

Judicial Role in Mediation (Comparative Study)

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Abstract

This paper explores the growing shift in legal systems away from traditional state judiciary procedures toward alternative dispute resolution mechanisms, with a focus on judicial mediation.

Judicial mediation is one of these mechanisms. It is an alternative to the official state judiciary, and its goal is to maintain and preserve relations between the opponents. In order to achieve this, it is necessary to seek the assistance of a third person whose characteristics include neutrality and independence, who is called a judicial mediator, with the aim of facilitating exchange and communication between the opponents and encouraging them to adopt common solutions chosen by them with complete freedom.

Based on the above, we find that the judicial mediator is neither a judge nor an arbitrator, but rather he is only a motivator and aims in his mission to facilitate negotiations between the parties with the aim of helping them find a solution to their dispute that they agree upon.

1. The Concept of the Judicial Mediator

Mediation is the foundation of the system of alternative methods for resolving civil disputes and lies at the core of these approaches. Just as the arbitrator is central to arbitration and the judge is central to judicial reconciliation, the mediator is the key figure in mediation, guiding the resolution process for the parties involved. Therefore, choosing the right mediator is crucial, as the success or failure of mediation in reaching an amicable settlement largely depends on this decision. For the mediation system to be effective, it is also essential to provide mediators with legal guarantees that ensure their protection and immunity.

1.1 Definition of the Judicial Intermediary

The mediator carries a significant responsibility in ensuring the success of the mediation process. It is essential to clearly define the mediator's role and to specify the necessary qualifications and moral qualities required for the position. The mediator's competence and ethical character form the foundation of effective mediation. In

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this context, the mediator's personality serves as the backbone of the entire process, underpinning their ability to facilitate a fair and amicable resolution.³

As for jurisprudence, a commentator from jurisprudence sees that it is not possible to give a clear concept to a person, but rather to give a picture of a perfect mediator who is considered a third party in a legal dispute between two persons, for a mediator who does not aim to kill a limb by looking at a person who has a limb, but has to enable a limb to find a limb without aiming to kill a limb by looking at a person who has a limb,⁴ but who has to make it possible for a limb to find a limb without aiming at a limb, and who does not look at a limb without looking at a limb.

On the other hand, the judicial mediator is known as "the person to whom the dispute is referred to negotiate between the parties to the dispute in order to reach a solution and to offer solutions that can help in resolving the dispute, and to reach a solution that satisfies the parties to the dispute in order to settle the dispute between them and the source of the dispute."⁵

Some know it as "a neutral party that assists the conflicting parties in their quest to reach a settlement in order to amicably resolve their disputes."⁶

Since the above, the mediator can be defined in civil disputes as: Every person whose name is registered in the table of mediators and has certain conditions that enable him to reconcile the conflicting interests of the parties in civil disputes.

1.2 Judicial Mediator: Qualifications and Code of Ethics

As previously stated, a mediator is any individual appointed to conduct the mediation process effectively, impartially, and efficiently, regardless of the method of appointment. The mediator's role is to assist the disputing parties in reaching an amicable settlement. Therefore, it is essential to establish a clear set of criteria that define the mediator's qualifications and ethical standards, which guide their conduct and ensure the integrity of the mediation process.

1.2.1 Qualifications for Judicial Mediator Appointment

1.2.1.1 He must be one of the persons recognized for his good conduct and integrity, as Article (3/1) of Executive Decree No.09-100 of 2009 stipulates that the mediator shall be chosen from among persons recognized for their integrity, and the law's recognition of such a condition means that the mediator's personality is a matter of consideration in the tasks of judicial mediation, as it may be the main reason for the parties' acceptance of it and their response to the mediator, as it may be a reason for its rejection. The mediator must not have been subjected to punishment for a crime that violates honor and must not be prohibited from exercising his civil rights, noting

³ Rola Taqi Salim Al-Ahmad, *Mediation for the Settlement of Civil Disputes in Jordanian Law(Comparative Study)*, PhD Thesis in Private Law, Faculty of Graduate Legal Studies, Amman University, 2008.

⁴ Salem Sufian, *Legal Center for the Judicial Mediator in Algerian Legislation*, published research at, *Journal of Thought(Journal of Law and Political Science)*, University of Mohamed Khudair Baksra, 10th issue.

⁵ Dr. Bassam Nahari Al-Jabour, *Judicial Mediation in Islamic Sharia and Law*, 1st Edition, Dar Al-Thaqafa for Publishing and Distribution, 2015.

⁶ Nishant Maka, *Role of a Mediator in the Process of Mediation*, an article published on the website <https://www.legalservicesindia.com/article/1819/Role-of-a-Mediator-in-the-Process-of-Mediation.html> visited at 13/3/2025 at 7:10 AM.

that The Algerian legislator did not specify what are the crimes against honor, in order to distinguish them from other crimes, especially since Article (2) of Executive Decree No.09-100 of 2009 prevented a person convicted of a felony or misdemeanor, with the exception of unintentional crimes, from being registered in the list of intermediaries.⁷ The judges.

Likewise, in the French Civil Procedure Law No.1123 of 1975, the mediator may not have been convicted of a felony and may not have committed acts contrary to honor or honesty, and then imposed on him a punishment of discipline or administrative punishment.⁸

1.2.1.2 The person must be qualified to consider the dispute, as the article (3/1) of the executive decree No.09_100 of 2009 stipulates that the mediator must be competent and capable of resolving disputes in view of his social position. This article does not require here any particular formation or scientific testimony, because some of the parties to the dispute are sufficient to peruse and look at them, to mediate between them a person who enjoys a special place that makes it a place of respect and trust before they take the place of taking the place of taking the place of taking the place of taking the place of taking the place of taking the place of taking the place of taking the place of taking⁹ the place of taking the place of taking the place of taking the place of taking the place of taking the second place.

By the same token, the French law stipulates that the mediator must have the requisite qualification and be in harmony with the civil procedure law, as it stipulates that the mediator must have the requisite qualification and be in harmony with the civil dispute, or that the mediator must have the necessary training or experience to practice the mediator, so the mediator may not have the ability to be able to live without being in harmony with the mediator,¹⁰ and so on.

As for our sweat legislation, the first and second paragraphs of the Act of Ethnic Action No. (37) of 2015, which is in force, indicate that the mediator is an expert in the dispute, and that he must be an expert in the dispute of action. This is the result of the desire of the legislator, so that the dispute is Seen by a person who is competent and the price of the ostracism is the omnipotence¹¹ of the omnipotence.

⁷ Dr. Khairy Abdel Fattah Al-Sayed Al-Batanouni, *Mediation as an Alternative Means of Resolving Civil and Commercial Disputes*, 2nd Edition, Dar Al-Nahda Al-Arabiya, 2012.

⁸ Article(131-5) : "mesure de médiation doit satisfaire aux conditions suivantes: 1-Ne pas avoir fait l'objet d'une condamnation, d'une Incapacité ou d'une déchéance mentionnées sur le bulletin n° 2 du casier judiciaire N'avoir pas été l'auteur de faits contraires à l'honneur, à la probité et aux bonnes mœurs ayant donné lieu à une sanction disciplinaire ou administrative de destitution, radiation, révocation." See also: Dr. Bachim Bogomaa, *The Relationship between Alternative Justice and State Justice*, 1st Edition, Academic Book Center, 2020, pp.197-198.

⁹ Consider: Dr. Ahmed Abdul Karim Salama, *The General Theory of Amicable Dispute Resolution Systems*(Negotiations, Mediation, Conciliation, and Conciliation) as a Substitute for the Judicial Battle, 1st Edition, with no year of publication, pp.187-190, as well as Robert A. Baruch Bosch and Joseph B. Folger, *Achieving the Goals of Mediation*(Confronting Conflicts by Empowerment and Mutual Recognition) , Translated by Asaad Halim, 1st Edition, Bibliotheca Alexandrina, 1999, p.107.

¹⁰ Article(131-5) : " La personne physique qui assure l'exécution de la mesure de médiation doit satisfaire aux conditions suivantes: 1.....
-..... 3-Posséder, par l'exercice présent ou passé d'une activité, la qualification requise eu égard à la nature du litige. 4. Justifier, selon le
cas, d'une formation ou d'une expérience adaptée à la pratique de la médiation."

¹¹ Dr. Mohamed Hussein Mansour, Labour Law(What is Labour Law, Individual Employment Contract, Collective Labour Contract, Collective Disputes, Settlement, Mediation and Arbitration, Strike and Closure) , 1st Edition, New University House.

1.2.1.3 That the natural person is neutral and independent in the practice of mediation, where the neutral person is considered the first principle of this procedure, as he refrains from his duty to mediate from negotiating to make him incline to one of the specialties, or the independent person must be true and visible, so it is not possible to mediate to be a submissive The Guarantee of the Neutrality and Independence of the Mediator Article 11 of the Executive Decree No.09-100 of 2009 prohibits him from directing his task in a dispute in which he has a personal reform, or the relationship of the kinship of one of the merits of one of its felonies, or it has a pre-existing or pre-existing dispute with one of them, or the relationship of one of its felons to one of its felons, or the relationship of one of its felonies, or it has a pre-existing or pre-existing dispute with one of them, or the¹³ other two felons.

1.2.2 Ethical Standards of Judicial Mediators

Among the most important ethics that must be available in the judicial mediator to achieve the goals of mediation effectively, maintain its achievements, adhere to the path set for it, and avoid any violations that would harm the case, individuals, and the public order, and the judicial mediator during the exercise of his mission Mediation needs a legal and ethical framework that guides its work and follows the steps of the mediation process, which requires specific and defined conditions, methods, and behaviors that serve as limits to its powers and a fence that defines the scope of its work and intervention. Among these ethical rules are what constitutes a human right and a commitment to the principles of And universal general values, including freedom, the permissibility of dividing the issue, and finally, improving and developing the mediation process.

1.2.2.1 Freedom and independence: Respecting the freedom of individuality and working to provide it is a duty dictated by the ethics of the judicial mediator's profession, which means the success of the mediating process, so the mediator must perform the mediating process on the basis of the principle of freedom for parties. The parties to the dispute shall voluntarily and without any pressure voluntarily resort to mediation and without any pressure in whichever of them is full and free, and the parties to the dispute shall be free to take the options in any of the stages of the mediation process in one of its stages and results, and the parties to the dispute shall have the freedom to take the options in any of its stages and to use them in any of the stages of the mediation process in one of its stages, and the parties to the dispute shall have the freedom to use it in any¹⁴ of its stages.

1.2.2.2 Subdivision of the case law: In application of Article (995) of the Civil Code and the Partial Administrative Code No. (08-09) of 2008, the extension of the median to all or part of the dispute law, is not arranged on the median of the median of the median of the median of the case, and it is possible to take the median of the median of the case, and it is possible to take the median of the salmon, but it is necessary to take the median of the case, and it is not possible to do so. Nor can the mediator perform the task of mediating far from observing the judge and following the case closely. However, the mediator maintains his complete independence in the conduct of the task of mediation, and does not accept the intervention of any important party except what he Sees as useful to his mission, as the French legislator who indicated that mediation covers all or part of the case.¹⁵

¹² Dr. Mustafa Mohammed Al-Dawski, Settlement of Foreign Investment Disputes B(Friendly and Judicial Means) , Book 1, 1st Edition, Legal Books House -Shannat Publishing House, 2016.

¹³ Article(131-5) : " La personne physique qui assure l'exécution de la mesure de médiation doit satisfaire aux conditions suivantes: 1 2 3... 4-... 5-Présenter les garanties d'indépendance nécessaires à l'exercice de la médiation."

¹⁴ Dr. Zainab Waheed Daham, Alternative Means to the Judiciary(Reconciliation -Arbitration -Mediation) for Dispute Resolution, 1st Edition, National Center for Legal Issues, Cairo -Egypt, 2017.

¹⁵ Article(131-2) : " La Médiation couvre tout ou partie du litige....."

1.2.2.3 Improving and developing the mediating process: The mediator must work to improve and develop the mediating process, and he must respect the different perspectives of his colleagues and mediators, and he must work to learn from his colleagues and work with them, and this is in order to improve and develop the profession of mediating and increasing people on a better basis. As this improvement and development comes only through continuous research, holding meetings and exchanging opinions with colleagues, to build sound bases and institutionalized work reference on experience and experience gained through the work of mediators at the national and international levels.¹⁶

2. Mediator–Judge Relationship

One of the advantages of the system of judicial mediation is that the acceptance of the parties to this procedure does not mean the exit of the court from the jurisdiction of the court, but the mediation takes place under its control and supervision, which gives it legitimacy, credibility and unity in the same time of the median prayers, and the manifestations of the censorship and supervision are manifested in the following:

2.1 The Judge's Authority in Supervising Mediation Procedures

The judge has a major role in the mediation process, and I mean here by determining the judicial mediation, and this role is not limited to the procedural and judicial aspects, but this role extends to include the judge's contribution to the spread of the mediation process and its success since the choice of the middle and until the end of the dispute. The judge assigned to consider the subject of the dispute is responsible for tracking the stages of judicial mediation, its progress, and the extent of interaction¹⁷ between the parties to the dispute, and the judge enjoys the following powers:

2.1.1 The judge's offer of mediation to the opponents, and this is what Article (944) of the Algerian Civil and Administrative Procedures Code, paragraph one, indicated, as well as the authority to appoint the mediator and notify him and the opponents of that, which was indicated by Article 994, paragraph two, and the first paragraph of Article (1000) of the Algerian Code of Civil and Administrative Procedure No.08-09 of 2008, and its counterpart, Article (1-131) of the French Code of Civil Procedure: "The judge who is examining the dispute, after obtaining the parties' consent, may appoint a third person to hear the parties and compare their points of view."¹⁸ To enable them to find a solution to the dispute between them."

2.1.2 Disciplinary authority, as indicated in Article (13) and (14) of Executive Decree No.09-100 of 2009, which determines how to appoint the judicial mediator.¹⁹

¹⁶ See Saleh Belkacem and Sahraoui Basour, The Role of the Judicial Mediator in the Resolution of Real Estate Disputes, Master's Memorandum, Specialization of Real Estate Law, Dr. Yahya Fares University -Medea, Faculty of Law and Political Science -Department of Law, 2017, pp.30 et seq. See Carl A. Slickio, Mediation in Dispute Resolution(When Conflict Rises_ A Practical Guide to the Use of Mediation) , translated by Ola Abdel Moneim, Reviewed by Faiza Hakeem, International Publishing and Distribution House, 1999, p.73.

¹⁷ See Saleh Belkacem and Sahraoui Basour, previous source, p.98, as well as: Khalidi Asmahan and Abed Najwa, Judicial Mediation under the Civil and Administrative Procedures Law, Master's Memorandum, Specialization in Real Estate Law, Ain Chamout Belhadj Bouchaib University_ Faculty of Law and Political Science, 2024, p.43."

¹⁸ Article(1-131) : " Le juge saisi du litige peut, après avoir obtenu l'accord des parties, désigner un tiers pour entendre les parties et confronter leurs points de vue afin de leur permettre de trouver une solution au litige qui les oppose."

¹⁹ See Khaledi Ismahan and Al-Abed Najwa, previous source, p.50.

2.1.3 Determining the Medium's Punishment Referring to Article (12) of Executive Decree No.09-100 of 2009, which determines how the Medium of Judgment determines the necessity of notifying the Judge of the acceptance or rejection of the accused person in accordance with Article (13-131) of the Code of Civil Procedure Law No.8 of 1995, according to which "no one is worthy of worship, but only the one who submits the meanings of Article (13-131) of the Code of Civil Procedure Law No.2 of 1995 – under Article (95) of the Code of Civil Procedure No."²⁰

2.1.4 Notifying the judge of the side of the mediator or the sides of the existence of an obstacle to the guarantee of the neutrality of the mediator Article (11) of Executive Decree No.09-100 of 2009, which determines how to appoint the mediator.

2.1.5 Extension of the duration of the median in the second paragraph of Article (996) of the Civil Procedures Law and the Partial Administrative Law No.08-09 of 2008, and this is what Article (3-131) of the French Civil Tenants Law stipulates. "The first period of median cannot exceed three months. This task can be renewed once, for the same period, based on the request of the mediator."²¹

2.2 Judicial Authority in Controlling and Supervising the Mediator's Work

The judge monitors the role of the mediator in the work on the success of the mediating process, which is not in conflict with it, or the substitution of the mediator in the work as long as the mediating process is not advanced and the mediating process is not in interest from its conduct, it may be that the mediator is terminated due to reasons other than the use of the contract, and the mediating process has not progressed²² or been questioned in accordance with the contract.

2.2.1 The necessity for the mediator to notify the judge of all difficulties he faces, and this is stipulated in Article (1001) of the Civil and Administrative Procedures Law, as well as the judge taking any measure he deems necessary at any time during the mediation process, and this is stipulated in the second paragraph of Article (995) of Civil and Administrative Procedure Code No.08-09 of 2008, and this is also stipulated in the second paragraph of Article (2-131) of the French Civil Procedure Code: "The judicial authority of the judge, who can take the necessary measures, shall not be relinquished in any case." Others that Seem necessary at²³ any time.

2.2.2 The judge terminates the mediation based on the request of the mediator or the litigant or from his self-immolation, and this is stipulated in Article (1002) of the Civil and Administrative Procedures Law No.08-09 of 2008.

2.2.3 Notify the mediator of the judge of the end of his assignment in writing, in the case of agreement or failure of the mediator and this article (1003) of the Civil Procedure and Administrative Procedure Law No.08-09 of 2008,

²⁰ Article(13-131) : " À la fin de sa mission, le juge détermine la rémunération du médiateur et les frais de la médiation sont répartis conformément aux dispositions de l'article 2. » – 22 de la loi n° 125-95 du 8 février 1995 relative à l'organisation des tribunaux et des procédures civiles et pénales Et l'administration."

²¹ Article(3-131) : La période initiale de médiation ne peut excéder trois mois Cette tâche peut être renouvelée une fois, pour la même durée, sur demande."le médiateur."

²² Ahmed Hamdan and Sharif Al-Hajni, Introduction to the Study of Mediation in Dispute Resolution, Egyptian Lebanese House, 2017.

²³ Article(2-131) "Et en aucun cas on ne peut renoncer à la juridiction judiciaire ». au juge, qui peut prendre toutes autres mesures qui lui paraissent nécessaires en tout temps."

and its counterpart Article (11-131) "In the end of his indictment, the mediator shall cancel the judge's written judgment unless the limb has succeeded in finding his indictment, and the mediator shall cancel the judgment."²⁴

2.2.4 In the event that the mediation is terminated or the mediator terminates his mission, the case shall return to the session, the third paragraph of Article 1002 and Article 1003 of the Civil and Administrative Procedures Law No.08-09 of 2008, and the judge shall approve the minutes of the agreement prepared by the mediator and which shall include: The content of the agreement, which is signed by the parties, is an order that is not subject to any appeal and is considered an enforceable document that accepts compulsory execution after appending the executive formula,²⁵ in accordance with Articles (600) and (1004) of the Civil and Administrative Procedures Law No.08-09 of 2008. For the same meaning, Article (10-131) French Code of Civil Procedure, paragraphs one and two: "1. The judge may terminate the mediation at any time at the request of one of the parties or at the initiative of the mediator, 2. A judge may also terminate it ex officio when it appears that the proper conduct of the mediation has been jeopardized"²⁶

3. Key Findings and Recommendations

3.1 Key Findings

An in-depth analysis of this topic has resulted in a series of key findings and corresponding recommendations. These are systematically presented below to provide clear insights and guidance.

3.1.1 Every person whose name is recorded in the table of intermediaries and in which there are certain conditions that enable him to mediate between the opposing concessions to the extremes of civil conflicts, one of the most important of which is the creation that must be available in the middle of the judiciary to achieve the goals of the intermediate (freedom and fragmentation of the judiciary and others that must be available in the middle of the judiciary).

3.1.2 The role of the mediator in the mediation process is not canceled in any case from the transfer of the role of the judge in the mediator, so the judicial mediator is not considered a delegate from the judge to the mediator, but the mediator works under the supervision and control of the mediator, and it does not constitute a guarantee for the performance of this procedure, but the mediator works under the supervision and control of the mediator, and it does not constitute a guarantee for the performance of this procedure, and they are still uncovering it.

3.1.3 The referral of the dispute by the judge to the mediator for settlement does not mean that the mediator has become a judicial delegate for the settlement of the dispute. The referral does not entitle the mediator to any of his powers, and the mediator is only obligated to perform his will. Now, the mediator remains under the control of the judiciary, and the person who is obligated to be eliminated is bound by the rule of law.

²⁴ Article(11 - 131) : "A la fin de sa mission, le médiateur informe par écrit le juge si les deux parties ont réussi ou non à trouver une solution au conflit qui les oppose. Au jour fixé, l'affaire revient au juge."

²⁵ See Mohammed Khair Ammar Sharif, *The Legal System in the Methods of Settling Engineering Disputes with a Foreign Element*, 1st Edition, Dar Al-Jinan for Publishing and Distribution, 2023, pp.355-356, as well as Ali Mahmoud Al-Rashdan, *Mediation between Theory and Practice*, Dar Al-Yazouri for Publishing and Distribution, 2012, p.215.

²⁶ Article(10 - 131) : "1. Le juge peut mettre fin à la médiation à tout moment à la demande de l'une des parties ou à l'initiative du médiateur. 2 Le juge peut également y mettre fin d'office lorsqu'il apparaît que le bon déroulement de la médiation a été compromis...."