

Provisions Of Precautionary Seizure In The Algerian Code Of Civil And Administrative Procedure

By

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Abstract

Precautionary seizure is a preventive measure enacted to secure the creditor's right and temporarily protect him by judicial request, and it aims to place the debtor's movable and immovable property under the hands of the judiciary and prevent him from disposing of it, and it is also the creditor's responsibility and responsibility. Because of the importance of this issue, we have decided to explain its various provisions and the procedures for its signature in light of the Algerian Code of Civil and Administrative Procedure.

Keywords: precautionary seizure, its characteristics and conditions, procedures for its signature, effects, lifting and fixing it.

Introduction

Attachment is defined as a procedural description attached to the seized property and making it subject to execution, and it aims to stop the hand of the owner of the property from it and place it under the hands of the judiciary in preparation for its sale and the creditor's payment of his right from its price.

The attachment is of two types, either executive attachment or precautionary attachment, the executive attachment is the one that aims to seize and sell the debtor's funds that are seized in fulfillment of the debt of the distrainer when the creditor has an executive bond, while the precautionary attachment is a purely preventive measure, which is not intended to sell the seized money, but rather to protect the creditor's right temporarily until he obtains an executive bond proving the debt, which is the subject of our study.

The Algerian legislator has dealt with the issue of precautionary detention and its provisions and the procedures for signing it in the Code of Civil and Administrative Procedure, and this is what we will address in some detail in this research.

First: Definition of Precautionary Attachment

Countless jurisprudential and legal definitions have been provided to define the meaning of precautionary detention, some of which we will only list.

Some define it as: "A preventive measure that the creditor resorts to when necessary, so he obtains from the judge an order to sign a material movable owned by his debtor to

preserve his right to the general guarantee, that is, the guarantee that each creditor has on the funds of his debtor, so it does not fall on a property but rather falls on a material movable, and it does not aim at the beginning of the sale of the seized movable and the requirement of his right from its price, but rather placing it under the hands of the judiciary to prevent the debtor from disposing of it and smuggling it to the detriment of the creditor"⁽¹⁾.

Others define it as: "a preventive procedural means, used by the creditor who has a bond or does not have a bond, to seize and temporarily seize his debtor's movable material property, to preserve the creditor's general guarantee, and is done by surprise the debtor so that he cannot smuggle his money"⁽²⁾.

Others define it as: "that measure taken by the creditor to prevent the debtor from disposing of some of his movable property for fear of smuggling or losing it, and precautionary attachment is a preventive measure resorted to when urgent necessity by obtaining an order from the judge, and the aim of which is to preserve the creditor's right to general security from his debtor's funds"⁽³⁾.

It is noted from these definitions that they agree in their entirety that precautionary attachment is a preventive measure resorted to by the creditor when necessary with the intention of placing the debtor's property - movable but not real estate - and seizing them under the hands of the judiciary to prevent the debtor from disposing of them to the detriment of his creditor.

If these are the definitions provided by the jurisprudential definitions of provisional attachment, what definition did the Algerian legislator bring to provisional attachment?

The Algerian legislator has dealt with the provisions of precautionary attachment in Chapter Two of Chapter Five of Book Three on the compulsory execution of executive bonds in articles 646 to 666 of the Code of Civil and Administrative Procedure⁽⁴⁾, defining precautionary attachment in article 646 thereof as: "Placing the debtor's movable material and real estate property in the hands of the judiciary and preventing him from disposing of them, and attachment falls on the creditor's responsibility".

Article 647 of the same Code stipulates that: "The creditor may, with a debt that is certain to exist, upon payment, request, by means of a reasoned petition, dated and signed by him or his representative, an order for precautionary attachment of movables or real estate of his debtor, if he is a holder of a debt bond or has apparent justifications that suggest the existence of the debt, and fears the loss of security of his rights."

These articles shall be useful for:

- The precautionary attachment was enacted to guarantee the creditor's right and protect him temporarily by judicial request, which is his responsibility.
- Provisional attachment is a temporary measure aimed at placing the debtor's movable and immovable property, if necessary, in the hands of the judiciary, and preventing him from disposing of them and smuggling them to the detriment of the creditor's general guarantee until the latter obtains an executive document.
- Provisional attachment is an exception to the general rule, which aims to ensure that execution cannot be executed without an executive document.

Accordingly, precautionary attachment has several characteristics that distinguish it from other reservations, and this is what we will discuss below.

Second: Characteristics of Precautionary Attachment

It is clear from reading the texts of the articles regulating precautionary detention in the Civil and Administrative Procedures Law that precautionary detention is characterized by a set of characteristics, which are as follows:

- Precautionary attachment is a preventive measure intended to place the seized property in the hands of the judiciary without automatically leading to its sale and the collection of the creditor's right from its price.
- It is not an absolute right of the creditor, although it is his responsibility, it is up to the competent judge to consider its usefulness when deciding on the state of necessity and fear.
- He signs the entire debtor's property, whether movable or immovable property, other than what was in force in the Civil Procedure Law before the amendment.
- The creditor can impose a precautionary attachment on the funds of his debtor, whether he has an executive bond or not, and therefore the creditor may sign the precautionary attachment even if he does not have an official or customary document or an enforceable judicial ruling, but it is sufficient that there are apparent justifications that suggest the existence of the debt, estimated by the judge, even if the case appears⁽⁵⁾.
- Provisional attachment shall be effected by an order on a petition issued by the competent president of the court after he ascertains the existence of a state of necessity, i.e. a state of urgency and danger that may threaten the creditor's general security, as expressed in article 647 of the Code of Civil and Administrative Procedure: "fear of losing the guarantee".
- Precautionary attachment does not lead to the transfer of possession of the seized property, but the distrainer shall remain in temporary possession of it until the decision to confirm the attachment or order to lift it, and he may benefit from these funds by the careful head of the family, and he may own their fruits while preserving them.
- Conservatory attachment aims to protect the creditor from the risk that the debtor will regulate his insolvency by disposing of his movables to a bona fide buyer so that the creditor cannot recover them from him.
- Every legal action taken by the debtor on the seized property - after signing the attachment and notifying him - is considered an unlawful, ineffective, and ineffective act, and from it, its effect does not apply to the barrier and is not invoked against it, for example, if a dispute occurs between two persons over the ownership of a car, here one of them may request a reasoned petition for an order on the appendix of a petition - addressed to the head of the judicial authority of the debtor's domicile or the headquarters of the car to be seized - through which he seeks to sign a precautionary attachment on the disputed car Transfer its ownership until the case is resolved amicably or by the court ruling.

For the provisional attachment to be achieved and the creditor obtains an executive document, general conditions must be met in the distrainer before the attachment order is issued, which are discussed in the analysis below.

Third: General Conditions of Precautionary Attachment

The Algerian legislator for the provisional attachment requires the existence of a state of necessity, that the distrainer be a creditor of the garnishee, that the object of attachment is property owned by the debtor, and that the creditor obtain an order of attachment as follows.

01- State of necessity condition⁽⁶⁾.

The Algerian legislator did not expressly stipulate this condition in the Code of Civil and Administrative Procedure, contrary to what was in force in the Code of Civil Procedure before its amendment in 2008, but in view of the text of article 647 mentioned above, it is clear to us that the legislator stipulated that for the signing of precautionary detention and the issuance of an order on a petition from the competent judge, the latter ensured that a state of necessity and urgency existed, which is expressed in article 674 with the term: "Fear of loss of warranty"⁽⁷⁾.

A state of necessity here means that the creditor's rights are threatened by the risk of loss, or that there is a state of urgency that requires the seizure of the debtor's property to prevent its destruction or deportation, such as in the case of the debtor selling his property or assigning it to his relatives, or the debtor's flight and rapid disposal of his property, or the imbalance of the debtor's financial condition.

In the sense of violation, when the condition of necessity is not met or the creditor cannot prove it, he cannot impose a provisional attachment on the property of his debtor.

The condition of necessity is a general and essential condition under which the creditor can make a precautionary attachment and is subject in his estimation to the discretion of the judge ordering the attachment without the supervision of the Supreme Court, and from him, he can consider the debt threatened and order the attachment, or that it is not threatened and there is no fear for the creditor's right to the general security and his request is rejected.

02- Indebtedness clause

Article 647 of the Code of Civil and Administrative Procedure provides as follows: "The creditor, with a debt that is realized, upon payment, may demand... Issuing an order for precautionary attachment on movables or real estate of a debtor ...", which indicates that to impose a precautionary attachment on the debtor's property, the distrainer creditor and the garnishee must have a fixed indebtedness relationship with a bond, justifications or apparent data that suggest the existence of the debt based on which he is entitled to make the attachment, and it is also required in the debt - the reason for attachment - that he must be the investigator of existence, the state of performance and the specified amount, even if this designation is not expressly provided for in Article 647 mentioned above, and this is what we will go into in some detail below.

A- Existential religion

The distrainer must be a creditor of a debt that is certain to exist, even if this debt is disputed⁽⁸⁾, because this does not prevent it from being considered realized, in other words, that the debt owed by the debtor exists and that the creditor has a debt fixed by a bond or an apparent reason indicating its existence.

However, if the debt is contingent⁽⁹⁾ or dependent on a condition, it is not valid to be a reason for making an attachment because the contingent debt may not be realized and therefore not established in favor of the creditor, and therefore authorizing the creditor to make a precautionary attachment on a mere contingent debt harms the rights of the debtor, who may request the lifting of attachment for this reason, in which case the judge must respond to his request.

B- Debt upon payment

The debt must be at the time of payment so that the creditor may issue an order for precautionary attachment on the funds of his debtor as a guarantee of his rights, that is, the debt

based on which the precautionary attachment will be signed has come to maturity, so the debt is not legally or contractually deferred, but if the term falls for one of the dropped reasons or the term is decided in favor of the creditor, the precautionary attachment may be made because the term, in this case, is considered dissolved and this condition is not necessary when requesting attachment⁽¹⁰⁾.

It is noticeable here that the jurists differed on the issue of whether or not it is permissible to sign the precautionary attachment if the debtor is granted a judicial period⁽¹¹⁾, so part of the jurisprudence argued that the judicial time limit does not prevent the signing of the precautionary attachment because when the judge grants the debtor a deadline, he allows him to voluntarily pay and not to smuggle his money, and then the creditor may take precautionary attachment measures on the debtor's funds, while another side went that the judicial term based on the facilitator's view impedes attachment. As long as the term has not been resolved or the debtor has been granted a term to be able to pay the debt, taking precautionary attachment measures against the debtor may hinder the payment of the debt instead of helping the goal, which is to pay the debt, and therefore the creditor may not take precautionary attachment measures on the debtor's property.

C. Debt of a certain amount

The Algerian legislator did not expressly provide for this condition in article 647 above, which implies that the final determination of the amount of the debt is not a necessary condition for authorizing attachment, but if the designation is not a condition for the issuance of the attachment authorization, the attachment itself shall not be signed until the amount has been determined, even if temporarily. discretion by the emergency judge based on the apparent reasons for the debt, and therefore the imposition of attachment without specifying the amount of the debt definitively or temporarily leads to the invalidity of the attachment.

This condition is necessary regardless of the attachment document, if the creditor requesting execution has an executive deed or an unenforceable judgment or does not have a bond and obtains permission from the judge of urgent matters and the debt is not specified in amount, he should resort to the emergency judge for a temporary assessment⁽¹²⁾, and then sign the precautionary attachment after that, and this order may be appealed following the general rules for grievance against orders on petitions, and the estimate determined by the judge of matters. Urgent does not bind the Court of First Instance when considering the subject matter of the dispute.

The purpose of determining the debt is to remind the debtor of what he owes to the creditor on the one hand and to allow the distrainee debtor to use the means granted to him by law to get rid of the total effect of the attachment, such as allocating the value of the debt and depositing it in writing when he wishes to request the lifting of the attachment, for example, or to request the limitation of the attachment and reduce its value on the other hand, as the use of these means requires determining the amount of the right of the debt.

In view of the fact that the precautionary attachment is considered an urgent protection for the creditor to avoid damages resulting from the delay in settling the case and the debtor's exploitation of this delay in smuggling his funds, the precautionary attachment may be imposed based on the right to compensation before a final judgment is issued to determine the responsibility.

03- The condition of the place of attachment or the seized funds

Article 646 of the Code of Civil and Administrative Procedure stipulates the following: "Precautionary attachment is the placement of the debtor's movable property, material, and real estate, in the hands of the judiciary and preventing him from disposing of them...", and Article 652 of the same law stipulates that: "The creditor may provisionally seize the real estate of his debtor."

It follows from these two articles that the legislator has authorized the precautionary attachment of all the debtor's property, whether they are tangible movable property such as goods and machinery that are not considered real estate by allocation, furniture, furnishings, etc., or real estate funds, contrary to what was in force before the amendment of the Civil Procedure Law⁽¹³⁾, and perhaps the reason for this is due to the legislator's desire to strengthen the creditor's guarantee and protect his right from the legal actions that his debtor may take over the real estate he owns to smuggle them and remove them from the guarantee. In practice, it is often the case for the debtor to dispose of his real property to third parties by any transfer of ownership to the detriment of his creditor and reduce his general security.

It is noticeable that the Algerian legislator introduced in the Code of Civil and Administrative Procedures new types of precautionary attachment in articles 650 to 658 thereof, stipulating that the precautionary attachment is returned to industrial and commercial rights, so that anyone who has a registered and legally protected innovation or production may provisionally seize a sample of goods or samples of counterfeit manufactures, and respond to the commercial base of the debtor, as well as to the movables of the lessee in the property. I am the leased property in payment of the rent due for the rent, the crops, and fruits in the agricultural lands, fields, or orchards leased, and the movables in the building or farm if they are transferred from their place without the consent of the lessor and on which the concession right, and the movables of the sub-tenants of the buildings, agricultural lands, fields or orchards located in the places they occupy, or the fruits of such lands in fulfillment of the due rent. The precautionary attachment is contained on the movables of the mobile debtor located in the area where the creditor resides, and this is contained on the movable in the hands of its holder in what is known as the entitlement attachment, and the precautionary attachment is contained on the material movable, whether it is in the possession of the debtor or third parties, and all that is in the matter - as will be explained - that the procedures for signing attachment differ in both cases, as the presence of the movable in the possession of third parties requires following the procedures of attachment of the debtor with third parties⁽¹⁴⁾.

04- Booking Tool

The attachment instrument means the precautionary attachment order issued by the competent judge locally and qualitatively, who is practically the president of the court within whose jurisdiction the debtor's domicile or the location of the funds to be seized is located, in accordance with the provisions of Article 649 of the Civil and Administrative Procedures Law.

Therefore, these are the general conditions that must be met to make a precautionary attachment on the debtor's property, but it is not enough that these conditions are met together to execute and sign the attachment, the creditor must complete the following procedures.

Fourth: Procedures for Signing Precautionary Attachment

If a creditor fulfills the conditions mentioned above, if he wishes to impose a precautionary attachment on the property of his debtor who is distrained, he shall follow the following procedures:

01- Submit a request from the creditor

By reading the texts of Articles 647 and 649 of the Code of Civil and Administrative Procedure, it becomes clear to us that the legislator considered that whenever the creditor wants to obtain an order to make a precautionary attachment, he must submit a written petition to the president of the court in which the debtor's domicile or the headquarters of the funds to be seized is located. The debt, if any, with its estimate if it is specified in a document, and if it is not specified, it mentions the approximate amount of the debt and the apparent justifications and reasons that favor the existence of the debt if it does not have an executive document proving the debt based on which it wants to seize the funds of its debtor, and what proves the fear of losing the guarantee of its rights, i.e. necessity and urgency, and finally the requests of the barrier at the end of the petition from the competent president of the court to grant him an order to sign the precautionary attachment of the funds to be seized, and then the signature of the creditor On the petition or his representative.

02- Issuing an order to conduct precautionary attachment

After the creditor submits his application to the competent judge, the latter examines the petition and ensures that it meets all formal and objective conditions, especially ensuring that the applicant for attachment has the capacity and the documents attached thereto regarding the existence of the debt, the reasons justifying the attachment and the availability of a state of necessity or urgency. Article 649/2 of the Code of Civil and Administrative Procedure.

This order shall include the name of the judge who issued it, his capacity, the name of the garnishee and his domicile, and determine the formula of the precautionary attachment on the seized property, whether movable or real estate, and the registration number of the order in the seizure writing, the date of its issuance, and the signature of the judge who issued it, and then stamped with the official seal of the judicial authority that issued the order, after which the precautionary attachment order shall be recorded in the records of the precautionary attachments at the level of the seizure writing, and then it shall be registered in the registration library as a judicial contract subject to registration fees and stamps due to the state. Which are determined annually in the Finance Law.

03- Procedures for the implementation of the precautionary attachment order

Once the creditor obtains an order of provisional attachment, he shall go to the office of the judicial record⁽¹⁵⁾ appointed in the attachment order or any other judicial report of his own choice if he is not appointed in the attachment order to notify the debtor of the attachment order, and then undertake execution immediately after notification, and he may seek the assistance of the public force to execute the attachment order when necessary.

A- How to notify and execute the precautionary attachment order

The execution of the precautionary attachment order shall be carried out by counting the funds to be seized⁽¹⁶⁾ in an official report called "seizure and inventory report" drawn up by the judicial report, a copy of which shall be delivered to the distrainer and a copy to the garnishee within a maximum period of three days (Article 688) after signing and stamping it with the official seal (Article 691/2).

Here, we must distinguish between two cases: the case of the presence of the seized funds in the hands of the debtor himself, and the case of the presence of the seized funds in the hands of third parties.

First case: The case of the debtor's movable property in the possession of the debtor

If the property to be seized is in the possession of the debtor himself or his subordinate - so that he has effective authority over him in control and guidance, such as the servant, janitor,

and driver - the judicial report shall notify the attachment order⁽¹⁷⁾ to the distrainee personally or to one of his adult family members residing with him if he is a natural person, and the matter shall be communicated to the legal or contractual representative if he is a legal person, and then he shall immediately inventory the funds and assign them accurately with their description, and draw up a seizure and inventory report. In accordance with Article 688/1 of the Code of Civil and Administrative Procedure, and if the debtor obstructs the conduct of the inventory process, he may seek the assistance of the public force to complete his task of executing the attachment order when necessary in accordance with Article 687/3 of the same said Law.

The legislator has specified how to seize and inventory some movables owned by the debtor in the Civil and Administrative Procedures Law as follows:

- If the seizure is made of sums of money in the debtor's residence or commercial premises, the judicial report must indicate the amount thereof in the minutes of attachment and immediately pay the value of the debt to the distrainer creditor against a receipt, but if the seizure is made on sums of money in foreign negotiable currency, the judicial report must indicate their type and amount and transfer them to the Bank of Algeria against their value in dinars and meet the value of the debt and expenses of the distrainer⁽¹⁸⁾.
- If the object of attachment is jewelry or valuables, the judicial report shall indicate in the seizure report the type of metal, the real weight, its descriptions, and the assessment of its value by an expert appointed by order on a petition, or by the department in charge of stamping precious metals, in the presence of the debtor or his legal representative, or after the validity of his summons to attend. In the minutes' attachment with a description of the seals and depositing them in the court control secretariat against a receipt⁽¹⁹⁾.
- If paintings or objects of special value are seized, they must be described and evaluated by an expert appointed by order on a petition⁽²⁰⁾.

After the completion of the inventory process and the announcement of attachment to the garnishee by the judicial report, he informs him that he has appointed a custodian of the seized property, so that it remains in his custody until the judgment confirming the attachment or ordering its lifting, and he may benefit from it for the benefit of the careful head of the family and to own its fruits while preserving them and inform him that he is civilly and criminally liable if he causes the concealment or squandering of these seized funds.

The second case: the case of the debtor's movable property in the possession of third parties

Third parties mean any person who is not subject to the actual authority of the debtor in directing and controlling, and the property to be seized is in the possession of the such third party, and in this case, the bailiff first notifies the attachment and inventory order to the third party who is called the garnishee, and then secondly notifies the garnishee of this matter to be aware of it and draws up the minutes of attachment and inventory of movables.

A- Notification of the attachment order to third parties

The judicial report shall notify the matter to the person who is attached to him personally if he is a natural person and to his legal representative if he is a legal person, with a copy of the attachment order and a notice thereof in the record (Article 669), and this third party, when he receives the seizure report and the inventory, must submit within a maximum period of eight days following his official notification of the attachment order a written declaration of the seized funds, and deliver it to the judicial record or the distrainer creditor accompanied by the supporting documents and indicating therein. All attachments under his control, if any, shall be accompanied by copies thereof (Articles 672 and 677).

The judicial record shall draw up a record containing the statement of the garnishee, in which he mentions the bonds he submitted regarding the attachments that occurred before and are still in existence, then this record shall be deposited in writing in the court record, then the garnishee shall announce that he has appointed a guard over the seized funds and their fruits, unless the latter prefers to hand them over to the judicial report, and in this case, he shall note this in the record, and he must also note in the record the excuses of the garnishee not to abandon the seized funds and not to hand them over to The debtor or others except by a contrary order (article 669/2-3).

The failure or silence of the garnishee to submit his written declaration in respect of the movables of the debtor in possession of them within the eight days specified by law in the aforementioned Article 677 entails professional and civil liability of the garnishee for the material damage caused to the creditor (Article 672/2).

B- Notification of the attachment order to the garnishee

After notifying the garnishee of the attachment order and writing the minutes of attachment of the funds in his possession, the judicial report shall, in a second stage, notify the garnishee of this matter within eight days following the seizure procedure, accompanied by a copy of the attachment order, noting this in the minutes of notification, otherwise the attachment shall be subject to annulment (Article 674), and the minutes of notification shall include a mention of the minutes of the seizure that was made on the funds of the garnishee held with third parties, the date of its conduct, a statement of the attachment order and the authority that issued it. And a statement of the seized funds, all so that the garnishee knows what happened to the funds held by others.

Any problems raised regarding the execution of the provisional attachment order or its notification shall be referred to the judge who issued it, i.e. the President of the Court.

Fifth: Effects of Precautionary Attachment and Penalty for Disposal of Seized Property

The creditor's obtaining an order of precautionary attachment and seeking to implement it would place the seized funds under the hands of the judiciary in preparation for the creditor to obtain an executive document, and the preservation of these funds requires placing them under the custody of their holder often and preventing him from disposing of them by any disposal whatsoever, and therefore what are the effects of imposing precautionary attachment and what is the penalty for disposing of the seized funds?

01- Effects of Precautionary Attachment:

Provisional attachment as a legal procedural act produces the following effects:

- Placing the seized property in the hands of the judiciary and preventing the debtor from disposing of it, and therefore any disposal thereof is considered null and void against the creditor in accordance with the requirements of article 661 of the Code of Civil and Administrative Procedure.

However, it is noticeable in practice that this prohibition is completely excluded because the movable can be transferred and disposed of to third parties in good faith, and this third party can dispose of it again, and in the end, tracking the seized money from the barrier becomes impossible and requesting its recovery becomes impossible, so the legislator considered the disposal of seized funds a crime punishable by law in Article 364 of the Penal Code and considered it a reason under which the creditor is entitled to file a claim for compensation for damages caused by the debtor due to Hindered him by this act.

- The seized property remains in the possession of the person temporarily seized or distrained until the attachment is confirmed by a judgment or an order is issued to remove it, and as long as the property remains in the possession of the debtor, he may benefit from it for the benefit of the careful head of the family and own and preserve its fruits in accordance with the provisions of article 660 of the Code of Civil and Administrative Procedure.
- Prohibiting the garnishee from leasing the seized movables except with the permission of the president of the court ordering the attachment, i.e. restricting the debtor's authority over his seized property in accordance with article 661/2 of the same law.
- Interruption of the statute of limitations of rights, as soon as the attachment is signed, the statute of limitations ceases to apply because the creditor's attachment means that he maintains his rights and claims them in accordance with Article 317 of the Civil Code⁽²¹⁾.

02- Penalty for disposal of seized funds

The legislator decided to protect the creditor civilly and penally if the debtor, third party, or receiver disposes of the seized property by concealing, smuggling, selling, destroying, or squandering it, as follows.

A. Civil Protection

Article 661/1 of the Code of Civil and Administrative Procedure stipulates the following: "Any legal disposition by the debtor of the seized property shall not be effective... "It follows from this that the debtor's disposition of the seized property does not have an effect on the distrainer and is not invoked before him and that the creditor has the right to exercise the right of resale and request the recovery of the seized property disposed of by the debtor⁽²²⁾.

B. Penal protection

The Algerian legislator approved penal protection for the seized money from embezzlement or squandering, even if the squanderer or embezzler is the owner of this money, and the purpose of this protection is not to protect ownership but to protect the seized money when the seizure is still in place and the seizure has been declared in accordance with Articles 364 and 365 of the Penal Code⁽²³⁾, the penal penalty is prescribed for anyone who squanders or conceals the seized money, either by selling, destroying or smuggling it, because this obstructs implementation. On items that are provisionally seized.

These penalties arise when the attachment is by judicial order and the attachment is still in place even if the distrainee does not owe the distrainer, as penal protection does not require the existence of an indebtedness relationship between the victim (the distrainer) and the offender (the distrainee, the garnishee or the receiver), but rather derives from the attachment order under which the property becomes in the hands of the judiciary, and therefore penal protection protects the seized property and the rights of the creditor at the same time.

The Algerian legislator also decided to protect the debtor and grant him the possibility to lift the precautionary attachment in whole or in part as follows:

Sixth: Lifting the Precautionary Detention

The garnished debtor may request the judge of urgent matters to lift the precautionary attachment in accordance with Article 663 of the Civil and Administrative Procedures Law in the following cases:

1. If the creditor does not seek to file a claim to confirm the attachment within a maximum period of fifteen days from the date of issuance of the attachment order.
2. If the debtor deposits sums of money in the court registry or the judicial record office to cover the principal of the debt and expenses.
3. If the lessee or sub-lessee proves that he has paid the due rent in the event that the lessor seizes the lessee's movables.

The lifting of the attachment as provided for in article 666 of the same law may be either in whole or in part.

01- Lifting the reservation completely

The Algerian legislator allowed the garnishee to request the complete lifting of the attachment on his seized property in two cases: either on the basis that the attachment on his property was invalid due to a defect in the procedures, such as if the attachment was made without a judicial order, or the seizure report was drawn up from a non-competent judicial report, or that the lawsuit was rejected for not proving the debt⁽²⁴⁾, in which case the distrainee has the right to file a lawsuit before the trial judge requesting that the attachment be lifted completely or based on the distrainee's acquittal. In this case, the attachment becomes baseless and the garnishee is entitled to file a lawsuit before the judge of urgent matters to get rid of the attachment and its effects.

02- Partially lift the reservation or reduce the value of the reservation

The reduction is requested by the debtor depositing part of the funds in the account of the judicial record or in the secretariat of the court control, which is sufficient to guarantee the principal of the debt and expenses by order on a petition issued by the president of the court, and this allocation is decided for the creditor alone to ensure that other creditors do not compete with him upon payment, so the precautionary attachment is transferred from the seized movable property to the amount deposited in the seizure writing or in the account of the judicial record and it has the status of precautionary attachment, but it is required for the transfer of attachment from the seized funds to The amount deposited includes:

- There must be a cash deposit equal to the debt for which the attachment is made, and this deposit may be made by the debtor or third parties because the purpose of the deposit with the allocation is as a fulfillment of the attachment pending on a condition, and this condition is to prove the debt and confirm the attachment.
- Payment to the distrainer shall not be made until his right to the principal of the debt has been established and the attachment has been established.

03- How to raise a hold

An action for the lifting of the attachment shall be instituted either through an urgent action filed before the judge who issued the provisional attachment order following the above-mentioned article 663/1-2, or using a justified request with serious and legitimate reasons submitted before the trial judge before whom the action for consolidation of attachment was filed if this action is still ongoing under the requirements of the aforementioned article 666.

Seventh: Confirmation of Precautionary Attachment

Confirmation of attachment is considered one of the necessary stages for the completion of precautionary attachment procedures, and it is the last procedure taken by the creditor to obtain an executive bond that entitles him to collect his right from the seized funds, as the distrainer creditor must file a lawsuit to confirm the attachment before the trial judge within a

maximum period of fifteen days from the date of issuance of the attachment order, otherwise, the attachment and the subsequent procedures thereof shall be null and void⁽²⁵⁾.

A claim for confirmation of attachment is a substantive lawsuit that may be filed before the trial judge to consider the validity of the attachment and confirm it only, as in the case of filing a lawsuit independent of the claim to prove the debt, and may require consideration of the validity of the indebtedness between the distrainer and the garnishee and the validity of the attachment together.

This substantive action shall be filed by means of a written petition containing the identity of the parties and shall be filed within the ordinary procedures for filing the lawsuit⁽²⁶⁾ within a legally specified time before the qualitatively and locally competent court⁽²⁷⁾ and the judgment issued therein is considered a decisive judgment of the dispute between the parties⁽²⁸⁾.

Eighth: Becoming an executive precautionary attachment

Contrary to what was stipulated in Article 369/1 of the old Code of Civil Procedure - which required the creditor to issue an order on a petition from the President of the Court to convert the precautionary attachment into an executive attachment after the expiry of the twenty-day period granted to the distrainee for payment - the legislator did not stipulate the method in which the precautionary attachment should be converted into an executive attachment in the new Civil and Administrative Procedures Law, and therefore when the competent court ruled to prove the debt and the validity of the attachment and confirm it This judgment acquired the force of *res judicata*, i.e. it became final, and the introductions of implementation were followed, especially the official notification of the executive deed and the assignment of payment in accordance with the provisions of Articles 612 and 613 of the Civil and Administrative Procedures Law, and the judicial record drew up a record of non-payment, the precautionary attachment turns into an executive attachment, and accordingly the seized funds are sold in the same way as the movable funds and real estate in the executive attachments.

Conclusion

At the end of this study, in which we reviewed the general provisions of precautionary attachment in the Code of Civil and Administrative Procedure, we concluded several conclusions, the most important of which is that the main objective of this type of attachment is to protect the rights of the creditor temporarily even if he does not have a bond proving the debt based on which this attachment was made, and that the Algerian legislator has set a general rule for the precautionary attachment procedure according to which the precautionary attachment cannot be made by the creditor unless he proves that the general guarantee of his debtor is threatened. and that the creditor may request the annulment of any legal action made by his debtor on his seized property and request the recovery of these attachments from third parties and keep them as a general guarantee until the attachment is confirmed and the creditor's right to the substantive lawsuit is proved, and that the legislator by stipulating this general rule has set a standard for precautionary attachment when available, the creditor may sign it and when this is not The standard rejected his request.

Bibliography

Mohamed Hassanein, *Methods of Implementation in the Algerian Code of Civil Procedure*, Fifth Edition, University Press Office, Algeria, 2006.

Badawi Ali, Precautionary Detention in Algerian Legislation, *Judicial Journal of the Supreme Court*, First Issue of 1996, National Office of Educational Works, Algeria, 1998.

Barbara Abderrahmane, *Methods of Implementation in Civil Matters, A Detailed Study of Algerian Legislation Supported by the Jurisprudence of the Supreme Court*, Baghdadi Publications, Algeria, 2002.

Larbi Chaht Abdelkader, *Methods of Implementation in Civil and Administrative Matters*, Marjajou Publishing, Algeria, 2008.

Mrouk Nasreddine, *Methods of Implementation in Civil Matters*, Dar Houma, Algeria, 2005.

Law No. 08/09 of 18 Safar 1429 corresponding to February 25, 2008, *Official Journal of the Algerian Republic*, No. 21 of April 23, 2008.

Law No. 91/03 of 08/01/1991, as amended by Law No. 06/03 of 20/02/2006.

⁽¹⁾Mohamed Hassanein, *Methods of Implementation in the Algerian Code of Civil Procedure*, Fifth Edition, University Publications Office, Algeria, 2006, p. 146.

⁽²⁾Badawi Ali, *Precautionary Detention in Algerian Legislation*, *Judicial Journal of the Supreme Court*, First Issue of 1996, National Office of Educational Works, Algeria, 1998, p. 19.

⁽³⁾Barbara Abdel Rahman, *Methods of Implementation in Civil Matters, A Detailed Study of Algerian Legislation Supported by the Jurisprudence of the Supreme Court*, Baghdadi Publications, Algeria, 2002, p. 84.

It is noteworthy that this definition is the one used by the Algerian legislator in article 345 of the Code of Civil Procedure before its abolition by article 1046 of the Code of Civil and Administrative Procedure, which stated the following: "Precautionary attachment shall be issued only in case of necessity and shall be ordered at the end of the petition. The only effect of provisional attachment is to place the debtor's movable property at the disposal of the judiciary and to prevent him from disposing of it to the detriment of his creditor."

⁽⁴⁾Law No. 08/09 of 18 Safar 1429 corresponding to February 25, 2008, *Official Journal of the Republic of Algeria*, No. 14 of March 8, 2006.

⁽⁵⁾Dr. Mohamed Hassanein believes in this regard that the judge should not answer the request for precautionary attachment if he does not prove to him that the right of the applicant is verified, i.e. it is not subject to serious dispute, but it is not required that its amount be free from the dispute, and then the judge ordering the seizure signs the seizure by determining its amount temporarily, and the decision issued for attachment is not considered an argument for the Court of First Instance in considering the right to exist or free from serious conflict because it is not. It is a decision or order on a petition issued under the state authority of the judge. Muhammad Hassanein, *op. cit.*, p. 149.

⁽⁶⁾The Algerian legislator set this condition only to distinguish between the general rule of precautionary attachment and the other precautionary attachments mentioned exclusively, which the legislator considered to be precautionary attachments expressly provided for in the Code of Civil and Administrative Procedure. Badawi Ali, *op. cit.*, pp. 21-22.

⁽⁷⁾Fear means the fear that the creditor will lose his general security and expresses a state of urgency and necessity and is subject in its estimation to the discretion of the judge ordering the attachment without the control of the Supreme Court, and the burden of proving it lies with the creditor.

⁽⁸⁾Larbi Shahat Abdel Qader, *Methods of Implementation in Civil and Administrative Matters*, Marjajou Publishing, Algeria, 2008, p. 130.

⁽⁹⁾The debt is probabilistic if, for example, it results from a judgment that ordered a threatening fine, this fine remains only a contingent debt because when liquidated by the competent judge, it may order its fixation or exemption of the debtor completely, and it is also considered a contingent debt if the creditor claims that he has a right to compensation against the debtor due to non-performance of the contract, the debt here is considered probabilistic because it may or may not be proved.

⁽¹⁰⁾Al-Arabi Shahat Abdel Qader, previous reference, p. 131.

⁽¹¹⁾Badawi Ali, previous reference, p. 24.

⁽¹²⁾Mrouk Nasreddine, *Methods of Implementation in Civil Matters*, Dar Houma, Algeria, 2005, p. 135.

⁽¹³⁾The principle of precautionary attachment prior to the repeal of the Code of Civil Procedure under Law No. 08/09 is that it is located on the debtor's material movables only and not on real estate (Article 345), while precautionary attachment of real estate is an exception only by requesting permission to register a temporary judicial security mortgage on the debtor's property (Article 347).

⁽¹⁴⁾The legislator dealt with the provisions of attachment of the debtor with third parties in Articles 667 and 668 of the Code of Civil and Administrative Procedure.

⁽¹⁵⁾The judicial bailiff is the person legally qualified to notify and implement judicial rulings and decisions issued by courts and judicial councils, as well as to notify and execute all bonds issued in the executive form, and he enjoys the status of a public officer, as he exercises the powers of the public authority in the notification and execution of executive bonds and he works for his own account as he receives his fees from the applicants for execution, and the profession of judicial bailiff was established under Law No. 91/03 of 08/01/1991, as amended by Law No. 06/03 of 20/02/2006, this law defines the territorial jurisdiction of the judicial report in the jurisdiction of the court in whose jurisdiction the bailiff's office is located, and at the level of each court there are a number of bailiffs' offices.

⁽¹⁶⁾By this we mean movable property, but if the precautionary attachment relates to the debtor's real estate, the precautionary attachment order shall be restricted to the real estate governorate within whose jurisdiction the property is located within a period of 15 days from the date of its issuance, otherwise the attachment shall be null and void in accordance with the requirements of Article 652 of the Civil and Administrative Procedures Law.

⁽¹⁷⁾In the official notification of the attachment order, refer to the text of articles 688, 689, and 690 of the Code of Civil and Administrative Procedure.

⁽¹⁸⁾See Article 695 of the Code of Civil and Administrative Procedure.

⁽¹⁹⁾See Article 665 of the Code of Civil and Administrative Procedure.

⁽²⁰⁾See Article 694 of the Code of Civil and Administrative Procedure.

⁽²¹⁾Article 317 of the Civil Code states: "The statute of limitations shall be interrupted by the judicial claim even if the case is submitted to the court that is not competent to warn or distrain, and by the application made by the creditor to accept his right to bankruptcy or distribution or any act performed by the creditor during a pleading."

⁽²²⁾Ali Badawi, previous reference, pp. 36-37.

⁽²³⁾Article 364 of the penal code states: "A person who destroys or dispels seized items placed under his custody or attempts to do so shall be punished by imprisonment for a period of six months to three years and a fine of 500 to 5,000 Algerian dinars. If the seized items are handed over to third parties for custody, the penalty shall be imprisonment from two to five years and a fine of 1,000 to 10,000 Algerian dinars..." Article 365 of the same Code stipulates that: "The same penalty shall apply to the spouse, ascendants or descendants of the garnishee, debtor, borrower or mortgagor who assisted him in destroying, dissipating, attempting to destroy or dissipate such things...".

⁽²⁴⁾According to Article 666/2-3 of the Code of Civil and Administrative Procedure, if the court dismisses the case for failure to prove the debt, it shall rule mandatorily to lift the attachment and decide on the request for civil damages if necessary, and may also sentence the distrainer to a civil fine of not less than 20,000 Algerian dinars.

⁽²⁵⁾The legislator is faulted in this article for using the term nullity misplaced, as invalidity is determined when there is a defect in the general conditions of precautionary attachment, or when one of these conditions is not met (such as the absence of indebtedness between the distrainer and the garnishee, or the absence of the place of attachment, or the absence of the attachment instrument), but in this case the attachment is valid because all its conditions are met, but its effect does not apply to the right of the garnishee for not filing a lawsuit to confirm it within a period of time. 15 days prescribed by law, and therefore it is more correct that the legislator should have used the term forfeiture by stipulating that: "If the lawsuit is not filed within this period, the attachment shall be forfeited."

⁽²⁶⁾Badawi Ali, previous reference, p. 43 ff.

⁽²⁷⁾Articles 32 and 40/7 of the Code of Civil and Administrative Procedure specify the court competent to hear the case for confirmation of precautionary attachment and indebtedness between the distrainer and the garnishee, which is the court within whose jurisdiction the attachment occurred, i.e. the court of the debtor's domicile, or the court in which the assets to be seized are located.

⁽²⁸⁾The judgment issued in the case for the confirmation of precautionary attachment shall be a final judgment if the principal of the debt does not exceed 200,000 Algerian dinars in accordance with Article 33 of the same law, in which case it shall be subject to appeal in cassation if issued in presence, but if the principal debt exceeds 200,000 Algerian dinars, the judgment shall be preliminary and subject to appeal within a period of one month from the date of official notification of the judgment if it is issued in absentia (Article 329). It is subject to appeal within one month from the date of the official notification of the adversarial judgment (Article 336), and it is subject to appeal in cassation to the Supreme Court within a period of two months from the date of the official notification of the judgment after it becomes final (Article 354). The judgment, whether issued in absentia or in presence, when it becomes final, may be a decisive judgment in both indebtedness and precautionary attachment, or it may be a decisive judgment in precautionary attachment only. See: Badawi Ali, previous reference, p. 46.