

SUBSTANTIVE AND PROCEDURAL CONTROLS FOR THE EXPERT'S DISMISSAL IN THE ARBITRATION CASE ACCORDING TO THE JORDANIAN ARBITRATION LAW COMPARED WITH THE UNCITRAL RULES

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ABSTRACT

It is in the context of the arbitration tribunals' endeavor to settle the cases they entertain that they may find themselves in need to seek the assistance of expertise in technical details that have their own specificities to help them decide the case. In fact, the one who performs the expertise is required to meet impartiality and independence; otherwise it is permissible to request his dismissal. In this regard, the Jordanian legislator has not dealt with regulating the subject of the experts' dismissal within the framework of the arbitration case except for the jurisdiction of the arbitral tribunal to decide on issues of dismissal in Article (32/J) of the Arbitration Law. Yet, we find that the Jordanian legislator, and in the Civil Procedures Law, article (90/2), did merely refer to the provisions of the judges' dismissal stipulated in Article (134) of the same Law. Therefore, we sought to study the possibility of the expert's dismissal in the arbitration case for the same reasons for which the arbitrator or the judge may be dismissed if achieved as well as the possibility of dismissing the expert for reasons of unfitness stipulated in this law or in terms of the reasons set in the provision of article (7) of the Instructions on the Experience Affairs of 2018 in addition to approaching the legal procedures to be followed in that dismissal and the legal impacts thereof together with consulting with the rules of the United Nations Commission on International Trade Law (UNCITRAL) set for the international commercial arbitration in this regard as they are international rules of reference as well as the Rules of Evidence issued by the International Bar Association (IBA).

Based on this, the study reached conclusions, the most important of which is that the reasons for the expert's dismissal in the arbitration case are not related to the common law, but to the private interest of the parties. Actually, the UNCITRAL Arbitration Rules considered the qualifications and capabilities of the expert to be one of the elements required for his acceptance in the first place, thus adding an explicit reason for the expert's dismissal in the arbitration case that was not stipulated by the Jordanian legislator in the Arbitration Law with a distinction between the expert appointed by the tribunal and the expert appointed by the parties. Further, the Jordanian Arbitration Law and UNCITRAL rules did not specify a specific period of time during which the expert's dismissal may be requested while the decision issued by the arbitration tribunal in consideration of the expert's dismissal request may not be challenged by any method of appeal, which matter requires the Jordanian legislator to amend the current Arbitration Law

by adding provisions that deal with the expert's dismissal, given the great importance of the expertise required by the technical nature of arbitration cases.

Keywords: Arbitration Case, Arbitrator, Expert's Dismissal, Impartiality, Independence.

INTRODUCTION

Arbitration is of great importance being an effective means for resolving disputes of a precise technical and specialized nature. In fact, the technical issues that the world is witnessing increase due to the bifurcation and diversity of these disputes while parties to the dispute prefer to resort to arbitration to settle their disputes.

In fact, and in order for arbitration to fulfill its mission of achieving justice within the framework of cases that are often of a technical and specialized nature as mentioned above, yet arbitration tribunals often need the assistance of experts specializing in technical fields in which the aforementioned cases revolve around (Al-Tarawneh & Al-Majali, 2020).

However, the technical expertise in arbitration has certain foundations and controls that the parties and the arbitral tribunal are obliged to adhere to, the most important of which is that the use of expertise, and even if it is within the discretionary power of the arbitral tribunal in evaluating the evidence, must be in the event that it did not create a fact or evidence that was not originally presented to it. Further, it is not permissible for the arbitral tribunal to decide on dispute issues that require expertise of its own knowledge, even if one of its members has technical expertise in the same subject matter of expertise. In fact, it is not correct for the arbitrators to be the experts while they are the judge while the arbitral tribunal may use the expertise on its own or at the request of any of the parties for which either party may seek the conducting of the expertise in case requested at the time set for the same and that it shall be for proving specific incidents being of a technical nature or it requires specialized knowledge. Yet, and in both cases, the arbitral tribunal is the one which decides whether or not to approve the expert report. In both cases also, the task of the expert must be determined in a manner consistent with the arbitration agreement and according to the subject matter of the case. Nevertheless, the arbitral tribunal has the discretion to withdraw from assigning the expert at any time. Yet, the expert must respect, in his work, the basic guarantees in litigation and to carry out his work himself. Further, the expert must have complete impartiality between the litigants and independence from any of them while any of the parties to the case may object to the appointed expert if something prevents his impartiality or independence (Sharqaw, 2012).

Actually, and since the expert's work - as an assistant to justice - is centered around providing technical knowledge and preparing evidence, yet the meaning intended by the term "*expert's dismissal*" is to put an end to his performance of his duties and prevent him from carrying out the expertise and expressing an opinion on the subject matter of the case in which he was appointed or chosen in the event that one of the reasons for the dismissal stipulated in the law is achieved while the purpose of allowing the expert's dismissal request is to provide the parties to the litigation with guarantees that make them feel safe against the expert's bias or being affected in the performance of his duties by his subordination to any party.

The Significance of the Research

The Jordanian legislator did not address the expert's dismissal within the framework of the arbitration case, as well as most of the arbitration laws of various countries, which came along the lines of the UNCITRAL Model Law on International Commercial Arbitration as is the case in Jordanian law except with regard to the jurisdiction of the arbitral tribunal to adjudicate matters of dismissal but without detailing of the legal regulation concerned with the aspects of the dismissal, so it is of utmost importance to know the legal provisions that can be the guide and that may constitute a breach by that expert of his commitment to stay impartial and independent in the exercise of the duties assigned to him by the arbitral tribunal for which the ambiguity surrounding the issue of the expert's dismissal within the framework of arbitration may be one of the reasons that lead the parties to the dispute to hesitate to resort to arbitration, especially if their disputes are based on accurate technical details in which experience has a critical role other than being one of the most important reasons for choosing arbitration to settle these disputes (International Arbitration Practice Guideline, 2021).

The Issue of the Research

The failure of the Jordanian legislator to regulate the provisions of the expert's dismissal in the Arbitration Law No. (31) of 2001 as amended, as well as most of the arbitration laws of various countries, which came along the lines of the UNCITRAL Model Law on International Commercial Arbitration, leads-in principle-to the lack of clarity of the reasons that may support the request to dismiss the expert in addition to leading to the difficulty of defining the scope of that dismissal in terms of its coverage, timing and legal effects (International Arbitration Practice Guideline, 2021). Therefore, several questions arise from this issue, which we summarize as follows:

1. Are the expert's dismissal cases the same as those of an arbitrator or judge?
2. Are there reasons for the expert's dismissal other than those that justify the arbitrator's dismissal?
3. What is the reasonable period during which litigants can request the expert's dismissal from the date of knowledge of the reason for the dismissal?
4. Is it permissible for the litigant who played a role in appointing the expert to request that expert's dismissal in all cases?
5. Are the procedures for dismissing the expert appointed by the arbitration parties different from those set for the expert appointed by the arbitral tribunal?
6. What are the determinants of the authority of the arbitration tribunal to adjudicate the request for the expert's dismissal?
7. Is it permissible to appeal the decision of the arbitral tribunal in the request to dismiss the expert?
8. What impact did the arbitration panel's decision on the expert's dismissal request have on the course of the arbitration case?

The Research Objectives

This research aims to answer the above-mentioned questions in order to be guided the sound legal provisions that should be followed in this regard and in order to reach an integrated

legal regulation regarding the issue of the expert's dismissal within the framework of the arbitration case which leads to guarantees that ensure his dismissal in a manner that achieves balance between the right of the litigants to request the expert's dismissal in the event that there is a reason justifying the same and the need to surround that right in a way that guarantees its seriousness, and to prevent it from being used for mere maliciousness and prolonging the dispute and approaching the international reference for arbitration rules to fill the gaps that the Jordanian legislator did not address in the subject of the study based on the fact that the Jordanian legislator has stipulated in article (3/B) of the Jordanian Arbitration Law that: *"The interpretation of the provisions of this law shall take into account the legal rules and principles applied in international arbitration..."*.

RESEARCH METHODOLOGY

To achieve the above-mentioned research objectives, we will rely on the analytical approach by analyzing the legal texts, linking them and drawing the conclusions that result from the same, citing some judgments and jurisprudential opinions as well as the reference of the Arbitration International Rules related to the topic of the research of which the most important are the rules of the United Nations Commission on International Trade Law (UNCITRAL) and the Rules of Evidence issued by the International Bar Association (IBA). Further, comparison shall be conducted with the matters adopted by the comparative legal systems for the points requiring the same (Jones, 2020). Accordingly, our study of the research topic is divided into two topics: The First Topic-the substantive reasons for dismissing the expert in the arbitration case. The second topic- the procedures for dismissing the expert in the arbitration case and the legal impacts

The First Topic: The Substantive Reasons for Dismissing the Expert in the Arbitration Case

The Jordanian Evidences Law No. (30) of 1952 and its amendments did not establish a special regulation for the subject of the experts' dismissal even in the field of the legal case otherwise than some comparative laws, such as the Egyptian Evidence Law No. (25) of 1968 that regulated this matter and dedicated special provisions for it (Knoll-Tudor & Rus, 2020). However, the Jordanian legislator referred, and regarding the expert' dismissal, to the judgments related to the dismissal of judges according to the second paragraph of article No. (90) of the Jordanian Civil Procedures Law No. (24) of 1988 and its amendments, which matter requires studying whether the expert's dismissal in the arbitration case is subject to the legal provisions set for dismissing judge and the arbitrator by examining the possibility of the expert's dismissal based on the reasons for the arbitrator's dismissal in (the first section), and the possibility of the expert's dismissal based on the reasons of unfitness in (the second section).

The Extent of Possibility to Dismiss the Expert Based on the Reasons Set for Dismissing the Judge or the Arbitrator

The Jordanian legislator addressed the experience by regulation in two positions of the Civil Procedures Law No. (24) of 1988 and its amendments, the first of which was in articles 83-86 of the aforementioned law while the second position was in articles 90-98 while in the context of the Jordanian legislator's regulation of experience, yet it did not provide any detail of its provisions regarding the expert's dismissal but it referred the subject of the expert's dismissal to the provisions to which the judges' dismissal is subject in the law itself, without taking into account the specificity of the expert's position that distinguishes him from the judge's position in terms of nomenclatures and procedures. In fact, the matter is not to replace the word "judge" with the word "*expert*" wherever it appears in the provisions related to the judges' dismissal in order to derive a system through which the expert's dismissal can be found (Schwebel, 1987).

Actually, it should be noted in this regard that the Jordanian legislator restricted the authorization of the experts' dismissal to the experts who are elected by the court, excluding those whom the opponents have a role in choosing. In fact, it seems that this is due to the assumption that the opponents know the experts elected by them, as it is assumed that the opponent agreed to appoint the expert only after investigating him and investigating his impartiality as well as impartiality as well as the extent of his relationship held with other opponents for which it is not possible for the opponent to argue that he does not know certain information about the expert he elects in this regard (Silver-Greenberg & Corkery, 2015). Yet, and in this context, we believe that the principles of justice and law necessitate allowing the opponents the right to seek to dismiss the expert elected by them in case of the achievement of a dismissal reason after his election.

Further, article 83/3 of the Jordanian Civil Procedures Law, as amended by Law No. 31 of 2017, obligates the expert to disclose the existence or absence of any circumstances or reasons that may raise doubts about his impartiality and independence with the parties to the case, their attorneys or the court's tribunal.

The Experts Affairs Instructions for the year 2018 also included regulating the behavior of experts before the courts for which article (13/B) of Chapter Three (Experts Code of Conduct) provides that: "*Every certified expert must, before starting work, sign a document pledging to abide by this chapter ...*".

Further, article (15) provides that: "*The expert's obligations: 1. To actively perform the duties and tasks assigned to him by his profession with the aim of integrity, impartiality, accuracy, independence, professionalism, AND neutrality to the best of his capabilities*".

In fact, it is clear from the previous articles that its text is commanding and of the common law while the court may, in whatever stage the lawsuit is, raises it on its own.

In this regard, the Jordanian Court of Cassation ruled in its judgment that "by extrapolating the provision of article 83/3 of the Civil Procedures Law, it becomes clear that its provision is commanding and of common law (Silver-Greenberg & Gebeloff, 2015). Accordingly, and as the experts did not declare the existence of any circumstances or reasons that would raise doubts about their impartiality or independence neither at the trial's minutes nor by a separate letter, the experience report or by any other means before the court, and therefore the expert report submitted by the two experts is also null and unproductive to its legal effects in

addition to being unfit for building a judgment for which the challenged judgment must be annulled because of these reasons.

In another judgment, the Jordanian Court of Cassation ruled that the expert did not disclose his impartiality and independence regarding the attorneys of the parties to the case, but rather disclosed his impartiality and independence regarding the parties to the case and the court tribunal only, which defects his experience report and renders it void causing the judgment of the Court of Appeal to be defective to rely on this report for which the judgment should be annulled (Szalai, 2013).

And regarding the legal reasons for the arbitrator's dismissal, yet the Jordanian legislator has permitted the arbitrator's dismissal based on a phrase that seems at first glance to be wide and absolute, when it was provided in article No. (17 / A) of the Jordanian Arbitration Law No. (31) of 2001 amended by Laws Nos. (16 and 41) of 2018, as follows: *"An arbitrator may only be dismissed if serious circumstances arise that raise doubts about his impartiality and independence."* In fact, it is the same phrase mentioned by article No. (12/1) of the UNCITRAL Arbitration Rules, as revised in 2010, as it provides the following: *"It is permissible to object to any arbitrator if circumstances exist that raise justifiable doubts about his impartiality or independence."*

Accordingly, the Jordanian legislator has amended, in the context of the arbitrator's dismissal, with similar provisions to the judges' dismissal, which were present in the repealed Arbitration Law No. 18 of 1953, by stating that: *"The arbitrator's dismissal is required for the same reasons of those related to the judge's dismissal."*

This is also what the Egyptian legislator used to regulate arbitration provisions within the provisions of the Law of Pleadings. In fact, article No. (503) of the Egyptian Pleadings Law No. (13) of the annulled 1986 was ruling for dismissing the arbitrator for the same reasons that the judge is dismissed or is deemed unfit for judgment. Yet, and when a special law on arbitration was issued, namely Law No. (27) of 1994 and its amendments, article No. (18) of this law listed a general and outline reason for the arbitrator's dismissal, i.e. the existence of circumstances that raise serious doubts about his impartiality or independence (Baker & Davis, 1992). Hence, no specific reasons for the arbitrator's dismissal have been identified while they were not referred to the reasons for which the judge may be dismissed or is deemed unfit for hearing the case.

Thus, we find that the Jordanian legislator, as well as the Egyptian legislator, have followed the UNCITRAL model approach in the matter of international commercial arbitration, as well as the rules issued by the Commission itself, where article (2/12) of the Model Law provides that: *"An arbitrator may not be dismissed unless there are circumstances that arise raising doubts about his neutrality or independence."*

However, and despite the Jordanian legislator's deviation, and in the Arbitration Law No. (31) of 2001 and its amendments, from the arbitrator's dismissal for the reasons of the judge's dismissal, yet the court that examines the request for the arbitrator's dismissal may be guided by the reasons for the judges' dismissal mentioned in the Jordanian Civil Procedures Law previously referred to if it considered that one of those reasons would affect the impartiality of the arbitrator or render him unfit for consideration of the arbitration litigation. In fact, it should be noted here that the non-referral of the Jordanian legislator regarding the reasons for the arbitrator's

dismissal to the reasons for the dismissal of the judges results from the lack of exclusivity of the Jordanian legislator on the reasons for the arbitrator's dismissal as well as the judges. Rather, it was found that it followed the model law approach, by setting a general standard related to impartiality and independence, whereby the arbitrator is dismissed for any reason that may affect his impartiality or prove his lack of independence (Broches, 1990).

In fact, the impartiality of the arbitrator in this context means that he is not biased towards one of the parties or against one of them for private or personal reasons, because at that time he will not be fair between the two parties, and that the arbitrator's lack of independence is due to the existence of a connection between him and one of the parties, which may be in the form of a relationship of interest or in subordination form to him since the arbitrator should be independent from either party and be partial which matter does not mean that any relationship held between the arbitrator and either party –whether being the one that selected him or the other- justifies the dismissal of the arbitrator as it may be an unrelated relation that would not be of an impact on the impartiality and independence of the arbitrator.

And if the expert's dismissal in the case is subject in terms of the same to what the judge is subject to in this regard, and since we have come to say - in principle - that the arbitrator's dismissal can be broadened for some of the reasons that the judge is being dismissed if it affects his impartiality and independence, then it is possible to say that the reasons for the dismissal of the expert in the arbitration case are broadened to include also the reasons for the dismissal of the judges themselves, with a specificity that characterizes that submission in terms of its extent and scope. In fact, the Jordanian legislator listed the reasons for dismissing the judges for which the expert may be dismissed for any of them in article (134) of the Civil Procedures Law No. (24) of 1988, while we will examine these reasons according to the following:

First- The Similar Case and the New Litigation

According to the first paragraph of article (134) of the Civil Procedures Law, if the expert or his spouse has a suit similar to the case in question in which he is required to conduct expertise, or if one of them finds a dispute with one of the litigants or with his spouse after the case heard before the judge having been constituted, then the expert may be dismissed, unless the new lawsuit was instituted after the expert was appointed with the intention of dismissing him.

In reality, this determination involves two reasons for the dismissal, the first being the similar case, i.e. that the expert's or his wife's case raises the same legal issue that the case requested to be dismissed raises from the trial in which he is requested to be dismissed, or that the facts of the two cases are similar in a way that calls for the same legal principle to be applied to them.

Actually, it is not required that the subject matter and facts of the two cases be identical, rather it suffices that there are legal points or similar facts for adjudication.

In fact, the wisdom of the expert's dismissal in this case is that the expert is likely to be affected when he presents his report in the case pending before the judge in line with his view of his or his wife's case, driven by his natural feeling in the direction that achieves his personal interest or that of his wife, and by the desire to establish a judicial precedent on which his or his wife's lawsuit shall be based.

As for the second reason for the dismissal, i.e. the new litigation, then the same denotes finding litigation against the expert or his wife with one of the opponents or with his wife after the constitution of the case in which the expert is sought to be dismissed.

This case assumes that there is a lawsuit already filed before the court and the expert is asked to conduct his expertise in this regard, and then (the expert himself or his wife) creates a new dispute (case) with one of the parties to the first lawsuit or with the wife of one of its parties, after the first lawsuit has been filed and he has been elected as an expert therein.

Second- The Litigation of the Expert's Divorcee or his Relative with one of the Litigants

An expert may be requested to be dismissed in case his divorcee from whom he has a child, any relative or relation in law shall have a litigation heard before the courts with any of the litigants at the lawsuit or with his wife unless the said litigation shall have been constituted after being elected as an expert aiming at dismissing him.

This case assumes the existence of a lawsuit brought before the court, which is the case that the expert is required to present his report on its subject matter and another case instituted at the same time before the court, which parties are the divorcee of the expert from whom he has a child or one of his relatives or in-law on one part, and one of the parties to the first lawsuit or the wife of one of them on the other. In fact, it is equal if this lawsuit was filed before the filing of the lawsuit brought before the judiciary or after it was filed.

Third- The Strong Relationship Held between the Expert and One of the Opponents

The expert may be dismissed if one of the litigants is working for him or if one of the litigants has used his housing or had received a gift from him before or after he was elected as an expert.

Fourth- Hostility and Affection between the Judge and One of the Litigants

The expert may also be dismissed if there is enmity or intimacy between him and one of the litigants, with which it is likely that he will not be able to perform his task without inclination.

In fact, and if the assumption is made that it is possible to say that the expert's dismissal in the lawsuit can be broadened in terms of the same reasons for what the judge is subject to in this regard, and that the arbitrator's dismissal may be expanded for the same reasons that the judge's response if it affects his impartiality and independence. Hence, the possibility to believe in subjecting the dismissal of the expert in the arbitration case to the same reasons set for the judge, which was discussed above, does not mean that those reasons are literally applicable to the expert's dismissal in the arbitration case, but rather those reasons are applied to his dismissal to the extent that they are compatible with the specificity of the arbitration case, which will be covered in the second topic.

However, it should be noted in this regard that the reasons for the judge's dismissal, and consequently the expert's dismissal - whether in the judicial or arbitration case - contained in

article 134, are not related to the common law, but rather related to the private interest of the parties, and their effects are only produced upon the request of those who have the interest. Yet, the judge's dismissal, the arbitrator's and the expert's dismissal is a permissible matter, which is extracted from the beginning of the aforementioned article (134), specifically from the expression "*a judge may be dismissed*".

The Possibility to Dismiss the Expert for Unfitness Reasons

As previously mentioned, the Jordanian legislator referred to article No. (90) of the Civil Procedures Law, regarding the experts' dismissal, to the reasons for the judges' dismissal contained in article No. 134 of the same law. Yet, the said referral has not been caused to include the possibility of the application of the reasons of unfitness of judges mentioned in article No. (132) of the aforementioned law on the expert in this context in addition to the provisions issued by the Jordanian legislator regarding the rules of conduct of experts, which were included in the Instructions on the Experts Affairs before the courts as previously referred to (Holtzmann & Neuhaus, 1989).

In fact, and by returning to the said article No. (132), we find that it has provided for the following: The judge is not fit to hear the case and he is forbidden to hear it even if no litigant rejects him in the following cases:

- 1- If he was the spouse of one of the litigants or was a relative or son-in-law to the fourth degree.
- 2- If he or his spouse has an existing dispute with one of the litigants or with his spouse.
- 3- If he was an attorney for one of the litigants in his private business, a trustee, a receiver, or a manager of his inheritance, or otherwise was the spouse of a guardian of one of the litigants or custodians over him, or had a fourth-degree kinship or affinity relationship with this trustee or trustee or one of the board members of the company in question or one its directors while this member or director had a personal interest in the lawsuit.
- 4- If he or his wife, or one of his relatives or in-law, or for whom he is his attorney, trustee, or custodian, has an interest in the existing lawsuit.
- 5- If there is a fourth-degree kinship or affinity relationship between him and one of the tribunal judges, or there is between him and the defender of one of the litigants a second-degree kinship or affinity relationship.
- 6- If he had issued a fatwa or pleaded on behalf of one of the litigants in the case, even if that was before his being appointed in the judiciary, or if he had previously examined it as a judge, expert or arbitrator, or had given testimony therein.
- 7- If a compensation lawsuit is filed against the applicant for dismissal, or if a report was submitted against him to the competent authority.

In fact, article (7) of the Experts Affairs Instructions of 2018 Before the Courts stated explicitly and affirmed some of the reasons included in article (132) above to the effect that: "*The expert must ask the court to withdraw from the work of expertise if he is close to the fourth degree or son-in-law of one of the parties to the dispute, or that he has a direct or indirect interest in any work related to the subject matter of the case in which he was appointed as an expert, or otherwise if he or his wife or any of his relatives up to the fourth degree has an existing dispute with one of the parties to the dispute*".

Actually, and though the reasons for the dismissal stipulated in article (134) of the Civil Procedures Law are not related to common law, while the reasons for unfitness relate to common law, as the judge, and once any of them is achieved, then the judge turns to be unfit to hear the case, without the need for one of the litigants to request the same. Therefore, it may seem at first glance that the claim that the reasons for the response are applicable to the expert despite their lack of relevance to the common law imposes - in a first instance - the claim that the reasons for unfitness are applicable to the expert, due to their relevance to the common law.

In fact, it can be said that the reasons for the unfitness of the judge mentioned above, if they are available, can affect the impartiality and independence of the expert in the same way as the judge. Yet, the question that arises here is: does the difference in the legal positions of both the judge and the expert lead to the necessity of a difference in the ruling regarding the order of nullity or not on the procedures that take place in the case in the event that one of the aforementioned reasons is present?

The answer to this question is that if one of these reasons is available in the judge and he continues to hear the case, then all the procedures that have taken place in the case, including the judgment issued in the case, are considered null including the judgment issued in the case if it has reached that stage which basis is the provision of article No. (133) of the Jordanian Civil Procedures Law No. (24) of 1988, which states that: *"A judge's act or ruling in the cases referred to in the previous article is null and void even if it is by agreement of the litigants."*

As for the expert, and if one of the reasons for unfitness mentioned above is present in the arbitration expert, or those included in the provision of article (7) of the Experts Affairs Instructions of 2018 above, which provides that: *"The expert must ask the court to step aside from the work of expertise if he is ... "*, yet, and by virtue of his legal position as an assistant to justice, his continuing to work despite the presence of one of the reasons mentioned in it leads to the same effects (nullity) that the judge's continuing to hear the case in spite of the presence of one of the reasons for the lack of fitness in him, and accordingly, the expert is dismissed by virtue of law.

However, it should be noted here, and as an important issue, that those reasons, whether mentioned in article (132) of the Civil Procedures Law or article (7) of the Expertise Affairs Instructions, are related to the right of litigants and come in the context of evidence that the litigants reassure about if the expert was appointed by them and disclosed explicitly or otherwise that these reasons of unfitness as mentioned before are present in him since the said reasons are related to the right of litigants, and in the context of experience and evidence, and in light of the absence of a provision in the instructions for expert affairs as stipulated in article (133) above, the absolute prohibition for the judge and if a request is not submitted for the expert's dismissal in this case and the expert continues to perform his task, despite the presence of one of the reasons mentioned in article (132) of the Civil Procedures Law or article (7) of the Instructions for Expertise Affairs in it, then his work is in the performance of the expertise and the report that was prepared by him are considered correct, unless these reasons are unknown to the parties or one of them, i.e. the expert did not disclose the same before performing his task or when submitting the expert report.

From here we conclude for all the above that the availability of any of the cases of dismissal or lack of fitness determined by the judge against the expert, does not necessarily lead to the invalidity of the expert's report submitted by him as long as he discloses those cases before the arbitration tribunal and the parties to the case and submits his report according to the task assigned to him within its limits in addition having the legal period stipulated by the law regarding waiving his right to object to any of the provisions of the Jordanian Arbitration Law lapsed, including the case of dismissing the expert or his unfitness, then the work of the expert turns to be productive of its legal effects which productivity shall be appreciated by the arbitration tribunal upon weighing the evidence, for which article (7) of the Jordanian Arbitration Law provides that: *"If one of the parties to the dispute continues the arbitration procedures with knowledge of the violation of a condition in the arbitration agreement or a provision of this law, which may be agreed upon its violation, and he has not submitted an objection to this violation at the agreed date or within a reasonable time when there is no agreement, then this is considered a departure from him of his right in objection"*.

In fact, we shall not miss in this context to mention that article No.(29/2) of the UNCITRAL Arbitration Rules, as revised in 2010, states the following: The expert shall, before accepting his appointment, submit to the arbitration tribunal and to the parties a statement of his qualifications and an acknowledgment of his neutrality and independence. The parties shall inform the arbitration tribunal, and within the time determined by the arbitration tribunal, whether they have objections to the expert's qualifications, impartiality or independence after which the tribunal shall proceed deciding the acceptability of any of the said objections (Hill, 2018).

Further, this is also stipulated in article (2/6) of the Evidence Rules in International Arbitration as established by the International Bar Association (IBA) to the effect that: The expert appointed by the arbitral tribunal shall, before accepting the appointment, submit to the arbitral tribunal and the arbitral parties a description of his qualifications and an acknowledgment of his impartiality with the parties, their legal advisors and the arbitral tribunal. Yet and after the appointment of the expert, no party may object to the expert's qualifications or impartiality unless the objection is based on reasons that the party became aware of after the appointment was made while the arbitral tribunal shall decide quickly what action it will take, if any.

In fact, and based on the analysis of the aforementioned provisions, it becomes evident that the UNCITRAL Arbitration Rules as well as Rules of Evidence in International Arbitration as laid down by the International Bar Association (IBA) have considered adding to the disclosure of impartiality and independence, the expert's qualifications and capabilities to be one of the elements required for his acceptance in the first place, thus adding an explicit reason –based on opinion- for the expert's dismissal to the arbitration case that was not stipulated by the Jordanian legislator in article No. (18) of the Law of Arbitration No. (31) of 2011 amended, which is that the expert does not have the qualifications that would enable him to perform his task properly if the arbitration tribunal omits asking for such qualifications from the expert before appointing him. Actually, the UNCITRAL rules as well as Rules of Evidence in International Arbitration as laid down by the International Bar Association (IBA) did not take this reason as a reason for the

arbitrator's dismissal in the arbitration case while it has been sufficient for both of the UNCITRAL Rules and to the Jordanian legislator to explicitly provide for the possibility to dismiss the arbitrator. In the event that there are doubts about his impartiality and independence, that is, one of the reasons for requesting the expert's response can be added, i.e. the insufficient qualifications or experience for the task or the issue assigned to him if the arbitration tribunal omits the same as it is unacceptable to appoint an expert who lacks experience and competence to perform his task.

The Procedures for Dismissing the Expert in the Arbitration Case and the Legal Effects of the Same

We have previously concluded that the reasons for the judges' dismissal apply to the expert in the arbitration case could out of the unity in the cause that leads to this, namely that it achieves what violates the principle of impartiality and independence and constitutes a breach of it in a manner that shows the arbitrator's bias with or against one of the litigants and not stripping him of his tendencies and the influence of his relations on performing his mission.

However, the statement that the expert in the arbitration case may be subject to these reasons cannot be taken into account at its launch, as it is possible within certain limits, and has certain legal effects. Accordingly, we will address the scope of the expert's dismissal in the arbitration case in (a first section), the date on which the request may be made in (a second section), the competent authority to consider the request for dismissal in (a third section), the effect of submitting the dismissal request in (a fourth application), and the extent of the possibility of appealing the judgment issued in the dismissal dispute in (a fifth section).

The Petition for Dismissing the Expert in the Arbitration Case

Among the procedural issues related to the subject of the expert's dismissal in the arbitration case is the question of who has the right to this request, whether from the parties to the case or from the arbitral tribunal, as this requires analyzing the texts related to this aspect where we find that paragraph (a) of article No. (34) of the Jordanian Arbitration Law No. (31) of 2001, as amended, provides for the following: *"The expert appointed by the arbitration tribunal shall be one or more natural or legal persons to conduct the expertise on any movable or immovable property or otherwise for any matter it deems necessary to conduct the expertise on."*

Further, it was stated in the provision of paragraph (B) of the aforementioned article that: *"If the two parties agree to elect the expert or experts, then the tribunal agrees to appoint them. Otherwise, it will elect them by itself. Further, it must specify, in its decision, the expert's task and to order the depositing of the fees as well as the appointment of the party charged with paying them."*

Yet, and based on the analysis of the provisions of the two above-mentioned paragraphs, the expert may be appointed by the arbitration tribunal (Tribunal Appointed Expert) while the either party to the arbitration case may appoint an expert to be nominated within his file of evidences (Party Appointed Expert) which matter requires distinguishing between them through the following:

The expert appointed by the arbitral tribunal: Article (32/I) of the Jordanian Arbitration Law stipulates that: *“The arbitral tribunal may, on its own or at the request of one of the arbitration parties, decide the carrying out of a survey and expertise in accordance with the provisions of article (34) of this law”*.

In the same regard, paragraph No. (1) of article No. (29) of the UNCITRAL Arbitration Rules, as revised in 2010, provides for the following: *“The arbitration tribunal, and after consulting with the parties, may appoint one or more independent experts to submit a written report to it on a specific issue to be determined by the arbitration tribunal”*. This is also stipulated in article (6/2) of the Rules of Evidence in Arbitration as set by the International Bar Association (IBA) – previously mentioned – to the effect that: *“The expert appointed by the arbitral tribunal...”*.

Yet, these texts denote that the arbitral tribunal has the right to appoint an expert in the case, either on its own or after consulting with the parties to the dispute. This expert must disclose his impartiality and independence from the parties to the dispute, their legal advisors, and the arbitral tribunal.

The expert appointed by the arbitration parties: The arbitration parties have the right to rely on experts to prove a technical issue in any matter related to the case before the arbitral tribunal, either by agreement among themselves or individually for each of them, but within a period specified in the terms of reference and procedural rules concluded by the parties or approved by any arbitral institution or determined by the arbitral tribunal while the other party has the right to comment on this opinion or submit a dissenting report.

In this regard, we find that article (34/B) of the Jordanian Arbitration Law stipulates that: *“If the two parties agree to elect the expert or experts, then the tribunal agrees to appoint them.”* Also, article (32/F) stipulates that: *“Either of the two parties to the arbitration may submit an expert report within his list of evidence prepared by an expert of his choice, provided that the letter of assignment of that expert, his mission and the fees paid to him shall be disclosed....”*

In this regard, clause No. (2) of article No. (28) of the UNCITRAL Arbitration Rules stipulates the following: *“Witnesses, including expert witnesses, may be heard under the conditions determined by the arbitral tribunal...”*. Further, paragraph No. (5) of Article (29) mentioned above also includes the same rules: *“... and any party may present expert witnesses at this session to testify on points of dispute”*.

Article (5/2) of the Rules of Evidence in Arbitration as established by the International Bar Association (IBA) specified the basic rules and data that must be included in the expert report of the expert appointed by one of the parties.

Based on this distinction between the expert appointed by the arbitral tribunal and the expert appointed by the arbitration parties, and the texts regulating these cases in the Jordanian Arbitration Law, the UNCITRAL Arbitration Rules and the rules of evidence in arbitration as set by the International Bar Association (IBA), a question arises in this regard about the expert who may be dismissed in the event that one of the aforementioned reasons is present in him. Is it permissible to request the dismissal of the expert appointed by the arbitration tribunal and the expert chosen by the litigants alike? Or is the permissibility of requesting a dismissal is limited to one of them and not the other?

In order to answer this question, a distinction must be made between the request for the dismissal of the expert appointed by the arbitral tribunal, which we find that the Jordanian legislator did not require any disclosure from him regarding his impartiality and independence, contrary to what was stipulated in article No. (29/2) of the UNCITRAL Arbitration Rules and what was also stipulated in article (6/2) of the Rules of Evidence in International Arbitration as laid down by the International Bar Association (IBA) - previously mentioned - and in view of the silence of the Jordanian legislator on this determination, it is possible to refer to what is included in these international rules regarding the organization of expertise in international arbitration, based on the fact that the Jordanian legislator has stated in article (3/B) of the Jordanian Arbitration Law that: *“In the interpretation of the provisions of this law, the legal rules and principles applied in international arbitration shall be taken into account...”*.

Accordingly, the arbitration parties have the right to request the dismissal of the expert appointed by the arbitral tribunal if there is a violation of his impartiality and independence towards the parties and their legal advisors as well as the arbitral tribunal in accordance with the controls set by these rules in this regard and what was dealt with in detail in the first section of this study.

As for the expert appointed by the arbitration parties, and despite the difference in the scope of his disclosure from the expert appointed by the arbitral tribunal, we find that the Jordanian legislator has stipulated in the text of article (32/F) of the Arbitration Law - referred to above - that expert discloses only his letter of assignment, mission and fees paid to him while it did not require the disclosure of his impartiality and independence towards the parties and their legal advisors as well as the arbitral tribunal, which is supposed to refer to the contents of the international rules subject of comparison regarding the organization of this issue where we find that the UNCITRAL Rules of International Arbitration did not include any reference to the disclosure of the expert appointed by the parties, but we find that article (5/2) of the Rules of Evidence in International Arbitration issued by the International Bar Association (IBA) stipulated that the expert appointed by the parties should include in the expert report submitted by him as follows: *“Acknowledgment of his impartiality and independence from the parties, their legal advisors and the arbitral tribunal”*. The thing that is concluded with the same is that even the expert appointed by the parties is also obligated to disclose, as is the case with the expert appointed by the arbitral tribunal, about everything that affects his impartiality and independence, and accordingly, the other party has the right to submit a request for his dismissal, and that the party that appointed him also has the right if it becomes clear to him that a serious reason after his appointment that affects the impartiality and independence of the expert appointed by him, and he was not aware of it until after his appointment to submit a request for his dismissal.

By the same mechanism, the dismissal of the expert agreed upon between the two parties is also requested in the event that there is a reason for rejecting him after his appointment by both of them that affect his impartiality and independence.

On the other hand, we find that the discussion of this issue is within the scope of experience before the judiciary in Jordanian law - as it was previously addressed in the first section of this study - when examining the reasons for the expert's response to the same reasons

for the judges' response, especially what was mentioned by the Jordanian legislator in the Jordanian Civil Procedures Law, specifically the provision of article 90/2) of it, which included the following ruling: "*... and the experts who are elected by the court on its own initiative shall be subject to the rulings related to the dismissal of the judges*".

Accordingly, it has been shown to us that the Jordanian legislator restricted the authorization of the experts' dismissal to the experts elected by the court, excluding those whom the opponents have a role in choosing, and it seems that the reason for this is the assumption that the litigants know the experts they elect, as it is assumed that the opponent did not agree to the appointment of the expert until after investigation and inquiry about his integrity and impartiality as well as the extent of his relationship held with the other opponents for it is not possible for the opponent to argue that he does not know certain information about the expert he elects in this regard. In fact, and in this regard, we believe that the principles of justice necessitate vesting the right upon the opponents to request the dismissal of the expert elected by them in case of presence of the dismissal reason after electing him or otherwise for a reason not known for the party or having not been disclosed by the expert upon his selection, whether in the lawsuit or in the arbitration case, and so the Jordanian legislator is called upon to intervene in legislation to explicitly grant litigants the right to dismiss the expert as mentioned above just like granting the litigants the right to request an arbitrator's dismissal whether he was the arbitrator appointed by the arbitration tribunal or whom the litigants had a role in choosing.

The Time when the Dismissal of the Expert may be requested in the Arbitration Case

The Jordanian legislator has not restricted the request for the dismissal of the judge or the expert appointed by the court to the necessity of presenting it at a certain stage, and accordingly it is permissible to request their dismissal whether the reason for the dismissal occurred after the lawsuit was filed or before the same, and it is permissible to request their dismissal in any case or stage of the case as long as the pleadings have not been concluded yet.

In fact, this is in contrast to the arbitrator's dismissal for which it is not permissible to request the latter's dismissal except for reasons that arise after the arbitrator's appointment or selection, that is, if the reason for the dismissal is established and the litigant or his attorney is aware of that reason before the arbitrator's selection or appointment, then he may not request the dismissal of that arbitrator.

This is what was included in article No. (17/B) of the Jordanian Arbitration Law No. (31) of 2001 as amended as it states that: "*It is not permissible for either of the parties to the arbitration to dismiss the arbitrator appointed by him or having participated in his appointment except for a reason that he became aware of after this appointment was made*".

It should be noted in this regard that the Jordanian legislator has kept silent in the aforementioned law about specifying the stage in which the expert's dismissal may be requested. Yet, and on the occasion of that silence, the following question arises: is it permissible in this regard to submit a request for the expert's dismissal at any stage of the arbitration case, just as it is permissible at any stage in the lawsuit regarding the request for the judges' dismissal?

In fact, and in this context, we see that the answer to the above question is the distinction between the expert appointed by the arbitral tribunal and the expert appointed by the parties, in

the manner detailed in the previous section since the expert appointed by the arbitral tribunal may be dismissed from the date of his appointment by the arbitral tribunal and even before the issuance of the arbitral award if he shall meet the reasons for the dismissal and while one of the parties of the case knows about the same. As for the expert appointed by the parties, based on the explicit contents of article 29/2 of the UNCITRAL Arbitration Rules, as revised in 2010, which provide the following: *".. and after appointing the expert, it is not permissible for any party to object to the expert's qualifications, impartiality or independence unless the objection is based on reasons that that party became aware of after the expert was appointed"*.

This means that the request for the expert's dismissal in the arbitration case appointed by the parties must precede the appointment of that expert while after his appointment, yet it is not permissible to request his dismissal unless he knows the reason for the dismissal after that appointment has been made.

In fact, it should be mentioned here and in this regard that the Jordanian and international legislators have not stipulated a specific period of time during which the dismissal may be requested. Therefore, a question arises about the period to be taken into account for accepting the dismissal request formally, whether the expert was appointed by the arbitration tribunal or the parties of the case, and if we have measured the expert's dismissal to the arbitrator's dismissal in terms of the reasons justifying it, and hence, is it permissible to measure with regard to the mentioned period as well?

In fact, article No. (18/A) of the Jordanian Arbitration Law No. (31) of 2001 as amended stipulates the necessity of submitting an arbitrator's dismissal request within fifteen days from the date on which the respondent becomes aware of the formation of the arbitration tribunal or the circumstances justifying that. In fact, this date is considered the date for the lapse of the right to submit the request for dismissal, and if the time lapses, he will lose the right to submit the request for dismissal and shall not be accepted in form, which is the ruling confirmed by the Amman Court of Appeal, as it decided in one of its rulings that: The request for an arbitrator's dismissal shall be submitted within fifteen days from the date the applicant becomes aware of the formation of the arbitral tribunal or the circumstances justifying the dismissal, pursuant to article No. (18/A) of the Arbitration Law No. (31) of 2001, and where this period has lapsed, then the request is in this the case submitted after the lapse of time for which must be rejected in form.

In fact, we believe that the period within which the expert's dismissal may be requested could be fifteen days starting from the date the respondent becomes aware of the reasons that can be established to be present in the arbitration expert after his appointment and permits the request for his dismissal, or at least that this period does not exceed the fifteen days' date mentioned in case the aforementioned analogy was not taken as mentioned, due to the expeditiousness required by the arbitration system in deciding arbitration cases, which are resorted to mainly in order to avoid the procedures and long deadlines that are usually required for court cases.

The Party Competent to Entertain the Request of the Expert's Dismissal

In the Arbitration Law No. (31) of 2001, the Jordanian legislator dealt with the party competent for examining the request for the expert's dismissal, as it is provided in article (32/J)

that “*the arbitration tribunal shall have the jurisdiction to decide in all matters related to the experts and to terminate their mission or dismiss them and accept or reject all their expertise or part of the same*”.

In fact, the Jordanian legislator has done well by delegating the competence to consider the request for the expert’s dismissal in the arbitration case to the arbitral tribunal whether that expert was appointed by it or by the litigants having a role in choosing him by which it avoided the issues that arise from the expert’s dismissal and the extent of its departure from the jurisdiction of the arbitration tribunal. It has jurisdiction in its entertainment without the need for the judiciary to intervene in that, because the experience as a whole is considered one of the matters being subject to the evaluation of the arbitral tribunal regarding its productivity for the case being entertained before it, and therefore it is capable to decide the issue of the expert’s dismissal better than others.

Actually, the question arises here: can the arbitration tribunal terminate the expert’s assignment on its own if it becomes clear to it that one of the reasons for the dismissal is available and even though neither of the litigants has submitted a request to dismiss him?

Yet, the answer to this question is imposed by the same reason set for the expert’s dismissal at the litigant’s request since as long as there are reasons demonstrated before the arbitration tribunal indicating the expert’s unfitness being detected on its own, and with a different mechanism for that, then it is not conceivable that the tribunal submits a request for the expert’s dismissal, but rather may issue a dismissal decision for the expert whether it was the party that appointed him or otherwise being appointed by one of the litigants or both. In fact, these cases include, for example, if the tribunal finds that the expert does not have the necessary qualifications for the subject matter of the case, or having provided misleading information about his experience to it or otherwise that he works for a party that has a relationship with one of the litigants which last assumption can be conceived in the event that the expert is (a legal person), an engineering office or an auditing firm, and it was found that he had provided one of the litigants with advice in a case similar to the same case he is assigned with providing expertise therein while he did not disclose the same to the arbitration tribunal, then, and in such cases, the arbitral tribunal may disqualify it from the task entrusted to it with stating at the justification for the parties to the case.

The Effect of Submitting the Request for Dismissing the Expert and Deciding the Same by the Arbitration Tribunal

The Jordanian legislator, and in the judicial field, did not stipulate that the judge should stop proceeding with the case, nor that the expert should stop performing his task until a decision is made on the request for dismissal submitted against each of them.

As for the Arbitration Law, and regarding the arbitrator’s dismissal, we find that article No. (18/D) of the Jordanian Arbitration Law No. (31) of 2001 as amended provides for the following: “*The submission of the request for dismissal does not entail the suspension of the arbitration procedures, and if the arbitrator is ruled to be dismissed, then the arbitration procedures in which he participated, and including the final arbitration award, shall be deemed null and void. However, the arbitration tribunal, and in its new formation, may adopt any of the*

previous procedures provided that the appointment of the president of the arbitration tribunal whose selection was participated by the arbitrator ruled to be dismissed shall remain valid".

In fact, the aforementioned provision denotes that submitting the dismissal request does not entail the arbitrator's stopping the proceeding of the case heard before him, and if this is the case with respect to the arbitrator, then it is more appropriate that the arbitration procedures do not stop upon submitting a request for the expert's dismissal whether being appointed by the tribunal or by the parties, as the latter's work is mainly limited to assisting the arbitrator from the technical aspect, and if the previous analysis is sound, then we believe that the fact that the arbitration proceedings are not affected by the submission of the expert's request for dismissal should not prevent that expert from continuing his work in the expertise until the request for his dismissal is decided in order to avoid the effects that may result from continuing to perform his mission, especially if the request for dismissal proves to be asserted.

Yet, a question arises here about the duration of making the decision by the arbitration tribunal regarding the request for the expert's dismissal? Is it possible for the expert to submit a reply pleading to his dismissal request?

Actually, and despite the Jordanian legislator's silence about specifying a specific period, yet there is no doubt that the nature and requirements of acceleration in arbitration have imposed the importance of time in all its procedures for which we find that the Jordanian legislator, and in the Arbitration Law No. (31) of 2001 as amended, has stipulated a specific period during which the competent court must decide on the request for the arbitrator's dismissal, i.e. thirty days, as from the date of receiving the request by it. Actually article (18/B) provides that: *"The request for dismissal shall be heard by the competent court by reviewing unless it decides otherwise and it shall decide on it within thirty days from the date of receiving it at its bureau after which its decision may not be challenged by any of the appeal methods".*

In fact, and if the term set for deciding on the request of dismissal of the arbitrator by the competent court has been set by the legislator as thirty days despite the lengthy litigation procedures, then it is more appropriate and in line with the acceleration of the arbitration process which the tribunal must take with great importance for which it should not exceed the period of hearing the expert's dismissal request before the arbitral tribunal which amounts to thirty days based on analogy with the period of the arbitrator's dismissal before the court out of the union of the cause between them, especially since there is a certain period set for arbitration while the delay in any proceeding by the tribunal would affect it and lead to other consequences.

As for the expert's right to submit a reply to the request for his dismissal, and if we return to analogy with the arbitrator's dismissal, then we find that the Jordanian legislator, and in paragraph (A) of Article (18) above, has authorized the arbitrator whose dismissal is requested, and in the event that he does not withdraw, to submit a reply to the request for dismissal. By analogy, the requirements of justice, especially if there is clear evidence before the arbitration tribunal on the reason for the arbitrator's dismissal and in order to avoid prolonging the arbitration procedures, especially if the expert has gone a long way in preparing the report, yet it may ask him to provide a reply within a short period to be specified by it on the reasons for his dismissal, but if there is a clear evidence in front of it regarding his dismissal, then it must judge for his dismissal directly without delay.

On the other hand, if it is proven to the tribunal that the expert's request to be dismissed in the case entertained before it to be correct, then it shall order his dismissal, and therefore, and if the expert has not completed the experience report and submitted the same to it, then it will ask him to stop completing it and return the documents and papers that have been submitted for the case, while if the expert has completed his report and handed it over to the arbitration tribunal, then. It must not approve this report submitted by him and to assign a new expert.

Yet, a question arises here about the experience that is assigned to more than one expert, for example, an expert engineer, an expert lawyer and an accountant expert, and if one of them is dismissed, does that have the effect of dismissing the rest of the experts from their mission?

Actually, and if we go back by analogy with the effect of that in relation to the arbitrator's dismissal, then we find that the Jordanian Arbitration Law No. (31) of 2001 amended has, in article (18/D) provided that: *"Submitting a request for dismissal does not entail the suspension of the arbitration procedures, and if a ruling is issued to dismiss the arbitrator, then the arbitration procedures in which he participated shall stand to be null and void, including the final arbitration award, while the arbitration tribunal, and in its new formation, may adopt any of the previous procedures ..."*.

Accordingly, and if an analogy is made to this provision in relation to the dismissal of one of the experts in the arbitration case if their number is more than one, then we find that the basis is the invalidity of the report in which the dismissed expert participated but without resulting in the rest of the experts involved with him in the experience being dismissed. Yet, and in case of appointing an expert as a substitute for the expert who has been dismissed while expert's report has been completed or reached advanced stages, then the experts, and in their new formation, may adopt any information shared by the expert who was dismissed and complete the report or to repeat the entire experience. In fact, it is preferred in all cases, and in order for the arbitration tribunal and the parties to be reassured, that the experience report is repeated in full.

Yet, another question arises about the financial fees that were paid to the expert whose dismissal has been requested: Can they be recovered from him after his dismissal? The Jordanian Arbitration Law did not address this issue with regard to the arbitrator, but there is nothing to prevent the expert who was dismissed to be requested to refund the sums paid to him, especially if the reasons for his dismissal are concerned information that he was supposed to disclose but failed the same which is then considered as a breach of his professional and contractual commitment for which he shall bear all its consequences which matter may fall under the contractual liability rules of the expert that entails his questioning about cases of (fraud, misleading and severe mistake) and not only recovering the sums paid to him, but also claiming him of compensation if his report results in damages to any of the parties to the arbitration dispute.

The Extent of Possibility of Appealing against the Judgment Issued for the Expert's Dismissal or the Rejection of the Same

Article No. (140) of the Jordanian Civil Procedures Law includes the permissibility of appealing against the judgment issued in litigation of the judges' dismissal in the event that this judgment includes a rejection to dismiss, as it provides for the following: *"If the court decides to*

reject the dismissal request, then the applicant may appeal this decision and challenge it with the ruling issued at the conclusion of the case”.

However, and in the event that the judgment is issued in the dismissal litigation by accepting the dismissal request, then it is not permissible for the judge whose dismissal was ruled for to appeal this ruling. Accordingly, and by analogy with the judge, the expert is prevented from challenging the judgment issued to accept his dismissal request, and perhaps the wisdom in that is that the expert is like the judge who is not a real opponent in the litigation of his dismissal. Yet, allowing either of them to appeal the judgment issued for his dismissal means entering into useless subsidiary disputes that impede the course of the original litigation. Further, the other party in the lawsuit (who did not seek the expert's dismissal) may not appeal the judgment issued for the expert's dismissal as he has no interest in such an appeal.

As for the field of arbitration, and by going back to article No. (18/A) of the Jordanian Arbitration Law No. (31) of 2001 as amended, we find that it has provided that: *“... and if the arbitrator whose dismissal is requested does not give up, then he must submit his reply to the dismissal request together with the evidence within fifteen days from the date of submitting the request. Thereafter, the arbitration tribunal in this case, and upon the request of the applicant, shall refer the request with the reply of the arbitrator, if any, whose dismissal is requested to the competent court to decide on it”.*

As for paragraph (B) of the same article, then it stipulated that *“the request for a dismissal shall be examined by the competent court by reviewing unless it decides otherwise, and it shall decide on it within thirty days as from the date on which it was received by its bureau after which its decision may not be subject to appeal by any of the methods of appeal”.*

In fact, the Jordanian legislator did not distinguish, according to the above legal provision, in the issue of the inadmissibility of the judgment of the competent court regarding the request for the arbitrator's dismissal to be appealed whether that judgment was issued with the acceptance or rejection of the dismissal, and accordingly it may seem that the implication of this is the inadmissibility of the judgment issued in the challenge of dismissal in both cases.

Yet, and as for the Jordanian legislator's silence about addressing the issue of challenging the arbitration tribunal's decision regarding the expert's dismissal or the rejection of the same, and with reference to what the Jordanian legislator stipulated in article (8) of the Arbitration Law No. (31) of 2001 to the effect that: *“It is not permissible for any court to intervene in matters governed by this law except in the cases indicated therein”.*

Accordingly, and based on the explicit above text, yet the judiciary may not intervene in the issues of arbitration except as stipulated in the Arbitration Law, and hence, it can be said that the judgment issued by the arbitral tribunal to consider the request for the expert's dismissal in the arbitration case may not be challenged by any of the methods of appeal whether that judgment has been taken to the effect of dismissing the expert or the rejection of the dismissal.

CONCLUSION

Concerning the failure of the Jordanian legislator to regulate the expert's dismissal within the framework of the arbitration case taking into consideration the practical importance of this issue, and through our study of the possibility of applying the provisions related to the expert's

dismissal within the framework of the lawsuit to the expert's dismissal within the framework of that arbitration, then we have reached many findings that are deemed a basis and the starting point for many of the recommendations hoped to be adopted by Jordanian legislator, namely: The Jordanian legislator did not provide any details for the provisions of the expert's dismissal in the context of the lawsuit, but referred the subject of the expert's dismissal in the latter to the provisions to which the judges' dismissal is subject as in the Civil Procedures Law No. (24) of 1988 in addition to having issued instructions regulating the affairs of expertise for the year 2018 without observing the specificity of the expert's status that distinguishes him from the judge in terms of nomenclatures and procedures.

The non-referral of the Jordanian legislator on the reasons for the arbitrator's dismissal to the reasons for the dismissal of the judges may not denote the Jordanian legislator's exclusion of those reasons. Rather, it denotes that legislator did not limit the reasons for the arbitrator's dismissal to those to which the judge's dismissal is subject. Yet, and in line with the international legislator's approach of the UNCITRAL Law of International Commercial Arbitration, and in addition to the possibility of adopting any of the latter, then the possibility of adopting any other reason that would indicate a defect in the arbitrator's impartiality and independence is also added.

The Jordanian legislator restricted the experts' dismissal to the experts elected by the court, excluding those whom the opponents had a role in choosing.

The expert's dismissal in the arbitration case is subject to the same reasons set for the judges' dismissal with a specificity that distinguishes the said submission in terms of its extent and scope.

The reasons for the judge's dismissal, and thus the expert's dismissal-whether in the judicial or arbitration case - mentioned in article No. (134) of the Jordanian Civil Procedures Law are not related to common law, but rather related to the private interest of the parties while the effects of the same are only produced upon the request of those who have the interest. In fact, the dismissal of the judge, the arbitrator and the expert is permissible.

The expert in the lawsuit is not dismissed by virtue of law as is the case with the judge due to the availability of one of the reasons for unfitness mentioned in article No. (132) of the Jordanian Civil Procedures Law or the reasons mentioned in Article (7) of the Expertise Affairs Instructions of 2018, as long as he explicitly discloses the said reasons and have been accepted by the litigants. In fact, those reasons are related to their right as long as they do not damage them.

The UNCITRAL Arbitration Rules considered the expert's qualifications and capabilities to be one of the elements required for his acceptance in the first place, thus adding an explicit reason for the expert's dismissal in the arbitration case that was not stipulated by the Jordanian legislator in article No. (18) of the Arbitration Law No. (31) of 2011 amended. That is, the expert's failure to have the qualifications that would enable him to perform his task properly and soundly.

A distinction must be made between the request for the dismissal of the expert appointed by the arbitral tribunal and the request for the dismissal of the expert appointed by the parties.

The Jordanian legislator did not require any disclosure from the expert appointed by the arbitral tribunal regarding his impartiality and independence, contrary to what was stipulated in

article No. (29/2) of the UNCITRAL Arbitration Rules and what was also stipulated in article (6/2) of the Evidence Rules in International Arbitration as was also developed by the International Bar Association (IBA).

The Jordanian legislator stipulated that the expert appointed by the parties to the arbitration, despite the difference in the scope of his disclosure from the expert appointed by the arbitral tribunal, that that expert discloses only his letter of assignment, his mission and the wages paid to him but did not require disclosure of his impartiality and independence.

The Jordanian and international legislators have not stipulated a specific period of time during which the expert's dismissal may be requested which matter may lead to an issue regarding the period that must be observed in accepting the dismissal request in form.

The Jordanian legislator did not arrange for the arbitrator to suspend proceeding with the case heard before pending the dismissal request, and if this is the case for the arbitrator, then it is more appropriate that the arbitration procedures do not stop when submitting a request for the expert's dismissal, as the work of the latter is mainly limited to assisting the arbitral tribunal from a technical point of view.

The award issued by the arbitral tribunal to consider the request of the expert's dismissal in the arbitration case may not be challenged by any of the appeal methods.

RECOMMENDATION

The Jordanian legislator intervened to amend the Arbitration Law No. (31) of 2001, by adding provisions dealing with the expert's dismissal, given the great importance of the expertise required by the technical nature of arbitration cases.

An explicit stipulation that the litigants be granted the right to request the expert's dismissal, whether that expert was appointed by the arbitration tribunal or the one appointed by the parties of the arbitration.

To determine the period within which the expert's dismissal may be requested provided that it is a maximum of fifteen days starting from the date of the dismissal applicant's knowledge of the reasons that may be established in the arbitration expert after his appointment and authorizing his dismissal request due to the acceleration required by the arbitration process that justified resorting to it at all.

If the arbitration tribunal finds that the request for the expert's dismissal is serious, then it must first prevent the expert requested to be dismissed from continuing his work in the expertise until the request for his dismissal is decided which is in order to avoid the effects that may result from continuing to perform his task useless.

The stipulation that the arbitral tribunal shall rule on the request for the expert's dismissal submitted to it as soon as possible but within a period not exceeding thirty days as from the date of submitting the request as measured by the arbitrator's dismissal by the court in order to avoid prolonging the arbitration process.

In view of the specificity of experience in arbitration disputes, it would be preferable, and before the arbitral tribunal selects the expert, to present his curriculum vitae to them and to consult with them only regarding his technical capabilities.

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