

NATIONAL ARBITRATION AND FOREIGN ARBITRATION AND THE EFFECTS OF EXCLUDING IRAQI ARBITRATION IN THE DRAFT IRAQI ARBITRATION LAW

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ABSTRACT	KEYWORDS
The arbitration law, whether national or foreign, is one of the important topics and arbitration includes two types, national arbitration and foreign arbitration, and it is considered a means of settling disputes and disputes between different parties outside the judiciary Due to the importance of the national economy and the increase in the proportion of investments, the arbitration law in the country is of great importance in terms of attracting investment, as they are more reluctant in a country that does not provide legal protection and strong legal cover for local arbitration The draft Iraqi arbitration law must take into account successful international practices and seek to find a balance between local and international standards to ensure a reliable and effective arbitration environment that contributes to enhancing confidence between the disputing parties and in the Iraqi legal system. The Iraqi legal system has defined commercial arbitration since 1928 with Law No. (34) of 1928, which includes the ratification of the Protocol on Arbitration Terms signed in Geneva on 9/24/1923 and called (Protocol on Arbitration Clauses Geneva). The aforementioned protocol included the validity of the agreements between the contracting states that included Resolving disputes related to commercial and other issues through arbitration.	National, foreign, arbitration, draft Iraqi arbitration law

Introduction

Arbitration appeared as an effective primary means in ending disputes between human beings since ancient times, when it had not arisen before the role of the judiciary, the default solution was litigation to a person characterized by integrity, experience and justice to listen to the parties to the dispute who choose him with conviction and prior acceptance of his judgment, due to what is known among people of the good qualities that make in his judgment and in his position neutrality of the parties to reassure them of it, and arbitration is as old as the existence of man and perhaps the oldest form was when There was a dispute between Cain and Abel, and the acceptable solution from them was to resort to heaven.

From the reference to the historical writings, we find that the Sumerian law has known a system of arbitration similar to the judiciary, where the dispute had to be presented to a general arbitrator, and a tablet was found on which an arbitration agreement was written from the third century BC in Babylon, and since the advent of Islam, the Prophet, may God bless him and his family and grant him peace, approved arbitration among the approved acts of praise in the pre-Islamic era of customs and traditions, and the rule of the Prophet (peace be upon him) in the famous Black Stone case after the dispute that occurred among the Arab tribes it. The Iraqi legal system has defined commercial arbitration since 1928 by Law No. 34 of 1928 approving the Protocol on Arbitration Clauses signed in Geneva on 24/9/1923 called (Protocol on Arbitration Clauses Geneva)

Research problem

Iraq is witnessing important legal and economic developments in the region in terms of investment and strategic location in a stage that is considered a post-conflict and dispute stage, so here arbitration is a vital tool to settle disputes and differences that occur effectively and quickly in light of the national quest to attract investments to Iraq and strengthen the national economy. Thus, the research problem is to explore the repercussions and effects of excluding national arbitration from the draft Iraqi arbitration law and its effects when legislating it compared to efficiency in terms of foreign arbitration compared to national arbitration.

Research Objectives

The aim of the research is to shed light on arbitration, activate, analyze and improve the draft Iraqi arbitration law to ensure informed and clear national arbitration and assess the legal and economic impact if national arbitration is excluded and make recommendations for the development of the arbitration system to serve the national interest and local and international parties.

Importance of research

The importance of the research stems from the development of the legal system for arbitration in a balanced manner that enhances Iraq's capabilities to settle disputes effectively and increases its attractiveness to foreign investments while maintaining legal sovereignty and confidence in national institutions, and the importance lies in providing some of the recommendations that may be useful in the process of improving the draft arbitration law that has emerged since 2021 with the support of the United Nations Development Program and the Government of Iraq to ensure a balance in it and a modern and strong framework.

Research Methodology

The analytical approach was adopted in analyzing the texts of the draft arbitration law and the Iraqi Civil Procedures Law No. 83 of 1969, in addition to the field study to obtain data and information

Research Plane

For the purpose of reaching the goal of our research, we divided it into two sections, the first of which we shared the definition of arbitration and its legal nature, in which we will search for the advantages of arbitration and objections to the arbitration system and the distinction between arbitration and other methods of settlement, either the second of which we will address the types of arbitration and the

possibility of excluding Iraqi law, in which we will search for local and foreign national arbitration and the effects of excluding Iraqi law, and then the conclusion was reached from the results and the recommendation for proposed solutions on it.

The first topic

Definition and legal nature of Arbitration

First Requirement: Definition of Arbitration

التحكيم لغة من مادة (حَكَم) وحَكَمَ بتشديد الكاف تعني طلب الحكم ممن يتم الاحتكام اليه ويسمى (الحكم بفتح الحاء والكاف أو المَحْكَم بضم الميم وفتح الحاء والكاف مشددة)⁽¹⁾.

Arbitration is meant in the legal terminology, it is a case in which people agree to resolve their dispute through arbitration and their choice is by the parties to the dispute to resolve the subject of the dispute,) provided that they are impartial and objective in issuing their decision and their decision is binding The parties shall determine the arbitrators' persons or at least ensure their agreement on arbitration . (2 to select the arbitrators or entrust the arbitration body or center, which has the powers and competences to organize the arbitration process in accordance with the rules or regulations to organize and operate the arbitration process .(3).

It is clear from this definition that the parties may agree to arbitrate in the body of the contract before any disputes occur between them to be resolved disputes or disputes will be resolved through arbitration Their agreement in this case is contained in the , and reconciliation between the parties to the contract form of a written clause in the contract, and they may draw up a written contract or an independent On the referral of what may affect them from the differences .agreement guaranteed by their agreement resulting from the original contract to arbitration, and the common denominator between the two images is that the agreement on arbitration has the character of (anticipation) for the future, and such an agreement is called in its two forms arbitration clause The parties may wait, if a dispute occurs between them, they conclude an agreement to refer it to arbitration, and this agreement is called a .(4)The compromise charterparty or arbitration document (ClauseArbitration)

The agreement of the parties to resort to arbitration, whether in the form of a clause or -1
::arbitration party, means the direction of the joint administration to arrange two legal effects
A-Depriving the jurisdiction of the state judiciary, to which the dispute should have been submitted, if there isno arbitration agreement, this agreement has the effect of impediment, according to which the judge is obligated not to consider the dispute as long as there is an arbitration agreement, and one of the parties adheres to it, even if the other party recoils on its heels trying to continue the judge's response (5) to the adjudication of the dispute.

B-Acceptance of the parties voluntarily and definitively for the arbitration award issued by the -أ
arbitrator or arbitrators is not entitled to the loser to file a lawsuit before the judiciary in order to reconsider the dispute, the arbitrators' judgment the force of the res judicata in regard to what was decided and most laws tend to prevent the appeal of the arbitration award or besiege the ways of appeal

(1) محمود مختار البربري، التحكيم التجاري الدولي، طبعة منقحة، القاهرة، 2007، ص5.

(2) Instructions for the implementation of government contracts No. 2 of 2014, Article 8 thereof

(3) Mahmoud Mukhtar Al-Barbari, previous source, p. 5

Gaber Gad Nassar, Arbitration and Conciliation in Some State Disputes, Cairo, 1997, p. 9⁽⁴⁾

Ali Badri Najib, The Role of International Commercial Arbitration in Dispute Settlement, Master's Thesis, Year 2009, (5) Baghdad, p 26

Or the request for invalidity by specifying exclusively the reasons on which the request for invalidity⁽⁶⁾ can be based.

Second Requirement: The Legal Nature of Arbitration

Arbitration raises controversy about its legal nature, so some tend to favor (judicial nature) on the basis of focusing consideration and relying on the nature of the work and the task performed by the arbitrator, Like the judge separating the judgment, and his ' as it adjudicates a dispute between two parties Where the arbitrators' arbitration ' judgment is considered as it is the authority of the res judicata decisions, whether local or international, are final and binding, which is what was agreed upon by the The subject of the dispute can ' parties to the contract, while the judge's judgment is subject to appeal be re-raised before the courts of second instance, as the arbitrator performs the function of the judge in The basis for the ' particular with regard to his work and function in resolving the dispute in his hands arbitrator to perform the function of a judge is the law, instructions or prior agreement that allowed Because the judiciary is ,⁽⁷⁾ arbitration as a means of resolving disputes that individuals can resort to the competent judicial authority, arbitration comes as an exception where people from outside this The state must monitor and intervene with ' authority are allowed to perform the function of judge peremptory rules that guarantee the integrity of arbitration proceedings, the integrity of the award, and allow it to be challenged before the judiciary. It regulates the rules and procedures necessary for the .⁽⁸⁾ implementation of the arbitration award

On the other hand, there is another trend that sees and prefers the contractual nature of arbitration, so Giving priority to the task of the arbitrator, but 'it is not important from the point of view of this trend the first is to look at who gave him this task, who determines the procedures to follow, and who He pays their fees, and determines for them the ' determines the person or persons of the arbitrators law according to which they settle the dispute according to its provisions. That the parties to the agreement are the ones who deal with all this, and arbitration legislation enacted by states or Do not put peremptory provisions except in the narrowest limits and to ' international conventions .⁽⁹⁾ serve the achievement (the will of the parties in the optional direction of arbitration)

The state stands at the role of the state (guard) to prevent prejudice to public order, either the commencement of arbitration and its progress until the issuance of the judgment, finds its basis in the Then their agreement with the arbitrators to (obey ' agreement of the parties to resort to arbitration Therefore, the implementation of most arbitration awards is and submit) to the judgments they issue Even if the 'done voluntarily and without resorting to the judiciary to obtain an enforcement order It is only similar to conciliation contracts that are subject to judicial ' judiciary was resorted to ⁽¹⁰⁾.ratification, and no one has disputed the contractual nature of the composition contract in such cases It follows from the preponderance of the contractual nature of arbitration, which is what we are biased by the need to knock the principle of (the authority of the will) and leave it to the parties to the dispute and their judges who chose them of their own free will and agreed in advance to submit to the The state may not intervene except to prevent prejudice to public order, or to ' provisions they issue

Abdel Aziz Al-Sen, Workshop on the Principles of Drafting Contracts for International Trade and Investment and Arbitration in Their Disputes, Cairo, 2012, p. 90 ⁽⁶⁾

.Ahmed Abu Al-Wafa, Arbitration in Judiciary and Reconciliation, Alexandria, 1974, p. 32 ⁽⁷⁾

.Mahmoud Mukhtar Ahmed Al-Barbary, International Commercial Arbitration, previous source, p. 7 ⁽⁸⁾

. Fouad Al-Alwani, Arbitration Formulas in Bills of Lading and Lease Parties, Baghdad Edition, 1992, p. 16 ⁽⁹⁾

Talal Yassin Al-Issa, International Arbitration in International Oil Disputes, Master's Thesis, Baghdad Edition 1988, p. ⁽¹⁰⁾ 38

ensure the proper conduct of the arbitration process by setting prescribed conditions that fill the gaps in the agreement of the parties, and does not resort to setting peremptory rules except within the limits of what affects the social, economic and political foundations of the state.

The second requirement:

distinguishing between arbitration and other methods of dispute settlement.

Conciliation and arbitration :

Agreement on voluntary recourse to arbitration means, as already mentioned, acceptance by the parties of the arbitrator's decision adjudicating the dispute

Arbitration is a final choice of arbitration as an alternative to resorting to the judiciary, and therefore the arbitration agreement is not considered The agreement associated with the reservation of a party or parties and their reservation of the right to resort to It does not change anything used the word arbitration or arbitrators, the lesson is the fact of what the will of the parties went to, not what they used of words. The judge shall be independent by order to inflict the correct legal adaptation without preventing him from doing so the terms and expressions used by the parties. the judiciary and put forward the arbitrator's decision⁽¹¹⁾.

It is clear from the above that when the disputing parties agree on the arbitration clause, they do not give the arbitrator to attempt to mediate or reconcile between the parties to the dispute, while remaining entitled to submit the dispute to the judicial authority In the event that the arbitration proceedings fail and no agreement is reached. Conciliation is the agreement of the parties to attempt an amicable settlement through a neutral party called conciliators who are elected by neutral and conciliatory parties⁽¹²⁾ and the competent court

The person who reconciles the parties shall determine the places of the dispute and present his judgment, which may be accepted by the parties or not receive any acceptance or conciliation. It does not issue judgments but rather submits a proposal for conciliation remains dependent on the acceptance The door to litigation⁽¹³⁾ of the parties to the dispute, if it does not succeed or is accepted conciliation and the judiciary was open to all parties.

The fundamental difference between arbitration and conciliation is not hidden, as conciliation inevitably includes, concessions from the parties in order to be able to communicate to a mediator solution, while the arbitrator – As we have seen – issues a judgment in which he may meet all the requests of one of the parties and reject all the requests of the other party, he is not looking for a compromise or compromise, and if he does and fails, he must continue his mission and issue a decisive judgment for the dispute

As for the conciliator, he can only terminate the procedures, and the parties are free to resort to the judiciary, which they cannot do if it comes to an arbitration agreement that ended with the issuance of an arbitration award adjudicating the subject matter of the Article 11 of the Government Contracts Implementation Instructions No. 1 of 2008 stipulates the mechanism of settling disputes after signing the contract by conciliation and arbitration methods as follows:

First: Disputes shall be settled after signing public contracts of all kinds using one of the following methods:

⁽¹¹⁾ .Mahmoud Mukhtar Al-Barbari, previous source, p. 53

⁽¹²⁾ Jaber Jad Nassar, previous source, p. 26

⁽¹³⁾ Nabil Abdel Rahim Hayawi, Principles of Arbitration, Cairo Edition, Year 2007, p 61

Conciliation -1

Where the dispute between two or more parties is settled according to the written contract between them or any written paper by resorting to this (14) method, i.e. conciliation amicably through the formation of a committee or through the selection of a neutral party called later.

Arbitration -2

Where it is resorted to in the event that no amicable or compromise solution is reached between the parties to the existing dispute, provided that it is mentioned in the same contract or the same paper written between the parties to the dispute and in the same sequence, that is, in the event of non-conciliation, arbitration is resorted to. It is also by choosing a neutral party named later to be his opinion binding on them or in the event that a solution or agreement is not reached by the neutral third party or international in the event of a big strategic (15) who was chosen, and arbitration may be local investment dispute.

A-Arbitration and transaction:

Reconciliation is a contract under which the parties to the dispute agree to settle the matter amicably when a dispute occurs, and the third method written in the contract or paper written in writing between the parties to the potential dispute, and the Civil Code defined in its article (698) reconciliation (is a contract that raises the dispute and interrupts the dispute by mutual consent).

This is done by making certain concessions in exchange for corresponding concessions from the other party to the dispute, and it is directly to discuss the merits of the dispute to strengthen relations between Conciliation. (16) the parties and pay the opinion amicably to avoid litigation and judicial proceedings. In that both of them settle the dispute in addition to that what refrains from is similar to arbitration reconciliation refrains from arbitration on the basis of what is known as the non-arbitrability of the subject matter as shown by the Iraqi Code of Procedure No. (83) of 1969 amended by Article (254) where it stipulates (arbitration is not valid except in matters where reconciliation is permissible etc.) The composition is similar to the form of arbitration clause if it is preventive, i.e. prior to the dispute, as it approaches the arbitration party if it is later on the emergence of the dispute, but it remains true that the composition raises the burden of the parties to the contract, it is the fruit of direct negotiation between them, while their role in arbitration stands when the arbitrator is authorized to resolve the dispute by a provision that may be spent for a party with all his requests, while the essence of the reconciliation is based on mutual concessions between the parties, which brings the reconciliation closer to

(17) the conciliation process, if it encounters Conciliator's suggestions Acceptance of the parties.

An important difference remains between arbitration on the one hand and reconciliation and conciliation on the other hand, as arbitration ends with a binding decision enforceable immediately after its completion after the finalization without needing the judicial authority to consider or implement it, while reconciliation is not enforceable until after the judiciary ratifies the matter so that (18) it makes it legally valid for the possibility of its application.

B-Arbitrage and expertise

The existing between the parties and each of them has its own and different contexts and for a specific purpose that is mentioned in the contract or in the paper written between the parties by choosing a third party agreed upon that party is neutral flexible with competence and has experience in the subject of

The instructions for the implementation of government contracts No. 1 of 2008 were canceled and replaced by the (14) instructions for the implementation of government contracts No. 2 of 2014 by Article / 8 thereof, which passed quickly and put dispute resolution in the controls attached to the instructions

Iraqi Code of Civil Procedure No. 83 of 1969 (15)

Talal Yassin Al-Issa, previous source, p. 43 (16)

Ali Badri Najib, previous source, p. 22 (17)

Mahmoud Mukhtar Al-Barbary, previous source, p. 28 (18)

the dispute and at the same time be confidential so that the goal is to provide an arbitrator technical opinion and issue a final recommendation to resolve the dispute in matters of a technical nature that They are two different ways to settle a need expertise that varies according to the type of dispute⁽¹⁹⁾ dispute

⁽²⁰⁾ It may be engineering, accounting or agricultural experience ... Etc.

Recourse to experts is not mixed with agreement on arbitration, as the expert does not issue decisions. Rather, it is technical information and clarifications that the abstaining parties can accept or reject. The opinion by choosing other experts, provided that the selection of experts is individual, as their opinion is not binding. As for arbitration, the arbitrator issues a decision that settles the dispute and binds the parties and may be authentic to the thing required, the parties do not have to return to raise the dispute to other arbitrators or file a lawsuit on it. Even in the event that the parties agree to give the expert opinion a forced character, it is still necessary to resort to the judiciary to adjudicate the subject matter of the dispute in accordance with the expert's opinion.

There remains a difference between the expert and the arbitrator related to how each of them performs the task entrusted to him, the arbitrator shows his decision based on the documents and pleadings submitted to him by the parties, while the expert party depends on (his information and experience) as The expert has to express his opinion without the need well as the information provided by the parties to refer to the parties, which the arbitrator cannot do, who must authorize the parties the possibility of It plays a role similar to the role of the judiciary, but then pictures of experience bestowed on them to describe arbitration sometimes, which are cases known as arbitration quality, quality or conformity, where an expert is judged to be provided with the agreements of the parties and a sample of the commodity or machine or goods in order to determine their conformity or non-conformity and there is no doubt that he stands at the role of the expert if he expresses his opinion only, but if the parties authorize him to arrange the results that are related to his technical opinion, here he has played the role of the arbitrator, if his opinion is binding in accordance with the agreement of the parties.

The second topic

Types of arbitration and the possibility of excluding Iraqi law and its effects in the draft Iraqi arbitration law.

In this section, we will deal with the types of arbitration in terms of national arbitration and international arbitration, as well as the possibility of excluding the application of Iraqi law to disputes submitted to arbitration in contracts to which Iraq is a party, and finally the effects of arbitration that prevent the courts from considering disputes to which the dispute is submitted by one of the litigants.

First Requirement:

National (Local) Arbitration and Non-National Arbitration

There is severe turmoil that leads to confusion in the use of descriptions attached to arbitration, it is described as national or local, as it may be described as foreign, and this foreign arbitration may be While other opinions tend to the lack of⁽²¹⁾ seen by some as synonymous with international arbitration a direct relationship between the two descriptions, arbitration may be foreign and not international and

Article 8 of the Government Contracts Implementation Instructions No. 2 of 2008 (¹⁹)

Jaber Jad Nassar, previous source, p32 (²⁰)

Abdul Aziz Al-Sen, Workshop on the Principles of Drafting International Trade and Investment Contracts and Arbitration in Their Disputes, Cairo, 2012, previous source, p. 133. (²¹)

there are many jurisprudence on the proposed criterion to resolve and determine the description of arbitration, then saying the standard (place of arbitration) and saying the standard of the applicable law⁽²²⁾ or saying to examine the nature of the dispute.

We believe that each of these criteria has a relative value, but neither of them has escaped criticism, and this reveals, in our opinion, the difficulty of setting an abstract general standard that expels its judgment in all cases.

If the matter is related to a purely national relationship in terms of the parties, the subject of the relationship and the place of arbitration, we are dealing with an internal (national) arbitration that does not raise any problem in terms of adapting it or determining the law that applies to it.

As for the criterion of differentiation between internal arbitration and foreign arbitration, we see the adoption of the criterion of the place of arbitration without paying attention to the nationality of the parties or the nature of the dispute, arbitration is foreign if it takes place outside Iraq, even if its parties

The same is true if one of the parties are Iraqi and related to a contract or a purely local relationship is Iraqi and the other is a foreigner. This arbitration is not described as (international) just because of the presence of a foreign party, but its flow abroad leads to its description as foreign or as a (non-local)

This criterion was adopted by the New York Convention to describe the arbitration award .arbitrator as a foreigner, as it stipulated that its provisions apply to arbitration awards issued in a country other⁽²³⁾ than the country in which they are to be enforced.

The criterion of (international) in our perception is linked to the nature of the conflict. Arbitration is international, if agreed upon on a relationship belonging to the sect (international commercial relations) and no importance after that to the nationality of the parties or the place of arbitration or the applicable law, if an Iraqi resident in a foreign country exports spinning machines to an Iraqi resident in Iraq and we agree to settle what may arise between them of disputes through arbitration taking place in Iraq, this arbitration is considered international despite the union of the nationality of the parties and despite the conduct of arbitration on the territory of the country to which they belong And this arbitration is not considered a homeland .

The second requirement: the possibility of excluding Iraqi law

Article VI of the law stipulates that the parties may agree to (subject their legal relationship to the provisions of a model contract, an international agreement or any other document) and in this case the arbitration provisions contained in this contract, this agreement or the document shall apply to the The implication of this text is that the arbitration that takes place between the parties to this agreement arbitration will be conducted in accordance with the provisions contained in the documents referred to,

Here, the question arises about the .⁽²⁴⁾ which means that the provisions of Iraqi law are not applied possibility of conflict between the jus cogens provisions of the law and the arbitration texts that will

If we imagine that the .apply according to the situation included in the agreement of the parties assigned document does not require writing except to prove the arbitration clause or does not require that the number of arbitrators be a chord in the case of their multiplicity, while the Iraqi law - as you will see - requires writing for the existence of the arbitration agreement, otherwise it is invalid, as well

Ahmed Ashoush, The Legal System of the Petroleum Agreement in the Arab Countries, Cairo Edition, Year 1957, p. 65. ⁽²²⁾

Abdul Aziz Al-Sun, previous source, p. 133. ⁽²³⁾
Iraqi Code of Civil Procedure No. 83 of 1969 (⁽²⁴⁾ www.americanjournal.org

In this case, ⁽²⁵⁾ as the arbitration is invalidated if there are multiple arbitrators and the number is even it is necessary to distinguish between arbitration taking place in Iraq, where it must be taken into account the peremptory texts because - as we have seen - Iraqi law applies to every arbitration that takes place in Iraq, if it is said that it can be excluded altogether even in its peremptory texts there is a point in stipulating that arbitration is in place and the meaning of Article VI is dependent on the possibility of applying the provisions of the arbitration referred to it related to procedures and all matters that have not been regulated by the Iraqi legislator by the provisions of his command. It is not conceivable to say otherwise unless the arbitration agreement is subject to another law such as the law of the country concluded it, but if the agreement was made in Iraq and arbitration takes place in Iraq, there is no room for excluding the provisions of Iraqi law *jus cogens*, and Article VI is intended to

provide the possibility of replacing the parties to other provisions that replace the arbitration taking place abroad, the parties subject the arbitration between them to a document. The arbitration provisions contained in these documents apply, and no ⁽²⁶⁾ or a model contract conflict is envisaged with the Iraqi law, which does not originally apply to any arbitration taking place abroad as (the law of the will of the parties) and in the opportunities faced by Article VI this will tend to choose the arbitration texts contained in (a model contract or an international agreement or any other document). The matter of the provisions of Iraqi law will not arise unless the arbitration award issued in Iraq is to be implemented, which we will show in detail.

Third Requirement: Effects of the Arbitration Agreement

Article (13) of the new draft law states: "First. The court that considers the dispute order must request an order, written contract or written paper indicating an agreement between the parties to resort to arbitration in the event of a dispute and considers it a formal matter before accepting the pending lawsuit. Secondly. The filing of the lawsuit, if the defendant pays so by making any request or defense in the lawsuit of the lawsuit referred to in the above shall not preclude the initiation or continuation of arbitration ⁽²⁷⁾ proceedings or the issuance of the judgment of impartial arbitrators.

This text follows the following:

A-The judgment of inadmissibility of the lawsuit is not issued by the court of its own accord, even if it is found that the arbitration agreement exists and it must exercise its jurisdiction. The explanation for this is that one of the parties to the arbitration agreement resorted to the competent judicial court is his unwillingness and his departure from the agreement and his resort to the competent judiciary in the lawsuit. If the other party attends and walks in the same direction as his opponent and begins to submit his defenses and papers on the subject of the dispute, this also means that he abandons the arbitration clause, which leads to the judge must consider the dispute before it and proceed to plead in the lawsuit. If the other party adheres to the arbitration clause, here the competent judge must rule not to accept the pending lawsuit filed before him, otherwise we would have opened the door wide to dissociate from the arbitration agreement, and waste its value. The project will oblige the need to declare adherence to the arbitration agreement before delving into the subject of the dispute, otherwise it is considered a waiver of payment after acceptance and can not after the discussion of the subject return to request the rule not to accept the lawsuit.

Samia Rashid, Arbitration in Private International Relations, Cairo Edition, Year 1984, p 78. ⁽²⁵⁾

⁽²⁶⁾ علي بدرى نجيب, المصدر السابق, ص 76

⁽²⁷⁾ Iraqi Code of Civil Procedure No. 83 of 1969

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،⁽²⁸⁾ B- The resort of one of the parties to the arbitration contract to the judiciary, does not prevent the other party from starting arbitration proceedings

If these procedures have commenced, the lawsuit filed does not restrict the continuation of the arbitrators in considering the dispute and issuing a judgment on it, after enabling the absent party to If he does not do so, ،⁽²⁹⁾ express his defense and notify him of the arrival within the stipulated period the neutral third party shall have the referees to decide on the dispute according to the data provided to If the plaintiff does not submit to the tribunal a statement of his claim within the agreed time, the arbitral tribunal shall order the termination of the proceedings, This means that the party who requested arbitration (the plaintiff) can ignore this request, and go to the judiciary after the deadline for submitting In his requests and is assured that the arbitral tribunal will order the termination of the proceeding order to avoid this result, the project gave the defendant the possibility of requesting the recovery of the procedures and settling the dispute if the plaintiff left his opponents arbitration. The defendant shall invoke before the judiciary the arbitration agreement and the court shall rule after accepting the lawsuit Article (1458) stipulates that if a dispute is brought before the judiciary of the State contacted by an arbitration court under the arbitration agreement, this judiciary must declare its lack of jurisdiction. If the dispute has not yet contacted the arbitral tribunal, the judiciary shall declare its lack of jurisdiction as long as the arbitration agreement is not clearly invalid

The French project obliges the judiciary to rule that it lacks jurisdiction to consider the dispute held on the arbitration agreement, and there is no doubt that the position of the Iraqi project in our view is more accurate, because the arbitration agreement does not remove the jurisdiction of the judge, but obscures him from considering the dispute It is noted that then an important difference between Iraqi and French law, as Iraqi law does not differentiate between the case that and then an important difference between Iraqi and French law, as Iraqi law does not differentiate between the case of filing a lawsuit before the judiciary after or before the arbitral tribunal contacted the dispute subject of the arbitration agreement

If it necessitates the judgment after jurisdiction , in both cases, it is imperative not to accept the lawsuit in the case of filing the lawsuit after the arbitral tribunal contacted the dispute, it entitles the judge to the possibility of not ruling after jurisdiction and addressing the subject, if he finds the apparent invalidity of the arbitration agreement, such as the absence of the arbitration clause from naming the arbitrators or indicating the method of their selection, or the absence of the charterparty from ،⁽³⁰⁾ determining the issues submitted to arbitration in the case of the arbitration party ... etc

The judgment of non-acceptance of the lawsuit is the existence of a valid arbitration agreement and not just the physical presence of an editor that includes such an agreement, the judge does not give up his right to address the subject of a dispute before him, unless it turns out that the arbitration agreement adhered to by one of the parties, is a productive agreement to raise and valid for the convening of an arbitration body considering the dispute, but if it turns out that it is in front of a void agreement, He may reject the plea of inadmissibility and address the consideration of the subject, and shall not be Which establishes the principle of jurisdiction, i.e. (22) hindered by relying on the text of Article authorizing the arbitration committee authority in accordance with the defenses related to its lack of jurisdiction, including defenses based on the absence of a clause or clause of arbitration or its invalidity or fall. And the other party argued the invalidity of this agreement, the judge of the lawsuit is the judge of defenses, and does not imagine the obligation of the judge to rule not to accept the lawsuit based on

Ahmad Ashoush, op. cit., p. 70 ⁽²⁸⁾

Iraqi Code of Civil Procedure No. 83 of 1969, Article 177 thereof ⁽²⁹⁾

Nabil Abd al-Rahim Hayawi, op. cit., p. 96 ⁽³⁰⁾

His rule shall apply under Iraqi law in (31) the adherence of one of the parties to the arbitration agreement accordance with the general rules. Moreover, the issuance of an arbitration award based on a void agreement, will make this judgment subject to a request for its invalidity in accordance with the text of Article (53 /1 / a), which lists the reasons for requesting the invalidity of the arbitration award, based on a void agreement. Therefore, we see beyond that, which is to authorize the judge to put forward the invalid arbitration clause As we see the , and to address the issue in the event that he pleaded against accepting the lawsuit possibility of any of the parties to the dispute arbitration agreement to file an original lawsuit requesting a ruling on the invalidity of the arbitration agreement, because the delegation of the arbitral tribunal the authority to decide on the validity or invalidity of the arbitration agreement does not mean its monopoly of this authority and robbed of the authority of the judge. To say otherwise is, in our view, an infringement on the right to resort to the judiciary. Therefore, it does not see a justification for the distinction established by the French legislator between the case of the arbitral tribunal's contact with the dispute, so the judge must rule on lack of jurisdiction and the case of the tribunal's non-contact with the dispute, so the judge is entitled to consider the apparent invalidity of the arbitration agreement and Proving the invalidity before the judge must open the door .(32) reject the ruling of lack of jurisdiction for him to put forward the arbitration agreement and restore his jurisdiction, which is not valid to lose it unless there is a valid arbitration agreement. We do not believe that it is sufficient to say that the arbitral tribunal, after its contact with the dispute, has a monopoly on the validity or invalidity of the arbitration agreement. And the determination of the principle of jurisdiction, intended not to hinder the conduct of the arbitration process, the Commission does not stop the proceedings until the matter is presented to the judiciary, but it has to continue if it estimated that the defenses are intended to It is not correct to ,procrastinate and prolong the dispute and these justifications have nothing to do lead to the statement to prevent the judge from verifying the validity or invalidity of the agreement of the wise, but on the contrary justifies the assertion of his authority, because raising the matter to him will not be a reason to stop or prevent the conduct of arbitration proceedings, unless the judge finds the invalidity of the arbitration agreement, addressed the subject and issued a judgment in which it became final, as it controls the arbitral tribunal in this case, Termination of the procedures because their continuation will become irrelevant, as the imposition of the issuance of an arbitration award, it will not be possible to implement it because it conflicts with a judgment previously issued by the judiciary, (2/58) which is one of the reasons for preventing implementation stipulated in Article

The end:

Iraq lacks modern legislation regulating commercial arbitration, while the Iraqi Code of Civil Procedure No. 83 of 1969 has in the third chapter of the law provisions for arbitration, Iraq has taken clear and readable steps to adopt laws and ideologies that aim to strengthen the economy attractive to investment and promote arbitration in the anti-corruption initiative funded by the United Nations Development Program for arbitration and in accordance with expanded government efforts to introduce Iraq into international arbitration and these steps include supporting the arbitration law Effective implementation of the 195 New York Convent Workshops and an attempt to legislate to integrate arbitration practices across Iraq came into effect for Iraq in February 2022. As the existence of legislation regulating local private and public investment disputes launches a safe environment for foreign investment in Iraq, as the arbitration system provides impartiality and

Samia Rashid, op. cit., p. 96. (31)

Talal Yassin Al-Issa, International Arbitration in International Oil Disputes, Master's Thesis, Baghdad, 1988, p 84 (32)

effectiveness to resolve disputes that occur between investors and is considered the safest means of adjudication in the event of a dispute ,on

Results:

The contrast and contradiction between favoring or rejecting the arbitration system is not without exaggeration, it is not true at all to say that arbitration protects the foreign investor from corruption and the low litigation system in developing countries, corruption and deviation are a phenomenon that has no homeland, and the scandals of the developed world and cases of deviation and corruption do not hide, and the suspicion of bias of the judge if it is established by the judge in developing countries, it But looking at the applications presented in the .is also based for the judge in developed countries judiciary reveals the slow procedures of the case in this regard and the multiplicity of degrees of the court from the beginning, then appeal, then discrimination and high wages in developed countries in particular, makes arbitration is the most appropriate means, whether in local disputes or international trade disputes, the judiciary is burdened with the number of cases that are submitted to it, and opening an alternative door such as arbitration and experience contributes to solving this problem at the local level, especially with the high awareness of the arbitration system and what It carries advantages If we move to the level of international trade relations, it is necessary to confront the reality of the contemporary world, it is a world like it or not that is taken over by the advanced industrial countries As for the criterion of differentiation between internal arbitration and foreign arbitration, we see the -2 adoption of the criterion of the place of arbitration without paying attention to the nationality of the parties or the nature of the dispute, arbitration is foreign if it takes place outside Iraq, even if the parties are Iraqi and attached to a contract or a purely local relationship, and the same if one of the parties is Iraqi and the other is a foreigner. This arbitration is not described as (international) just for a foreign party, but its flow abroad leads to its description as foreign or as a (non-local) arbitrator The legislation of the Iraqi Arbitration Law is a fundamental pillar in supporting and attracting -3 foreign investment to the country as all foreign investors and companies are required to add the arbitration clause when any dispute arises between the parties to the contract and because of the absence of the above law, Iraq is in setting the necessary conditions to protect its interests in front of investors because Iraq lacks important legislation such as arbitration and that all countries of the world have sought to legislate the arbitration law for decades to keep pace with legislation in developed countries and prevent the loss of lawsuits It arose as a result of that, which is what we see today from the lack of knowledge for

Propositions:

We are likely to adopt the criterion of the place of arbitration to distinguish between national and -1 foreign arbitration, and to adopt the nature of the dispute to distinguish between national and foreign arbitration on the one hand and international arbitration on the other hand, and it is no secret that the possibility of meeting foreign or international capacities, if the arbitration is abroad and relates to an international dispute, but not every foreign arbitration is international, and arbitration may be international despite its internal flow and even subject to national law, as we will see, which is if it is described as foreign, it is intended to highlight the lack of (local) dispute related to it and not foreign in the geographical sense of the

The Iraqi legislator did well with regard to Article (13) of the draft arbitration not to accept the -2 lawsuit by the competent courts if there is a provision in the contract indicating the resort to arbitration The Iraqi legislator did well with regard to Article (13) of .in settling disputes between the two parties

the draft arbitration not to accept the lawsuit by the competent courts if there is a provision in the contract indicating the resort to arbitration in settling disputes between the two parties. We see the possibility of any party to the arbitration agreement to file an original lawsuit requesting a ruling on the invalidity of the arbitration agreement, because granting the arbitral tribunal the authority to decide on the validity or invalidity of the arbitration agreement does not mean its monopoly of this authority and robbing it of the authority of the judge. To say otherwise is, in our view, an infringement on the right to resort to the judiciary.

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