



# THE ROLE OF WILL IN AGREEING TO INTERNATIONAL COMMERCIAL ARBITRATION

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## Abstract:

Algeria has adopted arbitration as a non-judicial essential means to resolve disputes that may arise between it and foreign investors, and has worked to grant them full freedom to resort to international commercial arbitration, either by agreeing to appoint the arbitrator or arbitrators and specifying the procedures and basic arbitration rules, or by agreeing to resort to institutional arbitration, making the parties' will swing between freedom and restriction in choosing between ad hoc arbitration or institutional arbitration. This study aims to demonstrate the role of will in agreeing to resort to international commercial arbitration, focusing on ad hoc arbitration due to the significant role of the parties' will in its establishment.

**Keywords:** will, agreement, international commercial arbitration, ad hoc arbitration, institutional arbitration.

## INTRODUCTION:

Regarded as a method or procedure for settling international conflicts, international commercial arbitration has an international scope when it comes to disagreements involving the economic interests of two or more nations. The ease with which potential international issues can be resolved can be attributed to the growth in economic cooperation among nations, as well as to increased investment and commerce. Under these circumstances, the use of arbitration becomes necessary because of its advantages over the domestic legal system, such as its ability to settle disputes quickly, its flexibility in determining which law will apply, and the strict legal procedures it necessitates—all of which are predicated on absolute confidentiality.

Arguably the most notable feature of arbitration is that it gives parties who are at odds or who are likely to clash in the future the chance to voice their opinions based on what is known as the "the will dominance principle." This establishes who will be in charge of resolving the disagreement that arises from their business dealings within the parameters of the legal arrangement that might unite them. Thus, the parties' will is seen as the fundamental component of arbitration since it steers and controls the process from the beginning—when the arbitration agreement is made—to the finish—when the arbitral decision is issued, all while adhering to Law No. 08-09 containing The Civil and Administrative Procedure Code, amended and supplemented <sup>(1)</sup>.

Given that the will of the parties to resort to arbitration is subject to the requirements of the law, extending judicial control over this will was and is necessary. How could it not be, when the parties, by their agreement, violate international public order? This oversight is particularly evident in terms of the recognition and implementation of the arbitration award, given the discretionary power of the Algerian judiciary.

This is where this came from study to examine the dedication of the Civil and Administrative Procedures Law to the will of the parties (disputing or likely to conflict in the future in agreeing to resort to international commercial arbitration, which leads us to pose the following problem: What is the extent of the role of will in agreeing to international commercial arbitration?

To answer the problem, we devoted the first section: To consider the extent of freedom of parties in agreeing on international commercial arbitration, while we devoted the second section: To consider aspects of judicial oversight of the international arbitration award.

**1/ the extent of freedom of parties to agree on international commercial arbitration**



To clarify the extent of the freedom of the parties to agree on international commercial arbitration, we had to refer to the Code of Civil and Administrative Procedure and examine its articles with extreme precision, in order to extract as much evidence as possible to establish this freedom, and from it we studied the legislative enshrinement of freedom to agree on international commercial arbitration and the context of this agreement

### **1/1/ Legislative enshrinement of freedom to agree on international commercial arbitration**

The freedom to agree on international commercial arbitration is legally guaranteed, as the will of the parties has a major role in choosing arbitration as a means of resolving the existing or potential dispute in the future (Section One), provided that the expression of will takes a written form, through what is called an arbitration agreement

#### **1/1/1 the legal basis for freedom to agree on international commercial arbitration**

The Civil and Administrative Procedures Law expressly recognized the right of parties to settle disputes through international commercial arbitration by providing them with the option of private arbitration, in which case they are free to select the arbitrator or arbitrators of their choice. Additionally, establishing fundamental guidelines for arbitration and reaching a consensus on institutional arbitration represent giving international arbitration organizations, like the International Chamber of Commerce, the power to settle disputes.<sup>2</sup> Thus, the will of the parties to agree to resolve the dispute through arbitration oscillated between absoluteness and restriction.

The parties' ability to express their will is restricted to free arbitration<sup>3</sup>, because the agreement establishes arbitration as a constitution, the parties and the judge must abide by its rules. The deal covers both public and private legal people as parties, and it even extends to public legal persons who have been given permission to agree even in some circumstances, to use international commercial arbitration; by this, we mean the international economic sphere as it pertains to public transactions, while also keeping in mind the provisions of Article 1006 of the Code of Civil and Administrative Procedure, which stipulates: "Every person can resort to arbitration in rights that he has absolute discretion over. Arbitration is not permissible in matters relating to public order or the status and capacity of persons. Public legal entities may not request arbitration, except in their international economic relations and within the framework of public transactions."<sup>4</sup>

Article 1039 of the Civil and Administrative Procedures Law states: "International arbitration, within the meaning of this law, is considered arbitration that concerns disputes related to the economic interests of at least two countries." This requirement was imposed by the Algerian legislator in order to give commercial arbitration an international character. The dispute must also arise between at least two countries and be related to these two countries' economic interests.

The Supreme Court also adopted the same legislative approach by establishing the following principle: (The arbitral award resolving the dispute between an Algerian company and a foreign company is considered as international commercial arbitration. The deadlines for appealing the annulment of the arbitral award resolving a dispute between an Algerian commercial company and a foreign company are calculated in accordance with the provisions of Article 1059 of the Code of Civil and Administrative Procedures).<sup>5</sup>), and that is when it considers the appeal in cassation submitted by the LLC Al-Ajar Company in Fasdis against the Morando Company LLC and (A.S.), and the facts of the case are summarized in that: (A contract was concluded between the appellant company and the appellant company, the content of which is to provide The latter is the appellant company with equipment, materials, and equipment for the expansion and modernization of the FSDIS factory, including obligations represented in operation, delivery, warranty, and training of users, in exchange for the appellant's current commitment to pay, in hard currency, a specific sum of four million euros for that, and that the payments are made through two banks, namely The Algerian Popular Credit and an Italian bank, but the appellant did not abide by what was agreed upon in the contract, which forced the appellant to resort to another partner. As a result, the appellant filed a petition before the arbitration court represented by the Algerian Chamber of Industry and Commerce, claiming that it was the appellant who had breached her contractual obligations, approved. Based on the provisions of Article 19 of the contract, which does not explicitly give jurisdiction to the aforementioned arbitration court to decide on the dispute, an arbitration ruling was subsequently issued on



09/17/2017 obligating the appellant to pay an amount 696,836;00 euros due to breach of contract implementation, and accordingly, the appellant now appealed the arbitration ruling issued on 05/22/2018, and a decision was issued by the Algerian Judicial Council ruling that the appeal was not accepted in form because it came outside the deadlines).

In its response to the appeal raised by the appellant, the Supreme Court responded by saying (.....and since this reasoning is incorrect and illegal, this is because the contract concluded between the appellant Algerian company and the appellant Italian company, which was obligated, according to the contract concluded between them, to provide the appellant with equipment... To modernize its factory, and in return for the appellant to pay it for that, falls under the penalty of international commercial arbitration, and therefore the current lawsuit relates to international commercial arbitration subject to the provisions of Articles 1039 to 1061 of the Civil and Administrative Procedures Code..., and since even if the appellant If you have filed an appeal against the arbitration ruling, the judges, in accordance with Article 29 of the Civil and Administrative Procedures Law, adapt the facts and actions at issue in the correct manner without being bound by the adversaries' assessment, and that the case in which the Council ruled that the appeal was not accepted in form, the correct interpretation of it is that it is a suit for the invalidity of the ruling. Arbitration in accordance with the articles relating to international commercial arbitration.....).

The bottom line is that the Judicial Council did not properly adapt the facts and actions in dispute, and that it decided the case by not accepting the appeal in form instead of adhering to the adversaries' adaptation, as the matter relates to the claim of invalidation of the arbitration award in accordance with the articles related to international commercial arbitration, given that the contract concluded between The appellant Algerian company and the appellant Italian company are subject to international commercial arbitration.

#### **1/1/2 The extent of guaranteeing freedom of will in agreeing to international commercial arbitration**

It has been argued that the disputing parties have the freedom to agree to resort to international commercial arbitration, and that their consent is embodied in the form of an agreement as designated in Article 1039 of the Code of Civil and Administrative Procedures, which states: "The arbitration agreement shall apply to existing and future disputes," and this agreement reflects the overall points of agreement as will be explained in the second request of this study. The arbitration agreement is characterized by not distinguishing between the agreement that precedes the dispute and the one that occurs after the dispute. The Algerian legislator explicitly addressed both scenarios in the first section titled "In Arbitration Agreements," of the second chapter titled "In Arbitration," where the plural form indicates the plurality of agreements, in two forms, as a condition for arbitration.<sup>6</sup>and arbitration agreement<sup>7</sup>, and this is in contrast to the arbitration agreement stipulated in Article 1040 mentioned above, as it was unilateral in form, and did not distinguish between the arbitration clause and the arbitration agreement, in addition to the fact that it was inclusive of disputes, so it is equal that the dispute is existing or likely to occur in the future, so the disputing parties must Agree on all matters falling under the scope of international commercial arbitration.

It is noted that the invalidity of the contract that brings together the parties does not affect the arbitration agreement. In the assumption that it is invalid, the invalidity does not affect the arbitration agreement, because the Algerian legislator enshrined the principle of the independence of the arbitration agreement from the original contract under Article 1040, paragraph four, of the Code of Civil and Administrative Procedures. It reads: "The invalidity of the arbitration agreement cannot be invoked due to the invalidity of the original contract."

From the above, it is clear that the arbitration agreement is nothing but the product of the expression of the wills of at least two states, for an economic interest that brought them together under a legal relationship, whether contractual or non-contractual, so the states parties agreed to choose arbitration as a means of resolving the existing or potential dispute in the future.

#### **1/2/ the basis of agreement on international commercial arbitration**



The freedom to use international commercial arbitration is merely a legislative guarantee to promote investment, so the Algerian legislator had to ensure this guarantee by stating, in a manner that ensures its validity and the ensuing legal effects. This is evident from the parties' areas of agreement, which alternated between the need to consider what is in the form and what is fundamental to the issue.

#### **1/2/1 areas of agreement in its formal aspect**

Article 1040, paragraph two, of the Code of Civil and Administrative Procedures requires that the international commercial arbitration agreement be entered into a written form, stipulating that: "In terms of form, and under penalty of invalidity, the arbitration agreement must be concluded in writing or by any other means of communication that permits proof in writing." Writing is a formal condition required for the arbitration agreement to be concluded. If writing is not completed, the agreement is invalid.

It is also noted that the parties to the dispute are free to decide to use international commercial arbitration; however, as the agreement must be expressed in writing, a legal requirement must be considered, regardless of whether the writing is official or customary. More than that, the parties may use any other kind of correspondence that permits written documentation.

Although writing, in its two forms, customary and formal, is clearly defined from a legal standpoint, but other means of communication that permit proof by writing are not, then the Algerian legislator did not include it in detailed text, and perhaps he means by it messages exchanged between parties, whether ordinary or sent by written means of communication such as telegrams. Telex may also be intended to give more freedom to the parties in choosing the form in which the arbitration agreement will be written.

Writing must result in an exchange of offers and acceptances regarding arbitration, with the acceptance being linked to the first party's knowledge. Silence may be deemed acceptance in certain circumstances, such as when the parties are engaged in ongoing transactions and arbitration was a condition therein. According to certain Arab legislation, writing is fulfilled if the arbitration clause is stated in the letters or telegrams exchanged between the two parties, and includes all written means of communication. Furthermore, arbitration may be pursued through an agent, which requires On the one hand, the agency must be written; on the other hand, it must be private and not general.<sup>8</sup>

#### **1/2/2 areas of agreement in its objective aspect**

This agreement covers three aspects: one about the arbitrator or arbitrators; another about the applicable law. There are a lot more substantive areas of agreement on international commercial arbitration than there are formal ones. Whether or not it is available will surely impact this agreement's validity about the disagreement and the methods utilized therein, and the third element have to do with making an arbitration decision.

##### **1/2/2/1 Agreement on the person of the arbitrator**

The terms of appointment, replacement, and repayment in specific situations are all covered under the agreement addressing the identity of the arbitrator or arbitrators.

##### **Appointing the arbitrator or determining the conditions for his appointment or replacement**

According to Article 1041, first paragraph, of the Code of Civil and Administrative Procedure, which states that "The parties may, directly or by reference to the arbitration system, appoint the arbitrator," the parties are free to decide on the arbitrator or arbitrators, or decide on the parameters of their employment and the circumstances surrounding their dismissal or replacement. «This prompts us to note a few points, which we do so as follows:

Depending on how important and complex the arbitration work is, there may be one or more arbitrators. It is observed that the requirements for the arbitrator are not specified, with the exception of one: if the arbitrator is a natural person, he must satisfy the requirement of having civil rights. In the event that a contract is made, designating the legal entity as the arbiter, in which case the latter appoints one or more of its members as arbitrators<sup>9</sup> If this indicates anything, it only indicates that it is not permissible for a legal person to assume the task of arbitration, provided that its representative enjoys his full civil rights by extrapolating Article 1014 of Civil and Administrative Procedures.



Generally, it is noted that the parties have the freedom to agree on the conditions or qualifications required for the arbitrator, especially since Article 1016 of the Civil and Administrative Procedures Law stipulates that: "The arbitrator may be rejected in the following cases: when the agreed qualifications between the parties are not met." This implies the parties' freedom to choose the qualifications possessed by the arbitrator, who is supposed to be a person or persons they trust and believe in their integrity, ensuring their fairness in resolving the dispute.

The parties must reach a consensus on matters pertaining to the arbitrator's appointment, dismissal, and replacement, rather than just designating a single person to serve in that capacity. This will make it possible for international business arbitration to expand the scope of agreements.

Referencing the arbitration system results in the intervention of a permanent arbitration body to select arbitrators because the arbitration system is essentially an agreement between the disputing parties, who may select any permanent body the International Chamber of Commerce arbitration system is typically selected.<sup>10</sup>

In anticipation of the absence of agreement or the difficulty of appointing an arbitrator or determining the terms of his appointment and the terms of his removal Or replace it, the party concerned with expediting the matter can submit the matter either to the President of the court within whose jurisdiction the arbitration falls if the arbitration takes place in Algeria, or to the President of the Court of Algeria if the arbitration takes place abroad and the parties choose to apply the rules of procedure in force in Algeria.<sup>11</sup>

However, not appointing the arbitrator or specifying the terms of his appointment and the terms of his removal or replacement in the arbitration agreement are not recommended. How could it not be, when the purpose of the agreement is to remove jurisdiction from the judiciary? In this case, however, the court will be referred to the judiciary to consider this issue, which will prevent the dispute from being resolved in a short time.

#### **The rejection of the arbitrator**

Extending Article 1016 of the Civil and Administrative Procedures Code, which states that the arbitrator may be fired in the following circumstances, further demonstrates the parties' same intent.

1. In the event that he falls short of the mutually agreed-upon qualifications.
- 2- When the arbitration system authorized by the parties specifies a reason for rejection, as stated in this article, even though it lists the reasons why the arbitrator or arbitrators were rejected<sup>12</sup>. However, its content clearly stated the will of the parties involved in agreeing on the arbitrator's response.

#### **1/2/2/2 The law applicable to the dispute and the procedures followed in that regard**

##### **The law applicable to the dispute**

For the arbitration agreement to be valid in terms of its subject matter, Article 1040, third paragraph of the Civil and Administrative Procedures Law, requires that it (the agreement) meet the conditions stipulated by the law, and it stipulates that: «The arbitration agreement is valid in terms of its merits, if it responds to the conditions set by either the law that the parties agreed to choose, the law regulating the subject matter of the dispute, or the law that the arbitrator deems appropriate ».

This leads us to the conclusion that the arbitration agreement's validity with regard to the subject matter depends on meeting the legal requirements, whether they have to do with the law that the parties agree to choose, the law that governs the dispute's subject matter, or the law that the arbitrator determines is appropriate. The agreement stipulates that none of these three alternatives may be changed.

We also learn that the assumption in which the parties agree, where their common will plays a major role in determining the law applicable to the dispute resulting from the relationship that brings them together, clearly evidently grants the freedom of the parties in conflict or who are likely to conflict in the future, provided that the arbitration court decides the dispute in accordance with the rules. This statute, which makes it very clear that the Algerian legislator created the law of will whenever the parties communicate their desires,<sup>13</sup> as well as the law that regulates the subject of the dispute in the absence of the law of will or the law that the arbitration court deems to be the appropriate law.



It is worth noting that Article 1050 of the Civil and Administrative Procedures Law entrusted the arbitration court with the authority to decide the dispute in accordance with the rules of law and customs that it deems appropriate, in the event that the parties do not choose the law applicable to the dispute.<sup>14</sup> From this it is clear that the Algerian legislator did not give the parties to the dispute the freedom to agree to exclude a law, but rather that in the event of disagreement, the arbitration court looks into the law and customs that are compatible with the nature of the dispute to decide it, not to exclude the law and replace it with the rules of justice and fairness (<sup>15</sup>).

#### **Procedures followed in resolving the dispute**

Article 1043 of the Civil and Administrative Procedures Law states: "The procedures to be followed in the dispute may be set in the arbitration agreement directly or based on the arbitration system, and these procedures may also be subject to the Code of Procedure." This means that the parties' will in choosing the arbitration procedures may extend in line with this provision. This is decided by the parties in the arbitration agreement; if the agreement is silent on this matter, the arbitration court will, where required, directly or through reference to the arbitration law or system, control the proceedings.

Accordingly, arbitral proceedings shall be subject to the full freedom of the parties, whether by determining such proceedings directly or by relying on an arbitral regime independent of the Arbitration Convention, they shall also be free to agree to submit the arbitral proceedings to the law of procedure they set forth in the Arbitration Convention, such as the law of the Algerian party but not the other applicable, and in the case where the Convention does not specify the arbitral proceedings, they shall be controlled, as the case may be, by the arbitral tribunal directly or on the basis of an arbitral law or regime as provided in article 1043 above.

The Code of Civil and Administrative Procedure's Article 1046, first paragraph, states that "The arbitration court may order provisional or conservatory measures upon the request of one of the parties, unless the arbitration agreement stipulates that." Accordingly, the parties' agreement on temporary or conservatory measures may also be included in the arbitration agreement. The legislator's intention is sought in the final section, "unless the arbitration agreement stipulates that." The African In theory, this might lead to greater latitude for the parties to choose interim or preventative actions at their discretion.<sup>16</sup>

#### **1/2/2/3 issuing the arbitration award**

Article 1049 of the Civil and Administrative Procedures Law stipulates that: "The arbitration court may issue rulings by agreement of the parties or partial rulings, unless the parties agree otherwise." The principle, therefore, is that the joint parties have the freedom to agree on the wording of the arbitration award, and as for the exception, it is up to the court. Arbitration, as it may issue rulings by agreement of the parties or partial rulings.

#### **2/ aspects of judicial control over the international arbitration award**

The Algerian legislator's dedication to freedom in agreeing on international commercial arbitration, by giving the will of the participating parties a major role in formulating the arbitration agreement in its various aspects, formal and substantive, cannot be taken as a whole, because it imposed judicial control over the international arbitration award, and the aspects of judicial control are evident from two aspects. One aspect relates to the recognition and implementation of the arbitration award and another aspect relates to the appeal of this award and its invalidation.

#### **2/1 recognition and implementation of the international arbitration award**

The arbitration agreement culminates in an arbitration award It must be recognized and implemented in accordance with the requirements of the law, so the judiciary has an important role in extending its oversight over this ruling, as we mentioned earlier, which leads us to detail the recognition of the arbitration award and its implementation

#### **2/1/1 Recognition of the International arbitration award**

Recognition is a procedure intended to acknowledge the existence of the arbitration award within the legal system of the state, where the competent judge considers the request of the party in whose favor the arbitration award was issued, insisting in doing so on his authority vis-à-vis the other party,



requesting its recognition and its mandatory nature in the issues that he had previously decided on.<sup>17</sup>).

The judiciary's oversight of the arbitration award is embodied in its recognition pursuant to Article 1051 of the Code of Civil and Administrative Procedure, which states: "International arbitration awards are recognized in Algeria if those who uphold them prove their existence, and this recognition does not violate international public order," and in the sense of violating this article. Recognition of the arbitration award is refused if the will of the parties to the arbitration agreement tends to violate international public order, and here the features of judicial control over the arbitration award appear.

The Algerian legislator has mentioned other cases in which recognition of an arbitration award is refused, through Article 1056 of the Code of Civil and Administrative Procedure, which clearly reflects the breadth of the scope of refusal to recognize an arbitration award, by stipulating that: "The order to recognize or By implementation, except in the following cases: 1 - If the arbitration court decides without the existence of an arbitration agreement, or based on an invalid agreement, or the expiration of the term of the agreement, 2- If the formation of the arbitration court or the appointment of the sole arbitrator is in violation of the law, 3- If the arbitration court decides in violation of the mission assigned to it, 4- If the principle of prima facie is not observed, 5- If the arbitration court does not reason with its ruling or if there is a contradiction in the reasons, 6- If the arbitration award violates international public order.

In sum, the judge has broad discretionary power to refuse to recognize the arbitration award, especially those related to violating international public order, because the aforementioned Article 1051 is devoid of any possible definition of international public order.<sup>18</sup>), this system lacks any legislative significance clarifying its meaning, which places in the hands of the judge broad authority to adapt it, whether by violation or by non-violation.

#### **2/1/2 Implementation of the international arbitration award**

Article 1051, second paragraph, of the Code of Civil and Administrative Procedure stipulates that: "It is considered enforceable in Algeria under the same conditions, by order issued by the president of the court in whose jurisdiction the arbitration awards were issued or the court of the place of implementation if the seat of the arbitration court is located outside the national territory." This The paragraph, in fact, complements the first paragraph related to the recognition of the arbitration award, which reflects the extent of the connection between the recognition of the arbitration award and its implementation, as they are subject to the same conditions, as explicitly stated in the text. With an explicit reference from Article 1054 of the Code of Civil and Administrative Procedure, which reads: "The provisions of Articles 1035 to 1038 above shall apply with regard to the implementation of international arbitration awards." he ran Subjecting the arbitration award in its implementation to the provisions related to the implementation of internal arbitration provisions, and accordingly the arbitration award shall be final Or partial or preparatory, enforceable by order of the president of the court in whose jurisdiction it was issued, provided that the concerned party expedites the deposit of the original ruling with the court's registry secretariat.

Some have argued that the Algerian legislator did not impose objective control on international arbitration awards, but rather required a formal condition in order to elevate it to the level of national judgments and give it legal effects, represented in obtaining an enforcement order (<sup>19</sup>), the arbitration award is ready for enforcement when it is endorsed with the enforcement formula in accordance with Article 1036 of the Code of Civil and Administrative Procedure, which states: "The chief of the registry shall deliver an official copy endorsed with the enforcement formula of the arbitration award to whoever requests it from the parties.

#### **2/2 the revision of the international arbitration award**

The scope of judicial oversight of the international arbitration award expands to include consideration of the appeals submitted by the parties to the dispute, which are for the purpose of reviewing this ruling by challenging it either by appeal or by invalidation.

#### **2/2/1 Appeal against the international arbitration award**



As we previously mentioned, the Algerian legislature placed complete judicial control over the arbitration result. This control is evident in the acceptance and execution of the award from two angles: The first component pertains to the appeal of the order that was made to either refuse to implement the arbitration verdict in line with Article 1055 of the Law Civil and Administrative Procedures or to refuse to recognize it.

As for the second aspect, it relates to the appeal of the order to recognize or implement the arbitration award, in the aforementioned cases specified exclusively in Article 1056, paragraph six of the Civil and Administrative Procedures Code, where the matter relates to the dismissal of the arbitration court without the existence of an arbitration agreement or based on an invalid or expiring agreement. The term of the agreement, and the fact that the formation of the arbitration court or the appointment of the sole arbitrator is in violation of the law Or because the arbitration court decided in violation of the mission assigned to it, or because it did not justify its ruling, or if there was a contradiction in the reasons, or if the principle of prima facie was not observed, or because the arbitration ruling was in violation of international public order.

The provisions of the appeal are summarized in the necessity of filing it before the Judicial Council within a period of one month, effective from the date of official notification of the order of the President of the Court in accordance with Article 1057 of the Civil and Administrative Procedures Law, and this is in the absence of a stipulation of the period during which the Judicial Council will decide on the appeal.

#### **2/2/2 appealing the invalidity of the international arbitration award**

The cases that call for an appeal against the invalidity of an international arbitration award are the same cases that call for an appeal against the order recognizing or implementing the arbitration award, which were previously referred to, noting that the appeal against the invalidity of an international arbitration award derives its legitimacy from Article 1058, first paragraph of the Code of Civil and Administrative Procedure, which reads: “The international arbitration award issued in Algeria may be the subject of an appeal for invalidity in the cases stipulated in Article 1056 above,” provided that the order ruling the implementation of the international arbitration award referred to in this paragraph does not accept any appeal, while an appeal for the invalidity of the arbitration award is subject to the force of law for appeal. In the execution order or the court abandons deciding on the execution request if the decision is not made.<sup>20</sup>The appeal shall be filed before the judicial council in whose jurisdiction the arbitration award was issued, within a period of one month from the date of official notification of the order ruling for implementation.<sup>21</sup>).

In summary, appealing the appeal of an international arbitration award or its invalidation only allows reviewing this ruling, which would activate judicial oversight more and more. We should point out that submitting appeals and delaying their exercise suspends the implementation of the international arbitration award.<sup>22</sup>Moreover, the decisions issued in this regard are subject to appeal in cassation.<sup>23</sup>), in the absence of specifying a deadline or deadline for filing the cassation appeal.

#### **CONCLUSION:**

At the end of this study, we concluded that the Algerian legislator worked to enshrine freedom in the agreement to resort to international commercial arbitration explicitly, giving a significant role to the will of the parties in formulating the arbitration agreement in its various formal and substantive aspects, which serves as a constitution or basic system that obliges the arbitrator to resolve the dispute in accordance with the provisions therein. The parties are also required to adhere to the content of the agreement without evasion or delay that would obstruct the process of international commercial arbitration, and to prevent this and to avoid unleashing the will of the disputing parties, judicial control over the international arbitration award was imposed, whether by recognizing and enforcing it or by rejecting it, and whether by appealing it or declaring it void.

This study has yielded a number of results, based on which we present some suggestions that will enhance the importance of international commercial arbitration as an optional means of dispute settlement. The conflicting parties shall enjoy the freedom to:





- Agreeing to resort to international commercial arbitration as a means of resolving the dispute, whether this is done directly or by referring to the arbitration system.
  - Agreeing on the type of writing or any other means of communication that permits proof in writing, such that the arbitration agreement is voided under penalty of invalidity.
  - Agreement on the arbitrator or arbitrators, as well as the law applicable to the dispute and the procedures followed in that regard, as well as issuing the arbitration award.
  - International commercial arbitration is an optional means of settling disputes. The parties to the dispute have complete freedom to resort to this means, which reflects the great role of the common will in its establishment as well as its implementation.
  - International commercial arbitration ends with an arbitral award, whether by recognizing it, implementing it, or rejecting it, which suggests the broad scope of the Algerian judiciary's authority to extend its control over arbitral awards.
  - The oversight exercised by the Algerian judiciary would limit the freedom of disputing parties to resort to international commercial arbitration, especially when it comes to violating international public order.
- In light of the results we presented, we suggest the following:
- Issuing an independent, self-contained law that includes all provisions related to international commercial arbitration instead of stipulating it in the Civil and Administrative Procedures Law.
  - Explicitly stipulating the conditions that must be met by the arbitrator, given the importance and difficulty of the task of international commercial arbitration.
  - Explicitly stipulating the replacement of the arbitrator and cases of his dismissal for the same reason that is, the importance and difficulty of the task of international commercial arbitration.

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<sup>1</sup>) Law No. 08-09, dated February 25, 2008, including the Civil and Administrative Procedure Code, amended and supplemented, Official Bulletin of the Republic of Algeria, No. 21, dated April 23, 2008.

<sup>2</sup>) Abdul Qader Yakhlef, "Legislative enshrinement of international commercial arbitration and its role in ensuring investment" *Journal of Legal and Political Thought*, Volume 5, Issue 2, 2021, p. 63.

<sup>3</sup>) Free arbitration It is arbitration undertaken by the parties in a specific dispute and they have absolute freedom to choose the arbitrators and the procedures and rules that apply to this dispute., while Institutional arbitration is undertaken by an organization or a body center Or organizations or permanent arbitration centers.....in which dispute resolution shall be in accordance with rules and procedures previously established to govern the work of these bodies. See: Khaled Muhammad Al-Qadi, *Encyclopedia of International Commercial Arbitration in International Joint Project Disputes*, with special reference to the latest rulings of the Egyptian judiciary, first edition, Dar Al-Shorouk, Cairo, 2002, p. 117.

<sup>4</sup>)Article 975 of the Civil and Administrative Procedures Code also stipulates that public legal persons may resort to arbitration by saying: "The persons mentioned in Article 800 above may not conduct arbitration except in the cases mentioned in the international agreements ratified by Algeria and in the article on public transactions," and what is meant by this Persons include the state, state, municipality, and public institutions of an administrative nature.

<sup>5</sup>) Decision dated 01/27/2022, File No. 1499606, Chamber of Commerce and Maritime, Supreme Court, Supreme Court Journal, No. 1, 2022, pp. 62-64.

<sup>6</sup>)Article 1007 of the Civil and Administrative Procedures Law stipulates that: "The arbitration clause is the agreement under which the parties to a contract related to rights available within the meaning of Article 1006 above are obligated to submit the disputes that may arise regarding this contract to arbitration."

<sup>7</sup>) Article 1011 of the Code of Civil and Administrative Procedure stipulates that: "The arbitration agreement is the agreement according to which the parties accept to submit a dispute that has previously arisen to arbitration."

<sup>8</sup>) Elham Azzam Wahid Al-Kharaz, *International Commercial Arbitration within the Framework of the Conflict Approach (Comparative Study)*, Master's Thesis, An-Najah National University, College of Graduate Studies, Nablus, Palestine, 2009, p. 17.



<sup>9)</sup> Article 1014 of the Civil and Administrative Procedures Law stipulates that: “The arbitration court shall not assign power to a natural person, unless he enjoys his civil rights. If the arbitration agreement appoints a legal person, the latter shall appoint one or more of its members as arbitrator.”

<sup>10)</sup> Elias Ajabi, "The legal system of international commercial arbitration under the Code of Civil and Administrative Procedure", *Legal Forum Magazine*, Issue 7, 2010, p. 192.

<sup>11)</sup> See Article 1041, second paragraph of the Civil and Administrative Procedures Law

<sup>12)</sup> For more details about the response of the arbitrator or arbitrators, see: Mustafa Sarij, *Commercial Arbitration Rules in Algerian Legislation in Light of the Civil and Administrative Procedure Code*, Master's Thesis in Law, specialty: Business Law, Colonel Akli Muhammad Olhaj University, Faculty of Law and Political Science, 2016-2017, pp. 76-78.

<sup>13)</sup> Which is consistent with the provisions of Article 18 of the Algerian Civil Code, which states: “The law chosen by the contracting parties shall apply to contractual obligations if it has a real connection to the contracting parties or to the contract.”

<sup>14)</sup> and its text: “The arbitration court shall decide the dispute in accordance with the rules of the law chosen by the parties, and in the absence of this choice, it shall decide according to the rules of law and customs that it deems appropriate.”

<sup>15)</sup> Abdul Qadir Yakhlef, *opcit*, p. 65.

<sup>16)</sup> Temporary or precautionary measures are classified into three categories: one category relates to presenting and preserving evidence, one category relates to ensuring the stability of legal relations between conflicting parties, and another category aims to create a legal situation. See: Lias Ajabi, *opcit*, p. 196.

<sup>17)</sup> Mustafa Sarij, *opcit*, p. 112.

<sup>18)</sup> Based on Article 24 of the Civil Code, we find that it stipulated that the foreign ruling should not conflict with public order in Algeria, by stipulating that: “Foreign law may not be applied in accordance with the previous texts if it is contrary to public order.” Or public morals in Algeria, or his jurisdiction was established by deception according to the law. Algerian law shall be applied in place of foreign law that violates public order and public morals.”

<sup>19)</sup> Abdul Qadir Yakhlef, *opcit*, p. 66.

<sup>20)</sup> See Article 1058, second paragraph of the Civil and Administrative Procedures Law.

<sup>21)</sup> See Article 1059 of the Civil and Administrative Procedures Code.

<sup>22)</sup> See Article 1060 of the Code of Civil and Administrative Procedure.

<sup>23)</sup> See Article 1061 of the Code of Civil and Administrative Procedure.