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Issuance Of The Judgment Arbitration

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Abstract

After the arbitration procedures are completed, the arbitration award shall be issued in writing, since writing is a necessary condition in it, because it is a judicial act practiced by the arbitrators in the matter of every judicial authority, it is considered a real arbiter in the dispute. in which all elements of judicial work are available, The formulation of this judgment is subject to formal rules that are close to those imposed on judgments issued by judicial authorities, The judgment must include the litigants' names and capacities, the names and capacities of the arbitrators, the claims of the parties, the place and date of the award, The arbitration judgment, like the judgment of the judiciary, is issued enjoying authenticity, it is distinguished from the judgments of the judiciary by its issuance having the force of the res judicata, which makes it an enforceable judgment because it is not permissible to appeal. . As for judicial rulings, they do not acquire the force of the res judicata until after the refusal of the appeal against them or the expiry of the deadlines for the appeal by the means of appeal, and after it is notified to the parties, then the procedures for its implementation are taken.

Introduction

Arbitration is important in resolving commercial and civil disputes, as it is considered one of the alternative means for settling disputes, and it is widely used in international contracts in particular, where it is rare to find an international contract that does not include an arbitration clause to settle disputes arising from the contract, and by arbitration we mean optional arbitration in which the parties agree A commercial contract on settling the disputes that will arise or arise between them in relation to that contract by resorting to arbitration, and that talking about arbitration requires volumes to saturate it with study, and that our study in this research is brief on the issuance of the arbitral award, that is, after the end of the arbitration procedures, and that result must be formulated in A document by the arbitrator or arbitrators. If the arbitrator is one, he issues his decision after closing the pleading and after completing the submission of documents and memoranda from the disputing parties and after exhausting all opportunities for them to express their requests and pleas. To study this topic, we divide the study as follows: -

The first topic: - The deliberation before the issuance of the arbitration decision:

The second topic: - Conditions for issuing an arbitral award and its types

The third topic: The content of the arbitral award

The first topic: - The deliberation before the issuance of the arbitration decision:

If the arbitral tribunal consists of several people, and usually their number is odd, then deliberations must take place between the arbitrators before issuing the decision, and as some jurists say, there are no formalities related to the deliberation of arbitrators, as it derives entirely from the agreement of the parties and from the rules of arbitration, provided that it respects the rules of international public order (which impose the principle of deliberation) and is also based on the provisions of the rules of procedure chosen by the parties, and it is assumed that deliberation takes place between the arbitrators who examined the dispute .

However, deliberation may not be achieved between all the arbitrators together, due to the difficulty of this in the field of international arbitration. The president may prepare a draft of the arbitral award and send a copy of it to each arbitrator in the country in which it is located, and each of them expresses his opinion by correspondence until the matter reaches an agreement on the wording of the award by The majority of arbitrators or unanimously.

The deliberation shall be confidential and it is not permissible to involve another person with the arbitrators such as experts or consultants, otherwise this becomes a reason to challenge the arbitral decision. The French Court of Cassation confirmed what the Court of Appeal went to in a well-known case, by saying (there is no specific formula for deliberation between the arbitrators). It added that (it is sufficient for the arbitrator who represents the minority to be in a position where he can express all his observations about the draft final decision of the arbitration and does not require that it be preceded by oral deliberation among all the arbitrators.

The decision is deliberated in secret, and they are divided between agreeing and opposing, and the decision is issued by a majority, so a meeting and the participation of all arbitrators is required in the deliberation.

This opinion differs from what the French Court of Cassation said in its interpretation of the deliberation, as it does not require everyone to meet, but rather leaves the minority with the opportunity to express its opinion, even on a draft or draft resolution sent to it by mail. But there is no such explanation in the Iraqi judiciary. The process of deliberating in arbitration. It seems that some Arab legislations require that the arbitrators meet together to deliberate together. This is what we find in Article (38) of the Saudi Law on Arbitration issued on March 27, 1985, where it says: "Deliberations take place confidentially, and only between the arbitral tribunal that heard the pleading and meets with all its members.

It is noted that the Italian Code of Procedure, which was amended in 183, states in the second paragraph of Article 823 of it that all arbitrators must personally participate in the deliberation. But the aforementioned law adds in Article 824 that the deliberation must take place in a place in Italy.

And one of the commentators adds that we will face difficulties when one of the arbitrators refuses to come in person to the meeting for deliberation. In this case, he indicates that the judiciary can support the deliberation conducted by the majority despite the absence of one of the arbitrators.

This means that what the French Court of Cassation has said in the aforementioned decision can be taken into account by the Italian judiciary.

Some international arbitration rules also stipulate that arbitrators in institutional arbitration prepare a draft or draft decision to be presented to a certain body in the arbitral institution and after its approval, the decision is issued by the arbitrators. Before signing a partial or final judgment, the project shall be submitted to the Court of Arbitration (Cour d'arbitrage).points related to the subject matter of the dispute, The decision is not issued until after the form is approved by the court." We find a similar text in the rules of control in the Arab and European Chambers of Commerce, where Article (24) of the mentioned rules deals with the arbitral award. To sign it, the arbitrator must necessarily submit the draft judgment to the Council for its review.

In conclusion, we would like to emphasize that it is necessary in all cases to conduct a deliberation before issuing and signing the arbitral award. As previously mentioned, the deliberation may take place by a meeting of the arbitrators together, or it may take place in any other form, it may take place by correspondence, by telephone, or by any other means of communication.

The second topic: the conditions for issuing the arbitration judgment and its types.

To study this topic, it is necessary to divide it into the following: -

The first requirement: the conditions for issuing the arbitration judgment:

First: Writing:

Most arbitration laws and rules5 state that the award must be issued in writing so that it can be deposited in the court to give it an executive capacity.

This was stated in the international arbitration rules. The second paragraph of Article (34) of the UNCITRAL Rules stipulates that "the arbitration decision shall be issued in writing…" The Model Law on Arbitration prepared by the said committee also included a similar text in Article (31) of it, where it came In it, "the arbitral award is issued in writing and signed by the arbitrator or arbitrators…" and writing is a must for all arbitral rules, even if it is not expressly provided for, because those arbitral rules, as well as the laws, stipulate what should be included in the award's decision, and this means that the decision must If his book is issued, but English law permits the issuance of the decision in writing.

Second: - The language in which the decision is written, but what is the language in which the judgment decision is written? We have already mentioned that the two parties are free to agree on the use of a specific language or languages in the arbitration proceedings.

For example, the third paragraph of Article 15 of the rules of the International Chamber of Commerce stipulates

that "the arbitrator shall determine the language or languages in which the arbitration shall take place, taking into account the circumstances, especially the language of the contract," as stated in Article (17) of the UNCITRAL rules in its first paragraph that: Taking into account what the two parties may agree upon, the arbitral tribunal shall, upon its formation, decide on the language or languages to be used in the procedures, and this designation shall apply to the statement of the case, the statement of defense and every other written statement... 22) from it.
In any case, the language used in the procedures is the language in which the arbitration decision is written, and therefore this applies to the language in which the decision is issued. Observing the same rules and language in which the judicial judgment is written. The Arab Commercial Arbitration Agreement also stipulated in the first paragraph of Article 23 of it that "the Arabic language is the language of procedures, pleadings, and judgments."
Third: The period during which the decision is issued Most of the arbitral rules, as well as the laws, specify a specific period during which the arbitrators must issue their arbitral decision, which puts an end to the dispute, and Professor Mohsen Shafiq justifies this by saying that this limitation was brought by the legislation "so that the arbitrators do not slacken in the consideration of the dispute, thus losing the advantage of speed that the opponents seek."6
The rule is to give priority to the agreement of the two parties in determining the period at which the arbitrator's task ends. In other words, the period during which the arbitration procedures end, including the issuance of the arbitral award, and the determination of the period is stated in the arbitration clause or in the stipulation. The two parties may extend the said period, either expressly or implicitly.6 Professor Robert says that determining the duration of the arbitration cannot be left to the discretion of the arbitrators, even under authorization by the parties, because this will lead to the risk of abstaining from ruling.8 Only the parties can agree to leave the issue of extension for a period specified by them to the arbitrators in the cases in which they deem the extension necessary.
It is clear from the foregoing that the parties have the right to determine the period during which the dispute occurs by the arbitrator or arbitrators. But in the event that it is not specified by those parties, the provisions of the applicable procedural rules shall be taken into consideration. For example, the French law states in Article 1456 that "if the arbitration agreement does not specify a term, the arbitrators' mission shall not continue for six months." Either Egyptian law stipulates a term Two months in Article (505) of it, but the Iraqi law also specified a period of six months9 for the task of arbitrators, and thus we find that the laws differ in determining the period.
These laws lay down special provisions for how to extend this period and the reasons for the extension. Some laws have special provisions for how to extend this period and the reasons for the extension, and some laws stipulate the expiry of arbitration in the event that the role of the judgment is not valid during that period (Article 1464/3 of the French law) or that the expiry of the period without the issuance of the judgment gives the right to each of The two parties may file the case in the competent court to resolve the dispute or to take new procedures to start the arbitration process again, and this is what we find in Article (263) of the Iraqi Code of Pleadings, where it states: "If the arbitrators did not settle the dispute within the period limited in their agreement or specified in the law If the arbitrators were unable to submit their report for a compelling reason, each litigant may refer to the court competent to consider the dispute to add a new period or to decide the dispute or to appoint other arbitrators to rule on it, according to the circumstances.
As for the beginning of the period, we find that French law stipulates that the six-month period starts from the day on which the last one of the arbitrators accepted his mission, and this is in the case of multiple arbitrators, or in the case of a single arbitrator. This period in Egyptian law is also from the date of the arbitrators' acceptance of arbitration, and the same is the case with Iraqi law, where it is stipulated in the second paragraph of Article 262 that the six-month period for the issuance of the arbitral award starts from the date of the arbitrators' acceptance of arbitration.10
If we look at the international arbitration rules, we will find a section of them that specifies a period within which the arbitrators must issue their decision. For example, the arbitration rules of the Arab-European Chambers of Commerce stipulate in the tenth paragraph of Article 23 of it that "the time limit within which the arbitrator must issue his judgment is determined." ninety days from the date of the referral stipulated in the fifth paragraph of this article, but the council11 may extend this period if it deems it necessary, based on the arbitrator's request.
The entry into force of the period is the date on which the Documentation Secretariat of the Arab-European Chambers of Commerce referred the arbitration file to the arbitrator, and not from the date of the court's acceptance of his mission as we have seen in the aforementioned legislation.
However, Italian law also limits the period to ninety days and starts from the court's acceptance of the task (Article

825), as for the rules of the International Chamber of Commerce. I.C.C. (18) of them before the amendment stipulated in its first paragraph that ((the arbitrator must issue his judgment within six months from the day he signed the report referred to in Article (13) i.e. from the day of signing the report named Act de mission.

As for the second paragraph, it came in it (La Cour, on an exceptional basis, at the request of the arbitrator or on its own initiative if necessary, to extend this period if it deems it necessary), but after amending the first paragraph of the above article since 1/1/1988, the period remained the same as six months, but its beginning became as follows:

((After depositing the security deposits mentioned in Article Nine of Paragraph Four of the Rules12, the period starts from the day on which the last arbitrator signed or from the day on which the two parties signed the minutes mentioned in Article 13, which is as we mentioned the minutes of the arbitration mission, and in the absence of signature The period starts from the date of the expiry of the period specified for one of the parties in the second paragraph of Article (13) to sign the minutes, or from the day on which the arbitrator was notified by the arbitration court that the deposits specified by the court had been paid in full, and this is in case the period was delayed beyond this notice)).

Thus, we find that the new text of Article (18) of the rules of the International Chamber of Commerce lists several dates for the beginning of the six months for the issuance of the arbitration decision.

Finally, we point out that the UNCITRAL rules and the texts of the Model Law on Arbitration do not address the issue of the period during which the award must be issued, and this is a deficiency that the Commission on International Trade Law did not pay attention to.

It is noted that the Arab Agreement on Commercial Arbitration stipulates in Article 31 of it that ((the decision shall be issued by agreement or by the majority within a maximum period of six months from the date of referring the file to the Authority)).

According to the provisions of the agreement, it is the head of the Arab Arbitration Center - formed according to the provisions of the agreement - who transmits the case file to the arbitral tribunal after its formation in order to carry out its mission.

The second requirement: - Types of arbitral judgment:

During the course of the arbitration proceedings, the arbitrator may take some decisions that deal with some issues related to arbitration, and these decisions do not settle the dispute definitively, but rather relate to some preliminary matters13 or some partial matters. Preliminary or partial decisions, such as the decision taken by the arbitrator to determine the law applicable to the subject of the dispute, the decision on the jurisdiction of the arbitrator, or the decision that determines the liability of one of the disputing parties without determining the amount of compensation for damages. Such decisions are procedural decisions because they lead to the settlement of the dispute and the termination of the arbitrator's task. We find that the majority of Arab laws do not provide for such decisions.

What concerns us in this field is the arbitral decisions that put an end to the dispute by resolving all disputed matters. Such decisions can be divided as follows:

1. **Amiable Composition**

Such a decision shall only be taken when the arbitrator or arbitrators are authorized to make a settlement decision by the two disputing parties. In such a case, the arbitrator is not obligated to apply the legal provisions on the subject matter of the dispute, but he may apply them or base his decision on the principles of equity (L'equite). It was stated in Article (265/2) of the Iraqi Code of Pleadings: ((If the arbitrators are authorized to conciliate, they are exempted from adhering to the procedures of pleadings and the rules of the law, except for those related to public order)).14

The jurisprudence also goes to the effect that the arbitrator in the conciliation cannot be bound by the legal texts that are peremptory in addition to the rules of public order.15

Before we finish this kind of arbitral decisions, we point out that the delegation of the conflicting parties to the arbitrator for conciliation is an explicit human being in the contract or in a form that is understood as such, as if it is said that the arbitrator resolves the dispute according to the rules of fairness or the rules of justice.16

The jurisprudence goes on to say that the arbitration clause by conciliation means that the parties waive the rule of law.17

2. **The arbitration decision based on the settlement agreement between the parties to the dispute:**

It may happen during the arbitration procedures that the two parties come to the arbitrator and tell him that they have reached an agreement to settle their dispute that is the subject of the arbitration. In the form they reached, it is not necessary for the two parties to submit to the arbitrator a written text that includes the details of their agreement, because often the disputing parties reach, during the oral argument, a specific formula for resolving the dispute, and in this case, they ask the arbitrator to issue the arbitration decision in the form they agreed to resolve their dispute, and on him The request must be submitted by the two parties and not by one party of the arbitrator to issue its decision in the form they agreed upon.

The jurisprudence considers that there is no objection in this case for the arbitrator to assist the parties in reaching such an agreement.18

However, the arbitrator is not obligated to answer the parties to their desire in this regard, and he can reject the request if he considers that the settlement they reached is illegal or in violation of the rules of public order, and therefore the inclusion of the settlement agreement in the arbitration decision depends on the consent of the arbitrator, and this is what the first paragraph stipulates. Article 34 of the UNCITRAL Arbitration Rules states: “If the parties agree before the issuance of the arbitration award to a settlement that ends the dispute, the arbitral tribunal decides to terminate the arbitration proceedings, or if the parties request it and agrees to the request to include the agreement in the arbitral award that It is issued based on the consent of the two parties, and this decision is not irrevocable)). Also, it was stated in the Model Law of Arbitration drawn up by the aforementioned committee in Article (30) thereof, with a text similar to the text referred to above.

It is noted that the arbitration decision based on the settlement agreed upon by the two parties is quickly implemented by them.

The Model Law met this point and emphasized it in the second paragraph of Article (30) ((.... This decision shall have the same character and the same effect as any other arbitral award issued on the merits of the case)).

3. **Final judgment**

It is the main decision or the final decision that addresses the dispute presented to the arbitrator with all its elements and finds a final solution for it. It is binding on the disputing parties. In the event that it is not implemented amicably by them, the procedures that are followed in the implementation of judicial rulings are followed in its implementation after giving the executive capacity to that decision.

It must be mentioned that the arbitration decision, whether it is based on conciliation or settlement, is also a final decision to end the dispute and find solutions for it, but we called this last type of decision the final name, where we mean the decision taken by the arbitrator or arbitrators after closing the pleading and without It may or may not be based on the settlement made between the conflicting parties.

The third topic: the content of the arbitral judgment

The fourth paragraph of Article 32 of the UNCITRAL Rules states the following: ((The arbitrators shall sign the decision, and it must include the date of its issuance and the place in which it was issued. They agreed not to cause it. Also, in the Model Law on Arbitration in Article 31 of it, and under the heading The form and contents of the arbitration award, the following text:

1- The arbitral award is issued in writing and signed by the arbitrator or arbitrators, and in the arbitral proceedings In which more than one arbitrator participates, it is sufficient if the majority of all members of the Tribunal sign it arbitration, provided that the reason for the absence of any signature is stated.

2- The arbitral award shall indicate the reasons on which the decision is based, unless the parties have agreed not to state the reasons, or unless the award was issued on agreed terms under Article 30.19
3- The decision must indicate the date of its issuance and the place of arbitration specified in accordance with Article (1) of this Article 20. The arbitration decision shall be deemed to have been issued in this place.20

Article 41/c of the Jordanian Arbitration Law states: "The arbitral award must include the litigants' names and addresses, the arbitrators' names, addresses, nationalities, and capacities, a summary of the arbitration expenditures, a summary of the litigants' requests, statements and documents, the ruling's text, the date and place of its issuance and its reasons, if it is obligatory, to include The judgment determines the arbitrators' fees and arbitration expenses and how they are to be distributed among the parties.

After presenting these examples of national and international texts that define the contents of the arbitral award and after reviewing the texts in this field, we conclude that the arbitral award contains the following matters:

1. **Names of the arbitrators:**
   It is necessary to mention the names of the arbitrators in the arbitral award, and it is customary to mention their qualities and addresses, the party who appointed each of them, and how the presiding arbitrator was chosen. Also in connection with the beginning of the period during which the arbitral award must be issued, some legal rules expressly stipulate that the specified period starts from the date of the acceptance of the last one of the arbitrators for the aforementioned task, and it is required to mention the names of the arbitrators who issued the decision, and this means if there was an arbitrator who was replaced before The issuance of the ruling is not mentioned in the decision.

2. **Names of the parties to the dispute:**
   The name of each of the parties to the dispute must be mentioned in the arbitration. The applicant for arbitration may be referred to as the plaintiff and the person against whom judgment is sought as the defendant, or the first term may be called the applicant for arbitration and the second party against whom arbitration is sought. Arab Convention on Commercial Arbitration.21

3. **Reference to the arbitration agreement:**
   Some legal texts do not require that the arbitration agreement be mentioned in the arbitration decision, but other texts require a reference to the arbitration agreement in the decision. An agreement subsequent to the emergence of a dispute, and we often find such a matter in international arbitration decisions, where it is said, for example: Based on the arbitration clause contained in the agreement signed between the plaintiff ... and the defendant ... on ... to the effect of settling all disputes that will arise from the interpretation or Implementation of this agreement by amicable means and in the event that this is not reached, the dispute shall be decided through arbitration by three arbitrators. Each party chooses one arbitrator and the other party chooses the second arbitrator, the two arbitrators meet, and the arbitration is conducted in accordance with the law .... etc.
4. **Subject matter of dispute:**
   The decision mentions the subject of the dispute 22that was raised between the two contracting parties and which led to a request by one of the parties to start procedures in order for that dispute to be decided by arbitration. Which led to submitting the dispute to arbitration, and as we have already mentioned that the subject matter of the dispute must be one of the issues that can be resolved by arbitration.23

5. **Actions taken by the arbitrators:**
   In this paragraph of the decision, the arbitrators mention a summary of the procedures that took place during the course of the arbitration, for example: the decisions taken regarding pretrial detention, the dates of the pleading procedure, the claims of each of the parties, the memoranda and regulations submitted by each of them and communicated to the other party, the statements of witnesses and experts, if any, and reports Concerning disclosure and inspection, and all documents submitted during the course of the pleadings, as mentioned in this paragraph, the problems faced by the arbitrators and

how to address them, as well as the closing date of the pleadings.

6. Reasons upon which the decision is based:

When we presented the legal texts, we found that most of them stipulate that the arbitration decision must include its reasons. Motifs de La sentence, and as we have indicated, the laws of the Anglo-Saxon countries do not require the reasoning of the arbitration decision, and the judicial rulings in these countries are also not blasphemous.

It seems that there has been a development in England with regard to this issue, where the courts of higher degrees in this country began to cause their decisions, and some courts, such as administrative courts, were required to cause their decisions because of the necessity of this in relation to the oversight exercised by the higher courts. The English Law of Arbitration of 1979 came with a new text, although it retained the general principle that the arbitral award should not cause any cause.25 However, each of the parties to the dispute may request, before issuing the decision from the arbitrator, that the decision include the reasons on which it was based26, and the High Court may, after the award is issued, request the arbitrator to state the reasons on which he based his decision.

Mr. Mohsen Shafiq points out that it may happen sometimes in England that the arbitrator writes the reasons for the decision in a separate paper without signing it and attaching it to the decision or handing it over to those who request it from the litigants.

We must mention in this regard that the French judiciary has held that failure to reason the arbitral award in international arbitration is not considered a violation of the international public order if the law or the procedural rules of arbitration do not require that the award be based on reasoning,27 With regard to the French Code of Pleadings, the internal arbitration decision that is not reasoned is considered null by the text of Article (1471) even if the decision is conciliation, but the texts of the French Code of Pleadings amended in 1981 do not oblige the arbitrator in international arbitration - which is arbitration related to international trade - to cause the arbitration decision only If the parties have requested causation, or if the rules of procedure followed by the arbitrator require that.

This distinction between the internal public order and the international public order for the state and for the reasoning of the decision was also made by one of the courts in an Arab country in an arbitration award that was issued in England and English law does not require the reasoning of the arbitral award or judgment, the Fourth Circuit of the Court of Appeal in Tunis confirmed in Appeal Judgment No. (45823) dated 4/22/1982 said that the failure of foreign arbitral awards to follow our method of justifying judgments is not, in and of itself, considered a violation of the Tunisian international public order if two conditions are met:

First: The science of reasoning should be the method used in the country in which these decisions were issued, in application of the law of that country or the custom in force.

Second: It should be clear to the execution judge from the decisions themselves or from the accompanying papers that the procedures followed in them are correct, that the legal reasons on which they are based are evident and that the rights of the defense are respected.29

In the third paragraph of Article 32 of the UNCITRAL Rules, it is necessary to give reasons for the arbitral award unless the parties have agreed not to give reasons for the award. the decision unless the parties have agreed not to cause it)).

As for the Model Law on Arbitration prepared by UNCITRAL, it also touched upon the reasoning for the arbitral award in the second paragraph of Article 31 of it, where it stated: “In the arbitration award, the reasons on which the decision was based shall be indicated, unless the parties have agreed not to state the reasons or what The decision was not issued on agreed terms under Article 30, bearing in mind that the article referred to in the text is related to the arbitral award that is issued based on the

settlement of the dispute between the two parties. Therefore, it is not necessary to justify the arbitral award, because the reason for the decision is the settlement that was made between the two parties and which was written down in the arbitral judgment.

It is noted that the arbitration rules of the Arab-European Chambers of Commerce, similar to the arbitration rules of the International Chamber of Commerce, did not include in their texts what indicates the necessity of justifying the arbitral judgment.

But the 1965 Washington Convention on the Settlement of Disputes Arising from Investments between States and Citizens of Other Countries referred to this in Article 48 of it, which dealt with how the arbitration award was issued and the matters that must be included in the said decision (motive dout etre).

However, among all the aforementioned texts, we find that the European Convention on International Commercial Arbitration of 1990 was more clear and detailed than the previous texts, as it was stated in Article 8 of them and under the title of the reasons for the decision as follows:

((It is assumed that the two parties have agreed on the reasoning for the decision unless:

a. The two parties had explicitly declared that they would not give reasons for the decision

B. If the two parties have subjected themselves to arbitration procedures in which the reasons for the arbitration decision are not made, and in this case the two parties or one of them must not have explicitly requested the reasoning of the decision before the end of the pleading or before writing the decision in case the pleading was not conducted)).

Before completing this topic, we refer to the Arab Commercial Arbitration Agreement of 1987, which also stipulated that the decision must be caused in the first paragraph of Article 32.

We conclude from the foregoing that the majority of international arbitration laws and rules require causation of the arbitral award, but some of these laws require causation of the arbitral award that is issued in accordance with their provisions, but these laws do not see an objection to not causation in international commercial arbitration if the procedural rules do not require that Or the parties to the dispute have agreed not to obligate the arbitrators to give reasons for the judgment.

7. Content of the arbitral judgment:

We do not mean here by the content how the arbitrators decided to settle the dispute. It is also called the term (verdict operative), i.e. the paragraph on ruling on one of the parties to the dispute and what must be implemented for the benefit of the adjudged party, or what each of the parties must do in order to end the dispute Everyone who has the right takes his right, and accordingly, the decision includes a decision on all issues submitted to arbitration, but if the decision omits some of the issues that the arbitrators had to resolve, the decision is considered incomplete and each party can ask the arbitrators to complete the deficiency by issuing a complementary or additional decision, and the same is the case With regard to correcting material errors that may be contained in the decision, the arbitrators can also be asked to explain the decision they issued, and this is what was stated in Article (1475) of the French Code of Procedure.

However, the arbitration rules set by the International Trade Law Commission were more clear, as it was stated in Article 37 of it and under the title of the additional arbitration award as follows:

1. Each of the parties may request the arbitral tribunal, within thirty days from the date of receiving the arbitration decision, provided that the other party is notified of this request, to issue an additional arbitration award in response to requests that were made during the arbitral proceedings but which the arbitral award omitted.
2. 2. If the arbitral tribunal considers that the request for the additional decision is justified and that it is possible to correct the omission that occurred without the need for new pleadings or the submission of other evidence, it must complete its decision within sixty days from the date of

receiving the request, and the third paragraph of this article emphasized following the same The method of writing the arbitral award and its contents in the additional arbitral award, as a similar text was mentioned in Article 33 of the Arbitration Model Law.

In sum, the arbitrators have the power to issue the additional decision in relation to the settlement of some requests that were submitted during the pleading during the arbitration procedures and were neglected by the decision issued to resolve the dispute, for example compensation for damages claimed by one of the parties or a claim for interest for delaying the delivery of goods that had been He bought it from the other party, and this decision is issued by the arbitrators at the request of one of the parties to the dispute. The arbitrators may also, whether on their own or at the request of one of the parties to the dispute, correct arithmetic errors, typographical errors or any other similar errors, or give the interpretation of some paragraphs Arbitral decision.30

It is noted that some arbitration rules or laws did not provide for this matter with regard to the arbitral award, but we believe that if the arbitration decision is issued, it is permissible to make a correction or issue an additional decision or give explanations for the decision, provided that this is during the period in which the decision must be issued and before it is deposited in the competent court. After that, each of the parties may request anew a new arbitration process to resolve the issues that were neglected by the first decision or the correction procedure, or request the competent court to make the correction, or request the arbitrators to interpret what was stated in their judgment, and all of this is due to The law applicable to the proceedings as well as the law of the country in which the arbitral award is to be enforced.

There remains another issue that raises the question of whether it is among the matters that the arbitrators must decide on or not? In other words, is the issue of the arbitrators' fees and expenses included in the arbitration award or not? As for the arbitration expenses, it is customary for the arbitration decision to include the amount of the expenses related to the arbitration process, and whether they are borne by one of the parties to the dispute, or are they distributed among the parties, and what is the percentage of each party bearing out of the total.

The arbitration expenses as specified in the second paragraph of Article 20 of the International Chamber of Commerce Arbitration Rules include the arbitrator’s fees and administrative expenses determined by the arbitral tribunal in accordance with the schedule attached to the said rules, the possible arbitrator’s expenses, the experts’ fees and expenses in case of resorting to expertise and the ordinary expenses incurred by the two parties for their defense such as issuing documents and expenses Translation, this is in institutional arbitration, where it seems easy because the administrative expenses and the arbitrators’ wages are predetermined according to the tables attached to the rules of the arbitral institution, in addition to the costs of transportation, examination and experts, as required by the arbitration procedures.

Concerning the necessity for the arbitrators to follow the agreement between the parties on how to distribute the expenses between them, the Paris Court of Appeal ruled on March 20, 1984 to nullify the paragraph on the expenses mentioned in the arbitration award, which stipulated that one of the parties to the dispute should bear those expenses, because the two parties had previously agreed It was divided equally between them and what came in the arbitration decision was because each party, during the pleading, required the other party to bear the mentioned expenses, but the Court of Appeal indicated that the authority of the arbitrators with regard to the issue of dividing the expenses was specific and clear in the arbitration agreement31. The arbitrators shall bear all expenses for one of the parties to the dispute.

It is useful in this regard to quote the text of Article (38) of the UNCITRAL Arbitration Rules, because it clearly indicated that the arbitral tribunal determines in its decision the arbitration expenses, and the said article clarified the matters covered by the term expenses, which are as follows:

1. The arbitrators’ fees, and the arbitral tribunal shall estimate these fees itself in accordance with the provisions of Article 39, and shall specify the fees related to each award separately.
2. The arbitrators' transportation expenses and other expenses incurred by them.
3. Expenses of expertise and other assistance requested by the arbitral tribunal.
4. The expenses of moving witnesses and other expenses incurred by them to the extent approved by the arbitral tribunal of such expenses.

5. Expenses of legal prosecution and assistance borne by the party who won the case, provided that these expenses are requested during the arbitration procedures, and their amount does not exceed the amount that the arbitral tribunal deems reasonable.
6. Any fees and expenses of the appointing authority as well as the expenses of the Secretary-General of the Permanent Court of Arbitration at The Hague.

The Arab Agreement on Commercial Arbitration also adds that the arbitration decision includes, in addition to other matters, the costs of arbitration and the framework 32/1.

It remains for us to review the question of how to estimate the arbitrators' wages or fees and what party is estimating them. We have found in the previous texts that the mentioned fees are considered part of the total arbitration expenses, and as we said previously that such matters can be known in advance and easily in the event that one of the arbitral institutions Organizing the arbitration process, because the rules of the said institution indicate the amount of remuneration and wages paid to the arbitrators, and it is estimated as a percentage of the value of the case submitted to arbitration.

Who bears those expenses and fees in whole or in part (Article

Article (38) of the UNCITRAL Arbitration Rules and Article (32) of the Arab Agreement on Commercial Arbitration, and we add Article (19) of the Jordanian Law on Arbitration, which states that "it is left to the opinion of the arbitrators and the judge to estimate their fees and arbitration expenses....", but how This is estimated by the arbitrators, and what are the bases that should be taken into consideration?

This was made clear in Article 39 of the UNCITRAL Arbitration Rules, where it stated in the first paragraph of it: "The estimated amount for the arbitrators' fees must be reasonable and take into account in its estimation the size of the amounts around which the dispute revolves, the complexity of the case, the time spent by the arbitrators in considering it and not This is one of the conditions associated with it. In the following paragraphs, it added that in the case of an appointment authority, in this case, if the aforementioned authority had issued a schedule of the arbitrators' fees in international cases, the arbitrators must follow this when estimating their fees, but if there is no such schedule, each party to the dispute may The appointing authority is required to follow the bases that are usually followed in estimating fees in international cases, and the arbitral tribunal must take into account those bases when estimating its fees.

But if the disputing parties find that the arbitrators' fees estimated by these are exaggerated, is it permissible for each of them to ask the court to consider the extent to which that fee matches what must be paid in similar cases to the arbitrators? In other words, can the parties to the dispute object to the arbitrators' assessment of their fees? According to the general rules, the two parties in this case may resort to the judiciary to exercise control over the assessed wages of the arbitrators in order to block the way for arbitrators to arbitrarily and exaggerate their fees. This is what jurisprudence and the judiciary in France went to.32

8. Date and place of issuance of the judgment:

It is common that all arbitration laws and rules stipulate that the date and place of issuing the decision must be mentioned due to the importance of mentioning such two statements when taking the necessary measures to recognize and implement the arbitral award. When we discuss the period during which the decision must be issued, in the event that the period is exceeded without obtaining an extension by the parties or by the arbitral institution or by the court, the arbitration procedures shall end, and this means that the dispute remains unresolved and this entails resorting to new procedures for arbitration.

The two parties can sue the court for his negligence and request compensation if they are harmed due to his failure to issue the decision within the specified period, and the date of issuance is from the day the arbitrators signed the arbitral judgment.

As for the place of arbitration, its importance appears in several matters, including what was stipulated in the New York Convention of 1958 in its first article, which took it as a criterion for knowing the foreign arbitration decision. Also, the majority of Arab laws consider the decision as foreign if it was issued outside its borders. Arbitration is considered national when it takes place on the territory of

the state itself. It is considered foreign if the arbitration takes place in another country.

As we know, the foreign decision is subject in the country in which it is intended to be implemented to special rules for its recognition and then implementation, and the usual place of issuance of the arbitral award is the same place in which the arbitration proceedings took place, that is, the place of arbitration is the place of the role of the decision and this is what she referred to Paragraph 4 of Article 16 of the UNCITRAL Arbitration Rules, where it states: "The arbitral award shall be made at the place of the arbitration procedure." its issuance and the place of arbitration specified in accordance with paragraph (1) of Article (20) and the arbitration decision shall be deemed to have been issued at that place).33

It seems that this principle has been established in the international field, according to which the place of arbitration is considered to be the place of the award, even if the deliberations take place between the arbitrators in different places. In their agreement, and in case of disagreement, the arbitral tribunal shall appoint him, and the place of arbitration shall also determine the place where the decision was made.

Before we finish these two statements, we say that not mentioning the date of the decision's issuance leads to the invalidity of the decision.35 As for not mentioning the place of its issuance, it does not entail its invalidity, because the place of issuance can be known because of the presumption that we referred to, which is that the place of arbitration is considered the place of issuance of the arbitral judgment.

9. Arbitrators' signature:

We have already mentioned that deliberations must take place between the arbitrators before the decision is issued, and after the deliberation is completed, the arbitral award that settles the dispute is prepared. Certain in that arbitral institution and after approving the project from it, it is issued signed by the arbitrators, for example, what was stated in the arbitration rules of the International Chamber of Commerce (I.C.C). Article (21) of those rules and under the title of the prior audit of the arbitration decision by the arbitrator stipulates the following: (Before signing the partial or final decision, the arbitrator must submit the project to the arbitration court, and the court may order amendments to the form, and it may, while respecting the arbitrator's freedom of decision-making, draw his attention to key points related to the subject matter of the dispute.

It is not possible to issue any decision before it is approved in terms of form by the Court d'arbitrage.

It is clear from this text that the arbitration court is a body stipulated by the arbitration rules of the International Chamber of Commerce and its task is to supervise the arbitration and not to conduct the arbitration because the arbitration, as we mentioned, is conducted by the arbitrators who are chosen from the two parties, or by the aforementioned court in the event that they are not chosen from among the parties to the dispute.

This court, according to the rules of the International Chamber of Commerce, has the right to monitor the decisions issued by the arbitrators, but it cannot change what was stated in the draft decision with regard to the subject matter of the dispute. Rather, it has the authority to alert the arbitrators to some matters that pertain to the subject matter, and the arbitrators may reconsider their decision if they so wish. As for the form of the decision or arbitral award, the court can decide to make some amendments to the project, and the International Chamber of Commerce points out that this oversight certainly explains the large percentage of administrative implementation of arbitral awards, as well as the lack or scarcity of invalidation of arbitral awards by national courts.36

This is with regard to some of the rules followed by some arbitral institutions, but this is not a general rule. There is no body in the UNCITRAL rules to which the arbitral award must be presented before its issuance, and there is also nothing to suggest that in the texts of the Model Law. The rule is that arbitrators are free to issue their award without submitting it to the arbitrators. An entity unless the

arbitration rules that were followed in the arbitration required that.

The arbitration decision may be taken in one of the following three ways by agreement, by majority, or by the president when opinions are dispersed. It is invalid as is the case with the causation of the decision and setting the date of its issuance.

If the decision was taken with the consensus of the opinions of all the arbitrators, then it is normal in this case for everyone to sign the decision, but one of the arbitrators may not be able to sign due to illness or a specific accident. It is sufficient for the decision to be considered correct.

But if the arbitration decision is taken by a majority, then the majority that agreed to the decision is signed, and some arbitration rules as well as some laws require that the violating arbitrator be mentioned and the reasons for his violation, while others do not require that.

As for the case of dispersion of opinions and the failure of the majority to be achieved, we will be faced with the impossibility of taking an arbitral decision and thus the arbitration ends without result, and the parties may resort to new procedures and choose new arbitrators or resort to the competent court to resolve the dispute, but some arbitration rules give the right to the president of the arbitral tribunal That the decision be taken and signed by him alone, as Article (19) of the rules of the International Chamber of Commerce stipulates that ((If three arbitrators are appointed, the award shall be issued by a majority, and if it is not available, the President of the Court shall issue the award alone)).

It is also understood from the second paragraph of Article (24) of the arbitration system for Arab-European Chambers of Commerce that the arbitral tribunal issues the award, and in the event that it is composed of three arbitrators, the award is issued by the majority. This matter is also found in the texts of the Arab Agreement on Commercial Arbitration, which stipulates in the fifth paragraph of Article 31 that "in the event of dispersal of opinions, the decision is issued with the opinion of the president and his signature, provided that the dispersal of opinions is proven in the decision."

The sixth paragraph of the aforementioned article also stipulated that ((the violating member writes a banner on a separate paper and shall be attached to the decision)). In any case, the majority of laws and all Arab laws stipulate the well-known general rule for making a decision or issuing a ruling, and in the case of plurality, the decision is taken By agreement or by a majority of opinions by signing the arbitral award, we thus reach the end of the arbitral proceedings, and thus we have also finished presenting the matters that must be included in the arbitral judgment.

There remains one thing that we have to discuss before completing all the procedures for the conduct of the arbitration process, which is the pronouncement of the judgment or the arbitral award, and the question that arises in this regard is whether it is necessary to pronounce the judgment in the presence of the disputing parties?

The jurisprudence almost 39unanimously agrees that this is not necessary, so it is not necessary to pronounce the arbitral award unless the litigants agree that it must be pronounced in the presence of all of them.

It is noted that the international arbitration rules also do not require in their texts the utterance of the arbitral award. Also, it seems that this matter is not mentioned in most of the legal texts.40

But national laws often oblige the arbitrator or the parties to the dispute to deposit the judgment with the court. Some arbitration rules also require that the arbitration decision be communicated to the parties to the dispute and give each of them a copy of the decision. This Model Law on Arbitration stipulated in the fourth paragraph of Article 31, where it indicated as follows After the award is issued, a copy

of it signed by the arbitrators is delivered to each of the parties. The UNCITRAL Arbitration Rules also require the arbitral tribunal to send to each of the parties a copy of the arbitral award signed by the arbitrators.

As for the International Chamber of Commerce, it stipulated that the arbitration expenses be paid before the arbitration secretariat informs the parties of the text of the arbitral judgment (Article 23/1 of the rules of the Chamber). mentioned article).

It is clear from the above that the arbitral rules do not provide for the pronouncement of the award or the arbitral award, but rather obligate the arbitrators or the concerned party in the arbitral institution to inform the parties to the dispute of the arbitral award and to provide each of them with a copy of the said award. They give a copy of the arbitration decision to each of the parties (Article 371).

In any case, although some laws do not indicate how to inform the parties of the arbitration decision, it has been worked on for the arbitrators to inform the two parties when they are present or in their absence of the text of the arbitration decision by sending a copy of the said decision signed by the arbitrators to each of the parties and as soon as possible Possibly if there is no specific period where we cannot imagine leaving the parties to wait for the outcome of what the arbitration will explain and not informing them of the decision that represents what the arbitrators have reached to put an end to the dispute before them41, and finally we add that if the law of the country in which the arbitration was issued requires depositing the decision or Register it, the arbitrators shall do so.

After the judge ascertains that the decision was taken within the specified period and that the said decision has fulfilled the conditions of its validity and the formal requirements, he orders its implementation, and the decision then has the same force as the judicial ruling.

Conclusion :

Through this study, the researcher reached a number of results, which are as follows:

First - The final arbitration decision is the main decision or final decision that addresses the dispute presented to the arbitrator with all its elements and finds a final solution for it and is binding on the disputing parties. The executive power of that decision.

Second - confidentiality of the deliberation, as it is not permissible to involve another person with the arbitrators, such as experts or consultants, otherwise this becomes a reason to challenge the arbitration decision.

Third - that writing is necessary for the issuance of the arbitral award, so that it can be deposited in the competent court to give it an executive capacity. As for the language, it is left to the freedom of the two parties to agree on it.

Fourth - The arbitral award must contain the names of the arbitrators, the names of the parties to the dispute, a reference to the arbitration agreement, the subject matter of the dispute, the procedures taken by the arbitrators, the reasons on which the award was based, the content of the arbitral award and the date and place of issuing the arbitral award The signature of the arbitrators.

References

1- Dr. Munir Abdel Meguid, The Legal Organization of International and Internal Arbitration, Mansha'at Al Maaref - Alexandria, 1997, p. 271 and beyond.
2- Dr.. Adam Al-Nadawi, Civil Procedures, Baghdad, 1988, p. 287. See also, kindly see Dr. Munir Abdel Majid, The Legal Organization of International and Internal Arbitration, previous reference, p. 271 and beyond.
3- An analogous text stated in Article (178) of the Belgian Law of 1972, as amended on March 27, 1985.
4- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond. See also, kindly see Dr. Munir Abdul Majeed, The Legal Organization of International and Internal Arbitration, previous reference, p. 271 and beyond.
5- An equivalent text stated in Article 178 of the Belgian Law of 1972, as amended on March 27, 1985.
6- Dr.. Mohsen Shafiq, previous source, p. 162. See also, kindly see Dr. Munir Abdel Majid, The Legal Organization of International and Internal Arbitration, op. cit., p. 271 and beyond.
7- Dr. Ahmed Abu Al-Wafa, Optional and Compulsory Arbitration, Fourth Edition, Mansha'at Al-Maaref, Alexandria, 1983, item 81, p. 185.
8- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
9- Lebanese Law, Article 773.
10- The arbitrators for arbitration and these laws are: Syrian law (Article 520), Tunisian law (Article 371), Libyan law (Article 752), and Bahraini law (Article 237).
11- The Supreme Arbitration Council stipulated in Article 4 of the said rules.
12- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
13- Article 22 of the UNCITRAL Rules Article 26 of the Arbitration Model Law.
14- Dr. Munir Abdel Majid, The Legal Organization of International and Internal Arbitration, previous reference, p. 271 and beyond.
15- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
16- Decision of the French Court of Appeal of March 2, 1985, published in Revue de Larbitrage.229.p.1985.
17- Dr. Munir Abdel Majid, The Legal Organization of International and Internal Arbitration, previous reference, p. 271 and beyond.
18- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
19- Article (30) refers to the issuance of the arbitration decision based on the settlement agreed upon by the two parties.
20- Article (20) refers to how the parties shall designate the place of arbitration.
21- The term in Article (16) and Article (18) of the Agreement.
22- Arbitration may include all matters related to the dispute, or the arbitration subject may be limited to some aspects of the dispute, and this is only if the two parties agree on naming and defining the subject matter of the dispute. If the agreement provides for referring each dispute or dispute to arbitration, the arbitration includes all matters related to the dispute. This is what was stated in the decision of the Iraqi Court of Cassation, where it stated in its decision that it said: If the litigant's consent to refer the case to arbitration is not restricted, then the arbitration includes all the matters on which the dispute was based between the two parties, and the court has the right to ratify the arbitrators' decision.., Resolution No. 118/ Appeal / 1970, date of resolution 24/3/1971, Judicial Bulletin, first issue, second year, p. 100.
23- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.

24- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
25- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
26- Also Article (3/823) of the Italian law, which requires that the reasons be mentioned briefly in the decision, and Article (1057/5), which requires that the reasons be mentioned in the decision, unless it only includes a report on the state of the funds in accordance with Article (1020/4) or the recording of the agreement that It was made between the two parties (i.e. the arbitration decision based on the settlement). As for the new Swiss law, as is the case in the French law, it requires the reasons for the decision unless the parties agree otherwise, Article 189/2. With regard to the issue of causation of the arbitral awards, see the study:DELOVLVE, j.L., Essai sur La motivation des sentence arbitrage Revue de L'arbitrage 1989, No. 2 pp. 149-156.
27- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond
28- Published in the French Legal Review in 1981, p. 101 and beyond.
29- Article 33 of the Arab Agreement on Commercial Arbitration stipulates the following: 1. If a material, written or arithmetic error occurred in the decision, the authority may automatically or upon a written request from one of the parties correct it after notifying the other party of the request, provided that a request is submitted.
30- Article 33 of the Arab Agreement on Commercial Arbitration stipulates the following: 1. If a material, written or arithmetic error occurred in the decision, the authority may automatically or upon a written request from one of the parties correct it after notifying the other party of the request, provided that a request is submitted.
31- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
32- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
33- Dr.. Fawzi Muhammad Sami, International Commercial Arbitration and the Position of Arab Legislation, Research Presented to the Third Arab-European Arbitration Conference held in Amman (Jordan), for the period from 23-25/10/1989, and published in the Arab Jurist Journal, Issues 13, 14, 15, 16 January, July, 1990, p. 102
34- DAVID. R/OP. Cit. No. 350. p. 440.
35- It is noted that the Belgian law, which specified the fifth paragraph of Article (1701), which enumerated the data contained in the arbitral award, stipulated in subparagraph (e) that the place of arbitration and the place where the award was issued.
36- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
37- Dr. Fawzi Muhammad Sami, Jordanian Commercial Arbitration, previous reference, p. 301 and beyond.
38- See Article (1701) of the Belgian Law, Article (822) of the Italian Law, Article (1473) of the French Law, Article (33) of the Spanish Law, Article (791) of the Lebanese Law and Article (507) of the Egyptian Law.
39- This connection d. Ahmed Abu Al-Wafa, Optional and Compulsory Arbitration, previous source, p. 274, and the sources he referred to.
40- Article (38) of the Saudi Decree on the Application of the Law Relating to Arbitration states: It is necessary for the arbitral tribunal, after closing the pleading and deliberation to issue the arbitration decision, to set a date for the pronouncement of the decision, and Article (39) states that the pronouncement of the decision shall be made by the arbitrators without them being bound by the rules of procedure when the arbitration law and the decree issued for its application stipulate, and the article adds that the arbitrators' decision must be It is consistent with the texts of Sharia and the laws in force.

41- Article 161 of the Iraqi Civil Procedure Code states that ((The verdict of the judgment shall be read publicly after drafting its draft and writing its reasons in the session specified for that, and it shall be notified in accordance with the rules.
42- - Ahmed Abu Al-Wafa, Optional and Compulsory Arbitration, Fourth Edition, Mansha'at Al-Maaref, Alexandria, 1983.
43- 2 - Adam Al-Nadawi, Civil Procedures, Baghdad, 1988.
44- 3- Fawzi Muhammad Sami, Jordanian Commercial Arbitration, House of Culture for Publishing and Distribution, Amman, 2012.
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