



JUDICIAL CONTROL OVER THE RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS: A STUDY UNDER ALGERIAN LAW

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Abstract - This article examines the scope of judicial control over the recognition and enforcement of arbitral awards under Algerian law. Although arbitration is based on the principle of party autonomy and aims to provide an efficient alternative to judicial litigation, arbitral awards cannot produce full legal effects without the intervention of national courts. The study highlights that judicial control, exercised mainly through the exequatur procedure, is limited to verifying formal requirements and ensuring compliance with public order, without extending to a review of the merits of the dispute. The research adopts a doctrinal analytical approach based on the Algerian Civil and Administrative Procedure Code, while also referring to comparative legal perspectives. It argues that Algerian law seeks to maintain a delicate balance between preserving the autonomy and effectiveness of arbitration and safeguarding the integrity of the national legal order. The study concludes that the effectiveness of arbitration largely depends on a restrained and consistent judicial intervention that respects the finality of arbitral awards.

Keywords: *Arbitration; Judicial Control; Recognition; Enforcement Algerian Law;*

INTRODUCTION

Arbitration has become a widely recognized mechanism for the settlement of both domestic and international disputes, particularly in commercial and investment relations, due to its flexibility, confidentiality, and efficiency¹. However, despite its growing autonomy as a private dispute resolution system, arbitral awards do not operate in complete isolation from state judicial authority. Their effectiveness ultimately depends on the intervention of national courts, especially at the stages of recognition and enforcement². Under Algerian law, the enforcement of arbitral awards is subject to judicial supervision through the exequatur procedure, which grants arbitral decisions their enforceable character within the national legal order³. This judicial involvement raises a fundamental legal tension between preserving the autonomy of arbitration and ensuring compliance with mandatory legal standards, particularly public order requirements⁴. Against this background, this study addresses the following question: to what extent does judicial control over the recognition and enforcement of arbitral awards under Algerian law strike a balance between safeguarding legal certainty and respecting the autonomy of arbitration. The article adopts a doctrinal analytical approach, focusing on the relevant provisions of the Algerian Civil and Administrative Procedure Code, alongside comparative insights, where necessary⁵. The aim is to

¹ René David, *Arbitration in International Trade*, Economica, Paris, 1982, p. 15.

² Ashraf Abdel Alim Al-Rifai, *Arbitration Agreement and Practical and Legal Problems in International Private Relations*, Dar Al-Fikr Al-Jamii, Alexandria, 2003, p. 1.

³ Algerian Civil and Administrative Procedure Code, Arts. 1035–1054.

⁴ Ahmed Mohamed Hashish, *The Executive Force of Arbitration*, Dar Al-Fikr Al-Jamii, Alexandria, 2001, p. 73.

⁵ Tayeb Kebaili & Karim Taouilt, *International Commercial Arbitration*, Dar Belqis, Algeria, 2020, p. 106.



clarify the scope and limits of judicial intervention and to assess whether such control reinforces or restricts the effectiveness of arbitral justice.

1. CONCEPTUAL FRAMEWORK OF RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS

1.1 Concept of Recognition of Arbitral Awards

Recognition of an arbitral award refers to the legal process through which a national court acknowledges the existence and validity of an arbitral decision, integrating it into the domestic legal order. It does not, in itself, imply compulsory execution, but rather confers legal authority and *res judicata* effect to the award, preventing the re-litigation of the same dispute before national courts⁶. In comparative doctrine, recognition is often considered a defensive mechanism invoked by a party seeking to rely on the arbitral award in subsequent judicial proceedings⁷. It ensures that the dispute, once settled by arbitration, is not reopened, thereby reinforcing legal certainty and procedural efficiency. Under Algerian law, recognition is governed by the Civil and Administrative Procedure Code, which requires that arbitral awards meet certain legal conditions before being admitted into the national legal system⁸.

1.2 Concept of Enforcement (Exequatur)

Enforcement, or *exequatur*, refers to the judicial procedure by which an arbitral award is granted executive force, allowing it to be executed compulsorily on the territory of the State. Unlike recognition, enforcement goes beyond acknowledgment and transforms the arbitral award into a legally enforceable instrument⁹. The function of *exequatur* is therefore not to re-examine the merits of the dispute, but to verify whether the award satisfies the minimum legal requirements necessary for enforcement under domestic law¹⁰. This includes compliance with procedural validity and conformity with public order. In this sense, the judge does not act as an appellate authority over the arbitral tribunal but as a gatekeeper ensuring that enforcement does not violate fundamental legal principles.

1.3 Distinction between Recognition and Enforcement

Although recognition and enforcement are closely connected, they remain distinct in both legal nature and practical effects. Recognition merely acknowledges the binding effect of the arbitral award, whereas enforcement gives it coercive force through the intervention of state authority¹¹. In other words, recognition operates at the level of legal validity, while enforcement operates at the level of execution. This distinction is particularly important in Algerian law, where both mechanisms are subject to judicial control but governed by different procedural implications. Some doctrinal positions tend to merge the two concepts due to their functional interdependence; however, maintaining a clear distinction remains essential for understanding the scope of judicial intervention in arbitration matters¹².

2. JUDICIAL CONTROL OVER ARBITRAL AWARDS IN ALGERIAN LAW

2.1. Legal Basis of Judicial Control

Judicial control over arbitral awards in Algerian law is primarily grounded in the provisions of the Civil and Administrative Procedure Code, which regulate both domestic and international arbitration. The legislator has explicitly assigned the national judge a supervisory role at the stage of recognition and enforcement, particularly through the *exequatur* mechanism¹³. This judicial intervention does not undermine arbitration as an alternative dispute resolution method, but rather

⁶ A. Redfern & M. Hunter, *International Arbitration*, Oxford University Press, 2015, p. 420.

⁷ Abdul Hamid El-Ahdab, *Arbitration in Arab Countries*, Kluwer Law International, 1998, p. 315.

⁸ Algerian Civil and Administrative Procedure Code, Art. 1051.

⁹ Gary B. Born, *International Commercial Arbitration*, Kluwer Law International, 2021, p. 3685.

¹⁰ Fouchard, Gaillard & Goldman, *On International Commercial Arbitration*, Kluwer, 1999, p. 945.

¹¹ René David, *Arbitration in International Trade*, Economica, Paris, 1982, p. 61.

¹² Tayeb Kebaili & Karim Taouilt, *International Commercial Arbitration*, Dar Belqis, 2020, p. 108

¹³ Algerian Civil and Administrative Procedure Code, Arts. 1035–1054.



ensures its integration within the state legal system. The arbitral award, although binding on the parties, acquires enforceability only after judicial validation, which confirms its compatibility with mandatory legal norms.

2.2 Scope of Judicial Review

The scope of judicial review in the recognition and enforcement of arbitral awards is generally limited and does not extend to a re-examination of the merits of the dispute. The judge is not authorized to review the factual or legal findings of the arbitral tribunal, as this would undermine the autonomy of arbitration¹⁴. Instead, judicial control is confined to verifying formal and procedural requirements, such as:

1. The existence of a valid arbitral award;
2. Compliance with due process guarantees;
3. Respect for public order.

This limited control reflects a balance between respecting arbitral autonomy and ensuring the legality of enforcement.

2.3 Public Order as a Limit to Enforcement

Public order constitutes the most significant substantive limit to the enforcement of arbitral awards. Algerian courts may refuse recognition or enforcement if the award contains provisions that contradict fundamental principles of national legal order¹⁵. The concept of public order, however, remains flexible and is assessed by the judge on a case-by-case basis. This discretionary power allows the court to ensure that enforcement does not compromise essential legal, moral, or economic principles of the Algerian legal system. At the same time, excessive reliance on public order may risk expanding judicial intervention beyond its intended limits, thereby affecting the effectiveness and predictability of arbitration.

2.4 Limits of Judicial Intervention

Although judicial supervision is necessary, Algerian law clearly restricts the judge from conducting a substantive review of arbitral awards. The judge cannot modify, reinterpret, or reassess the arbitral decision, as this would amount to an appeal mechanism, which is incompatible with the nature of arbitration¹⁶. Therefore, judicial control is intended to remain exceptional and narrowly defined, focusing only on legality rather than correctness of the arbitral decision. This limitation preserves the finality of arbitration while ensuring its conformity with the legal order.

3. CONDITIONS FOR RECOGNITION AND ENFORCEMENT UNDER ALGERIAN LAW

3.1. Formal Condition

The recognition and enforcement of arbitral awards under Algerian law are subject to the fulfillment of certain formal requirements, which primarily relate to the existence and procedural validity of the arbitral award. The arbitral award must be duly established and proven by the party seeking enforcement, typically through submission of the original award or a duly authenticated copy¹⁷. This requirement ensures that the court is not dealing with a fictitious or irregular decision and that the award originates from a properly constituted arbitral tribunal. In addition, the arbitral proceedings must comply with the procedural guarantees recognized under Algerian law, particularly those related to due process and the right of defence.

3.2. Substantive Condition: Compliance with Public Order

One of the most important substantive conditions for recognition and enforcement is that the arbitral award must not violate public order. Algerian law explicitly provides that foreign and international arbitral awards may only be enforced if they do not contradict fundamental principles

¹⁴ Fouchard, Gaillard & Goldman, *On International Commercial Arbitration*, Kluwer, 1999, p. 947.

¹⁵ Algerian Civil and Administrative Procedure Code, Art. 1051.

¹⁶ Gary B. Born, *International Commercial Arbitration*, Kluwer Law International, 2021, p. 3702.

¹⁷ Algerian Civil and Administrative Procedure Code, Art. 1051.



of public order and morality within the national legal system¹⁸. Public order, in this context, serves as a safeguard mechanism allowing the judge to refuse enforcement where the content of the award threatens essential legal, social, or economic values of the State. However, this notion remains inherently flexible and is interpreted restrictively by courts in order to preserve the effectiveness of arbitration. The judicial assessment of public order does not involve a review of the merits of the dispute but focuses solely on the compatibility of the outcome with fundamental legal principles.

3.3. Judicial Role in Granting Exequatur

The exequatur procedure constitutes the procedural gateway through which arbitral awards acquire enforceability in Algeria. The competent judge verifies whether the legal conditions for enforcement are satisfied before granting the execution order¹⁹. This judicial function does not transform the judge into an appellate authority over the arbitral tribunal. Rather, it places the judge in a supervisory role aimed at ensuring that the award can be integrated into the national legal order without violating mandatory legal norms. In this context, the judge plays a filtering role, ensuring that only legally valid and non-contradictory arbitral awards are granted enforceability.

4. CRITICAL ASSESSMENT OF JUDICIAL CONTROL OVER ARBITRAL AWARDS

4.1. Judicial Control: Guarantee of Legality or Risk of Intervention

Judicial control over arbitral awards under Algerian law is generally justified as a mechanism to ensure legality and safeguard fundamental legal principles. In this sense, the intervention of the judge at the stage of recognition and enforcement serves as a guarantee that arbitral justice remains compatible with the national legal order²⁰. However, this control raises a persistent tension between the need for legal supervision and the preservation of arbitral autonomy. While limited judicial review is necessary to ensure compliance with mandatory norms, excessive intervention may transform the enforcement stage into a de facto reconsideration of the dispute, thereby undermining the finality of arbitration.

4.2. Balance between Arbitration Autonomy and State Sovereignty

The relationship between arbitration and judicial control reflects a broader balance between party autonomy and state sovereignty. Arbitration derives its legitimacy from the consent of the parties, whereas enforcement derives its effectiveness from the authority of the State²¹. In this context, the judge acts as a mediator between two legal logics: the contractual autonomy of arbitration and the coercive power of the State. The challenge lies in maintaining this equilibrium without allowing judicial intervention to distort the efficiency and predictability of arbitral justice.

4.3. Impact of Judicial Control on the Effectiveness of Arbitration

While judicial oversight is essential, it may, if excessively exercised, affect the attractiveness of arbitration as a dispute resolution mechanism. The efficiency of arbitration is largely based on speed, finality, and neutrality. Any expansion of judicial review beyond its strict limits may lead to delays and procedural uncertainty, which contradicts the very rationale of arbitration²². Nevertheless, a complete absence of judicial control would expose arbitral awards to risks of illegality and inconsistency with fundamental legal principles. Therefore, the effectiveness of arbitration depends on a carefully calibrated level of judicial intervention.

4.4. Toward a Balanced Approach

The Algerian legal framework attempts to strike a balance between judicial control and arbitral autonomy by limiting the role of the judge to a legality review rather than a substantive review. This approach reflects a modern trend in arbitration law, which seeks to protect the integrity of

¹⁸ Algerian Civil and Administrative Procedure Code, Art. 605(4).

¹⁹ Ahmed Mohamed Hashish, *The Executive Force of Arbitration*, Dar Al-Fikr Al-Jami, Alexandria, 2001, p. 73.

²⁰ Gary B. Born, *International Commercial Arbitration*, Kluwer Law International, 2021, p. 3702.

²¹ René David, *Arbitration in International Trade*, Economica, Paris, 1982, p. 61.

²² Fouchard, Gaillard & Goldman, *On International Commercial Arbitration*, Kluwer, 1999, p. 950.



arbitral awards while ensuring their compatibility with public order and procedural fairness²³. Accordingly, judicial control should be understood not as a form of supervision over arbitration, but as a necessary mechanism of integration within the national legal system.

CONCLUSION

This study has examined the scope of judicial control over the recognition and enforcement of arbitral awards under Algerian law, highlighting the complex relationship between arbitral autonomy and state judicial intervention. It has been shown that although arbitration is based on the principle of party autonomy and aims to provide an efficient alternative to judicial litigation, its effectiveness ultimately depends on the intervention of national courts at the enforcement stage. The analysis demonstrates that judicial control in Algeria is essentially limited to a legality review, focusing on formal requirements and compliance with public order, without extending to a reconsideration of the merits of the dispute. This restricted role reflects an attempt by the legislator to preserve the balance between safeguarding the integrity of the legal order and respecting the autonomy and finality of arbitral awards. However, the study also reveals that the ambiguity surrounding concepts such as public order and the discretionary power granted to judges may, in certain cases, broaden the scope of judicial intervention. This raises concerns regarding the predictability and effectiveness of arbitration, particularly in international commercial relations. Ultimately, it can be concluded that Algerian law seeks to establish a balanced model of judicial control that neither undermines arbitration nor allows it to operate entirely outside the framework of state authority. The effectiveness of this balance depends largely on the cautious and consistent application of judicial discretion in practice.

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²³ Tayeb Kebaili & Karim Taouilt, International Commercial Arbitration, Dar Belqis, 2020, p. 110.



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