

LEGAL PROTECTION FOR THE ENFORCEMENT OF JUDICIAL DECISIONS AGAINST THE ADMINISTRATION AN ANALYTICAL STUDY UNDER LAW 22/13 ON CIVIL AND ADMINISTRATIVE PROCEDURES

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Abstract:

The legal provisions have authorised the resort to proceedings and the enforcement of coercive measures against the administration under certain conditions and defined procedures. The Algerian legislator has established a special system as a penalty that corresponds to the nature of the negative behaviour of the administration towards judicial decisions. Moreover, the guarantees for the enforcement of administrative judicial decisions against the administration have witnessed significant and substantial developments in Algerian legislation, particularly following the issuance of Law 22/13 on civil and administrative procedure, which explicitly extends the powers of the administrative judge.

Keywords: Law; Enforcement; Judicial decisions; Administration; Procedures.

Introduction:

Following the expiry of the optional implementation period without the administration complying with the implementation, legal provisions have authorised the resort to proceedings and the enforcement of coercive measures against the administration under certain conditions and defined procedures. These provisions are regulated by law and have developed in parallel with administrative justice.

When it has been proven that the administration has adopted a lax and dilatory approach as a tactic to avoid the implementation of judicial decisions, the legislator has established a system as a penalty commensurate with the nature of its negative behaviour towards judicial rulings. The first means used by the judge to put pressure on the administration to speed up implementation is the threat of a fine.

Alternatively, the judge may bring an action for damages based on the fact that the administration's refusal to implement the administrative judge's decision has caused damage to the party concerned, for which the administration will be held responsible¹. Moreover, the guarantees for the enforcement of administrative judicial decisions against the administration have undergone significant and substantial developments in Algerian legislation, particularly

¹Zine Ezzri, Means of Compelling Administration to Implement Judicial Judgments in Algerian Legislation, Journal of Humanities, Issue 20, Faculty of Law and Political Science, Mohamed Khider University, Biskra, November 2010, p. 119.

following the promulgation of the law on civil and administrative procedure, which expressly extends the powers of the administrative judge².

In cases where the designated official refuses to implement the annulment decision, the judge may impose criminal sanctions in accordance with the provisions of the Penal Code.

The principle is that judicial decisions are implemented voluntarily and optionally³. However, the party against whom the judgment has been pronounced may not voluntarily initiate its implementation as required, which necessitates the use of coercive measures provided for by law to enforce it. Delays and negligence on the part of the public administration in implementing judicial decisions, particularly those issued against it, cause damage to the party in whose favour the judgment or decision was issued. Against this background, the Algerian legislator has empowered the Algerian administrative judge, through the Code of Civil and Administrative Procedure, to impose a threatening fine in order to compel the administration to execute the decision. This is the first means at the disposal of the administrative judge to enforce prompt implementation by the administration⁴.

The Algerian legislator has provided effective methods and means for the enforcement of administrative judicial decisions, including financial penalties, such as the method of compensation by deduction from the treasury⁵. This is because state resources are subject to the principle of non-seizability, as laid down in Law 90-30 on national property, in particular Article 4, paragraph 1, as amended by Law 08-14, which states that "Public national property is not subject to disposal, prescription or seizure, and its management is subject to the provisions of this law, taking into account the provisions of special legal texts..."⁶.

This was confirmed by the Administrative Chamber of the Supreme Court when it issued a ruling stating that it is not permissible to dispose of, seize or possess state funds by prescription.

In order to address this issue, the following question was asked "Are the legal guarantees provided by the Algerian legislator in Law 22/13 sufficient to enforce judicial decisions against the administration?"⁷.

The descriptive and analytical methods have been chosen as they are the most appropriate to study this issue.

²- Nawaf Kanaan, *Administrative Judiciary*, 1st edition, Dar Al Thaqafa Publishing and Distribution, 2008, p. 119.

³- Ammar Bouzayaf, *Implementation of Judicial Judgments in Administrative Matters Between Legal Framework and Judicial Interpretation*, Journal of Social and Human Sciences, Volume 1, Issue 2, Arabi Tibsi University, Tebessa, September 2007, p. 12.

⁴- Oumria Hassain, *Threatening Fine and its Role in Implementing Administrative Judicial Judgments in Algeria*, Journal of Future Legal and Political Studies, Issue 3, Aqlo University Center, June 2018, p. 85.

⁵- Nabilah Ben Aisha, *Implementation of Administrative Judicial Resolutions*, 2nd edition, University Press Office, Algeria, 2016, p. 80.

⁶- Law No. 90-30 of 1 December 1990 on the Law of National Property, Official Gazette No. 52, year 1990, as amended by Law No. 08-14 of 20 July 2008 on the Law of National Property, Official Gazette No. 44, year 2008.

⁷- Decision of the Administrative Chamber of the Supreme Court, file no. 73271, dated 21.10.1990, Algerian Journal of Law, No. 1, 1992, p. 143.

The following points will be addressed:

1. The threat of fines and the compensation report.
2. The powers of the administrative judge in issuing enforcement orders (alternative procedures).

1. The threatening fine and the compensation report

The threatening fine is a new mechanism introduced by the Algerian legislator in the Civil and Administrative Procedures Code n° 08-09, amended by articles 978 to 988, to compel the administration to implement administrative judgements. This followed a doctrinal and judicial dispute over the possibility of imposing and applying fines against the administration⁸. This mechanism is considered an important guarantee for the protection of individual rights and freedoms against administrative arbitrariness. The legislator has also established another means of protecting their rights, which is to have recourse to the public treasury for compensation in cases of non-compliance or delay in implementation, based on the assumption of the moral suitability of the person.

On this basis, the division is presented as follows: In the first section, we discuss the threat of a fine as a mechanism to force the administration to implement the court decision. In the second section, we discuss compensation through deduction from the public purse.

1.1 The threat of a fine as a mechanism to compel the administration to comply with decisions of the administrative courts:

Initially, the concept of the threatening fine emerged in private law, but its scope was extended to public law relations when the French administrative judiciary allowed its use against the administration. The Algerian legislator provided for the use of the threatening fine against the administration as a mechanism in the hands of the administrative judge in Articles 980 to 987 of the Civil and Administrative Procedure Law No. 08-09, as amended⁹

First, the definition of a threatened fine:

The threatening fine is a penalty imposed by the judge, according to a general formula, for each day of delay, in order to ensure the proper execution of his decision or to guarantee the execution of an investigation procedure.

The threat of a fine is also defined as a penalty or fine imposed by a judge on a public law entity for delaying or refusing to execute a judicial decision.

Therefore, in the administrative field, the threatening fine is a monetary amount determined by the administrative judge in favour of the creditor and which, at the request of the creditor, the defaulting party is obliged to pay for each day, week, month or any other specified period during which the debtor fails to comply with the enforced act.

Secondly, the legal nature of the penalty:

It is worth noting that the nature of the threatening fine is still the subject of debate, particularly with regard to its legal nature, as some argue that its legal nature remains ambiguous. This means that the nature of the threatened fine is considered to be unclear.

⁸ - Zine Ezzri, previous article, pp. 122, 123.

⁹ - El Hadi Khedraoui, Legal Mechanisms to Ensure the Implementation of Administrative Judicial Judgments, Journal of Future Legal and Political Studies, Issue 3, Aqlo University Center, June 2018, p. 3.

However, based on the Civil and Administrative Procedure Law, in particular Articles 980 to 987, the nature of the threatening fine becomes clear¹⁰.

Consequently, it is considered to be an indirect means of securing enforcement because it can indirectly compel the opposing party to produce or import the necessary documents. It is also an indirect means of enforcing specific performance. In addition, it indirectly guarantees the execution of certain judgments.

A. The threat of a fine as a means of compelling the debtor to perform the specific act:

The primary principle of enforcement is specific performance, which forces the debtor to perform if possible. However, if this is not possible, any enforcement imposed on the debtor would violate his personal freedom. Therefore, the system of threatened fines serves as a middle way to allow the creditor to recover his rights without violating the debtor's personal freedom, but instead indirectly obliging him to comply¹¹.

And what can be deduced from the Civil and Administrative Procedure Code, as well as from the Judicial Code and the Supplementary Code, is that the fine is issued in the form of an order, as provided for by the legislator in Article 980 of Law 08-09, as amended and supplemented. This provides for the issuance of an order imposing the fine¹².

B. The fine is a means of ensuring the execution of certain judicial decisions:

The legislative recognition of the fine as a power of the administrative judge when individuals fail to comply with public moral obligations and administrative judicial rulings puts into effect the principle of the validity of rulings and obliges the administration to enforce them by imposing the fine. The fine is thus nothing more than a legal instrument granted by the Algerian legislator to the administrative judge, enabling him to issue orders to the administration to speed up the implementation of judicial decisions and to guarantee the rights of their owners. The fine is therefore a means of holding the administration accountable for implementing administrative rulings that have the force of *res judicata*. The purpose of imposing a fine on the administration that refuses to implement the judicial decision issued against it is to put pressure on it to implement administrative judicial decisions¹³.

C. The penalty is not part of the enforcement procedure:

The fine, by its very nature and according to the consensus of jurists, is an indirect means of ensuring the execution of an obligation or a decision by means of threats. It is not an enforcement measure in itself and therefore does not aim to punish the debtor for failing to fulfil his obligations. On the contrary, it forces the debtor to fulfil his obligation by means of the pressure and coercion imposed on his financial liability. The penalty is considered to be an indirect means of enforcing judgments that have the force of *res judicata*¹⁴.

¹⁰- Ali Othmani, Threatening Fines in Administrative Law: Analytical Study in Light of the Amended and Supplemented Civil and Administrative Procedures Law, *Tabna Journal of Scientific and Academic Studies*, Volume 05, Issue 02, University Center, Brikah, Batna, 2022, p. 63.

¹¹- Oumria Hassain, previous article, pp. 93-94.

¹²- See Article 980 of the Amended and Supplemented Law No. 08-09, above source

¹³- Ali Othmani, previous article, pp. 64-65.

¹⁴- Ali Othmani, previous article, p. 65.

2.1 Compensation by means of deductions from the public purse:

The Algerian legislator attempted to make the enforcement of financial judgments and rulings against the administration effective through the annulled Decree 75-48¹⁵ on the enforcement of judicial decisions, which was then replaced by the annulled Law 91-02¹⁶, and Article 14 of Law 22-13¹⁷.

First, we will explain the procedure for compulsory execution under the previous laws, and then the procedure for execution under Law 22/13.

First: Enforcement procedures under previous laws:

First of all, it should be noted that the Algerian legislator addressed the issue of the enforcement of administrative judgements in compensation cases prior to the enactment of Law 91-02 (which has since been repealed). This was done by means of Decree 75-84 (also repealed), which allowed the judgment debtor to apply directly to the Secretary of the Treasury for the amount to be deducted from the account of the liable entity¹⁸.

On this basis, we will first discuss the enforcement procedures under Order 75-48 (repealed) and then the enforcement procedures under Law 91-02 (repealed).

A. Enforcement procedures under Decree 75-48 (repealed)

The first legislative intervention was made by article 06 of the Finance Act of 1966, which established the right of the creditor to request the competent authority to register his debt and granted the Minister of Finance the power to deduct the necessary financial allocations to settle the debts of the public administrations based on the competent ministry¹⁹.

Then, on 17 June 1975, Decree No. 75-48 was issued, which regulated the enforcement procedures in this field. It granted the judgment debtor the right to apply to the Public Treasury, which would then pay the amount of the debt and deduct it from the account or budget of the relevant administrative body²⁰.

B. Enforcement procedures under Law 91-02 (repealed)

Law 91-02 was enacted on 8 October 1991, establishing the special rules applicable to certain judicial provisions. It repealed the provisions of Article 11 of Decree 75-48 and established effective procedures for the enforcement of compensation judgments, distinguishing between procedures for disputes between administrations and those involving individuals.

¹⁵- Decree No. 75-48 (repealed) of 29/04/1975 on the execution of court and arbitration decisions, Official Gazette, No. 53, 1975.

¹⁶- Law No. 91-02 (repealed) of 08/01/1991 concerning special rules applicable to certain judicial decisions, Official Journal No. 02, 1991.

¹⁷- See Article 14 of Law 22-13, cited above.

¹⁸- Ali Othmani, Mechanisms for Implementing Administrative Judicial Judgments in Algeria, doctoral thesis, Faculty of Law and Political Science, Haj Lakhdar University, Batna 1, 2018, p. 237.

¹⁹- Afif Ben Abou, Implementation of Judicial Judgments Involving Financial Conviction against Public Administration, International Law and Development Journal, Volume 9, Issue 1, Faculty of Law and Political Science, Abdelhamid Ibn Badis University, Mostaganem, 2021, p. 154.

²⁰- Mouloud Bouhali, Previous Memoir, pp. 95-96.

Following the enactment of Law 91-02, Ministerial Instruction No. 34-06²¹ was issued to clarify the practical procedures for implementing the provisions of Law 91-02, which sets out the special rules for certain judicial provisions²².

Law 91-02 assigned the task of enforcing judgments against the administration to the General Treasury, and this responsibility falls under the jurisdiction of the Secretary of the Treasury at the provincial level.

In order to ensure compliance with the execution, the legislator has imposed conditions and specific requirements on the application, including information on the claim itself, accompanying documents and the conditions for the attached documents, as indicated in Article 7 of Law 91-02²³.

Second, the enforcement procedures under Law 08-09 (as amended and supplemented) and Law 22-13:

Law 22-13, enacted on 12 July 2022, amended and supplemented Law 08-09 and repealed Law 91-02. It transferred the procedures contained in Law 91-02 to Article 986, as amended by Law 22-13²⁴. This applies when a judgment or enforceable instrument requires a public-law entity to pay a sum of money to a private-law entity²⁵, with the bailiff having a role in collecting the sums awarded for the benefit of the plaintiff²⁶.

We will now explain the compulsory execution of compensation judgments in cases involving one administration against another and for the benefit of private law persons.

A. Enforcement of compensation judgments in cases involving one administration against another:

Pursuant to article 986, paragraph 2, of law 08-09, as amended and supplemented by article 10 of law 22-13²⁷, the collection procedures for the administrations and public entities referred to in article 800, as amended and supplemented by article 4 of the same law²⁸, are initiated by a written request to the Secretary of the Treasury of the province where the liable party is located, if the opposing party is another public administration.

The request must be accompanied by a file consisting of only two documents:

1. A copy of the enforceable deed.
2. The official report of the notification of the claim²⁹.

²¹- Ministerial Directive No. 34-06 of 11 May 1991 of the Ministry of Finance, Directorate General of the Budget, as amended and supplemented, concerning the implementation of some court rulings.

²²- Ahmed Seryah, Implementation of Administrative Judgments against the General Administration in Algerian Legislation, Journal of Legal and Social Sciences, Issue 1, Ziane Achour University, Djelfa, 2022, p. 1273.

²³- Afif Ben Abou, previous thesis.p324_325

²⁴- See Article 986 of Law No. 08-09, as amended and supplemented, cited above.

²⁵- Fahima Beloul, previous article, p. 501.

²⁶- Fouad Issani, The new administrative law ensures the implementation of judgments against the administration with more "smoothness", 25 June 2022. Accessed on 2 March 2023 at 9:00 a.m., website: https://www.aps.dz

²⁷- See the provisions of Article 986 of Law No. 08-09, as amended and supplemented, cited above.

²⁸- See Article 800 of Law No. 08-09 as amended and supplemented, same source.

²⁹- Abdelrahman Barbarah, previous reference, p. 290.

In order to collect the sums awarded from the General Treasury, the legislator has stipulated that the execution must remain effective for a period of 4 full months from the date of the payment request. The Secretary of the Treasury may request additional information before the end of the 4-month period³⁰.

B- Compulsory execution of judgments for compensation in favour of private individuals against administrations:

When a judgment or enforceable instrument obliges a public entity to pay a sum of money to a private individual, the judicial officer is responsible for various enforcement procedures by deducting the amount from the current account held with the Public Treasury³¹. This is subject to the provisions of Law 06-03 regulating the profession of judicial officer³².

The bailiff must officially notify the debtor to comply with the requirements set out in the enforceable instrument and to pay the costs within a period of two months. If the debtor refuses to comply after the two-month period has elapsed, the judicial officer draws up a report of non-compliance.

A written request for collection is submitted to the Minister of Finance of the province in which the debtor is located. The request should be accompanied by a file containing the following information

1. A copy of the enforceable instrument.
2. Official notice of the debt.
3. Report of non-compliance.
4. Creditor's account number³³.

The Secretary of State for the Treasury may automatically withdraw the amount of the debt and the costs from the accounts of the debtor and transfer them to the account of the creditor within a period of three months from the date on which the application was lodged.

The Secretary of the Treasury may also request additional information from the bailiff before the specified deadlines³⁴.

2. Powers of the Administrative Judge in Issuing Executive Orders to the Administration (Alternative Procedures)

The orders issued by the administrative judge to the administration are a fundamental element in ensuring a balance between the privileges enjoyed by the administration in implementing judicial decisions against it and the need to protect the rights and freedoms of individuals. However, despite the great importance of these orders as a means for the judge to exercise control over the actions of the administration, the administrative judiciary avoids,

³⁰ - See the provisions of Article 986 of Law No. 08-09 as amended and supplemented, same source.

³¹ - Fahima Beloul, previous reference, p. 501.

³² - Law No. 06-03 of 20 February 2006 on the regulation of the judicial profession, Official Gazette, No. 14, 2006.

³³ - Abdelrahman Barbarah, previous reference, p. 289.

³⁴ - See the provisions of Article 986 of Law No. 08-09, as amended and supplemented, same source.

as far as possible, using its power to issue executive orders to the administration, due to the absence of an explicit legal provision authorising it to do so³⁵.

The negative consequences of the administration's refusal to enforce judgments have made it necessary for the judge to intervene and confront this phenomenon. This led the Algerian legislator to enact the Code of Civil and Administrative Procedure, which enables the administrative judge to exercise his powers by issuing orders obliging the administration to enforce its judgments³⁶.

Based on this premise, we will explain the powers of the administrative judge in issuing orders to the administration as follows:

2.1 Prohibition on the Administrative Judge issuing orders to the Administration:

The administrative judge, when deciding the pending dispute, is not authorised to issue an order to the administration to perform or refrain from performing a specific act, whether in a cancellation action or in a full judicial action. The administrative judge is also not authorised to replace the administration in the performance of a specific act falling within his competence³⁷.

Thus, the administrative judge is prohibited from issuing orders to the administration, and this was the case even before the enactment of Law 08-09 on Civil and Administrative Procedure.

First: The content of the principle prohibiting the judge from issuing orders to the administration

The principle of the prohibition of the administrative judge to issue orders to the administration means that he is not allowed to issue an order to the administration to perform or refrain from performing a specific act, in the course of the resolution of the pending dispute, whether in an action for annulment or in a full judicial proceeding³⁸. This principle was established as a result of the judge's self-imposed prohibition on issuing orders to the administration or substituting himself for the administration in taking action or enforcing judgments. It is therefore necessary to define this prohibition and to discuss its various justifications and historical background³⁹.

Second: Justifications for the prohibition on issuing orders to the administration

Among the justifications for this principle is the independence of the administrative function from the judicial function. Legislative texts and the nature of the powers of the administrative judge are also considered as a source of this prohibition.

³⁵ - Toufik Zid El Khail, Activating the Powers of the Administrative Judge to Ensure the Implementation of Judgments Against the Administration under the Civil and Administrative Procedures Law, *Academic Journal of Legal and Political Research*, Special Issue, Amar Thelidjani University, El Oued, 2017, p. 437.

³⁶ - Toufik Zid El Khail, previous article, p. 437.

³⁷ - Jihad Dhiab Allah Dhiab Al-Jazi, Innovative Means of Implementing Administrative Judgments: The French Experience as a Model, *Kuwait International Law College Journal*, Issue 3, Kuwait University, September 2018, p. 292

³⁸ - Hassana Meziane, previous thesis, p. 58.

³⁹ - Wafa Bou Al-Shaour, previous thesis, p. 167.

A. The principle of the separation of powers:

The administrative judiciary in Algeria considers that the administrative judge is not entitled to issue orders to the administration. This is in line with the principle of the separation of powers, which means that each authority has a number of exclusive and exceptional powers which it exercises independently⁴⁰. Other authorities are prohibited from exercising these powers or intervening to monitor or review them. As a result, the executive authority, i.e. the administration, carries out its functions as it sees fit, without the judicial authority being able to review the validity of these actions or rule on disputes arising from them.

In conclusion, the administrative judge in Algeria adheres to the principle of prohibiting the issuance of orders to the administration, as this is considered to protect the independence of the administration and maintain the balance of powers. Therefore, the administrative judge's instructions to the administration⁴¹.

B. Legislative texts as a basis for the principle of prohibition

Prior to the amendment of Law 08-09, there were no explicit legal texts in Algerian law prohibiting the administrative judge from issuing orders to the administration or offering alternative solutions. The legal texts were completely devoid of any explicit provisions on this matter. Reference was always made to the constitutional text, which establishes the independence of the judiciary from the executive. Therefore, this negative attitude of the administrative judge is merely a tradition followed by the French judge, who imposed this prohibition on himself⁴².

C. The nature of the powers of the annulment judge as a source of the prohibition

The legal nature of the annulment judge's powers is at odds with the process of issuing orders to the administration. According to the case law of the Algerian administrative judiciary, the power of the annulment judge is limited to declaring the administrative decision null and void, without the right to issue instructions to the administration. The administrative judge who annuls an unlawful decision cannot order the administration to take the necessary measures to implement the annulment⁴³.

Previously, the Administrative Chamber of the Supreme Court and currently the Council of State in Algeria agreed that when the administrative judge annuls an administrative decision for lack of legality, he should confine himself to that decision without issuing any orders to the administration⁴⁴.

2.2 Power of the administrative judge to issue orders against the administration

Following the procedural reform movement in 2008, specifically the Civil and Administrative Procedure Law, which included principles that strengthened the positive (interfering) powers of the administrative judge, one of the most important is the power to

⁴⁰- Mohammed Essghir Belali, Implementation of Administrative Judicial Decisions, Al-Tawasul Journal, Issue 17, Baji Mokhtar University, Annaba, December 2006, p. 153.

⁴¹- Nabilah Ben Aisha, previous reference, p. 96.

⁴²- Wafa Bou Al-Shaour, previous dissertation, p. 172.

⁴³- Mouloud Bouhali, earlier memoir, p. 127.

⁴⁴- Hassana Meziane, previous dissertation, p. 60.

issue orders to the plaintiff administration in order to clarify its obligations, especially in cases where the execution of the judicial judgment is hindered in order to circumvent it. This is stated in articles 978, 979 and 981 of the amended and supplemented law 08-09⁴⁵.

In cases where the administration refuses to execute the court ruling, the administrative judge has the power to order it to take the necessary measures to execute the ruling. It should be noted that this power of the administrative judge serves as a subsequent guarantee of the execution of the judgment and is only used after the issuance of judgments that do not include an order to the administration⁴⁶.

First: Types of administrative orders

It is clear from this point that the orders that the administrative judge can issue to the administration with regard to suspension can be divided into two types:

A. Pre-execution orders:

These orders refer to those issued prior to the judicial decision and are linked to a prior request for the issuance of the judicial decision. They are essentially attached to the original claim in an action for annulment⁴⁷. Article 978 of Law 08-09, as amended and supplemented, grants the administrative judge the power to issue pre-execution orders in the original judgment against any public corporation or body whose disputes fall within the jurisdiction of the administrative judiciary, to take the necessary measures if the order or judgment so requires, and to be associated with the content of the judgment⁴⁸.

B. After enforcement orders:

From the text of article 979, it is clear that after the judgement has been issued, specific enforcement measures are taken that were not mentioned in the original application. These measures are based on the request of the interested party and a new administrative decision is issued as an executive instrument⁴⁹.

The administrative judge is also empowered to issue orders to the administration to take specific executive measures subsequent to the original judicial decision. This can be understood from the phrase "not previously ordered because it was not requested in the previous dispute". It should be noted that in this article the legislator intended to deal with the situation where the administration is in the position of the defendant and applies the organic norm⁵⁰.

Second: Conditions for issuing orders to the administration

Through Articles 978 and 979 of Law 08-09, as amended and supplemented, the Algerian legislator has enabled the administrative judge to issue enforcement orders to the administration. The law allows for the execution of administrative judgements. However, the

⁴⁵- Hafida Saqiq, The role of the administrative judge in implementing court rulings against public administrations, Journal of Legal and Political Thought, Volume 6, Issue 2, Amar Thelidjani University, El Oued, 2022, pp. 449, 450.

⁴⁶- Jihad Dhiab Allah Dhiab Al-Jazi, previous article, pp. 298, 299.

⁴⁷- Afif Ben Abou, previous work, p. 398.

⁴⁸- See Article 978 of Law No. 08-09 as amended and supplemented, above source.

⁴⁹- See a copy of Article 979 of Law No. 08-09 as amended and supplemented, same source.

⁵⁰- Hafida Saqiq, previous article, p. 451.

administrative judge cannot issue the order spontaneously, but must do so on the basis of requests submitted by the parties to the dispute⁵¹.

A. Request by the party concerned for a specific administrative measure:

The Algerian legislator allows the administrative judge, at the request of the party concerned, to issue an order that the judge considers necessary for the execution of the judgment.

This is done by attaching to the judgment an order addressed to the administrative authority, which obliges it to take the necessary measures to implement the judgment. In the original judgment, the judge may refer to specific executive measures to ensure the execution of the judgment, such as ordering the reinstatement of an employee in his position in the event that a decision to dismiss him is annulled⁵².

It should be noted that in this case the request must be clear and specific, since a general request without reference to a specific and defined executive measure would be rejected⁵³.

B. Power of the judge to take specific measures:

The judge may use the authority of an order if the judgment requires the administration to take specific measures, such as issuing a new administrative decision, considering a request from the party concerned, or issuing a new administrative decision within a specified period⁵⁴. However, the use of the power of an order is not applicable if the execution of the judgment does not require the administration to take specific measures. These measures may include the taking of a specific action, such as the reinstatement of an employee, the lifting of a seizure or the stopping of a construction process, or the issuing of a new administrative decision⁵⁵.

C. Necessity of the order to implement the administrative judgment

The Algerian legislator has explicitly expressed this in articles 978 and 979 of law 08-09, as amended and supplemented, stating that "if the order, judgment or decision requires the obligation of a person". Therefore, the judge must use the power of an order when it is deemed necessary to implement the orders, judgments or decisions issued by the administrative judiciary⁵⁶. In such cases, some legal texts oblige the administration to perform or refrain from certain acts, and if the administration refuses to do so, the judge may order it⁵⁷.

⁵¹- Nabilah Ben Aisha, previous reference, p. 102.

⁵²- Hamid Chaouch, Authority of the Administrative Judge to Issue Orders to the Administration, Eighth International Conference on "Modern Directions of Administrative Justice and its Role in Establishing the Rule of Law" held on 6-7 March 2018, Hamma Lakhdar University, El Oued, 2018, pp. 247-248.

⁵³- Hassana Meziane, previous dissertation, p. 63.

⁵⁴- Maleka Hajaj, previous article, p. 1014.

⁵⁵- Afif Ben Abou, previous work, p. 413.

⁵⁶- Afif Ben Abou, same thesis, p. 413.

⁵⁷- Abdelkarim Ben Mansour, Powers of the Judge Against the Administration (Non-Admissibility of Judicial Intervention in Administrative Management), Journal of Humanities, Volume 4, Issue 05, Ali Kafi University Center, Tindouf, 2021, p. 148.

Conclusion:

From the research carried out, it is clear that administrative judgments, when they have the force of *res judicata*, are enforceable.

However, in order for these judgments to be implemented in practice, certain conditions and procedures for their enforcement must be met. The nature of judgments varies from case to case, depending on their content .

A judgment may be issued to annul a specific decision in the case of an action for annulment, or to compel the administration to pay a sum of money in the case of an action for damages. However, problems often arise during the enforcement process by the public administration, which may obstruct enforcement by refusing to comply, either explicitly, implicitly or involuntarily, because of the privileges granted to it by law and because it considers itself to be a microcosm of the executive authority.

In response, the Algerian legislator has sought appropriate solutions to compel the administration to execute judgments by establishing mechanisms that the administrative judge can use in the event of voluntary refusal by the administration to execute. The most important of these mechanisms are coercive fines and orders to the administration, as well as criminal liability for officials who refuse to comply, as provided for in Article 138 bis of the Algerian Penal Code, as amended and supplemented by Laws 12-14. In addition, the execution of judgments involving financial obligations may be carried out by means of deductions from the public treasury by the judicial officer, in accordance with article 986, as amended and supplemented by article 10 of law 22-31.

Based on the information provided, the following findings and recommendations can be made:

Findings:

-The legislator has sought solutions to reduce the phenomenon of administrative refusal to implement judicial decisions concerning financial obligations. Recently, Law No. 91/02 on the enforcement of certain judicial decisions was repealed and its provisions and procedures were included in Article 986, as amended by Article 10 of Law No. 22-13, which deals with this issue.

-The legislator introduced the bailiff, who is responsible for enforced execution procedures when the execution is for the benefit of a private party.

-The legislator only established time limits for the execution of judgments relating to compensation, but overlooked the establishment of time limits for judgments relating to annulment.

Recommendations:

-It is necessary to introduce a new legal provision allowing the seizure of the assets of the non-compliant administration up to the amount awarded by the judgment. This will respect the validity of court decisions and increase public confidence in the judiciary.

-It is necessary to add dismissal as a primary sanction, in addition to imprisonment, and to publish the judgment of conviction in order to act as a deterrent.

-Consider the refusal to execute as a personal act and make the convicted employee personally liable for the compensation awarded as a result of the offence of refusing to execute administrative court decisions.

-Propose the creation of a body within the administrative courts responsible for supervising the execution procedures of administrative judgments.

-Proposing a reduction of the enforcement period provided for in Article 986 of the Civil and Administrative Procedures Code, in order to avoid further burdening the party concerned with lengthy enforcement procedures for the recovery of debts.

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