

Procedures for the seizure of a debtor's assets held by a third party in Algerian legislation

إجراءات حجز ما للمدين لدى الغير في التشريع الجزائري

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Abstract:

Attaching a debtor's assets held by a third party constitutes an additional means for a creditor to recover the debt by force from the debtor. There are three parties involved: the attaching creditor, the debtor against whom the attachment is made, and the third party holding the attached assets. This attachment is limited to material movable assets, shares or profit shares in companies, financial securities, or debts, excluding real estate held by a third party. It can be an enforcement attachment if the creditor possesses an enforceable instrument; otherwise, it becomes a precautionary attachment based on apparent justifications held by the creditor.

The question arises: how has the Algerian legislator regulated the procedures for this attachment? It begins with obtaining an attachment order by way of a request appended to a petition, followed by serving the attachment order by a court bailiff and inventorying the assets, culminating in the preparation of an attachment report and its service upon the debtor. This has binding effects on the third party, most importantly a declaration of the debt owed, and binding effects on the debtor, most importantly the prohibition on disposing of the attached assets.

Keywords: creditor making the seizure – debtor against whom the seizure is made and person holding the assets – executive seizure – preventive seizure

المخلص:

يشكل حجز ما للمدين لدى الغير وسيلة إضافية بيد الدائن تمكنه من استعادة الدين جبراً من مدينه، أطرافه ثلاث: الدائن الحاجز، المدين المحجوز عليه والمحجوز لديه، يقتصر هذا الحجز على الأموال المنقولة المادية أو الأسهم أو حصص الأرباح في الشركات أو السندات المالية أو الديون باستثناء العقارات المتواجدة بحوزة الغير، يمكن أن يكون تنفيذيا حال وجود سند تنفيذي بيد الدائن، ودون ذلك فيصبح تحفظيا بناء على مسوغات ظاهرة بيد الدائن فيصبح تحفظيا.

التساؤل الذي يطرح كيف نظم المشرع الجزائري إجراءات الحجز الخاصة به؟، تبدأ باستصدار أمر بالحجز بموجب طلب على ذيل عريضة، مروراً بتبليغ أمر الحجز من طرف محضر قضائي وجرد الأموال، وصولاً إلى تحرير محضر حجز وتبليغه للمحجوز عليه، ترتب عليه آثار ملزمة للمحجوز لديه أهمها تصريح بما في الذمة، وأخرى ملزمة للمحجوز عليه أهمها المنع من التصرف في المال المحجوز.

الكلمات المفتاحية: الدائن الحاجز – المدين المحجوز عليه والمحجوز لديه – حجز تنفيذي – حجز تحفظي.

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Introduction:

Seizure of a debtor's assets held by a third party is one of the most important methods of enforcement, addressed by the Algerian legislator in Articles 667 to 686 of Law 08/09 on Civil and Administrative Procedures dated 25 February 2008, J.R. 21 of 2008. This seizure is imposed by the creditor on what the debtor owes to a third party, also known as a third party, and applies to movable property, shares or profit shares in companies, financial bonds or debts, but not to real estate, as stipulated in Article 667 of the Code of Civil and Administrative Procedure. The purpose of this seizure is to prevent the third party from fulfilling what is in his possession or delivering it to the debtor so that the creditor can collect his debts from the seized money or from the proceeds of its sale.

Seizure of the debtor's assets held by third parties is considered a means for the creditor to recover the debt held by the third party, who has no connection to the debtor, but the law has created this link to enable the creditor to recover the debt from the debtor by force. It may be enforceable if the creditor has an enforceable title (Article 667 of the Code of Civil Procedure) or provisional if there are apparent grounds (Article 668 of the Code of Civil Procedure), provided that this seizure is confirmed by an action to confirm the provisional seizure.

The Algerian legislator has regulated the seizure of the debtor's assets held by third parties through special procedures in order to protect the interests of the seizing party and the party whose assets are seized. This is done by initiating the seizure procedure against the third party before the debtor, so as not to give the debtor the opportunity to smuggle or transfer his funds. This is based on the principle of general guarantee, which requires that all of the debtor's funds be used to guarantee the repayment of his debts.

Considering that the seizure of the debtor's assets held by third parties is a means of enforcement, and that achieving the purpose of its signature requires a series of procedures to be followed, the Code of Civil and Administrative Procedure, like the old Code of Civil Procedure, has regulated this in more detail than its predecessor. However, it is clear that these procedures go through two basic stages, in which two parties are involved. The first is responsible for issuing the seizure order, which is the court with territorial jurisdiction, and the second is responsible for its enforcement, which is the enforcement authority assigned to the bailiff.

It should be emphasized that seizure involves two basic stages, on the basis that the matter is a judicial issue of a jurisdictional nature. No decision is made on the indebtedness of the person against whom the seizure is made, the amount of the debt, or the validity of the seizure, except at the initiative of the creditor by submitting a request to the court and then deciding on the request (Baatouch, 2013/2014, p. 27), either by accepting the case and issuing a seizure order, or by rejecting it on the grounds that it is unfounded.

Accordingly, in our study, we will exclude the procedures followed before the court with territorial jurisdiction to rule on the seizure request, as it is a judicial matter of a jurisdictional nature. This raises the following question: In the case of seizure of a debtor's assets held by a third party, what are the legal procedures to be followed, as regulated by the Algerian legislature in the provisions of the Code of Civil and Administrative Procedure?

We have used a descriptive approach, as the study describes a specific type of seizure, namely the seizure of a debtor's assets held by a third party, and an analytical approach to

analyze all the legal texts enacted by the legislator to regulate the procedures specific to this type of seizure.

To answer this question, we have divided this research paper into two sections

Section I: Enforcement procedures in the case of seizure of the debtor's assets held by third parties

Section II: The legal consequences of seizure of the debtor's assets held by third parties

Section I: Enforcement procedures in the case of seizure of the debtor's assets held by third parties

Seizure procedures for the debtor's assets held by third parties are complex for two reasons. The first reason is that this seizure may be precautionary or enforcement, and the second is that these procedures take place between three parties: the seizing creditor, the debtor whose assets are seized, and the third party holding the assets.

The stages followed in seizing the debtor's assets held by a third party vary depending on the basis on which the seizure is carried out. If the seizure is carried out on the basis of an enforcement order, the enforcement seizure of the debtor's funds held by a third party is limited to notifying the third party to whom the seizure is made and notifying the debtor to whom the seizure is made, and instructing the third party to report on what is in its possession, while the creditor is required to seize the debtor's assets held by third parties pursuant to a provisional seizure order to file a lawsuit to confirm the seizure before instructing the third party to report on what is in its possession (Bousari, 2014/2015., p. 287) .

Accordingly, we will divide this section into two parts. In the first part, we will discuss the procedures common to both provisional and executive seizure of the debtor's assets, and in the second part, we will discuss the specific procedures for provisional and executive seizure of the debtor's assets held by third parties.

First: Procedures common to both precautionary and enforcement seizure of the debtor's assets held by third parties

The Algerian legislature has established a set of procedures for the seizure of the debtor's assets held by third parties, taking into account their specific characteristics, which are as follows.

Issuance of the seizure order and procedures carried out by the bailiff.

1: Issuing the attachment order

Whether the attaching creditor has an enforceable title or apparent grounds proving the existence of the debt owed by the debtor subject to attachment, the procedures for attaching the debtor's assets held by third parties begin with the submission of a petition to the president of the court (Said, 2014., p. 43). The president of the court competent to issue the attachment order is the president of the court in whose jurisdiction the funds to be attached are located or in whose jurisdiction the debtor is domiciled, as indicated in Article 687 of the Code of Civil Procedure, which states: 'The seizure shall be carried out by order on a petition issued by the president of the court in whose jurisdiction the funds to be seized are located and, where applicable, in the debtor's place of residence, at the request of the creditor or his legal or contractual representative' (Djilali, 2017., p. 178).

The petition shall be submitted in two copies and must be reasoned and include a reference to the documents relied upon. The president of this body shall rule on this petition in accordance with the procedures governing orders on petitions set out in Article 310 and

beyond, within a maximum period of three days from the date of submission of the request (Said, 2014., p. 44)

1-1: Submission of the creditor's request for attachment

The request for permission to attach the debtor's assets held by third parties and the procedures for issuing it are subject to the rules governing the issuance of orders on petitions, where by the creditor submits the request to the president of the court based on a reasoned petition, dated and in duplicate, including the following key information:

1- The name, surname and domicile of the garnishee, with the necessity of choosing a domicile for him within the jurisdiction of the court where the garnished funds are located (Article 674/2 of the Code of Civil Procedure).

2- The name, surname and domicile of the debtor.

3- The name, surname and domicile of the debtor's debtor .

4- If the matter concerns a legal entity, its name, nature, registered office and the capacity of its legal or contractual representative shall be indicated.

5- The court before which the petition (request for attachment) is filed shall be specified.

6- A summary of the facts that led to the debt and its source shall be presented, with the creditor confirming that the debtor's funds are in the hands of a third party.

7/ Mention the value of the debt and the apparent evidence or justifications for its existence.

8/ Make a preliminary designation of the funds to be seized, such as seizure of the account of the person subject to seizure at a financial institution.

9/ Specify the reasons on which the creditor relied to file the application for provisional seizure.

10/ Request at the end of the petition that the president of the court grant an order to sign the provisional seizure of the funds held by the third party, with his signature (Article 311 of the Code of Civil and Administrative Procedure, dated 25 February 2008).

1-2: The role of the trial judge in issuing a preventive seizure order

The judge has full discretionary power, which he exercises in the absence of the other party. and thus constitutes an incomplete adversarial proceeding, given that we are dealing with a jurisdictional authority, which issues an order based on a petition from the president of the court. On the one hand, we can say that the judge has the power to determine the legality of the seizure, which is only issued after verifying that all conditions are met, in terms of the existence of a fear of loss of general security, which constitutes an element of urgency for the seizure.

The text of Article 647 of the Code of Civil Procedure gives the president of the court broad discretionary power to intervene in what is known as prospective judicial assessment, whereby he looks to the future based on present data. meaning that he will not immediately resolve the dispute over the debt and its existence, but will examine the documents and papers attached to the request for seizure and use them to predict the future if he rules on the principal of the debt and considers the likelihood of its existence or non-existence. If he considers the debt to be likely to exist, he will grant permission for seizure, otherwise he will reject the request for seizure. In addition to the power to assess the legality of the attachment, the judge also has the power to refuse the request for permission to attach if he finds that the right to be protected by the attachment is of such little value that it is not commensurate with the costs of the attachment. The same applies if it appears that the value of this right is not

commensurate with the damage caused to the debtor as a result of the seizure. A similar opinion holds that the judge may refuse to grant permission for seizure if the applicant for seizure is acting in bad faith and seeks only to harm the position of the person against whom the seizure is sought. This is perhaps what the Algerian legislator meant in the text of Article 646 of the Civil Code: '.....the seizure shall be at the creditor's responsibility.' This means that any deviation from the legitimate purpose of the seizure shall entail the creditor's responsibility, and this shall be decided by the judge hearing the case to confirm the seizure. If the court hearing the case finds that the debt has not been proven, it shall dismiss the case and lift the provisional seizure, and shall rule on civil damages resulting from the harm caused to the debtor by the malicious provisional seizure, in addition to imposing a fine of not less than 20,000 dinars (Al-Qaroui, 2014., p. 303).

If the request is rejected, the creditor who made the request may appeal the rejection order within a maximum period of fifteen days, starting from the date of the judge's rejection order (Said, 2014., p. 44).

2: Actions taken by the bailiff

The bailiff intervenes in this area of attachment with broad powers, as he is responsible for completing the attachment procedures from the issuance of the order until its execution.

The first section of Chapter III, concerning the seizure of a debtor's assets held by third parties, is entitled 'Official notification of the seizure order and its lifting.' The law deals with notification at length, as it is the basis for the success of any seizure operation. The specific procedures ensure correct and effective notification on the one hand, and on the other hand, they allow for the monitoring of the work of the bailiff, who has the authority in this area to exercise judicial custody over the seized property. The Algerian legislator has dealt with the official notification of the seizure order in Articles 669 to 674, in Section I, under the heading 'Official notification of the seizure order and its lifting' (Baatouch, 2013/2014, p. 30). The bailiff is responsible for: notifying the seizure order, inventorying the funds, drawing up the seizure report, and notifying the seized party of the seizure report.

2-1: Notification of the attachment order:

Since the attachment of a debtor's assets held by a third party involves multiple parties, including the attaching creditor, the attached debtor and the third party holding the assets, the legislator has taken into account the latter, who is presumed to be uninvolved in the relationship between the attaching creditor and the attached debtor. Therefore, Article 669 of the Code of Civil and Administrative Procedure requires that the third party be notified in person if they are a natural person, or officially notified through their legal representative if they are a legal person, by order of the judge who signed the attachment order. In both cases, the third party must be provided with a copy of the judicial attachment order, accompanied by the notification report, which must mention this delivery (Said, 2014., p. 44).

However, the law requires that a copy of the attachment order be delivered to the person holding the property, with a reference to this in the notification report, as stipulated in Article 669 of the Code of Civil and Administrative Procedure (Said, 2014., p. 31), the first paragraph of which states:

'The attachment order shall be served on the third party personally if he is a natural person, or on his legal representative if he is a legal person, with a copy of the attachment order being delivered and a note of this being made in the minutes' (Article 674 of the Code of Civil and Administrative Procedure).

If the person in possession of the property has several branches, the seizure order shall only have legal effect in relation to the branch designated by the creditor and specified in the judge's seizure order (Article 671 of the Civil and Administrative Procedures Law) (Said, 2014., p. 44).

As for the person against whom the attachment is made, they must be notified of the attachment order if they reside abroad, whether the notification is made to them personally or to their place of residence abroad, in accordance with the conditions established in the country where they reside (Article 670 of the Code of Civil and Administrative Procedure) (Djilali, 2017., p. 214).

2-2: Inventory of funds and issuance of seizure report:

After notifying the third party in possession of the funds of the seizure order, the bailiff shall immediately inventory the funds to be seized and accurately identify them (Barbara, 2009., p. 212), as stipulated in Article 669, paragraph 02, which states: The bailiff shall immediately inventory the funds to be seized and specify them accurately in the seizure and inventory report....." (Article 674 of the Code of Civil and Administrative Procedure).

If the subject of the seizure is commercial instruments issued in favour of the debtor, such as cheques, they must be specified in the seizure report and deposited with the court registry.

If the seizure involves jewellery or valuable items, the seizure report must include, in addition to an inventory, a precise description of the items and an estimate of their value by an expert appointed by order of the court or by the administration responsible for hallmarking precious metals, in the presence of the debtor or his legal representative or after the validity of his appointment to attend has been verified.

In all cases, the expert's report on the valuation and weight shall be attached to the seizure report. After weighing and valuation, the items shall be placed in a sealed and waxed container, and this shall be mentioned in the seizure report, along with a description of the seals and their deposit with the court registry (Aqsasi, June 2019., p. 70).

Article 669, paragraphs 02 and 03 of the Code of Criminal Procedure states: "..... The person with whom the seized property is held shall appoint a guardian over it and its fruits, unless the latter prefers to hand it over to the bailiff, in which case he shall note this in the report.

The seizure report must note that the person with whom the seized property is held has been warned not to dispose of the seized funds or hand them over to the debtor or anyone else, unless an order to the contrary is issued." (Article 674 of the Code of Civil and Administrative Procedure), the bailiff shall appoint a custodian for the seized property and its fruits, unless the custodian prefers to hand them over to the bailiff in order to bear the consequences of the seizure.

A report on the seizure shall be drawn up, including:

- a) All the details of the seizure, including an inventory of the funds to be seized and their precise designation.
- b) A note in the event that the legal representative of the legal person receives a copy of the seizure order.
- c) A warning to the person holding the seized property not to dispose of the seized funds or hand them over to the debtor or anyone else unless a contrary order is issued.
- d) A note that the person holding the seized property has handed over the seized funds to the bailiff (Barbara, 2009., p. 213).

The legal texts relating to the seizure of the debtor's assets held by third parties do not specify the information that must be included in this report. This omission is considered a shortcoming in the Algerian regulation of enforcement and precautionary seizures. In addition to the general information contained in the bailiffs' reports, reference must be made to the information contained in Article 691 of the Code of Civil Procedure, as well as information about the third party with whom the seizure is made and the reason for the seizure. The report shall be stamped and signed by the third party with whom the seizure is made, if present, or a note shall be made of their absence or refusal to sign (Bousari, 2014/2015., p. 292).

Section II: Legal consequences of seizing the debtor's assets held by third parties

Every legal rule that is applied and has effects represents the purpose for which it was established. The same applies to the rule of seizure of the debtor's assets held by third parties. The new law does not contain a specific section on these effects, but they can be found by reviewing the various articles governing this subject, which relate to both the person whose assets are seized and the person holding the seized assets. The basis is the idea of preventing the disposal of money in any way, because any disposal of it would harm the creditor, as long as it affects the general guarantee of the debtor (Baatouch, 2013/2014, p. 36) .

The seizure of the debtor's assets has general effects that apply to the seizure of the debtor's assets held by third parties as a precautionary measure and the seizure of the debtor's assets held by third parties as an enforcement measure, namely:

No set-off between the debtor and third parties after seizure: Pursuant to the provisions of Article 302 of the Civil Code, third parties may not invoke set-off against the attachment after the attachment has been signed. If the creditor attaches the debtor's funds held by a third party and that third party then becomes a creditor of the debtor, the third party may not invoke set-off on the grounds that the desired action would cause harm to the creditor.

Inadmissibility of invoking a fixed-date transfer of rights to invalidate an attachment of the debtor's assets held by a third party: Pursuant to Article 241 of the Civil Code: 'A transfer shall not be invoked against the debtor or against a third party unless the debtor consents to it or is informed of it by a non-judicial contract. However, the debtor's consent shall not render it effective against a third party unless such consent is fixed in date.'

Paragraph 1 of Article 250 of the same law also states: 'If what is in the hands of the transferee is seized before the transfer takes effect against third parties, the transfer shall be deemed to be another seizure in relation to the seizing party.' Considering the content of the two articles, we are dealing with two cases in which the transfer of rights is accompanied by the seizure of the debtor's assets held by third parties.

If the seizure takes place and the date of the transfer is not established, the transferee may not invoke the seizure, and the transfer shall be deemed another seizure, and the right shall be divided between the transferee and the seizing party as between co-debtors. However, if the transfer is dated and effective against third parties, the attachment is invalid because ownership of the property has been transferred to the transferee and the debtor has no authority over the property to be attached (Barbara, 2009., p. 210/211).

Another issue concerning the person who has the property seized and the person against whom the seizure is made will be addressed in the following two sections.

1: Effects related to the seized property

Seizing the debtor's property held by a third party imposes a set of obligations on the third party, based on the relationship between the third party and the debtor and the reason for which the latter has a right to the former's money or movable property, the seized property. The purpose of this is to protect the money held by the third party from any manipulation and smuggling, in order to guarantee the creditor's debt. These obligations can be inferred from various articles relating to the notification of the seizure order, because the legislator has laid down the procedures to be followed by the bailiff and attached to them what must be notified to the third party (Baatouch, 2013/2014, p. 41), the most important of which are:

1-1: Preventing the garnishee from paying the debt or handing over the movable property in his possession to the debtor or creditor

This obligation refers to the garnishee's withholding of the money, given that the purpose of garnishing the debtor's property held by a third party is to place the garnished money in the hands of the court in preparation for the creditor's right to be satisfied. Therefore, the third party in possession of the seized property is prohibited from fulfilling his obligation or delivering what is in his possession to the debtor, pursuant to Article 682 of the Code of Civil and Administrative Procedure.

If the person holding the seized property fulfils their obligation and delivers the movable property to the debtor, this fulfillment or delivery shall not be valid vis-a-vis the creditor who seized the property and shall not prevent the enforcement of the seizure of the debtor's property held by a third party against the latter.

The prohibition of fulfillment or delivery provided for in Article 682 is absolute, whether the attachment is imposed on specific assets of the debtor or on all of the debtor's assets held by third parties.

However, the legislator has excluded from this rule the wages of the person against whom the attachment is made, the salary allocated to his pension, or the wages of his workers, and has therefore required in Article 683 of the same law that the third party against whom the attachment is made shall continue to pay the wages of the person against whom the attachment is made, the salary allocated to his pension, or the wages of his workers. If the person whose property is seized is prohibited from paying the debtor whose property is seized, he is a fortiori prohibited from paying the creditor who seized the property because there is no legal relationship between them that justifies such payment.

This prohibition continues until the order of appropriation provided for in Article 684 of the same law is issued. (Said, 2014., p. 46/47)

1-2: Statement of assets

1-2-1 The debtor has a duty to report his assets:

whether it is a positive report proving the existence of a debt between him and the creditor, or a negative report proving the absence of a debt. The Algerian legislator has distinguished between two types of such reports:

The first type: called a certificate, referred to in Article 676 of the Code of Civil Procedure, which states: 'If the debtor has funds in the hands of the state, a regional group, a public institution or a national public body, they must provide the creditor or the bailiff, at their request, with a certificate proving the funds they hold for the debtor subject to attachment.'

The certificate shall therefore be delivered if the debtor is in the hands of the State, a regional group, a public institution or a national public body, at the request of the creditor or the bailiff.

The second type is called a declaration, which relates to funds held by persons subject to private law. as provided for in Article 677 of the Code of Civil Procedure. The person holding the funds must submit this declaration in writing to the bailiff or the person holding the funds within a maximum period of eight days following official notification of the attachment order, accompanied by supporting documents, indicating all the seizures in his possession, if any, and attaching copies thereof.

If the seizure relates to movable property, the person in possession of the property must submit a written statement indicating the list of movable property in his possession belonging to the person subject to seizure.

If the seizure relates to a debt owed by the person subject to seizure to the person holding the seized property, the statement shall indicate the amount of the debt, its location and the reasons for its expiry, if it has expired.

If the seizure relates to a sum of money deposited in a current or bank account or deposit, the statement shall indicate the amount of money available or its absence.

If the attachment relates to shares, profit shares or financial bonds, the declaration shall indicate their value, place of issue and maturity date (Djilali, 2017., p. 216/217).

1-2-2: Penalties imposed in the event of failure to declare:

Failure to declare shall result in the person in possession of the goods bearing the consequences of the penalties specified by the legislator in accordance with Articles 672 and 679 of the Code of Customs, which are as follows:

1. Failure to declare or exceeding the deadline of eight (08) days following official notification of the seizure order shall result in professional and civil liability for the person in possession of the property for any material damage caused to the creditor.

2/ If the person in possession of the seized property does not declare what he has in his possession as specified in Article 677, or submits an incorrect declaration or conceals the documents that must be filed to support the declaration, he may be sentenced to pay the amount seized in favour of the creditor who obtained an enforcement order, by way of an urgent claim.

In all cases, the person in possession of the property shall be liable for the legal costs.

In return for the obligations imposed on the person in possession of the property, Article 680 was introduced to grant the person in possession of the property the right to claim a deduction from his liability in the amount of the expenses he incurred for the funds seized from him.

The deduction and assessment of expenses shall be made by order on a reasoned petition issued by the president of the court in whose jurisdiction the place of execution is located, and the deduction order shall not be executed until the person in custody and the custodian have been officially notified, and it is subject to objection before the judge of urgent matters (Barbara, 2009., p. 217/218).

1-3: Allocation hearing

The attachment of the debtor's assets held by a third party does not oblige the third party to pay the debt to the bailiff or the attaching creditor immediately. Rather, this must be authorised by the court, which must first verify the validity of the relationship between the

debtor and the third party holding the assets, as well as the validity of the report submitted by the latter. With reference to the text of Article 684/1 of the Code of Civil Procedure, which states the following: ‘When the seizure of the debtor's funds held by a third party is carried out on the basis of an enforceable document for a sum of money or a debt, the garnishee, the garnishee debtor and the non-garnishee shall be required to appear before the president of the court within a maximum period of ten (10) days from the date of official notification in order to rule on the amount seized.’ (article 684/1 Law 08/09, Civil and Administrative Procedures Law).

It is clear from the text of the aforementioned article that appearing before the president of the court does not mean filing a lawsuit, but rather being summoned to a special hearing called an allocation hearing, where the president of the court considers the validity of the procedures for seizing the debtor's funds held by third parties and the documents submitted by the garnishee to prove his statement, and issues an order in this regard. The order issued by the president of the court is determined by three cases, which are:

The first case: if the declaration confirms the existence of the debt, in which case the president of the court issues an order to allocate the financial amount within the limits of the principal debt, in addition to the resulting legal expenses, and orders the lifting of the seizure of any amount in excess of that, as stipulated in the second paragraph of Article 684 of the Code of Civil Procedure: “If the statement of the person against whom the attachment is made confirms the amount of the debt, the president of the court shall issue an order to allocate the amount requested within the limits of the principal debt and the expenses incurred thereby, and shall order the lifting of the attachment for any amount in excess thereof.

If the amount attached is less than the amount of the debt, the debtor against whom the attachment is made shall remain obliged to pay the balance”.

Second case: If the person holding the funds does not submit a statement of liability after official notification and until the parties attend the allocation hearing, the president of the court shall issue an order to allocate the amount seized from the funds held by him. This shall serve as a penalty for his failure to fulfil his legal obligation. The latter shall have the right to recover from the debtor what he has paid, as stipulated in the fifth paragraph of Article 684 of the Code of Civil Procedure: “If the person holding the funds does not submit a statement of his liabilities after official notification and until the allocation hearing, he shall be required to pay the amount requested from his own funds, and he shall have the right to recover from the debtor what he has paid”.

Third case: It may be conceivable that the person holding the funds is not indebted to the debtor and does not hold the latter's funds, and therefore submits a statement that there are no funds. In this case, it is not conceivable that the president would issue an order to allocate the seized amount, but rather the creditor would take whatever measures he deems appropriate to collect his funds, in accordance with the provisions of the fourth paragraph of the aforementioned article, which states: “If the statement of the person holding the funds confirms that the debtor has no funds, the creditor shall take whatever measures he deems appropriate” (Al-Qaroui, 2014., p. 477/478).

2: Effects relating to the person subject to attachment

Given that the relationship relating to attachment is a three-way relationship, there is no doubt that the effects of signing it apply to all three parties. However, in this area, the main effects that can be observed relate to only two parties, namely the person subject to

attachment and the person holding the attachment, i.e. the third party. As for the garnishee, it cannot be determined through the procedural law itself because we do not find any regulation for it similar to the other two parties.

In fact, most obligations are imposed on the third party rather than the person subject to the attachment, because the money is not in their possession, and it is assumed that notification of the attachment order to the third party is sufficient (Baatouch, 2013/2014, p. 36/37). Accordingly, we will discuss below the effects relating to the person subject to the attachment.

2-1: Preventing the debtor from disposing of the seized property

This prohibition applies only to the debtor's seized assets and does not extend to his other assets. It is a partial prohibition because it only covers actions prohibited by law, in accordance with Article 636 of the Code of Civil Procedure. Its effect is relative and applies only to the creditor facing this obstacle. The prohibition is exhaustive and may not be extended, because the debtor is, in principle, free to manage and dispose of his assets, unless expressly prohibited by law. This is provided for in Algerian law under Article 660 (Boudiouf, 2012, p. 67), which states: The seized funds shall remain in the hands of the seized party until a ruling is issued to confirm the seizure or order its lifting.

The seized party shall be entitled to use the funds as a prudent family head would and to possess and preserve their fruits." (Law 08/09 on Civil and Administrative Procedures), whereby the seized funds remain in the hands of the seized party until the ruling, and the ruling confirms the seizure or orders its suspension, and he may use them as a diligent family father would, and possess their fruits while preserving them (Boudiaf, 2012, p. 67/68).

Request to lift the seizure: Pursuant to Article 675 of the Code of Civil and Administrative Procedure, the person against whom the seizure is made may request the lifting of the seizure in whole or in part in accordance with the provisions of Article 663 of the Code of Civil and Administrative Procedure by means of an urgent application in the three cases specified exclusively, namely, if the creditor does not seek to bring an action to confirm the attachment, or if the debtor deposits funds with the court registry or the bailiff's office to cover the principal debt and expenses, or if the tenant or subtenant proves that they have paid the rent due in respect of the landlord's attachment of the tenant's movable property (Barbara, 2009., p. 222).

2-2: Multiple Creditors

Based on the general right of security established for all creditors over their debtor's assets, any creditor may seize, from a third party, any rights owed to him or any movable property owned by the debtor that is in the possession of the third party, even if the third party has already seized the property for the benefit of another creditor. If other creditors come forward after the seizure of the debtor's property by a third party and they have enforceable instruments and no allocation order has yet been issued, they may come forward as creditors with the first seizing party, and the first seizing party and the seized party shall be officially notified of the seizure or successive seizures by the creditors.

In this case, the allocation hearing shall be postponed until all parties are present or until the deadline specified in the official notification has expired (Article 685 of the Code of Civil and Administrative Procedure) (Said, 2014., p. 47).

-Repayment of the debt:

Article 686 of the Code of Civil and Administrative Procedure contains two hypotheses:

The first hypothesis: that the seized funds are sufficient to satisfy the rights of all creditors, including the first lien holder and interveners. In this case, repayment is made by order of allocation among the creditors according to the value of their debts.

Second scenario: The funds seized are insufficient to pay all creditors. In this case, the funds are divided among the creditors according to their share, and the division here is similar to the case of alimony stipulated in Article 166 of the Family Law (Barbara, 2009, p. 223)

Conclusion:

Seizure of the debtor's property is considered a legal guarantee for the creditor who holds an enforceable instrument or has apparent grounds proving the existence of the debt owed by the debtor, which he uses without the latter's knowledge or consent, when he learns that the debtor has material assets, shares, profit shares in companies, financial bonds or debts, even if they are not yet due, and this seizure is issued by order of the president of the court in whose jurisdiction the assets are located.

It shall be an executive attachment if the creditor has an executive bond from among those specified in Articles 600-605 of the Code of Civil and Administrative Procedure, and a precautionary attachment if the creditor does not have an executive bond but has apparent grounds proving the existence of the debt owed by the debtor.

It is subject to a series of procedures, beginning with the obligation to notify the person against whom the seizure is made of the seizure order. After this notification, the seizure order is communicated to the person subject to seizure, followed by the notification of the person subject to seizure to declare his assets and the interested parties to contest this declaration. The procedures continue, including the intervention of creditors in the event of multiple creditors and their non-participation in the first seizure.

These procedures end with the confirmation of the seizure of the debtor's assets held by third parties, if it is a precautionary measure, and with the issuance of an order to sell the movable assets and an order to allocate them and the remaining assets, if any, to the creditor or creditors in the manner specified in the Code of Civil and Administrative Procedure.

In conclusion to the above discussion regarding the seizure of the debtor's assets held by a third party, which is a special type of enforcement by seizure, its specificity lies in the existence of a third party known as 'the third party,' as in this type of seizure there are three parties: the attaching party (the creditor), the attached party (the debtor) and the party with whom the attachment is made (the third party). The attaching party and the party with whom the attachment is made are not directly related, but the law has created this relationship between them in order to preserve the debtor's rights with the third party. From this, we can deduce some conclusions, the most important of which are:

1. The subject of attachment of the debtor's property held by a third party is movable property, shares, profit shares in companies, financial bonds or debts, excluding real estate (Article 667 of the Code of Civil Procedure).

2. If the creditor has an enforceable document and wishes to seize the debtor's assets held by third parties, a series of procedures must be followed, beginning with the issuance of a seizure order based on a petition issued by the president of the court where the assets subject to seizure are located. The attachment order shall be served by a bailiff, either personally in the case of a natural person or through their legal representative in the case of a legal person,

followed immediately by an inventory of the funds and the drafting of an attachment report, then the official notification of the attachment report to the attached party within eight days of the attachment.

3/ If the creditor does not have an enforceable title but has apparent grounds, he may provisionally seize the debtor's assets held by third parties (Article 667 of the Code of Civil Procedure), following the same procedures as those followed in the non-enforceable seizure of the debtor's assets held by third parties, except that the Algerian legislator has added another procedure, which is to confirm this seizure. The creditor must file a lawsuit to confirm this seizure before the judge hearing the case within fifteen days of the date of issuance of the seizure order. The creditor may even request confirmation of this seizure if the debt lawsuit has been filed before the judge hearing the case by submitting an additional memorandum without being bound by the fifteen-day period stipulated in Article 662 of the Code of Civil Procedure.

4. The person against whom the attachment is made has a number of obligations, the most important of which is the duty to declare what is in his possession and not to pay the attached amounts, except for wages. The person against whom the attachment is made is prohibited from disposing of the attached money, but this partial prohibition only covers what the law prohibits him from disposing of, in accordance with the provisions of Article 636 of the Code of Civil Procedure.

The most important recommendations we can make are as follows:

1. Since the garnishee is required to submit a written declaration of the funds garnished and submit it to the bailiff or the garnishing creditor within a maximum period of eight days from the date of official notification, there is no need for the bailiff to carry out an inventory.

2/ Certain basic terms must be defined, especially in the case of provisional seizure of the debtor's assets held by third parties, such as apparent grounds.

3/ The information that must be included in the provisional seizure report on the debtor's assets held by third parties and the penalty for failure to do so must be specified.

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