

ADMINISTRATIVE CONTROL IN THE FIELD OF THE SOCIAL SECURITY IN THE ALGERIAN LAW

KOHIL hayet ⁽¹⁾

⁽¹⁾ Lecturer, department of Law, Faculty of Law and political Science, Blida 2 university, 09000 Blida, Algeria.

Email : Kohil.hayet5@gmail.com

Abstract:

The subject of The Administrative Control in the Field of the Social Security is considered one of the important legal issues that attract researchers and, in general, all those interested in social law, academics and professionals.

Especially since the social security system in Algeria and in many countries is facing financial difficulties for many reasons, besides the weakness of employment and aging policies and other reasons, fraud and fraud committed by employers is considered one of the most important causes of the deficit that these funds suffer from and realizing The legislator of these conditions worked to develop the monitoring mechanism through a set of legal texts in which he clarifies how to exercise control and its conditions. However, this preventive method did not come to fruition and did not succeed in achieving the stated objectives, so it was necessary to study these laws to find a citizen Palaces and especially , This is the subject of the new topics that have not previously searched with sort of specialization of the recent financial crisis faced by the social security systems of many countries.

Keywords:

Administrative control, social security, control assistance, powers of the observer, conditions for monitoring.

Submission date: 19/06/2020, *acceptance date* : 12/08/2020, *Publication date:* 31/08/2020

To Cite the article:

KOHIL hayet, "ADMINISTRATIVE CONTROL IN A FIELD OF SOCIAL SECURITY IN ALGERIAN LAW", RARJ, Vol 11, number 02 (special number), 2020, pp. 755-773.

Available on: <https://www.asjp.cerist.dz/en/PresentationRevue/72>

Corresponding author: KOHIL hayet, Kohil.hayet5@gmail.com

المراقبة الإدارية في مجال الضمان الاجتماعي في القانون الجزائري

الملخص:

يعتبر موضوع المراقبة في مجال الضمان الاجتماعي من المواضيع القانونية الهامة التي تستقطب الباحثين و بصورة عامة كل المهتمين بالقانون الاجتماعي أكاديميين و مهنيين، خاصة و أن منظومة الضمان الاجتماعي في الجزائر و في الكثير من الدول تواجه صعوبات مالية لأسباب عديدة، الى جانب ضعف سياسات التشغيل و الشيخوخة و غيرها من الأسباب، يعتبر التحايل و الغش المرتكب من قبل أصحاب العمل من أهم أسباب العجز الذي تعاني منه هذه الصناديق و إدراكا للمشرع لهذه الأوضاع عمل على تطوير آلية المراقبة من خلال مجموعة من النصوص القانونية يوضح من خلالها كيفية ممارسة المراقبة و شروطها.

غير انه بالرغم من ذلك لم تؤدي هذه الوسيلة الوقائية أكلها ولم تتجح في تحقيق كل الأهداف المسطرة ما استدع ضرورة دراسة هذه القوانين للوقوف على مواطن القصور وخاصة أن هذا الموضوع من المواضيع الجديدة التي لم يسبق البحث فيها بنوع من التخصص لحدثة الأزمة المالية التي تعاني منها نظم الضمان الاجتماعي لدى الكثير من الدول

الكلمات المفتاحية:

المراقبة الإدارية، الضمان الاجتماعي، عون المراقبة، شروط المراقبة.

Le contrôle administratif dans le domaine de la sécurité sociale en droit algérien

Résumé :

Le sujet de contrôle dans le domaine de la sécurité sociale est considéré comme l'un des enjeux juridiques importants qui attirent les chercheurs et, en général, tous ceux qui s'intéressent au droit social, aux universitaires et aux professionnels. D'autant plus que le système de sécurité sociale en Algérie et dans de nombreux pays est confronté à des difficultés financières pour de nombreuses raisons, outre la faiblesse des politiques de l'emploi et du vieillissement et d'autres raisons, la fraude et la fraude commises par les employeurs sont considérées comme l'une des causes les plus importantes du déficit qui ces fonds souffrent et se rendent compte Le législateur de ces conditions a travaillé au développement du dispositif de suivi à travers un ensemble de textes juridiques dans lesquels il précise comment exercer le contrôle et ses conditions. Cependant, cette méthode préventive n'a pas abouti et n'a pas réussi à atteindre les objectifs énoncés, il a donc fallu étudier ces lois pour trouver un citoyen Palais et surtout, c'est le sujet des nouveaux sujets qui n'ont pas encore été recherchés avec sorte de spécialisation de la récente crise financière à laquelle sont confrontés les systèmes de sécurité sociale de nombreux pays.

Mots clés :

Le contrôle, la sécurité sociale, contrôleur, pouvoirs de controleur, conditions de controle.

Introduction

The taxpayers has a legal obligation in the field of social security that is legally assumed to be voluntary on the part of them, but in many cases the taxpayers may resort by using illegal methods in order to evade the obligations incurred by them, especially with regard to the basic payment of contributions, and on this basis social security funds intervene in many cases using legal and preventive means authorized by law to ensure the extent to which these persons are subjected to the applicable legislation,

Especially since the social security system is a sensitive sector, and it is based on the contributions incurred by the taxpayers on the one hand, and on the other hand the financial balances of social security funds are known to be significant imbalances, which prompted the legislator to protect them by more protective means by organizing the monitoring function with legal texts that allow the monitors to perform their duties related to monitoring the application The correct and proper legislation and regulation for taxpayers.

Hence the importance of studying the reality of monitoring in the field of social security in the Algerian law, in order to find the importance of the monitoring method as a preventive mechanism to maintain the financial balances of social security funds, and the study will focus on administrative control without medical supervision, so that the study is more focused and feasible, and that administrative control is put forward a lot of legal issues that must be studied and clarified, just as the issue of administrative control relies heavily on the social security system to deal with fraud and fraud committed by employers. As for medical supervision, it is primarily directed at workers.

It is considered on the other hand as another area of research, and to take note of the issue of medical observation in the field of social security, it is necessary to touch upon the definition of the subject under study and thus exclude similar topics and highlight the importance and objectives of monitoring in an attempt to determine the adequacy and effectiveness of the legal conditions established for the practice The profession, in addition to the obligations imposed on the observer, to make the monitoring cost-effective

Without forgetting the importance of the powers and protection to be granted to the observer, to enable him to exercise oversight in a professional and professional manner.

Based on the foregoing, the following problem can be raised: How effective are the legal texts related to supervision in the field of social security in achieving the goals of social security legislation in general and financial balances in particular? Accordingly, the study can be divided into the following axes:

The first topic: The position of supervision in the social security system

The second topic: the reality of observation.

All this depending on the descriptive approach by describing the most important provisions related to monitoring and observers on the one hand, and on the other hand on the analytical approach by trying to analyze these materials to find the shortcomings

and imperfection, then we addressed in the conclusion the most important results of the study and the most important suggestions supporting the content of the topic.

Chapter I: The status of monitoring in the social security system

Monitoring is one of the preventive mechanisms that work to reduce deviations and all violations of social security legislation by employers or taxpayers in general, and monitoring may be administrative for employers and may be medical related to employees. Also, monitoring is important through which plans and policies can be developed that contribute in maintaining the financial balances of social security funds, and it aims to control as a preventive and remedial mechanism to achieve a set of goals, whether at the level of legislation or at the level of taxpayers or at the level of social security funds.

Section 1 : the concept of supervision in the field of social security

Monitoring is a tool of the Social Security Administration, through which it achieves its goals centered on achieving social protection, and it is a comprehensive control for every customer with this administration or more precisely for each person who is charged towards employers or employees, and To find out the status of supervision in the social security system, it is necessary to address its definition and its types, then highlight its importance and define the goals it seeks to achieve.

Subsection 1 : Defining supervision in the field of social security

Oversight is defined in general as checking whether everything is going according to the plan drawn and programmed according to the instructions and rules established, with a view to indicating the shortcomings, shortcomings or deviations and errors in the application in order not to repeat these deviations and errors ¹.

As for monitoring in the field of social security, and by referring to the decision dated December 15th, 2004, which includes the approval of social security control agents in Article 2 thereof: "The control agents mentioned in Article 1 above cannot exercise their duties only after taking the oath stipulated in Article 29 of Law No. 14/83 of 21 Ramadan of 1403 corresponding to July 2nd, 1983 and mentioned above "²

And by reference to the text of Article 28 of Law No. 83/144, which states that: "The implementation of legislation and regulation in the field of social security shall be monitored by the agents of social security bodies accredited by the Ministry in charge of Social Security and jurors legally"³ .

1 Hamdi Suleiman, Administrative and Financial Control over Governmental Agencies, (Jordan, Dar Al Thaqa Library for Publishing, 1998) D-i, p.13

2 The decision of December 15, 2004, approving the approval of Social Security Watch agents, Official Gazette No. 26 issued on April 10, 2005

3 Law No. 14/83 of July 2, 1983, relating to the obligations of those charged with social security, as amended and supplemented by Law No. 86-15 of December 29, 1986, containing the Finance Law of 1987, and Law No. 98-12 of December 31, 1998 It includes the Finance Law of 1999, and Law No. 17/04 of November 10, 2004, p. 1821

By analyzing the texts of the aforementioned articles, it becomes clear to us that the Algerian legislator did not know the supervision in the field of social security, but rather only touched upon the conditions of the practice of monitoring and the agents who are qualified to practice it and how it is practiced, leaving the matter to the jurists.

Subsection 2 : types of monitoring in the field of social security

Monitoring is divided into administrative control, which is the subject of this study, and into medical monitoring as follows :

A- Administrative control

Administrative control means verification and ensuring that the administration adheres to the laws, regulations and instructions in its performance, to achieve the goals set according to the plans developed efficiently and effectively, and to identify the shortcomings and errors, and then work to treat them and prevent their recurrence, or it is "the tool by which we verify the administration's commitment to laws and regulations, and disclosure On deviations, correcting them, analyzing their obstacles, and seeking to remedy them in a way that prevents their occurrence and transcending them in the future"⁴ The Algerian legislator has touched upon this type of supervision through Law No 14/83.

Relating to the obligations of those charged with social security and Executive Decree No. 05/130, which includes determining the conditions for the exercise of social security control agents and the modalities for their approval, and Executive Decree No 17/138 amending and supplementing Executive Decree No 05/130.

The aim of this monitoring is to highlight on the extent of the employers commitment to the proper application of laws and regulations, especially those related to social insurance.

B - Medical monitoring

It is a measure aimed at ensuring effective and effective treatment at the lowest possible cost and also allows the Social Security Authority windows to be opened to real beneficiaries and closed in the face of others.

Article 64 of Law No. 83/11 related to amended and complemented social insurance stipulates that : "Social security funds can decide to subject the insured to a medical examination while bearing the expenses, and they may also subject the insurances to medical supervision by one of their representatives."⁵

Medical control is practiced by the counselor of the Social Security Authorities and it is practiced on the insured in order to detect fraud such as false sick holidays that cost the funds a lot of money, which negatively affected their solvency, under the name

4 Brih Rima: Administrative Control over Public Utilities, Masters in Public Law, Specialization in Public Administration Law, Al-Arabi Bin Mahidi University, Umm Al-Baqi, College of Law and Political Science, 2012/2013, p. 15

5 Al-Tayyeb Samati, Social Security in the field of Social Security, according to the new law, (Ain Mellila, Algeria, Dar Al-Hoda, 2014), p. 204.

of cash deeds that are unlawfully disbursed and made them knock The alarm and thus reconsider how to adopt sick holidays and performances in kind, for example, by imposing control on prescriptions, especially for some medicines.

Section 2 : the importance and objectives of monitoring in the field of social security

Monitoring has an importance through which plans and policies can be developed that contribute to maintaining the financial balances of social security funds and targeting specific goals. What we will see is as follows :

Subsection 1 : the importance of monitoring

The importance of monitoring lies through the set of processes through which:

- 1- Control has importance at the present time as it is not limited to detect deviations and errors, but its role has extended to include clarifying ways of correction and superiority, i.e. it has shifted to the preventive role instead of being limited to the therapeutic role⁶
- 2- Monitoring is the main entry point that helps to fix employers 'deviations, determining responsibilities, eliminating difficulties, and developing development plans. It aims at the end to form a realistic picture and accurate statistics on work conditions and the extent of implementing the obligations of the taxpayers.
- 3- The ability of supervision to reveal the obstacles that stand in the way of achieving the financial balances of social security funds, and to announce the calendar and correction, which is what drives them and helps them to review the desired goals behind them or seek to develop them in a way that is compatible with the new policies and the changes required in The field of social security,
- 4- Verifying and checking that the performance of the taxpayers is carried out in the manner determined by the goals and standards set by the social insurance system, and setting standards to determine the strengths and weaknesses of the taxpayer's performance, and the extent of its conformity with these standards, facilitate the process of determining the wrong form in the texts of laws, that is, it helps in reviewing the laws texts in which there are loopholes exploited by the taxpayers to evade their obligations.

Subsection 2 : Monitoring objectives in the area of social security

Monitoring, as a preventive and remedial mechanism, aims to achieve a set of goals, whether at the level of legislation, or at the level of taxpayers, or at the level of social security funds, as follows:

- 1- The monitoring process aims primarily to collect social security contributions, and thus to preserve the financial balances of the social security system, which are funded

6 Executive Decree No. 05/171 of 7/5/2005 specifying the conditions for the conduct of medical supervision for the socially insured. Official Gazette No. 33 issued on 5/8/2005

mainly from the contributions of the taxpayers in addition to the state budget intervention,

2- Sensitize the unauthorized workers to the social security agencies on the importance of engaging in social security funds, because of the social protection it provides for them through the evidence that can be obtained, namely sickness, death, disability, retirement, unemployment and childbirth. Thus the monitoring assistance would contribute to the expansion of the circle of those involved and thus increase the number of active workers i.e. increases the funds, which is the main objective of monitoring.

3- Verifying the proper application of legislation and regulation in the field of social security, especially what relates to the permit system, such as false statements of wages, for example, or sick leave...?

4- Determining all the violations committed by the employers, whether related to evading the payment of contributions, the failure to follow the measures prescribed to protect workers from work accidents, and this is what costs the social security system heavy losses.

By highlighting the goals and importance of supervision in the field of social insurance, we can say that it is one of the most important things that can make social insurance successful and effective within the social security system to achieve social protection for the insured in a sustainable and integrated manner, especially in front of the growing risks being known or unknown ones, which increase and raise the demands for more effective protection.

Chapter 2 : the reality of observation

The exercise of control requires the availability of a set of legal conditions in view of the sensitivity of the task entrusted to the observer, in addition to the obligations incumbent on him to ensure the conduct of the monitoring in the manner specified for it, as follows:

Section 1 : conditions for exercising control and the obligations of observers in the field of social insurance

Subsection 1 : conditions for exercising control

The control agents monitor the employers either spontaneously by programming several visits to the employers' workplaces directly, or the monitoring is carried out at the request of the departments of the collection department such as the numbering department, the contributions department and the employers disputes interest, so that these departments send what is called the monitoring document, where The control aid obtains the monitoring document from the secretariat of the Employers Control Service after it is registered in a special record prepared for that, so that it records the date of receipt of the monitoring document, the authority that sent the document and the name of the observer who transferred the document to its completion and the date of its delivery⁷.

⁷ Law No. 83/11 of July 1983 on Social Insurance, Official Gazette No. 28 of 1983

The law expressly stipulated a number of conditions that are required to be available in the supervision aid in order to be able to exercise his duties, as follows:

A - The supervision officer should be a member of the social security agencies

The legislator has determined, according to Article 28 of Law No. 14/83/83 the nature of monitoring, which is to be exercised by internal agents, since in order to monitor the implementation of social security legislation and regulation, the supervision aid must be affiliated with the Social Security Authority, and in the sense of the article, it is not possible to practice Monitoring for employers if It has not been done by an employee of the Social Security Authority, as monitoring in this system is internal control that is carried out by employees 'staff permanently without assigning, like some sectors, to external agents specializing in the field of monitoring to ensure impartiality and integrity.

And the reason is due to the nature of the control, which is that is internal. The proper application of the social security legislation is to be familiar with all the details related to this law, and this is only possible if he has held a position in several departments within the social insurance funds without being satisfied with one interest.

B - The control aid be legally accredited to perform the monitoring tasks

In addition to the need for monitoring to be internal, the law stipulated that this worker to whom the control task is assigned must obtain accreditation due to the seriousness of the task that will be assumed by the trustworthiness of the funds.

Submission of the application for accreditation: To accept the accreditation of the supervision aid, a request must be submitted by the relevant Social Security Authority to the minister in charge of Social Security in accordance with the first paragraph of Article 10 of Decree No. 05-130 amended and completed according to Executive Decree No. 17/138, after the conditions for accrediting agent are met The specific control according to the text of Article 11 of the above-mentioned decree which is⁸.

That he is an Algerian national, and if the legislator did not specify whether the original or the acquired nationality, that he be of assistance to the Social Security Authority, that he proves at least three (3) years of experience within the framework of the commission in the field of social security, that he is not Judicially preceded i.e. he is not subjected to a criminal rule which reverses with practicing the job; he should have a university degree or at least has an equivalent degree for a bachelor's degree.

Here, the legislator did not specify the field of university specialization. But in practice, he must have a Bachelor's degree in law; he must be at least 28 years old In our analysis of the text of Article 11, we notice that the Algerian legislator added a new condition that was not previously, that the auditor's aid possess a university degree or a certificate equivalent to at least a bachelor's degree, but in the past, a qualification

8 Brish Rima, Administrative Control of Public Utilities, p. 19

internship conducted by the aid was required to prove his professional competence⁹, and this is considered As a new trend, given that the position of Control Agent is very sensitive in the process of collecting the contributions due, especially at the level of the private sector, since most cases are not authorized by the private sector¹⁰.

The new thing that the legislator brought in pursuant to Decree No. 17-138 in its Article 2 is that it should be of assistance to the Social Security Authority, proving at least three (03) years of experience within the scope of the commission in the field of social security, and if it was not enough time to see all the details related to his profession and the social security legislation for its branching and multiplication,

Also, The legislator stipulated that every observer aid that proves seniority of more than ten (10) years while practicing the profession of monitoring employers can benefit from accreditation and this is stipulated in Article 14 of the same decree, except that the observed thing is that there is a contradiction, on the one hand the legislator is required starting from the practice The controller get accredited and on the other hand, it provides for seniority for a period of ten years in the field of monitoring, so accreditation comes at a later stage.

The legislator did not specify the legal period during which accreditation is granted for the control aid, which is often granted for a period of three (03) years¹¹.

The observer accordingly receives a professional identification card that proves his capacity as an accredited and sworn observer¹² whose model is determined by a decision of the Minister in charge of Social Security, and it is prepared by the General Directorate of the Social Security Authority, whether it is for wage or non-wage workers or the National Unemployment Fund¹³.

However, the accreditation may be withdrawn and this professional card is duly returned to the concerned authority in the event that the observer aid status is lost for any reason in accordance with the text of Article 13/2 of the same decree, the accreditation is withdrawn in the same manner in which the accreditation was granted to the concerned monitoring aide by a decision of The Minister in charge of Social Security, but with a report in which he justifies the reasons for withdrawing the accreditation from the concerned control aid, and this is what the new amendment

9 Laimish Ghazaleh, The Legal Basis for Commissioning in the Field of Algerian Social Security, Journal of Labor and Employment Law, June 2017, No. 4, p. 122.

10 Executive Decree No. 05/130 of April 24, 2005, which includes determining the conditions for the exercise of social security oversight agents and the modalities for their accreditation, Official Gazette No. 29 issued on April 24, 2005 amended and supplemented by Executive Decree No. 17/138 of April 11 2017, Official Gazette No. 23 issued on April 12, 2017

11 Belkacem succeeds, the supervision of the taxpayers in the field of social security - the National Fund for Social Security for the non-wage earners - the reality and the prospects, the formation of a post-graduate course in the management of social security, the Higher School of Social Security in conjunction with the Faculty of Economic Sciences and Management, University of Algiers, 1999-2000, P. 14

12 My Good Attributes, Social Security in the Field of Social Security, p. 122

13 My Good Attributes, Social Security in the Area of Social Security, p. 120

added in accordance with Article 02 of Decree No. 17-138 amending Article 11 of Decree No. 05-130¹⁴.

There are two instances where accreditation is withdrawn and they are ¹⁵:

- Violation of obligations assumed by the approved control aid.
- Or the expiry of the legal period of accreditation.

c - To perform the legal right monitoring assistance

The Algerian legislator explicitly stated that the control agent must take the legal oath before the court in order to be obligated to perform these tasks within the framework of the law only, and this is in accordance with the text of Article 29 of Law No. 14/83 so as we read the text of the article we find that in the past before the issuance of Decree No. 05- 130 The legislator did not specify regional jurisdiction¹⁶.

As the text came in general, it did not specify where the legal oath is to be taken, nor to the oath's text, nor to the state of renewing the oath or not in the event of a temporary suspension from work, which causes the observer to carry out his work as an inactive observer, despite the violation of the provisions of Articles 141 and 142 of the Penal Code ¹⁶. However, after the issuance of the aforementioned executive decree, the Algerian legislator continued his failure to mention the jurisdiction and the provision of swearing in Article 12, where he is sworn in before the Court of Residence of the Aid Observer, and he cannot perform his duties except after taking the legal oath, and this is what was stated in the text of Article 12/2 of the same decree¹⁷.

d- Respecting spatial and temporal competence for monitoring

The legislator stipulated in Article 2 of Decree No. 05-130 mentioned above that supervised aid must carry out his duties in the workplaces of his regional jurisdiction, except that, as an exception if necessary, the monitoring task can be performed across the entire national territory, and this is based on The program of work of its Social Security Fund/ Or in the context of exercising oversight duties by the common interests of social security bodies, and this is what the new amendment brought about in accordance with the above-mentioned Executive Decree No. 17/138 that amended Article 2, which authorized the performance of the monitoring task across the entire national territory, but at the request of the agency affiliated with it, And according to specific conditions, noting that the supervised aid can start his duties at any time of the day and night during working hours, as there are employers who violate Laws related to working hours but rather exercise his activities outside the usual working hours, i.e. after four and a half hours to evade the grip of the monitors, and this is what made the legislator tackle the issue by extending the temporal competence

14 Executive Decree No. 05/130, as amended and supplemented

15 My Good Attributes, Social Security in the Field of Social Security, p. 123

16 Article 2 of Executive Decree No. 17/138, which includes defining the conditions for the exercise of social security watchdogs and the methods for their accreditation

17 Articles 7 and 10/3 of Executive Decree No. 05/130 as amended and supplemented

of the monitors after seizing a violation of that type, which is stated in the text of Article 2 in its paragraph 3 From the same decree.

e - To exercise monitoring at the request of the competent authority or at the request of the trade union organization

This is what was stated in the text of Article 35 of the aforementioned Law No. 14/83, as the observer cannot perform his duties unless he receives a request to do so from a body Social security affiliated with it, according to the program of work of its social security fund or from the trade union organization to examine violations committed by the user in contravention of the provisions of the Social Security Law and / or in the context of exercising control functions by the common interests of social security bodies and that is confirmed in Article 2 bis of the Executive Decree No. 17/138 mentioned above.

Section 2 : The obligations of the controller and the legal protection established for him

The controller is committed to respecting a set of obligations identified in the legislations in order to ensure the achievement of the desired goals of monitoring, while providing him with the necessary protection, which is what we will introduce through the following:

Subsection 1 : Observer's obligations

A- Submission of training courses

In accordance with the text of Article 13 bis of Executive Decree No. 17/138, the Social Security Authority must guarantee to the approved monitoring agent continuous training courses that culminate in training certificates in the fields related to monitoring in field of social security, and if this is not possible, the Social Security Authority shall be obligated to justify the absence of training in writing accreditation can be withdrawn by the trustee authority upon observing the absence of training for three (3) consecutive years without justification, and that is until The observer controls the new methods of modern observation and provides him with the necessary knowledge in order to perform his duties in a professional manner.

B- Maintaining the professional secret

The legislator explicitly stated that the control agent must keep the professional secret in accordance with the provisions of Article 34 of Law No. 83/143 and not disclose in any case what amounts to their knowledge of the methods and results of exploitation during the exercise of their duties. And in case of violation of that, he is subjected to disciplinary sanctions by the agency affiliated with it in addition to withdrawing the accreditation card granted to him¹⁸ as a disciplinary punishment, as

18 Khalaf Kassem, Surveillance of Personnel in the Field of Social Security, p. 15

well as criminal penalties in accordance with the Algerian Penal Code as a violation punishable by law¹⁹

C- Adherence to the rules of integrity and impartiality: this is embodied in the following

1- Refrain from exercising control with institutions affiliated with his relatives, according to the provision of Article 8 of Decree No. 17/138, it is prohibited for the supervision agent to perform the monitoring mission with institutions in which his spouse, one of his assets, one of his branches, or one of his relatives is concerned with the third degree directly concerned with monitoring. Considering that the control aid is a neutral person. In addition to that, his job is sensitive and he is the only aid that belongs to the Social Security Authority, which is empowered to uncover the violations committed by the employers from which the Social Security Fund is affected ²⁰,

Where it is not conceivable for the controller to perform his mission with an institution affiliated with his relatives and discover that he does not respect the laws and legislations without falling into embarrassment, then the observer will be in front of two things: either preparing a report in violation, that is, sacrificing family ties to account for his job, which will cause him family problems, and despite that, he may be accused of complicity, or he either condones on the offense, and no report is made, and here he is an accomplice, as he maintains his family ties at the expense of his profession and the oath he performed, which is not acceptable in both cases. Therefore, he is completely excluded from the task and if the matter is not new in the law, where the relationship of kinship is considered a contraindication practicing many tasks, such as the governor's assignment, by auction sale, expert, judge ... or even to testify.

2- Not to accept cash or in-kind donations from any person related to the monitoring, as the legislator explicitly stated under Article 9 of Law No. 14/83 that it prohibits the observer agent to accept donations, whether they are cash or in kind provided to him directly or indirectly, or his acceptance of a benefit other than anyone, whether natural or legal person. It has to do with the control interest of the Social Security Authority or the tasks it carries out²¹, and every objection to this prohibition is considered an offense that falls under its jurisdiction to impose disciplinary penalties signed by its Social Security Authority, in addition to the imposition of criminal penalties stipulated in the Algerian Penal Code, especially Law No. 06 -01 Relating to the prevention and control of corruption ²².

In order to maintain the impartiality and integrity of the observer.

19 Executive Decree No. 05/130, as amended and supplemented

20 Article 7 of Executive Decree No. 05/130 as amended and supplemented

21 Article 34 of Law No. 14/83 83, as amended and supplemented

22 My Good Attributes, Social Security in the Field of Social Security, p. 118

D- Preparing the monitoring report

After completing the monitoring mission by the accredited agents and the jurors, it is obligatory for the latter to produce a report attached to the record containing the testimonies of the persons who are heard, signed by this witness and the controller²³, and for the various reports to be effective they must be subject to some specifications, including speed to report, especially if they are related to an accident or the completion of an operation.

What and to be on time because delay in transmission may hinder the speedy decision making that is effective for the case under study or the subject of notification, and the safety and accuracy of the information contained in the report because this helps to detect errors and the extent of their gravity and their impact on administrative work, which contributes to correcting the error. And it realizes the results that can be obtained from it²⁴.

Also, one of the principles to be respected in the report editing is that the notes must be accurate, objective and brief in addition to avoiding the lengthy preparation of the report in order to facilitate its study, because the longer the report is the more the degree of its exploitation is weak, and the stage of preparing the report is characterized by the freedom enjoyed by the observer. While preparing his report, where he can guarantee the notes that he deems worthy without any pressure or interference from any party, he is completely independent in its codification²⁵.

Therefore, he must indicate in it all the defects and irregularities that he discovers while performing his duties²⁶ and the hearing report must be free of voids between the lines, the filling or the delisting, and in the case of delisting or filling, the supervising aid and the audible person must approve it. And / or certification of the delisting or the filling, the supervised aid must indicate this at the bottom of the record²⁷.

After completing the preparation of the monitoring report, the observer aid will send it to the competent social security authority to settle the position of the taxpayer or refer the report to the state agent if it is required to do so²⁸ and the report is notified to the employer concerned within a maximum period of one month after the completion of the monitoring process, this is stipulated in Article 5 of the aforementioned decree²⁹, and this notification is in the form of a record containing the essential data represented in The date, place of reporting, the identity of the person who received a copy of the

23 Article 9 of Executive Decree No. 05/130 as amended and supplemented

24 Article 38 of Law No. 06-01 of February 20, 2006 on Preventing and Combating Corruption, Official C No. 14, issued on March 8, 2006, p. 15, amended and supplemented by Law No. 10/05 of August 26, 2006, Official C No. 50, issued on September 1, 2010, and Law No. 11/15, dated August 2, 2011, Official C No. 44, issued on August 10, 2011

25 Article 4/1 of Executive Decree No. 05/130 as amended and supplemented

26 Ahmed Waikato, Control over the Work of Public Administration in Algeria, a thesis for a doctorate in sciences in legal sciences, branch of public law, University of Mohamed Khader, Biskra, Faculty of Law and Political Science, 2015/2015, p. 61

27 Ahmed Swaikat, Monitoring the Actions of the Public Administration in Algeria, p. 234

28 Article 36/1 of Law No. 14/83, as amended and supplemented

29 Article 4/4 of Executive Decree No. 05/130 amending and supplementing

report, his identification number and signature, which was confirmed by Article 05 of Decree 05/130.

As for the legal value of these reports, the legislator did not specify the legal value of them, and as a result of that, the records prepared by the supervised aid do not have evidentiary and legal strength as it is in the case in the labor records inspectors, which have a legal argument that can only be challenged with forgery³⁰.

This is confirmed by Article 12, Paragraph 2 of Ordinance No. 75/33 related to the terms of reference of the Labor and Social Affairs Inspectorate that the labor inspector records are a definite means of proof that may not be challenged except by forgery³¹, and with the issuance of Law No. 3/90 it confirmed the authenticity of these minutes, but they may be challenged by any means of objection

This is what was mentioned in paragraph 2 of Article 14 of the same law³², and the legislator considered the records prepared by the labor inspector as a means of proof in Penalty matters. has authenticity and evidentiary power, provided it is correct, and this is stipulated in Article 214 of Ordinance 66/155 containing the Law of Criminal Procedure³³.

Subsection 2 : the powers vested in the control and protection agents assigned to them

The observer may, during the performance of his duties, experience difficulties impeding the performance of the monitoring. Therefore, the legislator provided him with a set of powers and granted him legal protection.

A- the powers of control agents

By analyzing the text of Article 3 of the Executive Decree No. 05-130 as well as Law No. 14/83 it authorizes the Oversight Service to perform the following tasks³⁴:

1 - Visits Authority

Pursuant to the text of Article 1/2 of the Executive Decree No. 05/130 mentioned above, which states that: "The supervision aid shall be qualified to carry out monitoring visits in the workplaces of his regional jurisdiction."

30 Article 36/2 of Law No. 83/14, as amended and supplemented

31 Article 5 of Executive Decree No. 05/130 as amended and supplemented

32 My Good Attributes, Social Security in the Area of Social Security, p. 140

33 Article 12/2 of Ordinance No. 75/33 of April 29, 1975, related to the terms of reference of the Labor and Social Affairs Inspectorate, Official C No. 39, issued on May 16, 1975, amended and supplemented by Law No. 90-03 of February 6, 1990, Related to the Labor Inspectorate, Official C No. 6, issued on February 7, 1990, p. 570

34 Article 14/2 of Law No. 90/03 of February 6, 1990 related to the Labor Inspection, Official C No. 06, issued on February 7, 1990, amended and supplemented by Order No. 96-11 of June 10, 1996, related to the Labor Inspection, states: Official C No. 36, issued on June 12, 1996 as follows: "The minutes of labor inspectors have the power of authenticity unless challenged by objection", p. 239

Pursuant to the provision of Article 30 of Law No. 14/83, the Algerian legislator has authorized every certified and sworn aid to conduct monitoring campaigns for the location of the taxpayers (employers) and at work hours³⁵.

With regard to all commissioning periods belonging to his regional jurisdiction in order to monitor the correct and proper implementation of social security legislation, he can also conduct monitoring at any time of the night or day provided that it is during his legally specified working hours³⁶, and if there are many visits considered stressful for the observer and in its place is replaced by what is lacking in its performance in performing its duties, as the legislator did not specify the cases that require supervision and those that do not require it.

The legislator also went further and expanded the area of territorial jurisdiction as an exception to be the monitoring process across the entire national territory, provided that according to the work of the Social Security Fund program has and / or in the exercise of oversight functions by the common interests of the Commission on Social Security³⁷.

2 - The authority to obtain information and to request documents

It is clear from the text of Article 3 of the same decree that every sworn and certified observer aid has the right to examine every document necessary to perform the monitoring operations without the taxpayer entitled to object to that pursuant to the provisions of Article 31 of Law No. 14/83, and in return for this the workers must provide all the necessary information To exercise control, and this is confirmed by Article 33 of Law No. 14/83, as amended and supplemented.³⁸

However, employers may adhere to the professional secret, which lead them to refrain from providing all the information required by the observer, and thus evading under the cover of the professional secret without the law creating a solution to these conditions that hinders the observers in the full exercise of their business.

3 – The authority to hear every person in the workplace and to carry out all required investigations

The legislator has authorized the accredited observer aid and the juror to listen to any person who is present in the workplace without objecting to that, and this is stated in Article 03 of the aforementioned decree.

Also, the legislator gave the aide to the observer the authority to carry out all the investigations required by the security agencies towards the employers, according to a previous request from the latter, and this is what was stated in Article 2 of Decree No. 17-138 which amends Article 03 of Decree No. 05-130.

35 Article 214 of Ordinance No. 66/155 of June 8, 1955, includes the amended and complemented Penal Code,

36 Article 03 of Executive Decree No. 05/130 as amended and supplemented

37 Article 30 of Law No. 83/14, as amended and supplemented

38 Article 2/3 of Executive Decree No. 05/130, as amended and supplemented

4 - Receive payment vouchers for the account of the Social Security Authority and notify notifications and prosecutions

The aiding agent is entitled to receive the payment vouchers for the benefit of the competent social security authority from the taxpayers (employers) and in return receives a statement proving his receipt of these bonds as a receipt.

The Algerian legislator has added an additional mission to the Control Aid, among the basic tasks stipulated in Article 03 of Decree No. 05-130, which was amended by Article 02 of Decree 17-138, which is to monitor notifications to notify the concerned taxpayer, as well as the prosecutions prepared by the Social Security Authority as a measure Forced collection procedures ³⁹.

5 - The authority to conduct electronic access to employers' statements and positions, and the authority to use public force

Under the new amendment under Article 2 of Decree No. 17-138 amending Article 03 of Decree 05-130, the Algerian legislator has added an important task for the aid watch staff, namely electronic remote insured access to a connected mobile device,

On the declarations made by employers and the modes of payment of social security contributions shown at the level of the data bases of the social security agencies, the results of electronic access are considered as a reliable reference that the monitoring agents should take, unless the designated user provides evidence to prove his legal status towards the social security bodies.

In addition, for the purpose of performing the monitoring mission, the assistance of the public force can be used in the event that the taxpayers are intransigent and refrain from submitting the monitoring procedure, as stated in the text of Article 37 of the above-mentioned Executive Decree No. 83/143.

Section 2 : the legal protection for control agents

The Algerian legislator has approved special protection for the control agents using the social security bodies during their performance, prescribed under Law No. 83/14 related to the obligations of those charged with social security, in addition to a special protection granted by the legislator in the common law under the Penal Code as follows:

Subjection 1 : The protection prescribed for the controller within the framework of the social security laws

Pursuant to the text of Article 31 of Law No. 83/14 mentioned above, those charged should provide the control agents with all documents and information necessary to perform their duties⁴⁰,

39 Article 2 of Executive Decree No. 17/138

40 Article 33 of Law No. 83/14, as amended and supplemented

The legislator wanted to provide facilities for the supervisory staff to perform their duties to the fullest extent, especially with regard to documents related to the entry and exit of workers, labor contracts, if any, and the employee's wage registry, and documents for payment of quarterly and annual tax dues, etc.⁴¹ And in the event of objection to that by the employer or the threat or insult or any act that impedes monitoring, the supervised aid benefits in the framework of the monitoring operations from the protection of the body used for him from all forms of insult and threat to his person and his dignity and this is stated in Article 6 of the decree Executive No. 05/130⁴²

The legislator went so far as to say that social security bodies in such cases can use the force of public law within the framework of the law.⁴³

Subjection 2 : protection prescribed for an observer under the Penal Code

Pursuant to Article 32 of Law No. 83/14 which states that: "Obstructive acts of control are punished with the penalties specified in Article 183 of the Penal Code," and by referring to the text of Article 183 of the Penal Code it states: "Every attack on Employees or representatives of The public Authority who implement orders, decisions issued by them, regulations, decisions or judicial orders, as well as any resistance to them with violence or infringement that is a crime of disobedience and the threat of violence are considered the same rule of violence.

Any disobedience that consists of the aforementioned acts by the employer is considered a crime punishable by the Penal Code in accordance with the provisions of Articles 184, 185 and 187 with the penalty of imprisonment in addition to paying financial fines or one of the two penalties⁴⁴.

Therefore, the Algerian legislator considered the employer observer among the representatives of the public authority who implement the public authority, and that he implements orders and decisions issued by public authorities, as well as the implementation of laws, whether by violence or infringement, so these acts are a crime of disobedience⁴⁵.

However, the thing that we intend on him is that although the legal texts came clear with regard to violations or objections to the work of accredited observers and jurors, the problem raised is that the legislator did not grant the latter the status of a public officer and therefore the question posed is in fact he can use the aforementioned articles and is it responded in this area? Therefore, the problem was raised by the fact that the control aid belongs to the Ministry of Labor and Social Security and not to the Public Employment Law No. 06-03.

41 Article 2 of Executive Decree No. 17/138

42 Article 31 of Law No. 83/14, as amended and supplemented

43 My Good Attributes, Social Security in the Field of Social Security, p. 128

44 Article 6 of Executive Decree No. 05/130 as amended and supplemented

45 Article 37 of Law No. 83/14, as amended and supplemented

According to the Directive Law for Public Institutions Law No. 88-01, which considered social security funds to be public bodies with special management after they had an administrative nature⁴⁶, and on this basis the control agent is not considered as a public official? and he is not subjected to the Public Employment Law⁴⁷, such as the labor inspector, who was granted the status of a judicial seizure by the legislator and considered by him to be one of the judicial seizure officers under special laws, and this is stipulated in Article 27 of Ordinance No. 66/155 related to the amended and complemented penal law ⁴⁸.

Conclusion

Control in the field of social security is considered one of the important mechanisms that will maintain the financial balances of social security funds by facing various types of evading the obligations imposed on the taxpayers on the one hand and preserving the rights of individuals to benefit from the social protection established for them in the framework of social security and Among the most important results reached:

1- The inadequacy of the statutory texts regulating social security with the current economic and social developments,

2- The absence of the fundamental guarantees related to the monitoring mission, such as guaranteeing the independence that prevents the exemption of the observer from performing his monitoring of the assignees without explanation,

3- Lack of awareness of the various laws related to monitoring, as well as limited working methods, overburdening the observer with ineffective research and insufficient coordination in an official capacity with public structures and departments,

4- Lack of communication with institutions and structures related to the work of monitoring.

5-Adherence to the professional secret by employers towards monitors,
Recommendations:

1- Issuing a special law on social security monitoring that establishes the principles of supervision, how to exercise control, the powers of the observer, the observer's legal protection...

2- Establishing a monitoring charter for institutions and employers assigned to social security funds, which serves as a guide specifying the rights and duties of the bodies covered by the monitoring.

3- Preparing a communication strategy between the justice sector, social security agencies and research laboratories to remove all ambiguities which are related to social security laws and take note of them.

46 Articles 184, 185 and 187 of Ordinance No. 66_156, as amended and supplemented

47 My Good Attributes, Social Security in the Field of Social Security, p. 128

48 Article 49 of Law No. 88/01 of January 12, 1988, which includes the Directive Law for Public Institutions, Official C No. 02, issued on January 13, 1988, p. 37

4-Canceling the procedures related to the administration's adherence to the professional secret in the face of the observers, as it is the case with the banking secret that deprives it of carrying out its tasks and helps the evaders,

5-Real and serious training by focusing on the practical and practical side of the training content to qualify the monitors and advance their performance in addition to seeking to make the training compatible with the development of legislation, society and the needs of the monitors,

6-Strengthening the monitoring system with internal and external assignment from holders of higher degrees,

7-The necessity of strengthening the monitoring system with the necessary means of work to improve the productivity in terms of quantity and quality,

8- Activating the preventive and advisory role of the observer in his interactions with the employee and the employee.

9-Reviewing the method of preparing the monitoring work program tightly and monitoring the employees and employers to be monitored by establishing a data bank for them.

10-Reducing the burdens on the observer with regard to futile research, such as social research.

11-Activating the relationships of social security funds with all public administrations (financial, customs ...) by strengthening the unified electronic network to facilitate the exchange of the database of employees and employers, Establishing an electronic national record for the smugglers who commit violations in the field of social security and the fiscal, customs, banking, financial and commercial fields ... as well as those who do not legally deposit their financial lists, and could result in the inclusion of an institution within this record by depriving it of the use of social, tax, customs and administrative facilities ,and from participating in public deals.