



LEGAL FRAMEWORK FOR DISMISSAL OF LITIGATION

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Abstract:

Litigation conducted before the judiciary is a procedural system governed by specific rules under legal provisions aimed at achieving a particular purpose. However, if the litigation process is obstructed by the stagnation of its procedures, it loses its effect and expires due to negligence in following its legally prescribed course, as a procedural penalty resulting from such negligence. Algerian legislation imposes the penalty of dismissal on litigation for considerations related to the interests of the defendant or those within its jurisdiction, such as the appellant. However, this penalty is not regulated to consider public interest, as indicated by Article 225 of the Civil and Administrative Procedure Code, which prohibits the automatic dismissal by the judge.

Keywords: Dismissal of Litigation, Procedures, Judge, Parties

INTRODUCTION:

The state alone assumes the task of the judiciary, bearing the responsibility for ensuring justice and equality among individuals. No individual can adjudicate their rights alone; rather, it is incumbent upon the state to provide the necessary mechanisms for the exercise of their legal rights, as enshrined in Articles 138 to 158 of the Algerian Constitution¹. These articles encompass a set of individual rights to access justice and claim their rights. Among these rights is the right to litigation, which entails a judicial dispute presented before the judiciary through a series of procedures defined by the law and undertaken by various judicial officers from the filing of the lawsuit to the issuance of a final judgment.

Exercising the right to judicial litigation requires following specific procedures and complying with legal deadlines and schedules. If these procedures encounter obstacles that hinder their achievement, delays in resolving the lawsuit and consequently obstructing litigation procedures may occur. Failure to follow legal procedures correctly or failure to present necessary evidence in a timely manner can all affect the ability of the claiming party to fully realize their legal rights. Therefore, it is incumbent upon the litigants to adhere to legal procedures and specified deadlines to initiate procedures to

¹ Constitution of the People's Democratic Republic of Algeria, approved in a referendum on November 28, 1996, published under Presidential Decree No. 96-438 dated December 7, 1996, in the Official Gazette No. 76, issued on December 8, 1996, amended and supplemented in 2002 pursuant to Law No. 02-03 dated April 10, 2002, in Official Gazette No. 25, issued on April 14, 2002, further amended and supplemented in 2008 pursuant to Law No. 08-19 dated November 15, 2008, in Official Gazette No. 63, issued on November 16, 2008, and further amended and supplemented in 2016 pursuant to Law No. 16-01 dated March 6, 2016, in Official Gazette No. 14, issued on March 7, 2016, and further amended and supplemented in 2020 under Presidential Decree No. 20-442 dated December 30, 2020, in Official Gazette No. 82, issued on December 30, 2020.



avoid these obstacles, thereby achieving the primary goal of judicial litigation; otherwise, this may lead to the dismissal of the litigation².

In Algerian legislation, dismissal of litigation occurs when litigation comes to a final halt, and all procedures undertaken within it are annulled due to stagnation resulting from the negligence of one of the litigants.

The litigant or his/her refusal to pursue it for a period of two years, and this period is calculated from the date of the last valid legal action taken within the framework of the litigation³. Consequently, the dismissal of litigation leads to its termination and the annulment of all its procedures due to the litigant's inaction or refusal to pursue it for a continuous period of two years. Additionally, litigation may be dismissed upon the request of one of the litigants due to the lack of progress in the litigation. This occurs in cases of negligence or neglect in the case during the aforementioned period. The issue of the dismissal of litigation holds significant importance in litigation procedures due to the substantial implications that may arise from it, significantly affecting the parties involved in the litigation. It may result in the complete expiration of the lawsuit and, in some cases, even the expiration of the right itself. The dismissal of litigation marks a crucial turning point in the course of litigation, where the litigation halts, and all procedures undertaken within the lawsuit are annulled. This situation may lead to the loss of the opportunity for the litigant to defend their rights and legally claim them. Furthermore, the dismissal of litigation may impose a heavier burden on the claimant, either due to negligence in pursuing their case or with malicious intent aimed at surprising their opponent after leaving them unattended for a period of time. In this case, the claimant may face penalties such as court costs or compensation to the other party. When litigants do not make sufficient effort to pursue their claims, they may face legal consequences such as the penalty of dismissal to encourage them to pursue their lawsuits seriously and comply with trial requirements⁴. Algerian legislation largely derives provisions regarding the dismissal of litigation from French legislation, regulating them in the fifth chapter of the sixth section, from Article 222 to Article 230 of the Civil and Administrative Procedure Code⁵. Therefore, the study of the dismissal of litigation through abandonment raises research interest in understanding the legislative purpose of determining this procedural penalty while retaining the right to reinstate the lawsuit through new legal proceedings after the declaration of the dismissal penalty. To address this issue, the study necessitates discussing and analysing the scope of the judgment of dismissal of litigation, requiring clarification in the research regarding the conditions for declaring the dismissal of litigation and the methods and mechanisms for maintaining the penalty of dismissal (in the first section). Then, it involves studying and analysing the legal implications resulting from the dismissal of litigation before all judicial authorities and at all stages where the lawsuit may be, to understand the legislative purpose intended to be achieved through this procedural penalty with all its conditions, operational mechanisms, and consequences resulting from the dismissal.

First Section: Scope of the Judgment of Dismissal of Litigation

Judicial dismissal of litigation is an essential part of the legal procedures that can be taken in civil and administrative cases. These procedures allow any party involved in the litigation to request the dismissal of litigation based on specific conditions, typically including matters such as settlement of claims, expiration of the specified time limit for the litigants, or any other conditions stipulated in the provisions regulating litigation. Therefore, the issue of the dismissal of litigation sparks

2 Mohamed Nasr al-Din Kamel, "The Obstacles of Litigation," Ma'arif Publishing House, Alexandria, 1990, p. 239.

3 Belgith Ammar, "Summary of Civil Procedures", Dar Al-'Alam for Publishing and Distribution, Algeria, 2002, p. 76.

4 Ahmed Hindi, "Adherence to the Dismissal of Litigation: The Determination of Litigants", Dar Al-Nahda Al-Arabiya, Cairo, 1991, p. 45.

5 Law No. 08-09 dated February 25, 2008, containing the Civil and Administrative Procedure Law, Official Gazette, No. 21, issued on April 23, 2008, amended and supplemented by Law No. 22-13 dated July 12, 2022, Official Gazette, No. 48, issued on July 17, 2022.

widespread debate in legal circles, where opinions differ on how to claim dismissal. Some acknowledge that it can be claimed in the form of payment raised by one of the parties to the lawsuit when the specified legal conditions are met. Others argue that the claim for dismissal should be in the form of an independent lawsuit presented to the competent court.

First Request: Requirements of Dismissal of Litigation

The law stipulates the necessary requirements for the judgment of judicial dismissal of litigation, requiring the litigation to remain dormant without movement or progress for a certain period, where this dormancy is linked to the negligence of the claimant who loses interest in the lawsuit and fails to take the necessary actions to continue it⁶.

If a period of two complete years passes without any legal action being taken, any party involved has the right to request the dismissal of the litigation, provided that the necessary conditions are met.

Accordingly, we will divide this request into two branches: the first branch will address the conditions related to the procedures for the dismissal of litigation, and the second will discuss the conditions related to adhering to the dismissal of litigation.

First Branch: Conditions Related to Procedures for the Dismissal of Litigation

The legislator imposes conditions for the dismissal of litigation, where the procedures must be stagnant without progress. This stagnation must result from the negligence of the claimant, who fails to take the necessary legal actions to continue the lawsuit⁷. If a period of not less than two complete years passes without interruption due to this stagnation, any party involved has the right to request the dismissal of the litigation.

Firstly: Failure of Litigants to Take Necessary Procedural Steps

Article 222 of the Civil and Administrative Procedure Law stipulates that if the litigants fail to initiate the necessary legal actions and procedures to continue the lawsuit, in this case, the lawsuit will be dismissed⁸. Prolonged failure of the litigants to take the necessary actions and procedures legally indicates their lack of interest in the litigation, which constitutes evidence of their negligence. Even in the absence of documenting their lack of interest, the prolonged period of inactivity cannot be overlooked. Therefore, the court may impose a penalty for not initiating the litigation by declaring its dismissal. Dismissal of litigation is considered a penalty specified by the legislator as a motivational means for litigants to continue their litigation and adhere to the procedures⁹. However, the party against whom the dismissal of litigation is claimed must provide the necessary evidence to prove the material excuse or legal issue that prevented them from continuing the litigation. If appropriate evidence is provided and verified, the excuse may be accepted.

The Algerian legislator differs from the Lebanese and Egyptian legislators regarding who is entitled to claim the dismissal of litigation. The Lebanese and Egyptian legislators primarily rely on the claimant's failure as a cause for the dismissal of litigation, while the Algerian legislator considers that the cause of dismissal of litigation can be attributed either to the claimant's failure to continue their claim or to the defendant's failure to respond to it. The Algerian legislator expressed this through the use of the term "litigants" in Article 222 of the Civil and Administrative Procedure Law, indicating that as soon as one litigant withdraws from pursuing the claim, the other litigants can request dismissal. Neglecting to assert one's rights in the lawsuit is considered a waiver of the procedures, a concept also adopted by the French legislator, from which the Algerian legislator has drawn inspiration¹⁰.

Secondly: Expiration of the Statutory Period

6 Zouda Omar, "Civil and Administrative Procedures in Light of the Opinions of Jurists and Judicial Judgments", Dar Huma, Algeria, 2021, p. 560.

7 Zoudeh Omar, "Civil Procedures in Light of Jurists' Opinions and Judicial Decisions," *ENCYCLOPEDIA*, Algeria, no publication year, p. 400.

8 Saheeh Savogha, "Explanation of the Civil and Administrative Procedure Law: Part One," Dar Huma, Algeria, 2011, p. 343.

9 Boudiaf Adel, "Concise Explanation of the Civil and Administrative Procedure Law: Part One," Click Publishing, Algeria, 2012, pp. 254-255.

10 The same reference, p. 255.



The legislator specified in Article 223 of the Civil and Administrative Procedure Law the period within which the litigation expires, which is two years. This period starts from the date of issuance of the judgment or the issuance of the judge's order assigning one of the litigants to take the necessary steps.

In support of this, the decision issued by the Supreme Court on 19/04/2006 under number 337111 stated: "The appellants criticized the appealed decision on the grounds that they adhered to the dismissal of litigation based on the provisions of Article 220 of the Civil Procedure Law, on the basis that a decision was issued by the Supreme Court on 29/01/1999, and this decision was served on the appellants on 14/04/1999. The litigation was not resumed after the appeal until 4/11/2001, so the litigation has exceeded two years, making it fall under the provisions of Article 220 of the Civil Procedure Law. Contrary to this would constitute a violation of a fundamental principle in the procedures, and expose the appealed decision to nullity. The argument of the appellants against the appealed decision is valid and in place because if litigation remains dormant for two years, whether this stagnation occurs before the court of first instance, the appellate court, or after referral from the Supreme Court, and litigation is not resumed after two years from the last correct action taken, it falls. Hence, when the litigants went on to argue that the dismissal of litigation only relates to judgments issued before the subject matter is decided, this doctrine is incorrect and constitutes a violation of the provisions of Article 220 of the Civil Procedure Law¹¹."

Therefore, the failure to continue litigation for a period of two years from the date of the last correct action taken, whether by the claimant or the defendant, results in the dismissal of the litigation. However, in the event that one of the litigants takes action against the other within the two years regarding the litigation, and provided that the action taken is valid, in this case, the period of dismissal of the litigation is interrupted, and a new period begins from the date of taking action¹². However, if the action taken is null and void for some reason, it does not stop the running of the dismissal period. Similarly, if it relates to a judgment issued before the subject matter is decided, the two-year period starts from the date of its pronouncement.

Although the Algerian legislator limits the dismissal of litigation to specific legal deadlines, he considered the interests of both parties in cases of delay due to obstacles, hindrances, or legal force. This is reflected in Article 288 of the Civil and Administrative Procedure Law, and these reasons are listed in Article 210 of the Civil and Administrative Procedure Law, which include a change in the litigant's capacity to sue, the death of one of the litigants, if the litigation is transferable, the death, resignation, suspension, deletion, or resignation of the lawyer, unless representation is legally permissible¹³.

In the event that one of the aforementioned reasons occurs, the claimant must proceed with the litigation against the general heir. This was stated in Decision No. 6192350 issued by the Supreme Court on 23/12/2010, which ruled: "The appellants criticize the appealed decision on the grounds that their litigation was based on the non-continuation of litigation and its stagnation for more than two years due to the neglect of the appellants' predecessor, and then to his heirs, who are the current appellants. However, the appellants' predecessor died on 13/10/2000, i.e., less than four months after the issuance of the judge's decision and before the conclusion of the investigation into the matter. Therefore, when they considered that the stagnation of litigation was due to the neglect of the appellants' predecessor who passed away before two years from the date of issuance of the aforementioned decision, this constitutes a violation of the provisions of Article 220 of the Civil Procedure Law, rendering the appealed decision subject to nullity. And since the appellants' objection to the appealed decision is valid, as it ruled on the dismissal of litigation despite the fact that the appellant had died less than four months from the date of issuance of the judge's decision and before

11 Decision of the Supreme Court, Civil Chamber No. 33711, issued on July 19, 2006, unpublished, (Referenced by: Hamdi Pasha Omar, Principles of Judicial Interpretation under the New Civil and Administrative Procedures Law, Dar Huma, Algeria, 2015, p. 185).

12 Omar Zouda, Civil Procedures in Light of the Opinions of Jurists and Judicial Judgments, Ibid, pp. 403-406.

13 Saheeh Sengogue, Ibid, p. 328.

concluding the investigation into the matter, and they considered that this stagnation was due to the neglect of the appellants' predecessor, and then to his heirs, in order for the expiration date of the dismissal to apply to the appellants, it was necessary for the respondent to prove the neglect of the appellants by proving their knowledge of the existence of the litigation. In this case, the presumption is based on the lack of the appellants' knowledge of it, and the burden of proof lies on the respondent, that the appellants knew about it and did not hasten to proceed with it before its dismissal. And when the judges of the matter concluded that the dismissal of the litigation was based on the neglect of the appellants without proving whether they were aware of the existence of the litigation or not, they erred in applying Article 220, which exposes their judgments to nullity.¹⁴

The second branch: Conditions related to claiming the lapse of litigation

The right to claim the lapse of litigation usually belongs to the party who initiated the lawsuit or faces legal opposition. It is required for the party seeking the lapse of litigation to be a party to it and to have a legal interest in its expiration.

Firstly: The defendant's adherence to the penalty of litigation lapse

Based on the interest as a condition for accepting the request for litigation lapse, it is noted that the only one benefiting from this request is the defendant himself. The latter is considered to be in a position aimed at getting rid of it, and if the opportunity is given to him and it becomes clear that the plaintiff has failed to take the necessary steps to pursue the lawsuit, it becomes obligatory for the sole plaintiff to request the lapse of litigation after the conditions for its lapse have been met¹⁵. In the event that the plaintiff stops pursuing his claim for a period exceeding two years from the date of issuance of the judgment or the judge's order assigning one of the litigants to take action, it is considered serious negligence or evidence of his clear intention not to pursue his claim. In both cases, he must bear the consequences of his negligence or bad faith, and therefore, to protect the defendant from the plaintiff's procrastination and negligence, the law grants him the right to demand the lapse of this litigation.

Sometimes, the defendants in the lawsuit may be multiple; in this case, each of them is entitled to request the lapse of litigation. If the defendants are multiple and one of them insists on the lapse, it is only ruled in favour of him without benefiting the others¹⁶. However, it continues for the defendant who the action is directed against. The rule is that it is not valid for one's opponent to be harmed by an action he did not take against him, but rather against another opponent. Similarly, the direct action of one of the defendants does not prevent the others from claiming its lapse¹⁷. Therefore, it is clear that if the defendants are multiple, some of them may claim the lapse of litigation, while others may not, provided that its subject is divisible.

Secondly: The plaintiff's adherence to the penalty of litigation lapse

The Algerian legislator abolished, by virtue of Article 2020 of the Civil Procedure Code, the right to adhere to the lapse of litigation for the benefit of the defendant only, for the purpose of protecting their interest, in cases where the plaintiff does not pursue their claim or fails to execute the judgment issued against them for a period of two years¹⁸. However, after the issuance of the amended and complementary Civil and Administrative Procedure Code, it became apparent that the legislator, in Article 222, extended the right to adhere to the lapse of litigation to both the defendant and the plaintiff, using the term "litigants," whereas previously only the defendant had the right to adhere to the lapse of litigation¹⁹.

14 Decision of the Supreme Court, Civil Chamber No. 619235, issued on December 23, 2010, unpublished, (Referenced by: Hamdi Pasha Omar, *Ibid*, p. 189).

15 Ahmed Hindi, *ibid*, p. 67.

16 Ali Abdel Hamid Turki, *Explanation of the Civil Procedure Code: Judicial Organization, Jurisdiction Basis, Theory of Action, and Judicial Litigation*, Third Edition, Dar Al Nahda Al Arabiya, Cairo, 2011, p. 859.

17 Same reference, p. 68.

18 Barbara Abdel Rahman, *Explanation of the Civil and Administrative Procedure Code: Part One*, Fifth Edition, Beit Al-Afkar, Algeria, 2022, p. 192.

19 Boudiaf Adel, *ibid*, p. 256.



Some legal scholars believe that in cases of multiple plaintiffs in litigation, the request for the lapse of litigation must be submitted against all plaintiffs, otherwise it would not be acceptable in ruling on the lapse of litigation, even if the subject matter of the claim is divisible. If the defendant fails to submit a request for the lapse against all plaintiffs²⁰, the judge in this case rules against accepting the request for the lapse of litigation²¹, and in this case, the litigation remains valid for all parties. Therefore, only the litigants themselves have the right to raise the issue of the lapse of litigation, and it is not for the judge to raise it on their behalf. Therefore, all litigants must adhere to the procedures of the litigation to avoid its lapse, otherwise it will be subject to dismissal²².

The second request: Mechanisms of adhering to the dismissal of litigation

According to Article 222 of the Civil and Administrative Procedure Code, in its second paragraph, it is permissible for the litigants to adhere to the dismissal of litigation either in the form of a request or by a submission raised by one of the litigants. Based on the above, the examination of the mechanisms of adhering to the dismissal of litigation requires dividing this request into two branches. In the first branch, the mechanism of the lawsuit in adhering to the dismissal of litigation is analysed, while in the second branch, the mechanism of the submission in adhering to the penalty of dismissal is studied.

The first branch: Adhering to the dismissal of litigation through a separate lawsuit

The dismissal of litigation can be requested in the form of a separate lawsuit filed by the party adhering to the dismissal, whether it is initiated by the plaintiff or the defendant, as stipulated in Article 222, Paragraph 2 of the Civil and Administrative Procedure Code²³. The Algerian legislator did not address the issue of dismissal of litigation through a separate lawsuit in detail or specify specific procedures to regulate it. Rather, it is treated like an ordinary lawsuit, where all the general substantive and procedural requirements for accepting a lawsuit must be met. Therefore, the party adhering to the dismissal of litigation must submit their claim through a petition to the court, requesting the dismissal of litigation, while ensuring that this lawsuit meets all the conditions for its acceptance, including capacity, interest, and authorization as specified in Article 13 of the Civil and Administrative Procedure Code.

The party adhering to the dismissal of litigation files their lawsuit after two years have passed from the last valid procedure or from the date of issuance of the judgment or order without execution. They can then request the dismissal of litigation after fulfilling all the conditions for its dismissal. Therefore, the applicant for dismissal submits their lawsuit before the same judicial authority that is considering the lawsuit related to the dismissal of litigation, either at the level of the court of first instance or at the level of the appellate court, provided that it is before the same authority where the last valid procedure or judgment was issued.²⁴

The second branch: Adhering to the dismissal of litigation through submission

The submission of the dismissal of litigation is considered a procedural defence due to its association with the procedural penalty that is activated due to the failure to comply with the prescribed deadlines for resuming litigation proceedings in cases of suspension. It is mandatory for the parties to raise this defence before addressing the substantive issue. The submission of the dismissal of litigation is not limited to one party over another as long as the legislator has not specified any party to exercise this submission over others, as clarified in Article 222, Paragraph 2 of the Civil and Administrative Procedure Code, using the phrase "It is permissible for the parties..."²⁵ This indicates that all parties have the right to submit the dismissal, regardless of their number, in cases where one of them refuses to proceed with the proceedings, leading to the suspension of litigation.

The submission of the dismissal of litigation requires that it be raised by an interested party in the dismissal, and the party must adhere to it before any means, defence, request, or action related to

20 Same reference, p. 257.

21 Sahih Sengove, *ibid*, p. 346.

22 Ahmed Hindi, *ibid*, p. 76.

23 Saheeh Sangoufa, previous reference, p. 343.

24 Boudiaf Adel, previous reference, p. 256.

25 Same reference, p. 257.

the litigation to be dismissed, otherwise the submission is not acceptable²⁶. This is stated in Decision No. 38331 issued by the Supreme Court on 04/11/1984²⁷.

The Second Section: Legal Consequences Resulting from the Dismissal of the Lawsuit

Acquiring the right to request the dismissal of the lawsuit as soon as its conditions are met obliges the judge to issue a dismissal judgment for the party who raised it. This judgment is considered declarative and does not establish the state of dismissal.

Legal consequences arise from the dismissal that relate to the moment when all the conditions for dismissal of the lawsuit are met, not necessarily to the date of the judgment issued for it²⁸. Therefore, the dismissal of the lawsuit entails the cessation of all its procedures, returning the situation to what it was before the lawsuit was filed, and preserving the original right that the lawsuit was based on.

The First Issue: Effects of Lawsuit Dismissal before a Court of First Instance

Lawsuit dismissal leads to the cancellation of all proceedings initiated by the litigants before the stagnation of their dispute, following the expiration of the two-year period stipulated in Article 223 of the Civil and Administrative Procedure Law. Consequently, the lawsuit is terminated and nullified without the dismissal of the case, as the dismissal judgment does not affect the substance of the right related to the lawsuit.

First Branch: Termination of Litigation Proceedings

The judgment of lawsuit dismissal returns the parties to the status quo ante, undoing all effects arising from the litigation, including both the legal and substantive aspects of the judicial claim. This entails the annulment of all judgments and procedures taken during the period of litigation before its stagnation. It is understood that the judgment of dismissal has a retroactive effect, bringing the litigants back to the starting point. Even if there were previous judicial decisions made as part of any investigative proceedings prior to the final decision on the matter, they are retroactively annulled according to Article 226 of the Civil and Administrative Procedure Law. Thus, the termination of all litigation proceedings means that they cannot be relied upon, objected to, or invoked in any other matter or lawsuit, as these would be null and void by law²⁹. However, in some cases, certain procedures or judgments issued within the context of the dismissed litigation may still have repercussions if the dispute is reopened. In such instances, some previous actions may remain effective and enforceable if reviewed or indirectly ordered by the judge.

First: Final Judgments Issued in Litigation

These refer to judgments issued in certain litigation requests that carry the force of *res judicata*, deemed binding according to the law³⁰. Based on these judgments, the previous procedures relied upon by these judgments remain valid and binding for the litigants even after the dismissal of the litigation associated with them. This means that the results achieved and the measures taken based on these judgments, such as the execution of judicial orders, remain valid and binding even after the dismissal of the litigation³¹, in accordance with Article 296 of the Civil and Administrative Procedure Law.

Second: Investigation and Expertise Actions Completed in Litigation

Litigants are allowed to retain and rely on investigation and expertise actions for use in new litigation as long as these actions are not invalidated. These actions are considered independent of the litigation procedures, allowing for their utilization in new litigation. This aims to avoid duplicating procedures and economize time and effort during litigation³². On the other hand, the wisdom of

26 Saheeh Sangoufa, previous reference, p. 343.

27 Decision of the Supreme Court, Civil Chamber No. 38331, issued on 04/11/1984, Journal of Jurisprudence, Issue 01, Year 1989, p. 102 (Referenced by: Hamdi Pasha Omar, Principles of Judicial Jurisprudence in Civil Procedure, Eighth Edition, Dar Huma, Algeria, 2009, p. 105).

28 Omar Zoudda, Civil and Administrative Procedures in Light of the Opinions of Jurists and Judicial Decisions, previous reference, p. 570.

29 Bouzidi Adel, *Ibid*, pp. 259-260.

30 Ali Abdelhamid Turki, *Ibid*, p. 860.

31 Same reference.

32 Ali Abdelhamid Turki, *Ibid*, p. 860.



adhering to these actions becomes apparent in avoiding the harm that may result from renewing litigation, such as the disappearance of the effects established by experts in their completed expertise or the death of witnesses whose testimonies were significant in the litigation³³.

Thirdly: Declarations Issued by Litigants and Oaths Sworn by Them

The Algerian legislator allows litigants to retain the declarations and oaths they have made, and these declarations and oaths remain evidence against them in the future. When a declaration or oath is made by the litigants, it remains valid for them to prove even after the dismissal of the litigation in which it was made. This means that these declarations and oaths retain their legal validity and effect, remaining valid to extend beyond the scope of the dismissed litigation and into new litigation without the need for reproof³⁴.

Second Branch: Non-Impairment of the Right Based on the Judgment Declaring the Dismissal of Litigation

The dismissal of litigation does not lead to the expiration of the lawsuit, in order to preserve the plaintiff's right in the lawsuit or the substantive right of the defendant. Accordingly, the plaintiff can resort to the judiciary with a new lawsuit. This is because the dismissal of litigation by dismissal does not entail the expiration of the lawsuit, as in cases where the settlement between the litigants results in the expiration of the litigation in a subsidiary manner. This procedure leads to the complete resolution of the dispute regarding the contested right and its subject matter, and its effect is not limited to the procedures only³⁵.

Second issue: Effects of the Dismissal of Litigation before Appellate and Cassation Courts

The situation of dismissal of litigation is not limited to judicial litigations held before the Court of First Instance only, but it can also occur before appellate courts. However, its effects differ from the effects of the dismissal of litigation before the courts of first instance, as affirmed by Article 227 and Article 229 of the Code of Civil Procedure.

Article 227 of the Code of Civil Procedure stipulates that if the dismissal of litigation is decided during the stages of appeal or opposition, the judgment rendered subject to appeal or opposition shall have the force of *res judicata* even if not officially notified to the litigants³⁶.

Branch One: Dismissal of Litigation During Opposition

The right to oppose is only established for the appellant who has defaulted or is absent from the litigation initiated against them, meaning that a default judgment has been issued against them, entitling them to oppose the judgment or decision issued against them in absentia, after fulfilling all the conditions and deadlines for opposition stipulated in Articles 327 to 331 of the Code of Civil Procedure. Therefore, the default judgment is final, and the dismissal of litigation during the opposition stage does not mean the dismissal of the final default judgment because the final judgment is not affected by the dismissal. In this case, the default judgment becomes non-appealable and non-appealable³⁷.

Branch Two: Dismissal of Litigation During Appeal

According to Article 333 of the Code of Civil Procedure, judgments issued in all articles are subject to appeal when they decide on the substance of the claim, a procedural motion, a motion for non-acceptance, or any other motion that terminates the litigation unless the law provides otherwise. In the event of the cessation of litigation procedures for a period of two years without pursuing its course until final resolution, this leads to its dismissal by a mechanism of payment or by filing a new lawsuit for the purpose of disclosing the status of the dismissal. This does not allow the appellant to refile the appeal, but the judgment of dismissal arranges the effect of the appealed substantive judgment. However, if the appealed judgment is not decisive on the subject matter and its appeal is

33 Ali Abdelhamid Turki, *Ibid*, p. 860.

34 Same reference, p. 861.

35 Bouzidi Adel, *Ibid*, p. 259.

36 Saeih Sengua, *Ibid*, p. 348.

37 Bouzidi Adel, *Ibid*, p. 260.

only after deciding on formal aspects and the requirements related only to accepting the claim, the judgment of dismissal in these cases does not prevent the appellant from filing a new lawsuit before the Court of First Instance, not the appellate court³⁸.

Branch Three: Effects of Dismissal of Litigation in the Appeal by Cassation Stage

An appeal by cassation does not constitute an extension of the original litigation or a stage of litigation. Therefore, the litigants do not have rights or advantages before the Court of Cassation to submit new requests or defences that were not previously presented before the trial courts. An appeal by cassation is only admissible if it is filed by one of the litigants or those with rights. In the case of an appeal by cassation, the deadline related to the dismissal of litigation remains valid after the decision on the cassation appeal and the referral of the case for reconsideration with a different composition, because the legislator did not suspend the process of resuming litigation after its referral from the Supreme Court. The period is calculated from the date of pronouncement of the cassation decision, not from the date of notification of this decision to the litigant, which means that the legislator holds the litigant responsible for being informed of the decisions of the Supreme Court to express his interest in the case before the Supreme Court by following the trial procedures and the decision issued regarding the submitted appeal³⁹.

CONCLUSION:

The penalty of dismissal of litigation is considered one of the obstacles that hinder the continuation of judicial proceedings on their natural course due to the stagnation of procedures for a period of two years from the last action ordered by the judge against one of the litigants to take steps to reach a resolution in its subject matter. Litigation is supposed to be a sequential process that begins with filing a judicial claim until it ends with the issuance of a judgment that settles the dispute, and its purpose is not legally fulfilled except by issuing a decisive judgment in its subject matter and preparing it for implementation through legal means. Therefore, the dismissal of litigation is its procedural cessation due to the failure of the litigants to take necessary actions. The judgment determining the penalty of dismissal entails several effects at all levels of litigation. However, one of the most important effects is that the dismissal of litigation does not lead to the expiration of the claim in its subject matter, nor does it affect the substance of the right judgment. Instead, it relates to its formal aspect, allowing its holder the right to demand what they believe is rightfully theirs by resorting to the judiciary and filing a new lawsuit. Dismissal is a procedural penalty made by the legislator to be linked to the litigants' interest, and it is not raised by the judge spontaneously, although the penalty of dismissal is sometimes related to the public interest achieved by litigation procedures, reflecting the judiciary's laxity in resolving cases raised by litigants. Therefore, it was up to the legislator to reconsider the nature of the penalty of dismissal to make it linked to the public interest and allow the judge to automatically issue it to achieve the legislative purpose expected of it and compel the litigants not to procrastinate and delay the litigation procedures until their conclusion. On another critical note, the scope and provisions regulating the penalty of dismissal require legislative review regarding the ambiguity surrounding these provisions in terms of detailing the conditions and reasons related to this penalty. The legislator has raised significant differences in applying the provisions of Article 222 of the Code of Civil Procedure regarding the determination of the intended meaning (of necessary actions) before the judiciary, as well as in applying the provisions of Article 223 of the same law regarding the precise statement of how to calculate the period of dismissal, whether in litigation before the court of first instance or in the stages of appeal and referral after cassation.

38 Same reference, p. 260.

39 Bouzidi Adel, *Ibid*, p. 261.



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B. Laws:

B-1. Constitution:

Constitution of the People's Democratic Republic of Algeria, approved in the referendum on November 28, 1996, published by Presidential Decree No. 96-438 dated December 7, 1996, Official Journal No. 76, issued on December 8, 1996, amended and supplemented in 2002 by Law No. 02-03 dated April 10, 2002, Official Journal No. 25, issued on April 14, 2002, and amended and supplemented in 2008 by Law No. 08-19 dated November 15, 2008, Official Journal No. 63, issued on November 16, 2008, and amended and supplemented in 2016 by Law No. 16-01 dated March 6, 2016, Official Journal No. 14, issued on March 7, 2016, amended and supplemented in 2020 by Presidential Decree No. 20-442 dated December 30, 2020, Official Journal No. 82, issued on December 30, 2020.

B-2. Ordinary Laws:

Law No. 08-09 dated February 25, 2008, containing the Civil and Administrative Procedures Law, Official Journal, No. 21, issued on April 23, 2008, amended and supplemented by Law No. 22-13, dated July 12, 2022, Official Journal No. 48, issued on July 17, 2022.

C. Judicial Decisions:

- [1] Supreme Court Decision, Civil Chamber No. 38331, issued on 04/11/1984, Journal of Judiciary, No. 01, Year 1989, pp. 100-103.
- [2] Supreme Court Decision, Civil Chamber No. 33711, issued on July 19, 2006, unpublished.
Supreme Court Decision, Civil Chamber No. 619235, issued on 12/23/2010, unpublished.