics and Procedures of the Urgent Lawsuit

Resorting to the judiciary usually takes two forms: either before the ordinary judiciary, which requires ruling on disputes after careful examination of the evidence and information presented to preserve rights and restore them to their owners; or before the summary judiciary, which requires ruling on the dispute before it with unusual speed to preserve and protect rights, a speed not typical of litigation before the ordinary judiciary. This endows the urgent lawsuit with specific characteristics and special procedures, which will be enumerated successively.

Subsection One: Characteristics of Summary Jurisdiction

One of the features of summary jurisdiction is that it is an ancillary function and an abstract action. It is invoked based on the possibility of a potential substantive judgment being issued in the future, whether this judgment is the result of a substantive lawsuit already filed or one pending filing. It aims to ensure that the substantive lawsuit achieves its objective. Therefore, if the substantive lawsuit is decided, the urgent lawsuit becomes inadmissible. This is the essence of the distinction, and it is presented below:

First: Summary Jurisdiction has an Ancillary Function

It is granted in view of the possibility of a potential substantive judgment being issued in the future, whether this judgment is the result of a substantive lawsuit already filed or one pending filing. This is because summary jurisdiction aims to guarantee that the substantive lawsuit achieves

its objective. Therefore, if the substantive lawsuit is decided, the urgent lawsuit becomes inadmissible¹⁹.

Second: Summary Jurisdiction is Granted Regardless of the Existence of the Substantive Right

The urgent lawsuit is an abstract action, and the reason for this is that it is merely a means of preliminary precaution. This abstraction results in an important consequence: the independence of the urgent lawsuit's conditions from the conditions of the substantive lawsuit, which presupposes the proof of the existence of the substantive right²⁰.

Third: Summary Jurisdiction has a Temporary Effect

It produces its effect until a decision is made in the substantive lawsuit. Therefore, a judgment issued for judicial sequestration ends its effect upon the issuance of a judgment of ownership to one of the litigants.

In reality, summary jurisdiction may lead to obviating the need to file a substantive lawsuit. Also, there is no explicit legal text regarding its temporary nature, except for Article 633 of the Code of Civil and Administrative Procedures concerning enforcement issues²¹. However, it is considered one of the essential characteristics of urgency, and some legislations explicitly stipulate it, such as Article 484 of the French Code of Civil Procedure²². Nevertheless, urgency may result in some definitive outcomes, such as the eviction of a tenant in the case of agreed-upon urgency.

The temporary nature of urgent orders implies that it is not permissible to rule for the payment of monetary amounts, with the exception of financial penalties and court costs. Furthermore, the urgent order can be modified if the facts change, and the modification is made through a new urgent order, such as appointing or terminating a judicial guardian²³.

Fourth: Absence of the Authority of *Res Judicata*

The urgent order does not bind the substantive judge because the substantive judge has not discussed the subject; therefore, the urgent order has no authority regarding the subject. It retains only relative authority concerning the facts it decided upon, which is a temporary authority²⁴.

However, if the summary judge is competent by virtue of an explicit legal text, he may address the merits of the right according to Article 300 of the Code of Civil and Administrative Procedures, which stipulates that the urgent order issued in matters that the law explicitly states are within the jurisdiction of summary jurisdiction allows the judge to address the subject of the right, and the order issued therein acquires the authority of *res judicata*²⁵.

Fifth: The Adversarial Nature (Contradictory)

This is what distinguishes urgent orders from orders on petitions, because urgent orders are issued upon the request of one litigant and in the presence of the other party or after they have been legally summoned²⁶.

Sixth: Non-Acceptance of Opposition or Objection to Immediate Execution

Urgent orders do not accept opposition or objection to immediate execution, as stipulated in Article 303 of the Code of Civil and Administrative Procedures²⁷.

Seventh: Immediate Execution Despite All Avenues of Appeal

This is stipulated in Article 303 of the Code of Civil and Administrative Procedures: with or without security, despite all avenues of appeal. Immediate execution is by operation of law and not by the judge's will; therefore, there is no need to explicitly state it in the order. However, in the case of extreme urgency, the judge may order the execution of the order in its draft form, even before registration²⁸.

Subsection Two: Procedures of the Urgent Lawsuit

The urgent lawsuit, also called the temporary lawsuit, is a set of procedures aimed at ruling urgently and quickly in a state of necessity. It is distinguished from other lawsuits by the competent authority to rule on it. Its subject matter is often judicial sequestration, establishing a state of affairs, hearing witnesses, enforcement disputes and issues, and, in any case, ruling on any precautionary measure in accordance with the provisions of the C.C.A.P. and specific legal texts, such as a request to stop new works pending a decision on the substantive lawsuit. The purpose of resorting to the urgent lawsuit is to avert an immediate and imminent danger, as it is feared that the passage of time will lead to a situation that is difficult to remedy in the future. It also aims to protect the parties' rights from being lost²⁹.

First: Parties to the Lawsuit

The parties must possess legal capacity, standing, and interest, but with a degree of leniency due to the urgent and temporary nature of the procedure. For instance, a notary, expert, or bailiff may file an urgent lawsuit if they face difficulties in carrying out their mission³⁰.

Second: Summons

This is done in accordance with the procedures stipulated for filing a lawsuit in Articles 16, 18, 19, and 20 of the Code of Civil and Administrative Procedures³¹. However, deadlines may be reduced to 24 hours. In cases of extreme urgency, these deadlines may be reduced further to an hour-by-hour basis, according to Article 301 of the Code of Civil and Administrative Procedures³². It is also permissible to file an urgent lawsuit outside the days and hours designated for hearing urgent cases. The summary judge may hear the lawsuit even before it is recorded in the docket and shall immediately set the date and time of the session, and may make it an hour-by-hour session, according to Article 302 of the Code of Civil and Administrative Procedures³³.

Third: Deliberations (Discussions)

The defendant has the right to review the plaintiff's requests and respond to them. However, deliberations can be oral, which is the general principle, and the judge is not obligated to postpone the case. Nevertheless, the integrity of the discussion requires giving the defendant an opportunity to study the plaintiff's requests and documents and respond to them. Sometimes, the judge asks the parties to submit their memoranda in writing if he deems their positions complex, likely to lead to

errors in interpretation, or dangerous, thus incurring their liability. The defendant may present counter-claims, and the rules of intervention in the proceedings may also be applied³⁴.

Fourth: Investigation

The summary judge may order any measure if it is necessary to rule on a dispute likely to occur. He may order the parties to attend or personally move to the location of the dispute. The presence of the clerk during the hearing of the urgent lawsuit is not mandatory and is not mentioned in any text³⁵.

Fifth: The Order Issued in Urgent Cases

In terms of form, it is a judgment in the full sense of the word and must include the details required in judicial judgments, such as the name of the court, the name of the judge issuing the order, the date of the order, and the names, addresses, and procedural positions of the parties. The order must be reasoned, and the statement of reasons and the parties' explanations can be abbreviated to the extent that allows the Council (Appellate Court) to exercise its oversight. In principle, the order should be issued in the same session, and the judge may rule on it even on holidays, although he may set another date for the pronouncement of the order. The original order is kept in the court registry, and copies are delivered to the parties³⁶.

Section II: Summary Justice in Judicial Precedent and the Problem of Jurisprudence Instability

The Algerian legislator has clarified cases of urgent actions (summary justice) within the framework of general rules and others that deviate from these rules, such as cases where the summary judge is constrained by the commitment to a specific legal text, as well as cases where the judge is obligated by the established precedent of the Supreme Court.

The Supreme Court's jurisprudence plays a significant role in summary justice cases, where its published decisions in judicial journals become binding on lower courts. In this latter scenario, specialists in law, particularly judges and lawyers, face implementation problems, primarily revolving around interpreting the applicable law and determining the appropriate solution for a specific case. This problem is certainly both a cause and a consequence of the contradictions in the Supreme Court's judicial precedents.

Judicial precedent is defined as the solution adopted by a judicial authority in a case brought before it when there is no applicable legal text, or when the text is ambiguous or inadequate. The legislator mandates that the judiciary must rule on every case presented to it. Furthermore, the judiciary is not allowed to neglect ruling on any of the original claims in cases involving multiple claims, even if the legal text is ambiguous or non-existent. In the first instance, the judge interprets the text; in the second, the judge rules based on the principles of Islamic Sharia, custom, or the principles of natural law and the rules of justice, lest the judge be considered a denier of justice.

Therefore, this section will address the cases of urgency in the Algerian legal system, focusing on those that fall outside the general rules³⁷, and examine the fluctuation of judicial precedent and its repercussions³⁸. on summary actions, as follows:

Section One: Cases of Urgency in the Algerian Legal System

The Algerian legislator established general provisions regarding summary justice, outlining the case of ordinary urgency and setting two important conditions that must be met. It also prescribed deadlines that correspond to the state of urgency, differing from those stipulated for ordinary urgency. There are other instances where the legislator limited the summary judge, obligating them to adhere to a specific legal text when ruling on the matter³⁹.

In addition to what has been mentioned, the Supreme Court's jurisprudence has a significant role in summary justice cases, where its published decisions are binding on the judicial authorities of a lower rank⁴⁰.

Accordingly, the study will be limited to clarifying the cases of urgency that fall outside the general rules, in accordance with the provisions of the Code of Civil and Administrative Procedures, which specified the summary judge's jurisdiction in certain matters explicitly addressed by legal texts. The summary judge is also competent in certain cases based on the established precedent of the Supreme Court. This will be presented sequentially through the following two subsections:

Subsection One: Urgency According to the Legal Text

Based on the maxim⁴¹: "No *Ijtihad* (legal reasoning/precedent) where there is a text," the legislator departed from the general principle stated in Article 303 of the C.C.A.P., which stipulates that a summary order shall not prejudice the merits of the case (the right), and consequently, does not acquire *res judicata* authority due to its temporary nature.

However, pursuant to Article 300 of the same law, the legislator allowed for the possibility of deciding on the merits of the dispute in matters that the law explicitly states are within the summary judge's jurisdiction. In such cases, the order issued acquires the authority of *res judicata* (the subject matter of a final judgment). This is indisputable, given that the summary judge is often more familiar with the details of the case than the judge of the merits, whether through the facts or the documents constituting the case file, thereby reducing procedures and saving time.

It is worth noting that the jurisdiction of the summary judge based on a legal text differs from their general jurisdiction. The requirement to prove the element of urgency is unconditional and is presumed by the legal text whenever specific facts are established⁴². However, the second element, not prejudicing the merits of the right, must still be present, because even if urgency is presumed by force of law, there is no text exempting the judge from proving the second element, which is not prejudicing the merits of the right⁴³.

Subsection Two: Urgency According to Judicial Precedent

Jurisprudence and the judiciary have converged on a single definition of urgency: it is any immediate danger that causes harm which cannot be remedied in the future. In this regard, the Supreme Court issued several decisions under the repealed Code of Civil Procedure, which remain relevant under the current Code of Civil and Administrative Procedures due to the similarity of the criteria used to define the state of urgency. Thus, the summary judge is competent in some cases based on the established precedent of the Supreme Court.

The Supreme Court's decisions have covered all the elements constituting a summary action: the existence of the element of urgency, the absence of prejudice to the merits of the right, the necessity of appointing an expert upon request, and petitions for revision. A selection of these decisions will be presented below.

First: The Element of Urgency

The Supreme Court's decisions clarifying the element of urgency include the following:

"Whenever it is established that applications intended to obtain an order for establishing a condition, for issuing a warning, or for taking any other urgent measure on any subject, without prejudice to the rights of the parties, are submitted to the President of the competent judicial body who issues the order regarding them. The worker's resignation from his position causes him to lose the right to occupy staff housing that was temporarily placed at his disposal and linked to the performance of his duties for the employing company. Therefore, the appeal must be rejected on its merits as long as the summary jurisdiction declared its competence and ordered the appellant to vacate the staff housing after the termination of his duties, thereby applying the law correctly"⁴⁴.

It is inferred from the above decision that the legal basis relied upon by the Supreme Court—that applications for an order to establish a condition, issue a warning, or take another urgent measure without prejudice to the parties' rights are submitted to the President of the competent judicial body—relates to orders on petitions under the Code of Civil and Administrative Procedures⁴⁵.

"If it is legally established that the summary judge, sitting to rule on administrative cases, is competent to take all necessary measures in a state of urgency, then the provisions of Article 171 bis of the C.C.P., which grants him this authority, have excluded disputes related to public order and public security from the scope of his jurisdiction. Hence, the decision to prohibit residency must be considered a security measure issued by public security services and taken within the scope of the powers entrusted to them, necessitating the upholding of the appealed summary order which declared the non-acceptance of the lawsuit aiming to postpone the residency prohibition decision"⁴⁶.

"Article 171 bis of the C.C.P. permitted the President of the Judicial Council or the delegated member, in all cases of urgency, to take the requested measure by means of a petition submitted to him, and explicitly provided for this even in the absence of a prior administrative decision. It is sufficient for the petition to be accepted for the requested urgent measure to be carried out, which the judge of the first instance should have issued instead of declaring non-competence. This makes his decision, given the subject of the request aiming to appoint an expert, contrary to the law and necessitates its annulment"⁴⁷.

"Since it was established in the present case that the Council judges maintained their summary jurisdiction on the basis of the appellant's lack of a lease deed, they have correctly applied the law"⁴⁸.

"It is established in the present case that the tenant of a commercial premise for a period of less than two years is considered an occupant without right or title after the expiration of the contract period and does not have the right to demand the renewal of the lease contract. Given this, the summary judiciary is competent to rule on the eviction. Therefore, the decision is sufficiently reasoned, which necessitates the rejection of the appeal"⁴⁹.

Second: Non-Prejudice to the Merits of the Right

"Whenever the law stipulates that the eviction of a doorman from a dwelling allocated for his profession cannot be ordered urgently as long as the employer requested the termination of the employment relationship, ruling otherwise constitutes a violation of the law for prejudicing the merits of the right"⁵⁰.

"Whenever it is legally established that, in all cases of urgency, the application is submitted by a petition to the President of the judicial body of the first instance competent to hear the merits of the case, and whenever it is also established that orders issued in summary matters shall not prejudice the merits of the right, then ruling on a serious lawsuit based on the examination of documents directly related to the facts of the lawsuit requires the declaration of the summary judge's non-competence. Given that it was established in the present case that the dispute relates to a request for eviction from a residential premise, and the summary judge of the first instance court ruled non-competence and referred the parties to the judge of the merits, the judges of the Appeal Court, by annulling the appealed judgment and ruling on the lawsuit anew by evicting the appellant from the disputed premises based on the existence of violence and trespass, have violated the law."

"Whenever it is established that orders issued in summary matters shall not prejudice the merits of the right, these orders are considered null and void if they address the settlement of the merits of the dispute"⁵¹. The summary judge must declare non-competence if a dispute arises over the concept or effectiveness of a law, a regulation, or a contract to support the requested measure, or else their decision is subject to cassation. Ruling contrary to this principle necessitates the cassation of the decision which affirmed a summary order ruling for the eviction of the appellant from the places he occupies, which belong to the respondent, without declaring non-competence"⁵².

"Whenever it is legally established that orders issued in summary matters shall not prejudice the merits of the right, and whenever it is also established that judicial sequestration is permissible over common funds in case of administrative vacancy or a dispute between partners if sequestration is shown to be the necessary means to preserve the rights of the stakeholders, then ruling contrary to the provisions of this principle constitutes a violation of the law. Given that the dispute revolves around the management of the partnership contract concluded between the two parties, which contained clear clauses assigning management to the appellant and making him a 50% partner in fishing resources, and that following the resort to summary justice, the judge of the first instance court ruled to appoint a judicial custodian, the Council judges, by affirming that the company was dissolved and that the claimant guarantees the appellant's share, while ignoring that the dispute concerned the exploitation of the boats, have thereby violated the facts of the lawsuit and touched upon the core of the subject by accepting the dissolution of the company, contrary to the provision of Article 186 of the C.C.P., which necessitates accepting the appellant's claim based on the violation of the aforementioned principle"⁵³.

Third: Necessity of Appointing an Expert Upon Request

Regarding the necessity of appointing an expert upon request, the Supreme Court's summary justice decisions include the following:

"Whenever it is legally established that when a temporary or precautionary measure needs to be ruled upon, the application is submitted by petition to the President of the judicial body of the degree competent to hear the merits of the case, and it is also established that orders issued in summary matters shall not prejudice the merits of the right, then the ruling rejecting the lawsuit for the appointment of an expert to conduct a physical inventory between the parties to count the

services rendered by the workforce, consumed building materials, and used equipment, constitutes a misapplication of the law. Given that it was established in the present case that the arbitration clause is binding on both parties and this measure falls within the subject of the arbitration agreement and prejudices the rights of both parties, these judges, by ruling the non-competence to appoint an expert, have misapplied the law"⁵⁴.

"It is legally established that orders issued in summary matters shall not prejudice the merits of the right, and it is also established that the intervention of the summary judge is necessary to put an end to the commercial premises owner's trespass by seizing a space legally leased to a third party. Therefore, the criticism of the appealed decision raised by the appellant regarding the exceeding of authority and lack of competence is unfounded and must be rejected. Since it was established in the present case that the Appeal judges upheld their decision to annul the appealed order and ruled anew to return the respondent to his commercial premises, by ruling as they did, they did not exceed their authority and decided on a case within their competence"⁵⁵.

Third: Petition for Revision

Regarding the petition for revision, the Supreme Court's summary justice decision states the following:

"Since the temporary nature of summary judgments and the decision issued at the appeal level allows the parties to resort anew either to the summary judge, who can rule differently if evidence of a change in circumstances is presented, or to the judge of the merits. A simple and swift lawsuit can enable them to obtain a new decision in the summary or the merits phase, thereby excluding recourse to extraordinary means of appeal, which is the petition for revision. The temporary nature of summary orders makes the decisions issued therein not subject to challenge by way of petition for revision, and by ruling thus, the court has violated the law"⁵⁶.

Section Two: Fluctuation of Judicial Precedent and its Repercussions on Summary Actions

The Algerian Constitution grants the two highest judicial bodies in the state the mission of unifying judicial precedent. This is stipulated in Article 179/3: "The Supreme Court and the Council of State shall ensure the unification of jurisprudence throughout the country and shall oversee the respect of the law"⁵⁷. meaning to establish uniform judicial solutions for the same legal issues.

In practice, the judgments and decisions issued by judicial bodies are often unpredictable. On many occasions, different rulings are issued regarding similar cases⁵⁸. For example, a group of workers dismissed by their employer under the same circumstances and for the same reason files lawsuits. Subsequently, the Social Division of the Court issues judgments granting all plaintiffs varying compensation. Following the appeals submitted to the Social Chamber of the Council, the resulting decisions varied as follows: 1. In most cases, the appealed judgment was affirmed. 2. In some cases, the appealed judgment was annulled, and the plaintiffs' claims were immediately rejected anew. 3. In other cases, the appealed judgment was annulled, and the court ruled non-competence in terms of the subject matter for the social judiciary. Following the appeal in cassation submitted by the municipality, the Social Chamber of the Supreme Court issued decisions categorized into two types: First: Rejection of the appeal in cassation⁵⁹. Second: Annulment of the appealed decision without referral, due to the Social Division's lack of competence to rule on this type of case⁶⁰.

It is self-evident that the Supreme Court bears some responsibility for the differences in the solutions provided by lower courts regarding the legal problems presented to them⁶¹. The Supreme

Court's decisions sometimes contain different and contradictory precedents, without enabling other judicial bodies to be informed of them. If the Supreme Court itself fluctuates in its jurisprudence and does not adhere to the principles it establishes, and furthermore, does not even abide by the law related to its powers, organization, and functioning, especially concerning its fundamental mission of unifying judicial precedent, it is natural for lower courts not to adhere to the Supreme Court's decisions due to their inconsistency and contradiction, including cases of urgency⁶².

To illustrate some aspects of this problem, it is necessary to address the legal stance on the instability of judicial precedent and highlight actual cases in this regard.

Subsection One: The Law's Stance on Judicial Precedent Instability

Non-retraction from judicial precedent and its stability are considered means to achieve the mission entrusted to both the Supreme Court and the Council of State, which is the unification of judicial precedent. This aims to achieve a supreme goal: ensuring adherence to that precedent by lower courts. The problem arises when the unification of judicial precedent is not achieved due to the two aforementioned judicial bodies retracting their previous precedent and establishing different judicial precedents, which raises the question of their duty to adhere to the judicial precedents they had previously established.

In the first appeal, the Supreme Court merely clarifies the correct legal rule to be applied to the case before it. If it accepts the appeal and annuls the challenged judgment fully or partially, it does not rule on the merits of the dispute but refers the case to the judicial body that issued the annulled judgment with a new composition, or to another judicial body of the same type or degree, which is then obligated to apply the referral decision concerning the legal issues ruled upon by the Supreme Court⁶³.

However, if the referral court fails to comply with the Supreme Court's decision on a legal issue, the latter may rule on the merits of the dispute during the second appeal in cassation. In the event of a third appeal, the Supreme Court is obligated to rule on the case in terms of both facts and law. In addition to its supervisory function over the judgments issued by the courts subject to the ordinary judicial system during appeals in cassation, the Supreme Court is also called upon in the same context to establish a judicial precedent that includes solutions that will facilitate the work of all judicial bodies, including itself⁶⁴.

Since it is certain that the stability of the Supreme Court's jurisprudence gives it strength and ensures its adoption by lower courts, there is no contradiction between entrusting the two judicial bodies with the unification of judicial precedent and simultaneously authorizing them to retract it and establish a different precedent. On the contrary, the nature of the work of these two bodies, and the fact that they rule on appeals specific to particular cases, means that their decisions do not rise to the level of a law containing general, abstract, and binding rules. This grants them the freedom to adhere to the precedent they established or to retract it and establish a different judicial precedent, provided they follow the legally prescribed procedures.

Subsection Two: The Reality of Judicial Precedent Instability

Despite the Algerian legal arsenal, which rivals that in force in more developed countries, the problem revolves around the scope of application. This is a well-established fact in most areas, and the Supreme Court and the Council of State are not exceptions; rather, they appear as typical examples. It is observed that the Supreme Court and the Council of State do not fulfill the role entrusted to them-the unification of judicial precedent-as their jurisprudence often fluctuates and

undergoes changes without following the legally stipulated procedures. Consequently, their decisions are no longer taken seriously by lower courts. The failure of the Supreme Court and the Council of State to perform their role is compounded by keeping their precedents unknown in most areas. The situation has reached the point where some judicial bodies, especially the courts, distinguish themselves by unique methods of handling lawsuits brought before them, disregarding the supreme purpose expected of them, which is to provide citizens with judicial protection to uphold justice and remove injustice. Certainly, without the desire to achieve this goal, there would be no reason to train and employ judges or establish judicial bodies⁶⁵.

Furthermore, the phenomenon of searching for any procedural violation, even if not stipulated in the law, has spread, leading to judgments that invalidate procedures, declare lawsuits inadmissible, or reject them as they stand. This serves a dual purpose: avoiding ruling on the merits of the case on one hand, and inflating the statistics of cases ruled upon on the other. It is also observed that the vast majority of decisions by the Judicial Councils, the Council of State, and the Supreme Court consist of affirming the appealed judgment or decision for the first two, and rejecting the appeal for the third. Undoubtedly, this is primarily due to focusing on clearing cases rather than ruling on their merits.

First: Examples of Change in the Supreme Court's Judicial Precedent

The Judicial Journal published two decisions issued by the Plenary Chamber of the Supreme Court, in accordance with the legally prescribed procedures, containing essentially the following:

1. The decision issued on February 18, 1997, under No. 136156, established the necessity of a formal deed for a contract involving the sale of a commercial establishment, under penalty of nullity⁶⁶.
2. The decision issued on March 27, 2001, under No. 201823, established the lapse of proceedings (expiration of the statute of limitations) after the case was referred following cassation, if two years had passed from the date of the Supreme Court's decision⁶⁷.

The Supreme Court Journal published a decision under No. 444499 on February 23, 2009, which stipulated that the parents' revocation of a gift contract is permissible through a notarial deed, without the need to resort to the judiciary⁶⁸.

Second: Judicial Precedent Remains Incomplete

Despite the efforts made by the Supreme Court to publish the decisions issued by its various chambers, they remain insufficient and suffer from a significant shortfall. Many decisions remain unknown to litigants, lawyers, and even judges, including some judges of the mentioned judicial body. Undoubtedly, this contributes to the fluctuation in the legal solutions provided by different judicial bodies to the problems presented to them. The situation has reached the point where some judicial bodies, especially the courts, distinguish themselves by unique methods of handling lawsuits brought before them, disregarding the supreme purpose expected of them, which is to provide citizens with judicial protection to uphold justice and remove injustice. Certainly, without the desire to achieve this goal, there would be no reason to train and employ judges or establish judicial bodies⁶⁹.

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Conclusion

Lawsuits concerning urgent matters in light of judicial precedent, with this study specifically dedicated to the precedents of the Supreme Court, are likely not to provide sound solutions in cases that are similar in circumstances and facts, as the precedents of this highest judicial body are often unstable and fluctuating. Moreover, the Code of Civil and Administrative Procedures has provided sufficient provisions to resolve urgent disputes.

The constitutional amendment, which is the supreme law, stipulates that unifying judicial precedent across the nation is within the powers of the Supreme Court and the Council of State. However, the Supreme Court remains far from the course leading to the achievement of its original purpose. The time has come to work on activating its role so that it can ensure respect for the law and the unification of its application at the entire national level. This is what will guarantee the respect of lower judicial bodies for the judicial precedent it establishes, and what follows from it in instilling citizens' trust in the judiciary.

In order to achieve this purpose, we propose the following:

- Ensuring that both the Supreme Court and the Council of State are composed of the most competent judges, and avoiding the use of promotion or transfer to these two judicial bodies as a means of getting rid of certain judges while awaiting their retirement.
- Making the prescribed procedures for changing judicial precedent part of public order, and granting the right to file an appeal for reconsideration against any decision issued without observing those procedures.
- Publishing all decisions issued by the Supreme Court and the Council of State, and facilitating the process of identifying all possible solutions to the legal problems they are required to rule on. This should be done by preparing a database of legal and judicial information. The aim is to gradually reduce the issuance of anomalous judicial decisions and ultimately achieve full coordination in judicial precedent.

Footnotes:

¹ Law No. 08-09 of February 25, 2008, Including the Code of Civil and Administrative Procedures, amended and supplemented, Official Gazette No. 21, issued on April 23, 2008.

² Boukandoura, Suleiman, *Urgent Actions in the Ordinary Judicial System Supported by Judicial Precedents and Jurisprudential Opinions*, 1st ed., Al-Alma'iyya for Publishing and Distribution, Constantine, 2014, p. 24.

³ Ibid., p. 24.

⁴ Boubcheur, Mohand Amokrane, "Changing Judicial Precedent Between Text and Application," *Algerian Journal of Legal and Political Sciences*, Faculty of Law, Algiers 1 University, Algiers, Vol. 41, No. 02, 2004, p. 160.

⁵ Shalaby, Hatem, "Implications and Importance of Summary Jurisdiction," published on December 23, 2018, available at: <https://ae.linkedin.com/pulse>, accessed on December 12, 2022, at 22:10.

⁶ El-Danasoury, Ezz El-Din and Akkazi, Hamed, Summary Jurisdiction and Enforcement Judgment in Light of Jurisprudence and the Judiciary, 3rd ed., University Publications House, Cairo, 2014, p. 13.

⁷ Cited these two definitions: Allam, Mohamed Fathallah, Urgent Constitutional Justice: A Comparative Study of the Idea of Urgency before Constitutional Justice, n.p., New University House, Tanta, Egypt, 2020, p. 16.

⁸ Ibid., p. 18.

⁹ Cited this definition: Al-Raissouni, Qutb, Contemporary Judicial Precedent: Its Necessity and Means of Promotion, n.p., Dar Ibn Hazm, Beirut, 2017, p. 92.

¹⁰ Cited this definition: Menqar Bennis, Mohamed, Summary Jurisdiction, n.p., Association for the Development of Judicial Research and Studies, Morocco, 1998, p. 23.

¹¹ Allam, Mohamed Fathallah, Op. Cit., p. 22.

¹² Al-Raissouni, Qutb, Op. Cit., p. 94.

¹³ Al-Raissouni, Qutb, Op. Cit., p. 96.

¹⁴ Zouda, Omar, Civil Procedures in Light of Jurists' Opinions and Judicial Rulings, 1st ed., Dar Houma, Algiers, 2021, p. 25.

¹⁵ Bachir, Mohamed, "Decisive Rulings on the Subject Issued Before Decision in the Code of Civil and Administrative Procedures," Journal of Legal and Political Sciences, Faculty of Law, Algiers 1 University, Algiers, No. 4, 2013, p. 383.

¹⁶ Dheeb, Abdelsalam, The New Code of Civil and Administrative Procedures: A Translation of a Fair Trial, 4th ed., Moufom Publishing, Algiers, 2016, p. 128.

¹⁷ Bachir, Mohamed, Op. Cit., p. 384. See also: Barbarah, Abderrahmane, Commentary on the Code of Civil and Administrative Procedures, 3rd ed., Al-Baghdadi Publications, Algiers, 2009, p. 219.

¹⁸ See Article 183 of the Algerian Code of Civil and Administrative Procedures (C.C.A.P.).

¹⁹ Al-Raissouni, Qutb, Op. Cit., p. 96.

²⁰ Bachir, Mohamed, Op. Cit., p. 384.

²¹ Saoudi, Zouhair, "Ordinary Summary Jurisdiction," Voice of Law Journal, Civil Status System Laboratory, Djillali Bounâama University, Khemis Miliana, Vol. 7, No. 1, 2020, pp. 698-699.

²² Dellenda, Youssef, The Concise Explanation of Common Rulings for All Judicial Authorities According to the New Code of Civil and Administrative Procedures, 1st ed., Dar Houma for Printing, Publishing, and Distribution, Algiers, 2009, p. 167.

²³ Zouda, Omar, Op. Cit., p. 31.

²⁴ Omar, Ismail Nabil, The Intermediary in the Law of Civil and Commercial Pleadings, n.p., New University House for Publishing, Beirut, 1999, p. 685.

²⁵ Bayoumi, Salah El-Din and Zaghloul, Iskandar Saad, The Modern Compilation in Summary Justice, n.p., Dar Al-Jeel for Printing, Egypt, 1997, p. 201.

²⁶ Salama, Ahmed Abdelkarim, Urgency in International Civil Pleadings, 1st ed., Arab Renaissance House, Beirut, 2001, p. 33.

²⁷ Saoudi, Zouhair, Op. Cit., p. 699.

²⁸ Ibid., p. 670.

²⁹ Ben Melha, Al-Ghaouthi, Algerian Judicial Law, 2nd ed., National Office for Educational Works (ONPU), Algiers, 2000, p. 314.

³⁰ Saoudi, Zouhair, Op. Cit., p. 701.

³¹ See Articles 16, 18, 19, and 20 C.C.A.P.

³² See Article 301 C.C.A.P.

³³ See Article 302 C.C.A.P.

³⁴ Hindi, Ahmed, Foundations of the Law of Civil and Commercial Pleadings, New University House for Publishing, 1st ed., Alexandria, 2002, p. 432.

³⁵ Saoudi, Zouhair, Op. Cit., p. 702.

³⁶ Ibid., pp. 702-703.

³⁷ Baghdadi, Djilali, Judicial Precedent, n.p., National Office for Educational Works (ONPU), Algiers, 1993, p. 157.

³⁸ Stipulated in Article 1 of Ordinance No. 75-58 of September 26, 1975, including the Civil Code, amended and supplemented, Official Gazette No. 78, issued on September 30, 1975.

³⁹ Ghani, Amina, "Urgency in Administrative Matters in the Code of Civil and Administrative Procedures," Master's Thesis, Specialization: Procedures and Judicial Organization, Faculty of Law, Oran University, Academic Year 2011-2012, p. 45.

⁴⁰ Bachir, Mohamed, Op. Cit., p. 385.

⁴¹ Article 300 C.C.A.P. stipulates the following: "The summary judge is also competent in matters explicitly stipulated by law to be within his competence, and in the case of deciding on the subject of the lawsuit, the order issued therein shall acquire the authority of *res judicata*."

⁴² Boudiaf, Adel, The Concise Explanation of the Code of Civil and Administrative Procedures, 1st ed., Vol. 1, Klik Publishing, Mohammadia, Algeria, 2012, p. 313. See also: Frija, Hocine, Basic Principles in the Code of Civil and Administrative Procedures, University Publications Office (OPU), Ben Aknoun, Algiers, 2013, p. 114.

⁴³ Bachir, Mohamed, Op. Cit., pp. 385-386.

⁴⁴ Supreme Court Decision No. 30161 of February 7, 1983, Judicial Review (M.Q.) for the year 1989, No. 1, p. 168.

⁴⁵ Boukandoura, Suleiman, Op. Cit., p. 25.

⁴⁶ Supreme Court Decision No. 26998 of April 12, 1986, Judicial Review (M.Q.) for the year 1989, No. 2, p. 215.

⁴⁷ Supreme Court Decision No. 46897 of April 12, 1986, Judicial Review (M.Q.) for the year 1989, No. 2, p. 215.

⁴⁸ Supreme Court Decision No. 206421 of August 8, 2000, Judicial Review (M.Q.) for the year 2000, No. 1, p. 115.

⁴⁹ Supreme Court Decision No. 218477 of July 13, 2000, Judicial Review (M.Q.) for the year 2000, No. 1, p. 137.

⁵⁰ Supreme Court Decision No. 28243 of February 21, 1983, Judicial Review (M.Q.) for the year 1989, No. 1, p. 171.

⁵¹ Supreme Court Decision No. 22098 of March 16, 1981, Judicial Review (M.Q.) for the year 1981, No. 2, p. 147.

⁵² Supreme Court Decision No. 41222 of March 16, 1981, Judicial Review (M.Q.) for the year 1989, No. 2, p. 176.

⁵³ Supreme Court Decision No. 36982 of June 29, 1985, Judicial Review (M.Q.) for the year 1989, No. 4, p. 129.

⁵⁴ Supreme Court Decision No. 34776 of March 23, 1985, Judicial Review (M.Q.) for the year 1989, No. 4, p. 129.

⁵⁵ Supreme Court Decision No. 32135 of March 9, 1985, Judicial Review (M.Q.) for the year 1990, No. 2, p. 131.

⁵⁶ Supreme Court Decision No. 58530 of July 9, 1990, Unpubl., Judicial Review (M.Q.) for the year 1993, No. 3, p. 122.

⁵⁷ Presidential Decree No. 20-442 of December 30, 2020, concerning the issuance of the text amending the Constitution, approved by the referendum of November 1, 2020, Official Gazette No. 82, issued on December 30, 2020.

⁵⁸ Boubcheur, Mohand Amokrane, Op. Cit., pp. 2-3.

⁵⁹ Supreme Court Decisions Nos. 88866 and 88867, Social Chamber, dated September 30, 1992 (Unpublished).

⁶⁰ Supreme Court Decision No. 110978, Social Chamber, dated November 22, 1994 (Unpublished).

⁶¹ Boubcheur, Mohand Amokrane, Op. Cit., p. 3.

⁶² Organic Law No. 11-12 of July 26, 2011, relating to the organization, functioning, and powers of the Supreme Court, amended and supplemented, Official Gazette No. 42, issued on July 31, 2011.

⁶³ See Articles 363 and 364 C.C.A.P.

⁶⁴ See Article 374 C.C.A.P.

⁶⁵ Boubcheur, Mohand Amokrane, Op. Cit., p. 9.

⁶⁶ Supreme Court Decision No. 136156 of February 18, 1997, Judicial Review (M.Q.) for the year 1997, No. 1, pp. 10-13.

⁶⁷ Supreme Court Decision No. 201823 of March 27, 2001, Judicial Review (M.Q.) for the year 2001, No. 1, pp. 99-103.

⁶⁸ Supreme Court Decision No. 444499 of February 23, 2009, Judicial Review (M.Q.) for the year 2009, No. 1, pp. 107-113.

⁶⁹ Boubcheur, Mohand Amokrane, Op. Cit., p. 10.

⁷⁰ Ibid., p. 11.

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