

THE PUBLIC SERVANT'S STRIKE IN JORDANIAN LEGISLATION AND INTERNATIONAL TREATIES

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Abstract

This study deals with the general employee's strike in Jordanian law and international treaties, as well as the laws of some countries such as Egypt, the Emirates, and France. The public employee is an embodiment of the spirit of the public utility and the driving element of management activity, without which all other elements that contribute to the functioning of public utilities are just worthless and useless tools. Therefore, since the strike in public utilities leads to the suspension of the services provided by this facility, it contradicts the most important principle on which public utilities operate, which is the principle of the continuation of the regular and steady functioning of public utilities. Therefore, countries differed in the direction of recognizing the strike. This study compared strikes in Jordanian law, Egyptian, Emirati, and French law, and international treaties.

Keyword : *The public servant's strike, Jordanian legislation, International treaties, Egyptian legislation, Emirati legislation, French legislation.*

1. INTRODUCTION

The principle of permanence and regularity in the functioning of public facilities is one of the basic principles that most countries seek to preserve, as it is linked to the necessary services on the basis of which individuals organize their lives and which cannot be dispensed with in any way. It is their intention to leave their jobs permanently. The public employee's strike threatens the security and stability of society as well as leads to chaos in public utilities, damages the public interest, and leads to disruption of the workflow of public utilities and paralyses their movement. It also makes the interests of individuals the subject of cheap bargaining, so the public office loses its respect and disturbs the public's confidence in those in charge of it, which then disturbs the citizens' trust in the state and its administrative apparatus.¹

The strike has a clear political character due to its strong influence on public opinion on the one hand and on economic life and state security on the other. Therefore, it is the concern of the public authorities in countries, regardless of the prevailing ideology. There is no agreement among members of the international community regarding the strike and the extent of its prohibition. There are

¹ Al-Kharsha, Muhammad Amin Falah, and Youssef, Walid Muhammad Abbas. The criminal responsibility of the public employee for the strike and breach of the workflow in the UAE law. *Conditional Thought*, Vol. 25, Pg. 97, 255-290 (2016).



capitalist countries that allow it within certain limits, as was the case in France starting in 1946. The Constitution of the Fourth Republic in France issued this year stipulated the right to strike at its forefront as one of the political principles upon which the building of society is based. There are some capitalist countries that prohibit it, such as England, the United States of America, Switzerland, and Belgium. As for the socialist countries, most of them forbid the strike and consider it a kind of sabotage of state funds, a disruption to their interests, and a delay in the implementation of the comprehensive national plan that the state is following. Therefore, the strike is one of the vital and exciting issues for its ramification and its extension to all aspects of political, social, and economic life due to its close connection with the theory of public utility and the principle of regular and steady biography.²

Islam recognises the right of every individual to a decent life, and the society positively enjoins the realisation of this life by means of zakat, care, and prohibition of usury; otherwise it would not be worthy of being an Islamic society. If life is a crime of a Muslim's right, then everything that affects this life of low wages, endangering workers' health and draining their power must be resisted. Thus, Islam gives man the right to positive defence and requires it. Within these limits, it can be said that Islam permits the strike as one of the modern forms of the emergence of some sects of grass working for the government, provided that this does not result in prejudice to the interests of the nation or what is known as the public interest.³

Whereas a strike is the cessation of public servants in public utilities from carrying out their duties, it has an impact on the continuity of public utilities, necessitating the development of legal rules to reconcile the regularity of the public utility in the provision of public service and the right of employees to claim their rights, but only in some government utilities. This study will address the concept of a public employee strike, as well as the most important content of the strike in Jordanian law and its comparison with Egyptian, Emirati, French, and international agreements.

2. THE ARGUMENT

The strike is a multifaceted phenomenon, which can be viewed from different angles, where the legal view can be viewed differently from the view of the social, and the latter can also be viewed in a view contrary to the viewpoint of the economist, and this difference of view does not detract from the value and importance of the strike, but rather seriously draws attention to it as a legal, social, economic, and political phenomenon. The public servant's strike, as most researchers in this field have known, is

² Abiwu, Lawrence. *Impact of employee strike action on employment relations in selected Accra, Ghana, public universities*. Diss. 2016.

³ Dr. Nassef Imam Saad Hilal. The strike of state workers between permit and prohibition in terms of legislation and jurisprudence.



"An agreement by a group of employees in a public utility to give up work for a temporary period of time without intending to leave it permanently, in order to protest a specific matter or obtain demands, especially those related to raising wages or improving working or living conditions."⁴

The General Assembly of the Fatwa and Legislation Departments of the Egyptian State Council defined it in a recent fatwa issued on December 9, 2012 as:

"Voluntary cessation of work with the agreement of some or all of the workers to demand the implementation of predetermined work-related matters that the employer refuses to achieve, and the workers practise it peacefully according to the free will of each of them, without violence or coercion against other workers or occupation of workplaces, and it is assumed that no harm to others or exposing them to danger or prejudice to the public interest or public order."⁵

In view of the narrow concept of damage, it is related to the occupational strike as the basis of legitimacy and non-violation of the provisions of the law in the national legislation that established the right of workers and employees to resort to strikes in order to enable them to demand and defend their rights and interests related to their job duties. Professional demands include economic as well as social demands, as long as they are related to the protection of the public servant's rights and benefits. The traditional strike is the most prevalent form among other forms of strike, which means that workers stop work or refrain from performing it with prior and thoughtful planning, while informing the employer of the date, duration, and reasons for the strike to take the necessary precautions. This image is considered the most appropriate with the working conditions and the employer as it enables workers to identify the economic situation of the facility and its financial capabilities, as well as to identify their own financial capabilities available to them to face the effects of the strike, which may be represented at least by depriving them of wages during the strike period.⁶

In this picture, workers usually resort to forming committees called "strike committees", the task of which is to organise the strike, follow up on the implementation of its decisions, and seek to expand the base of participants in the strike by getting the rest of the workers to participate in it. In addition to preventing the employer from hiring new workers to replace the participants in the strike, which leads to achieving the intended goal of the strike, which is to put pressure on the employer and force him to respond to their professional demands

⁴ Lahawi, Muhammad. The state of strike in some comparative legislation: France and Egypt as a model. *Al-Manara Journal of Legal and Administrative Studies*, p. 22, 59 - 69. (2018).

⁵ The General Assembly of the Egyptian Fatwa and Legislation Departments, Fatwa No. (895), session 9/12/2012, unpublished

⁶ Aliyat, Muhammad Najm Ibrahim. Legal directions for organizing the job strike in international conventions and national legislation in France, Egypt and Jordan / a comparative study. *International Academic Journal of Legal Studies*, (2019), 2(2)(2020) 25-55.



in order to prevent the losses that he may suffer in the event of the continuation of the strike and the failure to reach a solution regarding these demands.⁷

3. STRIKE IN JORDANIAN LAW

The Jordanian Labor Law No. (8/1996) did not include any definition of "strike," but it was defined in the repealed Law No. (21/1960) as ⁸"a group of workers stopped working due to a labour dispute." In this regard, it is possible to refer to what was included in Resolution No. (6) of 2014 issued by the Bureau for the Interpretation of Laws on the definition of the job strike, as it was stated in the text of the resolution that

"... strike in the scientific and accepted concept is the refusal of any business owner's employees to carry out the work entrusted to them by putting pressure on him to disrupt his commercial, industrial, or service interests or everything related to the activities of his project with the intention of obtaining rights or advantages for them by stopping work or sit-in without productivity, non-working, or leaving work, which constitutes absence from work in the scientific and accepted concept....⁹"

The Jordanian Labor Law has specified a main condition for a strike, that a worker may not strike without giving the employer a period of no less than 14 days prior to the date set for the strike, and the period is doubled if the work is related to a public interest service. The following is an explanation of some of the prohibitions of a strike in the Jordanian Labor Law; A worker who engages in a prohibited strike shall be liable to a fine of no less than 50 dinars for the first day and 5 dinars for each day the strike continues, and he shall be deprived of his wages for the days in which he strikes. It is not permissible to strike in the following cases: If the dispute is referred to the labor court. In the event that a strike has been carried out on a disputed matter, but a valid settlement period, or an applicable resolution of that matter has been applied.¹⁰

The right to strike is mentioned in the Jordanian Labor Law in Articles (134-136)¹¹, which regulate the conditions that must be met in the strike and the penalties prescribed in the event of its failure. This regulation is specific to the private sector. As for the public sector, Jordanian legislation prohibits strikes in public utilities in all their sectors, according to the civil service system. There are several demands to reconsider the ban on public employees, especially after the teachers' strike in 2019, preventing public employees from striking and the emergence of

⁷ G. Boldt, P. Durand, P. Horion, A. Kayser, L. Mengoni, A. N. Molenaar, *Strike and Lockout, Labor Law Collection*, 2. Labor Law in the Community, European Coal Community and of high authority steel, Luxembourg 1961, p.139.

⁸ Ali Muhammad Al-Jabali, *The Right of Public Employees to Strike in Jordanian Law*, pg. 64.

⁹ Jordanian Constitution, Labor Law, p. 36.

¹⁰ Decision of the Court on the Interpretation of Laws No. (6) of 2014. Date 15/09/2014, Adalah Publications

¹¹ The Jordanian Labor Law organized the strike under Articles (134) to (136), and Article (35) of the Jordanian Labor Law indicated that: "The conditions and other procedures for striking and closing are determined by a system issued for this purpose." In this regard, the Regulation of Strike and Lockdown Conditions and Procedures No. (8) of 1998 was issued.



random strikes; Recognition of the employees' union rights necessarily requires recognising the right to strike as one of the effective means of achieving union work, and the constitution guarantees freedom of opinion and expression for all citizens, and no one is excluded.¹²

4. THE STRIKE IN EGYPTIAN LAW

The legislator had to intervene to organise the strike for the workers, especially after the annulment of the decision by Law No. 2/1977 and the entry into force of the Agreement on Economic, Social, and Cultural Rights in the Egyptian law as of April 14, 1982, in which there is a text confirming the workers' right to strike and being informed of several procedural and objective restrictions without them A strike is not legitimate. The strike was not criminally punishable in Egypt until 1923, when the legislator found that the disciplinary penalty was insufficient to deter the employees from striking despite its seriousness. The legislator intervened in Law No. 37 of 1923, amending the Penal Code to prohibit the criminal strike and transferring this amendment in its case to the Penal Code issued in 1937. Following the Second World War, the legislature was forced to intervene to tighten the penalty for strikes and broaden the scope of their crimes through Decree No. 116 of 1946 and Law No. 24 of 1951. Thus, it became clear that strikes in Egypt, unlike in some countries, including France, are criminally punishable. Rather, the legislator has reached the greatest extent in this regard and has made stopping one employee from working a criminal offense. This is in order to ensure the regular and steady functioning of public utilities.¹³

Therefore, some jurists believe that this position is strict and unjustified, and it prevents employees, in many cases, from achieving their legitimate demands and paralyses the ability and effectiveness of trade union organizations. except in light of the international agreements approved by the United Nations General Assembly in 1966 on political, economic, and cultural rights. whereas Article 8 of this agreement states that the states parties agree to guarantee the right to strike as long as it is exercised in accordance with the laws of the country in question. Accordingly, the strike has become a legitimate right and permissible behaviour for state employees as a means of expressing their opinions, provided that it is within the scope of the law and its regulations. In this regard, the Arab Republic of Egypt acceded to this agreement in 1967, and on the first of October 1981, a Republican Decree No. 537 of 1981 was issued approving that agreement, and it was ratified by the Head of State in December 1982. From the foregoing, the strike became permissible in Egypt according to the text of Article 8 of the aforementioned agreement.¹⁴

¹² Labor law strike. Encyclopedia of Protectors of Right. Available at: <https://jordan-lawyer.com/2020/05/25/labor-strike/>. Accessed 5/8/2022

¹³ Mohamed Abdel-Aal Al-Sinari, administrative law in the field of theory and application. Arab Renaissance House for Publishing and Distribution. (2005)

¹⁴ Ahmed Al-Saeed Al-Zagard Labor Law "Explaining the New Law No. 12/2003.



5. THE STRIKE IN THE UAE LAW

The UAE legislator stipulated the necessity of having a special quality in the striker at the time of the commission of the crime, which is that he is a public servant or belongs to a certain sect considered by the legislator in the judgement of a public servant who is charged with a public service. A public employee is defined as a person who is entrusted with a permanent job in the service of a public facility managed by a public law person. Accordingly, the capacity of a public employee does not apply to a person unless he meets the following three conditions: He contributes to a public facility run by the state or a public legal person by way of direct exploitation; to holding a permanent job in a continuous and non-casual manner; To be appointed to the management of the public facility with a legal instrument¹⁵.

This penalty was stipulated in Article 231/1 of the UAE Penal Code in its first paragraph, and made it imprisonment for a period not exceeding one year, as the aforementioned article stipulated that "if at least three public servants leave their work or deliberately refrain from performing one of the duties of their job." If found agreeing to this or seeking to achieve an unlawful purpose, each of them shall be punished by imprisonment for a period not exceeding one year. It is noted that the UAE legislator did not set a minimum penalty for imprisonment, and this is evidenced by the application of the general limit set for this penalty, and he must apply Article 69 of the Penal Code, which decides that the minimum imprisonment is not less than one month.¹⁶

6. THE STRIKE IN FRENCH LAW

Prior to 1946, France did not recognise the right to strike for public officials but considered it a crime punishable by law, based on the protection of the principle of the regular and steady functioning of the public utility, a principle that remained an obstacle to approving the right to strike within the scope of the public service until the issuance of the 1946¹⁷ Constitution. The text explicitly referred to the legalization of the strike as an economic and social right, with reference to the necessity of exercising it in accordance with the rules and regulations regulated within the framework of laws and regulations.¹⁸

With the issuance of Law No. (31) of 1963, the right of the public servant to strike was confirmed, in conjunction with its organization in accordance with legal controls and restrictions that ensure the protection of the principle of the functioning of the public facility, in accordance with Article (3) of it, which

¹⁵ Suleiman Al-Tamawi: Al-Wajeez in Administrative Law, a Comparative Study, Cairo 1979, pg. 430; Dr.. Taima Al-Jarf: Administrative Law, Cairo 1978 AD, Dar Al-Nahda Al-Arabiya, p. 632.

¹⁶ Article 69 of the UAE Penal Code stipulates that "imprisonment is placing the convict in one of the penal facilities legally designated for this purpose, for the period of sentence. The minimum term of imprisonment may not be less than a month and its maximum maximum may not exceed three years unless the law provides otherwise".

¹⁷ R. Chapus, Droit administratif général, op, cit, p.609

¹⁸ Blanc, Laurent. public function. Translation: Antoine Abdo, The Scientific Library, Beirut, p. 165. (1973).



indicated that the union organizing the strike should give advance notice to the concerned presidential authority or the administration of the institution five days before the start of the strike. The matter differs from French Law No. (889) of 1983, which affirmed the right of public officials to strike as a means of expressing opinion and restricted this right to controls and conditions regulated in accordance with a legal framework for this purpose.¹⁹

7. STRIKE OUT OF INTERNATIONAL AGREEMENTS

The right to strike is described as one of the basic pillars of the economic and social rights of citizens, which have been affirmed by international legitimacy in many international conventions, especially in light of this right's being linked to other public rights and freedoms. The International Covenant on Economic, Social, and Cultural Rights of 1966 recognised the right to strike; the Covenant's Article 8, paragraph (d), states:

"...The States Parties to the present Covenant undertake to ensure: the right to strike, provided that it is exercised in accordance with the laws of the country concerned ... This Article does not preclude the subjecting of members of the armed forces, police officers, or officials of government departments to legal restrictions on the exercise of these rights. .."²⁰

The Arab Charter on Human Rights of 2004 did not go beyond the scope of this international legitimacy of the right to strike, without distinguishing between strikes in the private or public sectors, as the third paragraph of Article (35) stipulates that each state party guarantees the right to strike within the limits provided for by the legislation in force.²¹

The deliberate and neglectful failure of governments to establish a legal framework for methods of protest and strike constitutes a violation of the International Covenant on Economic, Social, and Cultural Rights, knowing that with this arbitrariness and violation by governments, civil, labor, and professional bodies retain their right to organise strikes and civil activities to demand professional and civil rights.

There is a clear government targeting of professional and civil labour organisations and groups claiming their rights, especially the active ones. The matter is not limited to the teachers' union alone; the matter includes all trade union, labor, and civil bodies claiming the rights of their affiliates in light of the apparent

¹⁹ Ahmed Ali. *The Right to Strike in Public Utilities: Its Development - Defining its Concept - Its Legal System*, Dar Al-Kutub Foundation, Kuwait, p. 37, (1997).

²⁰ The International Covenant on Economic, Social and Cultural Rights is a multilateral treaty adopted by the United Nations General Assembly on December 16, 1996 and entered into force on January 3, 1976. Its parties are obligated to work for the granting of economic, social and cultural rights, and the Covenant has been ratified by 164 parties.

²¹ The Arab Charter on Human Rights was adopted on May 23, 2004 on the occasion of the sixteenth summit of the League of Arab States held in Tunisia. March 2008, after it was ratified by 7 countries, which is the number required to enter into force.



inability of the regulations, legislation, and government procedures to achieve those rights, which forces these groups to use their rights in strikes and sit-ins.

Based on this, it can be said that international legitimacy, even if it grants the states parties the power to restrict the right of asylum to strike, does not allow the expansion of this restriction in a way that undermines this right, which was confirmed by the International Covenant, whereby states are prohibited from resorting to subjecting the enjoyment of the rights which are guaranteed by the International Covenant only to the limits established by law, and only to the extent that this is compatible with the nature of these rights, and provided that their sole objective is to enhance the general welfare in a democratic society.²²

8. CONCLUSION

Since it is established that the public employee's relationship with the state is an organisational relationship based on laws and regulations that employees are obliged to respect and not deviate from their provisions, public utilities aim to achieve the public benefit of individuals and perform indispensable services, some of which are directly related to the security and health of the citizen and his safety. It is not justified for employees to strike without a text allowing that, even if there were illegal measures taken by the management against them, given that the way to resist these measures is not by leaving work and refraining from performing it, but by resorting to the judiciary. The punishment, as explained above, appears disproportionate to the gravity of the outcome of the strike, which is compromising the functioning of the public utility and disrupting it, causing harm to individuals. Therefore, it seems appropriate to increase the minimum amount of imprisonment so that it becomes a period of not less than three months and not exceeding a year, and to add a fine that is proportional to the amount of damage.

Referring to the relevant legislation, it becomes clear that the strike is not a legitimate right of employees in all countries. Rather, the Jordanian legislator considers it a crime punishable by law. It also constitutes a disciplinary violation that requires disciplinary prosecution, which may lead to the employee's dismissal, based on the understanding and justification of its obligations that the strike leads to the disruption of the state's public utilities and pressure on the various state administrations by stopping work to respond to the demands of the striking employees, which leads directly to the spread of chaos, disturbing public security and harming the interests of the state and citizens alike, and it must be dealt with wisely, rationally, justly, and fairly.

As for the countries that authorised the employees according to the legislation they issued for this purpose and considered it a right for them, this right did not respond to its release. Rather, many restrictions and controls came to it to organise it so that it would not be a tool in the hands of the employees to disrupt the public utilities of the state with the intention of achieving professional goals

²² Article 4 of the 1966 International Covenant on Economic, Social and Cultural Rights.



and objectives or achieving political goals to pressure the government to retract a specific position, cancel or amend legislation, and certain vital facilities have been exempted from exercising the right to strike granted to workers in various state facilities.

The Jordanian legislator has prohibited the strike and criminalised those who carry it out, whether they are the instigators or the impeded, as long as there are professional unions that take care of personnel affairs and parties to which any employee can belong. However, honestly, the functional legislation applied in Jordan is still not sufficient to reach the employees' legitimate goals and aspirations. Rather, it is necessary to issue new functional legislation or amend the currently applied so as to achieve justice and equality among employees and be applied with integrity and impartiality. The conscious generation of employees is an incentive for the state to allow employees to strike, a restricted, organized, and justified strike that has exclusively professional objectives. This right is a means to keep employees from engaging in extremist groups opposed to the state. This is what European countries have done, as they did not give the employees the right to strike. One payment, rather, passed through long stages that took dozens of years, and when those countries reached full conviction that the employees had reached a high degree of maturity and awareness, they were granted this right.

It can be said that this approach of the French legislator is the same as that followed by the Egyptian legislator as well as his Jordanian counterpart when they implicitly acknowledged the public servant's right to strike after their ratification of the International Covenant on Economic, Social, and Cultural Rights of 1966. However, they took a different direction from what was included in the International Covenant on Rights Economic, Social, and Cultural, in that they do not affect the right to strike within the framework of the public service through the disciplinary responsibility of the employee when he goes on strike.