# The Technique of Re-Insertion: Between Permissibility and Obligation

# تقنية اعادة الإدراج : بين الجوازية والالزامية

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**Date of send**: 05/07/2025 **Date of acceptance**:18/12/2025 **Date of publication**:11/06/2026

**Abstract:**

The study aims to review and clarify the distinctive nature of the reinstatement remedy for a worker dismissed unfairly by the employer. It recognizes that the Algerian legislator has retreated from the protective role traditionally associated with the employment relationship by abandoning the nullity doctrine and instead applying the doctrine of abuse. This shift means compensating the injured party with equitable compensation. Such compensation is discretionary, as both parties in the employment relationship are free to accept reinstatement while retaining acquired benefits, or to receive monetary compensation if reinstatement is rejected provided this refusal is expressed during the proceedings. However, if neither party expresses their intention before the judgment is rendered, the employer is obligated to reinstate the worker under the threat of a coercive fine.

Through the study of this subject, it has been revealed that this mechanism constitutes one of the established safeguards designed to protect workers from arbitrary dismissal, as it enshrines the principle of in-kind compensation. On the other hand, the effectiveness of this mechanism can only be achieved through the adoption of a balanced approach grounded in flexibility—by ensuring its mandatory application while preserving the employee's acquired benefits, and allowing recourse to monetary compensation when its implementation becomes impossible. This balance aligns with the objectives of social justice and the requirements of economic stability within employment relations.

**Keywords:** Acquired Benefits – Coercive Fine – Compensation – Employment Relationship – Reinstatement – Unfair Dismissal.

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## Introduction

The general principle dictates that the compensation a harmed party is entitled to claim must be full and equivalent to the value of the damage whether material or moral aiming to restore the injured party to the state they were in prior to the occurrence of the harm, whenever possible. Compensation must neither fall short of nor exceed the value of the damage to be remedied.

However, this principle, as established in civil law, cannot be directly applied to employment relationships. Specifically, Article 73 bis 4 of Law No. 90-11[1] marks a shift from the full compensation principle under civil law to the principle of equitable compensation, seeking to strike a balance between the conflicting rights of the parties in the employment relationship. This approach considers the employer's economic interests on one hand, and the worker's job stability on the other.

A worker is entitled to compensation in cases of unfair dismissal, which may take the form of specific performance aimed at "restoring the situation to what it was before the damage occurred," namely reinstating the employee to their previous position. Specific performance is regarded as the most effective civil remedy, as it fully repairs the harm by restoring the prior state.

Accordingly, the central problem addressed in this research paper lies in the following: To what extent is in-kind compensation considered a distinctive safeguard for the worker and a support for their stability in their job?

The study of the specificity of the reinstatement remedy is of great importance given its role in ensuring the continuity of employment relationships. It constitutes a form of specific compensation awarded to the worker in response to the employer's abusive decision, which is void due to the employer's failure to comply with the substantive rules governing both disciplinary and economic dismissals. This remedy is considered the most distinguished and equitable sanction. However, it is inconceivable to compel the employer to reinstate the worker or to force the worker to continue employment following dismissal, as doing so would violate personal freedoms and undermine the contractual relationship.

Moreover, the importance of this topic is underscored by the Algerian legislator's introduction of a coercive fine as a means to compel the employer to comply with judicial orders mandating the worker's reinstatement, once the court determines that the employer had demonstrated resistance to reinstatement prior to the judgment. This fine represents a financial penalty distinct from the compensation prescribed under Article 73 bis 4 of Law No. 90-11.

This study aims to analyze the reinstatement technique as one of the most important legal mechanisms for protecting workers from unjust dismissal. It seeks to examine its development between the principles of permissibility and obligation, since both parties in the employment relationship may either accept or reject reinstatement during the judicial proceedings.

If the worker accepts, they retain all their acquired benefits. In contrast, if the worker refuses, they are entitled to monetary compensation of no less than the equivalent of the last six months' wages received.

However, if both parties to the employment relationship abstain from expressing their will, the court issues a ruling for mandatory reinstatement, which is then enforced either through compensation according to general legal rules or by means of a coercive fine.

To address the research problem, an analytical approach was adopted. This involved examining a range of legal provisions related to the specificity of the reinstatement remedy in employment relations, supplemented by an analysis of Supreme Court rulings that enrich and clarify the subject matter.

To answer the posed question, the study is structured as follows:

- First Section: The Effect of Accepting Reinstatement by the Parties to the Employment Relationship
- Second Section: The Effect of Rejecting Reinstatement by the Parties to the Employment Relationship

**Firstly: The Effect of the Parties' Acceptance of Reinstatement in the Employment Relationship**

The Algerian legislator, by adopting a liberal system, has retreated from the protective role traditionally associated with labor legislation, abandoning the theory of nullity that guaranteed compulsory reinstatement and strong protection for workers. Instead, the legislator has applied the theory of abuse, favoring equitable compensation for the injured party, which may take the form of reinstatement or monetary compensation to remedy the harm suffered.

This compensation is characterized by its discretionary nature, as both parties to the employment relationship have the freedom to accept reinstatement, or to receive monetary compensation if reinstatement is refused. In this latter case, the judge exercises discretion in determining the amount, provided this is expressed during the proceedings.[2] However, if neither party expresses their intention following the court's judgment, the mandatory reinstatement mechanism is then applied.

**1. Discretionary Reinstatement of the Employee to Their Position**

Reinstating an employee to their former position is widely regarded as the most equitable and beneficial remedy following an arbitrary dismissal. Despite its potentially destabilizing effect on the contractual relationship, compelling the employer to reinstate the employee or obliging the employee to resume their position cannot be reasonably justified. Such compulsion would constitute an infringement on individual freedoms, ultimately undermining both the contractual bond between the parties and the operational interests of the organization.[3] Accordingly, reinstatement is considered a discretionary rather than mandatory measure for either party involved in the employment relationship. This principle is evident in the provisions of Article 73 bis 4,[4] which grants both parties the right to either accept or reject reinstatement, without conferring any discretionary authority on the judge in this regard.

The reinstatement mechanism is defined as the reintegration or return of an employee who has been arbitrarily dismissed to their original position. This right allows the employee to resume their duties in the same role or, where that is not

feasible due to the position no longer being vacant or having been eliminated from the organizational structure comparable position.[5]

Therefore, reinstatement may be defined as the possibility of returning an arbitrarily dismissed employee to their former position or to an equivalent one, in cases where the original role is no longer available due to vacancy issues or its removal. This mechanism is also referred to as specific compensation, meaning it aims to restore both parties in the employment relationship to the status quo that existed prior to the issuance of the dismissal decision.

**2.Acquired Benefits Arising from the Parties' Acceptance of Reinstatement**

If both parties express their consent to reinstatement, such reinstatement must occur either in the same position or in a comparable one with equivalent remuneration. In this case, the employee retains all rights previously enjoyed under the employment relationship,[6] which the Algerian legislature refers to as "acquired benefits". These rights are maintained from the date the employer issued the dismissal decision up to the issuance of the judgment ordering reinstatement.

**1.1. Definition of Acquired Benefits**

The judge may propose to the disputing parties the reinstatement of the employee. If this reinstatement is accepted, the parties are restored to the status they held prior to the date of dismissal. Consequently, the employment contract is considered uninterrupted by the employee's return to their position, maintaining all previously acquired benefits. This approach reinforces the guarantee of compensating the employee for damages resulting from violations committed by the employer.

Acquired benefits are defined as contractual improvements to workers' rights, derived either from legislation, regulations, collective agreements, or the employment contract itself. Examples include notice periods, paid leave, retirement compensation, and the company's wage scale, among others.[7] Acquired benefits represent the entitlements the employee enjoys upon joining their position, sourced from legislation, regulations, collective agreements, or the employment contract.

An employee who has been unfairly dismissed must claim these acquired benefits explicitly and in detail, as the judge is bound by the content of the claims and cannot substitute the parties in expressing their demands. The judge also cannot grant more than what has been requested. Furthermore, these benefits must be existing rights rather than potential ones. This was affirmed by the social chamber of the Supreme Court in its definition of acquired benefits as existing, non-contingent rights that the employee derives either from the law, internal regulations, the employment contract, or collective agreements that the employee benefited from throughout the duration of the employment relationship.[8]

**1.2. Timing of the Accrual of Acquired Benefits**

The legislator did not specify the exact timing for the accrual of acquired benefits. Rather, the employee retains all the rights they enjoyed from the date of dismissal until the date the reinstatement ruling is issued, except for seniority, which remains frozen from the date of dismissal until reinstatement. This results in the non-payment of wages for the period corresponding to work performed, which conflicts

with the Supreme Court ruling No. 221338 dated July 11, 2001, which states: "It is the consistent jurisprudence of the Supreme Court that acquired benefits include, by definition, the employee's wages, and that these wages cover the period between dismissal and the issuance of the judgment, and may not extend beyond that."

The Algerian legislator should have mandated the payment of wages as an acquired benefit from the date of dismissal considered unfair until the employee's actual reinstatement to their original position. This contrasts with the laws prior to Law No. 90-11, which granted the judge broad authority to compel the employer to reinstate an unfairly dismissed employee, thereby reinforcing job stability. Under the previous regime, the employer's dismissal decision was nullified, compulsory reinstatement was ordered, and the employee was entitled to all benefits accrued during this period, including payment of wages. This was understood as a continuation of the employment relationship as if uninterrupted.

This approach led certain judicial authorities, even after the enactment of Law No. 90-11, to accept wage claims by unfairly dismissed employees contradicting the explicit provisions of Article 73 of the same law, which denies wages to unfairly dismissed employees, granting only compensation instead. The amount of compensation is at the judge's discretion, based on the harm suffered by the employee, consistent with the principle that wages are remuneration for work performed.[9]

Furthermore, the employee cannot simultaneously benefit from compensation, as Article 73bis-4 of Law No. 90-11 explicitly addresses the consequences of unfair dismissal. In cases where reinstatement is ordered, the employee retains all acquired benefits without entitlement to compensation. Compensation is granted only if the employer refuses reinstatement. This position is affirmed by the Supreme Court's ruling No. 199695, which states: "Awarding compensation to the employee following the annulment of the dismissal decision and the order to reinstate the employee constitutes a violation of Article 73/4 of Law 91-29. The court should have declared that the employee retains their acquired benefits."[10]

**Secondly: The Impact of Reinstatement Refusal by Either Party to the Employment Relationship**

The possibility for either party to refuse reinstatement adds a degree of flexibility to this mechanism. However, such refusal must be expressly declared during the proceedings related to the dismissal that is, at the early stages of litigation and before a ruling is issued. This position has been affirmed by the Supreme Court in Decision No. 223318,[11] which held: "The objection concerning the refusal of reinstatement must be raised during the proceedings related to the dismissal, and not at the stage of enforcement.".

In contrast, once a ruling ordering reinstatement has been issued, the employee is either entitled to compensation in accordance with general legal principles, or the employer may be compelled to comply under threat of a penalty payment. In such cases, the reinstatement mechanism becomes mandatory.

### 1. Discretionary Nature of Reinstatement Refusal During Proceedings

In accordance with the principle of *pacta sunt servanda* (contracts must be honored), the will of the parties governs the employment relationship. As such, only the mutual consent of the parties can create binding obligations.[12] Therefore, both the employer and the employee retain the right to refuse reinstatement during the course of legal proceedings, affirming that reinstatement remains a discretionary remedy at this stage. This reflects a shift in labor law from a prescriptive, regulatory model toward one that emphasizes mutual agreement and contractual autonomy.

Moreover, labor judges are not vested with the authority to impose reinstatement upon either party. The judge may propose reinstatement as a potential remedy but cannot compel its acceptance.[13] Thus, reinstatement is initiated at the judge's discretion but is not binding it remains an optional measure.[14] However, the judge retains discretion to determine financial compensation in cases where one party declines reinstatement, in addition to awarding the employee all potential forms of compensation necessary to redress the harm suffered.

#### 1.1.Monetary Compensation as a Consequence of Refusing Reinstatement:

Any dismissal deemed arbitrary entitles the affected employee to financial compensation for the harm suffered and the lost earnings. Monetary compensation refers to the sum the employer is obligated to pay the employee as redress for the damages incurred as a result of arbitrary dismissal. This applies in cases where either party in the employment relationship refuses reinstatement.[15] Article 73 bis 4 of Law No. 90-11 explicitly states: "…or in the event that either party refuses [reinstatement], financial compensation shall be granted in an amount not less than the wages the employee would earn for six months of work, without prejudice to any other potential compensation."

Accordingly, the labor judge is required to rule on the subsidiary claim involving the refusal of either party to reinstate the employee, as the judge is bound by the claims raised by the parties.[16] In such a case, the court must issue a final ruling ordering the payment of monetary compensation not less than the equivalent of six months' wages, the amount of which is to be determined by the judge upon fulfillment of specific conditions for entitlement.

#### 1.2. The Judge's Discretion in Determining the Compensation Amount

The labor judge holds discretionary power to award monetary compensation and enjoys broad authority in its assessment. This constitutes one of the safeguards granted to employees dismissed arbitrarily. The Algerian legislature has only set a minimum threshold, leaving the determination of the maximum amount to the judge's discretion based on general legal principles. The judge may increase the compensation to adequately redress the harm suffered by the employee as a result of the unlawful termination. This was affirmed by Supreme Court Decision No. 214574,[17] which stated: "It is well established in jurisprudence that the assessment of compensation for arbitrary dismissal falls within the discretionary power of the trial judge and is not subject to review by the Supreme Court, provided that the judge

establishes the arbitrary nature of the dismissal and assesses compensation in accordance with the damage suffered by the employee."

However, the compensation awarded to an employee dismissed unfairly is often criticized for being inadequate, as no amount of compensation can fully replace reinstatement to the employee's original position. Consequently, the Algerian legislator should have maintained the mandatory nature of reinstatement alongside compensation for the damages suffered by the employee, as was the case prior to the amendment of Article 73 bis 4.[18]

Another criticism concerns the judicial rulings related to such cases, which are issued as final and binding without the possibility of appeal, thereby bypassing the principle of two-tier litigation. This results in the absence of oversight over the trial judge's authority by higher courts regarding the accuracy of the compensation's determination and assessment.

Furthermore, the damage may be moral or psychological in nature. However, the Algerian legislator, under Law No. 90-11, did not explicitly address this type of damage, as the compensation is prescribed in general terms. This contrasts with the provisions of Article 6/2 of Law No. 78-12, which states that "the law guarantees... compensation for both material and moral damages suffered by the worker.".[19]

Moral damage essentially refers to the employee's feeling of uselessness and being perceived merely as a dispensable consumer, especially in light of their inability to meet the demands of those under their responsibility. The employee always views the employment relationship as a source of livelihood and life security, and losing this position directly affects their financial and social status.

Therefore, the Algerian legislator should have included compensation for moral or psychological harm within the provisions of Article 73 bis 4 of Law No. 90-11, as this would strengthen the protection afforded to the employee by ensuring fair and equitable compensation relative to what was lost.

**1.3.Examination of the Judge's Conditions for Awarding Compensation**

The social judge must consider whether the employee meets the conditions entitling them to compensation, which are as follows:

– The claimant must have the status of an employee.

– The dismissal decision must have been issued by the employer, whether on disciplinary or economic grounds.

– The dismissal decision must have been made in violation of legal or contractual procedures.

– The social judge must respect the legally established minimum compensation, which corresponds to the employee's wages for the last six months of employment.

– The judge must consider the employee's seniority, meaning the duration of employment with the employer, in addition to the salary the employee was receiving.[20]

– The period considered by the judge for calculating compensation extends from the date of dismissal until the issuance of the judicial ruling; it does not include the time between the ruling and its execution.

**2. Potential Compensation as a Consequence of Refusal to Reinstate**

An employee unfairly dismissed is entitled to compensation that is at least equivalent in significance to their previous benefits, specifically compensation for potential damages. Article 73bis-4 of Law No. 90-11 includes the phrase "without prejudice to potential compensation," yet the provision has been criticized for its lack of clarity regarding its scope. It merely affirms the employee's entitlement without defining the nature of such compensation, diverging from general legal principles which recognize civil compensation as limited to actual damages rather than hypothetical ones.

The term "potential compensation" here refers to lost opportunities. While the occurrence of such losses may be uncertain, the failure to capitalize on them is deemed actual harm. Consequently, the employer is obliged to remedy damages suffered by the employee, whether material or moral. Examples include the difficulties faced by the employee in securing new employment given high unemployment rates, the duration of unemployment, and resulting financial hardships, as well as psychological pressures linked to their deteriorating economic situation following the loss of their job.

**3. Mandatory Reinstatement After Issuance of the Judgment**

The employer must formally express refusal of reinstatement through a request submitted during the pleadings phase and prior to the case being deliberated. The employer is not permitted to await the issuance of a judgment ordering reinstatement and then reject it afterward. Should the employer fail to express this refusal beforehand, the reinstatement order becomes mandatory. In such cases, the employer is compelled to comply either through compensation for non-compliance with the reinstatement judgment, assessed according to general principles, or by way of a coercive fine for each day of delay in executing the judicial ruling[21].

**3.1 Compensation as a Consequence of Refusing Reinstatement After Judgment**

Under general legal principles, once liability for harm is established, the court is required to oblige the party responsible for the damage to compensate the injured party. This obligation is grounded in Article 124 of the Algerian Civil Code.[22]

Accordingly, when a final judicial ruling orders the reinstatement of an employee and the employer neither expresses a refusal during the litigation process nor complies with the court's decision persisting instead in their arbitrary stance the employee is entitled to file a claim before the civil division to seek compensation under general civil liability rules. This right is distinct from the compensation regulated by Article 73 bis 4 of Law No. 90-11, which governs the consequences of arbitrary dismissal. This distinction was clearly affirmed by the Supreme Court in Decision No. 282894, which stated:

"It is also established that the compensation claimed by the respondent pertains to the employer's failure to comply with a final judgment ordering reinstatement, and that such compensation can only be awarded based on Article 124 of the Civil Code, not on Article 73 bis 4."

In such cases, the judge has full discretion to determine the amount of compensation in accordance with general principles of civil liability. This contrasts with the compensation provided under Article 73 bis 4 of Law No. 90-11, which sets a minimum threshold without imposing a ceiling. This distinction was reaffirmed by the Supreme Court in Decision No. 303938:

"Compensation for failure to execute a judgment ordering reinstatement is subject to the judge's discretionary authority and must be awarded according to general legal principles, not under Article 73/04, paragraph 2 of Law No. 91/29 amending and supplementing Law No. 90/11.".[23]

Furthermore, the coexistence of a judgment ordering reinstatement and a separate award of compensation for failure to execute that judgment does not constitute duplication of compensation. The two remedies are legally distinct in their nature and purpose. This principle was articulated in Supreme Court Decision No. 282223,[24] which held:

"Principle: There is no duplication of compensation where one award is based on arbitrary dismissal and the other is based on the refusal to implement a judgment ordering reinstatement."

### 3.2Compelling the Employer to Reinstate the Employee Through a Penalty Fine

Employers often refuse to reinstate an employee to their position even after a judicial ruling mandates reinstatement. In such cases, the employer may be compelled to comply by the imposition of a daily penalty fine. This measure can be inferred from the provisions of Article 39 of Law No. 90-04.[25]

The imposition of a penalty fine involves two essential and interdependent stages. The first is the issuance of the penalty fine by the competent judge, and the second involves the liquidation of the penalty fine, during which the judge reassesses the fine, calculates, and finalizes the accumulated amounts resulting from the judgment imposing the penalty.

#### 3.2.1 Stage of Issuing the Penalty Fine

Once the specific conditions for imposing a penalty fine are met, the labor judge has the authority to pronounce it and determine its amount.

- Conditions for Imposing a Penalty Fine: The imposition of a penalty fine requires the fulfillment of the following conditions:

- The employer must have refused to fulfill an obligation established by an enforceable instrument.
- The employee must request the imposition of the penalty fine.
- Specific performance of the obligation must still be possible.

•Competent Judicial Authority for Adjudicating the Penalty Fine: The primary court responsible for social matters issues rulings in certain cases that are final and non-appealable, thereby bypassing the principle of two-tier litigation. The social judge possesses discretionary authority to impose the penalty fine by carefully examining the fulfillment of its conditions as well as determining the amount.

**3.2.2 Jurisdiction of the Social Judge in Ruling on the Penalty Fine**

The social judge holds the authority to impose the penalty fine, as stipulated in Article 73/4 of Law No. 90-11 mentioned above. This authority is exercised after the issuance of the enforceable judgment and the completion of enforcement procedures, upon confirmation that the employer has refused to fulfill their specific obligation established by the enforceable order to reinstate the employee to their position.[26]

**3.2.3 Discretionary Power of the Social Judge in Penalty Fine Cases**

The social judge has the power to examine and assess whether the specific and general conditions for accepting the claim are met. Additionally, the judge has discretionary authority to determine the amount of the fine and the duration of its applicability.

– Examination by the Social Judge of the Conditions for the Penalty Fine: The social judge exercises discretionary power in accepting the claim for the penalty fine by thoroughly considering whether the special and general conditions for initiating such a claim, as previously outlined, are fulfilled. The judge also holds the authority to reject the claim if these conditions are found to be unmet.

– The Social Judge's Authority in Determining the Coercive Fine: The Algerian legislator has not specified a fixed amount for the coercive fine. However, Article 34 of Law No. 90/04, referenced above, does not set a precise amount but establishes a minimum threshold. It provides for the imposition of a coercive fine in case of non-compliance, which shall not be less than 25% of the guaranteed monthly minimum wage, currently set at 20,000 Algerian Dinars (DZD), as stipulated in Article 87 of Presidential Decree No. 21-173 regulating the national guaranteed minimum wage.[27] Accordingly, the minimum coercive fine is equivalent to one-quarter of this amount, representing 5,000 DZD for each day of delay.

No legal provision expressly defines the duration, commencement, or termination of the coercive fine. Consequently, the social judge has full discretion in determining these parameters. The fine begins upon the expiration of the compliance period, which is set at fifteen (15) days in accordance with Article 34(2) of Law No. 90/04.

Therefore, the coercive fine starts from the date the ruling imposing it acquires the authority of res judicata and continues until full execution, in cases where the employer refuses to comply with the judicial order.

**3.2.4 Liquidation of the Coercive Fine**

The coercive fine serves as a temporary sanction for failure to execute a judicial decision. It becomes enforceable only after the employee requests its liquidation before the court, in cases where the employer persists in non-compliance and refuses

to abide by the judgment imposing the fine.

Upon such a request, the employee may obtain a new ruling ordering liquidation of the fine. Furthermore, the employee retains the right to choose between seeking liquidation of the coercive fine or claiming compensation under general legal principles.

– **The Employee's Right to Claim Payment of the Penalty Fine**The employee has the right to demand payment of the penalty fine when the employer fails to comply with a court judgment ordering reinstatement and continues to refuse to execute the ruling. The employee may also claim this fine in cases involving delays or procrastination in implementing the judicial decision.

It is important to note that the penalty fine does not constitute compensation for the harm suffered by the employee. The employee may claim the penalty fine independently of any claim for compensation, as the two are distinct. The purpose of the penalty fine is to compel the employer to comply with the court's judgment, whereas compensation aims to redress the material and moral damages sustained by the employee.[28]

– **The Employee's Right to Claim Compensation After Payment of the Penalty Fine**Even after payment of the penalty fine, the employee retains the right to initiate a civil claim for compensation under general legal principles, rather than relying on the provisions of Article 73 bis 4 of Law No. 90-11. The judge has full discretion to assess the amount of compensation in accordance with general legal rules, in contrast to the specific framework provided under Article 73 bis 4 of Law No. 90-11.

– This position has been affirmed by Supreme Court Decision No. 0914493, which stated:

– "The compensation due to the employee for failure to comply with a labor court judgment ordering reinstatement is governed by the general rules of compensation under civil law, not by the provisions of labor legislation."Similarly, Supreme Court Decision No. 282894 confirmed:"It is also established that compensation claims arising from non-compliance with a final judgment ordering reinstatement must be decided solely on the basis of Article 124 of the Civil Code and not Article 73 bis 4 of Law No. 90-11."

Compensation is determined based on two elements:

Actual loss, which includes the employee's lost earnings and other damages caused by the employer's delay in fulfilling their obligation.

Employer's obstinacy, reflected in their persistence, resistance, and refusal to execute the judgment that legally binds them.

**Conclusion**

The reinstatement of a worker to their position after being unjustly dismissed constitutes an essential guarantee for the continuity and stability of the employment relationship. It represents an effective legal mechanism to strengthen the protection granted to workers in cases of arbitrary dismissal, as it is based on the principle of

equitable restitution, restoring the situation to what it was prior to the dismissal.

Accordingly, the main findings reached through the study of this topic can be summarized as follows:

– Discretionary Nature of Reinstatement:The reinstatement technique is characterized by its optional nature, as the employer retains the freedom to accept or refuse it during judicial proceedings. If the employer accepts to reinstate the worker to their position, the latter regains all previously acquired benefits. The judge may suggest reinstatement to the parties; if accepted, both parties return to the situation they were in prior to the dismissal, and consequently, the employment contract is deemed uninterrupted, allowing the worker to retain all benefits such as paid leave, retirement-related compensation, and the institution's wage scale.

– Possibility of Refusal with Compensation:Both parties to the employment relationship may refuse reinstatement during the proceedings. In such a case, the worker is entitled to monetary compensation equivalent to no less than six months of wages, in addition to any other compensatory damages intended to redress the harm suffered.

– Mandatory Reinstatement in Case of Employer's Silence:If the employer fails to express their will, the judge issues a ruling declaring the employer's dismissal decision null and void and orders mandatory reinstatement. The employer is then compelled to comply, either through compensation for failure to execute the judgment—calculated according to general legal principles—or by imposing a daily coercive fine until the reinstatement is carried out. This latter measure ensures the worker's right to return to their job.

However, given the flexibility of the reinstatement mechanism and its impact on both the principle of employment stability and the continuity of labor contracts, it is necessary for the Algerian legislator to intervene by:

– Establishing the Mandatory Nature of the Reinstatement Mechanism:It is necessary to impose a mandatory character on the reinstatement technique by restricting the employer's discretion, given that the employer's decision in cases of unjust dismissal is arbitrary, and the worker bears no responsibility for the termination. Therefore, the worker must be granted fair and equitable compensation, which can only be effectively realized through reinstatement to their original position, as it constitutes the direct consequence of unjust dismissal. This is particularly important considering the dangerous flexibility introduced by Law No. 90-11, which significantly undermines the worker's job stability.

– Providing for Compensation for Moral Damages: The law should expressly stipulate the worker's right to compensation for moral (non-material) damages resulting from unjust dismissal under the provisions of Article 73 bis 4 of Law No. 90-11, particularly in recognition of the psychological impact of job loss and the difficulty of finding new employment.

– Imposing Deterrent Sanctions for Non-Execution of Judicial Decisions: There should be deterrent penalties for failure to execute judicial decisions ordering

reinstatement, as such conduct constitutes a criminal offense under the Penal Code, specifically the crime of undermining the authority of judicial rulings.

– Recognizing Judges' Authority to Impose Coercive Fines Ex Officio:Judges should be granted the power to impose coercive fines on their own initiative, thereby reinforcing the deterrent aspect of this measure and ensuring the effective enforcement of judgments ordering the worker's reinstatement.

– Determining the Starting Date and Calculation Criteria for Coercive Fines:The legislator should define the starting date for the accrual of coercive fines, which should commence once the judgment acquires enforceable status. Moreover, a clear criterion should be established for determining the fine's amount by multiplying the daily rate by the number of days of delay, thereby avoiding the current general and discretionary approach that diminishes its effectiveness.

– Mandating Settlement of the Coercive Fine and Civil Compensation:The law should expressly require both the settlement of coercive fines and the granting of civil compensation proportionate to the worker's actual losses and lost opportunities, in order to unify judicial practice and eliminate discrepancies arising from judicial discretion between the two remedies.

**Margins**

1-Law No. 90-11 of 21 April 1990 on Labor Relations, published in Official Gazette of the People's Democratic Republic of Algeria, No. 17 of 26 April 1990؛
as amended and supplemented by:

- Law No. 91-29 of 21 December 1991, Official Gazette No. 68 of 25 December 1991؛
- Ordinance No. 96-21 of 9 July 1996, Official Gazette No. 43 of 16 July 1996؛
- Ordinance No. 97-02 of 11 January 1997, Official Gazette No. 3 of 12 January 1997؛
- Ordinance No. 97-03 of 11 January 1997, Official Gazette No. 3 of 12 January 1997; andLaw No. 22-16 of 20 July 2022, Official Gazette No. 49 of 20 July 2022.

2- Decision of the Supreme Court, Social Chamber, Case No. 159386, dated 10 March 1998, *Judicial Review*, No. 2, Documentation Department of the Supreme Court, 1998, p. 101:
"It is legally established that in the event of a dismissal deemed abusive, the employee may request either the annulment of the dismissal decision or compensation for the resulting harm before the competent judicial authority.
In the present case, since it was established that the trial judges awarded compensation to the respondent from the date of his suspension until his actual reinstatement, they effectively ruled for ongoing compensation, which is unlawful, thereby rendering their decision subject to quashing."

3- It is worth noting that such reinstatement was mandatory under the laws predating the enactment of the Labor Relations Law, and judges held broad discretion to order it. This was stipulated in Article 43 of Ordinance No. 75-31 of 27 April 1975, concerning the general conditions of labor relations in the private sector, *Official Gazette* No. 39, published on 26 May 1975 (*repealed*).

4- Article 73 bis 4 sets out general provisions regarding the consequences of unlawful dismissal in both fixed-term and open-ended contracts. However, due to the specific nature of the former as a time-bound contract, the consequences stipulated in Article 73 bis 4 cannot fully apply. In such cases, the judge rules for reinstatement only for the remaining duration of the contract, or alternatively, grants financial compensation in case of refusal. This interpretation was clarified in the Decision of the Supreme Court, Social Chamber, Case No. 608809, dated 2 June 2011, *Journal*

*of the Supreme Court*, No. 2, 2011, p. 191, published on the official website of the Supreme Court of the People's Democratic Republic of Algeria: www.coursupreme.dz.

"Article 73/4 of Law No. 90-11 does not apply to fixed-term contracts. When the judge finds that the employment relationship was terminated abusively, and based on the claim, he may order reinstatement for the remainder of the contract period, or compensation in lieu thereof."

5-Suleiman Ahmia, *Collective Agreements as a Regulatory Framework for Labor Relations in Algerian Legislation*, doctoral dissertation, Faculty of Law, University of Algiers, 2008, p. 288.

Truskolaski, Muriel, *The Legitimacy of Economic Grounds for Dismissal (A Contribution to the Study of Just Cause)*, doctoral thesis, Faculty of Law, University of Cergy-Pontoise, France, 2008, p. 559.

6-Jean Savetier, "The Availability of a Job for the Purpose of Reinstatement, Redeployment, or Rehiring Priority," Social Law, no. 2, Technical and Economic Publishing, Paris, February 1999, p. 146.

7-Zahia Asaad, "Commentary on Decision No. 182539 of 18 January 2000 – Unlawful Dismissal – Employer's Refusal to Reinstate the Worker – Acquired Benefits – Article 73/04," *Judicial Review*, No. 2, Documentation Department of the Supreme Court, Algeria, 2002, pp. 44–45.

8-Decision of the Supreme Court, Social Chamber, Case No. 182539, dated 18 January 2000, *Journal of the Supreme Court*, no. 2, Documentation Department of the Supreme Court, Algeria, 2000, p. 41.

9- Decision of the Supreme Court, Social Chamber, Case No. 90533, dated 20 January 1993, *Judicial Review*, no. 2, National Office of Educational Works, Algeria, 1994, p. 103. The ruling stated:

"It is legally established that a worker cannot receive a salary from the institution unless he is appointed to a position and is actually performing the duties related to that position.

In the case of unlawful dismissal, the judge must order the worker's reinstatement to their original position along with the appropriate compensation.

Since in the present case, the Court of Appeal ruled to grant the respondent monthly wages from the date of dismissal to the date of actual reinstatement, it thereby violated the law. The compensation referred to does not include salary payments, which makes the decision subject to partial annulment."

Decision of the Supreme Court, Social Chamber, Case No. 106576, dated 31 January 1994, *Judicial Review*, no. 3, Documentation and Publication Department of the Supreme Court, Algeria, 1994, p. 117.

10- Decision of the Supreme Court, Social Chamber, Case No. 474154, dated 6 May 2009, *Journal of the Supreme Court*, no. 1, 2009, p. 399, published on the official website of the Supreme Court of the People's Democratic Republic of Algeria: www.coursupreme.dz.

11-Decision of the Supreme Court, Social Chamber, Case No. 223318, dated 14 March 2000, *Judicial Review*, no. 2, Documentation Department of the Supreme Court, Algeria, 2002, p. 189.

12-Huda Latif Al-Aqidi, *Compensation for Unlawful Dismissal in Labor Law: A Comparative Study*, Al-Halabi Legal Publications, Lebanon, 2011, pp. 136–137.

13- Decision of the Supreme Court, Social Chamber, Case No. 252326, dated 15 January 2003, *Judicial Review*, no. 2, Documentation Department of the Supreme Court, Algeria, 2003, p. 139. The decision states: "The judge may not substitute the employer in making an explicit declaration of refusal to reinstate the worker."

14- Decision of the Supreme Court, Social Chamber, Case No. 295696, dated 13 April 2005, *Journal of the Supreme Court*, no. 1, Documentation Department of the Supreme Court, Algeria, 2005, p. 141. The ruling stated:

"The court responsible for social matters must, in the case where the employer explicitly refuses to reinstate the worker, reject the request for reinstatement and grant compensation, in accordance with paragraph 3 of Article 73-04 of Law No. 90-11."
Decision of the Supreme Court, Social Chamber, Case No. 490425, dated 6 May 2009, *Journal of the Supreme Court*, no. 1, Documentation Department of the Supreme Court, Algeria, 2009, p. 417. The court stated:
"When the employer expresses an intention not to reinstate the worker in exchange for compensation for unlawful dismissal, the judge must award the dismissed worker financial compensation no less than six months' wages, without prejudice to any additional compensation."
15-Hamida Slimani, *Employer Abuse in the Exercise of Authority*, doctoral thesis, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2016, pp. 249–250.
16- Decision of the Supreme Court, Social Chamber, Case No. 288364, dated 16 March 2005, *Journal of the Supreme Court*, no. 1, Documentation Department of the Supreme Court, Algeria, 2005, p. 107. The court held:
"In a lawsuit seeking annulment of a dismissal decision deemed unlawful, if the court determines that the dismissal was indeed abusive, it is legally required to rule on the alternative claim regarding either party's refusal to reinstate the worker. The court may not ignore or omit a judgment on this matter. According to paragraph 2 of the amended Article 73/04, if either party refuses reinstatement, financial compensation shall be awarded no less than the equivalent of six months' wages, without prejudice to any additional compensation. Since the contested ruling contradicted this, it misapplied the law."
17- Decision of the Supreme Court, Social Chamber, Case No. 214574, dated 14 February 2001, *Judicial Review*, no. 1, Documentation Department of the Supreme Court, Algeria, 2002, p. 195.
18- Decision of the Supreme Court, Social Chamber, Case No. 177700, dated 9 March 1999, *Judicial Review*, no. 1, Documentation Department of the Supreme Court, Algeria, 1999, p. 132. The decision stated:
"In the present case, it was established that the respondent was dismissed prior to the publication of Ordinance No. 96-21 of 9 July 1996, i.e., before the amendment to Article 73/4 of the law of 21 December 1991. Therefore, the judges, by ruling for the respondent's reinstatement and compensation, correctly applied the provisions of Article 73/4 of Law No. 91-29. Accordingly, the appeal must be rejected."
19- Law No. 78-12 of 5 August 1978, establishing the General Statute of the Worker, *Official Gazette* no. 32, published on 8 August 1978 (*repealed*).
20- Article 12 of International Convention No. 158 concerning Termination of Employment at the Initiative of the Employer, adopted by the General Conference of the International Labor Organization on 22 June 1982, available at: http://www.unmn.edu/umanrts/arabic/ilo-c158.pdf. The article states:"Any worker whose employment has been terminated shall be entitled, in accordance with national law and practice, to a severance allowance or other separation benefits, the amount of which shall be determined, among other things, by the length of service and the level of wages, and shall be paid directly by the employer or by a fund constituted by employers' contributions."
21- Decision of the Supreme Court, Social Chamber, Case No. 474154, dated 6 May 2009, *Journal of the Supreme Court*, no. 1, 2009, p. 399, published on the official website of the Supreme Court of the People's Democratic Republic of Algeria: www.coursupreme.dz. The ruling stated:
"The judge shall, depending on the case and upon request, either compel the party refusing to comply with the judgment under penalty of a coercive fine as provided for in Article 39 of Law No. 90-04, or award compensation in accordance with the provisions of the Civil Code."
Taher Eddine Amari, "Refusal to Execute a Court Judgment Ordering the Reinstatement of a Worker: Between a Coercive Fine and an Award of Compensation," *Critical Review of Law and*

*Political Science*, no. 1, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, 2007, p. 105.

22-Ordinance No. 75-58 of 26 September 1975, containing the Civil Code, published in the Official Gazette of the People's Democratic Republic of Algeria, No. 30 of 30 September 1975؛
as amended and supplemented by:

- Law No. 05-10 of 20 June 2005, Official Gazette No. 44 of 26 June 2005; and
- Law No. 07-05 of 13 May 2007, Official Gazette No. 31 of 13 May 2007.

Decision of the Supreme Court, Social Chamber, Case No. 282894, dated 14 September 2003, *Journal of the Supreme Court*, no. 1, 2003, published on the official website of the Supreme Court of the People's Democratic Republic of Algeria: www.coursupreme.dz.

23-Decision of the Supreme Court, Social Chamber, Case No. 303938, dated 11 May 2005, *Journal of the Supreme Court*, no. 1, Documentation Department of the Supreme Court, Algeria, 2005, p. 165.

24-Decision of the Supreme Court (Social Chamber), Case No. 282223, dated 16 October 2002, *Judicial Review*, No. 1, Documentation Department of the Supreme Court, Algeria, 2004, p. 138.Decision of the Supreme Court (Social Chamber), Case No. 474154, dated 6 May 2009, *Journal of the Supreme Court*, No. 1, Documentation Department of the Supreme Court, Algeria, 2009, p. 399.

25-Law No. 90-04 of 6 February 1990, concerning the resolution of individual labor disputes, *Official Gazette* no. 6, published on 7 February 1990.

26-Decision of the Supreme Court, Social Chamber, Case No. 181284, dated 7 December 1999, *Judicial Review*, no. 2, Documentation Department of the Supreme Court, Algeria, 2000, p. 105.

27-Houcine Bencheikh Ath Mlouia, *Code of Civil and Administrative Procedure*, Houma Publishing, Algeria, 2008, p. 15.

28-Presidential Decree No. 21-137 of 14 April 2021, establishing the guaranteed national minimum wage, *Official Gazette* no. 28, published on 14 April 2021.