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INCONSISTENCY OF OPINION BETWEEN JURISPRUDENCE AND JUDICIARY IN TERMS OF THE CONCILIATION PROCEDURE IN CASES OF TALAK AND TATLIK IN ALGERIAN FAMILY LAW

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Abstract:

The Algerian legislator has long established conciliation as a means to settle disputes and conflicts. He emphasized on its regulation and organization through objective and procedural legal provisions. The importance of resorting to conciliation rises when it comes to family disputes, as they have a distinct nature and involve sensitive relationships. This stresses the necessity of conciliation in family cases, particularly those related to dissolution of the marital bond, for which detailed procedures are outlined in the Civil and Administrative Procedure Law, under the supervision of the judiciary.

***Key Words**:* Talak; Tatlik; Conciliation; Algerian Family Law; Jurisprudence

أثار عدم استقرار الفقه والقضاء بخصوص اجراء الصلح في قضايا الطلاق والتطليق في التشريع الجزائري

ملخص:

كرس المشرع الجزائري ومنذ القدم الصلح كوسيلة لتسوية المنازعات والخصومات حيث عمل على تقنينه وتنظيمه بمقتضى نصوص قانونية موضوعية وإجرائية، وتزداد أهمية اللجوء الى الصلح حينما يتعلق الأمر بالمنازعات الأسرية كونها تكتسي طابعا خاصا وتتعلق بعلاقات حساسة، وهو ما يؤكد وجوبية الصلح في القضايا الأسرية خاصة المتعلقة بدعاوى انحلال الرابطة الزوجية، حيث سنت له إجراءات مفصلة من خلال قانون الإجراءات المدنية والإدارية والتي تمارس تحت اشراف القضاء.

الكلمات المفتاحية: طلاق، تطليق، صلح، قانون الأسرة الجزائري ،تقاضي.

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L'instabilité Juridique et Judiciaire Concernant la conciliation dans les Affaires de Talak et Tatlik dans la Législation Algérienne

Résumé :

Le législateur algérien a depuis longtemps établi la conciliation comme moyen de régler les litiges et les conflits. Il a mis l'accent sur sa réglementation et son organisation à travers des dispositions légales objectives et procédurales. L'importance du recours à la conciliation augmente lorsqu'il s'agit de litiges familiaux, car ils revêtent une nature particulière et impliquent des relations sensibles. Cela souligne la nécessité de la conciliation dans les affaires familiales, notamment celles liées à la dissolution du lien conjugal, pour lesquelles des procédures détaillées sont exposées dans le Code de procédure civile et administrative, sous la supervision de l'autorité judiciaire.

***Mots Clés**:* Talak ; Tatlik ; Conciliation ; Droit de la famille algérien ; Jurisprudence.

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Introduction:

Conciliation, as a legal procedure, holds a significant place within the framework of civil law, particularly in family-related matters. This significance is highlighted by the fact that while Article 4[1] of the Civil Procedure Code generally permits conciliation, it becomes mandatory in family affairs cases as stipulated by Article 439[2].The concept of conciliation, as defined in Article 458[3] of the Civil Procedure Code, denotes a contractual agreement through which disputing parties either settle an existing dispute or preemptively avert a potential one by mutually relinquishing their claims. Notably, the Egyptian legal framework uses the term "waiving part of their claims" in Article 549[4] of the Civil Procedure Code instead of "waiving their rights" as found in Algerian law's Article 459. In the courtroom, a right initially starts as a claim, and if validated by the judge, it transforms into a full-fledged right. This study adopts a comprehensive approach, founded on extensive research and analysis of pertinent legal and juristic sources. It scrutinizes legal rulings and civil laws, drawing comparisons and assessing diverse perspectives and concepts related to the conciliation process in divorce cases. Additionally, a thorough literature review will be conducted to extract relevant conclusions and recommendations. The study places emphasis on the analysis of legal and judicial models from various legal systems to comprehend common challenges and potential variations in the application of conciliation procedures in Talak and Tatlik cases.

Furthermore, the study will propose solutions and recommendations aimed at mitigating the aforementioned inconsistencies and enhancing the conciliation process in Talak and Tatlik cases. These recommendations may encompass improvements to legislation and legal policies. Algerian legislation exhibits a profound interest in these alternative dispute resolution methods, encompassing the Civil and Administrative Procedure Code, as well as Family Law. These areas, often rife with conflicts, demand the utilization of such alternative mechanisms, especially in familial disputes given the unique dynamics within family relationships.

[1] المادة رقم 04 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص3.
[2] المادة رقم 439 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص38.
[3] المرجع نفسه.
[4] المادة رقم 549 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص45.

All these endeavors align with the lofty objectives delineated by the legislator in Family Law. This body of law emerged from extensive societal and legal discourse, striking a delicate balance between tradition and modernity, while preserving identity to uphold and fortify familial bonds, thereby enabling families to fulfill their pivotal role in societal construction.

One of the pivotal provisions within Family Law, Article 49, as amended by Decree 05/02[1], underscores the conciliation procedure's importance in resolving disputes between estranged spouses. This provision has engendered substantial debate and disagreement, particularly regarding its implications on certain judicial rulings and legal principles that pertain to public order, both within jurisprudence and the judiciary. Article 49 emphasizes the repetition of conciliation proceedings to safeguard the sanctity of the family, a cornerstone of Islamic Sharia and statutory laws. It establishes regulations aimed at ensuring the continuity and sustainability of marital life, acknowledging the family's fundamental significance in societal stability.

Conciliation stands as a primary procedure outlined by the revised Algerian Family Law, mandating that Algerian family judges resort to it prior to engaging in discussions or rendering judgments. This imperative arises from conciliation's inherent connection to the fate of a sacred relationship and the unknown future of children in the absence of familial stability. However, conciliation transcends mere legal formalities or judicial actions; it embodies a religious, ethical, and humanitarian endeavor that necessitates a deep understanding of religious rulings, wisdom, patience, and prudence.

The core challenge addressed in this study revolves around the incongruities between jurisprudential interpretations and judicial practices regarding conciliation procedures in Talak (divorce) and Tatlik (custody release) cases. These disparities have tangible implications for the administration of justice and the safeguarding of rights in this context. These issues encompass several facets:

Variations in Juristic Concepts and Interpretations: Jurisprudence and religious interpretations related to conciliation procedures in Talak and Tatlik cases exhibit marked disparities among scholars and jurists. This divergence in conceptual understanding and religious interpretation can lead to confusion in the application of laws and standards.

Discord between disputing parties: Jurists and judges may encounter difficulties in achieving conciliation in divorce cases due to a lack of consensus between the

[1] المادة رقم 49 من قانون الأسرة الجزائري، المعدل والمتمم بالمرسوم 02/05، المؤرخ في 27 فيفري 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع /

disputing parties. This challenge may arise from various factors, including the absence of alignment in claims or a desire to prolong conflicts.

FIRST TOPIC:

The legal nature of conciliation proceedings in talak and tatlik cases in the Algerian judicial system

Conciliation is deemed a crucial aspect of the legal procedure in divorce cases is. It is viewed as an effective method for efficiently resolving conflicts between couples seeking talak or tatlik, without the need for prolonged traditional legal proceedings.

The legal basis for conciliation procedures in talak and tatlik cases in the Algerian judicial system is based on the applicable laws and regulations. This approach relies on Law No. 84-11 of the Family Law[1]. In this context, conciliation procedures are allowed as long as the conflicting parties agree to resort to this process.

First requirement: conciliation in *talak* cases

Talak (divorce initiated by the husband) is conducted under the supervision of the court in accordance with Article 49 of the Civil and Administrative Procedures Law.[2] The court ensures the personal attendance of both parties to reach a settlement between them, in accordance with the provisions of Article 440 of the same law. When both parties are present, the discussions are conducted in a private session, and the judge listens to each spouse individually to allow them to openly express any criticisms towards their spouse. Then, the judge hears them together trying to reconcile their perspectives. Additionally, upon the mutual request of the spouses, a family member may attend the sessions and participate in the efforts to reach a settlement. This mutual request indicates that this person is close to both spouses and may help in settling the dispute.

The Algerian judicial system has witnessed inconsistency regarding its interpretation and application of the concept of conciliation. Judgments and court decisions have varied in this regard. *Talak* can be conducted without the conciliation procedure. This was confirmed by a decision issued by the Supreme Court,

[1] القانون رقم 84-11، المؤرخ في 09 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فبراير 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع/

[2] المرجع نفسه.

specifically the Personal Status Chamber, file No. 200138, on June 21, 1993.[1] However, there are other decisions in which the court considered conciliation a crucial step such as the decision of the Supreme Council issued on June 10, 1970[2], and the decision issued by the Supreme Court on May 15, 1991, file No 75141.[3]

And due to the inconsistency in judicial decisions promulgated by the Algerian court, the legislator issued clear guidelines in Article 439[4] of the Civil and Administrative Procedure Code. The article states that 'conciliation attempts are necessary and shall be conducted in a confidential session'.[5] Based on that, the judge is required to make such attempts within a period not exceeding three months from the date of filing the case. Then, the judge must draw up a notice that includes the details and results of these attempts.

The lawyer is not permitted to attend the conciliation session. In the event that one of the spouses could not attend due to emergency circumstance, the judge can postpone the conciliation session and set a new date for it, or appoint another judge to hear the absent spouse through a judicial representative. However, if the spouse who is supposed to appear personally fails to attend the session without a valid excuse, the judge will record this in the notice. Additionally, the judge may grant the spouses a period of time to think after the initial conciliation attempt, but these attempts should not exceed three months from the date of filing the case.

The judge may also issue temporary measures based on a non-appealable order, taking into consideration the agreements reached by the spouses. During this stage and until a final judgment is issued in the case, the judge has the right to amend or revoke these measures if new facts arise based on a non-appealable order.

According to Article 446 of the Civil and Administrative Procedures Law, if no fault is proven during the dispute, the judge may appoint two arbitrators to mediate between the parties in accordance with the provisions of the Family Law.[6] According to Article 56, one arbitrator is appointed by the husband and another arbitrator is appointed by the wife. These arbitrators are required to submit a report on their mission within two months.[7]

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[1] قرار منشور بنشرة القضاة 1999، العدد 56 ،ص40 .

[2] قرار منشور بنشرة القضاة 1969 ، العدد 02 ، ص44.

[3] قرار منشور بنشرة القضاة 1993 ، العدد 01 ، ص 65..

[4] المادة رقم 439 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص38.

[5] المرجع نفسه .

[6] المادة رقم 446 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص38.

[7] المادة رقم 56 من القانون رقم 84-11 المؤرخ في 9 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فيفري 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع /

If the court reaches conciliation between the spouses, the court clerk draws up a report that is signed by the judge and the spouses, and it is submitted to the archives of the court registry, in accordance with Article 443 of the Civil and Administrative Procedures Law.[1] In this case, the marital life continues. In the event that attempts to reconcile between the spouses fail or if one of them refuses to attend despite the given period for reflection, the judge proceeds to discuss the matter further.[2]

In regards to *Talak* by the unilateral husband's will, Article 49 of the Family Law states the following: '*Talak* is not granted except by a judgment after several attempts of conciliation by the judge, provided that the period of these attempts does not exceed three months from the date of filing the case...'[3] The same applies to *Talak* by mutual consent, *Tatlik*, and khul'*. As for *Talak* by mutual consent, the Algerian legislator stipulated in Article 431 of the Civil and Administrative Procedures Law[4] that the role of the judge in this type of divorce is not negative but rather involves listening to each party separately, then together, and then attempting to reconcile between them.

Thus, divorce by mutual consent cannot be accepted if one of the parties is under the influence or suffers from a mental incapacity that prevents them from expressing their will. Proving mental incapacity requires the submission of a report from a specialized doctor, according to the provisions of Article 432[5] of the Civil and Administrative Procedure Law. This amendment alters the previous perspective in which the judge focused solely on recording their mutual consent. When the spouses reach an agreement regarding divorce by mutual consent, they will notify the court by their decision and the court will take the responsibility of settling the dispute between them.

In the case of divorce by *khul'*, the spouses can reach an agreement regarding the *khul'*, as they can disagree about the amount of compensation to be paid. In this case,

[1] المادة رقم 443 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص37.

[2] عبد السلام ذيب، قانون الإجراءات المدنية والإدارية الجديد، ترجمة للمحاكمة العادلة، موفم للنشر، 2009، الجزائر.

[3] المادة رقم 49 من القانون رقم 84-11، المؤرخ في 09 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فبراير 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع/

*In the Algerian family law, there is a provision known as "Divorce on compensation" or "Khul'" According to Article 54 of the Algerian Family Law which states: "The wife may initiate divorce from her husband, without his consent, by paying him a sum of money as compensation (khul')."
This provision allows the wife to seek a divorce without the husband's agreement by offering financial compensation in exchange. It provides an option for the wife to dissolve the marriage unilaterally by compensating the husband. The amount of compensation is typically negotiated or determined by the court based on various factors (Jamal, 2009).

[4] المادة رقم 431 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص37.

[5] المادة رقم 432 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص37.

the matter should be brought before the court for consideration, and the court will determine the compensation within customary limits. The judge's role is to strive for conciliation between the spouses and diligently work towards finding a mutually acceptable resolution, as stipulated in Article 54 of the Family Law.[1]

Second requirement: conciliation in *tatlik* cases

Article 9 of the Family Law stipulates that conciliation is accepted in *Tatlik* cases. From this provision, it can be concluded that the conciliation procedures in *Talak* cases are similar to those in *Tatlik* cases. The grounds for *Tatlik* include non-support, marital defects, imposition of a custodial sentence, and other grounds like *Shiqaq*. [2]

The legal basis for *shiqaq* can be found in the Quran, where Allah azza wa jal says: 'And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire conciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things]'.[3]

Continuous *Shiqaq* between spouses is deemed as a ground for divorce in paragraph 2 of Article 53 according to Algerian law. Continuous *Shiqaq* leads to a loss of communication, affection, and mercy between the spouses. Therefore, the wife has been granted this right to maintain her psychological stability and the stability of the kids if any. If the wife provides a conclusive proof of *Shiqaq,* or the husband admits and the judge fails to reconcile the situation between them, the wife has the right to obtain a final divorce.[4]

Due to the varying valuation of fault caused by *Shiqaq*, several judicial interpretations have emerged on this matter; the most important of which is the decision issued by the Supreme Council on May 20, 1985, which includes the following:

It is legally established that if the dispute between the spouses persists for a long period and the wife suffers harm as a result of the dispute, and the judges are convinced of the necessity to separate them, then there is no alternative but to dissolve the marital bond. Hence, the rejection of the appealed decision based on

[1] المادة رقم 56 من القانون رقم 84-11 المؤرخ في 9 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فيفري 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع /

[2] المرجع نفسه.

[3] سورة النساء، الاية 35.

[4] المادة رقم 56 من القانون رقم 84-11 المؤرخ في 9 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فيفري 2005. https://alyassir.com/قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع /

inadequate reasoning and non-compliance with Islamic legal principles, in an unrelated context, is deemed necessary.[1]

If the wife fails to provide evidence or her husband denies her claims, and if the dispute continues and her claims are repeated without being proven, the judge must appoint two arbitrators to reconcile between the disputing spouses. One from the wife's family and one from the husband's family, and they should attempt to reconcile the couple. These arbitrators must draw up a report on their mission within a maximum period of two months, according to Article 56 of the Family Law.[2]

According to the Family Law in Algeria, if the dispute persists between the spouses, two arbitrators must be appointed for the aim to reconcile between them. This article is derived from the principles of Islamic jurisprudence and holds fundamental importance in Algerian law. However, the Family Law does not specify the necessary conditions for the appointed arbitrators.

Based on Article 56 of the Family Law[3], reference must be made to the principles of *Maliki*[*] jurisprudence to determine the required conditions for the appointed arbitrators, while taking into consideration the specific provisions of the law. According to the principles of *Maliki* jurisprudence, there are four conditions for the arbitrators: male gender, justice, maturity, and knowledge of their task and how to perform it. Additionally, arbitrators must be from the families of the disputing parties, as they are more familiar with the family's secrets and have a greater ability to resolve the conflict.

However, there is a difference between the *Maliki* school and other schools regarding the condition of gender for the arbitrators. The *Maliki* school does not consider it to be an essential requirement for the arbitrators.[4]

There are varying opinions among Islamic jurists regarding the role of arbitrators in divorce cases. Some believe that once appointed, the arbitrators have the authority to issue a divorce because they act as judges in the specific case

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[1] قرار منشور بنشرة القضاة 1990.

[2] المادة رقم 56 من القانون رقم 84-11 المؤرخ في 9 جوان 1984، المتضمن قانون الأسرة المعدل والمتمم بالقانون رقم 05-02 المؤرخ في 27 فيفري 2005. https://alyassir.com/ قانون-الأسرة-الجزائري-حسب-آخر-تعديل-مع /

[3] المرجع نفسه.

[*] The Maliki school of Islamic jurisprudence, established by Malik ibn Anas in the 8th century, is one of the four major schools within Sunni Islam. It draws its principles from the Quran and hadiths as its primary sources of guidance. In addition, unlike other schools of Islamic jurisprudence, the Maliki school recognizes the consensus of the people of Medina as a legitimate source of Islamic law (Cornell, 2006).

[4] حبار أمال، الصلح ودوره في حل النزاعات الاسرية، مجلة البحوث والدراسات القانونية والسياسية ، جامعة وهران، العدد 12.

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assigned to them. On the other hand, some scholars consider it unacceptable for the arbitrators to intervene in the marital dispute, especially if they contradict the guidance or decision issued by the court. Instead, they can participate in the judicial efforts after investigating the reality of the situation based on the Family Law. Article 56[1] of this law outlines the role of arbitrators in attempting to understand the underlying causes of the dispute between the spouses, resolving these issues, and bridging the perspectives of both parties to reach an agreement that satisfies them and restores peace and stability to the marital relationship.

THE SECOND TOPIC:

Legal consequences of failing to proceed with conciliation in divorce and separation cases

The failure to engage in conciliation in divorce and separation cases can lead to the case being brought to court, resulting in additional legal costs and larger legal issues for the parties involved. This, will be addressed as follows:

First requirement: failure to carry out the conciliation procedure voids the divorce judgment

Some scholars believe that divorce cannot occur except by a judicial decision, and that conciliation procedures have become mandatory, and the judge must implement it before pronouncing divorce. If these procedures are not followed, the issued judgment is considered void.[2] They also assume that this judgment is illegal and must be annulled. Zouda states in this respect that the conciliation attempt is an objective requirement for the validity of the legal proceedings, and its failure leads to the annulment of such proceedings.[3] Some suggests that conciliation should not be overlooked, as it has become an essential procedure in all cases of marital dissolution. Furthermore, judges are required to follow this process, and failure to do so may make their decisions subject to appeal.

It is concluded from the Supreme Court decisions that conciliation is a procedure stipulated by law and is considered part of the public order. And the decision in which this legal procedure is neglected is considered a mistake in the decisions application which necessitates its annulment as established through the following decision:

[1] المادة 56، المرجع نفسه.

[2] بلحاج، العربي، "شرح قانون الأسرة الجزائري"، دار النشر الجزائرية، 2004.

[3] عمر زودة ، طبيعة الاحاكم بانهاء الرابطة الزوجية وأثر الطعن فيها ، مذكرة لنيل شهادة ماجستير ، جامعة الجزائر ،2001.

In a decision issued on March 03, 1968 by the former Supreme Council, it was stated that: 'Granting divorce between the parties without attempting the stipulated conciliation in this matter and without hearing the concerned spouses is considered a violation of the law'. [1]

Second requirement: failure to carry out the conciliation process does not affect the divorce judgment validity

Some jurisprudence scholars view that the attempt to reconcile is in fact not a crucial procedure that can affect the judicial judgment of divorce. They believe that the purpose of conciliation is to offer advice, guidance, and good counsel to the wife.[2] Others consider conciliation trial as merely a formal and non-essential procedure aimed at giving advice and guidance and nothing more. From this perspective, it is understood that it is a non-obligatory procedure, and violating it does not invalidate or annul the judicial action resulting from such violation. One of the decisions issued on February 16, 1999, states the following: 'The conciliation trial is not considered a substantial form of divorce judgment, but rather the mentioned attempt of conciliation in Article (49) of the Family Law is merely an admonition, which renders the conciliation non-binding'.[3] Even the amendment in 2005, considered conciliation as a non-essential procedure according to a decision issued by the Supreme Court, Personal Status Chamber, on June 13, 2007. The decision rules the following: 'However, since Article (49) of the Family Law does not apply at the level of councils but only at the level of courts, in addition to the fact that the attempt of conciliation is not considered an essential form of divorce judgment, but rather a mere admonition, which renders the grounds unsubstantiated and requires the rejection of the appeal.'.[4]

Third requirement: the requirement for conciliation attempts in civil and administrative procedures, as specified in the law, does not render the procedural action invalid.

The legislator emphasizes the obligation of conciliation in the Civil and Administrative Procedures Law. It is worth mentioning that the court's initiation of conciliation is a mandatory matter that should not be subject to debate. This directly indicates that the legislator considers the court's attempt of conciliation as a necessary

[1] الغرفة العليا للأحوال الشخصية، تاريخ الجلسة 03 جويليا 1968، مجلة قرارات وزارة العدل الجزء الأول.

[2] لمطاعي نور الدين ،عدة الطلاق الرجعي وأثرها على الاحاكم القضائية ،دار فسيلة ،ج2 ،2009.

[3] قرار منشور بنشرة القضاة 2011.

[4] قرار غير منشور، 13 جوان 2007.

issue related to an imperative principle of the general system rules that must not be exceeded.

Considering divorce as null and void is deemed a violation of the provisions of Islamic *Sharia* law and lacks a legal basis. The legislator did not require in Article 49 of the Personal Status Law the necessity of conciliation attempts as a condition for the validity of divorce. Once the husband pronounces divorce, the divorce is established, and the judicial judgment confirms this declaration made by the husband. Therefore, divorce judgment does not depend on anything according to Article 49.

There is a contradiction in understanding legal texts between those who consider conciliation as an essential step and those who consider it unnecessary. In fact, there is no longer a debate about the mandatory nature of conciliation due to the clarity of this procedure through several attempts made by the judge in accordance with Article 49. This is confirmed by Article 439. However, it is worth noting the absence of an obligatory wording in the text of Article 49 and its amended version, and even in Article 439, which does not impose a penalty for non-compliance. The legislator did not restrict the texts under the threat of nullity, which confirms the wording of Article 49 of the Family Law.

The purpose of using the term "mandatory" is to empower the judge to carry out conciliation without relying on a specific requirement. Conciliation is considered obligatory within the limits of several attempts that the judge may undertake, despite the absence of a specific penalty for not doing so. At the same time, disregarding conciliation procedures affects the validity of the judgment, even though most laws overlook this matter. In fact, all of this is related to the lack of differentiation between legal rules.[1]

It is essential to understand when legal rules are binding and when they do not entail penalties for non-compliance, whether these rules are in the field of family law or procedures law. For example, Articles 49 of the Family Law and 439 of the Civil Procedure Law are two rules that carry the formulation of obligation, and despite being mandatory rules, no financial penalty is attached to their violation. It is also noted that there is an inconsistency in judicial positions regarding this matter, despite no change in the legal text, as these two mentioned articles do not abolish the obligation. On the other hand, Article 60 of the Civil Procedure Law states the following: ‘Procedural acts shall not be deemed invalid unless the law expressly

[1] عبد الحيكم بن هبري ، اجراء محاولات الصلح في قضايا فك الرابطة الزوجية وأثره في حماية الاسرة على ضوء الفقه والاجتهاد القضائي ،مجلة الدراسات والبحوث القانونية ، العدد الخامس.

provides for it, and the party invoking the invalidity must prove the harm caused to them'.[1] This provision relates to the invalidity of procedural acts, where the presumption is their validity, and the exception is invalidity.

The legislator did not specify specific rules for the invalidity of conciliation procedures, but rather addressed the topic of invalidity of procedures in general. The invalidity of procedural rules is generally considered a formality and is governed by the rules set forth in Articles 60 to 66 of the same law. If an explicit provision indicating invalidity is found, the judge is not allowed to exceed it, provided that there is an explicit provision regarding invalidity and negative consequences that affect the adversary result from it.

Conclusion:

Upon a thorough examination of the conciliation system and its role in resolving family disputes within the Algerian legal framework, it becomes evident that the Algerian Family Law possesses several distinctive advantages that differentiate it from other Arab and Islamic personal status laws. This law provides judges with substantial flexibility to address various family conflicts and grants them significant authority in this field. While judicial decisions are designed to align with the legislator's intent, they inevitably bear the imprint of the judge's unique characteristics and capabilities.

Furthermore, this law intentionally avoids strict adherence to a particular jurisprudential school, opting instead for a practice known as selective jurisprudence, wherein it draws upon a diverse range of schools of thought. By conferring upon judges the ability to mediate and reconcile between spouses in family matters, including divorce and separation, the law underscores the importance of preserving family stability and continuity.

This study has yielded the following noteworthy results:

Conciliation is widely acknowledged as an effective method for resolving disputes between litigants, and its legitimacy is firmly established in the Quran, Sunnah, and consensus. This recognition stems from its pivotal role in preventing hostilities and nurturing harmony and affection among the parties involved.

The conciliation referenced in Article 49 of the Family Law specifically pertains to divorce by unilateral will and does not apply to cases of tatlik, talak, and divorce by mutual consent. In contrast, the Civil and Administrative Procedure Law includes procedural provisions governing conciliation in family matters. The conciliation process outlined in this law allows the judge to bypass the provisions of Article 49 of

[1] المادة رقم 60/06 من قانون الإجراءات المدنية والإدارية، المعدل والمتمم، المنشور في الجريدة الرسمية، العدد 21، ص3-9.

the Family Law and instead rely on the provisions outlined in Article 439 and subsequent articles of the Civil and Administrative Procedure Law.

Conciliation attempts should not be viewed as a fundamental procedure that directly impacts or influences the judicial decision to dissolve the marital bond. They rather serve as a general measure aimed at offering advice, guidance, and positive counseling to the spouses, with the goal of promoting conciliation and providing an opportunity to resolve conflicts within the framework of marriage.

The primary objective of conciliation attempts is to furnish advice, guidance, and positive counseling to the spouse initiating the divorce, emphasizing the significance of preserving the marital bond and exercising the right of revocable divorce during the waiting period. It is not intended to persuade the spouse to entirely retract the divorce decision.

The conciliation procedure is categorized as part of the dispute resolution process, rather than the divorce process itself, as the legislator has not linked divorce to a specific procedure. The requirement to make multiple conciliation attempts within a three-month period from the date of filing the lawsuit is simply a limitation imposed by the law, which the judge should not exceed.

In cases of Tatlik and divorce by mutual consent, the judicial judgment is formed, meaning that the judge is not bound by a specific timeframe for conciliation attempts. Consequently, it is not related to Article 50 of the Family Law, as the legislator has not stipulated the consequences if the spouses withdraw their divorce request during the conciliation process. Therefore, the concept of conciliation mentioned in Articles 49 and 50 of the Family Law does not apply to conciliation that takes place during the consideration of a lawsuit based on Articles 53 or 54 of the Family Law.

What underscores the distinctiveness of conciliation in family matters is its differentiation from conciliation in other laws. It is characterized as a procedure rather than a contract, focusing on resolving existing disputes rather than potential ones. The legislator has also imbued it with a mandatory nature, as conciliation automatically commences once a lawsuit is filed before the Family Affairs Department.

The introduction of the new Civil and Administrative Procedure Law, specifically Article 439, underscores the mandatory nature of conciliation attempts, indicating that the legislator has established a general rule requiring judges to undertake multiple conciliation attempts between spouses, whether as a substantive or procedural provision. This rule is binding, although the legislator has not attached a specific penalty that would nullify the provisions. This suggests that the legislator intends to emphasize the obligation to attempt conciliation but does not elevate it to the status of a substantive procedure that affects public order.

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