

Foreign Electronic Arbitration Award In Algeria

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Abstract: This paper discussed on the possible application of foreign electronic arbitration award in Algeria. Despite the current concentration on the electronic arbitration globally, yet many Arab countries do not give it priority. More specifically, Algerian economy is left behind on the application of these modern arbitrations techniques. Moreover, it revealed that the issues of foreign electronic arbitration awards do not received adequate attention by these Arab countries. Therefore, this paper suggested that there is need for the Algerian Legislators to adopt and implement modern techniques in governing the foreign electronic arbitration award in Algeria. Moreover, this paper recommended that empirically study be conducted on foreign electronic arbitration award in Algeria.

Keywords: *Electronic Arbitration; Foreign Electronic Arbitration Award; Algeria.*

I. INTRODUCTION

The issue of electronic arbitration is considered as one of the modern topics that have not been known in its clear image in the Arab countries, [1] including Algeria. [2] Although electronic arbitration has an effective and distinct importance in resolving disputes arising from electronic transactions [3] However, the electronic arbitration, like any modern system, is subject to legal, procedural and objective problems directly related to the concept of arbitration itself in its abstract framework. It is concerned with the structure and the institutions on the one hand and provisions on the other hand with respect to their electronic framework [4]. This resulted in the invalidity of the arbitral award and the impossibility of its implementation on the ground.

One of the most important effects resulted from the electronic arbitration is the issuance of a resolution which is considered the objective sought by the parties in dispute [5]. Therefore, it must be surrounded by a set of guarantees that ensure its protection against distortion and manipulation. Also, its issuance by the arbitrators and their failure to deny it should be confirmed due to the fact that the decision of electronic arbitration was issued in the virtual world. This matter can only be achieved by documenting the proceedings electronically. This means that there is no linear signature in the traditional sense as it is not on papers [6].

Hence, the writing is not acquired as proof of confirmation only by signing it from those who issued it. The electronic signature to the electronic arbitral rule shall contain certain procedures for verifying its return to a particular person by means of analysis and decoding of the codes. It could be performed by the competent authority to verify the electronic signature certificates [7].

However, this provision is problematic when implemented in its electronic form [8]. The national juries lack legal framework to address the electronic judgement normally brought before them by the Electronic Arbitral Tribunal [9]. The international conventions also have a scarcity of legislation regarding the appropriateness of the rules of evidence laws for the methods of proof used in electronic

arbitration [10]. This is specifically when one knows that most of the arbitration laws, particularly the Arab ones, do not provide to electronic arbitration provision [11].

As for the implementation of the electronic arbitral laws, there are legal problems that the disputing parties may likely encounter regarding the arab laws [12], and the algerian law as well as after resorting to electronic arbitration. In particular, this is obvious when it comes to the implementation of foreign provisions under the new york convention [13] on the recognition and enforcement of foreign arbitral awards, 1958 [14]. The reason is that this convention does not establish a specific condition for the recognition and enforcement of the international arbitration rule [15]. It has also been met by the legislative deficiency in the text of article 1051/2 of the algerian civil and administrative procedure act of the competent court of recognition of the international arbitration provisions [16]. This must be overcome in a manner that is compatible with such development in the field of electronic arbitration [17] as the purpose of the parties to the dispute is the implementation of the arbitrators' judgment [18]. Principally, after the courts have demonstrated their inability to apply traditional controls to resolve electronic commerce disputes [19]. Therefore, based on the above this paper aims to discuss the foreign electronic arbitration award status in algerian law.

II. FOREIGN ELECTRONIC ARBITRATION AWARD

There are several studies dealing with the issue of electronic arbitration judgment [20] from the view of electronic provisions. It is important to note that, these studies did not cover all the problems that arise due to the electronic provisions. Primarily, the European Directive on E-Commerce adopted in 2000 indulges European member states to amend their legislation in order to take away formal obstacles to E-contracting [21]. Moreover, Mohammed Ibrahim Abu Al-hiji reviewed the steps that consider the dispute over the internet and the penalties made by the provision in addition to the authoritative methods of modern communication in the context and requirements. Abu Alhaga explaining the authenticity of modern methods in a way that overshadows the issue of electronic arbitration.

On the other hand, Soha Yahya Sabbahin studied the electronic signature and its pretext in confirmation [24]. She addressed the electronic signature and its pretext in confirmation under the traditional rules. Moreover, Suha showed the positions of some legislation against of this signature. However, she discussed briefly about the documentation of the electronic signature [25]. Consequently, this study believes that a need to view this issue should be expanded.

Moreover, Armagan Ebru Bozkurt Yuksel conducted a study on the online international arbitration. It aimed to defining the concept of international arbitration through the network [26]. Especially, after the widespread use of information and communication technologies in the completion of electronic works, the conclusion of contracts,

and their implementation through the internet [27] where the electronic arbitration emerged as a means of resolving the disputes. Yuksel's study aimed to identify the advantages of electronic arbitration and its constraints. It determined the form of the arbitration agreement and headed in its procedures. It should be noted that the arbitration resolutions are enforceable under the New York Convention in 1958 as well as the arbitrators' selection criteria.

The study mentioned above found that the arbitration via the internet is one of the fastest methods to settle disputes. However, electronic arbitration procedures are still conducted through traditional arbitration rules. Khaled Mamdouh Ibrahim in his study on the electronic arbitration dealt with many topics [28], including the international electronic contract, the electronic contract board, and the electronic mail [29]. Regarding the electronic arbitration, the study dealt with its nature, legal framework, procedures and how to implement the electronic arbitration judgment without addressing the difficulties that might be faced in the recognition of the electronic judgment.

Furthermore, in addressing electronic commerce dispute from comparative view [30], he compared between the Jordanian Arbitration Law No. 31 of 2001 [31] and the Egyptian Arbitration Law No. 27 of 1994 [32], and the national legislation and international conventions such as the New York Convention for the Recognition of Foreign Arbitral Awards and its effect in 1958 [33] and the law of the UN's Commission on the International Trade Law [34].

In the same vein, Ibrahim Ismail Ibrahim argued that the electronic arbitration in the contracts of international commerce is one of the most important methods in resolving the disputes that occur between the parties to contracts [35]. However, the electronic arbitration bodies and centers often follow their legal procedures when there is no agreement on certain procedures to reach the arbitral award that the parties to the dispute seek [36]. Thus, the electronic writing and electronic signature are the required conditions that must be provided at the time of the issuance of the electronic arbitration resolution [37]. Ibrahim stressed that the resolution of electronic arbitration has the same legal validity compared to the traditional arbitration resolution if the conditions stipulated by the law have been met.

Based on the aforementioned, these studies did not examine the difficulties of recognizing the national laws of the pretext of the confirmation and the implementation of the provisions of electronic arbitration and the effectiveness of the resolution of electronic arbitration. This is due to the fact that the purpose of parties to the dispute is to implement the arbitrators' judgment [38], especially after the courts have confirmed their inability to apply traditional controls to resolve electronic commerce disputes [39].

In addition, Izzola Timothy and Alawat Farida discussed the concept of electronic signature under Law No. 04-15 in terms of legal and jurisprudence aspect, the different characteristics and images it enjoys, the functions it performs, and the conditions that are required [40]. They also discussed the applications and the body that issued this signature by questioning about the extent to which the Algerian legislator is able to regulate the electronic signature as a mechanism for developing electronic commerce in Algeria [41]. The researchers concluded that the Algerian legislator has been relatively consistent when addressing the electronic signature [42]. However, the Algerian legislator has yet passed a law on electronic transactions to cover the evolution in this arena.

It is important to indicate that one of the difficulties faced by those studies is the scarcity of references that dealt with this issue subject in legal terms, especially the Algerian references because the majority of references dealt with the issue of electronic signature. Also, they briefly presented the issue of electronic certification. Thus, the majority of these references were adopted in dealing with this issue based on the narration of legal texts without analysis or discussion [43].

Furthermore, some studies directly addressed the issue of electronic certification. For example, Alaa Ahmed Mohamed Haj Ali focused on the legal organization of the certified bodies of electronic signature [44]. Haj Ali explained the legal organization of the electronic signature authority of certification and the extent to which the project of the law concerning electronic commerce and exchange of modern electronic methods according to the principle of parties' freedom of agreement [45]. However, his study did not address the problems facing the certification of electronic judgment [46].

In the same thread, Ahmad Mahmoud Al-Massaad (2015) observed the legal regulation for issuing a judgment of electronic arbitration. Al Masadah addressed the problem of determining the mechanism by which the electronic arbitral award is issued. In addition, he examined how it is used by the arbitral tribunal and the extent to which it considers the arbitration judgment to be true if it issued electronically. Al Masadah's study showed the importance of writing to issue a judgment of electronic arbitration. Al Masadah in his study adopted the comparative analytical approach, analysis of legal texts [57], presentation of some jurisprudential opinions, jurisprudence and relevant international conventions. So, he neglected the qualitative method. He also focused on the Arab laws in general and the Jordanian and Egyptian sources in particular in order to address the subject of the study by citing some French laws and international conventions such as the New York Convention 1958 [48] and the model UNCITRAL Law [49] but ignored the mechanisms of ratification of the electronic arbitral award by the national judge to enjoy the rule by legal force in the country of the judge.

On the other hand, Nada Maiz limited the institutional framework and the functional framework of electronic ratification [50]. Nada Maiz conceded the electronic ratification is prerequisite for authenticating the electronic signature and its equivalence with the traditional signature [51].

Moreover, Hassan focused on the technological development and the problems accompanied in proving the validity of the electronic signature [52]. They also focused on the necessity of creating a system that protects these legal actions due to the importance of electronic signature and documentation in the development of electronic commerce and other electronic transactions which required its access in a manner that is compatible with this development in the field of electronic arbitration [53]. Hence, the previous studies are conclusive evidence on the importance of electronic arbitration as an important issue in general, and the arbitration agreement in particular although they did not address the obstacles facing the electronic arbitration agreement directly.

III. THE TEMPLATE CONCLUSION AND RECOMMENDATION FOR FUTURE STUDIES

This paper discussed on how foreign electronic arbitration award used in modern globally. However, it can be notice clearly that previous studies did not address the problems that

hinder the application of foreign electronic arbitration award in Algeria. Moreover, some of these studies only dealt with the general treatment of the issue of electronic arbitration, while others dealt with some elements of electronic arbitration including agreement, procedure and judgment. Some sought to try to cite the traditional arbitration law related to some countries.

Despite these studies, there is limited literature showing the application of these laws relating to foreign electronic arbitration award particularly in Algeria [54]. Therefore, the application of these laws to foreign electronic arbitration award is still lacking. In view of these, there is need for the Algerian Legislators to adopt and create these modern techniques in new rules and legislation to guide or govern foreign electronic arbitration award in Algeria. Moreover, this paper found that there is lack of attention in the use of qualitative approach in conducting empirical research on the use of electronic arbitration, especially in Algeria. Therefore, there is need for the future studies to empirically adopt a qualitative approach.

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