

Classification of Procedural Defences under the Algerian Code of Civil and Administrative Procedures: An Analytical Study

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Abstract:

Procedural defences are among the most important means made available by the legislator to litigants for confronting judicial proceedings, given their role in organizing the course of litigation and ensuring compliance with procedural rules before the courts. The Algerian legislator has addressed these defences within the provisions of the Code of Civil and Administrative Procedures and has regulated several forms of them, which differ according to their nature and purpose.

This study aims to clarify the concept and classification of procedural defences under the Algerian Code of Civil and Administrative Procedures by addressing their principal types, particularly defences relating to jurisdiction and referral, as well as other formal defences, while identifying the distinctions between them in accordance with the relevant legal provisions. It also seeks to highlight the specific features of each type of defence and the extent to which they differ in terms of their nature and field of application.

Keywords:

Procedural defences; Code of Civil and Administrative Procedures; judicial proceedings; jurisdiction; referral; nullity.

Introduction:

Judicial proceedings constitute the legal means through which individuals exercise their right of access to justice in order to seek protection of their rights and legal positions. However, instituting such proceedings is not unrestricted; rather, it is subject to a set of rules and procedures intended to ensure the proper administration of justice and achieve a balance between the parties to the dispute. In this context, the legislator has made available to litigants a range of legal means enabling them to confront the action and the procedures undertaken therein, most notably procedural defences.

Procedural defences are means invoked by a party to challenge procedures relating to judicial proceedings, with the purpose of preventing their continuation, correcting their course, or bringing them to an end without addressing the substantive right forming the subject matter of the action. They concern the procedural aspect of the litigation rather than the claimant's entitlement to the substantive relief sought. They are therefore distinct from substantive defences, which are directed against the right at issue, and

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from pleas of inadmissibility, which seek to prevent the court from examining the action because a condition for admissibility is lacking.

The importance of procedural defences lies in enabling a party to monitor compliance with the rules governing litigation, whether the matter concerns judicial jurisdiction, the validity of procedures, or other issues connected with the procedural course of the action. They consequently constitute one of the principal means regulated by the legislator to ensure respect for procedural rules and to strike a balance between the right of access to justice and the proper administration of justice.

The Algerian legislator regulated procedural defences within the Code of Civil and Administrative Procedures, establishing several forms that differ according to the subject matter and nature of the defence and the purpose it seeks to achieve. This has resulted in a multiplicity of types and doctrinal classifications, making the identification and distinction of procedural defences an essential matter for understanding the procedural system governing judicial proceedings.

The study of the classification of procedural defences is particularly important not only theoretically but also practically, since determining the nature of a defence helps establish its place within the proceedings and distinguish it from other means of defence.

Against this background, the following research problem arises: How did the Algerian legislator regulate the categories of procedural defences in the Code of Civil and Administrative Procedures?

To answer this question, the study is divided into two sections. The first examines defences relating to jurisdiction and referral, while the second is devoted to defences relating to stay of proceedings and nullity.

Part One: Defences Relating to Jurisdiction and Referral in Judicial Proceedings

The Algerian legislator addressed jurisdiction and referral within the Code of Civil and Administrative Procedures and established a set of rules for each in order to regulate the course of judicial proceedings and ensure that disputes are decided by the competent judicial bodies. Jurisdiction determines the judicial body competent to hear the dispute through the distribution of disputes among the various judicial bodies, whereas referral means transferring an action pending before one judicial body to another in accordance with the cases specified by law.

Both jurisdiction and referral are of particular importance because of their direct connection with the proper conduct of judicial proceedings. This led the legislator to regulate the rules relating to them and to allow litigants to invoke defences connected with these matters.

Given the theoretical and practical importance of jurisdiction and referral, each will be examined separately. The first subsection addresses the plea of lack of jurisdiction, while the second examines defences relating to referral.

First Subsection: Defences Relating to Lack of Jurisdiction in Judicial Proceedings

In linguistic terms, jurisdiction denotes preference and exclusivity. In legal terminology, it means determining the authority granted by the legislator to each judicial body to decide a particular type of dispute, so that each body is assigned the actions falling within its judicial jurisdiction.

Dr Ali Awad Hassan defined jurisdiction as “the court’s authority to adjudicate the action.” Similarly, Dr Tayeb Kabayli considers the plea of lack of jurisdiction to be the means invoked by one of the parties by denying the court’s authority to decide the action on the ground that it lacks jurisdiction to hear it.

Accordingly, two principal types of plea of lack of jurisdiction may be distinguished as follows:

First – Plea of lack of subject-matter jurisdiction:

The plea of lack of subject-matter jurisdiction is one of the procedural defences that the legislator did not expressly include under the chapter on formal defences. Rather, it is regulated by Article 36 of the Code of Civil and Administrative Procedures, which provides that lack of subject-matter jurisdiction is a matter of public order and shall be raised by the judicial body of its own motion at any stage of the proceedings.²

Accordingly, this defence will be examined by defining subject-matter jurisdiction and the plea of lack of subject-matter jurisdiction and by explaining its nature and effects.

a – Meaning of subject-matter jurisdiction:

Subject-matter jurisdiction means the authority granted to judicial bodies at different levels to adjudicate the cases assigned to each of them. The legislator established the subject-matter jurisdiction of courts in Articles 32 and 33 of the Code, while that of judicial councils is addressed in Articles 34 and 35.

Two criteria have been relied upon to determine subject-matter jurisdiction. The first is the nature of the action, based on the type of matter in dispute brought before the courts and assigned to one judicial body rather than another. The second is the value of the dispute, based on the value of the interests forming the subject matter of the proceedings; the Algerian legislator has adopted the latter as one of the criteria for determining subject-matter jurisdiction.

b – Meaning of the plea of lack of subject-matter jurisdiction:

The plea of lack of subject-matter jurisdiction is the litigant's request that the court before which the action is pending refrain from deciding it because it lacks jurisdiction under the legally established jurisdictional rules. Accordingly, determining the judge's authority to decide the dispute depends on identifying the matters falling within that judge's jurisdiction. This plea is invoked under the aforementioned Article 36 as a formal defence.

c – Nature of the plea of lack of subject-matter jurisdiction and its effects:

The Algerian legislator confirmed in Article 36 that lack of jurisdiction based on the type of action is a matter of public order. The parties may not agree to derogate from its provisions, and the judicial body shall raise it of its own motion at any stage of the proceedings, even before the Supreme Court. When such a plea is raised, the court must decide it immediately or upon the request of one of the litigants in order to ensure the proper organization of the judicial service. The Public Prosecution may also invoke it as an intervening party even if none of the parties has raised it, and the court must respond to it directly. Since subject-matter jurisdiction is connected with public order, it remains a matter for the court to consider; for example, the parties may not bring a criminal action before the civil courts or a civil action before the administrative courts. Among the Supreme Court decisions confirming this principle is Decision No. 749672 of 14 July 2011, which held that the ordinary courts lacked subject-matter jurisdiction to hear a third-party opposition brought by the Minister of Finance. Article 800 of the Code provides that actions in which the State, a municipality, or a public institution is a party fall within the

²Article 36 of Law No. 08-09 dated 23 February 2008 containing the Code of Civil and Administrative Procedures, Official Gazette of the People's Democratic Republic of Algeria, No. 21, issued 23 April 2008.

jurisdiction of the administrative courts. Since subject-matter jurisdiction is a matter of public order, the trial judges should have declared that they lacked jurisdiction.³⁴⁵⁶⁷

* The court may raise the issue of jurisdiction of its own motion without addressing the merits, and the Public Prosecution, where it is a party, may raise the issue even if the parties have not invoked it.

* As a rule, litigants may invoke lack of subject-matter jurisdiction; however, they may not waive application of this rule or agree to derogate from it.

* An intervening party may invoke this defence, and it may be raised at any stage of the proceedings, even for the first time before the Supreme Court.

A Supreme Court decision, No. 475823 dated 12 November 2008, held that the administrative courts, rather than the ordinary courts, have jurisdiction over a claim for compensation arising from expropriation for public utility, in accordance with Law No. 91-11 of 27 April 1991 governing expropriation for public utility.⁸

Second – Plea of lack of territorial jurisdiction:

The legislator provided for the plea of lack of territorial jurisdiction in Articles 51 and 52 of the Code of Civil and Administrative Procedures, specifically in the first section of Chapter Two.

a – Meaning of territorial jurisdiction:

Territorial jurisdiction is the authority granted to a judicial body to decide cases brought before it on the basis of a geographical criterion subject to judicial territorial divisions. Thus, local or territorial jurisdiction is based on a general rule tied to the defendant's domicile, together with a number of exceptions.

The general rule of territorial jurisdiction is the court of the defendant's domicile. If the defendant has no known domicile, jurisdiction belongs to the court of the defendant's last domicile. Where a domicile has been elected, the competent court is that of the elected domicile unless the law provides otherwise, pursuant to Article 37 of the Code. This rule is based on the principle that a debt is to be demanded, rather than carried, to the debtor.⁹¹⁰

The legislator departed from this rule and established exceptions for determining the competent court, including the following:

* Article 39 identifies categories of actions and specifies the judicial body before which they may be brought. It follows from this provision that the judge may not raise lack of territorial jurisdiction of his or her own motion unless it has been raised by the parties.¹¹

³Supreme Court, Civil Chamber, Decision No. 749672 dated 14 July 2011, case (Minister of Finance v. heirs of J.M., in the presence of S.A. and L.M.), Supreme Court Journal, No. 02, 2011, p. 186.

⁴Al-Amrousi Anwar, Principles of Procedure and Defence Memoranda in Actions and Appeals, Vol. 4, Dar Al-Fikr Al-Jami'i, Cairo, n.d., p. 791.

⁵Al-Wafi Sami, Defences in Administrative Litigation, Arab Democratic Center for Publishing, Berlin, 2017, p. 36.

⁶Al-Danasouri Ezz El-Din and Akkaz Hamed, Commentary on the Code of Procedure, Vol. 1, 11th ed., Al-Jalal Printing Company, Cairo, 2003, p. 1059.

⁷Hamdi Basha Omar, Principles of Judicial Jurisprudence in Civil Procedure, 8th ed., Dar Houma, Algeria, 2009, p. 06.

⁸Supreme Court, Civil Chamber, Decision No. 475823 dated 12 November 2008, case (Wilaya Agency for Land Management and Regulation, represented by its director, v. Z.S.), Supreme Court Journal, No. 01, 2009, p. 210.

⁹The expression "the debt is demanded, not carried" means that the claimant must demand the debt at the defendant's domicile.

¹⁰Rochou Khaled, A Concise Commentary on the Algerian Code of Civil and Administrative Procedures 08-09, Dar Al-Khaldounia Publications, Algeria, 2019, p. 107.

¹¹See Article 39 of Law No. 08-09.

* Article 40 provides another exception by identifying actions for which a particular judicial body has exclusive jurisdiction, indicating their mandatory nature and allowing the judge to raise lack of jurisdiction of his or her own motion.¹²

b – Meaning of the plea of lack of territorial jurisdiction:

Some scholars define lack of territorial jurisdiction as the court's lack of competence to hear the action before it because the action falls outside its territorial jurisdiction under the applicable legal rules. This plea is invoked pursuant to Article 51 of the Code.

c – Form of the plea of lack of territorial jurisdiction:

Article 51 shows that the defendant has the right to raise this plea. The defendant must give explicit reasons for the plea concerning the court's lack of authority to decide the case and must identify the judicial body competent to decide it.¹³

Supreme Court Decision No. 546141 of 1 July 2009 held that the court at the insured person's place of residence had jurisdiction over a dispute concerning insurance compensation under Article 26 of Ordinance No. 95-07. That provision also permits an action to be brought before the court within whose territorial jurisdiction the harmful act occurred. Since the appellate judges excluded the insured person's domicile without giving reasons, they failed to apply the law correctly.¹⁴

d – Determination of the plea of lack of territorial jurisdiction:

Under Article 52, the judge has discretion when deciding lack of local jurisdiction: the judge may issue a separate judgment without considering the merits, or may decide both issues together, provided that the parties are first orally invited to submit their claims on the merits.¹⁵

e – Nature of the plea of lack of territorial jurisdiction and its effects:

As a general rule, the plea of lack of territorial jurisdiction is not a matter of public order. It must therefore be raised before any defence on the merits or plea of inadmissibility. This follows from Article 47 of the Code. If raised in this manner, the court must decide it, whether accepting or rejecting it, by a judgment subject to appeal. Conversely, if the plea is raised after a defence on the merits or after a plea of inadmissibility, it is inadmissible.¹⁶

In certain cases, however, lack of territorial jurisdiction is a matter of public order, such as conflicts of jurisdiction between judges, where the legislator has designated the judicial body exclusively competent to decide the matter, cases involving the recusal of judges and recusal procedures, and the cases provided for in Article 40.

The fact that the plea of lack of territorial jurisdiction is not generally a matter of public order has the following consequences:

* The court may not declare lack of local jurisdiction of its own motion, and the Public Prosecution may not raise this plea even when acting as an intervening party.

¹²See Article 40 of Law No. 08-09.

¹³Zouzou Houda, "Types of Defences under the New Code of Civil and Administrative Procedures," *Al-Muntada Al-Qanuni Journal*, No. 06, University of Mohamed Khider, Biskra, 2014, p. 197.

¹⁴Supreme Court, Commercial and Maritime Chamber, Decision No. 546141 dated 1 July 2009, case (Public Institution Cosider v. Regional Agricultural Cooperation Fund), *Supreme Court Journal*, No. 02, 2009, p. 193.

¹⁵Sanqouqa Saih, *Commentary on the Code of Civil and Administrative Procedures*, Vol. 1 (Articles 1–583), Dar Al-Huda, Algeria, 2011, p. 123.

¹⁶Florence Brus, *Le principe dispositif et le procès civil*, doctoral thesis, University of Pau and the Adour Countries, Faculty of Law, Economics and Management, France, 2014, p. 90.

* The defendant must raise the plea at the outset of the hearing, before any defence on the merits, and must give reasons and identify the competent judicial body.

* The parties may agree to derogate from the rules of local jurisdiction because those rules are not mandatory; an intervening party whose intervention benefits the defendant may also invoke the plea.

Second Subsection: Defences Relating to Referral in Judicial Proceedings

The plea of referral means transferring an action from the court before which it was initially brought to another court for examination and determination, provided that both courts have jurisdiction over the action. This occurs, for example, where the law permits an action to be brought before the court of the place where the contract was concluded or before the court of the place agreed upon for its performance.

The plea of referral takes two principal forms: referral because of identity of subject matter and referral because of connexity.

First – Referral because of identity of subject matter:

The Algerian legislator regulated referral based on identity of subject matter in the second section of Chapter Two of Title Three of the Code, specifically Articles 53, 54 and 57.

a – Definition:

Referral based on identity of subject matter exists when the same dispute is pending before two courts having the same jurisdiction and level. Article 53 provides that identity of subject matter exists when the same dispute is brought before two competent judicial bodies of the same level.¹⁷

b – Conditions:

The following conditions must be met: the same action must be brought before two courts with the same parties, subject matter and cause; the dispute must be pending before two judicial bodies belonging to the ordinary judiciary and at the same level; and both courts must have jurisdiction to hear the action.

c – Raising and deciding the plea:

The plea is raised at the request of one of the litigants and must be raised before any defence on the merits or plea of inadmissibility. The court before which the action was registered later relinquishes the dispute in favour of the first court if a litigant so requests under Article 54. The second paragraph of the same article also permits the judge to relinquish the case of his or her own motion upon becoming aware of the identity of subject matter.¹⁹

The judgment ordering relinquishment because of identity of subject matter is binding on the court to which the case is referred and is not subject to appeal under Article 57.²⁰

d – Nature:

The plea of referral based on identity of subject matter is not a matter of public order. This follows from the fact that the legislator did not require the court to order it of its own motion, but placed the matter in the hands of the litigants.

Second – Referral because of connexity:

¹⁷Article 53 of Law No. 08-09.

¹⁸Dhib Abdessalam, *The New Code of Civil and Administrative Procedures*, 2nd ed., Moufem Publishing, Algeria, 2011, p. 73.

¹⁹Ibrahimi Mohamed, *The Concise Guide to Civil Procedure*, Vol. 1, 3rd ed., Office of University Publications, Algeria, 2006, p. 65.

²⁰Messaoudi Abdallah, *Commentary on the New Code of Civil and Administrative Procedures*, Vol. 1, Dar Houma, Algeria, 2018, pp. 30–31.

The Algerian legislator addressed referral or relinquishment because of connexity in Articles 55–58 of the Code. Connexity means a close relationship between two or more actions such that, in the interests of justice and the proper administration of proceedings, they should be brought before one court so that they may be decided together.

a – Definition:

Referral because of connexity is a formal defence raised where two actions have been brought before different courts and, because of the connection between them, they should be decided by one court in order to avoid contradictory judgments. Article 55 provides that connexity exists where there is a relationship between cases brought before different formations of the same judicial body or before different judicial bodies and where, for the proper administration of justice, they should be examined and decided together.²¹

b – Conditions:

- * There must be a connection between two or more cases, whether in terms of facts or claims.
- * Both the referring court and the court to which the case is referred must have jurisdiction over the action pending before them.
- * The two actions must actually be pending before the courts.
- * The two actions must belong to the ordinary judiciary and be at the same level.

c – Raising and deciding the plea:

Under Articles 56 and 57, the plea of relinquishment because of connexity may be raised by the litigants or of the judge's own motion. The last judicial body before which the dispute was brought must order the referral in favour of another formation or judicial body by a reasoned judgment. If referral is ordered, the court must specify the hearing at which the parties are to appear before the court to which the action is referred. The latter must accept the transferred file without reservation, and the parties must comply with the judge's decision without bringing an appeal. Once the file is accepted, that court must order consolidation of the proceedings of its own motion pursuant to Article 58.²³

d – Nature:

The plea of referral because of connexity is not a matter of public order. It must be raised before any defence on the merits or plea of inadmissibility; otherwise the right to invoke it is forfeited. The forfeiture must, however, be invoked before the court in which the plea was raised and before the referral judgment is rendered.²⁴

Part Two: Defences Relating to Stay of Proceedings and Nullity in Judicial Proceedings

After examining in the first part the two forms of lack of jurisdiction and the two forms of referral, we turn to another type of formal procedural defence, namely the plea for stay of proceedings provided for in Article 59 of the Code, as well as the plea of nullity, which received particular attention from the legislator, as evidenced by its regulation in six articles, Articles 60 to 66 of the same Code.

First Subsection: Plea for Stay of Proceedings

Judicial proceedings are dynamic and evolving; they move from one hearing to another until they reach their conclusion and the court issues its decisions on the dispute. However, a case rarely ends at the first

²¹Article 55 of Law No. 08-09.

²²Al-Wafi Sami, *Defences in Administrative Litigation*, op. cit., p. 49.

²³Al-Wafi Sami, op. cit., p. 54.

²⁴Sagr Nabil, *The Mediator in Explaining the Code of Civil and Administrative Procedures*, Dar Al-Huda, Algeria, 2008, p. 145.

hearing because certain events or procedural incidents may suspend or terminate the proceedings. One such incident is the plea for stay of proceedings.²⁵

First – Definition of the plea for stay of proceedings:

The plea for stay of proceedings is not found only in Article 59 of the Code; it also appears in Articles 213 to 215. None of these provisions gives a specific definition. It therefore refers to a suspension imposed by operation of law that stops and prevents the taking of new procedural steps in the proceedings, failing which they are invalid. Its purpose is to suspend the progress of the proceedings.²⁶

Second – Rules governing the plea for stay of proceedings:

The purpose of a stay is to postpone determination of the principal proceedings until another issue connected with the same proceedings has been decided. It may also serve to allow examination of documents or preparation of new and decisive documents, thereby avoiding a decision on the merits.²⁷

Article 59 provides that the judge must stay the proceedings where the law grants a time limit to the litigant who requests it. This shows that the legislator has granted the parties the right to request a stay and has required the judge to grant a period where the law so provides.

An example is Article 37(3) of the Nationality Code, which provides that when such disputes are raised by way of a plea, determination of them is postponed until they are decided by the locally competent court, to which the matter must be brought within one month. Another example is Article 4 of the Code of Criminal Procedure, which requires the civil judge dealing with a civil dispute to refer the matter to the criminal judge; once the dispute is brought before the criminal judge, the civil court must stay the civil action until the criminal action has been decided.²⁸

An examination of Article 214 shows that the judge has discretion to accept or reject a request by the parties for a stay, except in cases expressly provided for by law. Where there is no legal provision granting the parties the right to request a stay, the judge is not bound to grant it and retains discretion.

Under Article 215, a stay is ordered by an order subject to appeal within twenty days from the date on which it is pronounced, and the second-instance judge decides the appeal according to summary proceedings.³⁰

Third – Effects of the plea for stay of proceedings:

A stay produces two effects. First, the proceedings remain pending and continue to produce all their legal effects; once the reason for the stay disappears, they resume as before. Second, the proceedings become dormant, meaning that they are frozen and no procedural act may be undertaken during the period of suspension; otherwise, the act is invalid.³¹

Second Subsection: Plea of Nullity in Judicial Proceedings

²⁵Al-Wafi Sami, op. cit., p. 55.

²⁶Ibid., p. 55.

²⁷Barakat Mohamed, "Incidents Affecting Litigation under Law 08/09," Al-Mufakkir Journal, No. 08, University of Mohamed Khider, Biskra, 2012, p. 50.

²⁸Article 04 of Ordinance No. 66-155 dated 8 June 1966 containing the Code of Criminal Procedure, Official Gazette, No. 48, issued 10 June 1966, as amended and supplemented by Ordinance No. 20-04 dated 30 August 2020, Official Gazette, No. 51, issued 31 August 2020.

²⁹Article 37 of Ordinance No. 70-86 dated 15 December 1970 containing the Algerian Nationality Code, Official Gazette, No. 105, issued 18 December 1970, as amended and supplemented by Ordinance No. 05-01 dated 27 February 2005, Official Gazette, No. 15, issued 27 February 2005.

³⁰See Article 215 of Law No. 08-09.

³¹Yahya Ben Ali Ahmed Al-Asiri, Incidents Affecting Litigation in the Saudi Sharia Law of Procedure, master's thesis, Naif Arab University for Security Sciences, Riyadh, 2005, p. 103.

Legal scholars have differed in defining nullity; however, the prevailing view considers it a procedural sanction affecting a procedural act and depriving it of its effects. Although several sanctions may result from a violation of a procedural act, the legislator gave particular attention to the sanction of nullity, as discussed below.

First – Definition of the plea of nullity:

The plea of nullity is a sanction imposed by the legislator and declared by the court pursuant to a legal provision where a legal act lacks one of the formal or substantive conditions required for its validity. The sanction prevents the act from producing the effects that the law would attach to it if it were valid.

Second – Conditions of the plea of nullity:

For a plea of nullity to be valid, several conditions must be satisfied. There must be a legal provision expressly providing for the nullity of the procedural act, as follows from Articles 60 and 64, which state that a procedural act may be declared formally null only where the law expressly so provides. In addition, a fundamental defect in the judicial procedure must have occurred and caused prejudice to the party under Article 60(2). The party invoking the nullity must also have an interest in doing so under Article 63. Finally, the plea must be raised before any defence on the merits, otherwise the right to invoke it is forfeited. This is based on Article 61 of the current Code, corresponding to Article 462 of former Ordinance No. 66-154.3233

Third – Cases of nullity:

The legislator provided for two cases of nullity, as follows:

a – Nullity of procedural acts as to form:

Article 60 establishes that there is no nullity except by express legal provision. For example, failure to include one of the particulars required in the official service report under Article 407 grants the interested party the right to invoke nullity. Since it is available only to a person having an interest, this is relative nullity.

In other cases, the legislator used the term “inadmissibility” instead of “nullity,” such as Article 15, which provides that the statement of claim is formally inadmissible where the required particulars are missing. Another example is the nullity of a judicial judgment that does not contain the expression “People’s Democratic Republic of Algeria” or that is not issued in Arabic, pursuant to Article 8 of the same Code.

Accordingly, a person prejudiced by a procedural act affected by nullity has the right to establish the occurrence of prejudice and raise the formal plea, and may invoke it throughout the proceedings.

b – Nullity of procedural acts as to substance:

Article 64 indicates that the cases of nullity of non-judicial instruments and procedures as to substance are exhaustively specified. Non-judicial instruments mean official instruments drawn up by a judicial officer outside the judicial service. Substantive nullity includes lack of capacity to litigate, meaning the person’s legal capacity to undertake proceedings before the courts, which does not necessarily require full legal capacity. It also includes lack of capacity or authority on the part of a representative of a natural or legal person, which likewise constitutes a substantive defect. Representation is a legal means enabling the representative to litigate in the name and on behalf of the principal; where the representative lacks the necessary capacity, procedural nullity results.

³²Mohamed Walid Hashem Al-Masri, *Commentary on the Law of Civil Procedure*, Dar Qandil, Amman, 2003, p. 417.

³³See Articles 60–64 of Law No. 08-09.

Proof of prejudice is not required to raise this type of nullity, and the judge may raise it of his or her own motion at any stage of the proceedings.

Fourth – Procedure for invoking nullity:

The procedure for this plea requires first identifying who may invoke it and then examining how the defect may be cured.

a – Invoking the plea of nullity:

Invoking nullity requires distinguishing between nullity relating to the public interest and nullity relating to a private interest. The former is relative nullity and may be invoked only by the person for whose benefit it was established. The latter is absolute nullity, which the court may raise of its own motion because it concerns public order under Article 65. The Public Prosecution may also invoke it because it is responsible for defending the public interest, and any person having an interest may invoke it as well.

b – Curing the nullity:

Nullity may be cured by completion, meaning removal of the defect affecting the procedure and addition of the missing element at the appropriate time. The judge may request such correction and grant a time limit. Once the procedure is corrected, the correction takes effect from the date of the defective procedural act pursuant to Article 62. It may also be cured by waiver: if the interested party expressly or implicitly waives the right to invoke nullity, the defective act becomes valid provided that the requirements of capacity and consent are met. Correction may also occur through appearance: where a person summons the opposing party and the summons is defective, the defect is cured as soon as the party or the legal representative appears. Another form is correction by a subsequent legal event under Article 66; addressing the merits may cure the procedural defect even if the party did not intend to do so and even if the party was unaware of the ground of nullity.³⁴³⁵

Fifth – Effects of the plea of nullity:

The nullity of a procedural act consequently entails the nullity of the instruments that followed it and those based upon it, because the criterion of connection justifies the nullity. For example, where a defective procedural act is closely connected with instruments preceding it, those instruments may also be affected by nullity. Conversely, the nullity of a procedural act does not affect the validity of earlier acts where the criterion of connection is absent, in accordance with the principle that what is based on a null act is itself null.

Conclusion:

The study shows that these defences constitute an important means of ensuring respect for procedural rules and the proper conduct of judicial proceedings, and that they vary according to their nature and subject matter.

Findings:

- Procedural defences are among the most important means of defence in judicial proceedings.
- Each procedural defence differs from the others in terms of its nature and field of application.
- The plea of lack of jurisdiction is one of the most prominent procedural defences, whether it concerns subject-matter jurisdiction or another form of jurisdiction.

Recommendations:

³⁴Zouda Omar, “The System of Nullity under the Code of Civil and Administrative Procedures,” Supreme Court Journal, No. 02, Algeria, 2012, pp. 29–32.

³⁵Al-Wafi Sami, op. cit., p. 77.

- The ambiguity of provisions concerning procedural defences should be avoided and those provisions should be simplified.
- Legal studies concerning the categories of procedural defences should be strengthened.
- Efforts should be made to unify judicial jurisprudence in matters that give rise to differences in application.
- Litigants should be more fully informed of the importance of procedural defences and the deadlines for raising them.

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