Ilkogretim Online - Elementary Education Online, Year; Vol 20 (Issue 5): pp. 2194-2206
http://ilkogretim-online.org
doi: 10.17051/ilkonline.2021.05.239

Settlement of disputes under the Jordanian Civil Mediation Law No. 25 of 2017

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Abstract- The Law of Mediation for the Settlement of Civil Disputes was issued in 2006 and was adopted No. 12 of 2006 and published in the Official Gazette No. 4751 on 16/3/2006 to replace the Mediation Law for the Settlement of Temporary Civil Conflicts No. 37 of 2003. It was composed of fourteen legal articles, Civil Code No. 25 of 2006 and in 2017 the law was amended to be called Law No. 25 of 2017, where the amendment to the texts of three articles of the law.

The law regulates mediation as an alternative means of litigation through the judicial administration, which operates through the courts of first instance and is called the mediation department, in which judges are called mediation judges.

The Jordanian legislator pointed out how to refer this type of dispute to this type of mediator, with a statement of the powers of mediators in resolving the dispute. The aim is to resolve disputes away from litigation and its complications and the consequences of litigation in courts.

Keywords: Civil Disputes, Mediation Law, Law No. 25

I. INTRODUCTION:

Praise is to Allah, Lord of the Worlds, and blessings and peacemay be upon His Noble Messenger, our Prophet Muhammad, his family and his companions, and those who followed them with kindness until the Day of Judgment, and after:

It is known that the dispute has three ways to settle it, which are: conciliation, in which the resolution of the dispute between its parties is by mutual consent outside the scope of the judiciary, and the judiciary, which is the judgment issued by the judge binding the parties to the dispute; And arbitration, which is the appointment of the two opponents as a ruler, who rules between them with their consent.

Judicial mediation is one of the conciliation procedures, and the role of mediation to resolve disputes is highlighted in terms of speed in cutting disputes, resolving disputes and ending disputes, thus saving time, effort and money that may be if the dispute is resolved through the judiciary, and mediation has a major role in removing the hatred that It may be the result of binding court rulings.

The Problem of the study:

The study problem is summarized in answering many questions, including:

1- How responsible is the mediating judge?

2- What is the difference between mediation and other means of dispute resolution?

3- Who is the agreement mediator?

4- What is meant by contractual and tort liability?

5- What are the means of agreement in resolving disputes?

Objectives of the study:

The study aims to achieve the following:

1- Explain the importance of mediation, and the difference between it, and other means.

2- Explain the importance of introducing the aforementioned mediation law.

Previous studies:

As far as the researcher's knowledge is concerned, there is no study named "Dispute Resolution Under the Jordanian Civil Mediation Law No. 25 of 2017," but there are studies related to the topic, including:

1- Alternative Means of Conflict Resolution in Jordanian Law, Hazem Samir Kharfan, The Reality of Mediation as a Means of Dispute Resolution in Jordanian Law, Journal of the Bar Association, Research Supplement, 2008.

2- The role of the private mediator in resolving civil disputes, Rola Abu Rumman, Dar Jamal Press, Amman, 2010.

3- Mediation in the Settlement of Civil Conflicts, Muhammad Ahmad Al-Qatawneh, MA Thesis, Mu'tah University, 2008.

All these studies talked about mediation in settling civil disputes. The researcher's study complements and clarifies these studies.

II. THE METHOD OF THE STUDY:

In his study, the researcher followed the inductive approach and the deductive method. The research plan came as follows:

Summary:

Introduction:

The first topic: the nature of mediation and the development of the Jordanian mediation law for settling civil disputes

The first requirement: the development of the Jordanian Mediation Law for the Settlement of Jordanian Civil Disputes

The second requirement: Introducing mediation and the types of mediators

The first section: the definition of mediation

The second section: types of brokers.

The third requirement: the importance of mediation, and the difference between it and other means of settling disputes

The first section: the importance of mediation

The second section: the difference between mediation and other dispute settlement

Fourth requirement: civil liability of the mediating judge

The first section: the definition of responsibility.

The second section: civil liability of the mediating judge.

The second topic: means, types of mediation, and how to refer a dispute to mediation in light of the Jordanian Mediation Law for Settlement of Civil Disputes No. 25 of 2017

The first requirement: means of agreement in resolving disputes.

The first section: articles of commercial arbitration.

The second section: agreement mediation.

The third section: reconciliation.

The second requirement: types of mediation, and how to refer a dispute to mediation.

The first section: types of mediation.

The second section: How to refer a dispute to mediation.

The third section: the responsibility of the mediating judge.

Conclusion: It includes the most important findings and recommendations.

The first topic: What are mediation and the development of the mediation law for the settlement of Jordanian civil disputes?

The discussion in this topic revolves around the development of the Jordanian Mediation Law for Settling Civil Disputes. And what mediation is, about civil liability, the importance of mediation, and the difference between them and other alternative methods of dispute settlement.

The first requirement: the development of the Jordanian Mediation Law for the Settlement of Jordanian Civil Disputes.

Mediation is one of the modern methods adopted by the Jordanian judiciary. And it proved to be very beneficial in most of the countries that took it, so it worked to reduce the burden on the courts. Therefore, the Mediation Law for the Settlement of Temporary Civil Disputes No. 37 of 2003 was issued for the first time, and it was published in the Official Gazette on 4/30/2003 (1), on 3/16/ 2006 Mediation Act passed; For the settlement of civil disputes No (12) for the year 2006 which replaces the temporary law No (37) for the year 2003, and it was published in the Official Gazette on page 738 No. (4751) on 3/16/2006, and it contains fourteen legal articles that regulate the work of mediation Through a judicial administration established at the headquarters of the first instance court, and this administration is called the Mediation Department, and it is made up of a number of beginning and conciliation judges called Mediation judges. In 2017, the Jordanian Civil Mediation Law for Settlement of Disputes was amended to be called Law No (25) of 2017, whereby the provisions of three articles of the law were amended. This law has regulated mediation as an alternative means of litigation through the Judicial Administration, which operates through the courts of first instance and is called the Mediation Department, in which the judges are called mediation judges.

Therefore, mediation in Jordan is considered modern in terms of its name, but it is not modern in practical and legal terms. The Jordanian legislator has put in place a detailed and independent legal regulation of the mediation process, which was mentioned in the previously mentioned law (2).

The second requirement: Introducing mediation and the types of mediators:

The First section: Definition of Mediation:

Mediation with the people of the language from the middle: the letter (W), the letter (S), and the letter (T) is a true construct that indicates justice and the half (3). And they said: The middle: the moderate: it is said: something in between, that is, between the good and the bad (4), and in the revelation, God Almighty said (From the middle of what you feed your family) (Al-Ma'idah: 89) meaning the average. And the Almighty said: (And also we made you a middle nation) (Al-Baqarah: 143) meaning justice and choice, and from the previous verse it is said from the middle of his people: that is from their choice (5), and from that mediation in truth and justice (6), and the mediator between the quarrels to reach truth and justice (7) .

Mediation is defined by the law people: as a means of interaction with the aim of reaching an agreed solution (8), and it is also known as a mechanism for resolving civil disputes between two parties, or more with the assistance of a third person who directs the negotiation process, brings together the views between opponents, and helps formulate appropriate solutions to the conflict (9) .

The second section: types of brokers:

By looking at the text of Law No (25) of 2017, it becomes clear that mediators are of three types (mediating judge, private mediator, and consensual mediator).

First: the mediating judge:

This law was stipulated in Paragraph (A) of Article (3), and the designation of the mediating judge was mentioned exclusively in the mediation law, and the mediating judge performs the mediation process and thus it can be said: The mediating judge in Jordanian law is the judge of mediation under the law, The judge of the peace under the Magistrate Courts Law (10), and the mediating judge under the Jordanian Mediation Law are judges of the Magistrates Courts, or the Courts of First Instance who are selected by the President of the Court of First Instance for the period that he determines in accordance with the text of Article (2) of the law. Accordingly, based on the law, it becomes clear that the mediating judge, or mediation judges, is a name given to practicing judges, or who are still practicing the judiciary; Because the legislator included non-practicing judges, i.e. retired, private mediators as stated in Article (2) of the law.

Second: The Private Mediator:

It is intended by the person to whom the conflict is referred, to undertake negotiations between the two parties to the conflict to reach a solution, and to offer solutions that can help in resolving the conflict,and reaching a solution that satisfies the two parties to the dispute, to settle the dispute between them with the reconciliation that stems from the consent of the plaintiff and the defendant.

The one who mediates without conciliation may be multiple, so it is permissible for one or more mediators to undertake the mediation. But they must reach, through negotiation, one result, which is either the agreement on reconciliation or not, and there is no effect of the difference in the views of the mediators in the negotiation process, which leads to the conclusion of the reconciliation contract in the event of their multiplicity (11), and the mediator was known in civil disputes as (a neutral person who is foreign to the conflict of his choice. In dispute, to find a solution to the dispute through a recommendation issued after research and investigation based on the evidence and information provided by the two parties, and after trying to approximate the views of each of them and getting them to conclude an agreement that puts an end to the conflict situation between them) (12). The Jordanian legislator has stipulated the private mediator in Paragraph (b) of Article (9), stating that by saying: (If the private mediator reaches a complete settlement of the dispute, the plaintiff may recover half of the judicial fees that he paid, and the other half shall be paid as fees to this mediator, provided that it is not less. A minimum of three hundred Jordanian dinars is 300, and if it is less than this limit, the parties to the dispute are obligated to pay the mediator equally between them the difference between that amount and the prescribed minimum, and if the private mediator does not reach the settlement of the dispute, the case management judge shall determine his fees not exceeding an amount Two hundred dinars, which the plaintiff is obligated to pay to him, and this amount is considered among the lawsuit's expenses (13).

Third: the consensus center:

We have previously talked about a mediator in general, and the definition of a mediator. The Jordanian legislator referred to the consensual mediator in Paragraph (b) of the text of Article (3). As the agreement mediator is chosen by the parties to the litigation, and the agreement mediator is required not to be among the private mediators or the mediation judges, and therefore the parties to the dispute have the right to choose the mediating judge as a general rule, as the agreement is one of the most important principles on which the mediation is based to reach a solution acceptable to it (14).

The third requirement: the importance of mediation, and the difference between it and other means of settling disputes:

The first section: the importance of mediation:

Highlights the importance of mediation as an alternative means of resolving civil disputes which lies in reforming and organizing relations between the parties to the conflict in the civil framework, it addresses the population in their differences in search of cohesion that must remain between them (15). Mediation also works on the search for the fairness sought by the parties to the litigation, in addition to the complete confidentiality enjoyed by mediation, which is one of its most important advantages as a means of settling disputes. Mediation also saves time, effort, and money for the state and opponents alike, as it reduces the burden on the courts and has the advantage of saving time, effort, and money. As it is known, litigation by known traditional means is financially burdensome for the parties to the conflict. This is because litigation in Jordan - as it is known - is not free of charge, in addition to the fees charged by the lawyer. Mediation also seeks to reconcile the interests of the parties to the conflict to reach a solution acceptable to the parties (16).

In addition to the foregoing, mediation works to maintain friendly relations between the opponents, and seeks to reduce the volume of disputes between the parties, and moves away from the formal or formal side. It also enables parties to the dispute to speak directly about their disputes. In it, that is, mediation for opponents, he is free to talk about their disputes.

In the end, the mediator strives by searching for points of agreement between the parties, as he works to highlight the importance of mediation. To achieve the common interests of the parties to the conflict; to push them to accept the solutions proposed among themselves (17).

The second section: the difference between mediation and other dispute resolution methods:

Mediation is considered one of the alternative means of resolving disputes, as it is not the only method for that in Jordan, as there are other methods for resolving disputes, including: litigation first, control second, and conciliation third.

Mediation participates with these methods in resolving, and ending the litigants' disputes, as it often takes place after the parties to the conflict have failed to reach an agreement; To solve their disputes through negotiation, direct contact, and without the interference of other parties or external parties, so the dispute is often sought by parties outside the scope of the dispute. When naming mediation, and taking it as an alternative way to settle disputes. What is meant here is that it is an alternative way to the litigation process, and the reason for imprinting this characteristic on it lies according to the logic of matters in the idea that the process of resolving disputes is entrusted to the state, so establishing the rules of justice and stability is one of the duties of the state (18).

In any case, it is necessary to explain the differences between mediation on the one hand, and other means of resolving disputes on the other hand.

First: the difference between mediation and litigation (19):

A- The mediator in the mediation process is obligated through his work with concern and effort; to achieve the goal, as the work of the mediator may end and the litigation remains. As for litigation, the judge must reach a verdict in this dispute that ends the litigation, and issues the judgment.

B- The mediator shall receive a financial fee for his work that is estimated by the parties to the dispute, while this is not present in the litigation process.

C- The mediator must complete the mediation work within a period not exceeding three months from the date of referring the dispute to him, while the litigation process may end earlier, and may extend beyond that.

D- To hold mediation sessions, the presence of the parties to the dispute or the presence of legal agents is required, while this is not required in the litigation process where one of the parties to the dispute can be tried in absentia.

E - In terms of expenditures as a public asset, the one who bears the litigation expenses is the losing litigant in the case. As for the mediation costs, they fall within the agreement between the parties.

F- As for the nature of the task, the judge in the litigation process focuses most of his attention on ending the dispute in accordance with the provisions of the law, while the mediator seeks to bridge the points of view between the litigants to reach a solution.

Second: The difference between mediation and arbitration:

Mediation and arbitration are distinguished by basic and fundamental differences, which are as follows:

1. Mediation takes place between the litigants themselves or their representatives, under the authority of the parties to the dispute with the aim of reaching an amicable solution formulated by the parties themselves, with the intervention of a third party, who is the mediator to complete the reconciliation and settle the dispute; While the arbitration in which the judgment performs the task of the judge. And that is that he meets with the two parties to the dispute, and issues his judgment and imposes it on the parties to the dispute, in which the dispute is settled, whether or not the opponent is satisfied, even if the choice of this judgment or the choice of the arbitration method was consensual (20).

2. The judge must offer mediation for reconciliation at the beginning of the process of adjudicating the litigation. As for arbitration, it is only possible at a certain stage of the case.

3. The judge shall refer the subject of the dispute to the mediator at the request of the parties to the dispute, or after the conciliation has offered mediation and with their consent to conduct mediation.

4. Mediation may deal with the whole issue of the mediating dispute in whole or in part, and this is what came in the text of the Jordanian Mediation Law for Settlement of Civil Disputes (21).

5. Mediation to settle the dispute between the parties to the dispute may not take place, because the mediator is unable to converge on the views between them, or one of the parties is not satisfied with the mediator's offer, and here the mediation judge must return the case to the subject judge for a judicial decision. Assuming the success of the mediation process, the mediator's decision does not have the authority of the adjudicated order, except after the subject judge's approval of the mediator's decision, and this is what was stipulated in the Jordanian Mediation Law for Settlement of Civil Disputes (22). In the event that efforts to resolve mediation fail, the plaintiff resorts to move the case before the competent court (23).

As for arbitration, it is a procedure whereby the parties agree to submit their disputes to an arbitrator at or before one of the stages of litigation, and by which they undertake to accept the arbitration decision, and it becomes binding on them. Neither of the parties shall refrain from accepting the arbitration award, especially if it is consistent with its legitimate principles (24).

The judgment issued by the arbitrator shall have the authority of the adjudged order, and the judgment shall be enforceable and not subject to appeal, except in the event that the arbitrators 'decision violates the principles in force in the law. For example, if the arbitrators' decision suffers from obscene ignorance, with which it is impossible to imagine the outcome of the judgment.

Nevertheless, the appeal is not directed to the authority of the arbitrators to decide the dispute, but rather the appeal is directed to the ruling that contradicts the legitimate principles (25).

Third: The difference between mediation and reconciliation:

Mediation differs from reconciliation in the following (26):

1- Mediation requires submitting the dispute to the mediator, which is the essence of the mediation contract, while submitting the dispute to a third party for reconciliation is an optional matter, as the parties to the dispute have the right to reconcile without the interference of a third party.

2- It is the right of the litigants in mediation to participate in the deliberation with the mediator and to develop appropriate solutions, while the matter differs in the reconciliation as the litigants are under the pressure of the judge, and none of the parties to the conflict may accept the solutions offered.

3- In mediation, the litigants are at ease and say everything they have, while this matter may not be available in reconciliation.

4 - The judge in mediation must do it in the first session, while the reconciliation is at any stage of the case.

5- Mediation is restricted to a specific period, while reconciliation is not restricted to a specific period.

6- The difference in some formal conditions, such as writing, which is a condition for a meeting in mediation, while it is a condition for proof of conciliation.

Fourth requirement: civil liability of the mediating judge:

Talking about the civil liability of the mediating judge requires us to first define responsibility, and then talk about contractual liability and tort liability.

The first section: definition of responsibility:

First: Responsibility in the language: He who asks a question and asks him and an issue and questions his means (27), including God Almighty's saying: "Your Lord had a responsible promise" [Al-Furqan, Verse 16].

The question is summoning knowledge, or what leads to knowledge, or calling money, or what leads to money, so calling knowledge is his answer on the tongue, and the hand is his successor in writing, or by gesture (28).

Second: Responsibility in idiom: Responsibility in its general sense may be legal and have a legal sanction, and it may be moral with a moral sanction only, represented by blaming oneself (29).

Civil liability is another penalty for a specific person, and it is divided into two parts: contractual liability and tort liability (30).

Third: the mediating judge:

Paragraph (a) Article (2) of Mediation Law No. (12) of 2006 mentioned talking about the mediating judge who is from among the justices of the peace, and the beginning is chosen by the head of the court of first instance, and when he works as a mediator, his mission as a judge ends by settling disputes. The mediating judge is exclusively in the mediation law, and accordingly, it can be said that the mediating judge is of two types in Jordanian law: the mediation judge according to the mediation law, and the magistrate under the magistrate courts law (31).

Fourth: The legal nature of the mediating judge:

The relationship between the mediating judge and the parties to the conflict must not be based on coercion in order to resolve the dispute, and this is the basis of the work of the mediating judge, and accordingly, the obligations of the mediating judge under Jordanian law are clear, among them the legislator in the aforementioned law.

It is clear from the text of Paragraph (a) Article (2) that the mediating judge who works under this name, and under the shadow of the mediation law does not remain for him from the word judge in terms of mission except the name, as his task is turned from a judge working on good dispute who orders him to a person seeking good Dispute with the consent of the litigants (32). Among the most important obligations of the mediating judge stipulated by the Jordanian legislator in the Mediation Law are the obligations of the mediating judge to achieve a result under the Mediation Law, and to exercise due diligence under the law as well.

The mediating judge shall submit a report attached to the settlement agreement to the referring judge in the event of a partial or total settlement, and submit a report in the event that the mediation process fails. Paragraph (b) of Article (7) stipulates: (If the mediator reaches a full or partial settlement of the dispute, he submits a report to the case management judge or the magistrate judge and attaches to it the settlement agreement signed by the parties to the dispute for ratification, and this agreement is considered after its ratification as a final judgment) (33).

Paragraph (c) of Article (7) stipulates: (If the mediator does not reach a settlement of the dispute, he must submit a report to the case management judge or the magistrate stating that the parties have not reached

a settlement, provided that he clarifies in this report the extent of their obligations, and their agents to attend mediation sessions) (34).

The second section: civil liability of the mediating judge:

The civil liability of the mediating judge derives its importance from the position of the parties to the conflict, and it arises, either from a legislative text, or a contract concluded between the parties to the dispute and the mediating judge, and civil liability for the damage resulting from the breach of certain obligations, and civil liability here is divided into contractual liability and tort liability (35).

First: Contractual Liability:

Responsibility as we mentioned is the penalty for breaching the obligations arising from the contract, and in order for this responsibility to be fulfilled, its elements must be available, and these elements are: (contractual error and damage and the causal relationship between error and damage) (36).

The first pillar: nodal error:

Critical error was defined as a deviation of behavior in such a way that the discerning does not exert it, if it is found in the same external circumstances that surrounded the official (37). The types of contractual commitment are of two types: there is an obligation that can only be achieved by achieving a specific goal that is the object of commitment, and this type of commitment is a basis in Islamic jurisprudence, and the second type is an obligation to exert effort to reach the achievement of this purpose, and if it is not achieved then it is an obligation to work, which is exerting effort A work whose results are not guaranteed, and this commitment is also not alien to Islamic jurisprudence (38). As for proof of the doctrinal error, it has been shown that Islamic jurisprudence clearly demonstrates and clarifies the issue of the burden of proof. A distinction is made between the debtor's hand if his hand is a trust, or a surety hand, so he must prove that he has committed himself, which is a commitment to achieving an end (39), and the standard of care for the behavior of the ordinary person is determined, i.e. the standard of the ordinary man, or the standard of the public man (40). Accordingly, it becomes clear that liability is the result of a mistake committed by the debtor in not implementing his obligation, and this is not denied unless the creditor proves the debtor's default (41).

Pillar two: damage:

The harm is all that is bad condition, poverty, and distress in the body, it is harm to join, and what is against benefit is by opening it (42).

Harm conventionally is inflicting spoilage to others altogether (43) while jurists defined harm as what afflicts a person with one of his rights, or a legitimate interest for him (44).

Conditions of damage: for the damage to happen, three conditions must be met:

First: For the object of harm to be owned (45).

Second: That the harm is real, meaning that it actually occurred, since the harm is the cause of compensation, and the cause does not precede the cause of it (46) (Islamic jurisprudence refuses to compensate for the potential harm or future harm because saying it leads to injustice as it depends on a matter that is not yet known. And it leads to unacceptable results) (47).

Third: That the damage is direct, and personal, meaning that the damage is a direct natural consequence of the infringement caused by the responsible.

Types of damage (48):

The types of damage vary according to many considerations, including:

First: With regard to verbal harm or actual harm.

Second: Considering the positive harm and the negative harm.

Third: The harm is inflicted, and the subsequent harm.

Fourth: Harm by destroying money, missing the benefit, or missing the opportunity.

Fifth: moral or moral harm.

The third pillar: the causal relationship between the contractual error and the damage In order for contractual liability to exist, there must be a breach of a contractual obligation. There must be a valid contract between the mediator and the litigating parties, given that the breach of the infringement obligation is stipulated in the contract (49).

As for the burden of proof of harm, it falls on the creditor, he must prove evidence of the harm he suffered as a result of the debtor's failure to implement his obligation (50), as the evidence, as it is known, is on a plaintiff other than the apparent one, and this is what was decided by Sharia principles.

Second: Negative Liability:

The default is defined as: (The person bears the results and consequences of his default, or whoever assumes his control and supervision) (51). In civil law, it should be blamed for mistakes that harm others, by obliging the wrongdoer to pay compensation to the injured party according to the method and size determined by the law, and tort liability must have three elements: (error, damage, and the causal relationship between them).

As for its pillars, Article (256) of the Jordanian Civil Law stipulates that any harm to others is obligatory for the perpetrator, even if he is not privileged to guarantee the harm) (52), so it is clear from this that tort liability is based on three pillars:

The first pillar: harmful action:

This act is based on an unlawful act, such as negligence, for example, and failure to observe laws and regulations, when the person causing the damage is obligated to pay compensation (53).

Pillar two: damage:

What is meant by harm here is the harm that befalls the injured in a right, or in a legitimate interest, whether this harm is directed to his life, money, or feeling (54). The damage may be material, or it may be moral, and the damage here results from a breach of a legal obligation other than the damage in contractual liability that results from a breach of a contractual obligation (55).

The third pillar: causation relationship:

It is the link between the harmful act and the harm. Article (261) of the Jordanian Civil Law stipulates (If a person proves that the harm arose from a foreign cause that he has no hand in, such as a celestial pest, a sudden accident, a force majeure, or the action of others, or the act of the injured was not He is obligated to guarantee unless the law or agreement requires otherwise (56).

The second topic: means, types of mediation, and how to refer dispute to mediation in light of the Mediation Law for the Settlement of Civil Disputes No. 25 of 2017:

The first requirement: means of agreement in resolving disputes:

Returning to alternative means of resolving disputes has the effect of reducing the burden on the judiciary, as indeed the need for a profound change in the judicial system appears, as it works to transfer us from an imposed legal order to a negotiable law. Accordingly, it is necessary to talk about means of agreement in resolving disputes that lie in:

First: Articles of commercial provisions.

Second: Agreement mediation.

Third: reconciliation.

The first branch: commercial arbitration clauses:

There are many clients and merchants who in the business world prefer to search for agreements by mutual consent. Therefore, alternative means - at the top of its pyramid - mediation - play a prominent role in settling disputes in the financial and business world. It is in the interest of everyone in this world to always search for A compromise solution through different agreement methods, and it is considered the best way to refer to the ruler, as the sure desire to maintain more friendly relations between clients, avoid financial loss, and not waste time, all this justifies the search for negotiable solutions.

Therefore, many large commercial enterprises seek to apply this method. To settle disputes as an alternative to the use of traditional justice, as the general nature of cases before the courts has begun to form a barrier in front of litigants who seek not to show their differences before the competitor, the supplier, and the customer (57).

The Second Branch: Agreement Mediation:

The general origin of this concept comes as a result of the desire of the opponents, whether they are united or separate, and at their initiative by inviting a mediator, which is known as the third party to find a solution to their dispute. This is as an alternative to judicial institutions or security centers, and this mediation is called this name because of the assignment of this task by the litigants to a mediator from outside the framework, or from outside the judicial environment (58).

With regard to the provisions of mediation, the rules of contractual freedom apply here, so that the parties remain free to appoint the mediator they choose, and with the possibility of this agreement between the litigants a contractual agreement, they can give it a legal character through settlement in the courts if they so desire.

Section Three: Reconciliation:

It is an agreement between two persons, or more who differ from each other, so that this difference is put to an end by agreement, or the claim is abandoned outside the court through the arbitrator. Reconciliation became the ultimate goal of the judge as they can reconcile in all stages of the case.

The use of reconciliation is considered a good thing in France in several areas, including: (debt repayment, problems between neighbors, the relationship between owners and tenants, the relationship between merchants and consumers), and the judicial reconciliation executed by the judge may take a mandatory character in the following cases (59):

1- Prior reconciliation before the labor court with regard to disputes related to workers' rights.

2- Reconciliation before the administrative committees.

3- Judicial Mediation.

4- Civil mediation.

5- Reconciliation before starting the divorce procedures.

6- Judicial family mediation.

7- Criminal mediation.

The second requirement: types of mediation, and how to refer dispute to mediation:

The first section: types of mediation:

Mediation has three types (60):

1- Judicial mediation: which takes place through the first-instance and conciliation judges, who are selected under the Mediation Law by the head of the Court of First Instance for this task, and these are called mediation judges.

2- Private mediation: which takes place in support of the text of the Mediation Law, whereby mediators are chosen here from among retired judges, professionals, lawyers, and experienced people who are certified for their integrity and impartiality, and these are nominated by the President of the Judicial Council upon the recommendation of the Minister of Justice, in support of the text Law, and these are called private brokers.

3- Agreement mediation: This takes place through a mediator agreed upon by the parties to the litigation.

The second section: How to refer a dispute to mediation:

It is necessary to talk here about two types of cases that are referred to mediation: the primitive cases and the reconciliation issues.

First: Refer the dispute to mediation in preliminary cases. The referral of the dispute in this type of case is made by the case management judge on his own initiative, after his meeting with the legal agents of the litigants, or upon the request of the parties to the dispute, or after their approval. And that is based on the text of Article (3) of the law, and if the case management judge referred this dispute on his own initiative, that will be after the nature of this dispute becomes clear to him, does it require that or not?

Second: Referring the dispute in conciliatory cases to mediation, and this is done through the magistrate's judge on his own initiative and based on the nature of the dispute, or at the request of the parties to the dispute in support of the law, and here the mediator determines his fees in agreement with the parties to the dispute, and if the dispute is settled amicably, the plaintiff shall recover the fees That paid.

With regard to the conditions of mediation, among the most important of these conditions (61):

1- The parties to the dispute attend the mediation sessions.

2- Confidentiality.

3- The mediation period should not exceed three months (just as the mediation judge, on pain of nullity, may not consider the subject matter of the case that was previously referred to him for mediation) (62).

With regard to mediation procedures, when referring a case to the mediation judge, the file should be referred to him in full, and he has the right to instruct the parties to the dispute to submit their statements or memoranda of their statements, and to attach to them the most important data on which they will rely.

In the event that the dispute is referred to a private mediator, the case file is not referred, but rather each of the parties to the dispute shall submit a brief memorandum of his statements and attach to it the most important data on which he will be based, then a session is set, and the parties to the dispute or the agents are notified, and when they attend the mediation sessions Discuss with them the subject of the dispute, and the requests of each of them, and the mediator has the right to isolate each party, and he also has the right to take what he deems appropriate. To bring points of view, and he has the right to express his opinion, provide evidence, and other things that facilitate the procedures of all mediation, and it may be the most important types of mediation (bargaining based on rights, conciliatory, or integrated bargaining) (63).

The mediation process goes through the following stages (64):

1- The joint session stage.

2- The closed meeting stage.

3- The stage of exchanging offers and demands.

4- The last meeting stage.

Based on the text of the law, this mediation entails certain results, and as stated in the text of Article 9, either the mediation succeeds, or it fails.

The third branch: responsibility of the mediating judge:

Talking about the responsibility of the mediating judge must be clarified, is it a default or a contractual liability? The mediating judge is asked about his actions in the event of a breach of his civil obligations as a result of his assuming his role in the mediation process, and he is asked in the event of his breaking the legal rules that govern the nature of his work as a mediating judge. It says that if the mediating judge neglects and violates the functions of the provisions stipulated in the Mediation Law, he shall be responsible for negligence and mismanagement in managing the dispute to reach a satisfactory solution for both parties, and therefore his responsibility is a default responsibility (65), and the conditions for establishing civil liability for the mediating judge are in (66):

1- The perpetrator of the harmful act must be the mediating judge.

2- He committed the act while performing his job or duty.

3- If he exceeds the limits set for him by the act issued by him.

Finally, the civil liability of the mediating judge ceases to exist for the discontinuation of the causal relationship, such as if he proves that the harm is caused by the victim, or that a third party is the sole cause of the injury (67).

III. CONCLUSION:

After this presentation on the subject of mediation as an alternative method for litigation in settling civil disputes, a study in the Jordanian Civil Dispute Settlement Law No. 25 of 2017, the researcher reached several conclusions, including:

1- Mediation is an alternative to litigation.

2- Mediation resolves the dispute between its people through an intermediary between them.

3- Mediation is one of the procedures of concluding a composition, so reconciliation is not free either between the plaintiff and the defendant.

4- Mediation has many advantages, which makes it one of the best alternative methods of dispute resolution.

5- The responsibility of the mediating judge is a default.

As for recommendations, the researcher recommends the following:

1- Preparing courses for training mediators on the mediation mechanism and how it is done.

2- Cooperating with the first countries in this matter to benefit from their experience.

3- The legislator must indicate the litigants' ways to attend the sessions when mediation procedures.

4- The legislator shall indicate ways to enable litigants to exchange and extend the pleading and defense memoranda.

5- The legislator must clarify the lawsuit that can be referred to the mediating judge and what state it should be in.

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