

Judiciary jurisdiction in Proving the Dispute of Arbitration

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Abstract

It is well known that Arbitration agreements play a major and significant role in the arbitration process and helps to set the general framework for the arbitration dispute and to resolve the arguments without going to courts. In this article, cases of deviations of the general principle that prevents the court from interfering with the arbitral agreement have been studied and illustrated. This is presented in three sections; the first section examines the court's role in Calling and questioning witnesses, The second section studies the court's role in summoning the expert, and The third section Bring a document or a copy of it or view it, all of that by referring to both the Jordanian arbitration law the UNCITRAL Law, the International Chamber of Commerce in Paris (ICC) and some other comparative Arabic laws, as well as, the amount that these legislations take into account the benefit of the parties to the arbitral agreement, as they are the basis for resorting the arbitration. To conclude, this paper ends with a conclusion whereby results and recommendations will be highlighted.

Keywords: Arbitration, Proofs, Judicial interference, Arbitration disputes.

1. Introduction

Dietary It is known as a general rule that a person claiming to happen of a particular event has the burden of proving that event, (Al-Sud, 1985) (Judges, 1994) Whether he is a plaintiff (the arbitrator) or a defendant (accused) and this also applies to the arbitration lawsuit, and this right is not considered the same and nothingness is the same, (Abdul Razzaq Al-Sanhouri, 1952). But it should be noted that this rule is not related to public order, so that the parties may agree to violate it as if they agree that the burden of proof will be transferred from one to the other, and the parties may agree not to apply the legal rules in the proof, whether concerning the strength of the evidence or the extent of its acceptance of proof (Wali, 2007). They may also agree on the procedures of evidentiary evidence, provided that the basic principles of litigation are respected, such as the principle of demand, the principle of equality between litigants, the principle of confrontation, the principle of respect for the right of defense, the principle that the arbitrator may not judge with his knowledge, and finally the principle that the arbitration dispute must be considered by all members of the arbitral tribunal (Mabrouk, 2010) (Abdel-Fattah, without publication year) (Hashem, 1986) (Khalil, 1995), and this agreement may be either express or implied (Wali, 2007).

The incident should be proven by the arbitration case, the conditions that must be met in the incident are stipulated in the ordinary cases, so it should be related to the case (Abdel Razzaq Al-Sanhouri, 1952, and it is acceptable (Wali, 2007) and it is proofed (Abdel Razzaq Al-Sanhouri, 1952). This is

confirmed by Article (4) of the Jordanian Evidence Law. It should be noted that the arbitral tribunal has a discretionary authority to accept or not accept the request to take any of the evidentiary measures (Yahya, 1988) and thus, have the same authority as the court, provided that the right to defense is not violated (Al-Wafa, 2001) (Abdel- Fattah W., 1984) (Mabrouk, arbitration, 2010) (Abdel-Fattah A., 1990), and may also repeal these proceedings (Al-Ashmawi, 1985).

As for the arbitral tribunal's power in the weighing of the evidence, herein it shall be in accordance with the type of evidence. Should the evidence be legal, such as approval and writing, and then the arbitral tribunal shall not have any power because the law stipulated and regulated it, so the arbitral tribunal shall not be entitled but to ascertain the availability of evidence. As for other pieces of evidence, such as testimony and experience, the arbitral tribunal shall have absolute power in their award, as the arbitral tribunal shall not be obligated to justify the evidentiary procedures it orders.

Through all of the above, it turns out that the arbitral tribunal -as it is known- is competent to hear the evidentiary materials and the court does not have the power to intervene in these issues. Otherwise, the judiciary still has jurisdiction over the evidentiary materials submitted to the arbitral tribunal, with specific limits and cases, so that, the court has the power to hear these disputes, despite submitted dispute to the arbitral tribunal, and that affirmed in Article (8) of the Jordanian arbitration law, which stipulates: " The court may not intervene the issues that governed by the law, except in the legally specified circumstances, without prejudice the right of the arbitral tribunal to request from the competent court to assist it in the arbitration procedures, in accordance with what this tribunal deems appropriate for the proper conduct of the arbitration proceedings, such as, invite a witness or an expert, or provide a document or a copy or review it, or otherwise."

This study is distinguished from previous studies as it focuses on answering the following question: To what extent can the admissibility of intervention of the State judiciary in the supplied evidentiary materials in arbitral dispute in the light of both the Jordanian legislation that represented by (The Arbitration Law & comparative legislations) and the International Chamber of Commerce in Paris (the rules of the law of UNCITRAL)?

The descriptive, analytical and comparative approach have been adopted in this study, and the question will be answered by focusing on the cases in which a court may intervene in the arbitration agreement, by dividing this study into three branches: The court's competency to summon and interrogate witnesses (first section), The court's competency to invite an expert (second section), and the court's role to provide documents or a copy or review it (third section).

2. The Court's competency in summoning the witnesses and interrogating them

The Jordanian Arbitration Law in Article (32) has stipulated to the same as the general rules regarding evidence, as it gave the right to the litigants in the arbitral proceedings to prove their claim by testimony. This is what was stated in article (23) UNCITRAL Model Law and the third Clause of the text of Article (25) of the Regulations of the International Chamber of Commerce in Paris (ICC). It should be noted that the second Clause of the text of Article (27) of the Cairo Regional Center for Arbitration Law (CRCICA) has permitted for any person, even if he is a party in the arbitration or has a connection with one of the parties, to be a witness in the presented process of Arbitration. The same rule applies to expert witnesses, who may call upon by the Commission in some matters related to

facts or technical expertise. This was contrary to the fundamental principle of the arbitration, which is principles of justice and equality, as interests will conflict in this case, then who may testify against his interests? However, the Jordanian legislator, his position was better from this standpoint, as he did not address this issue.

The Jordanian legislator also permitted the parties of the arbitration to attach a written testimony with the list of his evidence for any witness, provided that the same shall be affidavit. This is in accordance with the clause (d) of the text of Article (32) of the Jordanian Arbitration Law, taking into consideration that, if the other party requests to contest the witness, and the witness does not appear, then that written testimony shall be discarded. This is in accordance with paragraph (e) of the text of Article (32) of the same law. Besides, the arbitral tribunal must make the witness testified under the oath before hearing the testimony of the witnesses. This shall be done in accordance with the form decided by the arbitral tribunal. Also, the testimony shall be heard with the presence of all the members of the arbitral tribunal, as it is emphasized in clause (D) of Article (32). In viewing the position of comparative legislation, we find it has been divided into two groups: The first group represented in Article (33) of the Syrian Arbitration Law. We noticed that they meet at a common point with our Jordanian legislator, as the arbitral tribunal obliged the witness to swear an oath before giving testimony. However, its position remained better than the position of the Jordanian legislator because it added a phrase “unless otherwise agreed by the parties” and in this there is a full respect for the will of the parties of the conflict. on the other hand, the second group, which, represented in the fourth paragraph of the text of Article 33 of the Egyptian Arbitration Law and the second paragraph of the Article (24) of the Qatari Arbitration Law, has breached what the Jordanian legislator stipulated, as it does not require the arbitral tribunal to swear an oath by the witness before giving testimony.

As for the parties, if one of them does not appear, then a copy of a notary confirming the witnesses’ statements should be sent to them and they should be given the opportunity to discuss it (Al-Nasiri, 2013) (Hantoush, 1994), otherwise, the judgment based on this testimony will be void (Wali, 2007). The Jordanian Arbitration Law also gave the arbitral tribunal the right to use various means of technological communication in order to witness statements without the need to physically attend. This is indeed stipulated by Article (35) of the UAE Arbitration Law and the fourth clause of Article (28) of the Cairo Regional Center for Arbitration (CRCICA) Law, and the first paragraph of the text of Article (25) of the Regulations of the International Chamber of Commerce in Paris (ICC). We find that they have also taken what the Jordanian legislator has taken in terms of the possibility of using modern means to listen to witnesses.

However, in any case, the Arbitral Tribunal may have the right to determine to summon the witness to appear before it for discussion. The Jordanian legislature may also accept the means of technological communication, televised or closed-circuit, in accordance with clause (h) of the text of Article 32 of the Arbitration Law, where the latter gives his testimony by answering the questions put to him by the arbitral tribunal or by the parties. (Mata, 2009).

In addition, the arbitral tribunal has the power of estimating the value of a certificate issued from witnesses may be taken by their statements or may not in case they are not convinced. It's worth noting, that the discretion of the arbitral tribunal has the right to an assessment of the evidence does not mean arbitrariness in its authority, but it's applying the principle of logic, experience and feeling.

Furthermore, the arbitrator must balance the evidence, and thus he has the same authority vested to the judge (Wali, 2007). The arbitral tribunal may satisfy itself with the documents and papers submitted by the parties if it is sufficient evidence to adjudicate upon the dispute. Unless otherwise agreed, whereas the arbitral tribunal must respect the will of the parties. (Matar, 2009)

Through the foregoing, it is clear that the arbitral tribunal is basically competent to look into proving the facts of the case by means of testimony, but it sometimes - Since the arbitral tribunal does not have the authority to compel -may experience difficulties that might prevent them from considering the testimony as evidence (Al-Nasiri, International Commercial Arbitrator, 2013), that's where come the role of the judiciary whereby the arbitral tribunal has the right to resort to the judiciary in order to assist it complete its work (Zaid, 2004) (Shehata, 1992) (Hamid, 2005) (Believer, 1977).

This is clearly emphasized in article (8) of the Jordanian Arbitration Law, which stated that: "In matters governed by this law, no court shall intervene except in cases provided for therein without prejudice to the arbitral tribunal's right of asking the competent court for assistance in the arbitral proceedings, such as summoning a witness".

Where the role of the judiciary can be determined, here in two cases:

- The first case: If the witness refuse to appear before the arbitral tribunal.
- The second case: If the witness appears before the arbitral tribunal, but refuse to testimony.

In both of the previous cases, the arbitral tribunal wouldn't have any other choice except resorting to the judiciary in order to get the witness to testify, as the court is tasked to compel the witness to appear before the tribunal to hear his testimony.

As for comparative legislations, we note that it is divided into two groups:

As for the first legislative group, which is represented in Article 269 of the Civil Escorts and Iraqi Execution Law, the second clause of Article 28 of the Palestinian Arbitration Law, Article 759 of the Libyan Civil and Commercial Escorts Law, and the third clause of the text of Article 22 of the Saudi Arbitration Law, when controlling all these legislations. We find them going the same way as the Jordanian project, and it was referred to it to prevent repetition, but it should be noted that the Iraqi project differs in one respect, as it went to compel and oblige the arbitral tribunal to refer to the case when using the phrase "the arbitrators must refer to the competent court," as opposed to The Jordanian project that he left it to the discretionary authority of the arbitral tribunal, so that it has the right to refer or not to refer to the judiciary. This is evident in the text of Article 8 of the aforementioned Jordanian Arbitration Law when the phrase was used, without prejudice to the arbitral tribunal's right to request the competent court. To resort to the judiciary will conflict with the purpose and objective of submitting the dispute to arbitration instead of the judiciary.

As for the second group of comparative legislation, which is represented in Article (7) of the American Federal Arbitration Act of 1925 and its amendments, clause (a) of Article (37) of the Egyptian Arbitration Law, and the second clause of Article (27) of the Qatari and UAE Arbitration Law, first and second clause. From the text of Article (36) of the UAE Arbitration Law and clause (a) of Article (180) of the Kuwaiti Civil and Commercial Procedures Law. When we look into these

legislations, we find that it is not only a statement of the court's auxiliary role, but it was also more detailed so that the court gave the right to imposing penalties on the witness who fails to testify, and this was through explicit reference to the general rules that regulate and clarify these penalties, in contrast to the Jordanian legislator who neglected to consider this issue, however, we find that the position of the Jordanian legislator here was better than the position of this trend Legislative, because the Jordanian arbitration law in this matter was in line with the general rules in the Evidence Law, which did not provide for the issue of imposing penalties on the witness who failed to testify.

It should also be noted that both the UAE and Qatari legislators have been permitted to both the arbitral tribunal and any of the parties to request assistance from the court in testimony as evidence of proof, while both the Jordanian and Egyptian legislators have given this right to the commission without referring to the parties' right to do so .

From our point of view, we find that the position of the Qatari and Emirate legislators is better in this regard than the position of the Jordanian and Egyptian legislators. It is also worth noting that we believe that the American legislation in Article (7) of the Federal Arbitration Act dealt with an issue that was not regulated by the Jordanian legislator, as it referred to the compensation given to witnesses in return for their testimony and indicated that it is the same as the compensation paid to witnesses in the federal courts, as well as his statement of the mechanism Through which witnesses are summoned, and this, from our point of view, is a subject of criticism that can be directed at the Jordanian legislator, because it had to be more comprehensive, detailed and accurate in this respect, and in return it is possible to refer to the general rules in Jordanian legislation that solve this issue.

As for the UNCITRAL Model Law in Article 27 of it, we find that its position was close to the position of the second group of comparative legislation, by giving the arbitral tribunal and any of the parties the opportunity to resort to the court and request the assistance, but it differs in the requirement of the approval of the arbitral tribunal, in the event that the request for assistance was issued by both parties.

As for the International Chamber of Commerce in Paris (ICC), when we look at the texts related to proving the incident in the arbitration case, we find that they did not address the issue of resorting to the judiciary to help facilitate the task of the arbitral tribunal to obtain evidentiary evidence. Their position is better than that of the ICC in this respect.

Based on all of the foregoing, the following question arises: What if the witness is in an area that does not fall within the jurisdiction of the arbitral tribunal, will the latter be competent in this matter, or does it have to resort to the judiciary to complete its work through the so-called rogatory?

When looking at the text of Article (8) of the Jordanian Arbitration Law, we find that it did not expressly state the issue of delegation, but it may be understood indirectly that it could be included in the issues in which the arbitral tribunal resorts to judicial assistance, when it uses the phrase "...or otherwise. " As this phrase may include the issue of representation, especially since the article mentioned cases of resorting to the judiciary as an example but not limited to.

As for the comparative legislation represented in Article 7 of the United States Federal Arbitration Act, Paragraph (b), Article (37) of the Egyptian Arbitration Act, paragraph (c), Article 180 of the Kuwaiti Civil and Commercial Procedure Act, Article 269 of the Iraqi Litigation and Enforcement Act, Article (29) of the Palestinian Arbitration Act, Article 759 of the Libyan Civil and Commercial

Procedure Act, Article 779 of the Lebanese Civil Procedure Act, paragraph (2), Article (22) of the Saudi Arbitration Act, and paragraph (2), Article (36) of the UAE Arbitration Act, when examining these legislations, they have explicitly indicated that the arbitral tribunal may resort to courts in order to issue a rogatory letter. In our view, the status of those legislations was better than that of the Jordanian legislation that had no explicit reference to this issue.

3. The court's competency in inviting the expert.

The Jordanian arbitration law authorized the arbitration board on its own initiative or at the request of one of the parties to the arbitration to seek the assistance of one or more experts to express an opinion on some issues related to the arbitration lawsuit, and this is confirmed by the paragraph (I) From the text of the article (32) From the Jordanian Arbitration Law, the same applies to the comparative legislation represented in the article (36) From the Egyptian Arbitration Law and Article (30) From the Palestinian Arbitration Law, and this is what both the UNCITRAL Model Law went to (UNCITRAL) In the article (26) From it and the Cairo Regional Center Law (CRCICA) In the article (29) From it where we find them have followed the same path as the Jordanian legislator.

Experience is characterized by being one of the most important means of proof, especially if the arbitration dispute is based on what the expert estimates (Eid, 1988), knowing that some jurisprudential opinions contradict that, as you see that the experience in the arbitration case is not important to them, and they justify Their opinion that it should be taken into account when forming the arbitral tribunal is that some of its members have experience and knowledge in the field of contentious arbitration. Thus, there is no need for experience. Judging according to his knowledge, in addition to the fact that there may be some technical aspects that the arbitral tribunal cannot take into account, (Mata, 2009) and therefore based on all of the above, the importance of expertise in arbitration cases crystallizes. The expert may be a natural or legal person in accordance with paragraph (a) of the text of Article (34) of the Jordanian Arbitration Law.) of the Jordanian Arbitration Law, and with regard to comparative legislation, we find that there are some legislations that contradict what the Jordanian legislator has gone through, and among these legislations is the Egyptian legislation in the fourth paragraph of the text of Article 33. The Egyptian Arbitration Law, which does not require the expert to take an oath before performing his work. over the course of justice, and he must prepare a report on what he has reached, and then perform it. By depositing this report and delivering a copy of it to the arbitration parties. The arbitral tribunal may, on its own or at the request of one of the litigants, invite this expert to discuss it. The same applies to the comparative legislation contained in Article 31 of the Palestinian Arbitration Law. We find that he took the same path that the Jordanian legislator took. Note that the arbitral tribunal has the discretion to use expertise or not (Al-Ahdab, 1990) (Mata, 2009) and also has the right to withdraw from it after its determination, and to seek the expertise. It does not lead to the suspension of the arbitration proceedings, but rather continues. All this unless there is an agreement between the two parties to the contrary, and this is confirmed by paragraph (i) of the text of Article (32) of the Jordanian Arbitration Law.

Considering all the above, it is clear that the arbitral tribunal is competent related to expertise so that the judiciary does not have jurisdiction in this field, as what is emphasized in Article 32 (j) of the Jordanian Arbitration Law, which states: "The arbitral tribunal shall be competent to adjudicate on all

matters relating to experts, to terminate or return their functions and to accept or reject all or some of their expertise”.

Considering the text of the above-mentioned article, it is clear to us that the Jordanian legislator has authorized the arbitral tribunal to respond to the expert. And the Jordanian legislator did well by explicitly stating this issue, However, when we look at the texts of the Jordanian Arbitration Law, we find that it has suffered from a legislative vacuum, since he did not indicate the mechanism in which the expert's reply was to be made, nor did he indicate the cases in which the expert was to be responded to. We believe that he should have explicitly stated the matter or at least mentioned the phrase that the same mechanism for the arbitrator's restitution should be followed so that he would not leave room for the opinions that might go.

Though, the arbitral tribunal might face some difficulties in resorting to legal assistance. This is explicitly confirmed in article 8 of the Jordanian Arbitration Law, which states: "without prejudice to the right of the arbitral tribunal to request the competent court to assist it in the arbitral proceedings as it estimates appropriate for the good conduct of the arbitration, such as the invitation of a witness or expert" regarding comparative legislation, **the text is divided into two groups as follows:**

- **The first legislative group:** which is represented in Egyptian, Iraqi, Palestinian and Libyan legislation, when reviewing the texts on the use of expertise as evidence, did not deal with the question of jurisdiction, as opposed to Jordanian legislation, which, as I have already stated, explicitly provided for the right of the arbitral tribunal to have access to expertise if it deems it necessary. It should be noted that the draft law on Libyan arbitration, in article 40, went as far as the Jordanian legislator, and we believe that this is a positive step taken by the Libyan legislator in the hope that it will be implemented in the future. It should also be noted that the Iraqi Code of Civil Procedure and Enforcement did not deal in the first place with the question of the right of the arbitral tribunal to judge experience as evidence to the contrary of the Jordanian legislator who regulated and dismissed this issue in an above-mentioned manner. Therefore, in our view, this is a criticism that could be levelled at the Iraqi legislator from this point of view.
- **The second set of comparative legislation,** namely, article (27) of the Qatari Arbitration Law, paragraph 3 of the text of an article (22) of the Saudi Arbitration Law and article (27) of the UNCITRAL Model Law, when examining these texts, they have followed and referred to the Jordanian legislator in order to prevent repetition.

The International Chamber of Commerce of Paris (ICC), when looking at the texts on proof of the subject matter of arbitral proceedings through experience, is also found - As in the case of the testimony, the issue of recourse to the courts to assist in facilitating the task of the arbitral tribunal to obtain evidence was not addressed, and this position is, in our view, critical, it had to regulate the question of the auxiliary role of the judiciary in evidence.

4. The court's role in bringing or reviewing a document or a copy for it.

The principle of proof is that the parties must produce all the documents they have in support of and in support of their claims, which is explicitly stated in the paragraph. (c) the text of article 29 of the Jordanian Arbitration Law, as well as the comparative legislation of paragraph 4 of the article The Qatari Arbitration Act, section 266 of the Iraqi Code of Civil Procedure and Enforcement, and article

266 (179) of the Kuwaiti Code of Civil and Commercial Procedure and paragraph 3 of the text of the article (30) of the Saudi Arbitration Act and article (31) of the UAE Arbitration Act, they went to the same position as the Jordanian legislator that the parties had the right to submit documents and documents supporting their claims.

Sometimes these documents may not be available in the hands of one of them, but they are available in the hands of the other party or other one, and here the arbitral tribunal asks the party with the documents to deliver them, and then the tribunal sends a copy of the documents that have been submitted to the other party, where the article refers. The Jordanian Arbitration Law expressly addresses this issue, as for the comparative legislation of both the fifth paragraph of the text of the article. Saudi Arbitration Act, Qatari Arbitration Act, art. The Egyptian Arbitration Act and paragraph 3 of the text of the article From the UNCITRAL Model Law, we find that all of them have gone the same way as the Jordanian legislator.

However, some of the difficulties that the arbitral tribunal may face may arise and cause it to have access to justice. These difficulties can be identified in two cases:

- The First Case: If the party in possession of the documents fails to comply with the request of the arbitral tribunal and to hand over such documents, in which case the arbitral tribunal does not have the power to force that party to deliver them, it does not have the binding power of the courts, and thus the arbitral tribunal has only recourse to the courts of the State in order to require that party to hand over documents belonging to the other party in its possession.

It should be noted that the withholding of documents and documents from an adversary violates two important principles of arbitration: the principle of confrontation between the parties and the principle of the right of defence (Al-Tahawi1999).

- The second case: If the documents to be adhered to by one of the parties are in the possession of a third party (Sami, 2006), then the arbitral tribunal does not have the power to compel this third party to hand over the documents in his possession, and the reason for this may be due - from our point of view - to the fact that he is not a party to the arbitration agreement, so he has no obligation under this agreement to hand over the documents under his hand, in addition to the fact that the arbitral tribunal does not have the power to compel the parties, so how will it have this authority over others? Therefore, the arbitral tribunal has no choice but to request assistance from the judiciary in order to compel this third party to surrender the documents in his possession.

When looking at the text of Article 8 of the Arbitration Law, we find that it expressly states that the arbitral tribunal has the right to resort to the judiciary in order to assist it in bringing a document or a copy of it, or even in order to view it. As for looking at the comparative legislation, we find that their positions were different, and this can be shown by dividing them into three groups:

The first group, represented in Article (7) of the American Federal Arbitration Law, the third clause of the text of Article (34) of the Syrian Arbitration Law, the clause (B) of the text of Article (180) of the Kuwaiti Code of Civil and Commercial Pleadings, the third clause of the text of Article (22) of the Saudi Arbitration Law and the first and second clauses of the text of Article (36) of the UAE Arbitration Law. When looking at these articles, we find that they have explicitly stated the right of the arbitral tribunal to resort to the judiciary in order to assist it in obligating the other party or third

parties to bring whatever documents they have in their possession. Their position was similar of the Jordanian legislator's.

As for the second group, represented in the Qatari legislation, we find that its position was similar to that of the Jordanian legislator, whereas it permitted the arbitral tribunal to resort to the judiciary for assistance, but it differs from it in that it did not explicitly mention the issue of resorting to the judiciary to bring a document or a copy of it, with that and when looking at the text of the article (27) of the Qatari Arbitration Law, which referred to cases of resorting to the judiciary in the evidence, we find that it was mentioned by way of example but not limited to, as it states: "The arbitral tribunal or any of the parties may, after the approval of the arbitral tribunal, request assistance from the competent court to obtain evidence related to the subject matter of the dispute...", and therefore the arbitral tribunal has the right to resort to the judiciary in this matter as well.

As for the third group of comparative legislation, which is represented by the Egyptian, Iraqi and Libyan legislation, when reviewing the texts related to evidence, we find that they have neglected to address this issue, as they identified issues that may be referred to the judiciary, by way of example but not limited to, and the submission of documents or access to them was not from among these issues, and this, in our opinion, is a critical matter, as it should have gone to what the Jordanian legislator went and dealt with this issue or at least mention the evidence as an example but not limited to.

We need to note that the draft Libyan Arbitration Law in Article (40) thereof has explicitly stipulated and regulated this issue, as it gave the arbitral tribunal the right to refer to the court to assist it in compelling the third party or the other party to submit the documents under its control, and thus its position is identical to that of our Jordanian legislator. It should be noted that because the legislator in the Egyptian Arbitration Law did not provide for the issue of bringing a document, there were many jurisprudential opinions that tried to find a ruling for this issue and determine the extent of the court's jurisdiction over it. When we examine these jurisprudential opinions, we find that they are divided into two groups:

The first jurisprudence group agree that it is not permissible to resort to the judiciary and they justify their opinion that the Egyptian legislator listed the cases in which the authority may resort to the judiciary in the field of proof, it is mentioned by way of example but not limited to, and therefore it is not permissible to deviate from what the legislator wanted (Barakat, 1996) (Wali, 2007).

As for the second jurisprudence group, it goes to the opposite of what the first jurisprudence group came with, where it went to the permissibility of the arbitral tribunal to resort to the judiciary in this case and justify their opinion that the role of the court is an auxiliary role for the arbitral tribunal so that it intervenes in cases in which the arbitral tribunal encounters difficulties during the consideration of the case Arbitration and this is what the Egyptian legislator expressly stipulated (Sawi, 2002).

Finally, it should be noted that the Libyan arbitration draft law has clearly stipulated and regulated this issue, as it authorizes the arbitration panel to refer to court to assist it to compel the other party to submit his documents, therefore, its position seems identical to that of the Jordanian legislator. See Article (40) of the Libyan arbitration draft law.

5. Results

1. The origin of the arbitration dispute is that the court may not intervene in the evidences presented to the arbitration panel, yet the Jordanian legislator allowed it to establish its jurisdiction over this issue in certain instances.
2. The origin of the evidences seen in the arbitration claim is that it is within the jurisdiction of the arbitration panel and the court may not intervene in it. However, contrary to the origin, the legislator has allowed the judiciary in certain instances to intervene in some instances related to the evidences in the arbitration litigation.
3. The arbitration panel does not have the power to compel the parties of the arbitration dispute to provide some evidences. This is what led the legislator to give the arbitration panel the right to judicial recourse - by virtue of its authority - to compel the parties of the dispute to provide some necessary evidences to settle the arbitration dispute.
4. The legislator has limited the instances of judicial involvement in summoning witnesses to two cases which are the case of the witness's refusal to appear before the court or his refusal to testify.
5. The Jordanian legislator gave the arbitration panel the discretionary authority to accept the expertise or not, and also the legislator allowed it to recourse to the state's jurisdiction in order to help it conduct the expertise and invite the expert.
6. The Jordanian legislator has authorized the arbitration panel, in case it finds it difficult in issues related to bringing a document or a copy of it, or even verifying it, to recourse to the state courts because of their coercive authority.

6. Recommendations

- We hope that the Jordanian legislator shall take what both the Qatari and Emirati legislations have stated in terms of giving the parties the right to seek assistance from the court in giving testimony as evidence, and not limiting it only to the request of the arbitration panel.
- We hope that the Jordanian legislator shall take the same approach that the US federal law has taken in terms of clarifying the mechanism through which witnesses are summoned so that it is commensurate with the nature of the arbitration instead of leaving it to the general rules.
- We hope that the Jordanian legislator shall take into account the legislative gap in the matter of experience, by explaining each of the manner in which the expert is dismissed, as well as the cases in which he is rejected.

7. Conclusions

Under the umbrella of this research, we dealt with departures from the general assets cases, that prevents arbitration the court from interfering in the proven evidences that presented before the arbitral tribunal, through the statement of the position of each of the Jordanian legislation represented by the arbitration's law, and the position of some comparative legislation and each of International Chamber of Commerce for Arbitration in Paris (ICC) rules of law UNCITRAL Model of this issue.

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