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Arbitration as an Amicable Mechanism for the Settlement of Public Procurement Disputes in Algeria

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Abstract:
Arbitration is considered one of the alternative dispute resolution (ADR) methods without resorting to the judiciary. Given its importance in terms of procedural simplification and celerity in rendering decisions, coupled with the growth of international trade and economic globalization, all of this led the Algerian legislator to change its perspective on arbitration. This perspective shifted from the principle of prohibiting public entities from resorting to arbitration, to permitting it—albeit on an exceptional basis—in public procurement disputes. It is considered one of the amicable dispute settlement methods within the meaning of Article 153 of Presidential Decree No. 15-247, regulating public procurement and public service delegations.
Despite all the advantages arbitration offers in resolving public procurement disputes, it is nonetheless considered a risk to the public interest and the privileges granted to it. This is because arbitration treats the disputing parties as equals, without regard to the superior position of the public interest.

Keywords: *Public procurement, Arbitration, Public interest, Amicable settlement.*

L'arbitrage comme mécanisme amiable de règlement des litiges en matière de marchés publics en Algérie

Résumé:
L'arbitrage est considéré comme l'un des modes alternatifs de règlement des litiges (MARL) sans recourir aux tribunaux. Compte tenu de son importance en termes de simplification des procédures et de célérité dans le règlement, conjuguée à la croissance du commerce international et à la mondialisation économique, tout cela a conduit le législateur algérien à modifier sa perception de l'arbitrage. Cette perception est passée du principe d'interdiction aux personnes morales de droit public de recourir à l'arbitrage, à la permission d'y recourir – mais à titre exceptionnel – dans les litiges relatifs aux marchés publics. Il est considéré comme l'un des modes de règlement amiable des litiges, au sens des dispositions de l'article 153 du Décret Présidentiel n° 15-247, portant réglementation des marchés publics et des délégations de service public.
Malgré tous les avantages qu'offre l'arbitrage pour résoudre les litiges des marchés publics, il est néanmoins considéré comme un danger pour l'intérêt général et les prérogatives qui lui sont reconnues. En effet, l'arbitrage place les parties au litige sur un pied d'égalité, sans tenir compte de la position privilégiée de l'intérêt général.

Mots-clés: *Marché public, Arbitrage, Intérêt général, Règlement amiable.*

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Introduction

The public procurement contract is a form of administrative contract where one party is a public legal entity (public moral person) connected to a public service. It includes exceptional and uncommon clauses established to protect the public interest. Additionally, the Algerian regulator has imposed upon it the formality of writing, considering it an administrative contract concluded by public bodies with foreign or national economic operators for the execution of works, acquisition of supplies, provision of services, or preparation of studies, in return for financial consideration.

Public procurement contracts are of great importance as they relate to the volume of the state's public spending aimed at implementing public investment projects in accordance with development program plans, with the goal of driving the economy.

However, several disputes may arise during the formation (conclusion) or execution stage of public procurement contracts, impeding the operation of the public service and preventing the tangible realization of public investment projects, thereby halting development.

To avoid this, legal mechanisms must be found to remove these obstacles by settling public procurement disputes as quickly and cost-effectively as possible, ensuring the continuity of the public service and the path of growth.

In this regard, the Algerian regulator included the mechanism of arbitration through the text of Article 153 of Presidential Decree No. 15-247, regulating public procurement and public service delegations, which

stipulated the principle of mandatory amicable settlement, considering arbitration as an alternative judiciary (alternative justice) and one of the amicable methods for dispute resolution.

Undoubtedly, arbitration is one of the most important alternative dispute resolution methods in various fields. It is perhaps one of the most significant reforms introduced by the Code of Civil and Administrative Procedure (CCAP), as the Algerian legislator, for the first time, permitted public law persons (entities) to resort to arbitration as an exceptional measure in the field of international agreements and public procurement. Thus, it changed its perspective on arbitration, particularly for the State, the Wilaya (province), the Municipality, and public establishments of an administrative character (EPAs), moving from a phase of prohibiting arbitration to a phase of permitting it.

However, this shift to allowing arbitration in the public procurement field has created several problématiques (legal issues), primarily related to the compatibility of general texts with special texts in defining which public legal entities can resort to this procedure. Furthermore, arbitration is characterized by establishing a form of parity and equality between the disputing parties, without regard to the nature of the public interest and the necessity of prioritizing it over private interests. This may result in depriving the contracting authority (contracting service) of the public authority privileges granted to protect the public interest.

In light of this, we can pose the central research question (problématique): To what extent has arbitration, as an alternative judiciary, contributed to settling disputes that arise during the formation and execution stages of public procurement contracts?

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In an attempt to answer this question, we have divided our research paper into two main sections: (Section One) The Concept of Arbitration as an Alternative Judiciary for Resolving Public Procurement Disputes, and (Section Two) Arbitration as an Exceptional Procedure in Public Procurement Disputes.

1. The Concept of Arbitration as an Alternative Judiciary for Resolving Public Procurement Disputes:

Many comparative legal systems propose alternative dispute resolution methods, including arbitration. Through arbitration, a dispute is examined and decided upon by the disputants appointing an arbitrator they both accept to judge between them. Resorting to it depends on the will of the contract parties, as it is a legal system based on the principle of the autonomy of will (sovereignty of will). Due to the diversity of fields where arbitration can be used, several types of arbitration have emerged. The Algerian legislator has also regulated it with a set of procedures intended to preserve the priority of the public interest and guarantee the rights and freedoms of the contracting partner. Accordingly, we will address (1.1) the permissibility of resorting to arbitration in the field of public procurement, and then (1.2) the types of arbitration in the field of public procurement (Noufel, 2016, p. 59).

1.1 The Permissibility of Resorting to Arbitration in Public Procurement:

Given that the public procurement contract is an administrative contract, it recognizes a set of exceptional and unusual powers for the contracting authority vis-à-vis the contracting partner. In this context, the issue arises as to

whether resorting to arbitration in the procurement field is permissible, given that the arbitration procedure would deprive the public administration of its privileges and equate the contracting parties. Based on the foregoing, we will examine (1.1.1) the position of jurisprudence (*fiqh*) and the judiciary in comparative systems on the permissibility of resorting to arbitration, and then (1.1.2) the Algerian legislator's position on resorting to arbitration (Radi, 2013, p. 310).

1.1.1 The Position of Jurisprudence and Judiciary on Arbitration in Comparative Systems:

This issue has been raised in many comparative systems, including Egyptian jurisprudence and judiciary, where it has been a source of disagreement, resulting in varied judicial rulings and legal opinions (*fatawa*). The Egyptian administrative judiciary issued several rulings denying the validity of arbitration agreements in public procurement disputes. The Court of Administrative Justice (Qada' al-Idari) ruled in a case concerning a construction contract (the Martyr Ahmed Hamdi Tunnel) that this contract—a public procurement contract—is an administrative contract and it is not permissible to strip the Council of State (Majlis al-Dawla) of its jurisdiction to hear its disputes. The Supreme Administrative Court of Egypt also issued a judgment disallowing agreements that contravene the general rule stipulated in the Council of State's law, which assigns jurisdiction over administrative contract disputes to the Council of State. This applies to clauses that may be included in the administrative contract. If the parties to an administrative contract were allowed to resort to optional arbitration for disputes arising between them, this would be

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considered a modification of the Council of State's jurisdiction, an argument contrary to public law, as it is not permissible to contravene the general rule with individual acts (El-Tahiwy, 1999, p. 127).

The General Assembly of the Fatwa and Legislation Department at the Council of State has, on several occasions, issued opinions (fatawa) permitting arbitration agreements in administrative contracts. This is based on the argument that Article 58 of the Egyptian Council of State Law No. 47 of 1972 explicitly allows the public administration to resort to arbitration in its contractual disputes. The third paragraph of the aforementioned article obligates any ministry, public authority, or state department not to conclude, accept, or authorize any contract, settlement, or arbitration, or execute an arbitrators' award in a matter exceeding five thousand pounds without consulting the competent Fatwa department at the Council of State. The reasoning is that if arbitration were prohibited for the administration, the Egyptian legislator would not have obligated it to submit the agreement or the execution of the arbitrators' award to the Council of State for review (El-Tahiwy, 1999, p. 128).

1.1.2 The Algerian Legislator's Position on Resorting to Arbitration:

The Algerian legislator considers resorting to arbitration in the field of public procurement an exception. The general rule stipulated by the legislator is the prohibition of the public legal entities listed in Article 800 of the Code of Civil and Administrative Procedure—namely the State, the *Wilaya*, the Municipality, and public establishments of an administrative character (EPAs)—from resorting to arbitration. This is in accordance with the text of Article 975

of the aforementioned law, which states: "The persons mentioned in Article 800 above may not conduct arbitration except in cases provided for in international conventions ratified by Algeria or in the matter of public procurement" (Law No. 08-09, Art. 800 & Art. 975).

The rationale for this—prohibition except by exception—can be attributed to the fact that this procedure would deprive the contracting authority of its established privileges required by the public interest, as this alternative judiciary will equate the parties when ruling on the dispute between them (Imran, 2018, p. 186).

1.2 Types of Arbitration in Public Procurement Disputes:

Arbitration is a system primarily based on the principle of the autonomy of will, regarding whether or not the contracting parties can resort to it. This has resulted in its flexibility in resolving the disputes submitted to it (Filali, 2013, p. 51). Arbitration has been used in many international, regional, and even local contracts and has been regulated by various international, national, and regional legislations. This has led to a variety of forms of arbitration, the most important of which, in the field of public procurement, we will address by first discussing national and international arbitration in (1.2. 1), and then arbitration in law and *amiable composition* in (1.2. 2) (Noufel, 2016, p. 69).

1.2.1 National and International Arbitration in Public Procurement:

There are three criteria for distinguishing between international and national arbitration, as the international character of arbitration is determined by geographical, legal, or economic criteria. In this context, it can be said—

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generally—that arbitration is national if all its elements are connected to a single specific state, including the subject of the dispute, the nationality of the parties and arbitrators, the applicable law, and the place where the arbitration is held. This type of arbitration in public procurement is linked to a domestic national relationship, separate from the interests of international trade (Al-Ahdab, 2009, p. 44). In this context, national arbitration is that judicial system that governs a dispute between domestic public or private law persons, decided by national arbitrators, applying national law, with the award enforced in the same state (Noufel, 2016, p. 78).

International arbitration, however, is that alternative judicial system where the dispute includes one or more foreign elements. This element may relate to the subject of the dispute, the nationality or domicile of the parties and arbitrators, the law or agreement (if any), or the dispute's connection to the place where the award is issued or to the interests of international trade.

Additionally, arbitration acquires an international character by extension of the administrative contract (public procurement) that gave rise to the dispute. If the procurement contract is international, the arbitration is consequently international. It is given an international character when it involves the transfer of funds, goods, or services across the geographical borders of states (Omar Saadallah, p. 279, as cited in Noufel, 2016, p. 79). The importance of determining the internationality of arbitration lies in the fact that some legislations establish special rules that do not apply to other disputes, such as French law, which organized international arbitration in specific articles (Articles 1504 to 1527 of the new Code of Civil Procedure No. 11-48, issued on 13-01-2013) (Noufel, 2016, p. 79).

The Algerian Code of Civil and Administrative Procedure also dedicated a specific chapter to international arbitration procedures (Chapter Six, Articles 1039 to 1061 of Law No. 08-09) (Law No. 08-09, Arts. 1039-1061).

The Algerian regulator also obligated the contracting authority, when disputes arise concerning the execution of public procurement contracts concluded with foreign economic operators, to resort to an international arbitration body. This is in accordance with Article 153 of Presidential Decree No. 15-247, which states: "...recourse by contracting authorities, in the context of settling disputes arising during the execution of public procurement contracts concluded with foreign contracting partners, shall be submitted to an international arbitration body..." (Presidential Decree No. 15-247, Art. 153).

1.2.2 Arbitration in Law and Amiable Composition in Public Procurement:

This classification of arbitration is viewed from the criterion of the extent to which the arbitrator is bound by the rules of law in force in the state of arbitration. In this context, arbitration in law (*ex jure*) in the field of public procurement means the arbitration panel is obliged to apply a specific law to resolve the dispute before it, without the discretion to deviate from it. If it does, the parties have the right to appeal to the administrative judiciary for the arbitrators' violation of the applicable rules of law (Khalifa, 2003, p. 31).

As for "free arbitration" (*al-tahkim al-taliq*), we note that most jurisprudence refers to it as arbitration in equity or *amiable composition* (*ex aequo et bono*). This means the arbitration panel resorts to applying rules of justice and fairness to resolve disputes, without being bound by the

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provisions of the law, except for those related to public order (*ordre public*), even if the panel's award contradicts what the law would mandate if the dispute were presented to the judiciary (Majed Ragheb Al-Helou, p. 237, as cited in relevant literature).

A consequence of this type of arbitration is that the contract parties (public procurement) cannot appeal the arbitration panel's award on the basis that it violated the law, as the panel was not bound by a specific law in the first place. However, this does not exempt the arbitration panel from adhering to fundamental procedural rules and basic principles of litigation, including the respect for the rights of defense, which arbitrators must observe as arbitration is a form of alternative judiciary (Al-Khudair bin Abdullah, p. 143, as cited in relevant literature).

2. Arbitration as an Exceptional Procedure in Public Procurement Disputes:

The Algerian legislator adopted the principle of prohibiting the state or its institutions from resorting to arbitration as a general rule. However, following developments in this principle, especially in French jurisprudence and judiciary (Noufel, 2016, p. 111), the Algerian legislator gradually moved to soften its stance, permitting it as an exceptional procedure in the field of public procurement (Law No. 08-09, Art. 1006). It is considered one of the alternative methods for amicable dispute settlement. However, anyone following the provisions for arbitration in public procurement disputes will notice their distribution between the general text (the Code of Civil and Administrative Procedure) and the special text (the regulation of public procurement). To elaborate, we

will address the amicable settlement of public procurement disputes via arbitration in (Subsection 1), and then address arbitration in public procurement disputes and the *problématique* of the organic criterion in (Subsection 2) (Boudiaf, 2016, p. 178).

2.1 Amicable Settlement of Public Procurement Disputes via Arbitration

Presidential Decree No. 15-247, regulating public procurement and public service delegations, enshrined the principle of mandatory recourse to amicable settlement for public procurement disputes. It considered resorting to arbitration one of the amicable methods used (Presidential Decree No. 15-247, Art. 153), after this was established as a general principle resulting from the reforms of the Code of Civil and Administrative Procedure. From this standpoint, we will address (2.1.1) the adoption of the principle of mandatory amicable settlement, and (2.1. 2) the establishment of the principle of resorting to arbitration in public procurement (Boudiaf, 2013, p. 332).

2.1.1 Adoption of the Principle of Mandatory Amicable Settlement

Based on Article 153 of Presidential Decree No. 15-247, we find it obligates the contracting authority to resort to amicable settlement for public procurement disputes, whether at the time of conclusion or execution, in accordance with the legislative and regulatory provisions in force. It states: "Disputes arising during the execution of the contract shall be settled within the framework of the legislative and regulatory provisions in force. The contracting authority must, without prejudice to the

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application of the provisions of the paragraph above, seek an amicable solution to disputes that arise during the execution of its contracts....". The same article, in its final paragraph, obligates the contracting authority, when resorting to arbitration as part of an amicable settlement, especially when contracting with foreign economic operators, to submit the dispute to an international arbitration body. It states: "Recourse by contracting authorities, in the context of settling disputes arising during the execution of public procurement contracts concluded with foreign contracting partners, shall be submitted to an international arbitration body, upon the proposal of the concerned minister, for prior approval during a meeting of the Government" (Presidential Decree No. 15-247, Art. 153).

From the aforementioned text, it seems clear that this Presidential Decree adopted the principle of mandatory amicable settlement for disputes arising from the contract's conclusion and execution, and considered arbitration one of its methods, albeit briefly. The text only spoke of the possibility of arbitration when the contracting partner is foreign. This is all to avoid judicial litigation, which costs the parties complex procedures and lengthy disputes. If an amicable solution is agreed upon, the concerned minister, the independent national body, the *Wali*, or the President of the Municipal People's Assembly issues a decision formalizing this agreement and outlining the new obligations (Bouchkira, 2004-2005, p. 60).

The Algerian regulator acted wisely by adopting the principle of mandatory amicable settlement in public procurement disputes, to prevent the stalling of public projects. This procedure—arbitration—allows the parties to find a solution that suits them and puts an end to the

disputes between them, all for the purpose of continuing execution to ensure the project is delivered within its legal deadlines, thereby not undermining the principle of continuity of the public service, and ensuring the progress of development projects in various sectors of the state (Boudiaf, 2013, p. 321).

However, we must note that Article 153 of the public procurement regulation also set controls and limits for amicable settlement, stipulating that it must respect a set of provisions, namely:

1) The concerned administration must respect the legislation and regulation in force and not violate it.
2) Ensuring a balance in sharing costs between the two contracting parties.
3) Reaching the quickest possible completion of the contract's subject matter.
4) Seeking a final settlement of the dispute as quickly and cost-effectively as possible (Presidential Decree No. 15-247, Art. 153).

2.1.2 Establishing the Principle of Permissibility of Arbitration

One of the most important reforms of the Code of Civil and Administrative Procedure (CCAP) is that it, for the first time, permitted public law persons to resort to arbitration *by exception* in cases of international agreements and in the field of public procurement. Article 975 of the CCAP permitted this, stating: "The persons mentioned in Article 800 above may not conduct arbitration except in cases provided for in international conventions ratified by Algeria and in the matter of public procurement" (Law No. 08-09, Art. 975).

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From this text, we can see the transformation in legislation regarding arbitration, specifically for the State, *Wilaya*, Municipality, and public establishments of an administrative character (EPAs). Algeria moved from prohibiting arbitration to permitting it. The legislator acted wisely in allowing recourse to it as an amicable way to resolve public procurement disputes, as this achieves several advantages, the most important of which are (Kamar, 2009, p. 120):

1) Arbitration in public procurement disputes allows for a speedy resolution of the dispute, avoiding the lengthy duration of the conflict if brought before the judiciary and the harm that would affect the contracting authority, its contracting partner, and the public service user as a result of the delay.
2) Less formality in the arbitration procedure in the public procurement field.
3) Arbitration is characterized by complete confidentiality, unlike the judiciary, whose sessions are governed by the principle of publicity.
4) Arbitration allows the contract parties to choose their arbitrators, which litigants do not have if they go directly to court (Boudiaf, 2013, p. 332).

Referring to Article 976 of the CCAP, we find it stipulates: "The provisions relating to arbitration provided for in this Code shall apply before the administrative judicial bodies, when the arbitration relates to the State. Recourse to this procedure is made on the initiative of the concerned minister or ministers. When the arbitration relates to the *Wilaya* or the Municipality, recourse is made, respectively, on the initiative of the *Wali* or the President of the Municipal People's Assembly. When the arbitration relates to a public establishment of an administrative character, recourse is

made on the initiative of its legal representative, or the supervisory authority to which it reports" (Law No. 08-09, Art. 976).

From this text, we note the legislator has conditioned the resort to arbitration in public procurement on the "initiative" of the concerned minister or other representatives of public legal entities. The term "on the initiative of" (bi-mubadara min) is not in its correct legal position, although what is meant is prior approval. It would have been better for the legislator to use the term "ratification" (musadaqa) or "authorization" (tarkhis), which carry more legal weight. Furthermore, this article raises an important question resulting from the legislator's failure to specify any sanction if the minister's "initiative" for the arbitration agreement is absent. Is the arbitration procedure nullified? Or does the arbitration agreement remain valid and effective? (Noufel, 2016, p. 173).

To answer this question, it can be said that the sanction resulting from the administration's recourse to arbitration in public procurement disputes without obtaining the prior approval of the competent minister is merely a disciplinary sanction, governed by the law regulating the relationship between the administration and the minister. This is analogous to a ruling by the Egyptian Court of Cassation, which held that the administration's violation of Article 32 of the Council of State law—requiring authorization before concluding an arbitration agreement—does not lead to the nullity of said agreement, due to the absence of an explicit text decreeing such (Egyptian Court of Cassation, 1964, as cited in Noufel, 2016, p. 174).

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2.2 Arbitration in Public Procurement Disputes and the *Problématique* of the Organic Criterion

One of the most significant reforms of the Code of Civil and Administrative Procedure (CCAP) was allowing public legal entities, by exception, to resort to arbitration in cases exhaustively listed in Article 975, including disputes that may arise in the field of public procurement (Law No. 08-09, Art. 975). The legislator moved from prohibiting arbitration to permitting it. However, enshrining the **organic criterion** (*al-mi'yar al-'udwi*) in the concept of Article 800 of the CCAP conflicts with several special texts—namely Presidential Decree No. 15-247. Therefore, we will try to elaborate on this conflict by addressing (2.2.1) the *problématique* of *ratione materiae* jurisdiction and its conflict with Article 6 of Presidential Decree No. 15-247, and (2.2.2) the ability of public establishments of an industrial and commercial character (EPIC) to resort to arbitration (Presidential Decree No. 15-247, Art. 6).

2.2.1 The Problématique of Jurisdiction and its Conflict with Article 6 of the Public Procurement Regulation

Reading Article 975 of the CCAP, we find it defined the legal entities that can resort to arbitration by referring to Article 800: the State, the *Wilaya*, the Municipality, and public establishments of an administrative character (EPAs) (Law No. 08-09, Art. 800). The legislator thus enshrined the organic criterion for assigning disputes to the administrative judiciary. However, referring to Article 6 of Presidential Decree No. 15-247, we find it adds, alongside these public bodies, "public establishments subject to legislation governing commercial activity" (i.e., EPICs), when they are tasked with carrying out an operation financed wholly or

partially, by a temporary or final contribution, from the budget of the State or regional territorial collectives (Presidential Decree No. 15-247, Art. 6).

From this, we can ask: What is the impact of the organic criterion (enshrined in Article 800) on the scope of arbitration in public procurement? Is this criterion decisive in setting the rules of jurisdiction? Is it clear and consistent between the public procurement regulation on one hand, and the CCAP on the other? And will arbitration play its role as a dispute resolution mechanism in public procurement in light of this conflict in defining jurisdiction? (Boudiaf, 2013, p. 333).

This issue, created by the lack of clear definition of jurisdictional rules and the conflict between general and special texts, will negatively affect the ability to resort to arbitration in public procurement. This results in several negative consequences, including:

1) Public procurement disputes are technical in nature, which requires them to be viewed from a special angle. Resolving them outside the judiciary saves time. However, by excluding EPICs from the scope of arbitration (via Article 800), the procurement contracts concluded by these bodies will be harmed if they are not allowed this option (Menani, 2010, p. 128).
2) The duration of the dispute will be prolonged if recourse is made to the judiciary, causing significant harm to all parties—the contracting partner, the contracting authority, the public treasury, and even the public service user. Therefore, the dispute must be resolved quickly, which arbitration provides. But what about the funds that will be harmed by not

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allowing the public legal entities (EPICs) omitted by Article 800 of the CCAP, but included by Article 6 of Presidential Decree 15-247, to arbitrate their contract disputes? (Kamar, 2009, p. 129).

3) Upon the issuance of the CCAP, public authorities gave great importance to alternative dispute resolution rules (arbitration, mediation, and conciliation). This effectiveness is even greater when related to public procurement. But this contradiction in defining the legal entities (between Article 6 of the Decree and Article 800 of the CCAP) will undermine this effectiveness and importance (Boudiaf, 2013, p. 334).

2.2.2 *The Ability of Public Establishments of an Industrial and Commercial Character (EPIC) to Resort to Arbitration*

Based on Article 975 of the CCAP, we note the legislator did not explicitly provide for public establishments of an industrial and commercial character (EPICs) to resort to arbitration in public procurement, as the reference to Article 800 omitted them. However, upon reading Article 1006 of the CCAP, specifically the third paragraph, it states: "Public legal entities may not request arbitration, except in their international economic relations or within the framework of public procurement" (Law No. 08-09, Art. 1006).

Reading this text, we note it did *not* refer to Article 800, as Article 975 did. The text uses the general term "Public legal entities" without specifying their nature (administrative or industrial/commercial). From this standpoint, EPICs financed by public body budgets (per Article 6 of Presidential Decree 15-247) *do* fall under the provision of

Article 1006, paragraph 3, as it was not restricted by the list in Article 800. Therefore, they *can* resort to arbitration for disputes in the procurement contracts they conclude (Moussaoui, 2015, p. 231).

Conclusion

Arbitration in public procurement is a valuable and highly important gain, given the positive outcomes it can achieve. It is a special kind of justice characterized by speed in resolving disputes. It is also an encouraging means for foreign trade and investment, as it is a mechanism of understanding between disputants rather than a coercive means like the judicial system. It was approved as an alternative judiciary to keep pace with economic globalization and the development of free and fair competition rules.

To achieve these satisfactory results, the permissibility of public bodies resorting to arbitration in public procurement disputes was accepted as an exception, especially for contracts concluded with foreign institutions.

However, despite all the positive results that arbitration can achieve and the important role it plays, recourse to it is very limited due to several *problématiques* that may beset it:

1) The legislator did not succeed in setting the rules of jurisdiction based on the organic criterion (Article 800 of the CCAP), especially when compared with the special texts (Public Procurement Regulation 15-247).
2) Linking the requirements of Article 800 with Article 975 negatively affected the ability of EPICs (defined

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in Article 6 of Decree 15-247) to resort to arbitration, as Article 800 did not include them.

3) There is a significant difference between the CCAP and the Public Procurement Regulation regarding the rules of jurisdiction for public procurement disputes.
4) Arbitration is not playing its intended role in public procurement due to the lack of defined procedures and the failure to announce a list of arbitrators.
5) We note that arbitration in public procurement disputes did not receive sufficient attention in Presidential Decree No. 15-247, where only one article (Article 153) mentions it, and only briefly in the context of international contracts with foreign operators.
6) The Algerian legislator created a contradiction in defining the areas where arbitration is permitted. Article 975 limits it to international agreements and public procurement, while Article 1006 permits it in "international economic relations" and public procurement, which is a broader scope than the former regarding international arbitration.
7) Based on the foregoing, we can offer some recommendations that may contribute to achieving the desired effectiveness of arbitration in public procurement:
8) The Algerian legislator must rectify the clear contradiction between Article 975 and Article 1006 of the CCAP by unifying the terminology used and avoiding exhaustive lists to ensure textual integration.
9) Amend Article 800 of the CCAP to align with special legislation, including Presidential Decree No. 15-247, and to accommodate new classifications of

institutions (e.g., public establishments of a scientific and technological character, or a scientific, cultural, and professional character), which must be included with the other public law persons mentioned in Article 800.

10) The necessity of selecting arbitrators from state agents (public officials) who are related to the public procurement field and from different departments (e.g., finance, trade, public works, public treasury) to give the arbitration mechanism higher status and better results in resolving disputes.
11) The Algerian legislator must pay more attention to arbitration in public procurement by defining its procedures in future amendments to public procurement regulations.
12) The need to explicitly stipulate recourse to arbitration in *all* administrative contract disputes, not just public procurement.
13) Granting sufficient and enhanced guarantees commensurate with the importance of the public procurement contract, especially for public legal entities, as they exist to achieve the public interest, which is the basis of every contract.

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