



The course of the real estate tax dispute and its procedures in Algerian legislation

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Abstract

The tax legislator has approved a way for the taxpayer to resort to whenever he feels that his rights have been lost, whenever it becomes clear to him that the tax is considered illegal or deviates from the law. It is binding the taxpayer to go through a mandatory procedure that is bypassed in other administrative disputes, which is a condition for filing a prior administrative grievance with the competent tax administration, which gives this administration the possibility of settling it administratively and amicably before bringing the case before the judicial authorities. This stage is known as the administrative settlement, followed by another stage in which when the complaint becomes useless and results in rejection, the complainant resorts to the administrative judiciary. of the taxpayer's requests, and it is called the judicial settlement.

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- ✓ experience

1. Introduction

The dispute is often expressed by a lawsuit, as it is considered a set of procedures that the right holder or claimant takes before the judiciary. However, the dispute is not always based on a right, and not every dispute necessarily meets the conditions of the lawsuit. The judiciary considers all requests submitted to it regardless of whether the plaintiff's allegations are based on a right or not, because the plaintiff's responsibility is limited to paying the legal expenses unless this dispute is malicious. The rule requires that every judge is obligated to resolve the dispute before him by first applying the legislative text, and if he does not find one, he turns to other legal sources, taking into account the order drawn up by the legislator. Similar to other lawsuits, the administrative judge cannot refrain from presenting a ruling in a tax dispute, citing the lack of a legal rule, otherwise he will be considered a denier of justice. Rather, he must invent the legal rule to resolve the tax dispute with his own diligence and creativity, as the opening of the tax dispute begins with the registration of a written opening petition before the administrative court registry, in accordance with the conditions mentioned above. The administrative judge investigates the tax dispute, using various means of proof in the investigation, and then resolves the dispute before him. Therefore, the problem raised in this research paper is: How are the procedures for the real estate tax dispute carried out according to Algerian legislation?

2. Investigation procedures

he administrative judge before whom the tax dispute is brought orders a set of procedures that enable him to investigate and investigate the tax dispute, such as reviewing the investigation assigned to tax officers other than their colleagues who carried out the initial monitoring and expertise, which is what is stated in the text of Article 85 of the Tax Procedures Law.

2.1 Investigation review

The investigation review or counter-examination procedure is resorted to. If the judge finds it necessary to review the investigation, he orders this procedure. Thus, it is noted that the Algerian legislator did not limit the reasons for the administrative judge to resort to reviewing the investigation, but rather left it to his discretionary authority whenever he saw the need for it. However, this procedure was protected by conditions to provide transparency and equality, including that this process be carried out in the presence of the complainant or his representative. It was also stipulated that a tax officer should carry out this procedure other than the officer who carried out the first inspection according to Article 85-1, paragraph one of the Tax Procedures Code. The researcher believes that when the legislator assigned another officer to carry out the investigation review instead of the officer who was assigned to carry out the first inspection, he aimed to

achieve equality and transparency between the parties to the tax dispute. In our opinion, he will not achieve this endeavor because the investigation review is carried out in the same tax administration and the administration cannot in any way contradict itself despite assigning another officer to review the investigation. Therefore, it would have been more appropriate to assign another neutral party to carry out this process, a person who is not an employee of the court and is proficient in tax techniques and is sworn. The assistant in charge of the investigation is appointed by the provincial director of taxes, and the administrative judge, by virtue of a ruling, determines the tasks assigned to this assistant, where he also determines the period during which the tax assistant must carry out his mission, where he prepares a report on the operation assigned to him and includes the complainant's observations and the results of the monitoring he reached, and he also expresses his opinion on the first monitoring carried out by his colleague previously, so that the provincial director of taxes then deposits the report with the registry of the administrative court that ordered the investigation review in accordance with Article 85-3 of the Tax Procedure Code. It is also worth noting the method of appointing the assistant in charge of reviewing the investigation by the provincial director of taxes who is himself a party to the dispute, which in

our opinion remains far from objectivity and credibility, so it was necessary for the legislator to include in the tax procedural law texts that stipulate the rejection of the counter-examination if the judge or the taxpayer finds that the assistant in charge of this operation is biased towards his tax administration.

2.2 Experience

Expertise is considered one of the methods of proof in tax disputes. Article 86 of the Tax Procedures Law. Article 89 thereof also referred to the provisions of the relevant articles contained in the Civil and Administrative Procedures Law, and this concerns Article 125 to Article 145 thereof⁽¹⁾.

2.2.1 Definition of experience

The Algerian legislator defined expertise through the Civil and Administrative Procedures Law as “clarifying a purely technical or scientific material fact to the judge” ⁽²⁾. Recourse to expertise is only made in matters that exceed the scientific and technical knowledge of the judge. The general rule is that recourse to experts is at the discretion of the judge, as he may order expertise in any technical matter presented to him for adjudication. In some cases, such as tax disputes, it is impossible for the judge to adjudicate without resorting to experts ⁽³⁾.

The Supreme Court in Algeria adopted a

definition similar to that of the Egyptian Court of Cassation as follows: "Expertise is a normal investigative act that falls under public law, and that every judicial authority has the right to order its implementation, in accordance with the principle that authorizes resorting to all means capable of enlightening them, within the framework of what is not prohibited by law" ⁽⁴⁾.

Professor Dr. Ahmed Khalil defined expertise as "the operations and reports carried out by the expert appointed by the court in a technical matter that the judge believes has the scientific or technical competence to carry out" ⁽⁵⁾, and the expert is a person not employed by the court who has special technical information, so the judiciary seeks his opinion in matters that require this information to be investigated, meaning that experts are the judge's assistants and are delegated to solve the obscure points of investigation that they alone can estimate.

The old measure in Algerian legislation assigned the task of expertise to the direct tax officer according to Article 341 of the Direct Taxes and Similar Fees Law, but after the amendment in 1992 through Article 57 of the Finance Law of 1992, the expertise was directed to an expert appointed by the Administrative Court, in order to ensure neutrality in the expertise as well as to reach serious and objective results because it is prepared by an expert in taxation ⁽⁶⁾.

2.2.2 Terms of appointment of experts

The expertise is carried out by one expert appointed by the Administrative Court. However, if one of the parties to the dispute requests it, it is assigned to three experts, with each party appointing its expert, and the court appointing the third expert. The procedural texts include the provisions relating to the expert in the following points ⁽⁷⁾:

2.2.2.1 Who may not be appointed as experts

The law prevents some persons who are unable to the tax dispute, and they are:

- Employees who participated in establishing the contested tax.
- Persons who expressed an opinion in the disputed case.
- Persons who were authorized by one of the parties during the investigation.

It is worth noting that if the expert refuses the task assigned to him or does not perform it, another expert is appointed in his place.

2.2.2.2 Eliminate the expert

Each party may request shall submit the response in the name of the administration. In this case, the request shall be directed to the administrative court within a period of eight full days, starting to whom it refers in the response,

and at most at the beginning of the expert procedure. This request shall be decided upon urgently after the lawsuit is filed against the opposing party ⁽⁸⁾.

2.2.3 Conducting the experience

If necessary, the other experts at least ten days before the start of the operations., the complainant and/or his representative, where they carry out the task assigned to them by the administrative court in accordance with Article 86-7 of the TPC. The administrative officer who adds his opinion, and the experts write either a joint report or individual reports. After the the parties who have been legally notified of this can review them within a full period of 20 days ⁽⁹⁾.

The period specified in the judgment appointing the expert, which is as close as possible to the final amount of the expert's fees and expenses, before the experts begin their assigned tasks. The judge determines the expert's final fees after the report is deposited with the registry office of the administrative court that appointed him, taking into account a set of criteria for determining these fees, such as the efforts made by the expert to complete the task assigned to him, to hand over the amounts deposited with it within the limits of the amount due for his fees ⁽¹⁰⁾.

If the administrative court finds that the expertise was incorrect or incomplete, it

may order a new, supplementary expertise to be carried out within the previous conditions mentioned above.

We see that resorting to expertise in tax matters has become mandatory in the eyes of judges. The general rule is that expertise is taken into account as a reference in issuing their rulings, but they base those rulings on the content of expertise because they are ignorant of the tax legislative principles that are not included in their training in the higher schools of the judiciary, and even if they exist, they are not given great importance. For this reason, expertise has become excessively used by judges, which costs the parties to the dispute additional expenses.

3. Administrative Court Judgment

The Administrative Court is the authority with general jurisdiction in administrative disputes, including tax disputes, as it is competent to adjudicate in the first instance, with a judgment subject to appeal, in all cases in which the tax administration is a party to the dispute. Thus, the legislator has relied on the organic criterion, in application of Article 800 of the Code of Civil and Administrative Procedures. The Administrative Court issues its rulings following the following procedures:

3.1. Scheduling

The registry office at least ten days before the date of the session. In cases of urgency, this period may be reduced to two days by order of the head of the arbitration team ⁽¹¹⁾.

3.2 Session progress

The reporting judge shall prepare a report listing the facts contained in the tax lawsuit and constructing the parties' defenses with a summary of their requests. The opponents may also submit their oral comments in support of their written requests. In addition, the head of the arbitration formation may listen to the tax administration agents or invite them to provide clarifications. He may also, during the session and as an exception, request clarifications from any person present whom one of the parties to the dispute wishes to hear ⁽¹²⁾.

The case file, along with the report and attached documents, to the State Governor to submit his written report within one month from the date of receiving the file. He must return the file and attached documents to the reporting judge once the one-month period has expired. The State Governor shall submit his written report, on each issue raised, as well as the proposed solutions for resolving the dispute. This report shall conclude with specific requests. The State Governor shall also submit his oral comments. ⁽¹³⁾.

3.1.3 Issuance of the verdict

He issues his decision to close the majority of votes. The ruling may also be pronounced in the session .

The administrative court, which is a secret deliberation in which not participate in it because he pronounced by reading ⁽¹⁴⁾.

The jurisdiction, and therefore it does not have the right to revoke or amend its judgment, although it may interpret it and correct any material or clerical errors in it in accordance with the CAP Law ⁽¹⁵⁾, if it relates to a cancellation suit and the effects that this suit the judge be limited to a certain limit, so that his role does not turn into an administrative presidential authority, he may not direct an order to the tax administration to act in a certain manner, or take action himself in its name ⁽¹⁶⁾.

The administrative court ruling must include an analysis of the parties' requests. The judge bases his ruling on the parties' requests and is not obligated to refer to all requests. The judge bases his decision on all the attached documents and must submitted, a summary of the legal texts on which they relied, the date the investigation was closed, and, if necessary, the date it was reopened, and a clarification of whether the parties or their representatives attended the ruling or were absent. Reference must heard by order of

the president ⁽¹⁷⁾.

The suit in form or for lack of foundation, which results in the taxpayer pay or discharge the tax or order the tax administration to re-impose the tax. However, if the judge accepts the taxpayer's suit in form and examines its subject matter, and the latter is well-founded, he will rule on exemption or reduction of the disputed taxes. In this case, and when necessary, new foundations for imposing the tax are determined .

3.2.1 Definition of appeal

The appeal, as a regular appeal, is directed against urgent rulings and orders issued by administrative courts within the meaning of Article 900 bis of the Code of CAP.

3.2.2 Its procedures

Shall be filed by one of the parties to the tax dispute, whether present or summoned, in which a judgment has been issued official notification of the judgment subject to appeal, and within the same period from the date of expiry of the opposition period when the appealed judgment was issued in absentia by the Administrative Court. As for urgent matters issued by the Administrative Court, the appeal must be filed within fifteen days from the date of official notification of the order.

In addition, the substantive or urgent appeal petition must include all formal requirements and other legal procedures, specifying the substantive and legal bases for the appeal⁽¹⁸⁾.

3.2.3 Types of appeal

There are many types of appeal. By referring to the Civil and Administrative Procedures Law as well as administrative jurisprudence, we find several types, including:

3.2.3.1 Original appeal and sub-appeal

The original appeal is the appeal filed by the first appellant, i.e. the appellant, who is usually the person who was convicted in whole or in part, and to the interveners or those involved in the dispute, provided that there is an interest in the one who exercises this right ⁽¹⁹⁾.

As stipulated in Article 951 of the Code of Civil and Administrative Procedures, where the respondent may file a subsidiary appeal of the appealed judgment even if he missed the deadline to file an original appeal, but if the deadline for appeal has passed and the decision was not appealed at all, the subsidiary appeal may not be filed ⁽²⁰⁾.

3.2.3.2 *Cross-appeal and partial appeal*

In addition to the original appeal and the subsidiary appeal, administrative jurisprudence has approved two other types, which are ⁽²¹⁾:

The counter-appeal is that each party appeals the decision, within the specified period, with two petitions, meaning that there are two files, and it is ordered to be combined, and the earlier file is called the original appeal and the next one is called the counter-appeal. One of the results of the counter-appeal is that if the original appeal is accepted, the appealed decision is cancelled and the counter-appeal is automatically cancelled. If the original appeal is rejected, the appealed decision is confirmed and the counter-appeal is considered.

As for the first-degree decision, but only in part of it, and therefore it is required in each of the two appeals that they be made within the legal period and with a petition filed and a summons to appear.

3.2.4 *Effects of appeal*

The jurisdiction to consider requests to suspend rulings issued by the Administrative Court, if their implementation would expose the appellant to a certain financial loss that cannot be remedied, or when the

aspects raised in the appeal appear to justify the cancellation of the contested decision, or when the investigation shows seriousness. The Administrative Court of Appeal may, in all cases and at any time, lift the suspension of implementation based on the request of the concerned party ⁽²²⁾. The Administrative Court of Appeal issues a final decision on the appeal, because it is the second-degree body in the administrative judiciary ⁽²³⁾.

We see that through Article 90 of the Tax Procedures Law, the tax legislator has limited the appeal of the rulings of the Administrative Court by way of appeal within the conditions and procedures stipulated in the Civil and Administrative Procedures Law, thereby ignoring other appeal methods, whether ordinary or extraordinary, thereby violating the general provisions governing administrative lawsuits, contrary to what is the case in the field, where we see that the appeal of the tax article includes all legally available appeal methods, whether ordinary such as opposition, appeal, suit to correct material error, interpretative suit and urgent suits, or extraordinary such as appeal for cassation, request for reconsideration, objection of a third party outside the dispute.

4. CONCLUSION

Tax disputes differ from other administrative disputes in terms of concept and procedures, as the Algerian legislator has surrounded them with a set of mandatory conditions that reflect his keenness to provide guarantees for a fair trial for the taxpayer, starting with submitting his complaint to the competent tax administration, and his appeal before the available appeal committees, ending with the possibility of filing his lawsuit before the administrative judge. It is also noted by delving into the tax dispute, that it is characterized by the abundance of successive amendments to tax provisions, whether in substantive or

procedural legislation, which confuses both the tax administration and the taxpayer together, and also hinders the administrative judge responsible for examining tax dispute cases, in addition to his lack of control over the tax material, due to the lack of sufficient attention given to these standards in the judges' training program, in addition to their excessive resort to the management of expertise, even in non-technical matters, which has become a norm in the tax dispute, when the administrative judge has become indispensable to this measure, which inevitably incurs additional expenses that burden the taxpayer, not to mention the length and complexity of the procedure on the other hand.

5. Bibliography List :

- Atallah Bouhmida, 2011, Concise Administrative Judiciary (Algeria: Dar Houma).
- Fodil Kousa, 2015, Tax Claim and its Proof in Light of the Jurisprudence of the Council of State (Algeria: Dar Houma).
- Ali Awad Hassan, 1997, Expertise in Civil and Tax Matters (Egypt: Dar Al-Fikr Al-Jami'i).
- Amar Boudiaf, 2009, Cancellation Claim in the Civil and Administrative Procedures Law (Algeria: Josoor Publishing and Distribution, 1st ed.).

- Hussein Fria, 2011, Explanation of Administrative Disputes (Algeria: Dar Al-Khaldounia).
- Jamal Sais, 2014, Real Estate in Algerian Judicial Ijtihad (Algeria: Click Publications, Vol. 2, 1st ed.).
- Khader Al-Shuwaiki, 2013, Tax Base Disputes (Lebanon: Modern Book Foundation, 1st ed.).
- Khalil Bousnoubra, 2010, Mediator in Explaining the Law of Civil and Administrative Procedures (Algeria: Numidia for Printing, Publishing and Distribution, Vol. 1).

- Laid Salhi, 2014, *Al-Wajeez fi Sharh Law Al-Quds Al-Adawiya*, Dar Houma, Algeria.
- Slimane Bouzkri, 2014, "The Legal System of Registration Rights in Algeria", Master's Thesis, Faculty of Law and Political Science, University of Blida 2, Algeria.
- Yahia DENIDENI, 2013, *Studies in Algerian tax law* (Algeria: Dar el Khaldounia)
- Yahia Badairia, 2012, "The Legal Framework for Settling Tax Disputes under Algerian Legislation", Master's Thesis, Faculty of Law and Political Science, University of Hadj Lakhdar, Batna, Algeria.
- Law No. 08-09 dated 02/25/2008, including the amended and supplemented Code of Civil and Administrative Procedure, Official Gazette No. 21 dated 04/23/2008.
- The Tax Procedure Code.