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THE CONCEPT OF THE IRAQI COMMERCIAL COURT

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ABSTRACT. With the emergence of new types of disputes, we anticipate the injection of numerous cases and lawsuits into a single regulatory structure, posing numerous problems related to the judiciary's exhaustion, the length of the dispute, the inaccuracy and caution required when issuing resolutions to these disputes, which prompted states to adopt an important principle in their constitutions, namely the judiciary's specialization. Indeed, speeding up the judicial process is associated with achieving justice, as necessary procedures must be completed from the time the case is filed to the time the role of a judgment is established, provided that the legal texts and principles governing the dispute before the judiciary are considered, and then justice is achieved by combining the elements of time and mastery, as can be expected from the time required to resolve a case in the ordinary. This period is due to the close scheduling of hearings before the competent court as a result of the small number of cases brought before it; on the other hand, the judge who is concerned with experience and know-how avoids the use of experts in all small and large matters, as his specialization in the field of advocacy and the filings before him from the S.A.N. allow him to develop his skill and strengthen his judgments outside of his area of expertise.

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Introduction

Introduction

The existence of specialized courts requires procedures approved and determined by the laws that arise these particular courts, and is essential as it is the simplicity and ease of the judicial procedures followed in specialized courts as a factor of attraction and a guarantee of guarantees of justice, as there is no lesson in the specialization of the judiciary's courts and judges unless the proceedings are also private and have been facilitated and easy, otherwise This is certainly about the difficulty of the job that performs the service with technical and administrative

procedures by deleting the repeated and useless processes that are not intended and using, for example, modern electronic means and the requirements of technological technical progress created by the modern era and related to the training and development of the skills of judges on the one hand, and the use of modern technological means on the other. As we look closely at the branches of social life, we find many disputes arising on the occasion of the emergence of modern contracts and processes that did not exist before, as is the case with commercial disputes in general and investment disputes in particular, especially if the state policy aims to attract and attract investors. It is one of the most attractive factors for investors, which Iraqi laws, of a commercial nature, went particularly after 2004 towards providing various legal guarantees, including the commercial court formed on the basis of the rules of article 22 of the Law on Judicial Regulation No. 160 of 1979 in the replacement of section 7 of the Number 12 of 2004 issued by the Coalition Authority. The problem of the study stems from the recognition of the existence of such a court within the formations of the Iraqi judicial system without its own legal rules regulated by it on the one hand and on the other hand, the Iraqi legislator found this court within the formations of the court of intuition despite its specialization with specific exclusive jurisdictions, so the recognition of its existence was shy and not commensurate with the cause of this existence, the first was to analyze these rules and try to correct the defects or deficiencies that plague them. Finding legal rules consistent with the desire to apply the philosophy of judicial specialization sought by the legislator to find a group of courts specialized in various disputes.

In order to explain this important judicial edifice, we found that the concept of the Commercial Court and the terms of reference of the Commercial Court must be explained. The economic development that Iraq has witnessed in the last few years and its need to attract investments in various areas, is a reason why guarantees and incentives must be provided for these investments, and the reassurance of Nan to a fair specialized judiciary is among the most important of these guarantees, as the judicial decisions are strong. The speed with which foreign-party investment disputes are resolved without resorting to arbitration. We will try to clarify the concept of the Iraqi Trade Court by dividing this research into two demands, first addressing the definition of the Iraqi Trade Court, while the second will show the legal nature of the Iraqi Trade Court.

Study Methodology

We have a study of the iraqitexts related to this court and compared to the Egyptian Commercial Court, especially since we support the need for a commercial judiciary specialized in the consideration of commercial disputes in the world and banking. Based on a series of judicial decisions issued by these judicial bodies.

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The first requirement

Definition of the Iraqi Commercial Court

A commercial court in Iraq was established on the basis of article 22 of the Judicial Regulation Act No. 160 of 1979 in the replacement of section 7 of the 2004 Section 12 of the A.T.A., where a first commercial court was opened in Baghdad under the Baghdad Court of Appeal. The appeal of Basra and the resumption of Najaf, due to the success of the Commercial Court and the large number of commercial transactions due to the policy of economic openness, which led to an increase in the volume of lawsuits and disputes, as in disputes with the application of the Iraqi Investment Law No. 13 of 2006 amended, and the law on oil liquidation No. 64 for the year 2007, in addition to The rulers of the commercial law for businesses included in the content of Article 5 of the Iraqi Trade Act No. 30 of 1984 concerning the work of industry and trade and the extraction of raw materials as well as the workers contained in Article VI of it, which is accompanied by the broad interpretation of the texts of these articles for what may be new and updated as a result of the major technological developments that the world is witnessing every day. It is within the jurisdiction of this court that all that the paragraphs and texts of the articles in A.J. Gano N.A. take on a commercial character, provided that no one has a foreign style, such as trademark law and commercial statements No. 21 for the year 1957⁽ⁱ⁾ The Trade Agency Regulation Act and other laws of commercial status.

From all of the above we can see that the amount of trade in Iraq cannot be assessed for the following reasons

- 1- For the commercial court, the parties to the dispute must be at least one of them a foreigner. While the parties to the dispute in other civil courts are necessarily patriots.
- 2- The dispute must be in commercial disputes, the bulk of which is occupied by investment disputes.ⁱⁱ
- 3- The exclusive terms of reference of the Commercial Court concerning the group of business and distinguished business activities, especially investment disputes, especially since privatization has become one of the economic foundations adopted by the Iraqi Constitution of 2005, as

article 25 of it specified on a((the state ensures the reform of the Iraqi economy according to modern economic foundations and ensures the investment of its full resources, diversification of its sources and promotion and development of the private sector)). The Constitution, which can be counted as a constitutional basis for direct privatization, as this article stipulates (II: it regulates by law the provisions for the preservation and administration of the state and the conditions for its disposal and the limits in which it is not permissible to go away from any of these funds.) The special law is the regulated and prescribed rules, and the mandate of discrimination is not administrative decisions that control and impose restrictions on the movement of the private sector suddenly as it was in place before 2003, as the economic system in Iraq was characterized by excessive centralization and the dominance of the state in its public sector to the private sector and try to limit it to the narrowest limits and restrict private activities to operate within the central general economic system, ⁱⁱⁱ As a result of these constitutional principles, many economic activities have begun to be carried out by the private sector, whether in the form of industry and trade A, and with regard to the practice of banking through the licenses granted by the Central Bank of Iraq to private banks after certain conditions are met, as well as investment projects in Iraq.

In Egypt, two commercial partial courts were established in 1940, the first the Cairo Court of First Instance and the second, the Alexandria Court of First Instance. ^{iv} () These courts are not a distinct new class that is subject to the existing court class, and these courts have grown into the class of the courts of the subject matter and are not different in their composition and procedures from those that hear civil proceedings.

It should be noted that commercial courts have been established in the past under the mixed judicial system. ^v After the passage of the Egyptian Civil and Commercial Pleadings Act No. 77 of 1949, the commercial court system was abolished on the basis of the reasons given in the explanatory memorandum of the Law of Pleadings, in which it went on to say: (The presence of these courts in the French legal system is the result of historical considerations that required it in the past, but it was overturned and therefore narrowed by the French. ^(vi)

Based on the same considerations, the current Egyptian Civil and Commercial Pleading Act No. 13 of 1968 and judicial regulation law No. 46 of 1972 did not establish specialized commercial courts and merely partial courts to hear commercial cases in important major cities. ^(vii)

It should be noted that the trial courts in Egypt decide on civil and commercial cases worth more than 40,000 pounds, but the magistrates courts are competent to adjudicate cases that do not

exceed forty thousand pounds, and an exception to these rules that specify the jurisdiction of the two courts mentioned. Neither may hear civil proceedings, nor may other magistrates' courts in Cairo and Alexandria adjudicate a commercial matter. ^(viii)

Thus, the Egyptian commercial courts are ordinary courts that do not live up to the rank of specialized courts as in the case of economic courts, in terms of cases that can be considered by the court first and in terms of the composition of the economic court secondly as well as in terms of the procedures introduced by these courts such as the system of preparation and the use of experts in a special way, because the procedures of the Egyptian Commercial Court are the normal procedures for litigation and consist of the same judges of the Magistrate's Court and not specialized judges, and even With regard to the methods of appealing the rulings of the Economic Court, and its strange criminal jurisdiction, with regard to the case arising from the application of a set of laws within the jurisdiction of the Economic Court, which will be stated not really in the second chapter of this study. ^(ix)

The Egyptian commercial courts are unable as such to absorb the claims of investment, especially since investment is one of the important images of trade and therefore needs special judicial procedures based on speed and facilitation so that the investor can be reassured and trust the group of governors issued by her, It is not enough to provide benefits and exemptions to attract investment, but this attraction depends on the legal approach that deals with investment disputes, especially with regard to speed, justice and the use of specialists.

In Egypt, ^x there were those who advocated the idea of mixed commercial courts, which had been transferred to the Egyptian judiciary through the author of the old Egyptian case law, a French lawyer who lived in Egypt, as this idea was founded in the French case law repealed 1806. ^(xi)

Accordingly, the Commercial Court in Iraq constitutes a combination of guarantees to encourage investment, especially since the majority of contracts in economic activity are of the long type A. It is represented in the country, which supports the certainty of the activity and thus the expansion of investment. ^(xii)

The second requirement

The legal nature of the Iraqi Trade Court

Due to the specificity of the court in terms of its terms of reference, which do not fall within the jurisdiction of another court so that no other court can consider investment disputes with a foreign party, otherwise the fate of the decision will be null and void, considering the issuer of

its issuance as not competent as if hearing these cases, for example the Labor Court, and may be considered by the court as a normal court of justice considering a group of Aat, which is established on the occasion of the application of specific laws because of the laws it applies. Another trend is that this court is a judicial body specialized in certain and specific disputes, and has exclusive jurisdictions determined by its own law, and therefore considers that it is not a normal court of justice, but its specialty does not make it an exceptional court or a special court.

Knowing the legal nature of this court is important to say the constitutionality of its existence and recognize it, and then to initiate litigation, so that the decisions and rulings issued by it have the power of obligation and enforceability.

We will show this by dividing this application into two branches, which deal with the extent to which the court has adopted a committee or an arbitration panel, while the second branch deals with opinions that the court considered to be an ordinary court that is no different from other civil courts mentioned in the procedural laws.

First branch

Iraqi Commercial Court arbitration tribunal

Due to the fact that the court is competent to hear disputes of a commercial nature, through being related to investment, it has been given commercial status by the law, which, on the other hand, prefers to resort in their disputes to arbitration to stay away from the complex long litigation procedures that are not commensurate with the speed required in this business on the one hand, and on the other hand, transactions Commercial when it consists of investing a foreign party, it tends to arbitrate more than the tendency to submit to the national judiciary of the state attractive to investment, especially since certain laws such as the investment law allow the termination of disputes arising from the investment contract by directing to national and international commercial arbitration according to the agreement. It is concluded between the parties under which the arbitration proceedings determine its destination and the applicable law. ^(xiii)

Arbitration has a major role to play in resolving investment disputes, as the parties to these disputes prefer to resort to arbitration for its confidentiality, flexibility, experience of arbitrators, independence and impartiality, as well as the speed of adjudication of disputes, all of which are guarantees in trading transactions, which depend on two solid qualities, namely

commercial credit and sponsorship in the completion of business. In the second place, we believe that arbitration has disadvantages in relation to investment disputes, which are characterized by the arbitrator's decision as unnecessary if it is not ratified by the ordinary judiciary, and therefore cannot be implemented after this ratification and after the payment of the resulting judicial fees. ^(xiv)

In addition to the proportionality of the arbitration in terms of the persons and the content (subject), this means that the award is limited to the persons who appointed the arbitrators and to the subject on which they have been able to arbitrate. ^{xv} In addition, the expenses incurred by arbitration for the wages of the arbitrators, as well as the fees required by the ratification of the award and the fees for the implementation of this decision, which are met by the ordinary courts, create a reluctance to resort to this method of resolving disputes in general and banking in particular.

In order to indicate whether the Iraqi Commercial Court is an arbitral tribunal, we will show arbitration by defining it, its nature and distinguishing it from the ordinary judiciary, through the following paragraphs:

First: the definition of arbitration

Arbitration is defined as "the agreement of the parties, their authorization or the light of the conditions they set on the selection of one or more persons who decides on what arises in the future or actually arises between them from disputes by binding judgment without the court." ^(xvi)

Arbitration is a consensual contract that is positively accepted between adversaries and is a friendly way to resolve disputes. ^{xvii} Some express arbitration by saying that the private justice system, which is not far from the authority of the judiciary, has a real value based on the role played by this authority through two pillars (assistance and oversight). ^(xviii)

Some distinguish between the arbitration clause and the arbitration advice because the first is an agreement to offer the antagonism that may be made in relation to the implementation of a particular contract before an arbitration tribunal for decision and agreed upon at the outset, while the agreement is the subsequent agreement on arbitration after the establishment of the dispute. ^(xix)

Article 1 of the Iraqi Arbitration Bill 2011 defines arbitration as ((the parties to the dispute freely agree to resort to the arbitral tribunal for adjudication, whether or not the body handling these proceedings is an organization or a permanent arbitration centre). ^(xx)

It seems to us through the different definition of arbitration by jurists that its nature has not been agreed, some of them have added to it the nodal status, and some of them said that arbitration has a judicial nature, while some have found arbitration to be mixed nature between this and that.

Second: The nature of arbitration

Some laws have considered arbitration to be an agreement,^(xxi) therefore, an agreement that makes arbitration of a certain character, it is a condition that is included in a contract. And a consultation agreed upon after the establishment of the dispute, it is the previous or subsequent agreement or within the terms of the contract because the use of arbitration is in a special interest while the judiciary is in the public interest.^(xxii)

Part of the jurisprudence supports this nature of arbitration because of the basis from which arbitration derives its mandate, which is the will of the litigants who have set up a *Leh*, while the judiciary adopts the general jurisdiction to resolve disputes.^(xxiii)

While another trend of jurisprudence went on to say that the arbitration has a judicial nature because it begins with a contract and ends with a ruling and this ruling is an act of the judiciary.^(xxiv) The arbitrator does not prevail over the will of the opponents on the one hand, as well as the parties' submission to the ruling for independent procedures.

While a third *r.A.* goes on to say that arbitration is a mixed character, it is in fact not a pure agreement or a pure justice, and if it grows it is a system that passes in multiple stages, each wears a special dress, and gives it a different character, it is in a and has an agreement and in the middle of it. These images should be taken into account on the appointment of the applicable law.^(xxv)

From the foregoing, it seems to us that it is not different from arbitration in many ways, so a judiciary that does not have its own platform other than the judges.^(xxvi) While the original rule is that the judges and the exception shall not be permissible if authorized by the Judicial Council,^(xxvii) this is stipulated in article 12, paragraph 5 of the French Civil Arguments Act, which ruled that the judge of the dispute may be chosen by the parties to this dispute, and then we are in front of the so-called judicial arbitration, whereby the judge decides on the subject of the dispute without adhering to the rules of law and contributes to creating some kind of balance between the powers of the judge and the opponents within the scope of the law.^(xxviii)

If the litigants agree to do so,^(xxix) if the litigants agree to dismiss the arbitrator and inform him of their decision under an editor, they will do so. A. The judge may not be dismissed by the will of any of the parties to the case, and they can all be removed, and if a number of reasons can be

achieved, the judge shall not be able to prosecute, which prevents the judge from hearing the case by removing him, obligatorily or passably, as the judge may respond in accordance with the Civil Arguments Act,^(xxx) with a request. One of the parties to the case, who believes that one of these reasons makes the judge's judiciary improper, has a petition submitted to the judge who hears the case if the court is formed by a single judge or the president of the court if it is a judicial body. ^(xxxi)

Among the other things that distinguish the arbitrator from the judge is the result he deserves from arbitration and is determined in accordance with the fact that the liabilities in the arbitration contract himself and in a subsequent agreement, and if the liabilities are not determined by the arbitrator competent to consider the dispute in its ruling and by an independent decision. ^(xxxii) The court estimates that the arbitrators are dragged according to the effort sought by them and does not assign the litigants in the ordinary judiciary to pay a fine to the judge who hears the dispute, and each case has a specific justice's poison according to the value of the case and its subject matter.

It should be noted that the arbitrators adjudicate the antagonism on the basis of the condition or contract of arbitration and documents between the litigants, as it tries to oblige the parties to the dispute what they have conditioned on themselves to implement it or reconcile not to implement it. A. What court is considering the case in accordance with the legal rules that determine the terms of contract between them and the extent to which each party implements its obligations in this contract before the party to the other, which means that arbitration is a consensual solution for all the parties, while the ruling of the ordinary judiciary is a definitive judgment issued as shown by the judge of the dispute and carried out even. If the disputed persons had not been satisfied, or had not achieved the interest of their own, two parties would have been satisfied, in fact, one of whom had won the case and the other had lost it while the arbitrators were trying to divide the losses between the two parties and distribute them satisfactorily without regard to the applicable legal rules and the rights of the parties.

As before, the court's ruling does not be implemented unless it is approved by the court, which is primarily competent to hear the dispute, and unless the judicial fees for its ratification and the exile of the arbitrators are paid more expensive than the ordinary judiciary.

The arbitration is relative to the persons and the subject matter, as it does not extend to non-persons who have agreed in writing on the status of their dispute to arbitrate, nor does it include topics other than those referred to by the Arbitration Agreement and the walkers, whether the agreement was reached before and after the dispute.

It should be noted that liabilities can be forced and subjected to arbitration against their will, which is called compulsory arbitration, which is required by some banks in their disputes with other customers, because in doing so it is forcing their customers to take an exceptional way to resolve disputes away from the guarantees and actions known to the ordinary judiciary, and its characterized by the multiplicity of degrees of appeal in the A.A. Rulers and low costs and its application of a law that is easily recognizable soon. ^(xxxiii)

If we go towards the provisions of Egyptian law, we find that the Egyptian commercial courts may approach the work of the arbitral tribunal through the preparation body that was established under the Law on the Establishment of Economic Courts No. 120 of 2008, where article (8) stipulates that each commercial court shall be established. A body for the preparation of disputes and cases of this court, except for criminal cases, appeals, lawsuits and orders stipulated in articles (7.3) of this Law.

The Preparatory Authority is competent to verify the completion of dispute and litigation documents, study these documents, hold hearings for their parties, prepare a memorandum of requests and support for the litigants, and the aspects of agreement and disagreement. ^(xxxiv)

Preparation is intended to mediate between the litigants before the case is brought before the court. ^{Preparations xxxv} are also known as "resolving the dispute amicably between the parties and resolving it before it reaches the judicial podium."

^(xxxvi) The dispute preparation body is formed in accordance with the Law of Economic Courts headed by a judge of at least one of the judges of the economic appellate chambers and the membership of at least a sufficient number of its judges in the degree of president of a court or a judge of the court of first instance selected by its General Assembly at the beginning of each judicial year ^(xxxvii) and followed by the necessary number of administrators and writers. The registry of the book must present the disputes and lawsuits that the Commission has to deal with its president one day under its newspaper, and the following day the board shall be appointed by a member of its members and refer the case file to the commencement of preparation proceedings, and offer reconciliation to the opponents by his supervision. ^(xxxviii)

The role of the preparatory body in reform between adversaries is focused in line with the trend that has become prevalent in many advanced judicial systems, which is known as compulsory settlement, from which an important concept has emerged, namely judicial settlement. Investment projects require that the parties to the conflict be brought to a settlement as a pre-judicial phase, even if there has never been an agreement between them. ^(xxxix) The Preparatory Authority does not prepare the case, in order for the court to be satisfied with the

task of adjudicating it, and if it grows, it only prepares the case file and the statement of documents and the point of view of both parties and writes a report on it submitted by the court.

^(0x1) Therefore, it is a body of a special nature that differs from other bodies authorized to resolve the tendencies in the administrative courts from the time it approaches the system of the preparatory judge, which was in force in Egyptian law and other procedural laws, and thus the work of the preparatory body does not adjudicate the case between the parties, but offers reconciliation between the litigants if they wish to accept it and resolve the dispute, otherwise the commission will have to present the dispute to the competent court in its view, while we find that The arbitrators are doing their utmost to adjudicate the dispute before they reach a solution that satisfies both parties, while the preparation is nothing more than preparing the case for adjudication to end it in peace. ^(0xli) The preparation body operates within the ordinary judiciary, while the litigants resort to arbitration to rob the jurisdiction of the Arab judiciary, and it has been abolished because it disrupts the adjudication of disputes.^{xlii}

We conclude from this that although the presence of the preparatory body within the composition of the Egyptian commercial courts, which prepares the case and offers reconciliation between the opponents and does its best to reach a mutual consent and a friendly settlement, this does not make this a reference to how much it takes the description of the arbitral tribunal, based on the justifications we have provided.

Section 2

The Iraqi Commercial Court is a normal judiciary

The judiciary is the holder of a public mandate that is appointed by law in advance and whose judges are selected in accordance with the judicial system and permanently and have all constitutional and legal guarantees, ^{xliii} and this mandate is called natural ^{xliv} justice.

The judiciary has a mandate, which means the power to govern by law in a particular liability, and this is called jurisdiction and is offset by a lack of jurisdiction. The jurisdiction of a court means its share of the cases that it may adjudicate. ^(0xlv) Civil courts on classes or grades are, i.e., courts of first instance and "trial court", which the convict has an appeal against the federal appeal courts, which are the courts of second instance "court of appeal", and then the convicted person shall appeal the ruling of this court The Federal Court of Cassation, which is called the principle of litigation at two grades A and three, and brings many benefits, including urging judges of the courts of first instance to seek justice and make an effort to scrutinize and

investigate the allegations of the parties to the dispute as it enables the litigants to correct the fraud, error or negligence of the first degree.^(xlvi)

Despite the advantages of the principle of litigation on two degrees, it has not been spared criticism, it has been said that it costs additional litigation expenses, and delays the adjudication of disputes, as a grant of the right to the opponent who failed in his case in courts of first instance to send it to the courts of second instance, and must be given on the basis of this, The right to re-bring the litigants before a second court.^(xlvii)

The civil courts in Iraq are divided horizontally as well as the division we mentioned earlier, according to the administrative units, in order to bring justice closer to all without material or administrative complexity, and therefore the judicial divisions in Iraq are the courts of first and second instance and the Court of Cassation. The courts of rent of the property, and the courts of the second degree (appellate) are divided over all provinces, according to article 16 of the Iraqi Judicial Regulation Act. The Court of Cassation is the same and exercises judicial control over the decisions of all these courts.^(xlviii)

The ordinary courts of justice apply the civil arguments law as a procedural law for a case brought before them, and are competent to hear all civil proceedings.^(xlix)

Some believe that civil courts are not dedicated to removing a serious threat to the force of law in special real situations, but are dedicated to eliminating a normal threat that threatens a dual interest and not limited to the interest of law only, and that the law and the immediate personal interest are required.^(l)

While the Commercial Court is dedicated to removing a qualitative risk, it is the economic risk associated with investment disputes in which one of its parties is a foreign investor. The Iraqi Commercial Court shall in no way represent an exceptional ruling body, those who are in article 95 of the Iraqi Constitution prohibiting the establishment of special and exceptional courts, for their express violation and serious violation of the right of every citizen to be the judiciary to which he or she is^{li} referred or considered as a natural justice. . It may also result in problems^{lii} in the exceptional courts of determining the competent court to hear each dispute in accordance with the law of its establishment, which may result from a conflict or contradiction between each of them and the subsequent dispute of jurisdiction among them. Right and at least the loss of time and expenses, as well as the dispersal of the mandate of the judiciary and the dismemberment of its delivery without justification^{liii} or necessary. Part of the Egyptian jurisprudence goes on to^{liv} say () that the judiciary in order to be normal must have several elements, including with regard to the establishment of the court and determining its terms of

reference and how it works, including with regard to the judge and providing guarantees to him, so that the judge must be normal. His tenure in office has been carried out in accordance with the provisions of the law governing the appointment and transfer of judges, and he is in Egypt the law of the judiciary, and therefore the courts involving military judges and done with their knowledge, lack the integrity of the natural judiciary, and the judge has guarantees to ensure his independence and impartiality, which means that he is far from any influences that come from the executive branch, and public opinion and individuals, and the judiciary in order to be normal must be the establishment of the court and determine its terms of reference by law, and this law as mentioned above must be the same law competent to establish all courts at all degrees and jurisdictions. The court must be permanent and not restricted to a certain period of time, and temporary circumstances such as a state of emergency. A special mandate, which boils down to the type of disputes that this court considers and which does not remove it from the crucible of natural justice, is subject in terms of the methods of appealing against its rulings to the same rules as the ordinary courts of justice and singled out (cassation).
(lv)

Part of the jurisprudence discusses this issue^{0lvi} by saying that the legislator with the aim of facilitating the procedures of litigation and improving the investment climate, which is among the strongest and which prevents its growth, slow judicial proceedings, has created the courts for trade, which differ in their procedural rules from those applied by the ordinary courts, and expanded the jurisdiction of Ha, as he combined the trial and appeals chambers in one place, which represents a departure from the law of the judiciary, which requires that the seat of the court of first instance be in each capital of the provinces of the Republic. The aim of the establishment of commercial courts, as some have gone, lies in the creation of^{flvii} specialized courts in investment, commercial, industrial and similar matters.

Some believe that economic courts are qualitatively specialized courts that are not taken out of the umbrella of the ordinary judiciary by the ordinary judiciary, which are subject to the work of the family courts, which are subject to the laws governing the work of the ordinary courts of justice.^(lviii)

By reviewing the jurisprudential opinions put forward on determining the nature of the Egyptian economic courts, we conclude that the economic courts have specificity in terms of establishment, composition and membership of their judges, in addition to disputes that fall within their exclusive jurisdictions and which other ordinary courts do not have their consideration, they are not ordinary courts of justice and they are not special courts. While the

Iraqi Commercial Court is a normal judiciary despite the range of exclusive jurisdictions enjoyed by this court, while the first Iraqi legislator was to join this court with its own legal rulings so that it is not included in the composition of the Court of Intuition, because recognizing the actual specialization of this court would create specialized judges with experience in investment disputes as well as contribute to the speed of adjudication of investment disputes, which is an important guarantee of the guarantees of the foreign investor but It is an advantage provided by law to this investor.

Conclusion

At the conclusion of our study on the Iraqi Trade Court, we drew the following conclusions and made the following recommendations:

1. The results. Because no other court can act as a commercial court due to the confidentiality of the parties and the nature of the disputes, we believe that the legislator established a commercial court within the jurisdiction of each federal appeals court in Baghdad, Najaf, and Basra due to the high volume of commercial disputes and the importance of adjudicating cases within its jurisdictions in a timely manner commensurate with business work. The Business Court is a court that specializes in commercial issues, particularly investment conflicts and disputes over oil permits. As such, it is not an arbitral tribunal or a traditional judiciary, but it operates under the aegis of intuition courts. The Commercial Court's terms of reference are defined by the relevant laws on contracts, which include investment contracts as well as oil contracts or so-called oil licenses, and this court is a critical safeguard of the Investment Act's provisions encouraging and attracting foreign investment, as it resolves disputes involving the obligations of the parties to these contracts with high efficiency due to the specialization of judges in these areas. Of course, dismissing them with one-of-a-kind cases in terms of subject develops accumulated experience, as well as expediting the adjudication of the case, which is a significant effect of this court's existence.
2. Suggestions. We propose to the Iraqi legislator that, in order to achieve the guarantees intended for the investment law, the oil investment law, and other laws that bring their disputes under the jurisdiction of this court, this court's powers be expanded and that it be removed from the crucible of the courts of intuition in order to become a de facto specialized judiciary. We propose to the Supreme Judicial Council that specialized judges be appointed to consider such disputes by introducing them to sessions and workshops on the application of these special laws, because the existence of such a court ensures the efficiency and justice of judicial decisions issued by specialized judges and the speed with which such disputes are adjudicated, which is the goal of the disputing parties to avoid resorting to arbitration, especia We recommend to the legislature that, like with other courts, this court be regulated by clear and unambiguous legislative requirements contained within the legislation of judicial regulation, and that its powers be defined within the same statute.

References

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- (i) This law has been renamed the Trademark and Geographical Indicators Act under Order 80 of 26 Nissan 2004
- (2) The decision to correct the discriminatory decision of 753/Appellate Authority/Real Estate/2018 T/577 issued on 7 February 2018, which is special, is considered on the grounds of extending the investment period of al-Bashir Engineering Designs and General Contracting Company. 2019/T/694 issued on February 12, 2019, which approved the decision of the Court of Start competent for commercial claims to prevent opposition from the investment authority and the Municipality of Kufa to Al-Maymona Company, which has an investment license from the Najaf Investment Authority to establish a residential complex in the name of the residential city of Dora Najaf According to fundamentalist approvals.
- (iii) Dr. Alan Bahaiddin Abdullah Al-Mudarres, Legal Regulation for the Establishment of Private Banks, Zain Human Rights Publications, Beirut Lebanon, I1, 2016, p. 28
- (iv) D. Sahar Abdel Sattar Imam Youssef, Economic Courts in Egyptian Law, Arab Renaissance House, Cairo, 2008, p. 20
- (v) The mixed judicial system emerged in 1875 and inch¹The commercial courts, consisting of three judges, two foreigners, including the president, the third Egyptian, and two merchants, one Egyptian and one foreigner, are nominated by election. ‘ They had a few voices in deliberation and judgment. Lawyer Elias Shalhoub, Report on the Status of the Judiciary in Egypt, Arab Center for the Development of The Rule of Law and Integrity, International Foundation for Electoral Systems, 2004, p. 3
- (vi) French trade courts represent an exceptional judiciary²Where you're going.The Court of Commerce is under the authority of the Minister of Justice and controls the dispute in the first place and then the sentences are submitted to the Court of Appeal and the rulings of the Court of Appeal are appealed to the French Court of Cassation, and the French Court of Commerce is linked to the so-called historically³In the province of consuls where she was nicknamed the consular courts and is specialized so far in commercial disputes from elected judges are in fact the category of traders who have been trading for at least five years, and choose voters who are also merchants⁴These judges have studied the basic principles and principles of the law for more on French trade courts, consider Dr. Abdel Fattah Murad, a former source, p. 128-133.
- (vii) D. Sahar Abdul Sattar in front of Youssef, former source, p. 25
- (viii) Dr. Ahmed Mr. Al-Sawi, Mediator in Explaining the Civil and Commercial Pleadings Act, i1, No Printing Place, 2011, p. 461
- (ix) The Commercial Court of Egypt is similar to commercial courts, which take the form of specialized chambers in the consideration of commercial disputes and belong to the court of first instance in countries that take the Anglo-Saxon system such as the English law, which is characterized by the existence of an independent commercial law and its own judiciary, but there are no specialized courts for the hearing of commercial cases different from commercial courts, as well as the case for the United States of America there are no specialized commercial courts, as well as for both Amania and Belgium, but these courts are formed formation⁵Mixed⁶From technical and non-technical judges and its judges come by appointment or election. D looks. Sahar Abdel Sattar Imam Youssef, Trade Courts in French Law, Arab Renaissance House, Cairo, 2012, p. 9-10.

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- (xi) د. AbdelHamid Abu Hef, Civil and Commercial Pleadings and the Egyptian Judicial System in Egypt, i2, Without A Place of Printing, 1920, p. 265
- (xii) D . Mohi Mohammed Massad, Brief in Economic Courts, Modern University Office, Alexandria, 2010, p. 16
- (xiii) Article 27 / First of the Iraqi Investment Law No. 13 of 2006 amended by Law No. 50 L2015
- (xiv) The text of Article 271-272 of the Law of Pleadings is considered The iraqi civilian in force.
- (xv) Article 272/2 of the Iraqi Civil Arguments Act in force.
- (xvi) D .Ahmed Mr. Sawi, Al-Wajez in Arbitration, i4, Murad Abu Al-Majd Press, 2013, p. 13
- (xvii) Judge Medhat Al-Mahmoud, Explanation of the Civil Pleadings Law, C3,I1, Distribution of the Legal Library, Baghdad, 2005, p. 52
- (xviii) Alaa Abaryan, Alternative Means of Resolving Commercial Disputes, i1, Al-Halabi Publications, Beirut, 2008, p. 24
- (xix) D . Adam Wahib Al-Nadawi, former source, p. 290 and Dr. Iyad Abdul Jabbar Malaki, Civil Pleading Law, Atak, Beirut, without a year of printing, p. 152
- (xx) This project Posted on the website of the Iraqi Center for International Arbitration. Published on 27 January 2014 www.icacn.org The date of the visit 23 August 2017 by seeing the terms of this project is clear It matches it greatly with the Egyptian Arbitration Law No. 27 of 1994.
- (xxi) like the position of the Iraqi Case Law in Article 251 of which states:" Arbitration may be agreed in a particular dispute....."
- (xxii) D . Mahmoud Mukhtar Brieri, International Commercial Arbitration, i2, Arab Renaissance House, 1999, p. 7
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- (xxv) د. Mohsen Shafiq, International Arbitration, Without Place of Printing, 1973, p. 73 and also Dr. Ahmed Mr. Sawi, brief in arbitration , source former P. 14.
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- (xxvii) Article (255) Civil Arguments Iraqi
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- (xxxi) This petition is accompanied by support for the reasons for the response. You're looking at the stuff. 95 From the law ofPleadings theCivil Iraqi Rate.
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