

## AN ANALYTICAL STUDY OF ALGERIAN LAW NO. 24-01 INCLUDES SPECIAL MEASURES FOR OBTAINING ALIMONY

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### Abstract

Alimony is one of the consequences of breaking up the marital bond. It is approved by law and Islamic law and is obligatory. However, this payment may be fraught with problems and obstacles, such as inability or intentional non-payment. This is what called for the Algerian legislator to establish a law that protects the divorced woman and the child in custody, as they are the weak group in society. Moreover, alimony is one of the basics of living, so Law No. 24-01, which includes special measures to obtain alimony, was enacted as a law that protects these groups and punishes the debtor for breaching his obligation and not paying alimony to the convicted person.

**Keywords:** Alimony, Family Affairs Judge, Divorce, interest of child in custody.

### INTRODUCTION

Islamic and Algerian laws focus on the family, considered society's primary cell. Its entity and intrinsic characteristics must be preserved because protecting the family protects society. Still, it may be exposed to collapse due to several factors, including divorce, which is the dissolution of this family. As a result, His rights may be undermined, especially for the divorced woman and the custodian, as they constitute the weakest link in the family. Its dissolution also has consequences, including alimony, which is considered obligatory for the husband. Still, he may suffer from something that hinders its payment, whether through his inability or intentionally, and this is what has raised problems; the matter led to the legislator intervening to guarantee this right and to pay the dues included in the order or judicial ruling to the creditors of the divorced woman and her children in custody. So, he came with Law No. 24-01, which included special measures for obtaining alimony. This law abolished Law No. 15-01, which included the establishment of the Alimony Fund, as the latter was considered the first starting point for the legislator's interest in this category. However, the focus of criticism and shortcomings necessitated its cancellation and updating with a new law that guarantees rights protection, especially for alimony, which is considered an urgent case requiring speedy procedures.

Given the ignorance of many divorced women about the procedures for obtaining alimony from the Fund, this topic aimed to clarify the conditions and procedures that must be followed to make it easier for them to collect the alimony amounts included in the order or judicial ruling and to clarify how to recover alimony for the amounts paid to this category from the debtor by amicable means or by forced execution.

From this standpoint, we pose the following problem: Did the Algerian legislator agree to update Law No. 24-01 as a guarantee for the implementation of the ruling on expenses for divorced women and children in custody in the event of the debtor's abstention and incapacity?

To answer this problem, we divided the research topic into two axes:

The first axis: Benefiting from the alimony fund.

The second axis: The powers of the family affairs judge under Law No. 04-01.

#### **The first axis is benefiting from the alimony fund.**

Alimony, whether for the waiting period, neglect, or the child in custody, is a fundamental right of the divorced woman. It is the obligatory responsibility of the divorced father or husband, and his refusal to pay can lead to legal complications. Recognizing the urgency of this issue, Algerian law has provided a solution through Law 24-01, which outlines the conditions and procedures for benefiting from the alimony fund.



**First: The reasons for alimony.** This is because there are specific conditions for its obligation. Second, benefiting from the Alimony Fund involves [insert process details here].

**1. Conditions for the obligation of alimony.** About Law 24-01,<sup>1</sup> which includes special measures for obtaining alimony; it has set conditions for benefit, which are as follows:

- The beneficiary of the alimony fund must be divorced: that is, a ruling has been issued to dissolve the marital bond, whether by the husband's sole will or by mutual consent or divorce.
- The divorce ruling must include alimony.
- The ruling for alimony must have the force of the thing and is not enforceable through the divorced woman obtaining a report of an obligation to pay and a report of abstention from implementation.<sup>2</sup>

**2. Obligations for alimony.** It is known that alimony is obligatory for the father, and it has been approved by Islamic law and Algerian law, especially the Family Law and the Penal Code. If the father abstains from alimony, the custodial or divorced mother must file a lawsuit and resort to the judiciary to oblige him to pay alimony. If the father refuses to pay, there are penalties by the law. It is considered a misdemeanour and is punishable by imprisonment from 6 months to 3 years and a fine from 50,000 DZD to 300,000 DZD, according to Article 331 of the Algerian Penal Code.<sup>1</sup>

When the elements of the crime of abstention from paying alimony are present, they are represented by the material element, which is:

- Refusal to pay the judicially awarded amount.
- Continuation of abstention from paying alimony for a period exceeding two months.
- In addition to the moral element, which means that the criminal act occurred due to free will, whether intentionally or in bad faith, the burden of proof is the criminal intent and establishing evidence of the alleged incident's validity or denial.

As for the obligations of alimony in Law No. 24-01, which includes special measures to obtain alimony, Article 02 of the same law was unique to the categories that can benefit from the alimony fund when it is impossible to spend on them after it was not possible to implement the judicial ruling of the judge for alimony due to the hardship of the person charged with it and it was limited Benefiting through the text of the article above on:

- The child in custody after the divorce ruling is issued, given that custody is an effect of the divorce.
  - A woman divorced by a ruling to dissolve the marital bond includes maintenance for the waiting period according to the text of Article 61 of the Family Code,<sup>2</sup> as well as alimony for neglect, according to Article 82, if it is present in the text of the ruling ruling to dissolve the marital bond.<sup>3</sup>
- Referring to the texts of Law 24-01, we find that this law benefited some groups, such as divorced women and custodial mothers only, and therefore, it raises the question about the absence of some groups that should benefit from this law, namely widows, as well as married women in the event of their husband's hardship, since this law provided for food expenses. In cases of urgency, how can these groups obtain alimony when they are in a state of disability and unable to live? This is

<sup>1</sup>Law No. 24-01 of 11, February 2024, **containing special measures for obtaining alimony**, issued in the Algerian Official Gazette on February 11, 2024, No. 10, p. 05.

<sup>2</sup>Fatima Ben Sheikh, **“Legal Guarantees for the Rights of the Custodian and Child in Child Care, the Algerian Alimony Fund as a Model.”** Journal of Legal and Political Thought, Volume 6, Issue 2, p. 2022, p. 849.

<sup>1</sup>Law No. 06-23 of December 20, 2006, **containing the Penal Code**, issued in the Algerian Official Gazette, dated December 24, 2006, amending and supplementing Order No. 66-156 of June 8, 1966, amending and supplementing, No. 84.

<sup>2</sup>Decree No. 05-02, dated February 27 2005, which includes the Algerian **Family Law**, issued in the Algerian Official Gazette on February 27, 2005, amended and completed by Law 84-11, No. 15.

<sup>3</sup> Fatima bin Al-Sheikh, previous reference, p. 850.



considered a problem. Likewise, the legislator did not talk about the well-off divorced woman. Does she have the right to benefit from this Fund, or is she deprived of it to ease her situation? The legislator was silent on this subject and made it available to the divorced woman and the custodial mother without specifying that.

**Second: Conditions for benefiting from the alimony fund.** By extrapolating the text of Article 03 of Law 24-01, which includes special measures for obtaining alimony, the Algerian legislator limited the cases of benefiting from the alimony fund to divorced women, those with custody, and those in custody, and we can address these conditions as follows:

**1. If the debtor refuses to pay the value of the alimony awarded.** This situation is represented by the abstention of the husband, who is like a debtor, from paying him the value of alimony. This abstention may be intentional, as he evades payment intentionally and without a serious reason. In this case, the divorced woman enjoys her benefit from the alimony fund.

**2. The debtor's inability to pay.** The debtor's inability to pay is a reason for the custodial or divorced mother to benefit from and request alimony from the alimony fund.

However, the legislator, through the text of Article 03 of Law 24-01, which made disability a reason to benefit from a ruling for alimony from the alimony fund, but the legislator did not explain to us the meaning of disability and made it a broad term; Does it mean permanent or temporary disability? Therefore, the legislator must adjust the term and understand the intent of disability.

**3. The debtor's residence could not be found.** The alimony debtor may resort to the trick of evading the application of the judicial ruling by changing his place of residence in order not to be notified of the alimony ruling and to protect the custodial mother and the child in custody,<sup>1</sup> Law 24-01 in the text of Article 3 considered not knowing the location of the absent debtor as one of the reasons for non-implementation.

In order to benefit from the alimony fund, the divorced woman or custodial mother must prove the absence and failure to find the debtor's residence through the report of the notification and the assignment to pay until it is proven that it is impossible to implement the judicial ruling binding the debtor on the due alimony.<sup>1</sup>

**4. Cessation of debt for maintenance.** The debtor's cessation of alimony is one of the reasons for obtaining the alimony fund. It means the debtor paid alimony to the divorced or custodial mother. However, he stopped paying it, whether intentionally or due to inability, and in most cases, it may be a trick he deliberately takes not to pay the alimony. Accordingly, proof of his cessation of payment is through a judicial report proving the debtor's cessation of maintenance.

So, Law 24-01, which includes special measures for obtaining alimony, includes all the conditions for benefiting from the alimony fund or what is called food alimony, and this law came to protect the child in custody. The divorced woman from the debtor's family, and because it is a means of protection, it does not waive the debtor's obligation to pay alimony. Moreover, even if the divorced woman and her children shake him, it does not prevent him from being criminally prosecuted for not paying and abstaining from alimony, and this is what Articles 04 and 05 of Law 24-01 stated.

**The second axis: The powers of the Family Affairs Judge under Law No. 04-01.**

Law 24-01, which includes special measures to obtain alimony, has several characteristics specific to the Family Affairs Judge. These characteristics made him essential in reviewing and deciding on the depositors' requests to benefit from alimony, thus giving him more power than the repealed law. No. 15-01 includes establishing the alimony fund; these powers will be addressed through the following elements.

**First: The deadlines for benefiting from the alimony fund.**

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<sup>1</sup>Kamal Darraji, Karima Mahrouk, "The Role of the Alimony Fund in Ensuring the Payment of Alimony for Divorced and Child-Children, Study in Law 15-01." Journal of Humanities, Volume 32, Issue 3, 2021, p. 185.

<sup>1</sup> Kamal Darraji, Karima Mahrouk, previous reference, p185.



To determine the deadlines for benefiting from the alimony fund, we addressed the documents necessary for benefiting from alimony and the deadlines or procedures followed for that, which will be recognized in the following branches.

**1. Documents necessary to benefit from alimony.** Referring to the text of Article 06 of Law 24-01, which includes special measures to obtain alimony according to the condition of an application submitted to the competent judge. This application must be on paper or electronically and include the following documents:

- A copy of the divorce ruling or a copy of the order or ruling that assigned custody and alimony if the divorce ruling did not include that.
- A report of total or partial non-implementation of the order or judicial ruling specifying the amount of alimony shall be prepared by the judicial report.
- A postal or bank check to the beneficiary crossed out if the latter chooses this payment method.
- For example, every document that identifies the creditor and debtor of alimony, as well as a family civil status certificate,<sup>1</sup>

It can be said that this article came detailed with documents to benefit from the expense, and what distinguishes this article is that it came with a modern procedure that keeps pace with modernity and digitization, which is applying electronically, and this is only an option and not a mandatory procedure, as the application can be filed on paper and the reason can be attributed to the beneficiary's choice of an expense between paper and electronic. Some people still need to become proficient in technology.

This article detailed the documents other than the repealed Law No. 15-01, which included the establishment of the alimony fund, which should have mentioned these documents in detail.<sup>2</sup>

**2. The procedures used to benefit from alimony.** It can be said that the procedures used to benefit from alimony are the ones in which the deadlines for benefit can be, and for more knowledge, the texts of the following articles can be referred to the following articles 06, 07, 09, 10, 11, 12 of Law 24-201 that includes special measures to obtain alimony.

After applying to benefit from alimony attached to the documents mentioned above in the text of Article 6, the family affairs judge must notify the competent public prosecutor with the intention of filing a public lawsuit automatically because failure to pay alimony is considered a misdemeanour punishable by law, and this is by the Algerian Penal Code.<sup>3</sup>

It can also be done as a procedure carried out by the public prosecutor, which is mediation, and this procedure is stipulated in the Algerian Code of Criminal Procedure.<sup>4</sup>

An office in a court run by the Registrar receives requests to benefit from financial entitlements.<sup>1</sup> After the Registrar receives the request, the judge decides on the request according to a state order within five days of filing the request. The order includes, according to the text of Article 7 of the law, the following data:

- The identity of the alimony creditor.
- The number of children in custody, their names and ages, and the amount of alimony for each.
- Information related to the alimony debtor.
- The nature of the alimony (negligence, equipment, food).
- The date of benefiting from the financial benefits.

After that, the matter is notified by the seizure secretariat to each of the debtors, the creditor of alimony, and the Secretary-General of the Judicial Council, according to the reporting minutes and

<sup>1</sup>See Article 6 of Law 24-01.

<sup>2</sup>Law No. 15-01 of January 4, 2015, **establishing the alimony fund**, issued in the Algerian Official Gazette, dated January 7, 2015, No. 01.

<sup>3</sup>See paragraph 05, Article 6 of Law 24-01.

<sup>4</sup>Order No. 66-155 of June 8, 1966, containing the Code of Criminal Procedure amending and supplementing Law No. 19-10 issued in the Algerian Official Gazette on December 11, 2019.

<sup>1</sup>See paragraph 07, Article 06 of Law 24-01.



the deadlines for the notification are two days from the date of the issuance of the matter. A copy of the file mentioned in Article 06 of the same law is attached to the amount of the amount to the amount Secretary General of the Judicial Council.

This procedure is repeated in the repealed Law No. 15-01, which includes establishing the alimony fund to change the parties. It was the creditor, the debtor, and the competent departments, represented by the state departments in charge of social activity affiliated with the Ministry in charge of National Solidarity. However, in Law 24-01, the competent departments were replaced by the competent judge, the family affairs judge. As for the deadline, the same period was kept, five days from the request. This is because the law came in a state of urgency and expense that requires a minimum period to benefit from it.

The Secretary-General of the Judicial Council orders the disbursement of the financial dues of the creditor with alimony from the alimony Fund for this purpose, especially by transferring a bank or postal, within a maximum period of 25 days from the date of notification, And this is according to the text of Article 08 of Law 24-01.

The competent judge shall decide on any issues that obstruct the benefit of alimony under a state order within 30 days from the date of his notification, especially by the Secretary General of the Judicial Council or the creditor or debtor of alimony. The debtor or creditor of alimony must also notify the competent judge of any change that would affect The benefit from financial dues within ten days of its occurrence or knowledge of it.

The legislator should have clarified the type of these problems and determined their nature. He did well in leaving a broad scope for the judge to resolve any problems that hindered the benefit of the measures to obtain alimony. For example, the debtor pays the alimony amounts after issuing an order to pay the financial dues, and the Secretary-General also implements this order. Then, the General Secretary stops paying these dues to the custodial woman, and after a short period, the debtor also stops paying the alimony he is obligated to. Here, only a report of inspection or abstention is sufficient, and the General Secretary continues paying the dues again without submitting a new file.

**Second: Orders of the Family Affairs Judge under Law 24-01.** The family affairs judge has several powers, including valid orders under Law 24-01, and this will be studied in the following sections.

**1. An order to pay financial dues to the alimony fund.** The judge, after reviewing the documents submitted to him and stipulated in Article 06 of Law 24-01, is:

- A request to benefit from the financial benefits, whether on paper or electronically.
- A copy of the divorce ruling or a copy of the order or ruling that assigned custody and granted alimony if the divorce ruling did not include that.
- A report of total or partial non-implementation of the order or judicial ruling specifying the amount of alimony shall be prepared by the judicial report.
- A postal or bank check with a cross on it to the beneficiary if the latter chose this payment method.

**2. Decisive orders regarding changes that occur to the debtor or creditor of alimony.** As stipulated in Article 10 of Law 24-01, the legislator obliges the creditor or debtor of alimony to notify the competent judge that a change would affect the benefit from the alimony entitlements, and this within ten days from the date the Change occurs.

The judge decides on this Change by state order within five days of notification. The police secretariat notifies all concerned parties of the matter.

**3. Orders are issued after reviewing the alimony amount.** Article 11 of Law 24-01 stipulates that if the amount of alimony is reviewed, the competent judge shall issue a new order and notify the new order to the Secretary-General of the Council by the text of Article 07 of the same law. The procedure is to apply to the competent judge.

**4. Orders, including conducting a social investigation.** This is stipulated in Article 12 of Law 24-01, where the competent family affairs judge rejects it after being notified by the Secretary-General of the Council. The person in charge of custody must update the documents attached to





the file, which requires updating them on paper or electronically during the first trimester of each year, and this is with the General Secretariat in the council.

Suppose the person assigned to custody does not update the documents, or it is proven that his status has changed. In that case, the Secretary-General of the Council shall notify the Family Affairs Judge in writing. The Family Affairs Judge shall issue a state order to conduct a social investigation before deciding on the fate of the financial entitlements.

### CONCLUSION

Finally, we conclude that the legislator did well when he updated Law 24-01, which includes special measures for obtaining alimony. Thus, he devoted protection to the rights of the divorced woman and the custodian, in addition to the children in custody and the alimony assigned to them by law and law if the debtor husband refuses to pay what he owes and has succeeded. The legislator has addressed some of the imbalances in implementing the old Law No. 15-01, but there are some corrections that the legislator must consider.

**Therefore, the results reached are:**

- Law 24-01 gave the persons benefiting from this Fund, namely the divorced woman and the custodial mother, and it is one of the obligations for alimony.
- The law made the cases and conditions for benefiting from the alimony fund, and they are limited to the text, Article 03 of Law 24-01.

Shaking hands with the beneficiary parties of the party who owe the alimony does not mean forfeiting the debt. Instead, he will be criminally prosecuted for not paying the alimony, a criminal act and a misdemeanour stipulated in the Algerian Penal Code.

The legislator kept pace with digitization by stipulating that applications for benefits should be submitted electronically. This procedure is not obligatory, as it is a choice between traditional paper and modernity and digitization, and it is considered a modern and upbeat procedure.

- The legislator took into account the urgent nature of the alimony, so the judge was obliged to decide on the request within a maximum period of 5 days from the date of receiving the request and to inform him through the police secretariat within two days from the date of its issuance. This speed is to avoid the vast difficulties that divorcees and custodians encounter when implementing these rulings related to their necessary rights.

- The legislator gave the family affairs judge essential powers to deal with the mechanisms for collecting alimony. The most important of them is the number of orders according to which the request for alimony is dealt with and the deadlines for deciding it, as well as the issue of objections to it and studying the changes that occur to its parties. He added a fundamental matter: resorting to a procedure Investigation to confirm the debtor's eligibility for alimony.

**The recommendations are:**

- . Reconsider the categories that benefit from this Fund, such as widows, those of unknown parentage, the wives of imprisoned persons, the missing person, and others.
- . Reconsidering the amount of alimony due by considering social and economic changes in society.
- . Imposing administrative responsibility and imposing penalties on the departments charged with paying the amounts due in the event of procrastination and delay.

### LIST OF SOURCES AND REFERENCES.

#### A. Laws and orders.

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**B. the reviewer.**

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2. Kamal Darraji, Karima Mahrouk, “**The Role of the Alimony Fund in Ensuring the Payment of Alimony for Divorced and Child-Children, Study in Law 15-01.**” *Journal of Humanities*, Volume 32, Issue 3, 2021.