



Enforcement Procedures and Appeal Mechanisms for International Commercial Arbitration Awards under the Civil and Administrative Procedure Law 08/09

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Abstract

The nature of international commercial transactions necessitates the development of a specialized system for resolving disputes in international trade. This system, known as arbitration, requires speed and flexibility. However, the main issue with this alternative dispute resolution method is that an arbitration award issued by a specific tribunal in one country can become ineffective if it is not recognized by the state required to enforce it. Therefore, this study will focus primarily on the implementation of international commercial arbitration awards, which requires their recognition. The study will also address the issue of challenging these awards under the Code of Civil and Administrative Procedure.

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1. Introduction

The arbitration system is not of recent origin; it has been known and practiced since ancient times. The arbitration system was prevalent in tribal or civil societies without a central authority, especially for disputes between individuals from different tribes or cities. After the advent of Islam, the practice of arbitration was enshrined based on the words of Allah the Almighty: "But no! By your Lord, they will never be 'true' believers until they accept you 'O Prophet' as the judge in their disputes, and find no resistance within themselves against your decision and submit wholeheartedly."¹ The practice of arbitration continued to spread and develop, particularly with the growth of international trade and prosperity².

The efforts of the League of Nations after World War II in the field of international arbitration resulted in two fundamental documents : the Geneva Protocol of 1923 on arbitration conditions and the Geneva Convention of 1927 on the enforcement of arbitration awards. Additionally, the New York Convention of 1958 under the United Nations addressed the enforcement of foreign judgments. The Washington Treaty of 1965 established the International Center for the Settlement of Investment Disputes. Furthermore, the United Nations Commission on International Trade Law prepared the UNCITRAL Arbitration Rules, approved by the United Nations General Assembly in 1976³.

Regarding Algeria, it acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards via Presidential Decree No. 88/233. This

accession was, however, subject to reservations⁴. The legislator has addressed the regulation of arbitration for the first time in 1993⁵.

There are several types of arbitration. Free arbitration is formulated by the parties outside any institution or arbitration center. The litigants establish an arbitral tribunal and define their own rules and procedures. Alternatively, parties may resort to a specific arbitration institution, which manages the arbitration procedures, known as institutional arbitration. Other types include internal arbitration, where all elements belong to one country, and international arbitration, which transcends national borders⁶.

The importance of studying this topic lies in its focus on a crucial aspect of arbitration: the procedures for enforcing and challenging the arbitration award. The arbitration process comprises several stages, with the most significant being the enforcement of the arbitration award.

The Algerian legislature has authorized the use of arbitration to resolve disputes between individuals. However, it has not granted executive power to arbitration awards. Although a domestic arbitration award holds the authority of *res judicata* once issued, this does not apply to international commercial awards, which require recognition. The executive power is only conferred upon the international arbitration award through the issuance of a special order from the state judiciary, known as the execution order⁷. This study will address the procedures for obtaining such an order. In discussing this part, the following questions must be raised: What are the procedures for enforcing an

international arbitration award? How is an international arbitration award appealed? To enrich this issue, a descriptive analytical approach will be adopted. The topic will be addressed according to the following division:

First Topic: The Authority of the International Commercial Arbitration Award and Its Enforcement Procedures

- **First Requirement:** The Authority of the International Commercial Arbitration Award
- **Second Requirement:** Procedures for Enforcing an International Commercial Arbitration Award

Second Topic: Methods of Appealing Against the International Commercial Arbitration Award

- **First Requirement:** Appealing against the Execution Order and Refusal to Execute
- **Second Requirement:** Appealing against the International Commercial Arbitration Award

FIRST TOPIC: The Authority of the Arbitration Award and Its Enforcement Procedures

The judgment that resolves the dispute marks the termination of the arbitration court's mission and acquires the authority of res judicata concerning the resolved dispute. If individuals voluntarily execute the judgment, the dispute is concluded, and the arbitration award can be implemented in an ordinary manner. However, if it is not voluntarily executed, forced execution through the judiciary is necessary. This research will first address the authority of the arbitration award and then discuss the implementation of the international commercial arbitration award.

First requirement: The authority and scope of the International Commercial Arbitration Award.

This requirement will first address the question of the authority of an international commercial arbitration award. Subsequently, it will examine the scope of the authority of an international commercial arbitration award.

Firstly: The authority of the International Commercial Arbitration Award.

An arbitration award is not considered a judicial judgment but rather an arbitration judgment. It retains its status as a judgment even if its judicial nature is denied. This denial does not negate its arbitral or procedural nature as a judgment. Instead, it distinguishes it from judicial acts, whether they are judgments or judicial orders. Therefore, the arbitration award holds authoritative power⁸.

'In the jurisprudence of pleadings, authenticity means that the judgment issued carries the title of truth regarding the decision made for the parties involved in the lawsuit. It applies within the limits of the basis on which the lawsuit was filed. This means that the same dispute cannot be raised again on the same grounds between the same parties once the judgment has been issued to settle the dispute⁹'

Additionally, the parties' agreement to resort to arbitration obliges them to uphold this agreement. It prevents each party from turning to the state judiciary as long as the arbitration agreement is in place. Should one party violate this agreement, the arbitrator retains the right to insist on arbitration and continue the arbitration process¹⁰.

As a consequence of the above, the party in whose favor the arbitration award was issued has the right to invoke the authority of this award if the other party files a lawsuit before the judiciary to consider the subject matter decided by the arbitration award. The lawsuit must be based on the same reason as the arbitration claim. However, since arbitration is a contractual system subject to the principle of the authority of the will, the authority of the judgment issued by the tribunal disappears if the parties agree to reject the tribunal's ruling. They can then start new arbitration proceedings before a new arbitration tribunal. This tribunal does not have the authority to reject the arbitration request based on the previous arbitration award unless one of the parties invokes this authority. Similarly, if the respondent resorts to the judiciary to resubmit the dispute decided by the arbitration award, the court cannot rule that the case cannot be heard because it has already been adjudicated unless the other party invokes the authority of the arbitration award. This implies acceptance of submitting the matter to the judiciary.¹¹

Secondly: The scope of the International Commercial Arbitration Award

The arbitration award, like a judicial judgment, does not enjoy absolute authority. Its authority is determined by the subject matter of the dispute and the basis on which it is decided. This authority is also limited from the perspective of the involved parties. In the case of an arbitration clause, the claimant must specify the issues in dispute and their requests in the statement of claim. If the arbitration clause does not specify the

subject matter of the dispute, it is void. Matters submitted to arbitration must be capable of settlement by this method; otherwise, the agreement is invalid. A decision on a matter not covered by the arbitration agreement, or exceeding its limits, is invalid.¹²

Regarding the scope of the arbitration award in terms of persons, the Algerian legislator stipulates in Article 1038 of the Algerian Code of Civil and Administrative Procedure¹³ that an arbitration award, like a judicial judgment, is only binding on the parties involved. Only the parties to the lawsuit in which the award was issued, who were notified and able to present their defenses, are subject to the award's authority.

Second requirement: Recognition and enforcement of the International Commercial Arbitration Award.

This requirement will address the enforcement of the arbitration award, which is divided into two stages. First, the recognition of the international commercial arbitration award, a crucial procedure. This is followed by the enforcement of the arbitration award. This requirement will be divided into two sections to cover these stages.

Firstly: Recognition of the International Commercial Arbitration Award:

After the issuance of the final judgment in the arbitration dispute, the arbitrator exhausts his mandate. This means that once the final judgment is issued, the arbitrator loses his mandate. Similarly, the judge who issued the judgment is deprived of jurisdiction and cannot reverse the judgment for any reason. The only way to reverse the judgment is to challenge it in

the appropriate manner, hoping for cancellation or modification. Not all judgments issued by the judge or arbitrator exhaust their jurisdiction. Non-peremptory rulings, for example, do not exhaust this jurisdiction and can be reversed. The exhaustion of jurisdiction leads to the stability of legal positions¹⁴.

If the international arbitration award is not voluntarily enforced by one of the parties, forced enforcement becomes necessary. This involves referring to the state judiciary to request the enforcement of the arbitration award, which passes through two stages: recognition and enforcement. Articles 1051 to 1054 relate to the recognition and forced enforcement of international arbitration awards¹⁵.

As mentioned earlier, one of the effects of arbitration is that it concludes the adjudication of the dispute and terminates the mission of the arbitration court. Consequently, it immediately acquires the authority of *res judicata*, meaning the matter decided cannot be raised again before a judge or arbitrator. However, these judgments do not acquire executive force until they are recognized and ordered to be implemented¹⁶.

This involves first recognizing the award and then granting it an executive form. Recognition refers to the legal force that makes the arbitral award subject to consideration, whether for execution or for a legal effect that makes it useful and enforceable before Algerian courts. Therefore, the party in whose favor the award is issued can seek judicial authority to grant it executive form¹⁷. If the arbitral award is issued outside Algeria, the competent court for enforcement is the one in whose jurisdiction the place of

enforcement is located¹⁸. The arbitration award is confirmed by submitting the original arbitration agreement or valid copies thereof¹⁹.

Secondly: Enforcement of an International Commercial Arbitration Award.

The intervention of the judiciary at the stage of compulsory enforcement is considered very important, given the arbitration court's lack of the power of compulsion, so the opponent in whose favor the arbitration award was issued has no choice but to resort to the national judiciary to force the implementation of this arbitral award²⁰.

Thus, the arbitral award derives its executive power from the official judiciary, which also derives its power from the public authority, but both the judicial judgment and the arbitral award have no executive power unless it obligates the judgment holder to do something that can be enforced by force, which is called a binding judgment, while excluding from the scope of executive bonds the prescribed and established judgments²¹. The Algerian legislator has referred with regard to the execution of the international arbitration award to Articles 1035 to 1038²², and the request for execution is submitted with the original arbitration award at the court's secretariat from the party who is interested in expediting it. In the event that the conditions for enforcement are met, the competent court may issue an enforcement order, whereby the head of the registrar delivers a copy of the arbitration award signed with the executive version of the arbitration award to those who request it from the parties, and the arbitration award is subject to the same provisions that apply

to judicial judgments covered by expedited enforcement with regard to expedited enforcement. The refusal to enforce the arbitration award may occur for several reasons, including what the court raises on its own, such as the inability of the subject matter of the dispute to be arbitrated, as indicated in Article 1006 of Law 08/09, and therefore the refusal to enforce the arbitration award can be appealed in accordance with Article 1035, and the date of filing this appeal is 15 days from the date of the refusal before the Judicial Council.

SECOND TOPIC: Methods of Appealing against an International Commercial Arbitration Award

The arbitrator or arbitral tribunal to which the dispute is submitted possesses broad powers over the parties. It applies the legal provisions to the dispute before it. After the commencement of the arbitration proceedings, the parties have no control over the process until the arbitration award is issued. This situation makes the arbitration award subject to appeal, unlike conciliation²³.

The methods of appealing against an international commercial arbitration award vary based on the subject matter being appealed. These include appeals against orders refusing or allowing recognition and enforcement, appeals for nullity regarding the arbitration award, and appeals in cassation for each of these. Before discussing these methods, it is necessary to first address the cases of refusal to enforce an international arbitration award under the New York Convention. These cases are divided into refusals at the request of one of the parties and refusals that the court decides on its own initiative. The New

York Convention grants a state the right to refuse enforcement of a foreign arbitration award within its territory if the opposing party provides evidence to the competent authority that one of the conditions outlined in Article 5 of the Convention is met. However, Algerian legislation only considers one of these cases for refusing enforcement of an international arbitration award. A judge can refuse to grant the executive form only if the arbitral award is clearly contrary to public order²⁴. This research will address methods of appealing against an international commercial arbitration award, divided into two requirements.

First Requirement: Appealing against the order granting recognition and enforcement, as well as the order denying both.

This requirement will first address appealing against an order denying recognition and enforcement in the first section. The second section will then cover appealing against an order granting recognition and enforcement.

Firstly: Appealing against an Order Refusing Recognition and Enforcement

Article 1055 of Law 08-09 on Civil and Administrative Procedure stipulates that an order refusing recognition or enforcement is subject to appeal. Accordingly, the Algerian legislator allows the party affected by such an order, i.e., the applicant for enforcement, to file an appeal. This article pertains to the appeal of an order issued by the president of the competent court, which rejected the request to legalize the arbitration award in executive form. This applies to international commercial arbitration awards issued both inside and

outside Algeria. The Algerian legislator did not specify the time limit for appealing an order of refusal of execution. However, Article 1035 of the same law, referenced through Article 1054, specifies a 15-day period starting from the date of issuing the order refusing execution. This appeal is addressed to the Judicial Council²⁵.

Secondly: Appealing Against an Order Granting Recognition and Enforcement.

It is important to distinguish between an international commercial arbitration award issued in Algeria and one issued outside Algeria regarding the appeal of the order granting recognition and enforcement. If the award was issued outside Algeria, the order granting recognition or enforcement may only be appealed under one of the six cases specified by the Algerian legislator in Article 1056 of the same law, summarized as follows:

- If the arbitral tribunal decides without an arbitration agreement or on the basis of an invalid agreement or the expiration of the agreement.
- If the composition of the arbitral tribunal or the appointment of the sole arbitrator is contrary to the law.
- If the arbitral tribunal decides contrary to the task assigned to it.
- If the principle of *prima facie* has not been observed.
- If the arbitral tribunal does not reason its judgment, or if there is a contradiction in the reasons
- If the arbitral award is contrary to international public order.

Article 1057 outlines the time limit for filing an appeal in these circumstances. This time limit is set at one month from the date of the official notification of the court president's order.

As for the international commercial arbitration award issued in Algeria, under no circumstances may an appeal be filed against the order for its recognition or enforcement, and therefore, the interested party must file an appeal against the invalidity of the international commercial arbitration award, as this entails by force of law an appeal against the enforcement order or the court's abandonment of the enforcement request if it is not decided, which is stipulated in Article 1058 of Law 08/09 mentioned above.

The appeal of the judge's order, whether granting or refusing recognition or enforcement, results in the suspension of the enforcement of the arbitral award until the appeal is decided, and the rejection of the appeal filed before the judicial authorities necessarily entails the automatic granting of the executive version of the arbitral award²⁶.

Second Requirement: Appealing against the annulment of the Algerian arbitration award and the cassation appeal.

Through this requirement, we will first address the appeal for annulment of an international commercial arbitration award issued in Algeria. In the second section, we will then examine the cassation appeal.

Firstly: Appealing against the annulment of the Algerian arbitration award.

Pursuant to Article 1058, the Algerian legislator allows an arbitration award to be appealed for nullity under the conditions stipulated in Article 1056. However, an international arbitration award is not subject to all appeal methods, contrasting with the treatment of domestic arbitration awards in Articles 1032, 1033, and 1034 of

Law 08/09. An international arbitration award can only be appealed for nullity on the grounds specified in Article 1056 for appealing an enforcement order, provided the award was issued in Algeria.

Based on the text of Article 1058 of the same law and examining its wording, it is clear that the cases for invalidating an international arbitration award are limited and cannot be extended by analogy. It is not permissible to base an invalidation claim on grounds other than those specified in Article 1056. This approach is also adopted by the majority of legislators, including the Egyptian legislator, who specified special cases for invalidation of an international commercial arbitration award. Some cases are similar to those of the Algerian legislator, while others differ, such as issuing the arbitration award orally without a written form²⁷.

According to Article 1058 of the same law, the invalidity appeal must be filed before the judicial council in whose jurisdiction the arbitral award was issued. The legislator has established both a time limit for filing the invalidity appeal. The minimum time limit for accepting the invalidation of the arbitral award is from the date of its pronouncement until one month after the official notification of the order to enforce the award, issued by the president of the competent court. An appeal outside this deadline, whether before the issuance of the arbitration award or after the expiration of the one-month period following the official notification of the enforcement order, is inadmissible. The competent judicial authority can only proceed in two ways: either by rejecting the appeal after confirming that the arbitration

award was issued in Algeria, establishing its internationality, and verifying the grounds for challenging the invalidity as described in Article 1056, or by considering various matters that may lead to rejecting the appeal on formal or substantive grounds. This ultimately results in the enforcement of the international arbitration award.

The judicial body competent to consider the challenge to the nullity of the international arbitration award may respond. However, it does not consider the substance of the dispute or examine the requests of the arbitration parties. It is sufficient to examine the reasons for the nullity of the award as stipulated in Article 1056. Addressing the subject matter by the appellate body, as specified in Article 1059, exceeds the litigation at two levels and violates this right. The challenge to the nullity of the arbitration award is considered an appeal against the enforcement order of the arbitration award. The nullity appeal is filed after the appeal against the enforcement order. When this happens, the judicial body hearing the appeal must halt ruling on the enforcement order appeal. It appears the legislator linked the appeal of the nullity of the arbitration award with the appeal against the enforcement order because the outcome of the invalidity case affects the appeal if it is filed. The legal text provides for two cases. The first case is the unification of the body that hears both the appeal of the enforcement order and the appeal of the nullity of the arbitration award. This occurs if the place of execution or conclusion of the arbitration award is the same as the place of its issuance, ensuring the same

judicial body is competent to hear both appeals. The second case involves different judicial bodies. In this scenario, the opponent who files an appeal against the nullity of the arbitral award must argue before the party hearing the appeal against the enforcement order to suspend the decision until the appeal against the nullity of the arbitral award is resolved. This is relevant for appeals against enforcement orders and orders refusing to enforce the arbitral award. Filing an appeal for the annulment of the international arbitral award by a person who also filed an appeal against the order of refusal to enforce the arbitral award results in a request for the annulment of the arbitral award²⁸.

The Algerian legislator, similar to some other legislators, has not addressed the impact of the nullity of the arbitration award. Dr. Ahmed El-Sayed El-Sawy opines that the parties to the arbitration dispute remain bound by their agreement to resort to arbitration, provided the nullity ruling is not based on the invalidity of the arbitration agreement due to the absence of one of its essential elements or conditions of validity. The nullity can affect only the part of the award that is invalidated, if it can be separated from the other parts of the award²⁹.

Secondly: Appeal in cassation.

After submitting an appeal or annulment appeal, as specified in Articles 1055, 1056, and 1058, the competent body issues its decision either by rejecting or granting the appeal. In both cases, there is a party dissatisfied with the decision. The legislator allows litigants to challenge this decision by appealing it by cassation before the Supreme Court. However, the legislator did not clarify the time limits for this

cassation appeal. Legal logic suggests referring to the general rules regarding cassation appeal time limits in the absence of a specific legal text. The closest reference is the time limits for cassation appeals in the same chapter on arbitration provisions. It is safer to resort to the provisions of internal arbitration, where the legislator authorized cassation appeals against judgments issued in the appeal of internal arbitration provisions, as per Article 1034³⁰.

Conclusion :

Arbitration is an alternative means of resolving disputes between individuals, chosen for several reasons, including the ability to appoint arbitrators to settle disputes arising from their contracts, provided the subject matter is capable of settlement through arbitration. The arbitrators' work concludes with the issuance of the arbitral award. For international commercial arbitration awards, they are either voluntarily executed by the parties, which is the norm, or one party refuses, necessitating enforcement. In such cases, the state judiciary intervenes to recognize and implement the arbitrator's judgment. Through our study of the subject, we concluded the following results:

- The Algerian legislature requires that an international commercial arbitration award must not contravene international public order for it to be recognized.
- International commercial arbitration awards are recognizable and enforceable whether issued inside or outside Algeria.
- The refusal to recognize and enforce arbitral awards issued in Algeria or

abroad can be appealed within 15 days from the date of refusal before the Judicial Council.

- The enforcement order for an international arbitration award issued outside Algeria can only be appealed if one of the cases stipulated in Article 1056 of Law 08/09 on Civil and Administrative Procedures is met.
- The nullity of an international commercial arbitration award rendered in Algeria can be challenged if the conditions stipulated in Article 1056 are met.
- The enforcement of an international commercial arbitration award issued in Algeria cannot be appealed. The only recourse is to challenge the nullity of the award, which by law entails an appeal against the enforcement order or the court's abandonment of the enforcement application if it has not been decided.
- Filing any of the aforementioned appeals results in the suspension of the enforcement of the arbitration award until the appeals are resolved.
- All decisions rendered on appeals are subject to cassation appeal.

We have also formulated several suggestions :

- Legal texts related to international arbitration provisions should be reviewed to better align them with technological advancements in international trade.
- A special law for international commercial arbitration should be considered, separate from the Code

of Civil and Administrative Procedure.

- Procedural issues related to international commercial arbitration should be elaborated on to reduce the need for frequent legislative referrals.

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