

Litigation procedures in family matters, divorce - a model-**Houari Sabah****University Zian Achour Djelfa (Algeria), hoda50351@gmail.com***Received: 30/12/2023**Accepted: 23/04/2024**Published: 30/04/2024***Abstract:**

The lawsuit is the legal means of protecting the right through the judiciary. Although it is necessary for the lawsuit to be established, its two components must be present: a plaintiff, a defendant, and a subject. Resorting to the judiciary in order to fulfill and approve rights is a social necessity that has made all legislation guarantee it and guarantee it to individuals. However, its practice must be in accordance with the legal and procedural forms prescribed for it.).

Keywords:suit ; Terms: Plaintiff; Defendant.

1. INTRODUCTION

Recourse to justice for the fulfilment of rights and its adoption is a social necessity that makes all legislation guaranteed and guaranteed to individuals, but its practice must be in accordance with established legal and procedural forms.

A lawsuit is the only legal means for the protection of the right through the judiciary, although it is necessary for the proceedings to be initiated by a plaintiff, a defendant and a subject, the conditions of the case are either objective and must be available in the proceedings, or they have a form specific to some proceedings, but not others.

inthe amended Code of Civil Procedure defines the conditions for admissibility of proceedings by three. "No one may bring an action before the court unless he possesses the status and capacity to litigate and has the interest in doing so, The new amendment merely stipulated the elements of capacity and interest under of the Code of Civil and Administrative Procedure. invalidity ", whereas eligibility was included in the invalidity plea in the text of the same law

Legal provisions governing access to justice, such as the Civil Code Code of Commerce, Penal Code, Family Code and procedural text such as the Code of Criminal Procedure and the Code of Civil Procedure, which set forth the legal means to claim the

right and at the same time guaranteed the fundamental guarantees of litigation and the protection of the individual's substantive right, thereby achieving equality of individuals before the courts in terms of the uniformity of procedural rules. For the purpose of this study, we have proposed the following references: What are the legal mechanisms granted by the Algerian legislature to protect the family?

For this study, we proposed two main researchers:

First: Procedural Conditions of the Lawsuit

Second: Initiation of proceedings and litigation before the Family Affairs Judge, proceedings for notification and judgement, and methods for appeal..

2. Procedural conditions of the lawsuit

The litigation shall be subject to a set of conditions, including those relating to the plaintiff, the defendant and the subject matter of the right. This shall be described as follows:

2.1 Conditions relating to the parties to the proceedings

2.1.1. Requirement of applicant's interest

"Interest" means the benefit to which the claimant is entitled at the time of judicial recourse. This benefit constitutes the motive and purpose of initiating proceedings. No action without interest does not prejudice the judiciary to claims of no practical usefulness.

The interest to be granted in order to be admissible must be an existing legal interest and a situation or possibility.

An existing interest: the interest exists if it is based on a right or legal status. This determines the purpose of filing an action because it protects a right against assault or damage, such as an urgent action requiring the cessation of the construction of another's property or the non-delivery of the leased eye after the expiration of the lease period or failure to fulfil the debt upon payment.

The purpose of the interest is to ensure the seriousness of the recourse to the courts, but this does not entitle the judge to raise it on his own. This does not mean accepting the interest if it is intimidating public order and morals, such as demanding a gambling debt, opening a nightclub or maintaining a house to engage in an indecent act.

The potential interest is intended if the attack does not occur and no harm is not done. The interest is non-existent but is likely to be in the future or cannot be done, such as an urgent action aimed at stopping construction work that has not yet been proven to be harmful.

The aim of the potential interest pursuant of the Code of Civil and Administrative Procedure¹ is to prevent potential harm.

Potential interest: Article ² does not provide for this requirement, but it follows from the term "unlawful", which may be raised and upheld, for example: A lawsuit is brought by a woman who has an unlawful relationship with a man who demands maintenance and housing, etc. In the absence of interest, the judge shall rule after admissibility of the case. But this cannot arouse on its own, as mentioned above. The exception is that if the interest relates to public order, the judge must raise it on his own initiative. This is provided for in article 69 of the Code of Civil and Administrative Procedure. (The judge must automatically raise the plea of inadmissibility if it is a matter of public order, especially when the remedy of appeal is not respected or when the methods of appeal are not respected.).

2.1.2.Adjective

The class is the right to claim before the judiciary, and is based on the direct and personal interest in the litigation, as it may happen that a party intervenes during the course of the litigation, which is not mentioned in the petition of the opening of the case, whether by its will to achieve an interest in the interventionist or by request of one or both parties to the litigation.

The claim is brought against the claimant and the defendant.

First, the plaintiff's status:

A distinction should be drawn between the adjective in the proceedings and the adjudicator in the proceedings. It may be impossible for the applicant to initiate it in person because of a legitimate excuse, in which case the law allows another person to represent him in the proceedings, such as the presence of counsel on the plaintiff's behalf or the presence of another person under a private agency.

In this case, it is the judge's duty to ascertain the authenticity of the representation and subsequently to examine the availability of the qualifier. The representation may be correct with the depravity of the adjective in the proceedings and vice versa. One example is that the father comes spontaneously and without agency, Trial in lieu of his adult son, who sued for restitution of his apartment Unjustly occupied, the father thought the property was the same. The adjective in the case here is correct, but the representation is corrupt, the opposite. the father must be the bearer of a valid agency, but the son of the claimant has no title to his property, The representation here is true. It rejects the claim because of the son's lack of standing. The validity of the representation is not a condition of admissibility, it is a condition of validity of the litigation procedure.

The defendant's capacity:

It is a principle that a claim is valid only if it is brought in the same capacity, as the plaintiff is required to possess an element of capacity and, unless the plaintiff's claim is dismissed, the defendant is also required to have an element of standing if they are multiple, as the validity of the action is required to be brought against:

A person concerned with liability, such as an employee's claim against an employer or wife against her husband or a lessee against a lessee, in view of the independence of financial liabilities and the inadmissibility of burdens on other persons for actions unrelated to them.

Those who may be prosecuted shall not accept a claim against the ineligible person in respect of the right of defence or against an institution which does not possess moral personality or against a foreign official who enjoys diplomatic immunity³

2.1.3. Eligibility requirement for plaintiff and defendant

Article 65 of the Code of Civil and Administrative Procedure states: "A judge automatically raises a lack of capacity and may automatically raise a lack of authority for the representative of a natural or moral person", which determines the nature of this requirement and the consequences of its non-availability.

We note that the Algerian legislature has not referred to eligibility under Conditions for admissibility of proceedings. in section IV under the heading "In the defence of invalidity", This requirement is not only about the requirements of the proceedings, but is a general requirement that a person who engages in any legal act must have Therefore, the legislator did not place it in the same article. According to the jurisprudence of civil proceedings, the eligibility requirement is not a condition for admissibility, but rather a requirement for validity of the judicial claim. If a person sues without having the capacity to litigate, the procedural action shall be null and void because the filing of the action is a legal act and the law of the person in charge requires a certain capacity, namely, the capacity to litigate, which is the opinion of the Algerian legislature; The dismissal of this requirement and its deletion from the article on the condition of proceedings and its placement in the appropriate place, namely indicated that cases of invalidity of non-judicial contracts were exclusively in the event of a litigant's incapacity (plaintiff and defendant).

Eligibility: A person's power to acquire legal status and initiate litigation proceedings is two types:

Competence to assume rights and obligations. This is in conjunction with the legal existence of a person, whether a natural person or a moral person. The person's capacity shall mean a copy and proof of the capacity of the natural person to complete his or her birth alive. It ends with his or her death. According to the law, commercial companies demonstrate their eligibility by registration in the commercial registry and terminate its dissolution.

Eligibility for litigation or procedural capacity: It is linked to the capacity to perform is the person's ability to conclude legal conduct because the person's position of reason is one of excellence. eligibility is not sufficient, but the validity of the proceedings is required for the person to be eligible for it. Article 40 of the Civil Code defines that the capacity to litigate is limited to 19 years of age, If a person does not possess procedural capacity, he may not perform procedural acts, but requires that they be performed by a person representing him, so-called procedural representation and by a deputist under-qualified.⁴

In the same article, the legislator also emphasized the procedural character or so-called representation or delegation of authority. Code of Civil and Administrative Procedure ", which is also an important amendment, Because the court may raise the absence of this requirement either in the natural or the moral person legal action ", resulting in the invalidity of the legal proceeding on the understanding that this could be corrected in accordance with of the Code of Civil and Administrative Procedure⁵

2.1.4.Requirement for leave to initiate proceedings

in the Code of Civil Procedure, the Algerian legislature refers to a third requirement, namely the "authorization" clause, which reads as follows: "The judge automatically raises a lack of authorization if required by law", and thus the applicant must verify before filing his case that he has fulfilled this requirement, considering that the judge has the power to raise him on his own.

This requirement was approved by the legislator in order to try to settle the dispute earlier by means other than judicial means. For example, a person who wishes to file an action in order to revoke the provisional numbering is obliged before that time to lodge a protest before the Governor of Real Estate in accordance with establishing the Land Registry, The latter should hold a reconciliation session with the opponent in order to reach a friendly solution and upgrade the temporary numbering If the attempt at reconciliation is unsuccessful, the Real Estate Governor edits the non-reconciliation transcript, which is a restriction on the filing of this type of action because there is a possibility of amicable resolution.

Such a requirement was an extension of the precedent's interest clause, so that the litigant's interest lay in attempting to resolve the dispute amicably before recourse to the judiciary. The absence of a non-validity record in the case file involved an opportunity to resolve the dispute before the court amicably.

The aim of this requirement is to reduce disputes before the courts, which is the same requirement as the legislator in the previous law under article 459 of the Civil Procedure Code.

2.2 Conditions relating to the alleged right

Under article 13 of the above-mentioned Code of Civil and Administrative Procedure, the same law stipulates conditions relating to the alleged right, which must be available for admissibility, which will be dealt with respectively as follows:

2.2.1. The requirement that the right to the extent is due at the time of the claim

A claim for admissibility requires that the claimed right be fixed, and the performance is due at the time it is claimed. At the time of the filing of the case, the defendant's direction and registration with the Court's seizure secretariat.

If the right in question is a non-timely debt. It is not due to be claimed. If the case is brought against him before the agreed deadline and before his entitlement, the court before it may rule that the claim is inadmissible whenever the respondent submits that such debt is not due.

2.2.2. The requirement not to prejudge the merits of the case

If it is established that the disputed right has already been decided by the court before the proceedings, or by another court, neither the plaintiff nor his successor may bring such action again against the same defendant or his successor for the same right.

If the proceedings were to be instituted again on this subject, the defendant would have the right to pay prior to the same adjudication of the same matter between the same parties, for the same reasons, and would provide a copy of the previous judgement to substantiate the defendant's claim. This is the application of the Civil Code, which states that "

which had acquired the strength of the case was an argument in its determination, and those provisions did not have that argument in a dispute between the litigants themselves without changing their qualities. They relate to rights of the same place and reason, and the court may rule that the case is inadmissible for prior adjudication in response to the litigant's payment. ⁶

2.2.3. No-agreement clause on arbitration

The parties' agreement to resort to arbitration in any dispute prior to recourse to justice is an agreement which, although it does not remove from the court its jurisdiction to adjudicate on the merits of the dispute, prevents them from exercising adjudication proceedings as long as the agreement exists.

If, however, the applicant has access to justice before exercising his or her right to arbitration, the respondent is entitled to argue that the other party does not respect the agreement, and that he or she has no right of access to the courts at all. In this case, the Court must accept this argument and rule that the case is inadmissible, not on its own motion, but on the basis of the defendant's argument of inadmissibility.

2.2.4. The requirement of non-reconciliation between adversaries

There must be no agreement between the parties or the parties to the proceedings to resolve the dispute between them without resorting to judicial methods and opting for recourse to reconciliation.

According et seq. of the Civil Code, peace is considered a contract that terminates the disputes dealt with by peace and entails the waiver of rights and claims that are to be waived.

From the analysis of these texts, it can be concluded that if the conciliation contract has already been concluded between two parties or two natural or legal persons who are entitled to a right, each of them will have been deprived of their right to claim before the court because of the reconciled right.

If one of them initiates a lawsuit, and seeks to rule on the right already entered into by the peace, the defendant, or his counsel, will be entitled to argue that the claim is inadmissible. If proven, the Court would have to rule that the case was inadmissible, and that was the conciliation on the subject of the dispute before it between the same parties.

Lastly, the requirement not to pay bail in advance ⁷

3. Litigation and litigation. Family affairs, notification and sentencing procedures and methods of appeal. Model:

In return to the provisions of the articles provided for in the Code of Administrative and Civil Procedure, we find the procedures before this section as follows.

3.1 Powers of the Family Affairs Section:

This section considers the following issues.

- * Suits relating to betrothal, marriage and return to the matrimonial home.
- * Dissolution of the marital bond and its effect.
- :: Maintenance, custody and visiting rights.
- * Claims for proof of descent and marriage.
- * Suits for bail.
- * Jurisdictional litigation and lapse.
- * Quarantine, absence, loss and filing.

3.1.1. Regional jurisdiction of the Family Judge:

The Court shall have jurisdiction over the following cases:

The Court is competent to have the defendant's home in cases relating to:

- Issues related to the renunciation of the sermon.
- Issues relating to proof of marriage.
- Issues related to the dispute over friendship.

The Court has jurisdiction over the existence of the matrimonial home in the remains relating to:

- Issues related to the dispute over the property of the house.
- Issues related to divorce and return.
- Issues relating to divorce by mutual consent shall be the place of residence of one of the spouses at their choice.

The Court is competent to exercise the right in the following cases:

- Issues relating to the mandate.
- Cases relating to custody.

The court has jurisdiction over the creditor's home in cases relating to food maintenance.

- The Court has jurisdiction over the place of the licence applicant in marriage licensing cases .

3.1.2. Qualitative competence of the Family Judge:

The court is competent qualitatively to refer to the Family Code, which defines the substantive aspect of family law and leaves the procedural aspect in its practice to the Code of Civil and Administrative Procedure. The issues relating to this section are numerous and varied, including inheritance, endowment and other cases.

The Family Judge is also responsible for protecting the interests of minors, especially in the event of the parents' death and the absence of the guardian.

3.2 The procedure followed in some cases before the Family Judge:

3.2.1. Divorce by mutual consent.

Reference is made to section III concerning consensual divorce proceedings since it is defined as a procedure aimed at dissolving the marital bond with the common will of the spouses.

Procedures:

- To submit a joint application in the form of a unity petition signed by the spouses and not to apply the provisions of articles 16 and 21 of the Code of Civil and Administrative Procedure concerning the communication of the petition to the adversary.

The application cannot be submitted if one of the spouses is under application status or suffers from a casual condition of qualification that is barrier to proper expression of his will. This is established by a specialist physician.

- Information to be included in the petition:

Since the petition is joint and single, you must have the following data and annexes:

- For data:

- * Mention of the judicial authority before it.
- * Mention of the nationality, name, surname and domicile of each party.
- * Indicate the date and place of their birth.
- * The number of minor children stated that it was necessary.
- * Presentation of agreed terms and consequences of divorce.

- For annexes:

The petition shall be accompanied by a family certificate and an extract from the marriage contract.

The application shall be submitted to the Secretary of State and shall immediately inform the parties of the date of the hearing and surrender a summons thereto.

The proceedings of the hearing and the judge's duties:

When the judge ascertains the date of the hearing, each party shall hear individually and then collectively and shall ascertain their satisfaction and try to reconcile if possible.

The judge may amend the terms of the agreement if it is submitted with the children's interest or public order.

The judge then confirms the wishes of the spouses and issues a divorce judgement appealing the judge's judgement:

- Final divorce judgements shall not be subject to appeal.

- It shall be subject to appeal in cassation from the date of the sentencing instead of the date of the official notification of the judgement, with the aim of enabling the court to monitor the proper application of the law and the cassation appeal shall not cease execution.

3.2.2.Divorce from one of the spouses.

The application for divorce at the request of one of the spouses is another way of dissolving the marriage bond and has a set of procedures:

First. Proceedings:

The lawsuit shall be brought on the basis of a petition in accordance with the conditions established by Law.

- The petition must be signed and dated and contain the following information under formal nullity:

* The competent judicial authority before which the proceedings are brought.

* Name, surname and domicile of the applicant.

* The name, surname and domicile of the defendant and the defendant's home if he has no known domicile and his last home.

* Reference to the name, social location and nature of the person concerned, specifying the status of the person's legal or conventional representative.

* Summary presentation of the facts of the dispute and mention of requests, documents and supporting documents.

- The petition shall be deposited at the time of writing of the court's judgement in a number of copies by number of parties after payment of the fees established by law unless otherwise provided.

- The petition shall be entered in a special registry according to the order of its filing and shall indicate the name and surname of the litigants, the case number and the date of the first hearing.

- Then Amin Al-Zaabet will place the case number and the date of the first hearing on all copies and hand it over to the plaintiff to formally inform the adversaries, respecting the period of 20 days between the date of the handover of the summons to attend and the first hearing and if the adversary resides abroad to respect the period of 3 months unless otherwise provided by law.

Second: notification proceedings

1. Data adaptation by attendance: must include a set of data and:

* The name and title of the judicial record, its professional title, its stamp, the date of official notification and its hour.

* The name and surname of the applicant and his home.

* The name and surname of the person and his or her home.

* Mention the name and nature of the moral person and his/her social location as his/her legal or conventional representative.

* Date and session of the first session.

* The judicial record shall deliver the summons to attend by means of a record containing the same information as above, in addition to:

Signature of the amount on the record and reference to the nature of the document confirming his identity and the statement of its number and date of issuance.

b. Delivery of the mandate to come to the amount with a copy of the opening petition marked by the seizure secretariat.

c. Indicate in the record if the receipt is refused or it is impossible to notify or refuse to sign.

D. Fingerprinting the amount in case of impossibility to sign.

The defendant must be advised that, in the absence of the hearing, a judgement will be rendered against him on the basis of the plaintiff's applications.

The adversary himself or through his agent or legal representative shall be present at the meeting.

In the divorce proceedings, the request of one of the spouses to submit a copy of the petition shall be communicated through the judicial record to the defendant. The Public Prosecutor's Office shall be notified by the Secretariat of the Court, according to the article. (The plaintiff in the divorce proceedings must formally inform the defendant and the Public Prosecutor's Office of a copy of the petition referred to in article 436 above and may also inform the Public Prosecutor's Office through the Secretariat of Al-Daab.).

Three reconciliation proceedings:

The peace is considered compulsory. It cannot exceed three months from the date of the filing of the divorce. It is a fundamental measure and an attempt by the judge as a public asset. Two provisions may also be appointed in an attempt to induce the parties to renege on the divorce.

1. The peace before the Family Judge:

A confidential hearing shall take place on a date specified by the judge, at which both parties shall be heard seeking reconciliation. One of their family members may be present to participate in this, so that the judge may appoint another judge under the terms of a court order.

If one of the parties is unable to attend to a blocker, the judge may set a date after the hearing, or if it is without excuse, the judge shall issue a transcript thereto.

The judge may grant the parties time for reconciliation and consider it and may take interim measures under an order that is not subject to appeal and two cases can be observed.

a. In case of reconciliation:

The conciliation between the parties was established on the basis of a transcript which is immediately edited by the seizure secretary under the supervision of the judge and is signed by them in addition to the signature of the spouses and is deposited with the seizure custodian and is considered an executive bond.

b. In case of disadvantage:

In case of non-reconciliation or failure of one of the spouses to attend the reconciliation session despite the deadline granted to the reconciliation, the subject matter of the proceedings shall be considered.

The judge may consider the spouses' agreement during interim measures, as in the case of new facts, amend, annul or supplement such measures, and the order shall not be subject to appeal unless the proceedings are adjudicated.

2. Reconciliation carried out in pursuit of two provisions:

Reference is made to the text of the Family Code, which stipulates that: "If the conflict between spouses is intensified and the damage is not established, two provisions shall be appointed to reconcile them.

The judge shall appoint the two judgements from the parents of the husband and one from the parents of the wife and shall submit a report on her mission within two months.

By reference to the Family Code derived from the provisions of the Islamic Shari'a, we find that in the event of a rift between the spouses and the intensification of the litigation between them, provided that there is no harm, the judge can, without prejudice, appoint two of the parents of the spouses to reform them and must submit a report to the judge who assigned them within two months.

If the peace is done and according to the arbitrators, a transcript shall be written and certified by the judge and shall amount to an order not subject to appeal.

The arbitrators must inform the judge of all obstacles or difficulties encountered in the course of doing so and may terminate their duties as the judge finds it difficult to perform. The judge therefore reinstates the proceedings and the litigation continues.

3.2.3. Legal provisions relating to divorce:

Through exposure to divorce provisions, whether consensual or by the will of one of the spouses, it takes place in accordance with procedures established by the legislature in order to guarantee rights and try to reduce this phenomenon. The law sets out a series of measures aimed at reform, including the hearings of the peace and the appointment of arbitrators. Divorce occurs Through:

1. Divorce judgment: We distinguish between two cases.

a. If the divorce is based on the husband's request:

By reference to article 450 of the Code of Civil and Administrative Procedure, we find (the judge ascertains the will of the husband to file for divorce and Yamer to take all the measures he deems necessary.) This means that the judge must consider and ensure that the husband's will is safe and free from the defects of coercion.

b. In case the divorce is based on the wife's request:

* Based on one of the reasons mentioned in the Family Code (divorce).

According to article 451 of the Code of Civil and Administrative Procedure, The judge shall appoint and adjust the facts on which the application for divorce is based in accordance with the provisions of the Family Code and shall determine the extent of the application's establishment, taking into account the circumstances in which it was submitted.

The judge may take all such measures as he deems appropriate, in particular ordering an investigation, medical expertise or the transfer of an inspection.

The judge must initiate the ordered procedure if she has medical expertise.

The judge shall also review the facts relied upon in the application for dismissal in accordance with the provisions of the Family Code. "

in the Family Code stipulates the grounds by which a woman may request divorce exclusively. The judge shall:

- Scrutiny, examination and ascertainment of the availability of one of the reasons set out in article in the Family Code.

- He may take all appropriate measures such as investigation, expertise or inspection.

* Pursuant to of the Family Code:

The wife may remove herself without the husband's consent in exchange for money Here the judge must also:

- Adapt and examine the facts on the basis of the relevant article in the text of the Code of Civil and Administrative Procedure.

2-Appeal against divorce provisions:

Divorce provisions are final in accordance with article in the Family Code, which stipulates that: "Divorce, divorce and dismissal proceedings shall be without appeal except in their material aspects."

The aggrieved party maintains the right to challenge the financial segment before the second degree.

fourthly: Urgency in some cases before the Family Affairs Section.

the Code of Civil and Administrative Procedure of the Family Code confer on the judge powers of urgency and determines the cases before him on the basis of a petition in order to take all necessary temporary measures, especially with regard to maintenance, custody, visitation and accommodation.

The Explanation explicitly granted the Head of the Family Affairs Section the power to intervene in a range of issues exclusively:⁸

* Jurisdiction over a minor:

Jurisdiction over the same: Code of Civil and Administrative Procedure.

B. Jurisdiction over his property: of the Code of Civil and Administrative Procedure.

* Jurisdiction over incapacitated adults of the Code of Civil and Administrative Procedure

* Descent claims: of the Code of Civil and Administrative Procedure.

:: Sponsorship proceedings: of the Code of Civil and Administrative Procedure.

* Estate Claims of the Code of Civil and Administrative Procedure

4- Conclusion

The Code of Civil and Administrative Procedure is a clearer text of how to bring a case and its terms. It sets out a number of formalities, simple and detailed explanations of all procedures. A summary of the subject we have reached a set of results:

- The status reflects the most important conditions of the proceedings and must be available until they are conducted in the required legal form.

- The plaintiff is an interest or has a potential interest recognized and approved by law.

- To be eligible as a condition for the validity of the procedural work, the legislator has provided other solutions.

- The proceedings must be within the time limits specified by the law, whether procedural or substantive, and the time limit shall not be limitations.

We have reached a series of recommendations, the most important of which are:

- The legislator's inclusion of a judicial case as a means of submitting disputes to the competent judicial authorities is certainly a solution, but in matters of personal status, although it is apparent that mechanisms for solving problems and the realization of rights should be found, except that I must maintain the family.

The inclusion of magistrates' hearings in a judicial and advisory body in order to achieve the real goal of reconciliation, maintain marriage and make separation a final stage for the dissolution of marital ties, especially in the beard of the presence of children.

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