



Non-judicial Guarantees for Compelling the Administration to Execute Court Judgments in Algerian Legislation

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Abstract ;

Despite the binding nature of judicial rulings against the administration, the latter does not comply with their execution, even with the mechanisms established by the legislator under Law 08-09, which includes the Code of Civil and Administrative Procedures, such as coercive fines and the ability to issue orders to the administration. However, these measures remain insufficient. Consequently, the legislator has resorted to other non-judicial methods that are more stringent, such as the powers granted to members of parliament, which include mechanisms for questioning and interrogation, as well as the establishment of the Office of the Ombudsman under Presidential Decree 20-45 and the National Human Rights Council under Law No. 16-13.

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1. **Introduction**

The issue of the administration's refusal to execute judicial rulings has become a significant problem for many litigants. The law holds no value without its application, judicial rulings lack significance without their enforcement, and the principle of legality in the state is meaningless unless it is coupled with another principle that entails respecting the binding nature of judicial decisions. Engaging in lengthy and complex litigation procedures to obtain a ruling that affirms a right for its holder is futile unless the latter can actually realize that right through execution. While the effects of the binding nature of a judicial ruling include an obligation to execute it, with the possibility of suspending execution in certain cases, the general rule is that everyone, including the administration, is obligated to execute judicial decisions. This is a constitutional principle enshrined in Article 145 of the constitutional amendment of 1996, which states: "All competent state bodies must execute judicial rulings at all times, in all places, and under all circumstances."

Thus, judicial rulings that have acquired the force of *res judicata* are obligatory for execution. If the administration that issued the ruling against it initiates execution within the specified time frame and according to the legal procedures required for execution, there should be no issues. However, the fundamental problem faced by those who have received favorable judgments arises when the administration refuses to execute them due to its privileges and powers. The legislator has deemed the administration's

refusal to execute judicial rulings as grounds for its liability. In reality, the binding force of a judicial ruling only bears fruit when there exists an executive power that leads to compliance through legal procedures and means that ensure compelling the administration to execute judgments issued against it. This is addressed in Law 08-09 concerning civil and administrative procedures, which establishes judicial mechanisms such as coercive fines and the ability to issue orders to compel compliance with judicial rulings. Nevertheless, these mechanisms remain insufficient to compel compliance.

Consequently, the Algerian legislator has resorted to alternative non-judicial measures by granting parliament members extensive powers to pose oral and written questions to government officials, in addition to reviving the position of Ombudsman under Law 20-45 and establishing the National Human Rights Council under Law 16-13.

The reasons prompting us to study the topic of administrative refusal to execute judicial rulings stem from its numerous practical challenges.

Therefore, we deemed it necessary to provide alternative solutions established by the legislator that can be utilized by applicants for execution to safeguard their rights in light of the administration's refusal to comply with judicial rulings against it.

This study aims to explore the most important non-judicial mechanisms adopted by the legislator. Thus, our central question in this article revolves around: What are the non-judicial legal procedures established by Algerian legislation as an

alternative solution to compel the administration to comply with judicial rulings?

In this study, we relied on a descriptive approach to clarify these mechanisms while occasionally employing an analytical approach to analyze certain legal texts related to the execution of judicial rulings. Accordingly, this study will be evaluated according to the following outline:

Chapter One: Legislative oversight as a mechanism to encourage the administration to execute judicial rulings.

Chapter Two: Some advisory bodies as mechanisms to urge the administration to comply with execution.

2. Legislative oversight as a mechanism to encourage the administration to execute judicial rulings.

The constitutional founder has provided various means to ensure respect for judicial rulings. He has the right to reinforce these mechanisms with another approach that may have significant effects in this regard, which is the possibility of attracting parliamentary attention (first requirement) or raising awareness in political discourse regarding its issues (second requirement).

The process of legislative or parliamentary oversight is one of the mechanisms through which the administration can be deterred and encouraged to execute judicial rulings. Among the most prominent forms of this oversight are parliamentary questions and examining the extent to which they can be used to urge the administration to execute rulings issued against it (first requirement), as well as the interrogation as an effective

parliamentary mechanism in this context (second requirement).

2.1 Parliamentary Questions and Their Potential Use to Urge Administration Compliance

To analyze the provisions of this requirement, it is necessary to briefly address the content of the parliamentary question mechanism (first section), and then consider the limits of relying on it to activate and encourage the administration in the execution process (second section).

First: The Nature of Parliamentary Questions

We will first define parliamentary questions (1), and then outline their types (2).

2.2 Definition of Parliamentary Questions:

Parliamentary questions are one of the key tools through which parliament exercises its oversight and monitors the functioning of government administration. Through these questions, members aim to obtain information about issues they are unaware of, seek clarification regarding events they have learned about, or even gauge the government's future intentions on specific matters. (Mohamed Bahi Abu younes, 2002, 54).

The jurist Mohamed Suleiman Al-Tamawi defined parliamentary questions as a means for members of parliament to inquire about matters they are unaware of or to draw the government's attention to specific issues.

(Mohamed Suleiman Al-Tamawi, 1996, 475).

Similarly, Professor Said Bouchair describes it as an informational and oversight tool for deputies concerning the actions of the executive branch. (Said Bouchair, 1984, 337).

Professor Saleh Belhadj further defines it as a supervisory procedure through which a deputy in the People's National Assembly or a member of the Senate directs a question to a government minister regarding an issue pertinent to the sector managed by that minister. (Saleh Belhadj, 2010, 290).

From these definitions, it becomes clear that questions serve merely as a means to alert the government to the excesses committed by its central or decentralized agencies, including the refusal of the administration to execute judicial rulings issued against it.

In this context, the constitutional founder stipulated in Article 157 that parliamentary committees may hear government members on any matter related to public interest.

Types of Parliamentary Questions: Referring to Article 158 of the Constitution, which states: "Members of Parliament may direct any oral or written question to any member of the government," we can categorize parliamentary questions as follows:

A. Written Questions: These can be considered as requests for information or inquiries, characterized by their distinct

publicity and specific nature. They result in two essential outcomes: first, they indicate that the concerns of elected representatives have been communicated to the government and are not lost; second, they obligate the latter, especially the administration, to respond to their concerns and take action in a clear rather than implicit manner. (Saadi Sakri, 2018/2019).

The written question is the most commonly used form by parliamentarians, allowing them to receive clarifications and information from various government members, with responses provided in writing.

B. Oral Questions: These are considered the standard form compared to written questions, which are exceptions due to the latter's subsequent emergence. An oral question is a procedure that enables members of parliament to obtain clarifications from government members regarding a specific issue. (Wafaa Ahlam Chatahata, 2013, 58)

Oral questions differ from written questions in terms of how they are posed; they are asked verbally by the parliamentarian during the designated session, and the minister responds orally during the same session. The types of oral questions can vary; they may be either an oral question with the minister's consent or an oral question with or without discussion. (Hafidh Nekadi, 2014, 73)

Furthermore, each question is governed by a set of rules and restrictions, and it is not entirely unrestricted.

The Legal Framework for Parliamentary Questions

These regulations are addressed in Articles 69 to 76 of Law 16-12, which outlines the organization and functioning of the People's National Assembly and the Senate. **(Law 12-12 of 25/08/2016)** before delving into these articles, it is important to note that this law should be amended in line with the latest constitutional amendment in 2020.

The text of an oral question must be submitted by the deputy or member to the relevant council office (Article 70 of Law 16-12). Subsequently, the President of the People's National Assembly or the President of the Senate sends the accepted question to the government. The term "accepted" implies that there are oral questions that are not accepted by the relevant council office, which raises concerns about democratic principles, as deputies should be free to raise any issues concerning public interest.

A parliament member may only pose one question per session. They can withdraw their oral question or convert it into a written question, provided they notify the government before the session (Article 71 of Law 16-12).

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After discussing these two texts, it is evident that the legislator restricts the oral

question, which imposes a certain limitation on holding the government accountable, and consequently the administration.

In the same context, the written question is submitted by the parliamentarian to the relevant office. The chairperson of the concerned council then sends the accepted question to the government (Article 73 of Law 16-12).

, we note the same observation regarding the term "accepted." The parliamentarian can withdraw their written question and notify the government accordingly. The government is granted a period of thirty days to respond to the written question. The relevant council is responsible for informing the parliamentarian of the government's response regarding the issue raised.

One of the advantages of Law 16-12 is that both oral and written questions, along with their respective answers, are published under the same conditions applicable to publishing the minutes of discussions in each chamber of parliament. This serves as a deterrent for the relevant administration against failing to implement judicial rulings or decisions issued against it. Additionally, it allows the public to be informed about discussions taking place between members of parliament and the government. Thus, in order to maintain citizens' trust, the administration consistently strives to execute rulings issued against it.

2.3 Parliamentary Questions as a Means to Compel Administration Compliance

Typically, government-affiliated deputies cannot pose questions to it; if they do, such questions tend not to be challenging. Therefore, genuine and effective questions usually come from opposition deputies, albeit from a minority.

Consequently, the most effective questions are those presented by opposition party deputies, especially when they manage to embarrass the government by criticizing its unlawful actions and activities.

This is reflected in how loyal deputies exhibit complete satisfaction with the responses provided by ministers to their questions, demonstrating their unwavering acceptance of those replies. (Kaddour Drif, 2016, 33).

We present here some examples in this regard, including the question raised by Deputy Bousta Nour Eddine to the Minister of State, Minister of Interior and Local Communities, regarding violations and breaches in the application of the laws of the Republic, as well as the non-implementation of judicial rulings. The deputy referred to the prevailing situation in Saida Province, where, by a decision of the Governor of Saida, the President of the Municipal People's Council was suspended. This decision was annulled by the Administrative Court of Saida on August 4, 2014, yet the governor refused to implement the court's ruling and issued Decision No. 1217 dated August 26, 2014, appointing an administrative officer to manage municipal affairs. The same

governor also issued Decision No. 1218 on August 26, 2014, suspending the continuity of the President of the Municipal People's Council and his deputies. Following this question, the esteemed minister promised to resolve this issue in Saida Municipality. (Official journal, 2014, 26) It is clear that the governor, as a representative of the administration, did not respect the ruling of the Administrative Court of Saida issued against him; rather, he issued further decisions that completely contradicted the court's ruling. This behavior is contrary to respecting judicial decisions and upholding the law.

We note that there are numerous examples in this context and refer interested readers to the official website of the National People's Assembly to explore more instances of administrative violations against judicial rulings and the interventions by deputies to alert the government.

2.4 Parliamentary Interrogation to Compel Administration Compliance

We will address its concept in the first subsection and then discuss interrogation as a mechanism for compelling administration compliance in the second subsection.

A- The Nature of Parliamentary Interrogation

Here we will first define interrogation and then clarify its distinction from questioning.

The Algerian constitutional founder addressed interrogation in Article 160,

which states: "Members of Parliament may interrogate the government on any matter of national importance, as well as regarding the application status of laws, with a response due within a maximum period of thirty days."

– Definition of Parliamentary Interrogation

Some have defined it as a constitutional means of parliamentary oversight granted to the legislative authority against the executive authority, aimed at uncovering the truth about matters concerning state interests directed at holding the government accountable for implementing its public policy. Others define it as an accusation supported by evidence and documents that any member of Parliament has the right to direct at the Prime Minister or one of its members regarding breaches within their jurisdiction, allowing all members to discuss it with a view to initiating political accountability against those accused. (Sadek Ahmed,2008,24)

In this context, Article 66 of Law 16-12 states: "Members of Parliament may interrogate the government on current issues... The President of the Senate or President of the National People's Assembly shall notify the Prime Minister within forty-eight (48) hours following acceptance of an interrogation text signed by at least thirty deputies or thirty members of the Senate."

B- Distinguishing Parliamentary Interrogation from Questioning

Interrogation is essentially an accusation bolstered by supporting documents. It

involves two parties: those interrogating and those being interrogated. It also defines its results and effects that lead to political accountability. aimed at initiating political accountability against those accused after hearing their defense, potentially leading to a vote of no confidence if any violation or negligence is proven, resulting in loss of authority for either a minister or ministry. (Ahmed Mansour kamiche,2012,15)

They also differ in terms of specific procedures for submission and response.

2.5 Conditions for Parliamentary Interrogation

• Not Contradicting Public Interest:

This is a necessary and assumed condition for interrogation. The subject must be free from any personal interests and should always aim to achieve a public interest, considering that the parliamentarian represents the people rather than themselves. They must remain loyal to the aspirations and concerns of the populace. Article 150 of the repealed Law No. 77-01 states: "The Bureau of the National People's Assembly may decide that no follow-up will result from a request for interrogation when it becomes clear that the issue does not relate to public interest." It is noted that Law 16-12 does not explicitly address this condition, and we hope that the legislator will rectify this in the new law that will follow the latest constitutional amendment of 2020. Therefore, deputies should refrain from using interrogation as a means to pursue personal interests.

- **Written Format:**

Interrogation must be in written form to ensure a serious examination of its subject and the important facts contained within. This also allows parliamentary councils to review and scrutinize it, determining whether it meets legal conditions.

- **Number of Signatories:**

Article 66 of Law 16-12 stipulates a minimum of thirty members or deputies, as applicable. However, we disagree with the legislator regarding this number; in some cases, there may be grounds for interrogation, but insufficient signatories prevent accountability, especially since opposition deputies are often very few in both chambers. Therefore, we call on the legislator to reduce this number to a reasonable threshold that would allow opposition deputies to propose any interrogation they deem necessary for defending public interest.

- **Content Requirements:**

The legislator has stipulated that the interrogation must be related to current issues according to Article 66. The term "current issues" is vague and general, which could allow the government to evade responsibility by arguing that the subject of interrogation is not a current issue. We urge the legislator to clarify what is meant by "current issues." However, referring back to Article 160 of the Constitution, we find that the constitutional founder allows interrogation on any matter of national importance, which is a sound and

logical approach, especially since implementing rulings against the administration is indeed a national issue. The founder went further in this text by linking requests for interrogation to the status of law application. Whenever the administration refuses to implement rulings issued against it, this constitutes a clear violation of law application and warrants accountability and legal action against it. This sincere intention is evident in the constitutional amendment of 2020 towards Algerian legislation, which we commend and support, hoping it will be reflected in future laws aligned with constitutional texts.

2.6 Interrogation as a Mechanism to Compel Administration Compliance

Interrogation is among the mechanisms established by the legislator to compel administration compliance with rulings issued against it. However, certain complicated conditions, such as the required number of signatories, make its utilization difficult for deputies.

Interrogation serves to safeguard rights and guarantee individual freedoms against any potential administrative abuse. It is also one of the most important legal tools that inform public opinion about various government policies, especially when it finds itself in a position of being accused and attempting to convince interrogating parliamentarians of its correctness while responding to accusations and criticisms regarding its policies. Through interrogation and response, truths emerge,

allowing public opinion to grasp reality; thus, government responsibility arises in rectifying what has been damaged by the administration concerning non-implementation.

All these significant aspects can apply to efforts urging administrations to respect the authority of administrative rulings. Consequently, it can be utilized to uncover various violations occurring in this regard by drawing attention to those committed by administrative agents and employees under their ministry's jurisdiction. This would subsequently inform public opinion about the extent of violations against individuals' rights in terms of implementation while ensuring that their sector commits not to revert back to such practices, thereby eliminating potential future abuses.

3. Some Advisory Bodies as Mechanisms for Urging Administration Compliance

The constitutional founder addressed advisory bodies under Chapter Five of the Constitution, including:

The Supreme Islamic Council, The High Security Council, The National Economic, Social, and Environmental Council, The National Human Rights Council, The National Civil Society Observatory, The High Youth Council, The National Council for Scientific Research and Technology, The Algerian Academy of Sciences and Technology

All these bodies operate under the supervision of the Presidency of the Republic. Among these advisory bodies, there exists an advisory and oversight entity established by the legislator through

specific texts, namely the Ombudsman. What concerns us among all these bodies is the one that directly contributes to evaluating and deterring the administration in cases of its obstinacy regarding the non-implementation of rulings issued against it. Therefore, we will address the Ombudsman (First Requirement), followed by the National Human Rights Council (Second Requirement).

3.1 The Ombudsman as a Mechanism to Urge Administration Compliance

We will first discuss the nature of the Ombudsman in the first subsection, and then outline its powers in the second subsection.

– The Nature of the Ombudsman

We will clarify how the Ombudsman was established and evolved in its countries of origin, beginning with Algeria, followed by a definition of the entity.

- The Establishment of the Ombudsman

The designation of the Ombudsman system varies from one country to another. Some refer to it as "ombudsman," like Sweden, which is considered the source of this system globally, while others call it a "parliamentary commissioner," as in England. This system became widespread in Scandinavian countries, appearing in Finland in 1919, Norway in 1962, New Zealand in 1962, and Denmark in the same year. In France, it was established by law on January 3, 1973. (Djalti Mansour, 2020, 164) Subsequently, it spread to Africa and Arab countries, including Algeria.

The position of Ombudsman emerged under Presidential Decree No. 96-113 dated March 23, 1996 (Official Journal No. 1), which defines the powers of the Ombudsman, along with Decree No. 96-197 dated May 26, 1996, which outlines the means granted to this office. This position was abolished in 1999 but was reestablished following the constitutional amendment of 2020 under Presidential Decree No. 20-45. **(Presidential decree 20-45 of 15/02/2020)**

3.2 Definition of the Ombudsman

– Legislative Definition of the Ombudsman

Article Two of Decree No. 20-45 defines it as follows: "The Ombudsman is a non-judicial body that contributes to protecting citizens' rights and freedoms and ensuring the legality of public institutions and administrations.

It is noteworthy from this text that the legislator has indicated the legal nature of this office in that it does not take on a judicial form; rather, it serves merely as a listening device for citizens' problems and concerns. It is also authorized to assess the legality of public institutions and administrations' operations, reflecting a state intention for it to be a sensitive monitor of these administrative entities.

Thus, the Ombudsman is a non-judicial body established by presidential decree; it is an independent administrative authority aimed at maintaining a good relationship between administration and citizens while protecting rights and freedoms. **(Amar Aouabdi, 10, 1997)**

– Jurisprudential Definition of the Ombudsman

Jurisprudential definitions of the Ombudsman vary; however, we focus on one that aligns closely with logic. Some have defined the Ombudsman as an important popular mechanism for implementing judicial rulings in general and administrative rulings specifically, considering it an auxiliary body for Parliament in performing its oversight role over administrative actions due to its competence in receiving complaints from individuals dealing with administration and informing public opinion about administrative conduct—especially concerning compliance with judicial rulings that have acquired finality. **(Saadi Sakri ,Ibid)** In our view, this definition comprehensively encapsulates the role of the Ombudsman as an oversight body aimed at curbing executive authority's excesses.

It can be addressed based on Decree 20-45, which grants the mediator a range of powers in various fields, except for matters related to state security, national defense, and foreign policy (Article 4/5 of Decree 20-45). Here, we will briefly discuss the general competencies of the mediator and then focus on their role in compelling the administration to comply in cases of non-compliance.

– General Competencies of the Mediator

Referring to Article 2 of Decree 20-45, one of the mediator's primary powers is to protect citizens' rights and freedoms by

monitoring the functioning of public institutions and administrations and ensuring their compliance with the law.

In this context, to facilitate the mediator's work, the legislator has provided mechanisms for executing this mission according to Article 3 of Decree 20-45. Thus, we find that it grants the mediator continuous monitoring and general oversight powers to gauge the quality of the relationship between the administration and its citizens, allowing for an assessment of its seriousness and effectiveness.

Consequently, the mediator has the authority to conduct necessary investigations to uncover the truth and fulfill their duties. They have the right to contact any relevant administration or institution that could provide useful information or assistance. Additionally, they can access any files or documents related to their assigned tasks, based on Article 1/5 of Decree 20-45.

According to Article 7 of the same decree, the mediator must always send, in addition to an annual report, any recommendations or proposals aimed at improving the operation or organization of the concerned facility to the administration regarding reported difficulties. The report should also include assessments regarding the quality of services provided by public facilities along with suggestions and recommendations for their improvement.

However, in practical terms, we have observed some overlap between the powers of the mediator and those of governors in certain regions. This necessitates a clearer

delineation in future legal frameworks regarding the mediator's legal standing so that they or their representatives at the regional level understand their limits and scope of authority concerning the administration.

3.3 The Role of the Mediator in Compelling Administration Compliance

Decree No. 20-45 implicitly addresses issues related to non-compliance by administrations with rulings issued against them, a somewhat acceptable approach compared to Decree 96, which was annulled and did not address this matter at all.

In this regard, Article 3 of Decree 20-45 grants the mediator general monitoring and oversight powers that enable them to assess the quality of relationships between administrations and citizens.

- In this context, any individual who has exhausted all avenues for appeal and believes they have been wronged due to mismanagement of a public service can notify the mediator.
- Article 4 of Decree 20-45 states that the mediator does not adjudicate appeals concerning public facilities and their agents. Furthermore, they cannot intervene in any judicial procedures or reconsider any judicial decisions.

Article 6 of Decree 20-45 stipulates that "the mediator proposes measures and decisions that should be taken against the concerned administration or its negligent

employees" in reports submitted to the President.

From these texts, we can infer that the legislator intended for the mediator to monitor administrations that refuse to comply with rulings against them. This is evidenced by their use of terms such as "exhausted all avenues for appeal," indicating administrative obstinacy regarding compliance. The phrase "mismanagement of public service" is broad; non-compliance with rulings is at its core. Additionally, referring to "negligent employees" points back to our earlier discussion about public employee refusal to comply.

Moreover, the legislator requires that the mediator not intervene on their own initiative except after being notified by a concerned individual defined solely as a natural person, excluding legal entities. This exclusion seems unjust toward private legal entities such as commercial companies, and we do not know the rationale behind it.

This was our commentary on Article 3. Upon analyzing Article 4, it clearly distances the mediator from direct intervention in judicial decisions. The text indicates that it is not permissible for the mediator to intervene in any judicial procedure or decision, which aligns with legal principles regarding separation of powers.

In cases where administrations fail to comply with rulings against them, according to Articles 5 and 6 of the decree, mechanisms are provided for approaching

administrations and understanding reasons for refusal in order to achieve compliance through amicable means.

In cases of obstinacy on the part of the administration, the mediator submits a detailed report directly to the Presidency of the Republic, proposing solutions and measures deemed appropriate to compel the administration to comply. (**Chettab kamel, 2005, 129**)

Finally, it can be said that this body plays a significant and effective role in conveying the concerns of those harmed by administrative abuses regarding their rights and legal statuses directly to the President of the Republic, who can utilize constitutional means to compel the administration to adhere to the rule of law. This embodies the principles of a state governed by law.

3.4 The National Council for Human Rights as a Mechanism for Compelling Administration Compliance

After the Algerian legislator abolished the Office of the Mediator in 1999, it was imperative to establish another body to take its place. This was indeed achieved through Law 16-313 (**Law 16-13 of 03/10/2016**), which emerged from the constitutional amendment of 2016. Law 16-313 organized the National Council for Human Rights as an advisory body aimed at promoting and protecting human rights. Accordingly, we will first discuss the organization of the Council in the first section, followed by its general and specific competencies related to the subject of this study in the second section.

It is worth noting that there are other mechanisms established by the legislator to protect human rights in Algeria, such as the National Advisory Committee for the Promotion and Protection of Human Rights. (Kamel Chettab , Ibid)

3.5 Organization of the National Council for Human Rights

Article 2 of Law 16-13 defines it as follows: "The Council is an independent body placed under the President of the Republic, who is the guarantor of the Constitution, and works to promote and protect human rights." The legislator defined it by clarifying its purpose. We will first address the composition of the Council and then outline its operational rules.

A. Composition of the National Council for Human Rights

According to Article 9 of Law 16-13, the composition of the Council must consider principles of social and institutional pluralism, representation of women, as well as standards and criteria for integrity and required competence. This is logical to ensure quality in terms of human resources. However, we propose that members should be technocrats and non-partisan to prevent them from being swayed by government allegiance.

According to Article 10 of the same law, the composition includes thirty-eight (38) members representing various vital sectors in the state distributed as follows:

B. Members Selected by the Executive Authority:

Four members appointed by the President of the Republic, who must be recognized figures with competence and merit, showing a consistent interest in human rights issues.

C. Two Members Selected by the Legislative Authority:

The Senate selects two members representing it, while two other members represent the National People's Assembly, ensuring this is done after consulting parliamentary group leaders to guarantee transparency and proper selection.

D. Members Selected by Human Rights Organizations:

Ten members, half of whom are women, representing major national organizations active in various fields of human rights, particularly in political, civil, economic, social, cultural domains, as well as women's rights, children's rights, rights for persons with disabilities, and environmental issues. They are proposed by those organizations they represent.

E. Members Selected by Trade Unions and Professional Organizations:

Eight members, half of whom are women from trade unions that most represent workers and from national professional organizations, particularly those representing doctors, lawyers, and journalists. Gender parity reflects the 2016 constitutional amendment that enshrined

equality in employment between men and women.

F. One Member Selected by the Supreme Judicial Council:

To represent judicial authority as a symbol of neutrality and independence.

J. One Member Selected by the Higher Islamic Council:

To represent Islam as the state religion;

H. One member selected by the Higher Arabic Language Council

To represent Algeria's official language and promote its use while attempting to lift any freeze on Arabization laws.

I. A member selected by the High Commission for Amazigh Affairs: to represent a symbol of the Algerian state's identity.

J. Member selected by the National Council for Family and Women :to emphasize women's participation in all state bodies.

K. Member selected by the Algerian Red Crescent: to represent associative and solidarity work.

L. Two members selected from the university, specialized in human rights, considering the university as a source of rights and freedoms.

M. Two Algerian experts at international or regional bodies to provide them with more insight into relevant topics.

N. Member appointed by the High Council for Youth.

O. The National Commissioner for Child Protection.

It can be observed that the council has established a balance between the authorities of the executive, legislative, and judicial branches and all civil society bodies, as well as the components and symbols of the Algerian state. This reflects transparency, democracy, and the promotion of human rights both within and outside Algeria.

3.6 Rules for the Operation of the National Council for Human Rights

To carry out its functions, the council requires bodies that monitor its activities and organize its work. These bodies are outlined in Article 18 of its organic law 16-13:

- General Assembly
- Council President
- Permanent Bureau
- Permanent Committees
- General Secretariat

The question arises regarding the regulations and foundations on which its composition and member appointments are based, as well as how its operations are conducted?

- **General Assembly:** Referring to the founding law, specifically Article 19, it indicates that this assembly includes all

council members. It serves as an important space for exchanging opinions and engaging in constructive discussions on matters within its jurisdiction, working to approve the work program and budget project.

Regarding its convening procedures, it typically meets in regular sessions four times a year upon invitation from its president. Extraordinary sessions can also be convened in urgent cases, either at the president's initiative or upon request from two-thirds (2/3) of its members. Decisions are made by a majority of present votes, with meetings being valid if half (1/2) of its members are present. If this quorum is not met, invitations are sent out within seven (7) days thereafter; in this case, meetings are valid regardless of attendance numbers. Additionally, it is responsible for approving both the annual report of the council and its budget project, electing the presidents and members of six permanent committees, ratifying the internal regulations of the council and any amendments thereto, as well as approving opinions, recommendations, reports, and proposals issued by it.

It may also form thematic working groups comprising specialized experts, technicians, and even researchers in areas related to human rights according to its internal regulations. Furthermore, it is responsible for approving any opinion or recommendation or report or proposal issued by the council.

- **Council President:** Article 13 of the organic law establishing the council and Article 32 of its internal regulations

state that the council president is elected by council members for a term of four (04) years, which can be renewed once. The president assumes their duties through a presidential decree.

This text does not specify how this election is conducted or whether it is through secret ballot, public vote, or a show of hands. Additionally, there is a question regarding whether the President of the Republic can object to the chosen candidate for presidency or if they lack such authority, especially since their role remains contingent upon issuing a presidential decree to assume their duties. If it is assumed that the President has this right, does this not infringe upon the independence of the council and limit its powers?

The founding law confirms that the term of office for the council president is incompatible with any other professional function or electoral mandate to ensure their full dedication to their responsibilities. The legislator has also provided effective legal protection against any actions that may hinder their role, such as threats or violence against them or actions that may harm their reputation like insults or humiliation. They are afforded additional guarantees necessary for their independence, integrity, and neutrality. **(Article 14 of law N°16-13)**

They and their colleagues must adhere to confidentiality obligations regarding deliberations and avoid any stance or action that may conflict with their assigned duties. **(Article 15 of law N°16-13)**

They cannot lose their membership status in the council except through term expiration, resignation submission, exclusion due to three (03) consecutive unexcused absences from General Assembly meetings, loss of status under which they were appointed, death, conviction for a felony or misdemeanor involving intent, or repeated serious misconduct that violates membership obligations. **(Article 16 of law N°16-13)**

The replacement for any member who loses their status will follow designated procedures and conditions. **(Article 15 of law N°16-13)**

The president is responsible for managing budget expenditures and serves as both spokesperson and legal representative at national and international levels. **(Article 21/2 of law N°16-13)**

– **Permanent Bureau:**

Based on Article 22 of organic law No. 16-13 and Article 39 of internal regulations, the composition of the Permanent Bureau includes a president along with heads of permanent committees who are required to dedicate themselves entirely to fulfilling their duties while receiving compensation for this service. **(Article 22 of law N°16-13)**

The bureau works on implementing the council's program, preparing agendas for General Assembly meetings, applying its recommendations, drafting internal regulations for approval by the assembly before publication in official journals; it also determines internal organization and compensation systems for its members. **(Article 23 of law N°16-13)**

Permanent Committees: Article 24 of the founding law states that in order to fulfill its responsibilities effectively, the council may form permanent committees composed of its members:

- Permanent Committee on Legal Affairs
- Permanent Committee on Civil and Political Rights
- Permanent Committee on Economic, Social, Cultural, and Environmental Rights
- Permanent Committee on Women, Children, and Vulnerable Groups
- Permanent Committee on Civil Society
- Permanent Committee on Mediation

In addition to the aforementioned, and in order to represent it regionally, the legislator has granted the council president the authority to appoint regional representatives, specifying their number, organization, and operations in the internal regulations. **(Article 24 of law 13-19).**

General Secretariat: Article 26 of organic law 16-13 states that the National Council for Human Rights consists of a General Secretariat that includes the following senior positions:

- Secretary-General, who operates under the authority of the council president and ensures its smooth functioning.

- Director of Studies and Research
- Officer in charge of studies and research
- Director of Administration and Resources
- Head of the Research and Documentation Center

The functions, classification forms, and salary payment mechanisms for these roles are determined by a specific text.

Regarding the human resources necessary for the council's operations, the legislator has ensured its right to employ staff who will be subject to a specific basic law in accordance with applicable legislation and regulations.

3.7 The Competences of the National Council for Human Rights and Its Role in Urging Administration to Implement

Referring back to organic law No. 16-13, we can outline its competences in general (first) and discern its role and authority in compelling administration to implement (second).

– The General Competences of the National Council for Human Rights

According to Article 4 of law 16-13, one of the objectives and competences of the council is to promote human rights at both national and international levels. The issue of human rights is indeed a global concern.

To achieve this, the legislator has provided the council with several mechanisms, including submitting opinions, recommendations, proposals, and reports to both the government and parliament regarding any matters related to human rights at national and international levels, either on its own initiative or upon their request. This contrasts with a mediator who acts based on requests from affected individuals.

The legislator has also granted the council the ability to study draft legislative and regulatory texts and provide feedback on them, culminating in an evaluation of existing texts in light of fundamental human rights principles

.In this context, the council can propose recommendations regarding ratification or accession to international human rights instruments. It is noteworthy that Algeria's ratification of international treaties is a positive indicator of respect for human rights.

The council also contributes to preparing periodic reports submitted to United Nations mechanisms and regional institutions as part of Algeria's implementation of its international obligations in the field of human rights.

It works on evaluating the implementation process of observations and recommendations issued by United Nations bodies and committees as well as regional entities in this area.

Its mandate extends to promoting and disseminating a culture of human rights

through continuous education and awareness efforts by organizing national, regional, and international seminars and forums. It activates scientific research by conducting academic studies and research while also organizing awareness-raising activities related to human rights.

Additionally, it aims to propose any procedural suggestions that may help advance education, training, and research in the field of rights within school, university, social, and professional settings, thereby contributing to their implementation.

It is evident that all these powers align with the intentions of the constitutional founder who stipulated in Article 212 that "the council shall undertake oversight, early warning, and evaluation regarding respect for human rights." This is a highly positive indicator that falls within the principles of a rule-of-law state.

Moreover, based on Article 5 of law 16-13 which grants the legislator early warning authority whenever tensions or crises arise that may affect human rights, it studies these issues before referring them to relevant administrative authorities accompanied by necessary recommendations. When appropriate, it may also refer them to competent judicial authorities. The council has the authority to receive complaints regarding these matters, study them, guide complainants, and inform them about their outcomes. Additionally, it can conduct necessary

visits to places of detention or arrest centers for children's protection as well as healthcare institutions, temporary detention facilities, shelters for individuals with special needs, and reception centers for foreigners residing illegally within national territory.

Algeria has demonstrated its ongoing commitment to adequately addressing African migrants seeking illegal migration to Europe. Algeria has taken a leading role internationally in caring for migrants and refugees, particularly from occupied Western Sahara as well as occupied Palestine.

3.8 The Role of the National Council for Human Rights in Urging Administration to Implement

Among the most important aspects of human rights protection entrusted to the council is its role in monitoring the administration's compliance with judicial rulings and its commitment to executing them in good faith. This is clearly reflected in Article 7/5 of law 16-13, which states: "To undertake, within the framework of its mission, any mediation to improve relations between public administration and citizens." The text carries a clear and explicit objective, namely the council's effort to alleviate any blockage between the administration and the citizen. In respect of the principle of separation of powers and acknowledging the administration as a representative of the executive authority, the legislator has used the term "improvement," implying the use of amicable methods such as

reconciling viewpoints and other means that ensure the administration's compliance with rulings issued against it. In this context, Article 54 of the council's internal regulations assigns the Permanent Mediation Committee with the following responsibilities:

- Receiving, studying, and following up on all requests, complaints, and grievances from any natural or legal persons who perceive administrative actions as arbitrary or as a deficiency in their rights according to public service regulations.
- Welcoming complainants who arrive at the council's headquarters.
- Studying and preparing recommendations and proposals to be presented to public authorities regarding measures that would improve relations between public administration, private institutions, and citizens.
- Promoting mediation and establishing its culture in dispute resolution.
- Proposing to the council's Permanent Bureau the organization of awareness-raising seminars, study days, and training workshops to familiarize stakeholders with mediation, its types, and procedures.

The legislator has emphasized receiving, studying, and following up on all requests, complaints, and grievances from any natural or legal

persons who perceive administrative actions as arbitrary or as a deficiency in their rights according to public service regulations. This is a very positive step towards compelling the administration to implement decisions in cases of obstinacy.

In this regard, the legislator has granted the council, pursuant to Article 6 of law 16-13, the authority to request any document or information or any useful clarifications from public administration, provided that the council commits to utilizing such information within the framework of the law only.

Moreover, the constitutional founder has affirmed in Article 2/212, as well as the legislator in Article 1/5 of law 16-13, that the council shall not infringe upon the powers of the judiciary. This ensures that while performing its duties, the council remains within the limits set by law and does not encroach upon judicial authority.

In conclusion, we state that the establishment of this council serves as a legal guarantee by the legislator to compel administration to execute rulings issued against it.

4. Conclusion

After studying and discussing the topic of non-judicial mechanisms to compel the administration to execute judicial rulings, it becomes evident how challenging and expansive this issue is at all levels. This complexity necessitated a close examination of the

legal texts governing these guarantees. The constitutional founder has enshrined legislative oversight as a mechanism to urge the administration to comply, primarily through parliamentary questions and inquiries. However, government-affiliated deputies often find it difficult to pose challenging questions; when questions are raised, they tend to be non-embarrassing. Consequently, effective questions are typically posed by opposition deputies. Regarding inquiries, the complication of certain conditions, such as the required number of deputies, makes it challenging for them to be utilized effectively.

Additionally, the constitutional founder established, through the constitutional amendment of 2020, the Office of the Ombudsman, which has been granted extensive powers for monitoring and oversight. However, the legislator stipulated that the Ombudsman should not intervene on their own initiative but only upon notification from the concerned individual (natural person), excluding legal entities without clear justification for this exclusion.

Lastly, we acknowledge the new body established by the constitutional founder, represented by the National Observatory for Civil Society. This initiative was reinforced by Presidential Decree No. 21-139, which allows citizens to submit their complaints to this observatory, enabling it to compel the administration to act in accordance with legal provisions

. Therefore, we arrive at the following recommendations:

- Abolish the numerical requirement (30 deputies) for questioning, allowing opposition deputies a realistic chance with a minimum threshold of around ten.
- Strengthen administrative accountability when it persists in not implementing judgments and decisions issued against it.

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