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NEW TRENDS IN JORDANIAN ARBITRATION LAW

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ABSTRACT

Arbitration is considered one of the most prevalent means of resolving disputes. It is necessary to define this process accurately by indicating what matters are subject to arbitration and what is not .

The method of resorting to arbitration is determined through elucidating the forms of the arbitration agreement, and after the parties agree to arbitration as a means of resolving their disputes.

When resorting to arbitration some aspects, should be considered such as the mechanism of selecting the arbitral tribunal, its terms, how to terminate their task, and the applied procedures from the moment it started until the arbitral judicial decision is made.

Keywords: New trends, Jordanian Arbitration Law, Termination of arbitral proceedings, arbitration.

1 INTRODUCTION

People have resorted to arbitration because of their need to find other means to resolve disputes away from the judiciary, where they suffer from the long-standing procedures and complexities that may be faced by the case before the judiciary, in addition to the slow development of the judiciary system, All these reasons required finding a quicker way to adjudicate disputes.

Historically, people resorted to the tribal council of elders to resolve disputes arising between them, then when Islam came it approved arbitration, and gradually the need for arbitration has especially appeared with the development of the international trade sector, where venture capitalists and major traders need a fast way to end disputes related to their trade in a way other than the judiciary. They realized that their purpose can be achieved more by arbitration, because arbitration provides quickness in adjudicating cases, in addition to the great confidentiality that surrounds the control process.

Consequently, After the States have noticed this importance, they began to organize the arbitration process and every matter covered by this process by establishing a legal framework for arbitration. Jordan is one of the first Arab countries that have adopted an independent arbitration law.

In 1933, the first Jordanian arbitration law issued, and then the rest of the countries in the region started to establish their arbitration rules under the principles of international trade. Therefore, most of the laws of arbitration of the countries are like the principles of institutions that regulate the processes of control and the establishment of rules. The most affecting rules on the Local arbitration laws are the principles of the UNCITRAL Model Law on International Commercial Arbitration.

The significance of the study is to identify the new trends in the Jordanian Arbitration Law, to highlight the laws that need to be amended in this law, and to spread the culture of arbitration in Jordan, considering that the arbitration system is a system that is parallel to the judiciary in resolving disputes.

Study problems: This study raises several problems, one of which is, that arbitration, as considered by the Court of Cassation, is a parallel path to the judiciary, which means it is an independent route.

Through interpreting the texts of the arbitration law, it appears that the judiciary interferes greatly in the procedures of arbitration. Additionally, this study raises the question of the Jordanian Arbitration Law's capability to be in line with the principles of international trade, especially considering the new amendment by the Jordanian legislator.

Questions Of The Study:

What is the nature of disputes that are subject to arbitration?

What is the difference between the arbitration clause and arbitration?

How satisfied are the parties in determining the arbitral tribunal?

Has Jordan adopted the latest amendment as required by the principles of international trade?

Methodology

The researcher used two approaches to write this study :

1- The descriptive approach: This method was used to describe the legal texts that regulate the arbitration process in Jordan, review the subject of this study to achieve the objectives, and to study the jurisprudential views and judicial rulings related to the subject of the study.

2- Analytical approach: The analytical approach was used the examine the legal texts and jurisprudential opinions and judicial decisions related thereto, and to analyze them. Other legislations will be mentioned where necessary.

1.2 Chapter One: The New Trends In The Scope And The Agreement Of Arbitration

On the grounds of the fact that arbitration is an agreement between the parties to resolve disputes. If there is no agreement, there is no arbitration. Correspondingly, if the agreement is signed on what is not valid, there is no liability of this agreement. It was, therefore, necessary to state what could be considered as valid for arbitration or could not be considered so. This is what we will address in the first section of this chapter. Section two will address the statement of the forms of agreement agreed upon by the parties so that arbitration is a means of resolving their disputes.

1.2.1 Section One: The scope of arbitration

Constitutive definition of Arbitration: the source of judgment, which means to judge. Judgment: is the judiciary and it comes in the sense of knowledge, jurisprudence, and justice. It also means wisdom, putting something in its place.

The judge is one of the names of Allah. The judge is the person who is chosen to resolve disputes between the opponents and the ruling is the verdict[1].

Conceptual definition: arbitration is not expressly defined in Jordanian law. But it can be recognized through the text of Articles (2) and (3) of the amended Arbitration Law No. (16) of 2018 that: (the parties to the dispute agree to refer the present or future dispute to an arbitral tribunal, whether composed of one or more arbitrators to adjudicate the dispute between them).

However, the scope of the arbitration as provided for in Article (3) of the Arbitration Law: disputes arising out of legal relations between individuals and may be subject to agreement on arbitration, whatever its source, contractual or non-contractual, between persons of public law or private, commercial or civilian.

In accord with the Arbitration Law, Article (3) "whether the disputes are civil or commercial, they shall be subject to arbitration Law. If any question arises as to whether matters are subject to arbitration, this should be decided in favor of arbitration."

This is approved by the majority of national legislation governing arbitration, especially about international trade contracts and the requirements of the liberalization of international trade and the restrictions imposed by national laws and arbitration, especially within the scope of the law of international trade and the customs of international trade have been established.2But some disputes cannot be subject to an arbitration agreement.

This kind of disputes should be mentioned as the researcher need to identify such disputes that cannot be subject to the arbitration agreement, including irreconcilable disputes, these matters are related to personal status, in other word, issues related to public order.

It is obvious in the text of Article (163) (paragraph 2/3) of the Jordanian Civil Code[2]. It should be noted that the dispute concerning the general system is not subject to arbitration that because of the legislator's desire to subject these matters to the control and supervision of the judiciary for hegemony and the sovereignty of the state because of their special nature in Islamic law. Egyptian

legislator came in line with the Jordanian legislator that matters related to public order such as personal funds are not subject to arbitration[3]

The Jordanian legislation has authorized the judiciary to adjudicate these disputes, including the validity of the elections, the disputes of nationality as they are the right of the state, the disputes of proven descent, and the irreconcilable disputes. On the other hand, the disputes that can be resolved and related to a financial amount shall be subject to the arbitration agreement such as the wife's financial rights (inheritance), or a claim for compensation for the administrative decision issued in violation of the Nationality Law[4]

As for the criminal disputes and the issues related to public deterrence, it is not permissible to arbitrate, which requires the intervention of the Public Prosecution, and that the Public Prosecution undertakes its function before the judiciary and not an arbitral tribunal. The financial rights resulting from such crimes, such as compensation for injuries, can be subject to the arbitration agreement.

It is necessary to realize the nature of the legal relationship governed by the Jordanian Arbitration Law as it governs all legal relations, whether civil or non-civil because disputes could be a harmful act, beneficial act, or related to a certain amount of money in these cases they will be subject to the arbitration agreement[5].

1.2.2 Section Two: The arbitration agreement

The arbitration agreement is considered one of the important social issues that individuals in the past resorted to, as it is the main gate for the resolution of disputes, because without an arbitration agreement, whether it is a clause or a Submission agreement, it cannot be arbitrated.

Considering the increasing volume of trade, economic, and world openness, the urgent need to resort to arbitration has emerged, with many advantages, particularly in the context of large commercial transactions, which need to be accelerated in resolving such disputes.

Defining the concept of the arbitration agreement is not the task of the legislator, but rather the jurisprudence, but the legislator has sometimes defined it to remove the ambiguity. Therefore, the arbitration agreement is defined as a written agreement that includes referring existing or future disputes to arbitration, whether the name of the arbitrator or arbitrators is mentioned in the agreement of the parties. Article (9) of the Jordanian Law stipulated that the arbitration agreement (an agreement of the parties, whether of the juristic or natural persons who have the legal capacity to contract, to refer to arbitration all or some).

1.3 Chapter Two: The new trends in the body and procedures of arbitration

Most states have approved the arbitration system as a means of resolving disputes. Individuals have resorted to it extensively because of their will to choose freely arbitral proceedings. More importantly, is the selection of the persons involved. Thus, it is necessary to specify the mechanism of selection of arbitrators, the expected conditions to be met, restrictions for the selection process, and then specifying the statement of procedures until the issuance of the decision.

1.3.1 Section One: Arbitral Tribunal

The process of composing the arbitral tribunal is governed by two important matters: the parties' will which determines this body, and the other matter is

that the parties are equal in the process of selecting the arbitrators, and neither of them has preference over the other[6].

The arbitral tribunal has been defined as the body composed of one or more arbitrators to adjudicate disputes referred to arbitration following the provisions of this law[7].

The appointment of the arbitrators depends on the type of arbitration to which the parties will refer.

These sections will indicate these two types:

1- Ad hoc arbitration (free arbitration): arbitrators are appointed by the parties.

In which the parties' will has a full role in determining the persons of the body and determining the law applicable to the arbitral proceedings under which the dispute will be settled, and the parties will decide the location and language of the arbitration and any other matter that may arise from arbitration[8].

Article 14 (a) of the Arbitration Law stipulated that "the arbitral tribunal shall be composed by agreement of the parties." Where Article 16 (a) of the same law provides that: " The two arbitrating parties are free to agree on the selection of arbitrators and the manner and the date of their selection."

In the arbitration law, the Jordanian legislator referred to the fact that many international systems have the freedom to choose an arbitral tribunal. The 1958 New York Treaty states in article (5), paragraph (1/d) that "recognition and execution of a decision shall only be refused if that party proves that the composition of the arbitral tribunal was not by the agreement of the parties)[9].

The Jordanian legislator limited the composition of the arbitral tribunal where it stipulated that the number of arbitrators, if more than one, shall be odd, otherwise the arbitration is void[10].

The purpose of this requirement is to facilitate access to the majority and to avoid the problem of equality of votes, especially that the legislation in the text of the article (44/6) of the Arbitration Law provided for the termination of the arbitration proceedings in the absence of a majority, therefore, the legislator required that the number shall be odd and if these conditions are not met, the arbitration will be null[11].

Accordingly, we find that the Jordanian legislator adopted the rules established in the laws of comparative arbitration, for example, the rules of the UNCITRAL in accord to the composition of the arbitral tribunal which stipulated that in case the parties have not agreed in advance on the number of arbitrators, the number shall be three[12].

The mechanism of composing the Arbitral Tribunal is that, if the arbitral tribunal consists of three arbitrators, each party shall appoint one arbitrator and the two arbitrators thus appointed shall appoint the third arbitrator. In case the parties to the arbitration are three or more, each party shall have an arbitrator, and if the parties have not agreed to appoint the chairman among them. The chairman shall determine by consensus the members of the arbitral tribunal.

However, if the arbitration agreement fails to provide a way to choose the arbitrators, or if one of the parties fails to perform his task by appointing the arbitrator, the competent court shall preside over the arbitral tribunal.

The role of the judge in composing the arbitral tribunal: Article (16 / A / 1) provides that if the arbitral tribunal is composed of one arbitrator, the competent judge shall appoint the arbitrator at the request of one of the parties.

This confirms that the parties to the arbitration are equal in the process of selection of arbitrators since the appointment of the arbitrator was not left to the requesting party, but to the competent judge, the judge of the Court of Appeal, which is within the jurisdiction of the arbitral tribunal.

Article (2) of the same law stipulates that "If the arbitral tribunal consists of three arbitrators, either party fails to appoint his arbitrator within fifteen days following the date of receipt of a request to do so from the other party, or if the two appointed arbitrators fail to agree on the third arbitrator within fifteen days following the date of appointing the more recently appointed arbitrator, the appointment shall be made, upon a request of either party, by the competent court. The third arbitrator, whether appointed by the two appointed arbitrators or by the competent court, shall preside the arbitral tribunal."

The judge shall also have a role in the appointment in the case if the parties have agreed on the number of arbitrators but have not agreed on how to appoint them. Here the competent judge appoints arbitrators with the number agreed upon by the parties. On the other hand, If the parties have not agreed on the number of arbitrators nor on how to appoint them, the judge shall appoint three arbitrators and one of them shall appoint a chairman. The competent judge shall always consider in the arbitrator chosen by him the conditions required by law and the conditions agreed by the parties[13].

The Jordanian legislature restricts the issue of appointing arbitrators to the competent court of appeal, which helps to shorten the time and facilitate the parties by dealing with one court. The legislator considered the decisions issued by the competent judge regarding the appointment of arbitrators as

judicial administrative acts and not judicial rulings because there is no dispute or argument, as confirmed by the Court of Cassation "The decision of the Court of Appeal includes appointing arbitrators is not considered as a judicial sentence, but it is an act of the judicial administration and is not subject to the system of judgments because there is no dispute or disagreement in which a judgment is rendered and that decision is a judicial act"[14].

We find that the legislator has adopted the provisions of the UNCITRAL Arbitration Rules in accord to how to appoint the competent authority of the arbitrator if the arbitrator cannot be appointed by the parties[15].

2- Appointing arbitrators by the arbitral institutions (institutional arbitration)

These are organizations or bodies that are often privately owned. These institutions have their own rules of procedure, which contain regulations in which the conditions of this institution are determined. These lists indicate the names of the arbitrators, procedures, and costs. The parties can only choose the system that suits them, and these institutions have the authority to appoint the arbitrators from the list of names of the arbitrators who exist at the institution. If the parties fail to appoint an arbitrator, this institution shall perform all the administrative and regulatory work of arbitration[16]. This type is preferable to ad hoc arbitration.

Although the institutional arbitration reduces the role of the parties' will to determine any issues related to the arbitrations, it is enough for the parties to agree on the selected arbitral institution, which makes institutional arbitration more appropriate for the arbitration of international trade.

Article (5) of the Arbitration Law, the Jordanian legislator referred to this type of arbitration that is the parties have the right to authorize a third party to

choose a procedure that should be followed in a certain issue related to assist in completing the composition of the arbitral tribunal and to proceed with the arbitral proceedings.

Finally, we can notice that the Jordanian arbitration law has adopted arbitral procedures stated in the international trading systems, whether in terms of the way of appointing the parties to the arbitral tribunal or in the absence of such will and the establishment of the competent authority.

Conditions to be met by the arbitrator, whether the arbitrator was chosen by ad hoc method (by the parties) or by the institutions, this does not prevent the availability of a set of conditions for choosing the arbitrator and these conditions are imposed to ensure the proper conduct of the dispute proceedings. When the law confers the parties the right to choose the arbitrator, it does not mean that the law cannot impose conditions on the arbitrator. Their conditions are:

The arbitrator shall have civil competence.

Article (15) paragraph (a) stipulated that: "An arbitrator must not be a minor, an interdicted person or deprived of his civil rights on the ground of a judgment against him for a felony or misdemeanor contrary to honor or due to a declaration of his bankruptcy, even if he has been rehabilitated.

Civil competence is one of the most important conditions that must be enjoyed by the arbitrator. The arbitral award that he will be issued will be the same as the judicial judgment. Both are binding and both are subject to dispute. Therefore, the arbitrator must have civil competence, which is determined by the law of his country. The arbitrator should not be deprived of his civil rights. The purpose behind this idea is to ensure that the judgment will be issued by

this person and its impact not only on the parties to the conflict but extends to others[17].

Nevertheless, the Jordanian legislator stressed the issuances of "a declaration of bankruptcy, even if he has been rehabilitated", which indicates that the arbitrator should not be a trader who may be subject to bankruptcy even if he has been rehabilitated. Such a condition does not affect the arbitral process, but it may be contrary to the principles of international trade. Any trader could be subject to bankruptcy. This condition could not be considered appropriate for preventing the bankrupted trader from being chosen as an arbitrator.

Independence and impartiality.

The legislator stipulated that the arbitral tribunal shall abide by the principles of impartiality and equality between the parties, provide each of them with a full and equal opportunity, and ask them to avoid unnecessary delay or unnecessary expenses[18].

Although the arbitrator, especially in ad hoc arbitration, is chosen by the parties, this does not mean that the arbitrator is the defense agent for that party. Rather, the arbitrator shall be judged according to the evidence and not according to his tendencies or to satisfy the party that has chosen the arbitrator. Additionally, the arbitrator must always adhere to the principle of independence and not allow any party, either the two parties or third parties to affect the way he proceeds against disputes procedures and convictions.

Article (5) paragraph (c) stated that "The arbitrator's acceptance of his mandate, shall disclose any circumstances likely to give rise to doubts as to his impartiality or independence". The legislator did well in that he did not require a specific gender or nationality.

The mechanism of accepting the arbitrator for the arbitration tasks, In accord to Article (5) paragraph (c) The arbitrator's acceptance of his mandate shall be in writing. Through this condition, the acceptance of the arbitrator may be considered as a necessary condition for the completion of the legal composition of the arbitral tribunal.

However, the legislator did not require a procedure for writing. The writing of the arbitrator may be a signature of the decision of his appointment by the parties, the meetings, or by signing the preliminary provisions. The purpose of the condition "writing" is to prove the arbitrator's approval of this mandate and to determine the mutual obligations between the arbitrator and the party that appointed him[19].

The Court of Cassation affirmed in its decisions the condition that the acceptance should be in writing since the absence of the written evidence of the arbitrator's acceptance of his mandate was one of the reasons for the appeal. The Court explained that the Court of Appeal had to deal with the causes of nullity in a manner consistent with the purpose of the nullity case to discuss the validity of the arbitration agreement and the validity of the composition of the arbitral tribunal and respond to the appeal that the provision is contrary to Article (49 / a / 7) of the Arbitration Law.

(Decision No. 4901 of 2018, your decision), stated in the third reason of discrimination that the formation of the arbitral tribunal was missing one of its most important conditions since the documents of the case have not been accepted in writing by the arbitrators, Article (15) and Article (49 / A / 5) of the Jordanian Arbitration Law[20].

The termination of the arbitrator's mandate: Because the arbitrator is a person and may be exposed to situations that make the continuation of the arbitral process is not consistent with the purpose of the parties of arbitration, so he will be subject to termination of his arbitral mandate, This termination may due to challenging, removal, resignation or death.

The challenge of the arbitrator

Articles (17-20) specified the reasons for challenging the arbitrator that "An arbitrator may be challenged only if circumstances exist on that give rise to doubts as to his impartiality or independence." And "Neither party may challenge an arbitrator appointed by him or in whose appointment he has participated, except for a reason he became aware after the appointment has been made. "This is tacit approval to these reasons. Therefore, a part of the jurisprudence went to consider that the reasons for the arbitrator's challenge are not of the general order because the legislator did not arrange to submit a request for the challenge[21].

A request for challenge indicating the reasons for challenge shall be in written form and submitted to the competent court within fifteen days after the challenging party becoming aware of the constitution of the arbitral tribunal or becoming aware of the circumstances justifying the challenge. If this period exceeds the submission of the request for the challenge, this is tantamount to implicit approval thereof. If the application is submitted within the time limit, the arbitrator shall have two options. He may withdraw from his office within (15 days) of receiving the request for the challenge or he shall submit his response to the request with the list of evidence. The competent court shall

decide on the request and such decision shall be subject to no appeal whatsoever.

The court shall issue its decision within 30 days from the date of its submission to the court. If the challenge is admitted, all arbitral procedures in which the challenged arbitrator had participated, including the arbitral award, shall be deemed void except for the chairman of the arbitral tribunal, such remuneration shall remain valid[22].

The legislator in the final amendment set a specific period during which the court adjudicated the request for a response. Where the previous law did not specify a period. In this amendment, the legislator implemented the most important characteristics of arbitration, which is quickness. This made the Jordanian arbitration Law in line with the principles of international trade.

Article (12, 13) of the UNCITRAL Arbitration Rules regulates the mechanism of the arbitrator's challenge as it states that A party that intends to challenge an arbitrator shall send notice of its challenge, The notice of challenge shall be communicated to all other parties, to the arbitrator who is challenged and to the other arbitrators. The notice of challenge shall state the reasons for the challenge, all parties may agree to the challenge, the arbitrator may also, after the challenge, withdraw. If all parties do not agree to the challenge or the challenged arbitrator does not withdraw, the party making the challenge may elect to pursue it and it shall seek a decision on the challenge by the appointing authority[23].

Removal.

Article 19 of the Jordanian legislator provides for two forms of removal: either removal by agreement or judicial removal. The parties are bound by a binding

contract with the arbitrators when the arbitrator becomes unable to perform his function or fails to commence or to continue such performance in a manner which leads to unjustifiable delay in the arbitral proceedings, and if neither he withdraws from his office nor the two parties agree on removing him, then the competent court is empowered, upon a request of either party to terminate his mandate by a decision which shall be subject to no appeal.

Withdrawal

It means that the arbitrator abandons the mandate of arbitration after he had accepted it because he became unable to perform his function or fails to commence or to continue such performance he thought that there are serious reasons and sufficient to respond, he withdraws from his office on his own without the request of the opponents[24].

According to Jordanian legislation, the arbitral tribunal is entitled to rule on pleas related to its jurisdiction including those related to the non-existence of an arbitration agreement, the expiry or nullity of such agreement, or that the subject of the dispute is not included in the agreement[25].

Article 21 of the Rules of the UNCITRAL provides that the arbitral tribunal shall have the jurisdiction to adjudicate the defenses within its jurisdiction and have the power to adjudicate whether or not the arbitration clause exists[26].

1.3.2 Section Two: Arbitration procedures

The arbitration procedures are the process of pursuing the arbitral proceedings from the beginning of the proceedings until the end of these proceedings and the termination of the arbitrator's mandate. These procedures commence from the day on which the arbitral tribunal is composed is completed. "if the parties

to the arbitration do not agree on another date." These procedures shall determine the place of arbitration, its language, the hearing of the parties to the dispute, the submission of evidence, the determination of periods, and finally the issuance of the final arbitration award[27].

The place and the language of the arbitration.

The law granted the right to choose the place of arbitration to the parties, but with some limitation of the circumstances of the case, this is evident in Article (27) which stipulated that "The two parties are free to agree on the place of arbitration in the Kingdom(3) or abroad; failing such agreement, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case and the convenience of the parties in respect of such place."

On the other hand, the legislator gives the arbitral tribunal the right to choose any place it considers appropriate to perform any of the arbitral procedures. In the new amendment of the Arbitration Law, the legislature permitted the arbitral tribunal to use modern means to conduct any arbitral proceedings. This method enables the arbitral tribunal to meet with no need to move from one place to another.

The determination of the place of arbitration, as reported by the Jordanian legislator in the law, corresponds with many legal systems in determining the place of arbitration, by leaving the matter to the will of the parties.

Article (18), paragraph (1) of the UNCITRAL Arbitration Rules provides that "If the parties have not previously agreed on the place of arbitration, the place of arbitration shall be determined by the arbitral tribunal having regard to the

circumstances of the case. The award shall be deemed to have been made at the place of arbitration."

As for the language of arbitration, considering that parties and an arbitration body do not have to speak in the same language. Thus, it was required to regulate the language of the arbitration.

The legislator provided rules regulating the language of arbitration in Article (28) as followed:

"(a) The arbitration shall be conducted in Arabic. (b) Regardless of what is mentioned in paragraph (a) the two parties or that the arbitral tribunal determines another language to be used. Such agreement or determination shall apply to the language of evidence, written statements, oral hearings, as well as to any decision taken or any message sent or award rendered by the tribunal unless the two parties' agreement or the tribunal's decision provides otherwise. c. The arbitral tribunal may decide that all or part of the (written) documents used in the arbitration must be accompanied by a translation into the language or languages used in the arbitration."

When studying the above text, we can notice that. The legislator has been free of this privacy, as he did not only grant the parties or the body the freedom to choose the language of arbitration but also he gave them the freedom to specify the language of procedures, evidence, memoranda, pleadings, messages directed by the Commission and even the judgment.

1.3.3 Section Two: The procedures before the arbitral tribunal

After the applicant has notified the other party of his desire to compose an arbitral tribunal to resolve the dispute. Both parties shall appoint the arbitral tribunal. The parties shall agree on dates for the correspondence between them,

on the basis that determining the date is of the procedures agreed upon by the parties.

Statement of claim, notes, and documents

The claimant shall, within the period agreed by the parties or determined by the arbitral tribunal, send to the respondent and each of the arbitrators a written statement of claim containing his name and address and the name and address of the respondent, an explanation of the facts of the case, a specification of the disputed issues, his claims and any other matter required, by the arbitration agreement.

Then, the defendant, within the time agreed by the parties or determined by the arbitral tribunal and in reply to the statement of claim, shall send his statement of defense in writing. He may include in his statement any incidental claims related to the subject-matter of the dispute or invoke a right arising there from to claim a set-off, and he may do so even at a subsequent stage of the proceedings if the arbitral tribunal considers that the circumstances justify this (delay), because the original in the case of non-submission of the statement of defense, is considered abandoning of what is contained therein, either party may annex to his statement of claim or defense, as the case may be, copies of the documents he relies on or makes a reference to all or some of the documents and means of evidence he will submit.

The arbitral tribunal sends a copy of the originals of documents and the report of the experience[28]. In accord to article (31), the legislator gave the parties to the arbitration the possibility of amending or completing the claim or defenses during the proceedings unless the arbitral tribunal decides not to accept such amendment to avoid delaying adjudication of the dispute.

The legislator has imposed a penalty when the plaintiff or the defendant fails to submit the statement of claim list:

If the claimant fails to submit his statement of the claim according to Article (29/a) of this law without (showing) (1) enough cause, the arbitral tribunal may decide to terminate the arbitral proceedings unless otherwise agreed by the two parties.

If the respondent fails to submit his statement of defense in accordance with Article (29/b) of this law, the arbitral tribunal shall continue the proceedings without treating this as an admission by the respondent of the claimant's claim.

When studying the amended article (33) paragraph (a) in the new trend of arbitration we notice that the Jordanian legislator provides the termination of arbitral proceedings if the claimant fails to file his statement of claim or if the defendant does not request otherwise, which indicate that the defendant may request to continue proceeding, where the old text gives the arbitral tribunal the power to terminate the arbitration if the claimant did not file his statement of claim, unless otherwise agreed by the two parties.

The new amendment is a good one, in which the defendant has the power to decide on the continuation of the arbitral proceedings because the arbitration is voluntary and with the consent of the parties and that the arbitration proceedings cannot be terminated as soon as the claimant fails to submit his statement of claims. Because the effect of the termination of the proceedings to remove the restriction from recourse to the judiciary,

The new amendment grants the defendant the power to continue the proceedings, by this it protects his right to claim against the claimant with the existence of the arbitration agreement. While in the old text, the legislator

considered that the failure of the claimant to file his statement of claim was a reason for termination of the proceedings unless otherwise agreed by the parties.

In this part also, the legislator gave once again the power of the claimant, despite his failure to submit the statement of claim, he has the right to agree to resume the proceedings or not.

Besides, whether arbitration is a clause or a submission agreement, the defendant can determine what the claimant wants even if the statement of claim is not submitted, wherein a submission agreement is clear without having to look for it because the dispute is specific.

In the arbitration clause, the defendant is aware of the obligations which the claimant considers that the defendant has failed to achieve, and therefore the old text cannot be corroborated, which considers that the body does not know the subject matter of the dispute because when the defendant submits to the arbitral tribunal a regulation clarifying what the dispute was that shall be determined by the claimant and shall submit evidence to that claim. Then he shall proceed with the proceedings and shall be able to obtain an arbitral award. Thus, the subject matter of the dispute shall be terminated. The claimant cannot institute an arbitral or even judicial proceeding related to the subject - matter. These sanctions imposed by the legislator are like the provisions of article (30) of the rules of the UNCITRAL, but it has made the case of the claimant not presenting his case law as a reason for the termination of the arbitral proceedings[29].

Hearings.

Article (32) stipulated that the arbitral tribunal shall hold hearings to enable each of the two parties to explain the subject-matter of the case and to submit his arguments and evidence, The principle of confrontation unless the parties have otherwise agreed, the tribunal may consider that the submission of (written) memoranda and documents is sufficient (for adjudicating the dispute). The arbitral tribunal shall notify the two arbitrating parties of the date of hearings and meetings, before enough time of such date according to the tribunal's judgment. The arbitral tribunal shall record in writing and deliver a copy to each of the two parties

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The parties could include a written testimony of one of the witnesses if it shall be conducted under oath before any authority accredited s in the form determined by the tribunal. If the other party requests the witness to discuss him and he does not attend, this written testimony shall be excluded.

If a party submits proof of experience from a list of evidence issued by an expert, he shall attach to it the letter of assignment of that expert indicating the task of the expert and the fees paid to this expert. The other body or party shall call the expert to discuss him. The legislator gave the arbitral tribunal the possibility of hearing witness statements using technological means of communication. However, this does not obscure the right of the Commission to request the witness to appear before it and the arbitral tribunal of its own accord or at the request of one of the parties to report the experience, and the body shall be competent in all matters related to the expert in terms of the expert person or the report of experience issued by him[30].

The parties to arbitration may be brought before the arbitral tribunal through a lawyer, which can be concluded from article (25) paragraph (b) This will facilitate and accelerate the adjudication of the arbitration case since the lawyer has knowledge and experience in the proceedings[31].

The legislator did not state whether the parties to the arbitration could be represented or assisted by persons of his choice, as stated in the article (5) of the UNCITRAL Arbitration Rules, which indicated that "each party may be represented or assisted by persons chosen by it before moving to the arbitration proceedings, it is necessary to refer to the procedures followed in the institutional arbitration. As mentioned above, these institutions often contain certain regulations that regulate the arbitration procedures followed. Therefore, such arbitration provides a lot of time and effort to the Parties. Since the parties and the body must follow specific procedures as well as prior knowledge of such procedures.

Termination of arbitral proceedings

If the parties failed to agree on the legal rules applicable to the subject-matter of the dispute, the arbitral tribunal shall apply the substantive rules in the law it deems most closely connected to the dispute and to apply the terms of the contract which is the subject of the dispute, and shall take into account the customs applicable to the transaction, the prevailing usages and the previous dealing applied by the two parties[32].

And so the arbitration proceedings are terminated. Typically, the arbitral tribunal shall render the final award ending the entire dispute within the period as agreed upon by the two parties.

But failing such agreement, Article (37) render the arbitral tribunal to fix one year, with the possibility of increasing this period for a further period of (12 months) provided that the extensions are before the end of the year.

The legislator did well when he set a time limit for the arbitral tribunal to issue an arbitral award. This is in order not to lose the desired purpose of the arbitration, which is the speed of adjudication of the dispute, but the new trend gives the arbitral tribunal the possibility of extending the period for an additional year instead of six months. Which is not commensurate with the principles of international trade?

If the termination of the arbitral proceedings is issued, or if the expiration of the time limit set by the parties, whether by agreement of the parties or the law without issuing an arbitral award, the law gives the parties the possibility to submit a request to the competent judge to issue an order either to fix an additional date or to terminate the arbitration proceedings hearing the statements of the other party and if the judge issues a decision to terminate the proceedings, either party may bring the case before the court to hear the case[33].

Arbitration proceedings may end before the end of the arbitration period if the parties agree to do so, or if the claimant leaves the arbitration dispute unless the arbitral tribunal decides or the defendant refuses to suspend the proceedings. Another reason for the termination of the arbitral proceedings is that the arbitral tribunal finds it is futile to continue the arbitral proceedings or to impede them. One of the reasons for the completion of the arbitral proceedings before the end of the period.

Finally, the absence of the required majority for the award is one of the reasons for the completion of the arbitral proceedings before the expiry of the time limit[34].

1.4 Conclusion

At the end of this study I reached several conclusions and recommendations that are:

First: The results:

The forms of the arbitration agreement varied as it may be composed of an arbitration clause, arbitration submission agreement, supplement agreement, or mutual correspondence. If the arbitration agreement is returned as a condition of the contract, it is considered an arbitration clause, or it may be in an agreement independent of the above contract which is known as an arbitration submission agreement.

Arbitration differs from the resolution of other disputes such as conciliation, reconciliation, and experience in many aspects, the most important of which is binding.

The forms of arbitration that individuals can resort to are perhaps the most prominent of which are ad hoc (free) arbitration and institutional arbitration.

The parties' will to decide which authority to settle the dispute (the arbitral tribunal) was most significant in selecting the parties for this method of settling disputes among themselves, in addition to their choice of law to apply to the proceedings.

1.5 Recommendations:

To shed greater light on the correspondence exchanged in the Jordanian law and to consider it as a form of the arbitration agreement, to expand the scope

of the arbitration agreement which investigates and leads to a solution to the dispute whether commercial or local.

We recommend that the Jordanian legislator takes into account the provisions of the Saudi and Egyptian legislators, regarding administrative contracts, in terms of the possibility of resorting if a dispute related to them to arbitration and be subject to the approval of the Council of Ministers or any other body that assumes such jurisdiction.

According to the fact that the administrative contracts are hazardous, because they are related to the State, especially when the other party is in a foreign dispute. Giving electronic arbitration greater importance in the upcoming amendments, as this type of arbitration will achieve the purpose of arbitration better, especially in the field of international trade and the inability of individuals always to meet in the same and place at the same time.

1.6 References and resources

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Constitutional Court, Decision No. 2 of 2015

Court of Cassation in its Jurisdiction, Decision No. 4901 of 2018.

Court of Cassation in its capacity as a jurist, Decree No. 4253 of 2005.

Notes

[1] Ibn Manthoor, Li San Al Arab, C3, Inquiry: A: Amin Mohammed, I 3, Dar Al-Arabiya Revival Heritage, Beirut, p. 270

[2]Article (136) Paragraph (2/3), Jordanian Civil Law No. (43) of 1976, as amended, is published in the Official Newspaper.

[3]Al-Zu'bi, id.,, p. 85.

[4]Abdul Majeed, M (1997) The General Principles of International and Internal Arbitration in the Light of Jurisprudence and Arbitration, Al-Ma'aref Establishment, Egypt, p. 57

[5] Al-Zu'bi, id, p. 85

[6] Abdul Majeed, M, id.,., p. 133

[7] Article (2) Paragraph (a), Jordanian Arbitration Law No. 31 of 2001, published in Official Gazette No. 4496, dated 16/7/2001,

[8] Tarawneh, K (2017) Commercial Arbitration Concept and Procedures, Research Paper, Department of Policies and Economic Studies, Irbid Chamber of Commerce, Amman, p.85

[9]Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958), United Nations Vienna, 2015, date of visit 25 April 2019

[10] Article (14), paragraph (b), Jordanian Arbitration Law, previous reference

[11] Ben Sghair, Sh (2011) The Legal Center of the Court Comparative Study between Jordanian Law and Algerian Law, 1, Dar Al-Farouk, Jordan, p. 67

[12] Article 7, paragraph (a), rules of the UNCITRAL Arbitration

[13] Article (9), Jordanian Arbitration Law, Amended . id.,.

[14] The Court of Cassation in its capacity as a jurist, Decision No. 4253 of 2005, your decision

[15] See Articles 8,9,10, Rules of the UNCITRAL Arbitration, id.,

[16] Khraiji, A, A. Free and Institutional Arbitration, article, Mal Economic Newspaper, October 23, 2016, date of visit 25/4/2019

[18] Article (15), Amended Arbitration Law.

[19] Al Masry,H(2006) International Commercial Arbitration (Comparative Study), Legal Books House, Egypt –

[20] (Decision No. 4901 of 2018, your decision), stated in the third reason of discrimination that the formation of the arbitral tribunal was missing one of its most important conditions, since the documents of the case have not been accepted in writing by the arbitrators, Article (15) and Article (49 / A / 5) of the Jordanian Arbitration Law.

[21] Ben Sghair,Sh, id., P. 83

[22] Article 11, Amended Arbitration Law, Preamble

[23] rules of the UNCITRAL Arbitration ,id.,

[24] Al-Masri, H ,id., P. 225

[26] The Rules of the Analyst, id.,

[27] Article (27), Arbitration Law, Precedent

[28] Articles (29,30), Arbitration Law, id.,

[29] Rules of Unsterile, id.,

[30] Rules of Unsterile, id.,.

[31] Article (25), Amended Arbitration Law, previous reference, paragraph b, "Jordanian lawyer representing one of the parties to the arbitration may be assisted by a non-Jordanian lawyer or any person with experience and jurisdiction if the contract subject to the dispute referred to arbitration is subject to the provisions of a foreign law"

[32] Article (36) Arbitral Law, id.,

[33] Article (24) Amended Arbitration Law, id.,

[34] Al Masry, H, id., P. 329