



## GARNISHMENT OF SALARIES AND WAGES

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Received: 20/07/2024

Accepted: 29/09/2024

Published: 15/10/2024

### Abstract

There is no doubt that the stage of executing judicial rulings is a fundamental stage in ensuring judicial protection of rights. It is futile to issue judicial rulings and leave them unenforced. Therefore, it is said that a litigant wins their case twice: once before the court of subject matter and once before the enforcement authority. This saying undoubtedly highlights the complexity and importance of enforcement procedures from a legal perspective. What benefit is there in issuing a judgment that establishes a right for its owner if it is not enforced? This sentiment is echoed in a message from Umar ibn Al-Khattab to his judge, Abu Musa al-Ash'ari, stating: "Judging is an obligatory duty and a followed tradition... understand when a case is brought before you, for speaking a right without enforcing it is of no benefit..." In other words, a judgment or deed without execution is of no value. The execution of judgments is the actual translation of their pronouncements into reality, arising from a legal dispute whose aim is to establish a right or legal position that has been violated. The role of the judiciary is limited to preparing the enforceable deed, as the need for judicial protection is not satisfied merely by the issuance of the judgment. With the existence of the enforceable deed, the judgment creditor has the right to enforce it by aligning the actual situation with the legal position, known as the execution dispute.

**Keywords** - fundamental, Ensuring, Complexity, execution

### INTRODUCTION

There is no doubt that the stage of executing judicial rulings is a fundamental stage in ensuring judicial protection of rights. It is futile to issue judicial rulings and leave them unenforced. Therefore, it is said that a litigant wins their case twice: once before the court of subject matter and once before the enforcement authority. This saying undoubtedly highlights the complexity and importance of enforcement procedures from a legal perspective. What benefit is there in issuing a judgment that establishes a right for its owner if it is not enforced? This sentiment is echoed in a message from Umar ibn Al-Khattab to his judge, Abu Musa al-Ash'ari, stating: "Judging is an obligatory duty and a followed tradition... understand when a case is brought before you, for speaking a right without enforcing it is of no benefit..." In other words, a judgment or deed without execution is of no value. The execution of judgments is the actual translation of their pronouncements into reality, arising from a legal dispute whose aim is to establish a right or legal position that has been violated. The role of the judiciary is limited to preparing the enforceable deed, as the need for judicial protection is not satisfied merely by the issuance of the judgment. With the existence of the enforceable deed, the judgment creditor has the right to enforce it by aligning the actual situation with the legal position, known as the execution dispute.

Due to the importance of enforcement, the Constitution stipulates in Article 145 that all competent state organs must execute judicial rulings at all times, places, and under all circumstances. The legislator has given significant attention to this matter in the Code of Civil and Administrative Procedure No. 08-09 dated 25/02/2008, detailing it extensively in Articles 584 to 799, which is approximately twice the number of articles addressed in the Civil Procedure Code. This is to cover all aspects of the subject, providing the parties involved in enforcement with precise and detailed procedures to facilitate the task of the enforcement officer and avoid numerous issues they might face during their duties.

Thus, to enable the creditor to satisfy their right forcibly, the legislator granted them the right to follow enforcement procedures as long as they hold an enforceable deed that confirms this right.

Enforcement must be carried out on assets that are legally subject to enforcement, preceded by enforcement preliminaries. In consideration of these factors and to achieve justice and balance between the complex and intertwined interests of the parties involved in enforcement, the legislator imposed oversight on the exercise of the creditor's right to enforcement, ensuring the availability of the necessary conditions for compulsory enforcement procedures. This includes aspects such as the enforceable deed, the right being enforced, the assets subject to enforcement, the parties involved, and the preliminaries and procedures of enforcement.

Compulsory execution through seizure is the natural conclusion for a debtor's refusal to voluntarily fulfill their obligations. Seizure is a procedural system established by the legislator to compel the debtor to fulfill their obligations.

Compulsory execution can either be direct specific performance, allowing the creditor to obtain their right directly, whether the debtor's obligation involves performing or refraining from an act, such as demolishing a building or vacating a property, provided that this execution is possible.

Alternatively, execution can be carried out through seizure, which is used when the obligation involves paying a sum of money. This monetary obligation can either originate as such or arise as a result of converting a non-monetary obligation (due to the impossibility of specific performance) into an obligation to pay compensation.

The creditor of a monetary obligation can obtain their right by seizing the debtor's assets and collecting the value of the amount from the seized money or its price after sale.

Therefore, seizure involves placing the asset under the control of the judiciary, whether the asset is real estate or movable property, in preparation for its sale and the creditor's collection of their right from its price.

There are two types of seizure:

1. **Executive Seizure:** Its goal is for the seizing creditor to obtain their right from the debtor's seized assets or their price after sale.
2. **Precautionary Seizure:** Its goal is to safeguard the debtor's assets and prevent them from being disposed of to the detriment of the creditor.

The procedures for seizure, as organized by the Civil and Administrative Procedure Law, include several types:

- Seizure of movables with the debtor
- Seizure of the debtor's assets with third parties
- Seizure of shares, bonds, revenues, and stakes
- Real estate seizure

Thus, we are not addressing these types of seizures; the aim of this discussion is to address executive seizure concerning movables in the form of seizure of wages and salaries, as addressed in the Civil and Administrative Procedure Law in articles 775 to 782.

- What are the general rules governing seizure?
- What is the concept of seizure of wages, salaries, and incomes?
- What are the conditions for imposing this type of seizure?
- What are its procedures, and how are they carried out?
- Finally, how is the seizure of wages and salaries lifted?

Based on the above, this discussion can be divided into the conditions for imposing the seizure of wages, salaries, and incomes in the first section, then the procedures for seizure in the second section. But before addressing that, we must cover the general rules governing seizure in an introductory requirement as follows:

We will address this topic in detail according to the following plan:

#### **Introductory Section: General Rules Governing Seizure**

##### **Chapter One: Conditions for Imposing Seizure on Wages, Incomes, and Salaries**

1. **Section One:** The Concept of Seizure on Wages, Incomes, and Salaries
2. **Section Two:** Conditions for Imposing Seizure on Wages, Incomes, and Salaries
  - Condition One: The debtor must hold an executive bond.

- Condition Two: The seizure must be within the limits mentioned in Article 776.

## **Chapter Two: Procedures for Seizing Wages, Incomes, and Salaries**

### **1. Section One: Procedures for Seizing Wages, Incomes, and Salaries**

- First: Issuing an order on a petition.
- Second: Notification of the seizure order.
- Third: In case of multiple creditors.
- Fourth: Summoning the creditor and debtor to appear before the court president.
- Fifth: Attempting reconciliation by the court president.
- Sixth: Issuing the conversion order.
- Seventh: Official notification of the conversion order.

### **2. Section Two: How to Lift Seizure on Wages, Incomes, and Salaries**

## **CONCLUSION**

### **Introductory Section**

#### **General Rules Governing Seizure**

- First Rule:** Seizure does not transfer ownership of the seized property from the debtor until it is sold. The primary effect of seizure is to prevent the debtor from disposing of the seized property in a way that conflicts with or harms the creditor's right to convert the seizure into a monetary amount to satisfy the debt. Any disposition by the debtor of the seized property is void and without effect.
- Second Rule:** The debtor must take actions and make decisions that do not harm the seizing creditor, such as filing a possession lawsuit or demanding payment from third parties, as long as these actions benefit the seizing creditor.
- Third Rule:** Seizure has a relative effect, benefiting only the seizing creditor and not extending to other property not included in the seizure. This differs from the bankruptcy system in commercial law, where the bankruptcy declaration affects all creditors and all the present and future assets of the bankrupt debtor.
- Fourth Rule:** Seizure covers all the seized property, even if it exceeds the value of the seizing creditor's debt. However, during the sale, the sale should not exceed the amount necessary to satisfy the creditor's right and cover expenses according to Article 621 of the Civil and Administrative Procedure Law.
- Fifth Rule:** The rules of seizure are considered part of public order and cannot be altered by agreement between the parties. For example, the creditor and debtor cannot agree that the creditor will take ownership of the pledged property if the debt is not paid when due.
- Sixth Rule:** Seizure interrupts the statute of limitations according to Article 317 of the Civil and Administrative Procedure Law.
- Seventh Rule:** If the seizure is not completed in one day, it can be continued the following day. The judicial officer must take measures to protect the seized assets and those to be seized until the inventory and seizure report are completed, even if this requires continuing beyond working hours.
- Eighth Rule:** The debtor, judges who heard the case, judicial officers, public auction officials responsible for execution, court clerks involved in the procedures, and lawyers cannot participate in the public auction; otherwise, the auction sale can be annulled. However, the creditor can participate in the public auction according to Article 645 of the Civil and Administrative Procedure Law.

### **Chapter One: Conditions for Imposing Seizure on Wages, Incomes, and Salaries**

#### **Section One: The Concept of Seizure on Wages, Incomes, and Salaries**

The new Civil and Administrative Procedure Law includes provisions on the seizure of wages and salaries, which were previously regulated by Ordinance No. 75/34 dated April 29, 1975, concerning the seizure of debtor's assets with third parties and the suspension of salary payments. This ordinance was never applied in practice due to the ambiguity and complexity of its provisions.

Since this type of seizure is an executive seizure of the debtor's assets held by third parties, it has been incorporated into the execution section along with other types of seizures and revised for the following reasons:

1. To establish a proportion of the wage subject to seizure based on an objective criterion linked to the minimum guaranteed national wage, considering the debtor's need for income to meet basic living expenses and fulfill obligations to other creditors.
2. To simplify the procedures related to this seizure and include reconciliation as a mandatory step between the creditor and the debtor.
3. To define how deductions from wages are made in cases of fixed and ongoing debts, such as alimony.

Wages, incomes, and salaries refer to any regular, permanent, or temporary salary, including all types of pensions and periodic benefits owed to individuals, whether from the state, public institutions, or private entities.

### **Section Two: Conditions for Imposing Seizure on Wages, Incomes, and Salaries**

Article 775 of the Civil and Administrative Procedure Law states: "Seizure of wages, incomes, and salaries is only permissible by virtue of an executive bond and within the limits mentioned in Article 776 below."

According to this article, seizure can only be imposed if the following two conditions are met:

1. The debtor must possess an executive bond as defined in Article 600 of the Civil and Administrative Procedure Law.
2. The seizure must be within the limits specified in Article 776 of the Civil and Administrative Procedure Law.

#### **Condition One: The Debtor Must Possess an Executive Bond.**

Article 600 of the Civil and Administrative Procedure Law defines executive bonds as follows:

- **Court Judgments:** These are judgments that have exhausted ordinary means of appeal, as well as judgments with immediate enforceability. It is noted that judgments that constitute an executive bond are those that include an obligation. It is said in jurisprudence that an obligation judgment forms a link between declaratory judicial protection and executive judicial protection. It starts with affirmation and ends with execution. Therefore, declaratory or constitutive judgments do not contain an obligation to perform and do not require enforcement to compel the debtor to execute. Thus, they are said to have the authority of *res judicata* but lack enforceability (1).
- **Urgent Orders:** According to Article 303 of the Civil and Administrative Procedure Law, urgent orders are enforceable by law, do not affect the substance of the right, and are immediately enforceable with or without a guarantee, despite all means of appeal. In cases of extreme urgency, the judge may order enforcement based on the original copy of the order even before it is registered.
- **Payment Orders:** Payment orders constitute an exceptional method from the prescribed litigation methods as per Article 306 of the Civil and Administrative Procedure Law. An objection to a payment order is filed urgently before the judge who issued it, and the objection has a suspensive effect according to the last paragraph of Article 308. The payment order becomes an executive bond if no objection is filed within the specified period. Any payment order not requested to be marked with the enforceable formula within one year from its issuance is null and void.
- **Orders on Petitions:** Defined by Article 310 of the Civil and Administrative Procedure Law as temporary orders issued without the presence of the other party unless otherwise provided by law. They are enforceable based on the original copy. Any order on a petition not executed within three months from its issuance is null and void (Article 311, paragraphs 2 and 3 of the Civil and Administrative Procedure Law).
- **Orders for Determining Judicial Expenses:** As per Article 421 of the Civil and Administrative Procedure Law, judicial expenses are determined by an order issued by the judge and attached to the case documents if they cannot be determined before issuance (2).
- **Decisions of Judicial Councils and Supreme Court Decisions Involving Obligations:** Decisions from the judicial councils are those issued by all chambers except the indictment chamber and are enforceable upon issuance. They are delivered with the enforceable formula to the concerned

parties, except for decisions regarding personal status and capacity. Judicial decisions are not always executive bonds unless they involve an obligation, either by addressing the case anew or amending the appealed judgment (3)

Supreme Court decisions are considered executive bonds according to Articles 377 and 378 of the Civil and Administrative Procedure Law concerning judicial expenses, civil fines, and awarded compensations.

- **Administrative Court Judgments and State Council Decisions.**
- **Reconciliation Records or Notarized Agreements:** These are alternative methods established by the legislator as an alternative to judicial disputes for resolving conflicts. Reconciliation records (in cases of reconciliation) or mediation records (in cases of mediation) have the status of executive bonds, provided they are notarized by judges and deposited with the court registry (Articles 990 to 993 of the Civil and Administrative Procedure Law). Similarly, mediation records must be ratified by a judge with an order that cannot be appealed (Articles 994 to 1005 of the Civil and Administrative Procedure Law).
- **Arbitral Awards Mandated for Execution by Judicial Authorities:** These are deposited with the court registry and delivered according to Article 1036 by the head of the court registry with the enforceable formula to the requesting parties.
- **Checks and Promissory Notes:** These are commercial bonds enforceable after official notification of protests according to commercial law (Articles 536 and 440 of the Commercial Code).
- **Notarized Contracts:** These are contracts prepared by a notary, who is a public officer authorized by the state, running his office privately and under his responsibility (Law 06/02 dated February 20, 2006, regulating the notary profession). These include residential and commercial lease contracts, loan contracts, gratuitous loan contracts, donation contracts, endowment contracts, sale contracts, mortgage contracts, and deposit contracts.
- **Public Auction Sale Records:** Following the legislator's assignment to judicial officers of the procedures for public auction sales of seized movables, public auction sale records are considered executive bonds provided they are deposited with the court registry (Article 715 of the Civil and Administrative Procedure Law).
- **Auction Award Records:** In addition to considering the auction award judgment as a title deed, the legislator assigned the procedure of recording it with the land registry to the judicial officer (Article 762 of the Civil and Administrative Procedure Law). The auction award record is an executive bond due to its non-appealable nature and its obligation on the seized property owner, holder, or the surety to deliver the property or real right to the auction winner (Article 763, paragraph 7 of the Civil and Administrative Procedure Law). Therefore, the auction winner is exempt from resorting to the court but must execute the auction award judgment (Articles 764, 762, and 765 of the aforementioned law) (4). Finally, the legislator stated that all contracts and other documents that the law grants the status of an executive bond are considered executive bonds.
- **Foreign Executive Bonds:** Articles 605 and 606 of the Civil and Administrative Procedure Law specify that these include orders, judgments, decisions, contracts, and official bonds issued in a foreign country. These are enforceable after being granted the enforceable formula by the court of the jurisdiction where the execution or debtor's domicile is located. If an issue arises in executing a foreign judgment before the summary affairs judge, and it is found that the judgment lacks an execution order from Algerian courts, the judge orders the suspension of the judgment's execution (5).

#### **Condition Two: The Seizure Must Be Within the Limits Specified in Article 776.**

Article 776 of the Civil and Administrative Procedure Law states: "Anyone holding an executive bond may seize the wages, incomes, and salaries received by the debtor according to the following procedures and within the specified proportions below:

- 10% if the net salary equals or is less than the guaranteed minimum national wage.
- 15% if the net salary exceeds the guaranteed minimum national wage and equals or is less than twice its value.



- 20% if the net salary exceeds twice the guaranteed minimum national wage and equals or is less than three times its value.
- 25% if the net salary exceeds three times the guaranteed minimum national wage and equals or is less than four times its value.
- 30% if the net salary exceeds four times the guaranteed minimum national wage and equals or is less than five times its value.
- 40% if the net salary exceeds five times the guaranteed minimum national wage and equals or is less than six times its value.
- 50% if the net salary exceeds six times the guaranteed minimum national wage.

Family allowances are excluded when calculating the net income in the above proportions, and they cannot be seized."

## **Chapter Two: Procedures for Seizing Wages, Incomes, and Salaries**

In this chapter, we will discuss the procedures for seizing wages, incomes, and salaries in the first section, and then we will address the procedures for lifting the seizure as follows:

### **Section One: Procedures for Seizing Wages, Incomes, and Salaries**

The procedures for seizure are as follows:

**First: Issuing an Order on a Petition** Seizure of wages, incomes, and salaries is carried out by an order on a petition issued by the president of the court in the jurisdiction where either the residence or the registered office of the person in possession of the seized assets, or the wage or salary payment center, is located. The request can be made by the creditor, the spouse, the guardian, or the custodian, as the case may be. This is confirmed by Article 778/1 of the Civil and Administrative Procedure Law.

**Second: Notification of the Seizure Order** Official notification is made to the debtor personally, or to one of the adult family members living with the debtor at their real domicile, or at the chosen domicile. It is notified to the person holding the seized assets personally if they are a natural person, or to the legal representative, contractual representative, or authorized agent if they are a legal entity, with a copy of the seizure order being delivered and noted in the official notification report.

**Third: In Case of Multiple Creditors** Article 779 of the Civil and Administrative Procedure Law provides for this situation, stating: "If there are multiple creditors or creditors with executive bonds appear after the first seizure, they share equally in the percentage of the seizure mentioned in Article 776 above. The additional creditors are registered with the first seizure at the court registry by an order on a petition upon proof of their status. Alimony debts have priority over other debts for satisfaction according to the order specified in the Civil Code."

**Fourth: Summoning the Creditor and Debtor to Appear Before the Court President** The judicial officer summons the seizing creditor and the seized debtor to appear before the court president within a maximum period of eight days from the date of the official notification of the seizure order. This is confirmed by Article 780/3 of the Civil and Administrative Procedure Law.

**Fifth: Attempted Reconciliation by the Court President** The court president attempts reconciliation between the parties within a maximum period of one month, documenting their presence or absence in a report. If reconciliation is achieved, the court president documents the agreed-upon conditions in the report and orders the automatic lifting of the seizure. This is confirmed by Article 780/2, 3 of the Civil and Administrative Procedure Law.

**Sixth: Issuing the Conversion Order** If reconciliation is not achieved, this is documented in the report, and the court president issues a conversion order in favor of the seizing creditor. The order includes the following details in addition to the usual information:

1. The name, surname, capacity, date, and place of birth, and domicile of the seizing creditor.
2. The name and surname of the seized debtor.
3. The name, surname, capacity, and address of the person holding the seized assets.
4. The amount of the debt for which the seizure was made.
5. The specified proportion of the seizure and the amount deducted from the wage or salary.
6. An order for the person holding the seized assets to deliver the deducted amount to the seizing creditor in cash against a receipt, deposit it in a current account, or by postal transfer. If the

debt is for alimony, the conversion order includes the continuation of monthly payments to the seizing creditor until it is legally terminated or a contrary order is issued.

**Seventh: Official Notification of the Conversion Order** Official notification of the conversion order is made to the seized debtor and the person holding the seized assets. The person holding the seized assets must execute the conversion order in favor of the seizing creditor starting from the month following the official notification. This is stipulated in Article 782 of the Civil and Administrative Procedure Law.

### **Section Two: How to Lift Seizure on Wages, Incomes, and Salaries**

The seizure on wages, incomes, and salaries is lifted in the following cases:

- If a reconciliation is reached between the debtor and the creditor. This is confirmed by Article 780/3 of the Civil and Administrative Procedure Law, which states: "If reconciliation is achieved, the court president documents the agreed-upon conditions and orders the automatic lifting of the seizure."
- If the original debt, costs, and execution fees are paid.

### **CONCLUSION**

In this modest study, we have discussed the conditions for imposing seizure on wages, incomes, and salaries. We explored the concept of seizure on wages, incomes, and salaries, then addressed the conditions for imposing seizure in the first section. We also examined the procedures for seizing wages, incomes, and salaries, detailing the steps from beginning to end, and finally, how to lift the seizure in case of debt settlement.

Therefore, based on the above, it can be said that the Algerian legislator, through the Civil and Administrative Procedure Law, has worked to activate execution procedures, especially concerning the seizure of wages, salaries, and incomes. These procedures are precise in specifying the steps to be followed in execution and detailed, removing ambiguity from the execution process. The legislator considered all possible obstacles that could hinder the execution process and provided specific rules to enable the judicial officer to handle them with the flexibility needed to complete their task effectively.

However, despite the positive aspects of this law, significant difficulties in its practical application have been observed, possibly due to the ambiguity and novelty of its provisions and principles. Some financial institutions have not interacted with these new procedures, leading to issues for the judicial officer in identifying account numbers, amounts, and seizure procedures. This sometimes results in slow execution, allowing the debtor to hide assets and avoid judicial control, harming the seizing creditor's interests. This situation necessitates intensifying legal lectures and seminars to clarify these provisions and make them accessible to everyone.

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