CONTROVERSIAL ISSUES ABOUT THE ROLE OF ARBITRATION IN INDIVIDUAL LABOR DISPUTES: A COMPARATIVE STUDY

Pierre Mallet, Ajman University
Najlaa Flayyih, Ajman University
Zeana Ghanim Abdijabar, Ajman University

ABSTRACT

Arbitration has been recently dominating the financial transactions, because of its effectiveness in settling disputes as well as achieving interests of conflicting parties. Accordingly and as a result of the domination of arbitration processes, other dispute resolution methods, such as reconciliation or resorting to the judiciary have been negatively affected.

However, referring to arbitration in resolving disputes that result from individual labor often raises controversial issues and intellectually different attitudes. According to such conflicting points of view, some experts assume that arbitration could be considered as an ideal means for solving this type of dispute. Others, however, might raise doubts about its fair judgments, especially if such disputes occur between employers and their employees. It should be taken into consideration that the legislator in general has attempted to protect the weak party in this relation, and that is the laborer, through the enactment of rules, which govern the contract,. Any violation to these rules shall nullify any condition used against them.

In order to achieve some kind of equity and consistency between two conflicting philosophies, we may claim that resorting to arbitration is somehow unavoidable as a means for resolving individual labor disputes. Nevertheless, arbitration in this case shall be used within the limits that could protect the laborer's rights in face of his opponent within the framework of the rules stated above. These rules shall provide opportunities to benefit from the features of arbitration with the possibility of including them as an article or articles when constructing a labor contract. Nonetheless, such procedure shall be taken within a legal framework according to the Law of Labor so as to prevent employers from exploiting them on their behalf against employees.

One of these regulations is to stipulate in the contract that in case of resorting to arbitration to settle any dispute that may arise between the two parties, then the employer shall be the one who bears its costs. It is also assumed that such type of dispute could be solved through arbitration by adopting a value criterion of the wages that an employee receives from work. It is also posited that specialized arbitration centers could be established for settling disputes with workers in an attempt to protect employees' interests and meanwhile restrict the arbitrators' wages.

Keywords: Arbitration, Individual Labor Relations, Dispute Settlement, Laborer's Rights, Contractual Freedom/Freedom of Contract.

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INTRODUCTION

Arbitration has been playing for a long time an essential role in settling collective labor disputes in many countries in the world, especially, France, USA, Canada and Britain, and it has proved to be so effective in resolving those disputes without having any problematic issues in application. Besides, arbitration as a means of settling collective labor disputes has been recognized by the International Labor Organization.

However, the situation has been totally different in case of solving individual labor disputes. Lots of arguments have been raised on such role for arbitration. While some approve it, others totally deny it. A third party has accepted it but with specific conditions.

There is no doubt that arbitration and Labor Law belong to schools that are completely different. Each one of them claims that they own the truth at least philosophically, and each of them raises doubts about the intellectual legitimacy of the other. The Labor Law for example has been built on the idea of a general system, which is committed to protect the weak party in a contractual relation. Arbitration on the other hand is based on the principle of contractual freedom of will, and it is often described as a means of achieving justice for rich people only. The main focus of the current research is to create some kind of equilibrium between the different trends towards arbitration in an attempt to evaluate them in light of recent experiences in comparative law so as to come up with certain recommendations, which could be useful to the Emirati legislator in case he adopts a text in which he defines his view point and meanwhile to avoid any contradictive interpretations by the judiciary. Such complicated situation shall lead to unavoidable delay in solving the dispute and increase in costs with losses and impairment to workers' lives.

The researchers have adopted a descriptive analytic approach to describe and analyze the issue related to the role of arbitration on individual labor conflicts.

We shall review the related literature in an attempt to understand the nature of controversy about the role of arbitration as mechanism in solving individual labor disputes. In our review, we shall include both trends, of those who approve, and those who oppose the use of arbitration in settling the type of conflict already stated above. All these issues shall be investigated in the forthcoming sub-sections and as follows:

Refusal of Arbitration as a Mechanism for Settling Individual Labor Disputes

First of all, we shall investigate the reasons that lie behind the refusal of arbitration in settling individual labor disputes. Approval of comparative judiciary to such refusal shall be taken into consideration.

Causes of Refusing Arbitration to be used in Solving Individual Labor Disputes

Some of those who oppose the role of arbitration in individual labor disputes justify their refusal by referring to explicit provisions in their national legislations, which prohibits the use of arbitration in this area. A legal text therefore shall not be violated, and there is no space for

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common in the Arab legislations, (Szalai, 2013) which incorporates texts emphasizing such state of prevention (Schwebel, 1987).

However, in case of no text included in the legislation, which allows or prohibits arbitration as in the Emirati Legislation for instance, one strong evidence claimed by refusers is the idea of the general system (Holtzmann & Neuhaus, 1989; Darmis, 2000) on which labor laws have been legislated for the purpose of protecting the workers (Hill, 2018), being the weak party in a contractual relation. Consequently, they cannot be violated or derogated for any reason.

According to the specialists who represent this trend, arbitration cannot be viewed as a means of achieving justice within the scope of labor relations. Plaisant & Motulsky argue that *"arbitration assumes a kind of equity in power, and if the contractual relation loses this equity, arbitration then suffocates*". They add up claiming that *"arbitration is not recommended if the two parties are not in an equal level".* Racine, on the other hand, refers to the danger of arbitration within labor relations by saying that, *"arbitration shall not be a tool for prejudicing workers' benefits as this class is protected by the peremptory rules, which constitute the general social system"* and he fears that *"arbitration could be a tool just for serving the employer, and therefore impairing the workers' rights".* Besides, Gérard Lyon-Caen confirms that *"because the workers' rights are associated with the social system, which aims to safeguard them, a worker, hence, shall not find himself excluded from the protection of the judiciary"*.

It is also claimed that the Labor Law has established a special and integrated procedural system for resolving individual labor disputes. Therefore, the mechanisms of settling such disputes have been adopted by the legislator as part of this procedural system, in which all work departments cooperate with the judiciary to solve the conflict. An essential role indeed has been given to the work departments in settling these disputes due to being in positions of responsibility, and directly in touch with the problems when arising.

A labor dispute is not a private affair that is confined to the parties of the conflict. As a matter of fact, such disputes have an essential impact on the economy and stability of the community, and consequently, the role of those who are in charge of labor issues shall not be revoked or contravened by any attempt of inclusion or cancelation, simply because the procedural rules of the settling mechanisms are part of the general system (Sharqaw, 2012). Any violation to these rules shall lead to obstructing the work and depriving the jurisdiction of the bodies entrusted with the process of solving the dispute.

Besides, resorting to arbitration shall cost the worker expenses he is required to pay to the arbitration panel, and such financial obligation constitutes a heavy burden (Stone & Colvin, 2015). Alternatively, the legislator has provided free mechanisms through which the worker can solve his disputes. Besides, he might fall under the dangers of arbitrators who are incompetent in the legal issues, and furthermore, these arbitrators might be subject to the influence of the other party. Moreover, arbitration might lead to a delay in resolving the conflict due to the complicated procedures of implementing the arbitrators' judgments, especially when a request is made to obtain an execution order from the related court. Whereas the case is totally different with the judicial rulings, as they are executed immediately with self-enforcement power.

As for those who claim that arbitration provides fast and short procedures for litigation and issuance of judgment, many jurists are inclined to deny such assumption, as legislators in different countries have approved certain rules, which highly simplify the litigation procedures

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of labor cases. Comparative laws indeed have specified short periods and deadlines for reviewing labor lawsuits (Baker & Davis, 1992) and their provisions are issued with expedited enforcement and peremptory. Thus, labor laws have provided advantages that outweigh those provided by arbitration, such as the time required for settling the conflict as well as the simplification of procedures.

Approval of Comparative Judiciary for Rejecting Arbitration as a Means to Resolve Individual Labor Disputes

The French judiciary has adopted the idea of economic dependency as well as inequality between the two parties of the labor contract as a criterion for adapting the agreement, but not for long, using it after that as a complementary element, which confirms the legal reliance-relationship between the employer and his employees.

French jurisprudence had defined the criterion of economic dependency as the status in which the laborer's existence is in threat. But nowadays, it is defined as an indication for the instability of the worker's economic position in face of the employer. The worker, therefore, being in a weak economic position, shall be obliged to accept the arbitration condition when signing the contract, even though he is not pleased with it, just because he does not want to lose the job opportunity (Stone & Colvin, 2015). It has become apparent that employers insist on including the arbitration clause in every contract they conclude with workers. As a matter of fact, arbitration in individual labor relations could become, as some might say, "*like a wolf in sheep's clothing"* (Johnson, 1999). Meek and polite from outside, but a monster and a predator from inside.

The dominating trend in Lebanon is the one that rejects the use of arbitration in individual labor disputes. The Lebanese Court of Cassation states in one of its judgments that the jurisdiction of the Labor Arbitration Council is absolute and specific related to the general system. It is therefore not permissible to violate the rules of this system through any agreement, and hence the arbitration clause is considered as void. The Labor Arbitration Council in Beirut states in a resolution that *"the arbitration clause is considered as void due to violating the Lebanese general system, and adopting it shall obstruct the implementation of the Lebanese Labor Law provisions, which are regarded as mandatory and enforceable, and such action shall lead in consequence to the dispossession of labor arbitration councils in Lebanon".*

The Court of Cassation in Dubai has been moving in the same direction as it states in a ruling that the agreement concluded between the parties of the litigation is a labor contract, and the appellant's claim for the stock options in the arbitration lawsuit is considered as one of the rights arising from the work relationship. Accordingly, he should resort to the State Courts and follow the procedures stipulated in the Labor Law. In fact, the filing of an arbitration lawsuit is a normal procedure after the termination of the work relationship. Such action does not negate the jurisdiction of the State Courts to hear the dispute, and the total rejection is contradicting reality and law, simply because the stock determined to the appellant has been in return of his work as per the labor contract. In conclusion, we may say that they are part of the labor rights and it is not permissible to raise them for arbitration. Indeed, they fall under the Federal Law No. 08 of 1980

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amended by Law No. 12 of 1986, which regulates the labor relations. It is an imperative rule related to the general system, and it cannot be violated or waived.

In addition to what has already been stated, the trend rejecting the use of arbitration in individual labor disputes, also attempts to disprove the arguments of those who approve utilizing arbitration, especially the ones that are related to the non-intervening of the legislator, which indicates permissibility and freedom of contracting except what is excluded by a text. All responses however have centered on the fact that the silence of legislation cannot be taken as an evidence to authorize arbitration in individual labor conflicts. On the one hand, the silence of the legislator cannot be measured against the silence of the individual as organized in civil law. Furthermore, it is not allowed to come up with a judgment based on the silence of; the determination of individuals shall replace the legislation. On the other hand, when the legislator has established a special procedural system and specific mechanisms for resolving individual labor disputes, it simply means that only these mechanisms and exclusively can be used in settling this type of dispute. Besides, if the legislator had any intentions to use arbitration, he should have included it with the other mechanisms stipulated in the Labor Law.

The Trend in Favor of using Arbitration in Settling Individual Labor Disputes

In this section, we shall clarify the legal basis for resolving individual labor disputes by using arbitration under comparative laws, and how this idea has been developed in the French Law,

The Legal Basis for Resolving Individual Labor Disputes by Using Arbitration under Comparative Laws

Arbitration as a means for solving individual labor disputes is considered as an acceptable mechanism in many legal systems, whether those that follow the Anglo-Saxon system, i.e. the one familiar as common law, or the ones that adopt the civil law. The Canadian Law 13 as well as the English both adopt the Anglo-Saxon system and they seem to accept the arbitration conditions included in the labor contract. In addition, resorting to arbitration as means to solve individual labor conflicts in the American Law is common and widely acceptable, especially after the resolution of the Supreme Court issued in March 2001 according to which arbitration condition in labor contracts gained an approval. Except some labor sectors, such as transportation, It has become possible to resort to arbitration for solving disputes related to discrimination on the basis of race, gender, age, religion and wages according to different laws, such as Federal Employee Polygraph Protection Act, Fair Labor Standards Act, and Americans with Disabilities Act.

It is remarkable to note that when the State of California on 19th of October 2019 issued a legislation in which the inclusion of a mandatory arbitration clause in labor contracts was prohibited, this legislation caused a wide sensational rejection among people. This law was issued due to doubts that workers might not be able to refuse the arbitration condition for fear of losing the job opportunity. It has also been noted the inclusion of a mandatory arbitration clause in contracts gives companies the opportunity to win cases when they appear before the same

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arbitration tribunal several times. Accordingly, the employer cannot force or oblige the worker to give up any of his rights, including the right to file a complaint or a civil lawsuit.

But this trend, which has been adopted by the State of California, is considered as an exception to the general principle, which prevails the United States and confirms the legality of arbitration as an important mechanism for settling all disputes based on the Federal Arbitration Act of 1925, including individual labor conflicts. Because this legislation has been a deviation from the general basis, it has led to widespread and severe reactions and several parties have taken the initiative to appeal against this legislation before the courts.

Among the systems that have adopted the civil law are the Dutch and the Swedish and both permit including the arbitration clauses in labor contracts. Swiss Federal Law accepts arbitration clauses in international labor contracts when the Swiss Law is the one applied on the contract as per Article No. 177, Paragraph 01 of the Swiss Federal Private international Law.

In Italy, after the amendment of Article No. 806 of the Civil Procedures Law as per Law No. 02 of 2006, it has become permissible to use arbitration in solving labor disputes as long as the law or any collective agreement does permit use of such procedure.

As for Belgium, Article No. 1678, Paragraph 02 of the Judicial Law has adopted a different system based on the value of what the worker earns per year as well as the employment position he occupies in the institution. If the annual earnings of this worker are more than 66,441 Euros, arbitration, therefore, cannot be considered as unfair if used in settling the dispute.

Saudi Arabian legislation has allowed the use of arbitration in resolving individual labor conflicts. Article No. 224 of the Saudi Labor & Laborers Law, stipulates that, the two parties of a labor contract may include a text, which requires the use of arbitration for settling disputes. They can also come to an agreement when a dispute arises. However, and in all cases, the provisions of the arbitration system in force in the Kingdom and its executive regulations shall be applied.

Moreover, arbitration could be permitted if it has been chosen by the laborer himself as a procedure for solving the dispute (International Arbitration Practice Guideline, 2021). But if it is the employer who insists on using arbitration with improper purposes, which do not provide protection to the worker as stipulated in the law, the worker then may adhere to the invalidity of this condition (Knoll-Tudor & Rus, 2020)).

Development of using Arbitration in Solving Individual Labor Disputes in the French Law

A new trend has appeared in France, in which arbitration is accepted as a mechanism for settling individual labor disputes. This positive status has been reflected in the amendment of Article No. 2061 of the French Civil Law as per Law No. 2016-1547 of 2016, 20 which is related to consumer contracts. According to this amendment, arbitration has become a means for settling disputes when the two parties have total contractual freedom, and the inclusion of the arbitration clause occurs at the consent of both of them. The amended text offers the consumer the right to choose either arbitration or the traditional judiciary as a method of settling the dispute.

We should differentiate, however, between the contract that includes an arbitration clause and the arbitration condition itself. An arbitration agreement, whether independent, such as arbitration condition or included in the contract, cannot be described as unfair since it is based on the principle of contractual freedom. Besides, it cannot be considered as an imbalanced

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agreement. The essence of this agreement is to abandon the traditional litigation in favor of arbitration, and such procedure cannot be described as arbitrary as long as the two parties have agreed on solving their dispute in a different procedural way. In other words, this agreement does not influence the essence of the dispute. Indeed, what the conflicting parties care about is the content of the judgment that puts an end to the dispute, and not the method through which the judgment is announced. A decision issued by the French Court of Cassation in 2005 supports the viewpoint stated above. The decision states that "*the condition, which makes the settlement procedure compulsory cannot be considered as arbitrary, and it does not include any imbalance in the contractual equity between the parties".*

We have also noticed that the French Labor Law includes only few articles, which refer to arbitration, such as Article No. D.2261-2, related to collective agreements, Article l.2524-1 et seq., related to means of resolving collective labor disputes, and Article No. D.7112-2 and what follows, which focus on journalists. As outside the scope of this law, the text of Article No 07 of Law No. 31 of 1971, related to salaried lawyers, stipulate that "*in case of disputes arising of labor contracts, arbitration therefore shall be the means for settling them."*

Validity of Arbitration in Individual Labor Disputes in the French Law

Arbitration falls under the provisions of Articles 2059 to 2061 of the French Civil Law. While Articles 2059 and 2060 deal in general with the issue of arbitration, Article No. 2061 focuses specifically on the condition of arbitration.

We need therefore to investigate the cases of resorting to arbitration in the French Law whether in the local or international labor contracts.

Arbitration in a Local Labor Contract

Article L.1411-422 of the French Law stipulates that, "the labor judiciary is the sole body that has the right and jurisdiction to hear labor disputes regardless of their value and any contradictory agreement is deemed as if it does not exist". Article L.511-123 of the previous labor Law adds, with the exception of arbitration agreements that are subsequent to labor contracts. This addition allowed recognition of the arbitration validity without including an arbitration clause in the labor contract. However, the current version of Article L.411-4 has dropped this exception, emphasizing through the use of a specific phrase that the "*Labor Judiciary*" is the only body that could settle individual labor disputes. Accordingly, the Labor Law has completely prohibited the use of arbitration. But does this prohibition apply to the subsequent arbitration agreement after removing the exception from the current text of the article in question.

The French Government as well as the Parliament were inclined at that time, i.e. at the time of issuing the labor law, to emphasize the role of traditional judiciary in resolving individual labor disputes with no intention at all to exclude or nullify subsequent arbitration agreements, The French Minister of Labor then confirmed that the new text does not intend to exclude arbitration, and workers as well as employers are still capable of resorting to arbitration.

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The French Court of Cassation, for Example, has adopted this trend in 1984 when approving the validity of an arbitration agreement concluded after the labor contract came to an end. Its ruling stipulates that "*the Courts concludes that the arbitration agreement is valid as long as the labor contract has come to an end and the parties are free from any contractual obligations, and consequently, they could resort to arbitration*". This trend has been approved by Paris Court of Cassation, and supported by many French Jurists as well.

It has become obvious that an arbitration clause incorporated in a labor contract is totally prohibited, whereas an arbitration agreement subsequent to the termination of labor contract is acceptable in practical application. However, another debate has arisen over another issue related to the extent of resorting to arbitration in a framework protected by confining criteria, and weather the attachment of labor laws to the general system could prevent using arbitration in one way or another.

An answer to this inquiry can be found in a very famous judgment issued by Paris Court of Cassation in 1993, called "*Labinal*". The Court decided that "*resorting to arbitration cannot be excluded just because the contractual relation in its subject is under control of specific laws in the general system".* However, with Douga's ruling, the Court of Cassation concluded that the provisions of Articles L.442-6 et seq. of the French Commercial Law do not prohibit the use of arbitration though these articles are explicitly related to the general system.

The French Civil Law has been subject to constant development since 2001. For instance, on 5th May 2001, a law related to the new economic groupings was issued, which has completely changed the provision of Article 2061 of the Civil Law, which concerns the condition of arbitration. It states that "*with the consideration of special legislative provisions, the arbitration clause shall be deemed valid in contracts concluded for the purpose of practicing professional activities"*, whereas arbitration was considered as invalid in the old text of the Article.

In 2016, the French Legislator included a new amendment the text of the Article in question, stating that "*the condition of arbitration shall be accepted by the party against whom it is being argued… and if one of the two parties has contracted outside his professional activity, the arbitration condition, therefore, cannot be used against him"*.

It is remarkable to note the gradual changes that occurred to the formulation of this article, shifting from nullity to validity ending with accepting it. At the beginning, it was dealt with the arbitration clause from the viewpoint of being null or valid. In other words, the judiciary has to determine whether the condition is correct in principle or void. However, with the last amendment, the judge no longer cares about the issue of validity or nullity, and his role has been limited to become sure if the arbitration clause is accepted by the party against whom it is being complained.

The most essential change that the legislator has included on this Article is the scope of applying the arbitration clause. It is no longer limited to commercial relations. It has been extended to cover the contractual relationships between the professional and the consumer as long as the latter has accepted the condition of arbitration. Expanding the validity of arbitration clause in Civil Law is considered a tremendous change that has almost affected the essence of French Law, which is known as being very conservative, and mainly depends on the strength of the legal text rather than the contractual attitude.

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We may conclude that as long as the arbitration clause is accepted by contracting parties, it is possible hence to include it in all types of contracts. According to the concept of this Article, arbitration is no longer confined to traders, rich people, professionals, or the owners of strong economic positions. Indeed, this condition has become available to everybody, including the relationships arising from a labor contract.

Some of the Arab jurisprudence and judiciary allows conflicting parties to resort to arbitration if the agreement has been concluded after the business relationship comes to an end,[33] and it has been justified that worker during work shall be in a weak position and he cannot face his employer. The laborer therefore shall be protected by invalidating an arbitration agreement to be signed before or during the validity of the labor contract. On the contrary, signing an arbitration agreement after the business relationship comes to an end is more reasonable as the worker becomes free from any pressure placed on him by the employer. Both parties, i.e. the employer and the worker become in equal positions.

Part of the Lebanese jurisprudence and judiciary has adopted a trend similar to that of the French Law in some of its provisions. Article No. 79 of the Lebanese Labor Law stipulates that The Labor Arbitration Council is in charge of all disputes arising from the application of the provisions of this law. The jurist Edwar Eid has confirmed that it is possible to apply the same solutions that have been adopted by the French jurisprudence.

It should be noted that in case of an international labor contract, this contract shall be freed from the binding rules as per local laws. In this type of contracts, i.e. the international ones, we find that including conditions related to jurisdiction is acceptable and has been in force for a long time. However, the French Court of Cassation, being under the influence of confining non-international contracts to labor judiciary, has refused to incorporate the arbitration clause in international labor contracts. The Court later has changed its attitude and accepted to include the arbitration clause in international labor contracts.

We may conclude that the French judiciary has changed its attitude for several reasons. They are as follows:

The ideas of protective laws as well as confining jurisdiction to governmental labor judiciary have been the base for the refusal of arbitration in individual labor disputes in the French Law. This trend does not coincide with the philosophy of arbitration at the international level, which is based on revoking local laws and applying specific rules related to arbitration that have been adopted in international agreements, or the laws chosen by the conflicting parties to be used for arbitration. Accordingly, the international arbitration philosophy, which denies all obstacles stipulated by local laws, will inevitably collide with the binding rules that are still widely applied by Labor Law and the French Judiciary.

The trend of the French Court of Cassation, which rejects including the arbitration clause in international labor contracts, is completely contradictory to the intention of France to join New York Convention, which is related to the recognition and enforcement of foreign arbitral awards. Before 1989, France stipulated that the provisions of foreign arbitration can be exclusively implemented on commercial disputes. After this date, the condition of commercial dispute is no longer required, and thus it has become possible to implement any arbitration judgment in France even if it is related to an international labor contract. The question to be raised here is how could the Court of Cassation refuse to include the arbitration clause in

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international labor contracts, while, at the same time, France has become obligated to apply foreign arbitration provisions of all subjects? Facts have denied this attitude, and accordingly due to removing the condition of commercial dispute, the French Judiciary has to recognize the inclusion of the arbitration clause in international labor contracts.

As a matter of fact, the international law related to arbitration has witnessed significant development, whereas the French Civil Law, according to the changes we have already stated about Article No. 2061, considers the arbitration clause as void in non-international contractual relations. The French Court of Cassation has taken a totally different position represented in the very famous decisions, Dalico and Zanzi, in which the Court has confirmed that international arbitration is not subject to the local rules that are applied to arbitration.

It is, however, remarkable to note that after one month of issuing Zanzi, the Labor Chamber of the French Court of Cassation officially recognized the validity of including the arbitration clause in international labor contracts. This position has been repeated several times in subsequent years.

We should note that the French Court of Cassation could not completely get rid of its traditional legacy that is related to rejecting the inclusion of arbitration clause in contracts. We believe that the Court has adopted a defensive position towards workers. Although the court has accepted the arbitration clause to be included in the international labor contracts, it has given the labor the option of resorting to arbitration or referring to the governmental judiciary, denying such option meanwhile to the employer.

On 6th March 2013, the French Court of Cassation, in Deloitte Decision, has ruled that the Charter of Association, in which the arbitration clause has been included, cannot be implemented against the signatory workers. Consequently, those workers could have demanded for revoking the arbitration award. In relation to this ruling, the Supreme Court issued a clarification, in which it confirmed that the judge shall refrain from ruling on merits or designating the court before the case is filed.

After the jurisprudence has settled the possibility of resorting to arbitration in resolving individual labor disputes, this method has witnessed an increasing application due to its tremendous features. These features can be summarized as follows:

Reduction of Time

Labor disputes to be settled through arbitration might take a period between 3-6 months, while before courts, they might take fourteen months. Besides, periods of appeal and cassation could take another year. Some French jurists therefore believe that resorting to arbitration in resolving individual labor disputes shall keep increasing in the coming years.

Confidentiality

The importance of this element appears clearly in conflicts featured with high degree of privacy and sensitivity. In such cases announcement of dispute shall lead to extreme behaviors, such clinging to certain opinion and sticking to unchangeable positions. Whereas keeping the conflict secret may result in some type of compromise between the conflicting parties as long as

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nobody knows about it. Besides, many employees prefer not to disclose their salary before the government court, especially if they belong to the highly paid manager class.

Furthermore, some employees in certain situations may prefer to solve their disputes confidentially since it provides better protection and preserves the image and reputation of disputing parties. Moreover, confidentiality is highly required in cases of severe crises. Indeed, during such catastrophes, people becomes aware of the very sensitive information whether related to the company or the employee, including for example, the employer's complaint against the former worker, the latter's criticism to the company, the assessment of his professional performance, discussions about the conditions of work, how he was terminated, and the amount of his wage as well as the indemnity. In other words, everything related to the dispute shall be the subject of public talks.

Selection of Arbitrators

Arbitrators are often selected explicitly and in a consistent manner, with no sterile conflict, by the agreement of parties as represented in the governmental labor judiciary.

Nobody however denies the fact that arbitration is paid while government judiciary is free for workers. But it is remarkable to note that the long period of time that a dispute could take before courts might cost amounts of money more than the sums that shall be paid to arbitrators. In fact the continuation of the conflict for a long time, and being subject to complex litigation procedures that require high expenses will be reflected negatively the worker's life.

Nowadays, there are arbitration centers, which accept to arbitrate in low-value disputes, such as the Center of National Labor Arbitration where expenses for workers are often reduced, and they may pay a quarter, third or half of the full cost of arbitration according to the opponent in the case. He shall pay a quarter of the cost if his opponent is a prestigious person subject to the Value-Added Tax (VAT), a third if his opponent is a prestigious person not subject to VAT, and a half if his opponent is an ordinary person. In addition, the arbitration agreement may include a condition, which confirms that the employer alone shall pay the arbitration cost.

Analysis & Assessment

If we refer again to the Arab legislations that have ignored or not commented on the inclusion of an arbitration clause in individual labor contracts, such attitude could be taken as an evidence for permissibility, otherwise, the legislator would not have ignored it, and would have issued a provision, which prohibits resorting to arbitration. Accordingly, and based on the freedom of arbitration principle, the parties may agree on an arbitration mechanism to settle their individual disputes. As for other countries, the arbitration laws determine explicitly what is not permissible to be arbitrated. If there is no indication for prohibition, then it could considered as an evidence for permissibility, and it is not allowed to expand the prohibition because it is an exception and cannot be used for measurement.

Arbitration is mainly based on the principle of permissibility, and it should therefore refer to everything that leads to reconciliation, which is a stable principle in comparative legislations.

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Besides, the employee has the right to reconcile with his employer and settle all issues through direct negotiations, or resorting to arbitration as an alternative.

We have also noted that Article L.1411-4 of the French Labor Law implies in a way or another that arbitration in labor disputes is not permitted so as to confine the jurisdiction of those disputes to the national judiciary. The dominant interpretation of this Article whether by jurisprudence and judiciary, or when referring to the parliamentary discussions during the legislating process, goes in line with the trend of authorizing arbitration. The aforementioned judgment of the French Court of Cassation has put an end to this argument. Besides, and according to Motulsky, relating the issue of arbitration to the general system is somehow inaccurate, simply, because individual labor disputes do not contradict with arbitration. Moreover, the rivalry is in the field of labor, and the jurisdiction of social courts is not related to the general system to the extent that may prevent individual disputes from resorting to arbitration.

Arbitration is sometimes better for the employee so that he may not fall in the trap of the judicial red tape, which usually leads to a long period of delay in obtaining his rights, and the main source of his living. On the contrary, arbitration is somehow faster in solving issues.

As for those who have refused arbitration as a means for settling individual labor disputes, claiming that resorting to arbitration shall cost the employee more financial expenses, and moreover such process may violate some protective binding texts, these arguments indeed are not final. It is possible for example that the conflicting parties may come to an agreement according to which the employer alone shall bear the cost of arbitration, and if the arbitral award violates a provision related to the general system, the judge in this case (Schwebel, 1987) shall refrain from ratifying it and granting it the executive formula.

The UAE Arbitration Law, for instance, like any other legislation, authorizes the court to reject any arbitral award if it violates the general system as well as the public morals of the country (Broches, 1990). Besides, the judge shall refrain from implementing the arbitral award and such providing strict judicial control over arbitration processes in general. Some may claim however that arbitrators might not be competent enough to come up with the right judgment. The American Judge Harry Edwards replies to this argument. He says that "*arbitrators cannot be ignored or surpassed as judges when they adjudicate files related to labor relations*".

CONCLUSION

We have come up with the following conclusions: Role of arbitration as a mechanism for settling individual labor dispute has been an issue of argument all the time, between those who approve it and those who reject it. We have noticed that there are three trends. One trend refuses any role for arbitration in solving individual labor disputes. Another trend permits arbitration with no restrictions at all. The third trend allows resorting to arbitration in special cases. Each trend has its own arguments and indications.

Comparative laws have also different attitudes towards arbitration. While some legislation permits it, others prohibit it. A third type of legislation neither permits nor prohibits arbitration. However, the most acceptable trend is the one that approves the use of arbitration as a mechanism for settling individual labor disputes.

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Through our analysis and assessment to the aforementioned trends towards arbitration, we have found out that we should go for the one that approves arbitration due to the many advantages and benefits that it could bring to the worker, and because it is highly acceptable in comparative laws.

RECOMMENDATION

In accordance with the trend prevailing in modern legislations, we propose the addition of a text to the UAE Labor Law, in which the mechanism of arbitration shall be adopted as an exceptional method that can be used with complete approval of employees in settling individual labor disputes.

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