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Modern Trends in Arbitration in Civil and Commercial Matters in Qatar within the Framework of a Contemporary Legal Vision

By Dr. Azab Alaziz Alhashemi

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Introductory Words: *(international arbitration - dispute resolution - civil and commercial articles - qatar).*

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I. Introduction

The judiciary is the main means of resolving disputes, but with the development of national and international trade and investment conditions, there is an urgent need to find alternative ways to resolve disputes and keep pace with these developments in world trade. As a means of resolving conflicts. However, the evolution of arbitration with the development of international trade and the global investment movement, so that most of the laws of countries around the world have devoted a section to the regulation of arbitration and others to the enactment of laws. This development has been represented by arbitration proceedings and the formation of the arbitral tribunal, which have been very similar to judicial proceedings and formations.

Next come international conventions and treaties aimed at strengthening arbitration provisions and ensuring their implementation. It is no longer an exaggeration to say that international arbitration is no longer an alternative means of settling international commercial disputes, but has become the main means of resolving them and, unfortunately, the Tribunal's debt reduction has unfortunately been prolonged by its extension and the problems and difficulties of implementation. In the face of this evolution and the international appetite for arbitration as an alternative means of dispute resolution.

In particular, arbitration in the United States did not know the progress made by Europe during this period, unlike Europe, where the judiciary had volunteered to arbitrate and reactivate it as an alternative means of resolving disputes in order to reduce the burden on the judiciary and remain under its control after the arbitral award was made.

Research Methodology: The research adopted the comparative methodological and analytical method.

II. The Importance of Research

In fact, the prosperity of arbitration, the expansion of its horizons and its place in the field of administrative law have been combined with the multiplication of national and international economic relations between individuals, where the decline of the State in the fields of trade in the light of the growing domestic and international economic relations between countries and their desire to achieve economic development and satisfy the general needs of society The emergence of interdependent relations and interests between States and persons governed by national or foreign law, which has led to the acceptance of the idea of arbitration in administrative disputes.

Consequently, the legislator, taking into account the arbitral nature of administrative contracts, which now combines recent and contemporary developments in such disputes, has brought an action before the court - in the light of the recent amendments of the administrative tribunal - to examine questions relating to the administrative contracts to be applied in this respect. The category of delivery texts, rules and procedures of the provisions of the law of arbitration in civil commercial disputes, so that the court is competent to hear the invalidity and appointment of the arbitrator and the preparation of evidence and to initiate interim proceedings, and to consider problems of implementation.

III. Research Objectives

Despite the positive aspects, novelty and innovations of Qatar's new Arbitration Law, it contains deadly legal observations that lead to the arbitral parties

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being placed in unresolved legal situations. It also prolongs the conflict and we will talk about it briefly:

Under section 8(1) of the Arbitration Act, the legislator defined the competent court as "the Civil and Commercial Disputes Chamber of the Court of Appeal, or the Trial Chamber of the Civil and Commercial Court of the QFC, with the agreement of the parties".

The Qatari legislature has authorized multilateral arbitration (the initial multiplicity of parties to the arbitration). In the fifth paragraph of the same article, parties to the dispute are defined as parties or parties to the dispute[1].

Article 33 of the same law stipulates that the competent court is the owner of the court in case of invalidity of the arbitral award.

The Qatari legislature has given arbitrators the possibility of choosing the competent court to hear the invalidity of the arbitral award. Either they sue the invalid before the Department of Civil and Commercial Arbitration Disputes of the Court of Appeal, or before an international court of first instance, the QFC Civil and Commercial Court. At first sight, this text seems to be an advantage.

In reality, however, this provision constitutes a legal loophole and an obstacle for arbitrators, which leads to the prolongation of the dispute and thus denies the purpose for which arbitrators renounce recourse to arbitration, namely the early settlement of the dispute.

a) Research Problems

In line with this paradigm shift and the global renaissance reflected in the state of institutions and the law, the Omani legislature cannot ignore the importance of developing the Qatari arbitration system in addition to the evolution observed by the judiciary.

On the other hand, arbitration attaches the greatest importance - as is the case in other laws - to supporting foreign investment and giving investors the guarantees that would allow them to feel secure in using their capital in the Sultanate.

Considering that, in this regard, many Qatari laws regulating the process of recourse to arbitration and the competent authorities are punished, so that the legislator has understood the need to monitor the development of the international arbitration system, according to the speed and flexibility required by all transactions.

The legislator promulgated the Law on Arbitration of Civil and Commercial Disputes through the Qatari Decree. Arbitration was not limited to commercial and civil disputes, it also applied to administrative disputes to which the State or a person governed by ordinary law was a party, which had never been considered. Arbitration will be used to resolve these disputes.

[1] Law on Arbitration in Egypt and the Arab States Parts I and II

b) Research plan

Requirement 1: Non-judicial means of dispute resolution.

Requirement 2: The Qatari law on arbitration of civil and commercial articles.

Requirement 3: Commercial standard in the Qatar Arbitration Law.

Requirement 1: Non-judicial means of dispute resolution.

Arbitration as a special judicial system[2]

The use of arbitration as a means of dispute resolution is an important measure based on the violation of customary methods of dispute resolution in the State and the denial of the jurisdiction of the judiciary, which means that the mandate of the arbitral tribunal is limited to examining the subject matter of the dispute to which the arbitrators' wishes. The judiciary necessarily refuses to deal with it, otherwise compliance with the arbitration clause would oblige the courts not to accept the case.

The tendency to adopt the arbitration system rather than resorting to justice to resolve disputes between the parties to the contractual relationship may be motivated by the early resolution of the arbitral dispute, as well as - once the parties to the dispute have agreed - to preserve the confidentiality of the dispute and not to publish, but the reference What is important in the introduction of the arbitration system is the successor's desire to be decided by arbitrators on the basis of a degree of technical specialization that cannot be achieved within the jurisdiction of the State of general jurisdiction. Arbitration in banking and commercial transactions, international construction contracts, the international sale of goods, maritime disputes, etc., often require that the arbitrator have technical disciplines that the judiciary can only deal with through the use of experts - which implies prolonging the judgment, despite the importance of the prompt resolution of disputes before the courts. - the parties will have a realistic judicial system, in accordance with the technical concept of the subject matter of the dispute and involving the integrity of the judiciary; and by using the arbitration agreement of the two successive parties to select persons who have confidence in each other, the decision in the dispute is simply a judgment rendered within the family or the family, which excludes hatred between the parties to the dispute and defamation in the dispute and common familiarity and love despite a judgment in favor of one before the other. It also responds to the desire of merchants and owners of commercial and industrial projects not to inform others of their differences. The use of arbitration is an effective way of not publishing them to everyone, both in arbitration proceedings and in judgments rendered. The

[2] International Commercial Arbitration Course for Law Students at the Cairo Faculty of Law, 1974

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publication of certain parts of it, except with the consent of the parties to the arbitration, shall initiate the arbitration proceedings only by the parties to the arbitration and their lawyers.

Definition of arbitration

On the basis of the above, arbitration can be defined as an agreement to submit the dispute to a specific person or persons for decision, without recourse to the competent court.

Under this arbitration, the parties waive recourse to the courts, with the obligation to submit the dispute to one or more arbitrators for a binding award.

This agreement may be based on a specific contract in which the process is called the arbitration clause and may be in connection with a particular dispute that already exists between litigants and in this case is called the arbitration clause or arbitration agreement[3].

If States allow arbitration, this is done with the intention of facilitating the parties and until a dispute has been resolved by a technical body in order to avoid hearings and judicial proceedings, while saving time and effort in all cases. Arbitration must be based on two principles: the will of the parties and the agreement of the legislator. By accepting arbitration, the arbitrator grants the arbitrator the power to settle the dispute in place of the court already competent to hear the arbitrator. There is a link between arbitration and judicial proceedings: it begins with a contract and ends with a judgment or is subject to the rules of civil law as regards its convening - in this case, it is subject to the procedural code in terms of effects, execution and procedures. Arbitration cancels the nullity of contracts and its judgment is challenged, as well as against judgments and executed as executed.

The legal organization of arbitration is based on the consent and acceptance of the parties as a means of resolving all or part of the disputes that have arisen or may arise between them in the course of a particular contractual or non-contractual legal relationship. Its scope is defined according to the matters covered and the applicable law and the formation of the arbitral tribunal, its powers, arbitration procedures, etc. Consequently, when the agreement fails, he refrains from resorting to arbitration, which has a relative impact, which is invoked only to confront the party who accepted it and before his opponent.

The appearance of the binding in arbitration

We have seen from the foregoing that, by arbitration, the arbitrator must replace the court and that enforceability is transferred to the court, so that if the arbitrator does not appear before the courts after being duly summoned to appear before him, or if he refuses to defend himself, this does not prevent the arbitrator from deciding the dispute against him.

The verdict of the court is as binding as it is against the court. If the legislator is required to comply with the arbitrator's order, it is carried out solely for the purpose of verifying and controlling the arbitrator's work, since he or she must exercise his or her powers only with the agreement of the parties involved in an arbitration.

Censorship simply consists in verifying that the arbitrator has taken into account the form required by law, whether to rule on the dispute or to draft his judgment, without being subject to the subject matter of the dispute, the judge, when the enforcement decision is rendered, clarifies the executive version of the arbitrator's judgment in order not to leave the assessment of the case to the court clerk. The arbitration clause does not authorize the arbitral tribunal to take action before a dispute arises, but its application begins in the event of a dispute.

On the basis of this definition, it can be said that the judgment includes two elements: one for the parties to the conflict and the other for the judicial activity of the arbitrators.

1. The agreement of the parties concerned to have recourse to arbitrators in the event of a dispute to be settled by mutual agreement.
2. The judicial activity exercised by arbitrators, which leads to the natural result of the delivery of a judgment[4].

This definition is echoed by many lawyers in many Arab and foreign countries, based on these two elements:

The element of agreement and the judicial activity of the arbitrators of the majority of lawyers show their willingness to submit to arbitration and its simplified procedures. However, the arbitration agreement must be signed after the agreement has been signed, regardless of its form.

The difference between arbitration and experience

It is necessary to distinguish between the arbitrator and the expert, because we think they are in one sense: arbitration is different from experience.

The arbitrator acts as a judge and resolves the dispute between the parties and the opinion imposed on them, while the expert is a person who may be an assistant to the arbitrator or judge.

In the absence of litigation, it may be the agent of such parties to such assistance or agency. Its purpose is not to settle a particular dispute, but to provide expert advice on a problem and, since the expert has received an opinion; it is not binding on the judge, arbitrator or the parties seeking the opinion.

[3] Civil Arbitration Act

[4] Optional and mandatory arbitration

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In this respect, the arbitrator is different from the expert. First, for litigants, a judge is entrusted to him or her by an agreement concluded between them and certain authorities with a view to resolving a specific dispute, i.e. who are entrusted with a judicial mission or, in principle, comply with the decision taken within the limits of that task and in the light of the same subject.

Consequently, the expert may ask litigants to provide specific documents in order to help him to rule against the arbitrator who is not authorized to do so, but to provide him with the documents submitted to him and which are under his prescience.

However, there is often skepticism about certain agreements in which opponents refer to persons responsible for resolving a dispute on a particular subject and assigning them the task of determining the amount of debt resulting from the resolution of the dispute. Case law and the judiciary have raised a dispute about the nature of this agreement.

Some argued that it was simply a private law contract and could not be considered as arbitration in the strict sense. Another view was that such an agreement constituted arbitration in the strict sense of the term and that it was in fact a well-founded opinion that took into account the type of task entrusted to the expert arbitrator.

The view that this agreement is an arbitration must first be supported. The reason for the strength of this opinion is that, in order to determine the amount of compensation or the value of the right, the expert arbitrator must, by virtue of his jurisdictional function, settle the dispute first, even if he may do so on this question and then on the basis of his conclusions. The arbitration experience process - by estimating the amount of the indemnity or entitlement in general and therefore the arbitration process is based on it. Accordingly, it shall be deemed to describe this agreement by arbitration as the correct description of this agreement, unless it is distinguished from the contract originally concluded between the parties[5].

This does not change the time of the assignment if it is not done by a document similar to the arbitration agreement that is not considered an arbitration. In any event, this Agreement shall not be considered as an arbitral award executed in its enforceable form.

The difference between arbitration and conciliation

The arbitration and conciliation systems are distinct from each other. In conciliation, the parties in conflict engage in a mutual concession each waives some of its rights from the rights of the other by peers do something similar to this dispute to be resolved that may exist between them. The fact that in the legal system of reconciliation between parties in conflict of different order, but in arbitration, the parties they attend in their capacity as opponents in the case of a rotation procedure before the arbitrator who must be another person. On the other hand, in peace, we find a mutual renunciation by each party of some of its rights.

In arbitration, one party can win the entire case. People in conflict turn to one or more non-candidates to find a solution to their conflict. The solution to these interests may be acceptable to these people and thus serve as a basis for the subsequent reconciliation process; The use of reconciliation is in reality devoid of any procedural or objective rules and, although this characteristic is illegal for this type of social solution, it is nevertheless considered as a limited system in the legal field and these persons are not considered as arbitrators of the judiciary or arbitrators for a clear reason. The decision or solution they reach has no binding authority for those who use this method.

Therefore, the actions of the interests must constitute a prelude or a proposal for direct rapprochement between the parties, which means that the contribution of the reformers to this process simply constitutes an event of moral value for the parties to the expected reconciliation with a reconciliation document adopted by both parties. Noting that a conciliation decision cannot express its opinion on the dispute until the conciliation decision is rendered, unlike the interests expressed by the parties to the dispute before they publish the conciliation file.

[5] Arbitration within the framework of the Cairo Regional Centre

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Requirement 2: The Qatari law on arbitration of civil and commercial articles.

Chapter One

Definitions and general provisions[6]

Article (1)

In applying the provisions of this Act, the following words and expressions have the meaning assigned to them, unless the context otherwise requires:

Minister of Justice	The Minister
Ministry of Justice	The Ministry
Legal agreement: a legal approach to resolving the dispute rather than going to court, whether or not the arbitrator is, by agreement between the parties, a permanent arbitration centre.	Arbitration
The agreement provided for in Article 7 (1) of this Law.	Arbitration agreement
Party or parties to the dispute who have agreed to refer it to arbitration.	The parties
Body consisting of an individual arbitrator or an individual number of arbitrators, responsible for ruling on the dispute submitted to arbitration.	The Arbitral Tribunal
The body chosen by the parties to their agreement, as permitted by this Law, to perform certain functions related to the assistance and supervision of arbitration, whether it is a center or a permanent arbitration institution.	Other authority
Civil and Commercial Litigation Department at the Court of Appeal or Trial Chamber of the QFC Civil and Commercial Court, with the agreement of the parties.	Competent court of jurisdiction
Executing Judge of the Court of First Instance or Executing Judge of the Civil and Commercial Court of the QFC, if the parties so agree	The competent judge
The party to the agreement that initiated the request to submit the dispute to arbitration.	The applicant
The party to the agreement for which the dispute is submitted to arbitration.	Defendant
Any legal person authorized to conduct an arbitration in accordance with the provisions of this Law.	Arbitration centres[7]

Article 1 of the Act, in the definition of the other authority, indicates that the Qatari legislature has developed a new philosophy of shortening arbitration proceedings by finding another authority instead of the court to use the reduction of arbitration proceedings, which the parties have not designated, or by appointing the president of the arbitral tribunal if the arbitrators are unable to agree on his choice, it has also given it the power to rule on the arbitrators' request for dismissal and even to rule on appeals against the jurisdiction of the arbitral tribunal, or in any other argument in which the Authority, which is ordered by Mahmoud, reinforces the principle of the will of the parties to the arbitration when they do not wish to resort to justice at any stage of the arbitration.

Article (2) Scope of this law

1. Without prejudice to the provisions of the international conventions in force in the State, the provisions of this Law shall apply to any arbitration between parties governed by ordinary or private law. Regardless of the nature of the legal relationship in question, if such arbitration takes place in the State or if it is an international arbitration conducted abroad and the parties agree to submit it to the provisions of this Law.
2. Arbitration in administrative contract disputes must be agreed with the consent of the Prime Minister or his authorized representative. Under no circumstances may ordinary persons resort to arbitration to resolve disputes between them.

[6] (1999), International commercial arbitration

[7] Maritime Arbitration

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3. In the application of the provisions of this Law, arbitration shall be commercial if the dispute concerns a legal relationship of an economic, contractual or non-contractual nature. This includes commercial, investment, financial, banking, banking, industrial, insurance, tourism or other transactions.

The nature of the arbitration contract specified in the previous article

Arbitration may be concluded before the dispute by means of a clause in the contract established by the parties, in which the agreement generally provides that: if a dispute arises in the interpretation of the contract, in its performance or in relation to its effects, it must be submitted to arbitration. This is called the "arbitration clause" in most Arab laws, the "arbitration document" in the Saudi arbitration system and Egyptian law, or the "arbitration agreement" in Qatari and Kuwaiti law, this name was chosen by the Egyptian Arab Synod.

Arbitration may take place after the end of the dispute. The parties to the dispute conclude an agreement providing for the use of arbitration, known as the "arbitration clause". In both cases, the arbitration was concluded by mutual consent of the parties. It is an optional contract replaced by litigation and litigation, with the aim of resolving it in order to reach a fair solution[8].

State party to the arbitration agreement

If the State is a party to the arbitration agreement, the question arises as to the extent of the conflict between the arbitration agreement and the sovereignty of the State. He added that the State enjoyed its sovereign privileges in the field of arbitration in that it was not only subject to its law and with regard to the inadmissibility of arbitration in its administrative contracts and the inadmissibility of the arbitral award rendered against the State.

However, the provisions on international arbitration have gone further by setting out a set of legal principles applicable when a State is a party to an arbitration agreement, among other things:

1. The law applicable to legal persons originating from the State is the national law under which these legal entities were created. The legal personality of a ministry can only be reasonably determined in accordance with the law of the State to which the ministry belongs.
2. A State may not apply its national law if this would justify its refusal to be bound by an arbitration agreement it has concluded.
3. When the government or state enters into an arbitration agreement, it waives its sovereign immunity from that agreement.
4. The State shall not be considered a party to an arbitration agreement concluded by one of its organs because of the separation of the personality of the State from the personality of the public legal persons arising therefrom.
5. A State cannot rely on its inability to be recognized by the international community to avoid its obligation to conclude an arbitration agreement.

Qatar's Arbitration Act limited the agreement on arbitration in administrative contracts to the approval of the Council of Ministers.

Then comes the second paragraph of the second paragraph of Article II, which prohibits ordinary persons from resorting to arbitration.

It is therefore understood that the Qatari legislator only excludes the Council of Ministers or its authorized representative from signing an arbitration clause or condition.

The ambiguity of the legislator's position on the determination of the role of the will of the parties in the choice of rules applicable to arbitration proceedings in article 2.

Article 2 (1) of the Qatar Arbitration Act stipulates[9]

"Without prejudice to the provisions of international expenditure in force in the State, the provisions of this Law shall apply to any arbitration between ordinary law parties or private law persons. Regardless of the nature of the legal relationship in question, if such arbitration takes place in the State or if it is an international commercial arbitration conducted abroad and the parties agree to submit it to the provisions of this Law.

This article deals with the wording of the law applicable to the arbitration proceedings, distinguishing between two hypotheses:

First: If the arbitration is conducted in the State of Qatar

Second: If the arbitration is international commercial and takes place abroad

First: If the arbitration is conducted in the State of Qatar

Article 2 of the Arbitration Act stipulates that the provisions of this Act shall apply to arbitration proceedings if they take place in the State, regardless of the parties, whether public or private law persons and regardless of the nature of the legal relationship resulting from the dispute before it, whether commercial, civil, contractual or non-contractual. This article stipulates that Law No. 2 of 2017 on Arbitration in Qatar is the duty that applies to the arbitration proceedings conducted in Qatar, regardless of the will of the parties, since the parties do not have the right to choose the law applicable to such proceedings, as long as the

[8] General principales of international commercial arbitration.

[9] Contract contract

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arbitration takes place in their respective countries. Qatari arbitration applies to its proceedings and the legislator considered that the rules of this law were considered to have immediate effect.

However, section 19 of the Arbitration Act contained a provision that may appear to contradict section 2. Article 19 provides that:

The parties may agree on arbitration procedures, including rules of evidence to be established by the arbitral tribunal. They have the right to subject these procedures to the rules in force in any arbitration organization or center within or outside the State.

As indicated in the second paragraph, the arbitral tribunal may, subject to this Law, apply such procedures, as it considers appropriate.

The legislator in this provision gave the parties to the arbitration the right to determine the law applicable to its proceedings, which gives them the right to the exclusion of the application of national law of arbitration and the choice of another law to be applied to the arbitral proceedings.

In accordance with the provisions of the aforementioned article 19, the determination of the law applicable to arbitration conducted in Qatar in terms of proceedings is subject to the will of the parties, contrary to the provisions of article 2 of the Arbitration Act to apply its procedural provisions to arbitration conducted in Qatar without taking this into account. But does this mean that there is a conflict between the text of articles 2 and 19 of the Arbitration Act?

We believe in fact that there is no conflict between the text of these articles, each having a different scope of application. When the legislator decided in the first article to apply the Arbitration Act to arbitration conducted in Qatar, the rules of procedure relating to public policy set out in that Act were applicable. These rules on arbitration conducted in Qatar[10] without requiring the agreement of the parties' will to apply them. These are the rules to ensure the conduct of the dispute in arbitration, which are based on two fundamental principles on which no procedural law or agreement on the law governing the conduct of the dispute will be challenged.

Therefore, the scope of application of article 2 is different from that of article 19 of the Arbitration Act, which applies to arbitration proceedings. Regardless of the will of the parties and the law of their choice, with regard to the rules of public policy procedure contained in the Qatari Arbitration Act. Article 19 on other procedural rules is applicable.

The application of the provisions of the Arbitration Act relating to public policy to any arbitration conducted in Qatar is necessary and important, and its importance is demonstrated in the implementation of the arbitral award, if the decision was rendered in violation of a rule relating to public policy in Qatar. He will refuse to execute it because of this violation in accordance with the provisions of the Qatar Arbitration Act, which stipulates that: The enforcement of the arbitral award in accordance with this law shall only be ordered if it verifies that it does not contain anything contrary to public policy in the State.

Although there is no contradiction between the provisions of articles 2/19 of the Arbitration Act of Qatar in the light of the explanation given above, the fact remains that the existence of these articles in their current legislative wording may be confusing and may constitute a reason for the jurisprudential dispute. Therefore, we propose - to avoid confusion and to avoid a dispute based on case law - to merge these two articles into a single article worded as follows:

1. Without prejudice to the provisions of the international conventions in force in the State of Qatar and the mandatory rules of procedure relating to public policy set out in this Law, the arbitral parties may agree on the procedures followed by the arbitral tribunal, including their right to submit them to the rules in force in any State organization or arbitration center. In the absence of such an agreement, the arbitral tribunal may choose such arbitration procedures as it deems appropriate.
2. The preceding paragraph shall apply to any arbitration between parties governed by ordinary or private law, whatever the nature of the legal relationship in question, whether the arbitration takes place in Qatar or abroad.

If the arbitration is conducted outside the State

Article 2 of the Qatari Arbitration Act stipulates that the provisions of this Act apply to international commercial arbitration conducted outside Qatar, with the agreement of the parties, and the legislator has explicitly recognized the role of the will of the parties in determining the law applicable to arbitration conducted outside their country. This arbitration will be agreed by the parties following its application. However, the freedom of the parties to exclude Qatari law and to choose a foreign law applicable to the arbitration proceedings in this case is limited by the observance and respect of mandatory procedural rules relating to public policy in Qatari arbitration law if the arbitral award is to be applied in Qatar in accordance with that law and in accordance with the clarifications we have already provided[11].

However, it should be noted that the legislator, when referring in article 2 to domestic arbitration conducted in the State, used only the term "arbitration" without indicating whether the legislator had not qualified it as civil or commercial. When he spoke in the

[10] Civil law mediator

[11] Arbitration in Arab laws

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same article about arbitration outside the State, the term international commercial arbitration came up. Such an approach by the legislator may give rise to ambiguities: one can imagine that the dispute is international only if it is commercial, whereas there is no link between the international nature of the arbitration and its commercial nature. Arbitration is international according to certain criteria set out in article 2, paragraph 4, of the Commercial Disputes Act, as can be said, international civil arbitration is not subject to the law of arbitration, if that law applies to arbitration, regardless of the legal nature of the dispute being arbitrated, whether commercial or civil, in accordance with the provisions of article 2 itself which is the subject of such criticism, it therefore aims to avoid any confusion.

In section 2 of the Arbitration Act, the legislator was required to use the terms "domestic arbitration" and "international arbitration" without description to include arbitration in both civil and commercial disputes.

Requirement 3: Commercial standard in the Qatar Arbitration Law

Article 2, paragraph 3, of the Arbitration Act provides as follows: Arbitration shall be commercial in nature within the provisions of this Law if the dispute concerns a legal relationship of an economic, contractual or non-contractual nature; This includes commercial, investment, financial, financial, banking, insurance, industrial, tourism or other transactions of an economic nature.

In this provision, the legislator has adopted a broad and broad standard for determining what constitutes an enterprise: the economic nature of a legal relationship. it is stated at the beginning of the article that arbitration is commercial in the provisions of this law if the dispute arises from a legal relationship of an economic nature.

The legislator had included the words "in the provision of this law" to clarify that the company's criterion, namely that the work is of an economic nature, is specific to arbitration law and deviates from the standard set by any other article of the law.

After the legislator in the Arbitration Act defined the criterion of the economic nature of labour to be an enterprise, he did not content himself with this criterion - despite its excessive width - He provided a series of examples of companies for which disputes are commercial.

The legislator's conduct in this paragraph of Article 2 of the said Arbitration Act has been the subject of numerous criticisms and questions, and most of the criticisms concerned the deletion of the word "commercially" from the text of this paragraph of Article 2/quoted as well as the deletion of all the examples it contains. According to the criterion of the economic nature of the dispute, it is permissible to submit it to arbitration, i.e. it is sufficient to say that any dispute arising from a legal relationship of an economic nature may be submitted to arbitration[12].

One of the suggestions that we see that it is not necessary to use the word commercially because it will limit us to commercial documents, while many examples in the same article are not commercial in nature, can be abbreviated and expressed in a general way and can be modified as follows: the arbitration shall be subject to the provisions of this Law if the dispute concerns a legal relationship of an economic nature, whether contractual or not, whether civil, commercial, credit, industrial or agricultural.

I believe that this proposal replaces all the examples in this article. It is of a general nature and clarified as a general rule.

Article 2 Paragraph 4: Arbitration shall be international in the application of the provisions of this Law if its subject matter is a dispute related to international trade, in the following cases:

(A) If the seat of the employees of each of the parties to the arbitration agreement at the time of conclusion of the agreement is located in different States and if one of the parties has more than one establishment;

The lesson about the workplace that is most important to the subject matter of the arbitration agreement is, and if one of the parties to the arbitration agreement does not have a place of business, the lesson will be his or her usual place of residence.

(B) If the principal place of business of all the parties to the arbitration agreement is located in the same State at the time the arbitration agreement is concluded and one of the following places is located outside that State:

- The place of arbitration indicated in the arbitration agreement or at the place indicated.
- The place where a substantial part of the obligations arising from the parties' relations is performed.
- The most relevant place in relation to the subject of the conflict.

(C) If the subject matter of the dispute that is the subject of the arbitration agreement involves more than one State.

(D) If the parties agree to use a permanent arbitration institution based inside or outside the State.

Distinction between national and international commercial arbitration

First: Geographical Basis

1. The first criterion for distinguishing between the two is that an arbitration is considered foreign if one of its parties is foreign, whereas arbitration is domestic if the litigants belong to the nationality of the State in question; another criterion of the New York

[12] Arbitration Conferences

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Arbitration Convention is that the arbitration is foreign. The arbitral award was made in a State other than the one in which it is requested[13].

The 1961 Geneva Convention on International Arbitration went further by stating that the dispute arises out of an international commercial process if the dispute involved persons residing or having permanent resident status in different States. The 1985 United Nations Convention on International Commercial Arbitration (UNCITRAL) takes another basis: It is considered international if the parties at the time of conclusion of the arbitration agreement reside in different countries.

Second: The economic base

2. Some case law cases have another basis, namely that the dispute over international commercial interests is the basis for international arbitration, regardless of the place of arbitration or the nationality of the litigants. The French Arbitration Act of 1981 adopted this standard.
   Thus, according to this consideration, if there is a project to establish an oil refinery in a given country by national companies but on the basis of international contracts to import all project equipment from one or more foreign countries, this dispute is considered to be the basis for international arbitration because of the international interests involved in the implementation of the project, even if His parties are patriots and will be executed in the territory of the same State.

Third: The importance of distinguishing between domestic and international arbitration

3. If the arbitration is domestic, the national judiciary may control the arbitral award by dealing with the subject matter of the dispute, which is applicable in some States, while the laws of some States do not allow the national judiciary to deal with the subject matter of the dispute when requesting the application of the international arbitral award.
4. International arbitration is broader than domestic arbitration: in the latter, national law does not allow for the arbitration of workers' disputes, which is permitted by international arbitration, and some national laws prohibit the State and public bodies from submitting their disputes to individuals and companies for domestic arbitration. However, these parties may resort to international arbitration in their disputes with foreign companies and apply the laws of the State to domestic arbitration, thus annulling the arbitral award that contravenes the national law on arbitration, arbitration being a means of rendering justice.
   Thus, public policy is affected while national arbitration law does not apply to international arbitration.
   Rather, the national judiciary examines the arbitral award from the point of view of its compatibility with public policy when it seeks enforcement of the international arbitral award in the territory of the State. International and jurisprudence tend to suggest that the purpose of this research is to determine the extent to which the arbitral award is compatible with international public policy and not with domestic public policy[14].
5. National laws have drawn attention to the importance of distinguishing between domestic and international arbitration in order to reduce interference by the national judiciary in international arbitration. Since this distinction attracts international arbitration to countries whose laws do not hinder its movement and do not link it to domestic arbitration rules, because international arbitration has nothing to do with the economy of the State or its legal system. As a result, the Law on Domestic Arbitration and the Law on International Arbitration were published separately in France by a one-year difference between the first published in 1980 and the second published in 1981. The English and Lebanese legislators did the same in 1983 and the Belgian legislator followed a very advanced approach to international arbitration law, stating that the Belgian judge did not have jurisdiction to set aside the international arbitral award.
6. Modern case law has tended to weigh the economic criterion against the geographical criterion and to consider that arbitration is international under the following conditions:

First: To be a commercial subject, i.e. operations with an economic objective.

Second: This trade must be international, i.e. a movement of funds, goods or services across the geographical borders of States.

7. The 1985 United Nations Model Law on Arbitration, in its articles 1 and 3, provides that arbitration is considered international in the following cases.

First: If the premises of the parties to the arbitration at the end of the arbitration are located in two different countries.

Second: If the place of arbitration is located in a State other than the place of business of the parties.

Third: If the implementation of the main obligations arising from the commercial contract is different from that of the parties' headquarters.

[13] Judgments rendered by the Cairo Centre

[14] Regional international commercial arbitration sections 1: 6

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Fourth: If the parties expressly agree that the subject matter of the arbitration agreement concerns more than one State.

First: The idea of national public order

8. Rules of public policy Public policy Public policy: is the set of principles of jus cogens in the laws of the State that cannot be violated or added to all the political, economic, social and moral systems on which society is founded and which constitutes the core of public policy, even if not stipulated in the laws It is permissible to violate it, because it is considered as a pillar of society on which agreement has been reached for hundreds of years.
9. The notion of public policy is flexible and varies according to the place and time. What is considered a public policy in one State may not be considered a public policy in another. It may even be considered a crime and what is considered a public policy at one time in one State may not be considered at another time in the same State. An example of the difference in location[15].

   Calling for the establishment of a monarchy in a republican state is considered a crime, as the republican system is considered one of the rules of public order and vice versa. The call for a republican system in a monarchic state is considered a crime, because the monarchy is considered as a jus cogens that cannot be violated. For example, the different public policy rules on the length of time that smoking had been considered in some Arab countries to be contrary to the public policy of public morality, then became permissible and did not violate public policy.
10. The universally established rule is that any agreement or conduct contrary to the public policy of the State is absolutely null and void and that, consequently, the judiciary has the right to annul it on its own initiative, without request from the parties to the proceedings.

    Consequently, an arbitral award rendered in violation of public policy is null and void once it has been submitted to the national courts for enforcement.

Second: The idea of an international public order

11. In view of the conflicting concept of public policy between States, the idea of international public policy has emerged for international commercial relations between parties belonging to nationalities of different States whose relations are examined before international arbitration.

    Modern case law tends to stress that the issue in this area is not the protection of the public interests of a particular society, but takes into account another element, the protection of international solidarity, which requires the contribution of each country to the development of relations between peoples in order to find a mutual understanding creating peace, international trade being the best means of communication. Between peoples and exchange of resources between them. International solidarity requires the application of foreign law if it is in harmony with the interests of international trade in a manner that does not prejudice the public interest of the State.
12. The concept of international public policy can be conceived as reconciling the interest of the State with the interest of international trade. The judge therefore decides according to his conviction because it is impossible to establish a precise determination of the national and international interest. It is carried out in France even if arbitration has been considered in France and therefore if an arbitral award is made in a labor dispute between an employer and a worker who is not French, this arbitration is international and the French judiciary does not invalidate such a provision, even if French law does not allow arbitration in labor disputes. The arbitration was heard in France because it is not contrary to international public policy, although it is contrary to French public policy[16].
13. In the field of international commercial arbitration, the judiciary has tended to adopt the idea of international public order. Provisions have been made to accept the gold requirement in international contracts that provides protection against price fluctuations. In this regard, the judiciary has preferred to protect international trade at the expense of the national interest, as the legislation of all countries provides for the invalidity of the condition of gold processing in order to protect the national currency. It was decided that the text of the law prohibiting the use of arbitration by public authorities and persons in the public sector in disputes arising from contracts concluded by these bodies is considered to be related to domestic public policy.

    It is not part of international public policy and it is therefore decided that government and public sector entities may approve the arbitration clause in their international contracts provided that these contracts are contracts under private law and not in the field of administrative contracts.
14. In accordance with the concept of international public policy, the Supreme Court of the United States of America ruled that trade with world markets and in international seas could not be conducted in accordance with our conditions under

[15] Arbitration cases rendered by the Arab Arbitration Centre

[16] Absolute arbitration in the light of Islamic law

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our laws applicable by the United States courts. Because the rules of national public policy do not apply to international commercial disputes, the American court decided to enforce an arbitral award in a dispute between a bankrupt American company and a Japanese company, even though the rules of American public policy prohibited bankruptcy proceedings before arbitration.

15. The question can be raised of a clear definition of the rules of international public policy. It can be said that this question falls within the general principles established in the States of the world that respect the law and legality. Such as respect for human rights in general and the right to material, literary and artistic property, and the non-judgmental obligation to implement an obligation in kind if it affects the person or freedom of the debtor and non-discrimination on grounds of sex, race or religion. Some international arbitration judgments have ruled that the rules of international public policy do not allow the payment of the claim for illegal commissions before arbitration.

    The basis for this removal of the principle of "Nemo auditor" may not benefit a person because of the fraud committed by "This corresponds to the Islamic rule": who has sought the wrong prosecution in his hands, his pursuit of retaliation".

16. According to some case law, it would be appropriate for arbitrators to always seek to create obstacles to agreements contrary to the interests of the State, prejudiced by commissions and unethical agreements in international economic relations.

    Case law has argued that the international arbiter of the present time should be an objective thinker who responds to different cultures and political and social systems. The dispute is not considered to be steeped in a certain culture and the fact that these considerations are vital to the president of the arbitral tribunal, his vote being likely when the arbitrators diverge, but these considerations are also required by the members of the arbitral tribunal[17].

17. International commercial arbitration agreements provided for the respect of the rights of the defense, such as the 1927 Geneva Convention, the 1958 New York Convention and the 1961 European Geneva Convention. They annulled all arbitral awards infringing the rights of the defense and that these rights were not linked to a specific national law. The need to treat opponents on an equal footing and the principle of openness of proceedings and pleadings: therefore, the violation of the rights of the defense is a violation of international public order.

18. A case brought before the Tunisian courts by the Tunisian electricity company is an example of the tendency of the judiciary to distinguish between national and international public order. It was a public sector company against the French company Entrepose that decided to settle a dispute arising from a gas transport contract in Tunisia. The French company argued that the Tunisian judiciary was not competent to hear the dispute on the basis of the ICC arbitration clause stipulated in the contract, which provides for the examination of the dispute that may arise from the contract in Geneva.

    Tunisian society responded to this defense that Tunisian law prohibits government and public sector entities from resorting to arbitration in contractual disputes. The Tunisian court refused to admit that it did not have jurisdiction to hear the case and rejected the defense of Tunisian society on the grounds that the prohibition of Tunisian law does not apply to international contracts.

19. Another example of the application of international public policy, in which US courts have long held that antitrust cases cannot be adjudicated by arbitration, is that the US Supreme Court recently ruled that this rule applies to domestic disputes, but that such disputes can be settled. Arbitration if these disputes are international.

20. Some States have tended to develop a national law on international arbitration and another on domestic arbitration, such as the 1981 French law on international arbitration. It was preceded by the 1980 law on internal arbitration, as was Lebanon. The purpose of this trend is to preserve the State's domestic arbitration law, which can be based on long-established and stable traditions, and to enact international arbitration law so that the judiciary has a clear legislative tool to distinguish between domestic and international arbitration.

    This is the right solution for countries that do not want to change national arbitration law and therefore make judicial intervention in international arbitration flexible and limited without national judges having the embarrassment to deal with the rules of national public policy. When examining the request for enforcement of an international arbitral award or when appealing against any of these provisions.

21. One of the judgments of international arbitration in this regard is the 1975 judgment of the Arbitration Chamber of the International Chamber of Commerce in which the Authority concluded the following:[18]

[17] International commercial arbitration and comparative légal study

[18] Arbitration law in theory and practice

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"The arbitrator is not obliged to comply fully with the law that the parties have agreed to apply to the dispute. It always has the freedom to reject solutions arising from this law that are incompatible with international public policy and the arbitrator, as well as the stable rejection of judgments of the local judiciary. The arbitrator is not entitled to form the law of the State according to his or her perception, since he or she does not act on behalf of the State, but relies on general legal rules. In its interpretation of contracts, it is based on general legal principles and a universally established legal spirit.

22. The Commission rejected the provision of certain rules of law that the parties agreed to apply to the matter in dispute, arguing that this rejection was contrary to the general spirit of the law. These are the general principles of law recognized by civilized states. The decision then rejected the application of stable judgments to the application of these principles, which he refused to apply. This decision highlighted the particular nature of international arbitration, namely that it is based on justice and not on the application of the legal rules applied by the formal judiciary, since it is a special judge of Sui Generis.
23. It is recognized, however, that the application of the concept of international public policy in international arbitral disputes, even if it contravenes the rules of domestic public policy, cannot be compromised by a national interest of great importance to the State. Therefore, when an international arbitral award is submitted to it, the national judiciary must strike a fair balance between international public policy and domestic public policy, and must prevail, as it deems appropriate. There is no disciplined rule distinguishing between international public policy and domestic public policy. Without prejudice to the national interests of the State to which it belongs, the objective is to facilitate international trade, which suffers damage because of the domination of national interests over its course.

IV. Conclusion

The following review highlights recent trends in arbitration in administrative contracts:

1. Arbitration, which is a quasi-judicial system, is considered to be the most efficient and optimal means of settling economic and contractual disputes, due to the speed of its procedures, the flexibility of its settlement and the secrecy rarely found in the judicial system.
2. It is the Islamic Shariah that laid the foundations for the question of the use of arbitration in transactions between persons, making it an ancient system of civilizations in the light of the growing industrial revolution and the virtual world.[19]
3. The emergence of arbitration in the field of administrative contracts in Qatar in this era of blessed renaissance with the beginning of commercial development in the early 1980s of the last century, beginning with the creation of a committee, then by the Commission for the settlement of commercial disputes, but by the arbitrators of the time. The disputes were officials of the State's administrative apparatus. Arbitration in the field of administrative contracts has been a milestone comparable to the status achieved in various countries in order to keep pace with the developments observed by countries around the world in opening Qatar's trade, investment and tourism to the outside world.
   This led to the publication of the Qatari Arbitration in Civil and Commercial Disputes Act, which is in line with the conventions and treaties signed by the State in the service of cooperation with countries around the world.
   This was reinforced by the recent amendments to the Administrative Tribunal Act No. (6 bis) added by the Qatari Decree, which stipulated that: "The provisions of the Arbitration Act on civil and commercial disputes apply to administrative discounts related to administrative contracts. The judiciary in respect of administrative contracts of the Trial Chamber, the Appeals Chamber or the President of the Court, as the case may be. The Trial Chambers have courts of first instance to adjudicate arbitral disputes, empowered to take interim or assisted measures, to facilitate the collection and presentation of evidence and to consider enforcement issues raised by the President of the arbitral tribunal. The Appeals Chamber has the power to hear the invalidity proceedings and the President of the Court has the exclusive power to appoint the arbitrator or arbitral tribunal.
4. Arbitration is an exceptional means of settling disputes based on ordinary procedures, with complainants reluctant to resort to justice, with the obligation to refer the dispute to one or more arbitrators for decision under the power of the order, referred to as a "consensual contract"; Because the appointment of the court is only final and definitive by the acceptance of the litigants, because the principle prevailing in this contract is the authority of the will and freedom of the contracting parties, as well as it is closer to a "compensation contract", because the arbitrator carries out the work of the litigants and because they compensate at their fair value for the service rendered.

[19] Conferences on the fundamental problems of international arbitration from a development perspective

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5. Arbitration as a dispute settlement system does not confiscate the jurisdiction of the general jurisdiction of the State, but gives the parties to the contractual legal relationship and other parties a margin of freedom in the choice of arbitration as a means of resolving their disputes arising from these relationships, the judiciary retaining jurisdiction and authority to implement the arbitration agreement, and then its control over the validity of the agreement, the validity of the arbitration proceedings, the validity and enforcement of the arbitral tribunal's decisions, in addition to its important role in supporting the arbitral tribunal in the performance of its functions.
6. The competence of the Administrative Court in arbitration in the field of administrative contracts extends to the activities of the Department in the field of non-contractual liability under the control of administrative decisions and is not limited to contractual liability.[20]

V. Recommendations

1. The attention given to the arbitration system in the program, given the urgent need for results, recognize the value and importance of arbitration activity in all legal actions.
2. The questionnaires prepared proved the scientific reality in Qatar that rumors that arbitration in the field of administrative contracts benefits from the speed with which the judgment is rendered are theoretical,
   The Qatar Administrative Court now has the tools and capacity to handle such cases quickly and fairly at all stages of the dispute, most often for 12 months. They exceed the time the arbitrator spends resolving such disputes.
3. A special codification should be established for the use of arbitration by administrative authorities in the field of administrative contracts, in particular with national companies.
   Due to the cost of arbitration and other reasons, the parties may use different contracts than those applied in a manner that may undermine or interfere with the powers and broad privileges enjoyed by the administration in administrative contracts in particular.
4. The study recommends the establishment in some states of an independent arbitration[21],[22] center to monitor the arbitrator, receive complaints and other matters.[23]

References Références Referencias

1. Law on Arbitration in Egypt and the Arab States Parts I and II.
2. (1974), International Commercial Arbitration Course for Law Students at the Cairo Faculty of Law.
3. Civil Arbitration Act.
4. Optional and mandatory arbitration.
5. Arbitration within the framework of the Cairo Regional Centre.
6. (1999), International commercial arbitration.
7. Maritime Arbitration.
8. General principles of international commercial arbitration.
9. Contract contract.
10. Civil law mediator.
11. Arbitration in Arab laws.
12. Arbitration Conferences.
13. Judgments rendered by the Cairo Centre.
14. Regional international commercial arbitration sections 1: 6.
15. Arbitration cases rendered by the Arab Arbitration Centre.
16. Absolute arbitration in the light of Islamic law.
17. International commercial arbitration and comparative légal study.
18. Arbitration law in theory and practice.
19. Conferences on the fundamental problems of international arbitration from a development perspective.
20. Elimination of criticism in civil matters.
21. Studies in arbitration Law.
22. Arbitration assets in engineering disputes.

[20] Elimination of criticism in civil matters
[21] Studies in arbitration Law
[22] Arbitration assets in engineering disputes
[23] Multi-party arbitration

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