

The Authority of the Administrative Judge in Urgent Matters to Suspend the Implementation of an Administrative Decision: in Light of Law 22-13

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Abstract. Comparative legislations have found that there is no alternative but to grant the judiciary the authority to order the suspension of the execution of the administrative decision in order to confront the situation resulting from its implementation, which lies in the difficulty of restoring the situation to what it was before the issuance of the decision ruled null and void. This mechanism is considered an exception to the general principle which establishes that an appeal for annulment has no suspensive effect on the enforcement of the administrative decision. Additionally, the Algerian legislator has adopted the system of suspending the execution of decisions by providing for it in the Code of Civil and Administrative Procedures of 2008, as well as in other laws such as the Expropriation Law and the Public Procurement Law. Therefore, it has set a limit to the administration's privilege in enforcing its decisions, as this privilege cannot be absolute, since it may cause harm to individuals. Thence, it was necessary to place limits on this privilege in order to safeguard individuals' rights by temporarily suspending its effects until it is adjudicated by the judiciary.

1. INTRODUCTION

The urgent lawsuit is a legal means through which one of the parties seeks to take a temporary and rapid measure to protect their interests before reaching consequences that are difficult to remedy (Masoud, 2009, p. 134). It is defined by some jurists as a set of procedures aimed at deciding matters in an urgent and swift manner (Al-Ghouthi, 2000, p. 314).

Given the importance of distinguishing administrative litigation in general, and urgent litigation in particular, by a set of features and characteristics that set it apart from other types of lawsuits, the Algerian legislator has given it a certain degree of regulation in the Code of Civil and Administrative Procedures.

As for the powers and authorities of the administrative urgent judge, they are comparable to those known to the ordinary judge dealing with urgent matters, and may even exceed them. The judge can order the suspension of a strike, dissolve a political party or an association, and also accept or reject candidacy for elections. Further, the judge may also suspend the execution of an administrative or judicial decision, such as an eviction order from official housing or a tax collection order, not to mention ordering inspections or establishing a state of affairs, and taking precautionary measures such as ordering the suspension of works until the case on the merits is decided.

The problematic of this research lies in determining the limits of the powers of the administrative urgent judge in suspending the execution of an administrative decision, and whether the judge hearing the urgent case may affect the substance of the right or not.

In order to answer this problem, it is convenient to address both the conditions of the urgent lawsuit for suspending the execution of the administrative decision and the procedures for conducting this lawsuit in this regard.

1. Conditions of the Urgent Lawsuit for Suspending the Execution of the Administrative Decision

Regardless of the necessity for the urgent lawsuit to meet the general conditions for admissibility, such as the existence of urgency and non-prejudice to the substance of the right, specific conditions must also be met in order for the urgent judge to subsequently rule on the requested temporary measure, and this is what we will address in the following.

1. Formal Requirements: In this context, we will mention the requirement of a parallel lawsuit on the same subject, in addition to the requirement of a prior ruling.

A Parallel Claim on the Same Subject Matter: The most important feature that distinguishes administrative urgency from urgency before the ordinary judiciary, especially in cases related to suspending the execution of an administrative decision, is that nonetheless they share the requirement of the two elements, non-prejudice to the substance of the right and the necessity of the existence of a parallel case on the merits (Barbara, 2013), this is stipulated in Article 926 of the Code of Civil and Administrative Procedures, which expressed the obligation to attach to the petition seeking suspension of the execution of the administrative decision or some of its effects.

Condition of the Previous Administrative Decision: In all cases of administrative urgency, including cases of extreme urgency, the legislator has not excluded the submission of a prior administrative decision before the intervention of the judge, except in cases of utmost urgency, which allow the urgent judge to order all measures deemed necessary by way of an order on petition, even in the absence of a prior administrative decision.

Objective Requirements: In this field we will mention the requirement of a parallel lawsuit on the same subject, in addition to the requirement of a prior ruling.

Condition of the Previous Administrative Decision: In all cases of administrative urgency, including cases of immediate urgency, the legislator has not excluded the requirement of submitting a prior administrative decision before the intervention of the judge, except in cases of extreme urgency, which authorize the urgent judge to order all measures he deems necessary by

way of an order on petition, even in the absence of a prior administrative decision.

2. Objective Conditions: The substantive conditions for a lawsuit seeking the suspension of the execution of an administrative decision can be derived from the provisions of Articles 918, 920, and 921 of the Code of Civil and Administrative Procedures, including the condition of urgency, the condition of not obstructing the execution of the administrative decision, and the condition of not affecting the substance of the right, and this is what we will discuss in sequence.

Urgent State: A part of legal doctrine defines the state of urgency as: "a necessity that does not tolerate postponement or delay, and a direct danger that cannot be prevented by filing a lawsuit through ordinary procedures even with shortened deadlines." (Mohammed, 2002, p. 36) Nonetheless, the Algerian legislator has limited itself to considering urgency as an essential condition for the jurisdiction of the administrative urgent judge without defining it, and through this silence has left the task of determining the concept of urgency to legal scholars (Rima, 2012, p. 7).

Non-Prejudice to the Substance of the Right: The existence of the condition of urgency alone is not sufficient for the administrative urgent judge to declare jurisdiction to examine a request relating to the suspension of the execution of an administrative decision. More precisely, the judge must also verify the existence of the second essential condition in a suspension lawsuit, namely non-prejudice to the substance of the right, which is stipulated in Article 918 of the Code of Civil and Administrative Procedures, which states: "The urgent judge orders temporary measures and does not examine the substance of the right..."

The legal and doctrinal terminology used to describe this condition has varied. For, the Algerian legislator has maintained the term "non-prejudice to the substance of the right," both in the repealed Code of Civil Procedures under Article 171 and in the new Code of Civil and Administrative Procedures under Article 918, without providing a precise definition or concept of this condition, leaving that task to legal scholars.

Part of legal doctrine defines this condition as: "everything related to the right in terms of its existence or non-existence, including anything that affects its validity, impacts its essence, alters it, or affects the legal consequences established by law or intended by the contracting parties." (Rima, 2012, p. 18)

The Egyptian civil judiciary, on the other hand, has defined non-prejudice to the substance of the right as: "the request should be merely a measure granted in favor of the apparent right holder based on the documents, without the need for an in-depth examination through substantive investigative methods." (Belaabed, 2007-2008, p. 19)

Equally important, the meaning of the substance of the right varies depending on the type of urgent lawsuit, whether it concerns suspension of execution, investigative urgency, appointment of an expert, ordering an appropriate measure, or urgency relating to freedoms. Considering that in the field of suspending the execution of administrative decisions, the condition of non-prejudice to the substance of the right refers to annulment or amendment. Hence, the administrative judge suspends the execution of the administrative decision by setting aside the non-suspensive effect of the annulment appeal only, without ruling on its legality. For instance, the judge cannot order the annulment of the decision or compensation for it, as this falls within the jurisdiction of the judge of the merits. Pertaining to the Algerian Council of State issued a decision on 12/12/2007 upholding the appealed order of the first-instance judge, on the grounds that the appellant's request affected the substance of the right.

Condition of Not Obstructing the Implementation of an Administrative Decision: The substance of this condition is that decisions issued by administrative authorities inherently carry their enforceable force, and the administrative urgent judiciary may not order any measure that would lead to the suspension or obstruction of their execution, as they are presumed lawful and aim to serve the public interest (Mohamed, 2005, p. 185).

Namely, if the administrative urgent judge determines that the measure to be taken would put an end to the execution of an administrative decision or hinder part of its effects, the judge must reject the request in accordance with the provisions of Article 924/1 of the Code of Civil and Administrative Procedures. In simpler terms, the claimant must base their case on strong and serious grounds; otherwise, the purpose of the request would be considered as obstructing the activity of the administration.

I. Procedures for Filing a Lawsuit To Suspend the Execution of the Decision And Methods of Appealing It:

We have devoted this section to studying the most important stages through which the urgent lawsuit passes in the field of suspending the execution of administrative decisions, along with explaining the procedures governing the course of this lawsuit, and this is addressed in the first requirement. As for the second requirement, it is dedicated to clarifying the methods of reviewing the urgent order, whether through ordinary or extraordinary means of appeal.

1. Procedures for Filing a Lawsuit to Suspend the Execution of an Administrative Decision

In this section, we will discuss the most important steps and procedures that the plaintiff must follow in order to exercise their right to file a lawsuit to suspend the implementation of an administrative decision, through the following stages:

Filing The Administrative Urgent Lawsuit: There are conditions related to the claimant, other conditions related to the statement of claim, as well as those concerning the competent judicial body to examine the urgent lawsuit.

Conditions Related to the Claimant: The Algerian legislator, through Article 13 of the new Code of Civil and Administrative Procedures, distinguished between formal and substantive conditions for the admissibility of the lawsuit, it retained the two formal conditions, namely capacity (standing) and interest, while referring legal capacity as a substantive condition to Article 64 of the same law.

1. Capacity (Standing):

It is the right to bring a claim before the judiciary, based on a direct and personal interest in litigation (Barbara, 2013, p. 41). It may also happen that a party intervenes during the course of proceedings which was not mentioned in the initial statement of claim, either voluntarily to achieve an interest in their favor, or at the request of one of the parties to the dispute.

As regards this, the administrative urgent judge has the authority to examine and decide on the standing of the parties, and this is not considered a ruling on the merits. In view of the fact that the judge necessarily has the power to verify the standing of the claimant; thence, examining the claimant's standing is essential and constitutes a preliminary issue that must be decided first before addressing the request. This is in accordance with paragraph 2 of Article 13 of the Code of Civil and Administrative Procedures, which states: "The judge shall, of their own motion, raise the lack of standing of the claimant or the defendant..."

2. Interest:

It refers to the benefit accomplished by the person making the judicial claim. This benefit constitutes the motive behind filing the lawsuit and the objective of initiating it; there is no lawsuit without interest, in order to avoid claims that have no practical

benefit, such as unproductive lawsuits (Barbara, 2013, p. 44).

One of the characteristics of this interest is that it may be existing or potential in certain cases, such as interdiction cases, in order to prevent potential harm for example, the fear that the person subject to interdiction may dispose of their property in a way that harms heirs due to insanity or mental incapacity, in accordance with Article 101 and following of the Family Code.

In urgent judiciary, potential interest may suffice if the purpose of the request is precautionary to prevent imminent harm or harm feared from the disappearance of evidence (Rima, 2012, p. 30) when a dispute arises, such as establishing an urgent case. It may be accepted even if the dispute has not yet been proven, for fear of losing time and waiting until a case on the merits is filed, which could result in the loss of the features to be established.

Conditions Related to the Statement of Claim: In terms of form, the petition seeking urgent measures must include the data stipulated in Article 15 of the Code of Civil and Administrative Procedures, under penalty of inadmissibility, as follows:

- The judicial body before which the lawsuit is filed.
- The name, surname, and domicile of the claimant.
- The name, surname, and domicile of the defendant; if unknown, the last known domicile.
- Indication of the name, nature of the legal person, its headquarters, and the capacity of its legal or contractual representative, in addition to a brief presentation of the main facts and the reasons justifying the urgent nature of the case, as provided in Article 925 of the same law.
- The petition must be written (paper) or submitted electronically (Badia, 2025, p. 465), as provided in Article 815 of the amended Code of Civil and Administrative Procedures by Law 22-13. As for the requirement of signing the petition by an accredited lawyer has been abolished by the new amendment and has become mandatory only before administrative courts of appeal, as provided in Article 900 paragraph 2, which led to the complete repeal of Article 826 of the same law.
- The date and time of the first hearing.
- Among the formal aspects required by the administrative urgent judge in a lawsuit for suspension of execution is attaching to the petition a copy of the statement of claim on the merits, under penalty of inadmissibility.

The provisions of Article 848 of the Code of Civil and Administrative Procedures, relating to prior conciliation and formal notice, do not apply in urgent matters, because the nature of urgency is incompatible with long time limits and extensions, which is confirmed by Article 928 of the same law, that allows the administrative urgent judge to grant short deadlines so that the parties may submit replies and observations after official notification of the petition.

Conditions Related to the Competent Judicial Body: Since the administrative urgent lawsuit is a judicial action, it is subject to certain rules of investigation. Besides, the procedures for examining a request for suspension of execution are characterized by adversarial, written, and oral proceedings, as provided in Article 923 of the Code of Civil and Administrative Procedures, which states: "The urgent judge shall decide according to adversarial, written, and oral procedures."

1. Adversarial nature: Professor Rachid Kheloufi defined it as: "a means that ensures informing the parties in order to defend their rights, achieving equality between them before the administrative judge, and deciding the case within a framework of judicial impartiality." (Rachid, 2007, p. 49) The administrative judge applies this principle explicitly, as any document submitted by one party must be made available to the other for discussion and review.

2. Written and oral nature: Article 09 of the Code of Civil and Administrative Procedures states that "the origin in litigation procedures is that they are written" and this provision applies to cases brought before both administrative and ordinary judicial bodies.

3. Speed: The speed of adjudication in administrative urgent cases is the most important feature of such lawsuits. Due to its importance in achieving justice and stability in legal relations, the legislator emphasized it in Article 918 ("...decided within the shortest time limits...") and Article 941 ("The petition shall be officially notified immediately to the defendant, with a deadline set by the court for response").

4. Composition: The legislator in the Code of Civil and Administrative Procedures adopted what jurisprudence had previously established, namely that a collegial formation generally decides urgent cases, contrary to the old procedural law which granted individual powers to the head of the judicial body in urgent matters. However, after the amendment of the Code by Law No. 22-13, the Algerian legislator reassigned jurisdiction over administrative urgent cases, including suspension of execution, to the president of the administrative court. As for administrative courts of appeal and the Council of State, a collegial formation is required to decide urgent cases, as provided in Article 917 (Mohamed, 2005, p. 162).

From the above, it appears that the legal formation entrusted with examining the urgent lawsuit consists of three judges (a presiding judge and two assistants with the rank of counselor), in addition to the State Commissioner, who performs the functions of the public prosecution and submits oral submissions or specific requests in the form of a written report.

Closing of the Investigation and Notification of the Parties: The investigation is concluded at the end of the hearing unless the urgent judge decides to postpone its closure to a later date, and the parties are notified of this by all means. What is new in this regard is that the legislator has allowed the submission of additional memoranda and documents during the period between the hearing and immediately before the closure of the investigation to the other parties through a bailiff, and the concerned party must provide proof of having done so before the judge. The investigation is reopened in the event of postponement to another hearing.

Contrary to the provisions of Article 843 of the Code of Civil and Administrative Procedures, the parties may be informed during the hearing of issues raised relating to public order and public order, according to Article 932 of the same law, does not carry the meaning of a set of rules necessary to preserve social peace as defined by Algerian judiciary, but rather refers to legal matters whose violation is prohibited, such as when the legislator states that rules of jurisdiction are matters of public order (Barbara, 2013, p. 479).

Urgent Matters and Methods of its Appealing: The order issued by the administrative urgent judge is considered the result of the urgent dispute. For, every judicial claim must end with a judgment, decision, or order, even if the outcome is the annulment of the proceedings, rejection of the request, inadmissibility, lapse of the proceedings, withdrawal, or a ruling of lack of jurisdiction.

On that account, the urgent order must be issued in the same form as judgments are usually issued, must be reasoned, and examined by the collegial formation entrusted with deciding the case on the merits, in accordance with the provisions of Article 917 of the Code of Civil and Administrative Procedures.

On this basis, we will address the nature and content of the administrative urgent order and the methods of appeal against it as follows:

The Nature and Content of the Urgent Order

1. The Form of the Urgent Order

The Algerian legislator did not specify, in Articles 917 to 948 of the Code of Civil and Administrative Procedures, a specific format for urgent orders issued by the administrative urgent judge. In the absence of a specific provision, reference must be made to the general rules applied before the administrative judiciary.

Referring to Article 888 of the same law, it directs us to Articles 270 to 298, stating: "The provisions relating to judicial judgments set out in Articles 270 to 298 of this law shall apply before administrative courts." Articles 275 and 276 require a set of formal elements, including:

- The People's Democratic Republic of Algeria.
- In the name of the Algerian people.
- The judicial body issuing the order. Names, surnames, and capacities of the judges deliberating the case.
- Date of pronouncement of the judgment, order, or decision.
- Name and surname of the representative of the public prosecution, where applicable (the State Commissioner).
- Name and surname of the court clerk present.
- Names, surnames, and domiciles of the parties, and for legal persons, their nature, name, headquarters, and the capacity of their legal or contractual representative.
- Names and surnames of lawyers or any person representing or assisting the parties.
- Indication that the judgment was pronounced in a public hearing.

Article 889 further provides that the judgment must include references to documents and legal texts applied, and indicate that the reporting judge, the State Commissioner, the parties, and any other person heard by order of the presiding judge have been heard.

In addition to these formal elements, the urgent order must include substantive elements, such as:

- Reasoning in fact and law.
- Reference to applicable legal texts.
- A brief presentation of facts, claims, and defenses.
- Response to all requests and arguments.
- A clear operative part enabling execution.

2. The Legal (Temporary) Nature of the Urgent Order

Urgent orders are temporary by nature, as they are issued in consideration of urgency without addressing the substance of the right. Furthermore, they do not bind the court deciding on the merits. For, the decision on the merits remains within the exclusive jurisdiction of the trial judge, who has final authority over the dispute regardless of the interim measure taken. Thence, it is confirmed by Article 918, which states: "The urgent judge orders temporary measures, does not examine the substance of the right, and decides within the shortest time limits."

Nevertheless, the urgent order has temporary *res judicata* effect, which generally ends upon the issuance of the judgment on the merits, unless the latter adopts the same reasoning. In such a case, its authority derives from the judgment on the merits. Based on this temporary authority, the judge may revoke or modify the order upon request of any interested party if new circumstances arise, as provided in Article 922 (Masoud, 2009, p. 152).

Ergo, a ruling on a request to suspend execution whether granting or rejecting it may coincide with or differ from the judgment on the merits, since the court in urgent matters only examines urgency and seriousness of the grounds.

Methods of Appeal Against the Administrative Urgent Order: Appeal is one of the ordinary methods of challenge and represents the principal remedy against urgent protection orders; it is a right granted to the parties and reflects dissatisfaction with the outcome before the first-instance judge.

Regarding the scope of appeal, the Algerian legislator initially followed the French approach by distinguishing between orders that could and could not be appealed (Articles 919, 921, 922), while allowing appeal in matters related to public freedoms (Article 920) (Rima, 2012, p. 71).

However, following the constitutional amendment of 2020 (20-442, 2020) and the reforms to the Code of Civil and Administrative Procedures in 2022, which established the principle of two-tier litigation through the creation of administrative courts of appeal, the legislator abandoned this distinction and appeal has now become available for all urgent cases without exception.

Accordingly, urgent orders issued in immediate urgency cases are now subject to appeal under Article 936. Appeals are filed before the administrative court of appeal if the order is issued by a first-instance administrative court within 15 days from notification, and must be decided within 15 days from registration. If the order is issued by the administrative court of appeal in Algiers, it may be appealed before the Council of State within 15 days from notification.

2. CONCLUSION

We find that the Algerian legislator has granted the administrative urgent judge numerous powers and authorities, which has given them a level of credibility equal to or even exceeding that enjoyed by the ordinary urgent judge, in consideration of the specific nature of administrative disputes.

These powers may even go further, as the judge can order the suspension of a strike, dissolve a political party or an association, accept or reject candidacies for elections, and suspend the execution of an administrative or judicial decision such as an eviction from official housing or a tax collection order. The judge may also order inspections or the establishment of a case, and take precautionary measures such as ordering the suspension of works until the case on the merits is decided, in addition to dealing with cases of surpassing seizure and administrative closure.

The most important feature distinguishing administrative urgency from urgency before the ordinary judiciary, particularly in cases related to suspending the execution of an administrative decision, is that although they share the requirements of non-prejudice to the substance of the right and the existence of a parallel case on the merits, there are also the conditions of urgency and the requirement not to obstruct the execution of the administrative decision.

As for the conditions of a lawsuit to suspend the execution of an administrative decision, the Algerian legislator, through Article 13 of the Code of Civil and Administrative Procedures, distinguished between formal and substantive conditions for admissibility. It retained the formal conditions of standing and interest, while referring legal capacity as a substantive condition to Article 64 of

the same law. From a formal perspective, the petition requesting urgent measures must include the data stipulated in Article 15 of the same law, under penalty of inadmissibility.

Since the administrative urgent lawsuit is a judicial action, it is subject to specific rules of investigation. The procedures for examining such cases are characterized by their adversarial, written, and oral nature, as provided in Article 923 of the Code of Civil and Administrative Procedures.

Regarding the composition of the court, the legislator adopted in the Code what jurisprudence had previously established, namely that a collegial formation generally decides urgent cases, contrary to the explicit provisions of the old procedural law, which granted individual powers to the head of the judicial body responsible for urgent matters.

As for the legal nature of urgent orders, they are temporary by nature, as they are issued in consideration of urgency without addressing the substance of the right. They do not bind the court deciding on the merits, since the decision on the substance of the dispute remains within the exclusive jurisdiction of the trial judge, who has final and permanent authority over the matter regardless of the interim measure taken.

The Algerian legislator distinguished in the Code of Civil and Administrative Procedures between administrative urgent orders in terms of their susceptibility to appeal, explicitly providing that some orders are not subject to appeal (Articles 919, 921, and 922), while others particularly those related to public freedoms are appealable under Article 920, and remaining silent on others.

Finally, it can be said that the ruling on a request to suspend execution whether granting or rejecting it may coincide with or differ from the judgment on the merits. This is because the court, when deciding on suspension, rules on an urgent matter, examining the extent to which the formal and substantive conditions are met, as well as the degree of urgency and seriousness of the grounds.

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