JUDICIAL MEDIATION AND THE GOVERNANCE OF ADMINISTRATIVE CONTRACT DISPUTES: THE LEGAL POSSIBILITIES UNDER JORDANIAN AND UAE LEGISLATION

Ahmad A. Al Dalaien *, Mohammed A. Aladaseen **

* Faculty of Law, Mutah University, Al-Karak, Jordan
** *Corresponding author*, Faculty of Law, Mutah University, Al-Karak, Jordan
Contact details: Faculty of Law, Mutah University, 61710 Al-Karak, Jordan

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Abstract

The increasing complexity of administrative contract disputes necessitates alternative resolution methods. This study examines the potential for judicial mediation under Jordanian and UAE legislation, highlighting legislative gaps and drawing comparisons with other systems. Utilizing a black letter and comparative methodology, this study identifies the absence of explicit legal provisions for judicial mediation in administrative contexts and analyzes potential pathways for integration. The findings reveal that mediation, although not explicitly addressed, can align with public order principles to facilitate dispute resolution without undermining administrative legality. Embracing judicial mediation can enhance procedural efficiency and investor confidence, and contribute to a more effective governance framework. This analysis aligns with previous findings on alternative dispute resolution in administrative law (Hama, 2019; Pappas, 2023). The study concludes with recommendations for legislative reforms to embed mediation as a viable option for administrative contract disputes.

Keywords: Administrative Dispute, Judicial Mediation, Administrative Contracts, Mediation Agreements, Governance

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1. INTRODUCTION

The constitutional legislator assigns considerable importance to preserving the judiciary's authority to adjudicate and resolve conflicts, acknowledging them as an essential pathway to attain justice and uphold the rights of individuals. However, the combination of growing dispute numbers with delays in the court process and the failure to execute the administrative judicial resolutions creates real problems and makes it hard for the system to operate in an effective manner (Pappas, 2023; Blankley et al., 2024). Furthermore, current economic relationships, along with the influence of electronic transactions, have forced businesses and individuals to seek new ways to solve legal disputes

(Hama, 2019). This solution should help to reduce the growing number of cases by making the legal process easier to handle. Judicial mediation provides an efficient system to help solve these legal process issues. According to the United Nations Task Force, there are 1.5 billion people worldwide who cannot find solutions to their legal problems right now (Chamness Long & Ponce, 2019). The high rate of unresolved legal problems proves we need to look at mediation methods that let more people reach justice and take pressure off standard courts. Global legal systems now put mediation first because it delivers clear benefits to both governments and law sectors (Genn, 2009).

Jordan and the UAE have made efforts to incorporate mediation into their systems in the Middle East. Jordan has established specialized family reform offices within its Sharia court system to facilitate mediation and conciliation in family disputes. Similarly, the UAE has leveraged technological advancements with the recent development of Wasata, which is an online mediation platform launched by the UAE Ministry of Justice to utilize AI-powered dispute resolution as an alternative to the traditional litigation process. (UAE Ministry of Justice, n.d.).

Despite these advancements, the use of judicial mediation in administrative contract disputes remains largely unexplored in Jordanian and UAE legislations. This gap raises critical questions regarding the practicality and potential legislative adjustments needed to broaden the application of mediation from civil and commercial affairs to cover administrative disputes. Addressing this gap could provide a pathway for more comprehensive and effective dispute resolution mechanisms that align with the evolving needs of society and the legal landscape.

This research is based on the theoretical framework of a comparative analysis of legal systems and assesses the alignment between order principles and mediation practices. The significance of this study lies in its potential contribution to legislative practices that enhance judicial efficiency and investor confidence. Mediation serves as an expression of the intent and will of contracting parties and is crucial in expediting dispute resolution and preserving the confidentiality of dealings. This is particularly pertinent in sectors such as tenders and concession contracts with foreign elements.

This research will assess whether judicial mediation can be adapted to administrative disputes and identify the legislative adjustments required to enable this. The key research questions include:

RQ1: Can mediation be effectively applied to administrative contracts?

RQ2: What legal reforms are necessary for this integration?

The initial findings suggest that judicial mediation, although not explicitly addressed, can be adapted to administrative disputes through specific legislative reforms.

The rest of the paper is structured as follows. Section 2 reviews the relevant literature. Section 3 outlines the research methodology. Section 4 presents the findings. Section 5 discusses the results. Section 6 concludes with implications and recommendations for future research.

2. LITERATURE REVIEW

Mani (2012) conducted research on the new dispute resolution methods for administrative disputes that were enacted by Algerian legislation. This research examines conciliation and consensual mediation by describing their methods and rules while explaining how these methods integrate within the legal systems in practice. Mani's (2012) research shows that these alternative methods are more amicable resolutions than traditional litigation and enhance the efficiency of dispute resolution.

Boukhalfa (2007) demonstrates in his research that the French and Algerians in tax-related disputes benefit from judicial mediation as an exclusive dispute resolution method. Boukhalfa's (2007) comparative study analyzes both the strengths and weaknesses of judicial mediation systems in France and Algeria to help improve mediation in administrative justice. This research shows the necessity of legislative support to adopt mediation as a viable alternative dispute resolution (ADR) technique.

Jalloul (2012) analyzed judicial mediation in civil and administrative disputes within the American and Swiss legal systems. Jalloul's (2012) work highlights the fact that judicial mediation can be designed based on the nature of the dispute and legal culture. This research concludes that judicial mediation is most effective in well-established ADR systems, where legal frameworks encourage its application in administrative matters.

Pappas (2023), in his work, examined different methods of using mediation in the administrative law context. His work is also highlighting the legal structures that can enhance its effectiveness. Pappas (2023) demonstrates that various regulations need to be amended to facilitate effective alternate dispute resolution in administration disputes.

Similarly, Lutran and Hage Chahine (2020) examined how mediation was integrated into systems in the Middle East and North Africa (MENA) region from 2020 onwards, regarding both practical applications and legislative developments. While exploring the impact of the reforms on mediation uptake as an alternative to traditional administrative conflict resolution approaches, he emphasizes regional differences and challenges experienced during the integration of mediation into systems that traditionally favored formal adjudication.

Blankley et al. (2024) discuss the changes in the methods of alternative dispute resolution with a focus on administrative agency disputes from a comparative perspective. The research draws attention to the impact of international best practices on the national legal system and to what extent such dynamic mechanisms can address complexities related to matters of public interest under administrative conflict of law.

Abbott and Elliott (2023) also discuss the application of mediation practices in administration disputes and highlight their efficiency in managing complex disputes within the administration system. Abbott and Elliott's (2023) study explains how technology has improved the application of new mediation techniques such as online dispute resolution (ODR), which makes the whole process more efficient and cost-effective, thereby increasing transparency and efficiency in dispute resolution.

Hama (2019) examined the current ADR along with the changes and obstacles encountered with it.

Hama's (2019) research explores the changes and obstacles encountered in implementing laws to improve mediation for disputes. The research also highlights the opportunities for expansion and improvement in mediation that have been made possible while also recognizing the legal obstacles that could hinder such advancements.

Al-Sayyid (2013) examines the suitability of various administrative disputes for resolution by mediation. In this review, Al-Sayyid (2013) categorizes the disputes according to their nature and complexity and determines the kinds that may likely be more amenable to mediation. The study provides a critical overview of both the potential gains and losses of implementing mediation for administrative adjudication and concludes with the fact that it can, indeed, and significantly, add value to the efficiency and party satisfaction in disputes.

Khallaf (2015) explores the need and viability of judicial mediation in relieving the burden on Algerian administrative courts. Khallaf (2015) looked into the stance of the Algerian legislators who allow mediation under the Code of Civil and Administrative Procedures, highlighting legislative and judicial practices that promote the use of mediation. This study underlines the necessity of legal reforms and mediator training for mediation to work more effectively in administrative disputes.

This study highlights the important role of mediation in resolving administration disputes. It examines the possibility of implementing judicial mediation for administrative conflicts in Jordanian and UAE legal systems with a particular focus on administrative contracts. Since mediation regulations are currently lacking in these regions, this study explored potential legislative amendments and practical measures to incorporate mediation in the resolution of administrative disputes. Moreover, this study explores different perspectives from other countries as evidenced in the academic literature available.

3. RESEARCH METHODOLOGY

A dual approach shall be adopted for this study. First, the Black letter methodology will be applied to provide a well-reasoned understanding of legal principles, cases, and rules through the subjects. To further enhance the black letter law aspect of this study, a systematic analysis of the statutory law governing Jordan and UAE concerning judicial mediation is essential. There is a need to include greater details regarding the statutes governing judicial mediation in Jordan and the UAE. This could include particular laws such as Jordanian Mediation Law for the Settlement of Civil Disputes No. 12 of 2006 and UAE Federal Law No. 40 of 2023 on Mediation and Conciliation in Civil and Commercial Disputes. This will give a more critical overview of how these legal frameworks interact with administrative disputes and highlight any gaps or inconsistencies in current legal provisions.

Second, a comparative approach will be adopted and will also be carried out in order to achieve the overall objective of this research and make the study wider in scope and more valid. The selection of Jordan and the UAE in the comparative analysis was for various reasons. In both countries, comprehensive legislative reforms have been completed in recent decades on substantive laws related to administrative contracts, and judicial procedures as part of a broader regional trend to modernize toward better governance. Despite these advancements, both countries lack explicit provisions for judicial mediation in administrative disputes. Thus, it presents an opportunity to explore the potential benefits and challenges of its incorporation into their respective legal frameworks.

Jordan and the UAE represent two different yet powerful legal systems in the Middle East. Jordan's legislative framework reflects the efforts of a developing economy to integrate international best practices to balance judicial efficiency and access to justice. By contrast, the UAE, as a prominent regional economic hub, has led to legislative innovation, particularly in creating an investor-friendly legal environment. This contrast provides a valuable perspective, allowing for a comparison that captures the different stages of socioeconomic development and their impact on administrative law.

The focus on the black letter methodology and comparative approach emerges from several key considerations: First, the study's theoretical orientation relies on a detailed analysis of legal doctrines, statutes, and judicial systems, to address the theoretical gaps and legal inconsistencies in the frameworks of Jordan and the UAE. Second, the absence of empirical evidence regarding judicial mediation in administrative disputes in Jordan and the UAE makes other methodologies less viable at this stage. Since judicial mediation is non-existent in this context, alternative methods relying on existing practices, empirical data, or judicial outcomes may not yield meaningful results. These chosen methodologies correspond with the research aims, guaranteeing a stringent examination of the legal structures while leaving empirical and interdisciplinary investigations for future studies.

4. RESULTS AND DISCUSSION

4.1. The notion of mediation in the judicial system

Judicial mediation is a prominent alternative method for resolving disputes amicably and has been widely accepted in various legal frameworks. Notably, Jordanian Mediation Law for the Settlement of Civil Disputes No. 12 of 2006, embraced by the UAE legislator in UAE Federal Law No. 40 of 2023 on Mediation and Conciliation in Civil and Commercial Disputes, was incorporated into Algerian legislation under Civil and Administrative Procedures Law 08/09, Chapter Two of Chapter One of Book Five, which highlights the recognition of judicial mediation. The Iraqi legislator, exemplified by Government Contracts Instruction No. 1 of 2008, issued by the Federal Ministry of Planning, acknowledges the significance of this approach. This widespread adoption underscores the importance of judicial mediation as a viable option, particularly considering the escalating costs associated with dispute resolution through traditional legal channels, primarily in contracts and international disputes.

Despite the adoption of judicial mediation by Jordanian and UAE legislators as a significant avenue for resolving commercial and civil disputes, there is a notable gap in their understanding of the concept. Both legislations elucidate procedural aspects and associated provisions without explicitly defining the essence of this method. Hence, this study aims to bridge this gap by providing a clear definition and stressing the distinctive

characteristics of judicial mediation. In this context, the analysis aimed to unravel the concepts and conditions surrounding judicial mediation, providing a comprehensive understanding of this alternative method.

4.1.1. Judicial mediation as a concept

Mediation is generally understood as a process in which a third party assists two or more individuals in resolving one or more disputed issues. Additionally, it is characterized as an optional method employed at the discretion of the parties during any stage of the conflict, allowing them to choose mediation procedures and approaches to comprehend the subject of the issue and devise appropriate solutions. Therefore, it has been defined as "an optional method resorted to at the will of the parties during any stage of the conflict, during which they choose the procedures and method of mediation in order to understand the subject of the dispute and develop appropriate solutions to it" (Al-Jazi, 2011, p. 143).

Judicial mediation is "a procedural process that includes the intervention of one party between the parties to the dispute at their request or consent to reach a settlement of the dispute in an amicable manner" (Al-Jabour, 2015, p. 20). The European Judicial Community defined it as "an agreed upon method for settling disputes brought before the judiciary, through which the judge in charge of examining the dispute, after the approval of the parties, appoints a mediator to work under his supervision in exchange for an attempt to bring points of view closer together and help them find a solution to the dispute presented between them" (Khallaf, 2015, p. 432).

From the previous definitions, the authors find that they all revolve around describing it as an agreement process between parties with specific procedures to reach an understanding and an agreed-upon solution between the two parties to the dispute. It also, as a process, is perhaps obligatorily imposed by the judge to end a contention before him, in whole or in part, between the conflicting parties to expedite the resolution and preserve the opponents' friendship and interests.

4.1.2. Judicial mediation as an alternative court

From previous definitions, the authors clarify one of the most prominent characteristics of judicial mediation. It is not limited to shortening the duration of the conflict and accelerating its procedures; it also maintains an attractive investment environment. Countries strive to attract investment by establishing a reliable investment setting supported by efficient remedies for administrative disputes. Administrative contracts may appeal to foreign investors seeking investment stability and avoiding governance and judicial complexity. The Jordanian legislator confirms this in Article 43 of Investment Law No. 30 of 2014 as states:

"Investment disputes between government agencies and the investor are settled amicably within a maximum period of six months; otherwise, both parties to the dispute may resort to the courts, settling disputes in accordance with the Jordanian Arbitration Law or resorting to alternative means to resolve disputes by agreement of the two parties".

The UAE legislator also emphasized the claim mentioned above in Article 42 of Federal Law No. 6 of 2018 concerning Arbitration regarding the date of the award terminating the dispute.

From an international perspective, the authors stress the importance of resorting to mediation as an alternative means to avoid the problem of applicable law in administrative contracts, which could affect the sovereignty and authority of the state when applicable law is foreign. However, the Jordanian legislator has regulated judicial mediation and has only recognized the parties' agreement before the judge has filed a lawsuit with the competent judiciary. Additionally, the UAE legislator excluded the state as a party to the dispute from going to the mediation processes without legally addressing judicial mediation. From the authors' perspective, the UAE legislature prohibits contractual mediation without judiciary mediation. Reasonable explanations can be provided for judicial mediation's role in guaranteeing the equality of powers between parties and ensuring the highest level of fairness, particularly when the state is a party.

4.2. Mediation in a judicial setting: How it works

Mediation is a collaborative process aimed at reaching a solution that satisfies the involved parties while safeguarding the public interest. The participants in this procedure included the mediator, the court, and lawyers, all of whom played a role in facilitating mediation. It is necessary to clarify the criteria and the subsequent steps that take place when the judge asks the parties to participate in judicial mediation to fully understand the processes of judicial mediation and its possible use for settling administrative disputes in Jordan and the UAE. This discussion provides valuable insights into the prerequisites for a successful transition into the mediation stages.

4.2.1. The conditions for judicial mediation

Some legislation, such as the Algerian legislation, requires the judge to present it to the parties to the dispute (Amin & Ismail, 2022). The Jordanian legislator in the Jordanian Mediation Law for the Settlement of Civil Disputes No. 12 of 2006, Article 3 made the issue permissible based on the parties' request to the case or after they approve the judicial mediation. These requirements suggest that there are necessary conditions for referral for mediation, as discussed in the following subsections.

1) *Acceptance of the claim in the court*: For a dispute to be eligible for mediation, it must first be formally filed and accepted as a litigation case, whether before the magistrate court or case management judge. The authors advocate for an expansion of acceptable cases for mediation to encompass all courts, except for cassation. This broader inclusion, extending beyond the magistrate court or case management judge, aligns with the notion of approving mediation, subject to general litigation conditions.

2) *Admissibility of administrative dispute for judicial mediation*: This condition clarifies that administrative disputes must fall within the category of conflicts that are considered resolvable through mediation. In other words, mediation should not

violate the principles of legality or the public order. Thus, the dispute should be associated with administrative contract disputes; otherwise, it would fall under the purview of the full judiciary.

3) *Consent of the parties*: It is crucial to remember that the third condition relates to the fact that judicial mediation can only be conducted if the parties agree with it. For the parties' consent to be valid, it should be presented to the judge. Although the foundational principle is still rooted in the judicial system, mediation at its core is an alternative solution that can only be achieved through the voluntary agreement of disputing parties to achieve success. During this process, it should also be noted that a party can choose whether to have its entire conflict or only a portion of it mediated, particularly if the subject matter is divisible.

4.2.2. Stages of judicial mediation

Judicial mediation has several stages, from presenting it to the parties involved in the dispute, appointing the judicial mediator, holding sessions, and finally returning to the court.

1) *Offering judicial mediation by the competent court*: The Jordanian Mediation Law for the Settlement of Civil Disputes No. 12 of 2006, Article 3 provides the competent judge with the power to offer mediation to the parties or upon the request of any of them, whether at the beginning or at any time of the proceeding of the case. According to the authors, judicial mediation can be offered whenever it effectively achieves its objective of resolving disputes. However, the most effective time to achieve the desired goal of mediation is when it is offered before the subject matter has been discussed by a competent judge. This step contributes to achieving the intended outcome of the mediation, considering that the process cannot be successful unless the case is acceptable in terms of form and substance. As a result of mediation referrals, the judiciary's role is not diminished; rather, the litigation course is halted or even delayed (Al-Rashdan, 2019).

The legislator did not stipulate whether judicial mediation is permissible or mandatory to resolve disputes between parties in administrative disputes, and what occurs if a judge offers mediation to the parties. Some have asserted that judicial procedures are not invalid (Barbara, 2011). Court is the natural way to resolve contention, and mediation is only an alternative method that does not replace the judiciary. Some believe that the judge's neglect of the opponents' request for judicial mediation allows them to request redress for that neglect before the appellate court (Barbara, 2011). The authors support the first opinion, as it is closest to justice and the right to litigation, given that the lawsuit proceeded within the normal path of litigation, and the opponents would have been better off reminding the judge that the negligent party deserves more loss.

2) *Appointment of the judicial mediator*: The legislator does not address the issue of multiple mediators, meaning that the judge examining the case appoints several judicial mediators, whether on his initiative or at the opponents' request. The authors support the idea that nothing prevents this process, especially if the argument has a complex subject that includes thorny topics (International Centre for Settlement of Investment Disputes [ICSID], 2022). This is because judicial mediation procedures are conducted under the supervision of the judiciary. Nothing deters referring part of the contention to mediation without the other part, as if the matter required an estimate of compensation, for example, without rescinding the administrative contract.

3) *Judicial mediation sessions:* The mediator undertakes preparatory procedures to begin the mediation, including providing a brief and clear summary of the stages and process of the mediation, with all parties or their legal representatives present together, then determining the place designated for holding the mediation sessions, where the parties must submit a summary of the existing dispute and attach it to it. Documents that they believe support each of their points of view are sent to the mediator before the date of the first meeting, after verifying the eligibility of the parties and their legal agents, as the mediator may not single out one party over another to ensure integrity and impartiality. The mediator brings points of view closer together using the methods of dialogue and negotiation (Andrews, 2018). Sessions took place repeatedly for a period not exceeding three months, starting from the date of the first session and not from the date of naming the mediator.

4) *Return to session (closing phase of mediation)*: Mediation meetings in an administrative dispute end with one of two results: 1) the argument reaches an agreement, and then the mediator's efforts result in resolving the dispute partially or fully. Afterward, the mediator prepares a summary of the procedures he took and the conclusion he reached and then moves with the parties to formulate the agreed-upon solution in the form of a draft settlement agreement. Executable and approved by the judge 2) the mediation attempts fail, and the parties are told of a summary of what happened in the mediation meetings and the decision that was arrived at, with confidentiality maintained in the processes and debates that took place, and the case returns to court.

Here, the authors have the right to ask: What if the mediation steps were successful and moving in a positive direction, but the time required for the success of the mediation exceeded three months, then what is the fate of this dispute? Is it permissible for the mediator to continue his/her work or will the dispute return to the judiciary? The authors believe that the mediator must be allowed to continue his work even if he surpasses the time limit stipulated in the legislation if there are positive reasons for this. It is better to expedite the resolution of disputes rather than return to the zero point of the issue before the judiciary, with the possibility of holding the mediator and parties accountable for the reason for exceeding the time frame. This concern requires the intervention of the legislature to clarify the fate of such disputes.

4.3. The scope of application of judicial mediation in administrative contract disputes

The application of mediation, particularly judicial mediation, typically presents minimal challenges in civil and commercial disputes. However, this view differs significantly when it comes to administrative disputes, sparking controversy within the legal domain. The question arises: If mediation proves

effective in mitigating disputes, why is it not widely utilized in the realm of administrative conflicts? In response to this query, the authors explored this issue in two sections. The first delves into the challenges of judicial mediation, whereas the second focuses on the unique aspects of judicial mediation in the context of administrative disputes.

4.3.1. Challenges of judicial mediation and its application in administrative disputes

The examination of judicial mediation in administrative disputes generates controversy regarding its permissibility as an alternative means to resolve such disputes. This contention emerges from differing views of proponents and opponents concerning their adoption. If accepted, the critical question revolves around the scope of its application, namely identifying the specific administrative issues suitable for judicial mediation. This inquiry forms the crux of the debate surrounding the incorporation of judicial mediation into the resolution toolkit for administrative disputes.

The legal community is divided in its perspective of judicial mediation in administrative disputes, with supporters and opponents expressing differing viewpoints. This divergence can be viewed as a natural response to legislative texts that may demonstrate or be interpreted as implying a restriction on judicial mediation, particularly in scrutinizing the legality of administrative decisions. This contention arises particularly in situations involving a full-judicial dispute, where proponents contend that mediation should be permissible, drawing parallels to the applicability of reconciliation and arbitration in judicial matters.

1) Jurisprudence opposing judicial mediation in administrative disputes: Supporters of opposition jurisprudence relied on the necessity of the administrative judiciary having jurisdiction over everything related to administrative disputes without the possibility of resorting to any alternative means (Fatih, 2014). They based their opposing position on several grounds that we can summarize into two grounds for rejection:

a) Legal basis: France is one of the most developed countries that accepts mediation as an alternative solution to the judiciary. Some have pointed out that the French legislator clearly and explicitly recognizes mediation in civil and commercial matters, with the ambiguity of their position regarding administrative disputes (Belaiz, 2008).

According to Article 6 of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters, "mediation can provide an economical and rapid extrajudicial solution to disputes in civil and commercial matters". This insight is nothing but confirmation that the European legislator has limited the use of mediation to civil and commercial matters, ignoring any interpretation that would suggest the application of mediation to administrative disputes.

Whereas in Jordan, in the opinion of the researchers, the legal foundation for the potential rejection of judicial mediation stems from the content of Article 5 of the Jordanian Administrative Judiciary Law No. 27 of 2014. This article explicitly confines the court's jurisdiction to appeals associated with final administrative decisions, while excluding administrative contracts from its purview, as articulated in the text of Article 5. This limitation forms a key consideration that influences researchers' views on the feasibility of judicial mediation in certain administrative dispute contexts.

In contrast to Jordan, the UAE lacks a specialized administrative judiciary dedicated to handling administrative disputes. Despite this absence, the UAE legislator explicitly excluded disputes involving the administration as a party from the realm of mediation. Notably, this exclusionary provision does not specifically address judicial mediation, a point that will be examined in further detail later in the following section.

Besides the variations in the legal systems governing the parties involved in the administrative dispute. The crux of this issue lies in the constraints imposed on the administration's will as a disputing party, bound by the limits and conditions outlined in administrative law. These regulations are non-negotiable, creating a hurdle that parties cannot bypass or disregard. Administrations are obligated to adhere to these rules, in stark contrast to the other party, which operates under the principles of private law and enjoys more flexibility. This distinction in legal frameworks poses a significant obstacle to resolving disputes through mediation. The disparate interests of the parties exacerbate this challenge, with the administration striving to uphold the public interest while the opposing party seeks individual redress. This inherent clash of goals undermines any attempts at mediation, as parties are fundamentally driven by conflicting objectives that impede the prospect of reaching a mediated settlement.

b) General principles: Approval of the division of powers leads to another fundamental concept — the distribution of powers among various authorities. This issue becomes a central concern for supporters of the Rafid doctrine, who maintain that the administrative judiciary's use of provisions from the Civil Code infringes on the jurisdiction of the regular judiciary. Therefore, the administration's insistence on benefiting from the privileges of public law and refusal to be subject to private law is a *fortiori*, not subject to mediation, given that the mediator may be a private person who is not a judge. They also argue that the administrative judge's main limits and first task lie in monitoring the administration's work, which is a concern that is not achieved in mediation that seeks to bring points of view closer together to reach an appropriate solution for parties.

Undeniably, the fundamental underpinning of this legal perspective is rooted in the concept of public order. The principle of public order serves to prioritize the public interest over private interests, aligning with the fundamental purpose of establishing administrative entities. Consequently, the functions of administration are intrinsically tied to the concept of public order. The authors further correlated this idea with the presumptions of the safety and legitimacy of administrative decisions. These presumptions posit that the actions undertaken by the administration inherently aim to advance the public interest, emphasizing its priority. Given this perspective, the opposing viewpoint becomes more stringent, asserting that the administration should not resort to a non-judicial entity for dispute resolution or a body not explicitly designated in legislative texts. This strict

stance is driven by adherence to principles such as public order, safeguarding the presumed legitimacy of administrative actions, and prioritizing overarching public interest.

2) Jurisprudence supporting the possibility of judicial mediation in administrative disputes: In contrast to the rigid stance opposing judicial mediation in administrative disputes, an alternative perspective supports the feasibility of utilizing mediation. Those in favor of mediation adopt a more moderate interpretation of legal texts and principles, approaching the matter with a voluntary disposition and a positive outlook that aligns with the distinctive nature of administrative disputes. This contrasting viewpoint seeks to find a middle ground that acknowledges the potential benefits of mediation within the realm of administrative conflicts.

a) Legal basis: The French legislator permitted resorting to conciliation whenever the parties accepted the possibility of the court offering conciliation to the parties in the dispute (Boukhalfa, 2007). This permission is included in Article L.211-4 and Article 1-621-R of the Administrative Justice Code (2019). Although this call is not binding, it allows for the possibility of resorting to alternative means to resolve issues (Boukhalfa, 2007). Accordingly, supporting jurisprudence confirms the right to resort to judicial mediation when the French legislator recognizes mediation in cross-border disputes and refers to the matter of considering them to the administrative judge, who has the right to resolve them through mediation within specific controls and conditions (Khallaf, 2015). The French legislator also stipulated the legality of resorting to judicial mediation in tax disputes. (Jarrosson, 1977) In these ways, the mediation then found its way into administrative disputes.

In Jordan, it can be seen that resorting to judicial mediation is permissible and confirmed in administrative disputes as long as it falls outside the scope of administrative decisions contained within Article 5 of Administrative Judiciary Law No. 27 of 2014. These are matters in which arbitration and conciliation are lawful alternative means of resolving disputes. Judicial mediation is also perceived as another approach given that there is nothing to prevent it from being one. The authors also believe that the Jordanian legislator's exclusion of administrative contracts from the jurisdiction of the administrative judiciary and making them the jurisdiction of the civil judiciary means that the provisions of private law apply to them, allowing them to be subject to the provisions of judicial mediation. In the researchers' opinion, it is more likely that the Act amending the Law on the Formation of Regular Courts No. 30 of 2017 states the need to create economic judicial chambers and expand the jurisdiction of the Amman Court of First Instance to include cases related to administrative contracts involving the state. Since judicial mediation takes place before the Court of First Instance and the economic chambers, this means, according to the scholars' opinion and analysis, the possibility of activating judicial mediation in this type of administrative dispute. The authors also find in the text of Article 3 of Jordanian Investment Law No. 30 of 2014, a strong support that allows resorting to judicial mediation in administrative disputes, as is the case in tax disputes.

In the UAE and in light of the UAE legislator's adoption of the principle of unity of the judiciary, the authors view this introduction as the possibility of resorting to mediation in administrative contracts, especially those concluded within the framework of international contracts. It should be noted that the UAE legislator has specified topics that may not be covered by judicial mediation, meaning that what is not stipulated is what judicial mediation is permissible.

b) Avoiding stringency in applying general principles: The authors contend that the absence of specific legislation governing administrative trial procedures, whether in Jordan or the UAE, necessitates reliance on the Code of Civil Procedures. This dearth allows for the adaptation of suitable provisions for administrative disputes. In Jordan, considering the role of the administrative judiciary, there might be a specified jurisdiction designated for the Administrative Judicial Court, particularly concerning the principle of the legality of decisions. The authors suggested that anything less than an explicit prohibition in this exclusive text could be regarded as applicable to the civil judiciary, thereby permitting the option of resorting to mediation. This perspective advocates flexibility in interpretation and application, acknowledging the adaptability of general legal principles to the unique context of administrative issues. Moreover, the safeguarding of public order is not inherently contradictory to the practice of judicial mediation. The fact that judicial mediation operates under judicial auspices serves as a preventive measure, ensuring that the core tenets of the public order principle remain unaffected.

Building upon the above considerations, the authors assert that there are no inherent obstacles to judicial mediation given its significant advantages. Ignoring the potential benefits of judicial mediation might have detrimental effects on disputes, emphasizing the importance of considering them. This perspective calls for a balanced approach, recognizing the potential positive impact of judicial mediation while upholding the principles of public order.

4.3.2. Scope of judicial mediation in administrative disputes

In terms of practices, legislation, and legal practices, judicial decisions are made clear by the use of legal doctrine or interpretation of laws and regulations by judges in courtrooms. There is a tendency to be open to judicial mediation; however, it is important to note that this approach is not always universally accepted or applied across all situations or contexts. Some limitations still exist in which mediation is not allowed in the types of disputes that fall under processes. In particular, they relate to the legality or validity of official decisions made by authorities or cases involving the fundamental principles of public order. As a result of these considerations and the constraints discussed above. The following subsections shall delve into an examination of which types of conflict are suitable for resolution through mediation and which are considered unsuitable for this particular method of dispute resolution.

Disputes that are not appropriate for judicial mediation

According to Jordanian legal scholars, legal disputes cannot be resolved through judicial mediation. Instead, the responsibility to consider such disputes falls on the administrative judge, following the principle of legality and its protection, and includes disputes related to administrative decisions (Khallaf, 2015). The reason for this is that disagreements pertaining to legal claims are established and conducted based on general legal centers and foundations, aiming to protect not only the private interests of those who reject them but also the public interests by safeguarding the legitimacy of administrative actions, the legal system, and public money (Khallaf, 2015). The principle requires complete submission to the law, whether by the state or individuals.

In the regulation of Mediation Law for the Settlement of Civil Disputes No. 12 of 2006, the Jordanian legislator did not explicitly specify the issues that were subject to mediation or excluded from it. Article 11 of the law states, "The provisions of this law apply to cases heard before case management judges and magistrate judges that a judicial ruling has not decided". This approach was maintained in the 2019 draft mediation law, demonstrating a consistent stance by the legislator on this matter.

Article 28 of the UAE Federal Law No. 40 of 2023 on Mediation and Conciliation in Civil and Commercial Disputes outlines disputes ineligible for judicial mediation. They include:

- Urgent and temporary requests and cases.
- Cases in which the government is a party.
- Tenant lawsuits filed by committees specialized in rent disputes.
- Work-related claims.
- Personal status lawsuits.

Even though Jordanian legislators do not explicitly specify the nature of excluded disputes, the authors can infer some commonalities based on the general legal framework and the principle of legality. These principles lead to the identification of certain omitted disputes that are shared between Jordanian and UAE contexts.

Issues related to personal status: These encompass both articles related to purely personal status and those connected to the interests and financial rights arising from personal status matters. Matters linked to purely personal status may not be subject to any form of transaction, and consequently, they may not be suitable for mediation. Examples include issues connected to the status and capacity of individuals, in addition to those pertaining to the validity or invalidity of marriage and divorce. As for articles about financial interests and rights arising from personal status, reconciliation, and mediation are permissible, including compensation for breaking off the engagement or the amount of due alimony.

Matters related to public order: This category includes disputes related to public order, encompassing issues associated with acts of sovereignty, ownership of public funds, and cases involving human and drug trafficking. Such concerns, owing to their connection with public order, are typically excluded from the scope of mediation.

Issues related to nationality: These are connected to the acquisition of nationality, its conditions, and its revocation. This is because nationality-related questions pertain to the state's sovereignty and are within its exclusive jurisdiction, meaning that the state has the right to handle them (Bawa, 2016).

Matters in which the state is involved, such as those concerning public funds, public order, or state sovereignty, are not within the authority of the civil attorney general or the state attorney general to compromise or relinquish any part of them.

There are also issues related to future rights, such as criminal issues and disputes related to implementation (Al-Rashdan, 2019).

Therefore, we see in the previously mentioned concerns that they fall within the principles of public law and the supreme interest of the state, which belongs to the nation in general and not to private money.

Disputes appropriate for conducting judicial mediation in administrative disputes

Apart from legal claims, which are cases that cannot be settled through judicial mediation, those related to the legalization of rights or full justice may be resolved through judicial mediation (Khallaf, 2015). As it deals with disagreements over a personal right, the subject is based on personal and legal arguments to address material and moral damage suffered by holders of acquired rights. The most prominent disputes are as follows:

- A claim for compensation or liability;
- Administrative contract lawsuits.

According to our understanding, if a claim for compensation and a claim for cancellation are not filed together, the Jordanian legislator allows for the claim for compensation to be filed separately with the regular judiciary based on the text of Article 5 of the Jordanian Administrative Judiciary Law No. 27 of 2014. In the UAE, due to the adoption of a unified judicial system, compensation claims will be heard by the same judiciary. The authors believe that nothing prevents mediation in compensation claims (Matar, 2009).

Likewise, the cases in which the legislator has permitted resorting to arbitration are among the first in which conciliation and mediation are permissible as long as their subject matter is not related to the state and the principle of legality. Article 3 of Jordanian Arbitration Law No. 31 of 2001 states that:

"The provisions of this law apply to every consensual arbitration that takes place in the Kingdom and is related to a civil or commercial dispute between parties of public or private law, regardless of the nature of the legal relationship around which the dispute revolves, whether contractual or non-contractual".

We believe that if arbitration is permissible in relations between parties involving public law persons, then judicial mediation is permissible as a *fortiori*, especially since it takes place under the supervision and umbrella of the judiciary. This assertion is supported by the text of Article 7(A) of the Magistrate Courts Law No. 23 of 2017, "If it becomes clear to the judge at the outset that the dispute can be settled through mediation, so he may, with the agreement of the opponents, refer the case to mediation...". In the researchers'

perspective, there is nothing in this except that mediation is permitted whenever possible.

The authors added the nature of the circumstances that may surround the contractor's implementation of his obligations, such as the theory of emergency circumstances, the location of the wage, and unexpected financial difficulties (Al-Khalayla, 2012). The nature of the administrative contract and engineering and construction issues it contains requires specialists and flexible means of dealing with them; therefore, resorting to judicial mediation is necessary, as it provides a more knowledgeable and flexible approach than the judiciary alone (Al Jamal, 2012).

Suppose a Jordanian legislator has removed administrative contract disputes from the jurisdiction of the administrative judiciary. In that case, Jordanian and UAE legislators' conclusion of contracting contracts, including the FIDIC contract, especially the international contract, and their acceptance of the basic contract book for these contracts means accepting judicial mediation to resolve the concerns that may arise from these contracts.

4.4. The specificity of judicial mediation in administrative disputes

The preceding discussion regarding the legitimacy of judicial mediation in administrative disputes underscores its distinctiveness compared with analogous civil and commercial disputes. This distinction forms the crux of our exploration, which aims to elucidate the unique characteristics of judicial mediation in administrative contexts. Subsequently, we examine the stance of comparative law on this matter, seeking insights from legal systems outside immediate jurisdiction.

4.4.1. Reasons for the specificity of judicial mediation

The distinctiveness of judicial mediation in administrative disputes is underpinned by several factors that distinguish it from private law disputes. Unlike private law relationships, which thrive over the autonomy of the parties involved, administrative disputes lack such freedom. In public law, the administration's ability to act is constrained by regulations designed to protect the public interest. This discrepancy is due to the inherent nature of administrative disputes, which focus on the principles of legitimacy and safeguarding of public money and order.

The concept of public order is crucial in administrative disputes. Defined by the Algerian administrative judiciary in 1986 as "the set of rules necessary to protect social peace so that every inhabitant can exercise their legal rights within limits" (Boukhalfa, 2007, p. 41). The concept of public order requires the protection of public interest in its various concepts. The administration, equipped with the necessary means and authority, aims to safeguard public goods and funds. Therefore, regulations are bound to achieve this goal, in contrast to private individuals who pursue their interests and manage their private funds accordingly.

Furthermore, any outcome of judicial mediation must not conflict with the principles of administrative laws. Public entities cannot dispose of public assets or make undue payments, except when permitted by legislation. They are restricted from negotiating rules that govern the organization and interests of the state, such as relinquishing jurisdiction or disposing of state-owned property. Administrative law imposes these restrictions to ensure that the actions of public officials align with legality (Kanaan, 2008), which means that those who rule and those who are ruled are subject to the provisions of law.

In the judicial mediation process, the judge plays a role in convincing disputing parties that judicial mediation will resolve their issue (Khallaf, 2015). After verifying the possibility of submitting the dispute to mediation, the judge helps the parties choose a good mediator so that the mediation procedures remain under the control of the court and do not deviate from their purpose. Additionally, the judge ensures that the agreement complies with public order and principles by approving the minutes of the mediation prepared by the mediator. Finally, administrative law provides an agreement on the force of the *res judicata*.

Considering the above discussion, the role of administrative judges requires monitoring the validity of allegations and procedures applied. If they see that neither is valid or consistent with the general principles and rules of public law, they rule them out and prevent their implementation.

4.4.2. Judicial mediation and its role in governance administrative contract disputes

The conflict of interests, especially between people of public and private law, in the absence of proper legal and judicial regulation, is one of the most important problems in searching for alternative means that guarantee speedy resolution of the dispute and, at the same time, fairness and transparency, as the period required to settle administrative disputes may take time.

It should be noted that judicial mediation has emerged as a new and modern method of settling conflicts in the USA (Al-Salibi, 2010). During 1965–1978, due to the increase in judicial investigations and lawyers' fees, the USA was considered the first country to adopt judicial mediation in administrative disputes, as the federal legislator approved it in 1990 by issuing laws related to judicial mediation (Al-Salibi, 2010). Indeed, the administrative judge in the American District of Massachusetts imposes judicial mediation on the parties to the dispute, just as in Switzerland federal law stipulates judicial mediation in administrative matters (Jaloul, 2012).

Based on the above discussion, judicial mediation, as a new means of resolving disagreements, can be used in administrative contract disputes as it is excluded within the framework of legality principle disputes. However, it can be taken into account in rights disputes and compensation cases, given that it can include mediation following governance rules, which increases the confidence of the conflicting parties, especially investors, that their rights enjoy judicial protection. In addition to the fact that expenses are low while going to court can be quite time-consuming, the delay issue in adjudicating cases is not limited to one country or another. For example, in France, cases are left unresolved before the French administrative judiciary for ten years,

and the role of the Egyptian State Council in administering justice is still ineffective (Al-Jabour, 2015). Likewise, in Jordan and the UAE, a significant number of lawsuits and pressure on the courts were among the reasons that prompted the acceptance of alternative means, including mediation. The importance of judicial mediation and its role in governance emerges in administrative contracts, especially international ones, which do not want to fall within the question of an abuse of power or violation of human rights (Khallaf, 2015), such as contracts for construction and public works.

Egypt is widely regarded as a leading country in the Arab world for its efforts to promote mediation without fees to encourage conflicting parties to seek solutions with fairness and governance.

In Jordan, the judiciary was reluctant to adopt judicial mediation as an alternative solution to settle disputes despite the existence of arbitration and its clear application. The idea was to conduct a scientific study on the feasibility of using this method in the Jordanian legal system before preparing its own law. A research team was formed to investigate reality in the courts. The Jordanian Court then concluded several results and recommendations to prepare a special law for mediation as a substitute approach for resolving disputes. The first mediation department was established based on the Amman Court of First Instance on June 1, 2006, after which this system was introduced at a prominent and rapid level in the Jordanian judiciary where the percentage of referred cases increased. In 2007, the rate of cases referred for mediation was 131 per month, which decreased to 73 cases per month in 2008.

This method of resolving administrative disputes originated in the USA and was subsequently accepted in many Western and Arab countries. As for Jordan and the UAE, the authors analyzed and interpreted the texts in a manner that allowed the application of judicial mediation to administrative disputes.

4.5. Integrating judicial mediation: Legislative recommendations

Resolving administrative disputes using timely methods is crucial for governments to uphold the rule of law and promote a favorable atmosphere for business operations. In the case of Jordan and the UAE, incorporating mediation as an approach alongside conventional court proceedings can offer substantial advantages.

4.5.1. Legislative clarity

Legislators in Jordan and the UAE should explicitly allow judicial mediation in administrative disputes, with a mandate for judges to propose mediation in relevant cases. Alternatively, they could rename the law to Judicial Mediation Law to encompass all conflicts, aligning with practices in other countries. This endorsement should be similar to the provisions for arbitration, applicable to matters not conflicting with public order and the principle of legality (Albtoosh, 2019). The author believes that the law should be clarified and expanded to include the following provision: In cases related to contracts or economic issues, even if involving the state, the judge presiding over the case is mandated to propose mediation to the disputing parties. Alternatively, consideration may be given to renaming the law as Judicial Mediation Law to encompass all conflicts, aligning with practices in countries that have implemented administrative mediation alongside other dispute categories.

4.5.2. Governance rules for mediation procedures

Governance rules for mediation procedures have to be clarified for the best legal processes. For example, if the mediation initiated is not concluded within a legally defined period, there needs to be a provision of the mediator's responsibilities, including the power of a judge to extend the mediation period or some legal responsibility against a mediator for failing to carry out their duties (Albtoosh, 2019; Alshawabkeh & Almajali, 2021; Jami et al., 2020; Hansbrough & Singh, 2014). This scheme can then be followed by an amendment to include the following: The judge can extend the mediation period once he feels that the mediator's work is serious. Any mediator who does not fulfill his job and take all the measures necessary to bring the mediation to an end will be brought before the law.

These are the key elements that, applied to the jurisdictions of Jordan and the UAE, considerably enhance administrative dispute resolution and promote an efficient and equitable justice system (Andrews, 2018; Saleh, 1985; Jami et al., 2020; Albtoosh, 2019).

5. CONCLUSION

This paper has analyzed in detail the possible role of judicial mediation in the improvement of administrative dispute resolution in Jordan and the UAE, concentrating on its capacity to reduce the burdens on courts, accelerate proceedings, and uphold legal order. Judicial mediation presents a feasible alternative to traditional litigation since it offers friendlier resolutions and enhances efficiency. The comparative examination elucidates considerable opportunities for the integration of mediation into administrative legal frameworks, addressing the absence of explicit provisions in both jurisdictions. Legislative reforms, such as the incorporation of explicit legal stipulations and governance regulations, are imperative to ensure mediation's applicability in administrative disputes while safeguarding principles of legality and public order. The findings emphasize the significance of judicial mediation as an instrument for creating a business-friendly environment, essential for attracting investment and augmenting economic expansion in these nations.

While this study presents actionable legislative propositions, it is mainly theoretical, relying on legislative texts and secondary sources analysis. Future research should be done based on empirical studies, such as the analysis of case studies and interviews with legal practitioners, testing the practical difficulties and advantages that judicial mediation may present. Furthermore, factors such as judicial independence, administrative capacity, and public confidence in mediation necessitate further investigation to evaluate their influence on the efficacy of the proposed reforms. To address these limitations, future research may utilize this study as a foundational reference to develop more refined theoretical insights on the adaptation of

judicial mediation can bridge traditional and modern dispute resolution mechanisms, not only within the framework of Jordan and the UAE but also to encourage neighboring nations in the Middle East to explore similar reforms. In conclusion, judicial mediation signifies a transformative progression toward a more equitable and efficient justice system, offering substantial advantages for administrative dispute resolution and establishing the foundation for further legal advancements.

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