

Judicial mediation as a mechanism for settling commercial disputes: efficacy versus constraints

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Abstract:

Mediation is regarded as an alternative dispute resolution mechanism, which the Algerian legislator has emphasised before adjudicating cases brought before the judiciary. It serves as the primary means of achieving a consensual solution between disputing parties in commercial relationships, due to its speed, confidentiality, and low cost. Mediation can have a positive effect, demonstrated by its success in maintaining the stability of commercial relationships, or a negative effect, arising from the inadequacy of this mechanism in resolving such disputes without compromising the parties' rights, thereby necessitating referral back to the judiciary for a decision.

Keywords: mediation, judicial mediation, settlement, commercial disputes.

1. Introduction

Commercial transactions have developed significantly in recent times, resulting in an increase in related disputes. The judiciary has struggled to keep pace with the specific nature of commercial activity and its need for swift dispute resolution, which is incompatible with the judiciary's inherent delays and procedural complexities. Although the judiciary offers legal guarantees, it has shown its limitations in addressing these disputes. Consequently, many legal systems have sought alternative methods better suited to these requirements, and mediation has emerged as one of the most important alternatives for resolving such disputes. In fact, it has almost become the primary means of resolving business disputes, alongside arbitration and conciliation.

Mediation involves the intervention of a neutral, experienced, and independent person known as the mediator, who uses their skills to bring the parties' viewpoints closer and help

them resolve their disputes amicably, outside the courts. It plays an essential role in creating a favourable environment for investment and supporting trade by fostering a culture of dialogue and negotiation within the framework of respect for public order. Mediation also upholds the principle of the supremacy of will, as it is based on the parties' agreement. Furthermore, it helps reduce costs and ensures a higher degree of confidentiality, which increases confidence in this mechanism and makes it particularly suitable for the business environment due to its speed and confidentiality.

Most legislatures have sought to enshrine and regulate mediation of all types – agreement, judicial, or arbitration – under specific texts due to its role in achieving justice and improving the investment climate. The Algerian legislature has also adopted alternative means of dispute resolution through several legal texts, the most recent being Law No. 22-13, which amends and supplements the Code of Civil and Administrative Procedure¹. This law makes mediation a mandatory procedure in commercial disputes, requiring the judge to offer it to the parties at the first session without needing their consent.

Thus, the Algerian legislature has established several rules to regulate judicial mediation procedures. However, despite its importance, this regulation raises several issues regarding the effectiveness of this procedure in achieving the stability of commercial relations. This necessitates examining its implications by asking to what extent judicial mediation contributes to the effective settlement of commercial disputes under Algerian legislation, and to what extent its conclusions can be enforced against the parties.

To answer the previous problem, we adopted a descriptive analytical approach to legal texts related to the subject, particularly those that contribute to the success of mediation in settling commercial disputes. To facilitate understanding, we divided the topic into two sections: in the first, we addressed the positive effect of commercial mediation, while in the second, we focused on the negative effect of mediation, represented by the failure to resolve this type of dispute.

2. The effectiveness of commercial mediation in achieving the amicable settlement of commercial disputes (the positive impact of commercial mediation)

Mediation in commercial disputes² aims to achieve an amicable settlement between the parties by providing quicker and more effective solutions than the judiciary, without favouring the interests of either party. However, this effectiveness can only be realised if the appropriate conditions for success and the satisfaction of the disputing parties are met; otherwise, the settlement has no legal authority.

¹ . Law No. 22-13, dated 12 July 2022, amending and supplementing Law No. 08-09, J.R. No. 48, issued on: 17 July 2022.

² . A commercial dispute in general is one subject to the jurisdiction of the commercial judiciary, either because it arises between merchants, relates to a commercial activity, or occurs between one or more merchants and a civil party. Saidi Abdelhamid, Hassi Jihad, "Commercial and Investment Mediation in Algerian Legislation," *Journal of Research in Law and Political Science*, Faculty of Law and Political Science, University of Tiaret, Volume 08, Issue 01, 2022, p. 701.

2.1. Legal conditions for the success of an amicable settlement

Once the mediator completes the mediation proceedings, they draw up a report containing the results of the mediation. However, this is only possible if several formal conditions and substantive conditions are met to ensure the effectiveness of this mechanism and that the parties accept its outcomes.

2.1.1. Formal controls on the effectiveness of commercial mediation

Respecting the formal conditions in the mediation agreement ensures the proper conduct of the proceedings and the validity of the results. Therefore, the Algerian legislator has provided specific legal texts to ensure that mediation is conducted within a legal framework free from formal defects that could invalidate its effects. We summarise these conditions as follows:

a) Compliance with the legal provisions governing mediation

Law No. 08-09¹ recognised mediation as an alternative to litigation in civil and commercial matters, aiming to achieve reconciliation between the parties before the judge decides the case. It is a compulsory step prior to adjudication, which the legislator has made obligatory for the judge of the commercial section, without allowing the parties the right to refuse. Article 534/1 of Law No. 22-13 stipulates: "The head of the commercial section must submit the dispute in advance to mediation." Several legal articles address this process, starting with the judge's offer, proceeding to the appointment of the mediator, and concluding with the drafting of the minutes of agreement. In this regard, Article 994 of the Code of Civil and Administrative Procedure states that the judge is responsible for offering the mediation procedure to the litigants, except in family cases, labour cases, and matters affecting public order. The judge appoints the mediator, who is responsible for attempting to reconcile the litigants and find a solution to the dispute.

We summarise the main provisions of the Code of Civil and Administrative Procedure as follows:

-Judicial mediation must be ordered in advance by the judge of the commercial division without input from the parties², and the mediator must begin work for the compulsory mediation procedure to be considered respected³.

¹ . Law No. 08-09, dated 25 February 2008, containing the Code of Civil and Administrative Procedure, J.R. No. 21, issued on: 23 April 2008.

² . Article 534/2 states that: '...mediation before the Commercial Division is not subject to the consent of the parties, contrary to the provisions of Article 994 of this Code'.

³ . Khadiji Ahmed, Mediation in the Commercial Section, International Journal of Legal and Political Research, University of El Oued, Volume 07, Issue 03, December 2023, p. 164. This is contrary to the provisions of Article 994/2 of civil and Administrative Procedures Law., where they are free to accept or not.

Note that compulsory recourse to mediation does not necessarily require all parties to appear before the mediator to fulfil the mandatory requirement; it is sufficient for one party to take the necessary steps to assign the mediation to an appointed person, including lawyers or commissioners of legal persons. Additionally, representatives and advisors may attend the mediation meetings, provided the confidentiality of the proceedings is respected¹. In this regard, the Algerian legislature allows the mediator to summon any party whose hearing is considered useful for settling the dispute, provided the litigants agree². Compulsory mediation also does not mean that a solution must be reached to resolve the dispute.

-In the case of disputes referred to in Article 536 bis of Law No. 08-09, as amended and supplemented, which are handled by specialised commercial courts, mediation cannot be ordered. This is because mediation is limited to the conciliation procedure, which is mandatory at the request of one of the parties³. However, there is no reason why the matter should not be submitted to mediation if conciliation fails. Therefore, the commercial disputes eligible for mediation are those concerning commercial contracts, relationships arising between merchants and related to their commercial activity, and commercial premises, including matters related to customers, trademarks, sale, mortgage, and lease.

-If the matter concerns issues affecting public order, it is not permissible to refer the case to mediation⁴. For example, if the dispute concerns the invalidity of a commercial company because its place of business violates public order or its memorandum of association does not comply with the required legal form, mediation is not appropriate, as the dispute involves legal issues related to public order over which the parties have no authority to negotiate⁵.

-The judicial mediator must be appointed by the commercial judge, which contradicts the fundamental principle of mediation, as the judge selects the mediator from among individuals recognised for their good character, conduct⁶, and integrity. Mediation may also be entrusted to an association under Article 997 of the Civil and Administrative Procedures Law; in this case, the association's president must appoint one of its members to perform this task and inform the judge of the appointment. Once appointed, the judge refers the matter to the mediator and suspends the proceedings until the mediator reaches a decision, while respecting the prescribed time limits. It should be noted that it is preferable for the mediator to be a specialist in the commercial field, given the specific nature of commercial business.

¹ . Omar Zahi, *Alternative Dispute Resolution (ADR)*, Supreme Court Journal, special issue for the two academic days, 15 and 16 June on ADR, Part II, 2008, p. 593.

² . Article 1001 of Law No. 08-09.

³ . Article 536 bis 4 of Law No. 22-13.

⁴ . Article 991/1 of Law No. 08-09.

⁵ . Khadiji Ahmed, *op. cit.* 163.

⁶ . This is stipulated in Article 998, which lists a set of conditions that must be met by the mediator who is a natural person, in addition to what is addressed in Executive Decree No. 09-100, which specifies how to appoint a judicial mediator.

While the judge's supervision of the mediation process provides a legal guarantee of the mediator's independence and impartiality and gives the parties some confidence in the mediator's proposed decisions, it also restricts their freedom to choose the mediator according to the terms of their contract. This results in the exclusion of private law rules based on the principle of the authority of the will from application in this context, even though a contract cannot be constructed on equal terms without their application.

However, the Algerian legislator could have made this process more flexible by allowing the parties to the dispute some freedom, at least by referring them to the list of mediators to choose a mediator. If they cannot reach an agreement, the judge would then intervene to appoint one¹. Jurisprudence holds that there is no prohibition on using more than one mediator if the dispute is highly complex or involves multiple parties².

It must be emphasised that the judge competent to hear the case has not lost legal jurisdiction over the dispute due to mediation; rather, this jurisdiction is temporarily suspended until the legal period for mediation is exhausted. It should be noted that this suspension is not absolute, as the mediation agreement does not prevent the judge from examining the subject matter of the dispute. The judge remains authorised to ascertain the validity of the mediation agreement by ensuring it meets the general conditions for the validity of contracts and the legitimacy of the locality, and that the subject matter of the dispute is one in which mediation is permissible and not related to public order or public morals, before referring the dispute for settlement through mediation³.

-Respect the legal deadlines for deciding on the mediation order. Article 996 stipulates that the duration of the mediation period is set at a maximum initial period of three months, which may be extended once for the same period at the mediator's request, when necessary, after obtaining the consent of the litigants. This period is calculated from the date the mediator receives the order for appointment. The Algerian legislator has granted the judge discretionary authority to determine the period, taking into account the nature of commercial transactions, which are particularly characterised by speed. In this regard, the legislator authorises the judge to terminate the mediation automatically before the expiry of the time limits if the judge assesses that its proper functioning is impossible⁴.

¹ . Bougata Fatima Zahra, Mediation in the settlement of banking disputes, intervention at the National Forum on Mechanisms for the Settlement of Disputes of an Economic Character in Algeria: Between texts and reality, Faculty of Law and Political Science, Mohamed Seddik Ben Yahi University, Jijel, 08 and 09 November 2016, p. 190. 190.

² . Soualem Soufiane, The Legal Status of the Judicial Mediator in Algerian Legislation, Journal of the Thinker, Faculty of Law and Political Science, Mohamed Kheder University, Biskra, volume 09, Issue 1, 15 January 2014, p. 486.

³ . Abdullah Mohammed Abdullah Rajeh, The legal system of the mediation agreement in dispute settlement, Journal of Educational Sciences and Humanitarian Studies, Taiz University, Yemen, Issue 46, May 2025, p. 340, available on the website: <http://hesj.org/ojs/index.php/hesj/index>, accessed on: 13-11-2025, Accessed at: 22:15.

⁴ . Article 1002/2 Civil and Administrative Procedures Law states that: 'The judge may automatically terminate the mediation, when he realises that it is impossible for the mediation to proceed.'

-The mediator must not have a personal interest in the dispute or any kinship with either party, as this is incompatible with the independence and impartiality required of a judicial mediator¹.

Therefore, by respecting the aforementioned conditions, we ensure the legitimacy of the mediation and avoid nullity due to violation of legal procedures. Limiting the mediator's powers preserves the rights of the parties in the event of excess and enables the judiciary to monitor the process when granting the executive formula is requested.

b) Documenting the mediation agreement in writing

The drafting of the mediation agreement is a prerequisite, as the mediator prepares a record of the agreement specifying the agreed terms clearly and precisely. This record is signed by the mediator and the litigants, and deposited with the secretariat of the relevant judicial authority. Thus, this record embodies both conventional and facilitative justice, as it formalises the agreement of the conflicting parties regarding the amicable resolution of the dispute, and also enshrines facilitative justice, provided that the judge before whom the dispute is brought certifies the mediation record².

The Algerian legislator did not prescribe a specific form for the mediation report, but certain formal elements can be identified, such as stating the judicial council to which the court belongs, the name of the court, the order appointing the mediator, the department before which the dispute is submitted, the names, surnames, and addresses of the parties, and the content of the agreement terms³. The writing must be clear and accurate, and signed by the disputing parties, so that it can subsequently be approved by the commercial judge by an order that cannot be appealed⁴.

If one of the disputing parties is a legal person, its legal representative is responsible for signing the minutes. If the legal person is a commercial company or a public institution of an economic, industrial, or commercial nature, the subject matter of the agreement that can be signed by the legal representative must relate to legal acts that he can conclude without reference to the other partners or to the trusteeship that owns the capital in the case of public institutions of an economic, industrial, or commercial nature, otherwise the minutes of agreement will be considered invalid⁵.

Thus, writing is a prerequisite for the agreement and is considered an exception to the principle of consent in the general rules on which mediation is based. This allows the

¹ . Article 11 of Executive Decree No. 09-100, dated 10 March 2009, defining the modalities for the appointment of the judicial mediator, J.R. No. 16, issued on 15 March 2009.

² . Cherifa Ould Cheikh, Alternative dispute resolution methods, reconciliation and mediation records as executive documents according to the Civil and Administrative Procedures Law, Critical Journal of Law and Political Science, issued by the Faculty of Law of Mouloud Mammeri University, Tizi Ouzou, Issue 02, 2012, p. 128.

³ . Ibid, p. 129.

⁴ . Article 1004 of Law No. 08-09.

⁵ . Khadiji Ahmed, op. cit. 174.

parties, before signing the minutes, to familiarise themselves with its content and the paragraphs it contains that may affect the parties' positions, in addition to facilitating the implementation process¹.

The form of the mediation agreement, as a voluntary legal act, is regarded as a means of proof, as it cannot be established by any means other than acknowledgement. If the case returns to the judge and one party claims that the parties agreed to resolve the dispute during mediation but did not record it in writing, and the other party agrees, the judge will confirm what the parties have agreed. However, the written form of the mediation agreement, as a procedural act, is essential; if the agreement is not in writing, it is considered procedurally non-existent. Therefore, one party cannot be granted executive authority for an unwritten mediation agreement, even if the other party acknowledges it.

Based on the above, the writing serves to protect the parties if one of them retracts or denies what has been agreed, and enables the agreement to be transformed into an executive document that enjoys authenticity. Thus, the writing is not only a means of proof but also an essential condition for producing the legal effects of mediation.

2.1.2. Objective conditions for the effectiveness of commercial mediation

The objective conditions relate to the will of the parties, as well as the content and effectiveness of the agreement, which are listed as follows:

a) Issuance of the agreement with the consent of the parties

Consent to the mediation agreement is an essential condition that distinguishes it from the judiciary and arbitration, as it is based on the principle of the parties' free will; no solution can be imposed without their consent. The settlement agreement is affirmed by the mediator and accepted by the parties, who declare their agreement to the content of the settlement minutes. This acceptance is explicit and unambiguous, making the minutes the result of the contract concluded between the mediator and the parties to the dispute.

In addition, the will must be free from defects; otherwise, the agreement is subject to challenge under the general rules. For example, if one of the parties who signed the minutes makes a fundamental mistake, the agreement is not enforceable against that party, and they have the right to demand its annulment. The same applies in cases of coercion or fraud².

However, the question is whether the parties can authorise others to conclude the settlement agreement?

¹ . Shorouk Abbas Fadel, Saif Rashid Latif, The legal system of mediation, a means of resolving civil and commercial disputes, Arab Centre for Scientific Studies and Research, Egypt, 2021, pp. 414-415.

² . See Articles 81 et seq. of Ordinance No. 75-85, dated 26 September 1975, containing the Algerian Civil Code, J.R. No. 78, issued on: 30 September 1975, amended and supplemented.

The parties to the dispute may authorise others to conclude the settlement agreement by a special power of attorney that expressly permits concluding the settlement agreement on behalf of the client, ensuring that the representative's presence is valid, legal, and effective in the process. The parties' acceptance of the settlement decision constitutes the success of the mediation process¹. In this context, some courts have rejected claims by a party that they did not sign the settlement agreement, but rather their lawyer did so. The presence of the lawyer in the mediation process presumes that they are authorised to sign on behalf of their client², a presumption that can only be rebutted by strong evidence that the lawyer lacks such authority. To avoid this issue, the Algerian legislator has required the appearance of the litigants and the mediator before the court once the case is rescheduled. The parties' consent to the settlement guarantees their commitment to the agreement, as it is the product of their free will and constitutes a legal argument against the parties to the agreement.

b) Parties' Final Recognition of the Settlement Decision

The effectiveness of the mediation agreement depends on the parties' consent, which requires their signatures. A signature cannot be obtained without their presence during the reading of the agreement reached by the parties and the mediator. Acknowledgement is therefore achieved by signing the minutes of the agreement, as confirmed by Article 1003/2 of the Civil and Administrative Procedures Law., making it binding according to the rules of contracts.

It should be noted that the agreement may affect matters not originally included in the lawsuit and may also cover only part of the dispute³, with the remaining issues referred to the judge for adjudication. In this context, the Algerian legislator does not require the mediation procedure to address the entire dispute, but allows the judge, when the dispute is divisible, to order mediation for part of it and then follow the normal litigation procedures for the remaining issues.

2.2. Effects of ending commercial mediation with an amicable settlement

If commercial mediation concludes with an amicable settlement of the dispute, this demonstrates its effectiveness. Beyond this outcome, the agreement has effects that directly impact the legal positions of the parties and the stability of commercial transactions; these effects may be legal or practical.

2.2.1. The legal effects of ending mediation with an amicable agreement

¹ . Kadi Ali Mahmoud Al-Rashdan, Mediation to resolve civil disputes, general provisions - legal organisation - legislative framework, Manshurat Al-Halabi Jurists, Lebanon, 2019, p. 104.

² . Mohamed Salem Abul Faraj, Enforcement mechanisms of settlement agreements resulting from mediation as a way to resolve commercial disputes, a comparative study, Law Journal for Legal and Economic Research, Faculty of Law, Alexandria University, Issue 2, 2014, p. 301.

³ . Article 995/1 states that: 'Mediation extends to all or part of the dispute.'

Due to the speed, flexibility, and effectiveness of judicial mediation in resolving commercial disputes, it produces legal effects as powerful as judicial judgments, enshrining the principle of the authority of the will and respecting the parties' intentions.

a) Final resolution of the dispute

The most important effect of the mediation agreement is the termination of its procedures in accordance with what the parties have agreed and consented to. Thus, the dispute is considered legally resolved, which results in the end of the mediator's role and creates a new obligation on the parties not to renew the dispute¹. If one party decides to reopen the dispute, the other party has the right to invoke the existence of the settlement agreement, and the first party can only seek annulment of the agreement by filing a suit for annulment. Some believe that the defence of the mediation agreement is not related to public order, so the party for whose benefit it is imposed must raise it before addressing the substance of the case; otherwise, the right to do so is forfeited. Another view holds that it is a formal defence related to public order, which the court may consider on its own initiative, even if not raised by either party². This applies to commercial disputes in Algeria, as referral to mediation in commercial matters under Algerian law is mandatory, except for cases brought before commercial courts that require reconciliation.

b) Giving executive force to the mediation minutes

Once the minutes of agreement are ratified, implementation takes place in the field. Therefore, the minutes must include all the main points agreed upon, with all details clearly and accurately specified, as any ambiguity will inevitably cause problems in implementation and undermine the mediation. Since the parties have chosen to settle the commercial dispute amicably, the agreement becomes binding and enforceable from the moment the parties express their acceptance. However, it is not considered an executive document until approved by the judge³. Article 600 of the Code of Civil and Administrative Procedure recognises this by listing executive documents, including minutes of reconciliation or agreement signed by the judges and deposited in the secretariat, which also includes the mediation report. If the mediation result does not satisfy either party, it does not bind them.

The judge concerned must ensure that no judicial or arbitral judgment has been issued on the subject matter of the dispute, that the parties are competent to enter into the settlement agreement, that the matters in dispute are not contrary to public order, and that

¹ . Khairi Abdel Fattah Al-Sayed Al-Batanouni, *Mediation as an alternative means of resolving civil and commercial disputes*, second edition, Dar Al-Nahda Al-Arabiya, Cairo, 2012, p. 201.

² . Abdullah Mohammed Abdullah Rajeh, *op. cit.* 338.

³ . As it is considered an executive document, Article 1004 stipulates that 'The judge shall ratify the record of the agreement by an order that is not subject to any appeal, and the record of the agreement shall be considered an executive document.'

the agreement itself is not contrary to public order¹. Once he approves the minutes, he confirms the availability of all these conditions. After approval, the litigants have the right to obtain a copy of the minutes signed in executive form, which is delivered only to the beneficiary personally or to his agent by a special power of attorney², called the executive copy. Thus, the minutes of the agreement approved by judicial order constitute an executive document that permanently resolves the dispute and facilitates its implementation, and the procedures for implementing other bonds included in the Code of Civil and Administrative Procedure apply to it.

The judge's authority here is limited to recording and ratifying the amicable agreement reached by the mediator and the parties. He cannot refuse to record the agreement reached by the litigants as long as it fulfils its elements and conditions of validity, nor can he compel them to accept a solution to which they have not agreed, as his role is to record the agreement, not to create it.

It follows from the above that the parties are obliged to implement the recommendation voluntarily, and therefore it may not be challenged by the ordinary or extraordinary methods of appeal provided under the Code of Civil and Administrative Procedure, but only by filing a suit for nullity. The settlement agreement is binding only on its parties and may not be enforced unless an order is issued by the judicial authority granting the right to append the agreement with the executive formula.

In this case, however, the Algerian legislator does not grant executive status to the minutes themselves, but rather to the preliminary judgment by which the judge ratifies the minutes, as Article 1004 states that the order of ratification is not subject to appeal and thus the minutes of agreement become an executive document.

The question must be raised: if the settlement bearing the executory formula contains ambiguous, who is responsible for resolving that ambiguity? In such cases, it is most likely the mediator who undertakes the task of interpreting what is stated in the minutes. Regarding the existence of material or computational errors, the court – after a request is submitted by the concerned party – issues a correction decision, as stipulated in Articles 286 and 287 of the Civil and Administrative Procedures Law, without reconsidering the matter.

2.2.2. Practical implications of amicable settlement through commercial mediation

The effects of amicable settlement through mediation are not limited to legal aspects but also extend to several practical effects, summarised below:

a) Maintaining Business Relationships

¹ . Khairi Abdel Fattah Al-Sayed Al-Batanouni, op. cit. 214.

² . Article 602/1 stipulates that 'Every beneficiary of an executive deed shall have the right to obtain a copy signed in the executive form ..., which shall be delivered only to the beneficiary personally or to his agent by special power of attorney.'

One of the most important effects achieved by an amicable agreement is the maintenance of stable commercial relations between dealers, avoiding the adversarial nature of litigation that characterises the judicial process. It not only resolves the dispute but also helps rebuild trust between the parties and enables them to continue commercial cooperation without affecting their market positions. Mediation adds economic value by protecting and sustaining the network of commercial relations, thereby enhancing transaction stability and encouraging investment in general. The resolution of the dispute arises from the will of the parties, resulting in the absence of arbitrariness in implementing the mediation outcomes. In contrast, a judicial judgement may be disregarded by the losing party, which can negatively affect relations between the litigants¹.

b) Enhancing confidence in the business environment and attracting investments

As a flexible, dialogue-based mechanism, mediation enables parties to resolve disputes quickly and effectively, demonstrating their ability to manage differences in a civilised manner. This enhances confidence and encourages participants to engage in business without fear of disputes escalating. The confidential nature of mediation provides commercial enterprises with the assurance of continued operations, attracting partners and business associates while reducing legal risks that might deter some investors from entering new projects or concluding larger deals. Thus, the amicable agreements resulting from mediation not only resolve disputes but also help strengthen market confidence and promote economic stability.

Therefore, the most important guarantees for protecting investor interests are the extent to which they can resort to alternative methods for resolving any disputes that may arise between themselves and other investors. This effect is further confirmed by the Arab Investment Guarantee Corporation agreement, which emphasises mediation and conciliation before resorting to the judiciary or arbitration, making it one of the main requirements for business and investment markets due to the characteristics and advantages it offers in line with the nature and development of commercial activity.

c) Reducing the burden on the judiciary

Recourse to mediation reduces the number of cases requiring judicial judgments. However, this does not mean the judge abandons the case – especially in judicial mediation – as the judge may take any measure deemed necessary at any time, as stipulated in Article 995 of the Code of Civil and Administrative Procedure.

¹ . Siddiqi Abdelkader, Means of amicable settlement of commercial disputes according to Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure, Academic Journal of Legal and Political Research, Ammar Thaliji University, Laghouat, Vol. 06, No. 02, 2022.

3. The shortcomings of commercial mediation in achieving amicable settlement of commercial disputes (the negative impact of commercial mediation)

If the mediator makes efforts without bringing the parties' views closer, the mediation will have failed, as its success depends on the parties' willingness, which is not always achieved and may be affected by factors beyond their control. The failure of the process does not necessarily affect the parties' rights, but releases them from obligations arising during the mediation. This section will address cases where mediation ends without settlement and then discuss the implications.

3.1. When mediation ends without settlement

Mediation may end without settlement for several reasons, including the following:

3.1.1. Substantive reasons for the termination of mediation

a) Expiration of the mediation deadline

Mediation is limited to a specific period stipulated by the Algerian legislature under Article 996 of the Code of Civil and Administrative Procedure. The mediation process ends without settlement if the three-month period expires, although it may be extended once at the mediator's request, with the parties' consent, if necessary. However, we believe that while this period is reasonable for civil disputes, it is relatively long for commercial disputes, which require speedy resolution, thus leaving the parties with no choice but to refer to the judiciary.

b) Unable to follow the mediation process

As the continuation of the mediation proceedings depends on the parties' willingness to resolve the dispute and their level of cooperation with each other and with the mediator, ensuring seriousness in the settlement, if the mediator determines that it is futile to proceed – whether due to the impossibility of obtaining sufficient documents, the truth not emerging, the inability to secure the parties' consent, the difficulty of reaching an amicable settlement, or if one party waives the claim¹ – then there is no point in continuing the mediation proceedings.

The Algerian legislature has authorised the judge to decide to terminate mediation proceedings if he finds that continuing them will not lead to the desired solution, as stipulated in Article 1002/2 of Law No. 08-09, which states: 'The judge may terminate the mediation automatically when he finds it impossible for it to proceed', or 'The judge may terminate the mediation automatically when it appears to him that it is impossible for it to proceed properly', or at the request of the mediator or the litigants, according to the same text in its first paragraph².

¹ . Shorouk Abbas Fadel, Saif Rashid Latif, op. cit. 359-360.

² . Article 1002/1 states that: 'The judge may at any time terminate the mediation at the request of the mediator or the litigants.'

On the one hand, the Algerian legislator does not require the judge's decision to terminate the judgment to be reasoned; on the other hand, the decision to terminate remains at the mediator's discretion, even without justification.

3.1.2. Termination of mediation by the will of the parties

Commercial mediation may be terminated by the parties at any stage, either by mutual agreement or by the unilateral decision of one party.

a) Agreement to discontinue the proceedings

This is done by submitting a request to the mediator expressing the parties' intention to discontinue the mediation proceedings¹, through a written declaration signed by both parties and addressed to the mediator. The date of termination is determined by the date the declaration of termination is issued. It is noteworthy that the Algerian legislator did not elaborate on this process, as Article 1003 states that the mediator informs the judge in writing of the litigants' failure to reach a settlement, but does not specify the stages of termination in this case.

b) Termination of mediation at the will of one of the parties

Either party may withdraw from the mediation process, provided this does not cause harm to the other party. Article 12(d) of the UNCITRAL Model Law on Commercial Mediation and Article 9(c) of the UNCITRAL Mediation Rules 2021 stipulate that the date of termination is the date on which the wish to withdraw is expressed.

Withdrawal takes several forms. It may occur through rejection of the mediator's decision or recommendation, the other party's intransigence in its requests and rigidity in its opinions, or the mediator's bias, for example. Withdrawal is effected by informing the mediator and the other party through a written declaration. The withdrawal must be final and unconditional, or issued with reservation². The mediator may also request to terminate the mediation at their own discretion. Any party has the right to later claim the cancellation of the agreement that has been declared enforceable if it can prove that it made a mistake, whether related to the other party or the subject matter of the dispute, or if the agreement was based on coercion or fraud³.

¹ . Article 12(c) of the UNCITRAL Model Law on International Commercial Mediation of 2018 and Article 9(b) of the UNCITRAL Mediation Rules of 2021. See UNCITRAL Model Law on International Commercial Mediation arising from Mediation 2018, amending the UNCITRAL Model Law on International Commercial Conciliation 2002, United Nations Commission on International Trade Law, United Nations, Vienna, May 2022; and UNCITRAL Mediation Rules 2021, United Nations Commission on International Trade Law, United Nations, Vienna, June 2022. Available at: uncitral.un.org accessed on: 29-12-2025, access time: 22.30.

² . Shorouk Abbas Fadel, Saif Rashid Latif, op. cit. 365-366.

³ . Muhammad Salem Abu al-Faraj, previous reference, p. 345.

What is not included in the law is the case where the parties to the dispute fail to reach an amicable solution due to neglecting to follow up on the mediation procedures, whether by not attending the sessions or by a lack of seriousness¹.

3.2. Consequences of the end of commercial mediation without settlement

If mediation fails, the parties are released from any obligations agreed during the negotiation and mediation process, and all related actions are discontinued. To elaborate, we will address first the procedural implications and then the legal implications of an unsuccessful conclusion to mediation.

3.2.1. Procedural implications of ending the mediation without settlement

a) Reporting the termination of the mediation

Article 1003 of the Civil and Administrative Procedures Law stipulates: ‘When the mediator terminates his mission, he shall inform the judge in writing of the agreement or lack thereof reached by the litigants.’ Thus, the mediator is required to submit a written report to the judge stating the reasons for termination. He must also prepare a report on the mediation procedures, indicating the number of sessions held and the extent to which the parties or their representatives attended². If the mediator does not succeed in resolving the dispute, he writes a report on the failure of the mediation and deposits it with the secretariat of the court that appointed him. The case is then returned to the docket, as stipulated in the third paragraph of the above-mentioned article.

b) Referring the dispute to the judiciary

If mediation does not achieve the desired goals, the dispute is referred to the judiciary for the judge to decide on the matter. The judgement issued is binding on the parties, and they have no option but to appeal if they wish³, thus returning the case before the judge on the previously set date.

Since the legislator is obliged to refer the case to the mediator before it is decided by the judge, the case is suspended pending the outcome of the mediation. If the mediation fails or is suspended, the dispute is returned to the judiciary on the date recorded in the court

¹ .Unlike the Jordanian legislature, which has established sanctions against litigants who neglect to follow up on mediation, and thus the failure of mediation and the result of wasting time and effort. Barbara Abdel Rahman, *Commentary on the Code of Civil and Administrative Procedure*, Baghdadi Publications, Algeria, 2009, pp. 530-531.

² . Ahmed Abdulkarim Salama, *The General Theory of Amicable Dispute Resolution Systems (Negotiation, Mediation, Conciliation, Reconciliation) as an Alternative to the Judicial Arena*, Arab Renaissance House, Cairo, 2013, p. 23 et seq.

³ . See also Article 131-11 of the aforementioned French Code of Civil Procedure.

registry, with the court clerk summoning the litigants to appear before the judge and resume the litigation proceedings from the point at which they were interrupted¹.

In this case, the Algerian legislature is criticised for not addressing the reasons for the termination of mediation without settlement. It should have required that the reasons for failure be discussed by the mediator and the parties when the case is returned to the docket, so that the judge can issue a judgement favourable to both parties. Similarly, if the judge terminates the mediation process, the reasons for doing so, which may include the slow progress of mediation, especially if its term is extended, must be examined. If the judge finds justification for terminating the proceedings, he will issue a decision to that effect; otherwise, the proceedings will be resumed.

3.2.2. Legal implications of mediation ending without settlement

The failure of mediation does not affect the position of the parties to the dispute or their legal rights, which remain unchanged even if disputed. However, this does not prevent certain legal consequences arising if no agreement is reached, which are as follows:

a) Termination of the mediator's duties

The mediator's duties end as soon as the mediator prepares a record of the failure of the mediation, detailing the facts presented, documents submitted, requests, defences, expert reports, and the outcome of the mediation process, with a signature. This record is important in proving the exhaustion of mediation as an amicable means of resolving the parties' disputes², until the case is returned to the docket and litigation proceeds at the court level. In this situation, the mediator may make an oral or written recommendation regarding the appropriate settlement of the dispute, but the parties are not obliged to accept it, as it remains non-binding.

The parties remain obligated to pay the mediator's fees and are not exempt from this obligation on the grounds that the mediation was unsuccessful, as they are required to do so under the agreement with the appointed mediator, who is, after all, required to exercise diligence rather than to achieve a specific result³. The judge determines the amount to be paid by the litigants⁴, and the parties generally share the mediator's fees equally, unless they agree otherwise or the judge decides differently, taking into account the social status of the

¹ . Judge Ali Mahmoud Al-Rashdan, previous reference, p. 307.

² . Maher Al-Saeed Mohammed Jabr, Mediation as a means of resolving commercial disputes, a comparative study, Journal of Jurisprudential and Legal Research, Issue 39, October 2022, p. 488

³ . Ibid, p. 487.

⁴ . Article 12/1 of Executive Decree No. 09-100: 'The judicial mediator shall receive a fee, the amount of which shall be determined by the judge who appoints him,' noting that if the mediator breaches his obligations during the performance of his duties or receives payments during his work, he shall be removed from the list of mediators, as stipulated in Articles 13 and 14 of the aforementioned Executive Decree.

parties¹. Given that the parties are merchants, it is common for the fees to be split 50/50. It should be noted that the legislator did not address the situation in which the parties fail to pay the mediator's fees, nor whether the mediator may suspend or terminate the mediation in such a case.

b) No legal effect of documents submitted during mediation

Allowing the use of information and documents consulted during mediation proceedings when resorting to other alternative methods leads to reluctance to use mediation. Therefore, Article 11 of the UNCITRAL Model Law on International Commercial Mediation of 2018—confirmed by Article 7 of the UNCITRAL Mediation Rules of 2021—stipulates the prohibition of using any information or evidence provided during the mediation process in any subsequent proceedings, whether arbitral, judicial, or similar. Any information or evidence provided in the mediation process is prohibited from being used in any subsequent proceeding, whether arbitral, judicial, or similar². This prohibition covers all information or evidence, whether written, oral, or in the form of an electronic message, including anything prepared for the purposes of the mediation proceedings, statements of the parties, witnesses, expert opinions, and statements³. However, this does not preclude cases where it is necessary to provide documents or disclose their contents, such as with the express consent of the parties to the dispute or where a legal provision authorises it.

In conclusion, the positive effect of mediation ending in failure is that this outcome can be considered a success, as it allows the parties to understand the issues in dispute and overcome unrealistic expectations.

4. Conclusion

This study demonstrates that mediation plays a prominent role in resolving commercial disputes, owing to its speed, procedural flexibility, and confidentiality in hearings compared to the judiciary, which aligns with the nature of commercial transactions.

We reached several conclusions by studying the effects of mediation, both in terms of effectiveness and constraints to settle the dispute. It emerged that the offer of mediation is compulsory for the litigants, as ordered by the judge at the first hearing; it is not freely chosen by the parties, but a lawsuit must be filed as a prior procedure to benefit from the amicable settlement. We observed that mediation is conducted under the supervision of the judge, who appoints a mediator he considers specialised. This referral does not grant the mediator any authority, as the process remains under the judge's supervision. The judge

¹ . Article 12/3 of Executive Decree No. 09-100.

² . The same is true for some other legislations, such as the Moroccan legislature, which prohibits the mediator from providing any information obtained during the mediation process and prevents him from using it in any future lawsuit before the courts.

³ . Ahmed Abdul Karim Salama, op. cit. 233 et seq.

may terminate the mediation if he considers it futile or at the request of one of the parties, which then obliges the judiciary to decide on the matter. It also became clear that if mediation fails to settle the dispute, all evidence and documents submitted during the mediation have no legal value and cannot be used against their owner in subsequent judicial or arbitration proceedings.

Perhaps the most important result is that the agreement resulting from the mediation process becomes an enforceable document once it is approved by the judge who ordered the mediation and appended to the executive form. Additionally, the Algerian legislature has limited the mediation procedure to cases brought before the commercial division only, and not to those brought before specialised commercial courts that require reconciliation.

Based on the previous findings, we propose the following:

-The judge of the commercial section should exercise care when appointing mediators, selecting individuals who are competent and experienced in commercial disputes, and considering the adoption of specialised training programmes.

-The duration of mediation should be reconsidered, either by shortening it or by not permitting extensions, to suit the nature of commercial transactions and ensure a balance between timely dispute resolution and effective settlement.

-Provision should be made for the possibility of agreement mediation, arbitration mediation, or arbitration followed by judicial review, in line with most comparative legislation, in addition to judicial mediation. This would allow the parties to choose the most suitable method. We believe judicial mediation will not be effective if the parties are not committed to an amicable solution; therefore, agreement mediation or commercial arbitration followed by judicial oversight of its judgments should be considered.

Bibliography List :

Legal Texts:

- Ordinance No. 75-85, dated 26 September 1975, containing the Algerian Civil Code, J.R. No. 78, issued on: 30 September 1975, amended and supplemented.
- Law No. 08-09, dated 25 February 2008, containing the Code of Civil and Administrative Procedure, J.R. No. 21, issued on: 23 April 2008.
- Law No. 22-13, dated 12 July 2022, amending and supplementing Law No. 08-09, J.R. No. 48, issued on: 17 July 2022.
- Executive Decree No. 09-100, dated 10 March 2009, defining the modalities for the appointment of the judicial mediator, J.R. No. 16, issued on 15 March 2009.

Books :

- Ahmed Abdulkarim Salama, *The General Theory of Amicable Dispute Resolution Systems (Negotiation, Mediation, Conciliation, Reconciliation) as an Alternative to the Judicial Arena*, Arab Renaissance House, Cairo, 2013.
- Barbara Abdel Rahman, *Commentary on the Code of Civil and Administrative Procedure*, Baghdadi Publications, Algeria, 2009.
- Kadi Ali Mahmoud Al-Rashdan, *Mediation to resolve civil disputes, general provisions - legal organisation - legislative framework*, Manshurat Al-Halabi Jurists, Lebanon, 2019.
- Khairi Abdel Fattah Al-Sayed Al-Batanouni, *Mediation as an alternative means of resolving civil and commercial disputes*, second edition, Dar Al-Nahda Al-Arabiya, Cairo, 2012.
- Mohamed Salem Abul Faraj, *Enforcement mechanisms of settlement agreements resulting from mediation as a way to resolve commercial disputes, a comparative study*, Law Journal for Legal and Economic Research, Faculty of Law, Alexandria University, Issue 2, 2014.
- Shorouk Abbas Fadel, Saif Rashid Latif, *The legal system of mediation, a means of resolving civil and commercial disputes*, Arab Centre for Scientific Studies and Research, Egypt, 2021.

Journal article :

- Abdullah Mohammed Abdullah Rajeh, *The legal system of the mediation agreement in dispute settlement*, Journal of Educational Sciences and Humanitarian Studies, Taiz University, Yemen, Issue 46, May 2025, available on the website: <http://hesj.org/ojs/index.php/hesj/index>, accessed on: 13-11-2025, Accessed at: 22:15.
- Cherifa Ould Cheikh, *Alternative dispute resolution methods, reconciliation and mediation records as executive documents according to the Civil and Administrative Procedures Law*, Critical Journal of Law and Political Science, issued by the Faculty of Law of Mouloud Mammeri University, Tizi Ouzou, Issue 02, 2012.
- Khadiji Ahmed, *Mediation in the Commercial Section*, International Journal of Legal and Political Research, University of El Oued, Volume 07, Issue 03, December 2023.
- Maher Al-Saeed Mohammed Jabr, *Mediation as a means of resolving commercial disputes, a comparative study*, Journal of Jurisprudential and Legal Research, Issue 39, October 2022.
- Saidi Abdelhamid, Hassi Jihad, *Commercial and Investment Mediation in Algerian Legislation*, Journal of Research in Law and Political Science, Faculty of Law and Political Science, University of Tiaret, Volume 08, Issue 01, 2022.
- Siddiqi Abdelkader, *Means of amicable settlement of commercial disputes according to Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure*, Academic Journal of Legal and Political Research, Ammar Thaliji University, Laghouat, Volume 06, Issue 02, 2022.

- Soualem Soufiane, The Legal Status of the Judicial Mediator in Algerian Legislation, Journal of the Thinker, Faculty of Law and Political Science, Mohamed Kheder University, Biskra, Volume 09, Issue 1, 15 January 2014.

Seminar article:

- Bougata Fatima Zahra, Mediation in the settlement of banking disputes, intervention at the National Forum on Mechanisms for the Settlement of Disputes of an Economic Character in Algeria: Between texts and reality, Faculty of Law and Political Science, Mohamed Seddik Ben Yahia University, Jijel, 08 and 09 November 2016.
- Omar Zahi, Alternative Dispute Resolution (ADR), Supreme Court Journal, special issue for the two academic days, 15 and 16 June on ADR, Part II, 2008.

Internet websites:

- the UNCITRAL Model Law on International Commercial Mediation of 2018 and Article 9(b) of the UNCITRAL Mediation Rules of 2021. See UNCITRAL Model Law on International Commercial Mediation arising from Mediation 2018, amending the UNCITRAL Model Law on International Commercial Conciliation 2002, United Nations Commission on International Trade Law, United Nations, Vienna, May 2022; and UNCITRAL Mediation Rules 2021, United Nations Commission on International Trade Law, United Nations, Vienna, June 2022. Available at: uncitral.un.org accessed on: 29-12-2025, access time: 22.30.