

Specialized Commercial Courts in the Algerian Legislation

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Abstract---Due to the nature and frequency of commercial disputes, the Algerian legislator has created specialized commercial courts since the judiciary is an effective pillar for their resolution. Similar to other comparative legislations, it was achieved through Law No. 22/13, amending the Civil and Administrative Procedure Code, Law No. 22/07 on judicial division, and Organic Law No.22/10 on judicial organization, which introduced specialized commercial courts to treat various commercial disputes.

Keywords---Specialized Commercial Courts, commercial disputes, the Civil and Administration Procedure Code, commercial code.

Introduction

The Global economic developments have shifted the role of the state from being an interventionist to a regulatory one. Similarly, the Algerian state's policy has moved away from public monopoly over all other sectors and extended intervention in the economy towards redefining the relationship between the state and its economy, by reducing the state's involvement and nearly withdrawing from the field since 1996.

This change required a clear and comprehensive legal Framework to develop its economy and to attract investments to the state, and then to augment the national income. The constitutional amendment of 2020 boosted this through embedding the freedom of trade investment, and entrepreneurship within this law under Article 61. Hence, the principles of freedom in trade, industry, investment and support for private property were clearly enshrined.

The essence of commercial freedom lies in development speed and credit, which lead to an increase in new commercial transactions; therefore, diverse disputes field between its parties. The complexity and

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volume of commercial disputes, as well as the inability of the ordinary person. The commercial division handles the complexity and slowness of ordinary judicial procedures. Yet, these parties often resort to commercial arbitration due to its speed and effectiveness. Likewise, other legislations, the Algerian legislation founded specialized commercial courts through law N° 22/07 of May 5/2022, related to the judicial division. This latter provides for the establishment of specialized commercial courts to deal with various commercial disputes, supported by the organic Law N° 22/10, related to judicial organization; in addition to Law N° 22/13 amending the Civil and Administration Procedure Code, aiming to expedite the resolution of commercial disputes.

The present study addresses the following research problem

Is the adoption of specialized commercial courts in Algeria merely an initiation of the French and other legal systems, or is it an independent approach towards judicial specializations in Algeria?

This main question raises the following sub-questions:

- What is the composition of the commercial courts?
- What are the specific characteristics of commercial litigation?
- What innovations were introduced by Law N° 22/13 regarding commercial litigation procedures?

Objectives of the study

The present research sought to achieve these objectives:

- Highlighting the historical origins of the emergence of the specialized commercial court.
- Explaining the functioning of the courts, outlining their structure and positions.
- Clarifying the territorial and content subject matter jurisdiction mandated to the specialized commercial courts.
- Discussing the updated procedures enacted by Law N° 22/13, explaining the peculiarities of the commercial disputes.

As an attempt to answer these questions and achieve the goals, we adopted the analytical method to examine the legal texts related to the specialized commercial courts. The article is then divided into two main sections.

1-Section one is devoted to the legal framework of the specialized commercial courts.

2-Section two is devoted to the specificity of commercial disputes.

Section one: the legal framework of the specialized commercial courts

These specialized commercial courts were founded by Article 6 of Law N° 22/07, related to judicial division, which declares:

¹ "Specialized commercial courts will be established within the jurisdiction of certain judicial councils." This article implies that the establishment of these courts is restricted to certain judicial councils, determined by regulation: the Executive Decree N°23/53 defines the territorial jurisdictions of these courts.²

The establishment of these courts was also reaffirmed in Article 28 of Organic Law N°. 22/10,³ and even Law N° 22/13 amends the Civil and Administrative⁴ Procedure Code in Chapter Four titled "Commercial Section and Specialized Commercial Court".

¹ Law No. 22-07 of May 5, 2022, on **judicial division**. *Official Gazette of the People's Democratic Republic of Algeria*, No. 32, May 14, 2022.

² Executive Decree No. 23-53 of January 14, 2023, **determining the territorial jurisdiction of specialized commercial courts**. *Official Gazette of the People's Democratic Republic of Algeria*, No. 02, January 15, 2023.

³ Organic Law No. 22-10 of June 9, 2022, on **judicial organization**. *Official Gazette of the People's Democratic Republic of Algeria*, No. 41, June 16, 2022.

⁴ Law No. 22-13 of July 12, 2022, amending and supplementing Law No. 08-09 of February 25, 2008, on **the Code of Civil and Administrative Procedure**. *Official Gazette of the People's Democratic Republic of Algeria*, No. 48, July 17, 2022.

Section two: Specialized Commercial Court, in Articles 536 bis to 536 bis. Historical origins of the Specialized Commercial Courts

The specialized commercial courts date back to the medieval and modern eras. Yet, the ancient era only witnessed the emergence of some commercial practices and rules.⁵ In ancient civilizations, Egyptian and Babylonian societies used partnership contracts of partnership, interest-bearing loans, deposits, and even agency with commission. The Code of Hammurabi (Articles from 100 to 107) indicated these systems. They also knew banking operations, pledges, and certain services. Elsewhere, the Phoenicians and Greeks developed maritime trade systems related to joint loans and high-risk loan systems. The Romans despised trade and considered it a profession for slaves. This led to the creation of the Law of the Nation (*Jus Gentium*), which was free from formalities and complexities and facilitated commercial activities. They further established bankruptcy rules⁶, which was applied to civilians and traders, and even the debtors if the assets were insufficient.

The historical origins of the commercial courts date back to the medieval era. After the fall of the Roman Empire and the Crusades, trade expanded in the 11th century. Merchant guilds developed. Commercial customs in Italy. The harsh procedures of feudal courts pushed these guilds to elect respected and experienced merchants, so-called consuls⁷. They were elected to settle disputes by prevailing customs and forming consular courts. The innovative system was spread across Western Europe.

In the modern era, France issued the Royal Ordinance of 1563, which regulated consular and merchant courts. Two Royal Decrees, which were initiated by Minister Colbert under Louis XIV, followed it: the 1679 Decree about Land Trade (Jacques Savary Code) and the 1681 Decree on maritime trade.

After the French Revolution (1789), guild systems were canceled, and the Chappetier Law (1791) imposed the principle of free trade and industry. Yet maritime courts were cancelled,⁸ whereas the commercial courts were maintained. The French Commercial Code of 1807 (Articles 631-637) provided an independent, specialized commercial judiciary by allocating competence over disputes concerning the commercial transactions to commercial transactions to commercial courts. Article 638 excluded disputes about merchants' private lives.⁹

In Algeria, Commercial Courts initially remained forcibly until March 1, 1963. Ordinance N° 63/69 transferred all civil and commercial disputes to the ordinary judiciary, which reflected the principle of equality in front of the law and the adoption of a unified judicial system. This situation was continued by ordinance N° 66/154, including the repeated Civil Procedure Code.

Law N°08/09 marked the turning point in civil and administrative procedure.¹⁰ In the article. Article 32 (paragraphs 1-2) states that « the Court is the judicial authority of general jurisdiction and is composed of sections that may also include specialized divisions... » Paragraph 3 clarified its competence: « The court decides on all cases, particularly, civil, commercial, maritime, social, real estate, and family matters within its territorial jurisdiction ». Therefore, ordinary courts retained general jurisdiction over all disputes, upheld by internal sections for facilitated management. The principle maintains that subject-matter jurisdiction rules are of public order and cannot be conceded by agreement and can be raised by the judge at any stage of proceedings (Article 36 of Law N° (08/09).

⁵ Ben Ghanem, A. (2005). *Concise guide to commercial law and business law* (p. 53). Dar Moufam, Algeria.

⁶ Fodil, N. (1999). *Algerian commercial law: Commercial activities, traders, commercial premises* (3rd ed., pp. 21–23). University Publications Office, Algeria.

⁷ Taha, M. K., & Banduq, W. A. (2013). *Principles of commercial law: Commercial activities – traders – commercial companies – commercial premises – industrial property* (pp. 29–31). Dar Al-Fikr Al-Jamii, Alexandria, Egypt.

⁸ Fattak, A. (2004). *Expanded Algerian commercial law: Introduction to commercial law – Theory of commercial activities* (pp. 19–20). Ibn Khaldoun Publishing, Oran, Algeria.

⁹ Ben Ali, M., & Maghrebi, K. (2018). *Towards a specialized Algerian commercial judiciary*. *Journal of Law and Political Science*, 5(9), 64. University of Laghouar Abbas, Khenchela.

¹⁰ Law No. 08-09 of February 25, 2008, on the Code of Civil and Administrative Procedure. *Official Gazette of the People's Democratic Republic of Algeria*, No. 21, April 23, 2008.

Despite Article 32 (paragraphs 7, 8, and 9) of the Civil and Administrative Procedure Code stipulates the establishment of specialized commercial divisions describes the cases they deal with: « specialized divisions congregated in certain courts have exclusive jurisdiction over disputes concerning international trade, bankruptcy and judicial settlement, banking disputes, intellectual property disputes, maritime disputes, transport disputes, and insurance disputes. The position of these specialized divisions and judicial authorities under their jurisdiction will be decided by regulation. Specialized divisions are elaborated with three judges ». Hence, their implementation was delayed. Until the issuance of the necessary regulations, which had not been enacted.

After enacting Law N°22/07 about judicial division, Article 6 stipulates “Specialized commercial courts will be established with the jurisdiction of specific judicial councils.” Likewise, Organic Law N° 22/10 sets out in Chapter 3 about specialized judicial bodies. Section Three about specialized courts, Article 28 provides “A judicial council may include specialized courts competent to stand trial disputes of a commercial, real estate, and labor nature.” Law N°22/13 Amending the Civil and Administrative Procedure Code also affirmed the establishment of specialized commercial courts in certain judicial councils to deal with a series of commercial disputes.

-Articles 536 bis to 36 bis 7.

Compositions of specialized commercial courts

Based on Article 32 of the Civil and Administrative Procedure Code, the court is the judicial authority of general jurisdiction to listen to disputes and is formed of several sections. Each of them handles specific cases, provided by a special text. Case scheduling is held by the court registry based on the nature of the dispute. If the case is wrongly scheduled in an irrelevant section, it is then automatically transferred to the relevant section by the court registry after informing the court chief.

The court is composed of a president and specialized judges based on their specialties- Article 23 of Organic Law N° 22/10 on judicial organization. A single judge submits judgments unless otherwise provided by Law - Article 24, same law, the court serves as a First Instance Judgment jurisdiction - Article 19.

Concerning the composition of the specialized commercial court, Article 536 bis 02 of Law N°22/13 declares that the specialized commercial court is composed of sections headed by a judge, assisted by four assessors who have extensive knowledge of commercial matters. They obtain a deliberative vote and are selected under conditions and modalities determined by regulations. The Court may validly convene in case of the absence of an assessor. Yet, if two or more assessors are absent, they must be replaced by one or two judges respectively ».

This condition indicates that the specialized commercial court consists of sections headed by a judge who is supported by 4 assessors with significant expertise in commercial matters. Sessions remain valid one absent judges who must be replaced, and judgments are to be issued after deliberation. The number of sections is determined by an order of the president of the court and after consulting the public prosecutor according to the volume and nature of judicial activity. Article 536 of the Law N° 22/13.

Selection and Role of Court Assessor's

The selection of court assessors with expertise in commercial matters is governed by Executive Decree N°23/52,¹¹ issued pursuant 09 Article 536. bis 02 of Law N°. 22/13. This decree consists of articles that summarizes how a special committee prepares the list of assessors.

The committee is composed of

- President of the specialized commercial court
- Presidents of commercial chambers of judicial councils under its jurisdiction,
- Heads of sections of the specialized commercial court,
- the public prosecutor or an assistant from the judicial council where the court is located, and is headed by the president of the judicial council or their representative.

¹¹ Executive Decree No. 23-52 of January 14, 2023, **defining the conditions and modalities for selecting assistants to specialized commercial courts.** *Official Gazette of the People's Democratic Republic of Algeria*, No. 02, January 15, 2023.

-The court's chief clerk is considered to determine the committee's rules of operation (Article 3 of the decree).

Conditions for assessors (Article 5, Decree 23/52):

- They must be Algerians.
- They must enjoy civil and political rights and prove good conduct.
- They must possess extensive knowledge of commercial matters, regarding the jurisdiction of specialized commercial courts.
- They must not have been convicted of a felony or misdemeanor, except for unintentional crimes.

Each selected assessor undergoes an administrative investigation supervised by the public prosecutor at the relevant Judicial Council, with procedures defined by the President of the Court. Since assessors have a deliberative vote (not merely advisory), they witness judicial training about the jurisdictions of the court, its organization, and functioning. The Minister of Justice dictates the duration of the training and its program. Article 6 of the Decree.

The number of assessors is designed by the court president based on the needs of the court and may not exceed 200 assessors. Article 2. Assessors take an oath in front of the Judicial Court with the following formula:

« I swear by the Almighty Allah to perform my duties to the best of my ability and to maintain the confidentiality of information and documents to which I have access during or on the occasion of my duties ».

An oath-taking record is drafted and edited, with copies kept in the Council and the court's archives.

Article 7. They are installed in an official court session, and an installation record is prepared before they commence their duties. They receive compensation as defined by current regulation.

-Article 8.

3-jurisdiction of specialized commercial courts refers to the judicial authority with adjudicating cases regarding territorial jurisdiction and subject matter jurisdiction. Litigants must identify from the beginning a competent authority to listen to their claims since it is crucial for proceedings. The judge must verify jurisdiction before treating the merits of the case.

(1) Territorial jurisdiction

Article 536bis 01 of Law N° 22/13 determines the general rules of territorial jurisdiction provided in the Civil and Administrative Procedure Code. Article 37 establishes the general rule: jurisdiction occurs in the court of the defendant's residence. If this latter is unknown, jurisdiction is assigned to their last known domicile. If a chosen domicile exists, jurisdiction has to turn to the court of that chosen residence unless otherwise provided by law. In case of multiple defendants, jurisdiction is entrusted to the court where any one defendant resides

Article 39: describes exceptions for commercial disputes:

- For supply, works, or service contracts (technical or industrial), jurisdiction lies where the contract was concluded and executed, even if one party is not resident there.
- For commercial disputes, jurisdiction lies where the promise or delivery of merchandise occurred or where payment must be made, excluding bankruptcy and judicial settlement.
- For lawsuits against companies, jurisdiction remains where one of its branches is located.
- For bankruptcy, or judicial settlement of companies and partner disputes, jurisdiction lies where the bankruptcy or settlement was initiated or where the company headquarters are located
- Article 40/3.

For intellectual property disputes, jurisdiction lies in the court located at the judicial council where the defendant resides

- Article 40/4.

The territorial jurisdiction of specialized commercial courts, where determined by Executive Decree N°. 23/53¹² 23/53, creating 12 courts prevalent as follows:

- 1- Bechar:** Bechar, Adrar, Tindouf, Timimoun, Beni Abbes.
- 2- Tamanghasset:** Tamanaghasset, Illizi, Bordj Badji Mokhtar, In Salah, In Guezzam, Djanet
- 3-Djelfa:** Djelfa, Laghouat, Tiaret, Tissemsilt
- 4- Blida:** Blida, Medea, Tipaza, Ain Defla.
- 5-Tlemcen:** Tlemcen, Saïda, Sidi Bel Abbes, El Bayadh,
- 6-Algiers:** Algiers, Bouira, Tizi Ouzou, Boumerdes.
- 7- Setif:** Setif, Batna, Bejaia, Msila, BordjBouArreridj
- 8- Annaba:** Annaba, Tebessa, Guelma, El Taref, Souk Ahras.
- 9-Constantine:** Constantine, Oum El Bouaghi, Jijel, Skikda, Mila, KhenChela
- 10-Mostaganem:** Mostaganem, Chlef, Relizane
- 11- Ouargla:** Ouargla, El Oued, Ghardaia, Tougouost, El M'ghair, El Menia, Biskra, OuladDjellal,
- 12- Oran :** Oran, Mascara, Ain Temouchent.

(2) Subject - Matter Jurisdiction

Article 536 bis. of Law N°22/13 appoints the following disputes to specialized commercial courts:

- Intellectual property disputes.
- Disputes, including commercial companies, mainly partner disputes, and the dissolution or liquidation of companies.
- Judicial settlement and bankruptcy cases
- Disputes between banks/financial institutions and traders
- Maritime disputes, air transport disputes, and insurance disputes related to commercial activity.

Thus, while maintaining the disputes initially determined to specialized divisions, the legislator expanded jurisdiction to include financial institution disputes with traders and company-related disputes, particularly those related to partners and liquidation.

Section two: The specificity of commercial litigation. Commercial activities are described by flexibility, speed, and constant development. Therefore, the legislator always introduces regulations to keep up with these activities in order to increase investments and commercial transactions to achieve economic growth. This dynamic atmosphere makes it difficult for judges in regular commercial sectors to master all relevant issues. Consequently, establishing specialized commercial courts became indispensable. These courts are designed to treat cases with simplified, flexible, and expedited procedures seeking refuge to judicial solutions instead of Alternative Dispute Resolution (ADR) mechanisms, while they reinforce traders and investors' trust in an independent and efficient Commercial judiciary

The procedures of commercial litigation include :

Mandatory Conciliation in front of Specialized Commercial Courts.

Law N°. 22/13 integrated a mandatory conciliation procedure for disputes presented to the specialized commercial courts, based on Article 536 bis 4:

Filing a lawsuit must be preceded by a conciliation attempt initiated by one of the parties, who submits a request to the president of the specialized court. During 5 days, the president assigns a judge to conduct the conciliation procedure to be completed in three (3) months. The applicants must notify the other parties of the date of the conciliation session. The appointed judge may seek assistance from any person who can be suitable to facilitate the conciliation, which ends with a report signed by the judge, the parties, and the court clerk and is governed by the rules of this law.

If conciliation fails, the lawsuit may be filed in front of the specialized commercial court through an opening claim, joint with a conciliation failure; otherwise, the claim is inadmissible »

¹²Executive Decree No. 23-53 of January 14, 2023, **defining the territorial jurisdiction of specialized commercial courts.**
Official Gazette of the People's Democratic Republic of Algeria, No. 02, January 15, 2023.

Hence, the legislator urged mandatory conciliation as a prerequisite for all disputes within the jurisdiction of specialized commercial courts. Failure to comply results in the lawsuit being dismissed for procedural inadmissibility. This differs from the mediation required in ordinary courts' commercial sections

1.1 Definition of Conciliation

Article 450 of the Civil Code defines conciliation as¹³: « A contract through which parties terminate an existing dispute or prevent a potential disputes using mutually conceding certain rights ». To validate conciliation, both parties must have full legal capacity (Article 40, Civil Code). In addition, conciliation is an instrument to avoid bankruptcy judgments by giving the debtor a second opportunity to continue their trade. However, it simply becomes binding after being submitted to the court (Article 317, Commercial Code).

1.2. Procedure of conciliation.

According to Article 536 bis 4, this procedure consists of:

- Submission of a conciliation request to the president of the specialized commercial court by a party or representative.
- A judge assigned by the court president is tasked with dealing with the conciliation:
- The judge has up to three months to arrange between the parties and may call involve external experts if necessary.
- Drafting a report signed by the judge, parties, and clerk, allocating the success or failure of conciliation.

1.3. Effects of Conciliation

It has a declarative impact that confirms the right to concurrent rights. The results are as follows:

- Successful conciliation: the judge presents an injunction conciliation report, signed by all parties, and filed with the county registry (Article 993, Civil and Administrative procedure Code)
- Failed Conciliations: A report of failed conciliation is issued, which is to be attached to the opening claims; otherwise, this claim is rejected.

2-Role of the Public Prosecutor:

Article 536 bis 07 of Law N° 22/13 assert to:

« The public prosecutor who represents the specialized Commercial Court is the Republic Prosecutor at the Court within its territorial jurisdiction, according to Article 259 and 260 of this law

-Article 259: The public prosecutor is to be notified of cases where involuntary proceedings are mandatory and must issue an edited opinion about applying the law.

Article 260: The prosecutor is must be notified at least 10 days before listening to specific cases, like bankruptcy, judicial settlement, and financial liability of corporate managers. In addition, the judge may inform the prosecutor in cases where their intervention is considered necessary

3. Freedom of Evidence. ¹⁴

Article 30 of the Commercial Code provides:

« Any commercial contract may be proven by:

- 1) Official documents, 2) private writings, 3) accepted books,
- 4) Correspondence, 5) business records of both parties,
- 6) Witness testimony or any other means the Court deems admissible ».

¹³ Ordinance No. 75-58 of September 26, 1975, on the Civil Code, as amended and supplemented by Law No. 05-10 of June 20, 2005. *Official Gazette of the People's Democratic Republic of Algeria*, No. 78, September 30, 1975; No. 44, June 26, 2005.

¹⁴ Saadi, M. S. (2008). *Clear explanation of the Algerian civil law: Evidence in civil and commercial matters according to the latest amendments and judicial rulings* (Vol. 4). Dar Houma, Algeria.

Thus, the legislator gives freedom of evidence in commercial cases by permitting any party to prove its claims by any means unless otherwise specified by law. The judge cannot limit the right since it forms part of the fundamental right to defend.

This principle diverges from two major civil law rules as follows:

1. Rule against self-incrimination: in commercial litigation. Either party may compel the other to produce a document appropriate to the dispute if it is a mutual record affirming¹⁵ reciprocal rights and obligations (Article 330/1, Commercial Code). Business records can be required, and a supplementary oath may be imposed.

Article 331: Personal records can be evidence against their editors in two cases:

- When they explicitly state debt repayment.
- When they explicitly serve as a substitute for a document acknowledging a right

2 -Rule against self-generated evidence:

Traders may use their business records as evidence (Article 330/2 assuming that they are properly kept. Nevertheless, they cannot selectively present only favorable entries.

- Article 18. Business records may act as evidence in two cases :
- Between Traders: if the dispute relates to commercial activities, and the records are properly kept.
- Between a trader and a non-trader: If the dispute regards merchandise supplied to the non-trader and the law permits evidence by testimony, assuming that the judge requires a supplementary oath.

Final Judgment and Appeals

Cases sued by specialized commercial courts result in judgments that can be appealed in front of the judicial council under the applicable procedural rules. The president of the specialized commercial court is empowered as an ordinary court president in commercial disputes that issue urgent and provisional measures to preserve disputed rights.

Conclusion

The commercial law is closely linked to global developments as well as political, social, and economic factors that lead to independent legal rules that govern commercial activities, different from civil law provisions. These contain rules on trade records, commercial registries, trade names, company law, and industrial property. By recognizing these intricacies, the Algerian legislator established specialized commercial courts distinguished from ordinary courts. Under Article 536 bis, these courts deal with a wide range of commercial disputes with 12 regional courts founded nationwide. Their special composition comprises a president judge and four assessors with significant expertise in commercial matters whose deliberative opinions contribute to informed judicial decisions. Furthermore, the legislator presented a mandatory pre-litigation conciliation procedure, failure of which renders lawsuits procedurally inadmissible.

Main Finding

The establishment of specialized commercial courts was a positive step that aligned Algeria with similar legal systems. However, they challenge the lack of judges specialized in sophisticated commercial disputes since all have experience with general judicial training. The involvement of expert assessors with the intentional election power promotes judicial quality. Nevertheless, the legislator failed to determine the standard for « extensive commercial knowledge ». The law does not allocate the term « office » for assessors, or whether it is renewable. The possibility of substituting them with judges, and even issuing judgments without their presence, set off their intended role.

¹⁵ Boudraâ, B. (2004). *Concise guide to commercial law: Commercial activities, traders, commercial premises, commercial leases, sale, pledge, and management lease* (pp. 112–115). Riyadh Press, Constantine, Algeria.

Recommendations:

1. Implementing specialized training for judges appointed to commercial courts, given the technical and rapidly evolving nature of commercial disputes, supplemented by periodic updates.
2. Defining legally the term « office » for assessors and clarifying whether it is renewable
3. Requiring at least one assessor's presence for judgment to be valid by ensuring their role is effectively integrated into dispute resolution.

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