

METHODS OF APPEALING THE ARBITRATION DECISION IN INTERNATIONAL ADMINISTRATIVE CONTRACTS

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Abstract

The principle of not infringing on arbitration awards after their issuance is an urgent necessity for the stability of rights and legal positions, and this stability cannot be achieved unless the ruling in question acquires immunity that prevents it from being harmed, whether by amending it or canceling it. However, on the other hand, we find that these rulings are issued by human beings who are not infallible from error, whether intentional or unintentional (1), Considering that the arbitrator does not derive, nor does the legislator accuse, but rather from the arbitration agreement, if the agreement is invalid or if there is no basis from which the arbitrator derives his jurisdiction, then the decision issued become from Him He rules nothingness.(2)

Keywords - positions, Unintentional ,arbitrator ,jurisdiction

INTRODUCTION

What is issued by the arbitral tribunal has the authority of the res judicator, except that the Algerian Civil and Administrative Procedure Code in Chapter Four, relating to the methods of appealing arbitration rulings in Chapter Two of arbitration, has subjected it to appeal, and this is what we will try to answer through the following questions:

What are the established methods of appeal in arbitration rulings related to international administrative contracts? What are the reasons and deadlines that can be relied upon to appeal this type of ruling?

The Algerian legislator has distinguished between appeals against international arbitration awards issued abroad and international arbitration awards issued in Algeria, which we will discuss in the first section: appeals against arbitration awards in international administrative contracts issued abroad, and in the second section, appeals against international administrative arbitration awards issued in Algeria.

The first section: Appealing against arbitral rulings in international administrative contracts issued abroad

Article 1058 of the Code of Civil and Administrative Procedure states in its first paragraph, “An international arbitration award issued in Algeria may be the subject of an appeal for invalidity in the cases stipulated in Article 1056 above.”

Under the concept of violation, it is understood that the international arbitration award issued abroad cannot be the subject of an appeal for invalidity in Algeria, which is the solution adopted in French law in Article 1504 From the new civil procedures procedures law , and some jurisprudents (3) believe that the trend adopted deserves support because it encourages International distribution of judicial jurisdiction between states Towards international arbitration rulings Because the arbitration provisions in International administrative contracts issued abroad are subject to appeal Except indirect manner through appeal by recommencement Or against the order of the president of the court judge of recognition and execution And also according to the text Article 1061 from the Code



of Civil and Administrative Procedures The decisions issued are in implementation of two articles 1055 and 1056 are amenable to appeal.

First In- Recommencement:

In accordance with the provisions of Article 1055 of the Civil and Administrative Procedures Code the order is rejected Recognition or by refusing implementation such be amenable to recommencement. However, the Algerian legislator is under appeal order of recognition and execution it requires the conditions mentioned exclusively.

When a request is presented for recognition and execution of a sentence foreign arbitrator president of the court We face two assumptions while President of the Court may respond to the request The applicant has the right of the executive orders.

In consequence what is the intention by recognition and implementation?

The Algerian legislator did not know what was meant by recognition while we find that jurisprudence provided some definitions, Some people think that "the confession means that the ruling was issued correctly and legally binding framework (4), As others know "The request for recognition of the arbitral verdict is defensive procedure such goes to when the legal reviewing works is consummated filling regard a dispute

Has been concluded to arbitration, while the part who has issue advantage interests arbitration verdict, to prove this it reports the judgement to the court where reaffirm put the dispute(5) It is distinguished from implementation, In the confession, the convicted party invokes to his own advantage with what arbitration award decreed such asks properly for decision, As for the implantation order gives notice that the issued decision by jurisdiction competent judge and by its virtue orders that the arbitration award, whether national or foreign, under executive power, contrarily the confession such so called defensive procedure then execution is an offensive procedure so it doesn't request arbitration award confession by judge but rather it request to offer the international arbitration award the power given to the judgment in order the execution of sentence, Implementation goes beyond recognition(6) judicial verdict doesn't executed except execution implementation state order in accordance to the established principles while law bind over to procure like order for the reason that's arbitration award is an act issued by special jurisdiction and must be in accordance with conditions and established to procedures such has to be respected or reject the confession and the implementation.

1. Conditions for recognition and implementation of the arbitration award

The Algerian legislator has stipulated in Article 1051 from the Code of Civil and Administrative Procedures it has been confessed

of international arbitration awards in Algeria if proven whose hold on its existence, this confession was

not contrary to international public order and the article 1052 states from the same legislation and The arbitration award shall be confirmed by the submission of the original is attached to the arbitration agreement or copies that included its validity conditions Article 1053 states: "It shall be deposited documents mentioned in Article 1052 above by the secretariat of the competent judicial authority of the party concerned With accelerating.

Accordingly, the Code of Civil and Administrative Procedure binds the judge prior award confession and implementation make sure of legal conditions availability for confession and implementation, it is known that the Algerian legislator did not recognize clearly between confession and implementation, confession and implementation requisitions judge supervision are same, in light of what above it shows that confession and implementation to be applied without arbitration judgment evidence, and this should not be derogative to international public order(7)

2. The judicial authority competent to injunction confession and implementation order:

Article 1051 of the Code of Civil and Administrative Procedures stipulates «international arbitration awards confession doesn't applied in Algeria with assertion, This confession was not contrary to international public order It is considered enforceable in Algeria under the same conditions, By order



issued by the president of the court that issued the rulings arbitration within its jurisdiction, Or the implementation court if the seat of the arbitration court is located outside the national territory “. This article does not stipulate regarding confession, while it stipulates in its second paragraph that the court is competent to issue the implementation order, which is linked to the seat of arbitration as follows:

If the seat of arbitration is located in Algeria, The competent court is the one in whose jurisdiction the arbitral award was issued, If the seat of arbitration is located outside Algeria, The President of the Execution Court is the competent one.

As for the matter of confession of the arbitral award, if the request for confession is subsidiary, that is, linked to the request for implementation it is yield to the same rules mentioned, If the request for confession is original, The confession shall be made by the court in whose jurisdiction the arbitral award is enforced (8).

According to the accelerating by the concerned party it is often the party that issued the arbitral award in his favor by submitting a written petition before the president of the competent court, Requesting recognition or implementation of the arbitration award, This is taking into account the provisions of Articles 1051, 1052, and 1053, Articles 1035 to 1038, to which Article 1051 of the Civil and Administrative Procedures Code refers.

A. Appealing the order rejecting recognition and refusing to implement the arbitral award issued abroad and its procedures:

Article 1055 of the Code of Civil and Administrative Procedure stipulates: “The order rejecting recognition or refusing implementation shall be subject to appeal “, The Algerian legislator did not specify the cases in which it may be filed appeal against the order refusing to recognize and enforce the foreign arbitral award, By leaving the field open, all aspects may be directed against the matter, as are orders issued by the competent judicial authority by Refusal to recognize or implement will be subject to appeal before the judicial authority superior to the court that issued the order to refuse recognition or implementation (9), As stated in Article 1035, Paragraph 3, of the Code of Procedure Civil and Administrative Laws: “The parties may appeal the order rejecting implementation within a period of fifteen (15) days from the date of rejection before the Judicial Council.

” The appeal shall be registered in a written and reasoned form, it highlights the reasons for appeal, and rather the aspects of appeal based on it the petition shall contain all legal information and shall be attached to the order of appeal. As well as the arbitration award and arbitration agreement provided that the appeal party respects the principle of prima facie.

- Appealing the order recognizing and implementing the foreign judgment and its procedures:

When he decides on the application submitted to him, the president of the court usually responds to the request for recognition and implementation of the arbitral award after reviewing the file submitted to him, In accordance with Article 1051 and 1052 from the Code of Civil and Administrative Procedure, ensure that there is nothing preventing the recognition and implementation of the arbitral award in Algeria, In this case, the legislator initially prohibited an appeal from the order requiring recognition or implementation, This is permitted exclusively by the text of Article 1056, Which states: “The judge’s order for recognition or execution may not be appealed except in the following cases:

- If the arbitration court decides without an arbitration agreement or based on a void agreement or the expiration of the agreement’s term.
- If the arbitration court’s complaint or the appointment of the sole arbitrator is in violation of the law.
- If the arbitration court rules in a manner inconsistent with the task assigned to it.
- If the principle of prima facie is not observed.
- If the arbitration court does not reason with its ruling, or if there is a contradiction in the reasons.
- If the arbitration award violates international public order.

The appeal shall be registered in a written and reasoned petition, unlike an appeal against an order that refuses recognition or implementation, which must be within (15) days, The appeal against the order for recognition or execution shall be filed before the Judicial Council within one month, starting from the official notification of the order of the President of the Court. In accordance with the text



of Article 1057 of the Civil and Administrative Procedures Code(11) , And decisions Issued by the Judicial Council, in these cases it is subject to appeal by cassation.

What is noted is that the Algerian legislator, through the Algerian Civil and Administrative Procedure Code, He acted well by preventing appeals against arbitration awards that violated international public order.

Second - Appeal in cassation:

A cassation appeal is an unusual channel of appeal, Article 1061 of the Civil and Administrative Procedures Law stipulates, “Decisions issued in implementation of Articles 1055, 1056, and 1058 above shall be subject to appeal by cassation”.

Therefore, the decisions issued by the judicial councils in the appeal are filed against the order of the president of the court, the judge refusing recognition or execution, or the judge ordering recognition or execution; it is subject to appeal by cassation.

1-Cases of cassation appeal:

Since the Algerian legislator did not specify the cases in which it is permissible to appeal in cassation, especially in international arbitration, what are the aspects on which a petition for cassation in international construction contracts is based?

Since the legislator did not specify these cases or in the absence of a special text, It is necessary to refer to the general provisions stipulated in the Civil and Administrative Procedures Law, Especially Article 358, which specifies 18 channel for cassation appeal, Which states: “An appeal in cassation may only be based on one or more of the following aspects:(12):

- violation of an essential rule of procedure, neglect of essential forms of procedure.
- Lack of jurisdiction, exceeding authority, violating internal law, violating foreign law related to family law,
 - violating international agreements, and lack of legal basis.
- Lack of reasoning, insufficiency of reasoning, contradiction of reasoning with what is spoken.
- misrepresenting the clear and precise content of a document approved in a judgment or decision.
- Decrease in judgments or decisions issued at the last level, when the validity of the matter leading to it has been raised to no avail, In this case, the cassation appeal is directed against the last judgment on papers in terms of date, if this contradiction is confirmed, it shall be resolved by confirming the judgment or first decision
- Contradictory clauses are not subject to regular appeal, In this case, the cassation appeal is acceptable, If one of the judgments is the subject of an appeal by cassation even after the expiration of the deadline, stipulated in Article 354 above, It must be directed against both judgments, and if the contradiction is confirmed, the Supreme Court shall judge one or both judgments together. The presence of contradictory implications within the operative part of the judgment or decision, Judgment without request or reason from what he asked, unintentional mistake to decide on one of the original requests, If he doesn't defend my imperfections eligibility(13).
- The Supreme Court may, on its own initiative, raise one or more aspects of cassation in accordance with a text

Article 360 of the Code of Civil and Administrative Procedure(14).

2- Procedures for cassation appeal:

The request for cassation shall be filed before the Supreme Court, as it is the body competent to hear cassation appeals, In the final decisions issued by judicial councils, Therefore, against the decisions issued on appeal the complaint is against the orders of the president of the court that refuses to recognize and enforce the foreign arbitral award, Or those so designated by a petition signed by an attorney accredited to the Supreme Court, the appeal is dismissed in accordance with Article 354 of the Civil and Administrative Procedures Law, within 02 months starting from the date of official notification of the contested ruling if it was done in person, The appeal period is extended to three months if notification is made official in his real or chosen domicile, An appeal in cassation does not result in stopping the implementation of the ruling in the field of international administrative arbitration in accordance with Article 361 of the Code of Civil and Administrative Procedure.



Section Two: Appealing international administrative arbitration rulings issued in Algeria

Article 1058 of the Code of Civil and Administrative Procedure 15 states: “An arbitration award can be the international order issued in Algeria is subject to an appeal for invalidity, In the cases stipulated in Article 1056 above”, The distinction, then, is between arbitral awards issued abroad and those issued in Algeria the field of international administrative arbitration, Is that the latter is subject to appeal for invalidity, Therefore, we will discuss Cases of appeal of invalidity, then we turn to its procedures.

First - Cases of invalidation appeal:

The Algerian legislator recognized the right to appeal the invalidity of the international arbitration award issued in Algeria in the cases stipulated in Article 1056 of the Civil and Administrative Procedure Code (16).

This article determines what most national legislation applies to, Given that it is not permissible to appeal international arbitration judgments, to establish the right of the person against whom an arbitration ruling is issued to request the annulment of that judgment, for the reasons specified in Article 1056 above, This is a basic guarantee for the person against whom the judgement is issued. Below is a breakdown of these cases:

A- Cases related to the arbitration agreement:

The arbitration agreement is considered to be on behalf of the Constitution from which the arbitration process derives its legitimacy, Therefore, any defect affects its existence or health, It undermines the arbitration award and allows it to be appealed by invalidation.

This is achieved if the arbitral tribunal decides without an arbitration agreement, Or based on a void agreement or after the expiry of the arbitration period (17).

1_- Arbitration court deciding the subject of the dispute without an arbitration agreement:

In this case, the arbitration agreement is considered the basis on which the opponents rely to request the invalidation of the international arbitration award in administrative contracts, If one of the parties pleads before the court that there is no arbitration agreement, Or that no agreement was signed in this regard, The only thing the judge has to do is verify the reality of the existence of this agreement.

If it becomes clear to him that there is an arbitration agreement that meets the conditions required by law, He ruled to reject the claim of annulment, If it becomes clear to him that this agreement does not exist, he will rule that the international arbitration award is invalid, The absence of an arbitration agreement can be inferred from a lack of satisfaction, In resorting to arbitration by the party that

Filing an annulment suit, Or the third party named in the arbitration agreement does not have the capacity of arbitrator but is an expert or mediator.

The issue of the lack of an arbitration agreement may also arise if this agreement is found in a contract within a group of successive contracts and a dispute arises as to whether this agreement applies to anything other than the contract it contains, Or if the contract

It was executed by a person other than the one who signed it and the dispute arose over the validity of the arbitration agreement, Or a dispute may arise over the nature of this agreement.

In that it is an arbitration or mediation agreement or an agreement to resort to technical expertise.(18)

The issue may also arise in the event of an extension of the arbitration agreement, for those who were not an original party to it

Such as an heir whose inheritee concluded a contract that included an arbitration clause, On the pretext that he did not actively participate in its conclusion or that he did not sign it, Or in the event that the original contract containing the arbitration clause is assigned to a third party, Who became a party to this contract despite not participating in its conclusion, Or if one of the partners concludes a contract that includes an arbitration clause, it applies to the rest (19)

The absence of an arbitration agreement must be denied and adhered to before the arbitration award is issued, Because presence



The parties appear before the arbitral tribunal without any reservation that is interpreted as implicit consent to arbitration.

Therefore, the absence of an arbitration agreement is not a reason for invalidation, Unless one of the parties was not present before the arbitration panel or was attending and arguing that there was no arbitration agreement (20).

2 The arbitration court decided the subject of the dispute based on an invalid arbitration agreement:

The arbitration contract is a contract governed by the general rules in contracts; it must have all the necessary elements for concluding contracts, including consent, reason, reason, and formality.

As Article 1040, Paragraph 2 of the Civil and Administrative Procedures Law stipulates “As to form, and under penalty of nullity, the arbitration agreement must be concluded in writing, or by any other means of communication that allows proof in writing.”

Article 1040, paragraph 3, states: “The arbitration agreement shall be valid as to the substance.”, If it meets the conditions set forth by either the law that the parties have agreed to choose, Or the law regulating the subject matter of the dispute or the law that the arbitrator deems appropriate.”

Therefore, for the arbitration agreement to be valid, the will of the parties must meet the desire of the parties to settle their dispute through arbitration, This will must be free from defects of consent, and the dispute to be settled must be suitable for arbitration, The reason for arbitration must be legitimate, which is often the case, and it must be in writing, or it will be invalid.

To know the content of these pillars and the availability of its conditions, The law agreed upon by the parties to govern the arbitration proceedings shall be referred to, Some believe that the law of the state whose court is considering the nullity suit, It is the applicable law if the parties to the dispute do not agree on another law.(21)

3- The arbitration court’s decision on the subject of the dispute based on an arbitration agreement that has expired:

This assumption is fulfilled in the event that the arbitration agreement is dropped due to the expiration of its term, After it was raised correctly, this includes two assumptions:(22)

First assumption: The agreement shall specify a period for the commencement of arbitration if one of the parties wishes to resort to it, If this period expires without resorting to it, The arbitration agreement was terminated and each party regained its right to resort to the state judiciary.

Second assumption: The arbitration agreement shall specify a deadline for issuing the arbitration award, and this deadline shall expire without delay the issuance of the arbitration award, this assumption applies to the situation in which the arbitration deadline is set by a legal text not specified by agreement.

In order for a claim to invalidate an international arbitration award to be accepted based on the expiration of the arbitration period, The arbitration period may be expressly waived, Or implicitly during the arbitration proceedings and this was not pleaded before

The arbitral tribunal before issuing the international arbitration award, Such as sending a memorandum of his defense to the arbitration panel elsewhere, a reservation, after the expiration of the arbitration period and before the issuance of the international arbitration award.

After addressing the cases of invalidity of the international arbitration award related to the arbitration agreement, Cases of invalidity of the international arbitration award itself will be discussed below (23).

B- Cases of invalidity related to the arbitration award:

These cases can relate to international arbitration as an activity, This means that this judgment was issued by an arbitration panel formed in violation of the law, Or issue a seperative on a subject not covered by an agreement arbitration(24)

It may also relate to the arbitration award as a written document, An example of this is the failure of the arbitrators to sign the arbitration award, the lack of justification, or the contradiction of reasons.



It may also relate to arbitration procedures, for example failure to respect the prima facie principle, These reasons are detailed below, These reasons are detailed below, This is done by focusing on the cases mentioned in the Algerian Civil and Administrative Procedure Code.

Where Article 1014 of the Algerian Civil and Administrative Measures Law, Do not assign the arbitration task to a natural person unless he enjoys his civil rights, Article 1015 of the same law requires that the arbitrator or arbitrators accept the task assigned to them, So that the arbitration panel's complaint is considered valid, It also obligates the arbitrator, if he knows that it is subject to response, to inform the parties of this, He will not accept this mission except after their approval, and if he informs them and none of them requests his rejection or removal, They lost their right to appeal the invalidity of the international arbitration award based on this reason.

As required by Article 1017 of the Civil and Administrative Procedure Code (25), the arbitration court shall appoint an odd number of arbitrators or arbitrators, accordingly, in the event of violating the conditions stipulated in these articles, Arbitration is permissible as an exceptional method for resolving disputes, which consists of departing from the ordinary path of litigation and the guarantees it guarantees, Therefore, it is inevitably limited to what the parties to the conflict want to present to the arbitration panel, From this standpoint, it is possible to monitor the extent to which arbitrators adhere to the limits of their jurisdiction in the dispute at hand

On them.

The arbitration court's decision in violation of the mission assigned to it may be related to the form or With the topic (26).

In terms of form, this means the arbitration procedures agreed upon between the parties, such as the law applicable to the dispute, for example.

As for the topic, there are two hypotheses:

- **The first assumption:** The arbitration panel decides on issues not covered by the arbitration agreement

The arbitration panel may not decide on issues that the parties did not agree to submit to it, The arbitral tribunal may also not decide on issues presented to it as subsidiary matters, Because the arbitrator is not a judge and therefore the rule that "the original judge is the branch judge" does not apply. If during the arbitration proceedings a subsidiary issue is presented and decided

The arbitral tribunal stated that its decision is necessary to decide the subject of the dispute, It must suspend arbitration procedures until this matter is presented to the competent court and a final judgment is issued(27).

- **The second hypothesis:** The arbitration panel exceeded the limits of the arbitration agreement
In this assumption, it is equivalent to the overstepping being a deficiency by ignoring one or more of the liabilities requests, Or more by giving the liabilities more than they asked for, The Jordanian Court of Cassation ruled in 1997 resolution No. 461/95 states that: "If the Court of Appeal annuls the decision of the Court of First Instance, The judge approves arbitrators' ruling for the arbitrators' omission to address a paragraph of the arbitration agreement, She must return the papers to the court of first instance, To return the arbitration decision to the arbitrators for reconsideration, Do not decide to dismiss the lawsuit (28).

But the question arises, What if the arbitration award was issued on matters covered by the arbitration agreement and other matters not covered by this agreement?

The Algerian legislator did not answer. The researcher believes that it would have been more appropriate for the national legislator to address this problem, nor the French legislator to this question, While we find that Article 49/06 of the Jordanian Arbitration Law stipulates that: "If the arbitration award decides on issues not covered by the arbitration agreement, or exceed the limits of this agreement, However, if possible, separate the parts related to issues not subject to it, The invalidation only applies to the last parts(29).

C- Failure of prima facie consideration:



The principle of prima facie requires that the parties be able to present their full defense and be invited to every session held by the arbitration panel, and to take action against them, They are also given sufficient opportunity to review and respond to all memorandums or documents presented in the case (30).

It should be noted that it is not permissible to file a claim for the invalidation of an international arbitration award based on failure to respect the principle of prima facie if the arbitration panel has allowed the opponent to defend himself, But he didn't do it on his own, Such as abstaining from attending sessions without justification, with the aim of obstructing the proceedings, if his notification was correct.

D- If the arbitration court does not reason with its justice or if there is a contradiction in the reasons:

National legislation regarding the causation of an international arbitration award is divided into two parts:

A section that does not oblige the arbitral tribunal to give reasons for the arbitration award, like English law, The American, the Austrian, and the Swedish, An oath requires the arbitration panel to give reasons for the arbitration award, like Algerian legislation, Egyptian, French and Jordanian And the Kuwaiti(31). Reasoning means discussing the facts and legal points raised by the parties and explaining how they led to what was concluded from them(32). The Algerian legislator has required, in the Civil and Administrative Procedure Code, that arbitration awards be given causation Article 1027/2 thereof, which states: "Arbitration awards must be reasoned."

There are many defects in arbitration that could invalidate a foreign arbitration award in Algeria, including: lack of causation, The ambiguity of the reasons or their mention in general or hypothetical terms is based on mere speculation, Which does not match reality or contradicts some of the reasons, The absence of justification means that the arbitration panel did not rely on any reasons to justify its conclusion, or that it relied on incorrect or useless reasons.

Based on what was mentioned above, if the arbitration award is not reasoned or there is a contradiction in its reasoning, it may be appealed for invalidity, Because the reasoning relates to one of the litigation guarantees represented by the rights of the parties to the dispute, In defending their rights, which requires their knowledge of the reasons for governance that formed the basis for it, and therefore it relates to public order, However, the French legislator did not stipulate the lack of justification as a case of appeal international arbitration award, This is explained by the contractual nature of arbitration, which allows for the possibility of imagining a waiver of causation, But the question arises: Can the court recognize an unjustified foreign arbitration award issued in accordance with the foreign law applicable to the dispute?

The company Veuve Henri Brautchoux and the company El MASSIAN have objected to the execution order An unjustified foreign arbitration award, It was issued in accordance with the English law applicable to the subject matter of the dispute, and the Paris Court upheld the implementation, But the defense appealed its ruling on the grounds that the order to implement a foreign arbitration award was unjustified, While reasoning for judgments is a principle of public order in French law, However, the Court of Cassation rejected that appeal on June 14, 1960, declaring that the failure to justify the disputed judgment was not in itself a violation of international public order(33), By distinguishing between the internal public order and the international public order, And that the arbitration award was subject to English law, which does not require justification, This does not conflict with French public order within the meaning of French private international law, The disputed award was issued in accordance with the jurisdiction of the law applicable to the dispute, which allows the arbitration award not to be causative(34).

This is with regard to causation, but what about the other conditions that the law requires to be met in the arbitration ruling in international management contracts?

It is noted that the Algerian legislator explained the effect of neglecting the reasoning for the international arbitration award, or the presence of a contradiction in stating its reasons, but it did not indicate the effect of neglecting one of the other conditions required by the law in this judgment.



We find that the Jordanian legislator was more successful³⁵, by stipulating in Article 49/7 of the Arbitration Law that it is permissible to appeal the invalidity of the arbitration award, In the event that the arbitral tribunal does not take into account the conditions that must be met in a way that affects its content, Or based on invalid arbitration procedures that were raised therein, Thus, this text expands to include all assumptions in which it is possible to violate any of the conditions that must be met in a ruling arbitration, including giving reasons or issuing a ruling without writing or deliberation, Or it does not include an offer a summary of the parties' claims or defenses, Or does not include the data required by law in it, Such as the name and title of the arbitrators, the parties, and their representatives, if necessary, and the date and place of issuance of the award or not his signature, However, a distinction must be made between these conditions on the basis of the extent to which they relate to the interest of the parties in the case, Or it was established in order to facilitate the work of the arbitral tribunal or the implementation of the arbitration award when it is issued, In the first case, it is permissible to appeal the invalidity of the arbitration award in which a condition related to someone's interest was violated the parties to the case, In the final case, this is not permissible, and the matter is limited to fulfilling the missing condition whenever that is possible⁽³⁶⁾.

E-PUBLIC ORDER OFFENSE:

Public order is considered one of the basic controls in all legal actions, judicial and arbitration pronouncements, Violating it would lead to the disposal being invalidated or being challenged according to the legally available means, Accordingly, if a situation exists that requires filing a lawsuit to invalidate the international arbitration award, But it does not fall within the cases previously mentioned, The idea of public order can be used to invalidate this ruling, The idea of public order is relative and has not had a specific definition, Some jurists have worked diligently and defined it as follows: "It is established by the force of legal obligation, It is imposed by the aim of achieving an objective or general collective interest organizational within the state system, Or a transient international collective interest within an interstate system, By removing a trace the action of the personal will of individuals, And replacing the general will of the state, which is expressed by its peremptory laws, Or displacing the general will of the state as expressed by its laws or sovereign actions, Replacement of community will international law, which is expressed in its peremptory norms"³⁷", The researcher notes from this definition that it combines All types of internal and international public order of the state or international community in the concept of private and public law, As a general principle, it can be said that the public order is linked to social, political, or Economic or moral in each country, Which relates to the best interest of society.

Accordingly, the international arbitration award, which is contrary to public order in the country in which it was appealed, is declared invalid before its courts, It may be valid in another country because it does not violate public order there, Since the idea of public order differs among different legal systems or even among countries belonging to one legal system, It is difficult for the arbitration parties and the arbitral tribunal to know the various legal systems, To determine what is against public order and what is not in each of them.

This led to the emergence of a trend calling for a distinction between internal public order and international public order, to reduce the incidence of invalidation of the arbitration award, So that a national judge in a country may not rule that an international arbitration award is invalid, Just because he violated public order in his country, Rather, it must be contrary to international public order, and on the contrary, it can invalidate the international arbitration award for violating public order International, even if it does not violate internal public order (38). It is a classic example of a violation of international public order, Contracts relating to corruption, fraud, bribery, racial discrimination, money laundering, drug trafficking, slavery and illicit trafficking With weapons, all of this is contrary to international public order.⁽³⁹⁾

Second - Procedures for appealing invalidation:

Article 1059 of the Code of Civil and Administrative Procedure stipulates: "The appeal is subject to the invalidity of the arbitration award stipulated in Article 1058 above, Before the judicial council in whose jurisdiction the arbitration award was issued, The appeal shall be accepted starting



from the date of pronouncement of the arbitration award. This appeal shall not be accepted after a period of one month from the date of official notification of the judge's order by implementation.

According to this article, the jurisdiction to consider the appeal of invalidity against the arbitral award issued in Algeria, In the field of international management contracts, it is within the jurisdiction of the Judicial Council, within whose jurisdiction this judgment was issued, It does not matter if the arbitral award was issued under procedural law Algerian or according to foreign procedural law, Chosen by the parties or chosen by the arbitrator or tribunal arbitration. The claim for invalidation of the arbitral award shall be filed within one month, This period begins to enter into force from the date of official notification of the execution order, However, failure to respect these deadlines leads to the rejection of the invalidation appeal, The lawsuit is also dismissed by a written petition that completes all procedures Legal, and justified in accordance with the cases stipulated in Article 1056 of the Code of Procedure civil and administrative (40), Accordingly, the party who appealed the invalidity of the arbitral award must be notified Firstly, the party being appealed against, In accordance with the provisions of the Civil and Administrative Procedures Law, in order to be able to discuss the aspects of the appeal and present its defenses, and any violation of this principle leads to the rejection of the appeal. The petition shall be attached to the contested arbitration award as well as the arbitration agreement. This is so that the judge can whoever examines and monitors whether the arbitration award was actually issued based on a valid arbitration agreement, That the arbitrators were appointed in accordance with the law, The arbitration court decided in accordance with the task assigned to it and in accordance with the principle of prima facie, The arbitral award is justified and does not contradict international public order. After the Council's decision is issued, we will be faced with two situations; Either the invalidation appeal is accepted or rejected:

A_ In case the invalidation appeal is accepted: If the invalidation appeal is accepted, it will lead to the cancellation of the contested Arbitration decision, without considering the case in point or deciding the case again, Rather, the supervision locality is limited only to canceling the judgment, This will result in the arbitration award being invalidated and the case being reinstated to what it was before the arbitration proceedings, This includes the Algerian legislator's respect for the will of the parties, They have the right to form a new arbitration court to decide the dispute, Or dismiss arbitration and resorting to the national judge 41 If the court judgment of the state of the place of arbitration invalidates the arbitration award, this invalidation has general international validity, and that ruling may not be implemented in another country that is a signatory to the New York Convention, as stated in the text of Article 5 thereof, but the judiciary of some countries, and in particular France, holds otherwise.

B_ rejection case of the invalidation appeal: Rejecting the invalidation appeal has the opposite effects of accepting it Appealing invalidation, so; in the event that the court abandoned the implementation request after appealing the invalidity, The Council's decision to reject the invalidation appeal leads to giving the arbitration award an executive form. The order that enforces the international arbitration award issued in Algeria does not accept any direct appeal against it, nor can it be appealed against except indirectly, given that the challenge to the invalidity of the arbitration award is strongly arranged. The law is to appeal the execution order, as stipulated in Article 1058, second paragraph of the Code of Procedure Civil and administrative, which stipulates: "The order requiring the implementation of the aforementioned international arbitration award shall not be accepted Above is any appeal, but an appeal to the invalidity of the arbitration award constitutes, by force of law, an appeal against the implementation order or the court's abandonment of deciding on it.

Third - Renouncement and its procedures appealing:

Article 1061 of the Civil and Administrative Procedures Law stipulates: "Decisions issued in application of Articles 1055, 1056, and 1058 above shall be subject to appeal by renouncement." Hence the decisions issued by the councils The judiciary, on the occasion of its decision on the invalidation appeal, is subject to appeal by renouncement, and the appeal is based on the aspects



mentioned in Article 358 of the Code of Civil and Administrative Procedures mentioned above, since the renouncement appeal is an unusual method of appeal.

The renouncement appeal shall be filed before the Supreme Court within 20 months, starting from the date of notification. The official judging on the contested decision if it was made in person. The time limit for cassation appeal is extended to three (30) months if notification was made in the real or chosen domicile. An appeal in cassation does not result in stopping the implementation of the decision Issued by the Council.

Noting that the Washington Convention on the settlement of disputes arising from investment between countries nationals of other countries do not allow any appeal before the national judicial authorities in accordance with the text of Article 52 thereof, which stipulates that either party may submit a written request to the Secretary General to cancel Judgment for any of the following reasons

- A. Error in forming the court
- B. The court's use of authority in excess of its powers
- C. Invalidity of a member of the court
- D. Serious negligence of a basic procedure of trial
- E. The court failed to state the reasons on which it was based.


CONCLUSION:

The administrative contract being subject to arbitration, and hence the legal and judicial system that does not know the distinction between the administrative contract and the civil contract, requires that the state divest itself of its privilege over the other contractor, which is approved by the administrative judiciary, but on the other hand arbitration has now become one of the requirements of development, especially In countries where national capital is unable to meet their needs, it is a demand for foreign companies due to its confidentiality and simplicity of procedures. The legislator intervened after great hesitation in most countries of the world and permitted arbitration in administrative contract disputes of an international nature.

Most Arab countries have witnessed great progress in this field, and these countries, like other third world countries, have moved from a stage of doubt and mistrust in arbitration processes to acceptance of it, and this is evident in the development which was witnessed in the laws of most Arab countries, and Algeria in particular, and some of them allocated an independent law for arbitration, In addition to the fact that most of them adhere to international arbitration agreements, which requires the administration to respect them Its undertakings, and to implement the arbitration awards issued by the arbitral tribunal voluntarily and don't try obstructing its implementation, and not insisting on its judicial immunity or immunity against implementation, because that would make the state lose its credibility in its ongoing dealings with foreign companies, which would constitute a direct reason. In the reluctance of other foreign companies to contract, which will undoubtedly negatively affect the economies of countries.

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