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Failure of the Public Authority to Enforce Court Rulings in Palestine



The Civil Commission for the
independence of Judiciary and Rule of
Law" ISTIQLAL"





Failure of the Public Authority to Enforce Court Rulings in Palestine

A Legal and Analytical Study in Light of the Work of the Judicial Rulings Enforcement Observatory

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Executive Summary

The principle of the rule of law and the binding nature of enforcing court rulings constitute the fundamental pillar of any democratic system based on the separation of powers and judicial independence. In the Palestinian legal system, the **Basic Law**, in Article (106), and the **Judicial Authority Law** No. (1) of 2002, in Article (82), enshrine a decisive constitutional rule that court rulings are enforceable, and that refusing or obstructing their enforcement is a crime punishable by imprisonment and dismissal from office if the person refusing is a public official, while guaranteeing the injured party's right to full compensation from the National Authority. This constitutional obligation is further reinforced by the Penal Code No. (16) of 1960 (Articles 182, 327, 473), the Execution Law, and the Code of Criminal Procedure.

Nevertheless, the study reveals a deep gap between this solid legal framework and the reality on the ground, where the phenomenon of failing to enforce court rulings — particularly those issued against public authorities — has become widespread. This phenomenon poses an existential threat to the rule of law, the standing of the judicial authority, legal certainty, and public trust in state institutions, effectively emptying court rulings of their substantive content and undermining the legitimacy of the legal system as a whole.

Using the descriptive-analytical method, the study sought to diagnose the forms of non-enforcement of court rulings and their legal and material causes, to analyze the forms of criminal, civil, and disciplinary liability arising from it, and to identify the role of civil society institutions in confronting this phenomenon. It relied on legislative texts, judicial rulings, and field data documented by the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal).

The findings show that non-enforcement takes two basic forms: explicit refusal and passive administrative procrastination. Its causes vary between legal ones (immunities, appeals, force majeure, financial constraints, and complex administrative overlap) and material ones (weak logistical capacity, geopolitical fragmentation, and direct refusal). The Istiqlal Observatory documented (145) cases of non-enforcement, of which release and discharge orders constituted (90%), with the non-complying bodies concentrated in the security services at a rate exceeding (90%), particularly the Security Committee.

Non-enforcement has given rise to criminal, disciplinary (dismissal), and civil (full compensation) liability for those responsible, yet activating these forms of liability faces substantial procedural and legislative obstacles, making non-enforcement an independent source of liability for financial, professional, moral, and psychological harm. By contrast, the Commission's experience has demonstrated the effectiveness of an integrated strategy (official correspondence, strategic litigation, institutional dialogue, and media advocacy) in achieving enforcement in (41) cases.

The study concludes that the phenomenon of non-enforcement of court rulings reflects a deep institutional crisis that goes beyond mere administrative shortcoming to a constitutional violation that weakens the separation of powers and undermines the effectiveness of judicial oversight. The shift from the stage of issuing rulings to the stage of their actual enforcement is a fundamental precondition for consolidating the rule of law in Palestine.

In light of this, the study recommends the following: issuing an integrated legislative framework to implement Article (106) of the Basic Law; introducing daily coercive fines (astreinte); amending the Administrative Courts Law to include explicit jurisdiction over compensation claims arising from non-enforcement, with mandatory-compliance orders incorporated into the operative part of rulings; establishing a specialized unit within the Public Prosecution and a central body to follow up on enforcement; adopting a national database; and strengthening strategic litigation and the role of civil society in monitoring and accountability.

Confronting this phenomenon through radical legislative, judicial, and institutional reforms is not an option but a constitutional and rights-based necessity to restore the standing of the judiciary and reinforce trust in the rule of law.

Introduction

The rule of law is the cornerstone of any democratic system, requiring that all individuals and state institutions be subject to the law. In Palestine, this principle is constitutionally enshrined, affirming judicial independence and the necessity of respecting its rulings. However, the phenomenon of non-enforcement of court rulings, given the conditions Palestine is experiencing, has become widespread — clearly evidenced by the staggering number of enforcement cases. The matter becomes even more sensitive and complex when it is the public authorities that refuse to enforce final court rulings, as this phenomenon poses a serious challenge to legal certainty. The impact of this non-enforcement is not limited to undermining judicial authority; it also strips the law of its fundamental function: protecting rights and enforcing obligations.

In this context, the Palestinian Basic Law provides a solid legal framework regarding the binding nature of court rulings. Specifically, Article 106 provides that court rulings are enforceable, and that any failure or obstruction in their enforcement constitutes a crime punishable by imprisonment and dismissal from office, while guaranteeing the injured party's right to compensation. This constitutional guarantee aims to ensure that the executive authority does not exceed its powers, affirming that the legitimacy of public authority is closely tied to its compliance with the law and with court rulings.

Complementing these constitutional provisions, the legislator, in Article 82 of the Judicial Authority Law No. 1 of 2002,¹ set out a general, sovereign provision concerning the binding force of court rulings and the obligation to enforce them, prescribing a penalty for anyone who obstructs or refrains from enforcement. In the Palestinian Law of Civil and Commercial Procedure No. 2 of 2001, the Palestinian legislator provided a definition of an enforceable ruling, and referred to the Execution Law the mechanisms and procedures for enforcing civil rulings. In parallel, the Code of Criminal Procedure No. 3 of 2001 included mechanisms for enforcing criminal rulings and entrusted the Public Prosecution with the authority to enforce them, and included in numerous provisions the obligation to enforce criminal rulings issued in favor of individuals with respect to civil obligations and release on bail, and required those in charge of correctional and rehabilitation centers to unconditionally release any detainee held without a decision issued by the competent authority. These legal provisions classify refusal or obstruction of enforcement as an administrative failure and a breach of official duties. Procedurally, the law grants individuals the right to resort to the judiciary when an executive official deliberately obstructs a judicial order, classifying such inaction as a “default” that gives rise to the state's legal liability to compensate the injured party.

Within the framework of the penal laws in force in Palestine, the Penal Code No. 16 of 1960 contains numerous provisions criminalizing non-enforcement of court rulings. Article 182 provides that any official's refusal to enforce a court ruling constitutes a misdemeanor punishable by up to two years' imprisonment, while Article 327 of the same law prescribes a penalty for anyone who violates judicial measures taken by a court to protect property, classifying it among punishable misdemeanors. Article 473 requires one week's imprisonment or a fine for any person who violates measures issued by courts of any kind.

With regard to civil disputes between natural and legal persons — other than public authorities — non-enforcement is addressed under the applicable Execution Law, or through criminal complaint mechanisms against the party refusing enforcement. However, the matter becomes more complex when it is the public authorities that refuse enforcement, since such refusal by public authorities can undermine public trust in state institutions; when the executive authority treats judicial decisions as mere recommendations rather than binding judicial orders, it threatens the social contract and the stability of the legal system. Addressing this problem therefore requires more than legislative texts alone; it requires a cultural shift toward institutional accountability and the activation of strict oversight mechanisms to ensure that no official is above the law.²

Research Problem and Questions

Some rulings issued by courts of various types and levels sometimes face the public authority's refusal to enforce court decisions — whether through procrastination in certain procedures, or a government official's administrative obstruction preventing the enforcement of a court decision. Non-enforcement of rulings may likewise result from political pressure and administrative overreach. This is, in itself, a problem the research seeks to address and to find solutions for by answering the following questions:

- 1) What are the forms of non-enforcement of court rulings and their causes?
- 2) What are the legal and material causes of non-enforcement of court rulings?
- 3) What are the forms of criminal, civil, and disciplinary liability arising from non-enforcement of court rulings?
- 4) What is the role of civil society in curbing the spread of the phenomenon of non-enforcement of rulings?

¹ Law of Civil and Commercial Procedure No. 1 of 2002 — Issue 38 — Official Gazette — 15/8/2001.

² Institute of Law, Birzeit University: *The Judiciary and the Rule of Law in Palestine*, Birzeit University, p. 40, available at: <http://lawcenter.birzeit.edu/lawcenter/files/39.pdf>.

Significance of the Research

The significance of this research lies in its coverage of several different legal aspects prevailing in Palestine. It presents a brief overview of the judicial system in Palestine and of the foundations and principles on which it is based, then addresses in some detail other topics, such as the right to litigation, the types and levels of courts, the types of court rulings and their binding authority, and the guarantees for enforcing such rulings. On the other hand, the research's practical significance is evident in the procedural and field-level realities of non-enforcement it addresses, including the forms of non-enforcement of court rulings and their causes — both legal and material — followed by a discussion of the civil and criminal liability arising from non-enforcement of court rulings as set out in applicable Palestinian legislation, in addition to presenting examples of the role civil society institutions play in curbing this phenomenon.

Research Objectives

This research seeks to achieve the following objectives:

- 1) To identify the forms of non-enforcement of court rulings and their causes.
- 2) To determine the legal and material causes of non-enforcement of court rulings.
- 3) To clarify the criminal, civil, and administrative liability arising from non-enforcement, both on the part of individuals and on the part of the public authority.
- 4) To identify and strengthen the role of civil society institutions in curbing the phenomenon of non-enforcement of rulings.

Research Methodology

To achieve the objectives of this research, the descriptive-analytical method was adopted. The relevant legal provisions concerning the public authority's non-enforcement of court decisions were described, the forms of non-enforcement were analyzed, and the criminal, civil, and administrative penalties applicable to the party responsible for, or from whom, the act of non-enforcement originated were described. Reported instances of non-enforced rulings were presented and analyzed with the aim of building a national database on the subject, in accordance with the research plan.

Research Plan

To achieve the objectives of the research, the study was divided into an introduction, three chapters, general findings, in addition to a conclusion and recommendations, as follows:

Introduction: covering the research problem, its significance, objectives, and methodology.

Chapter One: The Judicial System in Palestine, comprising two sections:

Section One: The foundations and principles on which the judicial system in Palestine is based.

Section Two: Court rulings.

Chapter Two: Non-Enforcement of Court Rulings, comprising two sections:

Section One: The forms of non-enforcement of court rulings and their causes.

Section Two: The civil and criminal liability arising from non-enforcement of court rulings.

Chapter Three: Non-Enforcement of Court Rulings Between Practical Reality, Accountability Efforts, and the Results of Intervention, comprising:

Section One: Non-enforcement of court rulings.

Section Two: Istiqlal's follow-up mechanisms for the enforcement of court rulings.

Section Three: The results of legal and rights-based interventions in following up the enforcement of court rulings.

Conclusion: covering the key findings and recommendations.

Chapter One: The Judicial System in Palestine

The Palestinian judicial system is a complex legal structure, rooted in the principle of the separation of powers and judicial independence as provided for in the Palestinian Basic Law. This system operates through a hierarchical framework consisting of the ordinary courts — comprising magistrate courts, courts of first instance, courts of appeal, and the High Court/Court of Cassation — on the level of the ordinary judiciary in both its civil and criminal branches. As for administrative disputes of various kinds, administrative courts were established, at two levels, to hear and decide such disputes,³ alongside the Sharia courts and religious courts competent over personal-status matters, and the military courts competent over military cases as defined in the interpretive decision issued by the Constitutional Court No. 1 of 2018.⁴ Pursuant to the Judicial Authority Law, the High Judicial Council centrally administers the system with respect to the ordinary judiciary, while the administrative judiciary has its own administrative structure under Decree-Law No. 41 of 2020. The Supreme Constitutional Court holds final authority to review the constitutionality of laws and to interpret legislative texts, and enjoys administrative independence from the rest of the judicial system,⁵ as do the religious and Sharia courts, which enjoy administrative independence from both the ordinary and administrative judiciary under the laws establishing each of them.⁶

Section One: The Foundations and Principles on Which the Judicial System in Palestine Is Based

The judicial system in Palestine rests on several foundations and principles, which are set out below:

- **The first foundation is the principle of judicial independence and the rule of law:** the Palestinian judicial system is founded primarily on the principle of judicial independence, as provided for in the Palestinian Basic Law, which serves as the interim constitution. This principle guarantees that judges are subject to no authority other than the law itself, and prohibits any interference by the executive or legislative branch in judicial proceedings or in the administration of the court during or after the hearing of a case before it. Article 98 of the Basic Law provides: “Judges are independent and subject to no authority but the law; no authority may interfere with the judiciary or with matters of justice,”⁷ thereby ensuring the judiciary functions as an independent and sovereign authority,⁸ enabling it to issue rulings consistent with settled legal rules, which is a characteristic inherent to a ruling and the legal effect arising from a judicial ruling.⁹

³ Decree-Law 41 of 2020 — Special Issue No. 22 — 11/1/2021.

⁴ Constitutional Court Interpretive Decision No. 1 of 2018 — dated 8/1/2020.

⁵ Constitutional Court Law No. 3 of 2006 — Official Gazette 62 — 17/2/2006.

⁶ See, for example, Decree-Law No. 8 of 2021 on the Sharia Judiciary.

⁷ Article 98, Amended Basic Law No. 3 of 2003, published in the Official Gazette on 18/3/2003.

⁸ Dr. Maher Abu al-'Ainain, “The Original Action for Nullity,” *Al-Muhamah Journal*, No. 1, p. 631.

⁹ Nour al-Hajaya, *Recognition of the Binding Authority of a Court Ruling Outside Its Home State: A Study in French and Jordanian Law*, United Arab Emirates University, 2013, p. 81.

- **The second foundation is the principle of the separation of powers:** the Palestinian judicial system adheres to the principle of the separation of powers, recognizing the judiciary as one of the state's three main pillars. This foundation aims to create a system of checks and balances that prevents the concentration of power and ensures that public authorities are subject to judicial oversight under the umbrella of the Basic Law and the constitutional obligations it entails.¹⁰
- **The third foundation is the principle of equality before the law and the right to litigation.** Among the fundamental principles of the Palestinian judicial system, consistent with the Amended Basic Law, is the principle of equality among persons in similar legal positions. Article 30¹¹ of the Amended Basic Law provides that: "Litigation is a protected right guaranteed to all persons, and every Palestinian has the right to resort to his natural judge. The law shall regulate litigation procedures in a manner that ensures the prompt resolution of cases."
- **The fourth foundation is multi-level litigation,** whereby the Palestinian judicial system is built on a hierarchy of courts, allowing for multi-level litigation proceedings (courts of first instance — magistrate and first-instance courts —, courts of appeal, and the Court of Cassation as the body guaranteeing the proper application, interpretation, and construction by lower courts of the provisions of the law).
- **The fifth foundation is the mandatory enforcement of court rulings,** pursuant to Article 106 of the Basic Law. This principle is fundamental to preserving the standing of the judiciary and the effectiveness of the legal system. Consistent with this principle, the legislator has included a set of provisions and legal rules that ensure individuals and the public authority properly comply with the obligation to enforce court rulings, and has prescribed a mandatory penalty for anyone who obstructs or refrains from enforcing a final court ruling, as provided in Article 82¹² of the Judicial Authority Law No. 1 of 2002. The legislator also included criminalizing provisions in the applicable Penal Code No. 16 of 1960 and the Anti-Corruption Law No. 1 of 2005. As for rulings issued between individuals, they are enforced according to the mechanisms set out in the Execution Law.¹³
- **The sixth foundation is the gratuitousness of the judiciary,** meaning that a litigant does not pay a fee for litigation, since judges do not receive their pay from the litigants but rather receive their salaries from the state according to the salary schedule linked to the Judicial Authority Law. It should be noted that the gratuitousness of litigation does not mean that a plaintiff or applicant does not pay a fee set under the applicable fee schedule; however, this fee is a nominal one compared to the cost of litigation borne by the state.

¹⁰ Tharwat Badawi: *Political Systems*, Dar al-Nahda al-'Arabiyya, Cairo, 1986, p. 175.

¹¹ Article 30 of the Amended Basic Law, op. cit.

¹² Article 82 of the Judicial Authority Law, op. cit.

¹³ Execution Law No. 23 of 2005 and its amendments.

- **The seventh foundation is the public nature of hearings and the oral character of pleadings**, as provided in Article 105 of the Amended Basic Law, and in numerous procedural provisions found in the procedural laws applicable before courts of all levels and types.
- **The eighth foundation is the centralized administration of the judicial function in light of its functional nature.** The legislator distinguished, in administering the judicial function, between the different functional types of judiciaries in Palestine: The High Judicial Council administers the judicial system with respect to civil and criminal courts, i.e. what is termed the ordinary judiciary, while the Palestinian legislator excluded the administrative judiciary, the constitutional judiciary, and the Sharia and religious courts from the jurisdiction of the High Judicial Council.

These are the most important foundations and principles on which the judiciary in Palestine is based, briefly outlined here for the sake of the research's structure and sequence, as a prelude to studying the right to litigation and the rulings issued by the various courts and their binding authority in the following sections of this section.

Section One: The Right to Litigation

The primary legal basis for the right to litigation is derived from the Palestinian Basic Law as amended in 2003, which elevates the right to resort to the judiciary to a constitutional level, making it a sacred right that may not be violated. Article (30) of the 2003 Amended Basic Law provides: “1. Litigation is a guaranteed and protected right for all citizens. Every Palestinian has the right to resort to the judiciary. The law shall regulate litigation procedures to ensure the prompt resolution of cases. 2. Laws may not include any provisions that immunize any administrative decision or action from judicial review.”

The Judicial Authority Law No. 1 of 2002, as amended, and the Law on the Formation of Ordinary Courts No. 5 of 2001, as amended, establish the practical framework within which this constitutional right is exercised. Article One of the Judicial Authority Law provides: “The judicial authority is independent, and interference with the judiciary or with matters of justice is prohibited.” Article (2) of the Law on the Formation of Courts provides: “1. The ordinary courts in Palestine hear all disputes and offenses except those excluded by a special legal provision, and exercise judicial authority over all persons. 2. The rules of court jurisdiction shall be determined and exercised in accordance with the law.”

As for the procedural guarantee of this right, Articles 3 et seq. of the Law on the Formation of Ordinary Courts set out the procedures to be followed by courts of all levels when hearing a case, which reinforces the protection of the right to litigation by ensuring the independence of the judges hearing the cases and the binding nature of their rulings, as provided in Article 82 of the applicable Judicial Authority Law.

The right to litigation is a right guaranteed to all persons, citizens and residents alike, without discrimination, as indicated by Article (9) of the Basic Law, while Article 30/3 of the Basic Law includes the state’s obligation to compensate litigants for “judicial errors,” which further reinforces the protection of litigants’ rights.

Section Two: Types and Levels of Courts

First: The Ordinary Judiciary

Under Law No. (5) of 2001 on the Formation of Ordinary Courts, the Palestinian judicial system consists of several types and hierarchical levels to ensure a two-tier litigation principle. Courts in Palestine are formed of courts of first instance, namely magistrate courts and courts of first instance, each according to rules of subject-matter and value-based jurisdiction; courts of appeal, which are second-level courts based in Jerusalem, Hebron, Nablus, and Gaza, competent to hear appeals against rulings issued by courts of first instance, and the court of first instance sitting in its appellate capacity, competent to hear appeals against rulings issued by magistrate courts and execution judges; and the High Court/Court of Cassation, the highest judicial authority, which ensures the proper application of the law. It does not reconsider the facts, but rather focuses on exercising oversight of the legal procedures followed by lower courts, and monitoring the extent to which lower courts have properly applied, interpreted, and construed substantive and procedural law in relation to the facts of the dispute, without this oversight extending to interference in the lower courts’ substantive weighing of evidence.

Second: The Administrative Judiciary

Until the issuance of Decree-Law No. 41 of 2020, the High Court functioned as the High Court of Justice for hearing and deciding administrative disputes at a single judicial level. With the issuance of Decree-Law No. 41 of 2020, the administrative judiciary in Palestine became a judicial body independent of the ordinary judiciary, and litigation before it became a two-tier process, as provided in Article 6 thereof.

Third: Sharia Courts and Special Courts

In addition to the ordinary courts, the Palestinian system includes:

Sharia courts, which have jurisdiction over personal-status matters (marriage, divorce, inheritance) for Muslims and the recognized religious denominations, and military courts, competent to try members of the security forces.

Fourth: The Constitutional Court

An independent judicial body established under Law No. (3) of 2006, competent to conduct judicial review of the constitutionality of laws and regulations.

Section Two: Court Rulings

A court ruling is defined as (the decision issued by a properly constituted court in a dispute brought before it in accordance with the rules of procedure, whether issued on the merits of the dispute, part of it, or a matter arising from it),¹⁴ and court rulings in Palestine are characterized by their binding and enforceable nature, as they are issued in the name of the Palestinian Arab people, and derive their legitimacy from the 2003 Amended Basic Law and Judicial Authority Law No. 1 of 2002. These rulings are classified, in terms of their binding authority, into final rulings that decide the substance of the dispute and conclude it, and interim decisions issued during the proceedings that do not decide the dispute before the court.

In all cases, once a ruling becomes “final,” it becomes enforceable through the means prescribed by law, even if it remains subject to challenge through extraordinary means of appeal. A ruling becomes final and enforceable if issued by a court of first instance after the expiry of the period for appeal without an appeal being filed, and likewise becomes final and enforceable upon the conclusion of the appeal stage. As for cassation, being an indirect means of appeal, it does not suspend enforcement unless the Court of Cassation issues a decision suspending enforcement.¹⁵ Interim decisions, however, are enforceable immediately upon being issued by the judge of urgent matters, unless the court of appeal decides to suspend enforcement.

This is with respect to the ordinary judiciary. As for the administrative judiciary, enforceable rulings are those issued by the administrative court, and filing an appeal with the High Administrative Court does not affect the enforcement of rulings issued by the administrative

¹⁴ Abu al-Wafa, Ahmad: *Civil and Commercial Procedure*, 13th ed., Munsha'at al-Ma'arif, Alexandria, 1980, p. 657.

¹⁵ See Article 240 of Law of Civil and Commercial Procedure No. 2 of 2001.

court unless the High Administrative Court decides to suspend enforcement.¹⁶ Accordingly, enforceable rulings carry a binding force that binds all public authorities, and refusal to enforce them is considered not merely a breach of the rule of law, but a crime that imposes personal liability on the person responsible for it.

Section One: Types of Court Rulings and Their Binding Authority

First: Functional Classification of Rulings (Types of Rulings by Function)

Pursuant to the Law of Civil and Commercial Procedure No. 2 of 2001, and with reference to Decree-Law No. 41 of 2020 on Administrative Courts, rulings issued by the relevant courts are divided into:

- **Rulings on the merits that conclude the dispute (final/dispositive rulings)**

These rulings are issued after the trial court has exhausted its jurisdiction to examine the dispute, and decide the right claimed and/or the legal position at issue in the case on the merits — such as a ruling recognizing the plaintiff's entitlement to compensation, or a ruling annulling an administrative decision that affected their legal position. Once this type of ruling is issued, the court's jurisdiction over the dispute ends, and it may not reconsider the subject matter of the dispute again, except within the limits of correcting errors that occurred in it or interpreting any ambiguity in its ruling. In all cases, the court that issued the ruling may not change or amend its opinion.¹⁷

- **Incidental rulings (non-dispositive/interlocutory rulings)**

These do not conclude the dispute but relate to an inherently temporary measure intended to facilitate the court's proceedings in preparation for resolving the dispute before it. These rulings are divided into:

Preparatory rulings: such as an order for a medical examination or summoning a witness.

Interim/urgent decisions: these are decisions issued by the judge of urgent matters, or by the court competent to hear the dispute acting in its capacity as judge of urgent matters, on applications submitted to it in accordance with the law, aimed at issuing a temporary order or urgent decision that does not by itself resolve the dispute; such as decisions barring travel, imposing precautionary attachment, or suspending enforcement of administrative decisions pending resolution of the main case.

Second: Classification by Finality

This is the most important distinction with respect to the enforcement of a ruling:

¹⁶ See Article 41 of Decree-Law No. 41 of 2020 on Administrative Courts.

¹⁷ Mubarak, Abd al-Tawwab: *Al-Wajiz fi Usul al-Qada' al-Madani (Law of Procedure)*, 1st ed., Dar al-Nahda al-'Arabiyya, Cairo, 2005, pp. 535, 39.

- **Final rulings:** A ruling becomes “final” when issued by a court of appeal, or when issued by a court of first instance and the appeal period expires without an appeal being filed. Such rulings are enforceable even if they remain subject to challenge before the Court of Cassation. A ruling likewise becomes final and enforceable immediately upon being issued by the administrative court.
- **Definitive (res judicata) rulings:** these are rulings for which all possible means of appeal have been exhausted, including cassation in the ordinary judiciary, and all means of appeal in the administrative judiciary have been exhausted. They represent the “absolute truth” of the matter and may not be reconsidered except in accordance with the law regarding retrial or third-party opposition.¹⁸

Third: The Binding Authority of Court Rulings

In addressing this matter, a distinction must be drawn between the terms “res judicata authority” (*hujjiyyat al-amr al-maqdi bihi*) and “the force of a final decision” (*quwwat al-amr al-maqdi bihi*).

Res judicata authority requires that what a ruling decided, in form and substance, be respected by the parties to the case, by the same court that issued the ruling, and by other courts of the same level as the court that issued it, and precludes reconsidering the subject matter of the dispute again, on the basis that the court has already conferred the legal characterization on it and closed the door to its being re-argued by one of the parties before the same court or another court, on pain of the new case being dismissed.¹⁹

Res judicata authority is a matter of public order, such that the court must raise it of its own motion even if none of the parties invokes it, pursuant to Article 110 of the applicable Law of Evidence, which provides:²⁰ “Final rulings are conclusive as to the rights they decided, and no evidence rebutting this conclusiveness may be admitted; however, such rulings shall have this conclusive effect only in a dispute arising between the same parties, in the same capacities, and concerning the same right in terms of subject matter and cause. 2. The court shall apply this rule of its own motion.” Accordingly, a ruling may not be given this conclusive effect unless it is between the same parties and concerns the same dispute in subject matter and cause, and the court may apply this of its own motion even if not invoked by the parties, because it is a matter of public order.

In this regard, it must be said that res judicata authority attaches to a court ruling issued within the jurisdictional competence of the body that issued it, meaning the ruling must be issued by a body with competent jurisdiction. If it is issued by a judicial body lacking jurisdiction, it does not carry res judicata authority, being deemed void. Accordingly, a court before which a plea of res judicata

¹⁸ Khalil, Ahmad: *Law of Civil and Commercial Procedure*, n.e., Dar al-Jami’a al-Jadida, Alexandria, 1996, p. 134.

¹⁹ See Article (1837) of the Mecelle (Ottoman Civil Code), which provides: “A case that has already been decided and for which a notice of judgment has been issued in accordance with its lawful procedure — that is, a ruling which contained its grounds and conditions — may not be reheard or reargued.”

²⁰ *Law of Evidence in Civil and Commercial Matters No. (4) of 2001*, published in Issue (38) of the Official Gazette (Palestinian Facts), dated 5/9/2001, p. (226).

is raised must verify the jurisdictional competence of the court that issued the prior ruling before dismissing the new case.

As for the force of a final decision, a ruling is considered to have acquired this force when all ordinary means of appeal have been exhausted, or the legislator has so provided, or the parties have agreed to render it final. Accordingly, a first-instance ruling on the merits that remains subject to ordinary appeal is considered to carry *res judicata* authority but not the force of a final decision, in contrast to a final or definitive ruling on the merits, which carries both *res judicata* authority and the force of a final decision.

It should be noted here that *res judicata* authority differs from the force of a final decision: the former attaches to any court ruling issued by a body with jurisdiction to issue it, even if the ruling remains subject to appeal, meaning the ruling acquires this characteristic even if issued at first instance, though this is a provisional conclusiveness that disappears if the ruling is overturned as a result of the appeal being decided, and becomes settled if the ruling becomes final through the expiry of the appeal period or through affirmance on appeal. The consequence is that other courts may not reconsider a matter already decided, unless that court is the Court of Cassation — if the matter concerns the force of a final decision — or the court of appeal — if the matter concerns *res judicata* authority. Invoking *res judicata* authority requires that the dispute before the court be between the same parties, without a change in their capacities, and concern the same dispute in subject matter and cause.

The force of a final decision, however, attaches to final rulings that may not be challenged by ordinary means of appeal, meaning this force attaches to them even if they remain subject to challenge by extraordinary means such as cassation, retrial, and third-party opposition. Accordingly, the force of a final decision represents a stage higher than, and indeed encompasses, *res judicata* authority. *Res judicata* authority is thus *the legal immunity surrounding a court's ruling*. This means the dispute is considered “closed,” and no other court may reconsider it between the same parties and on the same cause, except within the limits of an appeal for retrial, which is an exceptional means of appeal available only for specific reasons under the law.

The binding authority of court rulings in Palestine is a fundamental principle that ensures legal stability and the resolution of disputes. This concept, known as “*res judicata*,” provides that once a final ruling is issued by a competent court, the matter may not be reconsidered between the same parties. Under the Amended Palestinian Basic Law and the applicable Law of Evidence, court rulings represent the definitive statement of the truth. This means that the factual and legal findings contained in a final ruling are binding on all state authorities and individuals, which constitutes a guarantee of the rule of law and the sanctity of the judiciary.²¹

For a ruling to acquire *res judicata* status under the Palestinian legal system, three essential elements must be present: identity of parties, identity of subject matter, and identity of legal cause. If any of these elements differs, the prior ruling does not bar the filing of a new case. Furthermore, the ruling must be final, meaning all ordinary means of appeal have been exhausted or the statutory

²¹ Institute of Law, Birzeit University: *The Judiciary and the Rule of Law in Palestine*, Birzeit University, pp. 45–46, <http://lawcenter.birzeit.edu/lawcenter/files/39.pdf>.

appeal period has expired. The purpose of this is to prevent conflicting rulings and to ensure that litigation reaches a decisive conclusion, preserving the standing of the judicial institution.²²

As for the binding nature of enforcing court rulings in Palestine, this is closely tied to public order, since the enforcement of court rulings is regarded as a manifestation of their force and that of the court that issued them. It should be noted, however, that rulings differ from one another in terms of their force or enforceability, depending on the extent to which they remain subject to challenge through the various ordinary and extraordinary means of appeal — rulings are not all on the same level in terms of their enforceability. Accordingly, *rulings that have acquired the force of a final decision are enforceable, and there is nothing to prevent their enforcement merely because they remain subject to extraordinary means of appeal*. An appeal by way of cassation, retrial, or third-party opposition, being extraordinary means of appeal against an issued ruling, does not prevent the party in whose favor the ruling was issued from enforcing it.²³ The rationale behind this rule is to prevent those against whom rulings carrying the force of a final decision have been issued from using extraordinary means of appeal as a means to obstruct the enforcement of rulings, unless the competent court decides to suspend enforcement subject to guarantees it deems necessary to preserve rights.²⁴

The enforceability of a court ruling is closely linked to its executory force, as an enforceable instrument that grants the party in whose favor it was issued the right to compulsory enforcement — that is, resorting to the enforcement courts and using all means available under the law for enforcement, or using compulsory force to ensure enforcement of the substance of the ruling. This force attaches to binding or urgent rulings on the merits, and to arbitral awards after their ratification and the granting of an enforcement order. The executory force of a ruling attaches to a final ruling or to a first-instance ruling covered by provisional enforcement.

In this regard, it should be noted that rulings issued by administrative courts, acting as courts of first instance, are enforceable, and an appeal filed with the High Administrative Court does not prevent their enforcement. The rationale lies in reconciling the interests of the party in whose favor the ruling was issued, given that such a ruling relates to legal positions that are adversely affected by delay in deciding appeals — such as a ruling annulling a decision to suspend a salary or annulling a decision to dismiss an employee, for example.

Section Three: Guarantees for the Enforcement of Court Rulings

The fundamental guarantee for the enforcement of a court ruling is its capacity for compulsory enforcement, whether by referring it to the competent enforcement court to take coercive enforcement measures, such as attachment and imprisonment, and enlisting the assistance of the judicial police to compel the judgment debtor to enforce the substance of the ruling, with respect to disputes between individuals; and the enforceability of a ruling against public institutions by

²² Al-Qadi, Ahmad: “The Binding Authority of Court Rulings and Its Effect on the Stability of Legal Positions,” *Al-Umma University Journal for Research and Studies*, vol. 5, no. 2, 2021, pp. 112–115.

²³ See Article (240) of the Palestinian Law of Civil and Commercial Procedure, which provides that “An appeal by way of cassation does not suspend enforcement of the challenged ruling unless the court decides otherwise, with or without bail, upon the appellant’s request,” and Articles (247) and (255) of the same law.

²⁴ Saif, Ramzi: *Rules for the Enforcement of Rulings and Official Instruments Under the New Law of Procedure*, 3rd ed., Maktabat al-Nahda al-Misriyya, Cairo, 1995.

compulsory means with respect to disputes between individuals and the public authority, or between individuals and institutions having corporate legal personality.

As for the procedural guarantees relating to the work of the enforcement judge and the enforcement courts, which are competent to enforce rulings between individuals, these are not left to the police alone but are a judicial process. The work of the enforcement judge under Palestinian law is regarded as the most important procedural guarantee for converting court rulings from theoretical texts into tangible reality, as provided in Execution Law No. (23) of 2005. This guarantee consists in giving the entire enforcement process a judicial character, such that the matter is not left to the administrative authority or the police acting alone, but is placed under the supervision of a competent judge who holds broad legal authority to issue the orders necessary to compel the judgment debtor to fulfill their obligations — including issuing orders for coercive imprisonment, attachment of funds and property, travel bans, and the use of compulsory force where necessary — which ensures rigor and speed in recovering rights under the umbrella of the law.

Accordingly, the Palestinian Execution Law provides a robust procedural framework to ensure that rulings do not remain mere ink on paper, providing the procedural guarantees necessary for enforcement. This law establishes the enforcement court, headed by the enforcement judge, who has the authority to issue attachment orders (asset seizure), travel bans, and even imprisonment in certain cases arising from debt, to compel the debtor to comply. These tools are considered coercive measures to protect the rights of the judgment creditor and preserve the effectiveness of judicial proceedings.²⁵

This guarantee, notwithstanding its importance, can be activated only between individuals, and cannot be activated against the public authority, pursuant to Article 11 of Decree-Law No. 11 of 2022 on State Lawsuits, which provides: (Once a ruling issued against state-lawsuit entities and those treated as such acquires definitive force, a certified copy of the final ruling shall be submitted to the Prime Minister, who must order its enforcement, and the enforcement courts may not carry out any enforcement action for this purpose).

Likewise, rulings issued by administrative courts are not enforceable before the enforcement courts as currently applied, since the Administrative Prosecution notifies state bodies and departments of the outcome of the decision issued by the administrative court for the purposes of working to enforce its substance. Accordingly, the enforcement of rulings issued against the public authority enjoys the enforcement guarantees set out in the Basic Law, the Judicial Authority Law, and the applicable penal laws, without the possibility of referring it to the competent enforcement courts.

Criminalizing non-enforcement is considered the most important guarantee in Palestine, as Palestinian law treats it as a serious crime — what is termed “constitutional deterrence” — as affirmed by Article (106) of the 2003 Amended Basic Law. This article establishes personal liability for the official responsible, meaning they cannot hide behind the institutional veil of the ministry or the state. If a minister or director refrains from signing an enforcement order, they can be sued personally, their imprisonment sought, and — most importantly — they can be removed from their post. This constitutes a strong deterrent against abuse of authority.

²⁵ Palestinian Legislation and Judicial System “Muqtafi”: *Execution Law No. (23) of 2005*, Institute of Law, Birzeit University, Articles 4–8, <http://muqtafi.birzeit.edu/pg/getleg.asp?id=18928>.

Pursuant to Article (106) of the Palestinian Basic Law, which provides: (Court rulings are enforceable, and refusal to enforce them or obstruction of their enforcement in any manner is a crime punishable by imprisonment and dismissal from office if the accused is a public official or person charged with a public service. The judgment creditor has the right to bring the case directly before the competent court, and the National Authority guarantees them full compensation) — this article is considered the constitutional basis for criminalizing non-enforcement of court rulings, and it addresses the right of the party injured by non-enforcement to direct judicial recourse and the right to private prosecution.

A plain reading of this text shows that it grants the injured party the right to bring a direct action — whether civil or criminal — against the party refusing enforcement, even if the Public Prosecution refrains from initiating the criminal complaint. However, the exercise of this right runs up against Article 1 of the Code of Criminal Procedure, which provides: (The Public Prosecution alone has jurisdiction to bring and pursue criminal proceedings, and no criminal proceedings may be brought by anyone else except in the cases specified by law; nor may proceedings be suspended, waived, abandoned, obstructed, or settled, except in the cases provided for in the law). Accordingly, the injured party has, in practice, no option but to file a complaint with the Public Prosecution to initiate criminal proceedings against the party refusing to enforce the court ruling.

Article 82 of the Judicial Authority Law likewise provides: (Court rulings are enforceable, and refusal to enforce them or obstruction of their enforcement in any manner is a crime punishable by imprisonment and dismissal from office if the accused is a public official or person charged with a public service. The judgment creditor has the right to bring the case directly before the competent court, and the Palestinian National Authority guarantees them full compensation).

Notwithstanding the explicitness of these provisions in treating non-enforcement as a crime warranting punishment by imprisonment and dismissal from office where the party refusing enforcement is a public official, they are not contained within the penal laws currently in force in Palestine. Accordingly, an indictment cannot be based on them alone; rather, the charge must be grounded in provisions found in the penal laws, such as the Penal Code No. 16 of 1960, or in provisions of the Anti-Corruption Law, treating the refusal of an official or person in a similar position as a corruption offense involving abuse of office.²⁶

Attorney Daoud Der'awi adds that the guarantees for enforcing court rulings in Palestine, under the applicable Penal Code, are weak guarantees that do not constitute a genuine deterrent — which has led to an increase in cases of public authorities refusing to enforce court rulings, particularly those issued by administrative courts, whether relating to the annulment of administrative decisions dismissing employees for unlawful reasons, or decisions to suspend salary payments.

As for cases where enforcement becomes impossible due to actions of the public authority, Palestinian law theoretically provides a financial safety net: financial guarantee and compensation are provided by the state pursuant to the principle of vicarious liability for the acts of its agents, based on Article 106 of the Basic Law and Article 82 of the Judicial Authority Law, whereby the National Authority guarantees full compensation to the person in whose favor the ruling was issued if it is not enforced. This means the citizen's right is never lost: if the state “refuses” to return a

²⁶ Personal interview with attorney and former judge Daoud al-Der'awi, 5/3/2026.

plot of land or pay a sum of money, the citizen has the right to sue the state treasury to obtain the full value of the ruling plus compensation for delay.

In parallel, and as a qualitative development in Palestinian legislation, the Palestinian legislator introduced a substantive amendment to the Execution Law under Decree-Law No. 25 of 2024,²⁷ amending Palestinian Execution Law No. 23 of 2005. Article 9 thereof provides: (Article 8 of the original law shall be amended to read as follows: enforcement may not proceed except pursuant to an enforcement instrument evidencing a right that is certain in existence, fixed in amount, and due for payment. Enforcement instruments include the following: 1- Rulings issued by the ordinary and religious courts, the enforcement of which does not conflict with the jurisdiction of any other law; rulings of criminal courts relating to civil and personal rights; administrative rulings relating to personal obligations; and rulings and decisions issued by any court to be enforced by the enforcement court, as well as any foreign rulings enforceable under applicable legislation. 2- Official instruments. 3- Customary instruments. 4- Instruments to which the law gives the force of an enforcement instrument.

The wording of the provision above regarding rulings issued by administrative courts suggests that what is meant are rulings relating to compensation for the plaintiff issued by administrative courts. However, the researcher's tracking of enforcement cases brought before the enforcement courts, which the researcher was able to review, did not clarify the intended meaning of the text, nor what is meant by "personal obligations" connected with administrative rulings — which warrants referring this text for interpretation by the Constitutional Court.

Even so, and to date, the sole guarantee for enforcing rulings issued by administrative courts against the public authority and those treated as such remains what is set out in Article 106 of the Amended Basic Law and Article 82 of the Judicial Authority Law, in addition to the provisions found in the penal laws in force in Palestine. To put these provisions into effect, the injured party must pursue judicial avenues to compel the body against whom the ruling was issued to enforce its substance, by activating the criminal, disciplinary, and civil liability for compensation arising from non-enforcement, through the avenues available to the injured party, as will be addressed in Chapter Two of this study.

²⁷ Decree-Law No. 25 of 2024, published in Special Issue No. 30 of the Official Gazette dated 31/12/2024.

Chapter Two: Non-Enforcement of Court Rulings

The refusal or failure of public authorities to enforce court rulings is considered one of the gravest challenges facing the rule of law in Palestine. This phenomenon occurs when a government official or public institution fails to take the legal measures necessary to enforce a final court ruling, thereby depriving the judicial process of its effectiveness. Under Palestinian law, the legal characterization of non-enforcement is that refusing to enforce a judicial order is not a mere administrative error but a criminal offense. Under Article (106) of the Basic Law and Article 82 of Judicial Authority Law No. 1 of 2002, “court rulings are enforceable. Refusal to enforce them, or obstruction of their enforcement in any manner, by any public official, constitutes a crime punishable by imprisonment and dismissal from office.”

Despite these provisions, and what is set out in the applicable Penal Code, non-enforcement of court rulings of various kinds has become a widespread phenomenon. Attorney Saher al-Rifa'i notes:²⁸ (In my office alone there are 70 final court rulings that public authorities have refused to enforce, ranging from rulings issued by administrative courts concerning the reinstatement of dismissed employees, some relating to the restoration of salaries, and others being rulings issued by civil courts for sums of money).

Attorney Daoud Der'awi²⁹ likewise noted the existence of several rulings issued by administrative courts concerning the restoration of salaries to certain litigants, and civil cases relating to financial entitlements, which the public authorities have nonetheless refused to enforce.

A review of unenforced rulings shows that non-enforcement takes two main forms: **the first form is explicit refusal**: where the official clearly declares an intention not to comply with the court's order; **the second form is implicit or passive obstruction**, which occurs when the authority resorts to procedural delay or maintains silence without taking the steps necessary to enforce the ruling, thereby effectively emptying the ruling of its value.

Non-enforcement of court rulings represents a grave violation of the principle of “separation of powers” and “the rule of law.” While the Palestinian Basic Law explicitly criminalizes non-compliance, research points to a gap between constitutional theory and enforcement practice: when a public official or government body refuses to enforce a final court ruling — particularly in administrative cases — the judicial authority is effectively stripped of its sovereignty. This phenomenon creates a state of “legal insecurity,” where citizens win their cases in theory but are unable to recover their rights on the ground.³⁰

There are institutional and political obstacles, including the absence of a body specialized in “administrative enforcement.” Unlike civil cases, where the enforcement court can seize assets, enforcing rulings against the state often depends on the voluntary compliance of the executive authority. Political sensitivities, claims of “higher state interests,” or the absence of strict disciplinary mechanisms against senior officials, frequently obstruct the enforcement of rulings

²⁸ Interview with Attorney Saher al-Rifa'i, attorney specializing in administrative justice.

²⁹ Daoud Der'awi, op. cit.

³⁰ Palestinian High Judicial Council: *Refusal of the Executive Authority to Enforce Court Rulings*, Istiqlal Judicial Portal, 2022, p. 2.

issued by the High Court. The effect of this reluctance is not limited to undermining individual rights only, but also undermines public trust in the legal system as a whole.³¹

To confront this refusal, the Palestinian Basic Law provides for the injured party's right to bring a criminal action, under Article 106 thereof, Article 82 of the Judicial Authority Law, and the provisions of other penal legislation. Accordingly, this action allows the injured party to sue the offending official personally. Legal scholars consider that, for these provisions to be effective, there must be a shift toward stricter judicial oversight and the possibility of holding officials who obstruct the course of justice personally financially liable. Strengthening the Public Prosecution's role in monitoring the enforcement of administrative rulings is viewed as a vital step to ensure public authorities remain subject to the law.³²

In this same context, returning to the records of the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal), rulings reported as not enforced by public authorities reached 145 final, enforceable court rulings.³³ These rulings varied between rulings issued by administrative courts and rulings issued by the ordinary courts. It is noted that most of the reported unenforced rulings are enforceable release orders for persons detained on various criminal charges, where law-enforcement bodies refrained from enforcing their substance and releasing the detainee in whose favor a bail-release order had been issued — which places the non-complying body in the position of committing the offense of unlawful detention without legal basis, in addition to the offense of non-enforcement of court rulings.

Section One: Forms of Non-Enforcement of Court Rulings and Their Causes

The enforcement stage of a ruling issued by the competent court represents the objective the plaintiff seeks when bringing the case, since through voluntary or compulsory enforcement before the competent enforcement court, the person obtains the benefit sought. Accordingly, enforcement of the ruling is the final and most important purpose of the existence of the judiciary, the filing of cases, the presentation of evidence, and the issuance of rulings — since enforcement of a ruling means delivering the right to its holder and settling the matter.³⁴

In the Palestinian legal system, enforcement of court rulings is a fundamental pillar of the rule of law. This obligation is constitutionally guaranteed under Article (106) of the 2003 Amended Basic Law, which provides that court rulings are enforceable and that non-enforcement is a crime punishable by imprisonment and dismissal from office.

³¹ Abu Dayya, Ahmad: *The Problem of Non-Enforcement of Court Rulings in the Areas of the Palestinian National Authority*, master's thesis, An-Najah National University, p. 80, available at: <https://repository.najah.edu/items/8d39210e-246b-4588-aa32-177aee64eef3>.

³² Al-Karnaz, Muhammad: "The Problem of Enforcing Administrative Rulings in Palestine: An Analytical Study," *Algerian Journal of Law and Political Science*, vol. 6, no. 2, 2021, p. 148, available at: <https://asjp.cerist.dz/en/article/173254>.

³³ Civil Commission for the Independence of the Judiciary and the Rule of Law — Register of Rulings Reported as Unenforced — unpublished.

³⁴ Saqf al-Hait, Muhammad: *Non-Enforcement of Court Rulings* (study), publications of the Civil Commission for the Independence of the Judiciary and the Rule of Law.

Nevertheless, despite these provisions, various forms of non-enforcement persist, taking several forms, set out below:

Section One: Legal Causes Preventing Enforcement of Court Rulings

1. Judicial Immunity

In examining the legal causes that prevent enforcement of a court ruling after it is issued, it is possible for a ruling to be issued against a person who enjoys immunity, such as a minister, member of the Public Prosecution, or diplomatic envoy. Judicial immunity is defined as: (exempting or excusing the person concerned from being subject to the local judicial jurisdiction of the state, except after obtaining authorization from the competent authority to lift the immunity in order to prosecute them). As for the judicial immunity of a diplomatic envoy, it exempts them entirely from the judicial jurisdiction of the host state, pursuant to the Vienna Convention on Diplomatic Relations.³⁵

At the same time, the liability of the head of state has been affirmed under the Anti-Corruption Law and its amendments,³⁶ which provides in Article (2) that: (This law applies to: 1- The head of state, his advisors, and the heads of institutions affiliated with the presidency ... etc.)

2. Appeal of Rulings

If a ruling is issued subject to provisional enforcement, or has acquired enforceable status as a final ruling, it becomes enforceable even if it remains subject to appeal, unless the competent court decides to suspend enforcement with or without bail, as provided in the applicable Law of Civil and Commercial Procedure. The court of appeal has the authority to issue a decision suspending enforcement of an urgent decision under Article 211 of the Law of Civil and Commercial Procedure, and the Court of Cassation likewise has the authority to issue a decision suspending enforcement of any final ruling under Article 240 of the applicable Law of Civil and Commercial Procedure.

3. Nullity of Notification

A ruling may not be enforced if the “enforcement notice” is legally defective; under the Execution Law, enforcement proceedings may not proceed until the judgment debtor has been duly notified of the enforcement notice in accordance with due process.

4. Geopolitical Fragmentation and the Restrictions of “Area C”

The geographic division of Palestinian territory constitutes a major material obstacle to enforcement. The Palestinian police are often unable to access “Area C” or East Jerusalem to enforce rulings (such as eviction or arrest) without prior coordination with the Israeli authorities, which is frequently refused or delayed. This creates “safe havens” for debtors

³⁵ Vienna Convention on Diplomatic Relations, 1961; the National Authority acceded to it by unilateral declaration.

³⁶ Anti-Corruption Law No. 1 of 2005 and its amendments, available at: <https://www.pacc.ps/uploads/books/1/book-10277-cat-1-d-19-06-19.pdf>.

or offenders to escape the reach of the enforcement court, making enforcement of court rulings practically impossible in those areas.

5. Security and Social Risks

In some cases, enforcement carries serious security risks, as when carrying out an eviction in a densely populated or volatile neighborhood. Tribal and clan dynamics can sometimes constitute a material obstacle, and social pressure or the threat of local unrest may lead security forces to hesitate in enforcing rulings to avoid “collateral social harm.”

6. Force Majeure

Public authorities frequently invoke “force majeure” or exceptional security and political circumstances as a legal justification for delaying or refusing to enforce court rulings.³⁷

7. Financial Constraints

Financial constraints and the principle of “financial impossibility” are among the most common legal pretexts related to the unavailability of budgetary allocations within the state budget. When a court ruling involves financial compensation or retroactive salary payment, the authority may claim it cannot enforce the ruling due to a lack of allocations within budget items. In this regard, legal scholars note that while the “State Budget Law” requires specific allocations, authorities often use it as a standing pretext to evade payment. This creates a legal conflict between “the sanctity of court rulings” and “the legality of public spending,” with the executive authority claiming it cannot violate budget laws in order to enforce a judicial order.³⁸

8. Complexity of Administrative Overlap and Ambiguity in Judicial Jurisdiction

Authorities sometimes justify non-enforcement by claiming a “conflict of laws” or “ambiguity in judicial jurisdiction.” One government department may argue that the ruling is directed at the wrong administrative body, or that the wording of the ruling is too vague to be translated into specific administrative measures. In addition, the executive authority may claim that the ruling conflicts with “acts of sovereignty,” which traditionally enjoy immunity from judicial review. By raising these technical legal details, the authority creates a procedural impasse, forcing the prevailing party back into a cycle of “interpretation suits,” which leads to further delay in final enforcement.³⁹

³⁷ Palestinian Legislation and Judicial System “Muqtafi”: *Amended Palestinian Basic Law of 2003 and Its Amendments*, Institute of Law, Birzeit University, Article 106, available at: <http://muqtafi.birzeit.edu/pg/getleg.asp?id=18928>.

³⁸ Abu Dayya, Ahmad: *The Problem of Non-Enforcement of Court Rulings in the Areas of the Palestinian National Authority*, op. cit., p. 115.

³⁹ Al-Karnaz, Muhammad: *The Problem of Enforcing Administrative Rulings in Palestine: An Analytical Study*, op. cit., p. 162.

Section Two: Material Causes Preventing Enforcement of Court Rulings

Sometimes, material causes arise after a court ruling is issued that prevent its enforcement or hinder its timely enforcement. Some of these causes relate to the litigants themselves, such as the death of one of the parties or the absence of assets belonging to the judgment debtor within the geographic jurisdiction of the enforcement court, while others relate to the public authority. We therefore briefly address the material causes attributable to litigants, followed by those attributable to the public authority, as follows:

First: Causes Attributable to the Litigants

1. Death of One of the Parties

It is self-evident that the death of one of the parties to a case after the issuance of the court ruling — whether or not enforcement proceedings have already been initiated — is considered a cause preventing or hindering enforcement, since upon the death of one of the parties, the other party must resort to the competent Sharia court to obtain a certificate of inheritance, and then proceed with enforcement against the heirs, notifying them and enforcing against them within the limits of the estate, as provided in Article 14 of the applicable Execution Law.

These procedures take a long time, given the slowness of obtaining the certificate of inheritance and the authorizations required by the competent departments for this purpose, the notifications to heirs built upon it, and consequently the continuation of enforcement proceedings within the limits of the estate — which may open another avenue of litigation to prove the existence of estate assets in the hands of the heirs or one of them, which is considered a significant obstacle to, or bar on, enforcement.

The same applies in the case of the death of the judgment creditor, since it is their heirs who must pursue enforcement proceedings. If there is no heir to pursue the proceedings, enforcement is rendered moot and the court ruling becomes practically without benefit, and its enforcement will be barred as a matter of fact.

2. Absence of Assets Belonging to the Judgment Debtor, or Their Existence Outside the Country

In the first case — the absence of sufficient assets against which to enforce, or the judgment debtor's claim of inability to pay — the competent enforcement judge holds hearings to establish the debtor's ability to pay, and then issues a decision requiring the judgment debtor to pay the debt in installments, which may take a long time and is considered an obstacle to enforcement. As for the second case — the existence of the judgment debtor's assets outside the country — this constitutes a bar to enforcement due to the impossibility of enforcing against them.

3. Causes Related to Banking Secrecy

In this case, the judgment creditor has no means of discovering the judgment debtor's bank balances to verify the existence of sufficient funds to enforce the substance of the ruling.

4. **Unregistered Land**

It may be conceivable that the judgment debtor owns immovable assets that are not registered in the records of the competent land department, whose records are instead subject to the property-tax department's system — a department that establishes payment of tax on the property but does not establish ownership. Execution Law No. 23 of 2005 requires the interested party to have the property newly registered before enforcement can proceed against it, which is financially costly and time-consuming, and which the judgment creditor may be unable to complete, thereby hindering or preventing enforcement in many cases.

5. **Loss or Destruction of the Subject Matter of the Ruling**

If the subject matter of the ruling is a specific tangible object (such as a particular vehicle or building), and this object is destroyed, lost, or undergoes a fundamental change before enforcement, enforcement of the ruling in its original form becomes practically impossible. In such cases, enforcement shifts from “enforcement in kind” to “financial compensation,” which may take significantly longer to resolve.

Second: Material Causes Attributable to the Public Authority

The material causes attributable to the public authority take several forms:

- Weak logistical capacity of the judiciary, in terms of an insufficient number of staff or judges, leading to a backlog of cases before the enforcement courts — these causes constitute a genuine bar to the enforcement of rulings.
- The administration's direct or implicit refusal to enforce court rulings issued by courts of all types and levels.

The most serious of these forms is the explicit refusal by an official or government body to comply with a final, enforceable court ruling. This occurs when the official openly declares that a ruling will not be enforced — such as an order to reinstate a dismissed employee or a refusal to release a detainee. However, non-enforcement often takes a more subtle form through passive obstruction or “procedural delay.” The authorities addressed by the ruling may acknowledge it but fail to take the administrative steps necessary to enforce it, effectively emptying the ruling of its value.

In this regard, Attorney Saher al-Rifa'i notes⁴⁰ that, for the purposes of enforcing court rulings issued by administrative courts, he has notified the relevant administration of the substance of the decision, requesting its enforcement and the administrative measures necessary for that purpose. Despite the competent bodies being notified and years having passed since, none of the rulings issued in favor of his clients — numbering 70 final court rulings — have been enforced.

The records of the Civil Commission for the Independence of the Judiciary and the Rule of Law — Istiqlal — likewise show more than one hundred and forty-five court rulings reported as unenforced, ranging from rulings issued by administrative courts relating to public employment — whether annulling dismissal decisions or restoring salary or allowances, etc. — to rulings issued

⁴⁰ Interview with Attorney Saher al-Rifa'i, op. cit.

by the ordinary courts, both civil and criminal, some relating to individuals' financial rights against the administration, and others to release orders and bail decisions. In all reported cases, the public authority refused to enforce the rulings, directly or indirectly, without stating any factual reasons justifying this refusal.

More seriously, non-enforcement of court rulings has extended to private bodies, institutions, and some universities that fall within the jurisdiction of the administrative court for review of the legality of decisions they issue. In this regard, we note the case of citizen (M.A.), who obtained a court ruling from the High Administrative Court annulling the decision to dismiss him from his position at one of the institutions subject to administrative-court review that is not part of the public authority. Despite taking all measures necessary to notify that institution of the substance and content of the ruling, the institution did not comply with the court ruling and took no action to enforce it, even though more than three years have passed since then.

Accordingly, public authorities' refusal to enforce court rulings in Palestine manifests in multiple forms, ranging from explicit defiance to passive delay. Explicit refusal occurs when a government official or institution issues an official statement or administrative decision that contradicts a final court ruling — such as refusing to reinstate a dismissed employee despite an order from the High Administrative Court. Passive obstruction, on the other hand, takes the form of “procrastination,” where the authority acknowledges the ruling but fails to take the practical steps necessary to enforce it. Another form of obstruction is partial enforcement, where the authority enforces only secondary aspects of the ruling while disregarding its legal substance, rendering the judicial victory worthless to the citizen.⁴¹

To deter non-enforcement, Palestinian law provides for the personal liability of the official who refuses to enforce a court ruling. Under Article 106 of the Basic Law and Article 82 of Judicial Authority Law No. (1) of 2002, a public official who refuses to enforce a court ruling faces criminal prosecution and disciplinary dismissal. This ensures they cannot invoke “state immunity” to shield their personal failure to apply the law. As a final safeguard, if enforcement of a court ruling becomes impossible due to the state's negligence or refusal, the beneficiary is entitled to financial compensation.

However, this legal deterrent is absent where the body refusing to enforce the ruling falls outside the public authority — that is, one of those private institutions subject to administrative-court review of the legality of their decisions — pursuant to Article 20/b of Decree-Law No. 41 of 2020 on Administrative Courts, which provides: (Appeals filed by interested parties seeking annulment of regulations, bylaws, or final administrative decisions issued by persons under public law, including professional syndicates, higher-education institutions, duly registered unions and associations, even if immunized under the law under which they were issued).

This is because the staff and representatives of such associations and institutions are not considered public officials and are not subject to the heightened legal accountability for prosecution and

⁴¹ Palestinian Center for the Independence of the Legal Profession and Judiciary “Musawa”: *Obstacles to the Enforcement of Court Rulings in Palestine*, p. 18, available at: <https://musawa.ps/uploads/381a3c1d70408cef3f8ef5b3394ee0f0.pdf>.

punishment under Article 106 of the Basic Law and Article 82 of the Judicial Authority Law; rather, criminalizing their acts falls under Article 473/1 of Penal Code No. 16 of 1960, which provides: (1- Anyone who refuses to enforce any decision issued by any ordinary court requiring or prohibiting an act shall be punished by imprisonment for up to a week or a fine of up to five dinars or both; anyone who actively prevents the erection of a building for which a permit has been issued by the competent authorities shall be punished by the same penalty).

Unlike civil rulings between individuals, which are enforced by the enforcement court through the attachment of assets, there is a material gap in the “enforcement mechanism” against the state. The law does not permit the attachment of public property or state funds to enforce a court ruling. Nor is there a specialized police force or independent body with actual authority to compel a minister or head of government to enforce a ruling. As a result, enforcement remains contingent on the voluntary cooperation of the executive authority, which is often unattainable given the absence of any real pressure to enforce.⁴²

Section Two: Disciplinary, Criminal, and Civil Liability Arising from Non-Enforcement of Court Rulings

The legal basis for pursuing liability against a party who refuses to enforce court rulings rests on Article (106) of the 2003 Amended Basic Law, which provides that court rulings are binding on everyone. It explicitly classifies refusal or obstruction of these rulings as a crime warranting administrative punishment through dismissal and criminal punishment through imprisonment, and grants the injured party the right to compensation.

Since the 2003 Amended Basic Law serves as the interim constitution in Palestine, all ordinary laws and legislation must, of necessity, be consistent with this constitutional approach and not contradict it. To fully understand the legal liability of the non-complying official, it is necessary to examine the content of the above-mentioned Article 106 as follows:

Section One: Disciplinary and Criminal Liability of the Non-Complying Official

First: Disciplinary Liability

Reading the constitutional basis for legal liability for non-enforcement, it produces an important effect against the non-complying official: dismissal from office. Since the penalty of dismissal from public office is rooted in Article 68⁴³ of Civil Service Law No. 4 of 1998 and its amendments, as a disciplinary penalty for negligence by an official in performing their legal duties — public office being a duty entrusted to those who hold it, aimed at serving citizens in the public interest in accordance with the laws and regulations. For this penalty to be imposed, the administrative superior of the official refusing to enforce the court ruling must properly form an investigation

⁴² Abu Dayya, Ahmad: *The Problem of Non-Enforcement of Court Rulings in the Areas of the Palestinian National Authority*, op. cit., p. 123.

⁴³ Civil Service Law No. 4 of 1998.

committee, in accordance with the applicable Civil Service Law and Implementing Regulation No. 45 of 2005.⁴⁴

Since the penalty of dismissal for refusal to enforce court rulings is set out in a mandatory constitutional provision, this requires the administrative superior of the non-complying official to take the necessary steps to refer the non-complying official for investigation, as a prelude to imposing the penalty against them.

But if the administrative superior refrains from taking this action against the non-complying official, can the party injured by the non-enforcement take any action?

We consider that, for the purposes of applying Article 106 of the Basic Law, the injured party must send a written letter to the direct administrative superior of the non-complying official, requesting that the necessary measures be taken against the non-complying subordinate. If the superior refrains from taking the necessary measures, this is considered a negative decision — a refusal by the administrative superior to issue a decision — making this decision subject to challenge before the administrative court through a direct action to compel the administrative superior to take the necessary measures to dismiss the official refusing to enforce the court ruling, as provided in Article 23/5 of Decree-Law No. 41 of 2020 on Administrative Courts.

Second: Criminal Liability

Since enforcement of court rulings is mandatory, and no individual or authority may refuse or obstruct enforcement without legal justification, non-enforcement of a court ruling gives rise to criminal liability for the non-complying official.

Criminal liability arises when a public official or a person appointed to public service deliberately refrains from enforcing a judicial order, or resorts to methods that obstruct enforcement of the ruling. Under Article (82) of Judicial Authority Law No. (1) of 2002, this act is classified as “a crime against the administration of justice.”

The penal laws in force in Palestine include, in numerous of their provisions, criminalization of non-enforcement of court rulings, whether rulings issued by administrative courts or by civil and criminal courts. They treat refusal to enforce a court’s release order as unlawful detention, criminalized under Article 178 of Penal Code No. 16 of 1960, which provides: “Any official who detains or imprisons a person other than in the cases provided for by law shall be punished by imprisonment from three months to one year.” Article 179 of the same law directly criminalizes unlawful detention, which occurs when a detainee is held without a judicial warrant or decision, providing: “If prison directors and guards, or those of disciplinary or correctional institutions, or any official exercising their authority, accept a person without a judicial warrant or decision, or hold them beyond the specified period, they shall be punished by imprisonment from one month to one year.”

Article 182 of the applicable Penal Code criminalizes any act that obstructs the enforcement of laws or judicial decisions, providing: (Any official who uses the authority of their office, directly

⁴⁴ Implementing Regulation of the Civil Service Law No. 45 of 2005.

or indirectly, to obstruct or delay the enforcement of the provisions of laws, ... or the enforcement of a judicial decision or any order issued by a competent authority, shall be punished by imprisonment from one month to two years).

Article 184 of the Penal Code also requires all members of the police force to comply with requests, orders, and decisions issued by the judicial authority, providing: (Any officer or member of the police or gendarmerie who refuses to comply with a lawful request issued by the judicial or administrative authority shall be punished by imprisonment from one week to one year, or a fine from five to fifty dinars, or both).

As a specific protection for public freedoms, Article 346 provides: (Anyone who arrests a person and unlawfully deprives them of their liberty shall be punished by imprisonment for a period not exceeding one year or a fine not exceeding five dinars; and if they detained the person on a false claim — that they hold an official position or carry a legal arrest warrant — they shall be punished by imprisonment for six months to two years ...).

Returning to the provisions of the applicable Anti-Corruption Law, a public official's, or equivalent person's, refusal to enforce court rulings is recognized as a corruption offense. The law defines corruption as (any act constituting an abuse of authority or a breach of public-office duties, where connected to obtaining an unlawful benefit or harming the public interest. Abuse of authority is likewise defined as an official's act or omission in the performance of their official duties with the intent of obtaining an undue benefit for themselves or others, or of harming another, constituting a violation of the law).⁴⁵

Accordingly, acts by a public official consisting of refusal to enforce court rulings may be characterized as corruption offenses if they involve abuse of authority, negligence in performing official duties, or obstruction of the course of justice.

Decree-Law No. (37) of 2018 (amending the Anti-Corruption Law), in Article (3) thereof, includes a definition of the offense of "corruption" and sets out a list of acts considered corruption. This list, in turn, directly refers to "the applicable penal laws" to determine the elements and penalties of these offenses. This cross-reference means the legislator decided that certain acts originally criminalized under the Penal Code rise to the level of "corruption," reflecting an intent to broaden the scope of anti-corruption efforts to include certain official misconduct, provided its elements are met as required by the applicable Anti-Corruption Law.

Despite the Basic Law and the Judicial Authority Law providing for imprisonment and dismissal for non-enforcement, experts consider that these provisions cannot serve as the basis for preparing an indictment against a non-complying official.⁴⁶ Attorney Daoud Der'awi notes that the legal basis for criminal prosecution lies in the applicable penal laws, and that provisions of the Basic Law cannot be relied upon to bring a charge against, or prepare an indictment against, a non-complying official. Attorney Saher al-Rifa'i similarly notes that charges against a non-complying

⁴⁵ Anti-Corruption Law No. (1) of 2005 and its amendments, Article 3: "Corruption: for the purposes of applying the provisions of this Decree-Law, the following acts are considered corruption: ... 6- Negligence in performing official duties provided for in the applicable penal laws ... 10- Abuse of authority ... 13- Obstruction of the course of justice."

⁴⁶ Interview with Attorney Daoud al-Der'awi and Attorney Saher al-Rifa'i.

official are brought on the basis of a violation of the applicable Penal Code and are directed at the official in their official capacity rather than personally — which allows them to escape prosecution and punishment.

For the purposes of applying the penal provisions and filing a complaint against a non-complying official, the party in whose favor a final ruling was issued must notify in writing the official responsible for enforcing the ruling, demanding enforcement in accordance with due process. If the official refuses to enforce the ruling, or obstructs enforcement through any acts leading to non-enforcement or its obstruction, the injured party may resort to the competent Public Prosecution with a complaint against the non-complying official, requesting that the Public Prosecution initiate criminal proceedings in accordance with the requirements of the Code of Criminal Procedure.

Although criminal liability may be subject to a statute of limitations, the Amended Basic Law treats crimes relating to violations of fundamental rights and freedoms (including the right to a fair trial and to enforcement of a final ruling) as crimes that are not subject to any statute of limitations. Here, the High Court plays a pivotal role in activating this liability by issuing judicial orders (mandamus orders) against officials. Non-compliance with these administrative orders strengthens the evidence of both criminal intent and civil negligence.

In this regard, we note that rulings issued by administrative courts are, in their operative parts, limited to annulling the challenged administrative decision where the grounds for admitting the administrative case are met, without the ruling including an order compelling the judgment debtor to enforce it. For example, where the conditions and grounds for a suit to annul an unlawful administrative decision of dismissal are met, the administrative court's operative ruling annuls the administrative decision described in the statement of claim, without its operative part including an order compelling the responsible official to reinstate the employee, or to resume salary payments if suspended — which hinders enforcement of the ruling issued by the administrative court, and in many cases gives the public authority or others a pretext for non-enforcement, on the basis that the court ruling was limited to annulment without an order compelling enforcement. This requires administrative courts to work toward developing judicial practice in this regard and/or introducing a legislative amendment to Decree-Law No. 41 of 2020.

Section Two: Civil Liability for Non-Enforcement — Compensation

The legal discussion of non-enforcement of court rulings does not end with its classification as an unlawful act or wrongful conduct by the administration or a public official. It extends further to deeper questions about the effectiveness of the legal tools available to address the consequences of this non-enforcement, and to ensure individuals obtain comprehensive and effective judicial protection. The right to resort to the judiciary is not complete merely by enabling individuals to file cases and obtain rulings in their favor; the true achievement lies in the ability to enforce these rulings effectively and within a reasonable timeframe, restoring rights to their holders and achieving the purposes for which judicial institutions were established.

In light of this, it has become settled in modern legal and constitutional scholarship that enforcement of court rulings is an integral and essential part of the concept of the right to a fair trial and effective litigation. Any delay or evasion of enforcement effectively empties rulings of

their practical substance and prevents citizens from genuinely benefiting from the rights recognized for them by the courts.⁴⁷

The preceding parts of this study addressed the constitutional and legal bases for the obligation of all individuals and authorities to enforce court rulings, the forms of non-enforcement, and the criminal and disciplinary liabilities arising from such non-enforcement, while highlighting the practical challenges facing the enforcement of rulings in the Palestinian context. Nevertheless, focusing solely on punitive aspects and legal liabilities will not be sufficient to achieve full protection for injured parties, particularly in cases where the harm has already occurred and its effects have become entrenched before any legal steps are taken against the non-complying body.

In many cases, criminalizing non-enforcement or disciplining those responsible for it does not adequately address the resulting harm. The harm may be deep-rooted and profound: an employee deprived of practicing their job despite a ruling in their favor may lose years of seniority, promotions, and income. A person whose financial entitlements were delayed in being settled may bear significant economic burdens, while persons who suffered detention in violation of a court ruling may find it difficult to repair the harm done to their liberty and dignity. Accordingly, reliance on traditional tools of judicial accountability alone appears insufficient to achieve full justice by way of compensation for such harms and to ensure genuine redress for injured parties.⁴⁸

Examining compensation requires distinguishing between a compensation claim brought by a party injured by the issuance of the challenged administrative decision before the administrative court competent to hear the administrative case, and a compensation claim brought by a party in whose favor a ruling was issued by one of the competent courts, for compensation for the harm suffered as a result of non-enforcement of the court ruling.

The first type of compensation falls within the jurisdiction of the administrative court if submitted concurrently with the administrative suit challenging the defective administrative decision, whereby the plaintiff seeks compensation from the administration for the harm suffered as a result of the challenged administrative decision, submitted pursuant to Article 20/2 of Decree-Law No. 41 of 2020 on Administrative Courts. The second type of compensation is that submitted by the party in whose favor an enforceable ruling was issued, before the court with competent subject-matter jurisdiction, against the state, to compel it to compensate for the harm suffered as a result of the responsible official's refusal to enforce the ruling, submitted on the basis of Article 106 of the Amended Palestinian Basic Law.

Returning to examine the first type of compensation, since administrative justice is fundamentally rooted in achieving a precise balance between preserving the public interest the administration seeks to achieve and protecting individuals' rights and freedoms from any excesses the administration may commit in exercising its authority — historically, judicial oversight of

⁴⁷ Civil Commission for the Independence of the Judiciary and the Rule of Law “Istiqlal”: “Court of Appeal Upholds Entitlement to Compensation for Non-Enforcement of Judicial Rulings,” rights report, 2025, <https://istiqlal.ps/normal/130>.

⁴⁸ Al-Basayta, Ibrahim 'Ayed: “Legal Liability Arising from a Public-Administration Official's Refusal to Enforce Administrative Court Rulings under Palestinian Law,” *Algerian Journal of Law and Political Science*, vol. 6, no. 2, 2021, p. 151, available at: <https://asjp.cerist.dz/en/article/173254>.

administrative acts has been linked to the concept of legality, whereby individuals were given the ability to challenge unlawful administrative decisions and seek their annulment before administrative courts, known as annulment jurisdiction, which was for a long time considered the primary means of providing protection to individuals and embodying the principle that the administration is subject to the law.

Over time, practical experience in various legal systems has shown that mere annulment of an unlawful administrative decision does not guarantee full protection of individuals' rights and legal positions. This is because a ruling annulling a decision remains focused exclusively on the invalidity of the administrative decision, without addressing all the harm arising from it prior to its annulment. As awareness of this shortcoming grew, legal circles, both theoretical and practical, began exploring complementary means to achieve more comprehensive justice.

The limitations of annulment jurisdiction are most apparent in disputes that take a long time to be decided before a final ruling is issued. In many cases, the harm arising from the administrative decision has already become a tangible reality long before its judicial annulment, leaving individuals victims of these effects without adequate compensation.

This problem is exacerbated in cases relating to fundamental rights and public freedoms, where a ruling annulling the unlawful act cannot erase the resulting psychological and social harm; a person subjected to unlawful arrest or restriction of their liberty cannot be adequately compensated for their actual deprivation at the time it occurred, even if a subsequent ruling annuls the act.

From this standpoint, the need emerged to develop judicial protection tools that go beyond merely reviewing the legality of administrative decisions toward addressing the harm arising from them. Judicial justice is not achieved merely by annulling a legal violation but also requires redressing the harm suffered by the individual because of it. This contributed to the emergence and development of compensation jurisdiction as a fundamental pillar complementing annulment jurisdiction in modern legal systems.

Compensation jurisdiction rests on a central idea: that the administration must bear responsibility for the harm caused by its acts or its failure to fulfill its legal duties. While the purpose of annulment jurisdiction lies in restoring matters to their lawful state by removing the unlawful decision, compensation jurisdiction is concerned with compensating individuals for the harm they have suffered and restoring legal and human balance to their lives on the basis of redress for harm.

In addition to redressing harm arising from a defective administrative decision, the importance of compensation jurisdiction has become particularly evident in addressing the problem of non-enforcement of court rulings. In many cases, the harm suffered by those in whose favor rulings were issued is not limited to the effect of the administrative decision itself, but also includes harm arising from the administration's delay or refusal to enforce final, binding court rulings. Here the need arises for a legal means enabling injured parties not only to compel enforcement but also to claim compensation for the harm they have suffered as a result of this unjustified delay.⁴⁹

⁴⁹ Sulayman Muhammad al-Tamawi: *Administrative Justice — Book Two: Compensation Justice and Means of Appeal*.

In the Palestinian context, the issuance of Decree-Law No. (41) of 2020 on Administrative Courts represents a notable step in this direction, as the law granted the administrative court the authority to hear compensation claims arising from administrative decisions and actions within the limits set by law. This legislative reform strengthens the effectiveness of administrative justice and supports the principle of accountability and the rule of law. It also paves the way for making use of compensation suits as a legal means of confronting the spread of the phenomenon of non-enforcement of court rulings.⁵⁰

Based on the foregoing, the shift from the concept of annulment jurisdiction to recognizing compensation jurisdiction does not represent a mere procedural expansion of the work of administrative justice, but reflects a fundamental transformation toward strengthening the concept of judicial protection to include providing comprehensive justice that addresses all aspects of harm.

As for non-enforcement of court rulings as a source of compensable harm, when we consider the evolution of administrative justice from annulment jurisdiction to compensation jurisdiction, we find that it reflects an urgent need to provide more effective judicial protection for rights and freedoms. The importance of this development becomes even clearer when addressing the consequences of non-enforcement of court rulings. The problem in this phenomenon lies not only in the administration's violation of a legal or constitutional obligation, but also manifests in the harm suffered by individuals as a result of the continued non-enforcement or delay in enforcement.

The severity of this harm is heightened by the fact that it occurs after the individual has already obtained a final, enforceable court ruling — meaning they have exhausted all litigation procedures and proven their right before the judiciary. Accordingly, non-enforcement constitutes a clear and independent infringement of the right acquired under the court ruling and the legal position recognized for the judgment creditor.

In this context, the effects of non-enforcement go beyond merely undermining the principle of the rule of law and the standing of the judiciary, extending to directly affect the rights and interests of the persons in whose favor the rulings were issued. These negative effects are reflected in numerous cases documented by civil-society institutions and rights bodies in Palestine,⁵¹ where delay or refusal to enforce rulings occurs in matters such as public employment, financial entitlements, judicial release orders, and other fundamental rights of individuals.⁵²

It may be useful in this study to note the types of harm that may properly be the subject of a compensation claim, as follows:

First: Financial and Economic Harm

Financial harm is among the most prominent consequences of non-enforcement of court rulings, particularly those relating to employment or financial entitlements. If the administration refuses to enforce a court ruling annulling a decision of dismissal — meaning the employee must necessarily be reinstated — the consequences of this refusal inevitably lead to depriving the employee of their

⁵⁰ Decree-Law No. 41 of 2020, op. cit.

⁵¹ See the records of the Civil Commission for the Independence of the Judiciary and the Rule of Law — Istiqlal — op. cit.

⁵² Khalid Khalil al-Zahir: *Administrative Justice: Annulment Justice and Compensation Justice*.

salary and financial entitlements for a long period, despite their right to return to their position having been judicially established. Non-enforcement of rulings relating to financial entitlements or job allowances can likewise expose the person to accumulating economic losses, since delayed enforcement of a ruling is often insufficient to compensate for the economic effects resulting from the delay.

This refusal may also cause the loss of investment or professional opportunities that might have been available to the judgment creditor had the ruling been enforced in a timely manner. This raises serious questions about the possibility of compensating for losses arising from “loss of opportunity,” which represents a form of compensable harm.

Second: Occupational and Professional Harm

The effects of non-enforcement extend to the career path and professional standing of judgment creditors. For example, delaying the reinstatement of an employee under a court ruling may deprive them of promotion opportunities or the ability to benefit from professional training programs, adversely affecting their professional development. In addition, they may lose their professional standing and workplace relationships due to the long period of interruption imposed on them, with some of this harm being difficult to remedy even upon reinstatement.

This harm underscores the need for more effective legal mechanisms to ensure compliance with the enforcement of rulings, particularly in cases affecting public employment in Palestine, which reports indicate represent a significant proportion of non-enforcement cases.⁵³

Third: Harm Related to Personal Liberty

Non-enforcement of rulings relating to personal liberty constitutes a serious violation of individuals’ fundamental rights. In cases of non-enforcement of release orders issued by competent courts, the consequences of this act remain grave and significant, because delay or refusal without a clear legal justification leads to the continued unlawful deprivation of a person’s liberty, in violation of the court ruling issued regarding their status.

The harm here is not limited to the wrongful detention of the person, but extends to the negative psychological, social, family, and professional effects arising from it. Comparative legal systems therefore regard the right of injured parties to obtain adequate and effective compensation as a priority that cannot be overlooked in the event of such a flagrant violation of personal liberty.

Fourth: Moral Harm

In addition to material harm, non-enforcement of court rulings can produce serious psychological effects on judgment creditors, reflected in feelings of frustration and loss of trust in public institutions, alongside a sense of futility in resorting to the judicial authority if its rulings go unenforced in practice. This refusal may also violate an individual’s dignity, harm their social standing, or damage their professional reputation, particularly in cases relating to rehabilitation or the recovery of employment or financial rights.

⁵³ Attorney Saher al-Rifa’i, op. cit.

Although measuring moral harm is a complex matter in practical and judicial terms, modern trends in administrative justice have become more open to recognizing this type of harm and compensating for it, provided a direct link is established between the harm and the unlawful act.

The distinctive feature of non-enforcement of court rulings lies in its being an independent act capable of causing new harm, regardless of the original administrative decision that was the subject of the dispute. An injured party may obtain a final ruling establishing their right and annulling a prior decision that harmed them, yet the administration refuses to enforce the ruling or delays its enforcement without clear justification, generating additional harm that did not exist when the original administrative decision was issued.

Accordingly, non-enforcement is not merely a continuation of the harm arising from the administrative decision that was the subject of the administrative case, but constitutes in itself an independent source of legal liability warranting special study. This supports the view that the judgment creditor is entitled to claim compensation that depends not only on the unlawfulness of the original administrative decision, but also on the unlawfulness of the refusal to enforce the court ruling — opening the way to developing new legal mechanisms to hold accountable public bodies that deliberately delay or refuse to enforce court rulings without valid legal justification.

Compensation suits for harm suffered by a judgment creditor as a result of non-enforcement of a court ruling are of great importance. In addition to being a means of redressing harm, they are considered one of the most important legal and judicial means of addressing the causes leading to non-enforcement of court rulings, and are at the same time an effective mechanism for achieving changes in public policy and administrative practices, through the judicial oversight they generate over the administration's conduct with respect to enforcing rulings, and the financial obligations they may impose on the administration and the public authority — ultimately strengthening the public authority's compliance with the decisions of judicial bodies, while also strengthening the judiciary's role in exercising oversight over proper respect for its rulings and asserting its standing.

In this framework, it is necessary to turn to the strategic-litigation approach, which means using the judicial process in a manner aimed at achieving objectives that go beyond the bounds of the individual case, such as strengthening legal protection of rights and freedoms, addressing legislative gaps, or improving institutional practices generally.

In the context of the widespread phenomenon of non-enforcement of court rulings, this allows for shifting the focus from demanding enforcement of rulings to holding accountable the bodies that cause harm through their unlawful acts of non-enforcement.

At the same time, strategic litigation is an effective tool for developing judicial practice, which is one of the most prominent objectives of this type of litigation. Given the novelty of the experience of compensation jurisdiction in Palestine, many challenges related to non-enforcement of court rulings still require settled legal treatment and renewed judicial practice.

Perhaps the most prominent legal and legislative challenges facing compensation suits for non-enforcement of court rulings lie in the novelty of the experience of compensation jurisdiction in Palestine, which remains a relatively new concept in the Palestinian context. In the absence of a comprehensive legislative framework prior to the issuance of Decree-Law No. (41) of 2020 on Administrative Courts, the role of administrative justice was limited to reviewing the legality of

administrative decisions through annulment suits, while consideration of compensation suits remained subject to general rules and was not clearly framed legally.

In this regard, we find it necessary to introduce an amendment to the Administrative Courts Law providing for the administrative court's specific jurisdiction to hear and decide compensation cases arising from the public authority's and other bodies' — subject to the jurisdiction of the administrative courts — refusal to enforce any ruling issued by the administrative court.

From the foregoing, it is clear that various legal tools can be activated to ensure public authorities' compliance with enforcing court rulings. In parallel, other oversight tools can be activated through relevant rights institutions, to create a state of oversight and pressure to curb the spread of this phenomenon. Chapter Three of this study will be devoted to studying and analyzing the work carried out by the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal) through its efforts to document cases of non-enforcement of court rulings and its follow-up work to ensure enforcement.

Chapter Three: Non-Enforcement of Court Rulings Between Practical Reality, Accountability Efforts, and the Results of Intervention

The phenomenon of non-enforcement of court rulings in Palestine cannot be fully studied merely by analyzing the legal texts and constitutional rules governing their enforcement. Rather, the practical reality and the spread of this phenomenon in its various forms must be examined in depth. Practical experience often highlights gaps that do not appear when the legal texts are read theoretically alone, and reveals the actual challenges facing the enforcement of court rulings within public institutions and the bodies entrusted with law enforcement.

In this context, the importance of the data collected by the Observatory of the Civil Commission for the Independence of the Judiciary and the Rule of Law “Istiqlal” stands out, as it provides a reliable database of cases of non-enforcement of court rulings and decisions in Palestine. This information provides an understanding of the nature of the phenomenon, the bodies most associated with it, the rights most affected, and its impact on the rule of law and the protection of rights and freedoms.

Section One: Non-Enforcement of Court Rulings

The monitoring results of the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal) indicate the documentation of (145) cases relating to enforceable court rulings and decisions that faced difficulties ranging from non-enforcement, delay, or obstruction, whether directly or indirectly. Although these cases are not necessarily comprehensive of all unenforced rulings in Palestine, they reflect an important indicator of the dimensions and general trends of the phenomenon.

To assess the extent of the spread of this phenomenon, we will analyze the cases documented by Istiqlal in terms of their general characteristics, the forms of non-enforcement or obstruction, and the qualitative distribution of rulings in terms of their operative content and the court that issued them, as follows:

First: General Characteristics of the Phenomenon of Non-Enforcement of Court Rulings

The documented data show that non-enforcement of court rulings is no longer an exceptional or rare matter but has become a recurring phenomenon encompassing various types of judicial decisions. Based on the cases documented by Istiqlal — which represent a portion of the overall unenforced rulings across the Palestinian territories — the number of documented cases reached 145, a figure that reflects only those cases the Observatory was able to identify and document, suggesting that the actual scale of this phenomenon is likely much larger, as previously noted in the interview with Attorney Saher al-Rifa’i regarding the 70 unenforced rulings in his office.

The forms of this non-enforcement vary, appearing in several forms, the most prominent of which are:

1. Explicit refusal to enforce.	2. Unjustified delay.
3. Administrative procrastination.	4. Partial or distorted enforcement of the judicial decision.
5. Failure to take the measures necessary to ensure enforcement.	6. Re-detaining persons after release orders have been issued.

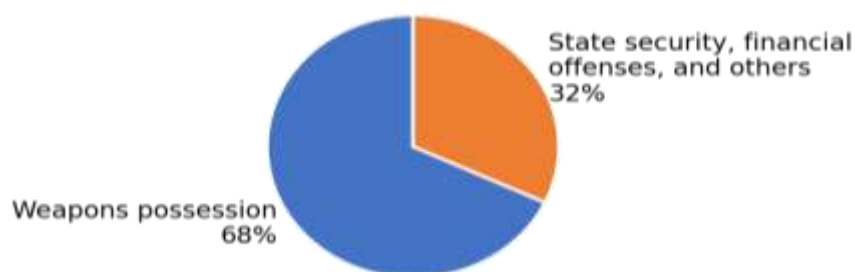
These patterns confirm that the problem does not relate to the absence or scarcity of court rulings, but to the extent of the legal system's capacity to enforce respect for rulings and ensure their translation into tangible rights enjoyed by individuals.

Second: Release Orders and Personal Liberty as the Rights Most Subject to Violation

Statistics show that the vast majority of documented cases relate to personal liberty, reaching 130 out of 145 cases — approximately 90% of the total cases documented by Istiqlal — connected to judicial orders relating to release, whether full release, discharge, or bail release.

These findings illustrate the severity of the phenomenon, meaning that nearly nine out of every ten cases of non-enforcement are directly linked to judicial orders for the release of detained individuals. The problem is thus not limited to the non-application of judicial decisions but extends to a violation of the fundamental right to personal liberty guaranteed by the Palestinian Basic Law and international human-rights instruments.

The data also show that most of these cases are linked to security-related matters, particularly charges of weapons possession, which constituted about 68% of the total documented cases (98 out of 145 cases). The remaining percentage was distributed among state-security offenses, financial offenses, and other offenses. See the following table:

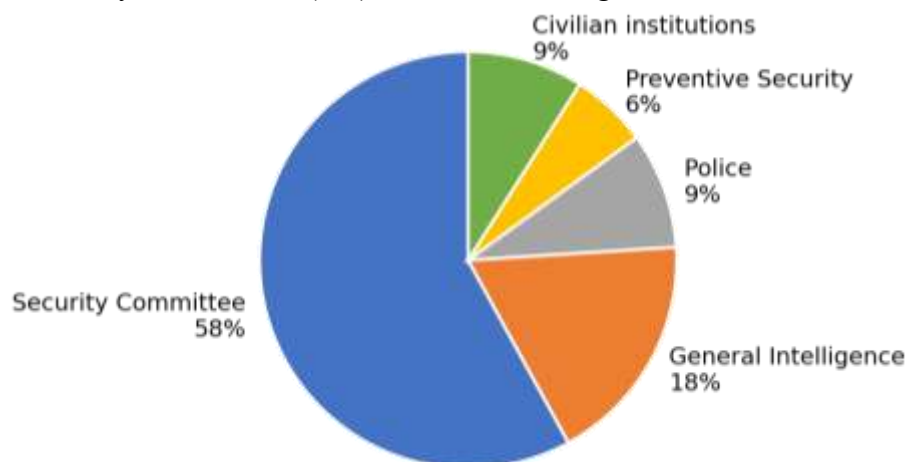


Weapons possession: 68% | State security, financial offenses, and others: 32%

These findings point to a close relationship between security-related cases and the likelihood of non-enforcement of release orders. They also raise serious questions about the effectiveness of the legal safeguards protecting personal liberty, particularly when a judicial release order fails to end a person's detention.

Third: The Bodies Most Involved in Non-Enforcement of Rulings

Monitoring results show that a large proportion of non-enforcement cases are attributable to security bodies or law-enforcement bodies. Specifically, the Security Committee recorded the highest rate of association with this phenomenon, reaching 84 out of 145 cases, equivalent to 58%. It was followed by General Intelligence with 26 cases (18%), then the Police with 13 cases (9%), and Preventive Security with 8 cases (6%). See the following table:



Security Committee: 58% | General Intelligence: 18% | Police: 9% | Preventive Security: 6% | Civilian institutions: 9%

These figures show that more than 90% of cases are directly or indirectly linked to security and enforcement bodies. The importance of this indicator lies not only in its quantitative dimension but in its fundamental implications for institutional and constitutional balance. The bodies entrusted with law enforcement are supposed to be the very bodies that ensure enforcement of court rulings. But when these bodies become an obstacle to the application of those rulings, the matter turns into an institutional problem touching the nature of the relationship between the executive and judicial authorities.

Analysis of the facts set out above makes clear that the problem lies not only in the existence of legal rules requiring enforcement of judicial decisions, but also, necessarily, in the effectiveness of institutional mechanisms for ensuring compliance and in the capacity of existing systems to hold the responsible bodies accountable when they fail to enforce.

Fourth: Unenforced Administrative Rulings ... A Crisis of Administrative Compliance with Court Rulings

Unenforced administrative rulings reflect a genuine crisis relating to the extent of the administration's compliance with judicial rulings and its respect for the rule of law. Although the number of such documented rulings is relatively small in the studies conducted, their legal and institutional impact is highly significant, as these rulings represent a mirror reflecting the judiciary's capacity to impose oversight on the administration, and a measure of the limits of public authorities' submission to the law.

In administrative cases specifically, the problem is manifested in the administration's refusal to enforce rulings issued against it, even after all stages of litigation have been completed. This situation reflects not only a failure to comply with the application of the law, but also highlights a deeper crisis relating to the limited tools for judicially enforcing rulings issued by administrative courts — a phenomenon that has extended to institutions other than state institutions, such as some universities.

Despite the importance of administrative justice as a last resort for citizens to defend their rights and legal position against administrative overreach, the loss of enforcement effectiveness weakens this recourse, depriving it of its importance and standing, and reducing administrative courts to a mere means of obtaining theoretical rulings with no real impact on litigants' lives.

Analysis of the nature of rulings issued by administrative courts shows that the problem of non-enforcement takes several forms, the most prominent of which are:

a - The public authority's refusal to enforce judicial decisions issued by administrative courts annulling dismissal decisions, with the consequent obligation to reinstate the employee. In this regard, we consider that the real reasons for non-enforcement constitute an extension of the reasons for the dismissal itself. This is because, once the judicial decision issued by the administrative court annulling the dismissal decision becomes definitive, no body may refuse to enforce it. However, a review of the cases reported to the Civil Commission for the Independence of the Judiciary and the Rule of Law⁵⁴ shows that the reasons for dismissal were fundamentally political, or based on malicious reports without genuine justification, or connected to the coup that took place in the Gaza Strip, or connected to the dismissed employee's union activity. This became clear from the evidence submitted by the public authority during the hearing of the administrative case, where the administration's evidence failed to prove the legality of the dismissal decision, following which the judicial decision annulling the dismissal was issued.

Yet tracking the reported cases shows that the judicial decision issued by the competent administrative court annulling the dismissal decision, despite its definitiveness and the absence of any avenue of appeal against it, met with no response from the public authority, which refused to enforce it without giving any reasons.

In this regard, we note that non-enforcement of court rulings has, in some cases, taken multiple forms, beginning with the administrative body addressed by the judicial decision refusing to receive a letter or notification from the interested party or their representative regarding the content of the judicial decision and the request for its enforcement. For example, in the case of citizen (M.Gh.),⁵⁵ who was dismissed from public office by an administrative decision issued by a body lacking jurisdiction given his employment grade, without stating any reasons in the dismissal decision, and without following the procedures prescribed by the law governing the public office to which the citizen was subject — the High Administrative Court ruled that the dismissal decision was void, nullifying all its effects.

⁵⁴ Civil Commission for the Independence of the Judiciary and the Rule of Law — Istiqlal — records of reported non-enforcement of court rulings.

⁵⁵ Civil Commission for the Independence of the Judiciary and the Rule of Law, op. cit.

When the citizen sent a written letter to the administrative body addressed by the judicial decision, that body refused to receive the letter, as the citizen and his representative were prevented from entering the institution by external security personnel. As a result, the citizen filed a report with the Civil Commission for the Independence of the Judiciary and the Rule of Law regarding the non-enforcement of the judicial decision. Despite the administration having been notified of the judicial decision, it refrained from taking any action regarding enforcement, reinstating the citizen to his position, and paying his salaries, without stating any reasons.

As for union-related backgrounds, the records of the Civil Commission for the Independence of the Judiciary and the Rule of Law⁵⁶ show that the administrative body, upon being notified of the judicial decision, began working to enforce it, but in parallel formed investigation committees against employees reinstated to their positions, to investigate them on the very same grounds that led to their initial dismissal — which is also considered a form of non-enforcement of court rulings, since what the administrative court decided has acquired *res judicata* authority and may not be reconsidered.

b- The public authority's refusal to enforce court rulings with a financial dimension, whether relating to the obligation to resume salary payments for employees whose salaries were suspended, or to pay allowances due to employees of various grades. In this regard, the stated reason for non-enforcement is the financial crisis facing the National Authority and the unavailability of sufficient budgets for payment. Here we note that, even assuming this reason for non-enforcement is valid as a material bar preventing the employee from obtaining their entitlements, it remains the government's duty to enforce the judicial ruling and record its particulars and the corresponding financial rights on the employee's financial statement, so that if a financial improvement occurs, these entitlements are paid directly without the need to resubmit an enforcement request each time.

c- The public authority's refusal to enforce release orders issued by competent courts. This form of non-enforcement is perhaps the most serious, given its connection to public freedoms, and it is the most numerous and frequent. Given the nature of this refusal, we find it closely linked to the grounds for detention in the first place, as it becomes apparent in most cases that the grounds for detention and prosecution were not genuine, and were aimed merely at detaining the citizen and depriving them of their liberty, having been included in the detention request submitted to the court in order to lend procedural legitimacy to the detention.

It is clear from the report issued by the Civil Commission for the Independence of the Judiciary and the Rule of Law on pretrial detention that the most common pretrial-detention files before magistrate courts relate to charges of incitement of sectarian tension and unlicensed weapons possession, as a result of which the magistrate courts ordered the accused detained, or extended their detention. After the judicial ruling ordering the accused's release on bail was issued, the administrative body refused to enforce the decision.

⁵⁶ Civil Commission for the Independence of the Judiciary and the Rule of Law — Istiqlal — op. cit.

In conclusion of this chapter, the findings of the Observatory of the Civil Commission for the Independence of the Judiciary and the Rule of Law show that the phenomenon of non-enforcement of court rulings in Palestine is not merely isolated or exceptional incidents, but constitutes a recurring pattern that adversely affects the effectiveness of the judicial system and its capacity to protect rights and freedoms.

These findings show that the fundamental challenge lies not in a lack of legal texts but in the absence of effective mechanisms to ensure the enforcement of rulings and to hold non-complying bodies accountable. Accordingly, strengthening the capacity for actual enforcement of court rulings is a fundamental requirement for consolidating the rule of law and ensuring effective judicial protection in Palestine.

Section Two: Istiqlal's Follow-Up Mechanisms for the Enforcement of Court Rulings

The monitoring findings addressed in this study reveal that the phenomenon of non-enforcement of court rulings is no longer a matter of rare, isolated cases, but has become a recurring phenomenon that adversely affects a range of fundamental rights. Among the most prominent of these rights are: the right to personal liberty, the right to work, and the right to effective judicial remedy. Accordingly, the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal) has developed multiple legal, institutional, and rights-based tools and strategies aimed at confronting this phenomenon. Its efforts have focused on four main pillars: official correspondence, strategic litigation, dialogue with decision-makers, and media and public advocacy.

First: Official Correspondence as a Means of Legal and Institutional Pressure

The Civil Commission for the Independence of the Judiciary and the Rule of Law began its efforts to address the phenomenon of non-enforcement of court rulings by using official correspondence as a fundamental tool for intervention and follow-up. This step constituted the first stage toward protecting rights relating to unenforced court rulings. Through this correspondence, the Commission sought direct communication with the competent bodies, demanding enforcement of judicial decisions and the removal of obstacles preventing it.

According to the study, based on documented data, the Commission sent more than fifty official letters to various governmental, judicial, and security bodies, highlighting the scale of the efforts undertaken at the institutional level. The addressed bodies included the Council of Ministers, the Ministry of Justice, the Public Prosecution, the Military Attorney General, the High Judicial Council, the General Personnel Council, the Ministry of Finance, the Palestine Monetary Authority, the Capital Market Authority, in addition to several security agencies and public institutions.

The nature of this correspondence reflects the diversity of the cases and rights addressed, as a large proportion focused on release and discharge orders, which constituted approximately 90% of the documented cases of non-enforcement according to the Observatory's data. In addition, the correspondence addressed rulings issued by the administrative court and the High Administrative

Court, and others relating to the reinstatement of employees or the enforcement of financial and employment rights arising from final court rulings.

From a rights perspective, this correspondence demonstrated its fundamental role not only as a means of communication with the relevant bodies, but also as a tool for protecting fundamental rights such as the individual's right to personal liberty, the right to work, and the right to effective judicial remedy. When correspondence is sent regarding a person detained despite a judicial release order having been issued, the matter becomes more than mere enforcement of a court ruling; it becomes a direct guarantee of the individual's right to liberty and a means of preventing ongoing violations contrary to judicial decisions.

As for administrative rulings, this correspondence shed light on additional aspects of the phenomenon relating to decisions issued against a public authority. The Commission addressed cases involving refusal to enforce decisions annulling certain administrative actions, or reinstating employees, or granting them due financial and employment rights. This shows that the problem is not limited to criminal cases but extends to administrative aspects that directly affect individuals' legal rights and entitlements.

In addition to addressing individual cases, this correspondence played an important role in building a documented institutional database on the phenomenon of non-enforcement of court rulings. These documents helped establish that the relevant bodies were aware of rulings requiring enforcement, and documented cases of continued non-enforcement or delay despite official demands. These efforts later paved the way for using the data in strategic-litigation proceedings, compensation claims, and legal accountability.

Accordingly, official correspondence can be considered a first strategic step in confronting the problem of non-enforcement of court rulings. It did not merely convert individual cases into documented rights files, but also contributed to directing efforts toward more advanced stages, including strategic litigation, communication with decision-makers, and media advocacy, to activate pressure toward respecting court rulings and strengthening the principle of the rule of law.

Second: Strategic Litigation as a Mechanism for Confronting Non-Enforcement and Developing Judicial Practice

When certain bodies persisted in refusing to enforce rulings despite official correspondence, the Commission moved to a more advanced stage by resorting to strategic litigation as an effective tool for accountability and ensuring enforcement.

This approach was developed in cooperation with a specialized legal team from the "Lawyers for Justice" group, who participated in following up cases of a public nature before the administrative judiciary. Data show that, by the time this study was prepared, the Commission had filed 19 lawsuits focused on two main types: challenges against continued detention despite the issuance of judicial release decisions, and challenges against non-enforcement of rulings as a negative administrative decision subject to challenge before administrative courts, coupled with a claim for compensation alongside the suit to annul the negative administrative decision.

These cases gained great importance as they marked an important turning point in dealing with this phenomenon. Rather than being limited to merely demanding enforcement of the court ruling, administrative justice became a tool for holding non-complying bodies accountable and placing their conduct under legal and judicial scrutiny.

These proceedings contributed to creating a legal foundation for developing new judicial precedents clarifying the limits of the authority of security and administrative bodies with respect to enforcing court rulings. It is also hoped that they will open the way to innovative means of legal accountability, such as filing suits for compensation for harm arising from non-enforcement.

From a rights perspective, these suits added a new dimension to the protection of fundamental rights, particularly given that a large proportion of non-enforcement cases related to release and discharge matters documented within the Commission's monitoring work.

Third: Strengthening Institutional Dialogue and Communication with Decision-Makers

Proceeding from a deep understanding of the institutional nature of the phenomenon, the Commission's efforts were not limited to using judicial tools alone but also sought to build bridges of dialogue with the responsible bodies and decision-makers.

The issue of non-enforcement of court rulings was raised continuously during the meetings and encounters held by the Commission with various relevant institutions, such as the High Judicial Council, the Ministry of Justice, the Public Prosecution, the security agencies, and other official bodies.

These meetings aimed to present the monitoring and observation findings, highlight the legal and rights-related consequences arising from non-enforcement of court rulings, and push toward developing effective policies and procedures that strengthen compliance with the enforcement of such rulings.

These initiatives also contributed to placing the issue within discussions on justice-sector reform and strengthening the rule of law, raising the level of discussion from individual complaints to a broader institutional discussion on the relationship between the judiciary and the bodies responsible for enforcement.

Fourth: The Media and Its Role in Public Advocacy for Strengthening Community Accountability

Alongside legal and institutional efforts, the Civil Commission for the Independence of the Judiciary and the Rule of Law (Istiqlal) employed media and public advocacy as effective tools for strengthening community oversight of the phenomenon of non-enforcement of court rulings.

Through producing media reports, providing digital content, broadcasting dialogue programs, and issuing press statements, the Commission sought to highlight the negative effects of non-

enforcement of court rulings and its impact on rights, freedoms, and the rule of law. This approach contributed to transforming the issue from a purely specialized legal matter into a subject of public concern, creating space for injured parties to share their personal experiences and increasing community pressure on the bodies responsible for enforcement.

In addition, the media played an important role in supporting monitoring, litigation, and advocacy efforts by highlighting the importance of enforcing court rulings as a fundamental pillar for ensuring justice and practically and effectively consolidating the rule of law.

Section Three: Results of Legal and Rights-Based Interventions in Following Up the Enforcement of Court Rulings

A study of the results of legal and rights-based interventions in following up the enforcement of court rulings demonstrates the importance of the issue of non-enforcement of such rulings, not only for monitoring violations and analyzing their causes, but also for assessing the effectiveness of the efforts made to address this problem. The Civil Commission for the Independence of the Judiciary and the Rule of Law has provided data documenting several cases resolved through legal and institutional follow-up, leading to the enforcement of some rulings or an improvement in the legal status of their holders.

The data indicate that 41 cases achieving positive results were documented, including the enforcement of judicial decisions, the release of detainees, or the remedy of the effects arising from non-enforcement. Although some of these may not be directly attributable to these interventions, institutional and media pressure, in addition to addressing the relevant bodies, helped create an environment conducive to achieving these results.

Most of the resolved cases relate to personal-liberty rights, with cases relating to release and discharge orders reaching 36 out of a total of 41 documented cases followed up, while administrative cases did not exceed 5 cases. These results reflect the predominance of the phenomenon of non-enforcement of release orders over other types of cases in Palestine.

It should be noted in this regard that the legal interventions directed toward protecting the right to personal liberty were of vital and significant importance, aimed at putting an end to cases of detention and restoring fundamental rights guaranteed constitutionally and legally.

As for the significance of enforced administrative rulings, the Commission recorded five administrative cases that ended with positive results. These cases addressed a range of files linked to rulings issued by the administrative court and the High Administrative Court, connected to matters relating to public employment and employment and financial rights.

The bodies concerned in these cases included: the Ministry of Education, the Palestine Monetary Authority, and other administrative bodies subject to administrative-court rulings.

The importance of these cases stands out given their connection to the enforcement of rulings issued against the public administration. The study showed that enforcing judicial rulings in this context is one of the most complex challenges. These cases also shed light on the role of legal and

institutional pressure, which can serve as an incentive for public bodies to comply with the enforcement of court rulings, even in files of a complex legal and employment-related nature.

Tracking the rights-based and institutional significance of the resolved cases reveals a set of fundamental indicators showing that non-enforcement of court rulings is not a final or immutable state, but can be addressed through sustained legal and rights-based follow-up efforts, achieved by combining the use of official correspondence, strategic litigation, and institutional dialogue alongside media support — the combined use of these tools proving more effective than relying on a single tool to address cases. The Commission's success in resolving 41 cases, particularly those relating to the release of detainees against whom bail-release orders had been issued, by following the strategic-litigation methodology, reinforces the importance of continuing to resort to strategic litigation and rights-based pressure, particularly where individuals' freedoms are at stake.

Conclusion & Recommendations

The issue of non-enforcement of court rulings in Palestine represents a decisive crossroads for the rule of law and the standing of the judicial system. While the Palestinian legislator has established a legal framework the sanctity of the Basic Law and the Judicial Authority Law — to ensure the binding force of rulings and their enforcement, the gap between legal theory and practical application remains a major challenge. This study has shown that the supremacy of a court ruling, as the embodiment of truth, lies not merely in its issuance but in its actual enforcement, which represents the final guarantee of citizens' rights and the state's legitimacy.

Furthermore, the study of the legal, material, and administrative obstacles to enforcing court rulings shows that the phenomenon of public authorities refusing to enforce court rulings empties them of their substance. Accordingly, addressing criminal, civil, and disciplinary liability is not merely a matter of punishment, but an effective means of legal reform aimed at restoring public trust in the Palestinian judicial system and ensuring that no official or body is considered “above the law.”

To that end, we find that Article (106) of the Palestinian Basic Law, which provides that court rulings are binding and enforceable, and that any refusal or obstruction of their enforcement constitutes a crime not subject to any statute of limitations, remains — in practice — undermined by public authorities' widespread refusal to enforce in many cases. Some other bodies, such as universities and other institutions, have followed the same approach as public authorities in evading the duty to enforce court rulings.

Practical reality points to a weak legal deterrent and weak penalties imposed on those who refuse to enforce court rulings. Although the State of Palestine is the primary guarantor of compensation for victims of non-enforcement — guaranteeing the injured party's right to compensation should actual enforcement fail — judicial precedent has been devoid of any rulings awarding compensation for non-enforcement, owing to the absence of ordinary legislation issued pursuant to Article 106 of the Basic Law setting out the mechanisms for compensation and the court competent to hear such a claim.

On the other hand, tracking the efforts made by civil-society institutions shows that there are effective, applicable tools that have achieved breakthroughs in the area of non-enforcement of court rulings, which calls for pooling efforts, given that the Istiqlal Observatory serves as a national observatory for documenting cases of non-enforcement, and for developing a national strategy building on past experience for following up cases of non-enforcement of court rulings.

First: Findings

- The study, through tracking the legal provisions, showed that enforcement of court rulings forms an integral part of the right to litigation, and that judicial protection is not complete merely by the issuance of a court ruling but is achieved through its actual and effective

enforcement. The Palestinian legislator has granted court rulings special constitutional and legal protection, affirmed the mandatory nature of their enforcement, and criminalized non-enforcement or obstruction of enforcement — reflecting the central status of court rulings as the arbiter in protecting rights and legal positions and delivering them to their holders.

- The study revealed a gap between the legal framework mandating enforcement of court rulings and practical reality, with cases of non-enforcement or delay in enforcement persisting. Non-enforcement of court rulings has taken several forms, ranging from explicit refusal to enforce, unjustified delay, partial enforcement, conditional enforcement, administrative procrastination, and failure to take the measures necessary to put rulings into effect.
- The public authority and those treated as such constitute the party most associated with the problem of non-enforcement of court rulings, raising questions about the extent of the administration's commitment to the principle of legality and the limits of its respect for judicial authority and its rulings — particularly as the spread of the phenomenon of non-enforcement of court rulings by the executive authority weakens the principle of separation of powers, limits the effectiveness of judicial oversight of administrative acts, and undermines the judiciary's constitutional role in protecting rights and freedoms.
- Although the body of Palestinian legislation includes a legal basis for holding accountable those who refuse to enforce court rulings, through criminal and disciplinary liability and compensation — and some forms of non-enforcement may raise suspicion of corruption, particularly if the refusal is deliberate, repeated, and connected to abuse of authority or the protection of unlawful interests — activation of these tools remains limited compared to the scale of the phenomenon and its effects.
- The penal provisions have not yet become an effective deterrent capable of curbing cases of non-enforcement, which calls for reviewing the mechanisms for their application and activating them more effectively.
- The study showed that the legislative development witnessed by the Palestinian administrative judiciary, particularly following the establishment of the administrative courts and the recognition of their jurisdiction to hear compensation claims, represents an important step toward strengthening judicial protection for individuals against unlawful administrative acts or refusals — particularly since annulment jurisdiction alone does not achieve full protection of rights, since a ruling annulling an administrative decision does not necessarily remove all the effects and harm that resulted from it prior to its annulment.
- Non-enforcement of court rulings can constitute an independent source of harm and of the administration's liability, even in cases where the original dispute has already been resolved by a final court ruling. This is because the harm arising from non-enforcement of court rulings may be material, occupational, professional, or moral, and much of this harm cannot be fully removed or redressed by subsequent enforcement of the ruling.
- Non-enforcement of court rulings, or delay in their enforcement, does not merely undermine the standing of the judiciary, but in many cases results in direct harm affecting the financial, employment, and personal rights of the individuals in whose favor the rulings were issued.
- Compensation constitutes one of the most important legal means available for addressing the effects arising from non-enforcement of court rulings, contributing to restoring balance to the legal positions of injured individuals. Recognizing injured parties' right to claim

compensation for harm arising from non-enforcement would strengthen the effectiveness of judicial protection and reduce impunity.

- Palestinian judicial practice in the field of compensation for non-enforcement of court rulings remains in its early stages and requires further development, particularly since compensation suits can constitute an effective tool for strategic litigation, especially in cases relating to public employment, financial rights, release orders, and other cases where non-enforcement results in serious harm. Resorting to strategic litigation in the field of compensation is not limited to providing redress to victims, but can contribute to developing judicial practice, strengthening the accountability of public bodies, and producing an institutional impact that transcends the bounds of the individual dispute.
- Curbing the phenomenon of non-enforcement of court rulings and ensuring their enforcement requires combined efforts for legislative reform, activating criminal and disciplinary accountability, developing administrative justice, expanding the use of compensation suits, and strengthening community and institutional oversight.
- Non-enforcement of court rulings is not inevitable; through the use of available legal and judicial means — activating legal correspondence, strategic litigation, institutional communication, pressure and advocacy, and activating the role of civil-society institutions, building on successful past experience — a serious and substantive breakthrough can be achieved on this issue.

Second: Recommendations

Based on the foregoing findings, this study offers a number of necessary recommendations to address the existing shortcomings in the non-enforcement of court rulings, as follows:

(1) Legislative Recommendations

- Issue a legislative framework to implement the constitutional rule set out in Article (106) of the Amended Basic Law, explicitly specifying: the body competent to prosecute non-enforcement offenses, the procedures for initiating criminal and civil compensation proceedings and activating disciplinary liability, mechanisms for protecting judgment creditors, and the penalties applicable to non-enforcement or unjustified delay in enforcement.
- Introduce specific legal provisions on the enforcement of rulings issued against public bodies, regulating and specifying the procedures for enforcing court rulings issued against ministries, public institutions, and official bodies, preventing reliance on legislative gaps or administrative complexity as a pretext for obstructing enforcement.
- Adopt a system of coercive fines (*astreinte*) allowing courts to impose daily or periodic financial fines on a public body that refuses to enforce court rulings or delays their enforcement without legal justification — this measure being one of the most effective means in many comparative legal systems for ensuring compliance with court rulings.
- Amend the Administrative Courts Law to allow compensation suits to be brought independently in cases of non-enforcement of court rulings, without limiting compensation to cases connected with an annulment suit, expanding the jurisdiction of the administrative judiciary over liability suits arising from non-enforcement, and requiring the operative part of the ruling to include binding orders for the enforcement of administrative-court rulings.
- Issue a law regulating judicial expertise, including standards and mechanisms for assessing moral damages.
- Review the State Lawsuits Law by repealing provisions that may constitute a practical obstacle to holding public bodies accountable or claiming compensation from them, ensuring a balance between protecting public funds and guaranteeing individuals' rights.

(2) Judicial Recommendations

- Develop the quality of court rulings issued by administrative courts by including compulsory orders directed at the judgment-debtor body, rather than limiting the operative part of the ruling to annulment.
- Administrative courts should establish the principle that non-enforcement of a court ruling constitutes a negative administrative decision subject to judicial review, which would broaden the scope of judicial protection and enable injured parties to directly challenge instances of non-enforcement, along with the injured party's right to seek compensation.
- Expand awards of compensation for moral damage by developing judicial practice to allow compensation for harm to human dignity, psychological harm, unlawful deprivation of liberty, and harm to professional and social standing.
- Develop judicial practice across all courts by adopting the principle of compensation for loss of opportunity in cases relating to public employment, promotions, and professional rights, where it is established that non-enforcement led to the loss of a genuine opportunity for the judgment creditor.

- Courts should adopt an expedited mechanism for hearing disputes relating to non-enforcement of court rulings, given their special nature and direct impact on fundamental rights.

(3) Recommendations Directed to the Public Prosecution

- Establish a specialized mechanism for following up non-enforcement offenses by designating a contact point or a specialized unit within the Public Prosecution to receive and follow up complaints relating to non-enforcement of court rulings, and enable it to act effectively and swiftly to ensure enforcement of rulings.
- Issue special instructions for prosecutors regulating investigation procedures for non-enforcement offenses, evidence-gathering mechanisms, and urgent follow-up on the enforcement of rulings relating to personal liberty and release orders.
- Give priority to cases relating to personal liberty, treating non-enforcement of release orders or rulings relating to personal liberty as among the highest-priority cases, given their direct impact on fundamental rights.

(4) Recommendations Directed to the Executive Authority and Public Bodies

- Establish a body under the Council of Ministers dedicated to following up the enforcement of court rulings, granting it the authority necessary to receive complaints and reports regarding the obligation to enforce rulings, enabling it to communicate with all bodies relevant to enforcement, and tasking it with notifying the Public Prosecution of any refusal or delay in enforcement, on pain of liability.
- Adopt the Istiqlal Observatory for monitoring enforcement of rulings as a central database including court rulings issued against public bodies, their enforcement stages, the bodies refusing to enforce, the reasons for delay or refusal, and rulings that have been enforced.
- Include enforcement of rulings among institutional performance indicators, treating the rate of enforcement of court rulings as one of the indicators for assessing the performance of public institutions and their executive officials.
- Require public bodies to state reasons for non-enforcement in cases where enforcement procedures are hindered by exceptional legal or technical reasons; the relevant body must be required to issue a written, reasoned decision explaining the reasons for non-enforcement and the proposed steps for addressing the problem within a reasonable time, subject to judicial review.

(5) Recommendations Relating to Integrity and Anti-Corruption

- Include systematic non-enforcement of rulings among institutional corruption indicators, where non-enforcement is repeated in an organized or deliberate manner, as an indicator of abuse of authority or a defect in the integrity and accountability system.
- Strengthen cooperation between the Anti-Corruption Commission and the Public Prosecution by establishing a referral protocol for cases showing indicators of abuse of authority, discrimination in the enforcement of rulings, or deliberate refusal aimed at achieving a benefit or protecting an unlawful interest.

(6) Recommendations Relating to Strategic Litigation

- Develop a national strategic-litigation program, with civil-society institutions — led by the Civil Commission for the Independence of the Judiciary and the Rule of Law “Istiqlal” —

selecting model cases capable of producing a judicial and institutional impact that transcends the bounds of the individual dispute.

- Focus on cases of public significance, particularly cases of non-enforcement of rulings reinstating employees, cases of non-enforcement of release orders, and cases of refusal to enforce financial rulings issued against public bodies.

(7) Recommendations Relating to Monitoring and Transparency

- Issue an annual national report on non-enforcement of court rulings issued against public authorities and institutions subject to administrative-court review, such as associations, syndicates, and universities, including the number of unenforced rulings, the bodies most prone to non-enforcement, the nature of the rulings subject to non-enforcement, and the measures taken to address the phenomenon.
- Publish periodic statistics on the enforcement of rulings to strengthen transparency and public accountability and to enable measurement of the scale of the phenomenon and its evolution over time.
- Strengthen the role of civil-society institutions in monitoring, documentation, legal follow-up, and raising awareness of the importance of enforcing court rulings as an indicator of respect for the rule of law.

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