The Problem of Non-Enforcement of Administrative Judicial Rulings and Decisions Subject to Appeal

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Abstract :

The study of the problem of non-enforcement of administrative judicial rulings and decisions contested to appeal is of great importance, as it reveals the tension that exists between, on the one hand, guaranteeing the litigant's right to appeal and, on the other hand, the need to enforce rulings and decisions issued by administrative judicial authorities once they have become final. While the enforcement of judgments and decisions issued in favor of the public administration does not raise any practical problems, the enforcement of judgments issued against it reveals a significant imbalance in the relationship between the administration and the litigant, as a result of the privileges and authority enjoyed by the administration. Addressing this issue is therefore essential for strengthening the protection of rights and freedoms and enhancing trust in the administrative judiciary.

Keywords:

Non-enforcement, appeal, Administrative courts of appeal, administrative judgments and decisions, public administration, compulsory enforcement.

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إشكالية عدم تنفيذ الأحكام والقرارات القضائية الإدارية المطعون فيها بالاستئناف

الملخص:

تكتسي دراسة إشكالية عدم تنفيذ الأحكام والقرارات القضائية الإدارية المطعون فيها بالاستئناف أهمية بالغة، لما تكشفه من توتر قائم بين ضمان حق المتقاضي في الطعن من جهة، وضرورة تنفيذ الأحكام والقرارات الصادرة عن الجهات القضائية الإدارية متى اكتسبت حجية الشيء المقضي به من جهة أخرى. فبينما لا يثير تنفيذ الأحكام والقرارات الصادرة لفائدة الإدارة العامة أي إشكال عملي يُذكر، يكشف تنفيذ الأحكام الصادرة ضدها عن اختلال واضح في توازن العلاقة بين الإدارة والمتقاضي، نتيجة ما تتمتع به الإدارة من امتيازات وسلطة. ومن ثمّ، فإن معالجة هذه الإشكالية تعد مدخلًا أساسيًا لتعزيز حماية الحقوق والحريات وترسيخ الثقة في القضاء الإداري.

الكلمات المفتاحية:

عدم التنفيذ، الطعن بالاستئناف، المحاكم الإدارية للاستئناف، الأحكام والقرارات الإدارية، الإدارة العامة، التنفيذ الجبري.

La problématique de la non-exécution des jugements et décisions administratifs faisant l'objet d'un recours en appel

Résumé :

L'étude de la problématique de la non-exécution des jugements et décisions administratifs faisant l'objet d'un recours en appel revêt une importance capitale, car elle met en évidence la tension qui existe entre, d'une part, la garantie du droit du justiciable de former un recours et, d'autre part, la nécessité d'exécuter les jugements et décisions rendues par les instances judiciaires administratives dès lors qu'ils ont acquis force de chose jugée. Alors que l'exécution des jugements et décisions rendus en faveur de l'administration publique ne pose aucun problème pratique notable, l'exécution des jugements rendus à son encontre révèle un déséquilibre manifeste dans la relation entre l'administration et le justiciable, en raison des privilèges et du pouvoir dont jouit l'administration. Par conséquent, le traitement de cette problématique constitue une étape fondamentale pour

renforcer la protection des droits et libertés et consolider la confiance dans la justice administrative.

Mots clés :
Non-exécution, appel, cours administratives d'appel, décisions et arrêts administratifs, administration publique, exécution forcée.

Introduction

The enforcement of administrative rulings and decisions is considered the embodiment of justice. Their enforcement reflects the practical effect of the administrative judge's work on the ground, and the issuance of rulings on them ultimately depends on the legal effects resulting from the ruling and the extent to which they are implemented in practice.

If administrative justice plays a fundamental role in establishing the rule of law based on the principle of legality, by monitoring the actions of the administration and requiring it to comply with judicial decisions at all levels of litigation (courts of first instance, courts of appeal, and the Council of State), this principle loses its value unless the state respects judicial rulings and decisions and works to implement them. What is the point of constitutions and laws stipulating the independence of the judiciary, guaranteeing the right to litigation, and ensuring that the judiciary exercises its jurisdiction to the fullest extent and exercises judicial oversight if their rulings are not enforced.

The enforcement of administrative judgments and decisions is a fundamental issue in administrative law, as it is closely and directly linked to the principle of the rule of law and the protection of rights. The Algerian Constitution has enshrined this obligation since the 1996[1] Constitution, and it was further reinforced by the 2016 constitutional amendment, which established the principle that judicial rulings must be enforced by all competent state authorities at all times and under all circumstances, with legal penalties for anyone who obstructs their enforcement.

[1] Article 145 of the 1996 Constitution states: " All competent state agencies shall, at all times, in all places and in all circumstances, enforce the judgments of the judiciary," which was amended by Article 163 of Law 01-16 of March 6, 2016, containing the constitutional amendment, J.R. No. 14 of March 7, 2016.

The 2020[2] constitutional amendment reaffirmed and reinforced this approach, with Article 178 stipulating that all state agencies must, at all times, in all places, and under all circumstances, enforce judicial rulings and decisions and ensure that they are respected as a symbol of legitimacy and an embodiment of the independence of the judiciary. It follows that the enforcement of judicial rulings, particularly administrative ones, is no longer a mere legal obligation but has become a constitutional duty.

Thus, the Constitution, as amended in 2020, established a clear rule that respect for and implementation of administrative judicial rulings and decisions constitute a fundamental guarantee of the rule of law, reflect the administration's submission to the law and the judiciary, and enshrine the effectiveness of judicial oversight of its actions.

Given that the administration's failure to implement without a legitimate reason constitutes a clear violation of the law, Algerian lawmakers have sought to address this situation by establishing a set of legal measures that can be resorted to in cases where the administration persists in its failure to implement the judgments and decisions issued against it.

What concerns us in this study, given the developments brought about by the new judicial reforms affecting the administrative judicial bodies, such as the establishment of administrative courts of appeal, is to focus on the nature of the administrative judicial rulings and decisions that are subject to enforcement, by comparing Law 08-09, as amended and supplemented by Law 22-13, which includes the Code of Civil and Administrative Procedure **(Section I).**

We then attempt to assess the effectiveness of the guarantees provided by the legislator in compelling the administration to implement the judicial rulings and decisions issued against it **(Section II).**

[2] Constitution of the People's Democratic Republic of Algeria, promulgated by Presidential Decree No. 20-442 of December 30, 2020, concerning the promulgation of the constitutional amendment approved by referendum on November 1, 2020, J.R., No. 82, issued on December 30, 2020.

On this basis, this study seeks to address the issue of non-enforcement of contested administrative judgments and decisions in light of Algerian legislation and jurisprudence. It starts from a central issue, which is to explain how the Algerian legislator has regulated the enforcement of these judgments and decisions, while at the same time questioning the legal means adopted to compel the administration to enforce the judgments and decisions issued against it.

Section I: New developments in the nature of enforceable administrative judgments and decisions

Before discussing the nature of enforceable administrative judgments and decisions, it is necessary to define administrative disputes, which are all disputes arising from the actions of the administrative authority and are resolved by the administrative judiciary. The judiciary is the most effective mechanism guaranteed by the Algerian legislature to individuals for the protection of their rights vis-à-vis the administration. Every administrative dispute ends with the issuance of an administrative judicial ruling that reflects the final resolution of the dispute and gives everyone their due rights, or the ruling is issued but is subject to implementation issues. The administration, as the holder of public authority and its privileges, is often the defendant in administrative disputes, but this does not prevent it from failing to implement the administrative court ruling issued against it.

Therefore, we must examine the administrative court rulings issued by the courts of first instance **(A)**, and then address the administrative court decisions issued by the administrative courts of appeal **(B).**

A)- Administrative judgments issued by courts of first instance subject to enforcement:

By examining the provisions of Articles 08-09 of the law, it is clear that judicial rulings issued by administrative courts of first instance are directly enforceable, and that appealing them does not suspend their enforcement, nor does appealing them to the Court of Cassation[3]. As an exception, opposition is the only normal means of appeal that suspends enforcement, according to Article 955 of

[3] See the text of Articles 908-909 of Law 08-09.

Law 08-09, However, it is only admissible in the context of judgments and decisions issued in absentia by administrative courts and the Council of State [4].

It should be noted that this procedure is relatively unique in terms of the nature of the judgment being enforced, compared to the enforcement of judgments issued by ordinary courts.

The executive nature of preliminary administrative rulings, in clear and precise terms, refers to any ruling issued by administrative courts in their capacity as the general authority and the first instance of litigation in administrative matters. As for the rulings issued by the Council of State as the first level of litigation, they had the character of a final preliminary judicial decision, meaning that they were final from the moment they were issued, as they could not be appealed before the Council of State itself [5].

This is in contrast to judgments issued by ordinary courts, where enforcement is suspended during the normal appeal period, as well as when it is exercised, with the exception of judgments that are enforceable by law [6].

The general rule renders judicial decisions unenforceable unless they are final, this is logical and acceptable because a judicial ruling can be appealed through ordinary and extraordinary appeal procedures, and as long as it is subject to review, it is likely that its substance and content may change at the level of the judicial authorities before which it is appealed. Therefore, it cannot be enforced unless it is final[7].

In our opinion, one of the justifications for recognizing the executive nature of preliminary administrative rulings, as a general principle, is the specific nature of administrative disputes and the nature of the relationship between the parties involved, because it is well known that administrative cases heard by administrative courts are subject to administrative decisions, such cases cannot be accepted[8] unless they relate to an administrative decision. Since administrative decisions are considered one of the most important legal means for the public

[4] See the text of Article 953 of Law 08-09.
[5] Rais Amina, "New Developments in the Implementation of Administrative Rulings and Decisions under Law 22-13 Amending and Supplementing Law 08-09," *Journal of Legal and Political Thought*, Volume 7, Issue 2 (2023), p. 397.
[6] See Article 323 of Law 08-09.
[7] Amina Raïs, op. cit., p.397.
[8] Administrative actions: actions for annulment, actions for compensation, actions for interpretation, and actions for review of legality.

administration to carry out its administrative activities in order to achieve the public interest and are associated with the presumption of legality, they must therefore be implemented immediately once their content is known.

What concerns us at this point in our research is what is issued by administrative courts, regardless of the nature of the dispute, where their rulings are generally enforceable, even though they are preliminary, but may encounter the problem of non-enforcement. when the administration shows bad faith in refusing to enforce the ruling in several ways, including outright refusal, which is the most severe form of non-enforcement, as well as defective enforcement, which is represented by delay or negligence, and incomplete enforcement that does not comply with the ruling [9]. This is the case when it reinstates an employee who was dismissed by the annulled decision to another position lower in the career ladder than the one, he held before the dismissal decision was issued.

One of the most important means provided by Algerian lawmakers to limit the consequences of the enforcement of a judgment issued by an administrative court at first instance is the possibility of requesting a stay of enforcement of that judgment, as provided for in Articles 913 and 914 of Law 08-09[10].

Through these two articles, we understand that the legislator has allowed the Council of State to suspend the enforcement of administrative judgments issued by the administrative court if the enforcement of the administrative judgment would expose the appellant to certain financial loss that cannot be remedied and if the issues raised in the appeal would justify the annulment of the appealed decision[11].

Or in the event that the administrative court issues a ruling overturning an administrative decision for exceeding authority, and the grounds for appeal are serious enough to lead to the overturning or amendment of the contested ruling, to reject requests for annulment [12].

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[9] Si LArabi Abdelaziz, The Jurisdiction of Administrative Courts in Administrative Matters, Master's thesis in public law, Mouloud Mammeri University of Tizi Ouzou, Algeria, 2017, p. 33.

[10] See Articles 913-914 of Law 08-09.

[11] Farhat Farhat, "Enforcement of Administrative Judgments", *Journal of Legal and Social Sciences*, Ziane Achour University of Djelfa, Algeria, Volume 6, Issue 1 (March 2021), p. 451.

[12] Khaled Baljilali, "The Problem of Enforcing Judicial Rulings Against the Algerian Administration", *Politics and Law Notebooks*, Vol. 14, No. 03 (2022), p. 178.

However, the principle of non-suspension of enforcement upon appeal does not apply unconditionally, as Algerian lawmakers have established exceptions that allow for the suspension of enforcement of a judgment in specific cases. Article 912 of the Code of Civil and Administrative Procedure stipulates that the appeal judge may order a stay of execution if he finds that the execution of the judgment would inevitably lead to situations that would be impossible or difficult to remedy later, or if it appears that the means and documents presented in the appeal are sufficiently serious to warrant the annulment of the contested judgment. In such cases, enforcement shall remain suspended until the appeal court has issued its decision, in order to strike a balance between the principle of the finality of judgments and the protection of the parties' rights from damage that may be irreparable [13].

Based on the foregoing, it is clear to us that granting enforceability to judgments issued initially by administrative courts tends, in practice, to tip the balance in favor of public legal entities, given the capabilities and powers they enjoy that enable them to benefit quickly from enforcement. This often results in prejudice to the legal position of the other party in the administrative dispute, which is the natural person who is considered the weakest link in the chain, raising the issue of striking a balance between the requirements of the smooth running of public services and ensuring effective judicial protection of the rights of litigants.

B)- Administrative judicial decisions issued by administrative courts of appeal subject to enforcement:

Following the 2020[14] constitutional amendment, the Algerian legal system underwent profound reforms affecting the administrative judiciary, its powers, and fair trial procedures.

The establishment of administrative courts of appeal is the cornerstone of these reforms and their most important development, as it has been enshrined in

[13] Malika Hajjaj, “Problems in the Enforcement of Administrative Judgments Against the Administration”, *Journal of Legal and Political Thought*, Volume 6, Issue 1 (2022), p. 1004.

[14] Presidential Decree No. 20-442 of December 30, 2020, relating to the promulgation of the constitutional amendment, approved by referendum on November 1, 2020, in the Official Gazette of the People's Democratic Republic of Algeria, No. 82, issued on December 30, 2020.

new legal texts, the first of which concerns judicial division[15] and the second judicial organization [16], leading to the redefinition of the jurisdiction of administrative courts of appeal through the amendment of the Code of Civil and Administrative Procedure [17].

If the goal of most of the administrative judicial reforms adopted by the Algerian state is to achieve an administrative judicial system that is free of flaws and more suited to embodying the rule of law, then our question is: does the enforcement of rulings by these judicial bodies form part of these reforms?

Prior to the introduction of recent judicial reforms, the system of appeal in administrative disputes was somewhat deficient in terms of ensuring effective protection of the rights of litigants, since appeals against judgments issued by administrative courts of first instance before the Council of State did not have any suspensive effect on enforcement. Article 908 of the Code of Civil and Administrative Procedure, in its previous version, enshrined this approach when it explicitly stated that an appeal before the Council of State did not suspend the enforcement of the contested judgment, which often did not serve the interests of the appealing parties, especially when enforcement would have consequences that would be difficult to remedy later.

However, the establishment of administrative courts of appeal constituted a qualitative shift in the administrative litigation system, as appeals before these judicial bodies were given suspensive effect[18], similar to what is practiced before judicial councils in the ordinary courts. This approach reflects the legislator's desire to strengthen the guarantees of two levels of litigation within the administrative judiciary itself and to provide temporary protection for the legal positions of the parties until the dispute is decided on appeal.

[15] Law No. 22-07 of May 5, 2022, on judicial division, O.R. No. 32, published on May 14, 2022.

[16] Organic Law No. 22-10 of June 9, 2022, on judicial organization, O.N. No. 41, published on June 16, 2022.

[17] Law No. 22-13 of July 12, 2022, amends and supplements Law No. 08-09 of February 25, 2008, containing the Code of Civil and Administrative Procedure, Official Gazette No. 48, issued on July 17, 2022.

[18] Article 900 bis 2 of the amended and supplemented Code of Civil and Administrative Procedure states: “The appeal has the effect of suspending the dispute and the enforcement of the judgment.”

However, the suspensive effect of appeals against judgments and judicial decisions is not absolute, as there is an exception for urgent orders. In this type of order, an appeal does not prevent its enforcement, as the law, in accordance with the provisions of Article 935 of the Code of Civil and Administrative Procedure, allows the judge hearing the urgent matter to order the enforcement of the order immediately after it is issued, given the urgent and necessary nature of this type of dispute. This means that the urgent order can be enforced as drafted, without waiting for the rest of the formal procedures to be completed, in order to ensure rapid judicial protection and achieve the purpose of urgency [19].

In addition, Algerian lawmakers have reduced the time limit for appealing judgments issued by administrative courts of first instance from two months, as was the case before the Council of State, to one month before administrative courts of appeal. This procedural amendment is a clear expression of the desire to strike a balance between the need for speed in adjudicating administrative disputes and ensuring effective judicial protection [20].

Therefore, these new provisions can be considered an important gain for administrative litigants, as they enable them to benefit from a stay of execution of the initial judgment until the appeal is decided, thereby limiting the risk of harm to their rights or legal status. The reduction of appeal deadlines also contributes to this trend, as it speeds up the resolution of administrative disputes and strengthens confidence in the administrative judiciary as an effective mechanism for protecting rights and establishing the rule of law.

In summary of this first part of the study, it is clear that in the various cases mentioned above, the issue of the administration's failure to implement the content of judicial rulings and decisions issued against it may arise, whether they are initial judgments, judgments appealed against, or even final judgments, which could hinder the normal course of administrative litigation and directly affect the rights of the weaker party, i.e., the litigant facing the administration.

Given the administration's strong legal position and special privileges, non-enforcement may become a means of violating the principle of equality between

[19] Wafsan Wahida, “Appeal Jurisdiction in Administrative Matters under Law No. 22-13, amending and supplementing Law No. 08-09, containing the Code of Civil and Administrative Procedure”, *Journal of Legal and Political Studies*, Volume 8, Issue 02, December 2023, p. 313.

[20] See Article 950 of the Code of Civil and Administrative Procedure amended and supplemented.

the parties to the dispute. Faced with this imbalance, the legislator intervened to establish legal solutions and mechanisms and guarantees aimed at obliging the administration to implement judicial rulings and decisions, in order to achieve balance within the administrative dispute, enshrine the effectiveness of administrative justice, and ensure respect for the principle of legality and the rule of law.

Section II: The effectiveness of the guarantees or mechanisms introduced by the legislator to compel the administration to implement

In order to accurately assess the effectiveness of the safeguards and mechanisms established by the legislature to compel the administration to implement administrative judicial rulings and decisions, the scientific approach requires beginning with a presentation of the traditional mechanisms established by legal and judicial practice **(A)**, and then move on to studying the new mechanisms introduced by the legislature to keep pace with developments and strengthen enforcement guarantees **(B).**

A) - Traditional mechanisms for compelling the administration to implement judgments and decisions:

At this point in the research, we will address the traditional mechanisms established by the legislator in its legal system, particularly Law 08-09, which was amended and supplemented to compel the administration to implement judicial rulings and decisions. The first mechanism concerns the authority to issue orders during the implementation of rulings, as the administrative judge has the authority to compel the administration to comply with the judgments issued against it by issuing direct enforcement orders. The second mechanism relates to punitive fines, which serve as a means of financial pressure on the administration that refused to comply, with the aim of forcing it to comply with the judgments issued against it.

1- The power to issue orders as a means of pressure during the enforcement of judgments:

The task entrusted to the administrative judiciary is both noble and burdensome. It is noble because this body acts as a shield protecting the rights and freedoms of individuals from the activities of the administration, and enshrines the concept of oversight of the administration's actions so that it respects the requirements of legality. It is demanding because the task requires highly

competent human resources on the one hand, and the establishment of serious and effective patterns in the management and organization of judicial activity and ensuring the authority of the judicial rulings issued by it on the other hand[21].

The role of the administrative judge does not end with the issuance of a ruling in a case, but rather continues with overseeing its implementation in practice through the effective execution of the ruling in order to realize its practical value. This demonstrates the administrative judge's keenness to protect rights and freedoms from administrative abuse [22].

Executive orders are regulated in Chapter VI of the Code of Civil and Administrative Procedure No. 08-09, under the heading "Enforcement of Administrative Judicial Decisions," where the legislator has devoted Articles 978 and 979 to clarifying the authority of the administrative judge to issue orders to the administration.

According to Article 978, when a ruling or decision requires a legal entity or anybody whose dispute is subject to administrative jurisdiction to take certain enforcement measures, the administrative judicial authority may order the administrative judicial authority requested to do so in the same judicial ruling, specifying a deadline for enforcement where necessary.

In this case, it is accompanied by the operative part of the judgment, which has the same authority because its purpose is to remedy the improper implementation of the administrative court's judgment [23].

Article 979 of the Code of Civil and Administrative Procedure also stipulates that the administrative court may order the necessary enforcement measures, even if they were not raised or requested in the previous proceedings. This article also gives the administrative judge the power to compel the administrative authority

[21] Abdelkrim Boudrioua, "The Principle of the Inadmissibility of Administrative Judges Issuing Orders to the Administration: Imitation or Restriction", *Critical Journal of Law and Political Science*, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Issue 01, 2007, p. 42.

[22] Fayza Brahimi, The Financial Impact of Failure to Enforce Administrative Court Rulings, Master's thesis, Faculty of Law, Mohamed Boukera University, Boumerdes, 2012, pp. 101 and 102.

[23] Serbah Ahmed, "Enforcement of Administrative Court Rulings Against the Public Administration in Algerian Legislation", *Journal of Legal and Social Sciences*, Ziane Achour University of Djelfa, Algeria, Volume 7, Issue 1, March (2022), p. 1271.

concerned to issue a new decision within a specified period, whenever the enforcement of the judgment so requires.

The practical application of this power is evident, for example, in ordering the reinstatement of an employee after a ruling overturning the decision to dismiss him, or in ordering the cancellation of a disciplinary penalty and its removal from the file concerned. These cases highlight the positive role of the administrative judge in ensuring the effective enforcement of judgments, rather than merely declaring the administrative decision unlawful.

In this sense, Articles 978 and 979 explicitly establish the authority of the administrative judge to issue orders to public legal entities, which constitutes a clear legislative shift from the previous position that excluded judicial orders as a means of compelling the administration to respect the authority of res judicata [24].

This change reflects the legislator's desire to strengthen the effectiveness of administrative justice and consolidate the rule of law by ensuring that judicial decisions are enforced on the ground. Executive orders are an effective tool for administrative judges to assert their authority over the administration, as they offer advantages that contribute to the smooth running of the proceedings before them. These orders enable judges to overcome the obstacles that public administrations may have put in place and continue to use, which are often employed to delay or circumvent the enforcement of judgments, thereby undermining the rights of litigants.

Executive orders also play an important role in correcting the imbalance between the administration and litigants by limiting practices that some administrations used to deprive rights holders of their opportunities. These orders thus contribute to enhancing the effectiveness of administrative justice and ensuring that the administration respects its legal obligations, thereby enshrining the principle of legality and the authority of judicial rulings.

[24] Youssef Ben Nasser, “The New Powers of the Administrative Judge in the Enforcement of His Decisions”, Presentation given at the National Forum on Developments and Updates in Civil and Administrative Procedure Law, Faculty of Law, University of Oran, January 20-21, 2009, p. 52.

2- Penalty payments as a complementary measure and means of enforcing orders:

In order to enhance the effectiveness of executive orders, the Algerian legislator sought to eliminate any ambiguity regarding the use of penalty payments in administrative matters, explicitly recognizing them as a mechanism that complements the authority of the administrative judge. Thus, by imposing a penalty payment, the judge is thus able to reinforce their judicial role in ensuring the enforcement of his judgments and imposing their respect by the administration, given that the decision constitutes a natural extension of his power to issue orders.

The penalty payment is not merely a means of ensuring compliance with judicial decisions per se, but also a tool for exerting pressure and coercion to compel the administration to implement the resulting executive orders. This reveals a close relationship between them and judicial orders, as the penalty payment is an essential means of ensuring the effectiveness and implementation of orders on the ground, thereby strengthening the position of the administrative judiciary and enshrining the principle of the rule of law [25].

The Algerian legislature has provided for a system of punitive fines in the Code of Civil and Administrative Procedure[26], authorizing administrative judicial authorities to impose them as a means of ensuring the enforcement of judicial decisions. In this context, Article 980 stipulates that the administrative judicial authority competent to issue enforcement orders in accordance with Articles 978 and 979 may order the imposition of a penalty payment, specifying the date on which it shall take effect [27].

Although the Algerian legislature has not provided an explicit definition of a penalty payment, they have surrounded it with a series of legislative provisions

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[25] Mohamed Bahi Abu Younis, *The Penalty of Imprisonment as a Means of Compelling the Administration to Implement Administrative Rulings*, Dar Al-Jami'ah Al-Jadida Publishing House, Alexandria, Egypt, 2001, p. 44.

[26] Articles 980-981-982-983-984-985 of Law No. 08-09 of February 25, 2008, containing the Code of Civil and Administrative Procedure, Official Gazette No. 21, issued on April 23, 2008.

[27] Ali Othmani, "Guarantees for the Enforcement of Administrative Judgments and Decisions: An Analytical Study in Light of the Code of Civil and Administrative Procedure", *Al-Mustaqbal Journal of Legal and Political Studies*, Institute of Law and Political Science, University Center of Aflou, Issue No. 4, December 2018, p. 206.

that regulate the conditions under which it may be imposed, the judicial authority competent to issue it, and its legal consequences.

Through these provisions, a penalty payment can be defined as a sum of money imposed by an administrative judge on a debtor for each specific period of time during which the debtor delays the specific performance of his obligations, when such performance requires personal intervention on his part [28].

The administrative judge shall not impose a penalty payment unless a set of legal and procedural conditions are met, which aim to ensure the proper use of this mechanism and achieve its purpose. These conditions include:

First: In order for the administrative judge to impose a penalty, there must be a judgment, order, or judicial decision that explicitly obligates the convicted party to perform a specific obligation for the benefit of the other party, as the element of obligation is fundamental to confirming the violated right, ensuring its protection, and responding to the violation [29].

Second: The judicial decision must be served in its enforceable form, as this form is the formal tool that gives the judgment its enforceable nature and makes it a valid basis for enforcement. No penalty can be imposed for non-enforcement before this procedure is completed [30].

Third: A penalty payment may only be imposed if the administration fails to comply with the ruling and three months have elapsed since the date of notification of the ruling. A request to the administrative judge to impose a punitive fine may only be submitted if non-compliance is established[31], provided that the purpose is to compel the administration to comply with the judicial ruling. Therefore, it shall not be imposed if enforcement is legally or materially impossible, and it can only be imposed if the administration has been given a period of time enabling it to fulfill the obligation imposed by the judgment[32].

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[28] Mardassi, Ezzedine, *Punitive Fines in Algerian Law*, Dar Houma Publishing House, Algeria, 2008, pp. 13-14.

[29] Asya Malayka, "Penalty Fines as a Guarantee for the Enforcement of Administrative Judgments under the Code of Civil and Administrative Procedure", *Journal of Legal and Political Sciences*, Issue 16, June 2017, p. 432.

[30] Ibid., same page.

[31] See Article 987 of Law 22-13.

[32] Christophe Guettier, Injunction and penalty payment, Jurisclasseur edition, No. 2. 1997. p. 30.

It should be noted that the text of Article 987 of Law 08-09 uses the term "judgment," which is understood to mean judgments issued by courts of first instance, while the text of Article 987 of the new law uses the term "judgment or decision," adding the word "final decision," which can be understood to mean the second level of litigation (administrative courts of appeal).

Fourth: The plaintiff must submit an explicit request for the imposition of a punitive fine[33], and this request is considered an essential procedural requirement that the judge cannot disregard, given that punitive fines are not imposed automatically by the administrative judge, but rather at the request of the interested party.

In addition, Algerian lawmakers have made the administrative judge's authority to impose a penalty payment discretionary [34], as the judge has the discretion to determine the appropriateness of resorting to this method against the administration, depending on the circumstances of each case and the nature of the obligation to be enforced. The imposition of a penalty payment is not a mandatory measure, but rather a legal means used when necessary to ensure the enforcement of judicial decisions.

The legislator has gone even further by granting the administrative judge, under Article 984 of the Code of Civil and Administrative Procedure, the power to reduce or cancel the penalty payment whenever necessary [35], which reflects the flexibility of this system and confirms the non-punitive nature of the penalty payment, as it is primarily a means of pressure aimed at compelling the administration to comply.

The principle of punitive fines applies to both administrative courts and the Council of State. The administrative court, as the court of first instance with jurisdiction over disputes relating to the implementation of administrative obligations, has the power to impose punitive fines, as does the Council of State when considering disputes brought before it.

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[33] Articles: 980-985-987 of the Code of Civil and Administrative Procedure.

[34] Kamoun Hussein, the phenomenon of the administration's failure to implement judicial rulings issued against it, Master's thesis on state transformations, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou,2009, p. 88.

[35] Hassain Omariya, "The Penalty of a Fine and Its Role in the Enforcement of Administrative Court Rulings in Algeria", *Al-Mustaqbal Journal of Legal and Political Studies*, University Center of Aflou, Issue No. 3, June 2018, p. 95.

We believe that, in accordance with and in line with the requirements for the implementation of administrative judgments and decisions, the imposition of punitive fines will also extend to administrative courts of appeal, as they are the judicial authority competent to rule on appeals lodged against judgments issued by administrative courts. Within the framework of their judicial powers, these courts have the authority to uphold, amend, or revoke the penalty of a fine, depending on the facts of the dispute and the requirements for the proper enforcement of judicial rulings. In this way, the administrative courts of appeal contribute to ensuring the uniformity of judicial practice and enhancing the effectiveness of the enforcement of administrative judgments, alongside the administrative courts and the Council of State, thereby ensuring the unity of the legal system for the enforcement of administrative judgments and enhancing the effectiveness of administrative justice.

B) - New mechanisms to improve and strengthen the effectiveness of the implementation of administrative rulings and decisions (forced enforcement):

The mechanisms introduced by the amended and supplemented Civil and Administrative Procedures Code 08-09 in the area of enforcement of administrative decisions, particularly the consolidation of the administrative judge's authority to issue orders and the possibility of imposing punitive fines on the administration, continue to have limited impact in practice. This is due to the many methods used by the administration to circumvent its obligations, either voluntarily or through legal obstacles that hinder the effectiveness of the administrative judge's intervention, despite the powers vested in him.

Faced with these difficulties, the legislator had to intervene to find new solutions that would help ensure the effective enforcement of administrative court rulings. The previous solutions were retained but reinforced with new provisions in Article 986 of Law 22-13, which contains the Code of Civil and Administrative Procedure.

Although, in our view, the basis for this measure was found in previous legislation[36], its presence was unclear and somewhat ambiguous, which limited

[36]- Article 986 of Law 08-09 states that “when a final judgment orders a public legal entity to pay a specific amount of money, it shall be enforced in accordance with the legislative provisions in force.”

its practical effectiveness. We therefore wonder whether Law 22-13 has managed to close the old loopholes and achieve a qualitative shift in establishing a new mechanism for enforcing judgments. This is what we will try to determine later.

Based on the general rules of administrative law, individuals may not seize public funds as a means of coercive enforcement against the government. Faced with this restriction, the Algerian legislature has developed special legal mechanisms for the enforcement of court judgments requiring the administration to pay sums of money, by assigning the task of enforcement to competent public officials, such as state treasurers at the states level [37].

In this context, Law No. 91-02[38] of January 8, 1991, relating to the special rules applicable to certain judicial decisions, was enacted, distinguishing between two basic cases: the first concerns judgments ordering the payment of sums of money to another public administration, and the second concerns judgments that require the administration to pay sums of money to private individuals. Law No. 91-02 on the special rules applicable to certain judgments remained in force until July 12, 2022, the date of promulgation of Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure. Article 14 of this law expressly repealed Law No. 91-02, thereby ending the application of the special rules that the legislature had adopted in the enforcement of certain judicial decisions. This repeal constitutes an important legislative change that warrants study and analysis [39].

Law No. 22-13, amending and supplementing the Code of Civil and Administrative Procedure, introduced new provisions relating to the enforcement of judicial decisions against the administration, particularly with regard to the enforcement of enforceable instruments requiring it to pay sums of money to individuals. These developments have raised questions about the nature of the amendments introduced by this law and the extent to which they contribute to strengthening the guarantees of litigants during the enforcement phase against the administration.

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[37]- Dr. Hussein Kamoun, New provisions for the enforcement of administrative judicial decisions under Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure, Legal Analyst Magazine, Vol. 06, No. 02, December (2024), p. 04.

[38]- Law 91-02 on the special rules applicable to certain judicial decisions dated January 8, 1991, Official Gazette No. 02, dated January 9, 1991.

[39]- Dr. Hussein Kamoun, op. cit., same page.

1- Conditions for resorting to Compulsory enforcement:

Enforcement against the administration is an essential tool for ensuring compliance with judicial rulings and decisions, particularly when it comes to the enforcement of financial obligations. However, recourse to enforcement is subject to specific conditions that ensure a balance between the administration's abuse of power in failing to comply with rulings issued against it and the protection of the interests of the weaker party in an administrative dispute.

Studying these conditions allows us, as researchers, to understand the legal controls that determine when and how the administration can be compelled to fulfill its obligations, reflecting the seriousness of the judiciary and confirming the effectiveness of the law in protecting rights. Among these conditions, we find what is stipulated in Article 986 of the new version of Law 22-13, which includes the Code of Civil and Administrative Procedure, as follows:

- The judgment or judicial decision must be final, meaning that the creditor has the right to recover the debt from the public treasury, provided that the judgment is final, i.e., that all ordinary avenues of appeal, such as opposition and appeal, have been exhausted. It should be noted that Article 986 of Law 22-13 includes the terms “judgment” and “decision,” from which it can be understood that the judgment becomes final when the deadlines for appeal have passed, at which point its nature changes from a preliminary judgment to a final judgment. In the case of an appeal against the initial judgment, the court of appeal will issue a final judicial decision that has the force of res judicata [40].

- A person subject to public law is required to make a financial payment [41].

- The legal entity fails to comply within the specified period after being officially notified of the ruling ordering it to comply and after two full months have elapsed. In our opinion, refusal in this case is an explicit expression, which requires continued pressure on the legal entity by continuing the necessary enforcement procedures, as we will see below:

[40]- Amina Raïs, Developments in the Enforcement of Administrative Judgments and Decisions under Law 22-13 Amending and Supplementing Law 08-09, op. cit., pp. 403-404.
[41]- See Articles 800-801 of Law 22-13, containing the Code of Civil and Administrative Procedure.

2- Compulsory enforcement procedures:

The provisions of Article 986 above show that the Algerian legislature has recognized a number of shortcomings in the system of enforcement against the administration, particularly in cases where it is required to pay sums of money to natural persons. This text was introduced in an effort to address the previous shortcomings and improve the effectiveness of enforcement against the administration, which will be clarified and analyzed below by highlighting the most important procedures to be followed.

First: The bailiff is required to draw up a report of non-enforcement after completing the preliminary procedures, whereby he must serve the enforcement order accompanied by the order to pay, giving the administration two months to enforce the judgment or judicial decision [42].

Second: If enforcement is still not carried out after this period has expired, the bailiff shall draw up a report confirming the administration's failure to enforce the judgment and submit a request for collection of the debt and expenses to the treasurer of the state in whose jurisdiction the headquarters of the party against whom the judgment was rendered is located. This request shall be submitted in writing, accompanied by a copy of the enforcement order, the official notification of the order to pay, the report of refusal to comply, and the creditor's current account number [43].

On this basis, the public treasurer may automatically order the withdrawal of the amount of the debt and expenses from the accounts of the convicted entity and transfer it to the creditor's account within a period not exceeding three months from the date of filing the request. Before making the transfer, he may also request additional information or clarifications from the bailiff or the competent judicial authority regarding the judgment or decision to be enforced, provided that this is done within a specified period[44].

The researcher therefore asks why the legislator has given the administration, which is the stronger party in the dispute, a period of two months for amicable enforcement, and why the bailiff may only certify non-enforcement after this

[42]- Beloul Fehima, Procedural Developments in Administrative Law (A Study in Light of Law No. 22-13 Amending and Supplementing Law No. 08-09), Journal of Legal and Social Sciences, Ziane Achour University of Djelfa, Algeria, Vol. 7, No. 4, December 2020, p. 501.
[43]- Ibid., same page.
[44]- See Article 986, paragraphs 3 and 4, of Law No. 22-13.

period has expired. After that, following the submission of the collection request to the treasurer, the latter was granted an additional three months to transfer the amount to the creditor's account. Thus, the period for enforcement of a judicial bond requiring payment of a sum of money may be extended to a full five months, which is a long period in our opinion, as it may adversely affect the rights of the creditor, especially if he is a natural person who is waiting for these sums to meet his needs or to complete his projects, making the delay in enforcement a cause of damage to his legal and financial position.

Conclusion

Through this brief study of the non-enforcement of contested administrative judgments and decisions on appeal, it is clear that the Algerian legislature, by amending certain provisions of the Code of Civil and Administrative Procedure under Law No. 22-13, has sought to introduce reforms as part of a broader approach aimed at improving the administrative justice system and addressing some of its shortcomings.

The study highlights that these amendments include a review of several rules relating to administrative litigation, as well as the introduction of new provisions reflecting increased legislative concern for protecting litigants, who are considered the weaker party in administrative disputes.

It should be noted that Law No. 22-13 introduces a set of new provisions, most notably the establishment of the suspensive effect of appeals against judgments and decisions issued by administrative courts. This addresses the practical problems that existed prior to the amendment, when some judgments were enforced despite being appealed, resulting in both legal and practical difficulties. The repeal of Articles 913 and 914 of Law 08-09, relating to the suspension of the enforcement of judicial decisions, also establishes the rule that a first-instance judgment is only enforceable once it has become final.

On the other hand, the legislature clarified the procedures for enforcing judicial decisions against the administration in cases involving financial obligations, by explicitly stipulating these procedures in Article 986. The most important of these is granting the judicial officer the authority to take collection measures before the competent treasurer, thereby enhancing the effectiveness of enforcement.

The legislature has also enshrined the principle of two-tier litigation in administrative law through the establishment of administrative courts of appeal, which allow litigants to bring their disputes before a higher judicial authority and provides an additional guarantee for the proper administration of justice.

Finally, it is important to emphasize the need to complement these reforms with practical measures, the most important of which is to expedite the establishment of administrative courts of appeal by issuing regulations governing their organization and jurisdiction, thereby ensuring that they can fulfill their role and strengthening confidence in the administrative judiciary. In addition, the legislator should update and review the legal deadlines for the administration to fulfill its financial obligations, especially since it is the stronger party in administrative disputes, thereby guaranteeing the rights of litigants against it.