

the implementation of the international arbitration ruling in accordance with the Law of Civil and Administrative Procedures

تنفيذ حكم التحكيم الدولي وفقا لقانون الإجراءات المدنية والإدارية

⁽¹⁾ Dr kalache khouloud

⁽¹⁾ University of khenechla (algeria)

Kh.kalache@gmail.com

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Abstract:

The Arbitration is considered as a legal means of resolving disputes between contracting parties, which has acquired an international commercial character, as a result of increased commercial transactions at the international level and the proliferation of international contracts, and therefore arbitration reflects an international endeavour to establish a system through which the rights of Contracting parties.

Once the arbitral award has been handed down, it must be implemented to make it authentic, which has made the success of the arbitration system linked to its effectiveness in applying its rulings and decisions.

¹ - Corresponding author: kalache khouloud, e-mail: kh.kalache@gmail.com

Therefore, we find that the implementation of the international governing provision is important, after the resolution phase of the dispute presented through arbitration and is the basis of the arbitration system itself, which led us to study all the procedures that are followed in order to grant the arbitral award executive power in the face of the parties, through the executive formula Granted after the intervention of the judge and the confirmation of the arbitral award.

key words: Conflict- the International arbitration- Arbitration ruling- Executive version-Implementation of the arbitral award.

الملخص:

يعتبر التحكيم وسيلة قانونية لفض النزاعات بين الأطراف المتعاقدة، هذه الوسيلة اكتسبت طابعا تجاريا دوليا، إذ كانت كنتيجة لتزايد المعاملات التجارية على المستوى الدولي وانتشار العقود الدولية، وبالتالي فإن التحكيم يعبر عن مسعى دولي هدفه انشاء نظام؛ يُمكن من خلاله حماية حقوق الأطراف المتعاقدة.

بمجرد صدور الحكم التحكيمي لابد من تنفيذه لإضفاء الحجية عليه، هذا الأمر الذي جعل من نجاح نظام التحكيم مرتبط بفعاليتيه في تطبيق الأحكام والقرارات الصادرة عنه.

لذلك نجد أن مرحلة تنفيذ الحكم التحكيمي الدولي ذات أهمية، تلي مرحلة الفسخ في النزاع المعروف عن طريق التحكيم، وهي أساس نظام التحكيم نفسه، وهو مادفع بنا إلى دراسة كافة الإجراءات التي يتم إتباعها قصد منح الحكم التحكيمي القوة التنفيذية في مواجهة الأطراف، من خلال الصيغة التنفيذية الممنوحة بعد تدخل القاضي والتأكد من صحة الحكم التحكيمي.

الكلمات المفتاحية: النزاع - التحكيم الدولي - حكم التحكيم - الصيغة التنفيذية -

تنفيذ حكم التحكيم.

introduction:

The judiciary was the means to resolve disputes arising from internal relationships, then other alternative ways of resolving disputes emerged, arbitration was the most important one, whereby a particular dispute would be agreed upon for adjudication by other persons, not state's judges.

The role of arbitration in internal disputes between citizens of a single state is not limited to the disputes of an international nature, a mandatory agreement system for the parties, subject to internal legal framing, as well as international legal framing.

As a general rule, the sentence is carried out voluntarily without the need for certain legal proceedings, but the convict may refuse to carry out the judgement voluntarily, which requires the use of the judiciary for the purpose of enforcing it, in order to obtain an order to be executed by the legally competent judge.

The importance of examining the implementation of the international arbitral award is reflected in its association with the exercise of sovereignty and independence enjoyed by any state, which gives it the right not to implement any provision unless it is issued by its bodies, in accordance with its legal rules and in its territorial boundaries.

As international transactions evolve as a result of economic openness, this requires international legal cooperation within the framework of international conventions, Helps to implement international arbitration provisions without prejudice to the manifestations of sovereignty, by ensuring that their elimination is controlled.

We will therefore address this issue by examining the Algerian legal framework for the process of recognition of international arbitration and the procedures for its implementation, after the following problem has been raised:

How effective is the international arbitration provision in terms of its enforceability?

Two sub-questions arise from the problem:

- **What are the effects of foreign rule within the national territory?**
- **What are the limits of the national judge's authority to monitor the international arbitration judgement during his dismissal in the application for execution?**

In order to answer the problem raised and the questions arising from it, we relied on the rules of the analytical method in order to study the procedures and stages of the implementation of the international arbitration judgment by reading the texts of the law on Civil and Administrative Procedures 08/09, a legal analytical reading, and within the framework of three sections:

- Section I: The legal character of the international arbitration ruling.
- Section II: The conditions for recognition of the international arbitral award and the procedures for its implementation.
- Section III: Execution order issued.

Section I: The legal nature of the international arbitration ruling

Like modern legislation, the Algerian legislative system has been given broad freedom for people to choose the means they see fit to resolve disputes that may occur between them and foreign parties.

International arbitration is one of the most important alternative ways for contracting parties to resolve disputes, given the advantages this system brings, as it is based on the freedom to select arbitrators and the speed of adjudication and adjudication of the dispute.

The Algerian legislator therefore provided a full chapter on international commercial arbitration and established special provisions

in the Law on Civil and Administrative Procedures¹, and also Algeria has ratified many international agreements relating to international arbitration, including the ratification of the New York Convention on Implementation. Recognition of foreign arbitral awards².

The arbitral award is in the extended sense: "the arbitrator's judgment that conclusively or partially adjudicates the dispute before him, whether it relates to the subject matter of the dispute itself or to jurisdiction or to an issue involving the proceedings that led the arbitrator to terminate the litigation."³

The enforceable arbitration provisions are binding provisions and only the provisions established and established, and here we can elaborate on this subject by asking the following question:

Does the arbitral judgement become an authority for the order in which it is issued, or should it be communicated to the convicted person as in any case and the dates of the appeal shall be applied?

Under the letter of the law, the arbitration judgment terminates the dispute, The power of the order is the degree of power that the judgment reaches and makes it enforceable, This requires that the adjudication of the dispute not be accepted again, whether from the arbitral tribunal or from the courts, given the foregoing of the case.

Article 05, Paragraph 01 of Decree No. 88/233, under which Algeria ratified the New York Convention on the Implementation of

¹- Law No. 08/09 of February 25, 2008, relating to the Civil and Administrative Procedure code., journal officiel, No 21.

²- Decree No. 88/233 of November 05, 1988, includes a reservation to the agreement ratified by the United Nations Conference in New York on June 10, 1958, on the adoption and implementation of foreign arbitration decisions, journal Official, No. 48.

³- Samiha Al-Glyubi, Commercial Arbitration, Arab Renaissance edition, Cairo, 2009, p. 56. See also :- Ahmed Hindi, Execution of Arbitrators, New University Publishing edition, Alexandria, 2001, p. 13.

Arbitration Provisions, states: "Arbitration provisions shall not be enforced unless it is binding."¹

Based on this article, it is clear to us that the arbitration judgment shall not be enforced unless it becomes final. What is meant by a binding provision?

There is one of the jurisprudence of those who believe that the term "binding" means that the ruling must have the power of the matter in which it is imposed, but the authenticity does not mean that the judgment is enforceable, but rather that the same dispute cannot be renewed before the judiciary.

The jurisprudential opinions on determining the legal nature of the arbitral award have differed, because it has a special system and has a complex nature, which holds the status of a contract because its basis is arbitration agreement, and it carries the status of a judicial institution because it is subject to legal procedures such as the judicial provision, both in terms of the conduct of the arbitration judgement and in the issuance of The arbitral award itself².

Accordingly, the arbitration provision is a legal act in terms of its origin, but the law has implications for the judicial decisions in terms of obtaining the authority of the matter in which it is issued, and the exhaustion of the authority of its jurisdiction, which is enforceable after the order of execution has been issued³.

If the executive version is granted, it is done by a court order, and the party wishing to implement the foreign arbitration ruling must file a lawsuit in order to be able to comply with the executive version.

¹-.article NO 05, of Decree No. 88/233.

²- Salim Bashir, the arbitration ruling and Judicial oversight, PHD these, Law Department, university of batna, 2010/2011, P53.

³ - Fouad Al Deeb, Implementation of International Arbitration Provisions between Nullandand and Exocoment in International Agreements and Modern Arab Legislation "Section II", Damascus University Journal of Economic and Legal Sciences, Volume 27, Fourth Issue, 2011.P12.

Section II : The conditions for recognition of the international arbitral award and the procedures for its implementation:

The implementation phase of the arbitral award is preceded by the recognition phase in terms of its validity and mandatoryness to the parties, but recognition of implementation, although they are two different procedures, is often associated with each procedure with its terms and conditions.

A) subtitle: Conditions for recognition of international arbitral award

Through the text of article N1051 of Civil and Administrative Procedure code, the conditions to be met for the recognition of the international arbitral award can be defined, stating that : "the provisions of international arbitration in Algeria shall be recognized if it is proven to be in accordance with its existence and that this recognition is not contrary to the international public order¹".

Therefore, the conditions to be met in the arbitral award for recognition are:

01- The condition to prove the international arbitral award

Article No 1052 specified how to prove the international arbitral award, by submitting the principal of the judgment in conjunction with the arbitration agreement, it is not possible to issue a recognition of the judgment without the existence of the arbitral award, and must meet the legal requirements, and therefore this evidence is the first procedure to initiate the procedure of implementation International arbitral award.

02- The condition that the international arbitral award does not violate international public order

It is a condition of the ability to implement the arbitral award in Algeria, the arbitration judgement cannot be enforced if the

¹ - Articl No 1051 , of civil Civil and Administrative Procedure code .

arbitration judgment is contrary to international public order, and this idea is reflected in the following:

- In the case of the content of the arbitration judgment conflicting with the general order of the state in which the arbitration judgment is required to be executed¹.
- when the conflict with the idea of public order is reflected in the procedures that were followed in its issuance and the violation of these procedures for the rights of the defense in the state².

This condition finds its legal basis in Article N 05, Paragraph 02 of the New York Convention 1958, which states that "an arbitral award can also be refused and implemented if the competent authority in the country in which the accreditation and implementation is requested notes the following:

- The adoption or implementation of the resolution may violate the public order in this country."

B) Procedures for the implementation of the international arbitral award

The implementation of the international arbitral award is the purpose of the parties to the arbitral liability by enabling the right holder to implement it as a procedural process, and under article 1051, paragraph 02³, We find that the process of implementing the

¹ - Hussein Freija, Impact of Arbitration on International Investment Contracts, International Forum on "Alternative Methods of Dispute Resolution, University of Algiers, 06/07 May 2014, The Forum's work is published in the Journal of the Annals of Algeria, Issue 03, 2014, p260.

² - Amal Badr, Judicial Oversight of International Commercial Arbitration - Comparative Study-, First Edition, Al-Halabi Human Rights Publications, Lebanon, 2012, P 149.

³ -Article N 1051, paragraph 02, of civil Civil and Administrative Procedure code states that "it is enforceable in Algeria under the same conditions, by order of the president of the court whose arbitration provisions have been issued in its jurisdiction or the court of execution if the seat of the court of arbitration is located outside the national territory".

international arbitral award is subject to the same conditions of recognition, which confirms that the link between them is close, because if the international arbitral award is not recognized, it cannot be implemented¹.

1- submitting a request for execution

The implementation procedures are initiated by submitting an application for execution with the competent court's control secretariat with an official paper called the opening of the case, the claim of granting the executive formula is a claim through which the judge examines the foreign bond or judgment and the extent to which it is available on the conditions specified in the law ².

▪ The competent Court to Review the international arbitration 's judgement:

Although the arbitration ruling has the authority to issue a ruling solely on the dispute in which it is dismissed, it lacks the executive power granted to him only by the judge, In the absence of voluntary implementation of the arbitration ruling, the state judiciary is resorted to, where we are before the forced execution and need the executive version of the international arbitration judgment.

Through Article N1051, we can determine the competent court to consider the application for the execution of the arbitral award, which is:

- ❖ **Firstly:** The arbitration headquarters determines the competent court: if the arbitration is based in Algeria, the application for

¹- Laila Ben Halima, Implementation of the rule of the International Commercial Arbitration in Algeria, Afac for Science journal, Volume 04, Issue 03, September 2018,P288.

²- Zerrouk Nawal, Judicial Oversight of the Work of Arbitrators under International Commercial Arbitration, PHD Thesis, Department of Law, Satif University, 2014/2015, p. 104.

execution is submitted to the president of the court where the arbitration is located¹.

- ❖ **Secondly:** if the arbitration is outside the national territory, the application for execution is submitted to the execution court and the court of execution is the court where the funds may be subject to forced execution.

Therefore, the jurisdiction shall be taken into account if the arbitration judgment was issued in Algeria or abroad.

- **The power of the judiciary to examine the arbitration ruling**
Legislation differs in the authority it gives judges to examine the judgement, some of them are given the power to deal with the arbitral ruling (Review system), and some of them limit their role to external monitoring of the judgement (Surveillance system).

- ❖ **Review system**

This system gives the judge the power to examine and review foreign judgment in terms of subject matter, facts and procedures again, and new applications can be submitted under this system.

After reviewing the judgement by the judge, the executive version of the judgement may be granted, not because it is a foreign judgement, but on the basis that it is a national judgement, since the court under this system considers itself to be a second degree in which the arbitration judgement is examined and reviewed.

One of the criticisms directed at this system is that it exceeded the will of the parties that went to choose arbitration, as a system to consider disputes that arise between them within the framework of

¹ - Malkea Nabil, Procedures for the Implementation of Foreign International Commercial Arbitration Awards in Algeria, Journal of law and Political Sciences, Issue 07, Jan. 2017, p135.

their relationships, because it revisits the dispute and issues a new judgement¹.

❖ **Surveillance system**

It means that the judge orders execution only after verifying that several conditions are required for the validity of the judgement in a formal manner and without prejudice to the subject matter², These conditions are limited to:

- The foreign court must be competent to issue a judgement
- The validity and integrity of the case before the foreign court.
- Applying the relevant law.
- The judgment must be in accordance with the general international order³.

The arbitration ruling is a judicial act in terms of its implications, as it is once signed by the arbitrators, it enjoys the courtesy of the order, and this is confirmed by article 1031 of Civil and Administrative Procedure code⁴, as it is a legal act in terms of origin, subject to the agreement of the parties. Therefore, it's characterized by a dual nature⁵.

Its implementation depends on the person's access to the execution order, and it is not this order that makes the arbitration ruling final or binding, but rather the nationality of the judicial

¹ - Abdul Nour Ahmed, Problems of Implementing Foreign Judgments (Comparative Study), Magistar these, Department of Law, University of Tlemcen, 2009/2010, p. 47

² -We find that the judgment that is issued in the matter of implementation is foreign provision itself, which is governed by the executive formula and not as a national provision, as in the review system.

³ -Ould Cheikh Sherifa, Implementation of Foreign Judgments, dar Homa, Algeria, 2004, p. 64

⁴ - Article No1031 of the Civil and Administrative Procedure code, states that : "the arbitration provisions shall be held as soon as they are issued in relation to the dispute in which they are dismissed ».

⁵ -Zerrouk Nawal, op cit, p150.

judgment, because it was issued outside the authority of the State, and in order to be officially recognized, the execution order must be issued by the competent authority¹ , According to article N 605 of the law on Civil and Administrative Procedures, "Orders, rulings and decisions issued by foreign judicial authorities in the Algerian region may not be executed until they have been granted the executive formula....." ².

2- Depositing the origin of the judgement

In order to begin the implementation of the arbitration judgment, whether national or foreign, the applicant must deposit the original arbitration judgment³, accompanied by the arbitration agreement or copies of them, in addition to providing an official translation into Arabic if it is in Arabic, the arbitration judgment is the document. which proves that there is a dispute that has been decided, which has already been clarified in order to recognize the international arbitral judgement.

The question is: Why did the legislator commit the applicant to submit the arbitration judgment with the arbitration agreement?

If we go back to Article N 1056, it states that "the order of confession or execution may not be appealed except in the following cases:

- If the court of arbitration is dismissed without the arbitration agreement" ⁴

This is the direct reason why the legislator obliged the applicant to submit the arbitration judgment in addition to the arbitration agreement, so that the judge could make sure that the arbitration

¹ -Salim Bashir, op cit, p 277.

² -Article N 605, of the law on Civil and Administrative Procedures no 08/09-.

³ - Malkea Nabil, op cit, p134. .

⁴ - article N 1056 of Civil and Administrative Procedures code, 08/09

judgment was issued on the basis of the arbitration agreement or the arbitration clause written¹.

It is not enough to deposit the principal of the judgement in addition to the arbitration agreement, but it requires the availability of conditions of health or formal safety (the most important of which is the writing requirement)² and objectivity in the documents submitted, and here highlights the role of the judge in monitoring the validity of the documents, both in terms of the validity of the proceedings of the control proceedings by respecting the basic guarantees For both parties:(The principle of respect for the rights of defence and confrontation ³ - The principle of the impartiality of the arbitrator - The principle of good faith in the conduct of procedures) ⁴.

Or in terms of the availability of the conditions stipulated in article N 605, which states that "it is not permissible to implement orders, rulings and decisions issued by foreign judicial authorities in the Algerian territory, unless they have been granted the executive

¹ - Alioush Korboua Kamal, Forced Execution of The Algerian International Commercial Arbitration Arbitration Judgment, 3rd Edition, University Publications office, Algeria, 2005/2006, p. 63.

² - The Algerian legislator has ordered writing as a condition, leaving the freedom for contractors to choose the type of writing, as it did not specify a specific written means of communication and leave the field open, due to what has contributed to the development of many traditional means of communication, we find that the required writing requirement can be met. To conclude arbitration when contractors use many means of communication such as mail, telegrams and faxes, therefore the difference in written means of communication does not affect the character of the writing requirement.

For more informations see : Aqoun Mustafa, International Arbitration Judgment and The Extent of Its Possibility of Appeal, Journal of Law and Political Science, Volume 3, Issue 2, jun 2017, p 188.

³ - Damana Mohamed, Maryam Maansry, procedures for the implementation of international commercial arbitration rulings in Algeria, Journal of Legal and Political Studies, volume02, Issue 2, jun 2016, p 152.

⁴ - Fouad Al Deeb, op cit, p 16.

version of a judicial authority when the following conditions have been met:

- 1- Do not include anything that violates the rules of competence.
- 2- Holder of the power of the order in accordance with the law of the country in which it was issued.
- 3- Do not conflict with an order, ruling or decision that has already been issued by Algerian judicial authorities and raised by the defendant.
- 4- it Does not include anything any contravention to the public order and public morals in Algeria"¹.

Section III: Execution order issued

Since the order to implement is the legal means by which the effectiveness of international arbitration provisions can be achieved, we will study its legal nature and identify its authority within the country in which it was issued.

A) The legal character of the implementation order (executive version)

It is an order on the petition issued by the President of the Court, issued in its jurisdiction at the request of the relevant persons, or before the court of execution if the seat of the Court of Execution is located outside the national territory, the court examines the foreign judgement to ensure that this judgment has been issued correctly, and after verifying that it issues a new judgement To implement the foreign arbitration ruling and to be able to do so in the executive form².

B) The authority of the order to execute

The authority of the order to execute is limited to the state in which it was issued, and the legal system that has been applied to it does not bind other states. Implementation in each country

¹ - aricl N605, of Civil and Administrative Procedures code, 08/09.

² - Hamdi Pasha Omar, Methods of Implementation in accordance with the Civil and Administrative Procedure code 08/09, dar Homa , Algeria, p 151.

individually, because it does not recognize the execution order issued by one country in another.

The application for the implementation of the international arbitral award may end with acceptance and hence the issuance of the execution order, and here we note that the execution order can be appealed to appeal in accordance with the text of article 1056, which specifies cases where this may be done exclusively, in addition, in the case of an appeal against the annulment of the arbitral award, It is strongly legally necessary to challenge the enforcement order¹.

The case may also end with the refusal to grant the order to execute ,to refuse ,orm to recognize the international ruling of control, in this latter case the question that arises here: can the order to refuse execution be appealed?

The Algerian legislator ruled on this matter under article No1055, granting the affected party the right to appeal the order refusing to implement².

In all cases, the aforementioned decisions are subject to appeal.

Conclusion

Arbitration is the legal means imposed by developments in international relations, which has made traders in the economic fields and commercial transactions resort to it to resolve disputes in a faster and more flexible manner, and when the phase of dispute resolution through arbitration is over comes the stage of the implementation of arbitration.

What has been highlighted in this paper is the legal means by which the international arbitration provision can be implemented and implemented, because it is the possibility of implementation and embodiment on the ground that has made the arbitral award more

¹- Aqoun Mustafa, op cit, p 195.

²- Article N1055 of the Civil and Administrative Procedure code. states that "an order to refuse recognition or to refuse execution is subject to appeal."

effective, so that we can reach a set of conclusions, the most important of which are:

- The algerian legislator introduced the system of order of execution as an attempt to reconcile the general interests of the State on the one hand, and to protect the rights and freedoms of the contracting parties on the other, which requires the establishment of mechanisms for maintaining public order, in order to ensure that the Algerian judiciary controls the arbitral judgement before it is implemented.
- This has made the relationship between arbitration and the judiciary integrated, as judicial oversight has been made in order to achieve the proper implementation of the arbitration judgement, in order to protect him and public order in the implementing State and not to limit the will of the parties that are the origin of the arbitration.
- The Algerian legislator also sought to maximize the effectiveness of the arbitration provisions by limiting the judge's oversight to the formal aspect.
- The Algerian legislator has singled out two conditions if the arbitral award is recognized and implemented under article N 1051 of the law on Civil and Administrative Procedure, but does this mean that this article is a rule that leaves no room for the judge's discretion to refuse to issue the order By implementing the international arbitral award for lack of other conditions?
- Based on this question, we suggest that decisions to refuse recognition or to refuse to implement the international arbitral award should be causing.

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