

## The Pratical Problem of Official Notification in Civil and Administrative Matters in Algeria

### الإشكالات العملية للتبليغ الرسمي في المسائل المدنية والإدارية

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#### **Abstract:**

The study was focused on identifying notification as a formal act by which a person is informed of a legal document or act. It is regarded as a crucial element of the legal process, since it assures that all parties in a dispute are aware of their rights and obligations. And a fundamental component of legal proceedings is to ensure individuals are informed of their rights, obligations, and legal actions. Despite its benefits, its practical implementation is hampered by significant challenges that often prevent due process and equitable outcomes.

Additionally, we will address practical difficulties related to official notification in accordance with the Algerian Code of Civil and Administrative Procedure.

**Keywords:** Legal notification; notification; The pratical Problem of Official Notification.

#### **ملخص:**

ركزت هذه الدراسة على تحديد مفهوم التبليغ ، كفعل رسمي يتم بموجبه إبلاغ الشخص بمستند قانوني ، يعتبر جزءاً أساسياً من العملية القانونية، إذ يكفل إدراك جميع أطراف النزاع لحقوقهم والتزاماتهم . ويضمن إبلاغ الأفراد بحقوقهم والتزاماتهم وإجراءاتهم القانونية. ومع ذلك، يواجه تنفيذه العملي تحديات كبيرة، وكثيراً ما يعوق الإجراءات القانونية الواجبة والنتائج المنصفة.

بالإضافة إلى ذلك، سوف نتعمق في مناقشة المشاكل العملية للإخطار الرسمي في مسائل قانون الإجراءات المدنية والإدارية الجزائري. **الكلمات المفتاحية:** التبليغ القانوني، التبليغ، المشاكل العملية للتبليغ الرسمي.

### **Introduction :**

The Algerian legislator endeavored to develop rules that govern the judiciary and ensure its application of law and protection of rights by guaranteeing individuals' right to legal action. The lawsuit was used by him to grant this right when an attack occurred. The law imposes in the direct application of the lawsuit and in the procedures of its progress. It is preserved by regulations that defined the role of the opponents, their rights and obligations. The judiciary's function is to ensure equality in legal roles and equal opportunities for litigants in pleading and defense. The opponent is notified of all procedures using legal notification, which is governed by the civil and administrative procedure law under the title of official notification contracts.

Legal notification ensures that the concerned person is aware of the decision or measures taken. The basis of the idea of notification is the principle of orality that prevails in the Code of Civil Procedure. Through notification, the person is informed and notified of the appearance before the court. This procedure is very important for the commencement of some deadlines such as appearing before the judicial authorities or using appeal procedures. It is not permissible to take any action against a person without enabling him to know it and without giving him a chance to defend himself.

Legal notification is the standard means for the knowledge of the parties to the judicial and non-judicial procedures. It is not considered to have official effect unless it is notified legally and correctly. It includes the notification of the summons to appear in court, the notification of judicial rulings, and the notification of the summons to fulfill the executive instruments. The law has determined the form in which legal notification must be made and the cases in which it is valid and produces its legal effects.

Legal notification is that which is done by means of a minutes prepared by the judicial officer. The Algerian legislator has entrusted the task of carrying out the notification of judicial and non-judicial contracts to judicial officers based on a request from one of the parties to the dispute, either personally or

through the legal or contractual representative or any other person with a special power of attorney. This procedure is resorted to either in the stage of the emergence of the dispute, that is, when the lawsuit is filed through the summons to appear in court, or after the issuance of the ruling through the notification of the ruling or order or decision issued in the dispute to the opponent to enable him to exercise his right to use the legal appeal procedures if he so wishes, and to make the ruling valid after the expiry of the periods for exercising the appeal procedures, or in the stage of implementing the ruling or implementing any other instrument, through the notification of the summons to fulfill to the opponent. The legislator has obliged the judicial officer to prepare a minutes in each notification process, provided that the minutes of the notification include an original and a number of copies equal to the number of people to be notified.

The task of notification has also been entrusted to the registrars of the judicial authorities in other exceptional cases.

During the implementation of the notification procedures, practical problems arise in civil and administrative matters, which may complicate the legal notification process and hinder the course of justice, delay the settlement of cases, and the loss of rights.

Starting from the fact that the subject of the study is an important and crucial topic, and unfortunately there is a lack of references, because we find problems of implementing the official notification, not the practical problems of the official notification, That's what brought us attention to this, we will delve to try shining a spotlight on this concept , and hence we pose our following question:

What is the meaning of official notification? And what are the most important practical problems of official notification in civil and administrative matters in Algeria?

To answer this question, we divided the article into two sections. In the first section, we discussed the concept of official notification, and in the second section, we delve into the practical problems of official notification in civil and administrative matters.

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**First main title: Concept of Legal Notification and its Characteristics**

A legal notification is a formal communication that is given to individuals or entities to inform them of a legal matter, action, or requirement. The purpose of these notifications is to convey important information about legal rights, obligations, or impending legal proceedings through writing. We will delve into the introduction of this concept .

**First subtitle: Legal notification meaning**

\* Legal notification, also known as official notification, is the standard means by which procedures reach the knowledge of the parties. The purpose of notification is for the person to be notified to be aware of the proceedings. The Algerian legislator has established rules to regulate and control the notification process so that this process will lead to real knowledge of the proceedings in order to protect the rights of individuals.

The Algerian legislator has utilized the term 'official notification' to convey judicial notification to the intended recipient of the judicial actions taken against them. He also distinguished between legal notification and judicial notification, with the former carried out by a judicial officer who prepares a minute in this regard, and the latter prepared by a court clerk without preparing a minute. However, they both share one thing, which is to achieve notification of the defendant, as judicial notifications are part of the lawsuit.

\* The basic procedure in civil and administrative proceedings is legal notification, which is considered one of the most important. This is considered a conclusive presumption of knowledge of the proceedings since it is performed in the specified manner and form specified by law. Judicial notifications are considered a positive path in the course of the lawsuit, on which the rest of the other judicial procedures depend. It is not possible to proceed with the lawsuit unless the notification is carried out in accordance with the legal provisions, which means ensuring the rights of the litigants without depriving any party of the parties to the dispute.

**second subtitle: Defenition of notification**

- Notification is considered a legal process between the applicant for notification, the person to be notified, and the person who carries out

the notification. It is also a legal notification of the beginning of the judicial dispute, which actually consists of delivering a fact to the knowledge of the person to be notified and delivering a copy of it to him, in order to prove his presence in the scheduled session to defend and confront his opponent with the facts he possesses.

### ➤ **Definition of notification**

If the lawsuit begins from the date of its registration in the register of the competent court, then the dispute in it does not convene or complete unless all parties to it attend the court at the specified time, or at least when it proves to the court that they were notified correctly and in the manner described in the law

The term "notification" has been used to refer to the procedure that is taken for the purpose of reporting and informing, and it has also been used to refer to the notification document in line with what people have come to understand. According to the first usage, notification has been defined in similar definitions, as follows:

In the field of civil procedure, it is intended to mean the procedure by which the parties to the case are informed of the contents of the trial documents and procedures in an official manner. [5]

It is the official means by which the defendant is informed of a certain fact, and enabling him to review it and deliver a copy of it to him.[6]

It is one of the prerequisites of execution and precedes it, and it is tantamount to notifying the convicted person, one of the parties to the notification, of what he is required to fulfill.[7]

### **Third subtitle: Legal notification in Algeria**

#### **3-1- Legal Definition of Notification in Algeria**

The Algerian legislator has limited their definition to official notification that is recognized by the judicial authorities, not defining notification. According to Article 416 of the Code of Civil and Administrative Procedure, notification means "the notification that is carried out by means

of a record drawn up by a judicial officer. Official notification can relate to a judicial or non-judicial contract, an order, a judgment or a decision."8

### **3-2-Types of official notification :**

In Algerian law, an official notification is considered a fundamental procedural requirement. The process involves letting a party to a legal proceeding know about the proceedings and giving them the chance to participate. To guarantee fairness and protect the rights of the parties, it is necessary to provide official notification. 8

In Algeria, the Code of Civil and Administrative Procedure govern the various types of official notification. Here are the main categories :

#### **1- Personal Service:**

The method of choice involves a bailiff delivering the notification document directly to the recipient.9

The bailiff then draws up a record of notification containing details like time and place of delivery, recipient's information, and type of document notified.

#### **2- Mailing:**

If personal service is impossible, registered mail with acknowledgment of receipt can be used.

The notification document is sent to the recipient's last known address and a delivery receipt confirms notification.

#### **3- Publication:**

In rare cases where the recipient's whereabouts are unknown or inaccessible, notification can be published in the official gazette "Journal Officiel de la République Algérienne Démocratique et Populaire".

This method serves as a last resort but still legally validates the notification attempt.10

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**second main title: The practical Problem of Official Notification in Civil and Administrative Matters in Algeria**

The Algerian legislator has regulated the process of official notification through the Code of Civil and Administrative Procedure in texts under the title "Contracts of Official Notification" from Article 406 to 416, in order to ensure the smooth running of the notification process in a sound manner and to protect the rights of the parties and to achieve the principle of morality.

However, despite this, during the implementation of the notification process, we find that it is fraught with many problems that hinder the normal course of justice. Some of these problems are due to the parties involved in the notification, whether in civil or administrative matters.<sup>11</sup>

**First subtitle: The practical Problem of Official Notification in Civil Matters**

**1- From the Perspective of Time**

The Necessity of Notification within a Certain Timeframe :

The factor of time in the Code of Civil and Administrative Procedure is of paramount importance. Failure to respect it can lead to the loss of a person's right. This is why this factor is so valuable in the judicial field and its procedures. The purpose of respecting this factor is to facilitate the access of the right holder to their right. When it is violated, it leads to the deprivation of that right.<sup>12</sup>

Algerian legislation establishes a time limit for legal notification. Article 416 of the Code of Civil and Administrative Procedure stipulates that, at the time of notification, it has no connection with a previous or subsequent fact.

The following reads: "No official notification may be made before 8 a.m., not after 8 p.m. or on holidays, unless necessary and with the permission of the judge."<sup>13</sup>

Without the text of the article, it is clear to us that notification shall be made on any day unless it is a legally prescribed official holiday and shall take place at any hour between the legally prescribed hours of 8 a.m. and 8 p.m.<sup>14</sup>

The Necessity of Notification within a Certain Period of Time ; Deadlines and time limits in the law are matters of public order, and they cannot be modified by agreement. They serve to achieve a balance between the public interest and the individual interest, ensuring the stability of transactions and situations, as well as the protection of legal positions. A deadline is a period of time that is set for the performance of a specific act. If the deadline expires, the act cannot be performed. This is a logical legal control mechanism. The process of official notification is not valid and does not have any effect unless it complies with the legal deadline.<sup>15</sup>

This is evident in the text of Article 416 of the Code of Civil and Administrative Procedure, which states: "A period of at least 20 days must be observed between the date of delivery of the summons, and the date of the first hearing, unless the law provides otherwise."<sup>16</sup>

## **2- From the Perspective of Place( location)**

The Algerian legislator has tackled the matter of the distance between the location where the party is required to go to appear or conduct a legal procedure. This issue is important because it can lead to the loss of time and resources, and it can also violate the principle of equality of arms.<sup>17</sup>

The Algerian legislator has established a presumption that notification has been received by the intended recipient if it is served to one of his family members who is present at his home. However, The presumption can be contested if the notification is delivered outside of the home where the family members live with the intended recipient.<sup>8</sup>

This is the subject of Article 410 of the Code of Civil and Administrative Procedure, which states: "If it is impossible to serve the notification personally to the person to be served, the notification shall be deemed valid if it is served at his original domicile to one of his family members residing with him or at his chosen domicile."<sup>19</sup>

The chosen domicile is the place that the person chooses, and it is not a place where his family members usually reside. This means that it is permissible to serve notification to any person who has a family or dependent relationship with the person to be served at the chosen domicile, whether they are people who have a working relationship with the person to be served.

If the possibility of serving notification to a third party is denied in this case because there are no family members present, the process of notification becomes difficult. This is why it is important to expand the scope of persons who can be served without being limited to family members, to include persons who have a dependent relationship with the person to be served.

The author of the study concludes that the restriction and limitation of the persons who can be served on behalf of the person to be served means reducing the chances of the notification being received.<sup>20</sup>

## **second subtitle: The pratical Problem of Official Notification in Administrative Matters**

### **1-The Problem of Notification in the Person of the Bailiff**

It is understood that the only person entrusted with the reporting function must have the power to initiate the procedure, which is both general and special.

The general prerogatives are intended to mean that the reporting officer has the status of a staff member in the category under which this procedure is issued, namely, the category of magistrates and that the reporting authority must therefore be performed by a staff member having the status of a record, If notified to the medium of a person who has no such status For example, by a law school student, this notification is invalid for lack of authority. as well as if he reported a transcript after losing that power, he was dismissed from his job.

A special authority is intended to be in a position to perform its function and must be competent to perform it in accordance with legal texts.

The judicial record shall make legal notification at the request of the person or his or her legal or conventional representative and shall produce a record containing the data mentioned in article 407 of the Code of Civil and Administrative Procedure.<sup>21</sup>

Consequently, the impugned decision after the extradition or receipt by a party of the Supreme Court's referral decision is a legal notification. However, on the other hand, the judicial record appoints an assistant juror after Yemen performs the provisions of Law 06-03, This raises as important a problem as the field problems raised during reporting.

However, through the Code of Civil and Administrative Procedure in the text of article 19, the assistant was omitted from the reporting function. Although the law governing the judicial record's profession acknowledged its existence, the method of exercise of the jury assistant is important without organization, which constitutes another problem with this category, which remains without a law regulating its work and to determine ; Responsibilities between the record and his assistant in the case of the matter. The reporting records are formalized through the seal of the State and through the signature of the record. According to article 14 of the Code of Civil and Administrative Procedure: The judicial record shall issue contracts and bonds in Arabic and shall sign them and stamp them with the seal of the State under null and void.<sup>22</sup>

## **2- problematic notification of the amount**

### **2-1- Natural Person**

The legal notification of a natural person is the delivery of the transcript of the notification paper to him in his hand and given the paramount importance of the legal notification of the person of the notification, as it is the semi-absolute means of ensuring that the communication reaches him and is therefore the most certain means of respecting the principle of validity.

The notifier is the person who must receive the notification and must state his name, surname and domicile. If he has no known habitat, his last habitat must be mentioned. The legal notification may be made at any place of barbecue that was in his or her home or non-home. This type of notification is not

problematic. In addition, other problems arise during the initiation of the reporting process, which can be summarized in the following points:

- If the notification transcript does not contain identification documentation information:

The refusal to hand over identification documents or to claim that they are not in possession of them, and by reference to article 407 of the Code of Civil and Administrative Procedure, which requires the availability of the notification transcript data, confirms the notified person's signature with information on identification documents.<sup>23</sup>

If this is not possible, he will make his mark, and the last paragraph of this article allows him to be notified to invalidate the legal report in the absence of the required data.

#### **2-2- Problems arising from notification by secured mail:**

When the transcript sends the notification transcript by secured mail, the return process takes a period of time which may lead to deletion. The complainant must simply seal the mail without having to obtain the receipt. Article 411, paragraph 2, and Article 412, paragraph 3, of the Code of Civil and Administrative Procedure state the date of the mail's seal, without explaining it.

As for the method of legal notification of military personnel, the Code of Civil and Administrative Procedure did not refer to the procedure for notifying members of the National People's Army and the National Gendarmerie, nor did it refer to reporting in military institutions, whether military institutions or security centres. This legal vacuum would have resulted in problems encountered by magistrates during their reporting of this category.

#### **2-3-Problems arising from notification by commentary:**

There is a lack of understanding of article 412, paragraph 3, of the Code of Civil and Administrative Procedure. But by extrapolating the text of the article, we find that the legislature intended the court in which he found the person to be notified or his last home, Because notification by commentary is

a means of communicating the idea of the knowledge to be informed wisely yet.

It is impossible to communicate it directly and this can only be reflected through the commentary procedure.<sup>24</sup>

#### **2-4- Legal Notification to Legal Persons**

Notifying a legal person is equivalent to personal notification when it is delivered to their legal representative. This is what we find in the text of Article 408 of the Code of Civil and Administrative Procedure. This is what we find in the text of Article 408 of the Code of Civil and Administrative Procedure.

The Code of Civil and Administrative Procedure provides that legal notification to a legal person is considered to be personal if the notification notice is delivered to its legal representative, its contractual representative, or to any person who has been appointed for this purpose.

For example, notification to administrations, regional communities, and public institutions with an administrative character is made to the representative appointed for this purpose and at their headquarters. Legal notification addressed to a legal person in the event of liquidation is made to the liquidator.

However, there is a question that arises: how can the bailiff be sure of the status of the recipient of the notification, whether he is legally qualified to do so or not?

The correct opinion does not require the bailiff to investigate the legal capacity of the legal representative to receive the notification, but rather to be satisfied with the declaration that he is the legal representative or his substitute, mentioning his name and title.

A decision issued by the Supreme Court on 22 May 2014 ruled that "the notification notice is not void if it does not mention the legal representative or the contractual representative, as long as the notification is proven by affixing the stamp prescribed for it."<sup>25</sup>

Official notification in civil matters is problematic due to its complexity. The need for notification within a specified timeframe is one of the most significant challenges. The reason for this is that the Code of Civil and Administrative Procedure sets deadlines for various procedural steps, like filing a lawsuit or responding to a response. If notification is not made within the required timeframe, it can lead to the loss of a party's right to participate in the proceedings. One of the most important challenges is the need for notification to be made within a certain timeframe. This is because the Code of Civil and Administrative Procedure sets deadlines for various procedural steps, such as the filing of a lawsuit or the submission of a response. If notification is not made within the required timeframe, it can lead to the loss of a party's right to participate in the proceedings.

The general rule requires the notification of the notified person and is a firm presumption that the ignorance of the other party cannot be invoked when the notification is properly regulated by Algerian law. Practical problems arise in civil and administrative matters during the reporting process, whether reporting to a natural person or a moral person, which is difficult to report and makes it a complex process.

### **Conclusion:**

The role of the judiciary is to ensure equality in legal centres and equal opportunities for litigants in the prosecution and in the defence by notifying the adversary of all proceedings by using legal notification, which is dealt with in administrative and civil proceedings under the heading of official reporting contracts.

The procedure is of paramount importance for the commencement of certain dates, such as attendance before the courts or the use of recourse methods. No action may be taken against a person without being able to learn of it and without being given an opportunity to defend him.

Legal notification is the model means of informing the adversaries of judicial proceedings and judicial proceedings, and is only formally effective if it is properly legally notified.

The problems of legal notification that we found in the study can be summarized as follows:

- The difficulty of locating the person to be notified. This can be a problem in cases where the person to be notified is difficult to find, such as if they are living in a remote area or if they have moved without leaving a forwarding address.
- The refusal of the person to be notified to accept the notification. This can be a problem in cases where the person to be notified is trying to avoid service of the document or act.
- The procedural requirements for official notification. The procedural requirements for official notification can be complex and time-consuming, which can make it difficult to complete the notification process.

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