

Mediation in Jordan

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Mediation as a social phenomenon is a highly entrenched practice in Jordanian society. This stems from Jordan's strong tribal roots which place high importance on the role of tribal leaders in mediating disputes.

Indeed, it has always been a sign of prestige and significant social status for a person to be chosen to mediate in order to resolve disputes. Additionally, Islamic teachings have traditionally prescribed mediation in order to resolve disputes in society. However, this cultural preference has not until recently been buttressed by robust structural frameworks. As such it would typically be undertaken on an ad hoc basis.

As far as legislation is concerned, Jordan has previously enacted the Mediation in Resolving Civil Dispute Act 2006 in order to formalize the process of mediation. However, before discussing this act one needs to briefly introduce the Jordanian judicial system. This provides a bird eye's view of the matrix in which this Act operates. It is important to note that Jordan is still experimenting with its new mediation Act. There is therefore little empirical evidence that addresses the impact of this Mediation Act 2006 on the Jordanian judicial process.

The Mediation Act 2006 states that a "Judicial Management Centre" shall be established at the Court of First Instance, known as the "Mediation Management Centre". This is comprised of judges from the Court of First Instance and the Magistrate Court. These are known as "Mediation Judges", and supported by an administrative team. One must also clarify that when parties to a dispute come to register their cases at the Court of First Instance and/or Magistrate Courts situated at the Palace of Justice in Amman, the Registrar initially asks the parties if they want the case to be considered by the Mediation Management Centre – which is attached to the Palace of Justice.

The Chairman of the Judicial Council has the authority to designate what is known as "Special Mediators" – selected from retired judges, lawyers, professionals, etc. However, it is not yet clear why the law has designated the category of "Special Mediators", as the parties themselves can appoint their own private mediators. The Mediation Act 2006 states that the Case Management Judge or the Judge of the Magistrate Court, after meeting with the parties in the dispute or their legal representatives, may refer the dispute, upon the request of the parties or after their approval, to the Mediation Judge or to a Special Mediator to resolve the dispute amicably. In all cases, the judge shall take into consideration, as much as possible, the parties' agreement while naming the mediator. However, the role of the direct involvement of the parties of appointing private mediators is not overruled completely by the Mediation Act 2006. In this respect, the parties may appoint private mediators upon the approval of the Case Management Judge or the Magistrate Judge. From a procedural viewpoint the Mediation Act 2006 makes a distinction between the requirements when submitting the file to the Mediation Judge and the Special Mediators.

The mediation judge reserves the right to ask the parties to submit a brief memorandum of their claims or defenses. When submitting to the latter, parties need to submit such briefs within a period not exceeding 15 days as of the date of the referral. In this respect, Art.(4) of the Mediation Act 2006 states that:

"Parties to the dispute need to attend mediation sessions or their legal representatives, particularly if they were juridical persons. As far as the mediator is concerned, it is up to him/her to determine the date of each hearing and notify the parties in dispute or their representatives of dates and

locations. The mediator shall meet with the parties in and their representatives and discuss with them the subject matter of the dispute including their requests and defenses. For this purpose, the mediator may give his/her opinion, evaluate the evidences, and present the legal grounds, precedents and other procedures, which will facilitate the mediation process. As far as time constraints are concerned, the mediator shall complete the mediation process within a period not exceeding three months as of the date of referring the dispute to him”.

If the mediator reached a settlement, totally or partially, he/she shall submit to the Case Management Judge or to the Magistrate Judge a report of such enclosed with the settlement agreement signed by both parties in the dispute to be ratified. This agreement shall be considered, after ratification, as final. However, if the mediator did not reach a settlement, he/she shall submit a report to the Case Management Judge or to the Magistrate Judge, indicating that the parties did not reach a settlement –provided that he/she clarifies in this report the scope of their compliance and their representatives in attending the mediation hearings.

If the mediation was not successful due to the absence of one of the parties or their representatives, the Case Management Judge or the Magistrate Judge may impose a fine on that party or their representative. However, upon the conclusion of mediation, the mediator needs to return to each party the memorandums and documents submitted, without retaining any copies thereof, subject to the legal liability. The mediation, which shall be confidential, once ratified by the parties, shall be considered final. Additionally, subject to nullity, even the Mediation Judge would not be able to review the decision.

As for the characteristics of the Jordanian System of Mediation, please note that:

1. The Jordanian system of mediation is largely court-based. When registering their cases at the Palace of Justice in Amman, the Court's Registrar will recommend referring disputes to the Mediation Management Centre.
2. The Jordanian system of court-based mediation is still experimental. The Mediation Management Centre is attached only to the Palace of Justice in Amman and not spread throughout the country. The legal community is still positive about the role of mediation in Jordan and is highly complementary that Jordan is the first Arab country to enact a Mediation Act.
3. Jordan accepts private mediation, and allows the parties to choose their own mediators. However, as seen above under the Mediation Act 2006, such type of mediation often lack some of the enforcement mechanisms accorded to court-based mediation.
4. Jordanian mediation needs to be confidential. Mediators owe a duty of confidentiality to the parties and may not in general circumstance divulge their proceeding to unauthorized persons or public bodies.
5. Court-based mediation in Jordan has a time constraint of three months to conclude within this time. This is seen as a step forward in order to cut costs and ensure that the process of mediation is timely and efficient.
6. Although mediation in Jordan is a voluntary exercise, once it is court-based certain enforcement mechanisms are employed to ensure that the process is taken seriously. For example, parties to the dispute will be fined if they (or their legal representatives, if they are juridical persons) fail to attend mediation sessions.
7. Once approved by the parties, court-based mediation outcomes in Jordan are final and cannot be abrogated. However, this is not the case when mediation is not court-based. If the parties do not agree to the decision of a private mediator, then they can bring the case to the courts. This is seen by some judges in Jordan as duplicating the process, and often requiring further regulation.

Jordan's experience with ADRs is still relatively new. However, despite this, Jordan has recently made commendable strides towards institutionalizing this process, and is increasing its attention to mediation.