

The Position of the Jordanian Legislator from Workers' Strike

Dr. Jamil Samawi
American University of Madaba, Jordan

Abstract

This study is revolves around Jordan legislator position from workers who organized issue of going on strike, as well as explaining the legal texts related to it and shows the penalties resulting in case of practice by them. The researcher used the descriptive and analytical method in reading, analyzing the legal texts in this regard and extrapolation the views of writers in relevant legal books and apply it on Jordanian reality. The most important results that the strike not limited to the private sector employees, but the legal texts in Jordanian Constitution ensured the right of workers in in public facilities to express and freedom of opinion, and free regulatory regulation. The study recommended the necessity to reconsider the issue of prohibition of strike and create legal texts organize such regulation within specific rules and bases, as it condones many cases of such strikes, especially in public facilities, and harms its functioning, and it is applied by employees whether been blocked or approved.

Keywords: The Issue of Going on Strike, Jordanian legislator, Sit-in

Introduction

It is believed that the first strike known to mankind dates back to the reign of Ramses III, while they built the tomb of Pharaoh in order to pay their wages and improve working conditions. The jurists believe that this strike, which the workers would have resorted to, would not have been possible without the noble and sacred nature of the task of these workers, which is the construction of the tomb of Pharaoh, as for the slaves, because of their status or legal status, which made them just things that were not allowed to such initiatives and protests¹.

The strike is a phenomenon that has evolved in accordance with the time limits experienced by humanity. Its movement and importance have increased in modern times as a result of the development of social, economic and political life. The individual, collective and public needs have increased. The relationship is often volatile and unstable between employers and employees. The legislator was supposed to regulate such a relationship between the parties of production in conflict situations, by granting both parties legal means of defense for their own interests, but within specific conditions and controls, by giving the workers the right to strike to express their dissatisfaction with the relationship with employers, as well as to grant employers the right of closure to preserve and defend their interests.

Therefore, the weak parties resort to claiming rights or protesting against their failure or dereliction to achieve them. A strike on the job is called the objection and its instruments of abstention and its components are the collective solidarity spirit. It is frequently encountered and dealt with because of the spread of injustice and the absence of religious beliefs, and for the human being represented by the reconstruction and development of the land and the maintenance of the responsibility of being negligent².

Most countries in the world, particularly the developed ones, recognize the strike as a human right, this recognition is usually in a legal text, it is often included in the constitution and the supplementary regulatory texts are used to determine how it is practiced³. The issue of the strike has taken place in most constitutions and national laws, and set aside constitutional clauses and legal articles, and some of them set up a system of strike, and organized the appropriate way, and the way to find a solution that satisfies the two parties⁴.

Therefore, we will discuss the legal provisions stipulated by the Jordanian legislator regarding the issue of the eligibility of workers' strike and penalties, if they are prohibited by law, by referring to the relevant laws such as the Jordanian labor law and penalties and the civil service system.

Research goals

The objectives are determined by the importance of the subject in question, which is the position of the Jordanian legislator on the subject of the strike. Therefore, the study aims to show the following:

- 1- Understand the concept of strike and the difference in concept between it and the sit-in.
- 2- To address whether there is a legislative deficiency that the Jordanian legislator has signed regarding the strike.

¹ Zubaidi, M. (2008) The crown of the bride of jewels Dictionary, the door hit, Vol.3, p.239

² Al-Ahmad, S.& Abu Ramia, S. (2012) Strike on Work - A Comparative Study between Islamic Law and Jurisprudence, Master's Study, An-Najah University Journal of Research (Humanities), Volume 26, No. (6), pp. 1296

³ The Egyptian Organization for Human Rights (2009) The Strike in Egypt between Legitimacy and Punishment, Report of the Egyptian Organization on Strikes and Sit-ins during 2009, Association, No. 5220, (2009), p.1

⁴ Khudair, M. (2011) Workers' Strike on the Work, its Definition, Legal Adaptation, Types and Legal Provisions, Jordanian Journal of Islamic Studies, Vol.9, No. (1 / A), pp.33

3- To clarify the position of the Jordanian legislator in approving or prohibiting the issue of strikes and penalties resulting from such practices.

Importance of the Research

The importance is represented in the following:

1. The urgent need to address such topics of concern to individuals and groups or at the level of peoples and leaders, through studying all its aspects, and the statement of the legal rules resulting from it, and the definition of its limits and controls.
2. It is one of the topics that affect the lives of people, not far from their contemporary reality.
3. The fact that workers in any governmental or private sector regard them as a form of peaceful change, and the only way to demonstrate their demands, cause and rights, to remove the harm on them.
4. There is a great deal of disagreement in the issue of strike action, and the specialists disputed in its feasibility and usefulness.

Search problems

The strike is the temporary abstention of a group of workers from work due to labor contracts, as a result of labor disputes between them and employers and the intention to return to work after deducting them. As a result of the increasing strikes among employees working in Jordan with a view to claiming their functional gain and services offered to them, without attention if such strikes are prohibited or approved by law, as referred to by the Civil Service Bureau in Article 169 (A / 2) by banning and stating the penalty resulting from it, it is noted that the Jordanian Constitution in Article 15 guarantees the freedom of opinion and expression, and the right of meetings and the formation of associations and political parties within the limits of the law. Article 23 of the Jordanian Constitution also provides for the right of workers to free union organization. The right of workers to strike was mentioned in the private sector in Articles 134-135-136 of the Jordanian Labor Law.

Therefore, the problem of the study is to try to investigate the rules and legal texts provided by the Jordanian legislator regarding the organization of the strike and the penalties resulting from it, by answering the following main question: **What is the position of the Jordanian legislator on the issue of workers' strike?**

Research Methodology

The researcher will rely on the analytical descriptive approach in reading and analyzing the legal texts in this regard and extrapolating the views of the book in the relevant legal books and applying this to the Jordanian reality.

Research Plan

The research plan was as follows:

The first topic: strike action: This section includes two requirements:

- The first requirement: the concept of strike in language and terminology and the difference between it and the concept of sit-in.
- The second requirement: forms of strike.

The second topic: is the position of the Jordanian legislator on the strike: it contains the relevant legal texts, if any, that were mentioned by the Jordanian legislator in both the Jordanian Labor Law and the Civil Service Law and the Jordanian Penal Code.

The first topic: strike action

The first requirement: the concept of strike

Several definitions of the concept of strike, as well as the difficulty of developing a comprehensive definition that contravenes the concept of strike, it is considered to be one of the basic elements of public freedoms, as a mean of defending the professional interests of the worker and a constitutional right enjoyed by both the worker and the employee.

The strike in the language: The source strike any cessation of the thing or the symptom, it is said to strike the thing: cessation and exposed and stopped. Stopped it: strike on it¹, residence, and in the crown of the bride, the man strike in the house: Stay,, So stop it².

Ibn Manzoor said: strike against something: turned away. Struck him means let him go. The original in saying: The animal struck, that the passenger if he was riding an animal and wanted to let it away on his side, he hit it with his stick, to adjust it for the side that he wants³.

¹ Ibn Mandour, A. (2003) *Lesan al-Arab*, Beirut edition, Vol. 1. p. 547

² Zubaidi, M. (2008) *The crown of the bride of jewels Dictionary*, the strike section, Vol.3, p.239

³ Ibn Mandour, A. (2003) *Lesan al-Arab*, Beirut edition, Vol. 1. p. 547

The strike as a term: the worker's suspension or abstention from carrying out his functions, which he had previously held without prior permission from his client or employer for the purpose of obtaining one of his rights by justice.¹

It was defined as: the cessation of work at a particular facility, or in the general facilities of protest or demand, and that people cease their actions to demonstrate their denial of government action².

Al-Manawi defined the strike as: the disobedience to the thing by lifting it and neglected it after accepting it³.

The strike in the Islamic Criminal Encyclopedia is that a person or group abstains from work or food in fulfillment of demands or conditions that they declare to official or non-official administrators⁴.

The strike is defined as the agreement of some workers to abstain from working for a period of time, without giving in their intention, to abandon their jobs permanently, with the intention of showing their dissatisfaction, or reaching certain demands, such as raising wages⁵.

It is also the abandonment of employees, or public servants, to their jobs, to demonstrate their discontent, to an act of government, or to compel the Government to respond to their demands⁶.

It is worth noting the distinction between the concepts of strike and sit-in, Sit-in is a relatively recent issue dating back to the mid-nineteenth century, in 1849 when American politician Henry David Thoreau published a paper entitled "In the Duty of Civil Disobedience" following the refusal to pay the tax allocated to finance The war against Mexico means the sit-in and has many names, such as: resistance of the civil government, civil disobedience, refusal to obey or submit to a law, organization, regulation or authority that is considered unfair by those who criticize it. It is therefore a public and peaceful work that is fully conscious, but it is a political job contradicts the law and applies it in the ablation Conditions for a change in law or government policy⁷.

The sit-in was defined as the act of an individual or group of individuals bound by a certain association to refrain from acting or abandoning something that they were willing to do⁸.

A sit-in is an abstention for the purpose of changing a particular law or regime and continues until the laws are changed, but the strike is a failure to work for a certain period in order to improve working conditions⁹.

The second requirement: forms of strike

It is assumed that every movement carried out by the workers in order to stop working must be organized so as not to turn into disobedience to the employer's orders. Therefore, they coordinate their actions in order to achieve their demands. They may be collective, class or sectorial. The following are forms of strike:

First: the traditional strike: is the most widespread, where the strikers cease to work at the same time leaving their workplaces or abstaining from joining them in a systematic and orderly manner, and is considered in advance in terms of how and how long to reach the intended goal¹⁰.

Second, the circular strike: Is a strike that requires careful planning and harmony, in which the different gradations of the production units in the facility are determined on the one hand, and the timing of the programmed strikes. This strike is carried out in a consecutive category. In other words, a class of workers stops to work for a specified period of time followed by another category after the restoration of the first category of activity, this strike does not completely stop the work of the sector; this made the circular strike prohibited in the public sector¹¹.

Such strikes are without paralyzing the movement of activity in the institution, and are considered more harmful than the collective disconnection from work, while at the same time a prelude to prepare the workers for total disconnection from work.

Third: the short and repeated strike: It is a number of frequent and repeated stops while staying in the workplace, and sometimes there is a complete break from work, where workers refrain from joining their work centers or delay at regular times, so that they resume work afterwards¹².

¹ Zidane, A. (2014) the rights of individuals in Dar al-Islam, p. (56)

² Al-Zagard, A. (2007) Labor Law Explanation of the new law No. 12 of 2003, The Modern Library of Publishing and Distribution, Egypt, (2007), p. 594

³ Al-Manawi, A. (1989) Definitions: Al Dad section, Contemporary Thought House, First Edition, Dar Al-Fikr - Beirut, Damascus, Vol.1. p.71

⁴ Al - Otaibi (2010) Islamic Criminal Encyclopedia: the door of the strike, (1/117).

⁵ Tamawi, S. (1966) Principles of Administrative Law, Part II, Theory of the General Annex, Cairo, p.177

⁶ Fuad, M. (1967) Al-Wajeez in Administrative Law - Administrative Authority, Cairo, Publisher D., p. 152.

⁷ Al-Sindi, R. (2016) the sit-in in Iraq, Legal Perspective, Journal of Writings, p.1

⁸ Khudair, M. (2011) Workers' Strike on the Work, its Definition, Legal Adaptation, Types and Legal Provisions, Jordanian Journal of Islamic Studies, Vol.9, No. (1 / A), pp.33

⁹ Jamil, O. (2008) Civil Disobedience Concept, Terms and Objectives: The Imam Shirazi Center for Studies and Research

¹⁰ Ali. A. (1996) Al-Wajiz in explaining the Labor Law, Legal Library of the House of University Publications, Alexandria, p. 632.

¹¹ Laurant, B. (1973) General Function, translation Antoine Abdou, First Edition, The Scientific Library, Beirut, p. 168.

¹² Rashid, W. (2003) Individual and Collective Labor Disputes under Economic Reforms in Algeria, Dar Houma, Algeria,

Fourth, The simple strike: it has several names, including strikes on production, partial strike and hidden strike, this type of strike is characterized by reducing and lessening the pace of production, so that workers continue to exercise their activity without completely stopping, according to a pre-planned production reduction, The act of strike means that the work remains constant¹.

Fifth: The impulsive or inflammatory strike: It is called the strike of exaggeration in activity, which is the opposite of the other types mentioned above, so that it includes more and more activity by taking careful consideration of all the administrative procedures held by the striking workers. The relationship between them and the practice of this type of strikes because the literal application of administrative systems is almost impossible because of the increasing congestion in public interests, resulting in this strike a delay in the functioning of the public facility².

The second topic: The Jordanian legislator's position on the strike

International conventions have recognized the right to strike as a human right. This right is linked to other rights, especially the right to work as one of the most important human economic rights and the right to trade union organization. Article 23 of the Universal Declaration of Human Rights affirms several rights related to the subject of the strike, just a disease that guarantees the worker and his family a life worthy of human dignity, and the international charters that provided for the right to strike³:

- 1- **International Covenant on Economic, Social and Cultural Rights (ICESCR):** Article 8 (1 / d) stipulates that the States Parties to the present Covenant undertake to guarantee the right to strike, provided that it is exercised in accordance with the laws of the concerned country.
- 2- The Arab Charter on Human Rights: Article 35 (3) of the Charter states that "Each State Party shall ensure the right to strike within the limits provided for in the relevant legislation."
- 3- The Arab Labor Organization Convention of 1977 on Freedoms and Trade Union Rights: Article (11) of this Convention stipulates that "Workers have the right to strike to defend their economic and social interests after exhausting the legal negotiation methods to achieve these interests."

In reference to the old repealed Labor Law (No. 21 of 1960) in Article 90, a strike is defined as: "A group of workers has ceased to work because of a labor dispute"⁴.

The civil service system also referred to the subject of the strike and indirectly in its recent amendments (No. 82/2013) in article 169 (2 / a) that the employee's loss of employment is "the suspension or omission of the staff member from performing his functions"⁵.

In reviewing the legal texts on the subject of the right of workers to strike, we find that the Jordanian legislator has attended, however, as many economic, social and political conditions have changed and Jordanian employees have been affected by the political events that have taken place in many Arab countries, especially near Jordan, the employee has changed to the extent that he has calls for change and modification of many general job conditions, such as salary adjustments, pushing it out of the strike ban, carrying out indiscriminate strikes that harm the functioning of public facilities and refraining from providing service to the beneficiaries of these facilities, the State has dealt with the strikers wisely and rationally and has not received any punitive sanctions and has often responded to their demands. This will put the Government in an awkward position by disabling the ban according to the civil service system and responding to their demands, which impose disciplinary sanctions against them, Up to dismissal of the job⁶.

Although the Civil Service Law prohibits the strike of workers, it contradicts the provisions of the Jordanian Constitution, which guarantees in Article 15 freedom of expression for every Jordanian, which states: "The State shall guarantee freedom of opinion and every Jordanian shall freely express his opinion by speech, writing, photography and other means of expression, provided that the limits of the law do not exceed " "Article 16 also guarantees the right to hold meetings, to form associations and trade unions, and to form political parties within the limits of the law. Article 23 of the Constitution guarantees the right to work for all Jordanians, and the state must provide them with the right to work. Protect it and put legislation in place to regulate it, and to ensure that workers are vigilant what regulatory free within the limits of the law⁷.

It should be noted that these legal provisions contained in the Jordanian Constitution did not exclude the

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¹ Deeb, A. (2003) Previous source, p. 368

² Ali. A. (1996) Al-Wajiz in explaining the Labor Law, Legal Library of the House of University Publications, Alexandria, p. 632.

³ Barghouthi et al. (2006) The Impact of the Strike of Public Officials on the Vital Sectors in Palestine, Palestinian Independent Commission for Citizens' Rights, Special Series of Reports (49), Ramallah, pp. 9-10.

⁴ Al-Buraizat, A. (2012) Strike of Public Officials in Jordanian Law, Master Thesis, Amman, Al-Isra University, p. 34

⁵ Civil Service System No. (82) for the year (2013)

⁶ Jabali, A. (2014) The Right of Employees to Strike in Jordanian Law, Unpublished MA Thesis, Middle East University, The Hashemite Kingdom of Jordan , p. 65

⁷ The Constitution of the Hashemite Kingdom of Jordan and its amendments for the year 1952

public employee by virtue of his position and thus guaranteed him his constitutional right to opinion and expression. The reason for prohibiting the strike is to keep the work in these facilities intact without harming public and private facilities.

Moreover, many of the legal provisions have shown the penalties imposed on employees who are offending, as stipulated in Article 134 of the Jordanian Labor Law and its amendments No. 8 of 1996¹, which states that: No worker shall be beaten or any employer close his institution in any of the following cases:

- a. If the dispute is referred to the conciliation representative, conciliation council or labor court.
- b. During the period in which any settlement takes effect or any decision in force, and the strike or closure relates to matters covered by such settlement or decision.

Article (136) of Article (A) states that if a worker strikes prohibited under this law, he shall be punished by a fine of not less than 50 dinars for the first day and five dinars for every day that the strike continues thereafter and he shall be deprived of his wages for the days he is going in strike .

According to these articles, a worker may not strike without notice to the employer not less than fourteen days before the date specified for the strike. Article 135 states: "A worker may not strike without giving notice to the employer in not less than fourteen days from the date specified for the strike, and this period shall be doubled if the work is in a public interest service".

With regard to the Jordanian Penal Code (No. 1960/16) and all its amendments and published in the Official Gazette No. (1487) dated 1960/1/1 and amended by the latest law (No. 2011/8) and published in the Official Gazette No. (5090) dated 05/2/2011 There is no provision to criminalize or penalize public employees who are in strike for their work, which has been confirmed by many studies and legal references. We believe that this is a legislative vacuum because the legislator did not specify the legal effects of the employee during the strike. On the other hand, we do not see protection for the employee and the worker in this field.

Based on the above, the Jordanian legislator must guarantee the right of workers to strike in public and private institutions and facilities by amending and adding legal provisions to approve and regulate such practices guaranteed by the Constitution to every Jordanian citizen within certain limits without prejudice to the national interest, which is caused by workers' strike of various economic effects on society, workers and employers represented by the delay and reduction of production, social effects on workers and employers, as well as psychological effects on everyone. The strike also has many legal effects, including labor contracts, rights of third parties and obligations.

Previous Studies

Khudair (2011) study entitled " workers' strike on work, definition, legal adaptation, types and legal provisions" in his study he stated that Strike action means the stop of some workers or government employees, from the performance of their work, temporarily, to demand the rising of their salaries, or improve their working and living conditions, or request other concessions, it is a new old way, grew up in the arms of Western thought, and then rounded to our Arabic communities. There have been many positions of Western law in adapting this incident, some of whom considered it a legitimate right of the employee, guaranteed by the Constitution, or the termination of the contractual relationship between the parties, while others saw it as a crime to punish the perpetrator. In Islamic law, it's different, forensic evidence has combined the mind act contrary to the appropriate work contract, and a betrayal of the nation in compromising their secretariats, and backward its funds and damage its property, the victim private employee can replace the method of strike on work, with a Jurisprudential way, according to the provisions (dismissal) known in the law. (And the public employee) can replace the method of strike by a professional way of strike, through professional unions.

Al-Ahmad (2012) study entitled "Work Strike - Comparative Study between Islamic Law and Jurisprudence". This study dealt with the strike on the work of a comparative study between Islamic law and jurisprudence, aimed at expressing the opinion of Islamic law and jurisprudence. And it also appears that the rules and general purposes of Islamic law encourage the collection of rights and the realization of justice for all those responsible, including the strike of workers to demand their rights, and by standing up to these determinants and related matters; the same, but because it is a means to conductive human needs, and therefore if the project takes into account the conditions to do.

Al-Jabali (2014) study entitled "The Right of Employees to Strike in Jordanian Law". The importance of this subject was discussed in the speech about the strike in general and the strike in Jordanian legislation and international conventions. The researcher conducted a field study through a questionnaire that included the employees of four ministries (Ministry of Education, Health, Awqaf and Social Development) of the relevant bodies of the subject of the study provided by this sector. The results showed that the civil service system should be modified in such a way as to allow the public servant to strike. The strike has now become very important and the employee feels its importance and effectiveness to meet his demands. The strike does not stop his practice of

¹ Jordanian Labor Law and its amendments No. (8) of 1996.

legal recognition or prohibition, and organizing the strike is a peaceful alternative to protests. It may be held at random and limit the negative effects that may result, and the study recommended the need to review the organization of the strike and not ban it, and the government to study the economic conditions and improve the conditions and salaries of staff commensurate with the cost of living and prevailing economic conditions and that's share demands of the employees who went on strike in Jordan were material demands.

Results

- 1- The strike is linked to the phenomenon of protest and the suffering of staff and arbitrary decisions in some cases by the administration, and is resorted to, whether prohibited by law or approved.
- 2- Workers' strike is a problem with historical, constitutional and legal roots.
- 3- That the strike is not limited to private sector employees, but that the legal provisions of the Jordanian Constitution guarantee the right of the employee in public facilities to express and freedom of opinion and free regulation.
- 4- In the event of a strike organized within specific conditions and bases that would reduce the negative effects that may result and achieve some of the orderly conduct of public utilities during the strike period.
- 5- The strike of employees working in public utilities is not only through confronting the administration, but by confronting the society by depriving it from some necessary services, as a rebellion against power and affecting the society and the national economy.

Recommendations

- 1- The Jordanian legislator must review the issue of the prohibition of strike and find legal provisions regulating this organization within specific rules and principles. It overlooks many cases of such strikes, especially in public facilities, and harms the functioning of the organization. They are implemented by employees, whether they are prohibited or approved.
- 2- Identify a specific mechanism for organizing the strike, by identifying special days and hours of strike outside the official working hours and in designated places such as trade union groups and away from work sites.
- 3- To inform the employee, upon appointment, of the most important rights and duties of the employer and the commitment of the employer or institution to which he works, whether governmental or private, as well as involve him in many training courses to educate him about the tasks and duties of the job.

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