

RESEARCH ARTICLE 	<h2>Procedures for Litigation in International Commercial Arbitration Decisions According to Algerian Legislation</h2>
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Abstract This study presents the development and preliminary validation of a culturally and linguistically adapted imitation Modern legislation has established provisions relating to the recognition and enforcement of international commercial arbitration awards, and treaties have been concluded on this subject. A review of these provisions concerning enforcement and recognition reveals that national courts exercise oversight over arbitration awards before ordering their recognition and enforcement. This oversight is conducted within a limited legal framework and is confined to monitoring the availability of the legal conditions required for recognition and enforcement in accordance with domestic laws and agreements. The primary purpose is to protect the arbitration parties' rights from abuse, and the secondary purpose is to uphold the sovereignty of the state of enforcement. The system of recognition and enforcement of international arbitration awards is not intended to hinder arbitration; rather, its purpose is to confer official status upon arbitration awards, thereby elevating them to the level of judicial decisions. This can only be achieved through the exercise of judicial oversight.	
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Introduction: Once the arbitral award has been issued¹, the arbitrator relinquishes the dispute and the award has the authority of *res judicata*² with regard to the resolved dispute. This means that the dispute cannot be brought before the national courts again. However, execution is required to realise the outcome of any ruling, whether arbitral or judicial. When resolving any dispute, it is evident that there will be parties in favour and against, and execution may be mandatory or voluntary.

Following profound economic reforms adopted by the Algerian legislature, international commercial arbitration was recognised through accession to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 10 June 1958 in 1988³. This was accompanied by the issuance of Legislative Decree No. 93/09, dated 25 April 1993, which amends and supplements Ordinance⁴ No. 66/154, dated 8 July 1966, concerning the repealed Civil Procedure Law. It was also accompanied by the conclusion of bilateral agreements aimed at promoting investment, as well as accession to multilateral agreements.

Thus, after the issuance of an international commercial arbitration award, the judiciary's primary role is to recognise and enforce it, provided it meets the formal and substantive requirements specified in the 1958 New York Convention, which Algeria ratified on 12 July 1988. This means that the national judiciary exercises oversight over the arbitral award after its issuance. Furthermore, judicial orders regarding recognition and enforcement may be subject to appeal before higher judicial authorities. The law also permits direct appeals against the arbitral ruling before seeking recognition and enforcement, either before or after doing so.

This raises questions about how arbitral awards are enforced, the role of the judge in this process and the competent authorities involved. It also raises questions about whether the same procedures are followed for enforcing judicial rulings and whether international commercial arbitration awards are subject to appeal. If so, before which authority, and what is its role? What are the methods of appeal? To address these questions, Legislative Decree No. 09/93 of 25 April 1993 concerning international commercial arbitration must be referred to, particularly Articles 458 bis 17 to 458 bis 28, which correspond to Articles 1051 to 1064 of the new Civil and Administrative Procedure Law.

The topic will be addressed through the following two main sections:

1. Recognition and enforcement of international commercial arbitration awards.
2. Litigation procedures concerning international commercial arbitration awards.

Section One: Recognition and Enforcement of International Commercial Arbitration Awards

Neither the Algerian legislator nor the New York Convention defines the term 'recognition'. However, legal scholars describe it as the acknowledgement that an arbitral award is valid and binding on both parties⁵. 'Enforcement', on the other hand, refers to the demand made by the party in whose favour the award was issued to implement the ruling⁶. This may occur through mandatory execution in accordance with the enforcement

¹- Article 1030 of Law No. (08/09) dated 25/02/2008, concerning the Law on Civil and Administrative Procedures, Official Gazette, No. 21, dated 23/04/2008.

²- Article 1031 of Law No. (08/09) dated 25/02/2008, concerning the Law on Civil and Administrative Procedures, Official Gazette, No. 21, dated 23/04/2008.

³- Presidential Decree No. (88/233) dated 13/11/1988, concerning Algeria's accession with reservations to the convention ratified by the United Nations Conference in New York on 10/06/1958, Official Gazette No. 48 dated 23/11/1988.

⁴- Legislative Decree No. (93/09) dated 25/04/1993, amending and supplementing Ordinance No. (66/154), dated 08/07/1966, which includes the repealed Law on Civil Procedures, Official Gazette, No. 27, dated 27/04/1993.

⁵- Sahar Abdel Sattar Youssef, *The Legal Status of the Arbitrator*, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2006, p. 39.

⁶- Sayed Ahmed Mahmoud, *The Arbitration System, A Comparative Study between Islamic Law and Positive Law*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2000, p. 39.

procedures of the country in which enforcement is sought. This process is facilitated by affixing an enforcement clause to the award, issued according to the enforcement law of the relevant country, as stated in Article 3(1) of the New York Convention.

Neither the Algerian legislator nor the New York Convention clearly distinguishes between recognition and enforcement. Therefore, judicial oversight of requests for recognition or enforcement is the same, requiring the same conditions and orders to be issued, and they are subject to the same methods of appeal.

The lack of distinction between the rules applicable to recognition and enforcement stems from their inherent connection. Often, a request for recognition follows a primary request for enforcement. Acceptance of a request for enforcement implies recognition of the award, and vice versa.

A request for recognition may be primary when the applicant is not seeking enforcement, but rather aims to obtain recognition of the award for defensive purposes. For example, this may occur when one party to the arbitration files a lawsuit regarding the same dispute that the arbitral award has resolved.

Furthermore, both the Civil and Administrative Procedure Law and the New York Convention require judges to ensure that the legal conditions are met before granting recognition and enforcement.

Section 1: Conditions for the Recognition and Enforcement of Arbitral Awards

The New York Convention does not specify the conditions necessary for the recognition and enforcement of an arbitral award. Instead, Article 5 outlines seven circumstances in which a judge may refuse recognition and enforcement. These are:⁷

- ✓ Invalidity of the arbitration agreement.
- ✓ Violation of the right to defence.
- ✓ The award exceeds the agreement of the parties.
- ✓ Invalid composition of the arbitral tribunal and its procedures.
- ✓ The award is not binding.
- ✓ The subject matter of the dispute is not arbitrable.
- ✓ Enforcing the arbitral award would contradict international public policy.

Additionally, Article 1051 of the Civil and Administrative Procedure Law stipulates that the arbitral award and the arbitration agreement must be presented.

We will attempt to analyse these conditions by classifying them into two groups: formal and substantive.

First Branch: Formal conditions for the acceptance, recognition and enforcement of the arbitral award.

In order to exercise oversight before granting recognition and enforcement of arbitral awards, the judge must first receive both the arbitral award and the arbitration agreement from the applicant for recognition and enforcement⁸, as stipulated in Articles 1051 and 1052 of the Civil and Administrative Procedure Law. This is essential, as oversight is conducted primarily based on these documents; otherwise, the request for recognition and enforcement will be rejected.

Formal conditions related to the parties

Capacity:

⁷- Ridwaan Abu Zaid, General Principles in International Commercial Arbitration, University Thought House, Cairo, Egypt, 1981, p. 24.

⁸- Rousseau (CH), Public International Law - Precis, Dalloz, 6th ed., Paris, 1976, p. 301.

Upon receiving a request for recognition or enforcement of an arbitral award, the judge's first task is to establish whether the applicant has the requisite standing. This can be inferred from the arbitration agreement and the arbitral award, which should identify the parties entitled to submit requests for enforcement and recognition. Additional documents, such as a power of attorney, may be included with the application, or the application may be submitted by a legal heir who has inherited the right to enforcement⁹. If the request comes from someone lacking standing, it is rejected outright in accordance with Article 459 of the Civil and Administrative Procedure Law.

Eligibility:

According to Article 1006 of the Civil and Administrative Procedure Law, individuals have the right to resort to arbitration regarding rights that they can freely dispose of¹⁰, provided that these rights are not related to public order, personal status or eligibility. Therefore, it can be inferred that the eligibility required to resort to arbitration is the capacity to act.

It is noteworthy that the New York Convention does not specify particular rules to determine the parties' eligibility; this is left to the applicable law governing the parties, specifically the law referred to by the conflict-of-laws rule in the law of the country of enforcement. Therefore, if the judge finds that one of the parties is not eligible, the request for enforcement and recognition is rejected.

Regarding public legal entities, the legislator permits them to resort to international commercial arbitration in the context of their international economic relations or within the framework of public contracts. Consequently, the judge will also reject the request for recognition and enforcement if one of the parties is a public legal entity and the arbitration does not fall within these cases. Furthermore, the judge must ensure that none of the parties to the arbitral award seeking recognition and enforcement belongs to a country with which dealings are prohibited.

In addition to meeting the eligibility and standing conditions, at least one party to the arbitration must reside abroad for a request for the recognition and enforcement of a commercial arbitration award to be accepted. This stipulation is set out in Article 458 bis of Legislative¹¹ Decree No. 93/09. However, the corresponding provision in the new Civil and Administrative Procedure Law omits the residence requirement, instead stating in Article 1039¹² that the dispute must concern the economic interests of at least two states.

Formal Conditions Related to the Mandatory Data of the Arbitral Award

The judge must ensure that the arbitral award contains the mandatory data specified in Articles 1027 to 1029 of the Civil and Administrative Procedure Law. This data includes:

- The name(s) and surname(s) of the arbitrator(s).
- The date and place of issuance of the award.
- The names and surnames of the parties, their addresses and the designation of legal entities and their registered offices.
- The names and surnames of the lawyers.
- The signatures of all arbitrators on the arbitral award, indicating any who refused to sign.
- A brief summary of the parties' claims and defences.

⁹- Houda Mohamed Magdy Abdel Rahman, *The Role of the Arbitrator in Arbitration Disputes and the Limits of His Authority*, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 1997, p. 20.

¹⁰- Mohamed Kola, *The Development of International Commercial Arbitration in Algerian Law*, Baghdad Publications, Algeria, 2008, p. 273.

¹¹- Article 458 bis of Legislative Decree 93/09

¹²- Article 1039 of the Law on Civil and Administrative Procedures

- The reasoning behind the arbitral award, as per Article 1055 of the Civil and Administrative Procedure Law. The lack of reasoning can be grounds for the annulment of the arbitral award, in addition to the resolution of the claims.
- Specification of the arbitration mission.
- The specification of the arbitral award ruling.

Formal conditions related to the arbitration agreement:

Before granting recognition or enforcement, the judge must verify the arbitration agreement. Specifically, they must ensure adherence to the principle of due process, confirm the arbitration mission and verify the legality of the arbitral tribunal's composition. The judge must also verify that the agreement is valid, as outlined in Article 1056 of the Civil and Administrative Procedure Law. This article considers these cases to be grounds for the annulment of the arbitral award, as well as grounds for appeal if the judge orders recognition or enforcement.

Second Branch: Substantive Conditions for Acceptance of Recognition or Enforcement

Once it has been confirmed that the international commercial arbitral award meets the aforementioned conditions, the judge must exercise substantive oversight of the award. This includes confirming that it does not contravene international public policy or address a non-arbitrable subject matter¹³. The judge must also verify that recourse to arbitration was consensual and that the subject matter of the dispute relates to the economic interests of at least two states.

1. Conditions of Consent in International Commercial Arbitration

The general rule is that arbitration is a consensual agreement and that the required formalities are merely a proof technique¹⁴. Legislative Decree No. 93/09 and the Civil and Administrative Procedure Law define arbitration as an agreement. This means that the parties must agree to submit the dispute to an arbitral tribunal. Consequently, any arbitral award resulting from a lack of consent is invalid. Similarly, any arbitral award resulting from error, fraud or duress is subject to annulment. It should be noted that the judge does not declare the award void, but rather refuses to recognise or enforce it in the absence of consent.

The legislator considers the absence or invalidity of consent for any of the aforementioned reasons to be grounds for the annulment of the arbitral award, as specified in Articles 1056(1) and 1058 of the Civil and Administrative Procedure Law. Furthermore, according to Article 1056(1), the agreement must be valid, meaning consensual and in effect at the time the arbitral award is issued. This is because the arbitration agreement forms the basis of the arbitration process¹⁵. If there is no arbitration agreement or if the arbitration clause is invalid or has expired, the award is issued without basis. This allows the party against whom enforcement is sought to request the rejection of recognition and enforcement by appealing the recognition order or by filing for the annulment of the arbitral award, as outlined in Article 1056 of the Civil and Administrative Procedure Law.

According to Article 1040 of the Civil and Administrative Procedure Law, the grounds for invalidity of the arbitration agreement are based on the law chosen by the parties, the law governing the subject matter of the dispute, or the law deemed appropriate by the arbitrator or arbitrators.

As stated in Article 1052 of the Civil and Administrative Procedure Law, written form is a condition for proof, but not for the validity of the arbitration agreement. Both natural and legal persons have the right to resort to international commercial arbitration in disputes concerning international economic interests. Public legal entities are also granted this right in their international economic relations and public contracts relating to ongoing

¹³- Mohamed Selim El-Awa, *The Legal System of Arbitration*, First Edition, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2008, p. 216.

¹⁴- Adja Al-Jilali, *The Complete Guide to Algerian Investment Law*, Dar Al-Khaldounia, p. 125.

¹⁵- Hafidha Al-Sayed Al-Haddad, *A Summary of General Theory in International Commercial Arbitration*, Al-Halabi Legal Publications, Beirut, Lebanon, 2010, p. 92.

economic interests, particularly with regard to obligations concerning the completion of works or the acquisition of materials, services or studies, as specified in Article 3 of Presidential Decree No. 02/250.

According to the aforementioned decree, public contracts are characterised by their regulatory nature and are not subject to the sovereignty of the will¹⁶, as they involve public funds and are protected as public property. In contrast, arbitration legally pertains to the rights of parties who have full discretion over them. The legislator's acknowledgement of public legal entities' right to resort to arbitration in the context of public contracts reflects the shift towards a consensual system in public procurement.

2. Condition of non-contravention of international public policy by the arbitral award

According to Article 1051 of the Civil and Administrative Procedure Law, the recognition of international commercial arbitral awards must not contravene international public policy. If this condition is not met, the award may be subject to annulment proceedings, as set out in Articles 1056 and 1058 of the same law. Similarly, Article 5 of the New York Convention states that the recognition or enforcement of an award must not violate the international public policy of the country of enforcement.

However, the legislator did not define the nature of international public policy or the criteria necessary to uphold it, as it cannot be measured against the domestic concept of public order due to the differing nature of the rules in each context. However, international public policy can be discerned through bilateral and multilateral agreements, as well as recommendations issued by international organisations of which Algeria is a member¹⁷.

As international public policy may vary from one country to another, this grants judges discretionary power. As the notion of public policy is fluid, an expansive interpretation could undermine the effectiveness of arbitration by limiting its scope through the rejection of recognition and enforcement. Therefore, it is essential to narrow the scope of this concept and distinguish it from domestic public policy. International arbitral awards must be enforced as long as they do not contravene international public policy, even if they violate domestic public policy. International public policy reflects the social, economic and ethical interests of the international community. For example, the bribery of arbitrators and the trafficking of drugs are considered part of international public policy.

International commercial arbitration is used to resolve disputes relating to economic interests. Therefore, it is crucial to strictly apply the New York Convention concerning international public policy in the country of enforcement, as recognition or enforcement that violates the state's fundamental principles and ideas should be rejected. The concept of public policy should not be used as a pretext for rejection whenever an arbitral award contradicts a mandatory rule.

Judges must primarily consider international mandatory provisions closely related to the dispute, while also taking into account the rules of international trade.

3. Condition of non-decision on matters prohibited from arbitration

According to Article 5, paragraph 2 of the New York Convention, a judge may refuse to recognise or enforce an international commercial arbitral award if the law of the country in which enforcement is sought does not permit arbitration of the dispute in question. As Algeria has ratified this treaty, judges can reject requests for recognition and enforcement if the subject matter of the dispute is not arbitrable. In order to achieve this, it is necessary to identify the areas in which the legislator has prohibited arbitration.

In this regard, Article 1006 of the Civil and Administrative Procedure Law establishes that individuals have the right to resort to arbitration for matters relating to rights that they can freely dispose of. However, arbitration is not permitted for matters relating to public policy, personal status or eligibility. Therefore, the principle for both

¹⁶- Manani Farah, Arbitration as an Alternative Path for Dispute Resolution, Dar Al-Houda, AinMelila, Algeria, 2010, p. 50

¹⁷- Adja Al-Jilali, Op. Cit., p. 560.

natural and legal persons is that they may seek arbitration for rights they can freely dispose of, except for issues relating to public policy, personal status, or eligibility.

For public legal entities, however, the legislator has set out a different principle: they may only resort to arbitration in their international commercial relations or public contracts¹⁸.

Examining the aforementioned article clarifies that the legislator requires judges to consider domestic public policy, meaning they must investigate whether the dispute relates to public policy. This contradicts what is stipulated in Articles 1051 and 1056 of the Civil and Administrative Procedure Law. Public policy is the only matter prohibited in international commercial arbitration, as it is difficult to conceive of an international commercial dispute relating to the status or eligibility of private natural or legal entities.

In the case of public legal entities, the judge must first verify that the resolved dispute is not related to public policy before granting recognition and enforcement. They must also ensure that the dispute relates to economic interests or public contracts; otherwise, recognition and enforcement will be refused.

Note:

In addition to the conditions mentioned in previous sections, it should be noted that, before ordering the recognition or enforcement of an international commercial arbitral award, the judge must confirm that the dispute involves the economic interests of at least two states. The subject matter addressed in the arbitral award must have an international economic dimension, and the absence of either of these elements necessitates rejection of recognition and enforcement.

Section Two: Procedures for the Recognition and Enforcement of International Commercial Arbitral Awards

Before outlining the procedures for obtaining recognition of an international commercial arbitral award and affixing an enforcement clause, it is crucial to first determine the competent judicial authority for this matter.

First Branch: Jurisdiction

Neither Article 458 bis 17 of the Civil and Administrative Procedure Law nor Article¹⁹ 1051/2, the corresponding provision, specifies the court with jurisdiction for recognition²⁰. However, the second paragraphs of these articles state that 'awards are enforceable in Algeria under the same conditions by an order issued by the president of the court in whose jurisdiction the arbitral award was rendered, or by the court in whose jurisdiction the award is to be enforced if the seat of arbitration is outside national territory'. Therefore, the court responsible for issuing the enforcement order is determined by the location of the arbitration as follows:

If the seat of arbitration is in Algeria, the competent court is the one in which the arbitral award was rendered.

- If the seat of arbitration is outside Algeria, the president of the court at the place of enforcement is competent.

Regarding the recognition order, if it is subsidiary (i.e. linked to the enforcement request), it is subject to the above rules. If the recognition request is primary and the applicant does not typically aim for enforcement, the request is submitted to the court where the arbitral award was rendered.

Second Branch: Procedures for obtaining an order for recognition and enforcement

According to Article 3, paragraph 1 of the New York Convention, the procedures for requesting the recognition and enforcement of international arbitral awards are governed by national law. Therefore, the procedures outlined

¹⁸- Article 1006 of the Law on Civil and Administrative Procedures.

¹⁹- Article 458 bis 17 of the Law on Civil and Administrative Procedures.

²⁰- Article 1051/2 of the Law on Civil and Administrative Procedures.

in Algerian law must be referred to. According to the Civil and Administrative Procedure Law, the party concerned, typically the party in whose favour the arbitral award was issued, must submit a written petition to the president of the relevant court, requesting the recognition or enforcement of the arbitral award. This petition must be accompanied by the arbitration agreement and the arbitral award, or copies thereof, to be filed with the court registry. Notably, Algerian law does not require the arbitral award to be deposited in advance, unlike Egyptian legislation.

The president of the court issues an order either for the enforcement of the arbitral award, which is affixed with an enforcement clause, for recognition if the primary request is for recognition, or for rejection of the request.

According to Article 310 of the Civil and Administrative Procedure Law, since the order is issued without the presence of the parties, rejection of the request for recognition or enforcement is automatic. This means that the opposing party is not notified of the petition and thus cannot present defences²¹.

If the request is granted, the applicant must formally notify the relevant enforcement party, who has the right to appeal this decision within one month of the notification date to the president of the council in cases explicitly stated in Article 1056 of the Civil and Administrative Procedure Law.

If the request is rejected, the applicant has the right to appeal against the decision within one month of the order being issued. The deadlines for appealing, as well as the appeals themselves, suspend the enforcement of the arbitral award²².

Once the arbitral award has become *res judicata*, the applicant (i.e. the party in whose favour the order was issued) may initiate enforcement, either coercively or voluntarily, in accordance with the Civil Procedure Law. This is because the arbitral award has become equivalent to a judicial ruling after being affixed with the enforcement clause.

After the enforcement proceedings have commenced, the judge who issued the enforcement order may intervene based on Article 172 of the Civil and Administrative Procedure Law to resolve any execution issues that may arise during the enforcement of the arbitral award. The judge also intervenes during attachment proceedings in the context of coercive enforcement, in accordance with the rules of the Civil and Administrative Procedure Law.

Section Two: Appeals in International Commercial Arbitration

The role of the judge in international commercial arbitration extends beyond the recognition and enforcement of the arbitral award. As the Algerian legislature has permitted appeals against international commercial arbitration awards and related orders for recognition and enforcement to be made to higher judicial authorities, judicial oversight continues until all legal avenues for appeal have been exhausted.

The Algerian legislator explicitly permits appeals and cassations against orders of recognition and enforcement, as well as annulments and cassations of arbitral awards, whether before or after an order for enforcement.

First Subsection: Appeals against orders of recognition and enforcement

The president of the court may grant or reject the request for the recognition and enforcement of an arbitral award based on their assessment of whether the legal conditions have been met. At this stage, the judge does not issue a ruling, but rather checks whether the conditions are met and issues his order accordingly. However, the judge may misjudge the availability of these legal conditions, which is why the legislator has allowed for appeals against all orders that refuse recognition or enforcement. This is stipulated in Article 458 bis 22 of Legislative Decree 93/09 and Article 1055 of the Civil and Administrative Procedure Law.

²¹- See Article 312 of the Law on Civil and Administrative Procedures.

²²- See Articles 312/2 and 1057 of the Law on Civil and Administrative Procedures.

Regarding orders that grant recognition or enforcement, the legislator has prohibited appeals in principle, except in the six cases listed in Article 1056 of the Civil and Administrative Procedure Law. Before the enactment of the aforementioned law, there were eight cases, with the legislator eliminating the first case outlined in Article 458 bis 23 of Legislative Decree 93/09 relating to the arbitral tribunal erroneously asserting its jurisdiction²³, or failing to do so, and the fifth case relating to the tribunal deciding beyond what was requested or failing to address one of the aspects of the request.

First subsection: Methods of Appeal Against Orders of Recognition or Enforcement

The Algerian legislator has permitted two methods of appealing against orders of recognition and enforcement of international commercial arbitral awards: appeal and cassation. This means that all decisions issued at the appeal stage can be challenged through cassation.

In all cases, the appeal must focus on the order rejecting recognition and enforcement. If the judge has granted recognition or enforcement, the appeal must be based on one of the grounds specified in Article 1056 of the Civil and Administrative Procedure Law. These cases include:

1. Lack of arbitration agreement: The arbitral tribunal issued its decision without an arbitration agreement, based on an invalid agreement, or based on an agreement that has expired. This represents a violation of the consent condition of arbitration, as stipulated in Article 5 of the New York Convention and referenced in the Civil and Administrative Procedure Law.
2. Improper composition of the arbitral tribunal: This occurs when the formation of the arbitral tribunal or the appointment of a single arbitrator violates legal provisions. This case is outlined in both the New York Convention and the Civil and Administrative Procedure Law.
3. Exceeding the Assigned Mission: If the arbitral tribunal ruled in a manner inconsistent with the task assigned to it. The tribunal is bound by what is requested by the parties to the arbitration, as stipulated in both the New York Convention and the Civil and Administrative Procedure Law.
4. Violation of the Principle of Due Process: The due process required in this case pertains to the arbitration proceedings. However, since the order for recognition and enforcement is issued as a decision at the foot of a petition, it does not adhere to the principle of due process. This is also noted in the New York Convention and the provisions governing arbitration in the Civil and Administrative Procedure Law.
5. Lack of reasoning: If the arbitral tribunal does not provide reasoning for its decision or if the reasoning is contradictory. The arbitral decision must be reasoned and non-contradictory, since the judge must examine the subject of the dispute to ensure that it is not contradictory, particularly with regard to the decision's disposition. This condition is outlined in the New York Convention and has also been adopted by the Algerian legislator, who requires courts to provide reasoning for their decisions.
6. Contravention of international public policy: The arbitral award must not violate international public policy.

Upon reviewing the six cases specified in Article 1056, it is evident that they all fall under the remit of both the New York Convention and the general principles of arbitration in Algeria. The presence of any of these cases enables the judge to reject the request for recognition or enforcement, as discussed in the previous section. As the party against whom enforcement is sought cannot raise these defences before the president of the court due to the nature of the judicial order, which does not require due process, the legislator granted the right to appeal based on the cases listed in the New York Convention. This is for the benefit of the party against whom enforcement is sought, in the event that the court accepts the request for recognition or enforcement.

²³- See Article 458 bis 23 as well as Article 1056 of the Law on Civil and Administrative Procedures.

Before issuing an order for enforcement or recognition, the judge ensures that the legal conditions are met. These conditions are limited to the six cases mentioned. Therefore, his decision to grant or refuse recognition and enforcement is tied to these specified cases. This means that all orders granting recognition or enforcement are subject to appeal, albeit with caution.

Second subsection: Procedures for appealing the order for recognition or enforcement

An appeal against an order rejecting or granting recognition or enforcement must be submitted to the court registry in accordance with the cases specified in Article 1056. This is done by submitting a reasoned petition outlining the grounds for the appeal, particularly in relation to the aforementioned cases. The petition must be in writing and include all legal details to enable the appellate authority to consider the appeal objectively.

The petition must be accompanied by the order being appealed, the arbitral award, and the arbitration agreement. This is particularly important since the grounds for appeal are typically limited to the cases mentioned in Article 1056, regardless of whether the order being appealed is for recognition, enforcement, or rejection.

In order to enable the appellate authority to assess the validity of the procedure, the petition must be accompanied by these three documents. Examining these documents allows the appellate authority to determine whether the first-instance judge made the correct decision, particularly since some of the cases in Article 1056 relate to the arbitration agreement, while others pertain to the arbitral award.

According to Article 1057 of the Civil and Administrative Procedure Law, an appeal is raised before the Court of Appeal without specifying the competent authority for hearing the appeal. In our view, therefore, since the order being appealed is at the foot of a petition, it is necessary to refer to the general rules governing such orders, as outlined in Articles 310 to 312 of the Civil and Administrative Procedure Law. Consequently, the appeal must be made in accordance with Article 312 before the President of the Court of Appeal.

The appeal is subject to the principle of due process between the parties, meaning that the opposing party must be notified of the appeal and provided with the petition and all accompanying documents, in order to enable them to present their defences.

According to Article 1057 of the Civil and Administrative Procedure Law, the deadline for appealing is one month from the date of official notification of the order by the president of the court. This is reasonable in cases where the president has ordered recognition and enforcement, since the beneficiary of the order is obliged to notify the other party of the order in order to initiate enforcement procedures. Thus, the deadline for the other party to appeal begins at that point.

However, if the president's order rejects recognition and enforcement, the person who submitted the request for recognition and enforcement becomes the appellant and is not notified by anyone. Therefore, in this case, it is reasonable for the deadline for appealing the rejection order to start from the date of the order, in accordance with Article 1035 of the Civil and Administrative Procedure Law.

After reviewing the appeal file, the President of the Court of Appeal will either uphold or annul the appealed order, with consequences to be discussed later.

Third subsection: The effects of appealing orders of recognition or enforcement

Article 1060 of the Civil and Administrative Procedure Law states: 'The submission of appeals and the deadlines for exercising them, as stipulated in Articles 1055, 1056 and 1058, suspend the enforcement of arbitral awards.' This means that judicial orders aimed at recognising and enforcing an international arbitral award cannot be executed during the one-month period following notification of the order.

The appeal also leads to the suspension of the enforcement of the arbitral award, which is one of the most significant consequences of registering the appeal. The suspension of enforcement continues until the appeal is resolved. It is important to distinguish between two scenarios:

1. If the appeal pertains to an order for recognition and enforcement: If the appeal results in confirmation of the appealed order, the party in whose favour the order was issued may proceed with enforcement. Conversely, if the appeal is accepted, this annuls the order being appealed, effectively rejecting the request for recognition and enforcement; thus, the arbitral award will not be executed.
2. If the appeal concerns an order rejecting recognition and enforcement: Accepting the appeal in this case results in an order for recognition and enforcement. The appellant only needs to add the enforcement clause to the order and start the enforcement process. If the original order is upheld, this indicates a rejection of the enforcement of the arbitral award.

Another important consequence of the appeal is the right to appeal by cassation against the council's decision relating to the appeal, as set out in Article 1061 of the Civil and Administrative Procedure Law. The question arises as to whether the grounds for cassation should be based on the reasons outlined in Article 1056 or those specified in Article 233 of the same law. The latter include:

Lack of jurisdiction or abuse of power.

Violation or omission of a fundamental rule in the procedures.

Absence of a legal basis for the ruling.

- Absence, inadequacy or contradiction in the reasoning.

- Violation or error when applying domestic or foreign law relating to personal status.

Contradiction between final judgements issued by different courts.

In our opinion, it is also necessary to differentiate between two scenarios based on the subject of the cassation appeal. If the cassation appeal is directed at a decision to reject recognition or enforcement, the general rules apply and the cassation must be based on the grounds mentioned in Article 233 of the Civil and Administrative Procedure Law. This is because Article 1055 allows for an appeal against all orders that reject recognition and enforcement.

However, if the cassation appeal is directed at a decision to grant recognition and enforcement, according to the legislator, the general principle is that the initial ruling cannot be appealed or subject to cassation, except in the six specific cases listed in Article 1056, which serve as grounds for both appeal and cassation simultaneously. Therefore, in the latter scenario, the cassation must be based on the grounds specified in Article 1056 of the Civil and Administrative Procedure Law.

Second subsection: Appeals Against International Commercial Arbitration Awards

Most international arbitration texts emphasise the finality of arbitral awards issued in the realm of international commercial arbitration, involving a commitment to waive appeal processes permitted by law. This commitment is reinforced by international and regional arbitration rules, which describe arbitral awards as final. For example, Article 24 of the International Commercial Law Regulations states: "The arbitral award is final."²⁴

However, an arbitral award may be unjust to one of the parties. This is why most domestic legislation regarding international commercial arbitration allows for appeals against the annulment of an arbitral award issued in

²⁴ - Professor Boussnoubera Khalil: Lecture titled Judicial Intervention in the Field of International Arbitration in Algerian Legislation, Supreme Court Journal, No. 2, 2006.

violation of the principles governing international arbitration, as established in various agreements and domestic laws. Article 458 bis 25 of Legislative Decree 93/09 of the Algerian legislation recognises the right to appeal for annulment of international arbitral awards, corresponding to Article 1058 of the new Civil and Administrative Procedure Law, provided the award was issued in Algeria. An appeal for annulment must fall within one of the categories listed in Article 458 bis 23 of Legislative Decree 93/09, corresponding to Article 1056 of the new Civil and Administrative Procedure Law. This latter article reduces the number of cases from eight to six and amends the wording of the final case. Previously, this case referred to recognition or enforcement conflicting with international public policy, but now it directly states that the arbitral award itself violates international public policy.

Thus, the Algerian legislator has granted the right to appeal against international arbitral awards issued in Algeria, in cases specified by Article 1056 of the Civil and Administrative Procedure Law. These cases are as follows:

1. The arbitral tribunal issued a ruling without an arbitration agreement, or based on an invalid or expired agreement.
2. If the composition of the arbitral tribunal or the appointment of a sole arbitrator violated legal provisions.
3. If the arbitral tribunal ruled inconsistently with the task assigned to it.
4. If the principle of due process was not observed.
5. If the arbitral tribunal failed to provide reasoning for its decision, or if the reasoning was contradictory.
6. If the arbitral award is contrary to international public policy²⁵.

It is clear from the above that an appeal for annulment targets international arbitral awards issued in Algeria which seek to annul an award that is contrary to the general principles of international commercial arbitration. The legislator has limited these cases to those mentioned above.

The Algerian legislator also permits cassation appeals against judicial decisions issued based on annulment appeals, as stated in Article 458 bis 28 of Legislative Decree 93/09, corresponding to Article 1061 of the new Civil and Administrative Procedure Law. Therefore, the cassation appeal can be considered a consequence of the annulment appeal. This highlights the judiciary's role in international commercial arbitration, including oversight of the arbitral award before recognition or enforcement is requested, particularly when examining annulment and cassation appeals.

The presentation of various procedures for appealing an arbitral award and the consequences of filing an annulment appeal will make this even clearer.

First subsection: Procedures for Annulment Appeals

As the appeal of an arbitral award leads to its enforcement being suspended, in accordance with Article 1060 of the Civil and Administrative Procedure Law and Article 458 bis 27 of Legislative Decree 93/09, it is important to consider the regulations governing these appeals, particularly with regard to jurisdiction, time limits and the various necessary procedures.

1. Jurisdiction:

According to Article 1059 of the Civil and Administrative Procedure Law, an appeal for the annulment of an arbitral award must be submitted to the Court of Appeal with jurisdiction over the location where the award was issued. This indicates that the Algerian legislator adopts the location criterion; that is, if the award was issued in Algeria, the Courts of Appeal within its jurisdiction are competent to hear the annulment claim, even if there is

²⁵- See Articles 458 bis 23 of Decree 93/09 and Article 1056 of the Law on Civil and Administrative Procedures.

no connection to the Algerian judicial system. Consequently, it can be inferred that an annulment appeal against an arbitral award issued outside Algeria cannot be brought before Algerian judicial authorities, even if the parties have opted for Algerian procedural law to apply²⁶.

Therefore, the judiciary's position on the annulment of an arbitral award issued outside Algeria is one of rejection.

Article 1059 simply states that an annulment appeal is to be made to the Court of Appeal, but does not specify the exact authority. Given the nature of the annulment appeal, which relies on the grounds specified in Article 1056 of the Civil and Administrative Procedure Law, it can be concluded that the civil chamber is the most qualified authority to adjudicate such disputes, especially since the annulment appeal does not present itself as a commercial dispute. Rather than reviewing or overseeing the decisions of the arbitral tribunal, the judiciary monitors compliance of the arbitral award with the rules established in the legislation, specifically the six cases outlined in Article 1056. Therefore, the competent authority is the civil chamber of the Court of Appeal within the jurisdiction where the arbitral award was issued.

2. Filing the annulment appeal

An annulment appeal against an arbitral award must be submitted in writing and comply with all the formal requirements set out in the Civil and Administrative Procedure Law. The petition must set out the grounds based on the cases mentioned in Article 1056 of the Civil and Administrative Procedure Law.

It should also be accompanied by the challenged arbitral award and the arbitration agreement, enabling the judge to determine whether the award was issued based on a valid arbitration agreement, whether the arbitrators were appointed in accordance with the law and whether the arbitral tribunal ruled in accordance with its remit while observing the principle of due process. The arbitral award must also be reasoned, non-contradictory and not in violation of international public policy. All of these points can be inferred from the accompanying documents.

3. Due process

The party appealing for annulment must notify the opposing party in accordance with the provisions of the Civil and Administrative Procedure Law, giving the latter the opportunity to discuss the grounds for annulment and present their defences. Failure to comply with this principle will result in the appeal being rejected.

4. Deadlines for annulment appeals

To be accepted, an annulment appeal against an international arbitral award must adhere to specific legal deadlines. Failure to meet these deadlines will result in the appeal being rejected, as stated in Article 1059 of the Civil and Administrative Procedure Law. Accordingly, the legislator has established the following timeframe for filing annulment appeals:

- The deadline for the annulment appeal begins from the issuance of the arbitral award without awaiting notification, since the award is deemed to have been issued in the presence of the parties. This justifies its non-appealability by opposition.

The deadline for filing an annulment appeal ends one month after the official notification of the enforcement order. Therefore, the annulment appeal is linked to the date of the official notification of the order for enforcement, while the deadline remains open before the order is issued.

It is the judge's responsibility to oversee these deadlines; consequently, filing the annulment appeal outside this timeframe will inevitably lead to its rejection.

Second subsection: The Effects of Appeals for the Annulment of Arbitral Awards

²⁶- Mostafa TrariTani, Op. Cit., p. 320.

The natural consequence of appealing against an arbitral award is the suspension of its enforcement. Additionally, cassation may be possible regarding the decision issued concerning the annulment appeal. To fully understand the effects resulting from an annulment appeal, we will address them sequentially as follows:

Before filing the annulment appeal:

The annulment appeal must adhere to the legal deadlines for cassation, which is a one-month period from the official notification of the enforcement order. According to Article 1060 of the Civil and Administrative Procedure Law, the arbitral award related to the enforcement order is suspended for 30 days from the date of notification of the order for enforcement. After this period, enforcement will proceed unless an annulment appeal is filed within the specified timeframe and no appeal has been made against the order during the same period.

After filing the annulment appeal:

Filing the annulment appeal within the designated timeframe automatically leads to the suspension of the enforcement of the arbitral award, as stated in Article 1060 of the Civil and Administrative Procedure Law. At this stage, it is important to consider two possible scenarios:

1. If the arbitral award has an enforcement order: The annulment appeal automatically constitutes an appeal against the enforcement order in this case, leading to the suspension of the enforcement of the arbitral award that has become *res judicata*.
2. If the arbitral award does not have an enforcement order: The annulment appeal obliges the court handling the enforcement request to refrain from ruling on it.

Following the Council's decision:

The Council's decision on the annulment appeal does not address the matter directly, but may either accept the appeal and annul the arbitral award, or reject the appeal and allow the award to remain in effect.

In the case of accepting the annulment appeal:

Accepting the annulment appeal has two effects: firstly, the arbitral award is annulled, meaning it disappears from legal existence and loses its authority and legal value. This restores the situation to what it was prior to the arbitration proceedings. Importantly, however, the annulment of the arbitral award does not affect the arbitration agreement. This means that the parties can either form a new arbitral tribunal to resolve the dispute, or abandon arbitration altogether and take the matter to a national court instead.

The second effect is that the annulled award cannot be enforced. This is stipulated in Article 1058 of the Civil and Administrative Procedure Law, as well as in Article 5 of the New York Convention, which requires the award to be binding.

However, arbitral awards that have been annulled in their country of origin may still be enforced if foreign courts issue orders to enforce them. For example, on 6 December 1988, a Belgian court ruled in favour of enforcing an arbitral award issued in Algeria on 29 December 1985, despite it having been annulled by an Algerian council decision on 20 December 1986. On 9 January 1990, the Brussels Court of Appeal upheld the enforcement order, dismissing the Algerian defences regarding the New York Convention. At that time, Algeria had not ratified the convention, and the arbitration had been conducted in accordance with ICC regulations, which stipulate the finality of arbitral awards and the waiver of all appeal rights²⁷.

U.S. courts have adopted a similar stance, as evidenced by the Columbia Court's July 31, 1996 order to enforce an international arbitration award issued in Egypt on August 24, 1994. This award had been annulled by the Cairo court on December 5, 1995. U.S. courts recognised its enforceability under Article 7(1) of the New York

²⁷- Mostafa TrariTani, Op. Cit., p. 329.

Convention, aligning with the approach taken by French and Austrian courts. However, Article 5 of the New York Convention indicates an obligation to refuse recognition of such annulled awards. This is reflected in Article 458 bis 17²⁸ of Legislative Decree 93/09, which corresponds to Article 1051 of the new Civil and Administrative Procedure Law, as adopted by the Algerian legislator.

Another consequence of accepting the annulment appeal is the right to file a cassation appeal against the council's decision, as set out in Article 1061 of the new Civil and Administrative Procedure Law.

Rejecting the annulment appeal:

Rejecting the annulment appeal has the opposite effect to acceptance. If the court has not approved the enforcement request following the annulment appeal, the council's decision to reject the annulment appeal means that the enforcement order remains effective.

If the enforcement order was issued before the annulment appeal was filed, then rejecting the annulment appeal will lead to the suspension of enforcement being lifted, thus allowing enforcement to proceed. This is especially important to note since a cassation appeal regarding the council's decision to reject the annulment does not suspend the enforcement of the arbitral award.

Conclusion:

In summary, international commercial arbitration provides a means of resolving disputes relating to economic interests between parties from different countries outside of judicial systems. It enables the selection of arbitrators and applicable laws, encouraging economic exchange even between countries with different legal systems while ensuring prompt dispute resolution.

However, the speed with which an arbitral award is rendered is not the ultimate goal of arbitration. Rather, the aim is to implement the award in practice, which cannot be achieved without enforcement. Enforcement necessarily occurs within the territory of a sovereign state and may sometimes be executed coercively. Therefore, national courts must be involved to recognise the arbitral award and permit its enforcement.

Modern legislation has established provisions concerning the recognition and enforcement of international commercial arbitration awards, and treaties have been entered into regarding this matter. A review of these provisions reveals that national courts exercise oversight of arbitral awards before ordering their recognition and enforcement. This oversight operates within a limited legal framework, focusing on verifying compliance with the legal conditions required for recognition and enforcement in accordance with domestic laws and agreements. The primary purpose of this is to protect the rights of the parties involved in arbitration from any abuse, and the secondary purpose is to uphold the sovereignty of the enforcing state.

Thus, the system of recognising and enforcing international arbitral awards is not intended to obstruct arbitration, but rather to give the award formal status, elevating it to the level of a judicial ruling. This can only be achieved through judicial oversight.

To facilitate this, the procedures for recognition and enforcement must be simplified and clarified, and legal concepts must be elucidated to ease the judge's task of exercising this oversight. Additionally, providing the necessary tools is vital; otherwise, one may find themselves on the back foot, which could lead to negative outcomes.

An agreement for international commercial arbitration may be institutional or private. Regardless of its nature, the arbitral body's role concludes with the issuance of the arbitral award, which may be perceived as unjust by one of the parties. The parties will not have the opportunity to appeal to the arbitral body. However, national legislation

²⁸ Khalil Bouthnoubara: Judicial Intervention in International Arbitration in Algerian Legislation, Supreme Court Journal, No. 2, 2006, p. 65.

has introduced rules allowing for the annulment of arbitral awards in strictly limited cases. The judiciary also intervenes in these cases, demonstrating its involvement in arbitration at every stage, from disputes between parties regarding the appointment or challenge of arbitrators to the recognition and enforcement of arbitral awards and appeals concerning orders for acceptance or rejection of recognition and enforcement, as well as annulment appeals.

Thus, it can be concluded that arbitration is a specialised judiciary that complements and oversees the regular judiciary.

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