"THE CONCEPT OF THE BINDING AUTHORITY OF ARBITRATION DECISIONS IN COLLECTIVE LABOR DISPUTES : A STUDY IN LIGHT OF ALGERIAN LAW."

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Abstract

"Collective labor disputes hold special importance due to the large number of people involved Therefore, the Algerian legislator has attempted to provide them with distinct procedures, including the option of referring them to arbitration in order to reach an amicable solution outside the court system. However, a careful examination of the provisions governing arbitration in Law 23-08 reveals that they are insufficient for the effectiveness of this procedure , As a result, this research paper aims to propose a new legal text that ensures the vitality of arbitration in collective labor disputes and guarantees its application to maintain stable labor relations."

Keywords: Collective labor disputes, Arbitration, Algerian law, Strike.

INTRODUCTION

The legal bonds resulting from labor relations are among the most important ones that the legislator has allocated specific legal rules to, due to their unique nature. However, these relations may shift from their static and stable state to a dynamic one, represented by a state of dispute. This necessitates finding a solution that responds to this specificity, through the use of non-judicial methods to resolve the conflict, with a particular emphasis on arbitration.

Once a collective labor dispute is submitted, it must be subjected to arbitration rules for resolution. After the dispute is settled, it results in an important legal consequence, which is the binding authority of the decision for both the employer and the workers. This, in turn, becomes a source of legal certainty for this relationship, necessitating an assessment of this certainty in order to address its shortcomings.

In light of this, the problem to be addressed can be formulated as follows:

To what extent can the concept of the binding authority of arbitration decisions contribute to achieving legal certainty for the parties involved in the employment relationship?

To facilitate answering this question, it has been broken down into a series of sub-questions:

1. What is the concept of binding authority and the concept of legal certainty?
2. What is the relationship between binding authority and legal certainty?

To address this issue, we adopt a two-part plan consisting of two sections, In the first section we examine the concept of binding authority in the context of legal certainty by addressing the concepts related to the topic, In the second section, we analyze the effects of the concept of binding authority and assess its adequacy in achieving legal certainty.

Section One: The Concept of Exhaustion in the Context of Legal Certainty.

"The concepts are considered the most suitable mechanisms for the realization of scientific knowledge and for understanding the essence of issues. Consequently, it is essential to elaborate on this research to determine the true nature of the concept of exhaustion in the field of collective labor relations (first requirement) within the context of legal certainty for the parties involved in this relationship, as it has become one of the most important principles governing legal relations (second requirement).

"First Requirement: The Nature of the Concept of Binding Authority of Arbitration in Collective Labor Disputes"

The concept of binding authority in collective labor disputes is based on a compound term, which necessitates breaking it down into its primary components in order to understand its meaning. Therefore, we will clarify the meaning of the concept of binding authority (first subsection) and then define what is meant by collective labor disputes (second subsection

Subsection One: The Concept of Binding Authority (Definition and Foundation).

Binding authority represents one of the important ideas aimed at achieving a set of objectives, particularly in safeguarding judicial decisions and arbitration rulings from individual capriciousness. It can be defined as: 'An absolute presumption indicating the truth contained in the judicial ruling, thereby protecting this ruling from any review, whether before the same authority or another[1],There are also those who view it as: 'A legal concept based on the idea that rulings, once they meet certain formal and substantive conditions, become immune to any changes, and that any attempt to alter them can be countered by the precedence of the ruling in order to avoid the issuance of conflicting decisions , This is the approach taken by the Algerian legislator, both in the context of judicial rulings through Article 338 of the Civil Code[2] ,These rulings make final judgments binding regarding the rights they have determined, and they are a presumption that cannot be disproved, provided that they are raised in cases of unity of parties, subject matter, and cause. For instance, if arbitration occurs between Union (A) and the employer regarding a specific dispute, it will not be binding on Union (B) unless it was part of that arbitration.

Thus, binding authority means that the judge exerts their effort in the dispute by ruling on it, or that they exhaust their authority in ruling on a particular matter ; They may not return to reverse what they have decided, even if it becomes apparent that their ruling was unjust or incorrect[3], **This definition can be extended to arbitration as one of the means referred to by the legislator, whether through the old law 90-02**[4] , And also through its definition in the new law as: 'A method for settling collective labor disputes, which follows a definitive agreement between the parties that involves the intervention of a third party called the arbitrator in order to resolve the dispute in accordance with the general rules of civil and administrative procedure law. The law has entrusted the arbitrator with the task of issuing an arbitral award[5].

The principle finds its basis in the Civil and Administrative Procedure Law[6]; the legislator explicitly stated in Article 1030: 'The arbitrator shall relinquish the dispute upon rendering a decision.' The second paragraph added: 'However, the arbitrator may interpret the ruling or correct any material errors and omissions that it may contain.' From the aforementioned article, it becomes clear that the article delineates the limits of the arbitrator's role after issuing the arbitral award by removing the jurisdiction over the matter while providing a positive formal role through the possibility of interpretation and correction of material errors, among others. This aligns with judicial practice, allowing us to say that arbitration has a judicial nature and also acquires judicial authority, which constitutes a source of its executive power.

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[1] Waseem Mohamed Farag, The Binding Authority of the Res Judicata Ruling: An Analytical Study, African Journal of Advanced Studies in Humanities and Social Sciences, Volume: 03, Issue: 01, 2024, pp. 257-271.

[2] Ordinance No. 75-58 dated September 28, 1975, containing the Civil Code, Official Gazette of Algeria, No. 78, published on September 30, 1975, as amended and supplemented.

[3] Wadah Rachid, The Arbitration System in the Settlement of Collective Labor Disputes: A Comparative Study, Doctoral Thesis, Mouloud Mammeri University of Tizi-Ouzou, Faculty of Law, 2010, p. 379.

[4] Law No. 90-02 concerning the Prevention and Settlement of Collective Labor Disputes and the Exercise of the Right to Strike, Official Gazette of Algeria, No. 06, published on February 7, 1990."

[5] **Article 04, Paragraph 03 of Law No. 23-08 dated 21/06/2023 concerning the Prevention and Settlement of Collective Labor Disputes and the Exercise of the Right to Strike, Official Gazette of Algeria, No. 42 of 2023.**

[6] **Law No. 08-09 dated 18 Safar 1429, corresponding to February 25, 2008, containing the Civil and Administrative Procedure Law, Official Gazette of Algeria, No. 21, published on February 25, 2008.**

Based on this, it can be said that binding authority has a general rule that extends to encompass the effects of arbitration, along with an exception that softens the general rule and adds flexibility in line with the concept of justice. The general rule of exhaustion stipulates that one cannot revert to what has been adjudicated, as this grants rulings immunity from being challenged and confers binding authority on what has been decided. This leaves the avenues for correcting the ruling and rectifying any errors or clarifying any ambiguities or obscurities, which necessitates narrowing the exhaustion rule in a manner that achieves legal stability and consistency according to the procedural methods established by law[7].

However, considering that the arbitrator in collective disputes has the same powers as a judge, in this capacity, they can correct any purely material or arithmetical errors contained within their rulings. They can also decide on substantive requests in other cases. This necessitates granting exceptional authority to the arbitration panel, even if it has exhausted its authority regarding the dispute it has adjudicated, allowing it to address errors or defects in its rulings without extending this to altering or revising what has already been decided. However, if the arbitration panel has made mistakes in assessing the facts, in evaluating them, or in applying the law, then the only way to address these defects is through appealing the arbitral award before the competent authority, and in accordance with the forms and procedures stipulated by law [8]. This has led both legal scholars and jurisprudence in France to establish that cases of reviewing arbitral awards through appeals, corrections, and interpretations are exceptions to the rule of exhaustion."

It must be stated that the concept of binding authority finds its significance in arbitration itself. Referring to the French legislator, we see that it mandates the inclusion of an arbitration agreement clause in all collective labor agreements and contracts. To implement this, it is necessary to prepare a list of arbitrators agreed upon by the parties, to the extent that the Supreme Arbitration Court, in its decision dated January 19, 1978, deemed the inclusion of an arbitration clause mandatory in collective labor agreements and contracts.

Subsection Two: The Concept of Collective Labor Relations.

Collective disputes refer to those disagreements that arise between a group of workers or the union organization representing them on one side, and the employer or employers, or the union organization representing them on the other side, regarding the interpretation or implementation of a legal rule[9]. It also refers to the conflict between a group of workers or a team of them and the employer or employers concerning the application or interpretation of a law or an agreement between them related to the conditions and terms of work, whether social or professional[10]. Some view it as the disputes that arise between a group of workers or the union organization representing them on one side, and the employer or employers, or the union organization representing them on the other side[11].

Based on these definitions, it can be said that collective labor disputes are those disagreements that arise between a group of workers or the union organization representing them on one side, and the employer or the union organization representing them on the other side, regarding the interpretation or implementation of a legal or regulatory rule, or a collective agreement related to

[7] Wadah Rachid, op. cit., p. 382

[8] Mohamed Hussein Mansour, Labor Law, 1st ed., Dar Al-Halabi Legal Publications, Lebanon, 2010, p. 255.

[9] Rikly Al-Sidiq, Reconciliation as a Primary Method for Amicably Settling Collective Labor Disputes According to Law 90/02 of 1990, Journal of Human Sciences, Volume: 34, Issue: 01, 2023, pp. 271-284.

[10] Suleiman Hamia, Mechanisms for Settling Labor and Social Security Disputes in Algerian Law, Third Edition, National Publishing House, Algeria, 2005, p. 92.

[11] Mustafa Ahmed Abu Amr, Collective Labor Relations in Light of the New Labor Law No. 12 of 2003, Dar Al-Jamia Al-Jadida Publishing, Egypt, 2005, p. 283.

the terms, conditions, and circumstances of work, or concerning social, professional, and economic issues related to labor, or any effect stemming from collective labor relations[12].

Accordingly, the scope of the study is defined—naturally—by collective disputes rather than individual disputes[13], as the subject of arbitration is usually these disputes. The vitality of the rights involved, as well as the broad range of stakeholders (employers and workers), makes it prudent to submit them to arbitration due to its procedural speed and specialization, which ensures a swift and quality resolution while preserving the direct rights of the parties involved and the indirect rights of third parties, especially if this work represents a qualitative addition to the national economy and provides essential goods and services to people.

Subsection Two: The Concept of Legal Certainty

Legal certainty is considered one of the most dynamic legal concepts in recent times, as it is one of the results of the rule of law. This necessitates examining its concept (Subsection One) and then identifying its dimensions to understand its interactive relationship with labor relations (Subsection Two).

Subsection One: The Concept of Legal Certainty

Legal certainty has become a focal point for researchers[14] and one of the most important topics. However, a comprehensive and definitive concept has not yet been established due to the diversity of the subjects discussed in this context, as well as the differing perspectives from which it is viewed[15]. Among the most significant definitions is that of the scholar Bentham, who defined it as: 'A principle aimed at protecting and anticipating the future, and necessitating the law to ensure this anticipation.' Meanwhile[16], Capron believes that legal certainty represents 'the quality of a specific legal system that guarantees citizens an understanding and confidence in the law at a given time; it embodies the requirements necessary for the quality of law and its predictability[17].

As for the researcher Thomas Piazzon, whose study is considered a reference in this field, he defines it as: 'The highest model for measuring trust through the accessibility of rights, the ability to predict the legal consequences of actions, and the embodiment of respect for the legitimate expectations of those subject to the law[18], "As for Mathieu, he defines it as: 'A general principle linked to other specific principles within the legal system, including non-retroactivity, protection of acquired rights, legitimate expectations, and legality.' Meanwhile[19], Moderne views it as: 'A set of principles formed by the totality of specific principles aimed at achieving common goals, including: legitimate expectation, non-retroactivity of laws and administrative procedures, the principle of stability in contractual relations, and the principle of access to the law[20].

"At the judicial level, we find that the German Constitutional Court was the first to reveal this, as stated in one of its decisions dating back to 1953: 'Constitutional law includes constitutional provisions, some cohesive and unified general principles, and central ideas established by

[12] Yahiaoui Nadia, Conciliation as a Means of Resolving Labor Disputes According to Algerian Legislation, Master's Thesis in Law, Branch of Professional Liability Law, Faculty of Law and Political Science, University of Tizi-Ouzou, 2014, p. 62.

[13] This is the provision established in the aforementioned Law No. 23-08.

[14] This is a description borrowed from the researcher who referred to it as the 'opium of judges.

Regarding the difficulties of that, see: Khaed Nabiel, The Conceptual Security of Legal Certainty.[15]

[16] Francois Tulkens, "Legal Certainty: An Ideal to Reconsider," in Interdisciplinary Journal of Legal Studies, Vol. 24, No. 01, 1990, p. 27.

[17] **Houria Ourak,** Principles of Legal Certainty in Algerian Law and Procedures, (Doctoral Thesis), Public Law Specialization, Faculty of Law, Algeria, 2018, p. 47.

[18] Thomas PIAZZON, Legal Certainty, Doctorate and Notary. Paris: Thesis Collection, Volume 35, Edition Alpha, Defrénois Lextenso Editions, 2010, p. 62.

[19]Brahim DALIL, Administrative Law in the Face of the Principle of Legal Certainty, Doctoral Thesis in Law, University of Paris-Ouest Nanterre la Défense, Doctoral School of Law and Political Science, 2015, p. 121.

[20]Ibid, p 122.

constitutional legislation. Among these principles is the principle of the rule of law, which is one of the guiding principles of the Basic Law and is binding on the state's legislative body. This principle is based on ensuring legal certainty as a fundamental element, which not only requires an organized process for legal procedures but also needs guaranteed outcomes[21].' Analyzing this, we find that the rule of law is based on providing legal security aimed at achieving guaranteed results that ensure the stability of legal positions, rather than mere possibilities that disrupt these relationships and put rights at risk

"This was later enshrined by the Court of Justice of the European Communities in 1961 in the S.N.U.P.A.T[22] ruling, where it stated: 'The principle of legal certainty particularly requires that regulations be clear and precise and that their application be predictable for litigants[23].' Thus, it establishes predictability as the basis for measuring whether legal security is achieved or not. The European Court of Human Rights (CEDH) followed suit in its famous ruling (Marckx)dated [24] June 13, 1979.

"This is also the approach taken by the French judiciary, as reflected in the report by the French Council of State in 1991. However, the lack of implementation of the recommendations in that report led to the issuance of a second report in 2006, which defined legal certainty as 'a state in which citizens know, without effort or difficulty, the commands and prohibitions of the law. This requires the existence of clear, understandable, relatively stable, and predictable standards[25].' The concept of legal certainty was further adopted in the famous ruling concerning SOCIETE KPMG in 2006[26], and it was embraced by the French Court of Cassation in a recent decision stating that legal certainty 'is one of the components of a fair trial.' It can be said that the trial encompasses all methods of resolution, whether judicial or non-judicial[27], such as reconciliation and arbitration."

Returning to the Algerian judiciary, we find that it has issued decisions that reference the idea of stability in legal relationships. Before the Court of Non-Contentious Jurisdiction issued a decision that officially adopts this idea, it stated that while the rule set out in Article 02 of the Civil and Administrative Procedure Law stipulates that its provisions apply immediately upon coming into force, and excepts matters concerning timeframes that began under the old law, there are other exceptions to this rule that are not included in the aforementioned Article 02. This pertains to the application of the principle of non-retroactivity of laws if they threaten legal stability and security or infringe upon the rights and acquired legal positions of the litigant, which may lead to a loss of trust in the legal and judicial system[28]. Thus, it can be said that this court established the foundations for activating legal certainty, namely, the non-retroactivity of laws and respect for acquired rights, while also indicating the impact of violating legal certainty, which is the infringement of the legal and judicial system.

To officially adopt it within its constitutional principles through the recent constitutional amendment, which states in its preamble: 'The constitution guarantees the separation of powers,

[21] CCFA, 1 BvL 23/51, 01.07.1953.
[22] European Court of Justice, March 22, 1961, S.N.U.P.A.T, joined cases No. 42 and 49-59.
[23] European Court of Justice, June 7, 2005, Case C-17/03, para 80
[24] European Court of Human Rights, 13 juin 1979, Marckx c Belgique, affaire N° 6833/74.
[25] French Council of State, Legal Security and Complexity of Law, France, La Documentation Française, 2006, p. 281.
[26] "French Council of State, KPMG Company and Others, Decision No. 288460 of 24/03/2006.
[27] French Court of Cassation, Civil Chamber 2, March 19, 2020, No. 18-23.923.
[28] Conflict Court, File No: 000114, Decision dated: 09/01/2012, Supreme Court Journal, Issue: 02, 2012, pp. 468-475.

balance among them[29], independence of justice, legal protection, oversight of the work of public authorities, and the assurance of legal and democratic security.' Additionally, Article 34/04 states: 'In order to achieve legal security, the state ensures that legislation related to rights and freedoms is accessible, clear, and stable.

Section Two: Dimensions of Legal Security

It can be said that legal security is based on two main dimensions:

1. **Formal Legal Security**: This allows laws and judicial rulings to be predictable, characterized by clarity and comprehensibility for their recipients. This predictability leads to the ability to understand the outcomes of legal actions when they are undertaken, as well as the judicial rulings, which contributes to their stability[30].

2. **Substantive Legal Security**: This represents the rational acceptance of legal rules, as they come within the context of the expectations of those tasked with applying them. It also includes the acceptance of judicial rulings that align with the spirit of the law and do not contradict it[31].

It can be said that both dimensions are present in the concept of res judicata. From a procedural perspective, its application allows for the understanding of the outcome of a dispute when it is brought before the judiciary, leading to a prior decision. This ensures the protection of legal positions and the preservation of acquired rights, preventing any infringement upon them. On a substantive level, it indicates the rationality of the legal text and its assurance of legal relationships in the field of practice.

Section Two: The Impact of Exhaustion on the Legal Security of the Parties in Employment Relationships

The concept of res judicata has a fundamental relationship with legal security, as it constitutes one of its mechanisms. Therefore, it is essential to identify the effects of res judicata and its implications for ensuring the security of legal labor relations (First Requirement), followed by determining its effectiveness in safeguarding this relationship (Second Requirement).

First Requirement: Classification of Effects

Res judicata has specific effects that arise from it; thus, it is necessary to classify these effects according to the standard of the parties addressed. We can identify the effects related to arbitrators (First Branch) and the effects related to the parties in collective labor relations (Second Branch).

irst Branch: Effects Regarding the Jurisdiction of Arbitrators

In principle, final judgments possess executive authority, and there is no distinction in this regard between judgments issued by arbitration in labor disputes and those issued by the judiciary. An arbitration ruling, once issued, is considered final and serves as an enforceable instrument. This is due to the nature of arbitration rulings, which require prompt resolution to settle the disputes at hand. The implication of res judicata here is that the arbitration panel that issued the ruling is barred from reconsidering its decision, except through a legally prescribed appeal, all in the interest of expediency in resolving these disputes.

This is supported by various legislations. For instance, Article 1476 of the French Code of Civil Procedure grants res judicata effect to arbitration rulings immediately upon their issuance. A similar provision is established by the Algerian legislator in Article 1030 of the Code of Civil and Administrative Procedure, which stipulates that the arbitrator or arbitrators lose jurisdiction over

[29] Presidential Decree No. 20-442 dated December 30, 2020, concerning the issuance of the constitutional amendment approved in the referendum of November 1, 2020, published in the Official Gazette of the People's Democratic Republic of Algeria, Official Gazette of Algeria, No. 82 of 2020.

[30] Raitio Juha, the principle of legal certainty in EC Law, Springer Science + Buisness Media Kluwer Academic Published, 2003,p 378.

[31] Elina Paunio, legal certainty un multingual EU Law: language, discourse and reasoning at the Eurpean Courtust Justice, Ashgate Publishing Limited, England,2013, pp, 51_52.

the dispute immediately after issuing their ruling. This ruling becomes binding on the parties to the dispute and must be executed in accordance with the provisions of Article 13 of Law 90/02[32].

The same approach is affirmed by Law 23-08, which specifies in Articles 20 and 21 that an arbitration decision must be issued within 30 days following the appointment of the arbitrators. This decision is binding as soon as it is issued, and the parties are obligated to implement it within three (3) days of its notification. The judicial authorities oversee this process, and a copy of the arbitration decisions must be sent to the Minister responsible for labor if they are issued by the National Arbitration Committee, or to the relevant regional labor inspection if they are issued by the Provincial Arbitration Committee[33].

Section Two: Effects on the Parties to the Employment Relationship

This refers to both employees and employers, to whom Article 21 of the law stipulates that the arbitration decision is binding on both parties. This results in a series of effects, which are :

(First) Regarding Employees: These are:

(A) Prohibition of Strike and Lockout:

The unique characteristic of the arbitration rulings issued in collective labor disputes, regardless of the parties' freedom to resort to it, is their binding nature. This binding nature ensures their immediate enforceability as soon as they are issued and receive the executive formula or an order for their execution, under the penalties established by various legislations. Consequently, any interested party has the right to demand the enforcement of these rulings before the competent authority or to ensure compliance with any of its provisions or to seek compensation for non-implementation[34].

Accordingly, employees are prohibited from resorting to strikes after the issuance of the arbitration decision[35]. Although striking is a constitutional right guaranteed by international agreements and regulated by domestic legislations, this right can only be exercised under specific conditions and in certain circumstances. Allowing strikes to undermine an arbitration decision would be considered a way to undermine the authority of the law and could raise doubts about the effectiveness of arbitration rulings, potentially leading parties to avoid resorting to arbitration altogether. This situation may burden the judiciary with cases that would become a heavy load on it.

It is important to note here that professional unions often initiate the procedures for peaceful resolution and are therefore the ones who demand their implementation, provided they have the status of representing the workers. This is because they serve as a model for establishing representation in a democratic manner that allows for the defense of their rights. This has facilitated the formation of union pluralism, which competes to protect workers' rights and freedoms[36].

It should also be noted that the binding nature of the arbitration ruling extends to include all workers, whether they were parties to the dispute or not. For those workers who are not parties to the collective labor dispute for which an arbitration ruling was issued, even if they are not members of the union that initiated the arbitration process and are not part of it, they still benefit from the same working conditions and terms. The arbitration ruling applies to all workers within the same establishment, whether they are union members or not, especially when the ruling achieves more beneficial advantages and guarantees for workers that are not provided for by law. This also ensures the principle of equality, as enshrined in the Constitution, is not violated.

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[32] The Law No. 90-02 , op. cit.

[33] Article 77 of Law No. 23-08, op. cit.

[34] Wadah Rachid, op. cit., p. 386

[35] It is regulated by Law No. 23-08 in Articles 49-76.

[36] Khaled Hamid, *Labor Disputes Amid Socio-Economic Transformations in Algeria*, University Publications Office, Algeria, 2011, p. 159.

A violation of this could result in the strike being considered a valid reason for terminating the employment relationship, as the strike in this context would constitute a serious offense[37]. However, the assessment of such a situation must be subject to legal legitimacy through a judicial process, as leaving this assessment to the employer alone could undermine objectivity and promote subjectivity. Furthermore, any dismissal of the worker—even[38] if it seems reasonable in this case—would be considered arbitrary dismissal[39].

B/ Prohibition of Violence:

In a state governed by law, it is essential for the law to have supremacy in organizing and defining legal positions. This is evident through the respect for the outcomes established after resolving disputes in accordance with the legally prescribed methods, whether judicial or non-judicial. Any attempt to use violence to alter these outcomes poses a threat to legal and social security. Therefore, as a general rule, the law permits the employer to seek a court order for the eviction of professional premises, as such occupation aims to obstruct the freedom to work[40].

(Secondly) For the Employer:

The effects of the binding nature of arbitration for the employer are as follows:

(A) Prohibition of Closure:

The principle of res judicata imposes certain obligations on the employer, such as refraining from exercising the right to request partial or complete closure of the establishment or reducing its size or activity during the stages of amicable settlement procedures. Article 200 of the aforementioned law stipulates: "The employer is prohibited from requesting closure during mediation and arbitration stages. Additionally, the employer may not terminate employment contracts for economic reasons during these stages." Instead of exercising this right, the employer can, as an exception, temporarily modify the contractual conditions. The employer may assign the employee to a different job than originally agreed upon, even if it differs from their original work, and may reduce the employee's wage, provided it does not fall below the minimum wage.

In such cases, the employee has the right to terminate the employment contract without prior notice and is entitled to compensation equal to one month's comprehensive salary for each of the first five years of service and one and a half months for each subsequent year [41]. This provision was adopted by the Algerian legislator and is outlined in Law No. 90/02, as mentioned earlier[42].

(B) Prohibition of Resorting to Punitive Measures:

The general principle regarding union work is that it is constitutionally protected, which necessitates the safeguarding of its members. In one of its rulings, the Supreme Court stated: "A union representative cannot be subjected to punishment, regardless of the offense attributed to them, without informing the union[43]." The wisdom behind this provision is to ensure legal protection, especially after the arbitration body has exhausted its jurisdiction, in order to prevent covert punitive measures against prominent union leaders.

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[37] Algerian Supreme Court, Social Chamber, Case No. 111095, Decision dated 20/04/1994, *Supreme Court Journal*, Issue No. 01, 1995, pp. 158-163.

[38] Supreme Court, Case No. 132207, Decision dated 07/05/1996, *Special Issue on Labor Disputes and Occupational Diseases*, Vol. 02, 1997, pp. 191-194.

[39] Algerian Supreme Court, Social Chamber, Case No. 0728901, Decision dated 10/01/2013, *Supreme Court Journal*, Issue No. 02, 2013, pp. 237-240. In the same context: Case No. 1205085, Decision dated 08/02/2018, *Supreme Court Journal*, Issue No. 01, 2018, pp. 126-129

[40] Algerian Supreme Court, Social Chamber, Case No. 95338, Decision dated 08/02/1994, *Supreme Court Journal*, Issue No. 01, 1996, pp. 125-129.

[41] Muhammad Abdul Karim Nafi, 02 , op. cit, p. 63.

[42] The Law No. 90-02 , op. cit.

[43] Supreme Court, Social Chamber, Case No. 1356311, Decision dated 03/10/2019, *Supreme Court Journal*, Issue No. 02, 2019, pp. 151-154.

Article 6 of the International Labour Organization's Recommendation No. 92 on conciliation and arbitration outlines the effects of arbitration, stating: "If the dispute is referred to arbitration for a final decision with the consent of all concerned parties, these parties should be encouraged to refrain from striking or locking out during the arbitration proceedings, and to accept the arbitration decisions." This principle was adopted by the Egyptian legislator, as Article 193 of the Labor Law prohibits workers from striking and employers from locking out throughout the mediation and arbitration stages[44].

The reasoning behind this, in our view, is to preserve the rights of both parties, ensure the stability of their professional relationships, and respect the peaceful settlement process they have initiated. It also encourages the avoidance of resorting to violence, coercion, or force[45]. The legal logic dictates that the working conditions and terms remain in effect during the peaceful settlement stages until a decision is issued by the arbitration body.

Section Two: The Effectiveness of Res Judicata on Legal Security for Parties in Employment Relations

An examination of the effects of *res judicata* leads to two perspectives. One view argues that it is a relative concept that does not provide sufficient security to safeguard collective labor relations (Section One). The other view holds that it is adequate to secure these relationships, provided it is reinforced with sufficient criminal protection (Section Two).

Section One: The Relative Nature of Arbitration Awards in Labor Disputes

Referring to Article 83 of Law No. 23-08, it stipulates: “The employer, workers' representatives, or any other person who deliberately fails to execute agreements from reconciliation, mediation, or final arbitration decisions that have acquired enforceable power shall be punished with a fine ranging from 20,000 DZD (20,000 DZD) to 50,000 DZD (50,000 DZD).”

Upon analyzing this article, it is clear that it is based on three elements, which must be present in every offense:

1. **The Material Element**: The deliberate refusal to execute arbitration decisions.
2. **The Mental Element**: The presence of criminal intent, meaning that negligence or delays in execution cannot, by the meaning of this article, constitute a crime.
3. **The Legal Element**: The penalty established by the legislator, which is a fine ranging from 20,000 DZD to 50,000 DZD, equivalent to approximately 151 to 378 USD.

Since the role of the researcher is to critique and analyze texts rather than merely accept them, it can be argued that this legal provision is insufficient for the following reasons:

1) Lack of Proportionality:

Proportionality refers to achieving a balance between the crime and the legal provision addressing it. In other words, it is the balance between the goal and the means used to reach it. The fine alone is not adequate to ensure respect for the *res judicata* of arbitration decisions in labor disputes, especially since employers can easily evade such fines.

2) Lack of Severity:

The imposed penalties are very light, treating the violation as a mere infraction, whereas it should be treated as a misdemeanor, which would provide a greater guarantee of enforcement.

Based on these characteristics, the following negative consequences emerge regarding the effectiveness of arbitration decisions in achieving *res judicata* in labor disputes:

1) Lack of Legal Security for Arbitration Decisions:

The weaker party (the union and the workers) will constantly fear that the employer might not comply with the arbitration outcomes. This undermines their trust in their legal status, leaving their security in doubt throughout the arbitration process.

2) Procedural Waste:

[44] Raafat Dosouqi, *Explanation of the New Labor Law No. 12 of 2003*, Part Two, Mansha'at Al-Maaref, Alexandria, Egypt, 2004, pp. 67-68.

[45] Wadah Rachid, op. cit., p392.

If there is a possibility that arbitration will not be enforced, the parties will be forced to resort to the courts again. This could take a long time, rendering arbitration essentially pointless. This raises questions about its actual value, especially given the worker's social vulnerability (e.g., the worker's family) and economic challenges. Even though the law does not require a lawyer in labor disputes, whether in the first instance or at the appeal stage, the worker's ignorance of the laws makes hiring a lawyer a necessity to protect their rights.

Section Two: The Authority of Arbitration Decisions in Collective Labor Disputes

The attempt to theorize the formulation of a new provision that ensures the effectiveness of the authority of arbitration decisions in the context of collective labor disputes is based on the idea of the provision's validity. Validity can be defined as[46]: "the procedural and substantive appropriateness of a specific rule within the overall prevailing legal system." It is also defined as: "a descriptive process aimed at evaluating the rule's compliance with the established standards throughout the continuum from proposal to issuance[47]." Some define it as:"a commitment that [48] requires lawmakers to produce the latter according to the constitutionally prescribed rules."

Through this, we aim to achieve effectiveness in arbitration, considering that effectiveness is merely an extension of validity, as ineffective rules are dead rules within the legal system in which they exist. Therefore, maintaining this provision is tantamount to deliberately killing it[49]. Hence, there is a need to reconsider the legal penalty (the legal element) associated with it by increasing the stipulated fine and including a prison sentence of six months to one year, as this would provide greater assurance of its enforcement, along with a heightened penalty in the event of recidivism.

This approach is akin to criminal law, which imposes penalties on those who violate legally binding rulings and decisions, as both share the same objective[50]: the stability of relationships and legal positions, as well as the preservation of acquired rights.

CONCLUSION

(First) Results:

1. The impact of the binding nature of arbitration decisions on ensuring legal security for workers, which makes legal security a practical principle, not just a theoretical one.
2. The importance of the binding nature in achieving stability in the work environment, which helps preserve acquired rights and prevent disputes.
3. The inadequacy of Article 83 of Law No. 23-08 in ensuring the effective enforcement of arbitration decisions, which negatively affects the legal security of the parties in the labor relationship.

(Second) Recommendations:

Reformulate Article 83 of Law No. 23-08 as follows: "Shall be punished by imprisonment from six (06) months to one year and a fine ranging from one hundred thousand dinars (100,000 DZD) to one hundred and fifty thousand dinars (150,000 DZD) (approximately 800 to 1,200 USD), any employer, workers' representatives, or any other person who deliberately fails to enforce the provisions of reconciliation agreements, mediation, or arbitration decisions that have acquired executive force.

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46 Giovanni SARTOR, "Legal Validity: An Inferential Analysis", Ratio Juris. Vol: 21, N°: 2, 2008 (pp: 212–247), p 229.

47 Rosco E. HILL, "legal validity and legal obligation", The Yale Law Journal, Vol: 80, N°: 47, 1970, (pp: 47_75),, p 49, 50.

48 Giovanni SARTOR, op cit, p 216, 219.

49 Hans KELSEN, translated by: Max Knght from the second Germen edition, pure theory of law, university of California,, USA, 1967 p281.

50 There is no violation of the legality of punishment in the researcher's analogy, as analogy is only prohibited for the judge. However, the researcher has the right to do so in an attempt to develop the legal system of their country.

The penalty shall be increased to two years in the event of repeat offenses."

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