

Mediation to Settle Civil Disputes In Jordan

Judge Waleed Kanakrieh

Judge of Amman : Court of Appeal Amman

Introduction in International ADR Rome Conference

Rome-Italy 28-29 September

Introduction :

Civil Disputes are no longer simple or clear in era distinguished with technological progress and intellectual overlap and in a world witnesses an unprecedented revolution in communication technology , rapid flow of information and the potential of electronic networks to arrange relations & contracts through the electronic network.

Thus the call for new methods to provide quick and effective resolution of these conflicts began, reasons may verify for restoring to alternative solutions in each country from another, but they all agree that the main reason to think about alternative solutions to resolve disputes was the slow litigation procedures. It's not sufficient to achieve justice between litigants to give every one his right, but justice should not be slow & late after the decision lose its importance, as the arbitration is not much different from the legal actions, so thinking in finding other effective & quick methods to resolve disputes, is important issue.

The Hashemite Kingdom of Jordan and by her openness to the world have been affected much as witnessed a rapid development in various aspects of life, and by virtue of its geographical position and the security and stability of policy and governance have also experienced a marked increase in the number of the population, in addition to increasing the volume of local investments and flow of foreign investment.

Trade have widespread by all sorts of forms, and registration for different types of commercial companies including national companies and big foreign companies , and it was natural to be accompanied by more complex in human relations, , which resulted in the quantitative and qualitative development in civil conflicts, which have become more

complex and ambiguous, This has been accompanied by inflation in the preparation of cases recorded in the courts .

This has become an urgent need to facilitate legal proceedings in this courts & develop the first systematic thinking in resolving disputes through Secondly solutions far from the site of the courts to resolve these disputes through opening the door to a number of retired judges, lawyers and professionals, who are known for their competence and integrity to contribute to the settlement of some disputes in a friendly way depend on compromise and accommodation away from the beam and without compulsion , and without being winner or loser or wrong or correct, and without leaving an impact on hearts of competing to take account of the speed required and mutual interests of the disputants.

Hence the mediation and management of the civil case applied in the Jordanian courts is one of the modern techniques introduced by the Jordanian judiciary, which proved successful and widely in many countries that have preceded us and directly contributed to easing the burden on the courts.

Before that mediation was legally still conduct deep-rooted traditions in the humanitarian and advocated by all religions, and pleasant to the same human nature that rejects imposing rules upon them .

Mediation is one of the effective ways of settling disputes away from the litigation process, through secret actions to ensure the confidentiality of privacy between the parties to the conflict based on the attempt to bridge the gap in viewpoints between the parties of the conflict , by using modernize means in the art of negotiations in order to reach an amicable & satisfactory settlement to all parties.

The management of civil cases that had been applied in Amman First Instant Court since October 2002is the idea based on the use of modern management concepts based on the planning, organizing and monitoring , its proper that this experience has made a qualitative leap in litigation procedures contributed to the investment of time and reduce long litigation period.

What is the Mediation ?

Its a mean of alternative solutions to resolve disputes by an impartial aims to assist the conflicting parties to meet and dialogue and bring closer viewpoints and evaluated to try to reach a compromise for both parties

Types of Mediation :

1. Judicial Mediation:

Done through Judges of First instant Courts & Conciliation Courts who initially chosen by President of the court of first instance for this task and are called " Judges Mediation"

2. Private Mediation:

Done by retired judges , lawyers & professionals and others who are known for their impartiality and integrity, these are appointed by the President of the Judicial Council and by a placement from the minister of Justice and are called " Private Mediators "

3. Conventional Mediation :

Done through out the Mediator agreed upon him by the parties of the conflict.

Mediation provisions:

1. The dispute parties should participate in the mediation sessions.

The legal representative should also participate in the mediation sessions.

If one of the dispute parties was a notable person, a delegated person should participate –other than the legal representative – to settle the dispute.

2. Secrecy:

Mediation procedures are secret and should not be protested from any part of dispute, in front of any court or any authority.

3. The duration of mediation is not more than three months.

The mediator should finish all mediation actions with maximum three months from the date of the receiving the dispute.

4. The mediation judge should not nullify to go through a case which was submitted to him before as mediation case.

Mediation Objectives:

1. To reduce the number of cases submitted to the subject judge.

Countries experiences shows that mediation contribute in a high range, to reduce the courts load.

2. Saving time, efforts and expenses for dispute parties, where they end the cases in its first levels.

3. Creating an attractive investment environment.

Practical experiences shows that the efficiency and integrity the Judiciary to settle disputes in a very short time, was one of the most important elements which attract national and international investments, this is why the person feels security and peace to go through trading relations without being afraid to lose his capital.

Mediation advantages:

1. Privacy:

The mediation ensures the privacy of the dispute between both parties.

2. Limitation of expenses:

One of mediation advantages that it is less cost than the cost of arbitration and it allows the defendant to refund the fees paid when registering the case.

3. Achieving sharing benefits for both dispute parties:

The final settlement in mediation is overall a good solution for both dispute parties.

4. Flexibility:

Mediation procedures are flexible, because there are no specific rules and procedures.

5. Protecting good relations between dispute parties.
Good relations are still found in mediation, where as judicial disputes break such relations.
6. Exploitation time:
Mediation ensures exploitation time and obtaining fast solutions.
7. Magnificent solutions which can be reached:
Mediation sessions helps getting over obstacles and finding creative solutions in order to settle disputes.
8. Providing a meeting for dispute parties before starting the trial.
Mediation sessions provide a final meeting between dispute parties in order to settle dispute.
9. Non –bearing any kind of risk:
Where as dispute parties have the freedom to take back any proposal during the mediation sessions, unless it is not written yet.

Types and manners of mediation:

Mediation has many different types and manners of negotiation and bargaining ,such as :

1. *Bargaining concerning rights:*
The focus here is about legal rights instead of dispute.
2. *Reconciliation bargaining:*
The focus here is to bring points of views together between parties.
3. *Distributive bargaining:*
This method examines how to settle the dispute over the amount of fixed resources disputed.
4. *Bargaining on the basis of interest:*
This method focusing on the interests of the other parties to the conflict in addition to the disputed rights.
5. *Integrated bargaining:*
The settlement includes other facts and interests than those disputed upon them.

Mediation Stages :

The mediation process is mostly one in four stages:

1. Joint meeting stage.
2. The closed meetings or individual stage.
3. The exchange offers and demands stage.
4. Final meetings stage.

Mediation Results :

1. Mediation success:

If the mediator reached to settlement between conflicted parties so the mediation is successive.

*** Results of mediation success:**

1. Conflicted parties will assign a settlement convention .
2. The Mediator will provide a report to the Judge of the management of civil cases or the conciliation judge .
3. Issuing a decision to ratify the settlement convention by the management of civil cases Judge or Judge of Conciliation.
4. The settlement convention after it has been ratified considered as final judgment and not subjected to any way of appeal and it will be in the implementation of the competent execution.
5. Recovery Fees: the defendant have right to recover half of the charges in the case of a whole dispute settlement , if the mediation was whole judicial or private, full fees if the mediation was agreement.

*** Results of False of Mediation:**

1. In the case of the mediator didn't reach to settlement amicably during the legal term, the mediator duty is providing the management of civil cases Judge or the conciliation Judge a report includes failure of parties to reach a settlement & the commitment of parties and their agents in attending mediation sessions.

2. However, if the non-completion of mediation was because of the absence of liabilities or any of them from mediation sessions, the management of civil cases Judge or the conciliation Judge have the authority to impose a fine on the absent party.

Mediator Fees:

1. Judicial mediator does not receive any fees from the parties to the conflict.
2. Private mediator be paid in case of successful mediation as a half of judicial fees paid by the defendant to be at least a minimum of three hundred JD, if the amount is less than that conflicted parties commit to pay difference equally between them.
3. Private mediator receive in case of the failure of mediation an fees determined by Judge of Management of Civil Cases and in an amount not exceed than two hundred JD abide by the defendant , this amount considered as case expanses.
4. The mediator has been appointed by the conflicted parties define his fees by an agreement with the conflicted parties.