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Mandatory Conciliation: A Procedural Shift in Litigation Before the Specialized Commercial Court

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Abstract
Conciliation aims to settle disputes between parties and resolve them amicably. It has been adopted by the legislator in the Code of Civil and Administrative Procedure and was considered an optional measure, which may be initiated either by the judge or by the parties at any stage of the proceedings. However, with the establishment of specialized commercial courts under Law No. 22-13, conciliation has become a mandatory procedure prior to the filing of a case before these courts.
Keywords: conciliation; jurisdiction of the specialized commercial court; success of conciliation; failure of conciliation.

Introduction

The legislator introduced, under Law No. 22-07[1], specialized commercial courts within the jurisdiction of certain judicial councils. This was followed by an amendment and supplementation of Law No. 08-09 dated 25/02/2008, pursuant to Article 03 of Law No. 22-13 dated 12/07/2022[2], which established a second judicial body competent to adjudicate certain commercial disputes alongside the commercial division existing within the courts of first instance.

These specialized commercial courts constitute an independent judicial body within the structure of the Algerian judiciary, aiming to keep pace with legal and economic developments and to adapt to the nature of commercial transactions, which are characterized by flexibility and speed, as these elements form a fundamental basis for profit generation and economic growth.

A lawsuit is normally brought before the court by filing a statement of claim that meets the formal and substantive requirements by the parties. However, the legislator, through Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure, has required that the registration of a case before the specialized commercial court must be preceded by an attempt at conciliation.

One of the parties resorts to conciliation with the opposing party in order to avoid complex litigation procedures, reduce the resulting costs and expenses, save time, or avoid the

[1] Law No. 22-07, dated 5 May 2022, on the Judicial Division, Official Journal No. 32, published on 14 May 2022.
[2] Law No. 22-13, dated 12 July 2022, amending and supplementing Law No. 08-09 of 25 February 2008, containing the Code of Civil and Administrative Procedure, Official Journal No. 48, published on 17 July 2022.

continuation of the dispute, and sometimes to prevent the disclosure of matters that may harm their reputation.

In this regard, a party may waive part of its claim in order to reach an amicable settlement. In some cases, one party may even renounce the entirety of its claim in exchange for another consideration outside the subject matter of the dispute. The consideration given in exchange for conciliation is referred to as the "conciliation consideration."[3]The legislator has enshrined the principle of conciliation in Law No. 08-09 of 25/02/2008, as amended and supplemented[4], where Article 4 provides: "The judge may carry out conciliation between the parties during the course of proceedings in any matter." It further added in Article 990 of the same law: "The parties may reach an amicable settlement spontaneously or through the initiative of the judge, at all stages of the proceedings."

It is clear from the two aforementioned provisions that conciliation between the parties to litigation is an optional procedure at all stages of the proceedings and in any matter, whether initiated by the parties themselves or by the judge, provided that the content of the conciliation does not contradict public order. However, the legislator, under Law No. 22-13 amending and supplementing the Code of Civil and Administrative Procedure, has made it a mandatory procedure preceding the filing of the claim, in all commercial cases heard before the specialized commercial courts.

This study addresses the specificity of conciliation before the specialized commercial judiciary, based on the following research question: What are the legal rules established to ensure the effectiveness of conciliation under Law No. 22-13?

To examine and analyze this issue, an analytical approach has been adopted. The study is structured into two main sections:

Section One: The concept of conciliation and its scope of application under Law No. 22-13

Section Two: The legal framework of conciliation before the specialized commercial court

First – The concept of conciliation and its scope of application under Law No. 22-13

Conciliation is considered an amicable alternative means of settling disputes between individuals, originating from the will of the parties and aiming to promote social peace[5]. Studying this subject requires presenting the position of both legal doctrine and legislation in defining its meaning (1).

Given that conciliation is a procedure adopted by the legislator regarding the settlement of disputes of an economic nature following the establishment of specialized commercial courts, it is necessary to present its fields of application under Law No. 22-13 (2).

1- The meaning and essential elements of conciliation

It is necessary to determine the meaning of settlement by highlighting its definition (a), then identifying its constituent elements (b).

[3] Abdel Razzaq Ahmed Al-Sanhuri, Al-Wasit fi Sharh al-Qanun al-Madani (The Middle Commentary on Civil Law), Part Five: Contracts Relating to Ownership (Gift, Loan, Perpetual Income, and Settlement), Dar Ihya' al-Turath al-Arabi, Beirut, (no date), p. 513.

[4] Law No. 08-09, dated 25 February 2008, containing the Code of Civil and Administrative Procedure, Official Journal No. 21, published on 23 April 2008, as amended and supplemented.

[5] Ismail Ahmed Mohammed Al-Asstal, Arbitration in Islamic Sharia, PhD thesis, Faculty of Law, Cairo University, 1986, p. 22.

a- Definition of settlement

Several definitions of settlement have been provided, whether from legal doctrine or from statutory law.

- **Definition of settlement in legal doctrine**

Some jurists have defined settlement as follows: "a contract by which the two parties put an end to an existing or potential dispute, through mutual waiver."[6] Others have defined it as: "a contract by which the two parties settle an existing dispute or avoid a potential one, whereby each of them, in a reciprocal manner, relinquishes part of his claim."[7]

- **Definition of settlement in law**

The Algerian legislator defined settlement in Article 459 of Ordinance No. 75-58[8] as follows: settlement is a contract by which the parties put an end to an existing dispute, or prevent a potential dispute, by mutually waiving their rights.

- As for the Egyptian legislator, it defined it in Article 549 of the Egyptian Civil Code[9] as follows: "settlement is a contract by which the parties settle an existing dispute or avoid a potential one, whereby each party, in a reciprocal manner, waives part of its claim."
- The French legislator defined it in Article 2044/1 of the Civil Code[10] as follows: "a contract by which the parties settle an existing dispute or avoid a potential dispute."

By comparing these definitions, it is noted that the Algerian legislator, unlike the Egyptian legislator, considers settlement as a waiver of the entire right, whereas settlement consists in each party relinquishing part of its right. On the other hand, it appears that the Algerian legislator agrees with the Egyptian legislator in their definition of settlement, as both include all its essential elements, unlike the French legislator, whose definition omits one of the most important elements of settlement, namely the mutual waiver of claims between the two parties. It is not required that the proportions of waiver be equal, as long as settlement is fundamentally based on the consent of both parties. However, the part waived must be sufficient to end the dispute and satisfy the other party.

b- Constituent elements of settlement

It is clear from the definition of settlement that it is a contract; from this perspective, it is subject to the general rules governing contracts, both in terms of formation and validity. It requires the essential elements for its formation, namely consent, meaning the mutual agreement between the disputing parties, provided that it is issued by persons having legal capacity and a sound

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[6] Ahsan Bouskiah, Customs Disputes in Light of Doctrine, Judicial Jurisprudence, and the New Customs Law, Dar Al-Hikma for Publishing and Distribution, Algeria, 1998, p. 229.

[7] Abdelhamid El-Shawarbi, Substantive Commentary on the Civil Procedure Law, Part 1/3, Mansha'at Al-Ma'arif, Alexandria, 2004, p. 252; Al-Ansari Hassan Al-Nidani, Judicial Settlement: The Role of the Court in Settlement and Conciliation between Litigants (A Foundational and Analytical Study), New University Publishing House, Alexandria, 2009, p. 59.

[8] Ordinance No. 75-58, dated 26 September 1975, containing the Civil Code, Official Journal No. 78, issued on 30 September 1975, amended and supplemented.

[9] Law No. 131 of 1948 issuing the Civil Code, published on the website: https://manshurat.org/node/72413, accessed on 13/02/2026.

[10] La transaction est un contrat par lequel les parties, par des concessions réciproques, terminent une contestation née, ou préviennent une contestation à naître. See: Civil Code, published on the website: https://www.wipo.int/wipolex/ar/legislation/details/19413, accessed on 12/01/2026.

will free from defects; the subject matter, which is the disputed right, with the necessity of fulfilling its conditions; and the cause, which is the motive that leads the parties to conclude the settlement, and it must be lawful.

According to Article 459 of the Algerian Civil Code, it is understood that for settlement to exist, three essential elements must be present:

- **Existence of an existing or potential dispute**

Settlement presupposes the existence of a serious dispute between two opposing parties, since it is a contract intended to put an end to the dispute between them. A dispute means that each party claims a right for itself. The dispute does not necessarily have to be certain or already occurred; it may be potential, i.e., capable of arising in the future, such as when the parties are uncertain about the existence or extent of a right. In such a case, settlement serves as a means to move from a state of doubt to certainty.

- **Existence of the intention to settle the dispute**

Settlement presupposes the intention to resolve existing disputes between the parties. Therefore, both parties must have the intention to end an existing dispute or avoid a potential one; otherwise, the agreement cannot be considered a settlement[11]. This intention is reflected in the efforts made by each party to reach a solution to the existing or potential dispute.

The judge supervising the settlement procedure must ensure that the intention to settle is genuinely expressed by both disputing parties. The only way to verify this is through their personal appearance before him and their acknowledgment of this intention, while presenting the reciprocal concessions they have made[12]. These concessions are not necessarily required to be equal[13]. For this very reason, experts emphasize the need for litigants to exercise caution and prudence when making such concessions[14], so that they do not later retract them.

On the other hand, it is not a condition for the completion of settlement that all disputed issues between the parties be resolved. Some issues may be settled through the agreement, while the remaining matters are left to the court for adjudication.[15]

- **Waiver by each party of part of its claims**

Settlement requires that both parties waive part of their claims. If one party does not waive any part of what it claims, while the other party waives all of its claims, this is not considered a settlement, but rather a unilateral relinquishment of a claim. The concessions are not required to be equal[16]; it may happen that what one party gives up is greater than what the other gives

[11] Abdelrazzaq Ahmed Al-Sanhuri, Al-Wasit in the Explanation of the New Civil Law, Volume Five, Contracts Relating to Ownership, op. cit., p. 510.
Alain Ghozi, La modification de l'obligation par la volonté des parties, L.G.D.J., Paris, 1980, p. 66.

[12] Laurent Poulet, Transaction et protection des parties, L.G.D.J., 2005, France, p. 33.

[13]. Ibrahim Sayed Ahmed, The Contract of Settlement in Doctrine and Jurisprudence, Modern University Office, Alexandria, 2003, p. 32; Abdelrazzaq Ahmed Al-Sanhuri, Al-Wasit in the Explanation of Civil Law, Volume Five, Contracts Relating to Ownership, op. cit., p. 512.

[14] Laurent Poulet, op. cit., p. 15.

[15] Abdelrazzaq Ahmed Al-Sanhuri, Al-Wasit in the Explanation of Civil Law, Volume Five, Contracts Relating to Ownership, op. cit., p. 511; Habbar Halima, "The Role of the Judge in Settlement and Conciliation between Parties in Light of the New Civil and Administrative Procedure Code," Supreme Court Journal, Special Issue, 2008, Part 2, p. 602.

[16] Nabil Saqr, Al-Wasit in the Explanation of the Civil and Administrative Procedure Code, Dar Al-Huda for Printing, Publishing and Distribution, Algeria, 2008, p. 543.

up. It is a mutual sacrifice made by each party to reach an amicable agreement and bring the dispute to an end.

2- Scope of application of settlement under Law No. 22-13

Referring to Article 536 bis of Law No. 22-13[17], amending and supplementing the Civil and Administrative Procedure Code, it is clear that settlement is considered a mandatory procedure in all commercial disputes heard by the specialized commercial courts, excluding disputes adjudicated by the commercial division. This regulation responds to the requirements of a developing economic reality that demands speed in judicial decision-making and a high level of technical efficiency, which are not available in ordinary courts or traditional commercial divisions.

It should be noted that the disputes listed in the aforementioned article are exhaustive and concern specific areas characterized by technical complexity and legal intricacy, namely:

- Intellectual property disputes, which mainly include counterfeiting, such as the infringement of copyright; unfair competition, such as damaging a competitor's reputation by disseminating false information affecting their products or person; as well as the import, export, and customs smuggling of counterfeit intellectual property rights and their sale, and piracy.[18]
- Commercial company disputes, which are among the most important cases entrusted by the Algerian legislator to the specialized commercial courts, due to their technical nature and the complexity of their legal and financial relationships. Within this framework, they particularly include shareholder disputes, which cover actions relating to profit distribution, actions for the dismissal of managers, as well as actions concerning the nullity of company formation, given their direct impact on the balance of internal relations between shareholders or partners.

This category also includes disputes related to the dissolution, liquidation, and division of company assets, which require precise handling of the legal and financial obligations resulting from the termination of the company's legal personality, thereby necessitating a specialized judiciary familiar with the nature and legal structure of commercial companies.

- Judicial reorganization and bankruptcy disputes, which are among the most complex commercial disputes assigned by the Algerian legislator to the specialized commercial courts. This specialization is justified by the extreme sensitivity of these cases and their close connection to economic stability, as they aim to protect distressed enterprises while ensuring the rights of creditors and business partners alike.

Among the most prominent cases falling within this framework are actions relating to the opening of judicial reorganization proceedings, challenges to legal acts concluded by the debtor during the suspect period, as well as actions brought against managers to hold them liable for bankruptcy in cases where mismanagement or gross negligence is established.

Alain Bénabent, Droit civil, Les contrats spéciaux, 3rd edition, Montchrestien, 1997, p. 576.

[17] Law No. 22-13 dated 12/07/2022, amending and supplementing Law No. 08-09 containing the Civil and Administrative Procedure Code, op. cit.

[18] Nabil Wnoughi, "Intellectual Property Disputes," Journal of Legal and Social Sciences, Vol. 02, No. 02, Faculty of Law and Political Science, Ziane Achour University, Djelfa, Algeria, 2017, p. 19.

- **Disputes between banks and financial institutions with traders:** Disputes may arise between banks and financial institutions and their commercial clients in the course of performing their legally defined functions, particularly those relating to banking operations governed by Law No. 23-09 on banking and monetary law[19]. Cases concerning deposits and loans granted to traders are among the most significant of these disputes.
- **Maritime disputes, air transport disputes, and insurance disputes related to commercial activity:** The legislator considers that any contract related to maritime commerce is a commercial contract; consequently, all disputes arising from such contracts fall within the jurisdiction of the specialized commercial courts. Among the most notable disputes are those concerning delay in the delivery of goods or failure to transport passengers at the agreed time.

As for air transport disputes, they include in particular those arising from the carrier's breach of its obligation to deliver goods or passengers at the place and time agreed upon in the air transport contract, as well as disputes relating to loss or damage of goods during transport.

Regarding insurance disputes related to commercial activity, they mainly include claims for payment of insurance premiums, actions for the annulment of the insurance contract in case of defects affecting one of its essential elements, as well as claims for payment of insurance sums or compensation.

- **International trade disputes:** These disputes mainly revolve around breaches of international trade contracts, including technology transfer contracts, international sales of goods and services contracts, as well as franchise agreements.

It should be noted that settlement, although a mandatory procedure before the specialized commercial court in this type of disputes, remains optional in terms of its outcome among the parties, as no party is obliged to accept the results of settlement sessions unless they explicitly consent to them.

Second: Rules governing settlement before the specialized commercial court and its effects

Given that settlement, in most cases, is based on mutual concessions between the parties, litigants may initiate it voluntarily, whether in the presence of an existing dispute or even at the mere possibility of its occurrence. The existence or potential existence of a dispute is one of the assumptions upon which settlement is founded[20]. The legislator, under Law No. 22-13, has made settlement a mandatory procedure preceding the filing of a lawsuit before the specialized commercial court. It has also defined the procedures to be followed during the settlement phase in order to enable the parties to resolve the dispute amicably (1), and has attached significant legal effects to it (2).

1- Settlement procedures

One of the fundamental principles of judicial work is that the judge does not act on his own initiative but only upon request. Accordingly, the judge cannot initiate settlement proceedings

[19] Law No. 23-09, dated 12 June 2023, containing the Monetary and Banking Law, Official Journal No. 43, issued on 27 June 2023.

[20] Houssine Ben Sheikh Ath Melouya, Administrative Procedure Law, Dar Houma for Printing, Publishing and Distribution, Algeria, 2013, p. 19; Al-Ansari Hassan Al-Nidani, Judicial Settlement: The Role of the Court in Settlement and Conciliation between Litigants (A Foundational and Analytical Study), op. cit., p. 60.

unless one of the parties submits a request to that effect (a), with notification to the opposing party (b).

a- Submission of the request

Pursuant to Article 536 bis 4 of Law No. 22-13, amending and supplementing the Civil and Administrative Procedure Code, the request for settlement is submitted by one of the parties to the President of the specialized commercial court in the form of a petition in two copies. The petition must include a brief statement of the facts and claims, as well as the legal grounds upon which the request is based. This is intended to determine the subject matter of the dispute, ensure its proper legal characterization, and enable the President of the court to verify whether the court has subject-matter jurisdiction over the dispute.[21]

The President of the specialized commercial court has discretionary power to reject the settlement request if it appears that the applicant lacks the legal capacity to initiate proceedings, such as in cases where the person is a minor or legally incapable. The request may also be rejected by means of an order on petition if it is established that the subject matter of the dispute does not fall within the subject-matter jurisdiction of the specialized commercial court as provided for in Article 536 bis of the Civil and Administrative Procedure Code, as amended and supplemented.

In the event of an order of refusal, it is considered an order issued upon petition (ex parte order) delivered by the President of the ordinary court, and it is subject to appeal before the President of the competent Judicial Council within fifteen (15) days from the date of issuance of the refusal order, pursuant to the provisions of Article 312 of the same Code.[22]

In the event that the request for settlement is accepted, the President of the specialized commercial court shall, within five (05) days from the date of registration of the request, issue an order[23] upon petition appointing one of the judges of the specialized commercial court to carry out the settlement procedure within a period not exceeding three (03) months from the date of the first settlement hearing. The petition must be reasoned and must include reference to the supporting documents relied upon, in accordance with the requirements of Article 311 of Law No. 08-09, as amended and supplemented.[24]

b- Notification of the opposing party

The applicant for settlement must notify the opposing party, or the parties to the dispute, of the date of the settlement hearing set by the judge appointed by the President of the specialized commercial court. This notification is made through a report drawn up by a judicial officer (bailiff)[25]. In the absence of a known domicile for the opposing party, formal notification is effected by posting a copy of the notification report on the notice boards at both the municipal

[21] Ben Touni Zahra, "Powers of the President of the Specialized Commercial Court and Litigation Procedures before It," intervention presented within the proceedings of a study day on specialized commercial courts under civil and administrative procedural laws, organized by the Council of the Sétif Judiciary in partnership with the Bar Association of the Sétif region, 11/02/2023, p. 7.

[22] Same reference, p. 4.

[23] The appointment of the judge is made by the President of the specialized commercial court through a judicial order recorded in a special register and attached to the settlement request file.

[24] Law No. 08-09 of 25 February 2008, containing the Civil and Administrative Procedure Code, op. cit., as amended and supplemented.

[25] For further details, see Articles 406 and following of Law No. 08-09 of 25 February 2008, containing the Civil and Administrative Procedure Code, ibid., as amended and supplemented.

office and the court within whose jurisdiction the defendant's last known domicile falls, pursuant to the provisions of Article 412 of the Civil and Administrative Procedure Code.[26]

As for the content of notification, and pursuant to Article 407 of Law No. 08-09[27], the notification report must include, in its original form and copies, the following information:

- The name and surname of the judicial officer (bailiff), his professional address, signature, and seal;
- The date and time of service, written in full;
- The name and surname of the applicant for notification and his domicile;
- If the applicant is a legal entity, its designation, legal form, registered office, and the capacity of its legal or statutory representative must be indicated;
- The name, surname, and domicile of the person who received the notification; and if it concerns a legal entity, its nature, designation, registered office, and the name, surname, and capacity of the person who received the official notification must be specified;
- The signature of the person who received the notification, together with an indication of the identity document used, its number, and date of issue; and in case the notified person is unable to sign the report, he must affix his fingerprint.

As for the settlement hearing, pursuant to Article 991 of Law No. 08-09[28], which states: "The attempt of settlement shall take place at the place and time deemed appropriate by the judge, unless special provisions of law provide otherwise," the settlement hearing may be held either in the office of the judge appointed to conduct the settlement or in the courtroom.

During the hearing, the judge works to bring the parties' positions closer and seeks to reconcile them in order to reach an amicable solution that avoids the need to bring a judicial action. The hearing is held in the presence of both parties only, without the participation of assistants, unless the settlement requires their assistance.

It is noted in this regard that the legislator has not specified the number of sessions allocated to settlement; however, it has expressly required that the settlement procedure be completed within a period not exceeding three (03) months. This timeframe is considered appropriate for the requirements of commercial transactions, which require speed in their formation and in the resolution of their disputes.

During the conciliation hearing, the judge issues an order administering the oath to anyone whose presence is deemed necessary for the conduct of conciliation, except for assistants, since they have already taken the oath in advance. The record of the oath-taking is included in the conciliation file.

The parties appear at the conciliation hearing before the judge hearing the dispute, in order to express their joint willingness to settle the conflict through the presentation of reciprocal

[26] For further details, see Article 408 and following of Law No. 08-09 of 25 February 2008, containing the Civil and Administrative Procedure Code, ibid., as amended and supplemented.

[27] Law No. 08-09 of 25 February 2008, containing the Code of Civil and Administrative Procedure, same reference, as amended and supplemented.

[28] Law No. 08-09 of 25 February 2008, containing the Code of Civil and Administrative Procedure, previous reference, as amended and supplemented.

concessions that they intend to make in order to reach an amicable solution bringing the dispute to an end.[29]

Also attending the hearing are the judge in charge of conciliation, the court clerk (registrar), who is responsible for drafting the conciliation report, and any person whom the judge considers useful for the conciliation process.

It is noted, without any doubt, that the personal appearance of the parties at the conciliation hearing enables the judge to grasp the substance of the dispute, guided by the explanations provided by each party, thereby increasing the chances of successful conciliation. However, despite the importance of such appearance, one or both parties may be unable to attend the hearing, whether for compelling reasons or special circumstances. In this regard, the legislator did not require the personal appearance of the parties at the conciliation hearing; therefore, parties may be represented by others, provided that the representative is granted an explicit mandate authorizing them to undertake conciliation procedures.

It should also be noted that the legislator did not clarify the legal effect in the case where the applicant for conciliation, or both parties, appear at the first conciliation hearing and then fail to attend subsequent hearings after adjournment, nor in the case where the applicant fails to appear at the first hearing.

The judge maintains a special conciliation register in which all conciliation procedures are recorded, in the presence of the presiding judge, the court clerk, the concerned parties, and any person whose presence the judge deems necessary for the conciliation sessions.

In line with the requirements of modernizing justice and digitizing judicial work, this register is no longer paper-based as it used to be, but has become a digital register in which all proceedings during the conciliation hearing are recorded, as well as the outcome of the application for the appointment of the judge in charge of conciliation whether by drawing up a conciliation report in case of success and the parties reaching an agreement, a report of non-conciliation if reconciliation fails despite the attempt, or dismissal of the request if procedural requirements are not met or if the parties fail to appear without a legal justification.

Among the procedures applicable before the specialized commercial court, paragraph 2 of Article 536 bis 04 of Law No. 22-13, amending and supplementing the Civil and Administrative Procedure Code, provides that the judge appointed to conduct conciliation may seek the assistance of any person whose presence is considered useful for the success of the conciliation process.

In this context, it is advisable where appropriate to resort to appointed judicial assistants, particularly when their technical or substantive expertise is closely related to the nature of the dispute, as this has a positive impact on enhancing the effectiveness of the conciliation process and increasing its chances of success. The legislator, under Article 5 of Executive Decree No. 23-52[30], has set out a number of conditions that must be fulfilled by the judicial assistant, the most important being: Algerian nationality, full enjoyment of civil and political rights, good

[29] Hussein Ben Sheikh Ath Mellouya, Administrative Procedure Law, previous reference, p. 619; Abdel Hamid Al-Shawarbi, Arbitration and Reconciliation in Light of Jurisprudence and Case Law, Mansha'at Al-Maaref, Alexandria, 2000, p. 464.

[30] Executive Decree No. 23-52 of 14 January 2023, laying down the conditions and procedures for the selection of assistants to the specialized commercial court, Official Gazette No. 02, issued on 15 January 2023.

conduct and reputation, and no conviction for a felony or misdemeanor, except for unintentional offences, in addition to possessing extensive knowledge of commercial matters. Each assistant is subject to an administrative inquiry conducted by the Attorney General at the territorially competent judicial council to verify compliance with the aforementioned conditions. The number of assistants is determined by an order issued by the President of the specialized commercial court, according to the number of divisions and the volume of judicial activity, and in all cases shall not exceed twenty (20) assistants.

In some cases, there is also a need to resort to sworn translators, especially when one of the parties to the dispute is foreign, in order to ensure the proper conduct of hearings and to enable all parties to understand the conciliation proceedings and participate effectively.

2 – Effects of conciliation before the specialized commercial court

Pursuant to Article 462 of Law No. 75-58[31], conciliation brings an end to the disputes it covers, and results in the extinction of the rights and claims waived by each party on a final basis. Accordingly, no party may re-litigate the dispute over matters that have been settled through conciliation, since conciliation, by its nature, terminates the dispute whenever it covers all contested issues. Otherwise, it terminates it only with regard to the points agreed upon, while the remaining unsettled issues remain subject to judicial consideration, as the conciliation was only partial.

Accordingly, no judicial action may be brought before the court concerning the same subject matter that has already been settled by conciliation. If such an action is nevertheless filed, each party may raise an objection based on the extinction of the dispute by conciliation. When this objection is raised, the court must refrain from ruling on the admissibility or the merits of the case and shall declare it inadmissible for lack of legal interest.[32]

Conciliation is also considered to be declaratory of rights in dispute, not constitutive of them. This means that the right granted to one of the concurring parties under a conciliation agreement reverts to its original source and does not derive from the conciliation itself.[33]

On the other hand, conciliation has a relative effect, both in terms of subject matter and persons. As regards its subject matter, its effects are limited to the dispute that has been settled by agreement and do not extend to any other dispute outside the scope of the conciliation agreement. It is also relatively binding in terms of its parties, meaning that conciliation neither creates benefits nor imposes obligations on persons who are not parties to the agreement.

In the context of commercial disputes, and in accordance with Article 536 bis 4 of Law No. 22-13, the conciliation process before the specialized commercial court results, in principle, in one of two outcomes: either the parties reach a conciliation agreement (A), or the conciliation attempt fails (B).

[31] Ordinance No. 75-58 of 26 September 1975, containing the Civil Code, previous reference, as amended and supplemented.

[32] Al-Ansari Hassan Al-Nidani, previous reference, p. 234; Abdel Hamid Al-Shawarbi, Arbitration and Conciliation in Light of Jurisprudence, Case Law and Legislation, previous reference, p. 480.

[33] Abdel Hamid Al-Shawarbi, Arbitration and Conciliation in Light of Jurisprudence and Case Law, previous reference, p. 482.

A – Case of conciliation agreement

If the judge appointed to conduct conciliation succeeds in achieving the purpose of the conciliation attempts, he shall, pursuant to Article 992 of Law No. 08-09 as amended and supplemented, draw up a conciliation report recording the agreed settlement. This report is signed by the parties to the conciliation session, namely the litigants, the judge, and the court clerk. It is then filed with the registry of the competent judicial authority so that it is assigned a date, a reference number, and official seals, thereby giving it the status of an enforceable instrument.

After this filing, the conciliation report becomes an enforceable instrument pursuant to Article 993 of the Civil and Administrative Procedure Code (CACP)[34], and it acquires binding legal force with regard to the rights it contains against the concurring parties, each of whom is required to proceed with the implementation of its provisions upon receipt of this instrument.

Since proceedings terminated by conciliation do not result in a judicial judgment, the report recording the conciliation replaces the judgment once it is filed with the court registry. It thus constitutes an enforceable title pursuant to Article 600/8 of Law No. 08-09, as amended and supplemented.

The notification of this instrument is carried out, and based thereon, an enforceable copy is issued and obtained, signed by the Head of the Court Registry of the specialized commercial court, pursuant to Article 602 paragraphs 1 and 2 of the same Code.

This conciliation report may not be challenged except by an action for forgery, or by an action for annulment based on defects of consent, or on illegality of the subject matter or cause.[35]

B – Case of failure of conciliation

The judge's efforts to achieve conciliation and settlement between the parties may fail, either due to the inability to reconcile the parties, their refusal to settle, or their failure to attend conciliation hearings after adjournment, within the maximum legal period of three (03) months. In such a case, the judge handling the conciliation request draws up a report of non-conciliation, stating the reasons that led to the failure of the conciliation attempt. This report is signed by the presiding judge of the conciliation session, the court clerk, and all parties present.

Pursuant to paragraphs (1) and (2) of Article 536 bis 4 of Law No. 22-13, in the event of failure of the conciliation attempt, the parties retain the right to resort to the judiciary and file their action before the specialized commercial court by way of a statement of claim, accompanied by the report of non-conciliation, under penalty of inadmissibility. The President of the specialized commercial court is also empowered, in this context, to exercise the same prerogatives as the President of the ordinary court in commercial disputes.

After the failure of the conciliation attempt, the case is adjudicated before the specialized commercial court by a judgment that is subject to appeal before the territorially competent judicial council.

[34] It provides as follows: "The conciliation report shall constitute an enforceable instrument upon its filing with the court registry."

[35] Ould Cheikh Cherifa, Alternative Methods for Dispute Resolution: Conciliation and Mediation Reports as Enforceable Instruments under the Algerian Civil and Administrative Procedure Code, Critical Journal of Law and Political Science, Issue No. 02, Faculty of Law, Mouloud Mammeri University, Tizi Ouzou, 2012, p. 107.

It is noteworthy that the legislator did not set a time limit for bringing an action after the issuance of the non-conciliation report, leaving it open-ended. This raises legal issues touching upon the principle of legal certainty and the stability of transactions, as leaving the time frame unrestricted keeps the parties in a state of uncertainty and exposes one party to The possibility of the dispute being revived at any time, thereby undermining the stability of its legal position and contradicting the requirements of clarity and defined procedural time limits that should govern procedural relationships.

The absence of a clear legislative timeframe may also open the way for filing lawsuits based on non-conciliation reports that are very old, without taking into account possible changes in circumstances or the lack of relevance of such reports to the current legal reality. This, in turn, burdens the judiciary with claims that have lost their relevance and undermines the principles of transparency and efficiency that should characterize commercial justice.

Furthermore, the failure to set a time limit for filing a lawsuit after the issuance of a non-conciliation report disrupts the functioning of commercial justice, which is essentially based on speed and efficiency. This negatively affects the stability of transactions and the confidence of litigants in the specialized judicial process.

Therefore, it would be preferable for the legislator to establish reasonable and binding deadlines for bringing an action after the issuance of a non-conciliation report, for example not exceeding a period of three months from the date of the report.

This would ensure a balance between the right of access to justice and the need to establish legal certainty, thereby strengthening conciliation as an effective mechanism for dispute resolution, enhancing the speed of adjudication in commercial disputes, and preventing the judiciary from wasting time and effort on cases based on outdated facts.

Conclusion

In light of the increasing volume of commercial cases and the resulting burden on the judicial system, the legislator has established specialized commercial courts alongside commercial divisions. Their creation represents an important positive step toward establishing a specialized judiciary in commercial matters.

At this level of jurisdiction, the legislator has adopted conciliation as a mechanism for the amicable settlement of commercial disputes under judicial supervision, given its multiple advantages, including procedural simplicity and the binding nature of conciliation agreements on the parties. This strengthens alternative dispute resolution methods and helps preserve relationships between traders and economic operators.

The study shows that conciliation between litigants constitutes a mandatory procedure before the specialized commercial courts. Through this mechanism, the legislator seeks to facilitate the amicable and rapid settlement of disputes without resorting to full litigation, as specialized commercial justice is primarily aimed at ensuring speed in resolving disputes. Conciliation achieves this objective by significantly reducing the time required to resolve disputes, as its procedures are simple and consensual in nature. Moreover, placing conciliation before litigation aims to ensure swift dispute resolution, given that judicial proceedings require considerable time.

If conciliation hearings prove ineffective, the parties may resort to the court to resolve their disputes.

Although conciliation is a mandatory procedure in all commercial disputes before the specialized commercial court, acceptance of its outcome remains optional and depends on the will of the parties.

In light of the above, and considering the importance of conciliation as a mechanism for the amicable and rapid settlement of commercial disputes before specialized commercial courts, the following **recommendations** are proposed:

- ✓ It is necessary to stipulate the mandatory personal appearance of the parties in all conciliation hearings, not only the first one, as personal attendance is one of the most important factors contributing to the success of conciliation, as it enables direct communication and enhances the possibility of understanding and settlement between the parties.
- ✓ It is necessary to set a deadline for filing a lawsuit before the specialized commercial court after the issuance of the non-conciliation report, starting from the date of its issuance, in order to ensure procedural discipline, legal certainty, and to prevent delay or procrastination in initiating proceedings after failed conciliation.
- ✓ It is necessary to allow the court or competent authority to extend the conciliation period if positive indicators appear suggesting the possibility of an amicable settlement and the parties show genuine willingness to reach an agreement, in support of the effectiveness of conciliation and to avoid its failure due to rigid time constraints.
- ✓ It is necessary to clearly define the starting point of the three-month period allocated to conciliation, in order to eliminate any ambiguity in calculating the deadline, ensure compliance with legal time limits, and assist both the court and the parties in properly organizing procedural steps.
- ✓ It is necessary to empower the President of the specialized commercial court to reject a conciliation request in case of lack of subject-matter or territorial jurisdiction, while making such a decision subject to appeal, in order to reinforce the right of access to justice.

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