

Public Employee Strike Considering Jordanian Legislation - Arab Legislation and International Conventions (Comparative Study)

Feras Syah Matar Alshrafat

Former part-time lecturer
Al -Bayt University -Jordan

Hussien Ali Rashed Alfaqeer

Lawyer - Jordanian Bar Association – Jordan

Abstract

Freedom of expression is protected in all constitutions and we did not find any constitution that prevented this freedom or restricted it explicitly, and to know the concept of strike, highlight and clarify the right of the public employee to claim his right to strike, and explain the justifications and prohibitions of the strike for the public employee, the researcher has followed several methodologies to reach these goals, including the descriptive and comparative approach.

We found that the freedom of expression stipulated in the constitutions, especially about the strike of employees in general and public employees in particular, is linked to legislation regulated by the legislator in the form of laws or regulations, and these legislations did not rise to the level required of them by the text of the constitution, as well as international conventions generally support the right of the public employee to express his opinion, and exercise his right to strike within an organized legal framework, but most Arab countries restricted the right to strike for the public employee and prevented it, such as Jordan, which the legislator stated in a form Explicitly prohibit public servants from striking in the civil service system, knowing that the Hashemite Kingdom of Jordan has signed international treaties that authorize and grant the right to strike.

Keywords: strike, constitutions, laws, public service, international conventions, public servant.

Introduction

The strike is considered a social phenomenon whose emergence has been linked to human assets as a protest behavior against an unsatisfactory material situation, and it serves as a means used by workers to obtain what they consider their rights, bypassing the authority of the state and the administration as a public authority aimed at satisfying the general needs of the various beneficiaries, and its means in this regard are the human resources and legal mechanisms available to it.

However, in the face of that urgency and the requirement to continue to provide public services steadily, there is an urgency of another kind emanating from within the womb of the administration and belonging to it, originating from those human elements that breathe their spirit into that entity and move it, and demand rights that it believes are necessary, so the administration employs a large number of human resources within the framework of links that differ about their legal nature to pass from the contractual association to the regular association that determines rights and obligations and becomes an officer of demands and responses, and so they differ. Ways to express demands and obtain rights, so that the right to strike remains the most important, but the adoption and practice of the strike within the framework of public order remained the subject of discussion that differed according to historical stages, as it passed from absolute prohibition to restricted recognition.

The problem with the study

The problem of the study lies in answering the following question: What is the legality of the strike of public employees in Jordanian legislation, with the existence of legal legislation that prevents the strike against public employees, the existence of international agreements signed by the Jordanian government that allow the strike and popular demands to allow the strike?

Study Methodology

To be able to answer the problem and questions of the study, the researcher followed the descriptive approach: through a description of the concepts and terms of the study in detail and a statement of the contents of these concepts and terms, as well as following the comparative approach: through a comparison between texts and legislation in Jordanian legislation, international charters and treaties, and some legal legislation in some Arab countries and France.

Study Questions

- What is the extent of the responsibility of the public employee during the strike period for the cessation of the services of the public utility to the beneficiaries?
- What is the legitimacy of the Jordanian law that prohibits the strike of public servants considering the existence of international conventions to protect human rights that allow the strike of public servants within certain theses?

Study Plan

Based on the above, we will divide this study into two sections as follows:

The first topic: the nature of the strike.

The second topic: the legal aspect of the public employee strike.

The third topic: jurisprudential trends on the right to practice the strike of the public servant.

The first topic: the nature of the strike.

The origin of the term strike "la grève" is due to a place in the French capital called "Place de Grève" located on the Seine River next to the municipality where unemployed workers used to gather in that place to search for work (Abu Omar, 2009).ⁱ

We will define the strike from the jurisprudential, legislative, and judicial aspects until the picture is complete:

First: Jurisprudential definition

Professors Jean Rivero and Jean Savories defined a strike as "the collective and deliberate cessation of work by a sufficient number of workers within a particular profession or institution to achieve a certain goal to resume work after achieving the goal, or the end of the labor dispute" (Al-Sarayra, 2012).ⁱⁱ

French jurisprudence has provided many definitions of a strike, including that "strike is the collective cessation agreed upon by all or some of the workers in a particular team or more to achieve professional demands" and this definition is one of the simplest, easiest, and most comprehensive definitions of the elements that make up the strike (Sayed, 1997).ⁱⁱⁱ

Mr. Al-Tamawi defined the strike as: "the abstention of employees from work that they are obligated to under the laws and regulations explicitly, clearly and consensually for a temporary and specific period while adhering to the benefits of public office, to achieve the professional demands of employees, or to express their rejection of an act of the government or to force it to retreat from a certain position or to push it to take another position" (Al-Tamawi, 1992).^{iv}

Some jurists also defined the strike as the refusal of employees and workers working in public utilities to carry out their work, while adhering at the same time to the advantages, advantages, and objectives of public office, as it is an agreement between a group of people to stop the work entrusted to them for some reason, such as achieving an interest or lifting damage to it (Al-Muntasir, 2014).^v

It is also known as a collective cessation of work in an organized manner aimed at pressuring decision-makers to achieve the goals of certain demands of workers, to improve living conditions or working conditions, or in solidarity with political or social movements to obtain benefits from the public authority in the state (Al-Braizat, 2012).^{vi}

The strike in the public sector was defined as the abstention and cessation of public utility employees from carrying out their duties and the work of their jobs while fully adhering to the rights and benefits of their jobs, to exert pressure on decision-makers on the part of the administration to improve the conditions and conditions related to work (Abu Zeid, 1999).^{vii}

Second: Judicial Definition

In its judgment of 7/7/1950 in Case No. (P426), the French Council of State defined a strike as "the collective cessation agreed-upon of all or some of the employees of a public facility or another facility, to support professional demands" (Abu Omar, 2009).^{viii}

The French Court of Cassation, in its judgment of June 28, 1951, defined a strike as: "the cessation of work by the masterminded workers to agree to improve working conditions" and settled the position of this court on the definition of a strike as: "the cessation of work by a mastermind to support predetermined professional demands, which the employer refused to fulfill" (Abdel Mohsen, 1992).^{ix}

As for the Egyptian judiciary, the Supreme State Security Court (Emergency) in its judgment issued on April 16, 1987, on the strike of railway workers defined a strike as "the collective abstention agreed upon by a group of workers from working for a temporary period to exert pressure to respond to their demands" (Hassan, 2012).^x

Third: Legal Definition (Legislation)

Most constitutions have provided for the legality of the strike, but they do not explicitly define it, leaving this matter to jurisprudence and the judiciary.

About Jordanian legislation, neither the Jordanian jurisprudence nor the judiciary has defined a strike, but the Jordanian legislator has merely stated the cases in which a strike is not permissible in articles 134 and 135 of the Jordanian Labour Code No. 8 of 1996.

The second topic: the legal aspect of the public employee strike

The legal legislation governing the process of the public employee strike has differed from one country to another, while some countries categorically rejected the theory of strike in public utilities, some countries approved it in an organized and confined manner so that no public facility is affected accordingly, so we will address the justifications and justifications for the permissibility and criminalization of the strike, some believe that the exercise of the right to strike is a legitimate and permissible right for the public employee and support his opinion with many justifications, and some took a different opinion and considered the strike of the public employee a taboo. So we will see in detail in this demand these justifications and justifications for preventing or permitting a strike.

First: Justifications and justifications for the permissibility

1- In international conventions

International Covenant on Economic, Social and Cultural Rights: Article 8, paragraph 1, section d, states that "the right to strike, provided that it is exercised by the laws of the country concerned", and in paragraph 2, "This article does not prevent members of the armed forces, police or employees of government administrations from being subject to legal restrictions on the exercise of these rights." Legislative measures or the application of the law would violate the guarantees outlined in that Convention (International Covenant on Economic, Social, and Cultural Rights, art. 8).^{xi}

The Arab Charter on Human Rights: Article 35/3 of this Charter states that "each State Party shall guarantee the right to strike within the limits provided for in the legislation in force" (Arab Charter on Human Rights, Article 35/3).^{xii}

The 1977 Arab Labor Organization Convention on Trade Union Freedoms and Rights: Article 11 stipulates that: "Workers have the right to strike to defend their economic and social interests after exhausting the legal means of negotiation to achieve these interests" (Arab Labor Organization Convention 1997, Article 11).^{xiii}

The European Social Charter of 1961 and its Amendment of 1996: Article 6, paragraph 4, of the amended Charter, states: "To ensure the effective exercise of the right to bargain collectively, the Parties undertake to encourage joint consultation between negotiators and employers by encouraging, where necessary and appropriate, mechanisms of voluntary delegates between employers or employers' organizations and workers' organizations to access regulations of terms and conditions of employment through collective agreements, by encouraging the establishment and use of appropriate mechanisms for conciliation and arbitration. to recognize the right of workers and employers to collective action in cases of conflict of interest – including the right to strike – under obligations that may arise from previously concluded collective agreements" (European Social Charter 1996, Article 6).^{xiv}

2- In the Arab legislative systems: Some Arab countries have mentioned in specific provisions of the law the legality of the strike of the public servant.

In Egypt, the right to strike passed through multiple legislative stages from prohibition to approval, until the emergence of Labor Law No. 12 of 2003, as amended by Law No. 180 of 2008 and Law No. 125 of 2010, where Article 192 of this law stipulates that: "Workers have the right to strike peacefully, the exercise of which shall be exercised by their trade union organizations in defense of their professional, economic and social interests, within the limits and by the controls and procedures prescribed in this law." Arranging some of the effects of the strike, preventing the strike in some cases (Al-Kuri, Buhru, 2012).^{xv}

In the Republic of Algeria, under the People's National Assembly Law No. 90/2 of 6 February 1990 on the prevention and settlement of collective labor disputes and the exercise of the right to strike, as well as by Order No. 60/03 of 15/6/2006 containing the Basic Law of the Civil Service, articles 36-37 grant the public servant the right to practice trade union work and strike within the laws in force (Jebali, 2014).^{xvi}

3- In Jordanian legislation: Article 15 of the Jordanian Constitution stipulates that: "The State guarantees freedom of opinion, and every Jordanian may express his opinion verbally, in writing, photographing and other means of expression, provided that it does not exceed the limits of the law" (Jordanian Constitution, article 15).^{xvii}

The Jordanian Constitution affirms in articles 16 and 23 the right to work for Jordanians and the State must guarantee them the right to organize trade unions and form unions within the limits of the law.

Jordan ratified the International Covenant on Economic, Social and Cultural Rights, which legalized strikes in its eighth article, in 1975 and became part of the Jordanian legal system in 2006, thus recognizing the right of public servants to strike (Jebali, 2014).^{xviii}

Also, the Jordanian Penal Code did not mention any legal text that criminalizes or punishes public sector employees or public utility employees who strike from their work, as well as we did not find in the Jordanian judiciary any mention of its history on the issue of the public employee strike, and no judicial authority issued any sentence on a public employee for participating in strikes that obstructed the work of a public facility, so there is no definition of strike definition issued by the Jordanian judiciary.

Second: Justifications and justifications for criminalization

1- In international conventions: As we have seen in the past, there were no international conventions that prohibit the strike of the public employee definitively and definitively, but most international conventions and agreements thought that the strike process should be organized about the public employee, to preserve the continuity of the work of public utilities, and with an emphasis on the importance and privacy of some public utilities that cannot be allowed to stop, but there was no prohibition of the strike, but an emphasis on the balance between the right to strike and the continuity of the functioning of the public facility.

2- In Arab legislation and regulations: For example, in Iraq, Iraqi law explicitly clarified the prohibition of the practice of strikes and its justifications for the public employee, and this was stated in the Penal Code No. 11 of 1969, where Article No. (346) stipulates that: "Any employee or person entrusted with a public service who leaves a currency or resigns or deliberately refrains from a job duty or work shall be punished by imprisonment for a period not exceeding two years and a fine not exceeding two hundred dinars, or one of these two penalties. Abandoning or refraining would have put people's lives, health, or security in danger, and this would have caused a strike or strife between the people or it disrupted a public facility and was considered an aggravating harm if the act was committed by three or more persons who agreed to do so or agreed to achieve a common purpose" (Iraqi Penal Code, article 346).^{xix}

In Lebanon, the Lebanese legislator has considered the practice of strikes a crime punishable by a criminal penalty, stipulating the penalty of civil deprivation of employees who have a public contract with the State, if they agree to suspend their work or submit their resignation, especially if this leads to obstruction of the functioning of a public utility or the public interest, by articles 340 and 341 of the Lebanese Penal Code (Marwa, 2003).^{xx}

The Lebanese Legislative Decree No. 112 issued on 12/6/1959 and its amendments related to the personnel system confirmed that through its texts it was stated that employees were prohibited from striking or inciting it, as well as granting the administration the authority and authority to refer the employee to the Disciplinary Council and consider him resigned and the consequences of that referral or resignation resulting from his financial situation (Lebanese Legislative Decree No. 112, 1959).^{xxi}

3- In Jordanian legislation

Article 120 of the Jordanian Constitution entrusted the Council of Ministers with issuing regulations that determine the appointment and dismissal of public servants, supervising them and determining their competencies and powers, and the Council of Ministers relied on this article in issuing the civil service system, which stated in Article 68, paragraph (c), that the strike was attended and prevented (the Jordanian Constitution, Article 120).^{xxii}

The third topic: jurisprudential trends on the right to practice the strike of the public servant.

There was no agreement among the jurists on the right of the public servant to exercise the right to strike or not, so two trends appeared in this matter:

First: The trend of rejecting the idea of a public employee practicing a strike

The owners of this trend believe that the relationship between the public employee and the state is an organizational relationship governed by the organizational position of the employee, and the nature of the work and its conditions are determined by the administration with its sole authority, so completely different from the private sector, in which this authority can be negotiated, as well as the nature and quality of services provided by the public facility to citizens, they are basic and necessary services, and the strike threatens the principle of work of the public facility based on maintaining the functioning of the public facility regularly and steadily, and the practice of the public employee strike against the government The holder of power is a clear challenge to her, which weakens her prestige and reduces her status (Hilal, 1984).^{xxiii}

Second: The trend in favor of the right of the public employee to strike

The proponents of this trend believe that despite the existence of the regulatory relationship between the state and the public employee, the exercise of the right to strike within regulatory frameworks defined by legal controls does not spoil that obstacle between the state and the public employee, and with regard to the nature of the services performed by the employee in the public facility that they are basic and necessary services provided to the public, this matter does not take at all, because there are some services in the private sector more and more influential such as the sector of doctors, pharmacists and lawyers ... These sectors have a greater impact on the lives of the public than most public jobs, as well as the state's recognition of the right of the public employee to form professional unions naturally provides the members of these unions with some of the rights derived from it, such as the right to strike, and not accepting the right to strike for union members will certainly reduce the importance of union work

and one of the most important means of unions that follow them to demand the rights of their members (Jebali, 2014).^{xxiv}

The researcher believes that the opinion in favor of the right to strike is closer to logic and reason, it is not fair to restrict the freedom of a citizen only because he is an employee of the state and has a relationship with his organization, we do not see any danger to the continuity of the public facility if the strike mechanism is set appropriately, so we have achieved justice between the public employee and other employees in the private sector, as well as provide a legal right for every employee affiliated with a union to exercise his right to claim his rights through the strike, as well as what supports This view we have noted the global trend in international conventions demanding all human rights principles that support the right to strike a public servant, and it is not imagined at this time, after all this development in the field of human rights, that the right of a public employee to exercise the right to strike will be confiscated.

Findings and recommendations

In conclusion, this study reached a set of results and recommendations, which we list as follows:

First: Results:

- All international conventions and treaties affirmed the freedom of the right to strike in general for public employees and the regulation of the right to strike for some public jobs that would prejudice important facilities in the state.
- Jordan is among the countries that have banned the strike of public servants according to the civil service system in Article 68, paragraph (c), issued under Article 120 of the Jordanian Constitution.
- There is a clear contradiction between the international conventions that allowed strikes within certain restrictions for public employees, which Jordan signed and included in its legal system, and the Jordanian legal system, which banned strikes permanently in the civil service system.
- Arab legislation, whose constitutions stipulate that freedom of expression is granted to its citizens, did not rise to the level required of them in the right to strike, but many of these legislative systems tended to prevent the right to strike on public servants.

Second: Recommendations:

- We hope that the Jordanian legislator will reconsider the Civil Service Law and give the public employee the right to strike within organized legal frameworks.
- We hope that the Jordanian legislator will abide by the agreements that have been signed, which include the right to strike a public employee and to coordinate between their provisions and the texts of Jordanian legislation that prohibit this right.
- We hope that the Arab legislator will deal with the principles of human rights better and take serious steps towards achieving these principles, especially about the right of public servants to strike.

Margins

-
- ⁱ- Abu Amr, Mustafa Ahmed, 2009, Legal regulation of the right Strike in Egyptian and French Law and Arab Legislation, Dar Al-Kutub Al-Qanoon and Dar Al-Shatat for Publishing and Programming, Egypt, p. 21.
- ⁱⁱ- Sarayra, Ibrahim Saleh, 2012, Legality Strike And its impact on contractual relations, Dar Wael for Publishing and Distribution, first edition, p. 18.
- ⁱⁱⁱ- Sayed, Ahmed Ali Abdel Aal, 1997, Haq Strike In the facilities General- Its Development - Defining its Concept - Its Legal System, Kuwait, Dar Al-Kutub Foundation, Second Edition, p. 99.
- ^{iv}- Al-Tamawi, Suleiman Muhammad, 1992, Al-Wajeez fi Al-Danoon, Cairo, Dar Al-Fikr Al-Arabi, p. 385.
- ^v- Al-Montaser, Asma, 2014, The Role of the Administrative Judiciary in Determining the Controls of Practice Strike in the General Facility, master's Thesis, Hassan I University, Morocco, p. 15.
- ^{vi}- Al-Barizat, Ahmed Atta, 2012, Strike of public servants in law Jordanian master's Thesis, Isra University, Amman, p. 35.
- ^{vii}- Abu Zeid, Mohamed Abdel Hamid, 1999, reference in administrative law, Dar Al-Nahda, Cairo, p. 118.
- ^{viii}- Abu Amr, Mustafa Ahmed, 2009, Legal regulation of the right Strike in Egyptian and French Law and Arab Legislation, previous reference, p. 34.
- ^{ix}- Abdul Mohsen, Abdul Basit, 1992, Strike In lawful labor law, Effects Legal, Dar Al-Nasr for Distribution and Publishing, Cairo, pp. 30, 31.
- ^x- Hassan, Salah Ali, 2012, Organizing the Right to Strike in Comparative Arab Legislation, New University House, Alexandria, p. 24.
- ^{xi}- International Covenant on Economic, Social and Cultural Rights, article 8.
- ^{xii}- Charter for Human Rights, Article 35/3.
- ^{xiii}- The 1977 Arab Labour Organization Convention on Trade Union Freedoms and Rights, article 11.

-
- ^{xiv} - European Social Charter of 1961 and its Amendment of 1996, Article 6.
- ^{xv} - Korean Pilgrim BuhruAhmed2012, the problem of regulating and codifying the exercise of the right to strike between international law and national legislation, New Knowledge Press, first edition, Rabat, p. 64.
- ^{xvi} - Al-Jabali, Ali Mohammed, 2014, The right of public servants to strike in Jordanian law, a field study, master's thesis, Middle East University, Jordan, p. 55.
- ^{xvii} - Constitution of the Hashemite Kingdom of Jordan, Article 15.
- ^{xviii} - Jebali, Ali Mohammed, 2014, The right of public servants to Strike In law Jordanian, Previous reference, p. 59.
- ^{xix} - Iraqi Penal Code No. 11 of 1969, Article No. 346.
- ^{xx} - Marwa, Hiam, 2003, Private Administrative Law, First Edition, University Institute for Studies, Publishing and Distribution, Beirut, p. 54.
- ^{xxi} - Lebanese Legislative Decree No. 112 Issued on 12/6/1959.
- ^{xxii} - Jordanian Constitution, Article No. 120.
- ^{xxiii} - Hilal, Nassef Imam Saad, 1984, Workers' Strike Between Leave and Prohibition in Legislation, Jurisprudence, and Judiciary, Ph.D. thesis, Ain Shams University, Egypt, pp. 7-8.
- ^{xxiv} - Al-Jabali, Ali Mohammed, 2014, The right of public servants to strike in Jordanian law, previous reference, p. 55.