



Research Paper

The Issues in Arbitrary Dismissal in the Jordanian Labor Law

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ABSTRACT

This study aims to shed light on the various issues raised by the subject of arbitrary dismissal in the Jordanian Labor Law. The study is divided into two main parts with the first aspect dealing with the legal concept of arbitrary dismissal, in particular cases of arbitrary dismissal, which, if one exists, the dismissal is considered arbitrary. It dealt also with the criterion of arbitrary dismissal and its relation to the theory of abuse of right contained in the Jordanian Civil Law, as both of which are considered unlawful. The second aspect dealt with the implications and proof of arbitrary dismissal, as in the event if the arbitrary dismissal is proven, it entails either returning the worker to work or paying him for monetary compensation, but the burden of proof shall be on the employer and he shall prove that the dismissal was done by legal means.

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INTRODUCTION

Various countries of the world endeavor to enact labor legislation in order to regulate the relationship between the interests of each party in the employment contract (the employee and the employer) in view of the difference between the legal status as the employee is the weaker party in the employment contract for his urgent need to retain the available employment opportunity under any circumstance, which prompted the legislator to intervene in drawing up ruling legal provisions in the Labor Act; to maintain the interests of the employee and achieve the greatest possible balance in this legal relationship.

The Jordanian legislator regulated the subject of arbitrary dismissal in the Labor Law out of concern that the employer would arbitrarily dismiss the worker without a legitimate reason. Therefore, the legislator decided to determine the employer's responsibility towards the worker if he is dismissed arbitrarily. On the event that it is established that the dismissal was arbitrary, the Court may issue an order to the employer to re-instant the employee in his original job, if possible, or pay him compensation. However, there are some

legal observations on this subject that we will try to address in this research.

In the context of the arbitrary dismissal, it should be noted that the contract of employment contract is divided into two namely: a fixed-term contract and an indefinite (permanent) contract.

The importance of distinction between both kinds lies on the extent to which the contract may be terminated by individual will or not, as the indefinite contract may be terminated by the unilateral will of one of the parties, provided that such party shall serve one month written notice notifying the other party of its wish to terminate the contract.¹

In the case of a fixed-term contract, the parties may terminate it before the expiry date only by their mutual agreement (Abu et al., 2006). If either party to the fixed-term contract terminates the contract without a legal justification, such action is unlawful and the other party shall be compensated for such damage as a result of the unlawful termination (Al-Allawi et al., 2006).

¹Article 23(a) of the Jordanian Labor Law.

It should be noted that arbitrary dismissal can only be raised in the case of indefinite employment contracts, given the specificity of this contract, in which either party has the right to terminate it at any time provided that the other party shall be notified.

One of the most important objectives of this study is to determine the criterion of abuse of the right contained in the Jordanian Civil Law No. 43 of 1976 and its relation to the arbitrary dismissal contained in the Jordanian Labor Law No. 8 of 1996 and its amendments, in addition to reach a criterion that achieves the relative justice of the employee if arbitrarily dismissed.

The importance of the study stems from the importance of the same topic. Arbitrary dismissal is one of the most important topics dealt with in the Jordanian Labor Law, in addition to the fact that this topic has not yet been fully researched and studied in the same way as other legal topics.

Through a careful reading of the provisions of the Jordanian Labor Law No. 8 of 1996 and its amendments related to arbitrary dismissal, It has become clear to us that there are legal observations on this topic that the Jordanian legislator does not explicitly and clearly define cases of arbitrary dismissal, and that the criterion of compensation provided for in Article 25 of this law did not provide sufficient justice for employees when it is established that they were arbitrarily dismissed. In addition, it did not specify whether the period of 60 days was the period of losing the right to bring a lawsuit against the employer to re-instate the employee in his original job or a period of limitation to hear the arbitrary dismissal claim and claim compensation, especially that the burden of proof was on the employer contrary to the general rule of burden of proof which lies on the claimant.

In this study, the researchers adopted the analytical inductive approach, through return the rules to its origins, as well as, be guided by the judicial decisions and study their suitability and compatibility with the legal texts related to the subject matter, especially the judgments issued by the Jordanian judiciary represented by the Court of Cassation.

LEGAL CONCEPT OF ARBITRARY DISMISSAL

This chapter is divided into three topics. The first topic deals with definition of the concept of arbitrary dismissal, while the second deals with the cases of arbitrary dismissal, and the third topic addresses the criterion of arbitrary dismissal,

²This Law has been published in the official gazette, Issue 4113, P. 1173, Dated: 16/04/1996. Article 1 of this Law states: (This Law shall be called the Labor Law of 1996 and shall come into force on the expiry of sixty days from the date of its publication in the Official Gazette).

³This Law has been published in the official gazette, Issue 2645, P. 2, Dated: 01/08/1976. Article 1 thereof states: (This

as follows:

The concept of arbitrary dismissal

A careful reading of the provisions of the Jordanian Labor Law No. 8 of 1996 and its amendments² demonstrates that the legislator did not set a definition of arbitrary dismissal, however, Article 25 of this Law referred to arbitrary dismissal when it provides that: "If the competent Court finds in a lawsuit instituted by the Employee within sixty days from the date of his discharge, that the dismissal was arbitrary and in violation of the provisions of this law, it may issue an order to the Employer to re-instate the Employee in his original job or to pay him compensation in addition to the payment *in lieu* of notice and his other entitlements provided for under Articles (32) and (33) of this law provided that the amount of such compensation is not less than three months and not more than six months. The benefits shall be calculated on the basis of the last wage received by the Employee."

Based on the aforementioned, it is noticed that the legislator in the previous article used the term arbitrary, which leads us to ask about the nature of this arbitrariness and its relationship to the abuse of the right contained in Article 66 of the Jordan Civil Code No. 43 of 1976³ which clarified when the exercise of a right shall be unlawful. Under this article, the person abuses a right if there is intent to create detrimental effects on others, the interest to be achieved from the act is unlawful, the benefit therefore is disproportionate with the damage inflicted on others, or if it exceeds custom and usage (Alsarhan et al., 2005). Hence, the arbitrariness in article 25 of the Labor Law is the same as the abuse of the right contained in article 66 of the Civil Code.

There is no doubt that the abuse of right and the arbitrary dismissal intersect in both are unlawful acts, so it can be said that: There is no difference between the arbitrary dismissal contained in the Jordanian Labor Law and the abuse of the right contained in the Jordanian Civil Code.

Arbitrary dismissal can only be applied to indefinite employment contracts as it relates to the right to terminate the contract unilaterally by either party as a reason for termination (Ale'toum et al., 1992). The arbitrary dismissal is only by the employer and not by the worker.

The judge is the arbiter in determining whether there is an arbitrary dismissal or not in the termination of the services of the worker, with the discretionary power in the

Law shall be called the Civil Code of 1996 and shall come into force as of 01/01/1977).

assessment of evidence because arbitrary dismissal is a matter of fact appropriated by the trial judge.⁴

Cases of arbitrary dismissal

The Jordanian Labor Law, through Articles 24 and 27 confirmed some cases of arbitrary dismissal.

Case 1: Article 27 (a / 1) of the Labor Law stipulates: "The pregnant working woman as of the sixth month of her pregnancy or during the maternity leave." It is clear from this article that the termination by the employer of a working woman if she has reached her sixth month of pregnancy is considered an arbitrary termination, as is the case of termination on maternity leave, the employer does not have the right to terminate the contract. Therefore, if the employer terminates the employment contract during the period of maternity leave, this dismissal shall be considered arbitrary even if the employer served a termination notice, as an exception (Ramadan et al., 2004). According to a part of jurisprudence, arbitrary dismissal in this case is not different whether the contract of employment is fixed-term or indefinite (*Ibid*). However, another part of the jurisprudence considers that this exception is applied in indefinite employment contracts and not for fixed-term employment contracts, because if the contract of the pregnant woman ends after the sixth month, then, it cannot be said that the termination in this case was arbitrary (Abu et al., 2006).

Case 2: Termination of the employment of a worker performing compulsory military or reserve service. In Article 27 (a / 2), The Labor Law regulates this situation and prevents the employer from terminating the employment contract in the event that the worker is entrusted with the compulsory military or reserve service, but the contract of employment shall be suspended during this period⁽¹²⁾. In this case, a distinction must be made between the fixed-term and indefinite employment contract. In the case of a fixed-term employment contract, the worker may complete

the duration of the employment contract after ending the term of compulsory military or reserve service, and the employer must reinstate the worker in his previous post (Al-Allawi et al., 2006: 28).

Case 3: Termination of the employment of a worker during his annual or sick leave or the leave granted to him for purpose of labor culture, pilgrimage or during his mutually agreed upon leave.

The Jordanian legislator introduced the subject of leave in Articles (60 to 71) of the Jordanian Labor Law, where such leave is considered to be a right of the worker (Al-Dawoudi et al., 2004) and shall be full paid even if no work is assigned to him.⁵ Therefore, the employer may not dismiss the worker during this leave, otherwise, the dismissal is considered arbitrary.

Case 4: Article 24 of the Jordanian Labor Law considered the termination for reasons related to complaints or claims submitted by the worker to the appropriate bodies as arbitrary dismissal.

It is prohibited to terminate the employment for reasons related to complaints or claims submitted by the worker to the appropriate bodies, hence, no worker may be dismissed and no disciplinary measures may be taken against him as a result of a complaint submitted by him to the Ministry of Labor or any other entity. If the employer terminates the employment, it is considered an arbitrary dismissal (Al-Allawi et al., 2006: 29).

Arbitrary dismissal is not limited to the four advanced cases, since it is possible to regard any termination in an unlawful and unjustified way as an arbitrary dismissal, in which the worker preserves his legal rights to return to job if a case is filed within sixty days of dismissal, or to claim compensation. There are cases that constitute an arbitrary dismissal other than the aforementioned cases, the most important of which are: if the employer serves two warning letters to the worker as a result of not observing the rules of public safety⁶, as well as, if the employer dismisses the worker for economic or technical conditions, without notice to the Ministry of Labor⁷, and also if the employer dismiss a worker if he strikes, and the Jordanian Court of Cassation, in a recent ruling, ruled that: "In accordance with the provisions of

⁴Court of Cassation ruling/ Rights No. 3246/2016 (Ordinary Tribunal) dated 04/01/2017; Court of Cassation ruling/ Rights No. 495/2014 (Ordinary Tribunal) dated 02/04/2014; Court of Cassation ruling/ Civil No. 327/2016 (Ordinary Tribunal) dated 02/05/2016; Cassation ruling (Rights) 1792/2007; Cassation ruling (Rights) 3255/2006; Cassation ruling (Rights) 1662/2006, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

⁵In some cases, the worker is entitled to receive wage without performing any work, as the legislator stipulated in article 128

of the Jordanian Civil Code: " The employer shall pay the agreed wage to the worker when he performs his work, or prepares himself and dedicate himself to do so, even if no work is assigned to him."

⁶Cassation ruling 705/2000, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

⁷Cassation ruling 2721/1999; Cassation ruling 2408/2007; Cassation ruling 3914/2006; Cassation ruling 3910/2006; Cassation ruling 2759/2003; Cassation ruling 2266/2002; Cassation ruling 3229/2000. Available at: www.adaleh.com.

Article (28) of the Labor Law, the Cassation of work (strike) is not considered a lawful reason to dismiss the worker"⁸.

Criterion of arbitrary dismissal

The Jordanian Civil Code adopted the theory of abuse of right defined by a part of the jurisprudence⁹ as the "unlawful use of the right." It is noteworthy that the Jordanian legislator came in harmony to some extent with the advanced jurisprudence, where it approved the theory of abuse of right in Article 66 of the Jordanian Civil Code, which stated in the second paragraph that the use of the right is unlawful:

- If there is intent to aggress;
- If the interest to be achieved from the act is unlawful;
- If the benefit there from is disproportionate with the damage inflicted on others;
- If it exceeds custom and usage.

In our opinion, a person shall be abused if one of the earlier mentioned cases is available. The theory of abuse of right does not require the availability of all the said cases, as only one of them is sufficient.

The criterion of the theory of abuse of right is varied in civil law. The jurisprudence of civil law differed on the criterion that distinguishes abuse of right. There are those who advocate a personal criterion and others who advocate the objective criterion.

Personal criterion

This criterion can be summed up in that arbitrariness depends on the psychological state of the right holder, as he is considered abusive in using his right if such use is intended to create detrimental effects on others, in the sense that harm to others is the sole purpose of using the right (Al-Sarraf et al., 1985).

We believe that the Jordanian legislator adopted this criterion in paragraph (a) of Article 66 of the Civil Code when it states that (the use of the right is unlawful if there is intentional infringement. As a result of the failure of this criterion to address all cases of abuse of rights, the objective criterion has emerged.

Objective criterion

⁸Court of Cassation ruling/ Rights No. 3202/2016 (Ordinary Tribunal) dated 27/02/2017, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

⁹This jurisprudence is adopted by Ahmad Fehmi Abu Senna, see Al-Zahawi, Saeed Amjad, *Alta'asuf fi Aist'imal Haq*

This criterion does not stand at the point of harming others, but it goes beyond the general purpose sought by the right holder from the use of his right. The proponents of this criterion were divided into two doctrines:

1) A doctrine that advocates the criterion of lack of legitimate interest: According to this standard, the use of the right is arbitrary if the owner does not have an interest in the use of the right or that interest is negligible in a way that does not justify the harm resulting from that use (Abu et al., 2006).

We believe that the Jordanian Civil Code took this criterion when it states in Article 66, paragraph (c), that "the use of the right is unlawful if the benefit thereof is disproportionate with the damage inflicted on others."

2) A doctrine advocates the criterion of the social goal of the right: This criterion is broader than the first criterion. According to this criterion, private rights become social functions (Alsarhan et al., 2005).

It is noticed that the Jordanian Civil Code took this criterion when it states in Article 66, paragraph (b), that "the use of the right is unlawful if the interest to be achieved from the act is unlawful".

It is noted that the Jordanian legislator has adopted the double criterion combining the personal and the objective criterion at the same time. There is no doubt that all of the foregoing leads us to the following question: Which of the aforementioned criterion has been adopted by the Jordanian Labor Law in the theory of arbitrary dismissal?

Article 25 of Jordanian Labor Law states that: "If the competent Court finds, in a lawsuit instituted by the Employee within sixty days from the date of his discharge that the dismissal was arbitrary and in violation of the provisions of this law, it may issue an order to the Employer to re-instate the Employee in his original job or to pay him compensation".

It is clear from the text of this article that the Jordanian legislator seeks to give arbitrary dismissal a specific criterion in which arbitrary dismissal and violation of the provisions of the Labor Law were combined, as the Labor Law is the reference in determining whether this dismissal is arbitrary or not, without taking into account the criterions earlier presented (Abu et al., 2006).

The rulings of the Court of Cassation in this regard were frequent, as stated in one of its decisions: "1) According to Article 25 of the Labor Law, dealing with reinstatement of employee, if the court finds that the worker is dismissed

Almalakiat fi Alshrye'a Walqanun, (translated into English as: Abuse in Use the Right of Property between the Islamic legislation and the laws), N. Ed., Arab Union Printing House, Cairo, 1976, P. 106.

from his job arbitrarily and contrary to the provisions of the Labor Law, it may issue an order to the employer, as it deems appropriate to return the employee to work or to pay compensation if the worker raises the case within sixty days from the date of dismissal, and if the worker is late, he shall not be deprived of the right to claim his labor rights¹⁰.

IMPLICATIONS AND PROOF OF ARBITRARY DISMISSAL

The Labor Law has defined the legal implications for arbitrary dismissal. The issue of proof is a judge's most difficult task. It is not an easy task for a judge to reach the truth.

Implications of arbitrary dismissal

Article 25 of the Jordanian Labor Law provided for the implications of arbitrary dismissal. The employee may return to work if he raises the case within sixty days from the date of dismissal (the first effect). Otherwise, the choice would be limited only to claim compensation within two years of the date of dismissal (the second effect).

The first effect: Reinstatement of the arbitrarily dismissed employee

The reinstatement of the arbitrarily dismissed employee is under the specific performance of the contract, namely restoring the situation prior to dismissal. It is clear that forcing any party to the labor contract to resume the work relationship is unacceptable as it represents an infringement of personal freedom, on the one hand, and also coercion incompatible with the proper good cooperation between the employee and the employer in order to work on the other hand¹¹. The question that arises in this regard is: who has the choice to re-instate the dismissed employee; the employer or the court?

A part of the jurisprudence considers that the court may give the employer the right to re-instate the employee after

an arbitrary dismissal or to pay the compensation provided for in the text of the law, because the text included the word (or) which would benefit the employer rather than the court (Abu et al., 2006). This argument is based on a decision of the Jordanian Court of Cassation, which ruled that "the provisions of Article 20 / c of the Labor Law make it clear that if the court finds that the dismissal is arbitrarily, it may issue an order that includes the employer's choice between returning the employee or paying compensation in accordance with the provisions of Articles 16 and 19 of the same law. Therefore, a decision makes it obligatory for employers to re-instate the employee upon his/ her request would be contrary to law because the said paragraph entitles the employer, and not the worker, the right of choice between re-employment or compensation"¹².

A review of the text of article 25 of the Labor Law shows that it gives the court, in case of arbitrary dismissal, the choice of returning the worker or pay monetary compensation, in the sense that the text includes the word "may" and the pronoun (it) refers to the court and not to the employer. Accordingly, the court is the party who may decide returning the worker to work or paying monetary compensation. If the dismissed worker raises a claim within sixty days from the date of the dismissal, the court may return him to work, if possible, otherwise it shall decide to award him the monetary compensation specified in the law.

It is noted that the Jordanian Court of Cassation has amended its previous decision and granted the right and authority to re-instate or to compensate the worker for the court and not the employer, where the rulings of the Court of Cassation in this regard were frequent¹³ as one of its decisions was: "The employer shall re-instate the employee in his original job if the claim is filed within sixty days from the date of his dismissal. If the employee files his claim beyond this period of sixty days and during two years of the dismissal date, the court may not issue a decision to re-instate him, but it continues consideration of the case until it issues a decision on the rights to which the employee is entitled under the provisions of the Labor Law"¹⁴. In another judgment, she ruled that "the established jurisprudence of the Court of Cassation has confirmed that the legislator in Article 25 of the Labor Law has given the choice to the

¹⁰Cassation ruling 3915/2005 dated 24/05/2006, See also Cassation ruling 3478/2004; Cassation ruling 3038/2002; Cassation ruling 3712/2002; Cassation ruling 339/2008, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

¹¹Keerah, Hasan, O'soul Kanoun Ala'mal (translated into English as: Origins of Labor Law), Alma'aref Publishers, Alexandria, 1983, P. 817.

¹²Cassation ruling 204/1994, publications of Adaleh Center for Legal Information, available at: www.adaleh.com. This

judgment has been mentioned in (Ramadan, Sayed Mahmoud, Alwasit fi Sharah Qanun Al'amal, Ibid, P. 437).

¹³Cassation ruling 339/2008; Cassation ruling 2150/2007; Cassation ruling 1792/2007; Cassation ruling 3915/2005; Cassation ruling 752/2005; Cassation ruling 206/2005; Cassation ruling 3735/2004; Cassation ruling 4202/2003; Cassation ruling 299/1999, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

¹⁴Cassation ruling 3616/2004, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

competent court to issue a decision to return the arbitrarily dismissed employee to his job if he files the case within sixty days of the date of dismissal and, 2) The employee shall be entitled to compensation for arbitrary dismissal, which means that the previous text dealt with the issue of reinstating the employee in his original job within 60 days, if possible, which means that the previous text that addresses the rule of re-instating the employee in his job has nothing to do with organizing the issue of statute of limitations for labor cases, on unfair dismissal provided for in Article (138 / b) of the Labor Law"¹⁵.

In reference to the text of Article 25 of the Labor Law, it is noticed that it provided for a period of sixty days, during which time the employee can file an arbitrary dismissal claim. Is this period a limitation period for the arbitrary dismissal claims or does the arbitrary dismissal claims, just like any other labor claim, subject to a statutory limitation of two years as stipulated in Article 138(b) of the Jordanian Labor Law?

It is clear that the aforementioned provision is taken to mean that the court is privileged, if the employee raises the case during this period to return him to work or to award him compensation. Therefore, according to this provision, the employee loses his right to file the case after 60 days.

However, the jurisprudence of the Jordanian Court of Cassation established that this period is not a period of limitation, but the period during which the employee can file a claim to return to work. If the employee files the claim during this period, the court may return him to work. Otherwise, if the employee files the claim after this period, the choice granted to the court is limited to the award of monetary compensation only. In any case, based on the provisions of Article 138(B) of the Jordanian Labor Law, the worker's right to claim compensation is subject to a statutory limitation of two years from the date of termination of employment^{16,17}.

In confirmation of the aforementioned, the Jordanian Court of Cassation ruled in one of its decisions that "the period of 60 days provided for in Article 25 of the Labor Law is a statute of limitation for purposes of returning the worker

to his work and not a limitation period for claiming the rights of the worker, including the compensation of unfair dismissal"¹⁸.

It should be noted that the worker shall not be paid for the period during which he is not working for the employer. This is what was confirmed by the Jordanian Court of Cassation in one of its jurisprudence. "If the court decides to return the worker to work pursuant to Article 25 of the Labor Law, and the employer accepts to return him to work, the worker shall not be entitled to be paid for the period in which he was dismissed from the date of dismissal until the date of his return because it is not one of the benefits stipulated in the said article, and because in accordance with the general rules, the worker's entitlement to be paid is during the validity of the term of the contract and the worker's performance of his work"¹⁹.

Although the Court of Cassation has followed this approach of non-entitlement of the worker during the period of work interruption, but our legal point of view, in case the court ruled to return the worker is that the Court should oblige the employer to pay the wage of the worker for the period of work interruption, this is because the return of the worker to work must bring him to the same financial situation that would have been if the employment had not been terminated. In addition, the arbitrary dismissal was done by the employer and not the worker, therefore, the researcher suggest that the legislator should redraft Article (25) of the Labor Law to include paying for the worker during the period of work interruption.

The second effect: Compensation for arbitrary dismissal

The court competent to hear an arbitrary dismissal case is entitled to issue a decision of compensation only if the worker files a claim of arbitrary dismissal after 60 days of the date of arbitrary dismissal. Article 25 of the Labor Law determines compensation to be the equivalent to half the worker's remuneration for every month for every year of effective service, and shall be calculated on the basis of the

¹⁵Court of Cassation ruling/ Civil No. 2342/2018 (Ordinary Tribunal) dated 24/02/2016.

¹⁶The statute of limitations is the passage of the legally prescribed time on the due right without being claimed, so that the passage of such time will result in loss the creditor's right to bring legal action against the debtor to claim the right. The Jordanian legislator has made it a reason to not hear the case, after which the creditor's right becomes a natural debt, which the creditor cannot compel the debtor to pay. Article 449 of the Jordanian Civil Code provided for: "the statute of limitations does not fall right, but it drops the right to establish lawsuit after the expiration of fifteen years without lawful excuse or justification, without prejudice to the special provisions". See details in (Alfar, Abdelqader, Ahkam Aliltizam "translated into English as: Provisions of the Obligation", N. Ed., Dar Althaqafah, Amman, 1999, Pp. 214-232).

¹⁷Cassation ruling 2113/1997, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

¹⁸Cassation ruling 148/1999, publications of Adaleh Center for Legal Information, available at: www.adaleh.com. This judgment has been mentioned in (Malkawi, Bashar, The most important legal principles governing the individual employment contract in the Jordanian Labor Law, 1st Ed., Dar Wael for Publishing and Distributing, Amman, 2005, Pp. 95-96).

¹⁹Cassation ruling 702/2004, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

last remuneration he received.

In addition to the amount of compensation, the worker shall be entitled to receive any allowances he is entitled to under a special scheme of savings, pension or other such funds in this establishment governed by internal regulations approved by the Minister of Labor, in addition to the end of service indemnity and the compensation *in lieu* of notice if not covered by social security (Abu et al., 2006).

Two points are noted from the provisions of Article 25 of the Jordanian Labor Law regarding the amount of compensation:

Point I: This states that the amount of compensation was determined to be the equivalent of half the worker's remuneration for every month for every year of effective service, provided that the compensation shall not be less than remuneration for two months in all cases. The question that arises here is that whether this compensation is fair for the dismissed employee.

From our point of view, this criterion does not provide sufficient justice for workers if they are dismissed arbitrarily. With the difficult economic conditions, the successive financial crises and the rapid rise in commodity prices, this criterion does not achieve the desired objective, as the purpose of determining such compensation is to compensate the worker for the damage caused to him by dismissal, since the arbitrary dismissal is done by the employer for an illegal reason and the worker has no relation to this dismissal and he is, in this case, the most affected by the arbitrary dismissal.

The compensation for the abuse in employment termination is indisputable, especially since the purpose of the compensation is not the punishment of the employer, but to redress the damage caused to the worker as a result of this termination. The compensation is to be measured by the amount of damage actually done, hence, the Jordanian legislator needs to link the amount of compensation to the damage caused to the worker as a result of arbitrary dismissal; the fact that the damage varied between a worker and another, and also to leave the determination of this compensation to be by the competent court as it is considered most reliable to determine the amount of damage done to the worker and this is what the Yemeni legislator did when the compensation of arbitrary dismissal is linked to damage done to the worker because the damage is uneven between a worker and another²⁰.

The assessment of compensation shall take into account the material and moral damages suffered by the worker. This assessment shall include the worker's type of work, term of service, experience, age, the reasonable period of work interruption, the family burdens imposed on him and the

impact of this dismissal on the worker's reputation and other circumstances. All of these circumstances confirm that the harm caused to workers as a result of arbitrary dismissal varies between a worker and another.

Point II: It is noted that this text has a legislative shortcoming that does not stipulate compensation for a worker whose actual period of service for the employer is less than a year. Is it fair for a worker not to be entitled to the rights stipulated in Article 25 of the Labor Law whether to return him to work or to compensate him because his actual service with the employer was less than a year?

In reviewing the text of this article, we find that it did not address this situation, in terms of it providing for compensation of the worker wage month for each year of active service with the employer, the worker whose service is less than the actual year does not deserve compensation provided for in this article. The Jordanian legislator is required to state this situation in order to reach justice between the workers without distinction between them. If the Jordanian legislator linked compensation to the extent of the damage occurred to the work without specifying a certain amount of compensation related to the active service for a year at least, this legislative shortcoming would be avoided, and this is mentioned in Point I.

The proof of arbitrary dismissal

The general rules of evidence provide that the plaintiff is the one to bear the burden of proving his claim in the ways provided for by the law (Alzubi, 2008). According to Article 77 of the Jordanian Civil Code, "onus of proof lies with the plaintiff and denial shall be supported by oath". Article 78 of the Jordanian Civil Code provided that "the object of evidence is to prove what is contrary to appearance and the object of oath is to ensure the continuation of the original state". In application of the general rule of proof, the burden of proof is either on the worker by proving that the dismissal was arbitrary or the employer by proving that arbitrary dismissal was based on a right reason and through legal means. Therefore, the question arising is based on the extent of compliance with these rules in the framework of the Labor Law.

In view of the specificity of the Labor Law, the issue is different, where the employer is obliged to provide legal justifications confirming that the termination of the employment contract has been legally done, and if the employer refrains from doing so, the court may conclude that the dismissal was arbitrary (Ali, 1999).

The employer is required to prove that the termination of

²⁰Article 39 of the Yemeni Labor Law No. 5 of 1995 provided for: "the worker shall be entitled to special compensation for damages sustained as a result of the employer's termination of the contract of employment arbitrarily..."

the worker is not an arbitrary dismissal, but is under the cases determined by the law. The dismissal is not considered arbitrary if it is under one of the cases stipulated in Article 28 of the Jordanian Labor Law. The rulings of the Court of Cassation in this regard were frequent²¹, as stated in one of its decisions: "Article 28 of the Labor Law specifically defines cases where an employer may dismiss the worker without the dismissal being arbitrary and that the defendant has not established any of these cases, making the dismissal arbitrary"²².

In another judgment, "If the defendant claims that the plaintiff was not arbitrarily dismissed and that the termination of his employment was lawful and in conformity with the provisions of the Jordanian Labor Law, then, the defendant must prove that the termination of the plaintiff's employment is consistent with the provisions of the Jordanian Labor Law. Thus, the Court's transfer of the burden of proof to the defendant is in accordance with the law and is in its proper place"²³.

It is noted that the Jordanian Court of Cassation did not comply with the general rule of proof that the evidence is on the person who claims that he is obliged to prove the arbitrary dismissal, but limited the task of proof on the employer only; the employer must prove that the dismissal of the worker was based on a valid reason. The Court of Cassation has done well to comply with the spirit of the Labor Law, as its ultimate objective is to protect the worker who is the weakest party.

CONCLUSION

After highlighting the subject of the study, some conclusions drawn were:

- 1) The arbitrary dismissal in Article 25 of the Jordanian Labor Law intersects the theory of abuse of the right contained in Article 66 of the Jordanian Civil Code, and both of which constitute an unlawful act. Article 66 refers to the criteria for abuse of the right. However, legislator of the Jordanian Labor Law did not take any of these criteria where the criterion of arbitrariness was considered to be a combination of arbitrariness and violation of the provisions of the Labor Law itself;
- 2) A question of whether the employer arbitrarily dismissed the worker is one of the matters that are subject to the discretion of the trial judge;

²¹Cassation ruling 2613/2004, Cassation ruling 2075/2007; Cassation ruling 4485/2005; Cassation ruling 1559/2005, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

3) The burden of proof in accordance with the general rule of the Jordanian Civil Code shall be on the plaintiff, contrary to what was stated by the Jordanian judiciary represented by the Court of Cassation where the burden of proof lies on the employer by proving that the dismissal was done by legal means;

4) The effects of arbitrary dismissal shall be either reinstatement of the worker to the extent that it is possible, if an action is filed within sixty days from the date of the arbitrary dismissal, or compensation shall be paid to the worker within two years from the date of the arbitrary dismissal;

5) The Jordanian judiciary clarified that the 60-day period mentioned in Article 25 of the Labor Law is the period in which the employee is entitled to return to work, and that the arbitrary dismissal claim is subject to limitation statute of two years.

6) The limitation of compensation for arbitrary dismissal does not conform to certain limits in the form provided for in the Labor Law, with the aim of compensating damages. Compensation must be calculated in light of the loss suffered by the person as a result of arbitrary dismissal.

RECOMMENDATIONS

The recommendations drawn from the course of the study include:

- 1) We propose to the Jordanian legislator that the amount of compensation for arbitrary dismissal should be linked to the amount of damage done to the worker through amending the text of Article 25 of the Labor Law by deleting the scope of compensation and leaving the amount of compensation for the trial judge;
- 2) The Jordanian legislator should provide for the compensation of the worker whose actual period of service is less than one year;
- 3) The Jordanian legislator should explicitly stipulate that the burden of proof is on the employer who must prove that the dismissal was done through legal means;
- 4) The Jordanian legislator should redraft the text of Article 25 of the Labor Law in a clear and explicit manner, and in a wording that is not so ambiguous, to clarify that the 60-day period is the period during which the worker can file an arbitrary dismissal claim and therefore can return to work whenever possible, and that arbitrary dismissal is subject to limitation statute of two years.

²²Cassation ruling 3735/2001, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

²³Cassation ruling 1418/2009, see also Cassation ruling 208/2011, publications of Adaleh Center for Legal Information, available at: www.adaleh.com.

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- See Al-Dawoudi, Ghaleb, Sharah Qanun Al'amal wa-T'adilat (2004). Explanation of the Labor Law and its amendments, Dar Wael For Publishing and Distribution, Amman, Pp. 126-133.
- See for this opinion, Abu Shanab, Ahmad Abdelkareem, Shareh Qanun Al-Amal Al'urduni Aljadid, Ibid, pp. 294.
- See for this opinion, Ramadan, Sayed Mahmoud, Alwasit fi Sharah Qanun Al'amal, Ibid, pp. 429.
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