



Enforcement of the Arbitral Award in Terms of Place

Douniazed LAHRACHE *

Faculty of Law, University of Algiers 1
d.lahrache@univ-alger.dz

Received: 29- 04- 2026

Accepted: 08- 08- 2026

Published: 22- 09- 2026

Abstract:

This research paper highlights the importance of arbitration as an alternative means of dispute resolution outside the traditional court system, given its advantages of speed, flexibility, and confidentiality in settling disputes. The paper examines the concept of arbitration from both a linguistic and technical perspective, considering it as an agreement between parties to a legal relationship to submit their dispute to arbitrators of their own choosing for resolution. It also explains the reasons for resorting to arbitration, particularly to avoid the slowness of judicial proceedings and the complexities and appeals that may accompany them.

Furthermore, the paper discusses the different types of arbitration, whether domestic or international, while emphasizing its main characteristics and procedures, such as the confidentiality of deliberations and the issuance of awards by majority vote. It also addresses the enforcement of arbitral awards and its importance in ensuring the effectiveness of the arbitration system. In this context, the study examines the legal rules governing the recognition and enforcement of arbitral awards, especially within the framework of the New York Convention of 1958.

The study concludes that the success of the arbitration system depends primarily on the extent to which arbitral awards are recognized and enforced in different states.

Keywords: Arbitration, Arbitral Awards Enforcement, New York Convention, International Commercial Disputes.

* Corresponding author



Introduction:

Arbitration is considered one of the alternative methods of dispute resolution, and it has been known since ancient times among the Greeks, Romans, and Arab Muslims, which demonstrates the historical roots and significance of this mechanism in achieving justice outside the framework of traditional courts. Linguistically, arbitration derives from the verb meaning “to appoint someone as judge,” and it refers to requesting a decision from a person entrusted with settling a dispute. It also conveys the meaning of delegation in rendering judgment between disputing parties.

The origin of this meaning appears in the Holy Qur'an in the verse: “But no, by your Lord, they will not truly believe until they make you judge concerning that over which they dispute among themselves.” This means appointing a judge to decide disputes and conflicts that arise between them. In legal terminology, arbitration means an agreement between parties to a specific legal relationship to submit disputes that have already arisen, or that may arise in the future, to one or more persons chosen as arbitrators to render a binding decision.

Recourse to arbitration is often motivated by several practical considerations, foremost among them avoiding the submission of disputes to ordinary courts, whose procedures may be characterized by delay, complexity, multiple levels of litigation, and the possibility of appeals. In addition, judicial enforcement may involve obstacles, procrastination, and lengthy procedures. Hence the common saying that delayed justice is a form of injustice. Arbitration is also distinguished by the fact that it is based on the will of the parties and their participation in selecting arbitrators and determining procedures, making it less adversarial than ordinary judicial litigation, where each party seeks victory over the other.

Arbitration is also regarded as an effective and suitable mechanism for resolving disputes arising from the performance of contracts, particularly commercial and investment contracts linked to economic development, due to the speed, flexibility, and technical expertise it offers. It is further characterized by confidentiality, as hearings are generally conducted in private and attended only by the parties and those directly concerned, thereby preserving business secrets and commercial interests.



Arbitration may be domestic when it concerns a dispute whose elements are entirely connected to one state, where national arbitrators are appointed and national procedural rules apply. It may also be international when the dispute is connected to more than one state through its parties, subject matter, or place of performance. In such cases, more complex legal issues arise, including the determination of the applicable law, the seat of arbitration, the nationality of arbitrators, and the procedural rules to be followed.

The deliberations of the arbitral tribunal are confidential, and arbitral awards are generally issued by majority vote and signed by the arbitrators. Such awards acquire the authority of *res judicata* upon their issuance with respect to the dispute decided. However, an important question arises in this context: **is the binding force of an arbitral award sufficient for its direct enforcement? And how are arbitral awards enforced in terms of place, whether within the state where the award was rendered or abroad?**

The recognition and enforcement of arbitral awards are provided for in the third section of Chapter Two of the Code of Civil and Administrative Procedure, under the title Special Provisions on International Commercial Arbitration.

After the arbitral award is rendered, enforcement is generally sought voluntarily by the party against whom the award has been made. In the event of refusal, however, the successful party is compelled to seek compulsory enforcement. The primary objective of arbitration is the issuance of an award, yet such an award would have neither legal nor practical value if it remained merely a written decision incapable of enforcement.

Indeed, the success of the arbitration system as a whole, and the recognition of its superiority as a method for resolving disputes of an international nature, is particularly reflected in the enforcement of arbitral awards outside the state in which they were rendered. The effectiveness of arbitration therefore depends largely on the extent to which its awards are enforced.¹

The general rule is that the parties respect the arbitral decision or award and that the losing party complies with it voluntarily. Refusal or delay in enforcement remains the exception. Voluntary enforcement also preserves one of the most

¹- Mohammed Ali Salem Jassim, Abbas Talib Razuqi, *The Legal System for the Enforcement of International Commercial Arbitral Awards*, *Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences*, Vol. 7, No. 2, University of Babylon, Iraq, 2015, p. 112.



important advantages of arbitration, namely the complete confidentiality of the dispute.

The enforcement of an arbitral award is not considered part of the arbitral proceedings themselves; however, it is closely connected to them, since the validity and regularity of the arbitral process constitute an essential condition for the enforcement of the award by the competent courts. If the arbitral proceedings are affected by serious irregularities or legal defects, this may lead to the refusal of enforcement of the arbitral award.

In practice, arbitral awards, whether domestic or international, often encounter several obstacles to their enforcement. Some of these obstacles arise from errors committed by the arbitrators during the conduct of the proceedings or in rendering the award, while others are linked to the law governing the dispute or to the law of the state where enforcement is sought, which may impose specific requirements and procedures.

With regard to the difficulties affecting the enforcement of foreign arbitral awards, the New York Convention of 1958 was adopted to govern the recognition and enforcement of foreign arbitral awards, and it has been ratified by most states worldwide. This Convention constitutes the most important international legal framework in this field. Its purpose was to facilitate the enforcement of foreign arbitral awards and to overcome the obstacles that had previously hindered their cross-border effectiveness.²

Accordingly, arbitrators or arbitral tribunals, as well as the parties to the dispute, must take into consideration the issue of enforcement from the moment the arbitration agreement is concluded, throughout the proceedings, and when

² - Before this Convention, there had been numerous initiatives and agreements in the field of arbitration, and many others were concluded after it. Nevertheless, the New York Convention remains one of the most important instruments and a cornerstone of the general principles of arbitration. Arbitration had already attracted attention during the Hague Peace Conferences, particularly through the provisions relating to the peaceful settlement of international disputes.

Article 13 of the League of Nations Covenant also recognized arbitration as a means of resolving international disputes, which were often related to the interpretation of international treaties. Subsequently, the legal framework was strengthened by the Geneva Protocol on Arbitration Clauses, the Geneva Convention on the Execution of Foreign Arbitral Awards, the New York Convention, the European Convention on International Commercial Arbitration, and the ICSID Convention relating to investment disputes between states and nationals of other states.

Within the Arab regional framework, several agreements were also concluded, most notably the Riyadh Arab Agreement for Judicial Cooperation.



drafting and issuing the award. This is necessary in order to avoid the situation where the parties later discover that the award is unenforceable under the law of the state where enforcement is sought, thereby rendering the award practically useless, with the party seeking arbitration becoming the principal victim.

The regulation of the recognition and enforcement of foreign arbitral awards is largely attributed to this Convention, which has become, for more than sixty years, one of the fundamental pillars of international arbitration enforcement, to the extent that it has been described as a global legal instrument applied in most contracting states.

Furthermore, this Convention replaced both the Geneva Protocol on Arbitration Clauses and the Geneva Convention on the Execution of Foreign Arbitral Awards with respect to states that had been parties to those instruments and subsequently acceded to the New York Convention.³

Article I of the Convention provides that: “The present Convention shall apply to the recognition and enforcement of arbitral awards made in the territory of a State other than the State where the recognition and enforcement of such awards are sought, and arising out of disputes between natural or legal persons. It shall also apply to arbitral awards not considered as domestic awards in the State where their recognition and enforcement are sought.”

Recognition of arbitral awards means that the arbitral decision or award has been validly rendered and is binding upon the parties. Recognition does not necessarily mean that the award is enforceable, since an award may be recognized without being executed. However, if the award is enforced, it is necessarily because it has first been recognized by the judicial authority that granted it enforceability.⁴

Recognition does not imply coercing the losing party to comply with the substance of the award; rather, it means that the judicial authority acknowledges the foreign arbitral award as legally valid. Such recognition signifies that the award is binding, carries the authority of *res judicata*, and that the matters definitively decided therein may not be reconsidered either by the courts or through further arbitration proceedings.

³ - Ashraf Wafa Mohamed, *Al-Waseet fi al-Qanun al-Dawli al-Khas (The Intermediate Treatise on Private International Law)*, Dar Al-Nahda Al-Arabiya, Cairo, 2009, p. 722.

⁴ - Fawzi Mohammad Sami, *International Commercial Arbitration*, Dar Al-Thaqafa, 5th ed., 2010, p. 359.



THE FIRST TOPIC : Conditions And Procedures for The Recognition and Enforcement of Arbitral Awards

Once an international arbitral award is rendered, it acquires the authority of *res judicata*, even before an enforcement order is issued, provided that it satisfies the formal requirements of validity. Such an award may be enforced either in the state where it was rendered or in another state, provided that the competent authorities grant it enforceability.⁵ For this reason, the discussion will address the conditions for the enforcement of arbitral awards as well as the relevant procedures.

FIRST REQUIREMENT: Conditions For the Enforcement of Arbitral Awards

The rules governing the enforcement of domestic judgments are generally the same as those applicable to the enforcement of international arbitral awards. This is because the New York Convention did not specifically determine the substantive conditions for enforcing international arbitral awards, but rather left this matter to domestic legal systems.

Nevertheless, the Convention established an important principle by requiring contracting states not to discriminate between international arbitral awards and domestic arbitral awards. This is reflected in the prohibition against imposing more burdensome conditions for the recognition and enforcement of international arbitral awards than those applied to domestic awards.⁶

Accordingly, Algerian law has provided both positive and negative conditions for enforcement under Article 1056 of the Code of Civil and Administrative Procedure.

Preface on the first requirement and the issues to be addressed.

Firstly : Positive Conditions for the Enforcement of an Arbitral Award

Article 1051 of the Code of Civil and Administrative Procedure provides that: “International arbitral awards shall be recognized in Algeria if the party relying upon them proves their existence, provided that such recognition is not contrary to public policy ...”

⁵ “The authority of *res judicata* is a characteristic attached to a final judgment that is no longer subject to appeal through ordinary methods of challenge.” — Ali Mustafa Malham & Fouad Deeb, *Enforcement of the Arbitral Award*, Al-Baath University Journal, Vol. 37, No. 6, 2015, p. 203.

⁶ Article 3, paragraph 2, of the New York Convention, ratified by Algeria through Decree No. 88/233, subject to reservations.



1- Proof of the Existence of the Arbitral Decision or Award

This condition is of a material nature, requiring the party asserting the existence of the award to produce the original award, together with the arbitration agreement, or certified copies thereof satisfying the legal requirements of validity.⁷

2- The Recognition or Enforcement Must Not Be Contrary to Public Policy:⁸

The requirement that recognition or enforcement must not be contrary to public policy is considered one of the fundamental conditions for the recognition and enforcement of arbitral awards. This condition is also established under the New York Convention, particularly in Article V(2), which allows the requested state to refuse recognition or enforcement if it would be contrary to its public policy.

The concept of public policy is characterized by its flexibility, variability, and broad scope. It differs from one state to another according to each country's legal, social, economic, and moral values. For this reason, states often invoke public policy in order to protect their essential interests and fundamental principles.

Under Algerian law, arbitration is permitted in matters involving financial rights over which individuals have full power of disposal, while matters relating to personal status and legal capacity are excluded, since they are considered issues connected to public policy and therefore not capable of settlement by arbitration.

In the field of international arbitration, the relevant notion is not limited to domestic public policy, but also extends to international public policy, which reflects respect for fundamental principles commonly recognized among states, rules of justice, and standards of good faith in international dealings. The protection of these principles constitutes a cornerstone in the recognition and enforcement of foreign awards.

⁷ - Article 1052 provides that: "An arbitral award shall be proved by submitting the original award together with the arbitration agreement, or copies thereof satisfying the conditions of validity."

⁸ - Article 1006 of the Code of Civil and Administrative Procedure, and Article 37, paragraph 2, of the Riyadh Arab Agreement for Judicial Cooperation.



At the regional level, the Riyadh Arab Agreement for Judicial Cooperation also requires that arbitral awards must not contravene the principles of Islamic Sharia, public morals, or public policy.

The concept of international public policy has generated significant scholarly debate regarding its legal nature: whether its rules derive from autonomous international sources or whether they are simply domestic public policy rules applied to international relationships. The prevailing view holds that the rules of international public policy are not international rules in the strict sense, but rather domestic public policy rules of the state where enforcement is sought, which apply whenever a foreign element is involved. These rules are mandatory and occupy a superior rank within the legal system of the enforcing state, as they reflect that state's national conception of fundamental values and determine what is considered acceptable or unacceptable within its legal order.⁹

3 – Reciprocity Requirement:

The reciprocity requirement is one of the conditions adopted by the majority of states, particularly in the field of international arbitration. According to this principle, a foreign arbitral award may not be recognized or enforced unless the state in which the award was rendered likewise accepts the recognition and enforcement of national awards issued by the state where enforcement is sought.

This requirement aims to ensure balance in international legal relations and to guarantee mutual respect for judgments and decisions among states, thereby promoting judicial cooperation and equal treatment. In this context, Algeria ratified the New York Convention, but such ratification was made subject to reservations, including the application of the Convention within the limits of the reciprocity principle.

Secondly: Negative Conditions for the Enforcement of an Arbitral Award

These are conditions that must not be present in an international arbitral award. They are set out in Article 1056 of the Code of Civil and Administrative Procedure, which provides six grounds on which enforcement may be refused.

1 – Invalidity of the Arbitration Agreement

⁹ - Nour Eddine Bekli, *Enforcement of International Commercial Arbitral Awards and Means of Challenge under Algerian Law*, *Supreme Court Journal*, No. 2, 2013, p. 82.



An arbitration agreement is defined as the agreement of the contracting parties to submit their disputes to arbitration. This agreement must exist prior to the rendering of the award and must not have expired if it was concluded for a fixed term. It must also be valid; for example, it must be in writing, since writing is a requirement for the validity of the agreement and not merely for evidentiary purposes. Likewise, the agreement must not be affected by any defect of consent, such as mistake, fraud, or duress, including error concerning the arbitral institution.

2 – Irregular Constitution of the Arbitral Tribunal or Defective Procedure

This condition requires that the arbitral tribunal be complete and properly constituted in accordance with the agreement of the parties. Any defect in its constitution may constitute a ground for setting aside the arbitral award and, consequently, refusing its enforcement. In this respect, priority is given to party autonomy. If the parties have agreed on a specific method for constituting the tribunal or have referred to a particular arbitral system, such agreement must be respected, provided that it does not violate fundamental procedural guarantees.

3 – If the Tribunal Decided Beyond the Scope of Its Mandate

The arbitrator must comply with the terms of the arbitration agreement and may not exceed the authority conferred therein. If the tribunal rules on matters not submitted to arbitration, or exceeds the limits of its mandate, the resulting award may be considered invalid. Therefore, the judge in the state where enforcement is sought must verify whether the award was rendered within the scope of the arbitration agreement.

4 – Observance of the Adversarial Principle

The adversarial principle is a fundamental procedural principle, and failure to respect it may lead to the refusal of enforcement of the award, whether the arbitral award is domestic or international. This principle is reflected in the respect for the rights of defense and in granting each party the opportunity to present its arguments and observations, either personally or through its representatives. Since this principle forms part of public policy, the parties may not validly agree to derogate from it.¹⁰

5 – Reasoning of the Award and Absence of Contradictory Grounds

¹⁰ Article 458 bis of the Code of Civil and Administrative Procedure.



The reasoning of an arbitral award, through the presentation of the arguments and legal grounds relied upon by the arbitrators in rendering their decision, facilitates the task of the judge when recognizing and enforcing the award. It also enables judicial review of the award and contributes to convincing the losing party, which may encourage immediate voluntary compliance with the award.

SECOND REQUIREMENT: Procedures for the Recognition and Enforcement of Arbitral Awards

In addition to acquiring binding force and the authority of *res judicata*, an arbitral award obtains enforceability once an enforcement order is granted and the executory formula is affixed to it.¹¹

Algerian law refers the rules governing international arbitration to the provisions applicable to domestic arbitration through Article 1054 of the Code of Civil and Administrative Procedure, while also establishing certain specific rules required for international arbitral awards.

The President of the court within whose territorial jurisdiction the award was rendered is competent to issue the enforcement order, pursuant to Article 1035 of the Code of Civil and Administrative Procedure. In the case of international arbitration, jurisdiction may also belong to the court within whose territorial jurisdiction enforcement is sought.¹² The term “court” here refers to the court of first instance. The enforcement order is issued *ex parte*, without adversarial proceedings. The party seeking enforcement must deposit the original arbitral award with the registry of the court, together with a copy of the arbitration agreement. Enforcement cannot be granted unless such deposit has been made before the competent judicial authority.

Entrusting the President of the court with the power to issue the enforcement order pursues an objective similar to that underlying arbitration itself, namely the swift settlement of disputes. The law associates this notion of speed with the President of the court, who is the judge traditionally competent to deal with urgent matters.

¹¹- Al-Hussein Al-Salmi, *Arbitration and State Judiciary (A Comparative Foundational Academic Study)*, University Institution for Studies, Publishing and Distribution, 2008, p. 470.

¹²- Khalil Bousenbora, *The Arbitral Award and Means of Challenge under Algerian Law*, Doctoral Dissertation, Mentouri University, 2007/2008, p. 139.



Firstly: Procedures for Applying for the Enforcement of an Arbitral Award and Required Documents

The deposit of the arbitral award before the competent judicial authority is generally made by the party in whose favor the award was rendered, since that party has the greatest interest in expediting enforcement. However, nothing prevents the losing party from making such deposit if it wishes to comply voluntarily with the award and discharge the obligations imposed upon it. The deposit is made by submitting the original arbitral award or a duly certified copy thereof, together with the original arbitration agreement or a copy thereof. If the award or the arbitration agreement is drafted in a language other than Arabic, both documents must be accompanied by an official translation into Arabic certified by an authorized body, in accordance with the relevant legal provisions.

Nevertheless, the mere deposit of the award and supporting documents is not sufficient in itself to confer enforceability. A formal application must be submitted to the competent court in order to obtain an enforcement order, since the court does not act on its own initiative but only upon request of the interested party. The formal service of this application marks the commencement of the legal time limits relating to appeals against the arbitral award or against the decision concerning its enforcement. The application must be accompanied by the following documents: the original arbitral award or a recognized copy thereof, the original arbitration agreement or a copy thereof, an official Arabic translation where necessary, and a copy of the record evidencing the deposit of these documents. The powers of the judge competent to issue the enforcement order are limited to verifying the formal and procedural regularity of the award and ensuring compliance with the legal requirements. If the judge discovers any serious defect leading to nullity, he or she must refuse to grant enforcement.

Secondly: Enforcement Disputes and Suspension of Proceedings

Disputes may arise during the enforcement of an arbitral award. Such disputes are generally divided into substantive disputes and interim disputes. Substantive disputes are those in which the claimant seeks a final determination regarding the validity or invalidity of enforcement itself. Interim disputes, by contrast, are those in which the claimant seeks a temporary measure pending a final decision on the merits, such as an order staying enforcement. Algerian law allows such suspension of enforcement procedures in order to preserve the rights of the parties until the dispute is resolved.



Compulsory enforcement of arbitral awards may therefore be suspended if the beneficiary of the enforceable title, the party against whom enforcement is sought, or any third party with a legitimate interest raises an objection to enforcement. In such a case, the judicial officer draws up a report concerning the objection and invites the parties to bring the matter before the President of the court within whose territorial jurisdiction enforcement is taking place, through urgent proceedings, in accordance with the law. If the judicial officer refuses to draft such report, the concerned party may file an urgent application before the President of the court on an hour-to-hour basis, summoning the judicial officer and the other parties to appear.

The filing of the objection results in the suspension of enforcement proceedings until the matter is decided, within a maximum period of fifteen days from the date the action is brought, by a reasoned order not subject to appeal. If the objection is dismissed, the judge orders the continuation of enforcement and may impose on the claimant a civil fine of not less than thirty thousand Algerian dinars, without prejudice to any civil damages that may be awarded to the opposing party.¹³

THE SECOND TOPIC: Means of Challenging the Enforcement Order

Algerian law follows the approach adopted under French law, as it distinguishes, with regard to means of challenge, between foreign arbitral awards rendered within the national territory and those rendered outside the national territory. Each category is therefore subject to specific legal rules. In addition, the question arises as to the legal effects resulting from a challenge against the enforcement order.

Accordingly, this section addresses, first, the means of challenge against international arbitral awards rendered inside and outside Algeria, and second, the effects resulting from challenging the enforcement order.

FIRST REQUIREMENT: Means of Challenging International Arbitral Awards

International arbitral awards may be rendered either within the national territory or abroad. Each category shall be examined separately as follows:

Firstly: International Arbitral Award Rendered in Algeria

¹³– Sofiane Soualem, *Alternative Methods for the Resolution of Civil Disputes under Algerian Law*, Doctoral Dissertation, Mohamed Khider University of Biskra, 2013/2014, p. 266.



Where an international arbitral award is rendered in Algeria, it is not subject to compulsory enforcement except pursuant to an enforcement order issued by the competent judicial authority. In this case, the enforcement order is not subject to any means of challenge, in accordance with Article 1058(2) of the Code of Civil and Administrative Procedure.

The provision states as follows: **“No appeal shall lie against the order granting enforcement of the above-mentioned international arbitral award.”**

However, an action for annulment may be brought against the international arbitral award rendered in Algeria. In other words, the challenge is directed against the arbitral award itself and not against the enforcement order. Nevertheless, such action automatically entails, by operation of law, an indirect challenge to the enforcement order.

The international arbitral award rendered in Algeria may therefore be challenged by an action for annulment, which must be brought directly before the Court of Appeal having territorial jurisdiction over the place where the award was rendered. The time limit of one month begins to run from the date of service of the enforcement order, pursuant to Article 1059 of the same Code.

Secondly: Means of Challenging an International Arbitral Award Rendered Outside Algeria

An international arbitral award rendered outside the national territory is not subject to any means of challenge in Algeria, being the state where enforcement is sought, whether by an action for annulment or by any other ordinary or extraordinary remedy.

However, such an award cannot be enforced in Algeria except by virtue of an enforcement order issued by the President of the court having jurisdiction over the place of enforcement, as provided for under Article 1051 of the same Code.

The President of the court,¹⁴ while examining the application for an enforcement order, may ultimately issue one of two possible orders, which may be outlined as follows:

See the decision rendered on **05/05/2011**, No. **662514**, published in the Supreme Court Journal, Issue No. 1, ¹⁴

2013, p. 183, which stated as follows:

“An international arbitral award rendered outside the national territory is not subject to any action for annulment or modification before the Algerian judicial authorities.”

See also the decision rendered on 29/12/2004, No. 326706, published in the Supreme Court Journal, Issue No. 2, 2004, p. 154, which stated as follows: “Whereas the respondent argued that the appeal against the order authorizing enforcement of the arbitral award was inadmissible, relying on Article 458 bis 25, paragraph 2, which provides that no appeal shall lie against the order authorizing enforcement of the arbitral award; however, the



1- Issuance of an Order Refusing Enforcement

The President of the competent court may issue an order refusing the enforcement of the international arbitral award. Such an order is subject to appeal, as provided by Article 1055 of the Code of Civil and Administrative Procedure. This was also established under Article 22 of Legislative Decree No. 93/09 of 25 April 1993 relating to international arbitration.

Article 1055 states as follows: **“An order refusing recognition or refusing enforcement shall be subject to appeal.”**

The appellant challenging an order refusing enforcement must base the appeal on the argument that the refusal order was not founded on one of the grounds provided for in Article 1056 of the same Code, or that it was not based on one of the grounds for refusal set out in the New York Convention.

It should be noted that the Algerian legislator has recognized that an appeal has a suspensive effect on enforcement. However, while the legislator expressly limited the grounds upon which an appeal may be brought against an order granting enforcement, no equivalent limitation was expressly stated regarding appeals against an order refusing enforcement.¹⁵

Accordingly, it may be argued that the judge may not issue an order refusing enforcement except on one of the grounds expressly provided for in Article 1056, or on one of the grounds for refusal set forth in the New York Convention.

2- Issuance of an Order Granting Enforcement

The President of the competent court may also, after considering the application, issue an order granting enforcement.

The person against whom the order is issued may appeal it before the Court of Appeal. However, such an appeal shall only be admissible if it is based on one of the six grounds listed in Article 1056 referred to above. The appeal must be filed within one month from the date of notification of the enforcement order issued by the President of the court.

respondent's criticism of the challenged decision is unfounded, because the prohibition established by this provision concerns only the order authorizing enforcement of an arbitral award rendered in Algeria, and does not apply to an order enforcing an arbitral award rendered in a foreign country...”

¹⁵- Aadja El Djilali, *Judicial Review of International Commercial Arbitration*, *Supreme Court Journal*, No. 1, 2006, p. 129. Aadja El Djilali, *Judicial Review of International Commercial Arbitration*, *Supreme Court Journal*, No. 1, 2006, p. 129.



The order issued by the President of the court, whether granting or refusing enforcement, may in principle be challenged through annulment proceedings before the same judicial authority from which the order was issued.

It goes without saying that appeal is ordinarily available only against judicial judgments deciding disputes between litigating parties. Nevertheless, Algerian law distinguishes unilateral judicial orders issued by way of refusal, allowing them to be appealed before the Court of Appeal, pursuant to Article 312 of the same Code. Such appeals are decided in accordance with the procedures applicable to *ex parte* orders.

SECOND REQUIREMENT: Means of Challenging the Enforcement Order

Algerian law follows the approach adopted under French law, as it distinguishes, with regard to means of challenge, between foreign arbitral awards rendered within the national territory and those rendered outside the national territory. Each category is therefore subject to specific legal rules. In addition, the question arises as to the legal effects resulting from a challenge against the enforcement order.

Accordingly, this section addresses, first, the means of challenge against international arbitral awards rendered inside and outside Algeria, and second, the effects resulting from challenging the enforcement order.

Firstly :Means of Challenging International Arbitral Awards

International arbitral awards may be rendered either within the national territory or abroad. Each category shall be examined separately as follows:

1 – International Arbitral Award Rendered in Algeria

Where an international arbitral award is rendered in Algeria, it is not subject to compulsory enforcement except pursuant to an enforcement order issued by the competent judicial authority. In this case, the enforcement order is not subject to any means of challenge, in accordance with Article 1058(2) of the Code of Civil and Administrative Procedure.

The provision states as follows: **“No appeal shall lie against the order granting enforcement of the above-mentioned international arbitral award.”**

However, an action for annulment may be brought against the international arbitral award rendered in Algeria. In other words, the challenge is directed against the arbitral award itself and not against the enforcement order. Nevertheless, such action automatically entails, by operation of law, an indirect challenge to the enforcement order.



The international arbitral award rendered in Algeria may therefore be challenged by an action for annulment, which must be brought directly before the Court of Appeal having territorial jurisdiction over the place where the award was rendered. The time limit of one month begins to run from the date of service of the enforcement order, pursuant to Article 1059 of the same Code.

2 – Means of Challenging an International Arbitral Award Rendered Outside Algeria

An international arbitral award rendered outside the national territory is not subject to any means of challenge in Algeria, being the state where enforcement is sought, whether by an action for annulment or by any other ordinary or extraordinary remedy.

However, such an award cannot be enforced in Algeria except by virtue of an enforcement order issued by the President of the court having jurisdiction over the place of enforcement, as provided for under Article 1051 of the same Code.¹⁶

Orders granting the application, however, are challenged by means of an action for annulment before the same judicial authority that issued the order, in accordance with Article 312 of the same Code.

Accordingly, an order granting enforcement of an international arbitral award rendered within the national territory is not subject to any ordinary means of challenge. Nevertheless, it may be challenged indirectly where an action for annulment is brought against the international arbitral award rendered in Algeria. In such a case, the annulment action simultaneously and by operation of law constitutes a challenge to the enforcement order.

As for an order granting enforcement of an international arbitral award rendered outside the national territory, it may be challenged by appeal before the Court of Appeal. However, such appeal shall not be admissible unless it is based on one of the grounds provided for in Article 1056 referred to above.

Secondly: Section Two: Effects Resulting from Challenging the Arbitral Award or the Enforcement Order

An action for annulment brought against an international arbitral award rendered in Algeria, or an appeal filed against the order granting enforcement, has a suspensive effect, pursuant to Article 1060 of the Code of Civil and

¹⁶ See the decision rendered on 17/02/2011, No. 652841, published in the Supreme Court Journal, Issue No. 2, 2011, p. 122, which stated as follows: "Whereas the order issued at the foot of the petition constitutes an ex parte judicial act, and consequently falls within the jurisdiction of the President of the Court of Appeal, in accordance with the procedures governing ex parte matters. Therefore, his jurisdiction to examine it is determined within the framework of his unilateral judicial powers. Whereas deciding this appeal by the Civil Chamber, according to the procedures applicable to appeals against judicial judgments rendered in disputes between opposing parties, constitutes a violation of Article 312 of the Code of Civil and Administrative Procedure."



Administrative Procedure. Accordingly, the remedies provided for under Articles 1055, 1056, and 1058 of the same Code result in the suspension of enforcement.

Consequently, compulsory enforcement may not commence until the expiry of the time limits for filing an action for annulment or an appeal.

Likewise, as long as the time limits for bringing such challenges are still running and have not yet expired, enforcement remains suspended as a legal effect thereof.

1- Conditions for an Arbitral Award to Acquire Enforceability

An arbitral award cannot be granted enforceability unless a number of legal requirements and procedural formalities have been fulfilled. The Chief Registrar of the court may issue the executory formula to the successful party only after the submission of the enforcement order, proof of its formal service, and a certificate confirming that no action for annulment or appeal has been filed within the statutory time limits. The period for challenge begins to run from the date of notification of the enforcement order. Once this period expires without any challenge being lodged, the award acquires enforceable status, enabling the successful party to initiate compulsory enforcement proceedings. The award may also become enforceable earlier if it is subject to provisional enforcement, if the parties have waived their right of appeal, or if they have agreed from the outset that the award shall be final.

2- Effect of Challenges on the Enforcement of the Arbitral Award

An action for annulment against the arbitral award, or an appeal brought against the enforcement order, has a suspensive effect consisting in the suspension of compulsory enforcement proceedings until the challenge is decided or the statutory time limits expire. This effect is intended to safeguard the rights of the party against whom enforcement is sought by granting an opportunity to seek review of the award or judicial order. However, such a system may in certain cases undermine the effectiveness of arbitration, since some parties may use remedies of challenge merely as a means of delay and procrastination. This runs contrary to the fundamental purpose of arbitration as a swift and efficient mechanism for resolving disputes outside the ordinary courts.

3- Distinction Between International Arbitral Awards Rendered Inside and Outside the Country

The available means of challenge differ depending on the place where the international arbitral award was rendered. If the award is rendered in Algeria, it cannot be compulsorily enforced unless an enforcement order is issued. Such order



is not subject to direct challenge; however, it may be challenged indirectly through an action for annulment brought against the arbitral award itself before the competent Court of Appeal. By contrast, if the award is rendered outside Algeria, it likewise cannot be compulsorily enforced except through an enforcement order. The foreign award itself is not subject to challenge before Algerian courts, but the order granting its enforcement may be appealed before the Court of Appeal, provided that the appeal is based on one of the legally recognized grounds for refusing enforcement.¹⁷

Conclusion:

It is clear from this study that the enforcement of an arbitral award, although not considered part of the arbitral proceedings themselves, is closely connected to them. The effectiveness of arbitration is not achieved merely by the issuance of an award, but rather by its ability to produce practical legal effects through recognition and enforcement. If the arbitral proceedings are defective or violate fundamental legal rules, this will often lead to the refusal of enforcement by the competent judicial authorities, thereby depriving arbitration of its legal and practical value. Arbitral awards, whether domestic or international, also encounter numerous difficulties, some resulting from errors committed by arbitrators or poor case management, while others are linked to the applicable law or to the law of the state where enforcement is sought.

The New York Convention of 1958 has constituted the principal international framework for facilitating the recognition and enforcement of foreign arbitral awards, as it has helped remove many of the obstacles that previously hindered cross-border enforcement. Accordingly, arbitrators and parties to the dispute must consider the issue of enforcement from the moment the arbitration agreement is concluded, throughout the proceedings, and when rendering the award, so that they are not later confronted with the impossibility of enforcing the award in the relevant jurisdiction. Otherwise, the award becomes practically worthless, and the party seeking arbitration is the first to suffer the consequences.

It is also observed that arbitration in Algeria still faces challenges related to the lack of specialized training among some arbitrators, particularly in technical and economic matters, as well as in negotiation skills and the management of international disputes. This may negatively affect the position of the state or national institutions in foreign arbitration proceedings, where they may sometimes find themselves in a weaker legal or negotiating position against better-prepared and more experienced parties.

¹⁷ - *Intervention of the Supreme Court on the Procedures for the Enforcement of International Arbitral Awards, presented at the Seventh Conference of Presidents of Supreme Courts in Arab States, p. 7.* □



In light of the foregoing, several recommendations may be proposed in order to strengthen the effectiveness of arbitration. Among the most important are the establishment of accredited arbitration centers supervised by judges or persons with judicial experience and specialized legal and economic expertise, together with the creation of national and international lists of reliable arbitration centers in coordination with the competent authorities. It would also be advisable to simplify the procedures for granting enforceability to domestic arbitral awards issued by accredited centers, thereby ensuring swift enforcement and respect for party autonomy.

It would also be beneficial to introduce financial and moral sanctions against parties who deliberately refuse to comply with arbitral awards without legitimate justification, as well as the imposition of penalty payments for each day of delay after the award has been granted enforceability, in order to reduce dilatory tactics and reinforce the authority of arbitration as an effective means of dispute resolution.

Finally, the success of arbitration should not be measured by the number of awards rendered, but by the extent to which such awards are respected and enforced, and by the ability of the state to provide a legal and institutional environment that inspires confidence in arbitration and makes it a genuine instrument for promoting investment and ensuring legal and economic certainty.

Bibliography:

First: Books

1. Ashraf Wafa Mohamed, *Al-Waseet fi al-Qanun al-Dawli al-Khas (The Intermediate Treatise on Private International Law)*, Dar Al-Nahda Al-Arabiya, Cairo, 2009.
2. Al-Hussein Al-Salmi, *Arbitration and State Judiciary (A Comparative Foundational Academic Study)*, University Institution for Studies, Publishing and Distribution, 2008.
3. Fawzi Mohammad Sami, *International Commercial Arbitration*, 5th ed., Dar Al-Thaqafa, Amman, 2010.

Third: Theses and Dissertations

1. Ahmed Abdelnour, *Issues in the Enforcement of Foreign Judgments: A Comparative Study*, Master's Thesis, Abou Bekr Belkaid University of Tlemcen, 2009/2010.
2. Khalil Bousenbora, *The Arbitral Award and Means of Challenge under Algerian Law*, Doctoral Dissertation, Mentouri University, 2007/2008.
3. Bacacem Khelout, *The Role of the Algerian Judiciary in International Commercial Arbitration*, Master's Thesis, Hamma Lakhdar University of El Oued, 2014/2015.
4. Abdelkader Hamdouni, *International Commercial Arbitration and Its Applications in Light of Algerian Law*, Master's Thesis, 2014/2015.
5. Sofiane Soualem, *Alternative Methods for the Resolution of Civil Disputes under Algerian Law*, Doctoral Dissertation, Mohamed Khider University of Biskra, 2013/2014.

Fourth: Articles



Enforcement of the Arbitral Award in Terms of Place

1. Mohammed Ali Salem Jassim & Abbas Talib Razuqi, ***The Legal System for the Enforcement of International Commercial Arbitral Awards***, Al-Muhaqqiq Al-Hilli Journal of Legal and Political Sciences, Vol. 7, No. 2, 2015.
2. Ali Mustafa Malham & Fouad Deeb, ***Enforcement of the Arbitral Award***, Al-Baath University Journal, Vol. 37, No. 6, 2015.
3. Abdullah Al-Soufiati, ***Judicial Review of the Arbitral Tribunal: A Theoretical Study under Jordanian Arbitration Law***, Al-Manara Journal, Vol. 20, No. 3, 2014.
4. Aadja El Djilali, ***Judicial Review of International Commercial Arbitration***, Supreme Court Journal, No. 1, 2006.
5. Mohamed Goudri, ***Enforcement of Foreign Judgments***, Supreme Court Journal, No. 2, 2011.
6. Nour Eddine Bekli, ***Enforcement of International Commercial Arbitral Awards and Means of Challenge under Algerian Law***, Supreme Court Journal, No. 2, 2013.
7. *Intervention of the Supreme Court on the Procedures for the Enforcement of International Arbitral Awards*, presented at the Seventh Conference of Presidents of Supreme Courts in Arab States.