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THE CONCEPT OF ARBITRAL AWARD AND THE ENFORCEMENT OF ARBITRATION AWARDS IN THE REPUBLIC OF IRAQ

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ABSTRACT

The subject of the article research is the concept of arbitral award and the enforcement of arbitration awards in the republic of iraq, the methodological basis of the article research is the controversial approach to the problem under consideration using general and private methods of scientific knowledge, formal legal, and logical, socio-psychological, system analysis. In the process of research the achievements of the sciences of civil, private international, iraqi law, and civil procedure. This study is divided into two parts: the first part presents the concept of arbitral award, and the second part presents the enforcement of arbitration award in the republic of iraq.

The purpose and objectives of the study.

The purpose of this research Article is to conduct a comprehensive analysis of the legal status of International Commercial Arbitration in the Republic of Iraq and Middle East .

The purpose is achieved by solving the following *objectives*:

– to define the concept of The concept of Arbitral Award in the Republic of Iraq and Middle East;

– to characterize The enforcement of arbitration award in the republic of Iraq;

– To discuss some laws and decisions on arbitration in the Republic of Iraq;

INTRODUCTION

Arbitration is one of the most important legal means for settling commercial disputes, as all countries of the world have worked to develop this system, especially the developing countries represented by the countries of the Arab world. Especially the Republic of Iraq, As the arbitration is considered one of the most important guarantees for the investors. It also encourages internal or external investments where the investor avoids the procedures and The routines followed in the Arabic courts and the high cost.

On the other hand, the Arabs are used to the arbitration system in commercial matters to settle disputes. This was not limited to the trade only, but all kinds of disputes. Because the results of arbitration are most likely to be satisfying to the conflicting parties and would not be questioned by them because they are the ones who chose the arbitrators and The arbitration system to settle the existing dispute between them, but at present, the Arabic and the Iraqi legislation, in particular, are not up to the required Standards level. as the Iraqi legislator has organized the arbitration law as part of the Civil Procedure Law (1969).

That was 51 years ago from now, and this law ignored many of the details and branches related to the arbitration. Also didn't establish clear concepts or definitions (for the arbitration and the arbitration awards), in addition to the development of the commercial disputes. As these old legislations became inconsistent with the current commercial system and From this standpoint, the need has risen to shed light on the arbitration.

1.1 The concept of Arbitral Award:

There is no doubt that the aim of the parties resorting to arbitration lies in putting an end to the disputes that arise between those parties, through the decision issued by the arbitrator, the arbitration award is the desired goal and the natural end of the entire arbitration process. And during the arbitrator's mission during the arbitration process and for the sake of the arbitrator's mission, he/she issues a decision up to the final award that ends the litigation, and thus approximates to the judge's job in judging in the dispute before him and exercising a judicial act, which brings the arbitrage award closer to the judicial decision(Azhar, B.S,(2010).

Therefore, it is necessary to define the concept of the award issued by the arbitrator, by defining it and clarifying its legal nature and what distinguishes it from the judicial decision.

On the level of jurisprudence, we find that there are two directions in the definition of an award, the first narrowing the concept of an award, making it limited to the final award issued by the arbitrator who ends the litigation, and this direction was taken by (Reywoud, Ponaret, Lalive) who represent an aspect of the Swiss jurisprudence, as they prepare the award issued by the arbitration court, even those related to the subject matter of the dispute, which is not

settled in a specific application, and not considered arbitration awards unless it has completely ended the arbitration dispute(Al-Haddad, H. S. (1997). .

According to this aspect of jurisprudence, all decisions that adjudicate the jurisprudence of the matter broadens the concept of the arbitration award so that it includes in addition to the final decision issued by the arbitrator and ends by the arbitration litigation, all other decisions issued by the arbitrator during the arbitration process starting from related to the subject, such as the authenticity of the original contract, and it's not considered arbitration awards but merely preparatory or preliminary judgments(Al-Worfali, J. O. 2009).

It was also known as "the final award that the arbitrage tribunal takes to adjudicate." On the subject of the dispute appointed to them (Samia, R, 1989).

Contrary to the other opinions, we find that there is another direction of the determination of jurisdiction and ending with the issuance of that award.

And the definitions that the jurisprudence founded in this field are many, so we find that some defined the arbitration award as "a judicial act that has the characteristics of rulings issued by the regular courts in terms of the authenticity of the adjudicated issue concerning the dispute that was adjudicated in a way that prevents one of the parties to the dispute from resorting to another judicial authority after the issuance of the award" (Ismail, K. M, 2015).

And it's noted on this definition that describes the arbitration award, as a judicial act that entails the issuance of the adjudicate the dispute in a way that prevents the parties to the dispute from resorting to another judicial authority, and this approach deprives the judiciary of its authority to monitor the arbitration award and the original jurisdiction, which if it didn't take the dispute to the arbitration, and this is not true, especially if it was agreed to resort to arbitration at a later stage to file the case before the judiciary, in this case, the case is rejected and resumed until the arbitration award is sent to the court that issues its award in the case according to the arbitration award (Al-Worfali, J. O, 2009).

While others also defined it as "the award that adjudicates the dispute or in a point or demand from the points and demands of the dispute .a final adjudication and are obligatory on the parties to the conflict" (Al-Ahdab, A. H, 2001).

Professor E. Gaillard also defined it as "the decision issued by the arbitrator, which is completely or partially adjudicate in the dispute before it, whether this decision relates to the subject matter of the dispute itself or the jurisdiction, or to a matter related to the procedures that led the arbitrator to rule on the end of the litigation" (Gaillard, E, 2010).

Returning to the legal texts governing the arbitration in both laws and agreements, we could not find a definition of the arbitration award in those laws and agreements. For example, we find that the British Arbitration Law of 1997 did not definite the arbitration award but defined the arbitration contract in Article 6 of it, which indicated It is an agreement leads to arbitration by disputes arising or might arise and it was considered an arbitration contract in the second paragraph of the same article, which indicated in the case of an agreement to set a written condition, it would be considered as a part of the contract and this condition is considered an arbitration clause.

This is also the case in the Egyptian Arbitration Law No. 27 (Egyptian Arbitration Act, 1994). and the Jordanian Arbitration Law No. 31(Jordanian Arbitration Act, 2001).

in addition to the Iraqi Civil Procedure Law No. 83 amending. We noticed that on one hand, it used the term award and not a ruling and that in Articles 268 – 274 of the Iraqi Civil Procedure Law No. 83 without referring to a definition of an award in particular, but rather defined the decision in general as a decision and not an arbitration award, as it distinguished between the decision and the verdict, so use the term decision concerning the action taken by the court before it adjudicates in the issue of the dispute and that in Article 155 of it, while the term judgment was used concerning the action taken by the court, which ends the dispute. Noting that the legislator has limited this term to the procedure taken by courts of the first instance and appeals only without cassation, as we find it has used the term the decision on the procedure issued by the Court of Cassation when considering the cassations in the appeals submitted to it, while we find that the legislator in the section of arbitration has used the term The decision and that in Articles 268–274 of the Iraqi Civil Procedure Law No. 83 (Iraqi Civil Procedure Act, 1969) without referring to the statement of what this decision is issued by the arbitrators knowing that it is supposed to this decision issued by the arbitrators is to end the litigation, but the procedure that the court takes when issuing the implementation order is to ratify the decision of the arbitrators, and this decision may not be challenged employing appeals established for judicial rulings of appeals, cassation or re-trial, and the law has drawn a special way to appeal it.

It is appealing the nullity, noting that there is an pointless attitude by the Iraqi legislator that tried to take away the jurisdiction from the arbitrator and return it to the judiciary by granting the judiciary the authority to adjudicate the dispute presented to arbitration mainly if the case is valid for adjudication and the decision issued by the court regarding this case may be appealed using the appealing methods of judicial rulings this is not true in our belief because it is contradicts the purpose of adopting the arbitration system and that is the speed of the procedures and the litigants are looking for their own justice away from the justice of the law on one hand, and it contradicts the Article 253 of the Iraqi Civil Procedure Law No. 83 which states that the case may not be brought before the judiciary in case of the agreement on arbitration until the exhaustion of its methods and that the arbitration here has not ended, in this In the case, the jurisdiction cannot be taken of the arbitrators and the judiciary interfered with the issuance of the ruling.

Giving the right to litigants to persist to the nullity of the arbitrators' award and the court has the right to nullify the award on its own accord if there is a fundamental error, and in addition to that and according to the opinion of some of them, and according to the text of Article 155 of the Iraqi Civil Procedure Law No. 83 that the term “decision” was given to the action taken by the court before deciding the dispute in the case It does not change these decisions or does not take the result of the procedure provided that the reasons are stated in the minutes of the session. As for the term, the verdict was given to the decision that ends the case and is considered an argument in detail as a judicial fact. This ruling is of two types. The court issues it in a lawsuit before the court and Tibet

or It is cut in its ordinary degree and the second is a final ruling, and it is he who has completed all the stages of the appeal and reached the final stage.It is no longer subject to appeal by any legal means of appeals (Al.Aboudi, A. 2000). As for the draft of the arbitration law, we do not find a definition of the arbitration award.

From our point of view, we hope from our legislator and other similar legislation to set a definition to the arbitration award to explain its legislative texts because it is considered one of the essential matters without being restricted by the other decisions issued by the arbitrators so it is implementable in the international agreements as well as the unified legal systems related to the implementation of arbitration awards.

And in terms of international agreements and regulations, we find the New York agreement of the recognition and implementation of foreign arbitrators (New York Convention, 1958)awards signed 1958 that came into effect in 1959, and unlike the other agreements and other regulations, in general, the concept of an arbitral award was explained in its first article in the second paragraph, when it indicated that the intended arbitration awards are not only the decisions issued by the arbitrators appointed to adjudicate in specific cases, but this term includes decisions issued by the arbitration tribunals to which the parties are subjects.

As for the Model Law (UNCITRAL) (New York Convention, 1958), signed on 21/6/1985, there was a proposal to define the arbitration awards, but it was retracted by the authors of this law and it was in the proposed definition, the arbitration award is defined as "an arbitration word that must be understood as a criminal justice that adjudicates the issues before the arbitral tribunal, and any arbitration tribunal t's decision shall be deemed an arbitration award, and a final judgment to the subject matter of the dispute, whatever its nature, or the arbitration court's jurisdiction, or any other matter related to the procedures, and in this last case, the court's decision shall be deemed as a final Arbitration award only if the Arbitration tribunal set the decision to be so".

This definition has been the subject of many disagreements, especially regarding the knowledge of whether the decisions issued by the arbitrators in the adjudication of a matter of their competence or the decisions focused on the procedures to set its features as arbitration awards, so the matter ended with the drafters of the Model Law to abandon the question of setting a definition for the arbitration award (Al-Haddad, H. S, 1997).

And after all of the above and after extrapolating the texts and definitions clarifying the meaning of the arbitration award, we find that the jurisprudence in those definitions is hesitant between those who called it the arbitration award and those who called it the arbitration verdict and each of them has his point of view, as for the naming of the arbitration award, it was adopted, for example by the Iraqi Arbitration Bill as well The New York Agreement and the Riyadh Arab Agreement, their justification for naming it a verdict was there are no differences between it and any other judicial verdict, each of which has its characteristics and conditions. As for those who use the term arbitration award that is used by each of the amended Iraqi Civil Procedure Law, as well as the repealed Jordanian Arbitration Law, the Model Law and the Arbitration Rules (UNCITRAL) signed in decree 31/98 – on 12/15/1976, and it is also used by

the Amman Arab Agreement for International Commercial Arbitration signed on 1987, and their justification for that is not to be confused between it and the judicial verdicts also to distinguish between them (Al-worfali, J. O, 2009).

From our point of view, we don't necessarily see a significant difference between the use of the term arbitration award or arbitration decision, as both of them express one point of view, and we do not believe that international and national legal norms have made the right choice by adopting one of the two terms.

Whatever the attempts made by jurisprudence to define the arbitration award, but the issue of giving an inclusive definition keeps the fundamental matters given the crucial importance of determining the implementable decision that is distinguished from those procedural and preparatory decisions that do not end the despite.

On our part, we define the arbitration award as the final obligating decision issued by the arbitrator or arbitration tribunal that adjudicates in whole or in part in a disputed issue or in a matter that must be adjudicated by a decision necessary to end the dispute.

After all the above, it is possible to draw a set of differences between the arbitral award and the judicial decision:

1. Arbitration awards are issued by a tribunal or an individual agreed upon by the parties, while the judicial verdicts are issued by the state's jurisdiction.
2. Arbitration awards are issued based on procedures agreed upon by the parties to the arbitration contract or determined by the arbitrator or arbitration tribunal, while judicial decisions are issued after procedures stipulated by a law called "litigation".
3. Arbitration decisions are issued in which confidentiality is the Distinctive feature of its procedures, while the judicial verdicts.
4. Is publicly issued unless the court decides otherwise.
5. The role of the parties in the arbitration contract in determining the tribunal that adjudicates the dispute and its venue is vast and unlimited, and then the decision of the arbitral tribunal can be made in a place other than the location of the court specialized in examining the dispute, in contrast to the judicial verdict in which the parties are free to determine the court that considers The dispute and its location is specified in fixed legal provisions.
6. The parties in the arbitration contract shall determine the law that must be applied to the presented dispute, and the arbitration award may be issued contrary to the substantive rules applied in the place of the competent court in the consideration of the dispute, while the parties opinion in the judicial verdict in determining the law to be implemented is limited within the limits of the Legislative provisions that govern it.
7. Arbitration awards are issued, even if the legislations permit its issuance by a single arbitrator, except that those decisions are often made by more than one arbitrator and the number must be odd, while the judicial verdict is issued by a court formed by a single judge except for the decisions issued by the appeal courts – second-degree courts it is issued by a panel of three judges.
8. The arbitration shall be of one award to save time and not to prolong the procedures. that means the awards of the arbitration tribunal cannot be applied against except in the case of refusal to grant the executive form in the case of

internal arbitration but in international arbitration the appeal against the decision to reject the executive form and in specific cases. Most of the legislation will not permit the appeal of the arbitration award unless the award is annulled for certain reasons, while the judicial verdict is in two stages.

9. The decision in arbitration looks for justice to reconcile the litigants, while the judicial decision searches for justice in the interest of law.

10. The arbitration award does not require litigant's requests, documents, arguments, and the reasons on which it relied, while legislation stipulated in the judicial verdict on that.

11. The awards of arbitrators are not required to be in the name of the head of state or the name of the king and it is implemented in the name of the people, whereas judicial verdicts are issued in this form.

A. The legal nature of the arbitral award.

The nature of the arbitration award conflicts in three directions between the one who says the contractual nature of the arbitration award and the judicial nature and another that says the judicial nature of the contractual basis (mixed) (Muhammad, H. F, 1951)., and the importance of these opinions we will provide it in some detail and as follows:

i. the contractual nature of the arbitral award:

The prevalent belief in jurisprudence and the judiciary at the beginning of the spread of arbitration its essence lies in the joint will of the parties to resort to it as a way to settle their disputes by a binding award of the arbitrator(Radwan, A. Z, 1981).

Professor Marlin, the Attorney General of the French Court of Cassation, summarized the contractual theory of arbitration as early as 1812, with the following phrase: “And therein lies his entity and essence, and there is no judgment except with the agreement, so he has like the agreement the nature of the contract” (Mohsen, S, 1997).

Proponents of this opinion focus on the principle of the power of the will, which is the pillar of the arbitration system, so there is no agreement and there is no arbitration between the parties without this explicit expression, and the award issued by the arbitrator bounces back to the agreement and once it is implemented.

Accordingly, the arbitration agreement takes the entire arbitration process so that it straightens a basis for the interpretation of all its phases until a decision is issued by the arbitrator that binds the parties to the dispute (Al-Gammal, M, 1998):

1. It is the agreement to arbitrate that achieves the removal of the dispute from the jurisdiction of the ordinary judiciary in the state and assigns it to the jurisdiction of a special arbitrator chosen by the parties to the agreement.

2. The parties to the arbitration agreement are the ones who choose the arbitrator whose task is to settle the dispute, and they determine the circle of his mandate, the period in which his mission ends, the laws that must be applied to the subject of the dispute, the procedural rules that the arbitration process would be done according to, its location and language.

According to that, the proponents of this opinion believe that the source of the authority of the award that the arbitrator finally reaches lies in the agreement and finds its executive authority only in that agreement and that it forms an

integral part of that agreement and therefore the implementation of this award must pass through the judiciary as a mere implementation of the arbitration agreement (Al-Gammal, M, 1998).The view of Professor Marlin convinced the French Court of Cassation, which upheld it in its decision of 1937 and remained attached to it for a long time .

However, this did not prevent the Paris Court of Appeal from adopting a decision issued in 1901 to the opposite theory, i.e. describing the arbitration as a judicial matter. On decisions not on contracts, but this decision of the Court of Appeal did not convince the Court of Cassation when requesting its veto before it, as it clung to the agreement's nature of the arbitrator's award (Mohsen, S, 1997).

The gist of this opinion is that the whole arbitration system falls within the framework of the contract and the binding force of the contract is essential to change the validity of the arbitration and its nullity and effect, and the commitment to its results.

It seems that this theory still resonates in the international field provided that it would reduce the interference of the national judiciary in arbitration by highlighting the role of the will of authority in it, which would also contribute to encouraging the arbitration and its spread at the international level (Born, G, 2014).

Despite the direction that this opinion went to highlighting the role of the power of the will in the field of arbitration, it ignores the fact of the judicial function performed by the arbitrator that ends with the issuance of the arbitration award, the arbitrator performs the same function as the judge and he ends in this regard to a decision similar to the decision that Issued by the judge, perhaps the reason behind this ignorance is to start from the phenomenon of the state's dominance and monopoly over the administration of justice between people through the staff judges who choose from it as surrendering to the reality of this hegemony and this monopoly would prevent the recognition of an arbitrator, that the parties to the dispute choose and define her/his authority, with a judicial function and then lead to the search for another interpretation of the arbitration system that does not conflicts with realistic facts, and this is what is actually presented by the idea of the contract that revolves in astronomy other than the orbit of the judiciary is the orbit of the will and binding force of the contract (Al-Gammal, M, 1998).

However, restricting this position to the state and monopolizing the administration of justice among individuals in society is only one of the stages of the development of the judicial function itself that was preceded by the stage in which arbitration was related to this job before the contemporary period in which the judicial function is distributed between the state's judiciary and the arbitration court. This is the starting point of the proponents of the second opinion, i.e. the proponents of the judicial theory.

ii. The judicial nature of arbitral award (Ullah, I, 2017):

The focus of this concept is based on proving the judicial character of the arbitration award issued at the end of the arbitration process since the essence of the arbitration system lies in the arbitration award, which is the primary work and the whole system is about it and represents the desired goal behind

the arbitration agreement, which is nothing more than a preparatory work for the work of the basis of the award (Al-Wafa, A.A, 1988).

Proponents of this concept believe that determining the nature of a system should depend on objective criteria related to the origin of the function of this system and not on organic or formal criteria related to the person who performs this function or what is opposed to its performance (Radwan, A.Z, 1981).

And if the arbitration does the same job as the state's judiciary, which is to settle the dispute and obtain justice between the litigants, then it necessarily acquires judicial character.

As for the arbitration agreement, even if it is the core of arbitration, this is only because arbitration is a special judicial system that exists alongside the general judiciary in the state, and because the state's judiciary is the general judiciary to resolve disputes, it necessarily necessitated the implementation of the work of the private judiciary, which is the arbitration judiciary to the will of the litigants, and from Here the realization of the arbitration was subject to the parties agreeing to resort to it and that the agreement is just a tool for moving the arbitration system that does not affect the essence of its judicial function and does not change its nature (Al-Gammal, M, 1998).

Some proponents of this concept went further when they linked the role of the common will of opponents in arbitration and their role in the judiciary. If arbitration was mean to resolve the dispute by the will of both parties, then resorting to the judiciary is done by voluntary action by one of them according to their statement, and when this is done the right of the other is attached to it, so that the plaintiff may not relinquish it except with the approval of his opponent, and the parties to the dispute may agree to submit the dispute to a court other than the one originally competent to it or to the courts of a state other than the state whose jurisdiction is proven to be competent, and the parties to the dispute may agree to relinquish it after it is filed, and this is all clear evidence to the opponents will put the dispute on the arbitration instead of the judiciary, as it does not affect the reality of the job performed by the arbitration, as it is a judicial function just like the state's judicial function(Al-Gammal, M, 1998).

Proponents of this concept are trying to explain the judicial nature of it by linking it with the judicial function of the state, some of them have gone (Al-Wafa, A.A, 1988). , to say, that the state alone retains the power to administer justice between people but delegates part of this power to the arbitrator chosen by the litigants within the limits of the conflict that they present to it so it is the reason behind the authority of the arbitrator, and the agreement of the litigants is a condition for the establishment of this mandate, and some of them think (Muhammad, H, 1990), that the function of the contemporary state is not a monopoly on achieving justice between people, but rather ensuring that this is achieved through the judiciary, which is independent of the state itself by establishing and facilitating it, and as can be achieved through a special judiciary, the opponents establish themselves according to the regulation of the law that the state describes for it. And if a side of jurisprudence takes this direction (Al-Kasaby, E. D, 1993) , it is not without a basic defect, which is the exclusion of the arbitrator's powers when adapting them to the arbitrator's award. Through this agreement, the arbitrator derives his/her authority to settle

the dispute without this agreement. arbitrator used to exercise a judicial position, but he is not like the state judge, he/she does not represent the state in any decisions he/she issues (Keutgen, G., & Dal, G. A, 2015)

This is what called for some aspect of jurisprudence that supports the judicial nature of the arbitration award to say that arbitration is of a special judicial nature that can only be understood in light of its connection to the arbitration system in a group.

iii. Mixed nature of arbitral award:

This direction went to reconcile the previous two directions, as it made clear that both directions have a part of the truth, so arbitration is a contract of a judicial nature, it is mixed or installed at the same time (Redfern, A., & Hunter, M, 2004). That is, arbitration is a fact that extends over time that begins with the arbitration agreement and ends with the inclusion of the arbitration award by order of implementation, and during this extension, the arbitration overcomes two aspects, the first is contractual, represented by the arbitration agreement, and the second is judicial, as it represented by the function of the arbitrator represented in resolving the dispute at hand (Al-Gammal, M, 1998). And the proponents of this direction seeks to release the freedom of the agreement from its inception and then refer it in its last stage to the judiciary to gain the decision in which he issues his argument himself, so he does not need a lawsuit followed by a decision that gives his argument, because this authenticity appears from the date of its issuance and if its legal implementation needs to a judicial procedure to grant him the nature of implementation.

But the main defect in this direction is that it does not give the arbitration award a single character, but rather made the decision a reflection of the parties 'agreement, which does not give the judicial function that the arbitrator assumes the importance that it deserves. Determine in advance a specific goal to which it aims to impart the contractual or judicial nature of the arbitration system.

And some of them say that the arbitration award is considered a contract before it acquires the nature of implementation and becomes a judicial decision after ordering its implementation, and they do not agree to specify the components of the arbitration of a judicial nature or those that highlight the contractual nature (Radwan, A.z (1981).

After this presentation of the directions that determine the nature of the arbitral award, we find that the proponents of the first direction focused on the legal basis of the arbitration award and ignored the judicial function performed by the arbitrator, unlike the Proponents of the judicial direction, as they focused on the function of the arbitrator and underestimated the agreement's original origin for this job, but the proponents of the mixed direction focused on the side of the abstract description of the various stages that arbitration goes through without pre-determining the goal that it aims to achieve from behind adding the contractual and judicial characteristic together to the arbitration system, i.e. this direction did not indicate the effect of this description on determining the form of the control that the judiciary can exercise it based on the decisions reached by the arbitrator.

We believe that a careful analysis of the legal nature of the arbitration award undoubtedly affects the determination of the image of judicial control over it,

but this analysis must be started from two opposite sides: the first is to discuss the nature of the arbitration award through the judicial function in the state, and the second is the necessity not to ignore the convention formation of the judicial function of the arbitrator, that is, not to ignore the role of the power of the will in the basis of the judicial function of the arbitrator.

The arbitration decision has basic features for the judicial function, so the goal is to resolve the dispute between the litigators, and this is what assumes the existence of a dispute and entrusting to others a task to settle it with a binding decision and this is the material aspect of the judicial function and on the other hand the arbitrator is committed when resolving the dispute to the basic principles of litigation that govern the judge's wok even if the arbitrator is authorized to reconcile, the arbitration award may have the formal side in the judicial work(Al-Kasaby, E. D, 1993).

And the fact that the arbitrator is chosen by the litigants themselves does not prejudice the judicial nature of his mission, and then the decision that he issues. It was delegated by the legislator, but its actions depend on the will of the parties(Al-Kasaby, E. D, 1993).

Accordingly, the statement of the judicial nature of the arbitration award is imposed by the will of the legislator and it is related to the extent of his recognition of individuals to authorize the performance of the judicial function to judges of their choice other than the state judges.

Through research in most of the legislation, whether national or comparative, we find that they are subject to the arbitration award to the judicial control, which is the claim of nullity, taking into account the judicial nature of the arbitration award and does not ignore its legal origin, through the diversity of the reasons for nullity and these legislations we see that it has been affected by the Model Law of Arbitration for the year 1985, which does not allow the appeals of arbitrators' awards, but rather set a special method for the state's judiciary to exercise control over these awards through a nullity lawsuit (Mustafa, M.M, 2017).

Among these legislations, for example, is the British legislation in the texts of the Arbitration Law of 1996, we find in Article 69 in its second paragraph, as it identifies certain cases in which the parties submit Their decision or request to appeal, and without it, the parties are deemed to be relinquishing that appeal, and it is not acceptable except in the case of approval by the parties, as well as when the appeal is authorized by the judge.

In the Arabic laws, we find this case as well, for example, in the Egyptian legislation in the 1994 Arbitration Law in Chapter Six of it in Article 52, as it determined that it is not permissible to accept an appeal in arbitration award by any of the appealing methods stipulated in the Egyptian Civil and Commercial Procedures Law. The law set the nullity lawsuit according to Article 53 and Article 54 (Egyptian Arbitration Act, 1994).

The same applies to Jordanian legislation in the Arbitration Law of 2001 (Jordanian Arbitration Act, 2001) in Article 48 thereof, which stipulates that it is not permissible to accept an appeal in an arbitration award in any of the methods stipulated in the Jordanian Civil Procedure Law, but it was determined that the appeal is permissible and the case filed according to the stipulated articles on it in the arbitration law.

As for the Iraqi legislation, we find that the issue of subjecting the arbitration award to the judicial control in the case of an invalidity appeal is stipulated in the Iraqi Civil Procedure Law No. 83 in Article 275 thereof.

As the court makes sure that there is no way to nullify the award, in this case, it ratifies it and this decision is subject to appeal. The judgment of appeal is subject to cassation according to the general rules and until the issuance of the judicial verdict to ratify the arbitration award and it becomes categorical to implement the verdict, though the arbitration award like all judicial verdicts, and Besides, the court's verdict is not admissible, but it accepts the appeal in other ways.

As the appeal of the arbitration award which is certified by the court is one of the weaknesses in the arbitration procedures in Iraq, because the agreement on arbitration between the parties to the dispute is based on resolving disputes that occur between them outside the judiciary, and if one of the parties is allowed to appeal the arbitration award, the two parties will find themselves before the judiciary once again, while they had agreed otherwise when they chose to resort to arbitration as the procedures for appeal before the courts may be used with the intent to procrastinate and gain time from the losing party as well as the time-consuming judicial procedures, and other expenses It is added to the previous arbitration expenses, and this is inconsistent with the arbitration clause, which seeks to expedite the settlement and the optional implementation of the arbitration award (Samia, R.(1989).

In this case, we find that it has also extended to the draft of the arbitration law, and we find in Article 52 of it in Chapter VI on invalidity, as it specified cases for appeal, as it was not permitted to appeal the arbitration award through appeal stipulated in the law of Procedure and set the cases in Articles 53 and 54 of this draft.

As for the international agreements, it is clear that they were not affected by the Model Law on Arbitration. For example, we find that the Amman Arab Agreement of 1987, which was established after the issuance of the Model Law, did not apply to its approach in this matter.

1.2 The enforcement of arbitration award in the republic of Iraq:

The implementation of arbitration provisions in Iraq varies whether or not they are subject to the civil procedure law. Especially some opinions believe the civil procedure laws are implementable only on the internal arbitration awards, not the international arbitration awards.

As for implementation in the Iraqi Civil Procedure Law No. 83 Article 271 of it stipulated that after the arbitrators issue their award in a foregoing manner, they must give a copy of it to each one of the parties and hand over the award with the original arbitration agreement to the court concerned with the dispute within the three days following its issuance by a receipt signed by the court clerk.

It is noted through the text that to implement the internal arbitration award, it is required to deposit the award with the original arbitration agreement to the competent court to hear the dispute (Court of First Instance) within three days after its issuance and to receive a receipt signed by the court clerk.

However, the arbitration award is not implementable by simply depositing it in the competent court. Rather, a decision must be issued by that court to grant it the executive form. This is what Article 272 of the Iraqi Civil Procedure Law No. 83 referred to when it stated that the arbitrators' award is not implementable by the executive departments, whether they were appointed by a court or agreement unless approved by the court concerned with the dispute upon the request of one of the litigants and after paying the prescribed fees.

The law has given the competent court full authority to review the arbitration award .it also can leave the arbitration award and decide itself in the dispute if the subject of the dispute is valid for adjudication. If the award is correct in both its form and substance the competent court will ratify it, but the appeal is accepted through the established legal methods, such as appeal, re-trial, cassation, correction of the decision that was submitted to cassation, and objection of others.

This is what Article 274 of the Iraqi Civil Procedure Law No. 83 referred to when it stipulated that the court may ratify the arbitration award or nullify it in whole or in part, and it may, in the case of nullity, in whole or in part, return the case to the arbitrators to fix what marred the arbitration award or settle the dispute itself if the case was open to adjudication.

Thus, the law gave the court wide authority to monitor the arbitration award by checking it in terms of form and content and verifying the follows:

1. Ensure the right to an equal defense between the parties.
2. The integrity of the procedures followed by the arbitrators, including the validity of notification of litigants, and others.
3. Ensuring that the award does not violate the public order in the country.
4. The subject matter of the dispute presented is one of the subjects that may be resolved through arbitration.

If the court confirms these aspects, then it invites the litigants to recite the arbitration award and listen to their statements in this regard and then issue its decision to certify it publicly, but if it finds that there is a problem in the formality or objectivity, then it may issue its decision to nullify the arbitration award in whole or in part and it may refer it to the Arbitral Tribunal to reform the mistakes that marred the award, it as well may settle the subject itself, if the matter was adjustable.

As for the implementation of the international arbitration award or issued abroad, despite the changes in the Iraqi legislator’s view of international arbitration from being a violation of the sovereignty of the state and a diminution in the value of Iraqi courts and laws to being considered the preferred means of resolving disputes arising from the implementation of contracts concluded with a foreign person and this is What was approved by the Iraqi Investment Law No. 13 as well as what was stated in Article 8 of the Iraqi Government Contract Execution Law No. 2(Iraqi Government Contract Execution Act, 2014) issued by the Ministry of Planning related to the implementation of government contracts which authorized the contracting authority to choose the international arbitration to settle disputes, however the problem still exists regarding the implementation of international arbitration provisions, as there are no clear and explicit texts related to the implementation

of those provisions under the Iraqi Civil Procedure Law No. 83 and specifically Articles 251–276 Chapter two related to the arbitration. Law No. 30 of 1928 did not mention this issue in clear texts. Is the Iraqi legislator's silence considered an authorization to implement these provisions? Or does the matter require clearer texts?

However, the implementation of an international arbitration award in Iraq does not deviate from two things:

i. In case Iraq has agreements with the requesting state. Iraq has joined some international bilateral or collective agreements to organize arbitration issues concerning those countries and one of these issues is the implementation of the arbitration awards, and the most prominent of those collective agreements are:

1. Judicial and Legal Cooperation Treaty between Iraq and the Union of Soviet Socialist Republics of 1973
2. The mutual assistance Treaty between the Republic of Iraq and the Arab Republic of Egypt for the year (1964)
3. Treaty of implementation of the provisions of the League of Arab States for the year (1952)
4. Amman Arab Treaty for Commercial Arbitration of (1988)
5. Riyadh Treaty for Judicial Cooperation for the year (1983).
6. Arab League Investment Agreement of (1981).

The accession of Iraq to these agreements facilitates the process of implementing the arbitration provisions with those countries. Providing that these agreements have been organized within the text of the implementation procedures and conditions required, and some of them have been subject to the internal legislation of the state required to implement. And Iraq is bound to these agreements and the agreements get the priority in the conflicts. This is what Art. 29 of the Iraqi Civil Procedure Law No. 83 stipulated, which states that (the provisions of the previous articles do not apply if there is a provision to the contrary in a special law or an international treaty effective in Iraq), and accordingly The texts of these agreements are prioritizing in the implementation in case it conflicts with the Iraqi law.

ii. In case that Iraq is not bound by any agreements, whether they are bilateral or collective agreements, the Iraqi jurisprudence had several opinions concerning the implementation of arbitration provisions, as follows:

1. Supporters of this opinion who think that the Civil Procedure Law applies to the provisions of international arbitration, as it treated as an internal arbitration award and relied on several arguments, including the following (Mamdouh, A. K, 1977):

a. The provisions of the Iraqi Civil Procedure Law No. 83 have been absolute and not limited to the awards of the internal arbitration, and therefore as absolute, it deals with both the internal and international awards.

b. The implementation of international arbitration provisions has become a common and internationally recognized principle, therefore it can be implemented in Iraq According to the text of Article 3 of the Iraqi Civil Procedure Law No. 83, which indicates that what is not mentioned in the previous articles regarding the conflict of the laws follows the most common principles of international law. Also, Iraq has joined many agreements and this indicates that Iraq has accepted the implementation of arbitration awards.

2. According to this opinion, international arbitration awards are subject in terms of implementation to the Law of Implementation of the Foreign Court's awards in Iraq No. 30 for the year (1928) and they believe that if the obstacle in the implementation of the foreign judicial award issued outside Iraq is the matter of issuing a decision to ratify it from a court outside Iraq in accordance to the provisions of the Law on the Execution of Foreign Provisions, there is no objection that an arbitral award can take the status of a judicial award in the country in which it was issued by giving the form of execution from the court of the country in which this award was issued to become a foreign award and it's subject to provisions of the Law of Execution of the Foreign Courts awards then it is ratified by the Iraqi competent court to implement it (Mohammed, S.A, 2012).

iii. Proponents of this opinion argue that the Iraqi legislator did not stipulate the implementation of arbitration awards issued abroad, and this cannot be extracted implicitly through the generality of the texts because the Iraqi procedure's law is for internal arbitration, and the Foreign rulings Implementation Law of 1928 requires that the ruling is issued From a court of competent jurisdiction abroad so that a decision to implement it can be issued, and therefore the arbitration award cannot be considered a judicial ruling until it is implemented following this law (Iraqi Implementation of Foreign Provisions Act, 1928).

We believe that the implementation of international arbitration awards in Iraq cannot be subject to the provisions of the Civil Procedures Law or the Law of the implementation of the Foreign Courts rulings of 1928 for the aforementioned reasons and therefore they are subject to bilateral or collective agreements that Iraq is bound by it with other countries, and the arbitration award can also be implemented If it was merged with a foreign judicial ruling issued by one of the foreign competent courts to give it the executive form, in this case, it can be implemented following the provisions of the Law of the implementation of the Foreign Provisions in Iraq not as an arbitration award but rather as a judicial ruling in which it was merged, and such provisions can also be implemented based on the principle of reciprocity, and better yet to expedite the issuance of the law of the arbitration in Iraq to get rid of all the problems in the previous texts (Al-Ajili, H.K, 2012).

In-Law No. 57 of 1990 (Protecting Iraqi funds, 1990), the Iraqi legislator has gone to prohibit the implementation of foreign arbitration awards inside the Iraqi territory, regardless of the subject of the arbitration or the authority that issued it, and authorize the implementation of the arbitration awards issued by national arbitration tribunals only. Under the pretext of preserving the protection of Iraqi funds, interests, and rights inside and outside Iraq Such laws are inconsistent with the development taking place in trade and investment activities and outrageous obstacles to the progress of Iraq.

Whereas, the text of this decision is inconsistent with the text of Law No. 30 of 1928, which authorized the implementation of foreign awards after presenting these provisions to the competent Iraqi courts. We believe that the optimal solution to this inconsistency in Iraqi legislation is to amend Law 57 of 1990 following the requirements of the current time and the Iraqi parliament must

expedite the vote on the decision to join Iraq to the New York Treaty of 1958 regarding the implementation of foreign arbitration awards (New York Convention, 1958)

As a result of the research, the following conclusions can be drawn in this research article:

1. The Iraqi legislator in the Iraqi Civil Procedure Law does not provide a definition of the arbitration agreement and accordingly, we see it was appropriate for the Iraqi legislator to enshrine in the Iraqi Civil Procedure Law, and in the future to the Law on International Commercial Arbitration of the Republic of Iraq the next definition of the arbitration agreement: "*It is a contract In which the contracting parties agree to waive their dispute from the ordinary judiciary and to resort to one or more neutral people called arbitrators to settle a possible future conflict or a dispute between them already, and thus by this contract they leave the jurisdiction of the original judiciary and submit to the jurisdiction of the arbitration tribunal, and this contract is binding on its parties and they must abide it*".

2. In-Law No. 57 of 1990, the Iraqi legislator has gone to prohibit the implementation of foreign arbitration awards inside the Iraqi territory, regardless of the subject of the arbitration or the authority that issued it, and authorize the implementation of the arbitration awards issued by national arbitration tribunals only. Under the pretext of preserving the protection of Iraqi funds, interests, and rights inside and outside Iraq Such laws are inconsistent with the development taking place in trade and investment activities and outrageous obstacles to the progress of Iraq. Whereas, the text of this decision is inconsistent with the text of Law No. 30 of 1928, which authorized the implementation of foreign awards after presenting these provisions to the competent Iraqi courts. We believe that the optimal solution to this inconsistency in Iraqi legislation is to amend Law 57 of 1990 following the requirements of the current time and the Iraqi parliament must expedite the vote on the decision to join Iraq to the New York Convention of 1958 regarding the implementation of foreign arbitration awards.
3. The Iraqi Foreign Arbitration Provisions Implementation Law No. 30 of 1928 represents a major impediment to arbitration as a way to settle disputes away from the judiciary, and therefore we recommend amending Law No. 30 that makes the possibility of implementing foreign arbitral awards in Iraq in the same way as judicial rulings even without requiring the existence of an international agreement that Iraq is associated with the country in which the award was made unless this award contravenes public morals and the and sovereignty of Iraq.

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