

## Emergency Arbitration in Jordanian Legislation: A Comparative Study

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### Abstract

By studying the Jordanian Arbitration Law No. 31 of 2001, we find that the Jordanian legislator recognized emergency arbitration, but did not use the term "emergency arbitrator," which aligns with the evolving nature of arbitration cases. An emergency arbitrator provides a swift procedure for parties requiring urgent measures that cannot wait until the formation of the arbitration panel. This procedure offers a temporary solution for parties in emergency situations.

The importance of the study lies in identifying the legal organization of emergency arbitration in Jordanian legislation. This helps us to understand the nature of emergency arbitration and the procedures of the emergency arbitrator, which is called pre-arbitration because of the temporary and precautionary procedures that cannot be postponed until the arbitration sessions are held in their usual form.

The problem of the study focuses on identifying the extent of the binding nature of the emergency arbitrator's decision regarding temporary and precautionary measures that require binding force, such as precautionary or provisional seizure, and the extent of application and compliance with the decision issued by the emergency arbitrator. The researcher used the descriptive, analytical, and comparative method in this study. The study concluded with a conclusion that included a set of results and recommendations, the most prominent of which was the need to amend Article 13 of the Arbitration Law of 2001, so that it more clearly defines the entity that has the authority to decide on emergency cases before holding arbitration sessions.

**Keywords:** Arbitration, Emergency Arbitration, Arbitrator, Provisional and Precautionary Measures, Precautionary Seizure.

## Introduction

Arbitration has become one of the means that disputants resort to in order to resolve their dispute. Before proceeding with the arbitration proceedings, it may be necessary to take some temporary and precautionary measures. It used to be the custom for these measures to be carried out by resorting to the competent judge of urgent matters, to take over these measures. However, under the Jordanian Arbitration Law of 2001, the UNCITRAL rules and comparative laws, the Jordanian legislator has authorized emergency arbitration, or what is called an emergency arbitrator, to take all the temporary and precautionary measures required by the dispute at the request of the applicant.

A review of the Jordanian Arbitration Law No. 31 of 2001 reveals that while the Jordanian legislator recognized emergency arbitration, they did not use the term "emergency arbitrator," which would align with the evolving nature of arbitration cases. An emergency arbitrator provides a swift procedure for parties requiring urgent measures that cannot wait until the arbitration panel is formed. This procedure offers a temporary solution to parties in emergency situations by issuing a provisional order, which can be reviewed by the arbitration panel once it is established.

## Statement of Problem

This study focuses on the legal regulation of emergency arbitration according to Jordanian legislation, which was stipulated in Article 13 of the Jordanian Arbitration Law No. 31 of 2001. The problem of the study revolves around identifying the extent of the binding nature of the emergency arbitrator's decision regarding temporary and precautionary measures that require binding force, such as appointing a guardian, preventing travel, or precautionary or preventive seizure, and the extent of application and compliance with the decision issued by the emergency arbitrator.

## Significance of the Study

The importance of the study lies in identifying the legal organization of emergency arbitration in Jordanian legislation. This helps us to know the nature of emergency

arbitration and the procedures of the emergency arbitrator, which is called pre-arbitration arbitration because of the temporary and precautionary procedures that cannot wait until the arbitration sessions are held in their usual form. Then we can identify the strengths and what the Jordanian legislator has done well in this regard and what may need legislative completion by stipulating it.

## Methodology

In this study, the researcher used the descriptive and analytical methods, by describing and analyzing the legal organization of emergency arbitration in Jordanian legislation. The study also used the comparative method by comparing emergency arbitration as an exceptional and temporary circumstance with the permanent situation which is handled by the arbitration body.

## Terminology

### Emergency Arbitration:

Temporary arbitration to address an emergency situation in a period before the formation of the regular arbitration body. It is carried out through a set of procedures (emergency arbitrator procedures) entrusted to him with the task of issuing temporary or precautionary measures.

### Arbitration:

An alternative mechanism for settling disputes outside the courts, whereby the parties choose individuals whose task is to resolve the dispute that has arisen or may arise between them, without being bound by the procedures of the state courts.

### Arbitrator:

A natural or legal person who is appointed by the parties to the dispute to resolve the dispute that may arise or is existing between them.

### Precautionary Measures:

Temporary measures or procedures taken by the court at the request of one of the parties in order to ensure the preservation of evidence or to prevent the loss of a right until a judgment is issued in the case, and they are carried out in an urgent manner.

### **Precautionary Seizure:**

A temporary legal procedure taken at the request of one of the parties to a lawsuit to guarantee their rights against the threat or loss of money, in exchange for providing security, until a final judgment is issued in the case.

### **Study Structure**

The study of emergency arbitration in Jordanian legislation is divided into two sections:

- Section One: The Nature of Emergency Arbitration.
- Section Two: The Legal Framework for Emergency Arbitration in Jordanian Legislation.

### **Section One: The Nature of Emergency Arbitration**

Arbitration institutions have resorted to appointing an emergency arbitrator to handle temporary and precautionary measures before the formation of the arbitration panel and the commencement of arbitration proceedings. This is done to protect the interests of the litigants instead of resorting to the judge of urgent matters in the state. Therefore, it is necessary to begin by understanding the concept of emergency arbitration and the emergency arbitrator, which we will address in the first section. As for the legal value of emergency arbitration, we will discuss it in the second section.

#### **First Topic: The Concept of Emergency Arbitration:**

Some legal scholars have defined emergency arbitration as "preliminary arbitration," that is, arbitration prior to ordinary arbitration. This means that it is an agreement among persons to issue temporary emergency measures, in the stage prior to ordinary arbitration, on an individual (the emergency arbitrator) whom they choose directly or entrust to an arbitration institution the authority to appoint him, which is more common, so that he ultimately issues a decision of a judicial nature that is binding on them and temporary until the ordinary arbitration court is formed or the file is referred to it <sup>(1)</sup>.

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<sup>1</sup> Nabehi Mohammed. Emergency Commercial Arbitration. Academic Journal of Legal and Political Research, Volume 6, Issue 1, 2022, p. 423.

Emergency arbitration is also defined as a preventive measure to assist parties with urgent and temporary protection measures before the formation of the arbitration panel, or if its formation is delayed, to address the imminent danger to the substantive right of the dispute without interfering with it. This is done through an arbitrator (the emergency arbitrator) who is authorized to take temporary or precautionary measures to maintain the existing situation or respect apparent rights, thus safeguarding the interests of both parties until the arbitration panel, after its formation, decides on the merits of the dispute <sup>(2)</sup>.

One legal perspective defines emergency arbitration as temporary arbitration to address an emergency situation during a period before the formation of a regular arbitral tribunal. This is achieved through a set of procedures (the emergency arbitrator's procedures), entrusting the arbitrator with the task of issuing provisional or protective measures <sup>(3)</sup>. Similarly, emergency arbitration is defined as a mechanism allowing a disputing party to request urgent provisional relief before the formal formation of the arbitral tribunal. It is designed to provide swift provisional measures in cases where waiting for the formation of the arbitral tribunal would result in irreparable harm or imminent danger <sup>(4)</sup>.

A mechanism for resolving disputes that are at risk of expiring due to time limits, whether by means of a provisional order or an arbitral award that does not prejudice the substantive basis of the dispute. This order or decision is intended to take only temporary measures to maintain the status quo, respect apparent rights, or preserve the interests of both parties.

As for the definition of an emergency arbitrator, an emergency arbitrator is that natural person to whom one or both parties to the dispute resort to take temporary emergency and urgent measures without prejudice to the origin of the dispute or the nature of the right subject to the dispute, meaning that the emergency arbitrator

<sup>2</sup> Shehata, Muhammad, Implementation of Arbitrators' Rulings, a paper presented at the Conference on Problems of Implementing Judicial Rulings from 19-22/5/2006, p. 21.

<sup>3</sup> Abu Bakr Al-Musab, "The Importance of the Emergency Arbitrator in Commercial Arbitration," Al-Arab Economic International Newspaper, July 12, 2016, p. 14.

<sup>4</sup> Mustafa Natiq Matoub, "The Self-Application of the Emergency Arbitrator and the Contractual Application of the Rules of Emergency Commercial Arbitration: A Comparative Study," College of Law, University of Mosul, Iraq, Tikrit Journal of Law, Issue 3, 2019, p. 23.

does not decide on the existing dispute between the two parties definitively.

The emergency arbitrator is defined as the arbitrator who is chosen at the request of one of the parties and is entrusted with a set of powers and authorities granted to him for the purpose of dealing with emergency, temporary and urgent circumstances before the arbitration panel is formed in its final form. The emergency arbitrator must have all the conditions that must be met by the ordinary arbitrator in terms of eligibility, impartiality, independence and integrity. The emergency arbitrator is a natural person, whose task is only in the case of emergency, temporary and urgent circumstances. His temporary task consists of making some decisions in the form of an order or ruling. His task is prior to the final formation of the arbitration panel and his task ends as soon as the file is referred to the arbitration panel and it is formed in its final form. <sup>(5)</sup>

An emergency arbitrator is defined as a person appointed to grant emergency relief to protect and preserve the rights of parties in circumstances where urgent protection is required, pending the formation of an arbitration panel <sup>(6)</sup>.

Researchers consider an emergency arbitrator to be a person by an arbitration institution, which authorizes and entrusts him with the task of issuing temporary or precautionary emergency measures in the pre-arbitration phase.

### **Second Topic: Characteristics of Emergency Arbitration:**

Emergency arbitration is characterized as being a consensual system that aligns with the wishes of the disputing parties to resort to it. It does not affect or adjudicate the substantive dispute. The application and selection of the emergency arbitration panel, represented by the emergency arbitrator, arises when there is an imminent danger. The emergency arbitration panel consists of only one arbitrator. The procedures of the emergency arbitration panel are characterized by their speed and expedited timeframes. The emergency arbitrator issues a temporary order or measure to address the dangers feared by the disputing parties. The issuance of temporary and urgent measures and procedures is done within a short and rapid

<sup>5</sup> Ahmed Elsayed Ahmed Mahmoud, *Emergency Arbitration in Investment Disputes: The Quantity of Rights*, Ain Shams University, Egypt, 2015, p. 11.

<sup>6</sup> Abdelkrim Ghosnoun, *The Legal System of the Arbitrator in the Commercial Field*, Master's Thesis in Business Law, Faculty of Law, University of Algiers, 2016, p. 60.

timeframe. These measures and orders issued by the emergency arbitrator are not binding on the arbitration panel that subsequently considers the dispute. This system is not free of charge, as the emergency arbitrator is entitled to a fee for their services <sup>(7)</sup>.

Emergency arbitration is a relatively recent system in arbitration, both in terms of national and international laws and regulations. This mechanism does not adequately meet the needs of parties in cases requiring swift and effective action. In many instances, it can take weeks or months for an arbitral tribunal to address the fundamental protections that dispute resolution focuses on. Over the past decade, emergency arbitration has become a key factor in the success of international arbitration, arguably the only truly new form of arbitration. This mechanism provides immediate protection to parties before the formation of the arbitral tribunal or if its formation is delayed. It has gained widespread acceptance in amendments made by international arbitration institutions worldwide, in accordance with the provisions of their respective laws <sup>(8)</sup>.

It should be noted that the basis for emergency arbitration is that there are several important practical considerations that must be taken into account before resorting to emergency arbitration. Striking a balance between urgency and fairness is not an easy task due to the inherent tension between the urgency of acting quickly and providing the parties with sufficient opportunity to present their case. The interaction between respective courts and the emergency arbitrator's power to grant temporary relief, which are not mutually exclusive, makes this issue even more complex <sup>(9)</sup>.

It should also be noted that the Jordanian Arbitration Law (Law No. 31 of 2001) is considered the primary legal framework for arbitration in Jordan. This law provides a legal framework for emergency arbitration, emphasizing the importance

<sup>7</sup> Al-Aboudi, Abbas, Explanation of the Provisions of the Law of Evidence, Dar Al-Thaqafa, Amman, 2005, p. 112 et seq.

<sup>8</sup> Ahmed Mohamed Hashish, the Nature of the Arbitration Task, Dar Al-Kutub Al-Qanuniyya, 2001, p. 136.

<sup>9</sup> Al-Tahawi, Mahmoud, the Legal Nature of the Arbitration System, Dar Al-Matbou'at Al-Jami'iyya, Alexandria, 2003, p. 16.

of taking swift measures in emergency situations. Article (13) stipulates <sup>(10)</sup>: The arbitration agreement does not prevent any party from requesting the judge of urgent matters, whether before or during the arbitration proceedings, to take any provisional or protective measure in accordance with the provisions of the Civil Procedure Law. Such measures may be reversed in the same manner.

It follows that Article 13 clarifies that an arbitration agreement does not prevent any party from requesting the judge of urgent matters, before or during the arbitration proceedings, to take any provisional or protective measure in accordance with the provisions of the Civil Procedure Code. Such measures may be reversed in the same manner. This text grants the judge of urgent matters the authority to take any provisional or protective measure during the arbitration proceedings, thus encroaching upon the jurisdiction of the arbitration panel. Furthermore, if the judge of urgent matters takes provisional measures regarding the timeframe for a party to file their arbitration claim, the provisions of the Civil Procedure Code cannot be applied in this regard. This is because it is difficult to form the arbitration panel within the eight-day period stipulated in the Civil Procedure Code for filing a claim, unlike a pre-established ordinary court.

Additionally, the Arbitration Law does not contain a specific provision for filing an arbitration claim after taking a provisional measure, and there is no basis for extending this to the Civil Procedure Code, given that the parties have the right to choose the procedural law <sup>(11)</sup>.

### **Third Topic: The Legal Value of Emergency Arbitration:**

What is known as "emergency arbitration" refers to special arbitration procedures very similar to summary proceedings. An emergency arbitrator is appointed to take these special and temporary measures quickly, as it is not possible to wait until the formation of the arbitration panel. The disputing parties resort to choose an arbitrator with limited jurisdiction related to issuing temporary and urgent orders to protect the rights of the parties without prejudice to the substantive right in

<sup>10</sup> Arbitration Law and its amendments No. (31) Of 2001, published in the Official Gazette, Issue No. 4496, on page 2821, dated 16-07-2001.

<sup>11</sup> Nadia Qazmar, "The Arbitrator's Method of Issuing Expedited Measures: A Comparative Study," published in the Middle East Research Journal, Issue 49, Jordan, 2020, p. 48.

dispute <sup>(12)</sup>. The existence of arbitration rules in general, to address many disputes between disputants, is of great importance in that these rules will govern any dispute referred to arbitration through the arbitration agreement between the disputing parties, and the matter is not left to the ordinary judiciary, which the disputants do not prefer to resort to, even if it is competent in the dispute, and to maintain the confidentiality of the dispute, speed in resolving the dispute, and economy of expenses <sup>(13)</sup>.

Emergency arbitration provides a quick solution to disputes, as it provides a quick solution for parties who need urgent measures due to the nature of the dispute. It also protects the interests of the parties, as it allows the parties to protect their interests by taking precautionary or temporary measures in emergency situations. Therefore, it mitigates damages, as it helps to reduce or prevent damages that may result from the dispute if quick measures are not taken. It helps to avoid or reduce damages in the absence of a quick solution to the dispute. In addition to providing a quick solution for the parties in emergency situations, it has an aspect of flexibility, as it allows the competent authorities to make quick and urgent decisions under emergency circumstances <sup>(14)</sup>.

It is well-established that expedited proceedings and their procedures exist within the ordinary judicial system, known as summary proceedings. This is a temporary mechanism for adjudicating urgent and emergency matters that do not affect the substantive rights of the parties. This is achieved through a case considered urgently to protect rights from being lost. The emergency arbitration panel consists of a single natural person chosen according to the institutional arbitration rules of arbitration centers that have adopted this approach. Its purpose is to take urgent and temporary measures, and it does not consider or decide the substantive dispute between the disputing parties.

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<sup>12</sup> Mustafa Natiq Saleh, *the Emergency Commercial Arbitration System: A Comparative Foundational Study*, 1st ed., Arab Center for Studies and Publishing, Egypt, 2018, p. 143.

<sup>13</sup> Ayed Sultan Marzouq Al-Buqami, *The International Nature of Commercial Arbitration in the Saudi System*, a paper published in the *Journal of Law*, Vol. 15, No. 2, 2017, p. 116.

<sup>14</sup> Samir Jawad – *Arbitration as a Mechanism for Dispute Resolution*, First Edition, Dar Al Qadaa Press, Abu Dhabi, 2014, p. 94.

On the other hand, we observe that the traditional ordinary arbitrator is a natural person chosen, either individually or in combination, according to the type of commercial arbitration the parties resort to—whether ad hoc or structured. Its primary function is to resolve the existing dispute between the disputing parties with a final and conclusive arbitral award. This individual is the arbitrator who guides the disputing parties to a final ruling in the arbitration case. The primary purpose of this panel is to bridge the gap between the occurrence of the dispute and the formation of the arbitration panel, which may be lengthy and not completed quickly. This is also relevant to the needs of one of the parties. Urgent, emergency, and temporary measures may require judicial intervention, which the parties attempt to avoid by resorting to arbitration to resolve their dispute <sup>(15)</sup>.

## **Section Two: Legal Framework for Emergency Arbitration in Jordanian Legislation**

To discuss the legal organization of emergency arbitration in Jordanian legislation in detail, it is necessary to identify the scope of the authority and jurisdiction of the emergency arbitrator in Jordanian legislation, which we will address in the first topic. As for the procedural system of emergency arbitration and its conditions, we will discuss it in the second topic.

### **First Topic: The Scope of the Authority and Jurisdiction of the Emergency Arbitrator in Jordanian Legislation:**

The scope of the authority and jurisdiction of the emergency arbitrator is determined by drawing upon jurisprudential opinions on the arbitrator's power to issue temporary and urgent orders, where jurisprudence has leaned towards three opinions on this subject:

- The first opinion holds that the judiciary alone has the authority to issue provisional and urgent orders, and no other entity shares this power. The arbitrator does not possess the authority to issue such orders in a dispute under consideration. This opinion is based on the existence of special guarantees for judges due to their knowledge of the law and their experience in its application.

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<sup>15</sup> Abu Al-Wafa, Ahmed, Voluntary and Compulsory Arbitration, University Press, 2007, p. 242.

The exclusion of the state judiciary due to the existence of an arbitration agreement pertains to substantive courts, not to ad hoc or provisional courts. The arbitrator does not possess the power to compel action, neither against the parties nor against third parties. Furthermore, the arbitration panel does not hold its sessions regularly but may meet at frequent or infrequent intervals<sup>(16)</sup>. Consequently, events may arise that justify taking a precautionary or provisional measure outside of its scheduled sessions<sup>(17)</sup>. It is difficult for its members to convene quickly enough to take the required action. The arbitration system requires adherence to the principle of due process, while taking precautionary or provisional measures necessitates, in addition to speed, the element of surprise. Adherence to the principle of due process in such cases gives a party acting in bad faith the opportunity to obstruct its implementation. For example, if one party wishes to obtain a precautionary seizure order on the other party's assets as security for a potential award, he must wait until the arbitration panel session is held and in the presence of the party against whom the decision is intended to be obtained, which enables the latter to dispose of the money to prevent the seizure<sup>(18)</sup>. The arbitrator has no authority to enforce the judgments issued by him, whether they are substantive or temporary, which will force the disputants to resort to the judiciary to obtain an order to enforce these judgments, so it is better to resort to the judiciary from the beginning<sup>(19)</sup>. On the other hand, the nature of arbitration necessitates that the judiciary alone possess the authority to issue provisional and urgent orders. This is because arbitration is the least preparatory act for enforceable instruments, both in terms of its generality and, consequently, its formality, and in terms of its

<sup>16</sup> Bardan, Iyad, *Arbitration and Public Order: A Comparative Study*, Al-Halabi Legal Publications, Beirut, 2004, p. 75.

<sup>17</sup> Al-Tahawi, Mahmoud, *Defining the Objective Meaning of the Subject Matter of Arbitration and its Role in Determining the Nature of the Work*, University Press, Alexandria, 2002, pp. 112-113.

<sup>18</sup> Al-Tahawi, Mahmoud, *the Concept of the Negative Effect of the Arbitration Agreement*, University Press, 2003, p. 303.

<sup>19</sup> Sayed Ahmed Mahmoud Ahmed, *The extent of the arbitrator's authority to take provisional and precautionary measures*, *Journal of Law, Kuwait University*, Issue No. 3, 2001, p. 97 et seq.

procedural formality<sup>(20)</sup>. Therefore, arbitration alone, unlike other preparatory acts for enforceable instruments, is the act for which procedural law requires two things: a) the issuance of a judicial order for its execution; otherwise, it has no enforceable form; b) the judge is required to examine the arbitration to ensure it is free from procedural defects; otherwise, he will not order its execution. Legal scholars, in considering that the function of ordering the execution of an arbitration award is to elevate this award to the level of judgments issued by ordinary courts, implicitly acknowledge that an arbitration award, by its very nature, is not on par with judicial judgments, but rather lower in terms of generality and, consequently, in terms of formality. They also implicitly acknowledge that an arbitration award, by its very nature, is not on par with judicial orders and notarial acts, but rather lower in terms of generality and, consequently, in terms of formality, because judicial orders and notarial acts, like judicial judgments, do not require the issuance of a judicial order for their execution.

Thus, the system of ordering the execution of an award Arbitration is a unique system, limited to the arbitration award itself, excluding all other pleadings. This means that the arbitration award, prior to a court order for its enforcement, requires not only less preparation than enforcement documents but also less formal and official documentation than pleadings in general<sup>(21)</sup>.

There is no alternative but to resort to the state judiciary to request the issuance of an urgent decision prior to the appointment of arbitrators as there are urgent circumstances that cannot tolerate delay<sup>(22)</sup>. Moreover, there are arbitration laws that have explicitly stipulated the prohibition of the arbitration panel from issuing temporary and urgent decisions and have restricted them to the judiciary, including Article 758 of the Libyan Civil and Commercial Procedure Law, (The arbitrators shall not authorize seizure or any precautionary

<sup>20</sup> Najla Tawfiq Faleeh, "A Dispute of Exception between the Judiciary and a Determining Body Regarding the Imposition of Temporary and Preservative Measures," a research paper published in the Journal of Law and Humanities, Volume 13, Issue 4, 2020, p. 78.

<sup>21</sup> Al-Rifai, Ashraf, "Public Order and Arbitration in Private International Relations: A Study in Arbitration Jurisprudence," Dar Al-Nahda Al-Arabiya, Cairo, 1997, p. 11 et seq.

<sup>22</sup> Al-Shawarbi, Abdul Hamid, Arbitration and Reconciliation in Light of Jurisprudence and the Judiciary, Al-Maaref Establishment, 2nd ed., Alexandria, 2000, p. 20 et seq.

measures); Article 26/1 of the Swiss Arbitration Agreement (The national authorities alone are competent to take temporary and precautionary measures); Article 685 of the Greek Code of Civil Procedure (The summary court alone is competent to take temporary measures). Article 889/1 of the same law stipulates that (The parties, may not deviate from this rule, nor do the arbitrators have the power to amend or cancel any temporary measure previously taken by the judiciary) <sup>(23)</sup>.

- The second opinion: Some scholars advocate granting the arbitrator the authority to issue urgent and temporary rulings. Indeed, some jurists have gone to extremes in this regard, stripping the courts of their jurisdiction when the dispute falls under the purview of arbitration. Proponents of this view offer several justifications, including: adherence to the will of the parties themselves, based on the presence of the arbitrator, who will decide the matter after the panel is formed; thus, there is no need to resort to a judge of urgent matters <sup>(24)</sup>; this panel is better equipped than others to assess the appropriateness of taking such measures; and it has the final say on the subject matter of the dispute. Therefore, it can take precautionary measures that do not affect the subject matter <sup>(25)</sup>. Furthermore, the arbitration panel's jurisdiction to consider urgent and temporary matters, in addition to considering the subject matter of the dispute, leads to cost savings, time efficiency, and ease of implementation. Moreover, the principle that the judge of the principal case is also the judge of the subsidiary case means that the arbitrator of the principal case is also the arbitrator of the subsidiary case. If the arbitrator is permitted to decide the dispute, then it is permitted to issue orders on petitions related to the dispute. Another view is that whoever owns the whole owns the part.

Supporters of this view cite what the French Court of Cassation decided, which adopted this view in some of its rulings and ruled that the creditor, after the

<sup>23</sup> Ayed Sultan Marzouq Al-Buqami, The International Nature of Commercial Arbitration in the Saudi System, a research paper published in the Journal of Law, vol. 15, no. 2, 2017, p. 123.

<sup>24</sup> Ahmed Muhammad Hashish, The Nature of the Arbitration Task, Dar al-Kutub al-Qanuniyya, 2001, p. 142 et seq.

<sup>25</sup> Mustafa Natiq Saleh, The Emergency Commercial Arbitration System: A Comparative Foundational Study, 1st ed., Arab Center for Studies and Publishing, Egypt, 2018, p. 158 et seq.

formation of the arbitration panel, may not resort to the judiciary to request temporary maintenance, the arbitration panel alone has the right to decide on this request <sup>(26)</sup>.

- The third opinion: Joint jurisdiction over provisional measures between the state judiciary and the arbitrators. Proponents of this view believe that the original jurisdiction to issue urgent and temporary decisions belongs solely to the state judiciary, unless the arbitration agreement explicitly grants the arbitrators this authority. In that case, the arbitral tribunal has the power to issue the urgent decision. When the arbitral tribunal authorized to issue provisional or temporary measures issues a temporary decision, the party with an interest in the decision must request the arbitral tribunal to authorize that party to take the necessary measures to enforce it, including the right to request the competent court to issue an enforcement order. The role of the judiciary in granting this authorization is one of the most important contributions it makes to arbitration, addressing the shortcomings arising from the arbitrator being a private individual without the power to issue orders. Without this support and assistance, the right holder would lose their right due to unforeseen circumstances, and there would be no swift means to stop the harm or for the evidence proving the right to be lost <sup>(27)</sup>.

As for the Jordanian Arbitration Law regarding the jurisdiction of the emergency arbitrator to issue temporary decisions, Article 23/A stipulates (subject to the provisions of Article 13 of this Law, the parties to the arbitration may agree that the arbitration panel, whether on its own initiative or at the request of either party to the arbitration, may order either of them to take whatever temporary or precautionary measures it deems necessary in the nature of the dispute, and may request the provision of sufficient security to cover the expenses of these measures) <sup>(28)</sup>.

<sup>26</sup> Mustafa Natiq Saleh, *The Emergency Commercial Arbitration System: A Comparative Foundational Study*, 1st ed., Arab Center for Studies and Publishing, Egypt, 2018, p. 158 et seq.

<sup>27</sup> Hafiza El-Sayed Haddad, *The Extent of National Judicial Jurisdiction to Take Provisional and Precautionary Measures in Private International Disputes Agreed Upon for Arbitration*, Dar Al-Fikr Al-Jami'i, Egypt, 1996, p. 10.

<sup>28</sup> Arbitration Law and its Amendments No. (31) Of 2001, published in the Official Gazette, Issue No. 4496, page 2821, dated 16-07-2001.

A review of Article 13 of the Jordanian Arbitration Law reveals that it does not grant the emergency arbitrator the authority to issue a provisional or temporary order to either party unless the parties have explicitly authorized the arbitration authority to do so. Therefore, the parties must explicitly agree to grant the authority to issue provisional or temporary orders. Similarly, the Egyptian Arbitration Law No. 27 of 1994, Article 24/1 of which states: "The parties to the arbitration may agree that the arbitration panel, upon the request of one of them, may order either party to take any provisional or precautionary measures it deems necessary given the nature of the dispute." In this regard, we conclude that the emergency arbitrator's authority lies in taking urgent provisional and precautionary measures at the request of the disputing parties before the formation of the arbitration panel. Provisional measures are temporary and precautionary procedures aimed at preventing infringement upon or jeopardizing the rights of the disputing parties.

These precautionary measures are granted to maintain the status quo until the final award is issued; they are a legal technique that provides stability. The situation between the parties to the dispute, and preventing its escalation<sup>(29)</sup>, is also defined as those temporary, circumstantial, and preventive measures aimed at preventing harm that may befall the rights of the concerned party if they are not taken in a timely manner. One or both parties to the dispute are then obligated to implement the arrangement ordered by the competent authority to prevent deterioration. Provisional measures are defined as any temporary measure, whether in the form of a decision or otherwise, by which the arbitration panel orders one of the parties, at any time prior to the issuance of the final decision resolving the dispute, to maintain the status quo or restore it to its previous state until the dispute is resolved; or to take an action to prevent financial or imminent harm or prejudice to the arbitration process itself; or to prevent taking an action that is likely to cause such harm or prejudice; or to provide a means of preserving assets by which the decision of the right can be enforced; or to preserve evidence that may be important and

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<sup>29</sup> Ahmed Sayed Ahmed Mahmoud, Emergency Arbitration in Investment Prohibitions, Journal of Law for Basic Scientific Research, Faculty of Law, Alexandria University, Issue (2), 2015, p. 644.

essential in resolving the dispute <sup>(30)</sup>.

## **Second Topic: The Procedural System for Emergency Arbitration and Its Conditions:**

### **Section One: The Procedural System for Emergency Arbitration:**

Emergency arbitration is a relatively recent system in arbitration, both in international and national legislation and rules. Emergency measures are taken to address changes in the legal positions of parties and economic circumstances. These measures, whether granted by national courts or by arbitral tribunals after their formation, often fail to adequately address the needs of parties in situations requiring swift and effective action. In many cases, the formation of an arbitral tribunal can take weeks or months, hindering the provision of the initial protection necessary for dispute resolution. Over the past decade, emergency arbitration has become one of the most successful aspects of international arbitration, arguably the only truly new form of arbitration. This mechanism provides immediate protection to parties before or after the formation of the arbitral tribunal. It has gained widespread acceptance in amendments made by international arbitration institutions worldwide to align with national arbitration legislation. Emergency arbitration procedures were incorporated into the rules of many arbitral institutions following the 2006 amendment to the UNCITRAL Model Law on International Commercial Arbitration, which aims to assist countries in reforming and modernizing their national laws to meet the demands of international trade <sup>(31)</sup>.

### **Section Two: Conditions for Emergency Arbitration:**

#### **First: Substantive Conditions:**

1. An urgent decision issued by an arbitration panel in a dispute within its jurisdiction under an arbitration agreement, whether a separate arbitration agreement or a clause in a contract, must meet the general substantive requirements of a contract, namely consent, capacity, and subject matter. This

<sup>30</sup> Ahmed Ibrahim Abdel-Tawab, *the Positive and Negative Impact of Control Agreements*, Dar Al-Nahda Al-Arabiya, Cairo, 2013, p. 49.

<sup>31</sup> Shaykha, Luay Hussein and Al-Issawi, Safaa Taqi Abdul Noor, *The Legislative Stance on Emergency Arbitration in Settling International Trade Disputes*, Journal of Legal Sciences, University of Baghdad - College of Law, Vol. 37, January, Special Issue, Iraq 2023, pp. 276-316

excludes disputes that the legislator has prohibited arbitration from addressing, such as matters of personal status and criminal liability. It must also meet the specific substantive requirements of an arbitration agreement, which must precisely define the disputes in the arbitration agreement. If these conditions are not met, the court may refuse to grant the arbitration decision enforcement. Furthermore, the arbitration agreement must be in writing, and the number of arbitrators must be odd <sup>(32)</sup>.

2. The urgent decision must be related to the right to be protected or to the preservation of evidence related to the right subject to arbitration. Examples include a request for a precautionary seizure of funds and goods as security for a potential award, hearing testimony from a witness who might travel, or establishing a condition by conducting an urgent inspection of the goods the subject of the dispute. However, if the goods whose condition is being established are not the subject of the dispute and are not within the jurisdiction of the arbitration panel, the court will then refrain from issuing an enforcement order.
3. The urgent decision sought to be enforced must not be a final ruling on the merits of the dispute; that is, it must not affect the substance of the right or the substantive legal position. If urgent judicial protection is sought under circumstances of urgency and its success depends on its swift application before damages occur or their effects worsen, the judge will not have sufficient time to examine the substance of the rights or substantive legal positions to be protected, especially since the other party against whom the action is intended has not yet presented their defense and evidence, as the decision was issued in their absence due to the urgency. If the arbitral tribunal's decision affects the substance of the dispute, it is considered invalid, and the court must refuse to issue an enforcement order <sup>(33)</sup>.

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<sup>32</sup> Huda Muhammad Abdul Rahman, *the Role of the Arbitrator in Arbitration Disputes*, Dar Al-Nahda Al-Arabiya, 1997, p. 357.

<sup>33</sup> Hafiza Al-Sayed Ahmed, "Precautionary Measures between State Judiciary and Arbitration," *Journal of Legal Studies*, Beirut Arab University, Issue 7, July 2001, p. 195 et seq.

## Second: Formal Requirements:

For a court to issue an order to enforce an arbitration panel's decision to issue a provisional or temporary ruling, certain formal requirements must be met. These requirements consist of follows <sup>(34)</sup>:

1. The arbitration panel must have issued a decision authorizing the provisional or protective measure. This is proven by presenting the written document containing the arbitration panel's decision.
2. The party requesting enforcement must obtain permission from the arbitration panel to approach the court for an enforcement order. If permission is not obtained, an enforcement order will not be granted. This is clearly stated in Article 23/A of the Jordanian Arbitration Law. This permission is granted through a written document issued by the arbitration panel <sup>(35)</sup>.
3. The party must have fulfilled any obligation stipulated in the arbitration panel's decision regarding the approval of the request for a provisional or temporary ruling, such as requiring them to provide sufficient security to cover the expenses of these measures, as indicated in Article 23/A. <sup>(36)</sup>.

Then, resorting to summary proceedings does not constitute a waiver of the arbitration agreement, regardless of whether the applicant had already initiated arbitration proceedings before submitting the request or had not yet taken any steps in that direction. This is because it does not affect the substantive right, which remains with the arbitral tribunal, and because the exclusion of state courts from the dispute due to arbitration applies only to substantive matters, not to provisional matters.

This is confirmed by Article 9 of the UNCITRAL Model Law on International Commercial Arbitration, which states that "it is not inconsistent with the arbitration agreement for a party to request, before or during the arbitration proceedings, that a court take provisional measures, and for the court to take

<sup>34</sup> Nariman Abdel Qader, *Arbitration*, Golden Eagle Printing, 1994, p. 298.

<sup>35</sup> Arbitration Law and its Amendments No. (31) Of 2001, published in the Official Gazette, Issue No. 4496, page 2821, dated July 16, 2001.

<sup>36</sup> Ibrahim Saleh, "The Effectiveness of Summary Proceedings and Their Implementation Mechanisms According to Jordanian Legislation," a research paper published in the University of Anbar Journal of Legal and Political Sciences, Volume 1, Issue 8, 2013, p. 83.

measures upon such request." Similarly, Article 26 of the UNCITRAL Arbitration Rules states that "the submission by a party of a request for provisional measures to the judicial authorities is not inconsistent with the arbitration agreement." Furthermore, Article 9 of the Model Law and Article 26, paragraph 1 s stipulate that "the arbitral tribunal has the power to take such measures as it deems appropriate." Temporary measures are permissible when requested by one of the parties and the procedure relates to a dispute that falls within the jurisdiction of the arbitration body, particularly the right to take measures to preserve the goods in dispute and request their deposit in a safe place with a third party or the sale of perishable goods. It also states that "a request submitted by one of the parties to a judicial authority to take provisional measures is not considered contrary to the arbitration agreement or a waiver of the right to adhere to it".

As for the Jordanian Arbitration Law, Article 13 can be understood to mean that an arbitration agreement does not preclude a party from requesting a provisional measure from the judge of urgent matters (the arbitration agreement does not prevent any party from requesting any provisional or protective measure from the judge of urgent matters, whether before or during the arbitration proceedings <sup>(37)</sup>).

In any case, it is not a matter of debate or contention for one of the parties to an arbitration agreement to resort to the court of urgent matters to request a provisional or urgent measure before the arbitration panel is convened. This is because there is an imminent danger to the right and a fear of the loss of evidence supporting it. In such cases, the decision issued by the court of urgent matters is considered an absolute necessity and does not necessarily entail the parties withdrawing from the arbitration agreement <sup>(38)</sup>.

## Results

1. Jordanian legislation recognizes emergency arbitration and the jurisdiction of the emergency arbitrator to issue urgent decisions and provisional orders, but it does not contain specific provisions for this.

<sup>37</sup> Arbitration Law and its Amendments No. (31) Of 2001, published in the Official Gazette, Issue No. 4496, page 2821, dated 16-07-2001.

<sup>38</sup> Fawzi Muhammad Sami, International Commercial Arbitration, Volume Five, Dar Al-Thaqafa Library for Publishing and Distribution, 1997, p. 295.

2. The jurisdiction of the emergency arbitrator to issue an urgent and provisional decision is only established by an explicit agreement between the parties to the arbitration, and the judiciary has original jurisdiction to consider urgent and provisional requests.
3. Resorting to the summary proceedings court does not constitute a waiver of the arbitration agreement, and when the judiciary grants an order to enforce the emergency arbitrator's ruling, it does not interfere with the arbitration panel's assessment of the existence of a state of urgency or the existence of the right sought to be protected.
4. An emergency decision issued by the emergency arbitrator does not have the force of *res judicata*, as the arbitration panel may retract it if the circumstances that necessitated it change. Furthermore, an emergency ruling issued by the emergency arbitrator has no enforceable force, and a party refusing to comply with it cannot be compelled to do so unless the party requesting enforcement obtains an enforcement order from the competent court.

## Recommendations

1. The researcher proposes amending Article (13) of the Jordanian Arbitration Law No. 31 of 2001 as follows: "The parties to the dispute may resort to an emergency arbitrator for urgent matters before the arbitration panel considers them, as follows:
  - The arbitration agreement does not prevent either party from resorting to an emergency arbitrator before or during the arbitration proceedings to request a provisional or protective measure, and this shall not be considered a withdrawal from arbitration.
  - The emergency arbitrator may order the measures he deems necessary to protect rights without prejudice to the merits of the disputed right
  - The emergency arbitrator's decisions in these matters are subject to appeal in accordance with the provisions of the Civil Procedure Law".
2. It is necessary to prepare arbitrators for emergency cases and train them in the skills required for this task.
3. The researcher recommends strengthening scientific research on emergency arbitration cases due to their unique nature, which would shorten the time required for subsequent arbitration sessions.

## References

- Abdel Qader, Nariman. Arbitration. Al-Nasr Al-Dhahabi Printing, 1994.
- Abdel Rahman, Huda Muhammad. The Role of the Arbitrator in Arbitration Disputes. Dar Al-Nahda Al-Arabiya, 1997.
- Abdul-Tawwab, Ahmed Ibrahim, the Positive and Negative Impact of the Control Agreement, Dar Al-Nahda Al-Arabiya, Cairo, 2013.
- Abu Al-Wafa, Ahmed, Voluntary and Compulsory Arbitration, University Press, 2007.
- Ahmed, Hafiza Al-Sayed, Precautionary Measures between State Judiciary and Arbitration, Journal of Legal Studies, Beirut Arab University, Issue 7, July 2001.
- Ahmed, Sayed Ahmed Mahmoud, The Extent of the Arbitrator's Authority to Take Provisional and Precautionary Measures, Journal of Law, Kuwait University, Issue 3, 2001.
- Al-Aboudi, Abbas, Explanation of the Provisions of the Law Al-Bayyinat, Dar Al-Thaqafa, Amman, 2005.
- Al-Baqmi, Ayed Sultan Marzouq, The International Nature of Commercial Arbitration in the Saudi System, Research published in the Journal of Law, Volume (15), Issue (2), 2017.
- Al-Musab, Boubaker. The Importance of the Emergency Arbitrator in Commercial Arbitration. Al-Arab International Economic Newspaper. July 12, 2016.
- Al-Rifai, Ashraf, Public Order and Arbitration in Private International Relations: A Study in Arbitration Jurisdiction, Dar Al-Nahda Al-Arabiya, Cairo, 1997.
- Al-Shawarbi, Abdul Hamid, Arbitration and Reconciliation in Light of Jurisprudence and the Judiciary, Al-Maaref Establishment, 2nd ed., Alexandria, 2000.
- Al-Tahawi, Mahmoud Al-Sayed, the Concept of the Negative Impact of the Arbitration Agreement, University Press, 2003.
- Al-Tahawi, Mahmoud, Defining the Objective Meaning of the Subject Matter of Arbitration and its Role in Determining the Nature of the Work, Dar University Press, Alexandria, 2002.
- Al-Tahawi, Mahmoud, the Legal Nature of the Arbitration System, University Press, Alexandria, 2003.
- Arbitration Law and its Amendments No. (31) Of 2001, published in the Official Gazette, Issue 4496, Page 2821, dated 16-07-2001.
- Bardan, Iyad, Arbitration and Public Order: A Comparative Study, Al-Halabi Legal Publications, Beirut, 2004.
- Boujalal, Sumaya, The Court of Justice in Taking Provisional and Precautionary Measures, Research published in the Journal of Human Sciences, Issue 48, Volume (B), Mentouri Brothers University, Austria, Algeria, 2017.
- Faleh, Najla Tawfiq. Conflict of Exceptions Between the Judiciary and a Body Directed to Take Provisional and Preservative Measures. Research published in the Journal of Law and Humanities, Volume 13, Issue 4, 2020.
- Ghosoun, Abdel Karim. The Legal System of the Arbitrator in the Commercial Field. Master's Thesis in Business Law, Faculty of Law, University of Algiers, 2016.

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- Haddad, Hafiza Al-Sayed, The Extent of the National Judiciary's Jurisdiction to Take Provisional and Precautionary Measures in Private International Disputes Agreed Upon for Arbitration, Dar Al-Fikr Al-Jami'i, Egypt, 1996.
  - Hashish, Ahmed Muhammad, the Nature of the Arbitration Task, Dar Al-Kutub Al-Qanuniyya, 2001.
  - Jawad, Samir, Arbitration as a Mechanism for Dispute Resolution, First Edition, Dar Al-Qadaa Press, Abu Dhabi, 2014.
  - Mahmoud, Ahmed El-Sayed Ahmed, Emergency Arbitration in Investment Disputes, Faculty of Law, Ain Shams University, Egypt, 2015.
  - Mahmoud, Ahmed Sayed Ahmed, Emergency Arbitration in Investment Prohibitions, Journal of Law for Basic Scientific Research, Faculty of Law, Alexandria University, Issue (2), 2015.
  - Mustafa Natiq Matoub, The Self-Application of Emergency Arbitration and the Consensual Application of Emergency Commercial Arbitration Rules: A Comparative Study, College of Law, University of Mosul, Iraq, Tikrit Journal of Law, Issue 3, 2019.
  - Nabhi Muhammad, Emergency Commercial Arbitration, Academic Journal of Legal and Political Research, Volume 6, Issue 1, 2022.
  - Qazmar, Nadia Muhammad Mustafa. The Arbitrator's Method of Issuing Urgent Reductions: A Comparison. Research published in the Middle East Research Journal, Issue 49, Jordan, 2020.
  - Saleh, Ibrahim, The Effectiveness of Summary Proceedings and Their Implementation Mechanism According to For Jordanian legislation, a research paper published in the University of Anbar Journal of Legal and Political Sciences, Volume 1, Issue 8, 2013.
  - Saleh, Mustafa Natiq, the Emergency Commercial Arbitration System: A Comparative Foundational Study, 1st ed., Arab Center for Studies and Publishing, Egypt, 2018.
  - Sami, Fawzi Muhammad, International Commercial Arbitration, Volume Five, Dar Al-Thaqafa Library for Publishing and Distribution, 1997.
  - Shehata, Muhammad, Enforcement of Arbitrators' Awards, a paper presented at the Conference on Problems of Enforcing Judicial Judgments, May 19-22, 2006.
  - Sheikha, Luay Hussein and Al-Issawi, Safaa Taqi Abdul Noor, The Legislative Stance on Emergency Arbitration in Settling International Trade Disputes, Journal of Legal Sciences, University of Baghdad -College of Law, Vol. 37, January, Special Issue, Iraq, 2023.