



Research Article

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Effects of the Extension of the Arbitration Clause to Third Parties

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Abstract: The extension of the arbitration clause to a third party who may not be a signatory to the arbitration agreement and therefore is not considered a party to the arbitration agreement, but it extends to him for several reasons, either as a result of his conduct that proves that he has a link to the arbitration agreement or that its extension entails an obligation in his liability or damage that may result from the implementation of the arbitration award against him, such as the subcontractor who is not a party to the arbitration agreement concluded between the employer and the original contractor, but any breach of the contractor's obligation The original shall entail the issuance of a judgment invoked against the subcontractor.

Keywords: Third Party Intervention and Litigation, Enforcement of Arbitration Award, Third Party Objection.

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INTRODUCTION

The developments of international trade, which are intertwined with contracts and multiple parties, and then the expansion of the scope of arbitration agreements to include non-signatory parties has become a crucial issue in the practice of arbitration, but the consensual nature of arbitration has proven to be an obstacle to obtaining a unified arbitration of the same nature, which opened a large scope for the parties to structure their contracts to ensure unified arbitration (1), To ensure fair judgments, their implementation is ensured.

Section One: The Effects of the Extension of the Arbitration Clause to Third Parties

The extension of the arbitration clause to third parties has several effects that have an impact on the inclusion of multiple arbitrations and parties, which result from the multiplicity of contracts concluded for the implementation of the original contract, which results in the implementation of this to the presence of several people whose presence results in reaching full justice in addition to preventing the multiplicity of procedures that can be raised later and accordingly will address in this section the intervention of others or the introduction and litigation of others in the first requirement and address in the last requirement the extent to which the possibility of implementing a judgment Arbitration when combining arbitrations and its impact on third parties

The First Requirement: Interference or the Involvement of Others and Their Litigation

The ratio of the arbitration agreement casts a shadow on the drawing of the boundaries of the personal scope of the arbitration agreement, and then the

arbitration dispute, and that the extension of the arbitration clause to other parties led to the intervention of third parties on its own or by requesting its entry, whether by one of the parties or the body as an exception (2), and this is what we will discuss in the first effect of the extension of the arbitration clause and that dealt in the first section of the intervention of third parties in the arbitration litigation The second section is the litigation of third parties in the litigation.

Subchapter One: Intervention of Third Parties in Arbitration Litigation

It is recognized that a third party can intervene before the judge of the state, and can be forcibly admitted to achieve the interests of justice, at the request of the judge or at the request of one of the arbitrators, but this interest cannot be accepted within the framework of the arbitration litigation, depending on the genesis of the agreement (3) A third party, such as the guarantor, is not entitled to intervene voluntarily in the arbitration litigation in which the dispute arises or may be raised in the future between the arbitrator and the respondent except by their agreement (4).

Moreover, he cannot be compelled to enter into litigation because he does not have the power to order the arbitrators, and therefore he can refuse (5) to enter into an arbitration that did not participate in the selection of his arbitrators (6) Article VIII of the London Court of International Arbitration Regulations of 1988 stipulates that "one or more third persons shall be permitted to join the arbitration as a party, provided that the third person agrees to the requesting party in writing after the commencement date...." This is stipulated in the Swiss

Rules of International Arbitration (2012) in Article II and the Arbitration Rules of the International Chamber of Commerce of 1998, which did not provide for a provision allowing voluntary or coercive intervention of a third party (7).

The prevailing jurisprudence in Egypt and France has unanimously agreed that preventing the litigants and the arbitrator from introducing a person who is not a party to the arbitration agreement is respect for the will of the arbitrators and the enforcement of the principle of attribution of the effect of the contract and not to exceed this effect of its parties (8), but it is permissible after their consent to allow the intervention or introduction of third parties in the arbitration dispute and that the expression of consent to the entry of third parties is either explicitly stipulated in the arbitration agreement, or by a subsequent agreement on it, but in the latter case requires approval The arbitral tribunal, because the third party involved in the dispute is not a party to the arbitration agreement, and then his intervention may lead to prolonging one of the dispute and not being able to issue a judgment on time, which exposes him to invalidity, and therefore the consent of the third party required to enter it must be because the judgment does not have the authority of the matter owned by the state judge, the procedural legal systems have recognized the idea of intervening in the judicial litigation, but the matter differs in the arbitration dispute, so there was no agreement between jurisprudence on The extent of delivery and acceptance of the process of intervention in the arbitration litigation Some jurisprudence has taken a path of silence on the basis that the Egyptian Arbitration Law No. (27) of 1994 has been devoid of a text that allows intervention in the arbitration dispute or preventing it (9) But the text of the Egyptian Law of Procedure in Article (126) "Every interested party may intervene in the lawsuit organized for one of the litigants or requesting a judgment for himself with a request related to the lawsuit and the intervention shall be in the usual procedures for filing the lawsuit before the day of the hearing" (10).

The Iraqi legislator did not stipulate among the articles of arbitration in the Law of Procedure the intervention of others, but stipulated in Article (69/1), which ruled that "every interested party may request the entry into the lawsuit of a third person organized by one of the parties, or request a judgment for himself, if he has a relationship with the lawsuit or has a bond with one of the litigants by a text or an obligation that does not accept division or is harmful to the judgment therein" (11).

When the advanced texts are stabilized, the accuracy of the Iraqi text is evident in determining the conditions that must be met for the validity of the intervention, so he removed all ambiguity surrounding the texts, not only did he state the condition of interest as one of the necessary and important requirements for the validity of the intervention, but he also mentioned

necessary things that are no less important than the condition of interest so that they constitute in their entirety strict controls, aimed at seeking to abuse procedures that harm the original parties, and the lawsuit alike, so he stressed the cases of association between the requests of the intervener or the required to enter In the case, one of the most important of these conditions is the interest that the applicant for intervention has a real interest, and the interest is known, case, possible and verified with the approval of the possible outcome in a certain range, and this is what is stipulated in Article VI of the Iraqi Law of Procedure, as the principles approved in jurisprudence and the judiciary is a lawsuit without interest, and that the interest is the subject of the lawsuit (12).

Subchapter Two: Extension of Third-Party Litigation in Arbitration Litigation

The idea of litigation or inclusion of third parties in an arbitration dispute revolves around forcing a third party to become a party to an existing dispute or to be present in it, based on a legal text or requested by one of the parties or by an order issued by the Authority on its own initiative (13).

The litigation of third parties is carried out every time it becomes clear to the parties to the lawsuit or the arbitral tribunal that there are other persons against whom the lawsuit should have been instituted but the litigants did not realize this, and therefore it is a means of completing the personal scope of the litigants (14).

On the other hand, jurisprudence linked the scope of the litigation in terms of persons and the spending of arbitration concluded between them, and therefore there is nothing to prevent the litigation of others in the arbitration dispute, as long as this third party is one of the parties to the agreement or extends to them the arbitration agreement, and in this regard the Egyptian and French arbitration law did not provide for the issue of litigation of third parties. The question arises: does litigation of third parties at the request of one of the litigants in multilateral litigation require voluntary multilateralism or does it extend to include compulsory multilateralism?

The litigation of third parties is supposed to be one of the litigation that can start multiple parties optionally, and this is done when the plaintiff has the authority to start the litigation one litigation against more than one person or the plaintiffs have the authority to start one litigation on one person or more, but it did not start as well in the case of optional pluralism, the lawsuit is accepted in the beginning despite the lack of litigation of some of its parties and may during the course of the litigation litigate those who did not file a lawsuit (and those who did not file a lawsuit against him) 15) As the litigation of third parties in accordance with the text of Article (69/2) (16) of the Iraqi Civil Procedure Law No. (83) of 1969AD, as amended, its essential condition is

that there is an optional multiplicity of litigants, so that the lawsuit will be evaluated if it is filed against some of them without the others, and with this it remains valid and cannot be triggered by the defense of non-acceptance of the lawsuit, which if such a payment was put forward to be rejected by the court (17), As for the mandatory litigation, that is, if the litigation is one of the litigations that must begin multilaterally, there is no way to involve others in this litigation at the request of one of the litigants based on the articles of litigation in comparative laws (69/2) pleadings, which corresponds to Article (117) of the Egyptian Law of Procedure, Article (331) of the French Law of Procedure. Any party to the lawsuit can litigate a third party in order to be included in the judgment issued in the lawsuit, and the litigation of third parties must take place in a timely manner in order to be able to present his defense" As for what the Egyptian legislator stipulated in Article (117) of the Law of Procedure, that "the litigant may enter into the lawsuit whoever was correct to litigate it when it was filed."

It is clear from the advanced texts that a general rule has been developed for litigation, namely: that the third party to be litigated is one of those who are entitled to file a lawsuit against him in the first place, but for one reason or another this lawsuit was not filed, without specifying the cases in which it is permissible to litigate others at the request of one of the litigants, and therefore one of the parties to the litigation may not enter into it any person except those who had jurisdiction at the time of its inception (18).

The Second requirement: the extent to which the arbitration award can be enforced when combining arbitrations and what impact it has on third parties

The arbitration award is the end of each arbitration agreement between the parties, which is issued based on the laws and procedures agreed upon by them, which would affect the extent to which the arbitration award issued in their arbitration dispute is enforceable, especially if the arbitration award to be implemented in a country other than the state of the seat of arbitration, and therefore we address in this requirement the effect of the implementation of the arbitration award when combining arbitrations in the first section, And invoking the arbitration award against third parties in the second section

Subchapter One: Effect of Annexation on the Execution of the Arbitration Award

One of the international conventions that dealt with the problem of international enforcement of arbitration awards is the New York Convention, which included three basic issues for the implementation of the arbitral award (19), namely the agreement of the parties to refer disputes that arise between them to arbitration, as well as restricting the arbitration court with the powers granted to it in the arbitration agreement, in addition to that the conduct of arbitration procedures must be fair for all parties to the arbitration (20) When there is an

arbitration agreement concluded between two parties, and they are the original parties to the arbitration, and therefore the introduction of a third party or the merger of a dispute or arbitration with the original arbitration, this will constitute a breach of the basic arbitration agreement concluded between the parties, which is based on the referral of their dispute to arbitration, and then for those who are a party to the arbitration agreement in accordance with the expanded concept of the idea of the party to the arbitration agreement, even if he is not a signatory to it, In order to have the authority of res judicata against this person, it is necessary to be a party to the arbitration dispute in which the judgment was issued, but if it is not adjudicated in this litigation, the judgment does not have the authority of res judicata against it.³The text of the Iraqi Law of Procedure Article (272) The arbitrators' decision shall not be implemented before the enforcement departments, whether their appointment is a judiciary or an agreement, unless ratified by the court competent in the dispute at the request of one of the parties. This means that the arbitration award does not possess the authority of res judicata only after its ratification by the competent court in Iraq, and this means that the one who issued in favor of the arbitration award can not implement it in Iraq once it is submitted to the enforcement departments, but must file a lawsuit before the Iraqi courts for the purpose of issuing a judgment for the enforcement of the arbitral award, and accordingly, the arbitration rules stipulated in the amended Law of Procedure No. 64 of 1969 give the judiciary broad authority to consider the arbitral award In terms of form and substance, which means the uselessness of the provision for arbitration and that the first parties to the contract resort to the Iraqi judiciary initially to settle the dispute that arises from the implementation of multiple contracts and unification based on the text of Article (75) of the Iraqi Law of Procedure In addition, the Egyptian legislator dealt with arbitration provisions issued abroad in accordance with Egyptian law and the legislator has equated them with arbitration rulings issued in Egypt with regard to the procedures for the implementation of the award, and therefore it is in possession immediately after its issuance of the authority of res judicata (21) . The Iraqi Law of Civil Procedure and Execution stipulates, where arbitral awards can not be implemented by the enforcement departments except in the event of ratification by the competent court, and this is confirmed by the Geneva Convention of 1927, noting that among the conditions for recognizing the arbitration award and ordering execution, that the award has been issued by the arbitration court specified in the arbitration party or clause or formed in accordance with the agreement of the parties. The same principle was echoed by the New York Convention of 1958, and the Convention dealt with the issue of recognition and enforcement of foreign arbitral awards in the territory of the State to which it is organized, and decided in Article (3) thereof that each of the Contracting States shall recognize the authority of the arbitration award and order its execution in accordance

with the rules of pleadings followed in the territory to which enforcement is requested and in accordance with the conditions stipulated in the following articles.

Subchapter Two: Invocation of Arbitration Award against Third Parties

The arbitration award is possessed under the pretext of *res judicata* as soon as it is issued and the thing adjudicated has authority as an effect of the arbitrators' ruling, but it remains relatively valid, when combining the arbitrations or the consent of the parties or the arbitral tribunal to intervene or enter others in the arbitration litigation, it becomes a real party to the arbitration litigation and therefore the judgment issued is an argument against it, as in the case of the subcontractor, which is a third party for the arbitration agreement concluded between the employer and the original contractor. But if the subcontracting contract is expressly referred to the arbitration clause contained in the original contract or requested to be included in the arbitration dispute, it is considered a party to the arbitration and otherwise it is considered a third party, in this case the subcontractor finds himself in front of the implementation of the judgment issued between the original contractor and the employer, so the judgment is invoked against the subcontractor and is affected by it (22)

The question that arises in the event that the arbitration award extends to third parties and is affected by this judgment, is it entitled to appeal against the judgment issued in the original contract?

The majority of comparative legislation tended to remedy the defects that afflict the arbitration award to take the system of nullity lawsuit, we find that the Iraqi law did not address the issue of the extension of the arbitration clause to third parties and the extent to which third parties were affected by the arbitration award issued in the original dispute, but only mentioned Article (224) and Article (225), which clarifies the objection of third parties in civil and commercial lawsuits, either the text of Article (273) of the Civil Procedure Law, which requires " When the arbitrators' decision is submitted to the competent court, the litigants may invoke its invalidity and the court may, on its own initiative, annul it in the following cases:

- If it was issued without written evidence or based on a void agreement or if the decision has gone beyond the limits of the agreement.
- If the decision violates a rule of public order or morals or one of the rules of arbitration set forth in this Law..."

It is clear from the text that the Iraqi legislator has accepted the appeal of the arbitration award by cassation and appeal in addition to the nullity lawsuit, which he limited to specific cases, contrary to what was also stipulated by the Egyptian legislator that the arbitration provisions do not appeal except by filing a

lawsuit claiming invalidity, either the position of French law has expanded the scope of review of the arbitration award and allowed in addition to the lawsuit of invalidity appeal as it allowed others the right to appeal the objection of the outside the litigation (24).

CONCLUSION

At the end of the topic of our research (the effects of the extension of the arbitration clause) we reached a number of results and proposals:

First: Results

- It became clear to us that the intervention or the entry of third parties must be approved by the arbitral tribunal and the parties and third parties for a long time
- The intervention of others or his intervention must be before the issuance of the arbitral award, if the arbitral award is issued, it will not be for his intervention to have an effect
- The joinder of arbitrations has an impact on the implementation of the arbitration award, especially if the judgment to be executed is in a country other than the country of your headquarters.
- The award issued for the joinder of arbitrations must not be contrary to public order in the country in which the enforcement of the arbitration award is sought.

Second: Proposals

- We propose to the Iraqi legislator to develop a draft arbitration law and stipulate the issue of combining arbitrations and multiple parties to accommodate all modern methods of contracting, in order to keep pace with this progress in international trade relations, especially in the field of investments.
- Another method of appeal must also be added, which is the objection of the outside the litigation in the draft arbitration law, because the nullity claim is available only to those who were a party to the arbitration agreement.

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