Victims' Rights in Contesting In Absentia Judgment

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Abstract:

The opposition to judgments in absentia is a matter of great importance due to the rights of individuals surrounding it, as well as the litigant's burden of being a guardian of legal deadlines and procedures, which costs him effort and fatigue, which increases the work before the judicial authorities, including courts and councils, and through them these procedural issues reach the Supreme Court.

This research paper, deals with how the judiciary deals with these issues, especially the material and moral damages that victims suffer as a result of crimes, which appears to be a way to preserve the dignity of others and deliver the right to its *owner.*

Keywords: *Civil Action; Opposition; Criminal Action; Default Judgment.*

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Introduction:

There is no doubt that the victim aims, through initiating a criminal lawsuit, to hold the perpetrator accountable for the harm caused by the crime committed against him, in a way that preserves human freedom and dignity, by establishing clear and simplified procedural texts to care for the victim, As the key figure in the procedural chain, the victim plays a crucial role in the public lawsuit from the initial investigation phase through to criminal litigation and the final, enforceable verdict stage. Indeed, at times, the victim's role in uncovering the truth -an objective of justice -can be even more significant than that of the perpetrator.

Caring for the victim in this context extends beyond merely compensating for material damages. It involves addressing both the moral and material aspects, aiming to satisfy the victim on a deeper, emotional level, he must participate in the criminal case, and feel cared for by the judicial authorities, in addition to what results in draining his anger and eliminating the desire for revenge, thus his role in the meaning of initiating a public lawsuit turns into a duty imposed on him for his role as a plaintiff who looks into his lawsuit, to achieve justice and protect the security of society, so the public lawsuit was a right for him. Hence, The victim, much like the accused, has the right to engage in public lawsuit procedures and appeal judicial decisions. Consequently, it is essential for legislators to clearly outline the procedures that the victim should follow in relevant matters, including the process for appealing judgments made in absentia.

The core issue is whether Algerian legislation strikes a fair procedural balance -under standards of due process and equitable redress- between the rights of victims and those of defendants convicted in absentia when exercising appellate remedies?.

This study aims to conduct a scientific analysis of the victim’s right to appeal judicial rulings, including those rendered in absentia, by examining the legal safeguards and procedural rights afforded to victims under applicable legislation. The objective is to assess the adequacy of these protections in light of statutory provisions.

Besides encouraging legislators to address the gaps and deficiencies affecting victims, it's important to recognize that their rights go beyond merely initiating a public lawsuit and seeking punishment as part of their criminal rights. Victims should be afforded adequate care and attention, much like other parties involved in the dispute, and should be included in all procedures relevant to the various stages of the lawsuit.

1. Chapter One: The conceptual framework for the appeal by opposition

Before addressing the procedural issues of our topic, it is essential to first define the appeal by opposition.

1-1 Section One: Definition of Appeal by Opposition

The appeal by opposition is considered a regular means of challenging decisions in criminal matters. It is a procedure established by law to review judgments issued in absentia against the accused, who was unable to defend themselves and present their arguments and evidence during the hearing.

It serves as a remedy for the absence of the principle of presence, and therefore, it is submitted to the same authority that issued the contested judgment.

1-2 Section Two: Who Can File an Opposition

An objection may be filed by the accused, the civil claimant, or the party civilly liable. The accused retains the right to challenge a judgment issued in absentia, whether contesting both the public and civil claims jointly or severally. (Article 409, Paragraph 2 of the Code of Criminal Procedure).

The objection filed by the civil claimant and the civilly liable party pertains exclusively to rulings issued on the civil action, and shall not extend to matters relating to the public claim. Article 413, Paragraph 2 of the Code of Criminal Procedure (Hazit, 2011)

Articles 327, 328, and 330 of the amended Code of Civil and Administrative Procedure No. 08-09 address the rights of an absent party to challenge a judgment or decision made while they were not present. These articles facilitate the process for the absent party to seek a review of rulings issued in their absence. It must comply with the formal requirements stipulated for the initiation of legal proceedings, and it should be presented to the same judicial authority that issued it, accompanied by a copy of the contested judgment, under penalty of inadmissibility on formal grounds (Saad, 2005).

1-3 Section Three: Conditions for Accepting an Appeal by Opposition to a Judgment Issued in Absentia

The Algerian legislator has stipulated the conditions that must be met when submitting an appeal by opposition, which are as follows:

1-3-1 Subsection One: Previously Established as a Civil Party

To accept the appeal of a civil claimant, the claimant must be recognized as a civil party following one of the methods specifically outlined in Articles 239 and subsequent articles of the Code of Criminal Procedure. If a person harmed by a crime has not been established as a civil party and their requests were not addressed by the court during the hearing, they cannot be considered a party to the judgment. Consequently, their appeal, whether by opposition or through an appeal against this judgment, cannot be accepted.

To establish their status, the victim must declare their capacity and interest in the case before the court, explaining the reasons for this establishment.

The penal judge will then determine whether to accept or reject this declaration. This declaration during the session is designed to assist the victim, as outlined in Article 242 of the Code of Criminal Procedure. This article specifies that if a civil claim is made during the session, it must occur before the public prosecutor makes their requests; otherwise, it will be considered inadmissible. However, if the public prosecutor has already made their request, the victim may ask to have the case returned to the docket if it wasn't resolved in the same session (Semati, 2007).

The right of opposition belongs only to those who have acquired the status of civil claimant, as a judgment can legally be issued in absentia against a harmed party who has not obtained this status. (Boudiaf, 2002)

1-3-2 Subsection Two: Respecting the Appeal Deadlines Specified by Law

This is outlined in Article 411 of the Code of Criminal Procedure, An opposition can be filed within 10 days from the date the judgment is notified to the accused. If the absent party resides outside the country, this period can be extended to two months. Therefore, the victim or their representative must file an appeal against a judgment issued in absentia within ten days of receiving notification if they are in the country, or within two months if they reside abroad. (Saad, Conditions for Exercising Civil Action Before Criminal Courts, 2002)

1-3-3 Subsection Three: Filing the Appeal According to the Procedures Specified by Law

According to Article 412, Paragraph 3, it is stated that an appeal against a judgment issued in absentia may be filed by opposition through a A written or oral report must be submitted to the clerk of the judicial authority that issued the judgment within ten days from the notification. This article indicates that the opposition needs to be presented to the same judicial authority., and it may be submitted in writing or orally. If these conditions are not met, the opposition will be deemed inadmissible.

1-3-4 Subsection Four: Presence of the Appellant on the Specified Date

The appellant is required to attend the hearing to address the judgment delivered in their absence and explain the grounds for their appeal, following the date and location outlined in the prior notification or summons. If they fail to appear, their appeal will be dismissed by operation of law, and the court will rule on this sua sponte or at the request of the opposing party. After that, the only option remaining will be to appeal both judgments simultaneously, as stated in Article 413 of the Code of Criminal Procedure.

2. Chapter Two: Procedures for Filing an Appeal by Opposition and Its Consequences

First, it is essential to understand the judgments that can be opposed, after which we will present the procedures specified by law and the resulting consequences as follows:

2-1 Section One: Judgments Subject to Opposition

These judgments are as follows:

- An in absentia judgment for a misdemeanor or minor offense can be issued by a court of first instance, the Court of Appeals, or a juvenile court.
- Judgment in absentia for a misdemeanor or minor offense from the criminal courts.
- As outlined in Article 326 of the Code of Criminal Procedure, judgments rendered in absentia by the criminal court possess a distinctive character. If the person sentenced in absentia surrenders to prison or is apprehended Before their sentence expires because of the statute of limitations, both the judgment and the procedures resulting from the order for their surrender are nullified by law. As a result, standard legal procedures will then be applied to them.

The legislator has limited the appeal to misdemeanors and contraventions, excluding felonies, due to their special nature, as stated in the above article, taking into account the felonies in terms of the prescribed penalties.

The civil claimant may lodge an opposition appeal against judgments rendered in absentia, but not against those delivered in presence, provided that the defendant demonstrates a legitimate impediment preventing their attendance which could not be raised prior to the contested judgment. However, if the appellant establishes such impediment before the in-person judgment is issued, their opposition (chattaou, 2008) .

2-2 Section Two: Procedures for Filing an Appeal by Opposition

From the above, we summarize the procedures for filing an appeal by opposition as follows:

- Article 413 of the Code of Criminal Procedure allows the accused, the civil claimant, and the party responsible for civil rights to submit an opposition.
- The opposition must be submitted within 10 days after the judgment notification, according to Articles 411 and 412 of the Code of Criminal Procedure. If the notification wasn't made directly to the accused and there is no evidence from any executive action that they were informed of the conviction, their opposition is still valid, even regarding civil rights, until the statute of limitations expires. In this case, the opposition period starts when the accused becomes aware of the judgment.

- The challenge is presented to the court clerk who issued the judgment, as specified in Article 412 of the Code of Criminal Procedure.
- Article 410 of the law mandates that the objection must be conveyed to the public prosecutor. by any means, who will then notify the civil claimant via a registered letter with acknowledgment of receipt.

If the opposition is limited to what the judgment decided regarding civil rights, the accused must directly notify the civil claimant of it.

2-3 Section Three: Consequences of Filing an Appeal by Opposition

When the appeal by opposition is accepted, two main effects result:

2-3-1 Subsection One: Suspension of the Judgment Being Opposed

Consequently, the outcome of the in absentia judgment remains on hold until a decision is made regarding the opposition, which depends on whether the opposing party is present or absent at the designated hearing for the opposition.

2-3-2 Subsection Two: Reexamination of the Case

If the opposing party appears at the first hearing of the opposition proceeding, the court shall re-examine the case de novo, irrespective of the party's subsequent non-appearance. The resulting judgment shall be considered in personam, even if rendered in the party's absence following such initial appearance.

However, if the opposing party does not appear at the scheduled hearing, the opposition is considered as if it never existed.

In every instances, the court will initially evaluate the formal validity of the opposition, confirming it was filed within the specified deadlines.

According to Article 413, Paragraph 2 of the Code of Criminal Procedure, the civil claimant's opposition is limited to decisions made against the accused within the civil aspect of the case, and does not include matters related to the public claim.

The appellant may present their defenses and any objections they wish to raise before the court, and they can expand the scope of the case by making requests of any kind. (Eddin, 2012)

A decision No. 189740 dated 27-10-1999 tackled the objections regarding the approval of the disputed ruling, citing a violation of the law. It ruled that an opposition filed by the accused against an in absentia judgment nullifies that judgment, even in its civil aspect. Consequently, the council, in adopting the reasoning of the decision subject to the opposition by the accused, violated a fundamental procedural rule. (Saqar, 2007)

There is also an important principle regarding opposition: the appellant should not be prejudiced by the appeal they filed. This means that if the accused opposes the judgment, the penalty should not be increased in the opposition. Similarly, when the appellant is responsible for civil rights, the opposition should not result in an increase in the amount of compensation awarded.

Conclusion:

We find that the harmed party from the crime cannot appeal an in absentia judgment unless they are established as a civil party and have their requests discussed during the hearing; otherwise, they lose this right. The Algerian legislator, through the legal provisions addressed in this study, has made efforts to ensure the rights of the victim in this procedure. However, there remain some shortcomings and gaps that need to be addressed. This has led us to a set of findings and recommendations, the most important of which are:

The legislator's approach creates a procedural imbalance by restricting the victim's opposition against an in absentia judgment solely to civil claims, while permitting other parties to challenge either civil, criminal, or both aspects of such judgment. This disparity raises fundamental concerns regarding equitable access to appellate remedies

.The legislator has restricted the appeal by opposition to judgments related to contraventions and misdemeanors, excluding felonies due to the severity of the prescribed penalties and the special procedures associated with them.

Despite the legislator's repeated attempts to address legal gaps and empower the victim with their rights, many imbalances still exist that hinder this. Therefore, greater attention must be given to the victim to ensure equality with other parties in the litigation.

Recommendations:

If the opposition is limited to what the judgment decided regarding civil rights, the accused should directly notify the civil claimant. It would be advisable for the legislator to include a provision requiring the party favored by the judgment to notify the absent party within a specific timeframe; otherwise, the judgment should be deemed void upon the expiration of that period. This would ensure that the absent party is informed of the judgment made against them and prevent any surprises long after its issuance, as well as guarantee the commencement of appeal deadlines.

The legislator should re-examine the admissibility of opposition proceedings initiated by victims against in absentia judgments, with a view to establishing procedural equity between victims and accused parties. This reform should expressly authorize victims to challenge such judgments on civil, criminal, or

both grounds, thereby aligning their appellate rights with those afforded to other procedural stakeholders.

The right of opposition should not be limited only to the civil claimant; the scope should be broadened to include all parties affected by the crime, such as the harmed party and any civil claimant.

Despite the legislator's cumulative amendments addressing procedural shortcomings, the victim's procedural position under the Code of Criminal Procedure continues to lack adequate safeguards. Fundamental legal modifications remain essential to ensure the victim's procedural equality with other participants in criminal litigation.

Footnotes:

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- ✓ Saad, A. A. (2005). Methods of appeal in judicial rulings and decisions (1st ed.). Algeria. p. 17.
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