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Judicial Mediation as an Alternative Mechanism for Dispute Resolution in Algerian Law: Developments, Effectiveness, and Challenges

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Abstract
Mediation has increasingly emerged as a central mechanism in the spectrum of alternative dispute resolution (ADR), reflecting the legislator's attempt to reduce judicial congestion, promote consensual settlements, and enhance access to justice. In Algeria, mediation was formally introduced in Law No. 08/09 of 25 February 2008 containing the Civil and Administrative Procedure Code, and subsequently restructured by Law No. 22/13 of 12 July 2022, which provided significant amendments to its legal framework. This article critically examines the legal recognition, procedural development, and practical application of mediation in Algerian law. The analysis explores its historical roots in traditional and tribal dispute-settlement practices, its adaptation within the judicial system, and the specific provisions that define its scope and limitations. By evaluating mediation's advantages—such as efficiency, confidentiality, and cost-effectiveness—alongside its drawbacks, including enforceability challenges and limited applicability in certain areas, this study highlights both the potential and constraints of mediation. The paper argues that despite progressive reforms, the full effectiveness of judicial mediation in Algeria is conditioned by cultural acceptance, judicial training, and institutional support mechanisms.

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1- Introduction:

Mediation is one of the alternative ways to resolve conflicts a fact practiced by human societies in various eras and eras has been practiced by our society ancient and modern, and many conflicts are resolved by tribal elders and elders. in the colonial period, the French positive judiciary was an intruder on the Algerian people, who remained committed to their Islamic customs, traditions and principles, and the society, especially in villages and rural areas,

continued to practice reconciliation and mediation between the contenders in many civil and commercial disputes even after independence and after the issuance of the Civil Procedure Law under order No. 66/154, dated 08 June 1966, which was free of alternative methods except those relating to arbitration.

However, the cultural, social and economic development of Algerian society, its openness to the outside world and its impact on globalization has become more and more diverse, which has resulted in a steady increase in the volume of issues, and the urgent need to find alternative ways to resolve conflicts has emerged. it is the inevitable result that the legislator arranged through the Civil and Administrative Procedure Code (rachid 2009 p 492.

Through the above, the problem can be raised that revolves around how the legislator organizes mediation procedures in the Civil and Administrative procedures Law and how effective they are in resolving disputes?

We will try to answer the problem posed and to study the subject we have followed a scientific approach appropriate to the subject of the study and this by following the analytical approach through our limitation of the legal texts related to the subject of study and the writings provided to us in the field of study and work to analyze it in the light of our scientific and practical experience in this subject, to answer these questions and study the subject of mediation is within two main topics, we address in the first topic the definition of mediation and its areas in the law of civil and administrative procedures and we address in the second discussion of mediation procedures and their effects on the conflict.

2. Definition of mediation and its areas in the Civil and Administrative procedures Law

In this paper, we discuss the definition of mediation as an alternative measure to resolve the conflict by addressing what the legislator and the jurisprudence in addition to identifying the areas of issues and disputes that can be covered by mediation as an alternative measure to resolve the conflict.

2.1. Definition of mediation as an alternative dispute resolution procedure

Through the articles that provide for mediation in the law of civil and administrative procedures, it is (Code of Civil and Administrative Procedure. 2008. A 994) clear that the legislator did not know mediation as an alternative measure to resolve disputes, but the concept and purpose of mediation is clear, as the legislator has required the judge to present the mediation procedure to the litigants in any article and in the event of acceptance appoint a mediator to receive views and attempts to reconcile the opponents to enable them to find a solution to a dispute, but the dispute must be submitted in advance to mediate in the cases submitted to the Commercial Section without the need for the consent of the opponents (Code of Civil and Administrative Procedure . 2008. A 534).

If the legislator does not know mediation in the law of civil and administrative procedures, there is a jurisprudence that defines mediation as a means of resolving disputes through the intervention of a third person who is impartial, impartial and independent and removes the existing dispute. by proposing practical and logical solutions that bring the views of the disputers closer in order to find a consensus formula, and without imposing on them a solution or issuing a binding decision (Alaa, 2008, p. 65) , and there are those who define it as a method of alternative solutions to resolve disputes based on providing a forum for the disputing parties to meet and dialog, to reconcile views with the assistance of a neutral person in order to try to reach an amicable solution acceptable to the parties to the conflict (Ahmed, 2007/2010, p. 39); there are those who define mediation as a mechanism based on the intervention of a neutral third person in negotiations between two opposing parties, so that this neutral works to bring the views of the parties closer and facilitate communication between them and thus help them find an appropriate settlement to the dispute (Kamal, 2009, p. 572).

through these definitions, mediation can be said to be an amicable alternative way to resolve the dispute outside the judicial facility in which a person with legally prescribed privileges and characteristics seeks to receive the requests and views of the litigants to reconcile them in order to find a solution to a dispute under a record that has the status of an executive bond.

2.2. Areas of mediation as an alternative dispute resolution procedure

Since mediation is a new method in Algerian law, some questions have been raised about the possibility of mediation in resolving all the disputes presented in number and type, but this question will soon disappear once we read the provisions of Article 994 of the Civil and Administrative Procedure Code article 994 stipulates that the judge must present the mediation procedure in all articles except family affairs, labor issues and anything that may prejudice public order. therefore, what article 994 of the Civil and Administrative Procedure Law states is that mediation is a fundamental measure that the judge must ensure that it is fulfilled before any other procedure and at the first hearing, and he must indicate that it is respected through his judgment. however, it can only be accepted by opponents for mediation, as the legislator ruled out mediation procedure and cannot be presented in family affairs and labor issues due to the existence of other mechanisms such as conciliation and arbitration to contain their own legislation, which ensures the resolution and resolution of these disputes. it is also not possible to resort to mediation in everything that would prejudice public order, and it seems that the legislator is referring to some contracts that are contrary to public order and some acts that are contrary to morality (Abdeslam, 2009, p. 415).

The lawsuits filed before the specialized Commercial Court, which the legislator provided for exclusively in accordance with Article 536 bis of the Civil and Administrative Procedure Law, which consist of intellectual property disputes, commercial companies disputes, especially partner disputes, corporate resolution and liquidation, judicial settlement and bankruptcy, banking and financial institutions disputes with merchants, maritime disputes, air transport, insurance disputes related to commercial activities, disputes related to international trade, and trade disputes. these cases falling within the jurisdiction of the specialized Commercial Court are not subject to the general rules applicable to mediation and are not subject to the rules applicable to the jurisdiction of the Commercial Section, as the legislator has subjected the disputes within the jurisdiction of the specialized Commercial Court to the obligation of conciliation before filing the case before it under the penalty of non-acceptance of the claim in form (Code of Civil and Administrative Procedure . 2008. A 536/4)

There are those who believe that mediation is permissible in the administrative article and in view of what the legislator took in article 994 of the Code of Civil and Administrative procedures, mediation is permissible in all articles, with the exception of family affairs, labor issues and all that may prejudice public order, and examples of what mediation is permissible in the administrative article:

- Disputes over ownership - disputes over land plot - disputes between owners - disputes between neighbors - in banking - in energy - in postal interests - loan institutions - consumption disputes - the agreed clause between supplier and customer on mediation - may be included as an agreed obligation (Kamal, 2009, p 580).

However, this approach can be denied and ruled out for a number of reasons, including the fact that the legislator did not explicitly provide for the possibility of resorting to mediation as an alternative way to resolve the administrative dispute, given that it explicitly stipulates reconciliation and arbitration in the fifth part of the fourth book in the procedures followed before the administrative judicial authorities this is in view of the fact that the administrative dispute requires a judge in a collective composition with a specialized composition in the administrative field to balance the respect of public rights and freedoms and the preservation of the public interest, and the nature of the administrative dispute prevents this, considering that the dispute is mostly about the cancellation of an administrative decision, its interpretation or examination the extent of his legitimacy and this is exclusively the prerogative of the administrative judge.

3. Mediation procedures and their impact on the conflict

In this section of the study, we discuss clarifying the procedures and stages of mediation as an alternative measure to resolve the dispute by addressing what the legislator has stated in addition to identifying and addressing the cases and assumptions of the end of mediation as an alternative way to resolve the dispute.

3.1.Procedures and stages of mediation as an alternative way to resolve the conflict

Mediation is one of the effective ways to resolve disputes between persons outside the litigation process through confidential procedures conducted by a neutral third person, which is based on an attempt to bring the views of the parties closer together in order to reach a settlement of the dispute (Ahmed, 2007/2010, p. 45).

3.1.1 The first phase procedures

The judge shall, according to the provisions of Article 944 of the Civil and Administrative Procedure Law, present the mediation procedure to the litigants in all articles except family affairs and labor issues and all that may prejudice public order while in Article 534 of the Civil and Administrative procedures Law the head of the commercial department shall submit the (Article 534 of the Code of Civil and Administrative Procedure The head of the commercial department must submit the dispute in advance to mediation). dispute prior to mediation so that it is not subject to the consent of the parties contrary to the provisions of Article 994.

Article 994 also states that mediation is a duty as a procedure, which requires the judge to submit mediation to the litigants in all articles except family affairs and labor issues and anything that would prejudice public order, while Article 534 stipulates that the dispute must be submitted to mediation as an alternative way and not as a measure, and the offer of mediation is not subject to the discretion of the judge, as the latter indicates in the ruling that he offered mediation and notice the rejection of the opponents mediation, but before the commercial section must issue an order appointing the mediator even without the consent of the opponents (Abderrahmane, 2009, p. 525) , the judge may also have the right, at his discretion, to refuse the parties' request for mediation if the dispute in which mediation is not permitted (Trari, 2009, p. 558) is before the civil judge, but it may be questioned whether there is a discretionary power of the judge to refuse to appoint a mediator on the grounds of disturbing public order in commercial cases.

After the offer of mediation by the judge and its acceptance by the litigants, the judge shall appoint the mediator by order, and this is stipulated in Article 944/2 of the Civil and Administrative Procedure Law.

After the parties agree to conduct the mediation or in the case of compulsory mediation if we are before the commercial section, the judge shall issue an order to appoint a mediator to receive the views of each of them and try to reconcile them by enabling them to find a solution to the dispute, provided that the judge's order in appointing the mediator includes the consent of the opponents and here the legislator did not indicate what if the consent required, is limited to the acceptance of the mediation process only or must include the acceptance of the person of the mediator as well as most likely that the approval is comprehensive, and must specify the time limits granted to the mediator to carry out his task, and the date of return of the case to the session provided that the period does not exceed three months, but it can be renewed for the same period once necessary after the approval of the litigants (Civil and Administrative Procedures Law.2008.A 996) , and as soon as the order to appoint a mediator (Civil and Administrative Procedures Law.2008.A 1001) is pronounced, the Secretary of the seizure shall communicate a copy of the order to the opponents of the mediator. here, the legislator also did not indicate how such notification was made, whether by a summons from the court and the writing of a report after receipt, or by an official notification under a judicial record, as provided for in article 406 of the Civil and Administrative Procedure Code. in practice, however, a litigant, often in the interest of expediting, will notify the mediator of a copy of the appointment order, together with the necessary documents to help resolve the dispute.

3.1.2. Second phase procedures

After the issuance of the order appointing the judicial mediator to (With reference to the provisions of Article 998 of the Code of Civil and Administrative Procedure, we find that it stipulates three conditions:

To be qualified to consider the dispute submitted to him.

Be impartial and independent in the practice of mediation.

The mediator must not have been subjected to a penalty for a crime involving moral turpitude, and he must not be prohibited from civil rights ، With reference to the provisions of Executive Decree No. 09/100 specifying the modalities for appointing a judicial mediator, with other conditions that must be met by the mediator, which are stipulated in article 02 thereof, which states: "Any person who meets the conditions specified in article 998 of the Code of Civil and Administrative Procedure may request to be registered in one of the lists of judicial mediators, unless:

Has been sentenced for a felony or misdemeanor except for unintentional crimes.

He was sentenced as a manager for a misdemeanor of bankruptcy and was not rehabilitated.

A public officer who has been dismissed or a lawyer whose name has been expunged) ، report this matter through the Secretary of the police or one of the adversaries, the procedures carried out by the mediator stipulated by the legislator begin by notifying the judge without delay of his acceptance of the task of mediation (Civil and Administrative Procedures Law.2008.A 1000/2), and here the legislator did not show us how this notification is done. is it verbal through which the mediator is content to move to the office of the judge and notify him of this, or is it in writing? in practice, however, it is assumed that the mediator will accept and agree to the mediation procedure, but if the opposite is the case only an apology for the task or an adversary submits a request for the replacement of the mediator because of the inability to communicate with the mediator or to apologize for the task.

The mediator should also call (Pursuant to the provisions of Article 997 of the Code of Civil and Administrative Procedure, mediation is entrusted to a natural person or to an association, and because the association is a legal person, its president, once entrusted with the task of mediation, appoints one of its members to carry out the procedure in its name and notifies the judge accordingly) the parties to the conflict without the legislator specifying the mechanisms of this, leaving the matter to the authority of the mediator and this is what we have observed in practice, so that the mediator calls the parties to the dispute without their clients by telegram and telephone, as well as sending a message to the parties to show them the address of the place of the mediation session as well as the date and request them bring every document useful in the resolution of the dispute, when they are present, meet with the parties and discuss with them the subject of the dispute as well as their requests and defenses and take what he deems appropriate to bring the views closer in order to reach a solution to the dispute; the mediator may also, after the consent of the parties, hear any person who believes in hearing it useful to settle the dispute and notify the judge of all the difficulties encountered in his duties (Civil and Administrative Procedures Law.2008.A 1001), and the mediator shall be impartial during the mediation sessions as his main task is to bring the views of the parties closer together (Ahmed, 2007/2010, p. 69) , he is not required to be knowledgeable about the legislation, jurisprudence and jurisprudence of the judiciary, he is successful and easy, he has to listen well, he has to be proficient in analysis, he has to be wise and good management (Trari, 2009, p. 563) , it is committed to keeping the secret toward the secret of (Civil and Administrative Procedures Law.2008.A 1005) the alghero is that the mediation sessions and what is done inside them are confidential and unannounced and the public is not entitled to attend the mediation sessions as is the case in litigation. in addition, the statements or concessions made during the mediation session in order to reach the settlement agreement remain confidential and cannot be invoked before the trial court in the event of failure of mediation, i.e. the judge returns from the beginning. this gives an incentive and encourages the resort to mediation and ensures that the parties do not use any waiver or authorization made during the mediation sessions before the trial judge (Ahmed, 2007/2010, p. 69).

3.2.The end of mediation as an alternative way to resolve the conflict

In this request, we address the procedures of the third and fourth stages through which mediation can be concluded.

3.2.1. Third phase procedures

When the mediator terminates his mission, unless it is terminated by an order of the judge automatically or at the request of the litigants, the legislator stipulates that the mediator shall notify the judge (Civil and Administrative Procedures Law.2008.A 1003) in writing in the event of an agreement or lack of agreement, in general, mediation may end by the judge's order on his own initiative or at the request of the litigants or in case of non-attendance one of the opponents of mediation sessions or reaching an agreement that resolves the dispute and finally not reaching an agreement that satisfies the parties.

termination of mediation by the judge

Mediation can be terminated by the judge automatically if he considers that mediation cannot reach a resolution of the dispute because of the impossibility of its proper conduct or if the mediator requests its termination or if the litigants so request (Civil and Administrative Procedures Law.2008.A 1002).

end of mediation thanks to the mediator

If the mediator reaches the settlement of the dispute in whole or in part, he shall send to the judge a written report containing the minutes of the settlement agreement signed by the parties to the dispute and the mediator.

mediation ends despite the efforts of the mediator

The mediator has not reached a settlement of the dispute due to the disagreement of the views of the parties and writes a written report stating the failure of the parties to reach an amicable settlement to resolve the dispute by virtue of a record of non-agreement.

end of mediation due to the absence of a litigant

Here the mediator did not reach a settlement of the dispute because of the absence of one of the parties despite being informed of the place and date of the mediation session, and here he writes a written report stating the failure of the parties to reach an amicable settlement to resolve the dispute because of the absence of one of the opponents is under a record of non-agreement due to the absence of one of the parties.

3.2.2. Procedures of the fourth stage

The end of mediation thanks to the efforts of the mediator is if he reaches the settlement of the dispute, here the judge sends a written report containing the minutes of the settlement agreement signed by the party and by the parties to the dispute, where the judge shall approve the minutes of the agreement under an unappealable order after returning the case before him on the date specified in advance, and this minutes (Civil and Administrative Procedures Law.2008.A 1003) shall be considered an executive document.

However, if the termination of the mediation by the judge on his own initiative is due to the impossibility of the proper conduct of the mediation, or if the mediator requests its termination or if the litigants so request, the case shall return to the session and the mediator and the litigants shall be summoned to it through the Registry Secretariat.

If the termination of the mediation is due to the mediator's failure to reach an amicable settlement to resolve the dispute due to the incompatibility of the views of the parties or because of the non-attendance of one of the parties despite being informed of the place and date of the mediation session, in the first case a report of disagreement shall be drawn up and in the second case a report of disagreement shall be drawn up due to the non-attendance of one of the parties.

We note that these two cases were not regulated by the legislator, which is the case of the failure of the parties to reach an amicable solution as a result of neglecting to follow up the mediation procedures, whether for not attending the mediation sessions or for lack of seriousness, the legislator did not decide sanctions against the litigants who agree to mediation and then neglect to follow it up, and he did not hurt in that because the absence of seriousness or absence leads to the failure of mediation and thus the loss of time, money and effort (brabara 2009, p. 531).

4.Conclusion:

In the end, as a conclusion to this study, it can be said that mediation is an alternative friendly way to resolve the dispute outside the judicial facility in which a person with the advantages and characteristics stipulated by law seeks to receive requests and views of the litigants to reconcile them in order to find a solution to a dispute under a record that has the status of an executive bond, and in this context the judge must offer the mediation procedure in all articles, However, it is only by accepting the litigants for mediation, except for what is presented to the commercial section, and the legislator also excluded the mediation procedure and it cannot be presented in family affairs and labor issues due to the existence of other mechanisms such as reconciliation and arbitration to contain their legislation to resolve and resolve these disputes, and mediation cannot be resorted to in everything that would prejudice public order, Also the lawsuits filed before the Specialized Commercial Court, which were stipulated by the legislator exclusively in accordance with Article 536 bis of the Civil and Administrative Procedures Law, these lawsuits within its jurisdiction are not subject to the general rules applicable to mediation and are not subject to the rules applicable to the jurisdiction of the commercial section, given that the legislator has subjected disputes within

the jurisdiction of the Specialized Commercial Court to the necessity of conducting reconciliation before filing the lawsuit before it under penalty of not accepting the lawsuit in form and thus excluding mediation, We have seen those who believe that mediation is permissible in the administrative article, but we believe that it is excluded in the administrative article due to the specificity and nature of the administrative dispute.

Mediation may end with its success thanks to the mediator's endeavors and his reach to settle the dispute by finding a solution that satisfies all parties, and here he must send to the judge a written report that includes the minutes of the settlement agreement signed by him and by the parties to the dispute, the judge approves it under an order that is not subject to appeal, and this record is an executive bond, If mediation efforts fail for any reason, such as if the mediation is terminated by the judge on his own initiative due to the impossibility of the proper conduct of the mediation, or if the litigants request it, or if the mediator requests its termination, here the case returns to the session and the mediator and the litigants are summoned to it through the Registry,If mediation efforts fail because the mediator does not reach an amicable settlement to resolve the dispute due to the lack of consensus of the views of the parties or because of the absence of one of the parties, the mediator shall draw up either a record of disagreement or a record of non-agreement due to the absence of one of the parties, as the case may be.

Through the above and through the study of the topic, the following results can be recorded:

We found that mediation contributes to reducing pressure on the ordinary judicial authorities and reducing the backlog of cases, especially when the legislator stipulated the obligation to mediate in cases submitted to the commercial department.

We also concluded that mediation has a major role in the cohesion of Algerian society through the role played by the judicial mediator in order to reach an amicable solution within the framework of consensus and the consent of the opponents.

We also concluded that in the event of the failure of the mediation and for any reason, especially in the absence of the opponent or the parties or the lack of seriousness of the litigants, it leads to additional losses and high costs such as judicial fees and lawyers' fees.

We found that among the reasons for the refusal of the majority of litigants to resort to mediation were fear of confrontation and their adherence to their demands, defenses and the right to compensation.

We also found that one of the reasons why the majority of litigants refuse to resort to mediation is fear of the additional expenses that must be paid to the mediator if the mediation is accepted.

We also found among the reasons for the failure of mediation the exclusion of the lawyer and his active role in resolving the dispute from the mediation session.

Through studying the subject and in the light of the previous results, some suggestions can be mentioned that may contribute to the success and effectiveness of mediation:

The legislator must provide for mediation in all articles and exclude the consent of the parties, as he did with regard to cases before the commercial department, with the possibility of involving litigants in the selection of the judicial mediator and even the possibility of dismissing the mediator if necessary.

In order to ensure the success of mediation, the legislator must provide for the fine of the person responsible for the failure of mediation due to absence or lack of seriousness in order to increase the effectiveness of judicial mediation.

The legislator must provide for mediation agreement that precedes the submission of the dispute to the judiciary in advance as an alternative way to resolve the dispute, as is the case in some countries, which has proven successful and effective.

Within the framework of increasing the effectiveness and role of mediation to resolve disputes, the legislator must organize mediation structurally and legally and involve civil society and its role in educating citizens to adopt alternative methods of dispute resolution, especially mediation.

In order to support mediation and give it the ability to resort to it by the litigants, the legislator must include it free of charge, just like resorting to the judiciary, since mediation expenses are often the reason for rejecting mediation by the litigants.

The legislator must involve the defense team in the mediation process because the lawyer plays an important role in resolving the dispute based on the trust that binds him to his client and his role in convincing him and clarifying all the ambiguities he feels during the mediation session.

The legislator must explicitly define his position on the issue of mediation in the administrative dispute in order to ward off any judicial or jurisprudential dispute.

Method and Methodology

This study adopts a doctrinal legal research methodology, combined with an analytical approach. The primary sources consist of the Civil and Administrative Procedure Code of 2008 and its 2022 amendments, supported by complementary statutes and judicial circulars. Secondary sources include doctrinal writings, jurisprudential interpretations, and comparative analyses with international ADR frameworks.

The methodology followed these stages:

1. Textual Analysis – Examination of statutory provisions governing mediation, particularly Articles 534 and 994 of the Code of Civil and Administrative Procedure.
2. Comparative Perspective – Review of academic literature and international ADR practices to contextualize Algeria's legislative reforms.
3. Analytical Evaluation – Assessment of the advantages, disadvantages, and legal limitations of judicial mediation, supported by case illustrations and theoretical insights.
4. Critical Reflection – Identification of cultural, institutional, and procedural factors that influence mediation's effectiveness.

Findings

The study revealed several important findings:

1. Legislative Evolution: Mediation in Algeria has evolved from traditional informal practices into a codified judicial mechanism, reflecting both societal continuity and legal modernization.

2. Scope of Application: Mediation is applicable across a broad range of civil and commercial disputes but explicitly excluded from family law, labor issues, and matters affecting public order. This exclusion reveals both a cautious approach and recognition of specialized dispute-settlement systems in these fields.

3. Judicial Role: The reforms impose an obligation on judges to propose mediation at the earliest stages of proceedings. This mandatory procedural step enhances awareness but is limited by litigants' acceptance.

4. Advantages: Mediation offers speed, reduced costs, confidentiality, and preservation of social and commercial relationships.

5. Challenges: Effectiveness is hindered by lack of awareness among litigants, insufficient training of mediators, and the absence of a strong institutional culture supporting ADR. Moreover, enforcement of mediated settlements remains partially dependent on judicial oversight, limiting autonomy.

6. Prospects: While the legislative reforms represent progress, Algeria's mediation system requires institutional strengthening, systematic mediator accreditation, and wider social acceptance to achieve its intended impact.

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Ethical Considerations

The study is based on publicly available legislative texts and scholarly literature. No human participants or sensitive data were involved. All references and sources have been duly acknowledged to ensure academic integrity.

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Conflict of Interest

The authors declare no conflict of interest.

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