

*The exceptional suspension of the judiciary and
its impact on divorce proceedings: Practical problems and solutions*
التوقف الإستثنائي لمرفق القضاء وتأثيره على دعاوى فك الرابطة الزوجية: الإشكالات والحلول



BELHOUCHE Soufiane^{1*}

¹ Contracts and Business Law Laboratory
Faculty of Law, Constantine 1 University
Soufianbel70@gmail.com

BOULEMKAHEL Ahmed²

ahmed.boulemkahel@umc.edu.dz

² Faculty of Law, Constantine 1 University

Date of transmission: 15/09/2025 date of acceptance: 09/11/2025 date of publication: 01/12/2025

Abstract: Guaranteeing access to justice and ensuring the right to litigation is based on the principle of continuity of public service for this vital facility, as it is one of the pillars of ensuring legal security and the quality of judicial rulings and decisions. However, practical experience confirms that the partial suspension of judicial services during judicial holidays or force majeure situations can lead to practical problems and negative consequences in divorce lawsuits of that are subject to specific time limits for adjudication under Article 49 of the Family Law. This paper analyzes the most important practical problems of this discontinuance and proposes appropriate solutions to the specificity of this class of suits.

Keywords: Marriage Dissolution Lawsuits; Judicial Service; Force Majeure; Judicial Recess; Practical Problems.

المخلص:

يرتكز تكريس حق الوصول إلى القضاء وكفالة حق التقاضي على مبدأ استمرارية الخدمة العمومية لهذا المرفق الحيوي باعتباره أحد دعائم ضمان الأمن القانوني وجودة الأحكام والقرارات القضائية. ومع ذلك، فالواقع العملي يؤكد على أن توقف المرفق القضائي جزئياً أثناء العطل القضائية أو القوة القاهرة؛ من شأنه أن يؤدي في دعاوى فك الرابطة الزوجية المرتبطة بأجال محددة للفصل فيها طبقاً للمادة 49 من قانون الأسرة إلى إشكالات عملية وتأثيرات سلبية. تحلل هذه الورقة أهم الإشكالات العملية لهذا التوقف وتقدم الحلول الملائمة لخصوصية هذا الصنف من الدعاوى.

الكلمات المفتاحية: دعاوى فك الرابطة الزوجية؛ مرفق القضاء؛ القوة القاهرة؛ العطلة القضائية؛ الإشكالات العملية.

* Corresponding Author

Introduction:

The judiciary is subject to two fundamental principles. The first is the principle of continuity, as it is considered a public service in the traditional sense. The second is the principle of enshrining the right of recourse to the judiciary, which is one of the most important rights enshrined in international conventions and is also considered a constitutionally guaranteed right in accordance with Article 158, paragraph 2, of the Algerian Constitution. It is also enshrined in Article 3 of the Code of Civil and Administrative Procedure. However, access to the judiciary may be partially suspended for specific reasons and on a temporary basis in two cases:

The first case: due to judicial recess, which is a period during which the judicial system is suspended for a specific period each year due to the annual leave of judges and judicial system employees.

The second case: due to force majeure preventing the judicial system from functioning, as happened recently due to the COVID-19 pandemic, where many departments and public facilities were shut down, including the judicial system, which was partially suspended, with only minimum services being provided.

Divorce lawsuits are among the most important legal cases linked to specific deadlines. According to Article 49 of the Family Law, the judge must reach a settlement within three months from the date the lawsuit was filed. Therefore, the suspension of judicial work is likely to raise numerous problems and negative effects in practical application. In this paper, we ask about the most important negative effects of the suspension of the judicial service on the progress of divorce lawsuits? What are the problems it raises?

In this article, we will address this issue with analysis, by addressing the discontinuation of the judicial facility as an exception to the principle of continuity of public service (**Topic I**), and then we will address in (**Topic II**) the negative effects of the discontinuation of the judicial facility on **divorce lawsuits**.

First Topic: Judicial Service: Between the Principle of Continuity and Temporary Suspension

The judiciary is considered one of the most important public services, as it represents the authority legally empowered to adjudicate various disputes, regardless of the parties involved. The Algerian Constitution enshrines the right of recourse to the judiciary in Article 165, paragraph 2¹. The principle of

¹ Article 165, paragraph 2, of the Algerian Constitution states that '*justice is accessible to all.*'

continuity is a fundamental and essential principle that characterizes the judiciary, but there are exceptions to this principle.

First requirement: the principle of continuity of the judiciary as a public utility

The principle of continuity of public utility is considered the cornerstone of public administration because it guarantees citizens' rights to access basic services, which necessitates surrounding it with safeguards to protect it. We will therefore first address the principle of continuity in terms of its concept in the **(first section)**, then the safeguards of this principle in the **(second section)**.

Section I: Continuity of public services: The concept and principle

Firstly: The concept

The principle of continuity is a principle that obliges the administration to ensure the continuity of public services and requires the uninterrupted operation of public services to meet the needs of users in all circumstances and under normal conditions. This principle obliges the state, as well as its agents and licensees, to ensure the stability of essential services, including the most important services such as security, public health and national defense, which cannot be interrupted. French jurist **Louis Rolland** described it as a 'law'. On a practical level, the Council of State and the Constitutional Council have emphasized the fundamental value of this principle. In 1979, the Constitutional Council granted it constitutional value in its decision on the right to strike in radio and television, while the Council of State described it as a 'fundamental principle' in its 1980 ruling in the **Bonjan** case¹.

Secondly: The principle

The contours of public service can evolve over time. Public service pursues goals related to order and regulation, social and health protection, education and culture, and the economy. As diverse as they may be, public service actors are subject to three main principles: continuity of public service, equality before public service, and adaptability (or mutability) of public service. Continuity of public service, a principle of constitutional value (decision 79-105 DC of the Constitutional Council of July 25, 1979), which is based on the need to respond to needs of general interest without interruption. However, depending on the services, the concept of continuity does not have the same content (total permanence for hospital emergencies, scheduled hours for others). The case law of the Council of State specifies that a service that does not respect the announced

¹ Isa Germain. Le principe de continuité du service public. <https://cours-de-droit.net/>

opening hours (late opening, early closing) risks being condemned. However, this principle of continuity must accommodate the right to strike, excluded for certain agents (police, military, for example) or limited by a minimum service (air navigation, rail transport, television and radio, in particular)¹.

Section II: Guarantees of the public services principle continuity

The principle of continuity requires a set of legislative guarantees established by the legislator under legal provisions, mainly consisting of restrictions on the exercise of the right to strike and restrictions on the exercise of the right to resign.

Firstly: Restrictions of the right to strike

The right to strike in Algeria is a constitutionally enshrined right, as stipulated in Article 70, paragraph 1 of the 2020 Constitution. Paragraph 2 of the same article refers to the prohibition or restriction of strikes in specific areas, including national defense and security, or in all public services or activities of vital interest to the nation². The Law No. 23-08 of June 21, 2023 on the prevention and settlement of collective labor disputes and the exercise of the right to strike, came to enshrine the constitutional principles where Article 42 defines the right to strike, and Article 3 its field of application, and also defined the modalities and conditions for the exercise of the right to strike in Article 41 and beyond³. In implementation of Paragraph 02 of Article 70 of the Algerian Constitution, Law 23-08 defined the prohibitions against resorting to strikes in Article 67 thereof in areas vital to the state and of great importance. Paragraph 02 of Article 67 refers to the regulation of determining the list of sectors, employees and jobs prohibited from resorting to strikes.

It also stipulated another category representing sectors of activity and job positions that require the implementation of a minimum level of service, which must also be determined by regulation. In the same context, Executive Decree No. 23-361 of 17 October 2023, was issued, specifying the list of sectors and positions that require a minimum level of compulsory service, and a list of sectors, employees and jobs that are prohibited from resorting to strikes, which, in general, emphasized the preservation of essential public interests and ensuring the

¹ Vie-publique.fr, La notion de service public: Quels sont les grands principes du service public? Dernière modification : 5 août 2025. <https://www.vie-publique.fr/fiches/20223-la-notion-de-service-public>

² Article 70 of the Algerian Constitution.

³ See Law No. 23-08 of 3 Dhu al-Hijjah 1444, corresponding to 21 June 2023, on the prevention and settlement of collective labour disputes and the exercise of the right to strike, Official Journal of the Algerian Republic, No. 42, 2023.

provision of basic needs for the country and its population. Among the sectors prohibited from striking is the justice sector, in accordance with Article 08 of Executive Decree 23-361. Article 9 of the same decree confirms the prohibition of judges from resorting to strikes¹, which has been enshrined since the enactment of Organic Law 04-11 containing the Basic Law on the Judiciary in Article 12 thereof².

By addressing the exercise of the right to strike and the restrictions imposed on it, we see that the judiciary is considered a vital service, which required the Algerian legislature to classify it among the sectors prohibited from resorting to strikes. The Algerian legislature did well to impose this restriction, especially after the recent unrest in the judiciary, This was evident in the strike by chief clerks and then the strike by judges in 2019, which the administrative judiciary ruled illegal under the emergency order issued by the Administrative Court of **Tipaza** on 3 November 2019, which stated in its reasoning: ***'The judges' strike violates the provisions of Article 12 of Organic Law 04-11, obstructs and affects the proper functioning of the sensitive public service that is the judiciary, and inevitably leads to the disruption of citizens' interests.'***³ In our opinion, this is one of the most important guarantees of the principle of continuity of public services and the right of access to justice.

Secondly: Restricting the right to resign

Resignation is considered a method of terminating employment in accordance with Ordinance No. 06-03, which contains the general basic law on public service. Article 217 of this ordinance stipulates that resignation is a recognized right of employees, but that it must be exercised within the conditions set out in this law. This means that employees cannot terminate their employment unilaterally and without warning. This is for several reasons, the most important of which is the smooth running of the public service and giving the employee an opportunity to reconsider their decision.

¹ See Executive Decree No. 23-361 dated 2 Rabi' al-Thani 1445, corresponding to 17 October 2023, which specifies the list of sectors of activity and job positions requiring a minimum level of compulsory service, and the list of sectors, employees and jobs prohibited from resorting to strike action, Official Journal of the Algerian Republic, No. 67, 2023.

² See Article 12 of Organic Law 04-11 of 21 Rajab 1425, corresponding to 6 September 2004, containing the Basic Law on the Judiciary, Official Journal of the Algerian Republic, No. 57, 2004.

³ The expedited order issued by the Administrative Court of **Tipaza** on 3 November 2019 under case number 02006/19, index number 02426/19.

In this regard, we find that the exercise of the right to resign is restricted under Article 218 of the General Basic Law on Public Service, which requires that resignation be made in writing by the employee, stating his explicit intention to terminate his relationship with the administration permanently. This request is sent to the authority with appointment powers through the administrative hierarchy, and the employee is obliged to perform the duties associated with their job until a decision is issued by this authority in accordance with Article 219 of the same law. The resignation shall not take effect until it has been expressly accepted by the same authority that is required to decide on it within a maximum period of two months starting from the date of submission of the request, with the possibility of postponing approval of the resignation request for a period of two months (2) starting from the date of expiry of the first period, due to the extreme necessity of the interest in accordance with the provisions of Article 220 of the same law¹. Resignation is therefore considered a right guaranteed to employees. On the other hand, the legislation guarantees the proper functioning of public services by setting deadlines, given the negative impact that a unilateral declaration of intent to resign may have on public services, affecting their continuity and regularity. The legislator has combined the desire to leave office with the granting of deadlines to achieve this within the framework of regulations that govern the resignation process in a balanced manner².

Second requirement: Temporary suspension of judicial services

As we have already explained, the judiciary is a vital utility that requires continuity. However, there are circumstances that may cause its temporary and partial suspension, including normal circumstances such as the annual leave taken by its personnel (judges and employees), known as the judicial holiday, and others related to unusual and unexpected circumstances, known as force majeure.

Section I: Judicial recess as a reason for partial suspension of judicial work

The human element is considered to be the most important factor influencing the functioning of the judiciary and consists of two main categories: the first category relates to judges, and the second category relates to court clerks. The right to annual leave is considered to be a guaranteed right for both categories. The Algerian legislature initially regulated what is known as judicial leave by

¹ See Articles 217 to 220 of Order No. 06-03 of 19 Jumada II 1427, corresponding to 15 July 2006, containing the General Basic Law on Public Service, Official Journal of the Algerian Republic, No. 46, 2006.

² Mehdi Bakhda, The Legal System of Resignation: A Study of Algerian Employment Legislation, Journal of the Academy of Social and Human Sciences, Volume 11, Issue 02, University of Hassiba Bouali, Chlef, Algeria, 2019. p. 43.

The exceptional suspension of the judiciary and its impact on divorce proceedings: Practical problems and solutions

Decree No. 77-162 on annual judicial leave and service in the sessions of the Supreme Council, judicial councils and courts held during such leave. It was then elevated by being enshrined in Organic Law 22-10 on judicial organization.

Firstly: Judicial recess under the Decree No. 77-162

Article 07 of Decree No. 77 -162 on annual judicial recesses and service in sessions of the Supreme Council, judicial councils and courts held during those recesses stipulates that the annual recess for the civil chambers of judicial councils and civil divisions of courts shall begin on 15 July and end on 15 September, i.e. the holiday lasts for two full months, so that judges and staff can take advantage of their annual leave for a period of 30 days, with the workforce divided into two equal groups, the first working from 15 July to 15 August and the second working from 15 August to 15 September. Therefore, reducing the number of employees and judges necessarily requires reducing the volume of work on the one hand, On the other hand, the judicial recess is an opportunity for legal assistants, such as lawyers, court clerks and experts, to also take advantage of their annual leave, given that judicial work requires them to follow up on cases throughout the judicial year. Article 08 of the same decree stipulates that during this period, emergency matters shall be heard by special chambers for holiday sessions of judicial councils and special branches for holiday sessions of courts. Urgent cases, as defined in this decree, refer to the cases stipulated in Article 02 thereof, which concern personal status cases, labour accidents and disputes, nationality, and urgent cases. Two special chambers shall be responsible for this service during holidays, namely: the Criminal Chamber and the Civil Chamber. We believe that the Algerian legislator in this decree made the right decision when he ensured the continuation of personal status cases, considering them to be ‘urgent proceedings.’ This is based on his belief in their specificity and their extremely important effects on the lives of individuals and families as a whole, as we will explain in detail in due course.

Secondly: Judicial recess under the Organic Law 22-10

The Organic Law No. 22-10 of 9 June 2022 on judicial organization contains relatively detailed provisions in 40 articles, compared to Organic Law No. 05-11 on judicial organization, which contained only 21 articles. However, Organic Law No. 22-10 did not attach much importance to judicial recesses, as it only mentioned them in a single article, Article 9, which stipulated that the judicial year shall end with a two-month judicial recess, from 15 July to 15 September of each year, during which the judicial authorities shall decide on urgent cases and cases involving prisoners. Organic Law No. 22-10 did not define the concept of

urgent cases, unlike Decree No. 77-162, nor did it refer to any referral in this regard, which led the presidents of courts and judicial councils to interpret the term ‘urgent cases’ in its narrow sense to include expedited cases, whether those published at the expedited division level or expedited cases registered at the level of other divisions responsible for ruling on expedited measures related to cases registered at the same division level. As well as cases of the social division under the provisions of Article 505 of the Code of Civil and Administrative Procedure, which must be adjudicated as soon as possible. This narrow application of the provisions of Article 9 of Organic Law No. 22-10¹ was an inevitable consequence of the legislative vacuum in this regard, as the legislator did not attach any importance to the issue of judicial recess and merely referred to it in a single article. This had a negative impact on the progress of the personal status cases before the courts as a result of the suspension of proceedings during the judicial recess, which had many negative consequences that we will discuss in detail in due course.

Section II: Suspension of judicial service due to force majeure

The second circumstance for the suspension of judicial proceedings is force majeure. We will first address this concept, then discuss the COVID-19 pandemic as one of the most prominent examples of force majeure in the current era.

Firstly: The force majeure concept

Algerian legislator did not define force majeure, but referred to it in the Civil Code as a cause for exemption from liability in several articles, including Articles 127, 138 and 851, as well as in Article 322 of the Code of Civil and Administrative Procedure as an exception to the forfeiture of rights or the forfeiture of the appeal right due to failure to comply with the time limits set by law. French legislator defined it in the contractual field as occurring when a cause beyond the debtor's control arises that was not foreseeable at the time of conclusion of the contract, cannot be averted by appropriate means, and prevents the debtor from performing the obligation. Thus, it is ‘any unforeseeable event over which the person has no control and which cannot be averted, rendering performance of the obligation impossible.’²

From the above, we can conclude that force majeure is constituted by two conditions: that the event is unforeseeable and that it is impossible to prevent. At the procedural level, individuals may not be able to resort to the courts to claim

¹ See Article 09 of Organic Law No. 22-10 of 09 Dhu al-Qa'da 1443, corresponding to 09 June 2022, relating to judicial organization, Official Journal of the Algerian Republic, No. 41, 2022.

² Abdul Rashid Tabi, Force Majeure and Its Impact on Legislation and Judiciary, COVID-19 as an Example, article published on the Supreme Court website. <https://coursupreme.dz/>

or defend their rights and legal positions, and they may not be able to exercise their procedural rights or perform their procedural duties due to circumstances, facts or events that prevent them from doing so. Furthermore, after resorting to the courts, circumstances may arise that prevent the pursuit of legal proceedings and even the appeal of a judgment¹. At the level of civil and administrative procedural law, only one article provides for force majeure and its effects, namely Article 322, which states that a case of force majeure, or the occurrence of an event that affects the normal functioning of the judiciary, is considered an exception to the forfeiture of the right or appeal within the time limits prescribed by law².

Secondly: The COVID-19 pandemic as an example of force majeure

The coronavirus (COVID-19) pandemic is an important model that should be studied and adapted as a force majeure in the current era, with the aim of protecting certain rights that may be lost due to the measures imposed because of the pandemic. In this context, Algeria has put in place a number of preventive measures and enacted several regulatory texts, the most important of which is Executive Decree No. 20-69 of 21 March 2020 on measures to prevent the spread of the coronavirus (COVID-19) and combating it³, as well as Executive Decree No. 20-168 of 29 June 2020 extending partial home quarantine measures and strengthening measures to prevent the spread of the coronavirus (COVID-19) and combat it⁴.

Like other sectors, the justice sector has taken a series of measures to limit the spread of the virus in accordance with the provisions of the aforementioned executive decrees. In this context, important decisions have been taken, which have resulted in the temporary suspension and reduction of judicial work. These decisions include ensuring a minimum level of service for the judiciary, including

¹ Mohammed Saeed Abdul Rahman, *Force Majeure in Procedural Law: A Comparative Fundamental and Applied Study*, first edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2011, p. 28.

² See Article 322 of Law 08-09 dated 18 Safar 1429, corresponding to 25 February 2008, containing the Code of Civil and Administrative Procedure, Official Journal of the Algerian Republic, No. 21, 2008.

³ See Executive Decree No. 20-69 of 21 March 2020 on measures to prevent and combat the spread of the coronavirus (COVID-19) pandemic, Official Journal of the Algerian Republic, No. 15, 2020.

⁴ See Executive Decree No. 20-168 of 29 June 2020 extending partial home confinement measures and strengthening measures to prevent and combat the spread of the coronavirus (COVID-19) pandemic, Official Journal of the Algerian Republic, No. 38, 2020.

suspending the registration of civil cases except for urgent cases, and suspending the proceedings of cases published at the judicial level, which is considered a temporary restriction on the right of recourse to the judiciary.

Secondly: Adapting efforts to force majeure during the pandemic

The public authorities have made considerable efforts to counter the negative effects of the coronavirus pandemic. In this regard, the Ministry of Justice issued a ministerial notice on 16 March 2020 concerning measures to prevent the spread of the coronavirus, which includes the following measures:

- Civil hearings will be held in courts only to consider cases in which lawyers are involved, and those in which they are not involved will be postponed, all with the exclusive presence of lawyers;
- Administrative court hearings will be held with the exclusive presence of lawyers, without the parties;
- Civil chamber hearings in judicial councils shall be held with the exclusive presence of lawyers;
- Judgments shall be pronounced in all civil, administrative and criminal cases under deliberation;
- The use of remote trial procedures shall be intensified in cases involving detainees, provided that the conditions for such procedures are met;
- Use of remote video conferencing technology in interrogations and hearings of the parties by the investigating judge, in accordance with the provisions of Law No. 15-03 of 1 February 2015 on the modernization of justice, provided that this procedure is limited to simple cases.

As for complex cases, the investigating judge may visit the penal institution in coordination with its director to establish a programme, after consulting with the public prosecutor and taking the utmost precautionary measures¹. E-litigation is considered one of the most effective means by which countries have responded to this pandemic. It is defined as ‘an unusual method of conducting legal proceedings and litigation, involving a shift from procedures based entirely on paper documents to the use of new electronic means for registering cases, conducting proceedings, storing files and issuing rulings.’²

A careful reading of the ministerial circular reveals that it does not devote any space or attention to family matters in general, and divorce cases in particular. And treats them as civil cases, despite the fact that these cases require the personal

¹ Ministerial circular issued by the Ministry of Justice on 16 March 2020 concerning the strengthening of measures to prevent the spread of coronavirus.

² Safaa Otani, E-Court (Concept and Application), Damascus University Journal of Economic and Legal Sciences, Vol. 28, No. 1, 2012, p. 169, <https://www.damascusuniversity.edu.sy/>

presence of the parties and even their witnesses in order to conduct a civil investigation into the facts and circumstances related to this type of case, such as investigations into custody issues and disputes over dowry and property.

Thirdly: E-litigation as a mechanism to ensure the continuity of judicial services in cases of force majeure

E-litigation is considered one of the most effective means by which countries have confronted the coronavirus pandemic. It is defined as “an unusual method of conducting legal proceedings and litigation, involving a shift from procedures that rely entirely on paper documents to the use of new electronic means for filing cases, conducting proceedings, storing files, and issuing judgments.¹”

E-justice requires technical capabilities, including computers, an internet network, servers for storing and preserving judicial data, and other capabilities that ensure interactive data exchange between various stakeholders. The Ministry of Justice is working on this and has established the “Directorate General for the Modernization of Justice” for this purpose². However, although the use of electronic means in criminal matters is more regulated from a legislative point of view and more widely used in practice, the use of electronic means in judicial proceedings in civil matters still suffers from legislative shortcomings, as Law No. 15 -03 of 1 February 2015³ on the modernization of justice is the only legislative text that enshrines it in only five articles, namely Articles 9 to 13. On the one hand, on the other hand, civil matters require considerable resources and a minimum level of knowledge of electronic technology on the part of litigants, which makes the use of electronic means unattainable in the medium term. Despite all this, the efforts of the public authorities to keep the judiciary functioning by modernizing services during the pandemic cannot be denied. This was confirmed by the then Minister of Justice, *Belkacem Zeghmatti*, in a speech he gave at the meeting of the Council of Arab Ministers of Justice held in Cairo, when he said: *‘The modernization of the justice sector has played a prominent role in facilitating and streamlining the administration of judicial work in the*

¹ Safaa Otani, “The Electronic Court (Concept and Application)”, Damascus University Journal of Economic and Legal Sciences, Volume 28, Issue 1, 2012, p. 169.

² Nawal Qahmous, Amal Ben Braih, “The Effectiveness of Digital Justice as an Embodied Technology in Times of Pandemic (The Coronavirus Pandemic as an Example)”, Journal of Humanities, Volume 33, Issue 2, June 2022, p. 103.

³ See Law 15-03 dated 11 Rabi II 1436, corresponding to 1 February 2015, on the modernization of justice, Official Journal of the Algerian Republic, No. 06, 2015.

*context of the coronavirus pandemic. Most trials this year have been conducted remotely due to the pandemic, and Algerian citizens have been able to access most justice services remotely, in accordance with the preventive measures adopted by the country's public authorities.'*¹

Second topic: The negative effects of the judicial proceedings suspension on divorce lawsuits

Divorce lawsuits are among those most affected by the suspension of judicial proceedings, which we will attempt to explain and analyzed. We will first address the effects related to the non-material aspects in the **first requirement**, then the effects related to the material aspects in the **second requirement**.

First requirement: Effects related to non-material aspects

There is no doubt that the temporary suspension of judicial activity for one of the reasons detailed above and the suspension of hearings related to family affairs, including reconciliation proceedings in divorce cases, will have a negative impact on the progress of these cases in terms of reconciliation deadlines as well as in terms of the validity of the waiting period and the exercise of the right of return, as all these effects are linked to a specific time frame.

Section I: In terms of reconciliation deadlines

Reconciliation is considered a mandatory and essential procedure in cases of dissolution of marriage, and the family court judge must carry it out in accordance with the provisions of Article 49 thereof. The impossibility of personal attendance is considered the first obstacle encountered by the judge in the event of a total or partial suspension of work at the court for the aforementioned reasons, because it is inconceivable to conduct reconciliation in the absence of the parties, which makes it impossible to proceed with the lawsuit.

Firstly: The inability of the petitioner to physically attend the dissolution of the marriage relationship

There is no disagreement that the physical presence of the husband is a necessary procedure, and failure to do so renders the judge's ruling to dissolve the marriage subject to annulment, as previously established by the Supreme Council in its decision dated 14/05/ 1984, file no. 32786², which states that the consent of the husband, who alone has the power to dissolve the marriage by divorce, must be ascertained. This was also confirmed by the judicial jurisprudence of the Supreme Court in its decision dated 10/04/2014, file no. 901209³. This means that

¹ Newspaper article published in Sabq Press, available at: <https://www.sabqpress.dz/>

² Supreme Court Journal for 1989, Issue 2, p. 66.

³ Supreme Court Journal for 2014, Issue 2, p. 273.

suspending this procedure means suspending the proceedings for dissolving the marriage as a whole, which is a serious matter with negative repercussions because it restricts, even if only partially, the freedom of the parties to dissolve the marriage and proceed with their case.

Secondly: Expiry of the deadlines set for reconciliation

The expiry of the reconciliation period is considered the most negative and complex issue, as Article 49 of the Family Law emphasizes that reconciliation must take place within a period not exceeding three months from the date of filing the lawsuit. Consequently, the temporary suspension of the judiciary, whether in the case of a judicial holiday lasting two full months, or in the event of force majeure, such as the coronavirus pandemic, which lasted for several months and could have lasted for an indefinite period until the force majeure ceased, would result in the expiry of the reconciliation period without the judge being able to make a single attempt at reconciliation or even to ascertain the will of the parties.

Therefore, we believe that it is imperative to prohibit the suspension of divorce proceedings under any circumstances, given the specific nature of these proceedings in terms of procedures and deadlines, which are set out in the form of mandatory rules that serve and enshrine substantive and legal rules, particularly those relating to the waiting period and reconciliation, as we will detail in the second section.

Section II: In terms of "*idda*" or "period of waiting" and return

There is no doubt that the relationship between the reconciliation period and the waiting period is strong in divorce by the sole will of the husband, whether it is a revocable divorce or an irrevocable divorce. As for the return, it can only be discussed in the case of a revocable divorce.

Firstly: In terms of the waiting period "*idda*"

The waiting period "*idda*" is defined as the period during which a woman waits to ascertain that she is not pregnant, to worship, or to mourn her husband. The waiting period is imposed on divorced women for the purpose of ascertaining that they are not pregnant. They must wait for three menstrual cycles, and once this period has elapsed and they are certain that they are not pregnant, they may marry another man. It is also imposed in divorce as an opportunity for reconciliation, as a wife in the waiting period of a revocable divorce is eligible for reconciliation, and if her waiting period expires, a new contract must be drawn up¹.

¹ Masoudi Mohamed Lamine, Al-'Iddah as a Legal Mechanism for Addressing Divorce, Academic Journal of Legal and Political Research, Year 2022, Issue 1, Volume 6, p. 745.

Islamic Sharia law imposes the waiting period in the Holy Quran in the verse: **{And divorced women shall wait concerning themselves for three menstrual periods}**¹, which confirms the importance and significance of its role in preserving the interests of the family. The legal waiting period is considered one of the effects of divorce that the wife must adhere to in the event of separation from her husband. If she remarries before that, she will have violated Sharia law and the law², which is the approach taken by the Algerian legislature and enshrined by the judiciary, considering the waiting period to be part of public order, as stated by the Supreme Court in its decision dated 12/07/2006 in Decision No. 358348, which states that³: **‘there is no divorce without a waiting period, and the waiting period is part of public order.’**

The waiting period applies to divorced women who have been consummated in accordance with Article 58 of the Family Law, which is logical because divorce before consummation does not require confirmation of the emptiness of the womb. The duration varies according to her situation. If she is pregnant, there is no issue, as the waiting period ends with the birth of her child, in accordance with Article 60 of the Family Law, which is consistent with the provisions of Islamic law, as stated in the Holy Qur'an: **{and if they are pregnant, then spend on them until they give birth}**⁴. However, the issue raised by the suspension of divorce proceedings in relation to the waiting period is the date on which it begins to be calculated. This leads us to the jurisprudential debate on the occurrence of verbal divorce, as well as the legal nature of the judicial ruling to dissolve the marriage bond and whether it is a declaratory or constitutive ruling.

Some jurists believe that divorce only occurs from the date it is declared by the judge in a judicial ruling, which is the date on which the waiting period begins⁵. While another opinion holds that divorce occurs as soon as the husband pronounces it and that the court ruling serves to confirm it rather than to enforce it, even if it is before the lawsuit is filed⁶. In general, we believe that suspending judicial proceedings in cases where the waiting period begins on the date the husband verbally declares the divorce does not pose any problem. However, a

¹ Sūrat al-Baqarah, Ayah 228.

² Hisham Debih, ‘The Rules of Waiting Period in Islamic Jurisprudence and Algerian Family Law,’ Journal of Legal and Economic Studies, Vol. 04, No. 01, 2021, p. 44.

³ Judicial Review, Vol. 2006, No. 2, p. 449.

⁴ Sūrat al-Talaq, Ayah 06.

⁵ Omar Zouda, The Nature of Divorce Rulings and the Effect of Appealing Them, Dar Belqis, Algeria, first edition, 2024, p. 183.

⁶ Nouredine Lamtaai, The Revocable Divorce Kit and Its Effects on Judicial Rulings, Faisila edition, Algiers, second edition, 2009, pp. 78–79.

problem arises in cases where the waiting period begins on the date the ruling is issued, because suspending judicial proceedings automatically delays the issuance of the ruling. This constitutes a violation of the legal and religious rules relating to the waiting period and suspends its implementation until the ruling is issued and it begins to take effect, which reinforces our view on the necessity of proceeding with divorce cases in all circumstances.

Secondly: In terms of the husband exercising his right of return

The right of return is closely linked to the waiting period and is only valid during the waiting period after the husband has declared divorce of his own volition. In other cases, such as divorce and *Khul' divorce*, the divorce is irrevocable unless a new contract is drawn up¹. This is logical, since reconciliation is a right granted to the husband but not to the wife, who can, on the other hand, withdraw her request for *khul'* or divorce "*Tataliq*". Article 50 of the Family Law stipulates that a man who returns to his wife during an attempt at reconciliation does not need a new contract, but a man who returns to her after the divorce decree has been issued needs a new contract. Thus, the legislator has linked the period of recourse to the period set for attempting reconciliation, which means that missing the deadline for attempting reconciliation means missing the opportunity for the husband to exercise his right to take his wife back, which is a serious matter, assuming that the husband has filed for divorce and the reconciliation period has expired due to the suspension of judicial proceedings, and then he wishes to take his wife back and withdraw the divorce at the first reconciliation session after the resumption of judicial proceedings.

This therefore has a negative impact on the progress of the case and the rights of the parties. It should be noted that Article 51 of the Family Law prohibits a man from remarrying a woman whom he has divorced three times in succession unless she has married another man and divorced him or died after consummating the marriage. Therefore, the judge must verify this matter during the reconciliation hearings in order to rule on the case in accordance with legal rules and Sharia principles.

The Supreme Court had also ruled before the enactment of the Civil and Administrative Procedures Law 08-09 that reconciliation in divorce by mutual consent requires a new contract, as stated in the Supreme Court's decision dated

¹ Najimi Jamal, Algerian Family Law: A Guide for Judges and Lawyers, Article by Article, in Light of Islamic Sharia Law and Judicial Precedents, Houma edition, Algeria, second edition, 2017, p. 127.

18/07/1988 under No. 49857¹ and the decision dated 09/07/1996 under No. 138949². However, after the Civil and Administrative Procedures Code was issued, the ruling on divorce by mutual consent became non-appealable in all its aspects, in accordance with Article 433 thereof³.

Second requirement: Effects relating to material aspects

After discussing the negative effects of the suspension of judicial proceedings on non-material aspects, we will now address the effects on material aspects, which are no less important than the former, especially those related to inheritance between spouses.

First section: Wife's Maintenance

The husband's maintenance of his wife is considered one of the most important effects of the establishment of the marital relationship. Maintenance, in the broad sense, is defined in Article 83 of the Family Law, which states that maintenance includes food, clothing, medical treatment, housing or rent, and whatever is considered necessary according to custom and tradition. The wife's wealth does not negate her right to maintenance, according to the Supreme Court's ruling issued on 22/02/2000, file no. 237148⁴. The marital relationship is the basis for the husband's obligation to provide maintenance for his wife, and he is obliged to do so by marrying her or inviting her to live with him, in accordance with Article 74 of the Family Law.

Disobedience is considered grounds for forfeiture of maintenance in accordance with the text of Article 37 prior to the amendment of the Family Law 05-02, which repealed this article and deleted the paragraph relating to the forfeiture of maintenance due to the wife's disobedience. In this context, Article 61 of the Family Law stipulates that a divorced woman may not leave the family home while she is still in the divorce period, except in cases of proven adultery, in which case she has the right to divorce. This was confirmed by the Supreme Court in its ruling issued on 11 April 2007, file no. 390091⁵. Therefore, according to the opinion that the divorce ruling is a declaratory ruling, alimony is linked to the date of signing the divorce, and then the alimony for the waiting period is calculated, during which the husband is obliged to pay alimony to his wife.

There is no dispute about the entitlement to alimony and its validity in this case, regardless of how long the case takes to be decided in the event of a

¹ Judicial Review, Issue 3, 1992, p. 44.

² Judicial Review 1996, Vol. 2, p. 77.

³ See Article 433 of the Code of Civil and Administrative Procedure.

⁴ Judicial Review, 2001, No. 1, p. 284.

⁵ Judicial Review, 2008, Issue 1, p. 245.

suspension of judicial proceedings. However, the issue arises when adopting the opinion that the divorce ruling is a constitutive ruling, because this entails the continuation of the husband's maintenance of his wife for a long period that lasts for the duration of the waiting period and may even exceed it, and thus the husband paying maintenance that is not due.

Second Section: Inheritance between spouses in the event of the death of one of them

Marriage is considered one of the grounds for inheritance according to Article 126 of the Family Law, and inheritance between spouses is mandatory even if they have not consummated the marriage according to Article 131 of the Family Law. Therefore, the basis for inheritance between spouses is the existence of a marital relationship. The issue arises again in the event of the death of one of the spouses during the proceedings for dissolution of the marriage or during the waiting period. Article 132 of the Family Law responds to this issue in principle by stating that if one of the spouses dies before the judgment is issued or if the death occurs during the waiting period, the surviving spouse is entitled to inheritance.

This article brings us back to what was discussed above regarding the validity of the waiting period on the one hand, and the nature of the ruling on the dissolution of the marriage on the other. This has led to more complex issues in practice and judicial application that the aforementioned legal text cannot address or resolve. This has prompted the Supreme Court to intervene on numerous occasions, because the solution provided by Article 132 of the Family Law cannot be applied literally, but rather the spirit of the text must be applied, taking into account the sequence of these articles, because a narrow and literal interpretation of them leads to a violation of other legal and Sharia rules. To clarify this, two cases can be envisaged:

Firstly: the death of one of the spouses after the judgment has been issued and the waiting period has expired

This situation can be envisaged if the husband files for divorce before the court and the court rules on the case before the expiry of three months (within two months, for example) from the date of filing the case, and the husband or wife dies after the ruling is issued and before the end of the waiting period, which is one month after the divorce ruling is issued. By applying the provisions of Article 132 of the Family Law, the marital relationship remains in force and the surviving spouse inherits normally despite the divorce ruling. (As an example: the husband files for divorce with the court on 01/02/2025, and the court issues a ruling on

01/04/2025. In this case, there is one month left of the waiting period. If the husband or wife dies before 01/05/2025, the surviving spouse inherits from the deceased spouse as normal).

Secondly: Death of one spouse before the ruling is issued and exceeding the waiting period due to the length of time taken to decide on the lawsuit

If the husband dies before the judgment is issued and before the waiting period expires, there is no practical problem in principle, because the marital relationship is established and the cause of inheritance remains valid. The judge shall then rule that the case is closed due to death, in accordance with Article 220, paragraph 02, of the Code of Civil and Administrative Procedure, as the dispute is not transferable. This has been established by the Supreme Court in several decisions, including the decision issued on 10/11/2011, file no. 653324, which states that the death of the husband after filing for divorce leads to the expiry of the dispute and not its interruption¹. The facts of the decision relate to a case in which the husband filed for divorce, and therefore the case concerned divorce by unilateral will.

The husband died during the proceedings, and his heirs resumed the proceedings, requesting that the divorce be confirmed so that the court could rule that the dispute had been interrupted. After the appeal, the Council decided to overturn the appealed ruling and rule again to confirm the divorce that took place before death, a decision that was overturned by the Supreme Court with an extension of the appeal and without referral on the basis that the judges of the Council do not have the power to change the subject of the original case from pronouncing divorce to confirming it retroactively. And that this was considered a deprivation of the wife's inheritance, and that divorce was considered a personal right that could not be transferred, and therefore the dispute was terminated by the death of the plaintiff. This is the same principle established by the decision issued on 11/04/2013, file no. 740083, when it ruled to reject the appeal against the decision upholding the appealed judgment, which ruled that the dispute had expired after the death of the husband who had filed for divorce and the intervention of his heirs, who insisted that their ancestor's divorce was irrevocable². However, the biggest problem that arises in this case is the delay in the divorce proceedings due to the suspension of the judicial system for any of the aforementioned reasons, after the expiry of the divorce period and even the death

¹ Judicial Review 2012, Issue 2, p. 238.

² Judicial Review, 2013, Issue 2, p. 280.

The exceptional suspension of the judiciary and its impact on divorce proceedings: Practical problems and solutions

period in the event that the divorce period turns into a death period in the case of revocable divorce.

It is known in Sharia and law that the expiry of the waiting period means the dissolution of the marital relationship and, consequently, the cause of inheritance becomes null and void, and there is no room for the application of Article 132 of the Family Law because it contradicts the rules of Sharia and the provisions of Article 126 of the same law. This requires that the judgment in the case be restricted to a period of three months, which is the waiting period, with an amendment to the provisions of Article 132: *'If one of the spouses dies before the judgment is issued and the death occurs during the waiting period, the surviving spouse is entitled to inheritance.'*

Conclusion:

The principle of continuity of public utilities is one of the most important principles that guarantee public services for citizens in the state. Perhaps the most important service closely related to this principle is the judiciary, which is governed by a constitutional principle no less important than the principle of continuity, namely the principle of guaranteeing the right to litigation or the right to resort to the judiciary, which is a right guaranteed by international conventions and national constitutions. However, the judiciary may be partially suspended on a temporary basis in two cases: the first is due to judicial recess, and the second is due to force majeure, as was recently the case with the coronavirus pandemic. Given the specific nature of divorce cases and their association with specific deadlines for adjudication in accordance with Article 49 of the Family Law, the suspension of judicial work causes many negative effects and practical problems, and requires consideration of appropriate solutions to avoid these effects. Through our explanation and analysis of this research topic, we have reached the following conclusions:

- Determining the date of divorce and the validity of the waiting period is of great importance in determining the other effects of the dissolution of the marital relationship, particularly the right of return and inheritance between spouses.
- The ambiguity in the relevant texts concerning family law has led to jurisprudential disagreement about the nature of the judge's intervention in the dissolution of the marital bond, and thus to inconsistency and instability in judicial application, even at the level of the Supreme Court as the body responsible for reviewing judicial decisions.
- The suspension of judicial services, even if temporary, has a negative impact on the progress of divorce proceedings by disrupting substantive and legal rulings

and the effects of these proceedings, as they are linked to legally established deadlines.

- The suspension of the judicial system affects the exercise of the right to request the dissolution of marriage as a discretionary right on the one hand, and delays the issuance of the judicial ruling and its legal effects on the other.

Finally, the recommendations below offer a set of practical solutions and positive suggestions as follows:

- It is necessary to amend the Family Law as the substantive and reference law that determines how the right to dissolve a marriage is exercised and its effects, by removing ambiguity from its provisions, given that it is linked to Sharia provisions, as Islamic law is its primary reference.

- It is important to further adapt the procedural rules for filing and conducting divorce proceedings to bring them into line with substantive rules on the one hand, and to take into account their specificity and importance in relation to the situation of individuals on the other.

- It is important to ensure the continuity of judicial work at the level of the Family Affairs Division in general, and more specifically in cases of dissolution of marriage, and that it does not stop under any circumstances, even in cases of force majeure, as it is no less important and serious than urgent cases, given that it affects the family, which is the nucleus of society.

- It is important to focus on the intervention of the Supreme Court in its joint chambers to unify judicial work on points of disagreement at the practical level relating to divorce cases, as they are linked to public order and Sharia provisions.

- The need to expedite the establishment of a legal framework for electronic litigation in civil matters and to enable all procedures to be conducted remotely, including the personal appearance of the parties, in order to avoid the negative effects of the suspension of judicial proceedings on this type of case.

- Give the necessary attention to family affairs in general and divorce cases in particular by ensuring the specialized and continuous training of judges in this field with a view to developing their ability to reconcile spouses as the most important alternative means of dispute resolution, as well as improving the quality of judicial decisions and avoiding conflicts between them.

Bibliography:

The Holy Qur'an

1- Sūrat al-Baqarah, Ayah 228.

2- Sūrat al-Talaq, Ayah 06.

Legal texts:

1- Algerian Constitution of 1996, Modified and Completed

2- Code of Civil and Administrative Procedure.

3- Organic Law 04-11 of 21 Rajab 1425, corresponding to 6 September 2004, containing the Basic Law on the Judiciary, Official Journal of the Algerian Republic, No. 57, 2004.

4- Organic Law No. 22-10 of 09 Dhu al-Qa'da 1443, corresponding to 09 June 2022, relating to judicial organization, Official Journal of the Algerian Republic, No. 41, 2022.

5- Law No. 23-08 of 3 Dhu al-Hijjah 1444, corresponding to 21 June 2023, on the prevention and settlement of collective labour disputes and the exercise of the right to strike, Official Journal of the Algerian Republic, No. 42, 2023.

6- Law 08-09 dated 18 Safar 1429, corresponding to 25 February 2008, containing the Code of Civil and Administrative Procedure, Official Journal of the Algerian Republic, No. 21, 2008.

7- Order No. 06-03 of 19 Jumada II 1427, corresponding to 15 July 2006, containing the General Basic Law on Public Service, Official Journal of the Algerian Republic, No. 46, 2006.

8- Law 15-03 dated 11 Rabi II 1436, corresponding to 1 February 2015, on the modernization of justice, Official Journal of the Algerian Republic, No. 06, 2015.

9- Executive Decree No. 23-361 dated 2 Rabi' al-Thani 1445, corresponding to 17 October 2023, which specifies the list of sectors of activity and job positions requiring a minimum level of compulsory service, and the list of sectors, employees and jobs prohibited from resorting to strike action, Official Journal of the Algerian Republic, No. 67, 2023.

10- Executive Decree No. 20-69 of 21 March 2020 on measures to prevent and combat the spread of the coronavirus (COVID-19) pandemic, Official Journal of the Algerian Republic, No. 15, 2020.

11- Executive Decree No. 20-168 of 29 June 2020 extending partial home confinement measures and strengthening measures to prevent and combat the spread of the coronavirus (COVID-19) pandemic, Official Journal of the Algerian Republic, No. 38, 2020.

12- Ministerial circular issued by the Ministry of Justice on 16 March 2020 concerning the strengthening of measures to prevent the spread of coronavirus.

Books:

1- Omar Zouda, The Nature of Divorce Rulings and the Effect of Appealing Them, Dar Belqis, Algeria, first edition, 2024.

2- Mohammed Saeed Abdul Rahman, Force Majeure in Procedural Law: A Comparative Fundamental and Applied Study, first edition, Al-Halabi Legal Publications, Beirut, Lebanon, 2011.

3- Nouredine Lamtaai, The Revocable Divorce Kit and Its Effects on Judicial Rulings, Faisila edition, Algiers, second edition, 2009.

Articles:

- 1- Abdul Rashid Tabi, Force Majeure and Its Impact on Legislation and Judiciary, COVID-19 as an Example, article published on the Supreme Court website. <https://coursupreme.dz/>
- 2- Mehdi Bakhda, The Legal System of Resignation: A Study of Algerian Employment Legislation, Journal of the Academy of Social and Human Sciences, Volume 11, Issue 02, University of Hassiba Bouali, Chlef, Algeria, 2019.
- 3- Masoudi Mohamed Lamine, Al-'Iddah as a Legal Mechanism for Addressing Divorce, Academic Journal of Legal and Political Research, Year 2022, Issue 1, Volume 6, p. 745.
- 4- Najimi Jamal, Algerian Family Law: A Guide for Judges and Lawyers, Article by Article, in Light of Islamic Sharia Law and Judicial Precedents, Houma edition, Algeria, second edition, 2017, p. 127.
- 5- Safaa Otani, E-Court (Concept and Application), Damascus University Journal of Economic and Legal Sciences, Vol. 28, No. 1, 2012, p. 169, <https://www.damascusuniversity.edu.sy/>
- 6- Hisham Debih, 'The Rules of Waiting Period in Islamic Jurisprudence and Algerian Family Law,' Journal of Legal and Economic Studies, Vol. 04, No. 01, 2021, p. 44.
- 7- Nawal Qahmous, Amal Ben Braih, "The Effectiveness of Digital Justice as an Embodied Technology in Times of Pandemic (The Coronavirus Pandemic as an Example)", Journal of Humanities, Volume 33, Issue 2, June 2022, p. 103.

Jurisprudence:

- 1- The expedited order issued by the Administrative Court of **Tipaza** on 3 November 2019 under case number 02006/19, index number 02426/19.
- 2- Supreme Court Journal for 1989, Issue 2.
- 3- Supreme Court Journal for 2014, Issue 2.
- 4- Judicial Review, Vol. 2006, No. 2.
- 5- Judicial Review, Issue 3, 1992.
- 6- Judicial Review 1996, Vol. 2.
- 7- Judicial Review, 2001, No. 1.
- 8- Judicial Review, 2008, Issue 1.
- 9- Judicial Review 2012, Issue 2.
- 10- Judicial Review, 2013, Issue 2.

Sit webs:

- 1- Newspaper article published in Sabq Press, available at: <https://www.sabqpress.dz/>
- 2- Isa Germain. Le principe de continuité du service public. <https://cours-de-droit.net/>