

Settlement as a Means of Dispute Resolution Before Specialized Commercial Courts "In Light of Law No. 22-13"

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Abstract:

Settlement is a friendly method for resolving commercial disputes in the specific cases delineated by the Algerian legislator in Law No. 22-13, which amends and supplements Civil Procedure Law No. 08-09. It occurs between the disputing parties, and in the event of a settlement, a record of agreement is drawn up, which is then submitted to the court for ratification, thereby putting an end to the dispute and becoming an enforceable document. If no settlement is reached, a record of non-settlement is created, allowing the parties to file a lawsuit before the specialized commercial court, meeting the general conditions mentioned in the same law, accompanied by the record of non-settlement. The legislator has stipulated that failure to provide this record results in the dismissal of the lawsuit for formal reasons.

Keywords: Procedure, Settlement, Specialized Commercial Courts, Commercial Disputes, Settlement Record.

Introduction:

A lawsuit is the legal means granted by law to a creditor to fulfill their right from the debtor, provided that a series of positive conditions for filing the lawsuit are met, namely: interest, capacity, and eligibility, along with negative conditions such as the absence of prior adjudication on the matter, the absence of expiration of the time limit, the absence of an agreement to arbitrate, the absence of a guarantee, and the absence of acceptance of settlement.

However, the enormous number of cases meeting the legal conditions and the developments occurring globally, especially in commercial and economic activities, along with the complexity of their legal and technical frameworks, have burdened the judiciary, negatively impacting their rulings. This situation has prompted the Algerian legislator to introduce amicable means for resolving commercial disputes under Law No. 22-18, which amends and supplements the Civil and Administrative Procedures Law. The legislator mandated the procedure of settlement before specialized commercial courts.

How has the Algerian legislator organized the settlement procedure before the specialized commercial court in Law No. 22-13, which amends and supplements Law No. 08-09, including the Civil and Administrative Procedures Law?

Thus, in this research paper, we will attempt to address the concept of settlement (Section One) and the scope of application of settlement before the specialized commercial court (Section Two).

Section One: The Concept of Settlement

Settlement is considered an alternative way to resolve specialized commercial disputes, introduced by the Algerian legislator through Law No. 22-13, amending and supplementing the Civil and Administrative Procedures Law, to alleviate the disputes presented before specialized commercial courts, which have burdened the judiciary and reflected negatively on their rulings.

In this section, we will discuss the meaning of settlement (Subsection One) and the elements of settlement (Subsection Two).

1. The Meaning of Settlement

The Algerian legislator organized the settlement procedure in Law No. 08-09 (Civil and Administrative Procedures Law) in Articles 970-974 and Articles 990-993.

To fully understand the topic of settlement, we must address the definitions that have attempted to define it (Branch One), followed by distinguishing settlement from some similar systems (Branch Two).

1.2 Definition of Settlement

First: Linguistic Definition: According to Ibn Manzur, the term “settlement” (صلح) comes from “صلاح,” meaning to correct or fix, and “الإصلاح” (to reform) is the opposite of corruption. Settlement, with a broken “ص,” is a source of reconciliation, and in Arabic, it can be feminine or masculine¹.

From this presentation, it is clear that Ibn Manzur does not differentiate between settlement and reconciliation.

Second: Jurisprudential Definition: There are various jurisprudential definitions of settlement, but they share similar content. In our research paper, we will mention the following definitions:

Professor Mohamed Salama Al-Zanati defines settlement as: “An agreement concerning a disputed right between two persons, where one waives their claim in exchange for something.”²

Professor Ahsan Bousqi’a defines settlement as: “A resolution of a dispute in a friendly manner.”³

Professor Abdel Razak Al-Sanhouri defines it as: “A contract by which both parties resolve an existing dispute or prevent a potential dispute by each waiving part of their claim.”⁴

From the aforementioned definitions, we can say that settlement is a bilateral binding contract that amicably resolves the dispute.

Third: Legal Definition: The Algerian legislator defines settlement in Article 459 of the Civil Code, stating: “Settlement is a contract by which both parties end an existing dispute or prevent a potential dispute by mutually waiving part of their rights.”⁵

From this article, we observe that for a valid settlement to be concluded, certain essential conditions must be met, namely:

- An existing or potential dispute.
- An intention to resolve the dispute through settlement.
- Mutual waiver by each party of part of their right.

1.3 Distinguishing Settlement from Similar Systems:

Settlement shares similarities with many systems that resolve disputes without resorting to litigation. Therefore, we will focus on clarifying the similarities and differences between mediation and arbitration.

1. Distinguishing Settlement from Mediation:

The Algerian legislator has not defined mediation in the Civil and Administrative Procedures Law; it has only mentioned general provisions related to it in Articles 994 to 1005. However, mediation can be defined as: “A mechanism based on the intervention of a neutral third party in negotiations between two disputing parties, aiming to bridge the gap between their viewpoints and facilitate communication, thus assisting them in finding an appropriate resolution to the dispute.”⁶

Mediation and settlement are similar in that both are alternative methods for amicably resolving disputes and are stipulated in the Civil and Administrative Procedures Law⁷. Both involve the preparation of a record signed by the parties and ratified by the judge, making it an enforceable document according to Articles 993 and 1004. Therefore, it cannot be contested.

However, mediation differs from settlement in that mediation is mandatory before the commercial section, whereas settlement is mandatory before specialized commercial courts, as stated in Articles 534 and 536 of Law No. 22-13, which amends and supplements the Civil and Administrative Procedures Law. Mediation is limited to a duration of three months, as per Article 996, which can be renewed once. In contrast, settlement is a consensual contract that operates without a third party, unlike mediation, which involves a mediator.

2. Distinguishing Settlement from Arbitration:

Both arbitration and settlement are amicable methods for resolving disputes presented before the judiciary, particularly those related to commercial matters that require efficiency in time, effort, and costs⁸.

Several theories have contended to define arbitration. The first theory views arbitration as judicial in nature because the result of arbitration is a ruling that possesses the same authority as a judicial ruling. The second theory looks at it from the angle of the arbitration agreement, stating that the origin of the arbitration relationship is the arbitration agreement, which entails obligations. The third theory merges the first two, defining arbitration as an agreement mediated by a procedure that concludes with a binding ruling, possessing both positive and negative characteristics.

Arbitration and settlement share similarities in that both serve as negative conditions for filing a lawsuit; a legal action cannot be initiated if the litigant has pursued either of the two paths. Both are also regulated under the Civil and Administrative Procedures Law.

However, settlement differs from arbitration in that the arbitrator is a third party, unlike the bilateral relationship in settlement. Additionally, settlement only applies if the parties are convinced of it, whereas arbitration can result in a ruling favoring only one party. Moreover, the record of settlement ratified by the court cannot be contested, unlike arbitration rulings, which can be challenged if one of the six conditions specified in Article 1056 is met⁹.

3. Elements of Settlement:

Since settlement is a contract, it possesses the same general elements as any contract, namely consent, subject matter, and cause, as organized by the Algerian legislator in the Civil Code from Article 54 to Article 133.

3.1 Element of Consent in the Settlement Contract:

The settlement contract is concluded as soon as both parties exchange their matching expressions of intent (offer and acceptance) in accordance with the general rules of contracts, as stated in Article 54 of the Civil Code, which specifies that a contract is formed upon the exchange of expressions of intent between the parties¹⁰.

The law has stipulated a series of conditions for the validity of the settlement contract in Article 460, which states: “It is required that the person settling be capable of disposing of the rights included in the settlement contract.”¹¹

Therefore, it can be said that both parties must have reached the age of majority and that their intentions must be free from defects that nullify consent, such as insanity or mental incapacity, or that diminish it, such as being a minor or being under guardianship. This is to ensure that the settlement contract is not subject to relative

nullity if their actions are between benefit and harm, or absolutely void if they are solely harmful.

3.2 Element of Subject Matter in the Settlement Contract:

The subject matter of the settlement is the disputed right. The parties' waiver of any part of their rights results in the final relinquishment of the rights and claims waived by one of the parties¹².

Thus, the general conditions for the subject matter must be met: it must be existent or capable of existing, it must be specified or capable of being specified, and it must be lawful and not contrary to public order and morals.

Article 461 states: "Settlement is not permitted in matters related to personal status or public order, but financial interests resulting from personal status may be settled."

From this article, we observe that individuals can resort to settlement for rights they can freely dispose of, excluding personal matters (such as proof of lineage) or those related to public order, which are regulated by mandatory rules that cannot be violated.

3.3 Element of Cause in the Settlement Contract:

The cause is the motivation that prompted the parties to enter into the contract, and it varies from person to person. The motivation may be one party's desire to avoid losing the lawsuit or to prevent prolonged litigation in order to maintain amicable relations between the parties¹³.

The cause of the settlement contract must be existent, correct, and lawful, in accordance with Article 97 of the Civil Code.

4. Scope of Application of Settlement Before the Specialized Commercial Court

To address this section, we must first examine the scope of application of settlement before the specialized commercial court (Subsection One), and then discuss the procedures for settlement before the specialized commercial court and the resulting effects (Subsection Two).

5. Scope of Application of Settlement Before the Specialized Commercial Court

The Algerian legislator has dedicated a special section for specialized commercial courts, addressing the type of jurisdiction in Article 536 bis (Subsection One) and the territorial jurisdiction in Article 536 bis 1, which refers back to the general rules (Subsection Two).

5.1 Type of Jurisdiction

Article 536 bis of Law No. 22-13, amending and supplementing the Civil and Administrative Procedures Law, states: "The specialized commercial court is competent to hear the disputes mentioned below:

- Intellectual property disputes,

- Disputes involving commercial companies, particularly disputes among partners and the dissolution and liquidation of companies,
- Judicial settlement and bankruptcy,
- Disputes between banks and financial institutions with merchants,
- Maritime and air transport disputes and insurance disputes related to commercial activities,
- Disputes related to international trade.”

It is noted that the cases mentioned in this article are the same as those outlined in paragraph 7 of Article 32 of the same law, which are explicitly listed and were previously within the jurisdiction of specialized sections that had not been established in practice. Given their complexities, jurisdiction was granted to specialized commercial courts to adjudicate them in a collective formation, while the commercial section retains jurisdiction over simple commercial disputes, which are decided by a single judge.

5.2 Territorial Jurisdiction

Article 536 bis of Law No. 22-13, amending and supplementing Law No. 09-08, states: “The provisions of territorial jurisdiction specified in this law apply to the specialized commercial court.” Referring to the legal provisions regulating territorial jurisdiction, namely Articles 37 to 40 of the Civil and Administrative Procedures Law, the general rule is that a lawsuit should be filed before the court in the defendant’s domicile. If the defendant has no known domicile, jurisdiction reverts to the court where the last known domicile was located. If a chosen domicile is specified, territorial jurisdiction is assigned to the court where the chosen domicile is located unless the law states otherwise.

Regarding the specialized commercial court, the original territorial jurisdiction is defined, followed by the specific jurisdiction outlined in Decree No. 53/23 dated January 14, 2023, which specifies the territorial jurisdictions of specialized commercial courts.

According to the aforementioned decree, there are 12 specialized commercial courts distributed as indicated in the decree. For example, if the original territorial jurisdiction is the court of Bordj Bou Arreridj, then the specialized commercial court would be the court of Sétif¹⁴.

6. Procedures for Settlement Before the Specialized Commercial Court and the Resulting Effects

After discussing the type and territorial jurisdiction of the specialized commercial court in Subsection One, we will address the procedures for settlement before the specialized commercial court (Subsection One), followed by the effects resulting from the settlement procedure (Subsection Two).

6.1 Procedures for Settlement Before the Specialized Commercial Court

Article 536 bis 4 stipulates that the procedures for filing a commercial lawsuit before the specialized commercial court are preceded by settlement procedures. This is done based on a request submitted by one of the parties to the president of the specialized commercial court, who will decide on the request within 5 days by issuing a ruling and assigning a judge within 5 days to conduct the settlement procedures within a maximum period of 3 months.

The party requesting the settlement is responsible for notifying the other parties to the dispute of the date of the settlement session, and the assigned judge may seek assistance from any person they deem appropriate to help with the settlement.

This settlement concludes with the preparation of a record signed by the judge, the parties to the dispute, and the court clerk, and this record is subject to the rules set forth in the Civil and Administrative Procedures Law.

According to general rules, particularly the provisions of the Civil Code, if a record of the settlement is prepared, it will put an end to the dispute. The Civil and Administrative Procedures Law explicitly states that in the case of a record of agreement, the record is returned to the court for ratification, thus ending the dispute and becoming an enforceable document, as mentioned in Articles 1003, 1004, and 1005 of the Civil and Administrative Procedures Law and Article 462 of the Civil Code. If a record of non-settlement is prepared and the settlement fails, the parties may proceed with litigation before the specialized commercial court¹⁵.

6.2 Effects Resulting from Settlement Before the Specialized Commercial Court

Paragraph three of Article 536 bis 4 states: “In the event of a failed settlement, and upon delivery of the record to the parties, a lawsuit shall be filed by petition before the specialized commercial court according to the provisions set forth in the Civil and Administrative Procedures Law, accompanied by the record; otherwise, it will be inadmissible.¹⁶”

It is noted that the request for settlement is mandatory before the specialized commercial court, and its absence will result in the inadmissibility of the lawsuit, alongside the general rules for filing a lawsuit stipulated in Articles 13-17 of the Civil and Administrative Procedures Law.

The specialized commercial court adjudicates disputes with a judgment that is appealable before the Court of Appeals according to the provisions set forth in the Civil and Administrative Procedures Law. This is affirmed by the legislator in Article 536 bis 5.

It is observed that there is no specific appellate chamber for appealed commercial judgments¹⁷. Appeals are made before the commercial chamber of the Court of Appeals that has jurisdiction over the specialized commercial court, which undermines the policy of bringing justice closer to citizens. It would have been preferable to allow

appeals to the Court of Appeals in the jurisdiction where the plaintiff resides, as this specialization seems ineffective. It would have been better to establish specialized appellate commercial courts similar to the administrative appellate courts to maintain this specificity.

7. Conclusion:

It has been demonstrated through this research paper that settlement is an amicable means of resolving commercial disputes before resorting to the specialized commercial court, as the legislator made it a mandatory requirement in Article 536 bis for the specific cases delineated. The absence of a settlement procedure results in the rejection of the lawsuit on formal grounds.

In the case of a settlement, a record of the agreement is prepared, which is then submitted to the court for ratification, thus ending the dispute and becoming an enforceable document, as stated in Articles 1003, 1004, and 1005 of the Civil and Administrative Procedures Law and Article 462 of the Civil Code. If a record of non-settlement is prepared and the settlement fails, the parties may proceed with litigation before the specialized commercial court, which will issue a judicial ruling that can be appealed before the commercial chamber of the Court of Appeals within its jurisdiction.

In conclusion, the following suggestions can be made:

1. The necessity to establish specialized commercial chambers to oversee the rulings of the specialized commercial court.
2. The need to create commercial arbitration centers, both for international and domestic disputes, within the territory of Algeria to encourage investment and incorporate arbitration into settlement, rather than relying solely on legal arbitration as currently practiced.
3. The establishment of specialized appellate commercial courts, similar to administrative appellate courts, to maintain the specificity of specialized commercial disputes.

8. References:

8.1 Laws

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²- Nadia Yahiaoui, *Conciliation as a Means for Settling Labor Disputes According to Algerian Legislation*, Master's thesis in Law, Professional Responsibility Branch, Faculty of Law and Political Science, Mouloud Mammeri University, Tizi Ouzou, Algeria, 2015, p. 14.

³- Ahsen Bousguia, *Conciliation in Administrative Disputes and Other Laws*, Baghdad Publications, Algeria, without publication year, p. 229.

⁴- Samia Ben Qouia, *Conciliation in Algerian Family Law: Legal and Shari'ah Issues*, *Algerian Journal of Legal, Economic, and Political Sciences*, Volume 53, Issue 05, Faculty of Law, Saïd Hamedine University, Algeria 1, 2016, p. 327.

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- ⁷- Abdul Rahman Barbari, Explanation of the Code of Civil and Administrative Procedures without edition, Baghdad Publications, Algeria, 2009, p. 525.
- ⁸- Abdelkader Sidqi, previous reference, p. 67.
- ⁹- The same reference, p. 67.
- ¹⁰- The same reference, p. 74.
- ¹¹- Article 460 of Order 75-58, previous reference.
- ¹²- Abdelkader Sidqi, previous reference p. 75.
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