

Judicial Intervention for the Appointment of an International Commercial Arbitrator

soumia gherbia¹, ammar zabi²

¹University of Eloued (Algeria) , gherbia-soumia@univ-eloued.dz

²University of Eloued (Algeria) , ammar-zabi@univ-eloued.dz

Laboratory of Public Policy and Improvement of Algeria's Public Service, University of Eloued.

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Abstract:

In international commerce, private parties commonly favor extra-judicial modes of dispute resolution, particularly those that permit a bespoke configuration of procedural rules, normative references, and decision-makers. Among these, consensual adjudicative mechanisms—most notably arbitration—are distinguished by their procedural malleability and autonomy from institutional judicial oversight. Nonetheless, operational setbacks may arise, particularly when the arbitration clause is structurally deficient or when one party strategically abstains from constituting the adjudicatory panel. In such contingencies, domestic tribunals may be called upon to perform a subsidiary role: facilitating the formation of the arbitral bench through judicial intervention. This procedural contingency, though seemingly paradoxical within a system predicated upon party sovereignty, has been formalized in multiple legislative frameworks. Algerian procedural law, under the rubric of Law No. 08-09, exemplifies this trend by delineating the jurisdictional gateway and procedural mechanics for such interventions. The present study interrogates this ancillary judicial function, its normative underpinnings, and the procedural bifurcation between adversarial and non-contentious modalities through which such requests are judicially actioned.

Keywords: Arbitration, judicial intervention, international commercial arbitrator, arbitral tribunal, arbitrator appointment.

soumia gherbia, *e-mail:* gherbia-soumia@univ-eloued.dz.

INTRODUCTION

Arbitral adjudication emerges as a contractual and voluntary juridical modality embraced by disputing entities in transnational and domestic commercial settings, primarily owing to its capacity to emancipate litigants from the constraints of institutional litigation. Among its cardinal hallmarks is the latitude conferred upon the parties to architect the decisional body—whether through direct nomination or via delegation to a specialized arbitration center—thereby preserving procedural sovereignty.

The configuration of the arbitral panel represents a *sine qua non* for the inauguration of valid arbitral proceedings; it is upon these appointees that the procedural and decisional burden rests, culminating in the issuance of an enforceable arbitral determination.

Nevertheless, in non-institutionalized (*ad hoc*) arbitral settings, preliminary stages often encounter operational inertia. Such procedural entanglements may derive from inter-party discord concerning the designation of arbitrators, protracted inertia from one disputant, or external contingencies impeding timely nomination. In other instances, structural deficiencies embedded within the arbitration covenant—such as lacunae in appointment mechanisms or imprecise compositional clauses—engender an impasse in constituting the adjudicatory ensemble.

When such procedural paralysis ensues, the aggrieved or proactive party may invoke the residual competence of the national judiciary to ensure the continuity of the arbitral enterprise. Contemporary legal orders and supranational arbitral doctrines have, in response, affirmed the facilitative competence of state courts in complementing the arbitral framework—endowing them with limited authority to intervene in matters of arbitrator designation, substitution, or recusal where impasses emerge.

In alignment with these modern legislative developments, the Algerian legislature has acknowledged the national judiciary's role in both domestic and international commercial arbitration. It has entrusted national courts with a crucial supportive function in instances where the parties encounter obstacles in constituting the arbitral tribunal. As previously noted, such judicial intervention is strictly contingent upon a formal request submitted by the interested party.

This study seeks to examine the procedural mechanism through which such requests are filed, identify the party entitled to make such a request, and determine the competent judicial authority vested with jurisdiction to hear the matter. This is especially pertinent given the divergence of views surrounding the procedural approach to seeking judicial assistance in constituting the arbitral tribunal.

Consequently, the present inquiry endeavors to elucidate the doctrinal architecture and normative contours that circumscribe the permissible scope of adjudicative intrusion by domestic courts in the process of arbitral panel constitution. Central to this exploration is the interrogation of the juridico-procedural foundation upon which such interventions are predicated, particularly in contexts where consensual mechanisms falter or prove inoperative.

This analytical undertaking shall initially dissect the ontological character and juridical categorization of the judicial solicitation aimed at constituting the arbitral adjudicatory body within transnational commercial disputes (Part I), subsequently transitioning to a critical exposition of the procedural pathways, institutional competences, and temporal parameters that delimit and govern such recourses within positive law frameworks (Part II).

1. The Legal Nature of Judicial Intervention for the Appointment of an International Commercial Arbitrator

In arbitral contexts where disputants are unable to operationalize the formation of the adjudicatory panel designated to resolve their commercial discord—either due to procedural voids or inter-party obstruction—the judiciary of the *lex fori* may be called upon to activate its subsidiary authority to enable the completion of the tribunal's structural composition. This judicial contingency is enshrined in the Algerian procedural corpus, particularly under Articles 1009 and 1041 of Law No. 08-09, which respectively address internal and transnational arbitration scenarios¹.

In such instances, litigants or signatories to the arbitral convention may lodge a formal invocation before the Chief Magistrate (President of the Court), petitioning for institutional substitution in the arbitrator designation process. Yet, a hermeneutic engagement with the aforementioned legislative provisions reveals an absence of explicit procedural demarcation—leaving unresolved the juridical nature of the recourse: is it to be construed as an *actio ordinaria* within the civil litigious framework, or as a unilateral *requête* submitted *ex parte* under streamlined motion protocols?

The ensuing analysis undertakes to delineate the jurisprudential implications of this procedural ambiguity, by unpacking the competing interpretive paradigms surrounding the legal character and formal configuration of judicial intervention in arbitral panel constitution.

1.1 Judicial Intervention for Arbitrator Appointment Through a Civil Lawsuit

A segment of arbitral jurisprudence maintains that the doctrine of consensual governance—commonly referred to as *party autonomy*—engenders a procedural imperative upon the adjudicative authority to incorporate the litigants into the arbitrator

designation trajectory. Within this paradigm, the judicial organ is compelled to formally enjoin the non-compliant party to fulfill its nomination obligation, granting a circumscribed period of forbearance prior to exercising judicial substitution.

Under this interpretive lens, the judiciary's intervention is characterized as a substantive jurisdictional act, executed through the formalized apparatus of contentious proceedings. Such an action entails the initiation of a full-fledged legal claim, conforming to the normative architecture of civil procedural law, and culminating in a definitive ruling subject to judicial scrutiny.

For the adjudicator to validate such a request, multiple substantive thresholds must be met: the existence of a bona fide controversy falling within the ambit of the arbitral stipulation; the legal efficacy and enforceability of said stipulation; the nonexistence of prior procedural mechanisms or third-party mandates for arbitrator nomination; and the confirmation that the proposed nominee satisfies the requisite professional and legal criteria.

Nonetheless, this procedural route—though exhaustive and adversarial in nature—entails a protracted temporal burden when juxtaposed with expedited *ex parte* mechanisms. Judicial intervention under this model is operationalized only after bilateral participation has been secured and adversarial presentations have been facilitated².

Despite its procedural inertia, this methodology offers notable advantages: it enables each party to articulate nuanced preferences concerning the professional profile, impartiality, and sectoral competence of the arbitral actors. Such dialogic engagement enhances procedural transparency and reinforces the participatory ethos intrinsic to arbitral legitimacy.

Furthermore, in cases where a party refuses to appoint its arbitrator, this method upholds the principle of adversarial proceedings (*principe du contradictoire*) by summoning the defaulting party and affording it the opportunity to state its position. This, in turn, reduces the likelihood of future procedural challenges that could prolong the arbitration process by contesting the tribunal's formation in its preliminary stages³.

From a critical vantage point, this procedural channel exhibits considerable vulnerabilities.

- Firstly, it renders the process susceptible to procedural obstructionism, as the recalcitrant party may strategically manipulate the legally prescribed delays—particularly in jurisdictions mandating judicial indulgence periods prior to substitutional appointment—thereby deferring the establishment of the arbitral tribunal and impeding the expeditious advancement of the proceedings⁴.

- Secondly, orthodox civil litigation frameworks fail to accommodate certain defenses which, by their nature, fall within the exclusive remit of arbitral adjudication. These include objections predicated upon premature invocation of arbitration, temporal extinction of claims due to statutory limitation periods, or procedural invalidation owing to the expiration of the arbitration clause's viability over time. The judicial forum, being extraneous to the intrinsic arbitral mandate, lacks the jurisdictional competence to entertain such objections without undermining the doctrinal integrity of the arbitration regime⁵.

Furthermore, the irrevocability of judicial pronouncements pertaining to arbitrator designation does not ipso facto strip them of their judicial character. Juridical orthodoxy stipulates that all judicial determinations are, in principle, subject to appellate review, except where the legislature has unambiguously and exhaustively derogated from this principle. The rationale for such appellate foreclosure—particularly in this context—appears to lie in the legislative intent to avert procedural stagnation and to safeguard the uninterrupted progression of arbitral mechanisms. Nonetheless, this procedural finality does not ipse jure reclassify such decisions as anything other than formal judicial acts⁶.

A number of comparative legal systems have adopted this analytical construction, mandating that any recourse to the judiciary for the constitution of the arbitral tribunal be initiated through conventional litigious mechanisms, subject to the procedural requisites and formalities governing civil litigation. In such frameworks, a judicial audience is calendared, and the concerned parties are summoned in accordance with adversarial due process guarantees.

By contrast, Algerian procedural law refrains from articulating a definitive procedural identity for such interventionist petitions. Neither does it delineate a codified procedural trajectory nor impose statutory deadlines for the judicial handling of these requests. This legislative lacuna has propelled several doctrinal voices to advocate for the application of ordinary litigation protocols in such scenarios. They posit that, absent an explicit provision to the contrary, the request must be channelled through a traditional lawsuit. In support of this thesis, they point to procedural benchmarks such as those outlined in Article 310 of the Algerian Code of Civil and Administrative Procedure, which mandates a three-day resolution period for certain *requêtes*—a procedural swiftness that sharply contrasts with the temporal indeterminacy inherent in full civil trials⁷.

From a comparative jurisprudential standpoint, the Egyptian judiciary has historically exhibited a bifurcated interpretative posture vis-à-vis the procedural conduit for invoking judicial facilitation in arbitral appointments. At an earlier juncture, the Cairo Court of Appeal embraced the procedural economy of the *requête unilatérale*, asserting that a request for judicial designation of an arbitrator could be addressed directly to the President of the competent court through an ex parte petition.

This position, however, was subsequently reversed by the Egyptian Court of Cassation, which issued a definitive doctrinal clarification. In construing Article 17 of the Egyptian Arbitration Statute⁸, the apex court determined that the appropriate procedural route must conform to the traditional architecture of adversarial litigation, mandating the submission of a formal judicial claim—not a mere motion or procedural demand⁹. The Court further affirmed that the arbitrator's designation must be effectuated through a full judicial pronouncement (*ḥukm qaḍā'ī*), rather than through an administrative or interlocutory decree.

Moreover, the legislative text vests the authority to effectuate such appointments in the adjudicatory bench as a collegial body, thereby precluding the President of the Court from unilaterally exercising this prerogative. Consequently, the institutional mechanism for arbitrator appointment must strictly adhere to the procedural rigors of standard civil adjudication, with no deviation permitted through simplified or discretionary executive procedures.

1.2 Judicial Intervention for the Appointment of Arbitrators Through a Petition by Motion (*Ordonnance sur Requête*)

A divergent strand within arbitral jurisprudence contends that judicial assistance in constituting the arbitral forum may legitimately proceed via an expedited, non-contentious procedural device—namely, the submission of a *requête unilatérale*. Under this construct, the designated judicial authority is empowered to nominate one or several arbitral adjudicators upon the unilateral application of a contracting party to the arbitration covenant¹⁰. This interventionist measure is typically executed through the promulgation of an ex parte judicial order, subsequent to a prima facie verification of the nominee's conformity with statutory and professional eligibility parameters. Crucially, such intervention is effected in the absence of adversarial engagement with the opposing party, in order to forestall procedural stagnation and to accelerate the activation of arbitral jurisdiction—thereby preserving the procedural entitlements and temporal expectations of the aggrieved right-holder.

Proponents of this approach base their position on several arguments:

- First, they contend that a request for the appointment of an arbitrator should not be equated with a conventional lawsuit, given the protracted nature of judicial litigation, which undermines the very efficiency and celerity that arbitration is intended to promote.
- Second, they argue that the legislator's use of the term “request” (*demande*) implies a reference to procedures governed by petitions, especially those resolved through orders on motion.

- Third, they highlight the fact that many legislative systems provide that decisions on arbitrator appointments are not subject to appeal, which aligns with the nature of orders on motion. If the decision were to be rendered through an ordinary lawsuit, it would be expected to be open to appeal, thus rendering the litigation process unnecessary where only a single-instance decision is available.

Despite offering an expedited and procedurally streamlined path for the affected party to obtain a judicial appointment of arbitrators—making it the method most compatible with the flexible and facilitative nature of arbitration—this approach has attracted criticisms, particularly for its potential to infringe upon the principle of adversarial proceedings. Despite its procedural economy and responsiveness to time-sensitive impasses, this model of unilateral judicial intervention has not escaped doctrinal scrutiny. Its detractors contend that such an approach erodes the consensual foundation upon which arbitral justice is premised. By authorizing the court to substitute its institutional prerogative for a party's contractual entitlement to designate an arbitrator—particularly in contexts where the resulting appointment is insulated from appellate oversight—this method is viewed as engendering a structural dissonance with the voluntarist underpinnings of arbitration¹¹. The irrevocability of such determinations, rendered absent adversarial confrontation, further exacerbates concerns regarding procedural fairness and the preservation of party autonomy.

In terms of Algerian law, the current Code of Civil and Administrative Procedure contains no express provisions clarifying the procedural nature of judicial intervention for the appointment of arbitrators. This stands in contrast to former Article 458 bis of the repealed Legislative Decree No. 93-09, which, in its first paragraph, stated: “*Where the judge is called upon to appoint an arbitrator under the conditions provided in the preceding articles, he shall respond to the request by issuing an order on motion, unless a summary review reveals the absence of an arbitration agreement between the parties*”¹². Although this provision was repealed, some legal scholars continue to rely on its rationale, arguing that judicial intervention by Algerian courts in arbitrator appointments should occur exclusively through ex parte orders¹³.

By inferential extension, Article 1016 of the Algerian Code of Civil and Administrative Procedure—pertaining to motions for disqualification of arbitrators—stipulates that such challenges are to be adjudicated via an *ordonnance* issued by the judiciary, upon the initiative of the party invoking procedural urgency. The deliberate legislative preference for the terminology “order” rather than “judgment,” coupled with the explicit invocation of expedition (*procédure d’urgence*), evinces a clear legislative intent to confer upon this mechanism an accelerated, non-contentious procedural character.

From a hermeneutic standpoint—and drawing upon the lexicon employed in Articles 1009 and 1041 of the same procedural code—we align with the interpretative school that

advocates for the admissibility of such interventionist petitions via unilateral motion. The linguistic formulation adopted by the legislator—stating that “the matter may be submitted to the President of the Court by the party seeking expedition”—unequivocally signals a procedural design rooted in non-adversarial petitioning. Had the drafters envisaged an adversarial framework requiring a conventional judicial action, the competence would have been attributed to the tribunal *in pleno*, and not singularly to its presiding officer¹⁴.

Within the sphere of comparative jurisprudence, particular attention must be drawn to the initial doctrinal orientation of the Cairo Court of Appeal, which formerly validated the recourse to unilateral petitioning as a procedurally legitimate avenue for judicial involvement in arbitrator designation. In a seminal pronouncement rendered in 2010, the court asserted that arbitral appointments may proceed through an *ex parte* procedural vehicle, emphasizing that the legislator's adoption of the term “request” in Article 17 denotes alignment with the legal architecture governing *ordonnances sur requête*¹⁵.

The court went further in classifying the nature of such judicial involvement, declaring that the intervention undertaken by the presiding judge in forming the arbitral panel does not amount to an act of contentious adjudication, but rather constitutes a procedural exercise situated within the domain of voluntary jurisdiction—thereby distinguishing it from decisions arising under the adversarial rubric of civil litigation.

The Jordanian Court of Cassation similarly upheld this position, affirming that the request for arbitrator appointment is to be submitted by way of petition, stating: “*The decision to appoint an arbitrator constitutes an act of judicial administration and is not subject to the rules governing judicial judgments*”¹⁶.

1.3 The Urgent Nature of Judicial Intervention in the Appointment of Arbitrators

The mechanism of judicial participation in arbitrator designation is intrinsically marked by procedural celerity and temporal sensitivity. Although the adjudicator is compelled to issue a resolution with dispatch, such exigency does not entail adherence to the formal structure of *référé* or interlocutory litigation. Instead, the judge operates within a *sui generis* procedural framework, adopting a model of accelerated adjudication without being constrained by classical preconditions of urgency or the absence of contentiousness. Notwithstanding its expedited character, the resulting pronouncement bears the hallmark of finality, conclusively resolving the matter submitted¹⁷.

An array of national legal systems—many of which have drawn inspiration from the UNCITRAL Model Law on International Commercial Arbitration—have codified this exigent procedural posture. For instance, the French Code of Civil Procedure, under Article 1460/2, mandates that the supporting magistrate adjudicate requests for arbitral constitution via fast-tracked procedures. Parallel reasoning is embedded within the

Tunisian arbitration corpus, where Article 5618 stipulates that such requests are to be resolved by an emergency decree rendered by the First President of the Tunis Court of Appeal¹⁸.

The Algerian legislator, in consonance with this global trend, employs the term "expedition" in Article 1016 of the Code of Civil and Administrative Procedure, thereby signaling the intention to confer upon the judiciary a responsive and auxiliary role in ensuring the non-obstruction of arbitral activation.

The English legislative model further accentuates the imperative of timeliness in arbitrator appointments. Particularly in configurations involving a sole adjudicator, the English Arbitration Act enshrines a non-conventional device whereby, upon the lapse of seven days from formal notification, the nominee of the non-defaulting party is ipso jure deemed to constitute the tribunal. This expedient mechanism—predicated upon party agreement—has proven to be an efficacious instrument for circumventing deadlocks in panel formation¹⁹.

For multiparty adjudicatory panels, the non-defaulting litigant may, following due notice, solicit the intervention of the judiciary to facilitate the completion of the tribunal's configuration.

Irrespective of the procedural modality adopted—whether by contentious action or unilateral petition—the role of the domestic judge remains inherently functional and ancillary, deployed to avert institutional paralysis of the arbitral forum.

From a doctrinal perspective, we advocate a hybridized procedural paradigm wherein the judge is vested with discretionary latitude to orchestrate preliminary measures prior to formally displacing a party's nominative prerogative. Such an approach may encompass summoning the recalcitrant party within a prescribed temporal margin or issuing formal notification of the appointment request, thereby allowing space for rebuttal or observation, in conformity with due process principles²⁰.

Additionally, the court should undertake certain safeguards before issuing the appointment decision, such as:

- Obtaining the written consent of the proposed arbitrator,
- Inquiring whether there is any circumstance requiring disclosure,
- Verifying that the arbitrator meets the legal and contractual criteria agreed upon by the parties, such as nationality, expertise, and specialization—

all in adherence to the principle of party autonomy, which remains central to the arbitration framework.

The UAE Federal Arbitration Law embodies this approach effectively. Article 11(6) requires the requesting party to provide a copy of the appointment request to all other parties, including a detailed account of all steps undertaken to constitute the arbitral tribunal. This procedural safeguard ensures transparency and protects the rights of all participants in the arbitration²¹.

Similarly, the French legislator adopts a pragmatic and flexible approach. The French judge, when ruling on a request for the judicial appointment of an arbitrator, acts more as a facilitator than an adjudicator—seeking to assist both parties in reaching a mutually agreeable solution²².

2. The Procedural Architecture Governing Judicial Recourse in the Constitution of an International Arbitral Panel

In alignment with prevailing trends across contemporary arbitral legislation, the Algerian legal framework accords disputing parties the facultative prerogative to petition the judiciary for institutional intervention in instances where the constitution of the arbitral adjudicatory body is stymied. This auxiliary judicial mechanism is designed to forestall procedural stagnation and to guarantee the unbroken progression of the arbitration process despite structural or adversarial impediments.

The present section undertakes a granular examination of the procedural regime regulating such recourse, by elucidating several critical dimensions: the locus standi of the petitioner empowered to initiate the intervention; the temporal threshold that must elapse subsequent to partial constitution (whether via party-nominated or presiding arbitrator) prior to admissibility of the request; the identification of the judicial forum competent to adjudicate such matters—whether in the context of domestic arbitration or international arbitral proceedings situated within Algeria or governed by Algerian *lex arbitri* abroad; and finally, the procedural modality by which the request is to be lodged, together with the indicative timeframe within which a resolution is to be rendered.

2.1. Entities Vested with Standing to Invoke Judicial Facilitation in Arbitrator Designation

It would be juridically incongruous to presume that courts at the situs of arbitration might act *sua sponte* to remedy disruptions in the composition of the arbitral bench. Institutional engagement of the judiciary in such circumstances remains strictly contingent upon an express procedural initiative taken by a party with a direct procedural stake in the constitution of the tribunal²³.

It is a foundational tenet—requiring no affirmative statutory affirmation—that standing to trigger such intervention is reserved to parties who are signatories to the arbitration covenant and bear a material legal interest in the resolution of the dispute. Consequently,

neither external third parties nor non-consensual actors possess the locus standi to petition for judicial involvement in the arbitrator appointment process. While, theoretically, co-appointed arbitrators may seek to instigate such intervention in situations where they reach a deadlock in selecting the presiding arbitrator, Algerian procedural law remains markedly restrictive in this regard. Under its current formulation, only the contracting parties themselves may lawfully initiate such recourse, thus excluding appointed arbitrators from exercising any analogous procedural competence²⁴.

From an analytical standpoint, this exclusionary posture unduly impairs the adaptability and operational integrity of the arbitral process. It artificially curtails the procedural fluidity required to navigate impasses in tribunal formation, especially in scenarios where the designated co-arbitrators are already institutionally entrusted with nominating the tribunal's chair. Denying them the ancillary faculty to solicit judicial assistance when confronted with procedural stagnation appears logically incoherent and practically counterproductive²⁵.

In contrast, the French legislature has embraced a more functionally inclusive model. Pursuant to Article 1460(1) of the French Code of Civil Procedure, the power to request judicial assistance in arbitrator appointment is extended beyond the original litigating parties to encompass both the arbitral panel in its collective identity and its individual members. The statute provides that: *“Le juge d’appui peut être saisi par l’une des parties, par le tribunal arbitral ou par l’un de ses membres”*²⁶.

2.2 Temporal Thresholds and Adjudicative Deadlines Governing Judicial Recourse in Arbitral Constitution Procedures

Algerian law does not prescribe any specific time limit within which a request for the judicial appointment of an arbitrator must be submitted to the competent court. Nor does it set a deadline after which a party's failure to appoint its arbitrator would be deemed a deliberate delay, or a period within which two party-appointed arbitrators must select the presiding arbitrator. This legislative silence leads us to conclude that the judge to whom the appointment request is submitted retains discretionary authority in determining the reasonable timeframe for such action.

The Algerian legislator appears to have deliberately avoided prescribing a rigid timeframe for submitting requests for judicial appointment, likely due to the view that arbitral constitution primarily serves private party interests—thus leaving timing to mutual discretion²⁷. Similarly, French law refrains from setting specific deadlines. In contrast, the UNCITRAL Model Law (Article 11) and Egyptian Arbitration Act (Article 17) impose a thirty-day limit, while Jordanian law adopts a stricter approach, requiring submission within fifteen days following the final arbitrator's designation^{28 29}.

In our view, the Algerian legislator would have done well to establish a similar timeframe for the submission of such requests to the President of the competent court. This would serve to deter parties from resorting to procedural obstruction or strategic delay. A defined period would also compel the defaulting party to fulfill its obligation to appoint an arbitrator within a reasonable and predictable timeframe³⁰.

As for the timeframe within which the court is to adjudicate the request for judicial intervention, neither the Algerian legislator nor most comparative arbitration statutes have set a binding deadline for issuing a decision. This stands in contrast with other urgent procedural matters—such as motions for notice or fact-finding orders—where Article 310 of the Algerian Code of Civil and Administrative Procedure provides for a maximum adjudication period of three days. Based on analogical reasoning, there is no impediment to applying this standard to arbitrator appointment requests, given that the underlying rationale—namely, the expeditious progress of arbitration—is shared.

Nevertheless, the duration of adjudication shall ultimately remain within the discretionary authority of the President of the Court, who must assess the procedural and substantive complexities of each individual case. The timeframe must, however, be sufficient to render a reasoned appointment order, while also being short enough to prevent delays that could undermine the efficiency of the arbitral proceedings³¹.

2.3. Jurisdictional Allocation of Judicial Authority in Arbitral Constitution Proceedings

Where impasses arise in the formation of an arbitral tribunal—whether due to a party's failure to appoint its arbitrator, a stalemate between appointees, or structural deficiencies within the arbitration clause—the party seeking procedural expedition may petition the Algerian judiciary to exercise its ancillary jurisdiction to complete the tribunal's composition³².

The attribution of jurisdiction hinges upon the arbitral typology: domestic or international. In domestic arbitration, Article 1009 of the Algerian Code of Civil and Administrative Procedure vests jurisdiction in the President of the court territorially competent over the locus of contractual conclusion or execution. Conversely, Article 1041/2 delineates the applicable regime for international arbitration, whereby the competent authority is either the President of the court at the seat of arbitration within Algeria or, where the arbitration is seated abroad but governed by Algerian procedure, the President of the Algiers Court³³.

Accordingly, the spatial determination of jurisdiction is contingent upon whether the seat is predetermined. Two primary scenarios may arise:

1. **Express Designation of Judicial Authority:** If the arbitration clause explicitly identifies the competent court, such designation is binding and exclusive.
2. **Absence of Designation:** In the absence of an express clause, Article 1042 confers jurisdiction upon the judicial authority situated at the place of contract formation or performance³⁴.

Nevertheless, Article 1042 suffers from normative ambiguity. It attempts to address the lacuna occasioned by an undefined seat at the pre-constitutive stage, particularly when the arbitral tribunal itself is tasked with later determining the seat. Since Article 1041 presumes prior knowledge of the seat, its application is logically precluded in such instances.

In light of this, it would have been legislatively prudent to institute default territorial criteria—such as the contract’s locus celebrationis or locus solutionis—to mitigate jurisdictional uncertainty. The current legislative silence risks procedural inertia and reinforces the very deadlock that judicial intervention aims to resolve³⁵.

Furthermore, a harmonization between Articles 1041 and 1042 is imperative, as their concurrent application may generate jurisdictional inconsistency. Professor Yassad has accordingly suggested judicial reliance on Article 1041 while rendering Article 1042 inapplicable³⁶.

When the arbitration is seated outside Algeria but subject to Algerian procedural law, judicial recourse must be directed exclusively to the President of the Algiers Court, pursuant to the express language of Article 1041³⁷.

Comparative legal frameworks offer divergent solutions. In France, the *juge d'appui* is a cornerstone of arbitral support. Article 1505 of the French Code of Civil Procedure designates the President of the *Tribunal judiciaire* for domestic arbitration and the President of the Paris *Tribunal judiciaire* for international arbitration—albeit within a narrowly defined scope of intervention³⁸.

Egypt, on the other hand, adopts a utilitarian allocation model: the court ordinarily competent to hear the underlying dispute assumes jurisdiction in domestic arbitration, while the Cairo Court of Appeal retains exclusive authority over international arbitration matters, as per Article 17 of the Egyptian Arbitration Law.

It is essential to reiterate that judicial intervention in arbitral formation is neither automatic nor discretionary in the absolute sense. It operates within a rigid matrix of jurisdictional and procedural safeguards that circumscribe the scope of admissibility and adjudication.

4. CONCLUSION

Upon meticulous examination of the procedural architecture underpinning judicial assistance in the constitution of arbitral tribunals under Algerian Law No. 08-09—particularly the operative modalities prescribed for initiating such recourse—we have distilled the following key findings:

- The judiciary's involvement in arbitral formation is ancillary and procedural in nature, confined to facilitating the continuity of arbitration where consensual mechanisms falter. It does not, and must not, extend into matters of substantive arbitral jurisdiction.
- While the majority of arbitration statutes empower courts to assist in appointing arbitrators, reliance on the conventional procedural route of an ordinary lawsuit may inadvertently undermine the procedural economy of arbitration. In light of this, we submit that a more efficacious approach lies in permitting such requests to be filed as unilateral motions before the President of the competent court, provided the opposing party is duly informed.
- Algerian procedural law adopts a uniform approach to tribunal constitution, making no distinction between the appointment of a sole arbitrator and that of a multi-member panel—a stance which diverges from more nuanced frameworks such as those embodied in French and Egyptian law.

In view of the interpretive lacunae and procedural ambiguities that persist within the Algerian legal regime, we respectfully propose the following legislative reforms:

- Articulating a definitive position regarding the appealability of judicial orders appointing arbitrators, preferably rendering such orders final and immune to challenge in order to safeguard the expedition of arbitral proceedings.
- Mandating the judiciary to rigorously verify that court-appointed arbitrators satisfy all qualification criteria—statutory, contractual, and as stipulated by the parties—to preserve the integrity of the arbitral process.
- Recasting judicial intervention as an inherently urgent procedural measure, thereby obligating courts to adjudicate appointment requests with promptitude, in consonance with the expedited models adopted in jurisdictions such as France.
- Introducing a clear statutory timeframe within which parties may initiate judicial intervention in arbitrator appointment, following the lead of the UNCITRAL Model Law and other comparative legislative instruments.

- Conferring upon party-appointed arbitrators the procedural standing to request judicial appointment of the presiding arbitrator where consensus proves elusive, thus enhancing institutional functionality.
- Harmonizing the application of Articles 1041 and 1042 of the Algerian Code of Civil and Administrative Procedure, in order to dispel existing doctrinal ambiguities and ensure consistency in determining the competent forum for international commercial arbitration requests.

Through the implementation of these legislative refinements, Algerian arbitration law would not only align more closely with best comparative practices but would also consolidate its procedural coherence and arbitral autonomy.

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