

The authority of the Algerian state to expel foreigners residing within its territory

Amina Rahaoui¹

¹Lecturer A, University of Djillali Liabes Sidi Bel Abbes, Faculty of Law and Political Science, Laboratory of Basic Private Law, Abu Bakr Belkaid University Tlemcen (Algeria).

Received: 01/2023

Published: 06/2023

Abstract:

The Algerian government possesses the right to expel foreigners residing within its territory if there are valid grounds for deportation, resulting in a series of legal implications. To ensure the legitimacy of such decisions, the Algerian legislature offers foreigners a set of guarantees to challenge deportation orders, which may encompass both administrative and judicial measures, guided by principles of humanitarian treatment.

The significance of this study lies in the imperative to explore the causes and consequences of deportation decisions in Algeria, as well as their justifiability, by examining the essential guarantees afforded to foreigners to contest these actions.

Keywords: Algerian legislature, deportation decision, foreigners, guarantees.

Email Author: amina.rahaoui@univ-sba.dz

Introduction:

The freedom of movement is considered a fundamental human right, guaranteed to both Algerian citizens and foreigners. To safeguard national sovereignty in Algeria, the Algerian legislature has established laws and procedures to regulate the entry, residence, and movement of foreigners within the country through Law 08-11, dated June 25, 2008. Consequently, the Algerian state holds extensive authority to determine the status of foreigners within its borders, including the conditions for their entry, residence, and even

their departure. The right of the Algerian state to deport foreigners is a necessary outcome of its sovereignty over its territories, in accordance with international customs¹. Algeria derives this prerogative from its right to preserve its security, entity, and resilience in the face of any foreigner whose behavior is deemed a threat to its interests. To ensure the legitimacy of deportation decisions in Algeria, the Algerian legislature grants foreigners a range of guarantees to confront deportation orders issued against them.

Based on this, we present the following questions: What is the extent of the Algerian state's authority in deporting foreigners? And what are the most important guarantees provided to foreigners to confront deportation orders?

To answer these questions, we will follow a descriptive analytical approach in this study. We will analyze the relevant legal texts that regulate deportation decisions in Algeria, including Law 08-11 mentioned earlier. The descriptive analytical method is most appropriate as it allows us to analyze the ideas surrounding deportation, its causes, effects, and procedures, ultimately determining the legitimacy of such decisions.

The significance of this research lies in the necessity of understanding the reasons and effects of deportation decisions in Algeria, as well as their justifiability, by identifying the key guarantees provided to foreigners to confront them. These guarantees can be administrative, judicial, or based on principles of humanity and international law.

To achieve the desired objective, we have divided the research into two sections: the authority of the Algerian state in deporting foreigners (**the first section**) and the guarantees provided to foreigners in Algeria to confront deportation orders (**the second section**).

First Section: The Authority of the Algerian State in Deporting Foreigners

The departure of foreigners from the territory of a state in which they do not hold citizenship takes various forms. It is important to distinguish between

¹ - Abdel-Munim Zamzam, *The Center of Foreigners in International Law and Comparative Egyptian Law*, 2nd edition, Dar al-Nahda al-Arabiya, 2005, p. 218.

voluntary or willful departure, where the foreigner leaves the territory after the expiration of their authorized stay or due to certain reasons. In such cases, the foreigner exits in an orderly manner through authorized border checkpoints under the supervision of the security authority, following the legal procedures. On the other hand, there is forced deportation, where the foreigner loses their right to choose and is compelled to leave the territory under the sovereignty of the state on its own lands. In such cases, the foreigner's residence may have been either legal or illegal¹.

Deportation is considered a legal procedure for the forced expulsion of a foreigner residing legally within the territory of the Algerian state. In this section, we will attempt to define the concept of deportation (**in the first subsection**). Although the right to deport is granted to the Algerian state based on its sovereignty, this does not mean that it can exercise this authority without specific circumstances warranting a deportation decision. Such a decision is accompanied by a set of legal consequences. Therefore, it is necessary to clarify both the reasons and effects of deportation in Algeria (**in the second subsection**).

The First Aspect: Definition of Deportation

The act of deportation is characterized by its clear danger and significant infringement upon the rights and freedoms of individuals. Therefore, it requires an exploration of its definition (First Aspect) and distinguishing it from similar procedures (Second Aspect).

First Aspect: Definition of Foreigners' Deportation

There are various definitions presented by jurists regarding deportation. Some define it as an action through which the state warns an individual or several individuals residing within its territory to leave as soon as possible, compelling them to do so if necessary².

¹- Fouzia Maafa, Authorities of the National Security Facility in Deporting Foreigners in the Algerian Legal System, Journal of Social and Human Sciences, Arabi Tibsi University - Tebessa, Issue 12, 2016, p. 49.

²- Ibrahim Ahmed Ibrahim, Entry, Residence, and Deportation of Foreigners (A Comparative Study), Master's Thesis, Institute of Arab Research and Studies, Cairo, 2001, p. 31.

Others define it as a measure taken by the state to prompt a resident foreigner to leave the territory within a short period. Failure to comply may result in forcible expulsion¹.

Professor Hisham Ali Sadiq defines it as a decision issued by the public authority of the state for reasons related to its safety, internal security, or external security. This decision requires the foreigner residing within the state to leave its territory within a specified deadline. Failure to comply may lead to punishment and forcible expulsion².

Professor Ibrahim Rawashdeh presents a comprehensive definition that attempts to encompass all the concepts to eliminate ambiguity and make it closer to accuracy. He states, "Deportation is an administrative decision issued by the competent administrative authority, not a judicial authority. It requires the foreigner residing within its territory to leave the state's territory within a specified deadline according to its decision. This is done for reasons related to the state's right to persist and maintain itself. Failure to comply may result in punishment and forcible expulsion. As an exception, judicial deportation decisions issued by specialized courts are considered secondary or primary penalties"³.

It is noticeable through these definitions that they vary in describing deportation as an action, a decision, or an act. Each description carries a different specific connotation. However, the most accurate description is that deportation is a decision as it is an administrative measure implemented by the administration, utilizing its authority prescribed by laws and regulations. The aim is to forcibly remove the foreigner from the country⁴.

¹- Ahmed Abdel-Hameed Ashoush, Omar Abu Bakr Bakhsh, Nationality Laws and the Status of Foreigners in the Gulf Cooperation Council Countries, Shabab Al-Jami'a Foundation, Alexandria, 1990, p. 473.

²- Hisham Ali Sadik, Nationality, Citizenship, and the Status of Foreigners, Volume Two in the Foreigners' Center, Manṣūrat al-Ma'ārif, Alexandria, pp. 42-48.

³- Ibrahim Abdul Majid Rawashdeh, Arab Legislation's Stance on the Issue of Deporting Foreigners, Master's Thesis, Institute of Arab Research and Studies, 1999, p. 14.

⁴- Mohammed El-Roubi, Expulsion of Foreigners from the State's Territory, A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2001, p. 23.

Deportation is considered a measure limited to foreigners, and the state is not permitted to deport its own nationals or prevent them from returning¹.

The Second Aspect: Distinguishing Deportation from Similar Procedures

States employ various measures that sever the connection between foreigners and the state, sometimes leading to overlapping, especially in the case of expulsion, residency prohibition, and entry prohibition.

First Point: Distinguishing Deportation from Expulsion

Expulsion and deportation share the similarity that both have an impact directed towards the foreign resident, resulting in their forced exit from the country². However, the differences between them become apparent in the following aspects:

- Deportation decisions are issued by the Minister of Interior, while expulsion is an inevitable police measure carried out under police supervision. It is taken as a current and discretionary security measure and is issued by the governor³.
- Deportation is resorted to in many cases primarily resulting from the foreigner's error, which affects public order, public security, official and diplomatic interests of the state, or due to the expiration of their residency period. On the other hand, expulsion is employed when a foreigner enters the territory illegally or resides unlawfully within the territory. In this case, the Algerian legislator has positioned expulsion between deportation and expulsion itself, as this situation constitutes a cause for deportation according to Article 30 of Law 08-11.

¹- Hossam El-Din Fathi Nasser, *The Legal Status of Foreigners*, 2nd Edition, Dar Al-Nahda Al-Arabiya, Cairo, 1966.

²- Murad Said, *Deportation and/or Expulsion to the Borders under Law 08-11, Multiple Approaches and Unity of Purpose*, National Forum on Regulating Special Relations in Algeria, Evolving Reality, Faculty of Law and Political Science, Kasdi Merbah University - Ouargla, Algeria, April 21-22, 2010, p. 344.

³- Article 36 of Law 08-11, dated June 25, 2008, regarding the conditions of entry, residence, and movement of foreigners in Algeria, Official Journal No. 36, dated July 2, 2008, states: "An alien who enters Algeria illegally or resides illegally on Algerian territory may be expelled to the borders by a decision issued by the competent regional governor unless his administrative status is regularized."

- Deportation decisions can be appealed before the competent judicial authority, which is the Council of State, through an urgent legal action. On the contrary, expulsion decisions cannot be appealed initially before the judiciary, as the legislator remains silent regarding the foreigner's right to appeal expulsion decisions¹.

The second point: Distinguishing deportation from residence prohibition.

Deportation is distinguished from residence prohibition in that deportation is considered an individual administrative measure resulting from the foreigner's violation of the requirements of the public order and is applied only to the foreigner. On the other hand, residence prohibition is considered a supplementary punishment pronounced by the Algerian judicial authorities and is issued against both foreigners and nationals. Additionally, residence prohibition may involve banning the convicted individual from certain places or the entire national territory. As a result, the foreigner subject to residence prohibition is escorted to the borders after completing their sentence, making it a supplementary punishment². In this sense, the prohibition of residence for foreigners in Algerian legislation leads to their mandatory deportation to the borders, in accordance with Article 42 of Law 08-11.

The third point: Distinguishing deportation from entry denial.

Deportation differs from entry denial or rejection, which involves immediately removing the foreigner upon their arrival at the Algerian border or shortly after their entry without granting them a period to leave the country. It also applies in cases where the foreigner enters the country illegally³. Article 5 of Law 08-11 states: "...the Minister of Interior may prohibit any foreigner from entering Algerian territory for reasons related to public order and/or national

¹- Samir Belhàirach, Protecting the Judge of Administrative Summary Proceedings for the Freedom of Movement of Foreigners in Algeria, Journal of Legal and Political Research, Mohammed Seddik Ben Yahia University - Jijel, Faculty of Law and Political Science, Issue 5, December 2017, p. 165.

²- Layla Hawari, Treatment of Foreigners: A Comparative Study between French Legislation, Algerian Legislation, and Islamic Sharia, Doctoral Thesis in Public Law, Djillali Liabes University - Sidi Bel Abbès, 2013, p. 49.

³- Badr Al-Din Abdel-Moneim Shawqi, Special International Relations: A Comparative Study with Islamic Jurisprudence, 2nd Edition, Al-Ashri Printing House, Egypt, 2005, p. 611.

security or that affect the fundamental and diplomatic interests of the Algerian state. Similarly, the competent regional governor can immediately decide on the entry of the foreigner into Algerian territory for the same reasons." Thus, entry denial is a measure aimed at preventing the foreigner from entering Algerian territory due to non-compliance with legal conditions and procedures, such as the absence of an entry visa (Article 34 of Law 08-11). In contrast, deportation occurs after the foreigner has entered the territory and has been allowed to reside but engages in behavior that violates public order and requires their deportation¹.

The second demand: Reasons for deportation and its consequences in Algerian legislation.

We will clarify both the reasons for deportation (**first subsection**) and the consequences arising from it (**second subsection**) according to Algerian legislation.

First subsection: Reasons for deporting foreigners in Algerian legislation.

The Algerian state has the right to deport foreigners it does not wish to have on its territory, in order to safeguard its political, economic, social, or health interests. However, deportation must be based on a justifiable reason; otherwise, its use would be arbitrary and an abuse of power. Thus, the authority of the Algerian state in deporting foreigners is no longer absolute but rather restricted by several reasons, according to Articles 22, 30, 31, and 32 of Law 08-11².

First point: Deportation of foreigners due to threats to public security.

¹- Ibtisam Azouz, Deportation and Expulsion of Foreigners as a Mechanism to Curb Illegal Immigration, Journal of Rights and Freedoms, Mohamed Khider University - Biskra, Volume 03, Issue 02, 2021, p. 206.

²- Samir Belhaïrach, the aforementioned reference, p. 166, states that Article 16 of Law 08-11 states: "A resident is considered a foreigner who wishes to establish his actual, customary, and permanent residence in Algeria, and who has been authorized to do so by being issued a resident card by the competent authority of his place of residence, valid for a period of two years." The non-resident is defined by Article 10 of the same law as: "A non-resident foreigner is one who passes through Algerian territory or comes to reside for a period not exceeding ninety (90) days, without intending to establish his residence or engage in professional or paid activities."

The Algerian administrative authorities have the right to deport any resident or non-resident¹ foreigner for reasons of security and protection of public order in Algeria, even if the foreigner has acquired citizenship². However, in the case of refugees, they cannot be expelled under any circumstances. The foreigner is deported based on specific circumstances, such as engaging in behavior contrary to public morals, such as prostitution, or committing acts that disrupt public tranquility, such as public intoxication. The foreigner may also engage in activities that threaten the security of the host country, such as espionage for foreign entities. Moreover, the presence of foreigners can pose a threat to public health by transmitting rapidly spreading and contagious diseases such as AIDS, malaria, and others³. All these actions make the presence of foreigners on Algerian territory a danger to the security and safety of the state.

Second subsection: Sentencing a foreigner to a non-custodial financial penalty in a crime or misdemeanor.

If a foreigner is sentenced or a final decision is issued imposing a non-custodial penalty due to the commission of a crime or misdemeanor, it renders them subject to deportation in Algeria, according to the second paragraph of Article 30 of Law 08-11. In this case, the Algerian legislator is criticized for not differentiating between crimes and misdemeanors regarding their impact on the foreigner's stay in the country. If the conviction is for a crime, it indicates the seriousness of the offense committed, but this may not be the case for misdemeanors⁴.

Third subsection: Failure to leave Algerian territory within the specified period.

¹- Lahmar Ahmed, The Legal System for Foreigners in Algeria, Master's Thesis, University of Tlemcen, Algeria, 2003, p. 96.

²- Al-Akhḍar Omar Dihimi, Study on Irregular Migration in Algeria, Scientific Seminar titled "Arab Experiences in Combating Irregular Migration," Organized by Naif Arab University for Security Sciences, Saudi Arabia, February 8, 2010, p. 14.

³- Fouzia Maaafa, the aforementioned reference, p. 56.

⁴- Amina Rahawi, The Role of Personal Agents in Private International Law, Doctoral Thesis in Private Law, University of Tlemcen, 2017.

The permission granted by the state to allow a foreigner to enter its territory does not imply granting them the right to permanent residence¹. This right depends on the validity of the legal permit issued to them for a specified period, which varies depending on whether the foreigner's residency is temporary or permanent. If this period expires, the foreigner is obliged to voluntarily leave the country. Otherwise, they are subject to compulsory deportation. Additionally, the permit loses its effect and legitimacy if the foreigner no longer meets the conditions for its issuance, even if they were initially eligible for these conditions. The first and second paragraphs of Article 22 stipulate the possibility of deporting a foreigner in the following cases:

1. Revoking the residency card from its holder if it is proven conclusively that the holder no longer meets the conditions for its issuance.
2. Revoking the residency card from a foreigner if their involvement in activities contrary to morality, public tranquility, or national interests is proven.

It is worth noting that there is a kind of contradiction in the provisions of Law 08/11, which confirms the lack of differentiation by the Algerian legislator between the procedures of expulsion and deportation, despite their different provisions. While Article 30, with its three paragraphs, refers to exclusive cases of deportation, its third paragraph refers us to Article 22/2, which talks about a case that warrants immediate expulsion of nationals, once administrative and judicial procedures are completed.

Second Subsection: Consequences of Deportation in Algeria

When a deportation order is issued correctly, it results in the termination of contracts entered into by the foreigner with others, legally binding and without any entitlement for the affected parties to claim compensation for such action². Furthermore, deportation leads to the loss of the foreigner's right to reside in the country. If they return to the country, they are granted a new residency as if they were entering for the first time. Deportation is originally limited to the

¹- Hisham Messaoudi, Legal Framework for the Deportation of Foreigners from Algeria under Law 08/11: A Study on Reasons and Procedures, Research Journal, University of Djelfa, Volume 06, Issue 02, 2021, p. 841.

²- Abdelhafidh Ben Obeida, Nationality and the Status of Foreigners in Algerian Jurisprudence and Legislation, 2nd Edition, Dar Homa, Algeria, 2007, p. 283.

person determined for deportation, but it may extend to other individuals if the administration has reasonable grounds to believe that the foreigner's family members are involved in activities that justify this decision. The administration may also include family members with the deported individual because deporting the individual alone contradicts the natural course of events. It is appropriate for the spouse to be with their partner, as well as for children who are under the care of their parents or family member subject to deportation. The purpose of deporting a foreigner is the state's lack of desire for their presence on its territory. Consequently, the foreigner is prohibited from entering the country from which they were deported. This consequence entails penalizing the foreigner upon their voluntary return if they re-enter without the required permission stipulated by law¹.

Regarding the violation of deportation provisions in Algerian legislation, any foreigner who seeks to evade the execution of a deportation order or re-enters the Algerian territory without the required permit after being deported, faces a penalty of imprisonment ranging from two to five years, unless they prove their inability to return to their country of origin or seek refuge in another country, in accordance with international agreements relating to refugees and stateless persons.

Furthermore, the court may issue a judgment prohibiting the foreigner from residing in Algerian territory for a period not exceeding ten years. The prohibition is legally enforced, and the individual subject to the prohibition is deported to the border, and when necessary, after the expiry of their effective imprisonment².

Second Subsection: Safeguards Provided to Protect Foreigners and Counter Deportation Decisions

While the Algerian state has the right to exercise the authority of deporting foreigners when the legal grounds are met, it also recognizes and respects the rights, freedoms, and protection of foreigners. In order to safeguard their rights,

¹- Article 42 of the aforementioned Law 08/11.

²- Mohamed Boujana, State Authority in the Deportation of Foreigners, Law Journal, University of Guelma, Issue 3, June 2012, p. 241.

a set of guarantees is granted to them, which confer legitimacy to deportation decisions. These guarantees provided to foreigners can be administrative and judicial (**first requirement**), dictated by international law and humanitarian principles (**second requirement**).

First Requirement: Administrative and Judicial Safeguards

These are the guarantees granted to foreigners to counter deportation decisions. They consist of the obligation to respect the formal requirements imposed by the issuing administrative authority, ensuring that the deportation decision possesses legality. Through these guarantees, foreigners can exercise their right to challenge the deportation decision before the urgent administrative judiciary. Therefore, we will discuss administrative safeguards in the first subsection and judicial safeguards in the second subsection.

First Subsection: Administrative Safeguards

Before issuing a deportation decision, the administration must follow specific legal procedures to ensure prudence, avoid haste, and safeguard the rights of foreigners. These measures aim to ensure the legality and justifiability of the decision.

1_The competent judicial authority for issuing deportation decisions:

The deportation decision against a foreigner is issued by the Minister of Interior, as stated in Article 30/01 of Law No. 08-11 "...the deportation of the foreigner outside Algerian territory may be decided by a decree issued by the Minister of Interior." In contrast, the expulsion decision is issued by the competent regional governor, as stipulated in Article 36 of Law No. 08-11: "The foreigner may be expelled...to the borders by a decree issued by the competent regional governor". In the case where a deportation decision is issued by the governor, the foreigner has the right to file a lawsuit before the competent regional administrative court. The judge examines the external legality of the decision, and if it is found that the decision lacks jurisdiction, it will be invalidated¹.

¹- Samir Belhaïrach, the aforementioned reference, pp. 172-176.

2_The rationale behind the deportation decision:

The justification for the deportation decision is a fundamental aspect that allows the judge to understand the reasons behind the decision. This procedure prevents the administration from issuing a deportation decision without proper justification¹.

However, difficulties arise when linking the rationale for the deportation decision to the concept of public order, which is a flexible idea that is challenging to define and regulate. It is subject to the discretionary power of the administrative authority responsible for issuing the deportation decision².

3_The necessity of notifying the foreigner of the deportation decision:

Once the Minister of Interior confirms the presence of one of the reasons specified in Article 30 of Law 08/11, an administrative decision to deport the foreigner is issued. This decision is communicated to the foreigner in accordance with the provisions of Article 31/02 of the same law. The foreigner is granted a period ranging from 48 hours to 15 days to leave the territory, depending on the severity of the attributed facts. The countdown for this period starts from the day the deportation decision is notified to the foreigner. However, if the deportation is based on the provisions of Article 30/3 and paragraphs 2 and 3 of Article 22 of the same law, the individual is exempted from leaving the national territory within 30 days from the date of notification. They may also be granted an additional period of 15 days upon a justified request. After the expiration of this period, the deportation decision is enforced forcibly, unless the individual appeals the deportation decision before the judge of the administrative summary court. In this case, the enforcement of the deportation decision is legally suspended until a ruling is made in the lawsuit³.

Second Branch: Judicial Guarantees

¹- Julien-Laferriere (François), *Droit des étrangers*, éd. PUF, Paris, 2000, p 164.

²- The general rule is that filing a cancellation lawsuit before the administrative court does not suspend the execution of the administrative decision being challenged unless otherwise provided by law, according to the provisions of Article 833 of the Algerian Civil and Administrative Procedures Law. However, deportation decisions are an exception to this general rule.

³- Article 31 of the aforementioned Law 08-11 states:

"The administrative authority may, by reasoned decision, order the deportation of any foreigner whose presence constitutes a threat to public order, security, or the national interest, or who has violated the conditions of entry, residence, or establishment in Algeria."

To protect the foreigner from arbitrary and unjustified deportation decisions, the Algerian legislator has granted them the right to resort to the administrative summary court to appeal the deportation decision issued against them. This falls under the category of judicial guarantees. Referring to the provisions of Articles 31 and 32 of Law 08/11, the foreigner against whom a deportation decision is issued can appeal to the administrative summary judge within 05 days from the date of notification, with the possibility of extending the appeal period to 30 days in cases mentioned in Article 32¹.

It is evident from the text of Article 31 of Law 08/11 that the Algerian legislator has departed from the general rules regarding the jurisdiction of the summary court, which require it to take only temporary measures that do not affect the substance of the right. Instead, new specific rules have been adopted for this type of dispute, granting the summary judge the authority to rule on the substance of the dispute. Thus, the judge can delve into the subject matter of the decision and assess the extent to which it respects legal and factual rules. This is an unusual jurisdiction within the powers of the administrative summary judge as provided for by the provisions of the Civil and Administrative Procedure Law².

It is commonly understood that the authority of the administrative judge in a cancellation lawsuit is limited to annulling the administrative decision without modifying or replacing it. The authority of the judge is restricted to controlling the legality only³.

On the contrary, the Algerian legislator, under Article 31 of Law 08/11, has deviated from the jurisdictional constraints of the administrative summary court

¹- Article 32 of Law No. 08-11 further states:

"However, without prejudice to state security, public order, public morality, and legislation related to organized crime, the deadline for submitting the aforementioned appeal may be extended to thirty (30) days for the following persons:

1. Foreigner who has been married for at least two (2) years to an Algerian, provided that the marriage was concluded in accordance with the applicable legislation and regulations, and that they can prove that they are actually living together.
2. Foreigner who can prove by legitimate means their habitual residence in Algeria before the age of eighteen (18) with their resident parents.
3. Foreigner holding a resident card valid for ten (10) years."

²- Samir Belhareth, the previous reference, page 169.

³- Mohammed Bahi Abu Younes, Expedited Judicial Protection of Fundamental Freedoms, Dar Al-Jami'a Al-Jadida, Alexandria, 2008, page 186.

and granted it the authority to annul the deportation decision. This approach is justified by the idea of public security, which aims to protect the fundamental interests of society. Additionally, it responds to the necessity of urgency in protecting foreigners. According to Article 32/3 of Law 08/11, the Algerian legislator has granted the administrative summary judge the power to temporarily suspend the enforcement of the deportation decision in cases of extreme necessity. In such cases, the deportation decision is considered suspended until the reason for suspending its enforcement ceases to exist¹.

These cases include:

1. Foreign father or foreign mother of an Algerian minor who has not reached the age of majority: In this case, the foreigner must prove that they contribute to the upbringing and care of the underage child through all means of evidence. The objective of the Algerian legislator in this case is to protect the interests of the Algerian minor child who holds Algerian nationality by birth in Algeria².
2. Foreign minor when a deportation decision is made: This case applies to an Algerian minor who has another original foreign nationality and has been authorized to renounce Algerian nationality by a decree. In the eyes of the law, the minor becomes a foreigner. It also applies to a minor who has been stripped of Algerian ³ nationality if their parents have been deprived of Algerian nationality⁴.
3. Foreign orphan minor: An orphan is a child who has lost one or both parents and has not yet reached the legal age of majority. The status of minority can be proven through a birth certificate, while proving that the child is an orphan requires a death certificate of one or both parents⁵.

¹- Nadhir Chouki, Cases of Deportation of Resident Aliens and their Limits in Algerian Law, Journal of Legal Studies, Al-Basira Research, Consulting, and Educational Services Center, Tamanrasset, Issue 17, 2003, page 13.

²- According to Article 07 of Order 70-86, dated 15-12-1970, containing the Algerian Nationality Law, Official Gazette No. 105, issued on 18-12-1970, amended and supplemented by Order 05-01, dated 27-02-2005, Official Gazette No. 15, issued on 27-02-2005.

³- Article 18, paragraph 02 of the Algerian Nationality Law.

⁴- Article 24, paragraph 02 of the same law.

⁵- Nadhir Chouki, the previous reference, page 13.

4. Pregnant woman at the time the deportation decision is issued: The purpose of this provision is likely to protect the interests of the fetus, who may have an Algerian father and thus holds Algerian nationality by law upon birth. Therefore, if it is within the state's right to deport the mother, she should not be deported on the grounds of being Algerian rather than a foreigner¹.

The second requirement: The commitment of the Algerian state to guarantee the minimum standards of humane treatment for foreigners.

Algeria has acceded to important international agreements regarding the treatment of foreigners, and therefore it is bound by international standards of humane treatment, particularly in the case of deportation. In light of these considerations, Law 08-11 concerning the situation of foreigners in Algeria strikes a balance between the requirements of national interest and international obligations².

On this basis, the Algerian state is committed to providing suitable residence conditions and determining the residence of the foreigner (Branch 1). Additionally, certain categories of foreigners are exempted from deportation provisions (Branch 2).

Branch 1: Providing suitable residence conditions and determining the residence of the foreigner.

In accordance with the principles and rules of humanity towards foreigners, waiting centers have been established to accommodate foreigners in cases where they are unable to leave the national territory, even if their residence is illegal. The foreigner in these centers is provided with acceptable living conditions until their deportation outside the territory and their return to their country of origin³. The residence of the foreigner may be determined if it is proven that their departure from Algerian territory after the deportation order is impossible for any reason that may seriously endanger their life or freedom⁴. The decision to determine residence is issued by the Minister of the Interior, and the

¹- Samir Belhareth, the previous reference, page 17.

²- Tayeb Zerouti, *Studies in Algerian Private International Law*, Part II, Dar Huma, Algeria, 2011, page 374.

³- Tayeb Zerouti, the same reference, page 375.

⁴- Moulood Didane, *The Nationality Code, Civil Status, Travel Documents, Entry and Residence of Foreigners in Algeria*, Balqis Publishing House, Algeria, 2008, page 111.

duration of the determination is open until the execution of the deportation order becomes possible. Determining residence obliges the sentenced individual to reside in a designated regional area for a period not exceeding 5 years, starting from the expiration of the original sentence or the release of the convicted person¹.

The second requirement: Exemption from deportation provisions.

As a general rule and in accordance with the provisions of Law 08-11, the entry conditions for foreigners into Algeria require the possession of a valid passport issued by their country or any other recognized document by the Algerian state, such as a valid travel document, stamped with the Algerian consulate visa, as well as a health booklet in accordance with international health regulations. From a contradictory perspective, foreigners can only enter Algeria legally if all these conditions are met because their fulfillment grants these individuals a status for foreigners that enables them to enjoy rights and bear obligations².

However, Article 07 of Law 08-11 allows for the consideration of all international agreements concluded by Algeria concerning refugees and stateless persons³. This necessitates a review of the international agreements ratified by Algeria in this field and the assessment of their applicability to refugees and stateless persons regarding their entry into Algeria. Stateless persons, although considered foreigners, as long as they enjoy political, public, and national rights, possess the attribute of nationality. However, stateless individuals are a special category of foreigners as they do not belong to any country, which requires treating them differently. The first article of Law 08-11 has emphasized this matter by excluding the provisions of this law from the scope of international agreements. As for political refugees, they are individuals who are unlawfully threatened in their country and hold a specific international nationality but have

¹- This is what Article 11 of the Penal Code, dated 18 Safar 1386 corresponding to June 8, 1966, as amended by Law No. 09-01 dated 29 Safar 1430 corresponding to February 25, 2009, Official Gazette, Issue 15, 2009, states.

²- Tayeb Zerouti, the previous reference, page 124.

³- Article 07 of Law 08-11 states: "Taking into account the international agreements concerning refugees and stateless persons ratified by the Algerian state, every foreigner arriving in Algerian territory must apply to the competent authorities responsible for monitoring at the border checkpoints, carrying a valid passport issued by their country or any other valid document..."

been forced to leave it out of fear of torture and persecution due to their political opinions, beliefs, or the group to which they belong. Political refugees are subject to special treatment according to international agreements related to political refugees. These individuals are categorized by international conventions and are subject to distinct provisions regarding entry, residence, mobility, and enjoyment of rights. Among these international conventions are the 1951 Geneva Convention relating to the Status of Refugees, the 1967 New York Protocol on the Status of Refugees under the Direct International Protection of the United Nations High Commissioner for Refugees, and the 1954 New York Convention on the Status of Stateless Persons, which Algeria has ratified. Implementing Executive Decree No. 63/274 was issued on July 25, 1963, regarding refugees, as well as Executive Decree No. 57/173 issued on June 8, 1946, concerning stateless persons¹.

To consider the situation of refugees and stateless persons, the first paragraph of Article 42 of Law 08-11 stipulates penalties for foreigners who refuse to comply with deportation orders or expulsion to the borders or who re-enter Algerian territory without permission. However, this article exempts political refugees and stateless individuals covered by the relevant international agreements from punishment. Therefore, forced and automatic deportation cannot be imposed on them, and if such measures are carried out and they re-enter Algeria, they cannot be criminally prosecuted based on Algeria's international obligations under the 1951 Geneva Convention and the 1954 New York Convention².

As a result, stateless individuals and political refugees enjoy special protection mandated by international law and humanitarian principles. This protection entails that deportation orders should not be enforced under any circumstances. It is understood that stateless individuals do not belong to a specific country³, and if they are deported, there is no state willing to accept their entry into its territory. Consequently, they are forced to return to the jurisdiction of the state that displaced them. In this case, they are punished for violating the deportation order, then deported again after serving their sentence. This creates an endless

¹- Tayeb Zerouti, the previous reference, page 366. Mohamed Saadi, Private International Law and its Applications in the Algerian Legal System, 1st edition, Dar Al-Khalidounia, 2010, page 289.

²- Tayeb Zerouti, the previous reference, page 376.

³- Hisham Ali Sadek, the previous reference, page 188.

cycle with no way out. To avoid such outcomes, a state may resort to alternative measures that achieve the same objective, such as determining the individual's residence and preventing them from engaging in any activities detrimental to the state's interests. As for political refugees, executing deportation orders becomes challenging due to the fear of subjecting them to persecution by the authorities. Therefore, forced deportation is prohibited in line with the global trend of adhering to international law principles, the Universal Declaration of Human Rights, and in response to humanitarian considerations¹.

Conclusion:

The Algerian state exercises the power of deportation against foreign nationals who threaten public interest, in accordance with the principle of state sovereignty over its territory. Deportation orders are issued against law-abiding foreign residents when the conditions stipulated in Law 08-11, which governs the entry and residence of foreigners in Algeria, are met. The purpose of deporting foreign nationals is the state's unwillingness to have them present on its territory. Consequently, they are prohibited from entering the country from which they were deported. This effect includes the punishment of the foreign national if they refuse to comply with the deportation order in Algeria or attempt to return. Due to the gravity of deportation orders, the competent administration authority is subject to a set of formal conditions. These conditions can serve as guarantees to challenge the deportation order, in addition to the possibility of resorting to administrative urgent litigation to cancel or suspend the deportation order. The guarantees granted to foreigners under Algerian legislation extend beyond the obligation of the Algerian state to ensure a minimum level of humane and international treatment. The most important findings of this study are as follows: The Algerian legislator's specification of the grounds for deportation in Article 30 of Law 08/11 constitutes an effective guarantee of the foreign national's right to lawful residence and movement within the state's territory. It is worth noting that the Algerian legislator did not differentiate between foreign nationals with lawful

¹- Hisham Masoudi, the previous reference, page 842.

residence and those with unlawful residence in terms of benefiting from the procedures and guarantees provided by Law 08/11 regarding deportation. The Algerian legislator was not decisive in distinguishing between the procedures of deportation and expulsion, as there was an overlap between the two legal statuses, resulting in a unity of their consequences on the level of Law 08/11. The Algerian legislator was decisive from the outset in determining the legal nature of deportation orders, considering them administrative decisions subject to appeal before the competent administrative court. Granting the Minister of Interior the authority to issue deportation orders reflects the seriousness of the deportation procedure and its consequences. As a confirmation of the Algerian legislator's commitment to ensuring the rights and freedoms of foreign nationals residing in Algerian territory, they are allowed to file urgent appeals against deportation orders. Respecting the rules of international law and humanitarian principles, foreign nationals subject to deportation orders benefit from temporary residence permits, and deportation orders are prohibited against stateless individuals and political refugees. Based on this study, the following recommendations are proposed: It is necessary for the Algerian legislator to differentiate between the procedures of deportation and expulsion at the border in the seventh chapter of Law 08/11. The Algerian state should refrain from arbitrary use of its sovereign right to deport foreigners, avoiding humiliation, undermining their dignity, physical or psychological harm, as this contradicts the basic rights and freedoms of humans. In implementing deportation, legitimate means should be observed, and harsh or abusive methods should be avoided.

Sources and References:

Legal Sources:

- Law 08-11, dated June 25, 2008, related to the conditions for the entry, residence, and movement of foreigners in Algeria, Official Gazette No. 36, dated July 2, 2008.
- Decree 70-86, dated December 15, 1970, containing the Algerian Nationality Law, Official Gazette No. 105, issued on December 18, 1970,

amended by Decree 05-01, dated February 27, 2005, Official Gazette No. 15, issued on February 27, 2005.

- Law No. 09-01, dated Safar 29, 1430 AH, corresponding to February 25, 2009, amending and supplementing Order No. 66/156, dated Safar 18, 1386 AH, corresponding to June 8, 1966, concerning the Penal Code, Official Gazette, No. 15, 2009.

Books: In Arabic:

- Ahmed Abdel Hamid Ashoush, Omar Abu Bakr Bakhshat, "Nationality Laws and the Status of Foreigners in the Gulf Cooperation Council Countries," Shabab Al-Jamea Publishing, Alexandria, 1990.

- At-Tayeb Zaruti, "Studies in Algerian Private International Law," Part Two, Dar Homa, Algeria, 2011.

- Badr Al-Din Abdel Monem Shouki, "Private International Relations: A Comparative Study with Islamic Jurisprudence," 2nd edition, Al-Ashari Printing House, Egypt, 2005.

- Hossam Al-Din Fathi Nasser, "The Legal Status of Foreigners," 2nd edition, Dar Al-Nahda Al-Arabiya, Cairo, 1966.

- Abdel Monem Zamzam, "The Status of Foreigners in International Law and Egyptian Comparative Law," 2nd edition, Dar Al-Nahda Al-Arabiya, Egypt, 2005.

- Abdel Hafidh Ben Obeida, "Nationality and the Status of Foreigners in Algerian Jurisprudence and Legislation," 2nd edition, Dar Homa, Algeria, 2007.

- Mohammed Bahi Abu Younis, "Urgent Judicial Protection of Fundamental Liberties," Dar Al-Jamea Al-Jadida, Alexandria, 2008.

- Mohammed El-Roubi, "Expulsion of Foreigners from the State's Territory: A Comparative Study," Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2001.

- Mohammed Saadi, "Private International Law and its Applications in the Algerian Legal System," 1st edition, Dar Al-Khalidunia, Algeria, 2010.

- Mouloud Didane, "Nationality Code, Civil Status, Travel Documents, Entry, Residence, and Movement of Foreigners in Algeria," Dar Balqis Publishing, Algeria, 2008.

- Hisham Ali Sadik, "Nationality, Domicile, and the Status of Foreigners," Volume Two in the Status of Foreigners series, Manshaat Al-Maaref, Alexandria.

In French: - Julien-Laferrière (François), "Droit des étrangers," PUF Publishing, Paris, 2000.

Theses:

1. Amna Rahawi, The Role of Personal Officer in Private International Law, PhD thesis in Private Law, University of Tlemcen, 2017.

2. Leila Houari, Treatment of Foreigners: A Comparative Study between French Legislation, Algerian Legislation, and Islamic Law, PhD dissertation in Public Law, Djillali Liabes University - Sidi Bel Abbes, 2013.

3. Ibrahim Ahmed Ibrahim, Entry, Residence, and Deportation of Foreigners (A Comparative Study), Master's thesis, Institute of Arab Research and Studies, Cairo, 2001.

4. Ibrahim Abdul Majeed Rawashdeh, Arab Legislations' Stance on the Issue of Deportation of Foreigners, Master's thesis, Institute of Arab Research and Studies, 1999.

5. Lahmar Ahmed, Legal System of Foreigners in Algeria, Master's thesis, University of Tlemcen, Algeria, 2003.

Articles:

1. Ibtissam Azouz, Deportation and Expulsion of Foreigners as a Mechanism to Combat Illegal Immigration, Journal of Rights and Freedoms, Mohammed Khider University - Biskra, Volume 03, Issue 02, 2021.

2. Samir Belhirsh, Protection of the Administrative Summary Judge for the Freedom of Movement of Foreigners in Algeria, Journal of Legal and Political

Research, Mohammed Seddik Ben Yahia University - Jijel, Faculty of Law and Political Science, Fifth Issue, 2017.

3. Fawzia Maafa, Authorities of the National Security Facility in Deporting Foreigners in the Algerian Legal System, Journal of Social and Human Sciences, Arabi Tibsi University - Tebessa, Issue 12, 2016.

4. Mohammed Boujana, State Authority in Deporting Foreigners, Law Journal, University of Relizane, Third Issue, 2012.

5. Nadhir Shouki, Cases of Deportation of Resident Foreigners and their Limits in Algerian Law, Journal of Legal Studies, Basira Research, Consultancy and Educational Services Center, Tamanrasset, Issue 17, 2003.

6. Hisham Messaoudi, Legal Frameworks for Deporting Foreigners from Algeria under Law 08/11: A Study on Reasons and Procedures, Research Journal, Djelfa University, Volume 06, Issue 02, 2021.

Conferences:

1. Al-Akhder Omar Al-Dhahimi, A Study on Illegal Immigration in Algeria, Scientific Symposium titled "Arab Experiences in Combating Illegal Immigration," organized by Naif Arab University for Security Sciences, Saudi Arabia, February 8, 2010.

2. Murad Said, Deportation and/or Expulsion to the Border under Law 08-11: Multiple Approaches and a Unified Goal, National Forum on Special Relations Regulation in Algeria, Evolving Reality, Faculty of Law and Political Science, Kasdi Merbah University - Ouargla, Algeria, April 21-22, 2010.