

Conciliation and Mediation to Settle Investment Disputes in Light of the Code of Civil and Administrative Procedures.

المصالحة والوساطة لحل منازعات الاستثمار على ضوء قانون الإجراءات المدنية والإدارية

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Abstract :

This research paper examines the amicable means of settling investment disputes in light of Law No. 22-13 bearing the Code of Civil and Administrative Procedures. It particularly focuses on conciliation and mediation, given their distinctive procedural characteristics and effects. Undoubtedly, the Algerian legislator has introduced both mechanisms in line with the notion of modernizing the justice sector, with the aim of resolving judicial disputes and terminating litigation before a final judgment is rendered. This approach is intended to alleviate the burden on judicial bodies. However, despite the significant role that mediation and conciliation play in resolving numerous disputes of various natures, including investment disputes, they also raise several legal issues, especially when it comes to the provisions relating to their nullity or annulment.

Keywords : conciliation; mediation; investment; disputes; Algerian legislator.

ملخص:

تتناول هذه الدراسة وسائل التسوية الودية لمنازعات الاستثمار على ضوء القانون رقم 22-13 المتضمن قانون الإجراءات المدنية والإدارية، ويتعلق الأمر بالمصالحة والوساطة نظرا لتمييزهما من حيث الإجراءات والآثار، والواضح أن المشرع الجزائري قد استحدث كليهما في مساعي منه لتطوير العدالة، وذلك بهدف تلافي النزاع القضائي وإنهاء الخصومة بشكل ودي من غير القضاء، وهو ما من شأنه تخفيف العبء على الجهات القضائية، إلا أنه ورغم ما تلعبه الوساطة والمصالحة في فض العديد من الاستثمار على اختلاف طبيعتها بما فيها منازعات الاستثمار، فهذه النظم يثيران جملة من الإشكالات القانونية التي سيتم تسليط الضوء عليها سيما ما يتعلق الأمر بأحكام البطلان أو الإلغاء.

الكلمات المفتاحية: الوساطة؛ المصالحة؛ منازعات الاستثمار؛ تشريع جزائري.

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Introduction:

While the judiciary holds the original jurisdiction to adjudicate disputes arising from investment contracts, in accordance with the procedural principles established under Algerian legislation, the latter has increasingly kept pace with the requirements imposed by the commercial arena by allowing for alternative means other than judicial proceedings. These alternative methods are accepted by the parties in light of the substantive and procedural advantages they offer in managing disputes, without the burdens of lengthy, complex, or rigid judicial procedures

In fact, through the amended and supplemented Code of Civil and Administrative Procedures—Law No. 22-13—and through various judicial agreements, the Algerian legislator has adopted alternative dispute resolution mechanisms, notably conciliation and mediation. These two mechanisms, in addition to commercial arbitration, form together the alternative system to the national judiciary, entrusted with resolving disputes that may arise in the formation, execution, or termination of both national and international investment contracts.

The Algerian legislator has dedicated the provisions of Chapter One of Book Five, entitled "Alternative Dispute Resolution Methods", to both conciliation and mediation. This initiative aims, on the one hand, to reduce the burden on judicial bodies and, on the other, to strengthen the role of the parties' will in managing contractual relationships and the disputes arising therefrom, by involving neutral third parties whose role, through these two mechanisms, is to assist in resolving disputes amicably and efficiently.

Accordingly, this study aims to shed light on the systems of conciliation and mediation and to highlight their role in the resolution of investment disputes under Algerian legislation.

This study stems from a central research question:

How do conciliation and mediation contribute to the resolution of investment disputes in Algerian legislation?

To address this question, we adopt both the descriptive method, which is applied in defining the key concepts surrounding conciliation and mediation, and the analytical method, used in analyzing the legal provisions governing these two procedural mechanisms. Consequently, the study will be divided methodologically into two main sections: the first will focus on the system of conciliation—its concept and effects—while the second will address the system of mediation

Section I: Conciliation as an Alternative Means of Dispute Resolution

Conciliation is an alternative mechanism to judicial proceedings for resolving disputes arising between parties. It is one of the methods adopted by the Algerian legislator under the new Code of investment N 22_18¹ especially in article 12 which provides the primary and alternative means of settling investment disputes, and code of Civil and Administrative Procedures. To clarify its role in resolving disputes resulting from investment contracts, it is necessary to first define the legal nature of conciliation and then examine its effects on the dispute.

A): The Legal Nature of Conciliation

The Algerian legislator did not provide a specific definition of conciliation under the Code of Civil Procedures. However, the Civil Code includes a concept referred to as settlement, which is

regarded as a contract by which the parties aim to end an existing dispute or prevent a potential one, with each party making mutual concessions regarding their rights². Thus, conciliation is considered a contract, and as such, it is subject to the general rules governing contracts, particularly with regard to the elements of consent, subject matter, and cause.

The element of consent is reflected in the alignment of the will of both the supplier and the recipient to choose settlement as a means to resolve their existing or anticipated dispute. Consequently, neither party may compel the other to resort to this method³, even if one of them enjoys a stronger economic position that allows it to exert pressure on the weaker party in the contractual relationship. Based on this, it is essential that the consent expressed in the settlement contract be free from any defects of will, such as coercion, error, or fraud.

As for the subject matter of the settlement contract, it lies in the substitution by the parties of the investment contract of judicial proceedings with this alternative mechanism. The legitimacy of this subject matter is affirmed by Article 990 of the Code of Civil and Administrative Procedures⁴, which states: “Parties may reconcile either spontaneously or at the initiative of the judge at any stage of the litigation.”

The cause of the settlement contract is found in the parties’ desire to prevent the occurrence of a potential dispute or to resolve an existing one, a cause that is legitimate pursuant to Article 459 of the Civil Code.

In truth, the parties to the settlement contract are the same as the parties to the dispute—i.e., the parties to the investment contract. However, third parties may also become parties to the settlement contract if their legitimate interests are affected in connection with the formation of the said contract. It is important to note that although the national judiciary is not a party to the settlement contract, it nonetheless plays an essential role in the conciliation process.

The judge, acting within the bounds of his discretionary power, may initiate conciliation between the disputing parties at a time he deems appropriate, unless otherwise provided by law⁵.

Clearly, the legislator has placed the conciliation process under judicial supervision, whereby the judge, after initiating the process, continues to oversee the parties’ reconciliation concerning disputes arising from investment projects.

Moreover, Article 460 of the Algerian Civil Code stipulates that any person who enters into a settlement must have the legal capacity to dispose of the rights in dispute. Accordingly, each party to an investment contract must demonstrate legal authority to act with respect to the rights arising from the original contract. For instance, a national investor may not enter into a settlement concerning rights belonging solely to a foreign investor unless the latter has expressly authorized such disposition. The same applies to the foreign investor, even if he enjoys a dominant economic position in the contractual relationship, as is often the case.

Considering the legal nature of conciliation as a method of dispute resolution in general, and specifically with respect to disputes arising from investment contracts—and based on Article 990 of the Code of Civil and Administrative Procedures—conciliation is a consensual contract. The parties have the freedom to resort to it at any stage of the proceedings.

This implies that one of the conditions for conciliation is the existence of a pending claim* before the competent judicial authority, concerning a dispute that arose in connection with the investment. In such circumstances, conciliation emerges to transfer the dispute from the full

jurisdiction of the judiciary, whose role is to adjudicate the matter through a ruling or judgment, to the same judicial body, but in its capacity as a supervisory authority overseeing and facilitating the conciliation process. This transfer may occur at any stage of the proceedings.

It is clear that while the parties have the freedom to conclude a settlement and to relinquish disputed rights, such freedom is not absolute. Conciliation may not extend to matters that fall within the realm of public order⁶, nor to issues pertaining to personal status. Any settlement agreement that involves the waiver of such rights shall have no legal effect. For instance, conciliation is not permissible in matters related to paternity, proof thereof, the validity of a marriage, or nationality. However, it is important to note that conciliation is allowed with regard to financial rights, such as waiving the right to inherit, without renouncing the status of heir⁷.

Given the importance of conciliation in resolving disputes, particularly commercial ones, the Algerian legislator emphasized—through the 2022⁸ amendment of the Code of Civil and Administrative Procedures—the necessity of subjecting commercial disputes to conciliation before filing a claim with the competent commercial tribunal. In this regard, the President of the competent commercial tribunal shall, within a period of five (5) days, designate, by an order on request, one of the judges to conduct conciliation between the disputing parties.

This process shall take place over a period of three (3) months, following notification to the parties of the request for conciliation and the date of its hearing according to the article 536 bis 4 of Law No. 22-13 amending the Code provides that.

B): The Effect of Conciliation on Investment Disputes

The Algerian legislator regulated the effects of the conciliation contract under the provisions of Section Two of Chapter Five of the Civil Code. Below is a statement of the effects that the conciliation contract has on investment disputes.

1 - Effect of the Conciliation Agreement on the Dispute

In this context, it is necessary to distinguish between the effect of a successful conciliation agreement and that of a failed one.

1-1 Effect of a Successful Conciliation Agreement

When the parties to a current or potential dispute arising from an investment contract reach a conciliation agreement, this necessarily results in the termination of the dispute. Each party agrees to relinquish its respective claimed and proven right⁹.

It is important to note, however, that the dispute does not cease merely by agreeing to initiate conciliation. Rather, it ceases once each party consents to waive the rights that arose due to legal liability in their favor. Conciliation is more appropriate when the breach that triggered liability is mutual—i.e., both the supplier and the recipient are found to have defaulted, in which case each party waives their right in exchange for the other's reciprocal waiver¹⁰.

Moreover, paragraph 2 of Article 462 of the Civil Code affirms that the settlement of the dispute results in the definitive extinction of all claims and rights waived through the conciliation.

Accordingly, once conciliation is concluded and executed, the parties may no longer invoke any of the rights that were subject to waiver.

It must be noted that only the rights explicitly covered by the conciliation agreement are affected. In other words, the agreement applies exclusively to the rights that both parties have consented to waive. Any rights not expressly included in the settlement remain in force and continue to be the responsibility of the liable party. Therefore, it is essential to clearly define all rights subject to waiver within the agreement to avoid any misinterpretation between the parties.

Undoubtedly, the objective of concluding a conciliation agreement between the parties is to reach a resolution to the ongoing dispute, which in turn leads to the extinction of the litigation, in accordance with Article 220 of the Code of Civil and Administrative Procedures. If the conciliation involves all disputed rights, it results in the complete cessation of the proceedings¹¹.

However, a question arises as to whether such extinction may be partial, particularly when the parties agree to settle only part of the disputed rights, such as agreeing on compensation for delay while leaving unresolved the issue of contract termination. In general, the litigation may continue for the unresolved portion of the rights not included in the conciliation agreement based on Article 464 of the Civil Code.

1_2- Effect of Failed Conciliation Agreement on the Dispute

While a successful conciliation agreement necessarily results in the termination of the dispute, the failure of the parties to reach a mutually satisfactory solution raises the question about the fate of the dispute in such case?

The Algerian legislator has addressed the scenario in which the parties fail to reach a conciliation agreement regarding the disputed rights. In this respect, Article 536 bis 4 of Law No. 22-13, provides that¹²: “In the event of a failed attempt at conciliation, the action shall be brought before the competent commercial tribunal by means of an introductory statement of claim, in accordance with the procedures set out in this law, and under penalty of inadmissibility, such claim must be accompanied by a report of failed conciliation.”

This provision indicates that when the parties fail to reach an agreement concerning the rights that arise from the legal liability of one party towards the other, the dispute reverts to the judiciary, and jurisdiction is thereby transferred to the competent commercial tribunal¹³. The claimant must then initiate proceedings in compliance with the procedural requirements, particularly the submission of an introductory statement of claim, which must, under penalty of inadmissibility, be accompanied by the official report of failed conciliation which serves as proof that the parties were unable to resolve the existing or potential dispute through conciliation.

1_3Effect of the Conciliation Agreement on the Waived Rights

A conciliation agreement explicitly reveals the rights that the parties have mutually agreed to waive, and its legal effect extends exclusively to those rights included in the scope of the agreement. By logical implication (a contrario), the parties are not considered to have conciliated over rights not expressly included in the agreement, whether the dispute is ongoing or anticipated.

The rights that may be subject to conciliation include disputed rights arising from the investment contract, such as disputes concerning entitlement to monetary compensation, payment of the purchase price, or other rights governed by the legal framework applicable to investments.

According to Article 463 of the Algerian Civil Code, this legal effect—the declaratory effect—is limited strictly to disputed rights. Consequently, the conciliation agreement cannot be invoked with regard to the rights resulting from fully executed obligations, or the rights not yet due for performance, and this because that such rights are not yet subject to dispute, as the element of fault—namely, breach of obligation by a party to the investment contract—has not yet materialized.

In such a case, the parties must ensure that such an agreement is clearly and precisely drafted, in a manner that does not allow for any interpretation considering that the definitive legal effect of a conciliation agreement—namely, the final resolution of the dispute—Accordingly, the Algerian legislator emphasizes the strict interpretation of any waiver clauses included in the conciliation agreement, regardless of their form. Thus, the effect of waiver, as a result of conciliation, applies only to the rights that were clearly and explicitly the subject of the dispute resolved by the conciliation agreement¹⁴.

In this context, where the conciliation agreement includes a mutual settlement of disputed rights between the parties to an investment-related conflict—whether the initiative comes from the judge or results from the parties’ own will—it must be formally recorded in an official document known as the conciliation report which must be signed by the judge, the parties, and the court clerk, and then filed with the registry of the competent judicial authority, in accordance with Article 992 of the Code of Civil and Administrative Procedures.

The legal status of the conciliation report is defined under Article 993 of the Code of Civil and Administrative Procedures¹⁵, whereby the report acquires the status of an enforceable title from the moment it is filed with the registry of the competent court. This is further confirmed by Article 600, paragraph 8, which explicitly states that the conciliation report becomes an enforceable instrument once it is duly endorsed by the judges and filed with the court registry.

Consequently, as an enforceable title, the conciliation report is subject to the same execution procedures applicable to other enforceable instruments, such as being affixed with the enforceable formula; and being officially served upon the parties to the dispute.

C) Invalidity of the Conciliation Agreement

A conciliation agreement may be rendered invalid based on the general principles that govern the invalidity of contracts, as well as the specific reasons outlined in the law for the invalidation of agreements. The conciliation agreement will be void if there is a defect in the consent of the parties, such as in cases where the weaker party in the contract is coerced into agreeing to settle their rights. Additionally, a conciliation agreement may be void if the reason is fictitious, meaning that evidence suggests the intention of the parties to the dispute to settle their rights conceals actions that could be unlawful under the applicable Algerian legislation.

Furthermore, the conciliation agreement can be also declared invalid if it pertains to matters relating to public order in Algeria. This includes agreements to settle issues related to criminal liability, such as those arising from the implementation of an investment contract, for example, crimes related to intellectual property rights, consumer protection violations, or even unfair competition.

Since invalidity is a consequence of breaching mandatory legal provisions, the invalidation of a conciliation agreement nullifies any result that was produced by it. Consequently, a void

conciliation agreement cannot be used to terminate the dispute or the legal proceedings, and the parties cannot rely on it either against each other or against third parties.

The conciliation agreement is considered indivisible, meaning that the invalidity of part of the agreement necessarily leads to the invalidity of the entire agreement¹⁶. This holds true even if the agreement is valid in terms of mutual consent and legal cause but the object of the agreement is deemed unlawful. However, Article 466, paragraph 2, of the Algerian Civil Code provides an exception to this rule: This provision does not apply if the judge finds clear from the wording of the contract or from legal inferences that the contracting parties agreed that certain parts of the contract are independent of each other.

Since the conciliation agreement before the court is a contract and not a judgment, it is formalized in the form of a report rather than a judgment. Therefore, it is considered an administrative act, not a judicial one. This means that the canceling or invalidation of the conciliation report is not pursued through an appeal, but rather through an original action before the competent authority¹⁷.

Section II: Mediation as Means of Settling Investment Disputes

Algerian legislator has adopted mediation as a new juridical system through which Investment Disputes are intended to be resolved, under Chapter V, entitled Alternative Methods of Dispute Resolution, and under Chapter II, entitled Mediation.

A) What is the Mediation:

In order to put the juridical concept of mediation, it is necessary to search for all the legal foundations that compose this system in Algerian legislation.

1- The definition of the Mediation

The legislator did not provide a definition of mediation, but nevertheless the rules of mediation of the International Chamber of Commerce appear, as it is stated in the preamble of these rules that mediation is "Flexible procedure aimed at achieving settlement through a neutral mediator"¹⁸. Thus, mediation appears as a method that flexibly copes with trade disputes in general and international trade in particular, and this is by the mediator's attempt to bring views closer and balance the economic interests of the parties to the investment contract.

Mediation was also defined as " **It is a means of interaction with the aim of reaching an agreement**"¹⁹, this guarantee of interaction rests with the mediator, who is independent of the parties to the conflict.

Mediation is one of the procedural guarantees that successive Algerian investment legislation has paid attention to, leading to Law No. 22_18, which the legislator re-established as an alternative solution to the judiciary in order to settle disputes, whether those that arise between national parties, or those that arise on the occasion of foreign direct investment relations in Algeria, which are usually governed by bilateral or multilateral agreements that bring together the Algerian state and foreign persons, according to which the total disputes arising on the occasion of these contracts are presented to mediators within the framework of Mediation procedures, as ratified by Article 12 of the Investment Law.

-2 Legal nature of The Mediation

Mediation appears as a compulsory procedural system for resolving investment disputes explicitly stipulated in Article 994 of the Code of Civil and Administrative Procedure.²⁰ In the event that the litigants accept to resort to the mediation system, the dispute will be decided by a mediator appointed by the judge according to certain procedures, but if the parties refuse to resort to this procedure, the jurisdiction remains entrusted to the judge, or the parties choose another alternative means to resolve their dispute, such as arbitration as an example.

The mediation was strengthened by the amendment that affected the Civil and Administrative Procedures Law in 2022, where Article 534 came to oblige the judge, before considering commercial matters, to submit the dispute to mediation, as it stipulated that: **The head of the commercial court must submit the dispute in advance to the mediation** "This indicates the active role of the mediation system for resolving investment disputes.

In fact, the parties' resort to mediation does not mean in any way abandoning the role of the judiciary in the dispute, based on the text of Article 995, which stipulates that: **Mediation does not entail the judge abandoning the case, and he can take any measure he deems appropriate at any time.**", where the role of the judge appears in the mediation system starting from its presentation to the litigants²¹, and also appears in the mediator designation²².

The role of the judge is also evident in the implementation of the outcomes of the mediation, so the judge has the right to intervene and take any action that is appropriate to the dispute, such as appointing experts, ordering expertise, and other procedures required by the dispute.

3 Mediation parties

the parties of the mediation are the number of people who contribute to the application of its procedures, as a priori is considered a party to the mediation, the litigants, who are represented by the investment parties, and they are the parties on which the existence of a dispute is based, and the judge appears as a party to this system, although he is not concerned with the dispute, but he is obligated to follow it, in order to take the necessary measures to resolve the dispute, and the mediator is also a party to this system, where since the appointment of the latter by the judge, he works to domesticate the applicable laws to bring the positions of the disputants closer, In this context.

the legislator has defined the conditions for the mediator to whom the mediation task is assigned, whereby mediation is entrusted to a natural person or a legal person represented exclusively in an association, as established by article 997 of the Code of Civil and Administrative Procedure, but in the case where the mediator is an association, the president of the latter appoints one of the members to carry out this procedure, after notifying the judge accordingly.²³.

It should be noted that the mediator does not require him to be a judge, as the Algerian legislator did not require that the mediator be from the judiciary, and this is a positive thing, specially that the judge does not specialize in the technical issues involved in the economic contract and investment projects.

4 Mediation Progress

The mediation procedures begin after the dispute is submitted to the competent judge qualitatively and regionally, who compulsorily offers the mediation procedure between the parties to the dispute arising on the occasion of the legal responsibility of one of the investors, after which

the parties express their position on this offer, either by rejecting and adhering to the jurisdiction of the judiciary.

4-1 Appointment of the mediator

A mediator is a natural or legal person represented by an association, neutral, independent of the parties to the dispute, enjoying good conduct and integrity and fulfilling the personal conditions specified in Article 998 of the Code of Civil and Administrative Procedure, who is obliged, by appointment of the judge, to initiate mediation procedures between the parties with a view to reaching a solution to the dispute.

The mediator shall be appointed by order of the judge, this order includes the consent of the litigants and their consent to mediation as a way to resolve the dispute, and the fact that this consent must be from both opponents, whether individuals or teams, so a party that did not accept mediation cannot be forced to comply with the desire of the other party to resort to it, and it must also include setting the first deadlines granted to the mediator in order to carry out the mediation task, and this is to ensure the good functioning of this process, and to avoid the consequences of the mediator's procrastination in it, which contradicts with The principle of speed and credit, which characterizes most commercial transactions, and working as much as possible to resolve the dispute as soon as possible²⁴, after the judge pronounces the order appointing the mediator, the seizure trustee shall notify a copy of the order to each of the litigants, as well as the mediator.

After notifying the mediator of the order to appoint him to conduct the mediation procedures, he must notify the judge of the acceptance of the mediation task, based on the text of Article 1000 of the Civil and Administrative Procedures Law, but this text did not clarify the hypothesis that this mediator refused the mediation task, and it is likely that if the mediator who was previously appointed to carry out mediation tasks for legitimate reasons, the judge is unable to appoint another mediator according to the same procedure described earlier.

4-2 Initiating the mediation process

After completing the procedures for his appointment, the mediator works to initiate the mediation process.

where the mediator intervenes as independent of the parties to the dispute and its causes, and allows the parties to work to bring positions closer²⁵, and provide the opportunity for the parties to the investment contract again to discuss the causes of the dispute, exchange defenses on the occasion of that, and know the different requests under which each party seeks to deserve one of the rights it claims, and this is after summoning the litigants without delay for the first mediation meeting, and this on the date appointed by the judge under the order appointing the mediator.

The legislator did not restrict the mediation process directly to the mediation process with many formalities or procedures, but granted him discretion to take all measures that would bring the goal of resolving the dispute closer.

In parallel with the special nature of investment contracts of a commercial nature, especially with regard to confidentiality requirements, the mediator must ensure during the mediation process the appropriate degree of confidentiality, which falls on the mediator during and after the mediation process, as he does not have for any purpose whatsoever, to disclose all or some of the information and data that the parties had led to him, and for this purpose Article 1005 obliges the mediator to keep confidentiality vis-à-vis third parties outside the dispute.

The mediator is also obligated to inform the judge who appointed him of the overall difficulties he faced during the mediation process, which would stand in the way of the success of this process, whether these difficulties are related to the refusal of the litigants to exchange documents, for example, or their refusal to make statements that would reach a solution to the dispute, and these difficulties can also be related to understanding the contract, and the need for the judge's intervention to interpret them²⁶.

the parties to the dispute are obliged to investigate seriousness and attend the mediation meetings, which would ensure overcoming the areas of contention, bringing positions closer and ensuring interests, as well as respecting the principle of good faith, and therefore it has become necessary for each party in the mediation to work seriously to reach a real solution to the dispute without procrastination and within the deadlines specified in the appointment order.

The legislator has allowed the mediator, if he finds that the continuation of the mediation process will not work, as there are no signs of the parties reaching a real solution to the dispute, to request the judge to terminate the mediation and then restore the judiciary's jurisdiction over the dispute, after the impossibility of its proper conduct, a procedure in which the mediator participates with the litigants.

B) the Impact of mediation on the dispute

Mediation ends as an alternative route to the judiciary to resolve civil liability in investment contract disputes resulting from the fact that civil liability is either successful or failing.

1-The Impact of successful mediation

The ordinary reasons for the end of mediation are that the parties to the dispute, together with the mediator, reached a satisfactory solution to the dispute that preserves the rights under which the dispute arose, and in this signs of resolving the dispute and ending the dispute, it is the responsibility of the mediator, when he reaches a positive position from the parties on the dispute, to inform the judge of this in writing, and to write a record, in which he proves the consensus between the parties, provided in this record that it contains a presentation of the facts of the dispute, and a statement of the mediation work settled upon, in an unreasonable manner This is in clear and explicit terms without exposure.

so that when the judge or the interested parties see it, the reality of the position of the parties after the mediation procedure becomes clear, after which both the parties to the dispute and the mediator sign the minutes, in preparation for the return of the parties again before the judge, but they agree on the outcome of the dispute, and they are summoned directly for that through the seizure trustee, in application of the provision of Article 1003 of the Civil and Administrative Procedures Law, so that the judge ratifies the mediation minutes in preparation for its implementation²⁷.

Speaking of the authenticity of the minutes of mediation, Algerian legislation has considered the minutes of mediation as executive bonds, and this is explicitly the text of Article 1004 of the Code of Civil and Administrative Procedure, and what was also ratified by Article 600 of the same law, which enumerated the executive bonds, and mentioned among them every agreement indicated by the judge and deposited with the Secretariat of Control, and thus and when the minutes of mediation met its formal and objective conditions, and after the judge's ratification of it, it became an executive bond, enforceable when it is skilled in the executive form, and reached the litigants,

notification It is true that the judge's approval of the reconciliation report is not subject to any appeal, in application of the provisions of Article 1004.

2- Impact of mediation failure

Among the unusual reasons for the end of mediation is the failure of the mediator's efforts to reconcile the positions of the parties to the dispute, and this is because the parties were unable to waive their inalienable rights in the wake of the civil responsibility of one of them, as the legislator allowed each of the parties to the dispute, when they agreed to refrain from the mediation procedure, to submit a request to the judge in order to intervene to end the mediation process, because they are convinced that they have not reached an agreement on the dispute, or that the mediation system is unable to grasp and address the essence of the dispute, and the mediator can as well, when it is found futile.

To continue the mediation work, the judge may be requested to terminate the mediation, in the face of the impossibility of its proper conduct, provided that he draws up a report of the disagreement and informs the judge of it.

Without prejudice to the foregoing, the judge may also, on his own initiative or at the request of the litigants or the mediator, and whenever he deems it justified, stop the mediation process, and this at any time, given that there is an obstacle that prevents the parties from reaching a solution to the dispute, and thus the mediation ends without reaching a solution, the end of mediation by failure according to the three cases mentioned above, does not mean the end of the dispute, nor the end of the litigation, as the failure of this procedure entails the return of the parties and the mediator again to the judge, after summoning them.

the dispute is transferred again to the jurisdiction of the judiciary, so that the judge adjudicates it unless the parties agree to follow another alternative path, such as reconciliation and arbitration.

Conclusion :

After the presentation above, which aimed to explore both the conciliation and mediation procedures and their role in resolving various disputes that may arise from the establishment, implementation, or termination of an investment contract, and in light of the significant importance attached to these two procedural systems in Algerian legislation, particularly following the amendments to the Civil and Administrative Procedure Law in 2022 by law N 22_13, moreover the new code of investment N 22_18, which reinforced the role of conciliation and mediation in resolving disputes generally and investment contract disputes specifically .

This was after the shift of the dispute resolution authority from the judiciary, as the primary method, to conciliation or mediation as alternative methods, considering the advantages that these two methods offer in terms of procedural ease. The study concluded with several key findings, which are summarized as follows:

- Conciliation is an agreement between the disputing parties aimed at ending the dispute through the waiver of one or more contested rights by each party.
- Conciliation takes place under the supervision of the judiciary, according to a defined legal framework.

- If conciliation is reached regarding the contested rights, the dispute is resolved. If it fails, mediation ends, and the dispute returns to the jurisdiction of the judiciary.
- Mediation is an alternative to litigation aimed at resolving investment disputes by involving a mediator who works to bring the positions of the conflicting parties closer together.
- Mediation occurs under the supervision of the national judiciary, and presenting it to the disputing parties is mandatory.
- If the mediator succeeds in reconciling the parties' views, the dispute is resolved. If the mediator fails, the resolution of the dispute returns to the competent judge.

Therefore, both conciliation and mediation should be highly valued and given more attention as alternative paths to litigation for dispute resolution. Despite their importance in resolving disputes, they have not received as much attention as arbitration, which risks turning them into mere formal procedures that prolong the dispute without resolving it.

¹ Law No 22_18 which includes the investment law, dated 25Dhe Elhidja 1443, corresponding 24 july 2022, Official Gazette, Issue No.50, dated 28 july 2022.

² See Article 459 of Ordinance No. 75-58, which includes the Civil Code, dated 20 Ramadan 1395, corresponding to 26 September 1975, Official Gazette, Issue No. 78, dated 30 September 1975.

³ The settlement is thus a consensual contract and is considered established as soon as the parties exchange their will through offer and acceptance. It does not require a specific form for its conclusion, but it is recorded in a report. In fact, the purpose of writing is solely for proof and not for the formation of the contract. For more details, see: :
_ Dawiya Kairouani, Ziad Mohamed Anis, "Particularities of Judicial Settlement as an Alternative Method for Resolving Civil Disputes in Algerian Law," International Journal of Legal and Political Research, Volume 6, Issue 1, 2022, p. 576.

⁴ Law No. 08-09 on the Code of Civil and Administrative Procedures, dated 18 Safar 1429 (corresponding to February 25, 2008), Official Gazette, No. 21, dated April 23, 2008, as amended and supplemented by Law No. 22-13, Official Gazette, No. 48, dated July 17, 2022.

⁵ See Article 991 of the Code of Civil and Administrative Procedures .

⁶ See Article 461 of the Algerian Civil Code.

⁷ Hamid Boudriat, The Legal Nature of the Judge's Role in Reconciliation, Annales de l'Université d'Alger, Volume 25, Issue 1, 2014, p. 95.

⁸ Law No. 08-09 on Civil and Administrative Procedure, amended and supplemented by Law No. 22-13.

⁹ See the text of Article 462 of the Algerian Civil Code.

¹⁰ Abdelrahman Barbara, Commentary on the Law of Civil and Administrative Procedures, 1st edition, Baghdad Publications, Algeria, 2009, p. 517.

¹¹ Lina Owein, Ahmed Hussein, Reconciliation in Commercial Disputes According to Law 22-13 Amending and Supplementing the Algerian Law of Civil and Administrative Procedures, Journal of Law, Society, and Authority, Vol. 13, Issue 2, 2014, p. 218.

¹² Law No. 08-09, comprising the Law of Civil and Administrative Procedures, as amended and supplemented by Law No. 22-13.

¹³ Seddiki Abdelkader, "Methods of Amicable Settlement of Commercial Disputes According to Law No. 22-13 Amending and Supplementing the Law of Civil and Administrative Procedures," Academic Journal of Legal and Political Research, Vol. 6, Issue 2, p. 78.

¹⁴ See the text of Article 464 of the Algerian Civil Code.

¹⁵ Law No. 08-09 on Civil and Administrative Procedures, amended and supplemented by Law No. 22-13.

¹⁶ See Article 466 of the Code of Civil and Administrative Procedures. Ibid

¹⁷ Hamid Boudriat, op. cit, p: 98.

¹⁸ See the Guide to the Rules of Mediation and Arbitration Rules in Arabic issued by the International Court of Arbitration and the International Centre for Dispute Resolution (ADR), published in 2014 and available at the following websites: www.iccarbitration.org and arb@iccwbo.org.

¹⁹ Alaa Abrian, Alternative Means of Resolving Commercial Disputes, 1st Edition, Al-Halabi Human Rights Publications, Beirut, Lebanon, 2008, p. 65.

²⁰ It should not be understood from the compulsory nature of mediation, that the parties to the dispute are obliged to follow it on the occasion of the occurrence of civil liability disputes, as the letter under the text of Article 994 and Article 534 of the Civil and Administrative Procedures Law, to the judge before whom the dispute is presented, he must before entering into the litigation to present the mediation procedure to the litigants, and they are free after that to accept the referral of the dispute to the mediator for consideration and work to resolve it, or reject this procedure and adhere to the judiciary.

²¹ See Article 994 of the Code of Civil and Administrative Procedure.

²² See the second paragraph of article 994 of the Code of Civil and Administrative Procedure .

²³ See Article 997 of the Code of Civil and Administrative Procedure .

In this context, the mediator is required, according to the provisions of Article 998 of the Code of Civil and Administrative Procedure, to be one of those who is attested to his integrity and good behavior, with the following conditions:

- He should not have been punished for a crime involving moral turpitude, and he should not be deprived of his civil rights.
- To be qualified to consider the dispute submitted to him.
- Be impartial and independent in the practice of mediation.

²⁴ See Article 999 of the Code of Civil and Administrative Procedure.

²⁵ Abd al-Rahman Barbara, op. cit. p: 529.

²⁶ See Article 1001 of the Code of Civil and Administrative Procedure .

²⁷ See article 1004 of the Code of Civil and Administrative Procedure .

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