



The urgent nature of litigation procedures before the social judiciary

D^r. MEZIOUD Bessaifi*

Faculty of Law and Political Sciences

University of Abdelhamid Ibn Badis Mostaganem

Bessaifi.mezioud@univ-mosta.dz

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Abstract:

The working class is one of the fundamental pillars of society, encompassing a large segment of its members. For this reason, it has received special attention and care from the Algerian legislator. To ensure the stability of the relationship between the worker and the employer, the Algerian legislator has established legal mechanisms to regulate the resolution of disputes that may arise between the parties through a set of defined judicial procedures.

Keywords: worker ‘ employer ‘judicial ‘protection.

Introduction:

In upholding the rule of law, the legislator has given special attention to workers, considering this one of the highest objectives pursued. This is based has, provided workers with judicial and procedural protections that distinguish labor disputes from other types of legal conflicts.

* MEZIOUD Bessaifi

The significance of this topic lies in understanding the key judicial procedures introduced by the Algerian legislator to expedite the resolution of disputes brought before the social judiciary. This is particularly important due to the unique characteristics of social justice, which distinguish it from other judicial branches, given that the worker is often the weaker party in the contractual relationship.

This raises the following key issue: What are the most important legal procedures established by the Algerian legislator to accelerate dispute resolution in social courts? And how has urgent litigation contributed to ensuring the stability of labor relations?

To address this issue, we have adopted an analytical and descriptive approach to examine various procedural legal provisions, including those within the Code of Civil and Administrative Procedure, Law 90-04 on individual labor relations, and Law 08-08 concerning social security disputes.

To enable this social class to fulfill its role effectively, ensuring its stability is crucial. Such stability can only be achieved through legislative intervention and the enactment of fair legal provisions that safeguard the mutual interests of both parties. Additionally, introducing a degree of procedural flexibility ensures justice, equity, and social stability.

Litigation before the social judiciary in Algeria is characterized by its urgent nature due to the significance of disputes between workers and employers and their direct impact on professional and social stability. For this reason, the Algerian legislator has established effective legal mechanisms to protect the rights of both workers and employers through swift and efficient judicial



procedures that contribute to a fair and balanced resolution of disputes.¹

Furthermore, special provisions have been dedicated to resolving disputes at various stages and across most procedural aspects. This is evident in the legal framework, including Law 90-04² on the resolution of individual labor disputes, Law 08-09³ concerning civil and administrative procedure, and Law 08-08⁴ related to social security disputes.

SECTION I : Structure of the Social Judiciary and Jurisdiction Rules

The Civil and Administrative Procedure Code emphasizes the jurisdiction of the social judiciary, in contrast to the previous law, by defining the court's composition in section A and outlining its substantive and territorial jurisdiction in section B.

Paragraph1: Composition of the Social Division

Given the unique nature of social disputes, the Algerian legislator has entrusted the court with a special composition tailored to the specificities of these cases. The social division differs from other divisions within the first-instance court in terms of its composition, considering the particular characteristics of labor disputes. This has been reinforced to establish the exceptional nature of the social division's structure since the issuance of the first legal text governing the judicial settlement of labor disputes, namely **Ordinance No. 75-32 on Labor Justice**, up to the

¹ -Ben Taâllah Zouhir, Social Judiciary - A Critical Study, Doctoral Thesis, Sidi Bel Abbès University, 2021, p. 08

² -Law 90-04 on the Settlement of Individual Disputes, dated November 6, 1990, Official Gazette No. 06.

³ -Law 08-09 on the Code of Civil and Administrative Procedure, dated February 25, 2008, Official Gazette No. 21.

⁴ -Law 08-08 on Social Security Disputes, dated February 23, 2008, Official Gazette No. 11.

enactment of **Law 90-04 on Individual Labor Disputes**. This exceptional nature has also been reaffirmed by the provisions of **Law 08-09 on the Code of Civil and Administrative Procedure**.⁵

According to Article 08 of Law 90-04, reaffirmed by Article 502 of the Civil and Administrative Procedure Code, court sessions concerning social matters are presided over by a judge and include two representatives from both workers and employers. However, the court remains legally constituted as long as at least one representative from each group is present

In case of the absence of worker or employer representatives, or all assistants, they shall be replaced by substitute assistants. If this is not possible, replacements shall be appointed based on the situation by the President of the Court, who may designate one or two judges as substitutes. Additionally, if any worker or employer representative is directly involved in the dispute or has a personal interest in the case, they must be replaced by a substitute assistant. If a substitute assistant is unavailable, a judge appointed by the President of the Court will serve as a replacement.

It is important to note that the legal composition of the court is a matter of public order and is governed by mandatory rules that cannot be violated. Any breach of these rules could lead to the annulment of a ruling due to a fundamental procedural violation. Established judicial precedents confirm this, as one ruling stated: *"The absence of a worker representative in the composition of a ruling issued by the social court constitutes a fundamental*

⁵ - BenAzzouz BenSaber, Procedures Followed Before the Social Division Under the Code of Civil and Administrative Procedure, Labor and Employment Law Journal, Issue 07, 2010, p. 70.



procedural violation affecting public order, resulting in the annulment of the judgment."

Paragraph 2: Judicial Jurisdiction of Courts Handling Social Matters

The **Code of Civil and Administrative Procedure** defines the jurisdiction of the **social court** into two types **Subject-matter jurisdiction (1) Territorial jurisdiction (2)**

Second Requirement:

Paragraph1 : Matter Jurisdiction

Subject-matter jurisdiction refers to the authority of courts to adjudicate disputes based on their nature or type. The assignment of jurisdiction to a specific court according to this criterion depends on the nature of the dispute, which determines the appropriate court to hear the case. The court must first assess the nature of the dispute to resolve the issue of jurisdiction.

It is important to note that subject-matter jurisdiction is a matter of public order, meaning that the judge can raise the issue of jurisdiction on their own initiative⁷.

Article 20 of Law 90-04 states that the **social court** has jurisdiction over individual labor disputes, including those arising from the execution, suspension, or termination of an employment relationship, as well as disputes related to training or apprenticeship contracts.

Additionally, **Article 500 of the Code of Civil and Administrative Procedure** grants the social division **exclusive jurisdiction** over the following matters:

⁷ - Nabil Saqr, "The Mediator in Explaining the Code of Civil and Administrative Procedure," Dar Al-Huda, 2008, p. 56.

- Disputes related to the election of worker representatives
- Disputes concerning the exercise of trade union rights
- Disputes related to the right to strike
- Social security and retirement disputes
- Collective labor disputes

Paragraph 2 : Territorial Jurisdiction

As a general rule, territorial jurisdiction is determined by the domicile of the defendant. This principle is based on the presumption of innocence, meaning that the party making a claim must pursue their opponent in the court of their domicile⁸. Additionally, since the plaintiff initiates the lawsuit and chooses the appropriate timing, fairness dictates that they should not also have the advantage of choosing the jurisdiction arbitrarily⁹.

In legal doctrine, territorial jurisdiction is also referred to as local jurisdiction, as it determines the specific court within a given judicial district that should hear the case. This jurisdiction is based on the geographic distribution of courts across regions, ensuring that each court adjudicates disputes within its legally designated territory.

Article 24 of Law 90-04 stipulates that territorial jurisdiction belongs to the court where the employment contract was concluded, executed, or where the defendant resides. However, in cases where the termination or suspension of the employment contract results from a work-related accident or an occupational disease, jurisdiction is transferred to the court where the plaintiff resides.

⁸ -Ajaa Djilali, "The Concise Guide to Labor Law and Social Protection," Dar Al-Khaldounia, 2005, p. 20.

⁹ -Boudiouf Adel, "The Concise Explanation of the Code of Civil and Administrative Procedure," Part One, Click Publishing, Algeria, 2012, p. 79.



SECTIONII : The Urgent Nature of Proceedings Before the Social Judiciary

Individual employment relationships often give rise to various practical issues during their execution, which can lead to tensions between the worker and the employer. This has prompted the legislator to focus on addressing such disputes by establishing formal conditions for filing a lawsuit (**subtiteA**) and simplified, flexible judicial procedures that reinforce the urgent nature of social litigation (**subtitle B**).

Paragraph1 : Formal Conditions for Filing a Lawsuit

Second Requirement: Internal Settlement Procedures

Articles 03 and 04 of Law 90-04 stipulate that before obtaining a conciliation failure report, the disputing parties must first resort to internal dispute resolution mechanisms.

As a general rule, collective labor agreements define the internal procedures for amicable settlement. If such agreements do not address these procedures, the worker is required to comply with the legal provisions governing dispute resolution before proceeding with judicial action.

Collective labor agreements have established internal procedures for resolving individual labor disputes, including the Sonatrach Collective Agreement. This agreement requires that in the event of a dispute, the worker must first submit their complaint to their legally authorized direct supervisor, who is required to respond within five days of being notified.

If the dispute persists, the worker must escalate the matter to the unit manager, who must provide a response within ten days of

notification. If the issue remains unresolved, the worker must then refer the complaint to the highest-ranking official within the organization, who must respond within twelve days of being notified.

Once the worker has exhausted all internal dispute resolution procedures, they may seek intervention from the regionally competent Labor Inspectorate¹⁰.

Second Requirement :Obligation to Attach the Lawsuit with a Conciliation Failure Report

Furthermore, Article 19 of Law 90-04 mandates that every individual labor dispute must undergo an attempt at conciliation before the Conciliation Office prior to initiating legal proceedings. The Conciliation Office consists of:

- Two representatives of the workers
- Two representatives of the employers
- The office is chaired alternately every **six months**, first by a **worker representative** and then by an **employer representative**.

However, regarding **social security disputes**, the deadline for filing a lawsuit is:

- ☐ A period of 30 days from the date of notification of the decision by the National Committee.
- ☐ A period of 60 days from the date of receiving the appeal if the competent appeals committee does not render a decision.

Paragraph 2 : The Urgent Nature of Social Judiciary

1- Second Requirement: Speed in Resolving Social Cases

¹⁰ - BenAzzouz BenSaber, "Procedures Followed Before the Social Division Under the New Code of Civil and Administrative Procedure," Legal Studies Journal, Dar Al-Khaldounia, Issue 07, 2012, p. 73.



The Algerian legislator has set a maximum period of 15 days for scheduling a case before the social division for all social disputes without exception. Article 505 of the Code of Civil and Administrative Procedure states:

"The first hearing shall be scheduled within a maximum period of 15 days from the date of filing the lawsuit."

This provision is also reinforced by Article 38 of Law 90-04, which further stipulates that the court must issue its ruling as soon as possible, except in cases requiring preliminary or preparatory judgments.

The phrase "the judge must decide as soon as possible" imposes an obligation on the judge to take all necessary measures to expedite the resolution of social disputes. The judge's performance remains under the supervision of the President of the Court and the President of the Judicial Council to ensure the efficient functioning of the judicial system¹¹.

It is worth noting that the legislator has not set a specific time frame for the social judge to rule on disputes brought before them. Instead, the law uses general wording to indicate the need for a prompt resolution. However, as an exception, Article 100 of Law 90-11 establishes a clear deadline for disputes related to the election of employee representatives.

This provision states that any objection regarding the election of employee representatives must be submitted within 30 days following the election to the territorially competent court, which must issue a final and non-appealable ruling within 30 days from the date of notification.

¹¹ - Boudiouf Adel, "Previously Cited Reference," p. 499.

From this, it can be concluded that the legislator has imposed a strict deadline on social judges handling cases related to the election of employee representatives, setting it at 30 days from the date of notification.

2-: Second Requirement: Exemption of Workers from Court Fees

According to Article 17 of the Code of Civil and Administrative Procedure, a lawsuit can only be registered after the payment of the required court fees, unless an exception is specified by law.

The **court fees** for **social cases** are set as follows:

- **1,000 DZD** for **employing institutions**
- **400 DZD** for **workers**, with an exemption granted if the worker proves that their **monthly wage is below twice the guaranteed minimum wage**

However, **Article 25 of the Supplementary Finance Law of 2015¹²** introduced a **flat-rate increase in court fees**, making them:

¹² -Ordinance No. 01-15 of July 23, 2015, on the Supplementary Finance Law for 2015, Official Gazette No. 40, p. 11.

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- Nabil Saqr, *The Mediator in Explaining the Code of Civil and Administrative Procedure*, Dar Al-Huda, 2008, p. 56.



- **600 DZD for workers**
- **1,500 DZD for employing institutions at the court level**
- **750 DZD for workers**
- **2,250 DZD for employing institutions at the judicial council level**

3- Second Requirement: Exemption from Mandatory Legal Representation

that legal representation before the Court of Appeal is mandatory, and failure to comply with this requirement results in the inadmissibility of the appeal, unless otherwise specified by law.

However, in social matters, this obligation does not apply to workers. This means that workers are not required to be represented by a lawyer when litigating social disputes, allowing them to defend their rights personally before the social court.

Scientific Journals

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- Ordinance No. 01-15 of July 23, 2015, on the Supplementary Finance Law for 2015, *Official Gazette* No. 40, p. 11.

Exemption from Mandatory Legal Representation in Social Cases Under Algerian Legislation

In Algerian legislation, workers involved in social disputes are not required to be represented by a lawyer when filing or defending their cases before the social judiciary.

that legal representation by a lawyer is mandatory before the Court of Appeal, except where the law states otherwise. However, in social matters, this obligation does not apply to workers, meaning they can personally represent themselves in disputes related to labor law, social security, and employment-related conflicts.

This exemption aims to:

Facilitate workers' access to justice by removing financial burdens.

Ensure flexibility and simplicity in social litigation.

Encourage workers to defend their rights directly without procedural obstacles.

While workers are not obligated to hire a lawyer, they retain the right to seek legal representation if they choose to do so. This legal provision reflects the Algerian legislator's commitment to protecting workers' rights and ensuring swift and fair resolution of labor disputes.

4- Second Requirement: Access to Legal Aid for Workers in Algerian Legislation

In Algerian law, workers who lack financial means can benefit from legal aid to facilitate their access to justice. This support ensures that financial difficulties do not hinder their right to legal representation and fair trial.

Conditions for Granting Legal Aid to Workers



A worker can benefit from judicial assistance if they meet the following criteria:

- Their salary is less than twice the guaranteed minimum wage.
- They lack sufficient financial resources to cover legal expenses.

Scope of Legal Aid

Legal aid covers:

- Exemption from court fees.
- Coverage of lawyer's fees if legal representation is needed.
- Costs related to expert opinions and other judicial procedures.

The Algerian legislator introduced this measure to:

- Reduce financial burdens on low-income workers.
- Strengthen the right to defense, particularly in labor disputes.

This provision reflects the state's commitment to protecting workers' rights and ensuring that legal and financial constraints do not prevent them from pursuing justice

Preface on the second requirement and the issues to be addressed.

Conclusion:

The urgency of litigation procedures before the social judiciary reflects the fundamental need to protect workers' rights and ensure swift access to justice in labor-related disputes. Given the economic and social implications of such cases, expedited proceedings are essential to prevent undue hardship on employees and maintain stability in labor relations.

The legal framework governing social litigation incorporates special provisions aimed at accelerating dispute resolution while balancing the rights of both employees and employers. However, challenges such as procedural delays and case backlogs still pose obstacles to achieving truly expedited justice.

In conclusion, while urgent procedures in social litigation play a crucial role in safeguarding workers' rights, continuous reforms and efficient judicial mechanisms are necessary to enhance their effectiveness. Ensuring swift and fair resolutions remains a cornerstone of a just and equitable labor justice system.

To achieve this, the legislator has:

- Simplified litigation procedures and made them flexible.
- Set symbolic court fees, making them affordable for workers, and in some cases, completely waived the fees under specific conditions.
- Limited the time frame for filing a case to six months from the date of issuing the conciliation failure report.
- Emphasized the urgency of resolving cases by ensuring that judges rule on them within a reasonable timeframe.
- Established subject-matter jurisdiction as a public order rule, making it non-negotiable.
- Revised territorial jurisdiction, particularly in cases of termination due to a work-related accident or occupational disease, allowing workers to file their claims in their place of residence, which is considered a positive amendment.

Despite these legal advancements, there are several challenges that need to be addressed:

1. Delays in resolving individual labor disputes due to case overload or the lack of strict deadlines, which may escalate disputes into collective conflicts that become harder to manage.
2. Difficulties in enforcing legal provisions, as some judicial bodies do not fully comply with procedural requirements. Moreover, conciliation offices have proven to be ineffective in resolving individual labor disputes.



3. Inadequate representation in urgent social security disputes, as the legislator did not include representatives of the Social Security Fund in the emergency division's composition.
4. No significant changes in subject-matter jurisdiction, as the law merely consolidated existing provisions related to individual labor disputes and social security disputes without introducing substantial reforms.

In light of these observations, future legislative reforms should focus on improving the efficiency of social litigation by enhancing procedural mechanisms, strengthening conciliation efforts, and ensuring quicker judicial resolutions.

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