

The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13

الطبيعة القانونية للدفع بعدم القبول: من منظور الفقه وقانون الإجراءات المدنية

والإدارية 08-09 المعدل والمتمم بالقانون 22-13

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Abstract:

This study examines the legal nature of the plea of inadmissibility in Algerian legislation, as a legal instrument aimed at denying the plaintiff's right to litigate due to the absence of judicial protection requirements, such as standing (*qualité*) and interest (*intérêt*). The study highlights the autonomy of this plea from both substantive and formal (procedural) pleas. It also clarifies the instances of inadmissibility related to public order (*ordre public*) which the judge raises *ex officio*, and those not related to public order which are invoked solely by the litigants. Furthermore, the study reviews the impact of the judgment rendered on the plea of inadmissibility on the course of litigation and the exhaustion of the court's jurisdiction upon adjudication. Finally, the study concludes by identifying a terminological overlap in certain legislative texts between "inadmissibility" and "nullity," while proposing the codification of the provisions for the plea of unconstitutionality within the Civil and Administrative Procedures Code.

Key words: Judicial Litigation - Plea of Inadmissibility - Civil and Administrative Procedures Law - Right to Litigation - Public Order.

Introduction:

Judicial litigation in general, and civil litigation in particular, is characterized by the presence of two disputing parties. The first is the "Plaintiff" (the active party), who claims to be the holder of the infringed right. By exercising the right to sue before the competent judicial authority, the plaintiff aims to obtain judicial protection for the substantive right protected by law. The plaintiff bears the burden of proving these claims and is responsible for notifying the second party at their place of residence. To ensure the claim is not invalidated or dismissed, the plaintiff must observe both formal and substantive aspects when filing the lawsuit. Furthermore, the legislator has provided the plaintiff with means to present "Claims," which vary in name based on their timing and purpose: the initial request is termed the "Original Claim" (Initial Petition), while "Additional Claims" are those the plaintiff may submit during the proceedings. These must be linked to the original claim and aim to modify it by either addition or reduction.

The second, or passive, party in civil litigation is the person against whom the lawsuit is filed—the "Defendant." The defendant must exercise the right of defense by seeking to annul or

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"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

deny the plaintiff's allegations on the grounds of invalidity, whether in form or substance, or by pleading the "Inadmissibility" of the claim altogether. The defendant's means of refuting the plaintiff's claims are known as "Pleas" (Defenses). These are stipulated by the legislator in the Civil and Administrative Procedures Law 08-09, amended and supplemented by Law 22-13, under Book Three regarding means of defense, which categorizes them into three types: Substantive Pleas, Formal (Procedural) Pleas, and Pleas of Inadmissibility. Notably, there is a fourth plea not included in the Civil and Administrative Procedures Law, which is the "Plea of Unconstitutionality," established by Organic Law No. 22-19 of July 25, 2022, defining the procedures for notification and referral to the Constitutional Court.

The "Plea of Inadmissibility"—the subject of our study—is among the legal terms that have seen jurisprudential divergence, particularly regarding its position among other defense methods and its legal nature. Therefore, this study aims to clarify the meaning of this plea in light of the Civil and Administrative Procedures Law 08-09 (amended by Law 22-13), outline the positions of legal doctrine and judiciary, and determine its specificity, forms, and effects on the validity of judicial proceedings, as well as its relationship with other pleas.

The core problem of this study revolves around the following: What is the legal nature of the "Plea of Inadmissibility" from the perspective of procedural doctrine and the Algerian legislator? And what constitutes the specificity of this plea compared to other types of pleas?

To address this problem, we have adopted the "Analytical Method," which suits the nature of the study by analyzing the articles of the Civil and Administrative Procedures Law related to inadmissibility, as well as analyzing legal doctrine and judicial precedents. Additionally, we employed the "Comparative Method" when distinguishing the plea of inadmissibility from other pleas.

To comprehensively cover the subject, the study is divided according to the following plan:

- **Title I:** The concept of the Plea of Inadmissibility based on its legal nature from the perspective of procedural doctrine and the Algerian legislator.
- **Title II:** Conditions and grounds for raising the Plea of Inadmissibility.
- **Title III:** The specificity of the Plea of Inadmissibility compared to other pleas.
- **Title IV:** The impact of the Plea of Inadmissibility on the course of judicial litigation.

1-Tilte I: The Concept of the Plea of Inadmissibility based on its Legal Nature in Jurisprudence and Law

In this section, we attempt to address the jurisprudential divergence regarding the legal nature of the "Plea of Inadmissibility," examining various opinions and justifications (1). We also explore how the prevailing jurisprudence formulated a definition for this plea, focusing on the Algerian legislator's stance and the approach adopted in determining its nature (2).

1.1- Defining the Plea of Inadmissibility based on its Legal Nature from the Perspective of Procedural Jurisprudence:

Procedural jurisprudence has diverged regarding the legal nature of the plea of inadmissibility, dividing into three schools of thought: One trend divides inadmissibility pleas into those related to the merits (substance) and those related to procedures. Another trend considers the plea of inadmissibility to be identical to a substantive plea; both trends attempt to justify their views. Meanwhile, the third and prevailing trend considers the plea of inadmissibility to be of a unique nature (*Sui Generis*), independent of other types of pleas.

The reason for this dispute among jurists regarding the nature of the plea stems from the definition of a "Lawsuit" (Legal Action) and its relationship to the "Substantive Right."

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

A lawsuit is defined as "the power to resort to the judiciary to obtain a declaration of a right or to protect it; it is the protection of a rule established by law"¹. It is also defined as "the authority granted by the legal system to the right-holder to resort to the courts to protect their right"².

According to jurisprudence, the existence of a substantive right and the occurrence of an infringement upon it constitute the objective ground for the emergence of the right to sue. Thus, there is a close correlation between the substantive right and the right of action; consequently, the latter is influenced by the existence or non-existence of the substantive right. This, in turn, reflects on the plea of inadmissibility, which serves as a tool to deny the existence of the right to bring a lawsuit³.

This is the approach adopted by the Algerian legislator in Article 67 of the Civil and Administrative Procedures Law, by linking the plea of inadmissibility to the "Right to Litigate"—a right that is exercised solely through the means of a lawsuit, as will be clarified later.

(A)- The First Jurisprudential School of Thought on the Plea of Inadmissibility: Proponents of this trend categorized pleas of inadmissibility into:

Substantive-related pleas: These involve specific cases, such as the plea of inadmissibility for lack of interest or standing, which are governed by the rules of substantive defenses.

Procedural-related pleas: Termed "Procedural Inadmissibility," these are governed by the general rules applicable to procedural pleas. An example is the plea regarding the failure to sue all parties whose joinder is legally required, such as the necessity of suing both the seller and the buyer in a pre-emption (*Shufa*) lawsuit.

- **Critique of the First School:** This trend was criticized because it leads to the dissolution of the plea of inadmissibility by distributing its elements between procedural and substantive defenses, whereas the plea of inadmissibility possesses its own legal autonomy as a self-standing plea⁴.

(B)- The Second Jurisprudential School of Thought on the Plea of Inadmissibility: Proponents of this view argued that the plea of inadmissibility is identical to a substantive defense. They based this similarity on the fact that it may be invoked at any stage of the proceedings, even for the first time before the Court of Appeal, as is the case with the lack of standing⁵.

- **Critique of the Second School:** This characteristic is not exclusive to substantive defenses and pleas of inadmissibility. Even formal or procedural pleas, if they relate to Public Order (*Ordre Public*), may be invoked at any stage of the litigation, including before the Court of Appeal.

(C)- The Third Jurisprudential School of Thought on the Plea of Inadmissibility: This is considered the preponderant view (*L'opinion dominante*). Legal scholars reached a consensus that the plea of inadmissibility is a self-standing and independent plea. It is a legal instrument used when a requirement for the admissibility of the lawsuit is missing. It is raised by the defendant or anyone in their legal position (such as an intervener or the Public Prosecution if it is a main party; likewise, an appellant may raise it). The objective is to obtain a judgment preventing the court from examining the merits of the opponent's claim. Thus, it differs from both formal and substantive pleas.

Based on this unique nature, procedural jurists faced difficulties in establishing a comprehensive and exclusive definition for the plea of inadmissibility due to the diversity of its instances. Some defined it as: "A plea that is directed neither at the proceedings (as in formal pleas) nor at the claimed right (as in substantive pleas). Rather, it is directed at the opponent's right of action (*le droit d'agir*), aiming to prevent the court from considering the case. Examples include inadmissibility due to lack of interest, lack of standing, filing after the expiration of a time limit, or prior adjudication (*Res Judicata*)."

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

Dr. Ahmed El-Sayed Sawi defined it as: "The plea by which the defendant, or those in their position, contests the plaintiff's right to bring the action, or challenges the fulfillment of a condition required by law for the admissibility of the lawsuit"⁶.

1.2- The Position of the Algerian Legislator on the Plea of Inadmissibility Based on its Legal Nature:

The Algerian legislator, through Articles 67, 68, and 69 of the Civil and Administrative Procedures Code (C.C.A.P), has recognized the independent legal nature of the Plea of Inadmissibility and its distinction from both formal and substantive pleas, thereby aligning with the preponderant jurisprudential view.

(A)- Legislative Definition of the Plea of Inadmissibility:

Article 67 of the C.C.A.P defines the plea of inadmissibility as:

"The plea which aims to declare the inadmissibility of the opponent's claim due to the lack of the right to litigate, such as lack of standing, lack of interest, prescription, expiration of mandatory time limits, and the force of *res judicata*, without examining the merits of the dispute." It is understood from this article that the plea of inadmissibility is a legal instrument invoked by a litigant to have the other party's claim declared inadmissible due to the absence of the right of action (*le droit d'agir*). This includes cases of lack of standing (*qualité*), lack of interest (*intérêt*), statute of limitations (prescription), expiration of procedural deadlines, and prior adjudication (*res judicata*). By this definition, it is a means to avoid addressing the merits; it pertains neither to the procedural aspect (formal) nor to the claimed right (substantive), but rather to contesting the validity of the right to resort to the judiciary for a particular claim.

Pleas of inadmissibility aim to protect litigants by ensuring compliance with legal requirements (such as standing, interest, and statutes of limitations) to secure their rights and transaction stability. Furthermore, they enhance judicial efficiency by filtering out defective claims, thereby reducing court backlogs, preserving the quality of judgments, and ensuring the overall stability of the judicial system⁷.

(B)- The Relationship Between the Plea of Inadmissibility and the Right to Litigate

Based on the legislative definition in Article 67, we conclude that this plea aims to declare the claim inadmissible due to the lack of the right to litigate. This implies a mutual correlation between the plea of inadmissibility and the Principle of the Right to Litigate, which is a constitutional right guaranteed to individuals under Article 164 of the Constitution⁸. This right ensures access to the judiciary and provides the necessary protection for appearing before it to settle disputes. Every person has the right to seek judicial protection for a right, an interest, or a legal status, or to seek redress for an infringement.

The Right to Litigate is defined as: "The right that allows any person to resort to the judicial authority provided for in the State's law, in accordance with the organized procedures, to achieve their legitimate interests"⁹.

By analyzing the first paragraph of Article 3 of the C.C.A.P, which establishes the right of access to the judiciary, we conclude that the exercise of this right is optional for every natural or legal person claiming a right—whether personal or *in rem*—with or without supporting documents. This right is exercised through the Lawsuit (*l'action*), which serves as the "entry visa" to the competent court. However, this is conditional upon the absence of restrictions, such as an arbitration clause, mandatory non-judicial conciliation, or specific legal prohibitions.

Since the right to litigate is a fundamental guarantee of a fair trial and equal opportunity, it is not limited to filing the suit but extends to all safeguards throughout the process: from admissibility and the course of litigation to the issuance and execution of the judgment. It also includes the right to appeal when legal conditions are met¹⁰.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

Jurisprudence agrees that the right to litigate possesses several characteristics: it is a right granted to all persons (reflecting the principle of equality before the law), it is a public right that is not subject to prescription and cannot be waived, and it is an absolute right not restricted by any constitutional limitation.

In conclusion, the Plea of Inadmissibility—according to Article 67—is the procedural sanction for the absence of the right to litigate. Thus, we can define it as: "The plea through which a litigant aims to deny the plaintiff's right to bring an action against them due to the lack of judicial protection or the forfeiture of the right to pursue it."

2-Tilte II: Conditions and Grounds for Raising the Plea of Inadmissibility:

The Algerian legislator, through Articles 67, 68, and 69 of the Civil and Administrative Procedures Code (C.C.A.P), sought to define the conditions for raising the plea of inadmissibility and to outline some of its instances, which vary between those related to public order and those that are not.

2.1- Conditions for Raising the Plea of Inadmissi:

Based on the reading of Articles 67, 68, and 69 of the C.C.A.P, the following conditions must be met to raise a plea of inadmissibility:

a- The Subject Raising the Plea: The plea must be raised by a litigant who has an interest in the dispute or anyone in the position of a litigant, such as the defendant or an intervenor (whether through joinder alongside the defendant or an offensive intervention). Additionally, the representative of the Public Prosecution (*Ministère Public*) must raise it if they are a principal party to the litigation pursuant to Article 258 of the C.C.A.P. Furthermore, under Article 69, the judge is obligated to raise the plea of inadmissibility *ex officio* if it pertains to Public Order.

b- The Subject Matter of the Plea: The ground for the plea must relate to the invalidity of the judicial claim due to the absence of admissibility requirements or the forfeiture (*déchéance*) of the right to bring the judicial claim.

c- Timing of the Plea: Given its significance, the legislator allows litigants, under Article 68, to submit the plea at any stage of the proceedings, even after submitting defenses on the merits. This same position is adopted by Article 115 of the Egyptian Procedures Law¹¹. This was also affirmed by the Supreme Court, stating: "...the plea of inadmissibility may be invoked at any stage of the proceedings, even for the first time before the Court of Appeal, regardless of whether the plea relates to public order. The right to raise the plea of inadmissibility is not forfeited even if the interested party has already entered into the merits of the case..."¹². Consequently, the plea of inadmissibility is not bound by a specific order of priority; the right to invoke it is not lost if a substantive defense was raised beforehand. Litigants may even raise it for the first time before the Court of Cassation (Supreme Court or Council of State).

d- Formal Presentation (Inferred Condition): The plea should be raised within the litigant's memorandum itself rather than in a separate petition. The litigant has the freedom to provide reasoning for the plea or not, as the legislator has not mandated specific reasoning.

e- Effect of the Judgment: If a judgment of inadmissibility is rendered, the plaintiff who lost the case cannot re-submit the dispute, particularly if the ground for the plea was the expiration of mandatory time limits or the absence of channels for appeal.

2.2- Grounds and Instances for Raising the Plea of Inadmissibility in the Civil and Administrative Procedures Code (08/09):

Given the extensive variety of instances for raising a plea of inadmissibility, the legislator provided an illustrative, non-exhaustive list of these grounds in Articles 67 and 69 of the Civil and

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

Administrative Procedures Code (C.C.A.P), while leaving other instances to be addressed in various separate provisions throughout the Code.

(A)- Absence of Admissibility Requirements: In Article 13 of the Civil and Administrative Procedures Code (C.C.A.P), the legislator stipulated the conditions for the admissibility of a lawsuit, which are: Interest, **Standing**, and Authorization (where required by law).

- **Requirement of Interest (*Intérêt*):** According to the legal maxims "No action without interest" and "Interest is the measure of the action," the plaintiff—whether a natural or legal person, private or public—must have an interest in filing the lawsuit. If their right is infringed, they resort to the judiciary to protect it. The interest must be personal, direct, and existing at the time the suit is filed, or a potential interest (*intérêt éventuel*). It must be recognized and protected by law. Interest is not only a condition for the admissibility of the lawsuit but also for any claim, plea, or appeal against a judgment. Consequently, if interest is absent or one of its conditions is missing, the opponent may raise a plea of inadmissibility. The judge does not raise it *ex officio* because it is not a matter of Public Order.

- **Requirement of Standing (*Qualité*):** Standing is the status in which the person bringing the action is the actual holder of the claimed right, creating a direct link to the right claimed against the defendant. Thus, both standing and interest coincide. Based on the rule "An action is brought by a person of standing against a person of standing," it is a fundamental condition for admissibility that must be met by all parties. It links the litigants to the subject matter and must be present for the acceptance of any claim, plea, or appeal, regardless of which party submits it. Accordingly, its absence nullifies the right to litigate and serves as a ground for a plea of inadmissibility raised by either the opponent or the judge.

- **Requirement of Authorization (*Autorisation*):** Article 13 of the C.C.A.P considers authorization a substantive condition for the admissibility of certain lawsuits. It is an exceptional requirement for specific cases where substantive law explicitly mandates obtaining permission before filing; otherwise, the case is dismissed for inadmissibility. "Authorization is the permit or preliminary procedure stipulated by law for the initiation of a lawsuit"¹³. Therefore, the authorization must be a formal document granted to an individual to perform specific tasks or actions defined by law. This document must be in their possession before filing the suit. If they exercise the right to sue, they must attach it to the statement of claim; otherwise, the judge will raise the plea of inadmissibility *ex officio*. Examples of Authorization include:

- A guardian's disposal of a minor's real estate, which requires authorization from the court president with territorial jurisdiction. Article 88 of the Family Code¹⁴ specifies the actions for which a guardian must seek the judge's permission.

- Authorization for an 18-year-old emancipated minor to practice commerce, per Article 05 of the Commercial Code¹⁵. The judge must verify this authorization, and if a suit is brought by or against an unauthorized minor, the judge must raise this plea *ex officio* as it relates to Public Order.

- Lifting the immunity of certain figures for prosecution, or a "delegation of authority" (*mandat de délégation*) where an administrative official delegates powers to a subordinate within legal limits, as "there is no delegation without a legal text."

* However, the legal issue that may be raised regarding Article 13 of the Civil and Administrative Procedures Code (C.C.A.P) is: To what extent are the lack of interest, standing, and authorization linked to Public Order (*Ordre Public*)?

The answer to this question is found in Article 13 of the C.C.A.P, which indicates that the judge raises the lack of standing and authorization *ex officio* (*tous les cas de défaut de qualité et d'autorisation*) whenever required by law. This implies that the lack of interest is not a matter of Public Order. This is further confirmed by Article 67 of the C.C.A.P, which cites the lack of

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

standing and interest as prominent examples for raising a plea of inadmissibility, without explicitly mentioning the lack of authorization.

* Consequently, according to the jurisprudential maxim "The specific provision overrides the general" (*Lex specialis derogat legi generali*), Article 13 of the C.C.A.P is considered a specific provision relative to the general provision of Article 67.

(B)- Prescription (Statute of Limitations): Prescription is one of the grounds for the expiration of obligations without performance, known as "Extinctive Prescription" (*Prescription extinctive*). This occurs when a certain period passes without the creditor demanding the debt from the debtor, resulting in the expiration of the debtor's obligation to pay. Consequently, the creditor loses the right to claim the debt thereafter. Accordingly, if a plaintiff files a lawsuit to claim a right that has lapsed by prescription, the defendant may raise a plea of inadmissibility due to the forfeiture of the right by prescription. According to Article 67 of the Civil and Administrative Procedures Code (C.C.A.P), this plea is not a matter of Public Order (*Ordre Public*); it can only be invoked by the interested party. The judge cannot raise it *ex officio*; rather, the party invoking it must provide material evidence to the judge proving the prescription of the right.

(C)- Expiration of Mandatory Time Limits (Forfeiture/Déchéance): The legislator may link certain rights to specific deadlines and dates for their protection. If these periods expire, the right to benefit from them is forfeited. For example, the expiration of the period specified for an easement (*servitude*) according to Article 878 of the Algerian Civil Code¹⁶; if an easement is established on a property for five years, it terminates upon the expiry of that period. Similarly, the legislator may set deadlines for filing a lawsuit, such as possessory actions, where the suit must be brought within one year of the disturbance. If filed after this period, the opponent may plead inadmissibility for filing outside the legal timeframe, as decided by the Real Estate Chamber of the Supreme Court in its decision dated 12/04/2004¹⁷. Another example is the warranty action for latent defects (*vice caché*), where Article 383 of the Civil Code stipulates that the aggrieved party must file the suit within one year from the date of delivery¹⁸. In these cases, the plea of inadmissibility does not relate to public order, and the judge cannot raise it automatically unless invoked by the litigant with supporting evidence.

(D)- Res Judicata (Hajiyat al-Shay' al-Maqdi Fih): *Res Judicata* refers to the issuance of a judgment between the same litigants, regarding the same subject matter and the same legal cause (*Object, Cause, and Parties*). Such a judgment serves as conclusive evidence against the parties and third parties. Consequently, according to the first paragraph of Article 297 of the C.C.A.P, the judge is divested of the dispute as soon as the judgment is pronounced. The judge cannot reconsider it except for correction or interpretation, as per the second paragraph of the same article. Therefore, if one of the litigants refiles the same lawsuit, the interested party can plead inadmissibility based on prior adjudication (*Res Judicata*). The litigant has no right to refile since the court has exhausted its jurisdiction over the merits of the dispute¹⁹. It should be noted that *Res Judicata* (*Hajiyat al-Shay'*) differs from the Enforceable Force of a Judgment (*Quwa al-Amr al-Maqdi*); the latter refers to the judgment's readiness for execution after obtaining the "executory formula," as the judgment on the merits has become final and is no longer subject to ordinary methods of appeal.

We conclude that the legislator excluded the aforementioned cases (Interest, Mandatory Time Limits, Prescription, and *Res Judicata*) from being considered matters of Public Order (*Ordre Public*). The reason for this likely stem from the fact that a judge cannot ascertain these instances independently unless they are raised by a litigant who provides material proof or evidence. This aligns with the legal maxim: "The judge is knowledgeable of the law but ignorant of the facts."

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

Conversely, Standing (*Qualité*) and Authorization (*Autorisation*) are considered instances of pleas related to Public Order, as affirmed by Article 13 of the Civil and Administrative Procedures Code. This is because they are legal statuses that the judge is expected to investigate and verify *ex officio* regarding the litigants' eligibility.

2.3- Grounds or Instances for the Plea of Inadmissibility stipulated in Article 69 of the Civil and Administrative Procedures Code (C.C.A.P) (Instances related to Public Order)

Article 69 of the C.C.A.P states: "The judge must *ex officio* raise the plea of inadmissibility if it relates to Public Order, particularly in cases of failure to respect the deadlines for appeals or the absence of a right to appeal."

The phrasing of Article 69 is mandatory, compelling the judge to automatically (*ex officio*) raise the plea of inadmissibility if it pertains to public order. The article highlights two specific examples:

- **Failure to respect the deadlines for appeals:** Whether for ordinary or extraordinary methods of appeal, the legislator has set specific legal timeframes for each. All deadlines mentioned by the legislator are considered matters of Public Order that must be respected by both the judge and the litigants. If the appellant fails to comply, the judge—at any stage of the proceedings—must raise this *ex officio* as a plea of inadmissibility. It is straightforward for the judge to verify compliance by examining the judgment and the affidavit of service (*procès-verbal de signification*) attached to the appeal petition.

- **Absence of a right to appeal:** The legislator has specified in various provisions of the C.C.A.P certain judgments and orders that are not subject to appeal by any means. These include:

- Judgments rendered in first and last resort (*premier et dernier ressort*) in cases of divorce or the dissolution of the marriage bond (Article 57 of the Family Code)²⁰.
- Judgments rendered in favor of an employee in cases of the employer's abuse of rights, such as a judgment declaring an unfair dismissal null and void and reinstating the employee, awarding compensation for overtime, or ordering the employer to provide payslips (Article 21 of Law 90-04)²¹.
- Judgments ordering the adjudication of a judicial sale (*l'adjudication*) (Article 765 of the C.C.A.P).
- Decisions regarding the joinder or severance of cases, which are considered administrative orders (*ordonnances gracieuses*) and are not subject to appeal (Article 209 of the C.C.A.P).
- Orders ruling on a litigant's request for the personal appearance of the other party (Article 98 of the C.C.A.P).
- Orders ruling on the payment of fees (Article 17 of the C.C.A.P).
- Orders ruling on the challenge of a witness due to incapacity, kinship, or any other serious reason (Article 156 of the C.C.A.P).
- Orders for provisional measures to protect a minor's interests (Article 467 of the C.C.A.P).
- Orders to strike a case off the cause list (Article 219 of the C.C.A.P).
- Orders ruling on execution difficulties during an investigation (*les incidents d'exécution de l'enquête*) (Article 92 of the C.C.A.P), among other orders.

Accordingly, if the party against whom the judgment was rendered appeals against those judgments or orders that the legislator has prohibited from being appealed, the judge shall intervene *ex officio*, rejecting the submitted appeal for inadmissibility, as it is a matter of Public Order.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

2.4- Instances of the Plea of Inadmissibility in Separate Provisions of the Civil and Administrative Procedures Code:

Among other cases where the legislator established a sanction for the non-respect of judicial claim requirements—and where the judge must raise the plea of inadmissibility *ex officio* due to its relation to Public Order—are the following:

- **Mandatory Use of Arabic:** All procedures, pleadings, and documents must be in the Arabic language, under penalty of inadmissibility (Article 8, C.C.A.P).
- **Timing of Formal Pleas:** Failure to respect the chronological order for raising formal (procedural) pleas not related to public order results in a sanction; the judge shall *ex officio* declare the inadmissibility of the formal plea if it is raised after substantive defenses or a plea of inadmissibility (Article 50, C.C.A.P).
- **Intervention of Third Parties:**
 - Intervention is inadmissible unless the party possesses standing and interest.
 - Intervention before the referral court (*juridiction de renvoi*) after cassation is inadmissible unless the referral decision states otherwise (Article 194, paras 2 & 4, C.C.A.P; reinforced by Article 371).
 - Intervention is inadmissible if it is not sufficiently linked to the litigants' claims (Article 195, C.C.A.P).
 - Intervention is only admissible for those with an interest in preserving their rights by supporting a litigant (Article 198, C.C.A.P).
- **New Claims on Appeal:** New claims are inadmissible before the Court of Appeal (Article 341, C.C.A.P).
- **Appeals in Cassation:**
 - Appeals in cassation against judgments rendered in the last resort are inadmissible unless filed alongside judgments/decisions ruling on the **merits** (Article 351, C.C.A.P).
 - It is inadmissible to file an appeal in cassation and a petition for reconsideration (*recours en révision*) simultaneously (Article 352, C.C.A.P).
 - An appeal in cassation is inadmissible unless submitted by a litigant or their legal successors (Article 353, C.C.A.P).
 - New grounds for cassation are inadmissible except those stipulated by law (Article 359, C.C.A.P).
 - Opposition (*opposition*) against Supreme Court decisions is inadmissible (Article 379, C.C.A.P).
- **Labor Disputes:** Under Article 504 of the C.C.A.P, a social lawsuit must be filed within 6 months from the date of the Report of Non-Conciliation (*procès-verbal de non-conciliation*), under penalty of forfeiture (*déchéance*) of the right of action. Here, the legislator used "forfeiture of right" instead of "inadmissibility" due to its link to filing deadlines. Furthermore, the report acts as a mandatory authorization; its absence allows the judge or the litigants to raise the plea of inadmissibility *ex officio* (Article 37, Law 90-04 as amended).
- **Possessory Actions:** Inadmissibility of possessory actions, including restitution of possession, if not filed within one year of the disturbance (Article 524/2, C.C.A.P). Additionally, the principle of non-cumulation applies: a possessory action is inadmissible if the party has already pursued a petitory action (ownership action) (Article 529, C.C.A.P).
- **Response Memorandum in Cassation:** Article 568 of the C.C.A.P provides the respondent a two-month period from the formal notification of the cassation petition to submit a response memorandum signed by a lawyer accredited before the Supreme Court, under penalty of "automatic inadmissibility" (*sous peine d'irrecevabilité d'office*). This is the only article explicitly using this phrasing.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

- **Arbitration Clauses:** Under Article 1007 of the C.C.A.P, the judge or the interested party may plead inadmissibility due to the existence of an arbitration clause. If a party resorts directly to the judiciary despite an arbitration agreement, the opponent may invoke inadmissibility due to the breach of the contractual obligation to arbitrate²².

Title III: The Specificity of the Plea of Inadmissibility Compared to Other Pleas:

When a defendant seeks to invoke the failure of one of the admissibility requirements set forth in Article 13 of the Civil and Administrative Procedures Code (C.C.A.P), they employ a specific legal instrument that differs entirely from procedural and substantive pleas: the Plea of Inadmissibility. Invoking this plea is essentially a fundamental right of the litigant; the interested party may exercise their right to plead inadmissibility, regardless of its type, at any time, unless the law provides otherwise. This means that, pursuant to Article 68 of the C.C.A.P, they are entitled to invoke it at any stage of the judicial proceedings, even for the first time before the Court of Appeal as a means of defense. This is based on the principle that a right—whether substantive or procedural—is neither forfeited nor extinguished unless the law explicitly stipulates so.

3.1- The Difference Between a Substantive Plea and a Plea of Inadmissibility:

Article 48 of the C.C.A.P defines a **substantive plea** (*défense au fond*) as: "A means aimed at refuting the opponent's claims, which may be submitted at any stage of the lawsuit."

While the plea of inadmissibility resembles the substantive plea in that both can be raised at any stage of the litigation, the fundamental difference lies in their targets:

- **Substantive Plea:** Raised when there is a lack of a substantive right; the litigant denies the existence of the right or the legal status claimed by the plaintiff, or contests the facts giving rise to that right, leading to the loss of legal protection.
- **Plea of Inadmissibility:** Raised when there is a failure to meet a requirement for judicial protection, such as the lack of interest.

Furthermore, some scholars argue that in a plea of inadmissibility, the court has not yet exhausted its jurisdiction over the merits, whereas in a substantive plea, the court's jurisdiction over the merits is exhausted, making the resulting judgment possess the authority of *Res Judicata*.

Regarding the adjudication process, the judge must address the plea of inadmissibility before addressing substantive pleas. However, the judge may rule on the plea of inadmissibility independently, or rule on both the plea of inadmissibility and substantive pleas together in a single judgment. In the latter case, the judge must clearly distinguish between the ruling on inadmissibility and the ruling on the merits²³.

3.2- Distinguishing Between the Plea of Inadmissibility and the Plea of Unconstitutionality:

By analyzing Articles 20, 21, 23, and 24 of Organic Law No. 22-19 (July 25, 2022), which defines the procedures for referral to the Constitutional Court²⁴, we conclude that the Plea of Unconstitutionality (*l'exception d'unconstitutionnalité*) shares similarities with the plea of inadmissibility in its "sui generis" nature and its availability before both ordinary and administrative jurisdictions at any stage of the proceedings.

However, they differ in several aspects:

- **Plea of Inadmissibility:** Can be raised by the litigant or by the judge *ex officio* if it relates to public order.
- **Plea of Unconstitutionality:** Raised only by the parties through a **separate, reasoned memorandum**.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

Organic Law 22-19 sets specific conditions for referring this plea to the Supreme Court or the Council of State:

1. Consulting the Public Prosecution or the State Commissioner.
2. The court must verify that the contested legislative or regulatory provision is decisive to the outcome of the dispute or forms the basis of the prosecution.
3. The ground raised must be serious (*sérieux*).

The decision to refer the plea results in a stay of proceedings until a decision is reached by the competent authorities. The referral or refusal decision must be reasoned and notified to the parties; it cannot be appealed except alongside the final judgment on the merits²⁵.

3.3- The Difference Between a Plea of Inadmissibility and Procedural Pleas:

Article 49 of the C.C.A.P defines a formal (procedural) plea (*exception de procédure*) as: "Any means aimed at declaring the invalidity, expiration, or suspension of procedures."

Procedural pleas must be raised simultaneously before any defense on the merits or plea of inadmissibility, under penalty of inadmissibility. What, then, distinguishes a procedural plea from a plea of inadmissibility?

(A)- Similarities Between the Plea of Inadmissibility and Procedural Pleas:

- **Nature:** A procedural plea (*exception de procédure*) may resemble a plea of inadmissibility in its nature; the legislator has designated certain procedural pleas as matters of Public Order (*Ordre Public*), requiring the judge to raise them *ex officio*. Examples include the plea of lack of subject-matter jurisdiction (*compétence d'attribution*) and the plea of nullity due to lack of legal capacity. Conversely, pleas not related to public order, such as lack of territorial jurisdiction or nullity of formal acts, can only be raised if invoked by a litigant.
- **Res Judicata Effect:** Both a judgment ruling on a procedural plea and one ruling on a plea of inadmissibility are characterized as judgments ruling on the "merits" (in a broad procedural sense) and possess the authority of *Res Judicata* (*Hajiyat al-Shay' al-Maqdi Fih*)²⁶.
 - Consequently, if the court rules on a procedural plea or inadmissibility, and the same dispute is refiled, the opponent may plead inadmissibility based on prior adjudication.
 - *Note:* If the court rules on an interlocutory matter without ending the litigation, it does not exhaust its jurisdiction. However, exceptions exist for interpretative or corrective actions, or third-party oppositions (*tierce opposition*).
- **Appeals:** Judgments ruling independently on a plea of inadmissibility or a procedural plea are appealable before the Judicial Council (*Council of State/Appellate Court*) because they terminate the litigation. This is supported by Article 333 of the C.C.A.P, which states: "*Judgments rendered in all matters are appealable when they rule on the merits of the dispute, a procedural plea, a plea of inadmissibility, or any other incidental plea that ends the litigation...*"

(B)- Differences Between the Plea of Inadmissibility and Procedural Pleas:

The primary distinctions include:

- **Objective and Legal Tool:** A procedural plea challenges the validity of litigation procedures, serving as a tool to enforce the sanction of Nullity (*Botalan*). In contrast, a plea of inadmissibility serves as a tool to enforce the missing requirements for the right of action, and may also enforce Forfeiture (*Déchéance*).
 - *Key Distinction:* If an appeal is declared inadmissible due to forfeiture of the right, it cannot be refiled. However, if a procedural act is declared null, it may be refiled after correcting the procedures (provided the deadline has not expired).
- **Correction of Procedures:** For procedural pleas related to nullity, the judge may grant a deadline to rectify the procedure. In contrast, a plea of inadmissibility, once upheld, cannot be

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

"corrected." However, the judgment can be appealed, and the appellate court may examine the merits if the plea was unfounded.

- **Timing of Invocation:** A plea of inadmissibility may be invoked at any stage of the proceedings. A procedural plea, however, must be raised simultaneously and prior to any defense on the merits or plea of inadmissibility; otherwise, the right to raise it is forfeited—unless it relates to Public Order.
- **Order of Examination:** Since the plea of inadmissibility acts as a "middle link" between procedural and substantive pleas, the judge should generally address procedural pleas before addressing pleas of inadmissibility.
- **The Power of Evocation (*Le Pouvoir d'Évocation*):** Generally, appellate courts only review matters decided by the first-instance court to respect the two-tier litigation principle (Art. 332 C.C.A.P). However, as an exception, Article 246 of the C.C.A.P²⁷ allows the Judicial Council, after ruling on a procedural plea that ended the litigation, to "evoke" (address) the merits of the case directly for the sake of the sound administration of justice.
- *The Question:* Does this power of evocation apply to the plea of inadmissibility? This will be addressed in Axis IV.

Title IV: Judgment on the Plea of Inadmissibility and Its Impact on Judicial Litigation :

Procedural jurisprudence has varied regarding the judgment ruling on a plea of inadmissibility, specifically on whether the Judicial Council (*Appellate Court*) should "evoke" (address) the unadjudicated merits of the case. Legal scholars have split into two main trends, while the Algerian legislator has maintained a distinct position:

4.1- The First Trend (Dual Nature):

This trend considers the plea of inadmissibility to have a dual nature—both substantive and procedural. It argues that if the judgment of inadmissibility relates to the merits, the court exhausts its jurisdiction over the subject matter. Consequently, if the appellate court vacates the judgment, it does not remand the case to the first-instance court. However, if the inadmissibility is procedural in nature, the court does not exhaust its jurisdiction; thus, if the judgment is vacated, the case must be remanded to the lower court to respect the two-tier litigation principle.

4.2- The Second Trend (Independent Nature):

This trend views the plea of inadmissibility as having an independent nature. It considers the judgment rendered therein as a ruling on the "merits" (procedurally speaking), which possesses the authority of *Res Judicata* and divests the judge of jurisdiction upon pronouncement. Therefore, if the appellate court vacates the judgment, it may evoke and decide on the merits if the case is ready for adjudication. If the case is not ready, it must be remanded to the court of first instance to be heard anew, in application of the two-tier litigation principle²⁸.

4.3- Position of the Algerian Legislator:

The Algerian legislator did not explicitly state a position on this matter. However, it can be implicitly understood from Article 67 of the C.C.A.P, through the phrase "...without examining the merits of the dispute," that the legislative intent leans toward the inability of the Judicial Council to evoke unadjudicated matters. This is because the purpose of the plea is to divert the court's attention from examining the subject matter of the claim or appeal.

- It can be concluded that a plea of inadmissibility produces significant effects on judicial litigation. A judgment upholding the plea resolves the dispute and exhausts the court's jurisdiction. If the judgment is appealed and subsequently vacated, the Judicial Council evokes the merits and decides the case, rather than remanding it, because the judgment of inadmissibility is deemed to have exhausted the degrees of litigation.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

- Exception: A plaintiff whose case was dismissed as inadmissible may file a new lawsuit with the same claims once the requirements are met. *Example:* A son lacks standing to protect his father's property during the father's lifetime; however, this standing is acquired upon the father's death, as he then assumes the status of an heir²⁹. The same applies if the requirement of interest or authorization is fulfilled subsequently

Conclusion:

through our study of this subject, we have reached several key results, most notably:

- **Sui Generis Nature:** The plea of inadmissibility is a plea of a special nature (*sui generis*), a position adopted by the Algerian legislator. It is considered a voluntary right, whereby the holder possesses the authority to invoke it or not, with the exception of pleas related to Public Order. For the latter, the legislator compels the judge to raise them *ex officio* at any stage of the proceedings, even if not invoked by a litigant.
- **Procedural Flexibility:** A distinguishing feature of the plea of inadmissibility is that there are no barriers preventing a litigant from raising it. Even if the litigant has already entered into the merits of the case, they retain the right to invoke inadmissibility at any stage of the litigation.
- **Exclusion from Public Order:** The Algerian procedural legislator excluded Interest, Mandatory Time Limits, Prescription, and *Res Judicata* from the realm of Public Order. The justification is that a judge cannot ascertain these instances independently unless the litigant raises them and provides material evidence. Thus, the judge can only become aware of them if proven by the interested party, following the maxim: "The judge is knowledgeable of the law but ignorant of the facts."
- **Standing and Authorization:** Although Standing (*Qualité*) and Authorization (*Autorisation*) are requirements for the admissibility of a lawsuit and are grounds for inadmissibility related to Public Order (as confirmed by Article 13 of the C.C.A.P), they are legal statuses that the judge is expected to investigate and verify regarding the litigants *ex officio*.
- **Preponderance of Public Order:** Our analysis of various provisions throughout the C.C.A.P reveals that most instances of inadmissibility mentioned therein relate to Public Order, thereby mandating the judge to raise them automatically.

Critical Analysis and Recommendations

Despite the Algerian legislator's recognition of the independence of the plea of inadmissibility from other pleas, several legal complexities persist, primarily regarding terminological precision:

1. **Terminological Inconsistency:** The legislator frequently uses the phrase "under penalty of inadmissibility as to form" (*sous peine d'irrecevabilité en la forme*). However, since the plea of inadmissibility differs from a procedural (formal) plea, the more accurate phrasing should be "under penalty of rejection as to form" (*sous peine de rejet en la forme*). The term "inadmissibility" (*non-recevabilité*) is technically appropriate for the plea of inadmissibility, not for formal procedural defects.
2. **Conflicting Provisions:**
 - **Article 15 (C.C.A.P):** Requires the statement of claim to include essential data "under penalty of inadmissibility as to form." It would be more accurate to state "under penalty of nullity" (*sous peine de nullité*), as this is an instance of the nullity of procedural acts.

"The Legal Nature of the Plea of Inadmissibility: From the Perspective of Jurisprudence and the Civil and Administrative Procedures Code 08-09, Amended and Supplemented by Law 22-13".

- **Article 565 (C.C.A.P):** Regarding the petition for cassation, it stipulates mandatory data "under penalty of automatic nullity," yet the article later mentions "under penalty of *ex officio* inadmissibility as to form," creating a conceptual overlap.

3. **The Plea of Unconstitutionality:** Although this is a plea of a special nature raised before high judicial bodies for referral to the Constitutional Court, the legislator has not yet integrated it into the C.C.A.P among the standard types of pleas. Its provisions remain confined to Organic Law No. 22-19 (July 25, 2022).

Proposal: We propose that specific articles be incorporated into the Civil and Administrative Procedures Code to detail the provisions and procedures of the Plea of Unconstitutionality, ensuring its integration within the general framework of judicial defenses.

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²² - Barbara Abdel-Rahman, op. cit., p. 105.

²³ - Omar Zouda, op. cit., p. 281.

²⁴ - Official Gazette No. 51, issued on 31/07/2022.

²⁵ - Derbal Abdelrazak, op. cit., p.255.

²⁶ - Article 296 C.C.A.P: "A judgment ruling on the merits is a judgment that rules totally or partially on the subject matter of the dispute, a procedural plea, a plea of inadmissibility, or any incidental claim. Upon its pronouncement, such a judgment acquires the authority of Res Judicata..."

²⁷ - Article 246 C.C.A.P: "When ruling on an appeal of a judgment regarding a procedural plea that terminated the litigation, the Judicial Council may address the unadjudicated matters if it deems it necessary for the sound administration of justice to provide a final solution to the dispute..."

²⁸ - Omar Zouda, op. cit., p. 283.

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