

Fragmentation of Granting Foreign Judgments the Enforceable Formula

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Abstract

The issue of fragmenting the granting of the enforceable formula to foreign judicial judgments is one of the problems that hinder the recognition and execution of foreign judgments. It raises several legal questions, especially concerning the principle of the unity of the judgment and the extent to which it can be divided without affecting its essence.

The importance of this topic lies in its discussion of a precise and significant practical aspect, as some foreign judicial judgments and some of their paragraphs may contradict the religious and social values upon which the Algerian legal system is based. This requires judicial intervention to adapt the judgment, and possibly fragment it, to preserve the balance between respecting the authority of foreign judgments and protecting public order.

Since the Algerian Code of Civil and Administrative Procedure, as well as the conflict-of-law rules stipulated by the legislator in the Algerian Civil Code, do not address this issue, identifying the position of Algerian doctrine and jurisprudence will contribute to unifying the positions of the various judicial authorities on this matter.

Keywords: Granting of judgments – Endorsement of judgments – Enforceable formula – Foreign judgment – Fragmentation of judgments

Introduction:

The enforcement of foreign judicial judgments is among the issues where principles of private international law intersect with the requirements of national legal sovereignty, especially given the ease of communication, the intertwining of cross-border legal relations, and the increase in mixed marriages, which result in disputes requiring international judicial resolution.

The Algerian legislator has established in the Code of Civil and Administrative Procedure the system of granting foreign judgments the enforceable formula as a necessary mechanism allowing their execution within the national territory, while considering several formal and substantive conditions, foremost among them being the rule of private international law prohibiting any foreign judgment contrary to public order.

However, the problem arises when the foreign judgment includes interrelated issues, some of which may conflict with public order. This raises a central question: how can the judgment be rendered without contradiction among its paragraphs? Accordingly, this article seeks to address the following legal and judicial question:

Can the enforceable formula be granted to part of a foreign judgment without the rest? What is the position of Algerian doctrine and jurisprudence on fragmenting the judgment in such cases?

Chapter One: The Legal Framework for Enforcing Foreign Judgments

The application of general law to foreign judgments issued by courts of countries with which Algeria has bilateral or multilateral agreements ratified by the competent authorities in both countries binds them to the terms of such agreements. As for those countries with which Algeria has no international agreements, the legislator subjects their judgments to a system of judicial review.

Section One: Granting the Enforceable Formula to a Judicial Judgment

The general rule in law is that a judicial judgment is enforceable as an integrated whole. However, the fulfillment of the general conditions set by the legislator for granting the enforceable formula to foreign judgments does not make the process automatic. Some judgments or their parts may contradict Algerian public order.

For instance, the Supreme Court rejected an appeal related to gender reassignment, as the foreign judgment sought to be granted the enforceable formula contradicted public order and morality. The same applies when a foreign judgment has been partially executed in the foreign state.

Thus, granting the enforceable formula to a foreign judgment, wholly or partially, excludes automatic review. The judge exerts considerable effort to decide whether to grant the enforceable formula, while respecting the sovereignty of the foreign judge who issued the judgment.

Section Two: The Concept of the Unity of a Judicial Judgment

The unity of a judicial judgment means that it must be cohesive and indivisible when granted the enforceable formula, especially if its parts are interrelated in substance and legal effect. Unlike some legal systems, such as the English system which limits the enforcement of foreign judgments to certain subjects like a specific monetary amount, Algerian law treats judgments more holistically.

For instance, financial rights in family matters are linked to divorce judgments. Although these matters are consequences of divorce, their consideration changes depending on the facts of each case. The Supreme Court, for example, examined a case of granting enforceability to a judgment dealing with child custody and visitation without having the divorce judgment itself presented.

The Code of Civil and Administrative Procedure stipulates conditions that must be met when requesting the execution of foreign instruments. Article 605, based on the principle of the international recognition of acquired rights, states that no foreign orders, judgments, or judicial decisions may be executed in Algeria without being granted the enforceable formula by an Algerian judicial authority, not by administrative bodies. The conditions include:

1. That the judgment does not violate jurisdictional rules;
2. That it has the force of *res judicata* according to the law of the country where it was rendered. The Supreme Court overturned a decision that failed to verify the validity of service procedures and of the notification record relied upon in issuing the certificate of non-appeal or opposition, as required by Articles 4(1) and 6(4) of the Algerian-French Convention ratified by Ordinance 65–194;
3. That it does not conflict with a previous order, judgment, or decision issued by Algerian judicial authorities, if raised by the defendant;
4. That it does not contain anything contrary to public order or morality in Algeria.

It is evident that the legislator refers to the foreign judgment as an indivisible whole and did not address its partial aspects. Hence, most studies either mention its granting or its denial, without addressing partial enforcement.

Section Three: The Enforceable Formula of a Foreign Judgment

The enforceable formula is a subsequent characterization of the judgment—it is the formula affixed to a foreign judgment that does not alter its content but makes it executable. Acceptance of judgments issued under foreign sovereignty does not depend on the substantive value of the judgment but on the will of the state receiving it, as Alain Pirotte expressed.

Therefore, this formula is granted only to a final, enforceable judgment that does not contravene public order or morality and does not constitute fraud against the law by evading one legal system to another.

The Supreme Court rejected an appeal where the plaintiff sought to evade Algerian law by requesting the enforceable formula for a foreign judgment, deeming it fraudulent and contrary to public order in Algeria. The judgment must also be internally coherent and indivisible in its essential matters.

This approach differs from certain comparative legal systems that do not require the enforceable formula and impose restrictive conditions for executing foreign judgments.

Since the Algerian system applies the “review system,” the Algerian judge’s role is limited to verifying the conditions stipulated in Articles 605 and 606 of the Code of Civil and Administrative Procedure before granting the enforceable formula and allowing execution in Algeria.

The Supreme Court has ruled that granting the enforceable formula to a foreign divorce judgment confers upon it the authority of *res judicata*, and that rejecting a return claim for lack of basis constitutes a correct application of law. It further ruled that granting the formula after verifying that the judgment does not offend public morality or national sovereignty is a proper application of the law.

The enforceable formula gives judgments, orders, or judicial decisions legal force in execution and grants them the status of enforceable titles. This means their recognition as binding judgments, allowing all enforcement procedures, including compulsory execution.

Chapter Two: The Limits of Judgment Unity and Its Effect on Enforcement Procedures

The unity of a judgment affects its execution procedures. When courts comprehensively review a foreign judgment under a strict approach, they tend to scrutinize its enforceability, which may gradually transform judicial review into a substantive re-examination.

However, Algerian courts adopt a flexible approach toward such judgments, considering Algeria’s open position to the world, its international commitments, and the fact that most of these judgments concern the interests of its nationals. Therefore, once the conditions of execution are met, the judgment is granted the enforceable formula and treated as if issued by Algerian courts.

Nonetheless, the legislator and Algerian courts have refused to grant the enforceable formula to judgments—wholly or partially—whose content contradicts Algerian public order when it is impossible to separate the conflicting part from the rest of the judgment.

Section One: The Scope of Judgment Unity Between Legal Texts and Judicial Practice

A foreign judgment is an integrated whole issued under the sovereignty of the foreign state. It cannot be fragmented by decision of the enforcement judge. The unity of the judgment justifies granting the enforceable formula to it as a whole, not to separate parts, as long as it remains interrelated.

A judicial judgment is a single document containing one text addressing a single dispute through logically coherent paragraphs. Therefore, it is impermissible to execute only part of a judgment while ignoring the rest, unless that part is independently enforceable by nature or contains distinct rights granted to each party.

Execution is usually clear for national judgments, but for foreign judgments, several issues arise upon enforcement, particularly when they include multiple effects not all acceptable or enforceable under Algerian law.

Algerian jurisprudence consistently adopts the principle of the indivisibility of foreign judgments when considering their enforceability, viewing them as coherent legal units that cannot be fragmented without infringing on the sovereignty of the issuing state or allowing domestic judges to interfere with the substance of foreign judgments.

Hence, most studies do not address the fragmentation of granting enforceable formula to foreign judgments.

Section Two: The Effect of Judgment Fragmentation in Light of General Principles

The Algerian legislator treats foreign judgments granted the enforceable formula the same as national judgments. The Supreme Court has annulled a judicial decision that assigned legal effects to a foreign judgment not yet granted the enforceable formula, affirming that such judgments carry the same effects as national ones once enforceable.

Article 605 of the Code of Civil and Administrative Procedure provides that for a foreign judgment to be granted enforceability, it must not “contain anything contrary to public order or morality in Algeria.” If it does, the enforceable formula is not granted.

Furthermore, Article 334 of the same Code clarifies the legislator’s view of partial judgments: decisions resolving part of a dispute or ordering an investigative or provisional measure are not appealable except together with the final judgment on the merits, unless otherwise provided by

law.

This enables the parties to use the same ordinary or extraordinary appeal methods applicable to national judgments in challenging the execution of foreign judgments.

If the foreign judgment or decision does not meet the legal requirements, or if the defendant proves fulfillment of its obligations under that judgment, the court will refuse to grant the enforceable formula.

The Supreme Court has ruled that Algerian courts cannot issue a second maintenance (alimony) judgment if a foreign court has already done so.

The lack of explicit legislative treatment of these issues prompts an inquiry into the doctrinal and jurisprudential stance regarding the **fragmentation of granting enforceability to foreign judgments**.

Chapter Three: The Position of Doctrine and Jurisprudence on the Fragmentation of Granting the Enforceable Formula to a Foreign Judgment

Jurisprudence and the judiciary play an important role in addressing issues that raise practical problems and have not been covered by the legislator. When a legal provision is ambiguous or absent, jurisprudence contributes to finding solutions, particularly by clarifying and interpreting the various perspectives that the judiciary may rely upon or prefer, thereby filling legal gaps and ensuring the adjudication of cases brought before the courts. A judge cannot abstain from ruling on cases submitted to him, to avoid the principle of denial of justice and to uphold the principle that "a judge may not withhold justice from those who seek it."

Section One: The Position of Jurisprudence on the Partial Endorsement of the Executory Formula for a Foreign Judgment

Legal scholarship has addressed this issue briefly; however, Algerian jurists have not neglected to discuss it. They have done so within the framework of private international law, a field that encompasses complex subjects requiring attention and scholarly writing. Although the study of foreign judgments allows for a more detailed exposition of opinions and their nuances, scholars have diverged into two main trends regarding this matter: one rejecting the divisibility of the enforcement order for a foreign judgment, and another allowing it under certain conditions.

Branch One: The View Rejecting the Divisibility of the Enforcement of a Foreign Judgment

Proponents of this view argue that if parts of a foreign judgment conflict with public order, the judgment should be entirely denied enforcement. The judgment must be endorsed or rejected

as a whole, and any attempt to divide it would constitute an infringement on the authority of a foreign sovereign court and a breach of the judgment's unity and legal security. The subject matter of an exequatur action is the foreign judgment as issued, and no additional or counterclaims that would modify its content are admissible unless they are intrinsically connected to the main action and are a mere consequence of its ruling.

This position originated in the field of conflict of laws and was later extended to the enforcement of judgments. Some jurists argue that excluding a foreign law for being contrary to public order should be total; partial exclusion would distort the foreign law and apply it in a way contrary to the legislator's intent.

The proponents of this view have presented several arguments, the most important of which are:

1. The unity of a foreign judicial decision must be respected as it was issued by a foreign court.
2. There exists a close connection between the different parts of the judgment.
3. Dividing it may distort the original ruling's meaning.
4. There is no explicit legal provision permitting such division. However, where a convention so provides, its terms must be respected, such as the Franco-Algerian Convention on the Execution of Judgments and Extradition of Criminals and the exchange of letters amending the Franco-Algerian Judicial Protocol of 28 August 1962.

Therefore, if parts of a foreign judgment are interrelated and some of them conflict with public order, the entire request must be rejected because separation would breach the nature of the foreign ruling.

Alioua Alia held that enforcement may be granted for part of a foreign judgment if that part meets all execution requirements and is separable from the other parts. The remaining portions could be subject to a new lawsuit, except if they contravene public order or conflict with a national judgment in the enforcing state. The defendant may also raise all objections regarding the legality of execution, such as alleging that the judgment lacks executory force in its country of origin or that the claim has prescribed. Proof in the enforcement action relates to the fulfillment of execution conditions, not to the merits of the foreign judgment itself.

As for the effects of a foreign judgment, the enforcement judge cannot grant it greater effects or guarantees than those given to national judgments. For example, if the foreign judgment creates an enforcement guarantee like a mortgage over the debtor's property, this cannot exceed

what domestic law allows. The Supreme Court has upheld a decision that granted exequatur to a foreign judgment even though it fixed the custodian's remuneration in foreign currency, ruling that it did not violate any substantive procedural rule, despite also holding that Algerian courts lack jurisdiction over the material aspects of divorce disputes between Algerian spouses residing abroad.

Article 938 of the Civil Code allows a lien to be based on a foreign judgment if it is enforceable; thus, Algerian law treats it similarly to a domestic judgment. However, the Supreme Court has refused exequatur in cases where, according to Article 344 of Ordinance No. 66-154 of 6 June 1966 (now repealed), the claim had become time-barred after thirty years.

Branch Two: The View Supporting the Divisibility of the Enforcement of a Foreign Judgment

Another group of jurists believes that a foreign judgment may be partially endorsed for enforcement. They base this on the definition of a judicial judgment as "a decision issued by a properly constituted court in a case brought before it according to procedural rules, whether deciding on the entire case, part of it, or a related issue." Thus, a judgment need not resolve the entire dispute but may settle a separable part of it.

Once the formal conditions for admissibility are met, enforcement may be refused for failing to satisfy one of the required conditions, or the national judge may allow enforcement only of part of the foreign judgment. If this part does not conflict with public order, it may be granted enforcement, applying the principle of "separability."

This view also notes that Article 605 of the Code of Civil and Administrative Procedure does not prohibit division; it only requires that the judgment not conflict with public order and that other execution conditions be met. For instance, if a foreign judgment grants divorce and divides property between spouses, an Algerian court may endorse the part concerning divorce only, rejecting the part on property division if it contravenes Algerian mandatory rules based on Islamic law, which does not recognize community property between spouses.

A judgment resolving all or part of a dispute is enforceable, as it is final. If the national judge grants enforcement, he accepts the foreign court's findings. If he grants partial enforcement, only the endorsed part is enforceable; the rejected part remains unenforceable due to lack of conditions or conflict with public order.

Orders from summary courts that annul enforcement documents or procedures do not require exequatur, as only substantive judgments determine rights. The Franco-Algerian Convention

on the Execution of Judgments, in Article 4, allows partial enforcement of a decision. Similarly, criminal judgments containing a civil component may be enforced only in respect of that civil part.

Most jurists, especially in France and Egypt, consider that it is unnecessary to exclude an entire foreign law; only the part conflicting with public order should be disregarded.

Partial enforcement achieves several goals:

1. Respecting international judicial relations.
2. Protecting litigants' interests.
3. Safeguarding the rights of the prevailing party that do not contravene public order.
4. Avoiding the need to re-litigate the same matter.

This approach balances recognition of the foreign judge's sovereignty with respect for national legal requirements, as reflected in Supreme Court jurisprudence allowing partial enforcement when the separable parts are independent and not contrary to Algerian public order.

Dr. Omar Belmami stated that although the enforcement judge cannot modify a foreign judgment, he may grant enforcement for a separable part if it meets the statutory conditions.

Judicial application supports this position: a foreign judgment ordering payment of debt with interest was found contrary to Algerian public order due to Article 454 of the Civil Code, which prohibits interest between individuals. Thus, only the part ordering payment of the principal debt was endorsed, excluding interest.

Professor Abdelaziz Saad similarly argued that when all conditions are met, the judge must grant enforcement, though he may do so partially if justified. However, the judge may not alter the content of the foreign judgment, as that would exceed his authority and expose his ruling to annulment on appeal.

Section Two: The Position of Algerian Courts on Partial Enforcement of Foreign Judgments

The judiciary has played a crucial role in shaping private international law, as its principles often arise from case law before being codified.

In the absence of explicit legislation, Algerian courts have sought to "characterize" foreign judgments to facilitate enforcement, acknowledging their validity while ensuring compliance with Algerian public order. The court may thus respond fully or partially to requests for enforcement or reject them entirely.

The enforcement court does not substitute the foreign court but acts in parallel, executing only the operative part of the foreign judgment. It may either grant or refuse enforcement in full; however, for the reasons previously discussed, partial enforcement has been accepted.

Branch One: Rejection of Partial Enforcement in Judicial Practice

The principle of judgment unity ensures the stability of rulings and prevents the enforcement of fragmented decisions that may upset legal balance. However, when a foreign judgment's elements are interconnected and some contradict Algerian law or Islamic principles, judges often deny enforcement based on unity, especially when the objectionable parts cannot be separated.

For example, if a foreign divorce judgment includes division of marital property, and that division conflicts with public order, the entire request for enforcement must be denied since the judgment is indivisible. The national judge lacks authority to divide the judgment; he must accept or reject it wholly.

Branch Two: Acceptance of Partial Enforcement in Judicial Practice

Rigid adherence to the unity principle caused practical problems, prompting courts to develop a flexible approach that respects sovereignty while protecting litigants' rights. Courts thus began to accept partial enforcement in two situations:

1. Granting enforcement to some parts of the judgment while rejecting others.
2. Responding to a party's request for enforcement of certain parts only.

This requires that:

1. The enforceable portions be independent legally and substantively.
2. Their enforcement not affect the remainder of the judgment.
3. Division not distort the judgment's structure or intent.

For instance, if a foreign divorce judgment includes custody and alimony orders, the Algerian court may grant enforcement of the divorce alone, if not contrary to public order, but reject custody provisions that violate the child's best interest.

This approach, confirmed by multiple Supreme Court decisions, accepts partial enforcement provided the endorsed part is independent and consistent with national public order.

Thus, partial enforcement is not a general rule but a narrowly applied exception balancing respect for foreign judgments with national sovereignty.

Conclusion

The study of partial enforcement of foreign judgments reveals it as one of the most complex issues in private international law. Between the principle of judgment unity and the pragmatic mechanism of partial enforcement, courts face the delicate task of balancing the recognition of foreign judgments with national legal sovereignty.

Algerian jurisprudence has adopted a flexible approach that permits partial enforcement when the part in question is independent, not contrary to public order, and separable from the rest of the judgment.

This mechanism offers a balanced solution—allowing execution of compliant portions while excluding those violating mandatory national norms, especially in family matters governed by Islamic law.

To consolidate this approach, the following measures are proposed:

1. **Codifying the principle of partial enforcement** to unify judicial practice.
2. **Preparing a judicial guide** outlining criteria for its application.
3. **Enhancing international judicial cooperation** through bilateral treaties.
4. **Specialized training** for judges in private international law.
5. **Re-examining the concept of public order** in light of evolving social and international norms.
6. **Encouraging amicable settlements** recognized by law to reduce litigation.

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