

## **Obstacles resulting from the Algerian judiciary's oversight of the foreign commercial arbitration award during the implementation phase**

**Laila DJAGHROURI**

University of Biskra , Algeria

[djagh.leila@gmail.com](mailto:djagh.leila@gmail.com)

**Muhammad ZURAIIFI**

Abdelhamid Ibn Badis University, Mostaganem  
International Law Laboratory for Sustainable Development

[mzerrifi11@yahoo.com](mailto:mzerrifi11@yahoo.com)

**Djamila DJAGHROURI**

University of Biskra – Laboratory Lacomofa, Algeria

[djamila.djaghrouri@univ-biskra.dz](mailto:djamila.djaghrouri@univ-biskra.dz)

### ***Abstract***

*The general and stable rule in the science of execution principles is that a creditor cannot direct execution on his debtor unless he has an executive predicate. This bond does not represent a legal act confirming the existence of the right, given by its availability to the creditor, the right to forced execution<sup>1</sup>, and therefore it is not acceptable for the creditor to provide any evidence other than the world of implementation to submit it by doing it, and consequently the executive bond must exist when starting the implementation, so the implementation began without an executive bond, so its procedures are not corrected by its exist-*

---

<sup>1</sup>Wali, P). d.c. (Forced execution, in civil and commercial matters in accordance with the Code of Procedure and the laws of administrative attachment and real estate finance. Dar Al-Nahda Al-Arabiya. 32.

ence After that, which is expressed by those who do not hold a bond that cannot execute. Originally, arbitration is an optional means of ending a dispute, leaving the will of individuals free to exercise it as the basis on which the arbitration system rests, but it cannot nevertheless provide arbitration awards with executive force that allows the compulsory enforcement of the obligations contained therein.

**Keywords:** arbitration, obstacles to implementation, judgment for a foreigner, execution judge.

## **Obstacles résultant du contrôle par le pouvoir judiciaire algérien de la sentence arbitrale commerciale étrangère pendant la phase de mise en œuvre**

### **Résumé**

*La règle générale et stable dans la science des principes d'exécution est qu'un créancier ne peut diriger l'exécution sur son débiteur que s'il dispose d'un prédictat exécutif. Ce cautionnement ne représente pas un acte juridique confirmant l'existence du droit, donné par sa disponibilité au créancier, le droit à l'exécution forcée, et donc il n'est pas acceptable pour le créancier de fournir une preuve autre que le monde de l'exécution pour le soumettre en le faisant, et par conséquent le cautionnement exécutif doit exister au début de l'exécution, donc l'exécution a commencé sans un cautionnement exécutif, donc ses procédures ne sont pas corrigées par son existence après cela, ce qui est exprimé par ceux qui ne détiennent pas un cautionnement qui ne peut pas exécuter. A l'origine, l'arbitrage est un moyen facultatif de mettre fin à un litige, laissant la volonté des individus libres de l'exercer comme base sur laquelle repose le système d'arbitrage, mais il ne peut néanmoins doter les sentences arbitrales d'une force exécutive permettant l'exécution forcée des obligations qu'elles contiennent.*

**Mots-clés :** arbitrage, obstacles à la mise en œuvre, jugement pour un étranger, juge de l'exécution.

## Introduction

Most modern laws, including Algerian law, regulate this indirect control with special provisions in addition to the provisions of the 1958 New York Convention on the Recognition and Enforcement of International Arbitral Judgments if they have acceded to them. , if the national judiciary is summoned within the scope of the nullity action to exercise its direct and tight control over the international arbitration award To verify the availability of the reasons for invalidity raised by the invalidity plaintiff in his statement of claim, the scope of his control narrows when he is summoned to request the enforcement of the international arbitration award against the convicted person who voluntarily refrains from executing it, and that is that the principle is to grant an order to execute the arbitration award, unless the judge finds that there impedes implementation.

Despite this control exercised by the execution judge is formal and superficial, its direct action on the reality in Algeria since the issuance of the arbitration law in 2008 has produced several problems and obstacles resulting from either the provisions and mechanisms of this law itself, or from external factors related to the process of implementing the foreign arbitration award, such as bias and lack of impartiality of some international arbitrators<sup>1</sup> who have working relations with major foreign law firms that also have interests with foreign international companies at the same time. It has commercial relations with Algerian public or

---

<sup>11</sup> See the case of the Algerian Shipping Company CNAN v. Saudi Company, French Court of Cassation decision, Civil Chamber 1, 7/06/2023, Clay's commentary, Dalluz 2023, events 23.

private economic operators, as well as the spread of the phenomenon of trying to bribe state agents by foreign economic operators to obtain economic projects.

**Statement of problem:** The appropriateness and compatibility of the provisions and frameworks for monitoring foreign arbitration awards when requesting their executive formula in Algeria in parallel with the Algerian state's desire to encourage this type of means of settling commercial disputes, especially because of its advantages in developing and encouraging international trade as well as stimulating foreign investment in Algeria, especially after the issuance of the new investment law.

### **1. Procedures for the implementation of a foreign arbitration award and ways to appeal it**

The arbitral award includes the judgment on one of the parties to the dispute to give the right to another party, and may also include obliging the parties as if the expenses were divided between them, and the party against whom the decision was issued must implement the decision in favor of his opponent, and the decision often includes the payment of compensation due to breach of obligations resulting from the contract agreed upon between the parties or non-implementation.

The rule is respect for the arbitral award by the parties, and its optional enforcement by the losing party, while the exception is the refusal and procrastination in implementation by the party that must implement the award<sup>1</sup>.

The refusal takes several forms, including refraining from implementation without appealing the decision, or that the said party resorts to challenging the decision by the legal

---

<sup>1</sup> Ahmed, H. (2000). Enforcement of arbitrators' awards: ordering the enforcement of national and foreign arbitrators' awards. New University House. , p. 13.

means granted to him (nullity lawsuit). , because the decisions and judgments issued by the arbitrator lack executive power.

An application for enforcement of the award shall normally be submitted to the competent court located in the place where the assets of the debtor against whom enforcement of the award are sought are located.

Therefore, it can be said that the procedures for the enforcement of foreign arbitral awards in Algeria are subject to two systems<sup>1</sup>, a national system that is the rules stipulated in Chapter II on Arbitration of Book V on Alternative Means of Dispute Resolution of the Civil and Administrative Procedures Code of 2008, and a treaty system represented in the provisions of the New York Convention of 1958, which Algeria ratified in 1988.

### **1.1. The procedures for recognizing and implementing the foreign arbitration award and the scope of the control of the execution judge**

Extrapolating from the relevant articles of the EMG Law, we note that the enforcement procedures are intended to concern international arbitral awards issued abroad and international awards issued by arbitral tribunals held in the territory of the State.

It shall be considered enforceable in Algeria under the same conditions by order of the President of the court in whose jurisdiction the arbitral awards were issued or the court of the place of enforcement if the seat of the arbitration is outside the national territory.

---

<sup>1</sup>S.A.E ., File No. 461776, dated 18/04/2007, case of the Algerian Food Industries Company "Salina" v. Trading & Service, published in the Journal of the Supreme Court, No. 02, 2007, pp. 207-214.

## **1.2. Procedures for Issuing an Order of Execution**

The procedure for requesting an order of execution is compulsory through the jurisdiction of the State concerned, and the competent judge does not issue this order on his own, as he is restricted by the principle of the request, as he does not require anything that was not requested of him by the person in capacity and interest<sup>1</sup>. Most laws have stipulated conditions that must be met in order to obtain an order of recognition and execution.

### ***1.2.1. Submit an application for recognition and execution and its conditions.***

The request for an order of execution is submitted by means of and system of orders on petitions provided for in the Civil and Administrative Procedure Codes (Articles 306 to 313).

Accordingly, the convict submits an application for an execution order with two identical petitions and that it includes the necessary data to identify both the applicant and the person against whom the order is requested, and the petition must include the facts and grounds of the request, and the date on which it was submitted<sup>2</sup>, and the request is accompanied by the arbitration agreement in order for the court to review it and ensure that it meets the basic conditions, and a translation of the judgment must be filed if it is issued in a language other than the country in which execution is sought, this is supposed to be translated into Arabic if

---

<sup>1</sup> Al-Bilani, B. (1996). Emergency implementation of arbitral awards in Arab countries. *Lebanese Journal of Arab and International Arbitration*, (3), 43..

<sup>2</sup>Khaled Abdel Hamid . (1996). se of the Judicial oversight of arbitral awards in the cour executive formula. *Lebanese Journal of Arab and International Arbitration*, No. 3., 11.

it is issued From a non-Arab or Arab arbitral tribunal and used a foreign language such as French, for example. Since the execution order is a state order, the summons requirement is unconditional.

Before submitting the application, the convict must notify the arbitral award to the convict, so that the deadline for the invalidity of the arbitral award begins, which is filed after completing the request for the enforcement of the arbitration award, otherwise the request is inadmissible, and the Algerian legislator requires that 30 days must pass from the announcement of the judgment to apply for execution, according to the text of Article 1059 of the CME.

In practice, the order for execution is always requested by the convicted person in his favor, but there is no objection to it being done by the convict, as the Algerian legislator left the matter open and did not explicitly specify the party charged with filing the arbitration award, but only mentioned the party interested in expeditious.

The submission of an application for execution shall lead to the issuance of the order on an urgent basis, and this order shall be justified, and if it is not executed within three months from the date of its issuance, it shall be forfeited and shall not have any effect (Article 311 of the same law).

With regard to the issue of the deadlines for submitting an application for execution, which forfeits the right of the convicted person to submit an application for execution, the Algerian legislator did not address this problem, so that in fact the convicted person often resorted to the judiciary to request an order of recognition or execution immediately after the issuance of the arbitration award and does not procrastinate in requesting its implementation.

### *1.2.2. The Judicial Authority Competent to Issue the Execution Order*

As mentioned above, the majority of countries agree that the arbitration award is not enforceable in itself, but must be enforceable by the competent judicial authority.

The extrapolation of some legal provisions related to arbitration, such as the Civil and Administrative Procedures Law, in giving jurisdiction to the judge of first instance, because it allowed grievance against this matter through appeal, which is before the Court of Appeal, of course,

The legislator took a different position and is inconsistent with other texts that frame the arbitration process, which are considered in line with the developments and requirements of international commercial arbitration, as he entrusted the authority to issue execution orders and recognition to the presidents of the courts of the place of enforcement across the country if the arbitration took place outside Algeria, contrary to the French legislator, who made the Judicial Court in Paris the only court on the French territory authorized to issue execution orders if the arbitration award was issued outside France., and from the Paris Court of Appeal, the only judicial body charged with hearing appeals from such orders<sup>1</sup>.

If the Algerian legislator intends to give the power to issue orders recognizing execution to the presidents of the courts because they are judges of urgent matters and because international arbitration requires speedy implementation, it would have been better - in our opinion - to assign the power to issue these orders to a single judicial authority, and to allocate a single judicial council (court of appeal) as

---

<sup>1</sup> Audit, M. (2011). The Review of International Arbitral Awards: A Comparison between the New . **Algerian law** and French law. *Arab Law Quarterly*, 25, 446.

well to consider the appeal against the orders issued by the president of this court.

## 2. Scope of Execution Judge Control

The international arbitration award is not enforceable in itself but must be enforceable by the competent judicial authority. The court before which the judgment is submitted for recognition and enforcement does not have the right to examine the origin of the dispute a second time, but its control is limited to its recognition with an order to execute it or not to recognize it.

Article 1058 of the CEM requires that such arbitral awards not be contrary to international public order. Therefore, the role of the judge who decides to give the executive form is limited to verifying the clear or unclear character of the arbitral award's violation of international public order without being led to a careful examination or objective examination of the problem. Censorship takes place according to the appearance of the ruling. This led some to say that the execution judge has a light hand when he oversees the international arbitration award<sup>1</sup>.

The judge monitors the fulfillment of the arbitration award of its legal conditions of the necessary data, such as the name of the arbitrators and the parties and the operative part of the award, and the absence of obstacles to the implementation of this award, and this is done by verifying the existence of arbitration in connection with a particular dispute, and that the latter is the one who was submitted to the arbitral tribunal, and that the court meets the required legal conditions.

---

<sup>1</sup> BERTIN (Ph), Le rôle du juge dans l'exécution de la award arbitrale, Rev.arb, 1983, p 281.

The judge of the execution order shall also verify that the convicted person has been properly notified of the arbitral award whose execution is requested, because failure to notify this judgment may deprive the convicted person of his right to file a nullity action before the court of the seat of arbitration.

The judge of execution issues an order for execution or rejection on the petition submitted to him to obtain this order, and this order must also be recorded on the same judgment to be executed, until the arbitration award completes the elements of the executive bond, and one of the advantages of recording the decision rejecting the implementation of the original arbitration award is to alert the court to which the application for execution of the judgment is submitted a second time, that there are reasons that prevent the issuance of the execution order, because the rejection of the execution order, as is the case in the rules, General orders on petitions does not preclude the re-order of a second time.

The control of the execution judge is if, without the presence of the parties, in the sense of without primacy, and without allowing the convict to raise the issues that made him not execute the judgment voluntarily, which raised reservations and debate in contemporary jurisprudence<sup>1</sup>, especially in France, after canceling the effect of the position of the appeal in the implementation of international commercial judgments since the amendment of the French Arbitration Law in 2011, so that some jurisprudence believes that the issuance of an order for execution by orders on petitions must It does not necessarily require the absence of the parties to the arbitration, especially since giving the execution order may result in the transfer of the convict's funds abroad

---

<sup>1</sup> Jourdan-Marques(J), *The State Control of International Arbitral Awards*, already cited, p. 50.

and the convicted person may not be able to recover them if the Court of Appeal later annuls<sup>1</sup>.

This problem does not arise in Algeria because the appeal of the order granting execution by the convicted person is a position for him in accordance with the general rules.

We believe that there is no objection to the judge of execution in Algeria summoning the other party in the arbitration case for clarification and enlightenment to achieve the legislator's goal with subsequent supervision, characterized by a minimum of seriousness and effectiveness.

### **3. Methods of Appealing the Decisions of the Execution Judge**

In arbitration articles, things seem more complicated, as arbitrators in arbitration articles are not custodians (guardians) of any part of international sovereignty; they derive their jurisdiction from the litigants, and here arises the need to grant the arbitral award the executive form when the adjudicator refrains from voluntary execution<sup>2</sup>.

In the implementation of this institution, new control is introduced over the arbitral award, sometimes coinciding with the control that occurs during the application of the methods of appealing judicial decisions.

These same reasons prompted the majority of legislators, including the Algerian legislator, to immunize the international arbitration award, where it was not permissible to challenge the international arbitration awards issued in its

---

<sup>1</sup> Mignard, J.-P. (2013). *Exequatur of Arbitral Awards: For an Adversarial Procedure*. Gazette du Palais, (No. 250), 27. Retrieved from <https://www.ohada.com/uploads/actualite/1956/exequatur-des-sentences-arbitrales-gazette-du-palais-7-sept-2013.pdf>

<sup>2</sup> Khaled Abdel Hamid, Judicial Control of Arbitral Awards at the Path of the Executive Formula, previous reference, 13.

territory, except by nullity as an original and initiating lawsuit, and for exclusive reasons. The foreign international arbitration awards, they made their implementation the rule, so that they restricted the procedures and the scope of control over them, and that some of them did not allow appeal against the decision granting the executive formula such as Jordan, which makes its implementation semi-automatic, but in France. The appeal of the execution order is not subject to its implementation, unlike what exists in Algeria.

#### **4. Appeal against Execution Order**

An appeal may be filed against the order issued by the judge of execution, whether approving the execution or rejecting the application, and this appeal shall be filed by the interested party and capacity in accordance with the usual procedures for pushing the lawsuit, i.e. by petition, and a valid notification to the other party (the defendant), and a litigation shall be held in his presence, and a judicial decision shall be issued in this appeal either upholding the order or canceling it.

A distinction must be made here between the appeal of the order refusing recognition and enforcement of the foreign arbitration award (first) and the appeal of the order granting recognition and enforcement of the foreign arbitration award (second).

##### **4.1. Appeal of the order refusing to give the executive form**

Recourse to the judiciary does not always mean obtaining an execution order, as the judiciary may issue an order of non-execution, so the party against whom the arbitration

award was issued cannot appeal this order because the execution judge does not support it<sup>1</sup>.

The majority of legislations have allowed appeals against the order refusing to give the execution of a foreign arbitration award, similar to the Algerian legislator, as article 1055 of the CME stipulates the following: "An order refusing recognition or refusing execution shall be subject to appeal."

order Reviewing these texts on the appeal of the refusing to grant enforcement to an international arbitration award, we note that the provisions of the legislation are similar in this matter, although they differ in their wording. All of them allowed this type of appeal before the same body, i.e. the Court of Appeal, while the deadline for appealing the appeal is also similar, which is thirty (30) as stipulated in Article 1057 of the CMC ,days.

Some have wondered about the extent and scope of the control of the Court of Appeal (Judicial Council in Algeria) in the appeal submitted by the plaintiff (the convict), whether it will be satisfied with the formal control of the arbitral award as done by the first execution judge (the president of the ordering court), or that its control will expand further, especially with the presence of all parties and the submission of their defenses in accordance with the principles of ordinary litigation.

Because, as already stated, and since the control of the execution judge is a formality, some argue that this type of appeal does not have a high chance of success given the power granted to the Court of Appeal, which can only su-

---

<sup>1</sup> Al-Mikati, R., Recent Trends in the Authority of the Judge Competent to Grant an Execution Order, op. cit., 46.

perfidiously control the arbitral award in terms of its existence and non-violation of international public order. In other words, the appellate body monitors the appealed matter in a formalistic manner, as was followed by the President of the Court of First Instance.

#### **4.2. Appeal of the decision granting the executive formula**

It is noted that concerning the text of Article 1056 of the CEMG, we find the appeal falls on the arbitral award itself and in the same exclusive cases that the convicted person had the right to raise before the nullity judge, which made some jurisprudence criticize this appeal because it allows the convict to object to the order granting execution with the same reasons that he could have raised before the nullity judge.<sup>1</sup>

The appeal of the order granting the execution form shall be made by means of a petition accompanied by a copy of the arbitration award ordered to be executed, accompanied by its arbitration agreement, and the petition must be reasoned, and must include at least one of the grounds of appeal specified exclusively in the aforementioned articles, and the respondent shall be notified with a copy of the judgment under challenge, and the appeal shall be made within thirty (30) days in the majority of Countries that adopted this appeal without extension due to the specificity of international arbitration.

---

<sup>1</sup> Ibrahim , N., Problems of Implementing International Arbitration Decisions in Arab European Arbitration, previous reference, , 5.

## **5. Cassation Appeal against the Decision of the Court of Appeal (Judicial Council)**

It is a type of judicial control carried out by the Supreme Court (Algeria) over judicial rulings issued by courts of appeal and contested for not conforming to the law and interpretation of the facts. The role of the Supreme Court here is limited to adjudicating the legality of judgments without interfering with the facts relating to those judgements.

The cassation appeal is not an extension of the first litigation or a degree of litigation, so that it is correct that the litigants have new aspects of appeal that cannot be presented before the Court of Appeal, which is an unusual way of appeal.

Article 1061 of the CEC stipulates in this regard: "Decisions issued pursuant to articles 1055, 1056 and 1058 above shall be subject to appeal in cassation."

It should be noted that the Algerian legislator, like other Arab legislators, is silent on the cases in which it is permissible to file a cassation appeal against decisions related to arbitration.

An appeal in cassation does not entail the suspension of the execution of the award or decision in the field of international commercial arbitration, as we understand from the text of article 361 of the CEM.

As mentioned above, the Supreme Court does not deal with the subject matter of the dispute, but rather monitors the legality of the procedures and cases of cassation limited to form and does not extend to the subject matter of the dispute.

On this basis, and after studying the only 10 decisions issued by the Supreme Court in Algeria in 2004, all of which concern the implementation of arbitral awards, most of

which came to correct procedural errors committed by the heads of judicial councils,

## **6. The reasons for rejecting the request for the enforcement of the foreign arbitration award**

The modern trend with regard to the implementation of foreign arbitral awards is that the competent authority in the country in which the award is to be implemented does not research the origin of the dispute, but its control is limited to verifying the validity of the award and following the main principles of protecting the rights of litigants when conducting pleading procedures, and that the award does not contain anything that contradicts the rules of public order<sup>1</sup>.

As for Algerian law, the <sup>2</sup> grounds for refusal to implement are six<sup>06</sup>, according to the text of Article 1056 of the CMD, which are: The court can decide on this only at the request of one of the parties, provided that one of the five cases mentioned is proven to have been fulfilled.

As for the second paragraph of the same article, it listed two reasons for which the competent court may refuse on its own motion to recognize and enforce the foreign arbitral award: - If the subject matter of the dispute may not be settled by arbitration in accordance with the law of the country in which the arbitration award is to be enforced. or whether the recognition and implementation of the decision are contrary to the rules of public order in that country."

---

<sup>1</sup> Mikati, R. , *New Trends in the Power of the Judge Competent to Grant an Order of Execution*, op. cit., 46.

<sup>2</sup> Al-Khouli, A. a. (2010). Implementation of international arbitration awards in accordance with the new Algerian law. *International Arab Arbitration Review*, (5), 102..

### **6.1. The reasons for refusing to enforce the arbitral award are raised by one of the parties to the dispute**

The proof of these impediments by the convict, is not before the judge of the execution order, because he is not allowed to do so, because the judge issues his order in a state capacity, but he has the right to raise these impediments or the reasons for refusing to execute at the level of the courts of appeal (the Judicial Council in Algeria), because the trial here is in his presence, and therefore he has the opportunity to plead one or more impediments.

### **6.2. Classical reasons**

These reasons are common between the nullity action and the request for enforcement of the international arbitral award, and reflect the double judicial control of the arbitral award<sup>1</sup>. This led some jurisprudence<sup>2</sup> to question the extent to which the scope of the execution judge's control over the impediments to the execution of the judgment differs compared to the nullity judge in light of the same reasons that may invalidate the arbitral award or be a reason for its implementation.

The Algerian legislator mentioned these impediments, as already mentioned in article 1058 of the CEM, and they are somewhat similar to the rest of the modern international legislation, since most of them were inspired by the New York Convention or the Lenostral Model Law.

We have divided these causes into three categories, each category containing different causes but sharing its objectives.

---

<sup>1</sup>Haddad, H. Q. (2009). Judicial oversight of arbitration awards between duplication and unity. *Journal of Arab International Arbitration*, No11 p., 6.

<sup>2</sup>Loquin, E. (2015). *International Commercial Arbitration*. Business practice. Joly éditions. p. 443.

### **6.3. Reasons related to the legitimacy of the arbitrator in settling the dispute**

This category contains the bases of the arbitrator's legitimacy in adjudicating the dispute and the rule of his jurisdiction, and concerns cases related to the arbitration agreement, if it is invalid or dropped and that it did not exist originally<sup>1</sup>, the arbitrator has declared his jurisdiction wrongly and without basis, and this category also allows the arbitrator to know whether the parties want to resort to arbitration in the subject matter of the dispute subject.

The agreement of the parties shall be null and void if one of the parties is incapacitated or incapacitated. Accordingly, a refusal to enforce the arbitral award may be made if the applicant proves that, at the time of its agreement to arbitrate, one of the parties to the dispute did not have the necessary capacity to perform such conduct, in accordance with the law applicable to that party.

### **6.4. Reasons related to the arbitrator's non-respect of the rules of dispute resolution**

The execution judge's control of the arbitrator's compliance with the rules of adjudication of the arbitration dispute allows him to know whether the procedures were respected or whether the arbitration dispute was conducted properly. It should be noted that under the banner of respect by the arbitral tribunal of the rules for the adjudication of arbitral disputes, several cases or grounds relating to the rights of the defence may be incorporated into the correct communication, enabling it to present its defences, documents and all

---

<sup>1</sup> An order of recognition or enforcement may -of Article 1056 of the CMC 1 Paragraph not be appealed except in the following cases: 1. If the arbitral tribunal decides without an arbitration agreement or on the basis of an invalid agreement or the expiry of the term of the agreement

the necessary documents that would allow it to defend itself on an equal footing before the plaintiff or the applicant for execution<sup>1</sup>.

Article 1056, third paragraph, stipulates, "The judge's order of recognition or execution may be appealed if the court decides in contravention of the mission entrusted to it."

The arbitral tribunal's respect for the rules of dispute resolution also requires respect for the principle of prima facie and the rights of the defence. The observance of prima facie is a matter imposed by the nature of the trial, and it is a duty in any arbitration, as the arbitrator is not entitled to rely on facts not invoked by the parties.

It should be noted here that the arbitrator's independence is required as a general asset, whether appointed by the parties directly, by arbitration centres, or by the national court. Moreover, although the arbitrator receives fees from the parties to the arbitration, the principle is that he does not represent them and is not considered their representative.

Because the arbitrator's acceptance of the arbitral mission is an essential procedure for the formation of the arbitrator, he is supposed to disclose and disclose every relationship that may affect his impartiality or independence, and this transparency allows the parties to accept or not accept the choice or appointment of the arbitrator.

It is noted that the duty to disclose does not exist unless the incident affects the independence and impartiality of the arbitrator, and the incident must be unknown to the public, as it is not necessary to disclose an incident known in advance to the parties (parties to the dispute).

---

<sup>1</sup> Giraud, P. (2017). *The duty of the referee to comply with his mission*. Bruylant

Third: Reasons related to the arbitrator's failure to respect the rules of issuing the arbitral award

The arbitrator may expose the arbitral award to non-acceptance of its enforcement by the competent authority in the country of execution, if he does not respect the rules for issuing the arbitral award stipulated in the conditions for the validity of the arbitral award.

It is noted that these conditions are not stipulated by legislation within the cases of refusal to implement the arbitral award like other cases, but they are understood from the provisions of the articles related to the conditions for the validity of the arbitral award, which is what came from, for example, Article 1051 of the EMG Law , when it stipulated "the convict must prove its existence", and this phrase means that the judgment submitted by the convict to the judiciary has the status of an arbitral award, according to the conditions stipulated in Articles 1027 and 1208 of the Same law.

## **7. The event that the arbitral award does not acquire the status of a binding**

This case of refusal to enforce the arbitral award is at the request of the opponent, which is to prove that the award has been executed, suspended or annulled by the competent authority in the country in which the said award was made or in accordance with the law under which the "country of origin" was issued.

The Algerian legislator, like most arbitration laws, has not been exposed to this situation, but as long as Algeria has ratified the New York Convention, which has made the annulment of the arbitral award in the country of origin one of the impediments to its implementation, it will most likely go along with this trend.

But we may be facing a case of suspension of the arbitral award, that is, suspension of its application, as mentioned in the New York Convention, and this situation can be faced when the annulment of the arbitral award is requested in the country of its issuance, and the competent authority before deciding on the request for annulment issues a temporary decision, which is the suspension of execution, and in this case the implementation of the award is not refused in the country in which the implementation is intended, but rather the suspension of implementation, until the request for nullity is decided, in accordance with Article VI of the Agreement.

### **Refusal to implement the arbitral award by the competent authority itself**

As mentioned above, the system of enforcement of foreign arbitral awards in the majority of modern legislation is subject to national legislative provisions and the provisions of international and regional conventions. Thus, as in the case of a claim for nullity, the judge of the enforcement of foreign arbitral awards takes into account his national law, as well as the provisions of these conventions, in particular the provisions of the New York Convention.

### **The non-arbitrability of the dispute**

In addition to the systems encouraging this system, which makes it a parallel and complementary system to the local judicial system, there are legal systems that see arbitration as an exceptional system competing with the general judiciary.

Undoubtedly, the adoption of an encouraging or cautious attitude towards arbitration by any country has positive or

negative effects on the scope of matters that may be adjudicated by arbitration.

This disagreement between legal systems has made it impossible to arrive at a uniform substantive rule setting out the issues in which arbitration is permissible.

The difficulty of drawing up a uniform list of subjects or questions in which arbitration is permissible, or determining a uniform standard for their definition, has undoubtedly led the drafters of the New York Convention to refer this problem to the law of the country where recognition and enforcement is sought.

### **Disputes in which arbitration is not permitted by express provision**

In this context, in particular, everything related to life, death, age, sex, nationality, family status such as parentage, marriage and divorce is included, as all these matters are not permissible to arbitrate, because the matter involves the rights of society and the rights of God, so the Public Prosecution must be involved in various disputes related to them. They are expressly provided for in Article 1006 of the CMC. When it prevented arbitration in matters relating to the status of persons, as stipulated.

### **Disputes Affecting Public Order**

Article 1006 of the CMC states that matters of public order cannot be arbitrated,

The adoption of the public order criterion in determining matters in which arbitration cannot be resorted to by the legislature was and still is the subject of criticism in jurisprudence<sup>1</sup>.

---

*Loquin, E.* (2018). *Public Order and Arbitration. Revue de jurisprudence commerciale*, (4), 15.<sup>1</sup>

Referring to the provisions of the New York Convention, we note that it did not specify the arbitrable subjects, nor did it specify the criteria by which the articles that may be arbitrated can be determined, leaving it to the organizing countries.

### **Freedom of disposition of the right as a criterion for determining arbitrable disputes**

Most international legislation, including Algeria, has adopted another, more flexible and less controversial criterion, the freedom to dispose of rights, as a basis for arbitration. Article 1006 of the CEM stipulates that "any person may resort to arbitration in respect of the rights over which he has the right to dispose". International jurisprudence, especially French,<sup>1</sup> considers this criterion necessary and sufficient to determine arbitrable matters.

### **Non-conformity of the Arbitration Award with Public Order**

The majority of legislation related to international arbitration agrees to refuse to give the executive form if the arbitral award is contrary to public order, but they differ in its content, as some of them require that the international arbitration award conform with its public order. The French legislator stipulated that the arbitral award should not violate international public order from the French perspective or approach.

---

<sup>1</sup> Jarosson, Ch. (n.d.). *Arbitrability: methodological presentation*. *Revue de jurisprudence commerciale*, (96), 1. Hanotiau, B. (1994). *Arbitrability and for arbitrandum: a re-examination*. *Journal of International Law (JDI)*,

## **The concept of public order**

According to Professor Turki, public order is meant as "a set of basic principles necessary for the organization of the international community, and it concerns common rules whose breach must be punished by the international arbitrator regardless of the national legislation governing the subject matter of the dispute."<sup>1</sup>

For his part, Professor Trari Thani believes <sup>2</sup> What is meant by international public order is the mitigating form of Algerian public order, which is in line with the requirements of flexibility that characterizes international trade, whether it is related to substantive or procedural rules.

## **Scope of Execution Judge's Control over the Conformity of an International Arbitration Award with Public Order**

Unlike an invalid judge, who may not know where an international arbitral award is executed, the judge of execution knows that the award will be executed in his territory. This has led some to say that the judge of execution may be more severe in controlling the conformity of the international arbitration award with its general order, and this is what jurisprudence defines as maximum control.

Because he is required to allow the international arbitral award to enter its legal system, and as the guardian and shield of the public interest, the judge of execution is inevitably more attentive and keener to respect his public order by international arbitral awards.

---

<sup>1</sup>Terki, N. (1994). *International Commercial Arbitration in Algeria*. Algiers: O.P.U., p. 46.

<sup>2</sup>Trari Tani, M. (year). *Algerian Law of International Commercial Arbitration* (p. 164). [Reference already cited].

As a result, the French judiciary<sup>1</sup>In a series of decisions issued by the Court of Cassation and the Paris Court of Appeal, stipulated clear, effective, and concrete public order to reject the international arbitration award. It must be a violation of public order and

This great confidence in the international arbitrator on the part of the French judiciary prompted some French jurisprudence<sup>2</sup> to criticize this soft stance because it will eventually lead, sensually, to sham and fictitious censorship. It seems that the French judge was influenced by the position of this hardline trend and radically changed his position in rulings related especially to bribery cases.<sup>3</sup>

As for the Algerian judge, he is one of the hardliners against violating the arbitral award of the system, which is what the Supreme Court went to when it overturned the decision of the Judicial Council of the capital that approved the order to enforce an arbitration award issued by the International Chamber of Commerce in Paris against an Algerian company.

Contemporary jurisprudence<sup>4</sup> agrees that the national judge is now dealing with violations of public order in new

---

<sup>1</sup> Cass, 1st civ, 04 June 2008, *SNF cl Cytec*, Civ 1, 29 June 2009, Smg cl. Pourpardine, *Dalloz*, 2011, p 1910, note X. Delpech.

<sup>2</sup>Loquin, E. (2018). Public order and arbitration. *Revue de jurisprudence commerciale*, (4), 1.

Seraglini, C. (2020). The judge's review of the sentence against international public policy: the past, the present, the future. *Revue Arbitrage*, (2), 347.

Mainguy, D. (2023, March 9). The new French conception of international public policy in international arbitration. *Legal Week - Enterprise and Business*, (10).<sup>3</sup>

<sup>4</sup>Fadlallah, M. (2000, September 12). Further setback of the review on the merits: reasoning and fraud in the review of arbitral awards. *Gazette Palestine*, p. 55.

articles and areas, namely contracts related to corruption, bribery in order to obtain contracts, racial discrimination, money laundering, drug and child trafficking, illicit international trafficking in arms, especially weapons of mass destruction, violation of human rights and the protection of nature. All these areas concern and affect international public order.

The debate remains open, between supporters and opponents of effective control of the conformity of the foreign arbitration award with national or international public order during the request for its executive form.

## **Conclusion**

Foreign arbitral awards are enforceable before the Algerian judiciary under certain conditions. This implementation is subject to the provisions of international conventions to which Algeria has acceded, such as the New York Convention of 1958 and the Riyadh Convention of 1985, if the conditions for their application are met. Otherwise, the national law represented by the rules stipulated in the Civil and Administrative Procedures Law of 2008. As we have mentioned, the conditions for implementation according to the aforementioned law are, or most of them, common to various modern laws, such as that the provision is not contrary to international public order.

When requesting the enforcement of a foreign arbitration award, the Algerian courts do not intervene in the subject matter of the dispute again, but their role is limited to ascertaining whether or not the conditions for the award to acquire the executive form are met.

This flexibility in the implementation of the international commercial arbitration award in Algeria is also one of the most important legal guarantees granted to the foreign investor.

However, despite the efforts made by national courts to reconcile the requirements of international trade with the effectiveness and necessity of oversight, this application still encounters many obstacles, whether textual or regulatory.

### **Recommendation**

- Giving exclusive authority to the Court of First Instance in the capital (the court of the headquarters of the center - Sidi M'hamed, for example) to receive a request to order the implementation of the arbitration award issued outside Algeria.
- The establishment of a special chamber in the Judicial Council in the capital to hear appeals in cases of international commercial arbitration and international trade disputes, and give it exclusive jurisdiction to consider appeals against judgments issued by this court of first instance.
- Dealing flexibly with foreign languages, especially English, such as Switzerland, France, and the United Arab Emirates, with regard to the translation of documents and documents.
- Introducing the electronic system in the procedures for requesting the implementation of the destruction of international arbitration by creating a special portal for that.
- Amending and adding some articles related to the implementation of foreign arbitration awards, including: -

- Adding the obligation to attach the request for an order of execution with the original arbitration agreement or an official copy of it with the original arbitration award, which is what Article 1035 of the CE says.
- Deviation of a time limit in which the right to request an order of execution of the foreign arbitration award (the limitation period of international arbitration awards) is extinguished.
- Requiring the judge to indicate the origin of the arbitration award in the event of rejection of the request for enforcement to avoid submitting it again by the party who submitted it to another court.
- The possibility of summoning the convicted person by the execution judge to hear his statements in case of suspicion of violating the procedural public order (failure to respect the rights of the defense by the arbitral tribunal, for example).

## References

### ▪ In Arabic

#### ▶ Books

1. **Amal Badr**, Judicial Oversight of International Commercial Arbitration, Al-Halabi Human Rights Publications, First Edition, Beirut 2012.
2. **Iyad Mohammed Parwan**, Arbitration, Order and Public - A Comparative Study -, Al-Halabi Human Rights Publications, First Edition, Beirut, 2004.
3. **Amer Fathi Al-Batayneh**, The Role of the Judge in International Commercial Arbitration - A Comparative Study -, Dar Al-Thaqafa for Publishing and Distribution, First Edition, Amman, 2008.
4. **Abdel Hamid Al-Ahdab**, Arbitration in the Arab Countries, Encyclopedia of Arbitration, Al-Halabi Law Publications, Third Edition, Beirut, 2008.
5. **Moataz Afifi**, The Arbitration Judgment Appeal System, New University House, First Edition, Alexandria, 2012
6. **Musleh Ahmad Al-Tarawneh**, Judicial Control of Arbitral Awards in Jordanian Law, Dar Wael for Printing, Publishing and Distribution, First Edition, Amman, 2010.
7. **Hindi Ahmed**, Enforcement of Arbitrators' Awards, Order of Enforcement of National and Foreign Arbitrators' Awards, New University Publishing House, Alexandria, Egypt, 2000.

► **Magazines:**

1. **Ahmed Al-Werfalli**, Judicial Control of Arbitration Procedures in the New Algerian Law, Arab Arbitration Magazine, No. 6, 2010, p. 164.
2. **Ahmad Hamza Haddad**, Enforcement of Foreign Courts and Arbitration Decisions in Jordanian Law, Arab International Arbitration Journal, No. 02, 1996, pp. 22-28.
3. **Akshim Hussein El-Khouly**, Implementation of International Arbitration Awards in accordance with the New Algerian Law, Arab Arbitration Magazine, No. 05, 2010, p. 97.
4. **Al-Kibi Hassan**, Judicial Oversight of the International Commercial Arbitration Judgment in accordance with Algerian Law, Al-Muthinker Magazine, No. 17, 2018, p. 378.
5. **Ibn Zakaria Radia**, International Commercial Arbitration between the Requirements of International Trade and the Requirements of Public Order, Journal of Arab International Arbitration, No. 02, 2012, p. 52.
6. **Ismail Ibrahim Al-Ziyadi**, Implementation of Arbitration Awards and Public Order, Arab Arbitration Magazine, No. 08, 2010, p. 837.
7. **Bashir Al-Bsilani**, Emergency Enforcement of Arbitral Awards in Arab Countries, Arab International Arbitration Review, No. 03, 1996, pp. 42 and 44.
8. **Balki Noureddine**, Problems of Enforcement of International Commercial Judgments, Algerian Journal of Law and Justice, No. 02, 2017, pp. 113-137.
9. **Belki Noureddine**, Implementation of International Arbitration Awards and Methods of Appeal in Algerian Law, Journal of the Supreme Court, No. 02, 2013, pp. 48 and 89.

10. **Joseph Chaul**, Arbitrator and Obligation of Independence and Impartiality, *International Arbitration Review*, No. 11, year. 2011
11. **Hafiza Al-Sayed Al-Haddad**, Judicial Oversight of Arbitration Awards between Duplication and Unity, *Arab International Arbitration Magazine*, No. 11, 2009, p. 04.
12. **Khaled Abdel Hamid**, Judicial Oversight of Arbitral Awards at the Path of the Executive Formula, *Lebanese Journal of Arab and International Arbitration* , No. 03, 1996, p. 11.
13. **Rafika Hajjailia**, International Arbitration Judgment between Execution and Invalidity in the Light of the Code of Civil and Administrative Procedure, *Algerian Journal of Law and Justice*, No. 02, 2017, pp. 139 and 147.
14. **Raafat Al-Mikati**, Recent Trends in the Authority of the Judge Competent to Grant an Order of Execution, *Journal of Arab International Arbitration* , No. 3, 1996.
15. Fathi Wali, Forced Execution, in *Civil and Commercial Matters in accordance with the Code of Procedure and the Laws of Administrative Attachment and Real Estate Finance*, Dar Al-Nahda Al-Arabiya.
16. **Sami Gul**, The Extent of Judicial Control of the International Arbitral Award, *Arab International Arbitration Journal*, No. 14/15.
17. **Sami Badie Mansour**, Methods of Appealing Arbitral Awards in Arab Laws, *Lebanese Journal of Arab and International Arbitration* , No. 42, 2007, p. 6.
18. **Abdelhamid Al-Ahdab**, The New Algerian Arbitration Law, *Arab Arbitration Magazine*, No. 02, 2009, p. 43.
19. **Abdo Jamil Ghsoub**, The Principle of Prima facie in Arbitration (A Comparative Study), *Lebanese Journal of Arab and International Arbitration*, 2014, No. 69-70, p. 3.

20. **Ajja Jilali**, Judicial Oversight of International Commercial Arbitration, *Supreme Court Journal*, No. 01, 2006, p. 119.
21. **Ghaleb Ghanem**, Oversight of Arbitral Decisions after the Path of the Executive Formula, *Journal of Arab International Arbitration*, No. 1 1996, p. 11.
22. **Lotfi Chadli**, Tunisian law and the enforcement of arbitral awards invalidated in the country of origin, what logic? *Arab Arbitration Journal* No. 04, 2009, p. 121.
23. **Lotfi El-Shazly**, Judicial Oversight of International Arbitration Awards Public Order, *Arab Arbitration Magazine*, *Arab Arbitration Journal* No. 08, 2010, p. 885.
24. **Karima Baattouch**, Problems of Enforcement of International Commercial Arbitration Awards, *Algerian Journal of Law and Justice*, No. 02, 2017, p. 161.
25. **Kassal Samia**, International Public Order and International Commercial Arbitration, *Journal of Arab International Arbitration*, No. 62, 2012, p. 37.
26. **Karim Taawelt**, The Judge's Control of the Arbitrator Jurisdiction between the Requirements of Effectiveness and the Necessity of Control, *Arab International Arbitration Review*, No. 62, 2012, p. 531.
27. **Mohamed Mejbar**, International Commercial Arbitration in the Light of Jurisprudence, *Algerian Journal of Law and Justice*, No. 02, 2017, p. 151.
28. **Malika Nabil**, Procedures for the Implementation of Foreign International Commercial Arbitral Awards in Algeria, *Journal of Arab International Arbitration*, No. 62, 05/2012, p. 73.

- In French

► **Books:**

1. **CLAY (Th)**, *L'arbitre*, Dalloz, Nouvelle bibliothèque des thèses, 2001.
2. **GIRAUD (Paul)**, *Le devoir de l'arbitre de se conformer à sa mission*, Bruylant, édition, 2017.
3. **JOURDAN-MARQUES (Jérémy)**, *The State Control of International Arbitral Awards*, LGDJ, 2017.
4. **LOQUIN (Eric)**, *L'arbitrage commercial international - Pratique des affaires- Joly éditions* 2015.
5. **NAJJAR (Nathalie)**, *L'arbitrage dans les pays arabes face à l'exigence du commerce international*, LGDJ, 2004.
6. **OBEID (Zeina)**, *The Recourse for the Annulment of Arbitral Awards in Arab Countries*, Editions A. Pedone, 2017.
7. **Terki, N.**, *L'arbitrage commercial international en Algérie*, O.P.U., Algiers, 1994, p. 46.
8. **TRARI-TANI (M.)**, *Algerian Law of International Commercial Arbitration*, 1st ed. Edition Berti 2007.

### -Articles

1. **ANCEL (F)**, *The International Commercial Chamber and Arbitration: The Conflict of Horizons?*, Cahiers de l'arbitrage, n°3, 2022, p 841.
2. **AUDIT (M)**, *The Control of International Arbitral Awards: Comparison between New Algerian Law and French Law*, Arab Law Quarterly 25 (2011) 441-453.
3. **BENCHENEB(A)**, *The reception by Algerian law of the notions of arbitration, conciliation and mediation*, RDAI , n°6, 2019, p 561.

4. **BENHAMIDA (W)**, The Impact of Default Interest on the Enforcement of Arbitral Awards in Arab Countries, *Rev.arb*, 2012, p.539.
5. **BENSAUD (D)**, Equality of parties in the constitution of the tribunal and divergent interests, *Gaz. Pal*, 08/03/3014, n°67.
6. **BERTIN (Ph)**, Le rôle du juge dans l'exécution de la award arbitrale, *Rev.arb*, 1983, p 281.
7. **BESSON (S)**, Le recours contre la sentence en droit suisse, *Rev. arb*, 2018, n°1, p.99.
8. **CHAINAIS (C)**, Prospective reflections on arbitration remedies, *Rev. arb*, 2018, n°1, p 177.
9. **CLAY (TH)**, The Control of Independence, *Cahiers de l'arbitrage*, 2022, n°3, p 681.
10. **DERAINS (Y)**, Chronique de la jurisprudence française, *Rev- arb*, 2001, p 805
11. **FADLALLAH. (I)**, L'exécution des awards arbitrales dans les pays arabes, ICC Publication, 1989, pp. 87-101.
12. **FADLALLAH (M)**, Nouveau recul de la révision au merits : motivation et fraude, *Gaz. Pal*, 12 September 2000.p 55.
13. **FOUCHARD (Ph)**, La portée internationale de l'annulment de la sentence dans son pays d'origine, *Rev. arb*, 1997, n° 3, p 329 .
14. **HANOTIAU (B)**: L'arbitrabilité et *la for arbitrandum* : un réexamen, *JDI*, n° 4. 1994, p 899.
15. **JAROSSON (CH)**, Arbitrability: methodological presentation, *RJ Com*, n° 96, p1
16. **JOURDON-Marques(J)**, variations around competence, *Dalloz actualité*, 23/05/2023
17. **GAILLARD (E)**, L'exécution des sentences annuls dans leurs pays d'origine, *JDI*, 1998, p 662.

18. **GAILLARD (E)**, *La sentence arbitrale*, JCL, droit international, Fasc 586-9
19. **LALIVE (P)**, *Ordre public transnational (ou vrai international) et arbitrage international*. Rev. arb, 1986, p. 329.
20. **LOQUIN (E)**, *The control of the conformity of the award to international public order*, Journal of International Law (Clunet), n°1, 2023, p 149.
21. **MAINGUY (D)**, *The new French conception of international public order in international arbitration*, La semaine juridique- Entreprise et affaires- n° 10 - 9 March 2023.
22. **MIGNARD (J-P)**, *Exequatur des sentences arbitrales : pour une procédure contradictoire*, Gaz . Pal, 07 Sept 2013, n°1417.p 25.
23. **MOURALIS(D)**, *The litigation of international arbitral awards before the enforcement judge*, Cahiers d'arbitrage, 2017, n°2, p 189.
24. **MOURALIS(D)**, *Friendship and arbitration: how far does the obligation to reveal go?*, La semaine juridique, édition générale, 2023 ,n° 16 p 814
25. **SERAGLINI (C)**, *The control of the sentence with regard to international public order by the state judge: myths and realities*, Gaz.pal 31/03/2009, p.5.
26. **SERAGLINI (C)**, *The control by the judge of the contrariété of the sentence to international public order: the past, the present, the future*, Rev.arb, 2020, n°2, p 347.
27. **PAULSON (J)**, *L'exécution des awards arbitrales dans le monde de demain*, Rev arb, 1998, p 637.
28. **PINNA (A)**, *Swiss and French approaches to the control of compliance with international public order*, Cahiers de l'arbitrage, 2018, n°3, p 465.

29. **PLONI (F)**, The Enforcement of Arbitral Awards to the Test of Corruption, *International Review of Compliance and Business Ethics* No. 4, July 2021, p 165.
30. **TERCIER(P)**, The Great Success of International Commercial Arbitration and the New York Convention, *Cahiers de l'arbitrage*, 2019, n°4, p653.
31. **TRARI-TANI (M)**, International Arbitration in the New Algerian Code of Civil and Administrative Procedure, *Bulletin of the Swiss Arbitration Association (ASA)*, 1 March 2009.