Arbitration in Administrative Contract Disputes under Jordanian Legislation (A Comparative Study)

Feras Syah Matar Alshrafat *

Former part-time Lecturer at Al -Bayt University -Jordan

Hussien Ali Rashed Alfaqeer

Lawyer - Jordanian Bar Association - Jordan

Abstract

This study aimed to identify what arbitration is in administrative contracts and to explain the possibility of resorting to arbitration as a successful way to settle disputes that arise in administrative contracts in Jordanian law, where the study showed that the Jordanian legislator defined arbitration and its arbitration systems as a means of resolving disputes within the Jordanian arbitration law No. (18) For the year 1955.

The study also showed that the Jordanian Arbitration Law No. (31) of 2001 and the amended Law No. (16) of 2018 did not have resorted to resorting to arbitration in administrative contracts explicitly, but there is nothing in the same law that prevents resorting to arbitration in administrative contracts, and this is what was supported by the Jordanian Court of Cassation, which did not oppose the administration's resort in public facilities for arbitration in the event of a correct contractual commitment agreed between the two parties to the contract, which are required to resort to arbitration in the event of a dispute as long as the resort to arbitration is not violating public system.

The study also showed that there are two opposing trends in the permissibility of arbitration in administrative contracts, an opposition direction for arbitration in administrative contracts, and another direction that went to support the arbitration in administrative contracts and the permissibility of the state and the general moral persons to arbitrate to settle administrative disputes.

The researcher used the descriptive analytical approach to conduct this study and use the comparative approach sometimes to serve the subject of the study; the study wished the Jordanian legislator to allow explicitly resorting to arbitration in administrative contracts, considering the privacy of administrative contracts.

Keywords: Administrative contracts, arbitration, Jordanian legislation, the legality of arbitration.

Introduction

Achieving justice among the residents of the state is one of its most essential functions. One of the methods of achieving justice is the right to resort to the judiciary, and it is a general right for all populations. This right regulates laws and regulations in that state, courts and judicial authority is the place designated for dismissal, but to keep pace with the rapid changes in various aspects of life and the complexity of legal relations It was accompanied by a development in legislation, and as a natural result of these developments, the many cases pending before the judiciary, which increased the burden on the judges, so it was necessary to create new and innovative methods that serve interests and rights, so the arbitration was one of the new solutions, the judiciary authorized the parties to the conflict to resort to An alternative road, which is arbitration to resolve disputes through a specialized jury.

Among the most important areas in which the need for arbitration appeared cases in administrative contracts, as the administrative contract is one of the parties of the public administration represented in its moral persons and its administrative apparatus as a public official authority, and it aims to conduct a public facility regularly and to achieve a public interest and is based on the methods and means of public law and what this includes this Methods and means of unfamiliar procedures and conditions in private law contracts.2

The study Problem.

Administrative contracts differ from civil and commercial contracts, as the administration conducts some of its work as a public authority, and these works that the contracting administration is doing is on the other hand, which is known as administrative contracts and administrative contracts aim to manage, establish, or restore public facilities.2

Accordingly, the problem of this study revolves around answering the following pivotal question**: How much is the possibility of applying the arbitration method in administrative contracts considering the Jordanian legislation?**

Study questions.

1. What is arbitration in administrative contracts?
2. What is the legal nature of arbitration in administrative contracts?

3. What is the legality of arbitration in administrative contracts?
4. What is the position of the Jordanian legislator on arbitration in administrative contracts?

Objectives of the study.

1. Learn about the concept of arbitration in administrative contracts.
2. Statement of the legal nature of arbitration in administrative contracts.
3. Explain arbitration features in administrative contracts.
4. Explaining the position of the Jordanian legislator regarding arbitration in administrative contracts.

The importance of studying.

The importance of the study lies in theory in the direction of clarifying the position of the Jordanian legislator on arbitration in administrative contracts, and in practice, its importance lies at this time in which Jordan opens in all fields, especially the encouragement of The spread of administrative contracts and the appropriate arbitration mechanism that guarantees the general interest of the state.

The Study Approach.

The researcher followed the following curricula in the completion of this study:
First: The descriptive analytical approach, where work was worked on and analyzed studies, legal texts, and judicial rulings related to the subject of the study.
Second: The comparative approach, by comparing the opinions of jurists in administrative law and the legal provisions issued regarding the subject of the study.

The first topic: What is arbitration in administrative contracts?

Arbitration is a compulsory road for those who chose a means of resolving disputes, so we will explain in this topic the concept and nature of arbitration in administrative contracts in the first requirement and the justifications for arbitration and distinction from other similar legal systems in the second requirement.

The first requirement: the concept of arbitration and the legal nature of administrative contracts

Both jurisprudence and the judiciary touched on the definition of arbitration and sometimes some legal legislation, and this is what we will explain in the first requirement, and in the second demand we show the nature of arbitration in administrative contracts.

The first branch: the jurisprudential, legislative, and judicial definition of arbitration in administrative contracts

Juristic definition of arbitration in administrative contracts.

At the level of jurisprudence, it was defined by French legal jurisprudence as an exceptional system for litigation according to which the state and other public laws may bring some administrative disputes arising from a legal or non-national or foreign legal relationship from the state of the State Council to be resolved in order to be resolved by arbitration based on a legal text that permits that. And out of the principle of the general embargo contained in the eligibility of the state and other persons of the law in resorting to arbitration.1

As for the Egyptian jurisprudence, it defined arbitration in administrative disputes as a legal means that the state or one of the general moral persons resort to, and according to which the administrative judiciary is dispensed with the settlement of all or some current or receiving disputes arising from relations of a contractual or non -contractual administrative nature between them or one of them or One of the people of private or foreign law, whether asylum is compulsory.2

Al -Faqhan "Obi" and "Drago" defined it as a procedure according to which the parties are agreed upon in a specific dispute to subject their differences to an arbitrator they choose and define its powers to separate them with their pledge to accept the refereeing ruling that it issues and considers it binding, and the jurist "Grosson" defined it that it is a system according to which it is based A third party to resolve a dispute between two or more parties by practicing the judicial profession that they entrusted to it.3

Arbitration was defined as: “The method that the parties choose to reassure the disputes that arise from the contract by offering the dispute, and deciding on it before a person or more called the name (the arbitrator or the arbitrators) without resorting to the judiciary.4

The arbitration was also defined as: "Agreeing to present the dispute before one or more arbitrators to separate it instead of the competent court, with an obligatory ruling for the two parties of the litigation, provided that the legislator approves this agreement as a condition or a map."5

Arbitration was also defined as: "A special system for litigation arises from the agreement between the parties concerned on the era to a person or person who is unanimous in the task of separation in the disputes existing between them by virtue of the authority of the judiciary."1

The legislative definition of arbitration in administrative contracts

The Egyptian law defined arbitration in Article (4/1) with the following: "The arbitration of the arbitration in the rule of this law shall be spent to the arbitration that is agreed upon by the parties to the dispute by their free will, whether it is the one that takes into account the arbitration under the agreement of the two parties, an organization or permanent arbitration center or not so ". 2

As for the Syrian arbitration law, he knew it in Article (1) with the following: "The manner of my channel is to solve the conflict with a substitute for the judiciary, whether it is the party that will undertake the arbitration procedures according to the agreement of the two parties an organizer or permanent center for arbitration or not."3

The Jordanian Arbitration Law No. (18) of 1953 defined the control as: "The written agreement that includes referring the existing and future differences on the arbitration. Arbitration No. 31 of 2001 and the amended Law No. 16/ of 2018 did not refer to the definition of arbitration, and this is the right eye, so he left the definition to jurisprudence and the judiciary is better.

Judicial definition of arbitration in administrative contracts.

The French State Council stated in its ruling on April 21, 1943, that arbitration, according to the definition of the French judiciary, is the authority of the decision that is recognized by the third party and a judicial delivery of the arbitrator's decision.

There was no compatibility in the judicial jurisprudence in Egypt on a unified definition of arbitration, as the Constitutional Court in Egypt defined it as: "Show a specific dispute between two parties to a tight of the jealousy, appointed by their choice or by authorizing them or in light of conditions determined so that this arbitrator in that dispute is separated by a decision to be Naturally from the suspicion of the mourning, just from fraud and boycotting the rivalry in its aspects that the two parties referred to him after each of them made his view in detail through the main guarantees of litigation.1

The General Assembly of the Fatwa and Legislation Departments of the Egyptian State Council has defined it as: an "Agreement to submit the dispute before one or more arbitrators to adjudicate it instead of the competent court, with a binding judgment for the litigants."2.

As for arbitration in administrative contracts, the legal texts did not deal specifically with the definition of arbitration in administrative contracts within administrative law, but there is an aspect of jurisprudence that deals with the definition of arbitration in administrative contracts.

Permission for arbitration in administrative law in particular, can be said that it is a legal means that the state resorts to through one of the public law persons or its public moral persons to settle some disputes arising from legal relations of an administrative nature, contractual or non-contractual, between it or between it and one of the national private law persons or whether the arbitration is voluntary or compulsory in accordance with the rules of peremptory law.3

Administrative arbitration has also been known as an exceptional litigation system under which the state and public law persons may remove some administrative disputes arising from a contractual or non-contractual legal relationship, local or foreign, from the jurisdiction of the state's national judiciary, in order to be resolved by arbitration based on a legal text that permits this, and a departure from the principle The general prohibition on the capacity of the state and other persons of public law to resort to arbitration.4

The second section: the legal nature of arbitration

Some believe that revealing the legal nature of arbitration is unnecessary, and there is no need to present the opinions of jurists and their judicial repercussions, while others see the difficulty of looking at the arbitration system as a whole before examining its legal nature, as this identification is not a theoretical matter in which the effort appears to be wasted, but rather that it is useful to know the treatment that the arbitral award will receive when it is intended to be executed, whether in the country in which it was issued or abroad. Knowing the legal nature of arbitration helps to a considerable extent in determining the legal description of the arbitral award when it is intended to be implemented.5

Jurisprudents of law have differed about the legal nature of arbitration because it is of particular importance in knowing the essence of arbitration, and determine the reasons that prompted the disputing individuals to resort to arbitration as a private way away from the state's judiciary, and what is the source of that compulsory power that the arbitration ruling enjoys, so their doctrines and directions multiplied in this. There are many opinions about defining the legal nature of arbitration, there is a tendency to say the contractual nature, and there is a trend that went to prefer the judicial nature, while there is a third trend that stood in a middle position between the two previous natures, where its owners see that arbitration has a mixed or dual nature, and in addition to that appeared a trend Fourth, his companions see that arbitration has a special and independent nature.2

The contractual nature of the arbitration

Supporters of this approach went on to say that the principle in arbitration is a consensual contract, that is, an existing agreement between the parties, that is, the arbitration ruling is an integral part of the arbitration agreement, that is, when a dispute occurs, it is referred to a third party for arbitration, and the arbitrators are individuals entrusted with the implementation of the agreement and do not rise to the rank of judges, and the arbitration process It is based on the free will of the parties by setting arbitration terms through the concluded contract or that they agree on it later, meaning that the will is the basis and founder of it, and thus the dispute between the parties comes out of the judiciary to a competent arbitration body agreed upon by the parties to resolve the dispute.3

The judicial nature of arbitration

Supporters of this approach see arbitration as a judicial nature that removes it from the contractual nature because it is a compulsory judiciary that is binding on the litigants, and because arbitration begins with a contract and ends with a ruling, and the arbitrator governs his work in the judicial work that is legislated by the judicial authority of the country. Through it, justice is what establishes the judicial nature, because this agreement cannot by itself move except through work of a judicial nature, like the administrative work that individuals do when resorting to the judiciary of states.4

It follows from saying the judicial nature of arbitration that the question arises about when the arbitral award acquires the judicial character, so does that judgment acquire the judicial character as soon as it is issued, or after the order to implement it? To answer this question, legislators divided into two directions:

The first trend: not considering the judicial capacity of the arbitral award except with the issuance of an order for execution (the Italian law adopted this approach within the framework of Law No. 28 of 1983 AD, and some French legislators supported this approach).

As for the second trend: the issuance of the executive order is not required to give the arbitration ruling a judicial status, the arbitral award enjoys the authority and the force of the final order since its issuance, and the implementation of the order of execution does not give the ruling authority, but makes it enforceable (which is the prevailing trend among French and Arab legislators).

Mixed nature of arbitration

In both the contractual nature and the judicial nature of arbitration, we noticed that each referred to one stage of arbitration characterized by the accompanying legal description, whether it was a contractual description or a judicial description.2 Arbitration is of a purely judicial nature, so arbitration must find a balance between the two natures of a complex nature because it combines the specifications of the contractual nature and the judicial nature. The arbitral tribunal because the arbitrator has a judicial function in nature and subject matter, and the decision issued by the arbitrator gives a binding force that differs from the binding force of the contract.3

Independent nature of the arbitration.

A part of the jurisprudence went on to say that arbitration, in general, cannot be considered as a contract on its launch nor a judgment on its launch, and even the description of duplication cannot be dropped on it, so some jurisprudence and legislators went on to say that arbitration is of a special nature because the owners of the contractual nature of arbitration could not agree Depending on the nature of this contract, is it a contract of public law or a contract of private law, and is it a contract that regulates the form or regulates the subject? Even those who say that it is a contract of private law differ in defining the nature of that contract, some of them say a work contract, and others say an agency contract, and others see that it is a mandate issued by the state to the arbitrator to establish justice between the litigants. As for those with a mixed nature of arbitration, it is sufficient to say that their position is a kind of neutrality to clarify the legal nature of the arbitration.4

However, arbitration is considered an independent legal system, that is, of a special and independent nature, as it must be viewed without linking it to the idea of a contract or a judicial ruling, but rather looking at why the litigants resorted to arbitration, and the aim of that is to seek justice on grounds different from the one on which the judicial ruling is based. Arbitration is a special judiciary because the arbitrator aims in his work when initiating the arbitral dispute to achieve justice, and he follows the method that he deems appropriate, and it is also special because it gives individuals the freedom to choose to resolve disputes by amicable means away from the facility of the ordinary judiciary.

The second requirement: is justifications for arbitration and its distinction from other legal systems.

That the disputing parties resort to arbitration for several different considerations and preferences over the judiciary of the state due to the advantages of arbitration and the desire of the disputants to obtain a quick ruling that decides the existing dispute, and the arbitration is distinguished by its confidential nature in resolving disputes, in contrast to the judiciary of the state which publicity is one of its distinctive characteristics, Arbitration achieves for the litigants the desire to preserve the confidentiality of the dispute and its facts in order to preserve their private and professional secrets and other advantages that make the disputants refer their dispute to the arbitral tribunal.

The first section: justifications for arbitration in administrative contracts

We must state the advantages and disadvantages of arbitration to find out the justifications that support resorting to arbitration or the negatives that push towards not going to arbitration.

First: The advantages of arbitration

The arbitration system has several advantages that prompt many parties to prefer resorting to it over districts in other countries:

- In arbitration, the two parties can choose a person they trust to be a judge between them, and he has distinct legal experience, or special expertise in the type of trade, or in whatever subject the dispute is based on, and this knowledge or experience may not be available to the judge.
- Arbitration takes place in most Arab legislation to one degree, as the arbitrators' ruling does not accept the appeal, and with this advantage, arbitration is considered time-saving and economical in expenditures, which is not available to the courts, although there are some countries that have allowed the appeal of the arbitral award, such as Syria, and the Kingdom Saudi Arabia, Yemen, Tunisia, Bahrain.
- The parties to the arbitration may agree to transfer the arbitral tribunal to adjudicate the dispute in accordance with the rules of fairness and equity, and then the arbitral tribunal is not obligated to apply the law, but rather decides the dispute according to what it deems to achieve justice, and in this it can reach a judgment that satisfies both parties.
- In arbitration, the parties can agree to apply the legal rules in any law of a foreign country, or those contained in a particular legal system, and they can also agree on the procedures they deem appropriate to resolve the dispute between them, and it may be a simple dispute that requires only simple procedures.
- Arbitration is characterized by the confidentiality of the sessions, as only the parties and their representatives attend them, and the arbitration award may not be published without the consent of the parties, to preserve the confidentiality of dealings between the parties.1

Second: the shortcomings of the arbitration process

Despite the emergence of many advantages of the arbitration system, it does not preclude the existence of disadvantages to this system, including the following:

1- In the arbitration system, the disputing parties bear the costs of arbitration together at the beginning of the arbitration process, as well as the arbitrators' fees to the disputing parties.

2- The procedures in the sense may extend a longer period of time than the procedures before the courts, for various reasons, including the failure of one of the parties to the dispute to appoint the arbitrator that he should choose, or the disputants' disagreement on the arbitrator, or the lack of agreement on the president of the tribunal, or because of the adherence to the invalidity of the agreement, or It does not include the disputes raised in arbitration.

3- In arbitration, a person or persons who lack experience or competence may take over the arbitration or the chairperson of the arbitral tribunal in a dispute.

4- The arbitration award is not subject to appeal in any of the appeal methods stipulated in the Procedure Law in some legislations.

Section Two: Arbitration is distinguished from other legal systems.

Arbitration is distinguished from some other legal systems that may be mixed with it, and the distinction between arbitration and other legal systems has several important results. As each system is subject to different legal rules, and the most important of these other legal means to settle disputes by a non-judicial way, which are similar or different from arbitration, are conciliation, conciliation, expertise, agency, and judiciary., which makes it succeed in one field rather than another.

Arbitration and experience.

Expertise requires a person who has knowledge and knowledge of a specific subject, who is called an expert, and this expert expresses his opinion after a study by expressing his opinion on certain issues presented to him and assigned to them, which may be engineering, medical, commercial, or mathematical...etc. in the light of what he concluded from The subject is according to his experience, and he is not bound by certain procedures and dates, in addition to that his opinion is not binding on the litigants and the judge, and experience in this sense is not considered a way to settle the dispute by arbitration, as it differs greatly from arbitration.2

In expertise, the expert expresses his opinion, and this opinion has no binding force. To find out whether the litigants' agreement is an agreement to resort to arbitration or expertise, the criterion for differentiation is the extent of the powers granted to the person to whom the dispute is presented. A binding decision for both parties, as it is a judgment and the issue is arbitration, although those powers do not go beyond expressing an opinion on a technical issue for guidance, whether the opinion is for the disputing parties or for another party, and for those to whom this report was written to act on it or leave it, it is an expert opinion only.

Arbitration, conciliation, or mediation.

Conciliation or mediation means that one or more individuals, on their own or at the request of the disputing parties, mediate and reconcile between them, by presenting a set of solutions or proposals to settle the dispute between them, leaving the disputing parties free to decide whether to approve or reject them. Conciliation is a procedure for agreeing to try an Amicable settlement to resolve the dispute or dispute through the “consensus” or the conciliators who were chosen by the disputants. The conciliator does not issue decisions but rather presents proposals to resolve the dispute between the parties. If the attempt failed, the door to litigation was available to the parties to the dispute, but arbitration is an option. Finally, "arbitration" as an alternative to the judiciary.

Arbitration and agency.

The agent works for the benefit of his principal and acts on his behalf in what he has been entrusted with, and he is not allowed to act in accordance with the agency granted to him except in what is in the interest of the principal, and he is entrusted with advising the one who appointed him.

As for the arbitrators, in the event of their multiplicity and the nomination of an arbitrator from each party, they understand the opposite, and each of them works completely independently of the litigants, and once the arbitration document is approved, he has the judicial capacity between the parties to the dispute, and the litigants are not able to interfere in his work, and his judgment is imposed on them and necessary for them, and then He must have no difference between the party who ruled him, or the other party who ruled someone else, and he must work with complete impartiality, and he is not allowed to support or lean with one of the opponents because he is his arbiter, and if he does so, then the litigants have to respond or isolate him, and his duty is to settle the dispute with justice between the two parties, as if he is a judge appointed by agreement of the litigants, and he exercises his work according to the judicial requirements, and not according to the desire of his arbitrator, and then he is not an agent or representative of one of the parties to the dispute, or a defender for him, or bear a burden in proving his right.

Arbitration and conciliation.

Reconciliation is a contract by which the parties to the conflict settle a dispute that has already occurred between them, or they anticipate a probable future conflict. In addition to that what prevents conciliation, arbitration is prevented based on what is known as the inability of the subject to arbitration, and conciliation is like the form of arbitration if it is preventive, i.

Arbitration and judiciary.

The basis for resorting to arbitration is the will of the parties to the dispute while resorting to the judiciary does not require the agreement of the parties to the dispute, and in terms of the scope of jurisdiction, the scope of the jurisdiction of the judiciary is wider compared to the scope of the jurisdiction of the arbitral tribunal. In the real case, it has absolute authority, while the arbitration rulings have relative authority. Its effect is limited to the parties to the dispute, and in terms of the enforceability of the ruling: Judicial rulings are considered enforceable immediately after their issuance once the appeal dates have expired, while arbitration rulings require the issuance of an executive order from the judicial authority.

As for the goal, the aim is to resort to arbitration in the dispute in an amicable way from a third party. As for arbitration, it aims at a private interest, while the judiciary aims at achieving the public interest. And in terms of the applicable rules, the judge applies the rules of law, but the arbitrators do not apply, so they can resort to reconciliation.

The second topic: Legality of arbitration in administrative contract disputes

That the debate was jurisprudential and still is about the legality of arbitration in administrative contract disputes, given the conflict of arbitration with the principle of state sovereignty, and as an assault on the jurisdiction established for the administrative judiciary and inconsistent with the idea of public order, arbitration is also considered a violation of the principle of separation of powers, this is what requires presenting general provisions To arbitrate administrative contract disputes.

The first requirement: the position of jurisprudence on arbitration in administrative contracts

Jurisprudence was divided into supporters and opponents of the idea of arbitration in administrative contracts, and each approach was based on legal foundations and justifications, which we will learn about in the following two sections.

The first section: the trend opposing arbitration in administrative contracts.

The opinions of those who oppose arbitration in administrative contracts are based on the fact that administrative contracts are related to public utility, which is considered a pillar or manifestation of the sovereignty of the country, and those who oppose arbitration in administrative contracts are considered an encroachment on the state’s judiciary, and it is also considered an encroachment on the jurisdiction of the judicial authority in that country and

in what The following are the reasons for those who adopt the idea of opposing arbitration in administrative contracts:

First: The arbitration process affects the sovereignty of the state.

The proponents of this opinion believe that resorting to arbitration to resolve administrative disputes leads to prejudice to the sovereignty of the state in two respects:

1- Depriving the original district of the national judiciary, which is considered a manifestation of sovereignty.
2- Allowing the arbitrator to exclude the application of the national law to resolve the dispute because the arbitration is carried out by ordinary persons or private bodies and therefore they are not bound to apply the national law of the state and resort to the application of a foreign law may be resorted to and the national law is excluded.

We see that this proposition is unsuccessful as a reason for rejecting arbitration, as it does not represent an attack or an infringement on the sovereignty of the state because resorting to arbitration is optional and not compulsory and takes place with the free will of the state through its representation of the people of public law. Likewise, the national legislator is the one who allowed arbitration as a method for resolving disputes and he organized it Granting the arbitrators powers and having the right to supervise the arbitrators and the authority to intervene, control and supervise them. Also, the party to the contract representing the administration can stipulate in accepting the arbitration the application of the national law.

Second: Arbitration in administrative contracts is an assault on the district of the local judiciary.

The judicial authority in any country is one of the components of power and a manifestation of the sovereignty of that country, but the current opposing arbitration in administrative contracts considers the arbitration process an assault on the jurisdiction of the judicial authority in the country and that democratic countries implement the principle of separation of powers, so the opposition current finds in the arbitration process a clear violation of the principle of separation Authorities and they believe that the place of resolution and judgment in disputes in which the state is a party to administrative disputes is the judiciary of that state.

When the disputing parties' resort to arbitration, they thus wrest district from the authority competent to rule within the state, which is the courts, and when the state resorts to the arbitration process and appoints an arbitrator, it has thus transgressed the local law and abandoned it. Therefore, the state does not know the extent of the impact of the decision to be issued by the arbitrator on the state, and the arbitrator may not consider the economic interests of the country.

Third: Arbitration conflicts with the idea of public order.

The opposition currently believes that arbitration in administrative contracts contradicts the basis of administrative contracts, because administrative contracts are because they care and the public interest prevails over private interest, that is, it is based on the foundations of public order. By ruling, it does not consider the primacy of the public interest over the private interest, and the fact that the matter is related to the public interest, it is not permissible to resort to arbitration except by a legislative text.

Fourth: Arbitration in state contracts contradicts the foundations of the administrative contract theory.

The arbitration process takes place with the agreement of all the disputing parties who signed the contract, and the disputing parties agree to appoint an arbitrator or an arbitral tribunal, the arbitration procedures, the place where the arbitration takes place, and the arbitration process can be easily applied to commercial contracts and civil contracts, but the legislators and jurisprudence find it difficult to apply it to administrative contracts because it is the state One of its parties, and the reason for that is that there is the principle of sovereignty and its imposition and that the state takes into account the public interest of the country. When it agrees on an administrative contract, it imposes conditions that preserve those interests.

The arbitrator who was agreed upon to resolve the dispute does not know the specificity of the administrative contract and does not know the nature of this contract and the position of the state in it and therefore, as we mentioned previously, does not resort to following and applying the local law and does not prevail over the public interest over the private, but in some administrative contracts the state maintains that public interest It sets exceptional conditions - although it agrees to the arbitration process - and these internal conditions are activated if the contract is internal, i.e. within the state, and resort to arbitration to speed up the process of resolving the dispute, but the problem is if one of the parties to the contract with the state is a foreigner, then the exceptional conditions cannot be activated because the foreign person moves away the application of the law and the judiciary of the Contracting State and adhere to the arbitration process.

The second section: the trend in favor of arbitration in administrative contracts.

Supporters of arbitration in administrative contracts find that arbitration does not contradict the essence of the sovereignty of the country and does not detract from or conflict with the judicial authority in the country. Supporters considered arbitration part of the judicial authority and its system. Therefore, the jurisprudence supporting the arbitration process in administrative contracts was based on the following:

First: There is no conflict between arbitration in state contracts and its sovereignty.

The judiciary uses some experts to write technical reports in some matters because the judge will not be technically specialized in all disputes, so judges use technical reports written by experts to issue their rulings, and also when judges resort to expert person to save time and effort and build a fair ruling that is indicated by a person with experience. Resorting to arbitration takes place with the approval of the law because there are some cases in which the law does not allow the arbitration process even if there is an agreement between the conflicting parties such as inheritance, divorce, and marriage, and supporters of the arbitration process in administrative contracts believe that the judiciary in the country has the right to control or supervise the arbitration process and they emphasize that the state It has the right to maintain exceptional conditions even when resorting to arbitration with the other party.

Second: There is no conflict between arbitration in state contracts and the district of the national judiciary.

To increase the commercial activity of the state and to encourage investment, the state has become involved in commercial and economic deals, i.e. there are contracts for the state of an international nature, so the arbitration process in these contracts has become of an international nature and an integrated global judicial system that complements the local judiciary of countries.

In international administrative contracts, the parties to the contract are the state and a foreign private personality, and when the state resorts to arbitration for reasons including saving time and effort, and the foreign party favors arbitration so that there is justice in the process of resolving the dispute because it fears that the state will judge that there is no impartiality and finds that the arbitrator is equal between the two parties The public interest of a country does not prevail over the private interest.

When the arbitration award is issued, it is not considered enforceable except after obtaining the execution order from the judiciary, and if it fulfills all the conditions and performs it correctly.

Third: The absence of a legal basis justifying the rejection of the idea of arbitration in state contracts.

Supporters of the arbitration process in administrative contracts rely on the fact that the legislator has not approved a law that explicitly or implicitly prohibits or prohibits the arbitration process, and that is that the principle in matters is permissibility, so it is not permissible to prevent the arbitration process as long as this process does not conflict with the judiciary and order in the state.

Supporters of the arbitration process believe that even if the state created legislation or a legal text to prevent the arbitration process, and this state resorted to the arbitration process, then this procedure is correct because it is the one that prevented arbitration and it has the right to abandon this procedure according to what the state deems.

The second requirement: is the position of the Jordanian legislator on arbitration in administrative contracts.

When reviewing the history of the arbitration process in Jordan and the legality of the process, Jordan was applying 1876 laws issued by the Ottoman Empire, as Article (1841) of Part IV (Explanation of issues related to the arbitration) of the Code of Judicial Rulings stated, “Arbitration may be made in money claims related to human rights.”.

When the Emirate of Transjordan was formed, Jordan applied the Palestinian laws in the arbitration process, as Law No. (9) of 1926 was applied, then Arbitration Law No. (14) of 1928, then Law No. (29) of 1934, and then Arbitration Law No. (63) of 1946 was issued. As it was mentioned in all laws an article stipulates that: “This law applies to every arbitration in which the government of Palestine is one of the two parties, but it does not affect the legal provisions related to the payment of fees and expenses by the government.”

After the independence of Jordan, Arbitration Law No. (18) 1953 was issued, abolishing all Palestinian legislation that was applied in the Hashemite Kingdom of Jordan. Then came the text of Article (20), in which it was stated that: “This law applies to all arbitrations in which the government of the Hashemite Kingdom of Jordan is the lead of the two parties, but Nothing in it affects the legal provisions related to the payment of fees and expenses by the government.

Jordan is considered one of the first countries that issued a separate arbitration law, but with economic developments and providing many of the foreign investments in the kingdom and the income of the kingdom in a number of international and bilateral agreements that encourage resort to arbitration such as the Amman Convention for Trade Arbitration in 1989, this made it possible New Law No. (31) of 2001, and according to this law, dealing with the previous arbitration law was suspended.

In order to make a number of amendments to the provisions of the previous law, Article (3) of this law stipulates that: “The provisions of this law apply to every arbitration agreement that takes place in the Kingdom and is related to a civil or commercial dispute between parties of public law or private law persons, whatever its nature. The legal relationship around which the dispute revolves, whether contractual or non-contractual.

Then the text of Article (3) permitted resorting to arbitration in administrative contracts and supported this resort and some court decisions indicated that, but when studying the Arbitration Law No. The international contract, therefore, the need to amend the Arbitration Law No. (31) of 2001 and put a text explicitly showing the possibility of resorting to international arbitration and indicating whether there are reasonable and applicable conditions and restrictions on the ground such as those set by the Egyptian law and the Syrian law of arbitration.

Jordan, in the arbitration law, we note that it does not object to resorting to arbitration in administrative contracts that took place within the country with the absence of a clear provision in arbitration in international administrative contracts, but it signed a set of agreements that show that there is no objection to the arbitration process in international administrative contracts. Among these agreements, The Washington Agreement of 1965 on November 12, 1972, and this agreement was laid as a basis for settling disputes that arise between the state and the foreign party contracting with it. 6/1974.

Conclusion

This study aimed to identify the meaning of arbitration in administrative contracts and to show the extent of the possibility of resorting to arbitration as a successful means of resolving disputes that may arise in administrative contracts in Jordanian law. No. (18) for the year 1955, where the Jordanian legislator explained the procedures to be followed to resort to arbitration and its conditions, however, after the occurrence of many economic developments and the entry of the Hashemite Kingdom of Jordan into many agreements, the previous arbitration law was amended and the Arbitration Law No. (31) for the year 2001 was issued. Many legal texts have been added that refers to the possibility of resorting to arbitration.

Although the Jordanian law did not explicitly allow resorting to arbitration in all types of contracts, there is nothing in the law itself that prevents resorting to arbitration in administrative contracts, and this was supported by the Jordanian Court of Cassation, which did not oppose the administration’s resort to arbitration in public facilities due to the existence of a valid and agreed contractual obligation. It is between the parties obligating them to resort to arbitration in the event of a dispute if resorting to arbitration is not contrary to public order.

And there are two conflicting trends in the permissibility of arbitration in administrative contracts, the first direction opposes arbitration in administrative contracts, unlike the other direction that went to support arbitration in administrative contracts and the permissibility of the state and legal and public persons resorting to arbitration to resolve administrative disputes.

Results

- Arbitration has become a global system and many bilateral and international agreements and treaties related to control have been established, and disputes covered by arbitration have begun to expand until they include administrative contract disputes.
- There are two jurisprudential directions regarding the possibility of arbitration in administrative contract disputes, where the first direction went to the impermissibility of arbitration in administrative contract disputes, unlike the other direction, which found it a necessary and urgent need.
- Jordanian law did not explicitly allow resorting to arbitration in administrative contract disputes, but there is nothing to prevent resorting to arbitration in these contracts.

Recommendations

- The researcher recommends amending the Jordanian Arbitration Law to include provisions that expressly and clearly show the possibility of resorting to arbitration in administrative contracts in general, and international administrative contracts, indicating the conditions and restrictions that may govern it.
- The researcher recommends the public administration exercise caution when drafting the administrative contracts that it concludes in general and the arbitration clause that permeates them, and to ensure that the arbitration clause does not prejudice the sovereignty of the state to which this administrative body belongs.
- The researcher recommends that the Jordanian legislator include a special text related to the control of international administrative contracts that is consistent with what was stated in the international agreements that Jordan joined, such as the Washington Agreement of 1965.
- We hope that the legislator will ensure a balance between the public interest and the private interest in arbitration in administrative contract disputes by defining administrative contracts that are excluded from resorting to national arbitration.

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