

THE LEGAL SYSTEM OF MEDIATION AND CONCILIATION CENTERS IN UNITED ARAB EMIRATES FEDERAL LAW "UNDER FEDERAL LAW NO. 17 OF 2016 AND ITS AMENDMENT NO. 5 OF 2021"

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Abstract

In this study, the researcher emphasizes on the lawful system of mediation and conciliation centers in compliance with The Federal Law No. 17 of 2016 and its amendment No. 5 in 2021. The researcher has divided his research into three main parts: the first part focuses on definition and construction of mediation and conciliation centers. The second part showed the conciliation procedures and finally, whereas, the third part shows the implications for conciliation. The aim of this study is to review the legal provisions of mediation and conciliation centers in the UAE judiciary system and to clarify their role in settling civil and commercial disputes by positioning the utmost suitable solutions and the minimum costs. The study also prolonged to apply alternative solutions to settle disputes prior to examining in courts.

The results and recommendations of this study shed lights on the necessary intervention of the UAE legislator to amend some provisions of the Mediation and Conciliation Centers Law to achieve the pioneer legislative actions within the framework of mediation and conciliation centers.

Key Words: *Mediation, Conciliation, Alternative Dispute Resolutions. Civil Procedure law.*

INTRODUCTION

Preface:

Most modern legislation seeks to enhance the role of alternative solutions in settling civil or commercial disputes.

This is to alleviate the burdens of the judiciary as a result of the enormous pressure in disputes brought to justice and the inability to resolve all disputes in a timely manner and achieve full justice. Legal transactions are complex and spread across state borders, as well as the conflict of laws. Such transactions require specialists in disputes arising from them, which is sometimes not available in the competent judiciary.

alternative solutions to conflict resolution have become a topic of interest, due to its advantages, in relieving the judiciary, speedy resolution of disputes, specialization in dispute, confidentiality of proceedings, maintenance of relations and trust between the parties, and flexibility in procedures and holding hearings. In addition to arbitration, it is a system that has proved its worth on the judicial side, for resolving disputes between individuals, at the level of internal disputes or in disputes relating to international trade. As a result, many alternative solutions, which seek to resolve conflicts extrajudicially, have grown out of the will of the disputants, foremost among them: conciliation, reconciliation and mediation.

The UAE legislature recognized this importance in order to ease the burden on the judiciary and to pursue alternative solutions for extrajudicial dispute resolution between the parties. The UAE legislature passed the Conciliation and Reconciliation Act in the Federal Courts No. 26 of 1999, and subsequently issued the Act on the Establishment of Mediation and Conciliation Centers in Civil and Commercial Disputes No. 17 of 2016 and amended it by Act No. 5 of 2021 to rename the Act Mediation and Conciliation Centers in Civil and Commercial Disputes.

Through this law, the UAE legislator has sought to resolve inter-personal disputes through special centers that seek to mediate and reconcile the conflicting parties before proceeding with judicial adversarial disputes, in order to achieve the objectives of alternative solutions to settle disputes, and to achieve a speedy end to the dispute between the parties, out of their will and will, without reaching a final decision on the dispute, in the way that such a resolution of the dispute benefits



people and the judiciary; Persons: by resolving their dispute as quickly as possible, providing litigation fees and expenses, and maintaining and maintaining the relationship between the parties, especially in the context of commercial disputes. For the judiciary: to reduce the volume of cases brought before the courts and to provide the time needed for the courts to adjudicate other disputes brought before them, through better investigation and more expeditious adjudication.

The importance of this Research:

The importance of the research is illustrated by a recent legal perspective taken by the Emirati legislature. This research is theoretical: the legal system of the Mediation and Conciliation Center is set out in UAE law, and the amendments made to it, particularly in Law No. 5 of 2021, as a new and modern system. The practical importance is possible: in trying to determine the effectiveness of the system of mediation and conciliation centers in resolving disputes before bringing them to justice in the UAE, and the impact of the establishment of these committees on alleviating the burden of the judiciary.

Research problem:

The purpose of this study; State the adequacy and effectiveness of the legislative treatment of mediation and conciliation centers in settling civil and commercial disputes and alleviating the burden of the judiciary under Federal Law No. 17 of 2017 and the amendment of No. 5 of 2021. The legal aspects adopted by the UAE legislator at mediation and conciliation centers are outlined in order to ensure that disputes are settled with the best solutions and the least costs, and that the interests of the judiciary and the parties are met with the need to settle the dispute before it is brought to justice.

Research Elements

The study seeks to answer many of the questions that it raises:

- What are the nature of mediation and conciliation centers, judicial or administrative?
 - Are mediation and conciliation centers part of judicial rivalry or not?
 - What are the cases that should be submitted to the mediation and conciliation centers?
 - What is the role of the parties in the settlement?
 - What is the nature of the settlement made before the mediation and conciliation centers?
 - How mandatory is settlement for the parties?
 - What are the implications of the mediation and conciliation process?

Limitations of the Study:

In this research, mediation and conciliation will be dealt with in accordance with Federal Law No. 17 of 2016 and its amendment No. 5 of 2021, within the framework of the application of Emirati courts. The research will neither cover the Federal Conciliation and Reconciliation Law No. 26 of 1999, which abolishes nor applies to mediation or conciliation in other countries.

This search will not be processed; The legal provisions on mediation are set out in Law No. 6 of 2021 on mediation to settle civil and commercial disputes.

RESEARCH METHODOLOGY:

The researcher will follow the analytical approach, in explaining the theories and theoretical studies that have been carried out on mediation and conciliation, and analyzing the legal texts contained in the Mediation and Conciliation Centers Law No. 17 of 2016 and its amendments.

Research Structure:

The research is divided into:

The first topic: Definition of mediation and conciliation centers and their formation.

The second topic: Conciliation procedures.

The third topic: Effects of conciliation.

The first topic

Definition and formation of mediation and conciliation centers

This research addresses the definition of mediation and conciliation in a first requirement, while the formation and nature of mediation and conciliation centers in a second requirement.

First Requirement



Definition of Mediation and Conciliation

Article 2 of the UAE Mediation, Conciliation and Mediation Centers Act, which was amended in 2021, defines mediation and conciliation as an optional and alternative means of amicably settling civil and commercial disputes that have arisen or may arise between parties to a legal, contractual or non-contractual relationship, using a third party (intermediary), whether judicial or non-judicial, and regulated by a federal law of their own. Conciliation: An alternative means of amicably resolving disputes between the parties, to be used before or during the hearing of a case before a court, and to be used by a neutral third party (the conciliator), to attempt to reach a conciliation agreement signed between the parties and binding on them. Conciliation: Settlement of the dispute between the parties by amicable settlement)

One side of Jurisprudence defines conciliation as an amicable way of settling disputes between the parties, consisting of the choice of one of the others to make the conciliation (the conciliator), to reach a solution to the dispute, by bringing together the different points of view, without extending its role to proposing a solution which it accepts (Rashid, & Fadel, 2021, p.13. Musa, 2005, p.23. Anonymous. 2016, p.1. Kumari, (2020), p.578).

another side of Jurisprudence defines it as a flexible process in which a neutral and well-trained third party conducts the negotiation between the parties to the dispute in a particular way (Al-Obaidi, 2021, p.463. Nassar, 2002, p.9. Cao, 2006, p.84),

And a third side defines it as a friendly way of resolving disputes between the parties through which the adversaries themselves or by a third party meet and consult to reach a solution that ends the dispute and is acceptable to the parties (Omar, 2005, p.8. Wenying, 2005, p.421).

The researcher believes that the definition of the first opinion is closer to the right one, as it gathered all the elements of conciliation, without mixing with other alternative solutions, the opinion of the second side has mixed between reconciliation and mediation, by requiring that the third person be well trained to conduct the negotiation, because the distinction between mediation and reconciliation is based on the role played by the third person, if his role is positive in proposing solutions, and presenting them to the parties, through his practice on the subject of the dispute, then that is mediation and not conciliation, while the role of the conciliator in conciliation is limited to trying to bring views closer together and reach a settlement for the dispute. While the third opinion, according to the researcher, has mixed between the conciliation carried out by the parties on their own and the conciliation that takes place through a third person.

Through the definition of the legislator, we believe that the following elements are necessary in order to be able to conciliate as an alternative solution to dispute settlement:

- A dispute between two or more parties, in the sense that conciliation is inconceivable without a dispute between the parties. The dispute between the parties is the subject of conciliation. Without such a dispute, even if the parties have already agreed to resort to conciliation, conciliation does not proceed without such a dispute (Wenying, 2005, p.422).
- Conciliation is an optional route, i.e., according to general principle, the parties cannot be compelled to resort to conciliation, since the freedom of the parties and the power of will are the real engine of the conciliation process (Langeland, 1995, p.34).
- A third person intervenes between the parties to resolve the dispute and attempts to reach a settlement, conciliation being only through the intervention of a third person in the resolution of the dispute between the parties, and the role of the third person is to bring the views of the parties closer together, to try to arrive at a settlement of the dispute, without that person having to arbitrate the dispute, as is the case of the arbitrator, or to assess the legal status of the parties as the mediator (Al-Ahmad, 2008, p.94).

As for the definition of reconciliation from a legal point of view in accordance with Article (2) of the Mediation and Conciliation Centers Law, it is (settling the dispute between the two parties by amicable settlement). Whereas the UAE Civil Transactions Law, in Article (722), defines the conciliation contract as: "Reconciliation is a contract that lifts the dispute and severs the litigation between the conciliators by mutual consent.



Reconciliation is based on the existence of an ongoing dispute. The dispute between the parties is the subject of the conciliation contract, whether the dispute is in law or reality, and the intention of the parties is to settle all or part of the dispute by the joint descent of the in-charge parties (al-Sanhouri, 2004, p.390).

Referring to the above mentioned, the UAE legislator, in definitions of the law of mediation and conciliation, misses the point for two reasons:

First: The definition of mediation was mentioned in the text of Article (2) of the Conciliation and Reconciliation Centers Law and stipulated that it is regulated by a federal law. At the same time Federal Law No. (6) of 2021 was issued, according to which it regulated the provisions of mediation to settle civil and commercial disputes, and this law defined mediation with the same definition that was contained in mediation and conciliation centers in an identical manner. The aforementioned mediation law was issued at the same time as the law which amended the Conciliation and Reconciliation Centers Law No. (5) of 2021 was issued, under which the definition of mediation added. Such addition is considered as a repetition; this is an undesirable matter in legislation. It is more suitable for the law that regulates mediation to define it, and there is no need to repeatedly define mediation in the Mediation and Conciliation Centers Law identically. It could have been referred to the definition of mediation in the Mediation and Conciliation Law (according to the definition contained in the Federal Law on Mediation for the Settlement of Civil Disputes). In the future, if the Mediation Act is amended by the definition, the definition of mediation in the Mediation and Conciliation Act should also be amended.

Second: The Conciliation and Reconciliation Centers Act defines conciliation differently from the definition of conciliation contract in the Civil Transactions Act. It is believed that the definition in the Civil Transactions Act is sufficient to define reconciliation and there is no need for the definition in the Conciliation and Reconciliation Centers Act. The definition of conciliation contract in the Civil Transactions Act includes conciliation even if it is done before conciliation centers or even if it is done before a court, which is more comprehensive, abstract and general.

It is also clear from the definition of conciliation that it depends mainly on the will of the parties to resort to it to settle the dispute, as the general principle has it that conciliation is not resorted to - according to the definitions that were said about it - except by agreement of the parties, and this in fact confirms that conciliation and recourse to it, is only in accordance with the will of the parties, and here the principle of the authority of the will to resort to conciliation is achieved, according to the meaning on which conciliation is based. It is the will of the parties to conciliate, in the general legal sense of conciliation, that plays a key role in resorting to conciliation, whether the agreement to resort to conciliation is by independent agreement between the parties after the dispute has arisen, or by virtue of a clause in the same contract in dispute. It is also permissible to agree to resort to conciliation regardless of the source of the obligation, whether contractual or not.

Second Requirement

Formation and nature of mediation and conciliation centers

This requirement deals with two main sections, section I, which outlines the composition of mediation and conciliation centers, and section II, which deals with the nature of mediation and conciliation centers.

Section I

Formation of conciliation centers

Article II of the Mediation and Conciliation Centers Law stipulates that the minister or the head of the local judicial authority may establish one or more mediation and conciliation centers within the jurisdiction of the courts of first instance. The Minister or the head of the local judicial authority shall issue the regulations governing the work of mediation and conciliation centers, provided that the spatial jurisdiction of each center shall be included in the case of multiple centers within the jurisdiction of the Court of First Instance. The Ministry or the local judicial authority may establish an electronic platform for mediation and conciliation, and its jurisdiction shall be determined in accordance with the rules of jurisdiction of the judicial



authority affiliated to it, and its procedures and work system shall be issued by a decision of the minister or the head of the local judicial authority, depending on the case.

First: Formation Validity:

According to this text, the competent person to establish conciliation centers is the Minister of Justice or the head of the local judicial authority in the event that the center is established in a local department, provided that the establishment of the center is within the jurisdiction of the courts of first instance, and in the event that there are multiple judicial authorities within the jurisdiction of the same court of first instance, the spatial jurisdiction shall be determined based on the regulations issued to organize the work of the center.

Accordingly, the executive authority, represented by the Ministry of Justice, has the authority to establish mediation and conciliation centers in the federal courts, while the judicial authority, through the head of the local judicial authority, has the authority to establish centers in local judicial authorities, and this matter requires a stance. We could say that mediation and conciliation centers work within the federal judicial system after registering the case through the mandatory referral to the center in partial cases and permissible referral in total cases, as the work of the center is done after the start of the judicial litigation. Overall, this falls within the framework of judicial work and does not fall within the framework of the administrative work of the Ministry of Justice, therefore it seems that the formation of centers in the courts should be done by the judiciary and not by the executive authority represented by the Ministry of Justice (Alsarhan, 2022, p.150).

The establishment of the center in the Court of First Instance is related to the jurisdiction of this court (provincial, value, qualitative and spatial), within the framework of civil and commercial lawsuits only, without other lawsuits or lawsuits excluded under the law that we will cover later, with the establishment of an electronic platform in accordance with the discretion of the ministry or the judicial authority of the center within the framework of the jurisdiction of the court to which the center belongs, and this electronic platform is compatible with the remote litigation system, which the UAE legislator has adopted since 2017 according to an amendment to the Civil Procedures Law. Accordingly, the remote litigation system was issued (Gandel, 2017, p.78).

Second: Conditions for Appointing Conciliators:

Article (7) of the Mediation and Conciliation Law stipulates that whoever is appointed to the position of conciliator in mediation and conciliation centers must meet the requirements determined by the minister or the head of the judicial authority in accordance with the text of Article VII, however the following rubrics must always be included:

- **Eligibility:** The conciliator must be fully competent, and full capacity in accordance with the provisions of the Civil Workers Law (Ahmad, 2004. P.47). The legal age of maturity specified by the relevant articles is twenty-one lunar years, which is approximately equivalent to twenty years, four months, and twenty days in the solar calendar, even if he is rehabilitated, but according to Resolution No. (33) issued by the President of the Judicial Department in Abu Dhabi, the conciliator is required to be at least 30 years and less than 60, excluding the exceptions made by the head of the department, where he may deviate from this condition and skip over the personal interview, but the age of maturity must not be less than the age specified in the Civil Transactions Law in case of exemption from the requirement. Therefore, the conciliator who has lost their qualifications for any reason or has been convicted of a crime related to honor or trustworthiness cannot be appointed as a notary public.
- **Integrity, impartiality and experience:** The conciliator must be known for their integrity, impartiality and experience. Integrity and impartiality are among the characteristics that are known about the person through his previous experiences and work or through the community around him, and it is subject to the discretion of the party that appoints him, because it is an internal psychological matter known about the person, while experience is a matter related to the previous work practiced by the person and the experiences he gained through these works,



They are usually evidenced by the person's experience certificates gained from these work places (Al-Batanouni, 2012, p. 67. Al-Rashdan, n.d, 42).

- **Courses and tests:** He must have successfully passed the prescribed courses and tests, and these courses and experiences are determined by the Ministry of Justice and the competent judicial authorities that hold these courses for conciliators in the appointment and selection period.

In accordance with the provisions of Article (8) of the Law, the appointment and delegation of conciliators shall be determined by the Minister or the head of the local judicial authority. The Council of Ministers or the competent local authority shall issue a special system for the salaries of appointed and delegated conciliators.

The appointed and delegated conciliators shall take the legal oath to perform their duties honestly and truthfully before the Minister, the head of the local judicial authority or whoever is authorized by them.

In accordance with article 10 of the Law, the conciliator is prohibited from:

- To be an arbitrator or expert, or to accept the power of attorney in a dispute against any of the parties on the subject matter of the dispute to conciliation or its subsidiaries, even after the end of the conciliation procedures, in order to ensure the impartiality of the conciliator in trying to settle the dispute between the parties, without having an opinion on the dispute or the inclination to one of the parties (Alsarhan, 2022, p.155).
- To testify against one of the parties in the dispute in the same subject matter of the dispute that is subject to conciliation or its subsidiaries, even after the conciliation procedures are over, unless authorized by the person concerned or otherwise agreed by the parties, unless the testimony relates to a crime, as testimony in the subject matter of the dispute means that he is biased towards one of the parties due to an incident that forces it in the subject matter of the dispute by prejudging the dispute between the parties (Gandel, 2017, p.196).

The supervising judge may dismiss the conciliator and replace him with another at the request of any of the parties, and he shall decide on the request within three days from the date of its submission, in any of the following cases:

- If the conciliator is unable to perform his duty for any reason, the conciliator may face a health or emergency symptom which disables him from exercising his mission or even in the event of death, in which case another conciliator is appointed to carry out the task.
- If the conciliator does not proceed or ceases to perform his task in a way that leads to undue delay in the procedures and does not resign, in some cases the conciliator does not exercise his task in the best way or procrastinates in exercising it, in which case, a replacement may be appointed.
- That the conciliator has a relationship with any of the parties that may raise doubts about his impartiality or independence, whether before or during the conciliation proceedings, and this case relates to the previously addressed condition of impartiality and integrity, if the conciliator fails to meet any of the previous conditions, he is dismissed by the supervising judge due to the unmet condition.

The decision issued to dismiss the conciliator is a non-appealable decision, and we believe that it would be desirable if the legislator allowed the appeal against this decision to protect the impartiality of the conciliator from the interference of the judge supervising mediation and conciliation, and to ensure non-interference in the affairs of the conciliator, provided that the appeal is within a period of 3 days from informing him of the decision, or the head of the judicial authority that follows to decide on the appeal within 5 days.

Disciplinary proceedings against the conciliator shall be conducted in accordance with the following:

- In the event that the conciliator violates any of the prohibitions stipulated in Article (10) of this Law, the aggrieved party may resort to the Center to take the necessary disciplinary measures against the conciliator, which does not violate his civil and criminal liability.



- The disciplinary procedures and penalties provided for in the Human Resources Law of the Federal Government and the local laws regulating the public service, as the case may be, shall be followed with regard to the discipline of conciliators.

Section II

Nature of mediation and conciliation centers

In alternative dispute resolutions, a major question is usually raised about the nature of resorting to the alternative means of dispute resolution, whether it takes the nature of obligation or choice, and usually the resort in most cases is based on the voluntary nature of the parties, however, the intervention of the legislator in the establishment of what is called pre-trial stages, such as conciliation or mediation within the judicial framework, requires addressing the answer to this question.

Is resorting to mediation and conciliation centers in UAE law an obligation or a choice? In order to answer this question, we first address the administrative nature, then the judicial character, and the criteria that were said in this regard:

A- Volitional Character:

It is known that alternative solutions to settle disputes - in general - are based on the will to resort to resolving the dispute through those solutions. Arbitration is based only on the basis of an arbitration agreement between the parties, even if the end judgement result was binding (Abu ALwafa, 1974, p.9), as well as other solutions such as mediation, conciliation, reconciliation and negotiations, it is initially based originally and generally on agreement, and also normally ends with an agreement between the parties, and it may not end with any agreement between the parties as it is based entirely on will, it was therefore said that conciliation as an alternative solution is of a contractual nature between the parties, since it arises only by agreement to resort to it, even if it is an implicit agreement, and it ends if a settlement is agreed upon, which is what imbues conciliation with a contractual character and is of a contractual nature (Sandy& others, 2001, p.18. Mabrouk, 2002, P.56).

Even if the conciliation is carried out by the referral of the law, this does not preclude the contractual nature of the conciliation, since it is carried out between two parties through a third person (Al-Meligy, n.d, p.45. Nassar, 2002, p.99) . Even in the case of a referral for conciliation, the defendant or plaintiff may refuse to proceed with the conciliation, and the conciliation comes to an end here as it is rejected by the parties. As for the conduct of the proceedings and attendance is tantamount to an implicit agreement, between the plaintiff and the defendant, to proceed with the conciliation proceedings, and may end in a settlement between the parties.

Jurisprudence offers a set of justifications that confirm the contractual nature of conciliation, namely:

- Conciliation is carried out by the agreement of the disputants, whether it is an express or implied contract, even if one of the parties resorts to conciliation under the obligation of the law, they are not obliged to follow through with it, especially the defendant. If the defendant decides to follow through, then he basically concluded a contract to proceed with the conciliation between the parties, and he must meet the contract conditions consisting of consent, reason, and subject matter (AL-Essawy, 2021, p.319. Moussa, 2005, p.26).
- The termination of conciliation is either a settlement between the parties or a non-successful conciliation, and in both cases, this reinforces the principle that conciliation is of a contractual nature, since it ends with a settlement between the parties voluntarily, or with no settlement by their own will (Al-Meligy, n.d, p.45. Nassar, 2002, p.99).
- The composition of conciliation commissions in whole or in part does not constitute the formation of judicial courts, their members do not have judicial guarantees and immunities in exercising the commission's work, nor are they bound to apply the Code of Civil and Commercial Procedure (Ubilava, 2022, p.105).

B- Judicial Character:



In contrast to the voluntary nature, an opinion has arisen that advocates for the judicial nature of the conciliation commissions, so if the conciliation is made with the consent of the parties, and based on a contract between them, a distinction must be made between the agreement on conciliation, which is a contract, and the conciliation itself, which is considered in its entirety a system of a judicial nature, whether or not it resulted in a settlement contract. The owners of the judicial theory rely on the fact that the theory of judicial work is based on three criteria, a formal criterion that bestows the nature of the work on the person who performs, thus, the work is considered judicial if it is done by a person who possesses the judicial job plus having an objective criterion derived from the fact that the work is related to resolving a dispute between several parties, so we are also facing a judicial work, and a mixed criterion which combines the formal and the objective criterions.

According to the proponents of this theory, conciliation, from the perspective of the objective criterion, aims to resolve a dispute between the parties, as conciliation is not carried out except in the event of a dispute, and aims to resolve it, so that it is accordingly an act of a judicial nature. In addition, if it is done by a judge, it is of a judicial nature as well (abdalrahim, 2000, p.189).

It is apparent that the UAE legislator has established mediation and conciliation centers within the jurisdiction of the courts of first instance in accordance with the text of Article II thereof, however he has left out the judicial nature relating to the persons in charge of them so that they are from outside the judicial framework - contrary to what has been made in the repealed law of 1999, which sometimes formed the committee of judges, therefor; conciliation here is a stage that precedes the stage of proceeding with the case. However, it must be noted that the UAE legislator in the text of Article (3) ordered the resort to mediation and conciliation centers in civil and commercial lawsuits that fall within the value jurisdiction of the summary courts or whose parties are spouses or fourth degree relatives, regardless of their value, where the matter is left to the agreement of the parties on the lawsuit that falls within the value jurisdiction of the full courts in accordance with the Civil Procedure Law.

It is not possible to rely here on saying that judicial supervision through one of the judges on the center gives these centers the judicial status, because the role of the judge is supervisory and not judicial, and his signature on the reconciliation agreement in the end does not grant it the status of judicial judgment, however it is only for the purposes of fulfilling the requirement of the supervisor's signature on the settlement agreement.

Based on the foregoing, we see that conciliation in mediation and conciliation centers is of a volitional nature and not a judicial one in UAE law, as in terms of the formal criterion, the one who practices the work is not a judge, and in terms of the objective nature, although it is carried out according to procedures set by the legislator, but these procedures are followed according to the will of the parties that expressed it, especially since conciliation usually ends as a result of agreement or lack thereof on the settlement, which is subject to the agreement of the parties.

The second topic

Jurisdictions and procedures of mediation and conciliation centers

This section covers the jurisdiction of the Conciliation Center in the first requirement, while it covers conciliation procedures in the second requirement.

First Requirement

Jurisdiction of a Conciliation Center

Article 3 of the Mediation and Conciliation Centers Act stipulates that the UAE legislature has reserved exclusive jurisdiction to the Mediation and Conciliation Center in civil and commercial cases. It also makes a distinction in the harmonization of cases, requiring recourse to the Mediation and Conciliation Center in cases that fall within the jurisdiction of the District Courts, in accordance with article 30 (a) of the Code of Civil Procedure, which referred for value to the Civil Procedure Code's Regulations, which specify the jurisdiction of the District Courts in cases not exceeding AED 1 million, and the validity of signature claims regardless of their value. As for civil and commercial cases valued at more than AED 1 million or of unestimated value, recourse to the



Mediation and Conciliation Centers is subject to the agreement of the parties thereafter the matter, and the procedure is not being applied before the Court.

The fact is that we cannot see the justification for distinguishing between total and partial cases in referral to mediation and conciliation centers, since referral is mandatory in partial and optional cases in total cases, since the value of the case itself is not a criterion for referral to conciliation centers as is the jurisdiction. We believe that cases of great value, especially those involving companies, can be conciliatory and achieve more success in settlement than those of lesser value. Most alternative solutions to dispute settlement, including conciliation and mediation, have arisen with the expeditious resolution of disputes between companies and legal persons rather than individuals, because of the speed with which these disputes can be resolved or settled between the parties without complicated judicial procedures. We therefore suggest to the legislature that all cases be covered, regardless of their value, and the need to be resolved without distinction.

Also, lawsuits between spouses and relatives up to the fourth degree fall within the jurisdiction of mediation and conciliation centers, regardless of their value.

Article 3 of the Mediation and Conciliation Act provides for the linking of jurisdiction to the Civil Procedure Code, without specifying the value of the action that is the competence of the Mediation and Conciliation Center, as it did in the repealed Code, so that it does not have to amend the Mediation and Conciliation Act whenever it amends the jurisdiction of the courts in the Code of Civil Procedure

The Mediation and Conciliation Centre does not have jurisdiction to the following cases:

- **Urgent and temporary orders and lawsuits:** According to the nature of these disputes, which require urgent or temporary protection without probing into the subject matter of the dispute itself, their nature makes them unsuitable to be the object of a conciliation that seeks to settle the dispute between the parties. Temporary or urgent protection requires urgent judicial intervention to protect the right or an urgent report that does not require delay and an authority to enforce this immediately by confronting the parties. However, we thought that the conciliator could have a role in reviewing these decisions during negotiations between the parties, such as reaching an agreement to dissolve the reservation between litigants if one of the parties provided sufficient guarantees to fulfill the right or in some cases conciliation, and in some cases, these temporary or urgent decisions would definitely cease to have effect in the event of a settlement agreement between the parties and its implementation without the need to go back to court (Gandel, 2017, p.78).
- **Cases in which the Government is a party:** Cases in which the State is a party (administrative cases) may not be conciliated because their object is not amenable to conciliation and mediation between the parties, as the State exercises them as a public authority with jurisdiction (Al-Bassiouni, 2020, p.27). However, we see no problem to seek conciliation in cases in which the state is a party in contractual terms, such as administrative contracts in the event of an objective dispute such as a financial obligation, in such event we see no problem in referring these cases to conciliation and mediation centers, and amending the text according to it.
- **Lease lawsuits:** The legislator appreciated special provisions in settling disputes related to rents arising from a lease contract, as these disputes are considered before special committees for rental disputes at the level of each emirate, for example, these committees are competent to urgently consider disputes arising from the rental relationship between the lessor and the tenant, and to decide on requests for temporary measures submitted by either party of the contract in accordance with Law No. 20 of 2006 regarding the regulation of the relationship between landlords and tenants in the Emirate of Abu Dhabi, and the formation of Each of the rental dispute settlement committees headed by a judge and the membership of two judges. Number of judges in each committee may not be less than three. Committees are subordinate to the Judicial Department (Gandel, 2017, p.43) .
- **Labor lawsuits:** As stipulated in the UAE Labor Relations Organization Law No. 33 of 2022 in articles 23 and 31 of its executive regulation, the Ministry of Labor is competent to examine



disputes between the parties and try to resolve the dispute between the parties before referring the case to the court in the event of failure to settle the settlement. The legislator therefore took labor cases out of the jurisdiction of mediation and conciliation centers, as they are subject to a special conciliation and settlement system by the Ministry of Labor (Fatal, 2018, p.67).

- **Personal status cases:** Article (16) of the Personal Status Law stipulates that one or more committees for family guidance shall be established in the personal status courts by a decision of the President of the Court (Alnoor, 2012. P.167). Each established committee shall be supervised by a judge, and is competent in the following:
 - Personal status disputes, with the exception of wills and inheritance, or urgent and temporary lawsuits in alimony, custody and wills, and claims to prove marriage or proof of divorce.
 - Consultation in personal status cases at the request of the court competent to hear the case.
 - Considering cases referred to it by the competent court after the parties' consent.
 - Family issues cases based on the decision of the competent court.
 - Personal status cases filed during the course of the case which was not previously discussed.
- Therefore, the legislator removed personal status cases from the jurisdiction of mediation and conciliation centers, which were subject to a special route in the Personal Status Law.
- Any other cases to be heard before a center, committee, or another body with similar jurisdiction.

Second Requirement

Mediation and Conciliation Procedures

First: Payment of the Case Fee:

According to the text of Article 5, the fees are not entitled to any judicial fees for disputes and requests submitted to the centers, and under Article 6, it is not permissible to register in the courts, in which a mediation and conciliation center has been established, any of the lawsuits that fall within the jurisdiction of the center mandatorily in accordance with the provisions of Article (3) of the law, except after it has been submitted to it, and a statement has been issued in this regard. If the Court refers a case pending before it to the Center at the request of the litigants, the President of the Court may return the fee paid before it in the event that the dispute ends in conciliation. So, if the center decides to rerefer the case, it does not require payment other than the already paid fees (Alsarhan, 2022, p.156).

Second: Effects of Referring the Case to Mediation and Conciliation Centers:

- 1- The periods prescribed for non-hearing of cases and the limitation periods stipulated in the laws in force in the State shall cease from the date of registration of the dispute before the Center.
- 2- In order to perform his work, the conciliator shall have the right to examine the papers, documents, records and other evidence and to take the procedures he deems appropriate without being bound by the Civil Procedure Law, the Law of Advocacy and official working hours, and he may seek the assistance of experts registered or agreed upon by the litigants in settling disputes submitted to him to provide technical and technical expertise. The conciliator sets the expert's fees and the work required of him and which he shall have a say on according to the regulations of the law of evidence in the civil and commercial transactions.

Third: Announcement: With regard to the notification of litigants, in accordance with article 11 of the Law on Mediation and Conciliation Centers, the rules of publicity provided for in the Code of Civil Procedure and the Regulations apply to mediation and conciliation disputes, and parties must attend conciliation hearings in person or on their behalf legally. The conciliator shall set the date of each session and inform the parties or their agents of the date and place of the dispute (Alsarhan, 2022, p.159).

Fourth: The period of hearing the case at the Center: The centers work to resolve the dispute within (21) twenty-one working days at most from the date of the parties' presenting before them, and it may be extended for another similar period by a decision from the conciliator, unless the parties agree on an additional similar period in application of the provision of Article 12 of the Law.



The third topic

Implications of Mediation and Conciliation

This section covers the effects of mediation and conciliation, whereas the first requirement covers the end of conciliation without reconciliation, while the second requirement covers the end of conciliation with reconciliation between the parties.

First Requirement

End of conciliation without settlement between the parties

Conciliation shall be terminated without reaching a settlement between the litigants and without achieving its purpose of reaching a reconciliation between the parties, in any of the following cases:

- **Absence of the parties:**

Article 14 stipulates that "if the dispute cannot be resolved by virtue of the absence of one of the parties for any reason whatsoever or the failure to reach a settlement, the parties shall be given a statement of what has been done in this regard, and the dispute file shall be referred to the competent court."

According to the above article, the conciliation proceedings shall be terminated if the parties or either of them does not attend, after being notified to attend, so in the event that the parties or either of them is absent from attending the session on time, the conciliation here shall end, and the Commission shall issue a decision to terminate the conciliation, and state the reason for the termination, which is the absence of the parties before the Conciliation Commission on the specified date (Gandel, 2018, p.124).

In the case of multiple parties to a dispute, the legislator did not deal with plurality of plaintiffs or plurality of defendants. We believe that the absence of one of them does not affect the work of the conciliation center, if disputes between the parties to the dispute can be settled. If conciliation can be reached between the parties present but not absent and without injury to others, the conciliation commission shall continue the conciliation proceedings between those present. If conciliation cannot be conducted in the absence of some parties, the conciliation as a whole shall be considered terminated (Alsarhan, 2022, p.314).

- **Freedom of withdrawal:**

Conciliation is based on the fundamental principle of the freedom of the parties at any stage of the conciliation to withdraw from it, in order to achieve the volitional aspect of the conciliation based on the will of the parties (Wenyng, 2005, p.430).

Withdrawal from the conciliation takes several forms: withdrawal from the conciliation may be through the refusal of the parties or any of them to resolve the conciliation, by refusing to resort to the Commission to resolve the dispute by conciliation, even if they have initially agreed to go to conciliation, and the refusal of conciliation before the Commission, either through a written note by the party refusing the conciliation, or through an oral expression of refusal when attending the conciliation session, and the Conciliation Commission is unable here to compel the conciliation to conciliate, and must give it a document to do so (Salameh, 2005, p.75).

Article 13/2 of the Law stipulates this principle (in cases of termination of conciliation, mediation and conciliation procedures shall be terminated in the following cases: 1. Consent of the parties to the settlement agreement. 2. **Notifying the conciliator by one or all the parties of their desire not to continue the mediation and conciliation proceedings.** ..)

- **Expiry:**

Conciliation shall also be terminated under Article (13/4) in the event that the period specified for the conciliation procedure expires, without reaching a solution between the parties, or without a refusal by the parties to resolve by conciliation, the period during which the conciliation must be settled - whether positively or negatively - is 21 twenty-one working days at most from the date of the parties' appearance before the center, and it may be extended for another similar period by a decision from the conciliator, unless the parties agree on another similar additional period.

- **Lack of seriousness of conciliation:**



Under Article 13/3, the conciliator may terminate the conciliation if it is found not to be serious to continue the conciliation for any reason, as in the case of procrastination by an opponent or their lack of a definitive response to the conciliator.

Section II

Termination of conciliation with a settlement between the parties

The main objective of resorting to conciliation is to reach a settlement and reconciliation between the parties, to resolve the dispute between them away from the State judiciary, with the aim of achieving party's satisfaction to the solution, to relieve the burden of the judiciary, and to avoid disputes in litigation.

The research here will not cover everything related to the reconciliation contract, like elements or effects, but will only cover what is related to the settlement or reconciliation that takes place before the conciliation committee, and the resulting settlement.

The conclusion of conciliation by signing an agreement of a reconciliation between the conflicting parties means the birth of a contract of reconciliation between the parties in place of the dispute.

The legislator requires certain procedures for the minutes of reconciliation made before the conciliation committee, and a statement of the scope of the reconciliation between the parties.

First: Settlement Issuance Procedures:

Article (15) of the Mediation and Conciliation Centers Law stipulates that (1- If reconciliation is made between the parties before the conciliator, this shall be evidenced in a minute signed by the parties and the conciliator. This record shall be approved by the supervising judge, and this record shall have the force of the executive bond, the same authority of judicial rulings. It may not be challenged by any means of appeal.2- The minutes shall be appended after its approval in the executive form at the request of all parties or one of them, and shall be implemented in accordance with the procedures stipulated in the Civil Procedures Law. and its aforementioned amendments.

The conciliation agreement shall be signed by the parties, the conciliator and the supervising judge. The conciliation contract which was concluded before the conciliation commission, shall be considered a valid executive bond for implementation before the implementing judge (Turki, 2009, p.233), that is if the general conditions required by the legislator for the executive bond are met. The mentioned rights should exist, along with the specified value, dues, and payables. And its executive form should be obtained as a nominal form.

In addition, the conciliation contract must be free of conflict with the law, signed by the parties, and signed by the conciliation commission, as indicated above.

Second: Scope of Reconciliation:

- **Scope of the reconciliation agreement in terms of the parties:**

Reconciliation is originally supposed to be carried out between the disputants. Therefore, each party of the dispute submitted to the Conciliation Commission for settlement has the right to enter into a conciliation agreement between the parties.

The parties of the reconciliation shall be determined based on the request for conciliation submitted by the parties, as the applicant for conciliation is the one who determines the other party in the relationship subject to conciliation (Alsarhan, 2022, p.158).

The request for conciliation may be submitted by more than one person, as opposed to more than one person, as all parties associated with the dispute may be parties to the settlement (Gandel, 2018, 190).

The question that arises here is: Is it permissible to invite other persons to the conciliation who are not included in the request for conciliation?

We believe that according to the general principle, the conciliation procedures seek to achieve settlement between the parties, as its procedures are flexible, unlike judicial litigation. so, any person may be invited to conciliate, if their name is related to the dispute between the parties before the conciliation commission. A third party may request the conciliation commission to attend the conciliation proceedings in order to suspend the dispute.



In the event of a settlement between the parties, conciliation may take place between parties but not between others, if the dispute can be divided between the parties.

In terms of effect, the reconciliation concluded before the Conciliation Commission shall not include a person who was not a party in that settlement, even if it was a party in the conciliation and did not agree to the settlement.

If a party does not have the necessary capacity for conciliation or settlement proceedings, either for lack of capacity or the disappearance of one of its aspects, the conciliation or settlement shall be carried out through the representative, trustee or guardian of that person, and the agent, representative or delegate may initiate the conciliation proceedings and sign the settlement if he is delegated or authorized to conciliate (Al-Sanhouri, 2004, p.390).

- **Scope of the reconciliation agreement in terms of object:**

The reconciliation agreement between the parties shall be focused, as a general asset, on the object of the dispute between the parties.

The settlement shall either result in the resolution of all disputes on which the parties have recourse to the conciliation commission in all its aspects, thereby ending the dispute between the parties. The settlement shall be on a part of the dispute, not on all disputed points, so that the dispute between the parties shall end with regard to the points that have been settled. Points not agreed upon between the parties shall be brought to justice.

The settlement may be limited to the object of the dispute, which is normal, or it may extend beyond the object of dispute between the parties, so that settlement may extend to future transactions, so that one party guarantees transactions on a certain scale between the parties, even if such transactions are not the subject of dispute. This is usually done in order to encourage that party to waive certain rights in the issue of dispute in return for future dealings with the other party (Al-Essawy, 2021, p.355. Allouzi, 2006, p.274).

The record of reconciliation before the conciliation commission is not considered a judicial record of reconciliation, as the record of judicial reconciliation is before the court in the case concerning which the conciliation is attached (Turki, 2009, p.227. Allouzi, 2006, p.280). The conciliation record before the conciliation commission is not taken before a court or a judge.

CONCLUSION

This research dealt with mediation and conciliation centers in the UAE law established under Law No. 17 of 2016 and its amendment No. 5 of 2021, whereas the first section dealt with the definition and formation of mediation and conciliation centers, the second section dealt with conciliation and reconciliation procedures, and the third section dealt with the effects of mediation and conciliation.

The research concluded the following results and recommendations:

First: Results:

- 1- The formation of mediation and conciliation centers came from reformers appointed by the minister or the head of the competent judicial authority from outside the judicial body, contrary to the previous law, which was the formation of conciliation committees either from judges or mixed judges and from outside the judicial framework.
- 2- Conciliation in the technical and legal sense in UAE law is of a voluntary nature and not a judicial one, and it is not considered part of the judicial authority. The supervision of a judge over the Centre does not confer the judicial status on it because it does not exercise the function of conciliation.
- 3- The legislator prohibits the referral of a lawsuit in which the State is a party, even if it relates to a right of subject matter or obligation, and in which the State does not engage in an act of a state or sovereign nature.
- 4- Conciliation ends with a settlement between the parties that has the force of an executive bond, as is the case with the record of conciliation that is made before the judiciary and signed by the judge supervising the center and may not be challenged in any way. A lawsuit

may be filed for the invalidity of the conciliation agreement even if the law does not address this in accordance with the general rules.

- 5- The UAE legislator distinguishes in referring to conciliation centers based on the value of the lawsuit and linking it to the value jurisdiction of the summary and full courts.

Second: Recommendations:

1. The researcher suggests renaming the law the Conciliation Centers in Civil and Commercial Courts Law and abolishing the word mediation to regulate it with a special law.
2. The researcher recommends that the definition of mediation contained in the law be removed because the same definition is included in the Mediation for the Settlement of Civil Disputes Act, and this definition is sufficient without having to be repeated in the Mediation and Conciliation Centers Act.
3. The researcher recommends that the formation of mediation and conciliation centers be carried out by the judiciary and not by the Minister of Justice.
4. Explicitly stipulate that any of the judges may be named conciliators in the law, especially since the disputants usually have more confidence in judges more than others.
5. Requiring a specific academic qualification for those who appoint a conciliator if the law and the regulation do not contain this condition.
6. Organizing the mechanism of conciliation sessions, the attendance of litigants, and the place and time of the convening.
7. Stipulating the treatment of the event of multiple litigants and the agreement of some of them to conciliation and the rejection of others.
8. The researcher recommends that mandatory referral be provided for in all cases heard by the District and District Courts without differentiation, since the justification for value discrimination by distributing jurisdiction between courts is not found in referral to conciliation centers.

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