A Reading into the Mechanisms of Amicable Settlement of Administrative Disputes in Algerian Law

قراءة في أليات التسوية الودية للمنازعات الإدارية في القانون الجزائري

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Abstract :

The Algerian legislature has established alternative mechanisms for making an amicable settlement of administrative disputes, based on agreement and mutual consent between the disputing parties outside the courts. This reflects a desire to strengthen the equilibrium between rights of both individuals and public interest, and to maintain the proper functioning of public services by regulating the legal framework governing these mechanisms, defining their scope and procedures within the principle of legality, while preserving the right to access to justice in the event that amicable settlement fails.

Keywords: Administration – Amicable Settlement – Arbitration – Conciliation – Mediation – Principle of Legality.

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Introduction

The diversification of state activities and the expansion of its areas of intervention have led to a multiplication and increased complexity of administrative disputes, particularly given their connection to the prerogatives of public authority. This has resulted in a growing backlog of cases before the administrative courts, highlighting the need for alternative mechanisms to settle administrative disputes in a swiftly flexible and amicable manner.

Amicable settlement of administrative disputes is a legal mechanism that enables the administration and the opposing party to reach a consensual settlement without resorting to the administrative courts or awaiting a judicial ruling.

Amicable settlement mechanisms are characterized by rapidity and flexibility, rest on the consensual nature of the parties, and are linked to the public interest, the requirement to respect the principle of legality, and the achievement of an equilibrium between individuals' rights and the proper functioning of public services.

Building on the above, we pose the following research question: What amicable settlement mechanisms are capable of achieving an effective settlement of administrative disputes, given their connection to the public interest and their subjection to the principle of legality?

This study seeks to identify the forms of amicable settlement in administrative disputes, analyze their legal scope and practical effectiveness, and assess their compatibility with the principles of legality and the protection of the public interest.

Firstly: Administrative conciliation

conciliation is an amicable means of resolving administrative disputes aiming at mitigating the burden on the administrative courts and ensure the swift settlement of disputes, through legal procedures designed to achieve an agreement between the parties that safeguards each party's rights and protects the public interest.

1. The Concept of Administrative conciliation

Administrative conciliation has a distinctive character that differs from conciliation as understood in private law, both in terms of its legal nature and its procedures, due to the prerogatives of public authority enjoyed by the administration.

1.1.Definition of Administrative conciliation

The Code of Civil and Administrative Procedure [1] did not define conciliation ; it only regulated its procedural rules. By contrast, the Civil Code defined it in Article 359 as: **a contract by which the two parties end an existing dispute or prevent a potential one, each making mutual concessions of their rights[2].**

From Articles 970 and 971 of the Code of Civil and Administrative Procedure, conciliation in administrative disputes is an optional procedure in the domain of full jurisdiction, initiated either by the parties or by the judge with the parties' consent[3].

1.2.Characteristics of Administrative conciliation

Administrative conciliation has the following distinguishing features:

- **Optionality:** Unlike Law 90-23[4], which made conciliation mandatory, Law 08-09 rendered it optional. The judge is not obliged to attempt conciliation, nor are the parties required to pursue it or request it.
- **Generality:** conciliation may take place before all administrative judicial bodies at any stage of the proceedings, though it is preferable to conduct it at the first hearing before the dispute escalates.

Article 970 of the Administrative Civil Procedures Code identifies only one type among the four categories of administrative actions in which amicable conciliation is permitted namely, full jurisdiction actions. excluding actions concerning the legality of administrative decisions such as annulment actions or those seeking interpretation or assessment of legality. conciliation is confined to compensation matters only; otherwise, it would constitute a violation of the principle of legality. It is also limited to actions related to personal interests only[5].

- **Executory character:** The conciliation document acquires executory force upon its filing with the court registry, pursuant to Article 993 of the Code. It is an enforceable instrument that the reconciled parties must implement according to its terms[6].

2. Rules of Administrative conciliation

Amicable conciliation requires following a set of legal procedures aimed at bringing the parties' viewpoints closer together in order to reach an agreement that puts an end to the dispute.

2.1.Procedures of conciliation

conciliation is initiated by the parties or at the judge's request. Article 990 of the Code requires the parties to appear before the judge and sign the conciliation document. The judge may only ratify it in the presence of both parties and with their freely given consent, free of any coercion or threat[7].

The judge has broad discretionary power over the time and place of conciliation under Article 991 the Administrative Civil Procedures Code. conciliation may be offered at any stage of the proceedings, in the courtroom or in the judge's office, or in a special session for specific matters[8].

conciliation before any other judicial officer such as a lawyer is not recognized, except conciliation before an expert, which must be recorded in a document signed by the parties and attached to the expert's report, and can only be challenged through forgery proceedings[9].

2.2.Effects of conciliation

After conciliation, the presiding judge prepares a conciliation document in the mandatory presence of the parties or their specially authorized representatives. The document, signed by the judge and the registrar, sets out precisely what was agreed. It then becomes an enforceable instrument that replaces a judicial ruling and is not subject to appeal[10].

If conciliation fails, the judge draws up a document of failure, and judicial proceedings continue until a ruling is issued.

Although conciliation is feasible in all administrative disputes, it remains difficult to achieve in some disputes which are carried out through amicable settlement and resettlement between the parties within their legally regulated framework, such as those concerning public procurement, where the law has enshrined amicable settlement and resettlement at all stages, whether during the conclusion or execution of the contract[11].

Secondly: Administrative Mediation

Mediation contributes to the amicable settlement of disputes outside the courts by facilitating dialogue between the parties and enabling them to reach fair, consensual solutions, thereby reinforcing the public interest and preserving public order.

1. The Concept of Administrative Mediation

Administrative mediation is an important means of achieving an equilibrium between the public interest and individual interests, arriving at consensual solutions within the framework of public law principles.

1.1.Definition of Mediation

The Code of Civil and Administrative Procedure did not define judicial mediation, unlike the French legislature, which has paid considerable attention to mediation in administrative matters as part of its judicial modernization reforms[12].

The European Group of Judges defined mediation as a consensual means of settling disputes before the courts, whereby the judge assigned to the dispute, with the parties' consent, appoints a mediator working under the judge's supervision to attempt to bring the parties positions closer and help them find a settlement[13].

French legal jurisprudence has defined mediation as a formal process in which a third party attempts to organize a dialogue to bring the parties perspectives closer and seek a solution to the dispute[14].

1.2.Characteristics of Judicial Mediation:

Judicial mediation has several key characteristics, including:

- **A mandatory alternative procedure:**

Mediation is regarded as a mandatory alternative procedure, as the judge is required to offer mediation to the parties at various stages of the proceedings[15].

- **A consensual procedure:**

Judicial mediation rests on the parties' consent, who must agree to the process and be willing to make partial concessions to achieve a full or partial settlement.

- **A procedure conducted under judicial supervision:**

The administrative judge has broad powers during mediation. In addition to being obligated to offer it, the judge oversees and monitors the mediation process without issuing any ruling on the merits by appointing the mediator, setting and extending timeframes, also by replacing the mediator when necessary, and terminating the mediation if it proves futile.

2. Rules of Mediation:

Administrative mediation is related to the public interest, which makes the administration legally constrained and subject to specific procedures governed by the principle of legality. It also requires the intervention of the administrative judiciary for ratification in order to become binding.

Administrative mediation is subject to a set of procedures, which are briefly concluded as follows:

2.1.The judge's offer of mediation:

The judge is required to offer mediation to the parties at any stage of the proceedings. In the event of refusal, the judge notes in the final ruling that mediation was offered but rejected. If accepted, the judge appoints a judicial mediator[16].

It should be noted that appointing a mediator does not constitute a delegation of the judge's powers; it is merely an effort to find an amicable settlement[17].

2.2.Appointment of the mediator:

Mediation may be entrusted to a natural person, a legal person, or an association, whose president designates one of its members as mediator. The mediator must be neutral, independent, of good conduct, in possession of full civil rights, and must not have previously been convicted of a dishonoring offense[18].

Executive Decree 09-100 elaborated on the conditions set out in Article 998 of the Code, excluding from the registers of judicial mediators anyone convicted of a felony or certain misdemeanors, anyone convicted of bankruptcy who has not had their civil standing restored, any dismissed public official, any disbarred lawyer, or any public employee who has been subject to a definitive disciplinary procedure[19].

The mediator is not required to be a legal professional; it suffices that the person be a good listener, capable of analysis, and skilled in handling situations[20].

The French Council of State's Code of Conduct and Ethics for administrative mediators adds the condition of competence, which includes at least five years of professional mediation experience and a specialized training certificate in administrative mediation, as well as keeping knowledge of administrative law up to date[21].

Following fulfillment of these conditions, the mediator must be registered on the judicial mediators' list maintained by the relevant judicial council, by filing an application with the public prosecutor accompanied by a criminal record certificate, residency certificate, nationality certificate, and other required documents. The public prosecutor then conducts a thorough investigation and forwards the file to the head of the judicial council, who in turn submits it to a selection committee composed of the council president, the public prosecutor, and the heads of courts within the council's jurisdiction. The finalized list is sent to the Minister of Justice for approval, and is revised once at the opening of each judicial year[22].

The judge appoints the mediator from the judicial mediators' list by order specifying the necessary data in particular, the parties' consent and the timeframes. A

copy of the order is sent to the mediator. The judge may also appoint a mediator from outside the list if circumstances require[23].

2.3.Conduct of the mediation process:

If the mediator rejects to conduct the mediation, the refusal is communicated to the president of judicial body that issued the appointment order, without any legal liability on the mediator's part. If the mediator accepts, they notify the judge and convene the parties for a first mediation session, during which they attempt to bring the parties' positions closer and find a settlement, while maintaining the confidentiality of all proceedings.

The mediator may request the judge to extend the mediation period once, with the parties' consent, provided the total mediation duration does not exceed three months[24].

Mediation ends upon the expiry of the set period, if no amicable settlement has been reached, or if the mediator concludes that proper conduct of the mediation has become impossible or upon decision by the judge or the parties. The registrar then summons the mediator and the parties to a hearing to continue the judicial proceedings[25].

2.4.Drafting and ratification of the mediation record:

Upon successful mediation, the mediator drafts a record containing the mediation results, signed by the mediator and the parties. The case is returned to the judge within the set timeframe, who ratifies it by an unappealable order, transforming the agreement into an enforceable instrument[26].

Unlike the conciliation document, which becomes enforceable upon drafting without requiring a ratification by the administrative judge, because in settlement it is the judge who conducts the process, whereas in mediation, ratification serves as judicial oversight over the mediator's work, ensuring that the mediator has not exceeded the mediator's powers and that the agreement does not contravene public order or public morals[27].

Thirdly: Administrative Arbitration

The rapid evolution of the state's functions and the expansion of its intervention into economic domains have necessitated new methods of settling administrative disputes marked by rapidity, confidentiality, and flexibility, while safeguarding the public interest leading to the use of arbitration in the administrative domain.

1. The Concept of Administrative Arbitration

Arbitration in administrative matters excludes cases from the jurisdiction of the administrative courts and refers them to one or more arbitrators. It takes multiple forms, allowing it to adapt to the specific nature of administrative disputes.

1.1.Definition of Administrative Arbitration

Administrative arbitration is a legal mechanism, regarded as an exceptional framework of litigation, through which the state and other public entities may select to exclude certain administrative disputes whether stemming from contractual or non-

contractual relationships from the jurisdiction of administrative courts, and instead settle them by means of arbitration in accordance with a statutory provision[28].

1.2.Forms of Arbitration

The forms of arbitration are as follows:

- **Arbitration clause:**

An agreement included within the contract by which the parties commit to submitting any future dispute to arbitration, pursuant to Article 1007 of the civil and administrative code. Under pain of being declared void, it must designate the arbitrator or more, and specify the modalities for their appointment[29].

- **Arbitration submission:**

Unlike an arbitration clause, which is agreed upon before a dispute arises, a submission agreement is concluded at a later stage after the dispute has emerged. It is an agreement between the parties to submit the dispute to arbitration and is independent from the original contract[30].

Arbitration can also be distinguished into other types based on the will of the parties: it is mandatory arbitration if it is imposed on the parties, and voluntary arbitration if they are free to choose it. It may also be classified as international arbitration when it is connected to international trade and the dispute arises between parties of different nationalities, thus having an international character whether in terms of the parties' nationality, the arbitrators, or the procedures and subject matter of the arbitration; and if it's related to a single state, then the arbitration is national[31].

1.3.Administrative Legal Persons Eligible for Arbitration

Public legal persons[32] shall not resort to arbitration except in their international economic relations and in public contracts pursuant to Article 1006 of the civil and administrative Code, and only with respect to contracts over which they have full discretion.

Article 976 specifies the administrative officials who are authorized to initiate arbitration in administrative contracts. When arbitration concerns the state, it is initiated by the competent minister or ministers. If it concerns a municipality or a province, it is initiated by the president of the municipal council or the governor. Ultimately, when arbitration involves a public institution of an administrative nature, it is initiated by its legal representative or the representative of the supervising authority.

2. Rules of Administrative Arbitration

The administrative arbitration process goes through a set of mechanisms and procedures that regulate the course of the arbitral dispute, starting from the conclusion of the arbitration agreement up to the issuance of the arbitral ruling.

2.1.Arbitration Procedures

Administrative arbitration is subject to a set of organized legal procedures, which are as follows:

- **Formation of the arbitral tribunal:**

Article 1017 of the Code of Civil and Administrative Procedure emphasizes the necessity of forming an arbitral tribunal consisting of one or more arbitrators, in an odd number.

The parties to the dispute have the freedom to select the arbitrators, agreeing either on a single arbitrator or an arbitral tribunal composed of three arbitrators. If the parties fail to agree on the selection of arbitrators, the president of the competent court intervenes to appoint the arbitrator or the head of the arbitral tribunal upon the request of one of the parties.

The arbitrator must possess legal competence and expertise, impartiality, and legal capacity[33].

- **Conduct of arbitral proceedings:**

The request for arbitration is submitted by one party to the other or to the arbitration center to express its intention to resolve the dispute through arbitration. The arbitration claim file is accompanied by all necessary documents[34].

The parties agree on the place and duration of the arbitration. If the duration is not specified, Article 1018 sets it at four months from the date of appointment of the arbitrators or notification of the arbitral court, with the possibility of extension by mutual consent or by the president of the competent court if necessary.

The arbitral dispute concludes either for **natural reasons**, such as the settlement of the dispute, the death of one of the contracting parties, or the merger of the parties' legal identities, or for **procedural reasons**, such as abandonment of the dispute or the expiration of the agreed arbitration period without resolving the subject of the dispute.

2.2.Effects of Arbitration

Adopting arbitration as a means of settling administrative disputes has legal effects that ensure the protection of the public interest on one hand, and the realization of the individual parties' interests on the other.

- **Authority of the arbitral award:**

The arbitral award must be issued in a written, reasoned form to allow the possibility of appeal. The award has the **binding force of res judicata**, and the parties execute it; otherwise, it is subject to compulsory enforcement, with the president of the court in whose jurisdiction the award was issued issuing an enforcement order after it is filed with the court registry[35].

- **Judicial oversight of the arbitral award:**

Article 1045 of the Code of Civil and Administrative Procedure stipulates that the judge does not have jurisdiction to rule on the subject matter of the dispute if an arbitration proceeding is ongoing or if an arbitration agreement exists[36]. However, the judge may intervene to assist the arbitrators[37], especially in cases where the parties refuse to provide decisive evidence administration often withholds documents. Since the arbitral tribunal does not have the authority to carry out evidentiary or

enforcement measures, the law allows it to seek the assistance of the administrative judge.

The judge will also be involved in instances when there is trouble in forming the arbitration tribunal, or in carrying out the process of appointing or challenging the arbitrators. In addition, either party or the arbitrators themselves can petition the court for intervention, as provided under Article 1048 of the Code of Civil and Administrative Procedures.

Conclusion

This study concludes by presenting a set of findings, which are as follows:

- The Algerian legislature has established alternative means for the settlement of administrative disputes including settlement, mediation, and arbitration as legal instruments that assist in mitigating the burden on the courts, reinforcing the principle of legality in the administration's activities, and embodying good governance, owing to the rapidity and flexibility they offer in settling disputes.
- The Code of Civil and Administrative Procedure grants the administrative judge an active role: the judge dominates the mediation process given the mediator's relatively vulnerable legal standing; plays a pivotal role in administrative conciliation by proposing it, overseeing its conduct, and ratifying the settlement agreement to render it enforceable; and contributes effectively to oversight of arbitral awards, with arbitrators frequently seeking the administrative judge's assistance in various circumstances.

Suggestions:

- The effectiveness of these alternative mechanisms remains contingent upon their legal framework being calibrated to match the specific nature of administrative disputes, in a manner that ensures a proper balance between the administration's public interest and individual interests.
- Fixation of the role of the administrative mediator, by applying the pattern of the administrative mediator as evolved in the French Law.
- Digitization of the processes of amicable resolution of administrative disputes, by forming special electronic platforms.

Margins:

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[2]Ordinance No. 75-58 of 26 September 1975, containing the Algerian Civil Code, Official Gazette of the People's Democratic Republic of Algeria, No. 78, issued on 30 September 1975, as amended and supplemented.

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[4]Law No. 90-23 of 18 August 1990, amending and supplementing Ordinance No. 66-154 of 8 June 1966 containing the Code of Civil Procedure, Official Gazette of the People's Democratic Republic of Algeria, No. 36, issued on 22 August 1990 (repealed).

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See also: Abdelrahmane Berbara, *Explanation of the Code of Civil and Administrative Procedure*, 2nd ed., Baghdadi Publications, Algeria, 2009, p. 520.
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[8]Abdelhamid Henane & Yahia Bedir, *The Role of the Algerian Administrative Judge in Settling Disputes through Conciliation*, *Journal of Legal Studies and Research*, Vol. 9, No. 2, 2024, p. 188.
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[11]Siham Bendaas, *op. cit.*, p. 10.
[12]See: Article 213-1 of the French Code of Administrative Justice, stemming from Article 5 of Law No. 2016-1514 of 18 November 2016 on the Modernization of Justice in the 21st Century, available at: https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000033424092
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[15]Zahia Ziri, *Alternative Methods for Settling Disputes According to the Algerian Code of Civil and Administrative Procedures*, Magister's Thesis in Law, Faculty of Law and Political Science, Mouloud Mammeri University of Tizi Ouezou, 2015, p. 63.
[16]*Ibid.*
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[19]Article 2 of Executive Decree No. 09-100 of March 9, 2009, determining the modalities for the appointment of the judicial mediator, Official Gazette of the Algerian Republic, No. 3, 15 March 2009, as amended and supplemented.
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[22]*Ibid.*, p. 130.
[23]See: Mohamed Achebouche, *Mediation in the Algerian Judicial System: A Comparative Study*, PhD Thesis in Law (Judicial Law specialization), Faculty of Law and Political Science, Abou Bakr Belkaid University, Tlemcen, 2021, p. 126.
[24]Article 996 of Law No. 08-09, containing the Code of Civil and Administrative Procedure, (previously cited).

[25]Zahia Ziri, *op. cit.*, p. 67.
[26]Articles 1003 and 1004 of Law No. 08-09, containing the Code of Civil and Administrative Procedure, (previously cited).
See also: Abdelrahmane Berbara, *op. cit.*, p. 529.
[27]*Ibid.*, p. 531.
[28]Mohamed Ali, *Regulation of Arbitration in Administrative Contract Disputes, Maalem Journal for Legal and Political Studies*, No. 2, December 2017, p. 132.
[29]*Ibid.*, p. 133.
[30]*Ibid.*, p. 134.
[31]*Ibid.*, p. 135.
[32]Public legal persons refer to entities governed by public law, i.e., subjects of administrative law. For further details on this issue. See: Abdelaziz Nouiri, *Arbitration in Administrative Contract Matters under Algerian Law, Algerian Journal of Law and Justice*, Vol. 5, No. 1, p. 53.
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