

## **ARBITRATION CLAUSES IN LABOR CONTRACT AND ITS RELATIONSHIP WITH PUBLIC ORDER ACCORDING TO THE JORDANIAN LEGISLATOR**

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**ABSTRACT:** *On our study of the arbitration clause in labor contracts and its relationship to public order, and depended on the clauses of the Jordanian Arbitration Law No. (31) for the year 2001 and its amendments for the year 2018 and Labor Law No. (8) for the year 1996, the arbitration clause mentioned in the labor contract is annulled, the Jordanian legislator is keen on The Labor Law states that its clauses related to the worker are peremptory clauses and it is not permissible to agree to violate them in order to preserve the rights of the worker. The employment owner neglects the employment, and one of these guarantees is the annulment of the clauses in which the employer waives the right in the labor contract from a right granted to him by the law, as the arbitration clause in the labor contract deprives the Magistrate Court of its specific competence in considering labor proceedings and on the urgency status and is exempt from fees. The study concluded that the arbitration clause involved the labor contract is annulled since it relates to the public order of the Jordanian legislator, and a set of results and recommendations hoping to be achieved a keyvalue to the specialized studies in this field.*

**KEYWORDS:** arbitration, arbitration clause, public order, labor contract, employer, employment owner.

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### **INTRODUCTION**

The Jordanian legislator was interested in the labor law to provide sufficient guarantees for the parties to the contract of labor, whether the employer or the employment owner, with a view to protect the contractual relationship and preserving the balance between them and ensuring the proper functioning of the work, and the employment owner isn't to be excused on the employer, because the employer needs work as a source of livelihood, as it is the weakest link in The contractual relationship, one of these guarantees is the annulment of the clause in which the employer in the labor contract waives a right that is guaranteed to him by the law, but there is nothing that prevents the legislator in the labor contract that states better rights granted by law to the employer.

One of the clauses that may be mentioned in the labor contract is the clauses of arbitration that resort to arbitration to settle disputes that may occur in the future between the employer and the employment owner, and as a general clause, arbitration is an alternative way to

settle disputes, as it is not resorted to except in disputes that accept reconciliation, so both parties Arbitration waive of their right to resort to the noble jurisdiction of the state; To replace an arbitral tribunal.

to settle the dispute, and despite some disputes accepting conciliation, the legislator, under penalty of responsibility, forbids prior agreement to arbitration in the employment contract (arbitration clause). This was confirmed by the Jordanian Court of Cassation in its decision, because this is a waiver by the employer of his right to resort to the state's jurisdiction to settle the dispute that may occur in the future from the contractual relationship between him and the employment owner, so the arbitration clause mentioned in the employment contract is not permissible in relation to public order.

The arbitration clause in the employment contract deprives the Magistrate's Court its specific competence by considering labor proceedings and on the urgency and exempt from fees, and this is in contrast to the arbitration that the employer incurs the costs of arbitration while it is indispensable, which is in the interest of the business owner by resorting to arbitration by resolving the disputes with the employer by arbitration Or amicable settlement with the loss of his financial right under the pretext of expenses and fees that pay expenses and fees for arbitration.

### **The objective of the study**

In order to be achieved the required objective from this study; it aimed to know that the arbitration clause in the employment contract is from the public order after analyzing the texts mentioned in Jordanian Labor Laws No. (8) of 1996 and Jordanian Arbitration Law No. (31) 2001 and its amendments for the year 2018 implementing and advocated by the decision of the Jordanian Court of Cassation.

### **Study Significance**

The importance of the study shows to identify that the arbitration clause mentioned in the employment contract is from the general order after studying and analyzing the items mentioned in the Jordanian labor and arbitration laws, and under penalty of annulment, the labor law states that any clause in the labor contract loss employer any of his rights guaranteed by the law is annulled, and advocated by the decision of the Jordanian Court of Cassation, and the arbitration law states the annulment of the prior agreement on arbitration (arbitration clause) mentioned in the labor contract.

### **Study Problem**

The main issue this study is that the arbitration clause mentioned in the labor contract and the it's relationship to public order, and depended on the items of Jordanian Labor Laws No. (8) 1996 and Jordanian Arbitration Law No. (31) 2001 and its amendments for the year 2018, the issues of this study are represented as follows:

- 1- Is resorting to arbitration in resolving labor disputes violates to the Labor Law?
- 2- Is the arbitration clause in the labor contract to settle labor disputes is annulled?

3- Is resorting to arbitration to settle labor disputes considered a employer's waiving of his right to state jurisdiction?

4- Is the arbitration clause in the labor contract considered a public order?

### **Study Approach**

In this study, the researcher follows the descriptive analytical approach, by reviewing the items of Labor Law No. (8) For the year 1996 and the Jordanian Arbitration Law No. (31) for the year 2001 and its amendments for the year 2018 that address the legal system of the arbitration clause mentioned in the labor contract and its relationship with public order.

We divide this study into three topics, as follows:

**The first topic: The legal nature of the clauses of labor law**

**The second topic: the legal nature of the arbitration clause in the labor contract**

**The third topic: the justifications for the relationship of the arbitration clause in the labor contract with the public order**

**The first topic: The legal nature of the labor law rules**

**The first requirement: the concept of an labor contract**

The Jordanian Labor Law defines the labor contract as: an explicit or implicit oral or written agreement, the employer undertakes to work for the employment owner and under his supervision or management for a wage, and the labor contract is for a limited or unlimited period or for a specific or unspecific labor<sup>1</sup>.

As it defined (2) by the same law of labor as: "Every intellectual or physical exerted by the employer for a wage, whether it is permanent, casual, temporary or seasonal"<sup>2</sup>.

**The second requirement: the legal nature of the labor law rules**

Labor law rules are featured by its ordered rules; As it is not permissible to agree to violate it; This is because they depend directly on preserving the balance between the both parties to the labor contract by protecting the weak party, the employer, from exploiting the employment owner, and at the same time protecting the employment owner from the rebellion of the employer and not obeying him or not implementing his orders and instructions, and this is clearly evident through the item of Article (4 / B) From the Jordanian Labor Law: "Every clause in the labor contract or an agreement by which any employer waives any of his rights conferred on him by the law shall be annulled."

The ordered rules define as: those rules that individuals are not permitted to violate, agree to contrast, or exclude its rule. The ordered rules are absolute rule where of its application,

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<sup>1</sup> -Article (2) Jordanian Labor Law No. 8 of 1996.

<sup>2</sup> - Article (2) Jordanian Labor Law No. 8 of 1996.

and there is no freedom to confront individuals, whether in relation to amending it, changing its rule, or excluding it<sup>3</sup>.

As we find that the Jordanian legislator, under penalty of annulment, states that every clause in the individual labor contract or an agreement that the employer waive of one of his rights granted to him by law is annulled, and the annulment here is partial to the clause found in the contract only and not for the whole contract; In order to preserve the least for the protection of the employer, it is not prevented from agreeing to provide better merits in the item of the contract, and we can infer this through the item of Article (61 / A) of the Labor Law concerning to the annual leaves of the employer, which states that: "Every employer has the right to leave Annual full paid for a period of fourteen days for each year of service, unless more than one is agreed upon ...".

The Jordanian legislator preserved the least right of a employer to take leave, which is fourteen days, if his service is less than five years<sup>4</sup>, so it is not prohibited for the parties to agree on a longer leave period. In this case, the agreement is considered "the law of the contractors" and this is confirmed by the item of Article (4 / a) of the Labor Law that: "The provisions of this law do not affect any of the rights granted to the employer by any other law, work contract, agreement or approval if it is Which of them give for the employer better rights than the rights granted for him under the provisions of this law. As for the collective work contract, Article (2) of the Jordanian Labor Law defines it as a "written agreement according to which the clauses of labor are regulated by the employment owner or " the Employers the association "on the one party and a group of employers or a association from another hand.

As the Jordanian legislator was keen in the Jordanian labor law to organize effective consensual ways to resolve collective labor disputes and build a laboring relationship on fair grounds in a manner consistent with economic and social development, these ways are direct collective bargaining between the two parties without the intervention of a third party

<sup>3</sup> - Dr. ALSaraaf Abbas. And Dr. George's Hezboon, Introduction to Law - Theory of Law and Theory of Right - Dar Al-Althaqafah, Amman, 2011, p.44

<sup>4</sup> - Article 61: item (a) of the Jordanian Labor Law states that: A- Every employer has the right to annual leave with full pay for a period of fourteen days for each year of service, unless more than that is agreed upon, so that the annual leave period becomes twenty-one Days if he spent five years in service with the same employer, and public holidays, religious holidays, and weekend days are not counted from the annual leave unless they occur during them. B - If the employee's period of service shall not reach a year, he is entitled to a paid leave in proportion to the period during which he labored in the year. C - The employer's leave may be deferred for any year by agreement between the employer and the employment owner until the year immediately following that year, and the employer's right to the deferred leave in this manner expires if the year to which it was postponed expired and his use was not requested during that year, and the employment owner may not refuse the employer's request to obtain On his leave. D - The employment owner may specify during the first month of the year the date of the annual leave for each employer and how it is used for the employer in his organization, according to the requirements of the labor in it, provided that the interest of the employer is taken into account.

or the intervention of the conciliation delegate or the conciliation council<sup>5</sup>; Where the labor law granted the minister to appoint one or more delegates from the ministry to carry out the mediation function in settling labor , collective dispute<sup>6</sup>.

This approach is namely called a mediation approach for resolving collective labor disputes, which is not the topic of our study.

## **The second topic: the legal nature of the arbitration clause in the labor contract**

### **The first requirement: arbitration agreement and its types**

#### **The first item: the concept of arbitration**

Arbitration is defined as “litigants waive on resorting to the judiciary with their commitment to submit the dispute to one or more arbitrators, in order to settle it by a ruling that is binding on the litigants”<sup>7</sup>.

#### **The second item: The concept of arbitration agreement**

The new Jordanian. arbitration law No,31 a year 2001 did not mention an article defines the arbitration law on the contrary the annulled agreement No,18 a year 1953 which defined it in the second item as the written agreement involves referring an exist or future dispute to arbitration, whatever, the name of arbitrator or arbitrators, Mentioned in the agreement or not mentionrd.

The Jordanian Court of Cassation defined the arbitration agreement as: "an exceptional way that litigants resort to settle disputes occurring among them, according to an existing agreement among them with aiming to exit through ordinary litigation."The International Commercial Arbitration standard Law (Unistral) defined the arbitration agreement as: an agreement between the two parties to refer to arbitration all or some of the specific disputes that occur or may among between them regarding a specific legal contractual or non-contractual relationship, and the arbitration agreement may be in the form of an arbitration clause It is mentioned in a contract or a separate agreement<sup>8</sup>.

#### **The third item: the types of an arbitration agreement**

The Jordanian legislator divided the types of the arbitration agreement into the arbitration clause and the arbitration clausung. Article (11) of the Jordanian Arbitration Law stated that: “The arbitration agreement may be prior to the occur of the dispute, whether it is

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<sup>5</sup>- Mansour Ibrahim Al-Atoom, Explanation of the Jordanian Labor Law, No. 8 of 1996 CE, 1999. DR. Omar Al-Ateen, Arbitration in Labor proceedings, Al-Manara Magazine,AL Al-Bayt University, Mafraq, No. 15, Volume 2, 2009, p. 198.

<sup>6</sup> - Article 120 of the Jordanian Labor Law, the Minister may appoint one or more delegates from the Ministry's labor to perform the mediation mission in settling collective labor disputes, for the region he determines and for the period he deems appropriate.

<sup>7</sup> - Dr. Ahmad Abu Al-Wafaa, Optional and Compulsory arbitration, University Press House, Alexandria, 2007, p. 15 d. Abu Al-Wafaa, Arbitration Contract and Procedures, Second Edition, Monshaat Al-Maaref, Alexandria, 1974, p. 15.

<sup>8</sup> - Article (7/1) of the International Commercial Arbitration standard Law (Unistral).

independent in itself or mentioned in a certain contract regarding all or some of the disputes that may occur Between the two parties, arbitration agreement may also take place after the dispute occurred ... ". Therefore, we will study with these types as follows:

### **First type: arbitration clause or arbitration item**

The arbitration clause is defined as: an article mentioned within the articles of a certain contract. Deciding to resort for arbitration as a way to settle the future disputes among contractors over the contract and its implementation or interpretation<sup>9</sup>.

The arbitration clause is devoted to disputes that occur from a certain contractual relationship between the two parties, and the arbitration clause may be mentioned in the original contract organizing the commitment of the two parties, or in a another agreement to this contract, but this agreement is required prior to the occur of the dispute, so the clause waive what may occur From disputes between the two parties for a certain contractual relationship, not the disputes actually occurred<sup>10</sup>. It is a probability as it is possible, or not, that the dispute occurred in the original contract<sup>11</sup>.

The arbitration agreement may be isolated of the original contract it contains, and leads to the arbitration agreement (arbitration clause) not being affected of the situation of the original contract, and this is known as the principle of the independence of the arbitration clause<sup>12</sup>.

### **The second type: Arbitration clausung or arbitration contract:**

**Arbitration clausung**, means as: any agreement organized by the parties separately about the original contract, by resorting to arbitration in relating to a dispute that already exists among them<sup>13</sup>. It shall specify the issues and the matter of the disputes involved by the arbitration; otherwise the arbitration agreement is annulled<sup>14</sup>.

### **The second requirement: the legal nature of the arbitration clause in the labor contract**

it has already been referred to the arbitration clause involved in the Article (11) of the Jordanian Arbitration Law, which permits agreement to settle the dispute that may occur

<sup>9</sup> - Dr. Samia Rashid, Arbitration in Private International Relations - Arbitration Agreement - The Arab Renaissance House, Cairo, 1984, p. 75. Dr. Adel Mohammad Khair, The Arbitration Mechanism in Egyptian Law, Compared to the standared Law on International Commercial Arbitration and the Arbitration System of the International Chamber of Commerce, Volume, October 1997, p. 35.

<sup>10</sup> - . Dr. Reda Mohammad Obaid, Arbitration Clause in Maritime Transport Contracts, Journal of Legal Studies, Faculty of Law, Assiut University, Sixth Issue, June, 1984, 197.

<sup>11</sup> - Hussein al-Mumen, Alwajeez in Arbitration, Al-Fajr Press, Beirut, 1977. 13.

<sup>12</sup> - Dr. Fawzi Muhammad Sami, (2008 AD), International Commercial Arbitration - A Comparative Study of the Provisions of International Commercial Arbitration - First Edition / Third Edition, Dar Al Thaqafa, Amman, p. 200.

<sup>13</sup> - Dr. Samia Rashid, Arbitration in Private International Relations, , p. 75. Dr. Adel Mohammad Khair, previous reference. 35.

<sup>14</sup> - Dr. Nariman Abdul Qadir, (1996), The agreement of contract, The Arab renaissance house, Cairo . . 45 Dr. Ibrahim Ahmed Ibrahim, private International Arbitration, Second Edition, Arab Renaissance House, Cairo, 1997,p. 87.

in the arbitration (the arbitration clause) or agree to settle an existing dispute by arbitration (arbitration clausung), but this is not implemented to all disputes may that do Arbitration without any restriction, and there are even disputes that may not be the subject of an agreement on arbitration, because it relates to the public order of the Jordanian legislator, despite the difference in this from one state to another, so issues in which reconciliation is not permissible are not permissible in arbitration<sup>15</sup>, for example. Criminal issues and the target of this is that this issue is related to the legislator himself<sup>16</sup>.

Referring to the arbitration clause in the labor contract, the arbitration law did not state that agreement to arbitration in labor contracts is prohibited under the Jordanian Arbitration Law No. (31) for the year 2001 before an amendment for the year 2018, but after the Jordanian Court of Cassation's decision annulling the arbitration clause in the labor contract which It based on its decision on the text of Article (4 / b) of the Labor Law that forbids agreement or a clause in the labor contract that reduces or annulled a employer's right guaranteed by the legislator, and among the most important of these rights is the right of the employer to resort to the state's jurisdiction to settle any future dispute between the worker and employment owner.

The decision of the Court of Cassation stated that: "The Labor Law granted the parties to the labor contract several advantages, including the urgent consideration by the competent Magistrate Court of the proceeding and the exemption of the proceedings from fees, and the law granted the employer full rights and granted him with a set of guarantees due to the weak party in the contractual relationship. In the item of Article (4 / b) of the Labor Law, the legislator has arranged the annulment of any clause in the labor contract or any agreement whereby any employer waives any of the rights granted upon him by the law. Exceptional on the general principle, in which the employer incurs fees, expenses, exempted by the Labor Law, so the clause of resorting to arbitration in the labor contract is a waiver of the rights granted to it by the Labor Law, and considers a violation of the provisions of Article (4 / b) of the Labor Law and therefore it is considered an annulled clause and shall not occur effect"<sup>17</sup>.

Due to the diligence of the Jordanian Court of Cassation mentioned above, the Jordanian legislator amended the Arbitration Law No. 31 of 2001 of 2018 by adding Article (10/2/2) to be as follows: "Notwithstanding what was stated in any other legislation and without prejudice to the previous legal situations of implementing this amended law is annulled any previous agreement to arbitration in the following two situations: 1. ... 2. Labor contracts. The agreement on arbitration in labor contracts (arbitration clause) to b annulled due to public order.

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<sup>15</sup> - Article (9) of the Jordanian Arbitration Law of 2001 sated that: "... arbitration is not permissible in issues where conciliation is not permitted".

<sup>16</sup> - Nabil Ismail Omar, Arbitration in National and International, Civil and Commercial Articles, New University Publishing House, 2004 AD, p. 75 and beyond.

<sup>17</sup> - <http://jc.wewebit.com/ar/decision/item/hye-aaam-320/2015>

Meanwhile, the Jordanian legislator permitted for the parties of labor contract, agreeing to settle any dispute may be occurred due to implementation of labor contract. Which includes resorting to an arbitration, where the contract is the law of contractors, both parties has a right insisting on arbitration clause mentioned in labor contract providing that the clause related to labor contract and did not reduce or annulled rights guaranteed by legislator for employer<sup>18</sup>.

### **The third topic: Arbitration clause in the labor contract and relationship with public order and its effects**

#### **The first requirement: Arbitration clause in the labor contract and relationship with public order**

The arbitration clause in the labor contract relates to the public order of the Jordanian legislator, and the public order is defined as: It is a set of basic principles on which society of all its values legal, political, social and economic systems depend on<sup>19</sup>. Our point of view is depend on the following:

**First:** Any clause mentioned in the labor contract that the employer waives or reduces any of his rights is annulled<sup>20</sup>.

**Second:** The Jordanian legislator gave first priority to labor issues, where he made the Magistrates Court the competent authority to consider labor proceedings and exempt from fees, whatever its cost, considering as a matter of urgency, so that the period of consideration shall not exceed more than three months, and shall not exceed more than a month before the Court of Appeal in a case of the decision is appealed<sup>21</sup>.

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18 - the decision of court of cassation No, 10\2005, the magazine of the bar association volume 7,8,9 a year 2006 p. 1087.

19 - AL- Pondogje Mohammad, (10/1/2015), Public order in jurisprudence - Al-Rai newspaper <http://alrai.com/article/691190.html>.

20- Article (4 / b) of the Jordanian Labor Law states that: "Every clause in the labor contract or an agreement by which any worker waives any of his rights granted to him by the law shall be annulled".

21- Article (137) of the Jordanian Labor Law states that: "A. The Magistrate's Court is competent to consider, as a matter of urgency, proceedings occurring out of individual labor disputes, with the exception of proceedings related to wages in areas where wages have power under the provisions of this law, provided that It will be decided within three months from the date of its arrival in the court B. The court's decision that is issued according to the provisions of item (A) of this Article will be appealed within ten days from the date of its understanding if it is annulled and from the date of its notification if it is considered and the court must decide on the appeal Within thirty days from the date of its arrival at its office, C. proceedings filed with the Magistrate Court shall be exempt from all fees, including fees for executing the decisions issued by it.



**Third:** The arbitration clause considers in the labor contract is annulled depends to the item of Article (10/d/2)<sup>22</sup> Jordanian Arbitration Law No. 31 of 2001 after its addition to its amendments for the year 2018.

**Fourth:** The decision of the Jordanian Court of Cassation is considered an annulled arbitration clause in the labor contract.

**Fifth:** An embodiment of the legal rule stating that: “What is built upon error is annulled,” and implemented to the item of Article: (231) of the Jordanian Civil law: “If something is annulled, in which includes is annulled”<sup>23</sup>.

**The second requirement: the implications of considering the arbitration clause in the labor contract from the public order**

All of legal items related to the arbitration clause mentioned in the labor contract of the Jordanian labor and arbitration laws were peremptory, so it is not permissible to violate them. Both of them stated on annulled it as item of the public order, and this was confirmed by the decision of the Jordanian Court of Cassation, which entails the following:

- 1- It is not permissible for any litigant resorting to arbitration, depends on n the existence of an arbitration clause in the labor contract, because this clause is annulled, and annulment here is partial to the arbitration clause that is independent of the original contract.
- 2- If arbitration is issued in a labor proceeding due to the agreement to arbitration in an arbitration clause mentioned in the labor contract, then the arbitration judgment is annulled, and it shall not be implemented because of the public order.

**CONCLUSION**

The study was interested in the arbitration clause mentioned in the labor contract and its relationship with public order, and through our study of Jordanian labor items No. (8) for the year 1996 and Jordanian arbitration law No. (31) for the year 2001 and its amendments for the year 2018 and what the jurisprudence of the judiciary concluded, we have ended in this study has set of results and recommendations:

**RESULTS**

- 1 - The legal nature of labor law rules is featured by peremptory rules, and it is not permissible to agree to violate them, As it relates to public order, it is not permissible for a employer to waive any of his rights guaranteed the law.
- 2 - It is not permissible for a employer, under penalty of annulment, to waive the right guaranteed by law to him to resort to the urgent and free judiciary of the state, as this would loss his rights.

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<sup>22</sup> - It stated that: "... any previous agreement on arbitration shall be annulled in the following two cases: ...  
2. labor contracts.

<sup>23</sup> - Jordanian Civil Law, 76 of 1996.

3- There is nothing to prevent the to the legislator from settling the dispute in labor proceedings within the framework of the arbitration clause that is resorted to after the dispute.

4- The resorting to arbitration to settle labor disputes in an individual labor contracts is considered a requirement of the employment owner.

### **Recommendations**

1- We hope the Jordanian legislator to include a item prohibiting the resort to arbitration in labor proceedings within the framework of the arbitration clause that is resorted to after the dispute has occurred, similar to the arbitration clause in the labor contract, and under penalty of annulment.

2- If the legislator maintains that the annulment is limited to the clause of arbitration only, and does not expressly state the annulment of the arbitration clause in labor proceedings, we suggest to create an arbitration institution to settle labor disputes within the framework of the arbitration clause and follows to the Ministry of Labor.

3- We hope that Ministry of Justice and the Judicial Council of Jordan allocate judges to each Magistrate's Court to consider labor proceedings only, in order not to prolong litigation in labor proceedings from practical hand, due to the huge amount of proceedings considered by Magistrates 'Judges of various specializations

4- We also hope that the Jordanian legislator will not differentiate between settling labor disputes in an individual contracts and collective contracts in the Jordanian labor law.

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