

**The Judicial Formation of the Arbitration Panel in Palestinian Legislation
(A Comparative Study)**

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Abstract

While arbitration is based on the principle of independence, judicial interference plays a vital role in forming the arbitration panel for the sake of fairness and stability. Even though party autonomy is considered the core of arbitration, most disputes regarding the composition need judicial oversight to maintain integrity in the arbitral awards. This is the judicial intervention in the formation of an arbitration panel under Palestinian legislation, including a comparison with the Egyptian arbitration laws. This paper describes and analyzes, in a comparative perspective, how the judiciary exercises its powers upon request to constitute the arbitral tribunal and the additional plenary role in preserving fairness and procedural order. The findings reveal significant differences in judicial involvement across the two jurisdictions. The study recommends limiting judicial intervention to necessary cases to preserve arbitration's confidentiality and independence. It also calls for the acceptance of the odd-numbered rule concerning arbitration panels in Palestinian legislation for greater procedural coherence and legitimacy.

Keywords: Arbitration Panel, Judicial Formation, Competent Court, Arbitrator Recusal, Arbitrator Dismissal

Introduction

This arbitration system, therefore, stands out to be most suitable for parties in dispute because of its unique features, as noted by Ferreira et al. (2022). It is supposed to be well guided so that parties may not be left on their own; otherwise, it risks collapsing at the first obstacle, as Shaimenova et al. (2020) established. Thus, the current arbitration trends prominently feature the supervising and supporting role of judiciary in establishing arbitral panels (Rao, 2021). This rise reflects a meaningful expansion of judicial functions to supervise as well as support arbitration procedures even after the pronouncement of the arbitral award (Basedow, 2018). Other than that, judicial formation of arbitration panels, usually upon request by either one of the parties or the panel itself, is another crucial part of this intervention (Tang et al., 2022).

In terms of party autonomy, the arbitration panels are generally formed by an agreement between parties. The intervention of a court should usually not be necessary in such cases (Shetreet, 2013). However, disputes over the appointment of arbitrators or a presiding arbitrator often arise, necessitating court intervention to ensure justice and prevent abuse of power (White et al., 2018). This function safeguards the good-faith party against delays or hindrances imposed by the bad-

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faith side, hence maintaining the efficiency of arbitration relative to litigation (Freyens & Gong, 2020).

This work is significant as it addresses the deficiency of specialist arbitration research concerning Palestine, namely the judicial function in constituting arbitration panels (Dremova, 2020). This analysis juxtaposes Palestinian and Egyptian arbitration laws to deepen comprehension and provide practical insights (Shi, 2023). The research specifically investigates the formation of arbitration panels and the judiciary's supporting role in this process (Ridi & Schultz, 2021).

Research Objectives

- The supportive role of the judiciary in forming arbitration panels and defining its boundaries.
- The extent and conditions under which Palestinian arbitration law allows judicial interference in panel formation.
- Practical implications for arbitrators and lawyers practicing within this scope.

Research Questions

- What are the limits set by Palestinian arbitration law for judicial intervention in forming arbitration panels?
- What are the mechanisms and conditions that, in this context, control judicial intervention?
- How do the arbitration laws of Palestine and Egypt compare in terms of judicial support for the formation of an arbitration panel?

It employs both an analytical and comparative approach. It considers relevant provisions of the Palestinian Arbitration Law Number 3 of 2000 and the Egyptian Arbitration Law Number 27 of 1994 (Lin, 2022). This research has been divided into two sections: the first regarding the requests for judicial intervention during panel formation, and the second deals with the role played by the judiciary for the proper maintenance of fairness and impartiality during this process of panel formation (Teichmann et al., 2023).

Literature Review

For the judicial establishment of an arbitration tribunal, a request must be submitted by the parties to the arbitration agreement or the tribunal itself to the competent court. Such judicial intervention is solicited and not imposed, aimed at ensuring the stability of the decisions issued by the tribunal (Basedow, 2018). This approach adheres to the principle of party autonomy, which forms the foundation of the arbitration process (Lin, 2022). The legislator specifies the competent court to address the request for appointing the arbitration tribunal (Section One) under certain circumstances (Shaimenova et al., 2020).

Section One: The Competent Court for Appointing the Arbitration Tribunal

Under Article 1 of the Palestinian Arbitration Law, "Definitions and General Provisions," the competent court is the first to assess the domestic dispute filed to the arbitration tribunal (DREMOVA, 2020). In Palestine, the Court of First Instance has territorial jurisdiction over international arbitration (Teichmann et al., 2023). International arbitration is handled by the Jerusalem Court of First Instance or its Gaza seat (Ferreira et al., 2022). Article 2(a) of the same law specifies local,

international, and foreign arbitration (Freyens & Gong, 2020). The Palestinian Civil and Commercial Procedures Law No. 2 of 2001 gives the inaugural domestic arbitration court authority (Ridi & Schultz, 2021).

Under the legislation, a magistrate court may intervene in the arbitration process if the substantive case is within its jurisdiction (Lin, 2022). Other Civil and Commercial Procedures Law courts are impacted (O'Connor & Rutledge, 2014). The territorial Court of First Instance hears international arbitration in Palestine (Rao, 2021). Jerusalem or Gaza hosts the Court of First Instance for foreign arbitration (Shetreet, 2013).

Article 17 of the Egyptian Arbitration Law No. 27 of 1994 requires the court under Article 9 to appoint the arbitrator at any party's request if the tribunal has one arbitrator (Niblett, 2013). If the tribunal contains three arbitrators, the two must agree on the third (White et al., 2018). Any parties may seek an arbitrator within 30 days from the Article 9 court (Gershoni, 2021). The court might appoint a third arbitrator, or one not nominated by one party under Article 9 of the Egyptian Arbitration Law (Darbyshire, 2011).

Unlike comparative arbitration regulations, the Palestinian legislative broadened the scope for determining the competent court to help the arbitration panel (Teichmann et al., 2023). Some legal experts feel that the court assisting in the arbitration process should always be actively engaged in the arbitration process and its parties to make its jurisdiction more practical and effective (Shaimenova et al., 2020). They recommend that the Palestinian legislative restrict the competent court to support the arbitration tribunal to one level, as Egypt did (Ferreira et al., 2022).

Freyens & Gong (2020) state that foreign arbitration takes the case to the West Bank's competent court. The Palestinian Arbitration Law specifies the Court of First Instance in Jerusalem or Gaza as the international arbitration court. Darbyshire (2011). Since Israeli restrictions prevent West Bank residents from attending court in Jerusalem or Gaza, this section has been extensively challenged. Lin (2022), Jerusalem's position as Palestine's capital makes it the competent court for international arbitration, but Gaza's distance and logistics make it difficult (Ridi & Schultz, 2021). The Palestinian legislative must consider these elements while creating such rules since they influence society (Teichmann et al., 2023).

Section 2: Instances of Court Intervention to Appoint Arbitration Panel Members

The Palestinian Arbitration Law separates pre- and post-dispute panels. Article 11 of the Palestinian Arbitration Law mandates the court to assist form the arbitration panel before the dispute. These situations need legal action before disagreement. This article states that the court intervenes when parties agree to designate one arbitrator without choosing one. One party may request this arbitrator in court (Lin, 2022).

Second: If one side fails to designate an arbitrator, the other may petition the court. The good-faith side avoids delays by preventing arbitrator nomination abuse (Ferreira et al., 2022). The Egyptian lawmaker gave parties timeframes. The Palestinian parliament should have imposed a 15-day arbitration selection deadline to guarantee seriousness and prevent dishonest parties from delaying the procedure

(Teichmann et al., 2023). The Arbitrator must comply.

Third, the other party may seek judicial arbitration if they fail. No arbitration replacement agreement is assumed (Shetreet, 2013). Palestinian lawmaker treated this situation like arbitration, giving the arbitrator a time to decide whether to continue. Egyptian law disregarded it. Ridi & Schultz (2021) say it speeds arbitration and avoids willful delay.

Fourth: If one party's arbitrator refuses to serve in a lone arbitrator or multi-member panel or becomes unqualified or unable to perform their duties and the parties do not select a successor, one party may ask the competent court to appoint an arbitrator. One party may choose a successor without judicial intervention (Shaimenova et al., 2020).

Fifth: If the parties or arbitration panel cannot agree, the court may appoint an arbitrator (Freyens & Gong, 2020). The Palestinian legislator should have set a timetable for arbitrators to designate a presiding arbitrator to minimize delays. Egyptian lawmakers set the period at 30 days after the second arbitrator's appointment. Palestinian legislators should have made arbitration panel chairman for impartiality in panel judgments (White et al., 2018).

Sixth: If the presiding arbitrator refuses or resigns and the arbitration agreement does not specify how or the parties cannot agree, the parties or arbitration panel may ask the competent court to appoint a replacement. (Basedow, 2018).

In instances specified by law, the arbitration panel may refer to the competent court to designate an arbitrator or presiding arbitrator from the ministry's authorized list, according to the Palestinian Arbitration Law No. 3 of 2000 Executive Regulations. Palestinian law requires the competent court to appoint an arbitrator or presiding arbitrator within 15 days of notifying the other party (DREMOVA, 2020). Article 11(2) of the Palestinian Arbitration Law states: "The court shall issue its decision regarding the appointment within fifteen days of notifying the other party of the request, and its decision is final and not subject to appeal" (Darbyshire, 2011).

We believe Article 11 of the Palestinian Arbitration Law No. 3 of 2000 permits court engagement in arbitration panel formation before the case begins (Lin, 2022). Each occurrence sparked legislation. However, this clause is disputed. Arbitrators who refuse and institutions that close are covered by the agreement. Palestinian legislators have not addressed this possibility, however Article 17, paragraph 2 of the Egyptian Arbitration Law No. 27 of 1994 permits one party to approach the court for aid constructing the arbitration panel.

This should be added to Article 11 of the Palestinian Arbitration Law so parties may petition the court for arbitration panel formation aid without breaking the agreement. Experts recommend implementing Article 11 cases until the Palestinian Arbitration Law is updated (Rao, 2021).

The same applies if the arbitrator dies or loses legal qualification before the dispute. A party may approach the competent court to assist from the arbitration panel (Niblett, 2013).

The court initiates most arbitration agreements and establishes a panel before

hearing the case (Gershoni, 2021).

The court may assist and monitor panel formation during arbitration. Most arbitration laws incorporate judicial aid in panel composition throughout the case (Lin, 2022). Despite impediments, arbitrators should perform (Ridi & Schultz, 2021).

Palestinian lawmakers fill arbitration-interrupting panel seats. Article 15 of Palestinian Arbitration Law No. 3 of 2000: "Article 11 requires replacing a dead, sacked, resigned, or expelled arbitrator. The arbitration will stop until a new arbiter is selected (Shaimenova et al., 2020). The court must reconstruct the arbitration panel while protecting the parties' sovereignty before intervening to resolve arbitrator vacancies that stall the arbitration process (Ferreira et al., 2022).

A death, dismissal, resignation, or other event may leave an arbitrator with two options: Party autonomy lets parties pick a new arbitrator similarly. Whether one or two arbitrators are appointed depends on party processes. If parties cannot agree on an appointment, Article 11 judicial intervention is possible (O'Connor & Rutledge, 2014). This statement should provide actual remedies for inept arbitrators or panels (Shi, 2023).

Chapter Two: The Judicial Role in Ensuring Impartiality and Integrity in the Formation of the Arbitration Panel

The legislator has been keen to maintain the highest possible guarantees that preserve the arbitration process and ensure the proper conduct of its procedures (Basedow, 2018). The laws studied prescribe instances where neutrality and integrity are compromised, particularly in the constitution of the arbitration panel, and provide avenues for judicial intervention to resolve these issues (Lin, 2022). The intervention can be by way of recusal or removal of an arbitrator under Section One and Two, respectively (Darbyshire, 2011).

Section One: Judicial Intervention for Recusal of the Arbitration Panel

Judges may dismiss arbitrators (Teichmann et al., 2023). Before arbitration, tribunals usually require this (Shaimenova et al., 2020). Arbitration seldom allows recusal (DREMOVA, 2020).

Parties cannot sway arbitrators (Ferreira et al., 2022). For fairness, legislators may recuse arbitrators (Shetreet, 2013). Most arbitration laws related recusal to arbitrator bias (Freyens & Gong, 2020). Identification proves arbitrators' impartiality (Ridi & Schultz, 2021).

Judges are out "when one of the parties in an arbitration dispute expresses their intention not to accept a specific arbitrator in a particular case due to the existence of one of the reasons defined by law and in accordance with the conditions and procedures set forth" (Rao, B. Palestinian Arbitration Law Article 12 requires arbitrators to disclose any facts that might throw doubt on their impartiality and independence after accepting arbitration (Lin, 2022). Some laws limit the disqualification of arbitrators because this action would suggest that the courts are interfering with the arbitration agreement. O' Connor & Rutledge, 2014) Disqualification from arbitration postpones it; thus, countries using common law, such as the U.S., restrict disqualification. Niblett, 2013) When a party believes the arbitrator will not be impartial or independent, they should let the arbitrator proceed and wait for the award before applying or objecting to the enforcement of the

award. Shi, 2023).

Teichmann et al. (2023) endorse this practice's Palestinian Arbitration Law and procedures. According to Darbyshire (2011), recusal-free methods recommend waiting to object to the arbitral ruling's implementation. Questions concerning arbitrators' impartiality and independence impair arbitration. Arbitration costs more and takes longer (Freyens & Gong, 2020).

Article 13 of Palestine Arbitration Law No. 3 of 2000 stipulates that a party cannot request the recusal of an arbitrator they picked or participated in choosing until subsequent circumstances show. Palestinian law requires complete recusal with rules and safeguards if an arbitrator's impartiality or independence is questioned. Recusal parties must defend arbitrator choice (Ferreira et al., 2022). Recusal is allowed if the seeking party finds the reasons after the arbitrator was appointed by a third party or competent court.

Others think that recusal grounds must be invoked on the same grounds that give the Civil processes Law the authority to demand fairness and independence of both judicial and arbitral procedures (Ridi & Schultz). The neutrality of arbitrators can be more difficult to ascertain as compared to judges (Teichmann et al., 2023). Such flexibility to correct an error requires an arbitrator who has selected a party or judge without considering a prior relationship with the opponent (Lin, 2022). This applies to judges and arbitrators, though the latter may optionally decline due to personal conflicts in non-legal or family matters (Freyens & Gong, 2020).

Academics and legislators disagree, but the Palestinian legislator has tried to harmonize Article 13 of the Arbitration Law, which gives the competent authority broad discretion to assess any situation that may raise reasonable doubts as to the arbitrator's impartiality or independence, with Article 27 of the Executive Regulations, which enumerates circumstances pertaining to family, conflict, history, and issues (Shetreet, 2013).

Since the legislature has not outlined instances of this statute, they can be referred to when including situations where the arbitrator's impartiality or independence is undermined in future cases (Teichmann et al. 2023).

Section Two: Judicial Intervention for Dismissal of the Arbitration Panel

An arbitrator may be fired to replace one. Only some legal or customary situations enable this (Lin, 2022). Dismissal "When the parties abdicate the arbitrator's or arbitrators' obligation to decide the dispute as stipulated in the arbitration agreement, the arbitrator cannot conclude the assignment. Parties may agree or disagree on dismissal "(Darbyshire, 2011).

Arbitrator firing is not allowed under Palestinian Arbitration Law. The Egyptian Arbitration Law addresses this in Article 20: "If the arbitrator cannot perform his duties, fails to commence them, or ceases to perform them, causing unreasonable delays in the arbitration proceedings, and he does not recuse himself or have the parties agree to dismiss him, the court referred to in Article 9 of this law may terminate his duties at either party's request.

This article shows parties may reject arbitrators without justification. All parties may agree to dismiss. The arbitrator's carelessness, busy schedule, or dispute resolution inexperience usually prompts such a request (Freyens & Gong,

2020). Dismissed arbitrators might be compensated for negligence (Shetreet, 2013). If dismissal damages their reputation, Egyptian arbitrators may sue (Shaimenova et al., 2020).

The law allows court-ordered dismissal. In the second portion of the article, a court may dismiss the arbitrator if the parties do not agree (Rao, 2021):

- First: arbitrator infirmity, failure, or resignation hinders proceedings.
- Second: If the arbitrator does not recuse himself.
- Third: If parties cannot agree to remove the arbitrator.

• Fourth: If a party invokes Arbitration Law Article 9. One party asks the court to remove the arbitrator to simplify and meet the legislator's arbitration legislation interest (Ridi & Schultz, 2021).

No—the language states to ask the court, not the president (Niblett, 2013). They would have agreed to fire the arbiter otherwise (Gershoni, 2021). This arbitration process reform has several advantages; hence we urge the legislature move to a petition-based procedure (Ferreira et al., 2022).

If the arbitrator cannot perform his duties, fails to commence them, or ceases to perform them, causing unjustified delays in the arbitration process, and he does not recuse himself or the parties agree to dismiss him, the court referred to in Article 9 can terminate his duties at either party's request under Article 20 of the Egyptian Arbitration System.

Methodology

The descriptive analytical approach is the approach adopted in our research titled "The Judicial Formation of the Arbitration Panel in Palestinian Legislation: A Comparative Study." It helped us delve more profoundly into judicial formation within the Palestinian system of arbitration. In this respect, the related legislation will be analyzed, including the Palestinian Arbitration Law constituting the legal framework in the building of arbitration bodies in Palestine. These legal texts have been meticulously analyzed in conducting our research for ensuring that a complete understanding of the provisions on the selection, appointment, and qualifications of arbitrators in Palestinian arbitration procedures is gained. Empirical data comprise case studies and available arbitration statistics in Palestine, which complement the legal analytical approach. These pieces of data give more insight into the practical operation and results of the process of arbitration, thereby allowing delving into more nuances concerning efficiency and challenges that were faced within the judicial formation of arbitration panels. We afterwards proceeded to a critical, itemized analysis of the ruling legal framework regulating judicial formation in Palestinian arbitration. This paper was purposed to be exploratory. An alternative real insight into the setup, efficiency, fairness, and applicability of international rules of arbitration in Palestine would be presented. Examples of case studies that will be done are those showing real arbitration cases in Palestine, how the selection and appointment of arbitrators had either succeeded or presented some challenges, and any judicial interventions. This will provide the empirical evidence necessary to understand how the legal framework works. We then sought the comparative view by investigating similar laws of other countries and how such Palestinian arbitration laws were contrasted with global practices on the choice of

arbitrators, neutrality, and procedure. This broad research has tried to assist in increasing knowledge of the process of judicial formation in the Palestinian arbitration and what it means for the settlement of disputes within the region. This will also be enriched by the inclusion of empirical data from other jurisdictions, such as arbitration statistics and case law, to develop a deeper understanding of how Palestinian arbitration procedures stand in relation to international norms and practices.

Findings

This comparative research on judicial formation regarding arbitration panels in Palestinian legislation gives the following important findings: problems of balancing between judicial intervention and party autonomy, limitations at the level of procedures, and legislative gaps are the three factors influencing the pragmatic functioning of arbitration in Palestine. This research will primarily dwell on Palestinian Arbitration Law No. 3 of 2000, providing a system regarding the establishment of arbitration committees and how courts and parties participate in arbitration procedures. The strengths and weaknesses of the Palestinian rule have been gauged in comparison to other arbitration laws, specifically Egypt's, along with international practices, by the research (Basedow, 2018). More importantly, the examples of comparative analysis extend to jurisdictions that are of varied legal traditions: the common law tradition of the United States, the German civil law approach, and Islamic law practices. That would give a fuller view of how the processes of arbitration could vary under different legal frameworks (Falih, 2015).

Another significant outcome of the research undertaken in this study is that Palestinian law provides autonomy for the parties to arbitration in terms of choosing their own arbitrators, and the means of procedure under the minimum control of the judiciary. It can also be noted here that Palestinian law has provisions that enable party autonomy regarding the matter of appointment of arbitrators. On the other hand, it also provides the equity of judicial involvement in some situations. The Palestinian law provides for judicial intervention in the constitution of the arbitration panel when parties cannot reach an agreement on arbitrators or fail to make an appointment within a reasonable period (Lin, 2022). Under such circumstances, the law empowers the proper court to appoint the arbitrators, so preserving the continuation of the arbitration process (Ferreira et al., 2022). This provision closely aligns with international arbitration standards, such as those outlined in the UNCITRAL Model Law, which permits judicial involvement only when necessary, ensuring a balance between party autonomy and legal oversight (UNCITRAL, 2021). This provision acts as an assurance to the arbitration process, ensuring that disputes will not be delayed due to an inability by parties to agree on an arbitrator (Teichmann et al., 2023).

At the same time, however, this reliance upon judicial intervention may also prove to be a weakness since another level of complexity is added within the arbitral process itself. This could be further heightened where the courts become involved at the very commencement with regard to the selection of arbitrators, which can certainly delay the resolution process whenever there is no consensus among the parties. From a stakeholder perspective, arbitrators and legal

professionals have expressed concerns about this process, particularly regarding the potential for judicial intervention to be seen as a sign of weakness in the autonomy of the parties. This finding indicates that the Palestinian Arbitration Law is supportive of party autonomy, but it also needs further articulation of the procedures relating to judicial intervention, since the process is often cumbersome and may detract from the overall efficiency of arbitration (White et al., 2018).

The findings on the subject in question also reveal that even upon constitution of the arbitral panel, Palestinian law permits the intervention of the courts of law—for example, where an arbitrator refuses to undertake his responsibilities or when he loses his qualification during the arbitration. This is an important clause because it maintains the continuity and integrity of the process and concurs with the date and ability of arbitrators to prevent delays (Shetreet, 2013). This legal element reveals a pragmatic approach toward arbitration, placing more emphasis on the speediness in dispute resolution than on procedural convolutions which may hinder it, according to Shaimenova et al. (2020).

On the contrary, this study also brings into light that there are significant lacunae in the legislation of the Palestinian Arbitration Law which should be investigated. One such lacuna is the fact that the law fails to give clear guidelines as to the time limits within which arbitrators are selected and the tests for judicial intervention at the determination of arbitrator removal. While the law deals with the possibility of judicial intervention where necessary, it does not offer a guideline timeline for when such intervention should occur. This issue is even more serious when Palestinian law is compared to international best practices, such as the International Chamber of Commerce rules, that set forth clear deadlines for each step in the arbitration process. Lack of clarity may result in a delay in the dispute resolution process since parties may be confused as to when judicial intervention may be required or how long they should wait before seeking judicial assistance (Darbyshire, 2011). Furthermore, the criteria for judicial intervention are somewhat vague, particularly in relation to the impartiality and independence of arbitrators (Freyens & Gong, 2020). In comparison, the UNCITRAL Model Law clearly specifies how to challenge the impartiality of an arbitrator, a critical provision that can help in reducing the occurrence of disputes over arbitrator independence (UNCITRAL, 2021). This provides a clear basis for probable partialities in the appointments of arbitrators or challenging appointed arbitrators during such process, provided that the law has failed to clearly outline specifications that would keep the arbitrators appointed neutral and not biased throughout the process of arbitration. as Ridi & Schultz, (2021).

Egyptian arbitration law, also put under scrutiny in this paper, offers a better and more structured platform on the level of judicial intervention. For instance, the Egyptian Arbitration Law has set more specific timetables for appointing arbitrators and has outlined in detail the procedures for their removal. Under this Act, there is more transparency concerning judicial interference when accusations related to partiality or interest have been cast upon the arbitrators. This contrasts with the less detailed approach of Palestinian law and suggests that incorporating a similar structure into the Palestinian framework could improve efficiency. The given comparative analysis thus presents the potential area of reform in Palestinian

Arbitration Law since making detailed and structured guidelines may help reduce the fear pertaining to impartiality and independency but also reduce the occurrence of delays in the actual arbitration process, as remarked by (Lin 2022, and Darbyshire, 2011).

The other key finding pertains to the logistical challenges created by territorial and jurisdictional divisions in Palestine. The jurisdictional complexity of the West Bank, Gaza, and Jerusalem creates an obstacle to the effective operation of Palestinian arbitration law, especially on issues of judicial oversight and availability of arbitration proceedings. It established that due to disparities in territorial jurisdiction, parties operating from areas located far such as Gaza may find it difficult accessing the courts where jurisdiction was bestowed with powers over matters of arbitration. This presents a major barrier not only for local stakeholders but also for international stakeholders involved in cross-border arbitration processes. This issue might delay the process of selecting arbitrators or the dispute itself, as there are possibilities of practical problems that the parties will face in accessing the judicial system in a timely manner (Shaimenova et al., 2020).

This territorial challenge is further exacerbated by the lack of a centralized mechanism for managing arbitration cases across Palestinian territories. The study finds that the absence of a unified system for handling arbitration cases can lead to inconsistent rulings and a lack of uniformity in how judicial intervention is applied across different jurisdictions (Ridi & Schultz, 2021). From a comparative perspective, jurisdictions like Germany have centralized arbitration bodies that ensure consistency across regions, a model that could be beneficial in Palestine. This is even more important in view of the trend for more and more cross-border arbitrations with the region, requiring even further consistency and harmonization in legal frameworks for arbitration to continue serving as a viable, let alone effective, method of dispute resolution today (Rao, 2021).

The results of this research suggest that while the current Palestinian arbitration law does form an adequate basis for judicial interference in constituting an arbitration panel, there are areas that call for reform. International standards and the practices of jurisdictions with diverse legal traditions highlight several areas for improvement, such as clearer timelines for arbitrator appointment and judicial intervention, and provisions ensuring arbitrator impartiality. The law has to give more indications on when to make the selection of arbitrators and when judicial intervention is necessary, and the law has to entail more express provisions that grant the impartiality and independence of arbitrators. More streamlined approaches with easy access toward the arbitration proceedings have also been necessitated by several territorial and jurisdictional challenges faced by different regions of Palestine for the parties. The paper fills such gaps in existing studies so that the Palestinian law of arbitration may emerge as an effective mechanism of dispute resolution in the region (Ferreira et al., 2022 and Basedow, 2018). Incorporating a more structured approach that considers the experiences of other jurisdictions would not only address these deficiencies but also enhance the Palestinian arbitration system's alignment with international practices.

Discussion

The results of this comparative study on the judicial formation of arbitration panels in Palestinian legislation shed light on several key issues, especially with regard to the balance between judicial intervention and party autonomy. The Palestinian Arbitration Law No. 3 of 2000 supports party autonomy, enabling the parties to choose their arbitrators without much judicial interference. However, this autonomy is not absolute, as the law provides for judicial intervention when parties fail to reach an agreement on the appointment of arbitrators or in cases where an arbitrator becomes unfit for their role during the arbitration process. This judicial role ensures that arbitration can continue even in the absence of consensus among the parties, preventing delays in the resolution of disputes (Ferreira et al., 2022).

One of the strong points of Palestinian arbitration law is that it recognized the need for judicial intervention with the purpose of maintaining the continuity of the arbitral process in case the parties could not appoint arbitrators or disputes about their qualifications arose. The law empowers the court to appoint arbitrators, hence arbitration does not stall due to procedural deadlock. This approach reflects a pragmatic understanding of the arbitration process, which prioritizes resolving disputes in a timely manner (Shetreet, 2013). However, the study also indicates that this reliance on judicial intervention can introduce complexity and delay. Early intervention by the courts, such as in the case of appointing arbitrators, delays the actual time to begin arbitration in cases where the parties are not able to agree on that issue (Teichmann et al., 2023).

The second relevant result refers to the deficiencies of Palestinian law concerning judicial interference. According to the law, when necessary, judicial interference will be possible, but in what and when a court may decide, Palestinian law has nothing to say. For instance, the law is silent on when the appointment of arbitrators should be done or at what stage the courts should intervene. Such uncertainty may lead to delays since the parties may not know at what stage to seek judicial support (Darbyshire, 2011). Besides, the lack of clear criteria for neutrality and independence of arbitrators can result in potential partiality at the stage of their appointment or challenges during the proceedings before the arbitrators, as was noted by Freyens & Gong, (2020). On the contrary, Egyptian arbitration law stipulates more detailed and orderly procedures regarding both the appointment and removal of arbitrators, thus it is more transparent and less susceptible to delays or partiality, according to Lin, (2022).

Besides, the territorial and jurisdictional complexities in Palestine make the effectiveness of the Palestinian Arbitration Law even more complex. The territorial complications between the West Bank and Gaza, and in relation to Jerusalem, pose different obstacles for the parties toward reaching both the courts and arbitration services. All the said territorial issues may cause some impediment, either in the arbitrator selection process or the very conduction of arbitration - some parties cannot get the appointed judicial authority due to legal boundaries (Shaimenova et al., 2020). The absence of a centralized system for managing arbitration cases across Palestinian territories contributes to inconsistent application of judicial intervention and further undermines the efficiency and predictability of arbitration (Ridi & Schultz, 2021). Considering the growing trend of cross-border arbitrations

in the region, which necessarily require a greater harmonization of their legal frameworks for effective dispute resolution, this inconsistency is highly undesirable (Rao, 2021).

The current Palestinian arbitration law may provide a basis for judicial intervention in the constitution of arbitration tribunals, yet it requires significant reforms. The law should give more specific guidance on when judicial intervention is required and fix more specific time frames regarding the appointment of arbitrators, while ensuring that the impartiality and independence of arbitrators are guaranteed. Besides, addressing territorial and jurisdictional challenges, and establishing a uniform mechanism for handling cases involving arbitration across Palestinian territories, would be a factor in increasing efficiency in the whole process of arbitration. These reforms would help in solidifying the role of arbitration as an effective and viable method of dispute resolution in Palestine. This view is supported by Ferreira et al. (2022) and Basedow (2018).

The practical implications of the findings from this comparative study on the judicial formation of arbitration panels in Palestinian legislation are immense, both for legal practitioners and businesses operating in Palestine. The study indicated that clear and structured directives on judicial intervention would facilitate arbitration, making it more predictable and efficient. This will translate to lawyers being able to have a clearer understanding of when and how to seek judicial assistance, which will prevent delays and ensure that arbitration can continue with no unnecessary interruption. This would also eliminate most controversies related to impartiality or qualifications, therefore ensuring much greater transparency within the process, according to Freyens and Gong (2020).

On the business side of things, it will be very helpful to rely on an effective and predictable system of appointing arbitrators. No early-stage delays in arbitration, such as in the selection of arbitrators, would speed up the resolution of disputes so that businesses can get back to their normal business activities. This would be important in industries where timely conflict resolution is crucial in keeping business operations running, such as in the construction, technology, and international trade sectors. Moreover, if Palestinian law could establish that the judicial system is respectful of the principles of impartiality and independence of arbitrators, this would make Palestinian law more attractive to international business, since foreign parties are likely to be more comfortable with arbitration if they trust the legal framework. (Lin, 2022).

Moreover, it is also important to solve the territorial and jurisdictional challenges in Palestine. There is so much division between the West Bank, Gaza, and Jerusalem that many business and legal practitioner logistical challenges impede the access of arbitration services and courts. A centralized mechanism dealing with arbitration cases would dispel the challenges by bringing uniformity in the way arbitration proceedings are handled under the Palestinian territories. This would also encourage cross-border arbitration and reduce the impact of jurisdictional disputes, thus increasing Palestine's attractiveness as a location for resolving international disputes (Shaimenova et al., 2020).

Such a reform in Palestinian law will have larger implications for its standing

as a regional arbitration hub. With clearer timetables, more fitting judicial intervention wherever necessary, and greater availability, Palestine can promote itself as the more active Middle Eastern center of arbitration. This will earn Palestine further confidence in its legal system, boosting foreign investments in the process and, further ahead, fueling economic development.

Finally, the study concludes that this kind of legislative reform must be balanced between judicial intervention and the autonomy of parties to guarantee efficiency, impartiality, and access to the arbitral process. Such changes will contribute not only to the enhancement of the legal framework for arbitration in Palestine but also to its practical value for business and legal practice.

Conclusion

The researcher in this study explores the possibility of reconciling judicial intervention in the formation of arbitration panels while preserving the advantages of arbitration. The judiciary intervenes in the formation of the arbitration panel when the parties to the dispute request its assistance, such as in appointing an arbitrator or a panel of arbitrators, replacing them, challenging their appointment, or dismissing them, or terminating their mandate for any reason. Thus, judicial intervention is a potential necessity for the formation of the arbitration panel and aims to ensure the stability of the decisions issued by the panel.

Recommendations

There is a relative divergence of the legislations in the compared law as far as the extent of the intervention of the judge is concerned with the constitution of the Arbitral body.

- The court is an assistant in the composition of the arbitration panel before and during the process of arbitration.
- The Palestinian Legislator stipulated that the appointed arbitrator must respond in writing within 15 days of his appointment, while the Egyptian Legislator missed the address of such situation in the context of the judicial intervention in the formation of the Arbitration Panel.

Based on the findings of this research, the following are some major policy recommendations toward an effective and efficient setup of the arbitration panel in Palestinian legislation:

- The intervention by the judiciary should be limited to the narrowest possible ambit, and only when necessary, so that the arbitral process remains as autonomous as possible, having its integrity preserved. This would uphold the cardinal principles of this alternative dispute resolution method relating to the independence and confidentiality of arbitration.
- The Palestinian Legislator shall adopt the principle of "arbitrator impartiality" with clarity in the formation of the arbitration panel that would ensure the arbitrators be appointed in a non-partisan manner and enhance fairness in the procedure.
- The Palestinian legislator must clearly and explicitly address the issue of the dismissal of arbitrators. This is an important aspect in holding the arbitrators accountable and, where necessary, removing them in a transparent and fair way to

avoid delays in the arbitration process.

- The Competent Court in International Arbitration Cases should be reconsidered by the Palestinian Legislator mainly as a way of realignment with the practical realities rather than the political ones. This will serve the interests of the citizens and make the arbitration procedure smooth and away from the political quagmires.

References

- Basedow, J. (2018). The multiple facets of law enforcement. In *Enforcement and effectiveness of the law: La mise en oeuvre et l'effectivité du droit: General contributions of the Montevideo thematic congress—Contributions générales du congrès thématique de Montevideo* (pp. 3–32). Springer International Publishing.
- Darbyshire, P. (2011). *Sitting in judgment: The working lives of judges*. Bloomsbury Publishing.
- Dremova, E. V. (2020). Conciliatory justice in modern Russia. *Journal of Advanced Research in Law and Economics*, 11(47), 19–25.
- Falih, N. (2015). The role of the supporting judiciary in the formation of the arbitral tribunal. *Journal of Rights and Humanities*, XIII(1), Algeria.
- Ferreira, D. B., Giovannini, C., Gromova, E., & da Rocha Schmidt, G. (2022). Arbitration chambers and trust in technology providers: Impacts of trust in technology-intermediated dispute resolution proceedings. *Technology in Society*, 68, 101872. <https://doi.org/10.1016/j.techsoc.2022.101872>
- Freyens, B. P., & Gong, X. (2020). Judicial arbitration of unfair dismissal cases: The role of peer effects. *International Review of Law and Economics*, 64, 105947. <https://doi.org/10.1016/j.irle.2020.105947>
- Gershoni, N. (2021). Individual vs. group decision-making: Evidence from a natural experiment in arbitration proceedings. *Journal of Public Economics*, 201, 104479. <https://doi.org/10.1016/j.jpubeco.2021.104479>
- Lin, Y. (2022). Arbitral procedures. In *China arbitration yearbook (2021)* (pp. 115–131). Springer Nature Singapore.
- Niblett, A. (2013). Tracking inconsistent judicial behavior. *International Review of Law and Economics*, 34, 9–20. <https://doi.org/10.1016/j.irle.2013.03.002>
- O'Connor, E. O. H., & Rutledge, P. B. (2014). Arbitration, the law market, and the law of lawyering. *International Review of Law and Economics*, 38, 87–106. <https://doi.org/10.1016/j.irle.2014.01.003>
- Rao, W. (2021). Are arbitrators biased in ICSID arbitration? A dynamic perspective. *International Review of Law and Economics*, 66, 105980. <https://doi.org/10.1016/j.irle.2021.105980>
- Ridi, N., & Schultz, T. (2021). Empirically mapping investment arbitration scholarship: Networks, authorities, and the research front. In *Investment arbitration scholarship* (pp. 209–241). Springer International Publishing.
- Shaimenova, A., Ilyassova, G., Klyuyeva, Y., & Khashimova, A. (2020). Development of the institution of arbitration in Kazakhstan: Problems of theory and practice. *Journal of Advanced Research in Law and Economics*, 11(1), 169–186. <https://doi.org/10.14505/jarle>
- Shetreet, S. (2013). The duties of fairness and impartiality in non-judicial justice. *Asia Pacific Law Review*, 21(2), 197–222. <https://doi.org/10.1080/10192557.2013.11887243>
- Shi, X. (2023). The relationship between general principles of international law and Article 38(1) of the ICJ statute: A law of the sea perspective. *Marine Policy*, 148, 105427. <https://doi.org/10.1016/j.marpol.2023.105427>

- Tang, H., Qiao, Y., Yang, F., Cai, B., & Gao, R. (2022). dMOBAs: A data marketplace on blockchain with arbitration using side-contracts mechanism. *Computer Communications*, 193, 10–22. <https://doi.org/10.1016/j.comcom.2022.03.004>
- Teichmann, F., Boticiu, S., & Sergi, B. S. (2023). The risk of abuse of arbitration proceedings in jurisdictions where corruption is pervasive. *Journal of Economic Criminology*, 2, 100032. <https://doi.org/10.1016/j.jec.2023.100032>
- White, G. O., Hemphill, T., Weber, T., & Moghaddam, K. (2018). Institutional origins of WOFS formal contracting: A judicial arbitrariness perspective. *International Business Review*, 27(3), 654–668. <https://doi.org/10.1016/j.ibusrev.2017.12.007>