



CREATION OF SPECIALIZED COMMERCIAL COURTS AND THEIR IMPACT ON FOREIGN INVESTMENT IN ALGERIA

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Abstract:

Beyond Doubt, The Economic Development That The World Is Undergoing, Particularly In The Field Of The Digital Environment And The Effects Thereof On International Trade, The World Of Finance And Business, Has Surely Led To An Increase In The Number Of Commercial Companies And Their Access In The Field Of Investment. In Consequence, There Were Newly Created Commercial Transactions That Did Not Exist In Previous Eras, Which Necessitated The Urgent Need To Study Them And Be Familiar With. In This Respect, This Led The Algerian Legislator To Create Specialized Commercial Courts That Grant Guarantees And Privileges To Foreign Investors.

Keywords: *Specialized Commercial Courts; Investment; Specialized Judiciary; Conciliation.*

INTRODUCTION

Actually, In The Midst Of The Economic And Social Development That Algeria Is Undergoing, Together With The Resulting Commercial Transactions And Complex Disputes Requiring Specialists For Settlement Purpose, In Order To Adapt The Provisions Of The Code Of Civil Procedure Related To Commercial Judiciary, So As To Contribute To The Consolidation Of Judicial Security Required In The Field Of Improvement Of The Business And Trade Climate In The Country, Thus Reflecting The Aspirations Of The Government And Its Keeness To Strengthen The Existing Guarantees Under The New Investment Law, Being In Line With Current Economic Data, It Was Decided By The Government To Create Specialized Commercial Courts To State In Such Disputes Related To The Field Of Business And International Trade Represented By Foreign Investment.

Undoubtedly, The Specialized Judicial Work Has Shown To Be One Of The Most Important Components Constituents Of Economic And Commercial Development, Which Requires Its Activation To Include A Set Of Judicial Elements, Represented By The Ability To Deal Arbitratively With Commercial Disputes Characterized By Speed And Confidence, Through The Speed Of Resolving The Same Without Slowness Or Looseness Because Of Their Impact On The Economic Cycle Of Any Country Hasting To Attain Economic Development In Light Of The Current Globalization, Which Necessitated The Creation Of A Commercial Judiciary Independent Of The Civil One.

Besides, This Study Focuses On The Creation Of Specialized Commercial Courts As Per The Amended Law No.22-13 Of The Code Of Civil And Administrative Procedures, Together With Its Impact On Foreign Investment In Algeria.

In The Light Of Which, The Following Problem Can Be Posed:

How Effective Are Specialized Commercial Courts In Developing The Foreign Investment Climate In Algeria?

In Order To Answer This Problem, We Adopted The Following Plan:

- **First Chapter:** Specialized Commercial Courts In Algeria
- ☞ **First Section:** Development Of Commercial Judiciary In Algeria
- ☞ **Second Section:** Structural And Organizational Framework Of Specialized Commercial Courts
- **Second Chapter:** Guarantees Of Specialized Commercial Courts To Stimulate Foreign Investment In Algeria
- ☞ **First Section:** Towards A Specialized Judiciary That Encourages Attracting Foreign Investment
- ☞ **Second Section:** Resort To Reconciliation And Settlement Of Disputes In A Short Time



- CONCLUSION

First Chapter: Specialized Commercial Courts In Algeria

Since The Beginning Of The Occupation In 1830, France Has Subjected Algeria To Its Judicial System, Considering It One Of Its Provinces, Including The Existence Of Specialized Commercial Courts, Which Were Recognized As Per The Royal Order Issued In 1563¹.

Through This Chapter, We Will Address The Development Of Commercial Justice In Algeria Through The First Section, Whilst The Second Section Will Address The Structural And Organizational Framework Of These Courts.

First Section: Development Of Commercial Judiciary In Algeria

As It Has Previously Been Pointed Out That The State Of Algeria Know The Specialized Commercial Courts And Was Working Therein, Whereat Four Courts Of This Type Were Created And Have Been Allocated To Adjudicate Commercial Disputes, Whereat These Courts Are Located In Algiers, Oran, Constantine, And Annaba².

Nevertheless, Upon The Abolition Of The French Judicial Organization In 1963 As Per The Decree No.63-69 Dated 01st March 1963, Pertaining To The Organization And Operation Of Commercial Judicial Entities, As It Stated In Its First Article As Follows: “Commercial Courts Shall Be Abolished Starting From The Date Of Publication Of This Circular³”.

Subsequently, The Commercial Section Was Created At The Level Of The First Instance Courts Stating In Disputes Of A Commercial Nature. Therefore, It Is Understood That The Algerian Legislator Abolished The Duplication Of Jurisdiction With Respect To Commercial Disputes, And Was Then Directed Towards The Unity Of The Judiciary After Abolishing The Commercial Courts And Adopting The Socialist System, Which Was Based On The State Monopoly Of All Facilities.

Nonetheless, After The Promulgation Of Law No.08-09 Containing The Code Of Civil And Administrative Procedures Dated 25th April 2008, Provision Was Made For The Creation Of Specialized Poles, And Article 32, Paragraph 2 Of The Law No.08-09⁴ Stipulated That: “They Can Also Be Formed From Specialized Poles”.

Accordingly, It Is Understood That The Necessity And Economic Need Incited The Legislator To Create These Specialized Poles, Whereat They Are Convened In Some Courts To Consider Only Disputes Related To International Trade, Bankruptcy And Judicial Settlement, Disputes Related To Banks, Intellectual Property Disputes, Maritime And Air Transport Disputes And Insurance Disputes⁵.

More To The Point, The Headquarters Of The Specialized Poles, Together With The Judicial Bodies Affiliated Thereto Shall Be Determined By Regulation, And The Specialized Poles Shall State Through A Collective Composition Of Three Judges, As The Ways Of Applying This Article 32 Of The Code Of Civil And Administrative Procedures, If Necessary, Shall Be Determined By Regulation⁶.

¹ - Ripert, G., & Roblot, R. (2002). “Treaty of commercial law, Merchants, Acts of business, Commercial enterprise, Business assets, Commercial companies”. Paris.

²- Hanane Maza, Said Boukerour, “The legal system of the Specialized Commercial Court”, Journal of Comparative Legal Studies, Vol. 09, No. 01, 270.

³- Executive Decree No.63-69 dated 01st March 1963, pertaining to the organization and operation of commercial judicial entities, Official Gazette issued on 03rd March 1963, No. 27.

⁴- Law No.08-09 dated 18th Safar 1429, corresponding to 25th February 2008, consisting of the Code of Civil and Administrative Procedures, Official Gazette issued on Rabi Ath-Thani 1429, corresponding to 23rd April 2008, No.21.

⁵- Paragraph 07 of Article 32 of the Law No.08-09, op.cit.;

⁶- Paragraph 09 of Article 32 of the Law No.08-09, op.cit.;

Notwithstanding The Efforts Of The Algerian Legislator To Create A Specialized Judiciary For Commercial Disputes That Have Economic Weight And Burden, Represented By Specialized Poles That Have Not Seen The Light On The Day And Have Yet To Be Installed.

Nonetheless, The Algerian Legislator Has Recently Created, By Law No.22-13 ⁷, Specialized Commercial Courts, To Be Precise, The Allocation Of An Independent Judicial Entity Dealing With Commercial Matters Provided For By Law No.22-13 Under Article 536bis Of The Code Of Civil And Administrative Procedures, As Follows:-

- “Intellectual Property Disputes;
- Disputes Of Commercial Companies, Mainly Disputes Of Partners And Resolution And Liquidation Of Partners;
- Disputes Of Banks And Financial Institutions With Traders;
- Maritime, Air Transport And Insurance Disputes Related To Commercial Activity;
- Disputes Related To International Trade”.

In Fact, The Objectives Of The Creation Of Specialized Commercial Courts ⁸ Are To:

- Enable The Commercial Judiciary To Play A More Effective Role In The Field Of Trade And Investment;
- Contribute To The Embodiment Of Judicial Security Required To Improve The Business And Commercial Environment;
- Ensure Accuracy And Effectiveness In The Provisions In Which Merchants, Who Have Extensive Knowledge Of Commercial Issues, Will Participate In The Adjudication Of Their Disputes.

Second Section: Structural And Organizational Framework Of Specialized Commercial Courts

Unquestionably, The Structural Framework Of The Specialized Commercial Courts Is Stipulated Under Article 536 Bis.2⁹ That: “The Specialized Commercial Court Shall Be Composed Of Sections Presided By A Judge And Assisted By Four (4) Assistants Who Have Extensive Knowledge Of Commercial Matters And Have A Deliberative Opinion, Who Are Selected According To The Conditions And Methods Specified By The Regulation.

The Court Shall Be Correctly Held, In The Absence Of One Of The Assistants.

In The Absence Of Two (2) Or More Assistants, They Shall Be Replaced, Respectively, By One (1) Or Two (2) Judges”.

Through The Provisions Of The Above-Mentioned Article, It Is Understood That The Algerian Legislator Has Adopted A Mixed Composition Of The Court, I.E. A Combination Between Regular Judges And Assistants, With The Intention That The Assistants Are Those Who Are Familiar With Commercial Matters, But They Are Not Required To Have The Status Of A Merchant Or Others, Provided That They Have Extensive Knowledge Of Commercial Matters, And They Can Be Personalities Known For Their Comprehension And Knowledge Of Commercial Matters.

In The Absence Of Assistants, They Can Be Replaced By Regular Judges.

As For The Issue Of Identifying Assistants, It Was Regulated By The Legislator Through The Executive Decree No.23-52 Dated 14th January 2023; However, The List Of Assistants Is Prepared Through This Executive Decree And Updated By A Committee Presided By The President Of The Court Of Justice, Which Is Located In The Jurisdiction Of The Specialized Commercial Court Or Its Representative, In Addition To The Membership Of The President Of The Specialized Commercial Court, The Presidents Of The Chambers Of Commerce Of Courts Of Justice Under The Jurisdiction Of The Specialized

⁷- Law No.22-13, dated 13th Dhu Al Hijjah 1443, corresponding to 21st July 2220, as amending and supplementing the Law No.80-09, dated 18th Safar 1429, corresponding to 25th February 2008, consisting of the Code of Civil and Administrative Procedures, Official Gazette No.48.

⁸- Mansour Youssef, “The acronym for the provision of Specialized Commercial Courts”, a study Day held on 18th December 2022 at the palace of Ain Defla Court of Justice.

⁹- Vide Article 536 Bis 2 of the Law No.22-13, op.cit.

Commercial Court, And The Presidents Of Sections Of The Specialized Commercial Court, Represented By The Public Prosecution, By The Attorney General Or One Of His Assistants At The Court Of Justice, Which Is Located In The Jurisdiction Of The Specialized Commercial Court.

As For The Organizational Framework Of Specialized Commercial Courts, The Commercial Court Is Divided Into Sections Which Are Determined By The Presiding Judge Upon A Consultation With The Public Prosecutor, Taking Into Account The Nature And Volume Of Judicial Activity, As Per Stipulated By Article 635 Bis 3 Of The Law No.22-13.

First: Determination Of The Number Of Sections Of The Court Based On The Criterion Of The Nature Of Activity

In Case We Rely On The Criterion Of The Nature Of The Activity, We Have No Choice But To Retain The Idea Of The Traditional Division Of The Courts, And It Is Inevitable To Say That It Is The Logical Idea And The Closest To The Right Due To The Multiplicity Of Disputes Before The Commercial Court On The One Hand, And The Difference Between The Legal Texts Regulating The Disputes Exposed Before Them On The Other Hand.

In Pursuance With The Provisions Of Article 536 Bis 4 Of The Code Of Civil Procedures, We Have Concluded To Divide The Commercial Court Into 08 Sections:-

- Section Of The Intellectual Property Disputes;
- Section Of The Commercial Company Disputes;
- Section Of The Bankruptcy Disputes And Judicial Settlement;
- Section Of The Disputes Of Banks And Financial Institutions With Traders;
- Section Of The Maritime Disputes;
- Section Of The Air Transport Disputes;
- Section Of The Insurance Disputes Related To Commercial Activity;
- Section Of The International Trade Disputes;
- Section Of Specialized In Adjudicating Orders Of Emergency Interim Proceedings And Problems Related To Execution.

Nonetheless, Despite The Logic Of The Previous Division, It Cannot Be Applied To All Commercial Courts, And In The Event It Would Be Applied To Courts With Special Headquarters, In Respect Such As Constantine And Oran, It Is Impossible That The Number Of Its Sections Exceeds 06 Sections As Maximum Due To The Requirement By The Legislator Not To Exceed The Number Of Assistants 20 Assistants. As Consequence, We Propose The Following Division¹⁰:

- Section Of The Intellectual Property Disputes;
- Section Of The Bankruptcy Disputes And Judicial Settlement;
- Section Of The Disputes Of Banks And Financial Institutions With Traders;
- Section Of The Air And Maritime Disputes;
- Section Of The International Trade Disputes And The Insurance Disputes Related To Commercial Activity;
- Section Of Emergency Interim Proceedings And Problems Related To Execution.

Second: Determination Of The Number Of Sections Of The Court Based On The Criterion Of The Volume Of Activity

In Case We Relied In The First Division On Logic Or What Should Be, In This Case, The Matter Differs And We Had To Refer To Practical Reality And Study The Ordinance No.06/24 Issued By Mrs. Toumi Zohra, President Of The Commercial Court In The Province Of Setif¹¹, The Commercial Court Was Divided Into Two Sections:-

¹⁰- Vide Article 02 of the Executive Decree No.23/53, op.cit.

¹¹- Ordinance No.06/24, dated 02nd January 2024, pertaining to the determination of the number of divisions of the court, distributing tasks to judges and determining the dates of holding sessions.

First Section Deals With The Consideration Of:-

- Disputes Of Commercial Companies;
- Disputes Of Banks And Financial Institutions;
- Disputes Of International Trade;
- Disputes Of Intellectual Property;
- Disputes Of Bankruptcy Disputes And Judicial Settlement;
- Disputes Of Maritime, Air Transport And Insurance Related To Commercial Activity.

Second Section It Is Concerned With The Consideration In The Emergency Interim Proceedings And Problems Related To Execution.

In Light Of Which, It Is Noted On This Division To Be Illogical And Put Pressure On The Judge, And The Composition As A Whole, Because Given The Modernity Of Commercial Courts And The Lack Of Cases Compared To The State Of The Situation Will Be In The Future, It Is Advisable To Reconsider This Division, In Such A Manner That The Adjudication Of Disputes Will Continue For Hours Late ¹².

In General, From A Realistic Point Of View, Not All The Blame For The Improper Division Falls On The Presiding Judges, As Much As Due To The Mistake Of The Legislator And His Contradictions, As The Issue Has Shown To Be Strange That He Takes Into Account, When Creating Any Judicial Body, Several Criteria, Including The Volume Of Activity, And Even Though This Criterion Was Alike Taken Into Account When Determining The Number Of Court Divisions, It Was Not Taken On Serious Basis.

Second Chapter: Guarantees Of Specialized Commercial Courts To Stimulate Foreign Investment In Algeria

In Light Of Creating Specialized Commercial Courts, We Find That The Algerian Legislator Has Created A Legal Framework To Provide A More Attractive Investment Environment To Attract Economic Operators, As These Courts Have Granted The Foreign Investor Several Guarantees, The Fact Of Which Will Be Addressed By Us Through This Discussion.

First Section: Towards A Specialized Judiciary That Encourages Attracting Foreign Investment

The Meaning Here Is That The Judicial Authority, Taking Into Consideration Commercial And Economic Disputes, Is To Some Extent Specialized In Such Matters And Is More Familiar With.

In Fact, Disputes Related To The World Of Finance, Business And Trade Are Often Knotty And Complex, The Fact Of Which Has Become Beyond The Jurisdiction And Ability Of The Current Ordinary Judge; In A Consequence, The Recent Legal Amendment Distinguished This Type Of Disputes With An Independent And Separate Section From The Existing Commercial Section, As This New Formation Is Represented By Specialized Commercial Courts To Which The Task Of Adjudicating Disputes Between Merchants, Disputes Involving Banks, Disputes Related To International Trade, Insurance, Supply Contracts, Maritime Transport Contracts, And The Like, In Order To Resolve These Complex Disputes That Require Specialized Training, With The Required Efficiency And Necessary Speed.

In This Regards, The Algerian Legal Expert “Abdelrahman Salah”, Said: “The Recent Amendment To The Code Of Civil And Administrative Procedures, To Introduce Specialized Commercial Courts, Is An Attempt By The Algerian Legislator To Create A Specialized Judiciary That Responds To The Aspirations Of Economic Progress Envisaged By The Country, As These Courts Will Be Managed By Specialized And Experienced Judges In Commercial Justice, Who Are Formed At The Level Of Cases Brought Before Them, As This Will Allow To Accelerate The Pace Of Adjudication Of Most Commercial Disputes With Quality And Efficiency, Whatever Their Complexity Levels” ¹³.

More To The Point, The Same Legal Expert Pointed Out That There Are Several Types Of Cases In The Judicial Profession That Require Specialized Training And Very Broad Knowledge That Cannot Be

¹²- Article No.01 of the Ordinance No.06/24, op.cit.

¹³- <https://elayemnews.dz>, viewed on 05th July 2024 at 09h00

Provided In General Training. At The Faculties Of Law In Algerian Universities, Money Law, Business And Commercial Law Are Taught, But This Remains Insufficient, Because It Needs A Mix Between Theoretical And Applied; Likewise, It Needs A Broad Understanding Of Laws, Which Needs Specialized Training For A Judge, So That He Can Optimally Control This Type Of Disputes, Seeing That This Training Is Performed Through The Higher School Of Judiciary, Which Studies These Specialties As Subjects, In Addition To Training Courses And Subsequent Field Internships That Alike Exist, That A Judge Must Be Subjected To, Who Chooses To Work In These Courts In Order To Deepen His Knowledge In Such Field¹⁴.

More To The Point, Minister Of Justice Keeper Of The Seals, Abderrachid Tebbi, Also Stressed That The Creation Of Specialized Commercial Courts Will Contribute To Strengthening The Dynamism Of Investment And Trade, Along With Strengthening The Guarantees Approved By The State In The New Investment Law.

In A Speech Read On His Behalf By The Director Of Civil Affairs And The State Seal Of The Ministry, Mohammed Ali Salah, At The Opening Of The Training Day Pertaining To Specialized Commercial Courts, The Minister Said That Their Creation Came “Within The Framework Of The Comprehensive Endeavour Of The President Of The Republic Aimed At Strengthening The Dynamism Of Investment And Trade For The Purpose Of Achieving Judicial Security For Litigated Investors And Traders Through Specialized Courts Created To Adjudicate Disputes Related To Their Activity¹⁵”.

Above And Beyond, This Type Of Courts Will Give A Strong Boost To The National Economy, As It Will Contribute To Attracting Major Foreign Investments And Fetching Capital, In Addition To Sending Messages Of Reassurance To Investors Abroad And Inside The Country; Similarly, This Will Serve As An Important Step Towards Creating A Favourable And Attractive Environment For Foreign Investors, And A Window To Support National Projects And Institutions.

On Similar Basis, Another Important And Positive Thing, For The Creation Of Commercial Courts Is To Create A Favourable And Attractive Climate For Investment, Which Ensures Neutrality And Speed In Resolving Investment Disputes, As This Constitutes The Biggest Obstacle For Investors, Because The Presence Of Such Type Of Courts Inside The Country, Is A Reassuring Message And Satisfaction In The Same Investor, Whether Local Or Foreign One, Because The Latter Will Ensure The Presence Of Competent Bodies That Will Deal With Resolving And Addressing His Grievance Or Complaint In A Short Time, Efficiently And Transparently, The Fact Of Which Makes Him Practice His Business Or Start His Investment With Full Comfort And Confidence In The Judiciary.

Second Section: Resort To Reconciliation And Settlement Of Disputes In A Short Time

In Real Fact, The Amicable Settlement Of Commercial Disputes Has Shown To Be One Of The Positive Points Addressed By This Amendment, Which Distinguishes The Specialized Commercial Court, Whereat The New Amendment In Article 536 Bis 4 ¹⁶ Thereof Recognized That The Conciliation Procedure Must Be Adopted Before Filing Any Lawsuit Before The Specialized Commercial Court.

Through Mandatory Conciliation Before Any Action In Front Of The Specialized Commercial Court, A Procedure That Would Minimize Disputes And Settle Them Within Reasonable Terms, Whereat Article 536 Bis 4 ¹⁷ States That The Registration Of The Case Is Preceded By A Conciliation Procedure, Which Is Carried Out At The Request Of One Of The Opponents, Submitted To The President Of The Commercial Court, Who Appoints Within 05 Days, One Of The Judges To Carry Out The Conciliation Procedure Within A Period Not Exceeding 03 Months.

In Case Of Failure Of The Attempt To Reconcile, The Lawsuit Is Filed Before The Specialized Commercial Court With An Application Instituting Proceedings Under Penalty Of Not Acceding The

¹⁴- Op.cit.

¹⁵- <https://news.radioalgerie.dz/ar/node/21838>, viewed on 15th August 2024 at 19h00

¹⁶- Article 536 Bis 4 of the Ordinance No.13-22

¹⁷- Same Article of the same Ordinance.

Lawsuit In The Form Of The Minutes Of The Conciliation, And The Case Is Adjudicated Before The Specialized Commercial Court With A Judgment That Can Be Appealed In Front Of The Court Of Justice, Which Is Of Great Legal Importance, Consisting In Encouraging Alternative Means Of Dispute Resolution Through Flexible Procedures That Help To Endeavour Settling Amicably Before Resorting To Litigation, Which Would Alleviate The Work Of Judges And Save Time, Effort And Money For The Disputing Parties.

CONCLUSION

In The Light Of The Facts Set Out Above, We Find That The Algerian State Has Sought To Establish Specialized Commercial Courts In Order To Strengthen The Business Sector And Embody An Investment Environment That Contributes To Attracting Investors Thereto, In Addition To Preserving Rights And Building Trust Between The Judiciary And The Investor.

In Virtue Of Which, We Find That One Of The Advantages Of Specialized Commercial Courts:-

- Flexibility In Dealing With Various Business Issues;
- Assistants Being Elected Traders By The Traders Themselves Actually Means Trust Among The Litigants;
- The Predominance Of Conciliation So That The Presence Of Merchants In The Judicial Composition Reflects Positively On The Performance Of Judges, Through The Appointment Of Agents And Conciliators;
- Bringing The Points Of View Between The Litigants Closer And Trying To Reconcile Between Them Before Submitting The Dispute To The Judiciary.

Above And Beyond, This Aims To Preserve The Continuation Of Commercial Relations, Including International Trade, In Light Of The Consecration Of The New Investment Law, The Legislator Is Under The Procedure Of Filing A Lawsuit Or Private Commercial Dispute To The Specialized Commercial Court By Conducting Conciliation.

Furthermore, For Strengthening Purpose Of The Role Of Specialized Commercial Courts, We Propose In Conclusion The Following Recommendations:-

- The Need To Conduct Training And Educational Courses For Judges To Train Them In The Field Of Business, Economics And Investment, Whereat Their Training Is Specialized In Such Fields;
- The Creation Of Appellate Commercial Courts To Consider Appeals Issued By The Specialized Commercial Courts Of First Instance As The Second Degree Of Litigation, Instead Of Appealing These Judgments To The Court Of Justice, All This To Ensure The Privacy Of Foreign Investor Disputes;
- The Obligation To Establish Commercial Courts That Adjudicate Criminal Cases, Or At Least The Existence Of A Special Section At Each Court, Instead Of Assigning The Issue Of Adjudication To Ordinary Criminal Courts;
- Reconsideration Of The Designation Of Commercial Courts And Change Them To Economic Courts.

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