

Arbitration Fees, Expenses and Determination Controls

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Abstract

The Jordanian Arbitration Law No. 31 of 2001, along with its amendment No. 16 of 2018, addresses arbitration fees and expenses. Article 41/D (1, 2, 3) outlines how to determine the arbitrators' fees, their distribution, and how to handle situations when one party fails to pay its share, assigning the second party to pay on their behalf. Once the final arbitration decision is issued, the arbitration fees and expenses are determined. Decisions regarding these fees are subject to appeal before the relevant appeals court within fifteen days. However, the law does not comprehensively regulate this matter. Unless a written agreement exists, the issue falls outside the jurisdiction of the appeals court. This research explores the definition of arbitration fees from the perspectives of jurisprudence, the judiciary, and various legislations, focusing on the estimation of fees, especially in Ad-Hoc Arbitration. The Jordanian legislator has not provided specific principles for estimating these fees, which should also consider the arbitrator's experience and length of career. In contrast, Institutional Arbitration has clearer criteria. The research concludes that the lack of specific legal provisions for judicial oversight over the arbitral tribunal's fee decisions has led to inconsistencies in judicial decisions by the Court of Appeal. Legislative intervention is needed to address these gaps in the law.

Keywords: Jordanian Arbitration Law, Fees, Expenses, Judicial Oversight.

1. Introduction

The modern concept of interpersonal relations is a priority for consensual means in resolving disputes arising between them, and arbitration is one of the alternative means for resolving disputes (Sader, 2015).

Arbitration in legal terminology means the agreement between the parties to a certain legal relationship, contractual or non-contractual. Provides that if the dispute has already arisen between them or that is likely to erupt, people chosen as arbitrators will be assigned to resolve it.

Parties shall designate arbitrators, or at least the agreement should include a statement of how the arbitrators to be selected, or they shall entrust a body or center from one of the permanent

arbitration bodies or centers to take over the organization of the arbitration process in accordance with the rules or regulations of these bodies or centers. (Bariri, 2014) Arbitration is a legal system drawn up by the legislator alongside the state's judiciary, according to which people agree to settle disputes that arise between them through ordinary individuals chosen to settle these disputes by a binding judgment. (Qassas, 2004)

Arbitration derives its legitimacy from several considerations, of which the principle of procedural economics might be the most important one, which dictates the necessity of speeding up seeking rights with the least possible effort and in the least possible time. Even if this will cause the arbitrators to incur high financial costs, for the value of time, judges usually sacrifice the value of money. Therefore, the liberation of the arbitration litigation from the traditional procedural constraints, with the complex formalities it imposes which drain effort and time before the state's judiciary, is one of the most important goals of the litigants, in addition to the confidentiality of arbitral proceedings, especially in international trade disputes (Doudar)

The will of the parties constitutes the arbitration constitution, they form the arbitral tribunal, which means they choose them, with one condition that their number is odd, otherwise the arbitration will be void, and the requirement of the odd number is to avoid the denial of justice. In the case of divided opinions, the majority permits the issuance of the arbitral decision, because most of the opinions issue the arbitral decisions. (Hendi, 2013) .

Ad Hoc is the normal form of arbitration entrusted to the parties within the limits permitted by law to a third party to resolve a dispute arising between them and in which the procedures and rules applicable to the dispute are determined.

However, Regulatory arbitrage or Institutional arbitration is entrusted to a commission, organization, or one of the permanent arbitration centers, for the arbitration process to be held according to pre-established rules and procedures of these permanent bodies. (Omar, 2011). Some arbitral institutions assess their own administrative fees and expenses, and the fees payable to the arbitral tribunal, by reference to a sliding scale, which is based on the amounts in dispute (including the amount of any counterclaim). This has the advantage of certainty, in that the parties can find out at an early stage what the total cost of the arbitration is likely to be (Nigel blackaby, 2015)

The modern era has witnessed the phenomenon of establishing many permanent arbitration centers, established within the framework of a legal regulation that allows the parties to international contracts to benefit from its services by accepting its jurisdiction. Whether the arbitration clauses to be contained in the contract or after the dispute arose by providing in the arbitration agreement that in case a dispute erupts to refer it to one of the institutional arbitration centers. This type of arbitration is distinguished by the fact that its legal system usually deals with most of the issues raised by the settlement of disputes, while giving freedom to the parties to the dispute to amend its rules. Despite the advantages of institutional arbitration previously presented, the guarantee of confidentiality of the dispute may not reach the level provided by Ad Hoc. (Sharaf Eldin)

The arbitral tribunal is considered the court to take over the arbitration dispute in which the parties to the dispute have agreed to resolve their dispute by means of arbitration. (Shehata, 2010) .

The arbitrator is not required to be a legal expert or to be one of those who engage in the same type of activity subject to arbitration. However, parties to the dispute must choose their arbitrators from among those who have the competence, experience and practice that would help them perform their task with cleverness and good conduct, also not to make major mistakes that threaten the judgement or its procedures nullified. (Younis, 2009) .

The most prominent feature that distinguishes arbitration from judiciary is that the one who decides the dispute in the first case is a person appointed by the litigants, while the appointment of a judge is by the state in the second case. Therefore, all legislation agrees to give the parties to the arbitration agreement the freedom to choose the persons who will compose the arbitral tribunal. However, if an obstacle arises in the way of appointing the arbitrator or arbitrators, there are legislations, including the Jordanian law - which makes the judiciary a role in this appointment. (Khalil, 2002)

The arbitrator is the most important element in the arbitral dispute system. He is rightfully the cornerstone of the arbitration system, and spatiotemporal powers over the arbitral dispute that no one else has, and to the extent of the litigants and their skill, and accuracy in choosing the arbitrator, all of that determines the degree of the arbitration success, justice and freedom from defects (Shehata, 2010).

Arbitrator should enjoy privileges and rights in return for the obligations or duties that the arbitrator must abide; perhaps the first of these is the right to the fees and expenses of the arbitration process. (Qandil, 2011) .

The Jordanian Arbitration Law stipulated the formation of the arbitral tribunal and gave the consensual will of the litigants the greatest role. Law organized and surrounded it with conditions in a way that ensures the achievement of justice and social interest. In addition, took precautions to prevent what might happen and affect the correctness of its formation (Shehata, 2010)

Arbitrator right to receive fees for his work is one of the most important obligations of the parties to the arbitration, and it is confirmed by practice (Zoubi, 2020).

In case of Ad Hoc, the agreement between the arbitrator and the parties is what determines the fees of arbitration. However, in case of institutional arbitration or arbitration conducted through an arbitration center, the center is the one who agrees on these fees and expenses with the parties to the arbitration dispute, and most often, each arbitration center has lists of fees according to the system adopted in the center. (Shehata, 2010). It is binding to arbitrators registered in the Center's lists as soon as they accept the mission. Usually, the arbitration fees are estimated at a certain percentage based on the amount of controversy to be settled by arbitration. There is a lump sum as administrative expenses, and a lump sum as a reward for each arbitrator that is determined based on the amount on controversy, and another amount as administrative expenses is calculated based on a percentage of what exceeds the first lump sum, and the same applies to the arbitrators' reward (Sami, 2012).

The arbitration system is based on the rules of the International Chamber of Commerce regarding the arbitration costs, which include the arbitrators' fees, their expenses, and

administrative expenses, which is determined in the light of the amount controversy. The share of each party in the administrative fees and expenses is determined at the end of the arbitration in accordance with the schedules in force in the Chamber. Arbitrators shall clarify the method of distributing the costs of the proceedings between the parties, and in all cases, each party for proceeding expenses, arbitrators' fees and arbitration costs shall pay a security deposit in advance to the International Center for Settlement of Investment Disputes. Its determination shall be made within the limits decided by the Administrative Council. The parties may object to the determination made by the competent authority considering the dispute, and the arbitral tribunal owns the fees and expenses between the parties unless there is an agreement. (Sharaf Eldin).

Part of the jurisprudence considers that, originally, the arbitrator receives his fees in return for his work, if he did not waive these fees. In the performance of his work, the arbitrator bears various expenses, which may be large, such as the expenses of traveling to a foreign country when necessary and paying airplane and hotel expenses. These expenses increase with the length of the arbitration period, and the arbitrator may not bear these costs (Wali, 2014)

On the other hand, the arbitrator has the right to demand all the fees and expenses that may have been incurred, whether they were included in the agreement or not. He can refer to the parties claiming the unjustified enrichment through the judiciary or arbitration. In practice, the arbitration applicant or the parties deposit a sum of money to meet any fees or expenses, as most arbitration centers require a specific financial deposit for that. (Shehata, 2010)

Originally, the arbitrator deserves a fee for his service to the litigants if there is no custom or tradition that this service to be provided for free. Charging arbitration fees does not violate the principle of the independence of the arbitrator, because this award does not affect the arbitrator's opinion when issuing the ruling. The arbitrator deserves the fees even if he is a public servant if the work is done for the benefit of the litigants. He also deserves the fee, even if he is a state judge, practicing arbitration in cases other than prohibited by law, and even in cases of compulsory arbitration held without the consent of the parties to the dispute, because the compulsion is imposed on the litigants not on who undertakes the task of arbitration, as he does not engage in this process until after acceptance, so as long as he cannot be forced, he deserves a payment. (Attia, 1990) .

Whereas Article (41/1/2/3) of the Jordanian Arbitration Law No. 31 of 2001 and its amendment No. 16 of 2018 stipulated that:

1. If the parties to the arbitration and the arbitrators did not agree on the arbitrators' fees and its distribution among them, then the fees shall be decided by the arbitral tribunal, both parties shall be requested to pay the arbitrator's fees equally, without prejudice to the arbitral tribunal's right to decide on the expenses and fees and the method of distribution in the final arbitral award.
2. If any party fails to pay its share of the expenses and fees, the other party shall be requested to pay on its behalf.
3. In all events, every decision made by the arbitral tribunal about the arbitration fees can be challenged before the Competent Court within fifteen days from the date on which the parties are notified and its decision on this matter will be binding.

The Jordanian legislator did not stipulate in Arbitration Law No. 31 of 2001 before the amendment to give the arbitration parties the right to distribute the arbitration fees. On the other hand, explicitly stipulating that the parties to the dispute are equally required to pay the arbitrators' fees, without prejudice to the right of the arbitral tribunal to decide on the expenses, fees, and the method of distribution in the final arbitral award. As article, 41/d stipulates that in all events, every decision made by the arbitral tribunal about the arbitration fees can be challenged before the Competent Court and its decision on this matter shall be binding).

The jurisprudential point of view tends to define the concept of arbitrator's fees, as all the fees that arbitrators deserve due to his actual effort in the arbitration process. (Qandil, 2011). The expense is all he spent in the arbitration process, such as travel expenses, staffing allowance, clerk or correspondent, and what was spent in order to obtain documents deemed necessary to be obtained, and in general All payments made in connection with and arising from the arbitration process (Momani). The arbitrator's fees can also be defined as the amounts he receives as compensation for the trouble and effort he exerted during the consideration of the dispute. As for the expenses, they include travel expenses from his home country to the arbitration place, if necessary, accommodation expenses and the expenses of his assistants in arbitration. (AbdelSadiq, 2014) .

The parties agreement in advance on the fees and expenses of the arbitration does not raise any problem in accordance with the provisions of Article 41/1/2/3 of the amended Arbitration Law, the problem arise in case of Ad Hoc arbitration consists of a single arbitrator, or if the arbitral tribunal is composed of three or more arbitrators, If there is no agreement between the parties to and the arbitrators in the application of the previous article, Article (41/d/1) of the Jordanian Arbitration Law did not specify what the arbitration fees are and did not differentiate between arbitration fees and arbitration expenses, and what is the assessment criteria adopted when appealing the decision of the arbitral tribunal in estimating the arbitration fees, and if the criteria on which the judiciary relies when appealing to them is fixed or variable criteria, and whether it is possible to issue a ruling on the arbitration fees when issuing the final decision in the case, and can the arbitral tribunal stop the proceedings in the case of non-payment of the arbitration fees.

2. Research Questions and Problems

1. To what extent has the Jordanian legislator addressed the determination of arbitrators' fees and expenses of the arbitration process?
2. What is the role of the judiciary in determining arbitration fees?
3. The impact of setting standards to determine arbitrators' fees on encouraging resorting to arbitration as an exceptional means to the judiciary and saving the time and effort that drains the state's judiciary.
4. The absence of statistics and studies on the reality of arbitration in Jordan due to the absence of an accredited arbitration center
5. To what extent is confidentiality guaranteed in institutional arbitration compared to Ad-Hoc arbitration?

6. What are the fees and expenses due to the arbitrator in case the arbitrator is unable to proceed with or continue with the arbitration?
7. What is the impact of the selection of the arbitrators or arbitrators and their nationalities on the fees, expenses, and administrative expenses of the arbitration process?

3. Research Aim and Objectives

Shedding light on the issues facing the arbitration process and its impact on the interests of the parties, and among the issues are the fees of arbitrators in Ad-Hoc arbitration and working to prepare standards and guiding rules for all parties related to the arbitration process, to avoid disputes when one of the parties wants to determine the fees as they wish and in an exaggerated manner without standards and foundations. To determine it, while recognizing that the arbitrator has the right to receive fees for his work, in addition to the importance of creating credibility and confidence among the investor, which encourages investment in Jordan and the handling of cases. and treat cases where the arbitrator may be dismissed, he may die or stop proceeding with the arbitration, or the litigants themselves may hinder the arbitration process, so the arbitrator cannot proceed with the arbitration.

4. Methodology.

In order to achieve the goal of this study, we followed the descriptive and analytical approach of the Jordanian Arbitration Law No. 31 of 2001 and its amendments, by explaining the rules for estimating the fees of arbitrator or arbitrators and the expenses of arbitration in Jordanian law, and analyzing their texts according to legal analysis methods.

5. Results and discussions.

The beginning of the term of the arbitral tribunal is considered from the time of the completion of its formation and its acceptance of the arbitral mission. which is determined according to the circumstances, If we are in the process of Ad Hoc arbitration, then this mandate does not begin until the arbitrator or arbitrators have been identified and accepted the mission explicitly or implicitly, and if we are facing institutional arbitration with an arbitral center the jurisdiction of the arbitrators begins from the moment determined by this center to refer the dispute to its arbitral tribunal, as it is considered an agent of the two parties in determining the arbitral tribunal.

But it is necessary to look at the issue from the practical side, as the case does not enter the jurisdiction of the arbitral tribunal unless the two parties or one of them send the papers and documents related to the dispute to the arbitral tribunal that was agreed upon, or to the permanent arbitration center entrusted with the arbitration. Often the arbitration centers prepare a model document to be signed by the two parties, so that their signature is an indication of the start of the arbitration procedures, which means that the case enters the jurisdiction of the arbitral tribunal. (Douidar).

At the forefront of the financial rights of the arbitrator are the fees, which are a monetary amount that he receives in return for performing his task in arbitration. (Shehata, 2010) . It is appropriate that the arbitrators do not agree on fees to be paid in whole or in part after the final

decision in the case. Rather, to preserve their dignity, all fees must be paid before starting to practice their task, fees can be deposited into the account of the presiding arbitrator, and he distributes them to the members of the commission after the ruling is issued. If the parties do not pay the arbitrators' fees, the tribunal may suspend the proceedings until they are paid, and in case of failure of payment during the suspension period, the tribunal may terminate the procedures. If there is no agreement between the parties to the dispute and the arbitrators on the fees, (Wali, 2014) . It cannot be considered that there is an agreement on the amount of arbitration fees. Through the terms of reference and conditions of arbitration, the parties to the arbitration authorize the arbitral tribunal to estimate their fees and any other expenses arranged by the tribunal, providing that the parties jointly pay these fees and expenses. As a result, the arbitral tribunal decides who will bear those fees and expenses in whole or in part in the body of the arbitration award, it was agreed that the fees should not exceed what is included in the approved guide of the Jordanian Arbitrators Association. Thus, the tribunal is authorized to estimate the fees, provided that the fees do not exceed the guide of the Jordanian Arbitrators Association. That assessment is subject to judicial oversight in accordance with the provisions of Article 41/d of the Arbitration Law, in case the court has found that the arbitration case is still in its initial stage, the arbitral tribunal effort is still in its infancy, and what the arbitral tribunal has decided does not commensurate with the time and effort and the estimation of the arbitration fees was not reasonable and acceptable at that stage of the arbitration case. (Judgment No. 151/2021, dated 3/3/2021).

In addition, there are cases in which arbitration does not end with a ruling in the dispute. The arbitrator may be dismissed, he may die or stop proceeding with the arbitration, or the litigants themselves may hinder the arbitration process, so the arbitrator cannot proceed with the arbitration. The litigants of the arbitration agreement may fail their agreement. In all these cases, what are the fees and expenses due to the arbitrator?

In these cases, and similar cases, the status of the arbitration and arbitrator shall be considered. Undoubtedly, the arbitrator is entitled to compensation for his fees and expenses, and this is estimated according to the work done, the effort, and what caused him to be deprived of profits, as long as the good faith in what the arbitration has devolved to, or the damage is not resulted from his action. Except in the case of his death or bad faith, he does not deserve to be paid the fees (Momani) . However, if the arbitral award nullifies due to negligence or error of the arbitrators, they do not have the right to claim the fees and expenses because they have caused by their negligence and mistake or their bad faith in wasting the time and efforts of the parties with no avail. Rather, the arbitrator shall be entitled to his fees and expenses if the arbitral award is nulled for a reason beyond his control, or if he was unaware or was not in the process of verifying its availability. (AbdelSadiq, 2014) .

If there is no agreement on the arbitrator fees, the arbitrator may not issue a decision determining his fees and expenses, as the arbitrator will then be a litigant and an arbitrator at the same time. Rather, the arbitrator can resort to the judiciary requesting to estimate his fees and obligate the payment. If the arbitrator sets his fees in the final arbitration award, then this term is not obligatory unless the parties accepted it, the party sentenced of payment can resort to the judiciary requesting the disregard of the fees section of this ruling because those who have no jurisdiction issue it. (Wali, 2014) . Jordanian judiciary has decided (In this we find that this reason

is appropriate because if the agreement does not include the fees, the arbitrator may not issue a decision setting his fees and expenses, but the arbitrator can resort to the judiciary by requesting and obligating this determination. If the arbitrator determines his fees in the arbitration award, this determination does not oblige the parties unless they accept it. The appellant, as the party sentenced to these fees, may resort to the judiciary to request the disregard of the judgement, because someone who has no jurisdiction issued it, and it is not part of the arbitral award. However, the disagreement on the fees does not invalidate the arbitral award. (Court judgment No. 2184/2021, dated 20/09/2021).

In the light of the text contained in Article 41 of the Jordanian Arbitration Law, whereby the parties to the arbitration case are assigned to pay the arbitrators' fees equally among themselves, and if any party fails to pay its share of the expenses and fees, the other party is assigned to pay on his behalf. Part of the jurisprudence goes that joint responsibility in this area or that scope is based on considering the arbitrators as agents of the litigants, which leads to the implementation of the provisions of solidarity among multiple agents in the face of the clients. But the arbitrators are not actually agents of the litigants, and that is what makes it impossible to say the parties to the dispute shall jointly pay the arbitrators' fees, unless there is a special provision in the law. (Al Jammal and Abdel-Aal, 1998).

The parties to the arbitration and the arbitrators may not agree to determining the arbitrators' fees. In accordance with the provisions of Article 41/3 of the Jordanian Arbitration Law, every decision issued by the arbitral tribunal regarding the arbitration fees is subject to appeal before the competent court within fifteen days from the date of notification of the parties, in this case the decision of the court of appeal is a final decision. Amman Court of Appeal decided, in one of its decisions that, "If there was no agreement between the parties to the arbitration and the arbitrators determines the arbitrators' fees, taking in consideration the time taken in the arbitration, procedures held during it, the arbitral tribunal effort and the value of the lawsuit under arbitration, and in the light of what is stable from the arbitration file, the court considers the arbitrators' estimation of their fees in the amount of 6000 JD based on the guidelines of the Jordanian Arbitrators Association is exaggerated and that this award is not binding but indicative, especially since the appointment of the arbitrators was made by a court decision not through the association, our court considers the amount of 4,500 dinars as a fee for the arbitral tribunal, which is an appropriate according to the above statement". (Court judgment No. 156/2019, dated 28/03/2019). In another ruling, the same court decided (Although the power to estimate the arbitration fees belongs to the arbitral tribunal, the arbitral tribunal when estimating the fees, this power is not absolute. Thus, the arbitral tribunal, when estimating the fees, adheres to a few criteria, including the following:

- 1- The effort done or expected to be made by the arbitral tribunal, the time the arbitrators spend examining the case, the period taken to hear the case, and the procedures that it includes.
- 2- The nature of the dispute and the subject matter of the case.
- 3- The value of the lawsuit.

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- 4- That the amount of fees estimated by the arbitrators to be reasonable. Our court finds that the value of the case is not the only criterion for estimating the arbitration fees, because they increase the arbitration fees to increase the value of the lawsuit at the time of its assessment. Rather, it is necessary to consider all the above-mentioned criteria. (Court judgment No. 523/2021, dated 12/10/2021).

The Jordanian judiciary has decided to impose additional criteria to extend its control over the estimation of the arbitrators' fees as follows (that the arbitral tribunal has given itself the authority to determine the amount of the fee, the share of each party and how and when it is paid. Which expresses that the arbitral tribunal has the power to estimate the arbitrators' fees. However, this estimation is subject to judicial oversight according to the provisions of Article 41/d of the Arbitration Law, and that such oversight must have criteria through which the court can perform its control over the assessment of fees, which is subject to the following criteria, collectively or individually:

- 1- The amount estimated for the arbitrators' fees should be reasonable.
- 2- To consider in the assessment the sum and nature of the disputed amounts.
- 3- The nature of the dispute and its impact on the effort and time spent by the arbitrators in the case. Circumstances related to the case in terms of the nature of the disputed property, the place of arbitration, the seat of arbitration, the language of arbitration, the cooperation of the parties in facilitating the arbitration procedures. By examining the sessions of the arbitration case, it can be concluded that the time the arbitrator has spent considering the dispute is neither long nor exhausting effort and the procedures do not require more time. So, the payment of the prescribed fees is not commensurate with that effort, time, and the nature of the dispute, and it has not yet been mentioned in the case documents what can be used to estimate the compensation, and since it did not appear from the case documents and circumstances related to the case that the estimation of the amount of these fees was reasonable and acceptable. The court found that the estimation of the payment is exaggerated, and the apparent situation does not help the arbitral tribunal in estimating its fees. (Court judgment No. 374/2021, dated. 21/06/2021). The final decision to determine the fees is made by the arbitral tribunal, and its decision in this regard is subject to appeal before the competent court within fifteen days from the date of notification to the parties. In case the decision is not appealed, it is considered a waiver of the right to appeal and the decision regarding the fees is considered a final decision in accordance with the provisions of Article (41/d/3) of the same law. (Court judgment No. 4640/2021 , dated 18/10/2021). Part of the jurisprudence consider that the failure to pay the arbitration fees does not invalidate the arbitration award. (Wali, 2014) .

Finally, the challenge to the arbitration award regarding the arbitration fees cannot be accommodated the request of the invalidity of the arbitral award except in cases listed in Article (49) of the Arbitration Law, as the text in Article (41/d/3) requires appealing it within fifteen days from the date of its notification for parties. (Court judgment No. 136/2021 , dated 16/05/2021).

6. Conclusion

The emergence of commercial disputes over enormous financial amounts resulted in the emergence of the need for the arbitrators to have new special expertise, which contributed to creating new bases for determining the arbitrators' fees, which depend on the value of the lawsuit more than the effort expended in the case. (AbdelSadiq, 2014). And judicial authority intervenes as a supporting judge, participating in the management of the arbitration By interfering in favor of arbitration, The judge no longer considers resorting to arbitration as a form of rejection his jurisdiction, but has become a guarantee of the quality of arbitration through his judicial oversight. (Sader, 2015).

If the tribunal consists of three arbitrators, usually each party agrees with the arbitrator he has chosen on his fees and expenses, and the two parties agree with the president of the tribunal on his fees and divide it between each other. An agreement may arise between the parties to the dispute and the arbitral tribunal on their fees. (Wali, 2014). As it is possible to delegate the arbitrator to estimate his fees, and this determination is after the dispute is resolved and the arbitral award is issued. In addition to that, this estimation is subject to the absolute control of the court, which has the right to amend it. (Wafa, 1988). Considering the arbitral mission is a procedural, non-judicial task and is subject to the general rule that the judiciary is competent to determine the arbitrator's remuneration unless there is an agreement on it. If there is no explicit agreement between the litigants to delegate the arbitrator the authority to assess his fees, then he does not have the right to estimate it in any way because it goes beyond the limits of the task assigned to him and because he may not be both a litigant and an arbitrator at the same time. (Hashish, 2000).

The Jordanian judiciary has decided "In this regard, we find that the two parties to the arbitration have authorized the arbitral tribunal to determine the arbitration fees and expenses in accordance with clause (9) of the terms of reference. Accordingly, what the arbitral tribunal has done in estimating its fees are among the issues included in the arbitration agreement, and it does not exceed the limits of the agreement. (Court judgment No. 1562/2017 dated 02/07/2017).

Part of the jurisprudence decides that the arbitration award may specify the party who bears the arbitration fees, which is done under the discretionary authority of the arbitral tribunal, so that it may decide that the losing party bears these fees by his own. The original principle is that the fees should be divided equally between the two parties, unless the arbitral tribunal decides otherwise. (AbdelSadiq, 2014).

One of the rare legislations that explicitly addressed this issue is the Italian Code of Civil Procedure. Article No. 814 states that "The arbitrator have the right to recover his expenses and reward in return for his work and the parties to the arbitration are jointly obligated to pay this amount. Without prejudice to the right of one of them to recourse against the other in the case one of them paid this whole amount under the agreement." (AbdelSadiq, 2014).

Article No. 24 of the Saudi Arbitration Law treated this issue as:

1. When choosing an arbitrator, a separate contract stating his fees must be concluded, and a copy of the contract is deposited to the authority specified by the executive regulations of this Law.

2. If no agreement is reached between the two parties to the arbitration and the arbitrators to determine the fees of the arbitrators, it shall be determined by the competent court by a final decision that is not subject to any means of appeal. If the appointment of the arbitrators is made by the competent court, the fees of the arbitrators shall be determined by the same decision.

Article No. (47) Of Arbitration Law No. (6) Of 2018 in the United Arab Emirates, stipulates in the first clause of the aforementioned article “without prejudice to the arbitrators’ right to recourse against the parties for their fees and expenses, the arbitral tribunal may refuse to deliver the final arbitral award to the parties in the event of non-payment of the full arbitration costs. Accordingly, the arbitral tribunal has unanimously concluded by all its members to refer the matter to the court.”

Jordanian Independence of Judiciary Law of 2014 its amendments, Article (17/A) stipulates that “A judge may appoint an arbitrator at the request of the Council of Ministers upon the recommendation of the Council if the government or one of the public institutions is a party to the dispute to be settled by arbitration or if the dispute is of an international character, and the council has the right to estimate the arbitrator fees”.

In Egypt, it is found in the text of Article 63/2 of the Law of the Judicial Authority that “...without the approval of the aforementioned council (the Supreme Judicial Council), delegating the judge to be an arbitrator on behalf of the government or one of the public bodies when it is a party to a dispute that is intended to be resolved by arbitration. In this case, only this council shall determine the remuneration to which the judge is entitled.” However, this solution which is codified by Article 63/2 of the Judicial Authority Law, does not change the fact that “these rewards themselves are considered a means of impairing the independence of the judiciary”, and therefore this text raises the question of the legality of Arbitration of judges, especially since the arbitral task, being a non-judicial procedural task, is merely the task of helping the judiciary. (Hashish, 2000).

The Egyptian legislator did not include any rules in the arbitration law for regulating arbitration litigation expenses and did not refer their application to the rules of the Civil and Commercial Procedures Law - as it was likely to be done and this is confirmed by practice. However, we believe in the necessity to recourse in this regard to the rules of the United Nations Model Law that aforementioned (1) in reference to the rules regulating the expenses of the arbitration litigation. (Mahmoud, 2012).

This research clarifies the controversy about the estimation of arbitration fees in several respects. Article 41 of the Jordanian Arbitration Law did not specify the concept of arbitration fees and the criteria, standards, and controls for estimating the arbitration fees. Although, part of the legal and judicial jurisprudence takes into consideration the value of the lawsuit and the effort conducted. However, the judiciary has contradicting rulings in the matter of estimating the arbitrators’ fees and this matter is left to the discretion of the judge, which constitutes a clear disturbance when imposing the judicial oversight granted by the legislator to re-estimate the arbitration fees. Therefore, legislative intervention is necessary to regulate this issue.

It should be noted that the judiciary did not take into consideration, when reassessing the arbitration fees, the personal factors related to the arbitrator, such as the scientific and practical position of the arbitrator, the complexities of the subject matter of the arbitral case, and comparing the subject of the dispute to previous cases whenever possible, and the claims of the multiple and different parties' claims in one arbitration case. As a result, it can be said that the criteria for controlling the value of the arbitration case are not effectively disciplined, as the plaintiff can claim a small amount of money, and then the value of the dispute is a high amount of money. As a result, the initial assessment of the judiciary without assessment of fees.

This research clarifies the legal grounds considered if the arbitration agreement concluded between the parties to the arbitration and the arbitrators does not include provisions for determining the arbitrators' fees and arbitration expenses.

The arbitration fees are to be previously agreed between the parties to the arbitration with the arbitral tribunal, or through referral to a specific authority for guidance on how to estimate the fees and expenses of the arbitration in order to respond to the developments of the arbitration disputes in the future and addressing defects and shortcomings in estimating arbitrators' fees in a way that supports the continuation of arbitration. Therefore, the establishment of specific legal controls, bases and standards is necessary to determine the arbitrators' fees.

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Ethics Declarations

This study was conducted in accordance with the Declaration of Helsinki (1964) guidelines and was approved by the Research and Ethics Committee of the University of Jordan, Jordan. The following ethical principles were strictly adhered to throughout the research process:

- Voluntary Consent: Informed consent was obtained from the relevant authorities at the University of Jordan.
- Minimization of Risks: Efforts were made to minimize any potential risks to participants.
- Confidentiality: Participant information was kept confidential.
- Transparency: Participants were informed about the research content and objectives.
- Documentation: All research stages and results were thoroughly documented.
- Reliability: The research methodology and instruments used were designed to ensure reliability.
- Validity: Data processing methods ensured the validity of the research findings.

Data Availability Statement

The datasets collected and analyzed during this study are available upon reasonable request from the corresponding author.

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Conflicts of Interest

The authors declare no conflict of interest.

Author Contributions:

- Muhanned Al Taani and Tawfiq Almajali: Conceptualized and designed the study, collected and analyzed the data.
- Muhanned Al Taani and Tawfiq Almajali: Wrote the first draft of the manuscript.
- All authors: Reviewed and edited the manuscript and approved the final version for publication.

Consent for Publication

The authors consent to the submission of this paper for publication and, pending the editorial board's decision following the peer-review process, agree to its publication.

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