



Legal system of commercial courts

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Abstract:

This study examines the role of specialized commercial courts in Algeria as a key mechanism to encourage investment. These courts aim to create a secure legal environment that promotes both national and international investments. The paper investigates the evolution of these courts, focusing on their legal framework and procedures, which have been designed to accelerate dispute resolution and strengthen economic development.

Keywords: Specialized Commercial Courts, Investment, Jurisdiction, Intellectual Property Disputes, Judicial Security.

Introduction:

To create an attractive environment for both domestic and international investments, the Algerian legislator has aimed to protect investors from arbitrary actions by establishing judicial safeguards. These measures enhance the business environment and encourage investment, giving the judiciary a more prominent role in the areas of trade and investment. An example of this is the enactment of Law No. 22-13, which amends Law No. 08-09 in the Code of Civil and Administrative

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Procedures, establishing specialized commercial courts alongside existing commercial divisions to handle specific disputes that were previously under the jurisdiction of commercial poles.

The specialized commercial courts are outlined in the Code of Civil and Administrative Procedures, specifically in the second section of the fourth chapter of the first book. For investment-related disputes, alternative dispute resolution methods, including reconciliation, mediation, and commercial arbitration, are also available. According to Article 12 of Law No. 22/18 concerning investment, the legislator grants investors the option to choose these methods, intending to address issues and remove barriers, making the investment climate more appealing.

This highlights the significance of examining specialized commercial courts as mechanisms for promoting investment in Algeria. Investors and business professionals recognize the importance of this topic, considering that the investment sector significantly contributes to economic growth and strengthens international relations. This is especially true when national and foreign investors collaborate on large projects, which requires a supportive environment, suitable regulatory frameworks, and adequate incentives.

The following question thus arises: To what extent can commercial courts be regarded as a mechanism to foster investment? To address this, we employed scientific research methodologies for a thorough examination. Specifically, we used the descriptive approach to present specialized commercial courts as a mechanism for investment encouragement, along with an analytical approach to study the relevant legal provisions.

This study is organized into two sections: the first discusses the conceptual framework of specialized commercial courts, while the second addresses the litigation procedures and significance of these courts in driving investment within Algeria.



Section One: The Conceptual Framework of Specialized Commercial Courts

The term "specialized commercial court" is relatively new in Algerian law, as commercial disputes were previously handled in ordinary courts. However, other legislations have extensive experience with separating commercial jurisdiction from civil jurisdiction.¹

Therefore, to study this topic, we will first address the historical development of commercial courts in Algeria and provide a definition (Section one), followed by an exploration of the specialized commercial court's subject matter and territorial jurisdiction (Section two).

Subsection One: The Historical Development of Commercial Courts in Algeria and Their Definition

Sub-subsectionOne: The Historical Development of Commercial Courts in Algeria

Algeria, having been a French colony until 1962, applied the French judicial system during the colonial era, specifically from 1830 to 1962. During this period, commercial courts were introduced following their formal recognition by royal decree in 1563. Four commercial courts were established in Algeria, located in Algiers, Oran, Constantine, and Annaba. These courts were responsible for resolving commercial disputes, mirroring the functions of commercial courts in France, and were composed of selected merchants rather than professional judges, as outlined by the legislation of that time².

After Algeria gained independence, the legal system was adapted, with one significant step being the issuance of Order No. 62-175 on December 31, 1962.

¹—Bourana Fatiha, "Procedures for Resolving Commercial Disputes According to the Provisions of Law No. 22-13 Amending the Code of Civil and Administrative Procedures," Master's thesis in Business Law, 2022-2023, p. 46.

² —Hanan Mazza, "The Legal System of the Specialized Commercial Court," *Comparative Legal Studies Journal*, Vol. 09, No. 01, 2023, p. 270.



This order continued the application of French laws, except where they contradicted Algerian sovereignty. Since the commercial courts established in the four cities did not conflict with national sovereignty, they remained operational for a time. However, in 1963, the Algerian legislator abolished these courts with Decree No. 63-69, which stated in its first article that "The commercial courts are abolished as of the date of the publication of this decree." This decision was based on the principle of judicial unity that was adopted post-independence.

Subsequently, the Algerian legislator reconsidered and reintroduced specialized jurisdiction for commercial disputes, particularly those requiring expert judicial attention. This was achieved through Law No. 08-09, which refers to these as "specialized poles" in Article 32. However, it is important to note that the legal framework detailing the locations and operational mechanisms for these specialized poles and their judicial bodies has not yet been fully defined³.

In an effort to reform the judicial system and promote economic growth, the Algerian legislator, through Law No. 22-07 dated May 5, 2022, concerning judicial organization, reinstated and enhanced specialized commercial jurisdiction for handling commercial disputes. According to Article 6 of this law, specialized commercial courts are to be established within the jurisdiction of certain judicial councils, designed to meet the needs of the commercial environment and business sector. Ordinary courts often lack the speed and efficiency required to handle commercial cases, making the creation of specialized courts essential. To further clarify the organization of these courts, Law No. 22-13, issued on July 12, 2022, outlines the procedural and organizational aspects of the judicial body. This law introduced eight articles, from Article 563 bis to Article 563 bis 7, in the second section titled "On the Judicial Commercial Court" within the fourth chapter of the Commercial Code and the specialized commercial courts under Law No. 08-09⁴.

³ —Sardo Mahmoud, "Specialized Commercial Courts Facing the Evolution of Commercial Transactions," intervention for participation in the seminar organized by the Court Council of Ain Defla titled: "Prospects and Challenges in Resolving Commercial Disputes in Light of the Establishment of Specialized Commercial Courts," December 18, 2022, p. 06

⁴ —Article 563 bis 7 of Law No. 22-13



Sub-subsection Two: Definition of the Specialized Commercial Court

As is known, the Algerian legislator does not delve into definitions, leaving that to jurisprudence and judicial interpretation. However, Professor Ben Azzouz Fatiha defined the specialized commercial court as one of the first-instance courts that issues preliminary rulings subject to appeal, adjudicating a specific category of disputes of a commercial nature⁵ From our analysis of Law No. 22-07 and Law No. 22-13, we can conclude that the specialized commercial court is defined as: "A court specialized in hearing and issuing preliminary judgments in commercial disputes, consisting of a judge and four (4) assistants as a general rule," indicating that the Algerian legislator did not establish complete independence for commercial jurisdiction from civil jurisdiction. Thus, the specialized commercial court does not address all commercial matters, but only specific disputes explicitly enumerated in Article 536 bis of the Code of Civil and Administrative Procedures.

Subsection Two: Subject Matter and Territorial Jurisdiction of the Specialized Commercial Court

Sub-subsection One: Subject Matter Jurisdiction

Subject matter jurisdiction is defined as the distribution of work among different levels of courts within a single judicial authority based on the type of case. A court is granted the authority to hear a dispute according to its nature⁶, In accordance with Article 536 bis of the Code of Civil and Administrative Procedures, the specialized commercial court is concerned with hearing a specific category of dispute

⁵—Ben Azzouz Fatiha, "Implications of Establishing Commercial Jurisdiction in Algeria," *Journal of Law and Political Science*, University Center of Naama, Algeria, Vol. 9, No. 1, April 2023, p. 234.

⁶—Ahmed Saleh Makhoulouf, "Subject Matter Jurisdiction of Specialized Commercial Courts in Light of Article 35 of the Legal Proceedings System," *Journal of Knowledge*, No. 66, Institute of Public Administration, Riyadh, Dhul-Qi'dah 1435 H, p. 121.



—exclusively and without others—due to their close connection to international laws that give special attention to intellectual property and trade freedom⁷.

Article 536 bis of Law No. 22-13 states that the specialized commercial court is competent to hear the following disputes:

- Intellectual property disputes
- Disputes related to commercial companies, particularly disputes among partners and the dissolution and liquidation of companies
- Judicial settlement and bankruptcy
- Disputes between banks and financial institutions and merchants
- Maritime disputes, shipping, and insurance disputes related to commercial activities
- Disputes related to international trade

Thus, we can summarize these jurisdictions as follows:

First: Intellectual Property Disputes

Intellectual property rights are legally protected rights that begin their protection from the date of registration with the relevant authorities, namely the National Office of Copyright and Related Rights and the National Institute of Industrial Property. The legislator has granted these rights both civil and criminal protection; criminal protection falls under the jurisdiction of the criminal courts, while civil protection is the responsibility of the specialized commercial court.⁸

⁷—Barbara Abdul Rahman, "Commentary on the Code of Civil and Administrative Procedures in Light of Law No. 08-09 Amended by Law No. 22-13," Vol. 1, 5th ed., Bayt Al-Afkar ,Eldar Elbidah, Algeria, 2022, p. 426.

⁸—Sardo Nabil, "Specialized Commercial Courts Facing the Evolution of Commercial Transactions," Djilali Bounaama University, Khemis Miliana, Algeria, no date, p. 12.



The disputes related to intellectual property rights include:

- Disputes over unfair competition
- Disputes concerning the refusal to register intellectual property rights
- Disputes related to the exploitation of intellectual property rights and associated transactions
- Disputes regarding the payment of fees
- Disputes between rights holders⁹.

In addition to:

- Imitation and piracy
- Crimes related to import and export and customs smuggling
- Breaches of international contracts that include intellectual property rights¹⁰.

Second: Disputes Related to Commercial Companies

Commercial companies are classified as commercial enterprises either by nature or form¹¹. The commercial nature of a company is primarily determined by its subject matter, especially in the case of partnerships¹². In Algeria, the legislator has organized the regulations governing commercial companies in Book Five of the Commercial Law, which has been amended several times.

Disputes involving companies generally revolve around debts stemming from various commercial transactions. On the other hand, partner disputes arise among the partners of a company, often concerning the company's foundational agreement. These disputes can include issues such as the annulment of minutes

⁹Sardo Nabil, op. cit., p. 12.

¹⁰—Nougai Nabil, "Intellectual Property Disputes and Methods of Resolution," Journal of Legal and Social Sciences, No. 6, Zian Achour University, Djelfa, no date, pp. 201-204

¹¹ —Article 544 of the Commercial Law

¹² —Article 795 bis 1 of the Commercial Law



from general assemblies or conflicts related to the dissolution and liquidation of the company¹³. The latter type of dispute was introduced by the legislator and was not originally covered by Article 32 of the Civil and Criminal Procedure Code. This inclusion proved valuable, as such disputes are among the most important commercial matters that often present complex issues, necessitating a specialized tribunal to handle them, as seen in various legal systems¹⁴.

The specialized commercial court is also competent to address issues related to judicial settlements and bankruptcy, with its procedures and regulations specified in Book Three of the Commercial Law¹⁵.

Third: Disputes Between Banks, Financial Institutions, and Traders

Banks and financial institutions are considered a category of traders engaged in a specific type of commercial activity known as banking. Banks are defined as institutions that specialize in mediating the circulation of money and credit for profit¹⁶, on the other hand, financial institutions are legal entities whose ordinary and primary function is to carry out banking operations, excluding the acceptance of funds, management of payment instruments, or making them available to their clients. Therefore, financial institutions are considered non-cash institutions¹⁷.

Given the specificity of this activity, the legislator has provided a special law governing it, namely the Currency and Loan Law, in addition to commercial law and banking customs.

Regarding disputes related to banks, which were previously designated as the jurisdiction of specialized courts, Article 536 bis of the Civil and Administrative Procedure Law has now included financial institutions, making the term broader and more inclusive than before. However, the new element introduced by the

¹³ —Junaidi Faiza, "Lecture on Subject Matter and Territorial Jurisdiction of the Specialized Commercial Court and Procedures for Conducting Lawsuits," Higher School of the Judiciary, Elqliaa, Algeria, 2023, p. 02.

¹⁴ —Ben Azzouz Fatiha, op. cit., p. 237.

¹⁵ —Junaidi Faiza, same reference, p. 13.

¹⁶ —Jack Youssef, Commercial Law, Volume II, Tarbin Press, 1978-1979, without mention of place of publication, p. 300.

¹⁷ —Article 71 of the Currency and Loan Law (Order No. 03-11, dated August 26, 2003, regarding currency and supply, Official Gazette, No. 52, issued on August 27, 2003, as amended).



aforementioned article is that the specialized commercial court will adjudicate these disputes if a conflict arises between a bank or financial institution and a trader, whether a natural or legal person¹⁸.

The legislator has limited the jurisdiction of the specialized commercial court to disputes between banks and financial institutions with traders, excluding other types of disputes. This approach reflects a personal criterion in commercial activity, meaning that disputes between banks or financial institutions and their non-trader clients, who are often deposit account holders, are excluded. The justification for this limitation may be that the relationships between traders and banks or financial institutions tend to be significant, complex, and require swift resolution.

Fourth: Maritime Disputes, Maritime Transport, and Insurance Disputes Related to Commercial Activity

Maritime trade disputes are considered commercial activities and are governed by maritime law. Due to the specificity of these disputes, which are viewed as ordinary commercial activities, the legislator has designated them under the jurisdiction of the specialized commercial court. Air transport contracts are also deemed commercial ventures, as they are included under transport and movement, and the legislator has similarly assigned them to the jurisdiction of the specialized commercial court. Insurance companies are recognized as commercial entities, and the legislator has classified insurance disputes related to commercial activities under the jurisdiction of the commercial court¹⁹. If any of these disputes are not related to commercial activity, the court does not have jurisdiction over them²⁰, these disputes are governed by maritime law, aviation law, and insurance law²¹.

Fifth: Disputes Related to International Trade

International commercial contracts are subject to the parties' freedom to resort to commercial arbitration in resolving disputes, due to the speed of arbitration

¹⁸ —Ben Azzouz Fatiha, op. cit., p. 238.

¹⁹ —Sardou Nabil, op. cit., p. 14.

²⁰ —Ben Azzouz Fatiha, same reference, p. 238.

²¹ —Barbara Abdul Rahman, op. cit., p. 426.



procedures and the specialization of arbitrators. The Algerian legislator has assigned disputes arising from international trade contracts to the jurisdiction of the specialized commercial court, which provides the guarantee of specialization sought by the parties to the international contract²².

The underlying transaction here relates to international investment and international commercial activities in terms of geographical scope and the nature of the parties involved. This jurisdiction is perhaps the most significant element among the powers granted to the specialized commercial court, aligning with the Investment Law of 2022²³.

The Algerian legislator has endowed the specialized commercial court with procedures that position it as an alternative to international commercial arbitration, where disputing parties can find the same advantages present in international arbitration, especially since an arbitration award requires recognition by the judiciary before it can be enforced²⁴.

It is noteworthy that the Algerian legislator, unlike the French, Saudi, and Moroccan legislators, has not expanded the jurisdiction of the specialized commercial court to include disputes arising between traders. The French legislator, for instance, has entrusted the commercial court with the authority to adjudicate disputes between traders, as well as all obligations arising from their commercial activities, regardless of their source. The court is also responsible for resolving all disputes of a commercial nature among all parties involved²⁵.

Sub-section Two: Territorial Jurisdiction

Territorial jurisdiction refers to the authority granted to a specific judicial body to hear cases brought before it based on a geographical criterion that adheres to the judicial division. Given that specialized commercial courts are considered

²² —Sardou Nabil, op. cit., p. 14.

²³ —Sardou Nabil, op. cit., p. 14.

²⁴ —Sardou Nabil, same reference, p. 14.

²⁵ —Ben Azzouz Fatiha, op. cit., p. 238.



special judicial bodies, the legislator has only established them in certain judicial councils²⁶.

The scope of their territorial jurisdiction was defined by Executive Decree No. 23-53, dated January 14, 2023, which listed the specialized commercial courts as twelve courts throughout the national territory. The mentioned text was accompanied by an annex that specified the judicial councils regionally associated with each specialized commercial court, referred to as the territorial jurisdictions of the specialized commercial courts.

The legislator, in Article 3 of the same decree, stipulates that each specialized commercial court shall convene at the court designated by a decision from the Minister of Justice, which is affiliated with the judicial council located within its jurisdiction. However, the specialized commercial courts of Algiers, Oran, and Constantine will be provided with dedicated premises. The remaining rules of territorial jurisdiction will follow the provisions set forth in the Civil and Administrative Procedure Law or by specific texts.

Regarding intellectual property disputes, while the law previously assigned territorial jurisdiction to the court convening at the headquarters of the judicial council in the jurisdiction where the defendant is domiciled, according to paragraph four of Article 20 of the Civil and Administrative Procedure Law, the territorial jurisdiction now shifts to the specialized commercial court affiliated with the judicial council located within the jurisdiction where the defendant is domiciled.

For disputes involving commercial companies, the specialized commercial court that is affiliated with the judicial council located in the jurisdiction of the company's registered office or one of its branches is competent to hear the dispute, in accordance with paragraph four of Article 05 of the aforementioned law.

²⁶—Hanan Mazza, Legal Framework of the Specialized Commercial Court, Journal of Comparative Legal Studies, Volume 09, Issue 01, 2023, p. 276.



In terms of disputes related to judicial settlements, bankruptcy, and disputes among partners in commercial companies, the specialized commercial court that has initiated bankruptcy or judicial settlement procedures within its jurisdiction or where the company's registered office is located will have jurisdiction, as per paragraph three of Article 20 of the Civil and Administrative Procedure Law.

If the dispute pertains to international trade, including maritime and air trade, the jurisdiction will be held by the specialized commercial court located in the jurisdiction where the promise or delivery of goods occurs, or where performance is to be made, according to paragraph four of Article 39 of the aforementioned law.

In all cases not mentioned or those addressed by specific provisions, general rules of territorial jurisdiction will apply, meaning jurisdiction will belong to the specialized commercial court located in the jurisdiction of the defendant's domicile, or their last known domicile, or the chosen domicile in case of selection. In the event of multiple defendants, it suffices to follow the domicile of one of them, in accordance with Articles 37 and 38 of the Civil and Administrative Procedure Law²⁷.

Section Two: Litigation Procedures and the Importance of Specialized Commercial Courts in Promoting Investment in Algeria

The operations of specialized commercial courts have unique characteristics that differ from the commercial section of regular courts, both in terms of the formation of these courts and the conduct of litigation before them. This is significant for improving the overall business climate. To understand this better, we will outline the structure and organization of these courts and the litigation procedures before this specialized court in the first section, while the second section will focus on the importance of establishing these courts.

²⁷—Hanan Mazza, Said Bougrour, Legal Framework of the Specialized Commercial Court, Journal of Legal Studies, Volume 09, Issue 01, p. 276.



Subsection One: Litigation Procedures Before Specialized Commercial Courts

The establishment of specialized commercial courts represents a significant development in the Algerian judicial system, as these courts exclusively handle specific cases, facilitating faster resolutions and reducing errors due to the specialization of the judges. Therefore, the legislator has designated a special structure for these courts, which will be outlined in (Section One) regarding their organization and (Section Two) regarding the conduct of litigation.

Sub-subsection One: Structure and Organization of Specialized Commercial Courts

The creation of specialized commercial courts marks a notable evolution in the Algerian judicial system, as these courts focus on specific cases, aiding in swift resolutions and minimizing errors due to the judges' expertise. Thus, the legislator has given these courts a unique structure and organization²⁸.

First: Structure of the Specialized Commercial Court:

According to Article 536 bis 2, "The specialized commercial court is composed of sections presided over by a judge, assisted by four (04) aides who have extensive knowledge of commercial matters and have a deliberative opinion. They are chosen according to the conditions and methods specified by regulations. The court is validly constituted in the absence of one aide. If two (02) or more aides are absent, they are replaced successively by one (01) or two (02) judges²⁹."

Thus, the composition of the specialized commercial court, as stipulated in Article 32/09 of the Civil and Administrative Procedure Law, is collective. This collective composition previously consisted of three judges; however, after amendments that abolished paragraphs 7-8-9-10 of Article 32 of the Civil and Administrative Procedure Law (see Article 14 of Law 22-13), the legislator retained the designation of collective composition. According to the new text,

²⁸—Daoudi Soumya, Legal Framework of Specialized Commercial Courts, Master's Thesis, Mohamed Boudiaf University, M'Sila, 2022-2023, p. 16.

²⁹—Law No. 22-13, Article 536 bis 5.



namely Article 536 bis 2, the presidency is held by one judge, assisted by four aides with extensive knowledge of commercial matters, who have a deliberative opinion—not just an advisory one, as stated in Article 533 of the Civil and Administrative Procedure Law before its amendment. If one or two aides are absent, they are replaced by one or two judges, as applicable, and the specialized commercial court's composition remains valid even if one aide is absent, allowing the judge to resolve disputes with three aides³⁰.

The aides are selected from individuals knowledgeable about commercial life and professional customs; thus, the aides can be traders or from other backgrounds, as the legislator does not require them to have the status of a trader. The legislator has defined the conditions and methods for selecting aides for the specialized commercial court under Executive Decree No. 23-52, dated January 14, 2023. According to the provisions of this decree, a committee chaired by the head of the judicial council in the jurisdiction where the specialized commercial court is located, or their representative, prepares and updates the list of aides. This committee also includes the head of the specialized commercial court, heads of the commercial chambers of the judicial councils affiliated with the jurisdiction of the specialized commercial court, heads of sections of the specialized commercial court, and the public prosecutor or one of their assistants from the judicial council in the jurisdiction of the specialized commercial court³¹.

The commercial courts have become operational under Algerian law, as per Article 06 of Law No. 22-07, which includes the judicial division. This article states: "Specialized commercial courts shall be established within the jurisdiction of certain judicial councils³²."

Article 536 bis 03 of the Civil and Administrative Procedure Law states: "The president of the specialized commercial court shall determine, after consulting the

³⁰—Derbal Abdelrazak, *A Concise Guide to Civil and Administrative Procedures*, Bertie Publishing, Algeria, 2022, p. 631.

³¹—Hanan Mazza, *op. cit.*, p. 272.

³²—Law No. 22-07, issued on May 5, 2022, regarding the judicial division, J.R.J.J., No. 32, published on May 14, 2022.



public prosecutor, the number of sections by order according to the nature and volume of judicial activity."

From this provision, it can be inferred that the sections within the specialized commercial court are determined based on the nature and volume of cases that may arise in the geographical area under the court's jurisdiction. The president of the specialized commercial court has the discretionary authority to determine these sections, and the public prosecutor's opinion is sought due to the dual powers of the latter, which include an administrative role allowing them to express their views on the establishment of sections within the court³³.

As the specialized commercial court began its operations in Algiers, it issued an order for the distribution of tasks specific to this court for the judicial year 2022-2023. This court is presided over by Judge Dammash Aziza. As for the sections, five sections have been established as follows:

- Section for disputes between banks and financial institutions with traders and international trade.
- Section for intellectual property disputes.
- Urgent Commercial Section, considering that the Algerian legislator acknowledged the existence of urgent matters, which are present in all other courts due to their preventive role, as they can help preserve rights and prevent situations from worsening.
- Section for maritime disputes, air transport, and commercial insurance.
- Section for company disputes, judicial settlement, and bankruptcy³⁴.

³³—Law No. 22-07, issued on May 5, 2022, regarding the judicial division, J.R.J.J., No. 32, published on May 14, 2022.

³⁴—Law No. 22-07, issued on May 5, 2022, regarding the judicial division, J.R.J.J., No. 32, published on May 14, 2022.



Section Two: Proceedings Before Specialized Commercial Courts

The proceedings before the specialized commercial court are characterized by a system that distinguishes them with pre-trial and post-trial procedures for filing a lawsuit.

First: Procedures Prior to the Initiation of Proceedings

From the analysis of Law 22/13, which amends and supplements Law No. 08/09 concerning civil and administrative procedures, it is evident that the legislator has established a requirement for reconciliation between the disputing parties before filing the case with the specialized commercial court³⁵.

The Algerian legislator defines reconciliation in Article 459 of the Civil Code as "a contract by which the parties end an existing dispute or prevent a potential dispute by mutually waiving their rights." As such, the reconciliation process mandated by the legislator prior to initiating a lawsuit before the specialized commercial court aligns with this definition, as it aims to resolve or prevent disputes.

While reconciliation is generally an optional method for resolving disputes, as outlined in Article 990 of the Civil and Administrative Procedure Law, it becomes a mandatory procedure in certain cases. Specifically, it must be followed if required by a particular legal provision, such as Article 536 bis 4 of the Civil and Administrative Procedure Law, which mandates it as a necessary step before registering a case with the specialized commercial court³⁶.

According to Article 536 bis 4, reconciliation must be pursued as a preliminary procedure upon the request of one party, which is then presented to the president of the specialized commercial court. The party requesting the procedure must have the legal capacity to undertake litigation. For instance, minors cannot submit such requests. Moreover, Article 460 of the Civil Code stipulates that only individuals with the capacity to represent the concerned rights in the reconciliation agreement may initiate it. A legal representative can only proceed with

³⁵ —Law 22/13, amending and supplementing Law No. 08/09 concerning civil and administrative procedures

³⁶ —Ben Azzouz Fatiha, same reference, p. 235



reconciliation if they have the authority to act on behalf of the entity, either by law or by mandate.

Before initiating the lawsuit in the specialized commercial court, the reconciliation request must be filed with the president of the court, who will assign one of the judges within five days. The judge is tasked with handling the matter within a maximum period of three months. The requesting party must inform the other parties of the scheduled reconciliation session. The request must be submitted in duplicate, justified, and accompanied by supporting documents. Additionally, a brief summary of the facts, requests, and legal grounds must be included to establish the dispute's nature and clarify the jurisdiction of the specialized commercial court, which will either accept or reject the reconciliation request³⁷.

If the reconciliation request is accepted, the presiding judge issues an order to appoint a judge to handle the reconciliation, and a session is scheduled. The requesting party must notify the other parties of the session's date. Notification is made officially by a judicial officer following the procedures outlined in Article 406 and subsequent articles of the Civil and Administrative Procedures Law.

If the parties fail to attend the session or the notification is not delivered, the reconciliation judge will prepare a report indicating the failure of the process, which will be signed by the judge and court registrar. If reconciliation is successful, a reconciliation report will be prepared instead. Both reports are then attached to the petition to open the case before the specialized commercial court. Additionally, the appointed reconciliation judge may seek help from any person they deem appropriate to facilitate the process, as allowed by paragraph 2 of Article 536 bis 4 of Law 22-13³⁸.

³⁷ —Article 311 of the Civil and Administrative Procedure Law

³⁸ —Ben Toumi Zahra, President of the Specialized Commercial Court, Sétif—presentation titled "Powers of the President of the Specialized Commercial Court and Procedures for Litigation Before It," Court of Appeal of Sétif in partnership with the Lawyers' Organization of the Sétif region, a study day on specialized commercial courts in civil and administrative procedure laws, p. 7/8



Second: Filing a Case Before the Specialized Commercial Court and Its Issued Rulings

A case may be filed or registered before the specialized commercial court after the failure of reconciliation. The Algerian legislator did not specify special procedures for filing a case before the specialized commercial court; rather, it is subject to the conditions for filing ordinary lawsuits before the court, except for the requirement to attach the petition with the report of unsuccessful reconciliation; otherwise, the case will be rejected formally. This is stated in the text of paragraph three of Article 536 bis 04 of the Civil and Administrative Procedures Law³⁹.

It can be observed that, as mentioned earlier, the Algerian legislator, through the amendment of the Civil and Administrative Procedures Law, did not provide specific procedures for filing a case before commercial courts, other than the stipulation of the obligation to pursue reconciliation. Therefore, the general procedures applicable to civil lawsuits are also applicable to cases filed before commercial courts. Consequently, the legislator did not take into account the particularities of commercial disputes, which require prompt issuance of rulings⁴⁰.

A lawsuit can be initiated by the plaintiff personally, their agent, or their lawyer, through a written petition, signed and dated, with a number of copies equal to the number of parties involved. It is worth noting that the legislator did not require representation by a lawyer before the specialized commercial court. The obligation to litigate with a lawyer applies only to appeal and cassation courts, in accordance with Article 10 of the Civil and Administrative Procedures Law. Since the commercial court serves as a first-instance judicial body, it does not mandate representation by a lawyer for the parties.

After filing the lawsuit, it is necessary to undertake the procedures for summoning the parties and submitting documents, and to establish the dispute according to the rules stipulated in the Civil and Administrative Procedure Law.

³⁹The text of paragraph three of Article 536 bis 04 of the Civil and Administrative Procedures Law states

⁴⁰Hanan Mazza, "The Legal System of the Specialized Commercial Court," *Comparative Legal Studies Journal*, Volume 09, Issue 01, University of Oran, June 11, 2023, p. 279.



Finally, in accordance with Article 536 bis 5, the specialized commercial court shall rule with a collective formation consisting of one judge and four assistants, or one judge and two assistants, or three judges, depending on the absence of the assistants, as previously stated. The ruling will be a preliminary judgment subject to appeal before the judicial council. Upon appealing the judgment, the dispute will be reviewed again regarding the facts and law before the commercial and maritime chamber at the level of the judicial council⁴¹.

Thus, the case returns to an ordinary, familiar judicial body, rather than a specialized one, which is legally empowered to annul the ruling issued by the specialized commercial court and to reconsider the dispute according to the perspective of the judges of the second degree.

The legislator has granted the president of the commercial court all the powers that fall under the jurisdiction of the president of the ordinary court. Additionally, the head of the department enjoys full authority to take necessary provisional or precautionary measures in urgent cases⁴².

Section Two: The Importance of Commercial Courts

As is known, commerce is characterized by a set of features that resulted in the establishment of a legal framework independent of civil law, namely commercial law. These features primarily include speed and ease of procedures, unlike civil matters, which are often slower. Trust and credit are essential pillars of trade, acting as its lifeblood; they strengthen with connection and are threatened by disconnection, differing from civil law. This credit includes granting deadlines for payment⁴³.

⁴¹— Article 536 bis 5 of the Civil and Administrative Procedure Law

⁴²— Hanan Mazza, previous reference, p. 279.

⁴³ - Muhammad Sardou, "Specialized Commercial Courts in Facing the Evolution of Commercial Transactions," a presentation in the context of a study day on: prospects and stakes in resolving commercial disputes, Judicial Council of Ain Defla in partnership with the Faculty of Law, University of Khemis Miliana, December 18, 2022, p. 07.



These factors must be considered when resolving commercial disputes, which is why specialized commercial courts were established to achieve this purpose. Below, we will present the main reasons that led the legislator to create them⁴⁴.

Firstly: Speed and Credit:

Speed is one of the most important characteristics in the commercial field, as goods, products, and services can either be perishable or subject to fluctuating prices, making it crucial to avoid missed sales opportunities. Consequently, commercial law provides sufficient flexibility for the movement of funds among traders⁴⁵.

Regarding credit, it reflects traders' confidence in their transactions, allowing them to acquire goods without immediate payment while sellers grant them time to settle debts. In return, traders consistently strive to fulfill their obligations to maintain mutual trust.

To protect the characteristics of speed and credit, the legislator established several rules aimed at ensuring stability in commercial transactions. Specialized commercial courts implement these rules when adjudicating disputes brought before them, as seen in:

1- Rules of Evidence:

The legislator set rules for evidence in commercial matters to simplify transactions and ensure speed, in contrast to general rules characterized by complexity and delay. The legislator allows for the use of all possible means of evidence in the event of a dispute, permitting the use of informal commercial documents even without a fixed date. Additionally, traders may use their commercial books as evidence⁴⁶.

However, the principle of freedom of evidence has an exception; the legislator requires written evidence for commercial company contracts, as stated in Article

⁴⁴ - Ben Azouz Fatiha, "Implications of Establishing Commercial Jurisdiction in Algeria," University Center of Maghnia, Journal of Law and Political Science, Volume 09, Issue 01, March 8, 2023, pp. 230-231.

⁴⁵-Muhammad Sardou, op. cit., p. 07.

⁴⁶ - Muhammad Sardou, op. cit., p. 08.



545 of the Algerian Commercial Code. This written requirement exists to protect the parties in case of disputes, thereby reinforcing the principle of credit.

2- Rules of Notice:

In cases where a debtor delays fulfilling their obligations, the creditor must issue a written warning to the debtor as proof of notice. However, in commercial matters, the notice can be given without the need for a formal document, which applies the principle of speed⁴⁷.

3. Rules of Bankruptcy:

The bankruptcy system was established to protect the collective interests of creditors from the actions of the debtor. Declaring a merchant's bankruptcy leads to the restriction of the debtor's ability to manage their assets, placing these assets under the supervision of a designated judge⁴⁸, therefore, the declaration of a merchant's bankruptcy must be subject to specialized commercial courts to ensure and protect commercial credit.

Secondly: The Evolution of Commercial Transactions

The rapid growth of commercial transactions, especially in the sectors of commercial companies and banking, combined with the increasing number of parties involved in economic exchanges, led the Algerian legislator to create specialized commercial courts. These courts were designed to handle disputes arising from this complex environment, which requires a distinct legal framework. The legislator outlined specific types of disputes that fall under the exclusive jurisdiction of these courts, while less complex commercial matters remain within the jurisdiction of the commercial division of regular courts.

This underscores the significance of specialized commercial courts in attracting investment, as they provide a system where investors can be confident

⁴⁷ - Muhammad Sardou, same reference, p. 10.

⁴⁸ - Elias Barouk, "Bankruptcy and Judicial Settlement in Algerian Commercial Law," lectures given to law students specializing in Private Law, Third Year Law, Faculty of Law, University of May 8, 1945, Qalma, 2019-2020, p. 09.



that their legal concerns will be addressed promptly and competently by courts with expertise in commercial matters.

Conclusion

The creation of specialized commercial courts plays a crucial role in improving the business environment and boosting economic growth. This initiative reflects a strong commitment to resolving commercial disputes effectively while enhancing the quality of justice within the business sector. It also serves to attract both national and foreign investment, thus stimulating economic development.

Our analysis led to several key conclusions: The modification of the Civil and Administrative Procedure Law through Law 22-13 aligns with the evolving commercial landscape by establishing courts dedicated to handling specific commercial and investment-related cases. These courts address the unique needs of the commercial sector, particularly the demand for efficiency, which in turn allows Algeria to assert more control over its legal framework.

Specialized commercial courts facilitate the issuance of clear, well-founded decisions. By promoting alternative dispute resolution methods such as mandatory conciliation, the courts improve the speed of resolving disputes and alleviate congestion in the judicial system. This approach highlights the legislative focus on creating a favorable business climate and supporting economic growth by evolving the judicial system to meet commercial needs and ensure equitable outcomes.

The courts are equipped with tailored procedures designed to meet their objectives, including the mandatory conciliation process before any legal action is taken, thus saving both time and costs when successful. The adjudication process in these courts involves a panel of judges and specialized assistants, ensuring decisions are made by experts in the field. Furthermore, when investors opt for these specialized courts, they do not face the need to enforce judgments as with arbitration decisions.

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