

Mandatory Conciliation as a Procedure Before Specialized Commercial Courts

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Abstract:

Through the new judicial organization, the Algerian legislator introduced specialized commercial courts to replace the specialized hubs. They imposed upon them, as a prior mandatory procedure, judicial conciliation under penalty of inadmissibility of the lawsuit in form. This aims to avoid the abundance of disputes in the field of commerce, driven by the desire to accelerate the national economy.

Among the findings of this study is that the Algerian legislator did well in taking this step. However, the conciliation period, estimated at three months, is lengthy considering the nature of commercial disputes characterized by speed and creditworthiness.

Keywords: Specialized commercial court, conciliation, judge, judicial dispute.

Introduction:

Due to the importance of commerce in the lives of individuals and societies, states have paid great attention to it and considered it one of the most important criteria for their progress and development. They have organized it with special rules that suit its nature, both domestically and externally.

Since its independence, Algeria has sought to modernize and develop its legal system in all areas, issuing a set of laws over the years. Among the most recent of these laws concerned with the commercial field is Law 22-13¹, which came as an amendment to the Code of Civil and Administrative Procedure, wherein the legislator established specialized commercial jurisdiction. The specific subject-matter jurisdiction of these courts was determined by Article 536 bis, which was exhaustive².

In pursuit of the Algerian legislator's goal to develop the legislative system in line with current challenges, he introduced the procedure of judicial conciliation and made it a mandatory procedure that must be followed in commercial disputes before this court³.

Conciliation is one of the important alternative methods for dispute resolution and holds significant importance in the commercial field. Conciliation contributes to alleviating the burden on the judiciary and achieves speed in resolving pending cases between parties. In Algerian law, conciliation in commercial matters is regulated through legal articles

¹ -]: Law No. 22-13 dated Dhu al-Hijjah 13, 1443 corresponding to July 12, 2022, amending and supplementing Law No. 08-09 dated Safar 18, 1429 corresponding to February 25, 2008, containing the Code of Civil and Administrative Procedure.

² - Law No. 22-07 dated May 05, 2022, containing the judicial division, Official Gazette No. 32 dated May 14, 2022

³ - Wahiba Boutiche, "Mandatory Judicial Conciliation as an Alternative Dispute Resolution Mechanism in Cases Brought before the Specialized Commercial Court: How Effective?," Academic Journal of Legal Research, Volume 15, Issue 01, Year 2024, p. 447.

clearly stated in both the Civil and Commercial Codes, making it an effective procedure for resolving commercial disputes⁴.

This topic is of great importance both for the litigants and for the judiciary. For the litigants, it can spare them from engaging in a lawsuit and its high costs. For the judiciary, this procedure avoids an abundance of cases before the commercial courts.

This leads us to raise the following problem: Did the Algerian legislator succeed in introducing the conciliation procedure as a mandatory procedure before filing a lawsuit under Law 22-13, in order to reduce cases before the commercial judge on one hand, and to achieve a prior consensual agreement between litigants that could potentially preserve ongoing commerce between the parties on the other?

To answer this problem, we used the descriptive method to elucidate the opinions of jurists in this field, and the analytical method to analyze the legal provisions governing this subject.

This study has been divided into two main axes:

First: Legal concepts of conciliation and specialized commercial courts.

Second: Conciliation procedures before specialized commercial courts.

First: Legal Concepts of Conciliation and Specialized Commercial Courts.

To understand and study the subject of conciliation, it was necessary to clarify the concept of conciliation and the concept of specialized commercial courts separately.

1- Concept of Conciliation:

Defining conciliation requires examining its jurisprudential definition, then its legal definition.

A/ Jurisprudential Definition:

Many definitions of conciliation have emerged, and some of them can be summarized as follows:

Conciliation is considered a way to resolve disputes instead of litigation, sometimes the only means to establish peace among human groups. Its source is custom in Arab countries. Its benefit is not limited to the level of dealing between disputing parties, but its importance is general and extensive for the dissemination of justice and fairness. It has been defined as "Conciliation is the master of rulings, and conciliation erases wounds"⁵.

It is also defined as "a contract between disputants by which they settle an existing dispute between them or a potential dispute between them, by each relinquishing part of their claims"⁶.

Conciliation is defined in Islamic law according to the Maliki school, particularly by Judge Iyad, as "opposing the claim," and some jurists have adopted this.

It is also defined by the Hanbali school according to Qadri Pasha in his book "Murshid al-Hayran" as "to remove the dispute and end the conflict."

⁴ -]: Salem Abderrahmane, "Conciliation Procedures before the Specialized Commercial Court," Journal of Legal Research, Volume 08, Issue 02, June 2025, p. 356

⁵ - Daouia Kirouani, Ziad Mohamed Anis, "Specificities of Judicial Conciliation as an Alternative Path for Settling Civil Disputes in Algerian Law," International Journal of Legal and Political Research, Volume 06, Issue 01, May 2022, p. 573.

⁶ - Warda Charef Eddine, "The Conciliation Procedure in Disputes Brought before Specialized Commercial Courts According to Law 22-13," Journal of Judicial Jurisprudence, Volume 16, Issue 02, October 2024, p. 147.

While in Shafi'i jurisprudence, it is defined as "the master of rulings."

Conciliation is an agreement between disputants to put an end to an existing or potential dispute, whereby each party relinquishes some of their rights⁷.

B/ Legal Definition: The Algerian legislator defined conciliation in Article 459 of the Civil Code as: "Conciliation is a contract by which the parties terminate an existing dispute or prevent a potential dispute, by each mutually relinquishing their right."

From this text, we conclude that the legislator considered conciliation a contract whose purpose is to end an existing or potential future dispute, along with the presence of an important condition, namely the necessity for each party to partially relinquish their right. If one party does not relinquish anything of what they claim and the other relinquishes everything they claim, this would not be conciliation but rather a record of waiver of the claim⁸.

C/ Characteristics of Conciliation:

Conciliation is suitable for commercial cases that require speed in resolving disputes and preserving the reputation of traders. Its characteristics include:

- Conciliation is a mandatory procedure: The legislator made the conciliation procedure in cases brought before the specialized commercial court a mandatory and obligatory procedure under Article 536 bis 4 of the aforementioned Code of Civil and Administrative Procedure, considering this procedure to be a matter of public order.
- Conciliation is an alternative method of dispute resolution.
- Conciliation is a judicial procedure: The conciliation procedure is at the core of judicial work, considering that it is the judge who conducts and supervises it, thus gaining familiarity with the subject in all its aspects.
- Conciliation is a consensual contract.
- Conciliation is a flexible procedure: Conciliation procedures are simple and do not take a long time to resolve the dispute if successful. They are suited to commercial disputes that require speed, which saves money and preserves the reputation of capital owners compared to litigation procedures that last for many years.
- Conciliation is a procedure that ensures confidentiality: It takes place in a closed session, unlike ordinary lawsuits.
- The conciliation report is an enforceable instrument: The conciliation is recorded in a report after being signed by the litigants, the judge, and the court clerk, thus becoming an enforceable instrument according to the text of Article 600/8 and Article 993 of the same law, immediately upon its deposit with the court registry. Then the head of the court clerks grants the parties the enforceability formula of the report⁹.

D/ Conditions of Conciliation:

In addition to the general conditions that must be met in a contract, such as consent, subject matter, and cause, other specific conditions must be met for conciliation before specialized commercial courts, represented in the following:

- Existence of an existing or potential dispute: The need for conciliation arises from an existing disagreement causing a dispute between two parties, or at least a potential future

⁷ - Salem Abderrahmane, op. cit., p. 357.

⁸ - Wahiba Boutiche, op. cit., p. 448.

⁹ - Wahiba Boutiche, op. cit., p. 449.

dispute. If there is no existing dispute, there is no justification for conciliation. It is not required that a final judgment has not been issued in the dispute; conciliation is permissible even if a judgment has been issued in the dispute, whether this judgment is subject to appeal through ordinary or extraordinary means, or even after the judgment becomes final. In all these cases, conciliation is permissible, such as the convicted party waiving the right to appeal the judgment, whether for consideration or without consideration. It is also permissible for the parties to conciliate regarding the execution of the judgment, such as agreeing that the judgment creditor waives part of their right established by the judgment in favor of the judgment debtor in exchange for the judgment debtor voluntarily fulfilling the remainder without resorting to compulsory execution procedures. All this is before non-specialized commercial courts. However, before the specialized commercial court, conciliation is mandatory as a procedure before filing the lawsuit with the court.

-Intention to settle the dispute: This means that the desire and will of the parties must be directed towards settling the existing dispute through conciliation or preventing a potential dispute. If they do not have the desire for that, conciliation will not bear fruit. It is not necessary for the conciliation to cover all disputed matters; it can be valid for a part of them, leaving the court to adjudicate the remaining part.

-Mutual relinquishment of claims:

In conciliation, the litigants must mutually relinquish their claims. It is not required that this relinquishment be equal between the parties; it is considered conciliation regardless of the sacrifice made by one party relative to the other. If one party relinquishes everything they claim and the other does not relinquish anything, we are faced with an acknowledgment of the opponent's right, and that is not conciliation. This is a general rule¹⁰.

2- Specialized Commercial Courts:

Specialized commercial courts refer to first-instance courts that issue appealable primary judgments, adjudicating a specific category of disputes of a commercial nature¹¹.

The Algerian judicial organization tended towards establishing the idea of specialized justice on the ground, by organizing specialized hubs in some courts.

To achieve the goal of supporting industrial and commercial investment and attracting foreign capital, it was necessary to establish an independent judiciary to adjudicate commercial disputes. Thus, the Algerian legislator became convinced of the need to create an independent judicial body specialized in these disputes based on the principles of fair and effective trial, through equality, transparency, simplification of procedures, and speed in adjudication.

Specialized commercial courts were established within the jurisdiction of certain Judicial Councils, applying the provisions of Article 536 bis of Law 22-13 amending and supplementing Law 08-09 containing the Code of Civil and Administrative Procedure.

¹⁰ - Deghich Hamlaoui, op. cit., p. 403.

¹¹ - Said Elbah, Sara Azzouz, "Specialized Commercial Courts: A Step towards Specialized Justice," Researcher Journal for Academic Studies, Volume 11, Issue 02, June 2024, p. 493.

This was done under Article 06 of Law No. 22-07 dated May 5, 2022, on judicial division¹², where Executive Decree No. 23-53¹³ set the number of specialized commercial courts at 12 throughout the national territory. Except for the specialized commercial courts of Algiers, Oran, and Constantine, which are provided with special premises, each specialized commercial court sits in the court specified by a ministerial decision of the Minister of Justice within the council's jurisdiction.

We can define them as "one of the first-instance courts belonging to the ordinary judiciary, specialized in adjudicating certain disputes exclusively listed in Article 536 bis of the Code of Civil and Administrative Procedure. Judgments issued by these courts are appealable before the Judicial Councils"¹⁴.

Second: Conciliation Procedures before Specialized Commercial Courts.

The legislator assigned the conciliation procedure to the judge, who may be assisted by assistants with expertise in commercial affairs under Article 536 bis 4 of the aforementioned Law 22-13. The conditions and methods for selecting assistants for the specialized commercial court were determined by the aforementioned Executive Decree.

The judge's role in conciliation matters extends throughout the proceedings; however, it does not constitute implementation of the reconciliation. The conciliation attempt may not take place because it contradicts the parties' categorical refusal. This means the judge supervises the conciliation and attempts to find solutions to the dispute before him that satisfy the parties, who then proceed to implement it.

1- Request for Conciliation:

Referring to Article 536 bis 4, which states: "The registration of a lawsuit is preceded by a conciliation procedure, which is carried out upon the request of one of the litigants and submitted to the president of the specialized commercial court. Within five days, by an order on petition, the president appoints one of the judges to carry out the conciliation procedure within a period not exceeding three months. The requesting party notifies the other parties to the dispute of the date of the conciliation session."

2- Holding the Conciliation Session:

The judge assigned to carry out the conciliation procedure must do so within a period not exceeding three months, as a maximum limit. During this period, the judge undertakes conciliation between the parties to the dispute, attempting through conciliation sessions held in the judge's office, assisted by assistants, to find a solution to the dispute and convince the parties of the amicable solution, explaining to them the advantages of conciliation, considering that reconciliation resolves the dispute as quickly as possible and at the lowest cost, while also preserving the secrets and reputation of the traders.

3- Drafting the Conciliation Report:

There are two possible outcomes: either the conciliation succeeds or it fails.

¹² - Law No. 22-07 dated May 05, 2022, containing the judicial division, Official Gazette No. 32 dated May 14, 2022.

¹³ - Executive Decree No. 23-53 dated January 14, 2023, defining the territorial jurisdiction districts of the specialized commercial courts, Official Gazette No. 02 dated January 15, 2023.

¹⁴ - Saad Legleib, Noui Ahmed, "Reasons and Justifications for Establishing Specialized Commercial Courts in Algerian Legislation," Tabna Journal of Scientific and Academic Studies, Volume 06, Issue 02, Year 2023, p. 471.

A/ Case of Successful Conciliation Procedure:

The court clerk drafts the conciliation report, which includes the subject matter of the dispute and the solution agreed upon by the disputing parties. The judge, the parties, and the court clerk sign the report¹⁵.

The judge may only authenticate a conciliation that took place before him with the acknowledgment of the parties, meaning the court attests that the two litigants agreed before it to conciliation, thus granting it official status.

B/ Case of Failed Conciliation Procedure:

The court clerk drafts a report of non-conciliation, in which the judge states the subject matter of the dispute and mentions the reasons why an amicable solution could not be reached. Then the judge, the parties, and the court clerk sign the report.

The report of non-conciliation holds significant legal value, considering that the lawsuit cannot be registered without obtaining a report of non-conciliation, according to the text of Article 536 bis 4/3 of the Code of Civil and Administrative Procedure, amended and supplemented by Law 22-13, which states: "In case of failure of the conciliation attempt, the lawsuit is brought before the specialized commercial court by an initiating statement of claim according to the rules stipulated in this law, attached, under penalty of inadmissibility of the lawsuit in form, with the report of non-conciliation."

The conciliation report has a binding legal authority for the parties involved in the dispute or for third parties¹⁶.

Conclusion:

Finally, it can be said that the Algerian legislator did well in establishing specialized commercial courts instead of specialized hubs, moving towards specialization in the judiciary to elevate and develop the Algerian judicial organization.

Furthermore, the mandatory nature of the conciliation procedure before filing a lawsuit before these courts is an extremely important procedure because it prevents judicial disputes in this area, which hampers commerce that requires speed and creditworthiness. Among the findings reached in this study:

- The conciliation period set at three months is somewhat lengthy and does not align with the nature of commercial disputes characterized by speed and confidentiality. Consequently, if conciliation is not achieved within this three-month period, the parties will revert to ordinary judicial procedures, which will further extend the duration of the dispute. Therefore, it would have been appropriate for the legislator to reduce the conciliation period to one month, scheduling conciliation sessions weekly.

We have also come up with some important recommendations, mainly represented in the following:

- Activating the mechanism of electronic litigation, especially for companies located abroad, to facilitate conciliation procedures.
- Instilling awareness of the importance of conciliation among disputing parties to promote a culture of amicable solutions.
- Foundational and specialized training for judges to ensure a deep understanding of the specificities of commercial cases and the mechanisms of conciliation within them.

¹⁵ - Abderrahmane Salem, op. cit., p. 363.

¹⁶ - wahiba Boutiche, op. cit., p. 456.

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