

The Legal System of Judicial Conciliation in Civil Litigation under The Algerian

النظام القانوني للصلح القضائي
في الدعاوى المدنية في ظل التشريع الجزائري

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Abstract:

Conciliation occupies a prominent place in legal doctrine, prompting various states to establish regulations governing its procedures due to its significant role in alleviating the caseload before judicial authorities. This stems from the flexibility and expediency it provides in dispute resolution, as well as its ability to engage the disputing parties in the amicable settlement of their conflicts. Consequently, the need for conciliation has emerged as an alternative mechanism for dispute resolution. Given its importance, the Algerian legislator has enacted a suitable legal framework to regulate this system, ensuring the protection of the rights of the parties involved in a consensual and amicable manner.

Keywords: Judicial conciliation , executive title, dispute settlement, official record...

الملخص:

يحتل الصلح مكانة بارزة في الفكر القانوني لذا كان من الطبيعي أن تعتمد مختلف الدول الى تنظيم القواعد المنظمة له نظرا لدوره الفعال في التقليل من حجم القضايا المعروضة أمام الجهات القضائية نظرا لما يوفره من مرونة وسرعة في التقاضي الى جانب مساهمته في اشراك أطراف النزاع في حل وتسوية منازعاتهم، لذا فقد ظهرت الحاجة اليه كأحد الحلول البديلة لتسوية النزاعات ونظرا لأهميته فقد عمد المشرع الجزائري الى وضع اطار قانوني ملائم لهذا النظام يكفل الحفاظ على حقوق الأطراف المتنازعة بشكل ودي.

الكلمات المفتاحية: الصلح القضائي - سند تنفيذي - تسوية النزاع – محضر...

Introduction:

The judiciary is seen as the institution responsible to handle debate and clashes between parties. Each individual possesses a fundamental right to seek justice. However, the conventional approach of settling disputes by resorting to court has led to the legal system becoming overwhelmed with a large number of cases. Besides, the gradualness of court procedures and the length of case periods have had a serious effect on the judiciary's capacity to perform its obligations. As a result, diverse ways and implies were required, with simple strategies that permit parties to lock in in finding satisfactory arrangements to their issues. ¹

In keeping with current headways, the court is now not the sole substance entrusted with settling clashes, but different strategies and methods have been created to help and supplement the legal in settling debate that develop between the parties. Elective ways for settling clashes are characterized as an vague collection of forms for settling debate, which are as often as possible carried out with the help of a third party in arrange to resolve these case. ²

For the reasons expressed over, the utilize of these approaches has ended up a reflection of the debating parties' wish to dodge the complications inborn in case strategies whereas shortening the period of the case. In other words, the thought of diminishing the burden on the legal specialists cannot be the only rationale for adopting alternative dispute resolution methods for settling debate within the Civil and Administrative Procedures Law.

There is a more basic foundation to utilizing conciliation as one of these strategies. which is permitting prosecutors to resolve their issues by selecting a third party that they choose or that the legal chooses for them, which helps in coming to a settlement that they are mutually acceptable and satisfying. ³ As a result of modern requirements and developments, conciliation has become an unavoidable method of resolving disagreements in our day.

Significance of The Study:

- The relevance of conciliation in legal philosophy stems from its role in settling conflicts peacefully by using a third party to achieve a solution that satisfies all parties involved, resulting in a voluntary resolution.

- Saving litigants time and money.

- Increasing the atmosphere of love and harmony amongst persons and encouraging them to seek conciliation to resolve their conflicts willingly and peacefully, rather than going to court, where litigants suffer significant costs and lengthy procedures in order to get justice.

The research Objective:

The research seeks to:

- Identify the conciliation procedure by stating its definition, characteristics, and types.
- Address the procedural rules regulating conciliation, its scope, and its effects.

Statement of The Problem

¹ Mohammed Bachir, Alternative Methods for Resolving Disputes in The Civil and Administrative Procedures Law, Annals of the University of Algiers 1, Issue 2, 2014, p.53. (Original reference in Arabic)

² Alaa Abarian, Alternative Means for Resolving Commercial Disputes, El-Halabi Legal Publications, Lebanon, 2008, p.53. (Original reference in Arabic)

³ Mohammed Bachir, Ibid., p.58.

Based on the prior data, the research presents several concerns, the most pressing of which is: How effective is the judicial conciliation system as an alternative litigation resolution method?

Methodology:

As to address this issue, the research adopts a descriptive method combined with an analysis tool to describe the legal aspects governing conciliation in Algerian legislation, shedding light on its concept, characteristics, and types, as well as analyzing the legal texts governing conciliation to get a complete vision of the subject with its legal aspects.

Accordingly, we divided this study into two sections as follows:

Section One: Substantive provisions of conciliation in Algerian legislation

Section Two: Procedural provisions of conciliation in Algerian legislation.

Section One: Substantive provisions of conciliation in Algerian legislation

Conciliation, as an elective to the legal, could be a strategy pointed at settling debate between parties agreeably. It is the result of exceptional efforts and serves as the foundation for resolving conflicts. This strategy has been embraced by Algerian legislators since antiquated times, so it isn't considered a modern system; in any case, its actuation in legitimate thought was later, because it got to be a need managed by the require of the debating parties to resolve and settle the debate palatably.

1. The concept of conciliation

1.1. The definition of conciliation

First, the jurisprudential definition

The term "conciliation" implies "a contract by which the two parties resolve a debate that has really emerged between them or avoid a potential debate, and this can be accomplished by each party intentionally giving up a few of its claims." ¹, It involves "settling the debate genially between the adversaries within the nearness of an existing or potential debate, and conciliation is for the reason of finishing the debate due to shared struggle over claims". ²

Pr.Rachid Khelloufi described it as "a legal procedure usually carried out by those experienced in legal matters and social issues, and sometimes by judges or legal professionals in order to reconcile the opinions of the disputing parties in the dispute." ³

Concurring to these definitions, conciliation is an elective strategy of settling clashes that tries to bring the restricting parties' focuses of see closer together in arrange to set up an pleasing settlement, given that it is utilized either naturally by the adversaries or at the judge's ask.

Second, the legislative definition

Within the to begin with chapter of the fifth book of Law No.08-09 of the Respectful and Regulatory Strategies Code, Articles 990-993, the Algerian parliament set up conciliation

¹ Mohammad Esayed El-Tahawi, Conciliation and Arbitration in Civil and Commercial Matters, Dar El-Fikr El-Jami'i, Alexandria, Egypt, 2003, p.143. (Original reference in Arabic)

² Houcine Fridja, Basic Principles of Civil and Administrative Procedure Law, University Publications Office, Algeria, 2013, p.475. (Original reference in Arabic)

³ Rachid Khelloufi, Lectures on Administrative Disputes, Office of University Publications, Algeria, 1994, p.44. (Original reference in Arabic)

as an elective strategy of settling clashes. In any case, it was not characterized within the Respectful and Authoritative Strategies Code. Citing the wording of Article 459 of the Respectful and Authoritative Methods Code.

We find that the lawmaker characterized conciliation as "a contract by which the two parties conclusion an existing debate or avoid a potential debate, by each of them giving up his right in trade."

According to the article's substance, conciliation could be a contract marked by two opposing this idea parties with the objective of settling a current difference or avoiding a future issue. As a consensual contract, it requires coordinating of offer and acknowledgment by both parties.¹

Despite the fact that they pushed the idea of conciliation sketched out in Articles 990-993 of the Gracious Code, the conciliation they implied incorporates a smaller implication, since it is confined to that which happens amid the lawful struggle. Based on this, the procedural standards examined in prior segments are related to the legal nature of this conciliation, which happens amid the stages of the court debate consequently or at the judge's ask and is recorded within the minutes.²

1.2. The characteristics of conciliation

Conciliation has a set of characteristics and advantages, and these characteristics apply to all alternative methods of settling disputes and include the following:

First, confidentiality:

The discretion in conciliation signifies that this process transpires in an exclusive, non-public environment, contrasting with the typical openness of court proceedings, except when concerning issues of public order and ethics. This scenario typically unfolds in the judge's chamber or an alternate room away from public view, where the judge engages with the involved parties and seeks to align their differing perspectives. Personal confidentiality may also be a factor. Such details must be safeguarded, offering assurance, trust, and tranquility to those involved, which enhances the efficacy of the conciliation process.³

Second, speediness:

The duration of processes and the multitude of protocols have turned into defining characteristics of the formal judiciary in many nations, influencing the rights and interests of the parties involved. It is insufficient to merely grant each individual their due; Justice must also be timely; otherwise, the significance of the right diminishes

Hence, there is a pressing need to explore alternative methods that stray from traditional legal frameworks. The absence of rigid protocols, coupled with procedural adaptability and a general detachment from stringent regulations, bolsters the prominence and efficiency of

¹ Cherifa Oued Cheikh, Alternative methods for resolving disputes, conciliation and mediation minutes according to the Algerian Civil and Administrative Procedures Code, Critical Journal of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Issue 2, 2012, p.94. (Original reference in Arabic)

² Mohammad Bachir, Op.Cit., p. 60.

³ Karim Aichouch, Alternative Methods for Resolving Disputes, lectures given to first-year master's students specializing in judicial law, University of Algiers 1, 2019-2020, p.23. (Original reference in Arabic)

these approaches. Consequently, they have emerged as vital elements in resolving conflicts and achieving amicable, mutually agreeable solutions.¹

Third, Low expenses and costs:

Conciliation involves addressing the disagreement quickly and at a reduced cost. Initially, by fostering harmony among the involved parties, they can sidestep ongoing legal processes along with the associated formalities and costs they impose on those in conflict.

2. The types and conditions of conciliation :

Article 990 of the Civil and Commercial Code declares that "the parties may come to an agreement voluntarily or upon the judge's suggestion at any point during the dispute." As per the wording of the article, conciliation is categorized into two forms: consensual conciliation outside of judicial authority and judicial conciliation. Our focus is on judicial conciliation due to its association with the litigation process, whether initiated voluntarily or prompted by the court. This requires the presence of specific conditions outlined by the Algerian legislature for its valid resolution to yield legal repercussions.

2.1. The types of conciliation

First, Judicial conciliation

It is the settlement that occurs before the judicial authorities and is classified as either required or discretionary.

A- Obligatory judicial conciliation :

Article 439 of the Civil Code states, "Efforts toward reconciliation are compulsory and occur in a private session." The wording of this article implies that judicial reconciliation is a process mandated by the Algerian legislature through a legal document, indicating that neither the judge nor the disputing parties can forgo it. Additionally, the court does not take into account the consent or refusal of the parties; therefore, we deduce that the judge is obliged to initiate it, and thus bypassing this method and ruling on the matter directly will lead to an erroneous judgment.

B- Optional judicial conciliation :

Without reservation, this approach is used to resolve issues, and the inability of either the parties or the court to initiate it does not nullify the conclusive decision in the matter, as engaging in it hinges solely on the willingness of the parties or the judge's initiative.

Consequently, Article 990 of the Civil Procedure Code allows for mediation among the parties at every phase of the legal dispute, which is echoed in Article 4 of the same statute, asserting that "the judge may facilitate mediation between the parties throughout the dispute regarding any issue." The judge is empowered to pursue mediation whenever feasible and prior to any ruling on the case before him.

Second step, non-judicial conciliation:

This is a form of mediation that occurs outside of the court system, allowing the involved parties to amicably settle a disagreement they have through mutual consent.

This suggests that such mediation is a collaborative effort influenced by the desires of the participants, granting them the total liberty to engage in it or not, based on what best suits

¹ Salah Bouguerra, Reasons and Justifications for Adopting Alternative Means of Resolving Disputes as a Path to Consensual Justice, Journal of Research in Law and Political Science, Issue 06, 2017, pp.421-422. (Original reference in Arabic)

their interests regarding the conflict. Non-judicial mediation does not constitute a legal action; therefore, the resulting mediation document does not serve as an enforceable title..¹

2.2. The conditions of conciliation

Prior to the validation of a conciliation, certain requirements must be fulfilled. These encompass general stipulations concerning eligibility, agreement, reasons, and the matter at hand, as well as specific conditions that determine its legality, such as the existence of an actual or potential conflict between the parties involved. Besides the legal stipulations, the resolution requires that both parties concede some of their rights in a reciprocal manner, in addition to the formal prerequisites.

2.2.1. General objective conditions for the validity of the conciliation :

The Civil Code specifies four main objective conditions: capacity, reason, consent, and subject matter.

A- Consent

It involves aligning the proposal and agreement of the parties engaged in the conflict regarding the specific allocation of rights subject to mutual concession, alongside consensus on the conditions and limitations of the resolution. Consequently, if the resolution is achieved solely through the intention of one participant, there is no necessity to deliberate on the alignment of two intentions. Furthermore, the authorization must be given by an individual with a rational intention that is devoid of defects such as error, deception, coercion, and undue influence.²

B- Capacity

Capacity signifies an individual's competency to obtain rights and undertake responsibilities in a manner that enables them to engage in lawful actions³. Capacity is categorized into two types: obligation capacity and performance capacity. For a conciliation to possess legal validity, it must be generated by an individual who is of legal age, possesses sound mental abilities, and is not under any judicial restriction. Legal entities possess capability within the limits of the objectives for which they were created or as dictated by law.

As stated in Article 460 of the Civil Code, "the individual who facilitates reconciliation must possess the authority to manage the rights encompassed in the settlement agreement for compensation."

Based on the phrasing of the article, the Algerian lawmaker sought more than mere full competence within the parties; he also required that this competence be acknowledged. He did not limit his view to the ability to dispose, as the settlement constitutes an exchange agreement instead of a contribution.

¹ Barbara Abderrahman, Explanation of the Civil and Administrative Procedures Law, Baghdadi Publications, Algeria, 2009, p.517./ Karim Aichouch, Op Cit., p.30. (Original reference in Arabic)

² Dris Kamel Fathi, Lectures on Commercial Disputes given to first-year Master's students specializing in Business Law, Faculty of Law and Political Science, Department of Law, University of Martyr Hama Lakhdar, El Oued, 2019-2020, p.10. (Original reference in Arabic)

³ Mouhannad Oualid El-Haddad & Khaled Oualid El-Haddad, Introduction to the Study of Legal Science - Theory of the State - Theory of Law - Theory of Right - Warraq Foundation for Publishing and Distribution, Amman, Jordan, 2008, p.397. (Original reference in Arabic)

C- Reason

A justification must be present; i.e. otherwise, the agreement becomes void and unenforceable. Furthermore, it should be authentic, lawful, and aligned with public order and morality, as articulated in Article 98 of the Civil Code.

D- The subject matter:

The disputed entitlement is the focus of the mediation, and it must be present, can be present, and be articulated. By citing the language of Article 4 of the Civil Procedure Code, which indicates that "the judge has the authority to facilitate a reconciliation between the parties at any point during the conflict in any issue."

It is observed that the magistrate may engage in judicial mediation between the parties throughout the duration of the conflict in any issue, and it can also be employed at any point during the legal dispute as outlined in Article 990 of the Civil Procedure Code.

Nevertheless, this norm has exceptions since it is confined to specific matters where a resolution is impermissible, as specified in Article 461 of the Civil Procedure Code: "A mediation is not allowed in issues related to personal status or public order, but a mediation is acceptable regarding financial interests stemming from personal status."

According to the wording of the article, conciliation is not authorized in matters of personal status or public order.

2.2 2. Special objective conditions for the validity of the conciliation:

A- Existing or potential conflict

This standard is regarded as the cornerstone for fostering conciliation, for reconciliation is impossible without the presence of a conflict, whether it currently exists between the involved parties or is expected to arise in the future.¹

Thus, the legislation indicates that in judicial mediation, a disagreement must be acknowledged and established, and it suffices for one of the contending parties to initiate a lawsuit seeking a claimed right to achieve a mutually agreeable resolution that the involved parties may either accept or decline. It is crucial to highlight that any potential dispute lies beyond the realm of judicial mediation and must be addressed through consensual mediation.²

B- Each party waives part of its right and intends to resolve the dispute.

This stipulation necessitates that both involved parties forfeit any grievances they possess towards one another to enable them to finalize a consensus and agreement. Per Article 459 of the Civil Procedure Code, both parties must renounce the claim. If only one party relinquishes it without the counterpart, the issue is considered abandoned rather than resolved. Additionally, the renunciation does not have to be commensurate.³

The two sides might come to a consensus on all the contested subjects, leaving no outstanding issues, or they could agree on a singular matter while allowing the remaining questions to be resolved by judicial authority. To exemplify reconciliation, both parties must

¹ Zaid Boualkarara, Alternative methods for Settling Disputes, lectures given to second-year master's students, specializing in the law of legal and judicial professions, Faculty of Law and Political Science, Department of Law, University of Mohamed Seddik Ben Yahia, Jijel, 2021-2022. (Original reference in Arabic)

² Mohammed Essalah Raouan, Alternative methods for Resolving Judicial Disputes in the Civil and Administrative Procedures Law No.08-09, Journal of Legal and Political Sciences, Volume 09, Issue 02, June 2018, p.502. (Original reference in Arabic)

³ Mohammed Essalah Raouan, Op Cit., p.503.

possess a sincere intention to resolve the disagreement, evident in each side's efforts to discover a resolution to the existing or potential conflict. ¹

Section Two: Procedural rules and consequences of conciliation

The conciliation becomes legally binding after adhering to a series of procedural requirements established by Algerian legislators. As a result, the discussion in this part will be about the settlement methods and their impacts, as follows:

1. Procedural rules of conciliation:

Special provisions govern judicial conciliation proceedings, which the parties must follow. Referring to the provisions of Articles 4 - 990 - 991 of the Civil and Commercial Code, the circumstances that must be satisfied for the completion of judicial conciliation, which are:

1.1. Initiatives to conciliation:

According to Article 990 of the Civil Procedure Code, "the opponents may reconcile spontaneously, or at the request of the judge, at all stages of the dispute." According to Article 972, "conciliation shall be carried out at the request of the opponents or at the initiative of the head of the arbitration panel." According to the articles' wording, conciliation is done on the initiative of the opponents or at the judge's direction.

A- The parties appear before the judge and acknowledge the conciliation:

Conciliation shall not be concluded unless the disputing parties are present in person before the court or the agent, and each party recognizes the content of the reconciliation in an express, plain, and unambiguous way. The Algerian legislator allows disputing parties to perform reconciliation at any stage of the case, bringing justice closer to citizens and allowing them to resolve their own disputes. ²

B- Judge's intervention in the dispute:

According to Article 990 of the Civil and Commercial Code, the judge guarantees that all essential processes are followed in order to establish an amicable settlement that satisfies all parties. The judge does neither grant or deprive someone of their rights. He tries to bring opposing viewpoints closer together, which necessitates the development of several abilities. ³

The wording of Article 991 of the Civil and Commercial Code, which allows the judge the ability to perform the conciliation at the location and time he thinks suitable, also affirms the judge's position in the dispute, unless the text states otherwise.

1.1. Signing the conciliation report:

In accordance with the agreement between the parties, the conciliation is documented in a report for signature, as outlined in Article 992 of the Civil Procedure Code: "The conciliation is recorded in a document signed by the parties, the judge, and the clerk, and is filed with the registry of the judicial authority." Once the conciliation document has been submitted to the registry, it is regarded as an enforceable title. ⁴

¹ Cherifa Oued Cheikh, Op.Cit., p.102.

² Daouia Kirwalia & Ziad Mohammed Anis, The Specifics of Judicial Reconciliation as an Alternative Way to Settle Civil Disputes in Algerian Legislation, International Journal of Legal and Political Research, Volume 6, Issue 1, May 2022, p.581. (Original reference in Arabic)

³ Karim Aichouch,,Op.Cit., p.38.

⁴ Article 993 of the Civil Procedure Code.

1. The scope and effects of conciliation:

The Algerian legislator has created broad procedural guidelines for conciliation as an alternative method of resolving conflicts¹. In most divorce and labor disputes, the conciliation procedure is a fundamental pre-requisite for filing the legal dispute.

The Algerian lawmaker has also provided for the conciliation mechanism to have legal implications for the dispute, the court, and the parties involved. As a result, in this part, we will discuss some of the conciliation models specified by the legislature as follows:

2.1. Conciliation in family matters cases:

The distinct characteristics of divorce disputes, along with the diverse repercussions in the domestic realm specifically, and in the societal context more broadly, have led the lawmakers to implement a mediation approach aimed at reconciling couples.

In accordance with Article 439 of the Civil and Commercial Code, this process is compulsory in cases of divorce and occurs in a confidential session, as affirmed by Article 49 of the Family Law, which asserts that "Divorce is substantiated only by a ruling following multiple attempts made by the judge within a 3-month period from the lawsuit's initiation."

This type of mediation aims to motivate the involved parties to withdraw the divorce petition filed in court and restore a peaceful marital relationship by each party conceding part of their entitlements.²

Judicial mediation in family issues has specific regulations that need to be adhered to. It is an obligatory procedure that does not depend on the will of the parties or the discretion of the judge. The judge's mediation process culminates in either:

- The couples' failure to agree despite being given adequate time to consider and consult, as the judge listens to each spouse separately and then together. A family member may attend and participate in the conciliation upon one couples' desire.³

The judge is also keen to make several attempts within three months of filing the complaint. The judge then discusses the subject of the lawsuit, as stated in Article 443/4 of the Civil and Commercial Procedure Code: "In the event of no conciliation or the absence of one of the spouses despite the period of reflection granted to him, he proceeds to discuss the subject of the lawsuit."⁴

- Following multiple efforts toward mending their differences, a reconciliation document is promptly drafted by the clerk with the oversight of the judge. This document is to be signed by the couple, the judge, and the clerk, subsequently filed with the registry office. This document is recognized as an enforceable instrument in accordance with Article 600 of the Civil Procedure Code.⁵

2.2. Conciliation in labor cases:

Labor conflicts can be collective or individual, and the Algerian legislature has created norms and processes for labor reconciliation.

¹ Mohammad Bachir, Op.Cit., p.59.

² Ibid., pp.62-63.

³ See Article 440 of the Civil and Commercial Procedure Code.

⁴ See Article 442 of the Civil and Commercial Code and Article 49 of the Family Law.

⁵ Fatta Maachi Nabali, The Mandatory Reconciliation in Individual Disputes, Critical Journal of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Issue 1, 2016, p.20. (Original reference in Arabic)

First, reconciliation in individual labor disputes:

Labor relations can lead to conflicts between the employer and the employee, referred to as individual disputes. The Algerian legislature has defined this under Article 02 of Law No.90-04 concerning the resolution of individual labor conflicts ¹ as "any disagreement between a hired worker and an employer regarding the enforcement of the employment relationship that connects both parties if it remains unresolved within the framework of settlement procedures in the employing entities."

As stated in the article's narrative, the lawmaker characterized an individual conflict as any contention arising between an employer and an employee during the course of their working relationship that remains unresolved within the employing entity's resolution procedures. Conversely, the legislator has dismissed the notion that it is a conflict between two parties if it is managed and resolved at the level of the employment authority.

To maintain the two sides' good relationship, the Algerian legislator enforced, in addition to internal settlement, the reconciliation system, which was regarded as a required step in labor relations. The Algerian legislature prioritized this approach by enforcing unique legal procedures, both formal and substantive, inside the employing body or before the labor inspectorate. ²

Consequently, the conciliation procedure is a necessary and formal prerequisite for initiating any legal action. Courts resolving labor conflicts will not entertain a case unless this process is followed, with the exception of the scenarios outlined in Article 19/2 of Law No.90-04 regarding the resolution of individual labor disputes, which pertain to defendants located overseas or in instances of insolvency or judicial resolution, where conciliation becomes discretionary.

A- The composition of reconciliation offices:

In Algerian law, reconciliation offices are established with a dual framework composed of equal representatives, meaning two representatives for employees and two for employers. Each group also has alternate representatives, twice the number of the primary members, ready to step in when required. Representatives from organizations and companies within the jurisdiction of the respective judicial authority elect the members through a direct secret ballot for a term of three years. ³

Considering the essential function that individuals within the reconciliation office hold in bridging divergent perspectives to establish a basic understanding vital for safeguarding the rights and interests of the parties involved, the legislation outlined specific criteria for candidates seeking membership ⁴ along with barriers that hinder candidacy. ¹

¹ Law N°.90-40 of February 6th, 1990 relating to the settlement of individual labor disputes, amended and supplemented, Official Gazette No.6.

² See Article 443/2 of the Civil Procedure Code.

³ Article 12 of Law N°.90-04 relating to the settlement of individual labor disputes.

⁴ Article 13 of Law N°.90-04 on the settlement of individual labor disputes stipulates that "the following may not be elected as assistants and members of the conciliation offices:

- Persons convicted of committing a felony or of imprisonment for committing a misdemeanor and whose reputation has not been restored.
- Bankrupt persons who have not been restored.
- Employees convicted for recidivism in violation of labor legislation during a period of less than one year.
- Former assistants or members whose membership status has been revoked."

B- Reconciliation procedures in individual labor disputes:

In the realm of mediation, the labor authority is informed either through a written request or directly by the complainant. Within three days of notification, the labor inspector is required to inform the mediation office and assemble the involved parties for a discussion. A period of eight days should be established from the notification date to the scheduled day for the parties to convene. ²

In the event that the defendant or their representative is absent on the appointed date, they will be called again to a mediation session within 8 days following the notice. Should the defendant or their authorized agent miss two back-to-back meetings, the reconciliation office will produce a report indicating non-reconciliation. Conversely, if the parties come to a consensus on all or part of the conflict, the office is required to compile a reconciliation report, which serves as evidence until disproved as fraudulent. Nonetheless, the reconciliation report may omit aspects that contradict the relevant legal texts. ³

C- Implementation of the reconciliation agreement in individual labor disputes:

In accordance with the stipulations outlined in Articles 33–35 of Law No.90-04 concerning the resolution of individual labor disputes, the Algerian legislator has detailed the procedural parameters for the enforcement of the reconciliation agreement.

Execution must adhere to the criteria and timelines established by the involved parties; should no such timelines be agreed upon, enforcement shall occur within 30 days following the agreement's date.

Article 34 reiterates that if either party neglects to comply with the requirements and deadlines laid out in Article 33, the President of the Court dealing with social matters may order the immediate enforcement of the reconciliation report, determining a daily financial penalty not less than 25 percent of the lowest guaranteed monthly salary—this is further supported by the provisions of Articles 508 and 509 of the Labor Code.

Furthermore, the Head of the Social Department is empowered to swiftly implement temporary and precautionary measures to inhibit any actions that could obstruct the freedom to work, as stated in Article 506 of the Labor Code.

Second, reconciliation in collective labor disputes:

Given the great importance of labor relations and the resulting collective disputes resulting from conflicts of interest between workers and employers and due to their negative impact on the economic, social and professional fields,⁴ it was necessary for the Algerian legislator to intervene in order to establish legal rules and mechanisms capable of resolving these disputes in peaceful and friendly ways that are considered the best and most effective civilized means of organizing professional relations.

To address these shifts and evolving requirements, the lawmaker enacted Law No. 23-08 on June 21st, 2023, concerning the prevention of collective labor disputes, their resolution,

¹ Samisha Theldjoun, The Role of Reconciliation Offices in Settling Individual Labor Disputes in light of Algerian and Comparative Law, World Policy Journal, Volume 6, Issue 1, 2022, p.1129. (Original reference in Arabic)

² See Articles 26-27 of Law N°.90-04 on the settlement of individual labor disputes.

³ See Articles 30-31-32 of Law N°.90-04 on the settlement of individual labor disputes.

⁴ Nawal Malouk: Mechanisms for settling collective labor disputes in Algerian legislation, a study in light of Law N°.23-08 relating to the prevention of collective labor disputes, their settlement and the exercise of the right to strike, Journal of Judicial Reasoning, Volume 16, Issue 1, March 2024, p.161. (Original reference in Arabic)

and the right to strike. This legislation seeks to foster dialogue and consultation channels to minimize collective disputes as much as possible.

In this regard, Article 2 of the same law characterizes a collective dispute as "any dispute managed in accordance with the provisions of this law, pertaining to social and professional relationships and general working conditions between a group of wage-earning workers or their union representatives, on one side, and an employer or a group of employees or their union representatives, on the other, that has not been resolved within the procedures outlined in this law."

According to the article's text, a collective dispute is not merely a collection of individual disputes among workers due to varied reasons or purposes; rather, it constitutes a singular dispute based on common objectives and causes, where all or a segment of employees or their union representatives engage on one side, in contrast to one employer or their representative group ¹, with the disputes unresolved within the framework established by Law No. 23-08 concerning the prevention of collective labor disputes and the right to strike.

The Algerian lawmaker has structured methods and remedies for addressing collective labor disputes in Chapter Two of Law No. 23-08, titled Prevention and Resolution of Collective Labor Disputes. Regarding this, Article 6 stipulates that "collective labor disputes unable to be resolved directly—be it through amicable means, periodic meetings, or the application of collective agreements or treaties—shall undergo conciliation, mediation, and possibly arbitration procedures within the forms and conditions laid out by this law."

Article 4/1 of the same law describes reconciliation as "an amicable approach to settling collective labor disputes with the assistance of a third party known as a 'conciliator,' as per what may be outlined in a collective agreement or treaty. This process aims to align the perspectives of the disputing parties, confront their differences, and seek an amicable settlement.

The article further clarifies that "in the absence of conciliation processes through agreements, or if they prove ineffective, the parties must adhere to the conciliation procedures mandated by law before the labor inspectorate."

When initial discussions do not yield results, reconciliation acts as a compromise in the subsequent phase. It involves a neutral party called a conciliator, whose role is to pinpoint solutions and resolve the collective disagreement in a manner satisfactory to all involved.

The Algerian legislator has emphasized the necessity and therapeutic value of resolving conflicts, whether originating from economic-related employment entities or governmental institutions and administrations. This is categorized into two types: negotiated reconciliation determined by collective agreements and legal reconciliation, activated when negotiated reconciliation fails or is unspecified. ²

2.3. Reconciliation in commercial matters:

On July 12th, 2022, the Algerian lawmaker introduced the reconciliation process for commercial issues through the enactment of Law No.22-13, which incorporates the Code of Civil and Administrative Procedure. This serves as an alternative method for resolving

¹ Karim Aichouch, Op.Cit., p.44.

² Naouel Mellouk, Op.Cit., p.165.

commercial conflicts, aligning with the demands of the business environment, particularly in terms of efficiency, reliability, and confidence in both establishing and executing business agreements and dealings.

Consequently, the Algerian lawmaker acknowledges the significance of conducting the reconciliation process before initiating a lawsuit in the dedicated commercial court, as set forth by Law No.22-13, which created a distinct framework for it, concerning both its structure and the types of commercial conflicts it is authorized to address.¹

The lawmaking body required the mediation approach in every commercial matter addressed by the dedicated trade court, excluding those considered by the trade segment. Additionally, the lawmaker established a fine for failure to adhere.²

Prior to filing a case in the specialized commercial court, the disputing parties are required to submit a reconciliation appeal to the court's president. Usually, the plaintiff is the one who initiates this appeal. In response to the appeal, the president designates one of the court's judges within 5 days from when the disputants submit their appeal, through an order on a petition, to oversee the reconciliation process, which must adhere to the court's specific and territorial authority, ensuring the reconciliation period does not exceed 3 months.

This method seeks to harmonize the adversaries by aligning their perspectives more closely. The court might also solicit assistance from any individual deemed suitable for finalizing the settlement agreement. While pursuing a settlement is an obligatory and essential process in front of the specialized business court, embracing its conclusion is optional. The involved parties may choose to find a fair resolution, or their attempts may not succeed.³

2. Effects of conciliation:

Should the reconciliation process prove successful and all parties involved reach an agreement, the conflict is ultimately settled; as the reconciliation takes hold, the disagreement concludes. This is outlined in Article 220 of the Civil Procedure Code: "The conflict concludes upon the expiration of the lawsuit through reconciliation or the acceptance of the ruling" and Article 462 of the Civil Procedure Code: "The reconciliation resolves the disputes it addresses."

Consequently, the reconciliation report holds the authority of *res judicata*, and it is impermissible to initiate a case with the same elements before a different judicial body, suggesting that the consensus reflected in the reconciliation report bears two implications, one substantive and another procedural. Therefore, in this section, we will explore the effects of

¹ Article 536 bis of the Civil Code stipulates that the specialized commercial court shall have jurisdiction to consider disputes related to:

- Intellectual property disputes
- Commercial company disputes, especially disputes between partners and the dissolution and liquidation of companies
- Judicial settlement and bankruptcy
- Disputes between banks and financial institutions and merchants - Maritime disputes and insurance disputes related to commercial activity
- Disputes related to international trade.

² Abdelkader Seddiki, Op.Cit., p.77.

³ Ibid., pp.77-78.

the parties' reconciliation on the conflict ¹ , as well as its implications for the court and the disputing parties:

1.1. Effects of reconciliation on the dispute:

Under Article 200 of the Civil Procedure Code/1, Conflict ends when litigation is resolved, accepted, or abandoned. The consensus of the parties involved signifies the ultimate resolution of the conflict, as well as the termination of the rights and claims that have been subject to resolution, particularly since the settlement document will be endorsed by the judge, the clerk, and the disputing parties. Rights that have been relinquished cannot be reclaimed ². Article 600/8 of the Civil Procedure Code asserts that the conciliation documents signed by judges and filed with the clerk are deemed executive titles.

2.2. The effects of conciliation on the court and the parties:

Regarding the court, if the opposing parties come to an understanding and reach a friendly resolution, the matter is resolved, and there is no need to present it to the legal authorities, as the reconciliation record is considered an enforceable document.

Per Article 992 of the Civil Procedure Code, the jurisdiction of the court concludes upon the signing of the report. For the parties involved in the dispute, their agreement to the settlement process and their signature signifies their contentment with the terms agreed upon, which is the purpose behind utilizing alternative methods for resolving disputes outside of judicial systems.

These alternatives not only spare the parties from judicial costs but also avoid the complications linked to the overwhelming number of cases filed in courts. Furthermore, there are challenges stemming from enforcement and delays by the party against whom the judgment was delivered, primarily due to their discontent.

In contrast, if the parties fail to reach a settlement, this necessitates signing the non-reconciliation minutes and brings the case back to the appropriate judicial authorities.

Conclusion:

Integrating the conciliatory framework within the judicial system has become essential, driven by the judiciary's need for a mechanism that not only facilitates peaceful dispute resolution but also alleviates the burden of case congestion. Furthermore, it offers a distinctive form of justice. As a result, the following outcomes have emerged:

- The reconciliation system has become a manifestation of social solidarity and the organization of social life due to the trust and reassurance it provides that brings together the reconciled parties without severing family, commercial or social ties

- The speed and flexibility that characterizes the conciliation system has greatly contributed to ending disputes and conflicts quickly compared to judicial bodies that require long procedures that lead to disrupting the interests of the parties, which contributes to improving and achieving the effectiveness of the judiciary.

- Resorting to conciliation does not mean that it is an alternative way to the judiciary, but rather it is a system that complements the judiciary because it takes into account the interests

¹ Mohammad Essalah Raouan, Op.Cit., p.505.

² Karim Aichouch, Op.Cit., p.53.

of the disputing parties in exchange for the mutual concessions that each party offers of its own free will.

- The judicial conciliation is documented in a report that includes the agreement reached and signed by the opponents, the judge and the clerk, and the official formula is added to the clerk's office to become an executive title.

To improve this system in a rapid and effective manner, work should be done on:

- Increasing individuals' awareness of the importance of conciliation as a means of settling disputes, in addition to enhancing cooperation between courts and parties concerned with conciliation to provide comprehensive support to the parties and facilitate access to appropriate solutions.

- Simplifying the procedures related to it by reviewing and updating the legal texts regulating it periodically to ensure their suitability to legal and social developments.

- Expanding the scope of conciliation to include other and different types of disputes that will benefit from this mechanism to ensure the achievement of justice.

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