

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

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صلاحيات قاضي تطبيق العقوبات في تنفيذ عقوبة العمل للنفع العام

وفق قانون 24-06 المعدل والمتمم لقانون العقوبات الجزائري

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Abstract:

The Algerian legislator has entrusted the task of implementing the community service sentence to the sentence enforcement judge. In this regard, from the moment the case file related to this sentence is received by the public prosecutor's office until the completion of its execution, the judge is granted a range of powers intended to ensure the proper enforcement of the sentence. To this end, the judge may also undertake any action or procedure necessary to resolve issues that may arise at any stage of execution and that may hinder the achievement of the intended purpose. This study aims to define and analyze the powers of the sentence enforcement judge in the implementation of community service sentences, as the judicial authority responsible for supervising their execution.

Key words: the community service sentence, the sentence enforcement judge, the host institution, the convicted.

Introduction:

The enforcement of criminal penalties holds paramount importance due to its impact on the individual rights of the convicted person and on their future. Thus, the supervision and management of the offender during the execution of their sentence has become one of the primary priorities of the modern penal system, as the goals of deterring criminal behavior and combating crime cannot be fully achieved without the proper application of sanctions.

Accordingly, within the framework of judicial oversight of the execution of sentences and their alternatives, the Algerian legislator has established the system of the sentence enforcement judge, granting this authority broad powers and prerogatives under the law. As one of the most significant alternative sanctions recognized by the legislation, the community service sentence falls under the responsibility of the sentence enforcement judge, who is tasked with ensuring its proper implementation. To this end, the judge is vested with a variety of powers, starting from the moment the case file is received from the public prosecutor until its closure.

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"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

The community service sentence is an alternative penalty carried out outside the premises of penal institutions, requiring coordination among the various authorities involved in its implementation—with the sentence enforcement judge playing a central role. The judge is authorized to make decisions concerning the sanction and to adopt various preliminary and final measures to ensure its proper execution.

Given the significance of this subject, the present study addresses the following central question: **To what extent does the sentence enforcement judge, through the prerogatives granted by law, succeed in ensuring effective oversight of the execution of community service sentences?**

In order to respond to this question and to determine and analyze the various powers granted to the judge by law, we have chosen to structure this study into three main sections. The first section addresses the judge's powers prior to the implementation of the sentence; the second section examines their powers during the actual execution phase; and the third section explores the challenges and obstacles the judge faces in the enforcement and practical application of the sentence.

1- Powers Prior to the Implementation of the Sentence

Upon receipt of the community service sentence file by the Public Prosecutor's Office, the Sentence Enforcement Judge¹ carefully examines the file before recording it in the registry dedicated to community service case². This registry, which is opened at the beginning of each Gregorian calendar year and closed at the end of the same year, assigns each case a serial number, receipt numbers, the filing date, as well as the full name of the beneficiary, the date of the ruling or decision, and the court that rendered it. All these details are recorded on the case file's cover.

The file also contains information about the judicial council to which the court belongs, the duration of the original sentence, the substituted sentence expressed in hours of community service, and the nature of the offense committed. Additionally, a specific color code is assigned to each file, distinguishing it from those originating from other courts, with each court being identified by a particular color³.

At the next stage, the convicted individual is summoned by a bailiff, who specifies in the summons that failure to appear on the appointed date may result in the reinstatement of the original custodial sentence. If necessary, the judge may instead schedule attendance at the court premises in the region where the convicted person resides.

To initiate preliminary procedures, the judge verifies the individual's identity as indicated in the ruling or decision, along with their social, professional, health, and family status⁴. These steps involve subjecting the person to a medical examination (1.1), after which the host institution will be determined (1.2).

1.1- Subjecting the Convicted Person to a Medical Examination

In line with French legislation, Algerian law through Ministerial Circular No. 02 on the modalities of implementing community service requires that the convicted person undergo a medical examination conducted by a prison facility doctor located at the court seat or judicial council, as applicable. The purpose is to assess the person's health and issue a report to enable the judge to assign work that aligns with their physical condition.

Based on this, it is clear that the medical examination seeks to ensure the physical and psychological fitness of the convicted person and to assign them work that suits their capabilities.

1.1.1 Ensuring the Physical and Mental Integrity of the Convicted Person

The medical examination is essential to ensure the convicted individual is fit to carry out the assigned work and to prevent the spread of contagious or dangerous diseases in the institutions

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

where the sentence will be executed. This is critical both for the wellbeing of the convicted person and for the oversight authority supervising the sentence⁵.

It is noteworthy that Circular No. 02 does not mention the necessity of referring the individual to a psychologist or psychiatrist, despite the importance of such an evaluation⁶. It limits itself to verifying physical integrity, although the expression *medical examination* technically encompasses both physical and psychological assessments. Mental disorders can significantly hinder the judge's ability to assign appropriate work and may complicate execution, just as physical disabilities or infectious diseases would matters the legislator ought to have addressed in detail.

1.1.2 Determining the Type of Work Assigned

The medical examination allows the judge to assess the physical and psychological capabilities of the convicted individual, aiding in the selection of suitable work, as stated in the aforementioned circular. The selected work must align with the individual's capabilities and consider the details of their social background file, which includes information on their family, social, academic, and other life aspects⁷.

The selected job should facilitate rehabilitation and reintegration into society. However, the law does not specify how such jobs should be selected. The circular merely states that the judge should choose a job from among existing positions, based on the person's abilities. These jobs typically fall into the following categories:

- Environmental preservation, including green spaces, beaches, and damage repair
- Maintenance work such as painting, cleaning, construction, and upkeep of public parks
- Heritage conservation, including the restoration and cleaning of public buildings
- Solidarity-based work assisting individuals with special needs

The judge must also consider the individual's age and gender, and adhere to legislative and regulatory provisions related to employment. For example, minors should not be removed from their family environment and must be allowed to continue their studies. Night work must be avoided, and the individual's qualifications must be considered when assigning work⁸.

1.2 Designating the Host Institution

Algerian law restricts the institutions authorized to host convicted individuals for community service to public legal entities or associations recognized as being of public interest and/or utility, as per Article 5 bis 1 of the Penal Code⁹. Public legal entities include institutions under the authority of the state and local authorities such as wilayas, communes, hospitals, schools, and courts. This raises the question: How are these institutions designated (1.2.1) and what role do they play in the implementation of the sentence (1.2.2)

1.2.1 How the Host Institution is Designated

The Algerian legislator has not specified in either the Penal Code or the aforementioned circular how the judge is to select the entities that will host convicted individuals for community service. This responsibility is left to the discretion of the judge, who may directly contact public institutions within his or her jurisdiction or act through the external services of the penitentiary administration to offer them the opportunity to host such individuals.

If an institution agrees, the judge verifies that it meets the necessary conditions and is capable of supporting reintegration efforts. Agreements are then signed to outline the institution's obligations.

Public institutions may also submit requests to host convicted individuals directly to the judge and the penitentiary administration. Upon sentencing, the judge issues a placement decision assigning the individual to one of the institutions that expressed interest.

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

It is worth noting that convicted individuals are often assigned to courts for cleaning tasks or to training centers affiliated with the Ministry of Justice or municipalities.

1.2.2 The Role of Host Institutions in the Implementation of the Sentence

Algerian law provides that community service is to be performed in public institutions governed by public law, and the work performed by the convicted person is considered a public asset benefiting the state treasury, which also covers insurance costs.

These institutions play a key role in overcoming obstacles to implementing the sentence and in giving real meaning to the sanction. Their duties include:

- Taking into account the individual's academic qualifications in their work assignment
- Clearly expressing consent to host the convicted person, ensuring the person's rights are protected, and providing coverage for workplace injuries and illnesses
- Promptly informing the judge of any failure by the individual to meet their obligations
- Submitting a work tracking report to the judge and notifying them upon completion

2. The Powers During the Punitive Execution Phase

After completing the preliminary steps outlined in the first chapter, the sentence enforcement judge issues a placement decision that includes various details such as the date and number of the judgment, the full name of the beneficiary, their date and place of birth, place of residence, the institution where the work will be carried out, the duration of the work, the associated program, and the start and end dates of the work. Additionally, this decision includes a set of conditions that the concerned person must adhere to¹⁰.

The judge also informs the beneficiary, the host institution, and the external services of the prison administration responsible for the social reintegration of detainees about this placement decision. Once this stage is completed, the convicted person is ready to begin work in the designated institution. However, the role of the sentence enforcement judge does not end with the issuance of this decision; the judge is also responsible for monitoring the execution of the sentence, as will be discussed in the next section. Moreover, the judge has the authority to amend previously adopted measures, a matter addressed in the following point.

2.1 Monitoring the Execution of the Sentence

The sentence enforcement judge implements all necessary measures to ensure that the sentence of community service is executed in accordance with the provisions of Article 5 bis 3 of the Penal Code. Under this provision, the law grants the judge the authority to modify certain procedures they initially put in place (2.1.1), as well as the power to temporarily suspend the execution of the assigned work (2.1.2).

2.1.1 Modification of Certain Procedures

As previously discussed, the sentence enforcement judge is responsible for selecting the nature of the work assigned to the convicted person and the host institution¹¹. The judge also sets the work schedule, including the total number of hours and how they are distributed, in agreement with the host organization. Moreover, the judge monitors the implementation of the sentence.

However, these measures may be adjusted either by the judge or upon request from the host institution or the convicted person if they appear to hinder the proper execution of the sentence or disrupt the normal life of the convicted individual.

In this regard, and in accordance with Article 5 bis 3 of the Penal Code, any difficulties that may obstruct the effective implementation of the community service sentence shall be brought to the judge, who is empowered to take all necessary actions to resolve them. This may include modifying the work schedule or changing the host institution¹².

It is important to note that these adjustments aim to ensure the smooth execution of the community service sentence and achieve its purpose through the rehabilitation and social

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

reintegration of the offender. Therefore, when selecting the type of work, defining the work hours, and choosing the host institution, the judge must ensure that the convicted person's social, familial, and professional life remains undisturbed¹³.

However, it may prove challenging for the judge to make such adjustments, compelling them at times to temporarily suspend the implementation of the sentence until the reasons for the interruption are resolved. This matter will be addressed in the next section.

2.1.2 Suspension of the Sentence

Pursuant to Article 5 bis 3 of the Penal Code, the sentence enforcement judge has the authority to suspend the execution of the community service sentence if a serious reason justifies it, particularly when the social, medical, or family circumstances of the convicted person so require. This decision can be initiated by the judge themselves or made in response to a request submitted by the convicted person or their legal representative.

The suspension remains in effect until the reason that justified it no longer exists, provided that copies of the suspension order are communicated to all parties responsible for supervising the sentence, namely: the public prosecutor, the host institution, and the external department of the prison administration.

During the execution of the sentence, the convicted person may be exposed to bodily injury or other external circumstances, such as being summoned for national service. In such cases, the judge may suspend the sentence until the reason for the interruption is no longer present. The judge holds full authority to conduct any necessary investigations to verify the validity of the claimed reason and to notify the Public Prosecutor accordingly.

It is important to emphasize that when the execution of the sentence is interrupted, the period of suspension is not counted toward the total duration of the community service. Consequently, the convicted person must complete the remaining hours of work once the suspension reason ceases to exist.

2.2 Termination of the Sentence

The sentence enforcement judge, as the competent authority overseeing the execution of community service, holds the power to terminate the sentence once the convicted individual has completed the assigned work in accordance with the regulations (2.2.1). The judge may also order early termination of the sentence even if it has not been fully carried out, in the event of a breach by the offender of the imposed obligations (2.2.2).

2.2.1 Completion-Based Termination of the Sentence

A person sentenced to community service must comply with the obligations set by the sentence enforcement judge. Chief among these is appearing before the judge when summoned, as this signals the start of the alternative sentence. The offender must also commit to performing the assigned work as specified in the placement order, in line with the schedule agreed upon with the host institution. This includes signing the attendance sheet on each workday and responding to all summonses issued either by the host institution or by the sentence enforcement judge, especially when they concern work organization or addressing problems that may arise during execution¹⁴. The individual must also comply with all monitoring measures imposed.

The community service sentence is deemed completed once the assigned work has been carried out appropriately and within the legally prescribed period¹⁵, provided that the individual respects all imposed conditions and avoids any misconduct during the execution of the sentence, whether with the supervisors of the institution, public officials, or any other individuals¹⁶.

Therefore, successful completion of community service constitutes full execution of the sentence¹⁷. However, if the offender fails to comply with the obligations of the community service

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

sentence without valid justification, the judge may adopt strict measures, including terminating the execution of this sentence altogether, as detailed in the next section.

2.2.2 Termination of the Sentence Due to Non-Compliance

The community service sentence is consensual in nature and cannot be imposed on the offender without their explicit agreement. The convicted individual performs the assigned work voluntarily, without coercion by the judge. Nevertheless, once consent is given, it becomes a binding obligation, and the individual may not withdraw without a legitimate excuse.

If the obligations are not respected, the sentence enforcement judge may terminate the sentence and notify the Public Prosecutor, who in turn sends a report to the Criminal Records Office to annotate it on Form No. 1 and in the margins of the original judgment or decision.

A. Forms of Violations Committed by the Offender During Execution

Violations of the community service sentence may take various forms, making it clear that the offender has no intention of complying. Such violations include:

- Failure to respond to a summons issued by the sentence enforcement judge¹⁸.
- Refusal to report to the assigned host institution¹⁹.
- Appearing at the host institution but leaving without valid reason.
- Failure to comply with monitoring requirements associated with the sentence.
- Committing a criminal offense during the execution of the community service sentence²⁰.

B. Sanctions for Violating the Execution

According to Article 5 bis 4 of the Penal Code, violation of the terms of the community service sentence results in its termination and the enforcement of the original custodial sentence that had been substituted²¹. The offender must be informed of this sanction in accordance with Article 5 bis, which obliges the judge to warn them that failure to meet their obligations will result in reinstatement of the prison sentence.

The sentence enforcement judge must issue this warning clearly, preventing the offender from claiming ignorance such as believing they could simply make up missed work later. The law focuses on the breach of obligations without justification and does not allow for second chances before enforcement of the custodial sentence.

In other words, the offender forfeits the opportunity to resume the community service, and the original prison sentence is fully enforced without reduction, regardless of how much of the alternative sentence had already been served—even if only one day remained—because the individual had voluntarily committed to the alternative punishment before the judge²².

3. Problems in the Application of the Sentence Raised Before the sentence enforcement judge

The Algerian legislator has set forth certain conditions that must be met in order for a defendant to benefit from the sentence of community service as an alternative to deprivation of liberty. However, the practical reality of applying this alternative punishment has revealed several violations and obstacles that can impede the sentence enforcement judge in the performance of their duties and in ensuring the smooth implementation of the sentence.

These issues can be divided into two categories:

- Problems beyond the control of the sentence enforcement judge (3.1), and
- Problems arising from the sentence enforcement judge themselves (3.2).

3.1 Problems Beyond the Competence of the sentence enforcement judge

These are issues that may arise before the penal execution stage, i.e., before the case file reaches the sentence enforcement judge. They may also occur after the file has been transmitted to the judge—for example, due to errors committed by trial judges or criminal chamber judges,

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

such as failing to comply with legal requirements by imposing community service without informing the convict or obtaining their consent.

When such legally flawed decisions are forwarded to the sentence enforcement judge for execution, they encounter enforcement problems²³. According to Article 14 of Law No. 05-04: "Disputes relating to the enforcement of penal judgments shall be submitted, by request, to the court that rendered the decision.

The request may be submitted by the Public Prosecutor, the Prosecutor General, the sentence enforcement judge, the convicted person, or their counsel. If the request is submitted by the sentence enforcement judge or the convicted person, it shall be forwarded to the Prosecutor General or the Public Prosecutor, who must provide written submissions within eight (8) days."

In practice, however, it has been observed that the Public Prosecutor's Office sometimes fails to schedule objections before the competent court, arguing that trial judges have discretionary power to grant alternative penalties to whomever they choose even if this power is exercised in violation of the law. And even when such objections are formally raised, they are rarely addressed despite their legality.

The implementation of community service can also be obstructed by purely administrative procedures, such as delays in forwarding case files to the sentence enforcement judge, or submitting files that are incomplete, thereby obstructing the enforcement process.

One of the most serious obstacles faced by sentencing judges is the difficulty in notifying the convict of the alternative sentence, primarily due to delays caused by judicial officers (*huissiers de justice*) responsible for carrying out the notifications²⁴. The beneficiary may end up not being notified at all, especially if an appeal has been filed.

To address this, a practical arrangement has been made between the Public Prosecutor's Office and the sentence enforcement judge: the convicted person is notified immediately in court following the judgment, using a pre-prepared notification record. Furthermore, the person is directed to report to the sentence enforcement judge on a date jointly set by the prosecution and the judge. This measure has proven highly effective, although some members of the Public Prosecutor's Office oppose it due to its questionable legality²⁵.

In some cases, even when the convict has been legally notified, they may still fail to fulfill their obligations under the alternative sentence. In such cases, the sentence enforcement judge draws up a violation report and informs the Public Prosecutor to initiate enforcement of the original custodial sentence under Article 5 bis 4 of the Penal Code. However, the Public Prosecutor may refrain from acting, possibly due to pressure from the beneficiary or their family²⁶, and may instead refer the matter back to the Sentence Enforcement Judge placing the latter in a difficult position.

3.2 Problems Arising from the sentence enforcement judge

The sentence enforcement judge themselves may also be the source of obstacles to the effective enforcement of community service sentences. This can occur for several reasons, such as excessive workload, or lack of material and human resources that would otherwise facilitate the enforcement process—such as the absence of assistants or social specialists tasked with supervising the execution of the sentence. Without these supports, the sentence loses its intended rehabilitative and exemplary character²⁷.

It is clear that these problems are not solely attributable to the sentence enforcement judge but rather to the legislator, who has failed to establish an appropriate institutional framework for managing this type of sentence.

As a solution, it is proposed to create a specialized Court for the Execution of Sentences, in which the sentence enforcement judge would be integrated—similar to models adopted by other legal systems.

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

Conclusion

The sentence enforcement judge is considered the magistrate specifically responsible for supervising the execution of criminal penalties and their alternatives as issued by various criminal courts. This judge is selected from among magistrates who hold at least the rank of a court-level judge and who demonstrate particular interest and expertise in the penal system. Beyond the duties formally assigned to them, the judge ensures the proper implementation of community service as an alternative to short-term imprisonment and is tasked with resolving any issues that may arise in the course of its execution.

This magistrate also serves as the principal mediator in the process of social reintegration for individuals sentenced to community service, assuming from the outset responsibility for receiving the convicted persons, managing all procedures related to their work assignments, and monitoring their performance until completion.

Through this research study, and in order to prevent certain obstacles that may hinder the sentence enforcement judge in carrying out their mission, we propose the following recommendations:

- It is essential to clarify the process for determining the work assignments designated to individuals sentenced to community service. This should be modeled after the French legislature's approach, which obliges host institutions to maintain a registry of proposed work assignments on which the judge can rely after consultation with the relevant authorities.
- The sentence enforcement judge should take into account the convict's original profession when assigning them to community service. If the convict is employed, efforts should be made to assign them tasks related to their existing job or at least similar in nature. This enables more efficient execution of the sentence, leveraging the offender's experience and better achieving the rehabilitative goals of the sentence.
- There is a need to amend Article 5 bis 3 of the Penal Code as follows:
 - (a) Expand the list of eligible host institutions to include private-sector entities.
 - (b) Introduce a provision that, in the event of suspension of the community service sentence due to a valid and serious reason, the calculation of the sentence duration (capped at 18 months) shall be paused, with the revised period beginning from the date on which the serious reason ceases to exist.
- There is a need to include in the law a specific provision addressing the situation where a person sentenced to community service commits a liberty-depriving offense during their sentence. In such cases, execution of the community service sentence should be suspended, allowing for its resumption after the custodial sentence has been served. This would avoid applying the original prison sentence as a punitive response to breach of obligations and would thereby eliminate conflict with the principle of non-cumulative sentencing, especially since there is a final judgment separating the two penalties. The current practice contradicts the provisions of Article 33 of the Penal Code.

Given that the community service regime was primarily established to avoid the harmful effects of incarceration particularly due to its failure to fulfill its intended deterrent function and prevent recidivism we strongly recommend its systematic and consistent activation by judges whenever the legal conditions for its application are met.

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

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¹ a specialized judge responsible for the implementation of penalties and their alternatives, appointed by the Minister of Justice and Keeper of the Seals within the jurisdiction of each Judicial Council (see Article 22 of the Law on Prison Organization and Reintegration of Inmates).

² The register for the receipt of community service sentence files is opened at the beginning of each Gregorian year and is closed at the end of the year

³ Sayeh Sangouga, *The Sentence Enforcement Judge or the Social Reintegration Institution for Prisoners: Between Legal Framework and Reality under Algerian Legislation (An Evaluative Scientific Perspective)*, Dar Al-Huda, Ain Melilla, Algérie, 2013, pp.160 -161.

⁴ Ministerial Circular No. 02 of 21/04/2009 concerning the Procedures for the Implementation of Community Service Sentences, Ministry of Justice, People's Democratic Republic of Algeria, p. 4.

⁵ Haitham Khadraoui, *Alternative Sentences to Imprisonment*, Magister Thesis in Business Law, Faculty of Law, Economic and Political Sciences, Sousse, Tunisia, p. 51.

⁶ Sayeh Sangouga, *op.cit.*, p. 162.

⁷ Social Investigation File: This is a file that contains all information related to the convicted person's social, family, academic, and other circumstances (see Ministerial Circular No. 02, p. 2)

⁸ Circulaire ministérielle n° 02, *op.cit.*, p. 05.

⁹ Law No. 24-06 of 28 April 2024 amending and supplementing Ordinance No. 66-156 of 8 June 1966 on the Penal Code.

¹⁰ Sayeh Sangouga, *op.cit.*, p. 163.

¹¹ Ministerial Circular No. 02, 2009, p. 5.

¹² Ministerial Circular No. 02, 2009, p. 6.

¹³ Ministerial Circular No. 02, 2009, p. 4.

¹⁴ Abderahmane Khalfi, *Alternative Sentences: A Comparative, Analytical and Case Law Study*, Al-Halabi Legal Publications, Beirut, p. 182.

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¹⁶ Khaled Chinoune, *Community Service as an Alternative Sentence to Deprivation of Liberty*, Magister Thesis, Faculty of Law, University of Algiers 1, 2009–2010, p. 111.

¹⁷ Rami Metouali Abdelouaheb Ibrahim, *Community Service Sentences in Comparative Criminal Legislation*, First Edition, Cairo, Egypt, 2012, p. 147.

¹⁸ Ministerial Circular No. 02, 2009, p. 5.

¹⁹ Sayeh Sangouga, 2013, p. 165.

²⁰ Sayeh Sangouga, 2013, p. 165.

²¹ Abderahmane Khalfi, *op.cit.*, p. 183.

²² Sayeh Sangouga, *op.cit.*, p. 166.

²³ Sayeh Sangouga, 2013, p. 146.

²⁴ Sayeh Sangouga, 2013, pp. 174–175.

"The Powers of the Sentence Enforcement Judge in the Execution of Community Service Sentences under Law 24-06 Amending and Supplementing the Algerian Penal Code "

²⁵ Sayeh Sangouga, 2013, p. 167.

²⁶ Sayeh Sangouga, 2013, p. 180.

²⁷ Ouadira Oouafae, Community Service as a Criminal Sanction (Master's Thesis in Advanced Studies in Criminal Sciences), Faculty of Law and Political Science, Tunisia, University of El Manar, (2000–2001), p. 78.