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A Legal Study: Between Jurisprudential Foundations and Legal Theory

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Abstract:
Algerian law adopts the cessation of payments criterion as the legal basis for initiating procedures for dealing with the financial difficulties of commercial enterprises. The inability of a company to meet its due debts is considered sufficient grounds for commencing judicial reorganization proceedings or declaring bankruptcy. Consequently, the Algerian legislator links the occurrence of this condition to the initiation of collective insolvency proceedings, without providing the enterprise with broad opportunities to benefit from preventive legal mechanisms that could assist it in overcoming its financial crisis before reaching the stage of bankruptcy.
In this context, comparative legislation has developed a variety of mechanisms enabling financially distressed enterprises to overcome their crises. On the one hand, it has introduced amicable procedures based on dialogue and negotiation with creditors to reach consensual solutions, such as debt rescheduling or granting additional time for repayment. On the other hand, it has established judicial rescue procedures that allow for the reorganization of the enterprise's financial and administrative affairs under judicial supervision, thereby providing it with a genuine opportunity to restore its operations and avoid liquidation. This modern approach reflects a shift in the philosophy of enterprise insolvency laws, whereby the primary objective has become the protection of the enterprise as an economic and social entity that contributes to wealth creation, the preservation of employment, and the promotion of confidence in commercial transactions. Bankruptcy is thus regarded as a measure of last resort, to be invoked only when rescuing the enterprise has become impossible and all legal mechanisms aimed at its rehabilitation and continued operation have been exhausted.

Keywords: cessation of payments, enterprise difficulties, judicial reorganization, judicial composition, bankruptcy.

Introduction

The cessation of payments constitutes the cornerstone of the legal framework governing enterprise insolvency in various commercial legislations, as it represents the legal event revealing the deterioration of the debtor's financial position and necessitating judicial intervention to protect creditors' interests and ensure the continuity of economic activity. However, the evolution of enterprise insolvency laws has led to a reconsideration of the traditional concept of cessation of payments. It is no longer regarded as an inevitable ground for declaring bankruptcy; rather, it has become a legal criterion for assessing the extent to which an enterprise requires preventive measures, judicial reorganization, or restructuring before reaching the stage of liquidation.

This topic raises numerous legal and practical issues, particularly with regard to defining the concept of cessation of payments, its legal basis, the criteria for determining the date of its occurrence, the obligations imposed on the debtor once it arises, and the legal consequences resulting from the establishment of such a condition. Moreover, legal and economic scholarship has not adopted a uniform position on this criterion. While some scholars consider it an effective instrument for protecting commercial credit, others criticize its rigidity and its adverse effects on enterprises capable of recovery. This has prompted modern legislations to adopt a new approach, whereby cessation of payments serves as the starting point for rescue procedures rather than as a path that inevitably leads to bankruptcy.

Research Problem

To what extent has the legislator succeeded in regulating the provisions governing cessation of payments in a manner that achieves a balance between protecting creditors' rights and preserving the continuity of the economic enterprise, in light of the modern developments in enterprise insolvency law?

Research Hypothesis

This study is based on the hypothesis that cessation of payments no longer constitutes a legal ground that inevitably leads to the liquidation of an enterprise. Rather, it has become a legal criterion aimed at the early detection of financial difficulties and enabling the judiciary to activate preventive and judicial reorganization mechanisms in a manner that balances the interests of debtors and creditors while preserving the continuity of economic activity.

Research Methodology

This study adopts the analytical method to examine the legal provisions governing cessation of payments. It also employs the comparative method to highlight the approaches adopted by legal scholarship and comparative legislation in addressing this issue, in addition to the descriptive method when presenting the relevant legal concepts and doctrinal opinions.

Structure of the Study

The nature of this study requires its division into two sections:

Section One: The Legal Regulation of Cessation of Payments and Its Effects

First Requirement: The Legal Framework and Obligations.

Second Requirement: Determining the Date of Cessation of Payments.

Third Requirement: The Legal Effects of Cessation of Payments.

Section Two: The Theoretical Foundations of Cessation of Payments and Contemporary Jurisprudential Trends

First Requirement: Legal Theory (Concept and Foundation).

Second Requirement: Jurisprudential and Economic Foundations (Shortcomings and Development).

Section One: The Legal Regulation of Cessation of Payments and Its Effects

This section examines the legal provisions governing the state of cessation of payments by outlining the legislative framework regulating it, the obligations imposed upon the debtor, and the legal rules relating to the determination of the date on which it occurs. It also addresses the legal consequences arising from the establishment of cessation of payments and their impact on the legal status of the debtor and creditors, as well as on the conduct of enterprise insolvency proceedings.

First Requirement: The Legal Framework and Obligations

The system governing cessation of payments constitutes a legal framework that sets out the rules regulating the situation in which the debtor becomes unable to discharge due debts. It also specifies the procedures to be followed from the moment this condition is established until it is addressed in accordance with the law. At the same time, this framework imposes reciprocal obligations on all concerned parties, including the debtor, creditors, and judicial authorities, with the aim of safeguarding rights, ensuring the orderly conduct of proceedings, and maintaining a balance between protecting the distressed enterprise and preserving the interests of creditors.

Declaration by the Debtor: The debtor's declaration of cessation of payments is one of the principal obligations imposed by commercial law upon a trader or a private legal entity once it becomes unable to pay its due debts. This obligation is based on the principle of transparency and disclosure, as the initiative to declare the enterprise's actual financial condition constitutes the first step toward resolving its difficulties within an organized legal framework. Accordingly, the legislator has not left it to the debtor's discretion to determine the appropriate time for disclosing the cessation of payments; rather, the debtor is required to declare this situation before the competent court within a period not exceeding fifteen (15) days from the date on which the cessation of payments occurs.

This obligation is intended to ensure the prompt intervention of the judiciary before the enterprise's financial situation deteriorates further. Delay in making such a declaration may result in an increase in the volume of debts, a decline in the value of the enterprise's assets, prejudice to the interests of creditors, and a reduction in the prospects of successfully rescuing

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the enterprise. Therefore, the earlier the cessation of payments is declared, the greater the possibility of adopting legal solutions that allow the continuation of economic activity and prevent the enterprise from reaching the stage of final liquidation.[1]

This procedure also enables the court to obtain an accurate understanding of the enterprise's financial condition through the documents and records submitted by the debtor to establish the true state of its financial position. This, in turn, assists the court in selecting the legal procedure most appropriate to the nature of the difficulties facing the enterprise, whether judicial reorganization or the declaration of bankruptcy, in accordance with the conditions prescribed by law.[2]

The debtor's declaration also serves the interests of creditors by preventing the enterprise from continuing to enter into new transactions despite its inability to fulfill its obligations, thereby avoiding the expansion of the body of creditors and safeguarding the principle of equality among them. Furthermore, it limits any actions that the debtor may undertake with the intent of concealing assets or granting preferential treatment to certain creditors at the expense of others, thereby reinforcing confidence in collective insolvency proceedings and upholding the principle of protecting commercial credit.[3]

On the other hand, the debtor's obligation to declare the cessation of payments is not merely a procedural requirement; it also reflects the debtor's good faith and willingness to cooperate with the judiciary and creditors in seeking legal solutions to address the financial difficulties faced by the enterprise. Conversely, failure to submit such a declaration or unjustified delay in doing so may give rise to adverse legal consequences, both with respect to the debtor's liability and the conduct of collective insolvency proceedings, since such conduct may contribute to the aggravation of the enterprise's financial distress and prejudice the rights of third parties.[4]

Accordingly, the obligation imposed upon the debtor to declare the cessation of payments within the prescribed period is not simply a formal requirement. Rather, it constitutes a legal mechanism for ensuring early judicial intervention, protecting the interests of creditors, and enabling the court to adopt appropriate measures at the appropriate time, in a manner consistent with the objectives of the enterprise insolvency regime, namely preserving economic activity whenever possible and resorting to bankruptcy only when all prospects for rescuing the enterprise have been exhausted.[5]

Application for the Commencement of Proceedings: The Algerian legislator has not made the commencement of proceedings for dealing with the financial difficulties of commercial enterprises dependent solely upon the debtor's will. Instead, it has adopted a system that grants multiple parties the right to initiate such proceedings. This approach is based on considerations relating to the protection of commercial credit and the need to ensure prompt judicial

[1] Article 215 of Ordinance No. 75-59 of 26 September 1975, containing the Algerian Commercial Code, as amended and supplemented.
[2] Nadia Fodil, Bankruptcy and Judicial Reorganization under Algerian Law, National Office of University Publications, Algeria, 3rd ed., p. 45 et seq.
[3] Abdel Hamid El-Shawarbi, Bankruptcy in the Light of Jurisprudence and Case Law, Mansha'at Al-Ma'arif, Alexandria, pp. 112–118.
[4] Yves Guyon, Droit des affaires, Vol. 2: Entreprises en difficulté, 10th ed., Economica, Paris, pp. 89–95.
[5] François Pérochon, Entreprises en difficulté, LGDJ, Paris, latest ed., pp. 61–70.

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intervention once cessation of payments has been established. Restricting the initiation of proceedings to the debtor's discretion alone could delay the commencement of proceedings and prolong the financial crisis, thereby adversely affecting creditors' rights and the stability of commercial transactions. Accordingly, the legislator has broadened the range of parties entitled to initiate such proceedings in order to achieve a balance between the interests of the enterprise and those of its creditors.[6]

Nevertheless, the debtor's application remains the mechanism most consistent with the philosophy underlying the enterprise insolvency regime, as the debtor is the party most familiar with its actual financial position and its ability to discharge its obligations. Once the debtor realizes that its financial situation no longer permits it to perform its obligations as they fall due, it becomes incumbent upon it to apply to the competent court for the commencement of the proceedings prescribed by law. Such an application is not merely a procedural formality; rather, it constitutes a legal act demonstrating the debtor's respect for its obligations and its willingness to address the financial difficulties affecting its business through the mechanisms established by law, thereby enabling the court to intervene at an appropriate stage before the financial crisis worsens.[7]

Conversely, the legislator has granted creditors the right to apply for the commencement of proceedings whenever they possess evidence establishing that the debtor has ceased making payments. This right is founded on the necessity of providing legal protection to creditors who may suffer harm from the debtor's continued operation despite its inability to fulfill its obligations. Granting creditors the right to initiate proceedings is not intended to place undue restrictions on the debtor; rather, it seeks to prevent the deterioration of the debtor's financial condition, avoid the dissipation of the enterprise's assets, and preserve the principle of equality among creditors, all of which are consistent with the preventive function of collective insolvency proceedings.[8]

The legislator has also empowered the president of the competent court to commence proceedings ex officio whenever it becomes apparent, from the facts or documents submitted, that the enterprise is in a state of cessation of payments requiring judicial intervention. This authority reflects the preventive role of the commercial judiciary, whose function extends beyond adjudicating applications brought before it to safeguarding public economic order whenever the available evidence reveals a risk threatening the continuity of the enterprise or adversely affecting the rights of its creditors. This approach confirms that the enterprise insolvency regime is no longer founded solely upon the traditional adversarial principle but has evolved into a system in which judicial intervention serves as a means of protecting both the economic and social interests involved.[9]

[6] Ordinance No. 75-59 of 26 September 1975, containing the Algerian Commercial Code, as amended and supplemented, particularly Articles 215 et seq.
[7] Mohamed Farid El-Arini, Commercial Law: Bankruptcy and Preventive Composition, Dar Al-Jami'a Al-Jadida, Alexandria, 2004, pp. 67–74.
[8] Elias Nassif, Encyclopedia of Bankruptcy and Judicial Reorganization, Vol. I, Halabi Legal Publications, Beirut, 2012, pp. 98–107.
[9] Alain Lienhard, Droit des entreprises en difficulté, 9th ed., Delmas, Paris, 2021, pp. 115–123.

The multiplicity of parties authorized to apply for the commencement of proceedings reflects the legislator's intention to ensure promptness and effectiveness in addressing cases of cessation of payments. It limits the possibility of the debtor concealing its financial condition or delaying the request for judicial protection, while at the same time providing creditors with a legal mechanism to safeguard their rights and enabling the court to intervene in a timely manner by adopting appropriate measures. Accordingly, the system governing the commencement of proceedings constitutes one of the principal safeguards underpinning enterprise insolvency law, as it seeks to address financial distress at an early stage, enhance the prospects of rescuing the enterprise and ensuring the continuity of its operations, while simultaneously preserving the interests of creditors and maintaining the stability of commercial transactions.[10]

Second Requirement: Determining the Date of Cessation of Payments

Determining the date of cessation of payments is of paramount importance in bankruptcy proceedings. Pursuant to Article 222 of the Algerian Commercial Code, the court is responsible for verifying the existence of this condition and determining its actual date on the basis of the facts and evidence presented before it. Where it is impossible to determine this date with precision, the date of the judgment ordering the commencement of judicial reorganization or bankruptcy proceedings shall be deemed the date of cessation of payments. The principal purpose of determining this date is to establish the commencement of the suspect period, during which certain transactions and contracts concluded by the debtor are subject to judicial scrutiny. This enables the court to annul or declare unenforceable those transactions that are likely to prejudice the rights of creditors or violate the principle of equality among them, thereby strengthening the protection of commercial credit and ensuring the integrity of collective insolvency proceedings.

The Court's Role in Determining the Date of Cessation of Payments: Determining the date of cessation of payments constitutes a pivotal stage in bankruptcy proceedings, as it makes it possible to identify the moment at which the debtor moved from merely experiencing temporary financial difficulties to a state of genuine inability to discharge due commercial debts. This date is not linked to the mere failure to pay a single debt; rather, it is determined through an overall assessment of the debtor's financial situation and an evaluation of its ability to meet its obligations using its available resources. Accordingly, determining this date requires a thorough examination of the factual circumstances surrounding the debtor's business activities, beyond formal appearances that may conceal the true state of its financial position.

The authority to determine this date rests with the competent court, which relies on various means of proof, including commercial accounts, accounting records, bank account transactions, expert reports, as well as other indicia that assist it in forming its conviction regarding the commencement of the debtor's financial insolvency. The significance of this determination lies in the legal consequences it entails, as it serves as the basis for calculating the suspect period, during which certain acts undertaken by the debtor are subject to judicial review to ensure that they do not prejudice creditors or undermine the principle of equality among them. This, in

[10] Corinne Saint-Alary-Houin, Droit des entreprises en difficulté, 12th ed., LGDJ, Paris, 2023, pp. 84–96.

turn, reinforces confidence in commercial transactions and ensures the proper conduct of bankruptcy proceedings.

The determination of the date of cessation of payments is one of the principal issues to which the Algerian legislator has attached particular importance within the bankruptcy regime, owing to the legal consequences that extend throughout the various stages of collective insolvency proceedings. Article 222 of the Algerian Commercial Code entrusts this task to the competent court, which is responsible for verifying the existence of cessation of payments and determining its actual date. This approach reflects the legislator's intention to subject this matter to careful judicial supervision, given the consequences it has for the rights of the debtor, creditors, and third parties, as well as its impact on the stability of commercial transactions. Consequently, the court does not merely establish the debtor's inability to discharge its debts; it also examines the circumstances that led to such inability so that the date determined accurately reflects the enterprise's actual economic situation.[11]

An analysis of Article 222 reveals that the legislator has granted the judge broad discretionary authority to determine the date of cessation of payments. This discretion is not exercised arbitrarily; rather, it is based on the evidence presented before the court, including commercial books, financial statements, expert reports, bank account records, and all other indicia that disclose the debtor's actual financial condition. The purpose of this authority is to prevent the debtor from concealing the true state of its financial position or delaying the declaration of cessation of payments in a manner that would enable it to undertake transactions detrimental to the body of creditors. At the same time, it prevents creditors from alleging the existence of bankruptcy without a factual or legal basis.[12]

Article 222 further indicates that the date of cessation of payments is not necessarily linked to the date of the judgment ordering the commencement of bankruptcy proceedings. The court may determine that the debtor had become unable to meet its commercial obligations at an earlier date. Accordingly, the legislator has empowered the court to retroactively fix the date of cessation of payments whenever the facts so establish. This ensures that the judicial decision is consistent with the enterprise's actual economic reality and prevents the recognition of transactions concluded during a period in which the debtor had already lost the financial capacity to perform its obligations.[13]

The importance of determining this date lies in the fact that it constitutes the legal basis for calculating the suspect period, during which certain transactions carried out by the debtor are subject to judicial scrutiny in order to safeguard the principle of equality among creditors and prevent the unlawful preference of some creditors over others. The more accurately the date of cessation of payments is established, the more effectively the court can review transactions that may have prejudiced the creditors' general security, whether by the premature payment of

[11] Article 222 of Ordinance No. 75-59 of 26 September 1975, containing the Algerian Commercial Code, as amended and supplemented.

[12] Nadia Fodil, Algerian Commercial Law (Commercial Acts, the Trader, Bankruptcy), National Office of University Publications, Algeria, p. 278.

[13] Ammar Amoura, A Concise Explanation of Algerian Commercial Law, Dar Al-Ma'rifa, Algeria, pp. 344–350.

certain debts, the creation of new security interests, or the disposal of the enterprise's assets in a manner detrimental to the collective rights of creditors.[14]
Accordingly, Article 222 does not merely regulate a procedural issue; rather, it establishes a legal safeguard designed to achieve a balance between the interests of the debtor and those of the creditors while promoting the stability of commercial credit. Entrusting the determination of the date of cessation of payments to the court reinforces judicial supervision over bankruptcy proceedings and ensures that the legal consequences of this regime are based on objective standards derived from facts and evidence, rather than on allegations or formal considerations. This approach is consistent with the fundamental objective of the bankruptcy system, namely the protection of commercial transactions and the achievement of fairness among all creditors.[15]

Presumptive Date: Determining the date of cessation of payments is of considerable legal significance within the framework of judicial reorganization and bankruptcy proceedings, as it constitutes the basis upon which a range of legal consequences relating to the debtor's status and the interests of creditors are established. It also serves as the starting point for determining the suspect period and assessing the validity of the transactions undertaken by the debtor prior to the commencement of collective insolvency proceedings.[16]
In practice, however, it may be difficult to determine the exact moment at which the debtor became unable to discharge its due debts, whether because of the complexity of its financial transactions or the insufficiency of available evidence. This may give rise to disputes regarding the actual date of cessation of payments. Recognizing this difficulty, the legislator has established a fallback rule whereby, if the court is unable to establish an earlier date with certainty, the date of the judgment ordering the commencement of judicial reorganization or bankruptcy proceedings shall be deemed the date of cessation of payments.[17]
This solution promotes the stability of judicial proceedings by preventing delays resulting from evidentiary difficulties. It also safeguards the interests of the body of creditors by providing a fixed temporal reference point for determining the suspect period and the potential avoidance of transactions that may have prejudiced their interests.[18]
Nevertheless, this date is not conclusive. The court may revise it whenever convincing evidence establishes that the cessation of payments occurred at an earlier date. This reflects the legislator's intention to strike a balance between ensuring the stability of commercial transactions and safeguarding commercial credit and the rights of creditors.[19]

The Suspect Period: The suspect period constitutes a fundamental stage in the bankruptcy regime. It begins on the date on which the court determines that the debtor has ceased making payments and continues until the judgment ordering the commencement of judicial reorganization or bankruptcy proceedings is issued. Its significance lies in the fact that, during

[14] Ahsen Bousquiaa, A Concise Guide to Algerian Commercial Law, Dar Houma, Algeria, pp. 391–397.
[15] Mostafa Kamal Taha, Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, pp. 562–569.
[16] Abdel Hamid El-Shawarbi, Vol. I, Mansha'at Al-Ma'arif, Alexandria, p. 241.
[17] Article 222 of the Algerian Commercial Code, op. cit.
[18] Samir Abdel Sayed Tanagho, Dar Al-Matbou'at Al-Jami'iyya, Alexandria, p. 128.
[19] Mostafa Kamal Taha, Dar Al-Fikr Al-Jami'i, Alexandria, p. 534.

this period, the debtor may undertake legal transactions that adversely affect the general security available to creditors or grant preferential treatment to certain creditors at the expense of others, thereby violating the principle of equality among creditors.

For this reason, the legislator has vested the judiciary with the authority to review the acts and transactions carried out during this period in order to ensure their compliance with the law and to verify that they are free from any form of fraud or bad faith that may prejudice the collective interests of creditors. Where it is established that any of these transactions has infringed upon creditors' rights or diminished the debtor's assets, the court may declare such transactions unenforceable or annul them in order to protect the debtor's estate, which constitutes the common security of all creditors.

This legislative framework demonstrates that the legislator did not intend to unduly restrict the debtor's freedom to dispose of its property. Rather, the objective is to limit transactions undertaken under conditions of financial distress that may undermine the stability of commercial transactions or impair commercial credit. Accordingly, the suspect period constitutes one of the principal legal mechanisms for ensuring fairness among creditors and safeguarding the integrity of bankruptcy proceedings.

Third Requirement: Legal Effects of Cessation of Payments

Under Algerian law, a judicial determination that the debtor has ceased making payments gives rise to a number of significant legal consequences affecting the debtor, creditors, and third parties. These consequences may be summarized as follows:[20]

Third Requirement: Legal Effects of Cessation of Payments

Under Algerian law, a judicial determination of cessation of payments gives rise to several significant legal consequences affecting the debtor, creditors, and third parties. These may be summarized as follows:

- Commencement of Collective Insolvency Proceedings: A judgment establishing cessation of payments results in the commencement of judicial reorganization or bankruptcy proceedings, depending on the debtor's financial situation. Consequently, the debtor's assets become subject to a special legal regime intended to protect the body of creditors and either reorganize or liquidate the debtor's business.
- Determination of the Date of Cessation of Payments and the Suspect Period: The court determines the date of cessation of payments, thereby establishing the commencement of the suspect period, namely the period preceding the judgment during which certain transactions undertaken by the debtor may be annulled or declared unenforceable if they prejudice the rights of creditors or confer an unlawful preference upon one creditor over others.
- Restriction of the Debtor's Authority to Manage Its Assets: The debtor becomes subject to judicial supervision, and its authority to administer its assets may be restricted or withdrawn, depending on the nature of the proceedings commenced. In such cases, the

[20] Articles 215–218 of the Algerian Commercial Code, op. cit.

bankruptcy trustee or judicial administrator exercises certain powers on the debtor's behalf in accordance with the provisions of the law.

- Stay of Individual Actions by Creditors: The judgment results in the suspension of individual legal actions and enforcement proceedings initiated by creditors against the debtor, thereby preserving the principle of equality among creditors and ensuring the collective and orderly distribution of the debtor's assets.
- Establishment of Creditors' Rights and Organization of Claims: Creditors are required to declare their claims within the legally prescribed time limits. These claims are then examined and verified in order to prepare a final list of creditors entitled to benefit from the insolvency proceedings.
- Possibility of Avoiding Certain Transactions of the Debtor: The court may declare certain legal transactions undertaken by the debtor during the suspect period unenforceable or annul them where it is established that such transactions prejudiced the collective interests of creditors or were carried out with the intention of causing such prejudice.
- Effects on Ongoing Contracts and Employees: The performance of certain contracts may continue where this serves the interests of the bankruptcy estate or the rescue plan. The judgment also gives rise to specific consequences concerning employment contracts in accordance with the provisions governing collective insolvency proceedings.
- Possibility of Final Liquidation: Where it becomes evident that rescuing the enterprise or restoring its financial equilibrium is impossible, the proceedings may conclude with a judgment declaring bankruptcy, followed by the liquidation of the debtor's assets and the distribution of the proceeds among creditors in accordance with their legal priorities.

Taken together, these legal effects are intended to protect the general security available to creditors, ensure equality among them, preserve the enterprise whenever its continued operation remains feasible, or, where rescue is impossible, provide for the orderly liquidation of its assets.

Section Two: The Theoretical Foundations of Cessation of Payments and Contemporary Jurisprudential Trends

This section examines the theoretical foundations underlying the concept of cessation of payments by explaining its legal meaning and the principles upon which the legislator and legal scholarship have relied in defining its content and legal effects. It also reviews the principal contemporary jurisprudential and economic approaches that have reassessed this criterion, highlighting the shortcomings of the traditional conception and the developments that have reinforced the philosophy of rescuing enterprises before resorting to their liquidation.

First Requirement: Legal Theory (Concept and Foundation)

The principle of cessation of payments constitutes a legal doctrine serving both preventive and regulatory functions. It is founded upon the philosophy of protecting commercial credit, ensuring equality among creditors, preserving the economic enterprise, and providing the objective legal basis for judicial intervention in response to a trader's financial distress. This

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explains why it continues to be adopted as the principal criterion for the commencement of bankruptcy and judicial reorganization proceedings in most comparative legal systems, including Algerian law.

- **The Strict Material Criterion:** The Algerian legislator has adopted a material criterion for determining the existence of cessation of payments, making the actual inability of the trader to discharge due commercial debts as they fall due the decisive basis for the commencement of bankruptcy or judicial reorganization proceedings, irrespective of whether the value of the trader's assets exceeds its liabilities or whether the trader remains solvent from an accounting perspective.[21] This legislative approach reflects the legal premise that the existence of a financial crisis is not measured by the size of the debtor's estate or the value of its assets, but rather by the trader's ability to generate the liquidity necessary to satisfy obligations as they fall due.[22] Accordingly, a debtor may own assets of substantial value, yet if those assets cannot be readily converted into liquid funds, the debtor will be deemed to have ceased making payments whenever it is unable to discharge its due debts. From this perspective, cessation of payments constitutes an objective criterion revealing the deterioration of the financial position of the commercial enterprise and justifying judicial intervention to regulate creditors' rights and preserve the stability of commercial credit. This approach is consistent with the philosophy adopted by the Algerian legislator in Article 215 of the Commercial Code.[23]
- **The Nature of the Debt:** The Algerian legislator has not regarded the legal characterization of the debt as a decisive factor in determining the existence of cessation of payments. Rather, the focus is on establishing the existence of a genuine and continuing inability to satisfy due financial obligations whenever the debtor is a trader or a private legal entity. Consequently, a debt whether arising from a commercial relationship, a civil obligation, or any other financial commitment may serve as the basis for establishing cessation of payments, provided that the failure to discharge it demonstrates the deterioration of the debtor's financial position and its inability to meet its obligations through ordinary means. This legislative approach reflects a shift from the formal conception, which linked the application of the bankruptcy regime to the legal nature of the obligation, to an objective approach that places emphasis on the economic reality of the enterprise and its capacity to continue operating on credit and fulfilling its financial obligations.
- **The Obligation to Initiate Proceedings:** The Algerian legislator has structured the cessation of payments regime around the principle of mandatory initiative, requiring a debtor who is found to be in a state of cessation of payments to apply, of its own accord, to the competent court and declare this condition within the period prescribed by law. This obligation is not merely a procedural requirement for the commencement of

[21] Article 215 of Ordinance No. 75-59 of 26 September 1975, containing the Algerian Commercial Code, as amended and supplemented, op. cit.
[22] Abdel Razzaq Al-Sanhouri, Al-Wasit in the Explanation of Civil Law, Vol. I, Dar Ihya Al-Turath Al-Arabi, Beirut, p. 694 et seq.
[23] Mostafa Kamal Taha, Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, p. 579 et seq.

collective insolvency proceedings; rather, it constitutes a legal duty closely connected with the proper administration of the debtor's estate and the obligation of good faith imposed by law upon traders in their dealings with creditors. A debtor's continued operation despite being aware of its inability to meet its obligations aggravates the deterioration of its financial position and exposes both existing and prospective creditors to increasing financial risks, thereby undermining legal certainty and the stability of commercial transactions. Accordingly, the prompt declaration of cessation of payments serves as a preventive mechanism that enables the judiciary to intervene at an appropriate stage, adopt measures aimed at preserving the general security available to creditors, and prevent transactions that may prejudice their rights or violate the principle of equality among them. This legislative framework also reflects a shift in the philosophy of bankruptcy law, from focusing primarily on holding the debtor accountable after the financial crisis has intensified to adopting legal mechanisms that facilitate early intervention in the management of financial difficulties and mitigate their impact on economic activity and commercial credit.

Second Requirement: Jurisprudential and Economic Foundations (Shortcomings and Development)

The criterion of cessation of payments is regarded as one of the principal standards relied upon in enterprise insolvency law to determine whether a trader or an enterprise has reached a stage requiring judicial intervention. Nevertheless, this criterion has been the subject of considerable doctrinal criticism, particularly where it is applied rigidly by limiting the assessment to the mere failure to discharge due debts without taking into account the economic and financial circumstances affecting the enterprise.[24]

- **Criticism of Rigidity:** A number of legal scholars maintain that adopting a literal interpretation of cessation of payments may lead to outcomes that are inconsistent with the fundamental objective pursued by modern insolvency legislation, namely preserving the continuity of economic activity before considering the liquidation of the enterprise or its exit from the market.[25]

An enterprise may, at times, experience a temporary liquidity crisis that prevents it from immediately satisfying its due obligations, despite possessing financial or real estate assets whose value exceeds that of its debts. However, such assets may not be readily convertible into cash within a short period.[26]

In such circumstances, the failure to make payment does not stem from the collapse of the enterprise's financial position, but rather from a temporary inability to generate the liquidity

[24] Ordinance No. 75-59 of 26 September 1975, containing the Algerian Commercial Code, as amended and supplemented, particularly the provisions relating to enterprise insolvency and bankruptcy.

[25] Law No. 22-09 of 5 May 2022, amending and supplementing the Algerian Commercial Code concerning preventive procedures, judicial reorganization, and bankruptcy.

[26] Mohamed Fawzi Sami, Commercial Law: Bankruptcy and Preventive Composition, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 145.

required to satisfy debts as they fall due. This situation differs fundamentally from a state of permanent financial insolvency.[27]
Moreover, the strict application of this criterion may result in the commencement of collective insolvency proceedings against an enterprise that still possesses a genuine capacity to restore its financial equilibrium, provided that it is granted an appropriate period to reorganize its operations or restructure its debts.[28]
From this perspective, contemporary legal scholarship maintains that cessation of payments should not be understood as a purely factual event. Rather, it should be assessed in light of the enterprise's overall economic condition and its actual ability to overcome the financial crisis it is experiencing.[29]
Some scholars further argue that disregarding the enterprise's economic potential and focusing solely on a temporary shortage of liquidity may lead to the unnecessary sacrifice of productive enterprises, even though they remain capable of continuing their operations and generating profits once the temporary financial difficulty has been overcome.[30]
This rigid approach may also have adverse repercussions for the national economy, since the termination of enterprises that are capable of recovery results in the loss of employment opportunities, a decline in investment, and prejudice to the interests of creditors themselves, who may ultimately derive greater benefit from the continuation of the enterprise than from its liquidation.
For this reason, modern legislations have adopted a philosophy centered on the prevention of bankruptcy by affording the enterprise an opportunity to restore its financial equilibrium before reaching the stage of liquidation. Consequently, the criterion of cessation of payments has become subject to a more flexible judicial assessment.[31]
Accordingly, the criticism directed at the rigid application of the cessation of payments criterion reflects an evolution in legal thought, which no longer regards this criterion as an end in itself, but rather as a means of protecting the enterprise, its creditors, and the economy as a whole, thereby achieving a balance between the stability of commercial transactions and the preservation of economic activity.[32]

- **The Shift toward Enterprise Rescue:** In modern legal systems, cessation of payments is no longer understood as the inevitable end of an enterprise or as an unavoidable precursor to the declaration of bankruptcy. Rather, it is regarded as a legal indication of financial distress requiring judicial intervention to examine the true nature and causes of the crisis. This approach reflects a transformation in the philosophy of enterprise insolvency law, shifting the focus from imposing sanctions upon the distressed trader to identifying mechanisms capable of ensuring the continuation of the enterprise, which is

[27] Elias Nassif, Encyclopedia of Bankruptcy and Preventive Composition, Halabi Legal Publications, Beirut, p. 253.
[28] Abdel Hamid El-Shawarbi, Bankruptcy and Preventive Composition in the Light of Jurisprudence and Case Law, Mansha'at Al-Ma'arif, Alexandria, p. 125.
[29] Ripert et Roblot, Traité de droit commercial, Vol. II, LGDJ, Paris.
[30] Yves Guyon, Droit des affaires, Vol. II: Entreprises en difficulté, Economica, Paris.
[31] Mohamed Fawzi Sami, Commercial Law: Bankruptcy and Preventive Composition, op. cit.
[32] Elias Nassif, Encyclopedia of Bankruptcy and Preventive Composition, op. cit.

recognized as a fundamental pillar of economic activity, a means of preserving employment, and an instrument for safeguarding commercial transactions.[33]

Based on this approach, judicial reorganization and judicial composition have become among the principal mechanisms adopted by the legislator to address financial difficulties before they culminate in bankruptcy. The purpose of these procedures extends beyond the protection of creditors; it also encompasses the reorganization of the enterprise's affairs, enabling it to restore its financial equilibrium and continue its operations whenever it is established that the financial difficulties it faces can be overcome through appropriate legal and economic solutions.[34]

The scope of the judge's discretionary authority in assessing cases of cessation of payments has likewise expanded. The court no longer confines its examination to determining whether a due debt has remained unpaid; it also evaluates the enterprise's overall financial condition, its prospects for recovery, the extent of cooperation between its managers and creditors, and the viability of the proposed rescue plan. The debtor's good faith is regarded as a fundamental consideration in this context, as it reflects a genuine willingness to address the financial difficulties and fulfill its obligations, thereby enhancing the prospects for the success of judicial reorganization and judicial composition proceedings.[35]

This modern approach achieves a balance between the various competing interests. It affords the enterprise an opportunity to continue operating and generating value, increases the likelihood that creditors will recover their claims, preserves employment, and mitigates the economic and social consequences that may result from the liquidation of enterprises capable of recovery. Consequently, in contemporary legal thought, cessation of payments is viewed less as a direct cause for terminating an enterprise's economic activity and more as the beginning of a process of reform and restructuring.

Conclusion

This study has demonstrated that cessation of payments is no longer merely a legal event giving rise to the commencement of bankruptcy proceedings. Rather, it has become a legal instrument that enables the judiciary to assess the financial condition of the enterprise and select the most appropriate procedure for addressing the difficulties it faces. The evolution of commercial legislation has contributed to transforming the traditional understanding of this concept, shifting the primary focus toward preserving the continuity of the enterprise whenever there is a realistic prospect of its recovery, rather than hastening its liquidation. The study has also shown that the effectiveness of this legal framework depends not only on the existence of appropriate legislative provisions but also on their proper application by the judiciary and on the cooperation of both debtors and creditors in ensuring the success of judicial reorganization and rescue procedures, thereby achieving a balance between the protection of commercial credit and the continuity of economic activity.

[33] Abdel Hamid El-Shawarbi, Bankruptcy and Preventive Composition in the Light of Jurisprudence and Case Law, op. cit.

[34] Ripert et Roblot, Traité de droit commercial.

[35] Yves Guyon, Droit des affaires, Vol. II.

Findings

- Cessation of payments constitutes the starting point for enterprise insolvency proceedings; however, its determination requires a careful assessment of the financial and economic circumstances affecting the enterprise.
- Determining the date of cessation of payments gives rise to significant legal consequences, as it forms the basis for assessing the validity of certain transactions undertaken by the debtor and influences both the legal position of creditors and the subsequent judicial proceedings.
- Modern legislations have moved away from the punitive approach traditionally associated with cessation of payments, replacing it with a framework focused on the rehabilitation of the enterprise and the resolution of the underlying causes of its financial distress.
- Contemporary legal scholarship emphasizes that distinguishing between genuine financial insolvency and a temporary liquidity crisis is essential in order to avoid subjecting enterprises capable of recovery to proceedings that may unnecessarily terminate their activities.
- The success of judicial reorganization and judicial composition proceedings depends upon transparent and good-faith management, together with the cooperation of creditors and the judiciary in implementing the proposed solutions.

Recommendations

- Review the legal provisions governing cessation of payments in order to establish more precise and flexible criteria that promote consistency in judicial practice.
- Strengthen preventive and early warning mechanisms to enable enterprises to address financial difficulties before reaching the stage of cessation of payments.
- Enhance the role of financial and accounting expertise in cases involving enterprise insolvency in order to assist the judiciary in reaching decisions based on sound economic and legal foundations.
- Promote the use of judicial reorganization and restructuring mechanisms as the primary means of addressing financial distress whenever the enterprise is capable of restoring its operations.
- Draw upon comparative legal experiences in developing Algerian legislation so that it keeps pace with contemporary trends that prioritize the continuity of enterprises while safeguarding creditors' rights and ensuring legal certainty in commercial transactions.

Footnotes

1. Article 215 of Ordinance No. 75-59 of 26 September 1975 containing the Algerian Commercial Code, as amended and supplemented.
2. Nadia Fodil, Bankruptcy and Judicial Reorganization in Algerian Law, National Office of University Publications, Algeria, 3rd ed., p. 45 et seq.
3. Abdel Hamid El-Shawarbi, Bankruptcy in the Light of Jurisprudence and Case Law, Alexandria, pp. 112–118.

4. Yves Guyon, Droit des affaires, Tome II: Entreprises en difficulté, 10th ed., Economica, Paris, pp. 89–95.
5. François Pérochon, Entreprises en difficulté, LGDJ, Paris, latest edition, pp. 61–70.
6. Ordinance No. 75-59 of 26 September 1975 containing the Algerian Commercial Code, as amended and supplemented, particularly Articles 215 et seq.
7. Mohamed Farid El-Arini, Commercial Law: Bankruptcy and Preventive Composition, Dar Al-Jami'a Al-Jadida, Alexandria, 2004, pp. 67–74.
8. Elias Nassif, Encyclopedia of Bankruptcy and Judicial Reorganization, Vol. I, Halabi Legal Publications, Beirut, 2012, pp. 98–107.
9. Alain Lienhard, Droit des entreprises en difficulté, 9th ed., Delmas, Paris, 2021, pp. 115–123.
10. Corinne Saint-Alary-Houin, Droit des entreprises en difficulté, 12th ed., LGDJ, Paris, 2023, pp. 84–96.
11. Ordinance No. 75-59 of 26 September 1975 containing the Algerian Commercial Code, as amended and supplemented, Article 222.
12. Nadia Fodil, Algerian Commercial Law (Commercial Acts, the Trader, Bankruptcy), National Office of University Publications, Algeria, p. 278.
13. Ammar Amoura, A Concise Explanation of Algerian Commercial Law, Dar Al-Ma'rifa, Algeria, pp. 344–350.
14. Ahsen Bousquiaa, A Concise Guide to Algerian Commercial Law, Dar Houma, Algeria, pp. 391–397.
15. Mostafa Kamal Taha, Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, pp. 562–569.
16. Abdel Hamid El-Shawarbi, Vol. I, Alexandria, p. 241.
17. Article 222 of the Algerian Commercial Code, op. cit.
18. Samir Abdel Sayed Tanagho, Dar Al-Matbou'at Al-Jami'iyya, Alexandria, p. 128.
19. Mostafa Kamal Taha, Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, p. 534.
20. Articles 215–218 of the Algerian Commercial Code, op. cit.
21. Article 215 of Ordinance No. 75-59 of 26 September 1975 containing the Algerian Commercial Code, as amended and supplemented, op. cit.
22. Abdel Razzaq Al-Sanhouri, Al-Wasit in the Explanation of Civil Law, Vol. I, Dar Ihya Al-Turath Al-Arabi, Beirut, p. 694 et seq.
23. Mostafa Kamal Taha, Commercial Law, Dar Al-Fikr Al-Jami'i, Alexandria, p. 579 et seq.
24. Ordinance No. 75-59 of 26 September 1975 containing the Algerian Commercial Code, as amended and supplemented, particularly the provisions relating to enterprise insolvency and bankruptcy.
25. Law No. 22-09 of 5 May 2022 amending and supplementing the Algerian Commercial Code concerning preventive procedures, judicial reorganization, and bankruptcy.
26. Mohamed Fawzi Sami, Commercial Law: Bankruptcy and Preventive Composition, Dar Al-Thaqafa for Publishing and Distribution, Amman, p. 145.
27. Elias Nassif, Encyclopedia of Bankruptcy and Preventive Composition, Halabi Legal Publications, Beirut, p. 253.

28. Abdel Hamid El-Shawarbi, Bankruptcy and Preventive Composition in the Light of Jurisprudence and Case Law, Alexandria, p. 125.
29. Ripert et Roblot, Traité de droit commercial, Tome II, LGDJ, Paris.
30. Yves Guyon, Droit des affaires, Tome II: Entreprises en difficulté, Economica, Paris.
31. Mohamed Fawzi Sami, Commercial Law: Bankruptcy and Preventive Composition, op. cit.
32. Elias Nassif, Encyclopedia of Bankruptcy and Preventive Composition, op. cit.
33. Abdel Hamid El-Shawarbi, Bankruptcy and Preventive Composition in the Light of Jurisprudence and Case Law, op. cit.
34. Ripert et Roblot, Traité de droit commercial.
35. Yves Guyon, Droit des affaires, Tome II.