

THE RIGHT OF THE PUBLIC EMPLOYEE TO STRIKE IN THE JORDANIAN LEGAL SYSTEM. (A COMPARATIVE STUDY)

Mohammed Mufadi AL-Maagbeh, The University of Jordan

ABSTRACT

The strike of public employees is of vital, fundamental, and controversial issues owing to multiple problems it raises in face of political systems. Despite its close relation to an inherent human right, as a manifestation of freedom of expression, it negatively affects the functioning of public facilities regularly and steadily. The stances of jurisprudence and the judiciary, nevertheless, differed on this matter between legitimacy and lack thereof. Accordingly, the current study casts light on the Jordanian legal system in terms of the regulatory legislation thereof, and the stance of the Jordanian constitutional and administrative judiciary towards public employees' strike. Coherently, the study seeks to clarify the contradiction between the stance of the Jordanian constitutional and administrative judiciary on preserving this right and how it is practiced. In this context, the study scrutinizes the constitutionality of the text of Article (68) Of the Jordanian Civil Service System No. (82) of 2013. Moreover, the study views the international conventions ratified by Jordan that features the public employees' strike as a general principle, restricted exceptionally to the necessities of regular functioning of the public facility. Consequently, the study focuses on Jordan's ratification of the International Covenant on Economic, Cultural and Social Rights and hence examines whether it affects the legitimacy of the strike or not.

The research concluded that Article 68 of the Jordanian Civil Service Law No. 82 of 2013 is unconstitutional. In addition, there is a clear contradiction between the rulings of the Jordanian Constitutional Court and the Supreme Administrative Court pertaining to the preservation of the right for a public employees to strike, since the Jordanian constitution, in accordance with the amendments of 2011, affirms the imperative for preserving the public rights and freedoms of Jordanians and not to prejudice their essence or undermine their fundamentals, consolidating the text of Article (2/128) of the Jordanian Constitution of 1952.

Keywords: International Covenant on Economic, Cultural and Social Rights, Constitutional Court, Public Service, Strike, Public Employees, Human Rights.

INTRODUCTION

The strike of public employees from the performance of their duties is one of the constitutional and administrative issues that have received steady attention, whether on the part of states, relevant international organizations, or natural individuals. As this issue is related to political, economic and social human rights and freedom of expression concepts, giving that it is one of the most important rights and freedoms which is guaranteed protection in state-actors constitutions and hence referred to as ordinary laws without prejudice to its essence and basis.

Despite the international interest in legalizing the legality of the public employees' strike. It is closely linked to a firm and constant principle of established principles of administrative

Law, which is the principle of the necessity of the regular and steady functioning of the public facility, as any breach of this principle that governs the issue of presenting and satisfying the basic needs of the public constitutes a breach of peace. Social situation in any country may destroy its political and social stability in cases where this right is not allowed.

Therefore, we find an enormous group of legal studies that have paid unparalleled attention to this issue in an effort to find a precise balance between two variables, namely freedom of expression, considering that the public employees' strike is one of its manifestations and that it enjoys protection at the domestic level through states' constitutions and at the international level through International Charters, declarations and agreements. The second variable is the principle of the regular and steady functioning of the public facility which is a fundamental duty of the state. Violating public employees to strike has, in reality, dire dangerous and grave effects on states' stability and at the same time hinders the provision and satisfaction of the basic needs of the public.

The importance of this study revolves around its close connection with the realities of life of the common people and basic human rights and freedoms. The so-called Arab Spring had central results, the most important of which was the expansion of the circle of the culture of protest and rejection of existing policies on the one hand, and on the other the escalation of public employees' demands for the need to improve the work environment and increase their salaries in light of the erosion of financial incomes due to widespread corruption and failed economic policies and the consequences of that. Significant effects, most notably the sluggishness of the public sector, and its inability to satisfy the basic needs of people in health, educational and other sectors.

Faced with this reality, the marches of rejection and protest of public sector employees in various Arab countries took place in a remarkable and clear manner, and their abstention from work resulted in the cessation of many public facilities from providing basic and necessary services to people. In addition to the government's inability to find legal and economic solutions to deal with these demands, which prompted some Arab regimes to follow repressive measures against all voices rejecting and opposing government policies that took uncommon forms of excessive use of force and dissolving many trade union organizations. All these circumstances have created a problem that cannot be ignored, which centered around the right of employees to strike and the necessity of continuity of work and the non-disruption of vital sectors that serve the people.

Based on that, this research paper came to shed light on this problem through analysis and comparison to come up with recommendations to contribute to existing literature and also locating legal foundation that takes into account balances between the two mentioned above variables and reconciles them so that neither one precedes the other and thus establish an acceptable balance to protect human rights while at the same time maintaining the continuation of work and presenting public services.

The Concept of Public Employees' Strike

As usual, the various legislations that govern and regulate the relationship of public employees with the public administration did not define. Meanwhile, the concept of the public employees' strike has always left to jurisprudence and the judiciary, giving that it is one of the issues that in fact difficult to define and easy to describe. In order to clarify this concept, it is necessary to address its definition in language, and then we explore the most important Arabic and French jurisprudential definitions. The linguistic concept of the word "strike", which is derived from the source of the quadruple verb (strike) means ceasing and turning away from something specific. (Ibn Manzur, 1993).

Hence, we find that striking means cessation from an action or thing or turning away from it, and in this way it is different from abstaining in language, for abstaining has a more comprehensive and more general meaning of the strike, as it represents abstinence from work and the relationship between them in general and in particular, so every strike is an abstinence and not every abstention is a strike, and that the failure of the public employees to carry out the work through relying on his own reasons is not considered a strike in such a case (Khalil, 2014).

Strike in the terminological sense and in the jurisprudence of general law has a specific meaning, emerging and related to workers in public facilities, and with this definition it is outside the scope of our discussion, the strike of workers in the private sectors. We find that an important aspect of common law jurisprudence is defined by public employees abstaining from their work while adhering to their jobs, and employees usually resort to this method to show their discontent with a government action or action or to force it to retreat from a position or respond to their demands. (Tamawi, 1980)

Another aspect of jurisprudence defines the strike as "the employees ceasing to carry out their work without desiring to end the service in a collective, agreed manner in order to pressure the administration through the disturbance caused by the strike to achieve a special interest for the strikers or raise a damage they see as a reality on them or to protest against an order of affairs." (Hamid, 1999)

Based on the foregoing, we can know employees' strike: that the public employee temporarily stops performing his duties and job duties while the job association remains in place as a tool and means to achieve financial demands or improve conditions and conditions for practicing professional or professional work. The public employees' strike from practicing his job is closely related to the principle of regular and steady functioning of the public facility, given the serious effects of this stoppage affecting the rights of everyone who receives the service and may paralyze the services provided by the public administration to the public.

Based on that, the strike or abstaining from performing the duties and job tasks according to the above definitions, has many features and characteristics: as it is practiced collectively and it is at the same time abstaining from carrying out a duty and legal obligation of regularity and performance in accordance with the requirements of the legislation governing it, which is used as a pressure tool. The public administration is required to fulfill financial demands or gains and to improve living conditions, which in this way violates the principle of the regular functioning of the public facility and its absolute prohibition may sometimes constitute a prejudice to the freedom of expression guaranteed by international treaties or national constitutions.

The French jurisprudence dealt with the public employees' strike with several definitions, the most prominent of which is the definition of the French jurist Sinay, who indicated that the strike means "a collective and deliberate refusal to work in which the workers cross out temporarily on the terms of the contract for the success of their demands." (Akash, 2015)

It is noted that this definition did not distinguish between the strike of the public employees in public facilities and employee who works in the private sectors, and that it takes the collective character, contrary to reality, the cases of strike are quasi-collective or practiced by the majority of employees, and it is usually masterminded, i.e. programmed and agreed upon in advance. Here, the strike is specific to the demands in terms of content and form. At the same time, we find that many of the strikes occurred as an accidental result or coincided with general political events such as those that accompanied the revolutions and protests demanding freedom and improvement of living conditions, noting that the amendments that enter legislation related to employees relationship with the management and his position Through the legislation governing his relationship with the public administration, a prize and its project, and the

provisions of the administrative judiciary in Jordan, Egypt and France have settled the right of the public administration to make any amendments to the legal strike status and to restrict it with any restrictions, without the public employee having to invoke the theory of acquired rights (Jubouri, 1999).

It is known that the public office is based on the presidential authority and the idea of public order and the continuity of the regular functioning of the public facility, and that any breach or prejudice to this principle enters the circle of prohibition and falls within the scope of illegality due to its preference for the private interests of public employees over the public interest and thus is inconsistent with public order and stability societal and social peace and this trend establishes its position rejecting the strike on the legal regulation of public employment that is based on abstract general legal texts, whether they are contained in a law or system, contrary to the doctrinal theory that governs workers' relations with employers based on a contractual basis in accordance with the contract rule of the Shari'a of the contractors (Abu Zaid, 2002).

We find that this trend does not allow a public employees' strike from work even if unlawful measures are taken against him by the public administration, or he touches his professional rights, so striking is not a legitimate way to confront these measures according to this opinion, but resorting to the judiciary is the appropriate method considering that the countries of good governance It is the one who adheres to the rule of law and in which all rulers and ruled are subject to the law in its broad sense and under the supervision of a judge. Most of the constitutions in the third world countries talk about it and its claim of independence, immunity and protection is nothing but abstract texts separate from the reality that is completely different, and this reinforces the saying that the executive authorities in most countries practice serious violations of the human rights system in the absence of an independent judiciary far from the interference of the authorities Ruling in those states.

The Doctrinal Trend in Support of the General Employees' Strike

This trend goes towards supporting the right of the public employees to strike and considers it one of the constitutionally guaranteed political rights and that it is a form of expression of opinion and it is not permissible to restrict it, rather it must be organized without prejudice to its essence and that the organizational relationship that binds the public employees to the administration makes it a legal and organizational center, and this regulation and framing of this relationship legal does not mean in any way the infringement of a basic constitutional right, which is the right to strike, and that the organizational relationship between employees and the administrative authority does not at all mean and absolutely restrict a right approved by human rights declarations, relevant international laws and national constitutions. The prohibition of a public employees' strike means an explicit waste of the contents of the international and local legal system and is considered a departure from the idea of legality and general principles of law that the administrative judiciary has extracted from declarations of human rights and introductions to constitutions, what has settled in the conscience of peoples and what has been approved by civilized nations. (Helou, 1996)

It is noted that this jurisprudential trend establishes a general understanding of its content, that the preambles to constitutions enjoy the same legal value of constitutions as they are a product of the authority competent to draw up the constitution, and they have been expressed and what they contain in terms of goals and principles through this introduction or preamble, and this trend goes to the fact that the introductions of the constitutions are equal in terms of Legal value with the contents of the constitution in terms of expression and will. Therefore, we find that this trend recognizes to the public employees the strike as contained in the preconditions of the

constitutions, which he considers a legitimate, approved and original right through the stipulation of it, even though the constitutions suspend its practice on the will of the ordinary legislator, so the constitutional legislator has ensured its practice, approved its legality, defined its features, and left its organization to the ordinary legislator.

We find that this jurisprudential trend has recognized the legitimacy of the public employees' strike as it is a recognized constitutional right and has been dealt with by regular legislation to organize without prejudice to the origin and essence of this right in accordance with the rule of legislative progression and the formal and objective superiority of the constitution. And steadily, if the restrictions and limitations are heavier through ordinary legislation or regulations, that takes these legislations out of the scope of legality to illegality and empties the will of the constitutional legislator from its content constitutes a violation of it and a transgression of it.

As the restrictions put in place by regular legislation, whether bylaws or laws, are an exception on a general basis, which is permissibility, this exception should not be expanded and overloaded with more than is possible, and the philosophy and wisdom behind its approval is to preserve the principle of the regular and steady functioning of the public facility, but it is noticed that The will of the ruling authorities in most countries that see freedom of expression as a manifestation of compromising its inclusiveness and always strive to remain outside the circle of the rule of correlation between responsibility and authority.

The Public Employees' Strike and International Charters

The public employees' exercise of their right to strike in public facilities was dealt with by national legislation and regional and international agreements, because this matter raises the problem of reconciliation between freedom and especially its aspect related to the expression of opinion, represented by the right of the public employees to strike as one of its manifestations, and the necessities for the regular and steady functioning of the public facility.

There is no doubt that the problem of the public employees' strike rises to the surface when the professional unions call for it. The vast majority of public sector employees belong to professional unions such as doctors, engineers and others, as all workers in the public education sector are affiliated with the teachers' union, as the union decision-making is to declare a general strike paralyzes and disrupts educational facilities. Based on that, it is necessary to address the legal regulation of the public employees' strike in international conventions and charters and national legislation. This issue will be dealt with through three sub-titles: the first is the public employees' strike in international charters, the second is the public employees' strike in the judiciary and comparative legislation (France as a model) and the third is the position of Jordanian legislation.

Public Employees' Strike in International Charters

It is an axiom and self-evident that international declarations and covenants related to human rights have recognized and recognized the right of the public employees to strike as one of the basic rights of the human being by virtue of this right being linked to other rights such as work, the right to organize unions, and freedom of expression, despite the fact that the latter is restricted by the restrictions of an organization that does not prevent it. Through a legal system that was crystallized over decades of popular struggle. It is noticeable that the Universal Declaration of Human Rights did not explicitly address the right to strike in its provisions, but it can be seen from some of the texts contained in it, for example, articles 22 and 23, which dealt

with relevant rights and a link with the right to strike, including freedom of choice to work, guarantees of work with fair conditions, wages, and trade union organization.

As for the International Covenant on Civil and Political Rights, Article 8 explicitly addresses the right to strike. The article emphasized the need for the signatory countries to pledge to guarantee the right to strike. Article 8d affirmed the right to strike, provided it is exercised in accordance with the laws of the country concerned. As for Article 8/2, it expressly stipulates that members of the armed forces, police officers, or government department employees shall not be given the right to strike, and thus restricting the exercise of the right to strike (The International Covenant on Economic, Social and Cultural Rights, 1966).

Thus, we find that the International Covenant has authorized the strike in general, whether it is for employees working in government departments (public facilities), or workers who work in the private sectors, without specifying. This agreement gives the ruling authorities the right to maintain the functioning of the public facility regularly and steadily, without justification for canceling the strike, preventing it completely, or wasting it.

Therefore, we find that the authenticity of this right stems from international conventions with which employees working in public facilities can practice it as a means of defending their social and economic interests after these rights and interests cannot be reached through means of dialogue and negotiation.

As for the Arab Labor Organization Convention No. 12 of 1977, it gave workers the right to strike in defense of their economic and social interests, provided that legal negotiation methods have been exhausted. As for the Arab Charter on Human Rights, this right is also affirmed in Article 35, which stipulates that states parties guarantee the right to strike in the limits established by the legislation in force in those countries. (The Arab Charter on Human Rights, 2004)

What is stated in this charter is an affirmation of what was stated in the international conventions related to the concepts of human rights and which we referred to previously, and notes the stability of international treaties and charters for the recognition of the authenticity and legitimacy of the right to strike for the public employee and that the restrictions brought about by international conventions aim to regulate the exercise of this right, The issue of organizing according to their social and economic conditions is left without wasting, or prejudice to its essence and origin, and that the authorities of the states do not exercise strictness and exaggeration in the restrictions imposed by their laws so that this right is wasted and emptied of its contents. Perhaps it is useful in this context that the texts contained in the laws and bylaws of countries conform directly to international conventions and agreements without ambiguity.

The Public Employees' Strike in the Judiciary and Comparative Legislation (France as a Model)

It is important to address the strike of employees in public facilities in some comparative legal systems such as France, especially since the legal system in France is more stable and rooted, as the French legislator explicitly recognized this right and organized it in contrast to the Jordanian legislator, which did not address it through the 1952 constitution and its amendments and did not organize it. The legislative development of employees' strike in France went through two phases. The stage before the 1946 constitution and the 1946 constitution.

Before the 1946 constitution was issued, the hierarchy of public employees was considered a criminal and unlawful act and requires disciplinary sanctions against all who practice it as a disciplinary and behavioral violation, and in some cases, it was considered a criminal offence, and disciplinary at the same time, and this is evident in Articles 291-294 of the

French Penal Code 1810 issued in 2005, and the French legislator went further by wasting disciplinary guarantees for him (Akash, 2015).

The rulings of the State Council in France went on to criminalize the strike and consider it an illegal act through many provisions, perhaps the most important of which is the "Finkel" ruling issued by the French Council of State. The reasons for this ruling are summarized in the case of the strike of the Postal Service employees, which the government faced with dismissal from work and repression using Excessive force, at that time the dismissed employees appealed this decision before the French Council of State, but the State Council rejected the appeal on the pretext that the strike is an illegal act (Wahhab, 2011).

The French legislator has adopted many principles issued by the French Council of State, which include the clearly illegality of the public employees' strike by the 1947 law, of which Article 17 stipulates that "every action or action issued by employee is liable to disrupt the normal functioning of the public facility regularly and steadily which constitutes a grave breach of his duties. And if this suspension results from a collective or agreed-upon activity, then it will deprive the employees of the disciplinary guarantees stipulated by law "(Article 17 of the French Civil Servants Act, 1941).

It is noted that the French legislation, whether constitutional or based on the formulation of ordinary laws or the decisions of the French Council of State, followed a course at this stage, the focus of which was the illegality of the strike carried out by public employees and the French legislation and judiciary considered that the public employees' strike in it violates the principle of the regular and steady functioning of the public service and that it constitutes A serious breach of the job duties of a public employees.

The issuance of the French Constitution of 1946 constituted a fundamental shift in terms of recognizing the right to strike for employees. After the public employees' strike was considered an unlawful act, and those who practiced it were subjected to disciplinary and criminal sanctions, the new constitution laid a new curve on the legality of the strike, as it explicitly stated in its preamble to the legality of the strike, but only partially. Despite the presence of a text that favors the strike, the French ordinary legislator to the will of the legislator did not respond to the constitutional legislator except with the issuance of the 1963 law, as the strike was organized according to its provisions and this law included with its provisions civil public employees in the state, provincial councils and municipalities in addition to employees in projects, bodies and public or private institutions in charge of managing a public facility (Habib, 1996).

The law promulgated in France in 1963 dealt with organizing the public employees' strike, as it obligated all trade unions to the necessity of prior notification to the concerned administration by indicating the goals and objectives of the strike, the reasons for resorting to it, its time, place and duration, requiring that the concerned administration be granted a period of no less than five full days before the strike begins in order to avoid strikes surprisingly and giving an opportunity for settlements and negotiating solutions with the concerned unions, in an effort to avoid the strike (Qasim, 1986).

It is noted that the French legislator issued many legislations aimed at organizing public employees' strikes in basic public facilities to ensure that they proceed regularly and steadily, even to a minimum, during the occurrence of the strike. Perhaps among the most important of these legislations is the law issued on December 31, 1984 and the decree issued on December 17, 1987 and the law issued on December 31, 1987 (Hamza, 2005).

In line with the new position of the French legislator, the French State Council recognized the legitimacy of the administration's decision to summon the striking Electricity Authority employees due to what it causes. This work strike involves stopping the public facility

services as they are essential services and serve the vital interests of the people (Muhammad, 2007).

It is noted that the stage of the 1946 constitution and onwards approved the legality of the public employees' strike, and the regular laws dealt with it to the extent that it does not paralyze the work of public facilities, and yet the French State Council affirmed that the constitutional legislator's recognition of the right to strike for public employees does not mean excluding the restrictions that organize it like other rights And the freedoms, and granting the administrative public authorities in the absence of the organizational texts for the public employees' strike, to work on the proper functioning and regularity of public facilities under judicial control of the restrictions they put in order to ensure the smooth functioning of the facilities regularly and steadily, so that they do not arbitrarily place restrictions that do not aim to achieve the public good.

Based on that, we find that the legislation and the judiciary in France recognized the right to strike for public employees clearly and within restrictions, and this was evident in the 1946 constitution, the 1958 constitution, the Constitutional Council decision issued in 1979, and the decisions of the French Council of State (Shimi, 2010).

In summary, we find that the judicial and legislative reality in France has approved the right to strike according to organizational restrictions determined by regular laws, and in our opinion that the French legislator did a better job as it approved the legality of the public employees' strike as a general principle and put restrictions and guarantees in order to preserve the regular and steady functioning of the public facility, and thus it has balanced the right In the strike as one of the basic rights and freedoms and the conduct of the public facility regularly and steadily.

The Position of the Legislation and the Judiciary in Jordan Regarding the Public Employees' Strike

The different legal systems differ in terms of their view of the public employees' strike, according to the philosophy and political, social and economic perspectives on which the existing political system in this country is based and on which the existing laws and constitutions are only a reflection of that philosophy and the prevailing political doctrine.

For this, the difference in political doctrines and political philosophy on which the political systems of different countries are based have lent a delusion to the legislative system of each country, especially those related to the exercise of rights and freedoms, and perhaps the most prominent of them is freedom of expression, considering that the public employees' strike is one of the manifestations and tools of those systems that believe in basic rights and freedoms. On the other hand, we find that many third world countries include texts that guarantee rights and freedoms in their constitutions and laws, but it is a theoretical practice that is not actual. On the contrary, it is noticed that it infringes upon the rights and freedoms of its citizens.

Based on that, the analysis of the Jordanian legislative reality and actual practice requires addressing the position of Jordanian legislation and the judiciary, standing on it, analyzing it and highlighting it through two aspects, the first is the position of the Jordanian legislation on the employees' strike, and a second requirement is the position of the administrative judiciary on the strike of the public employees.

The Position of the Jordanian Legislator - According to the Rule of Law in its Broadest Sense - On the Public Employees' Strike

No Jordanian legislation has dealt with the public employees' strike in an integrated manner, neither by its organization nor by the authority that permits and prohibits it, while the Jordanian Labor Law No. 8 of 1998 deals with the strike of workers in private sectors, and it does not fall within the scope of this study.

Therefore, the research necessity necessarily requires clarifying the position of the Jordanian constitutional legislator by examining some texts dealing with rights and freedoms as texts that enjoy formal and substantive supremacy over all other legislation, whether laws and regulations, pursuant to the rule of legislative progression.

The Jordanian constitution of 1952 dealt with this issue through Article 15 of Chapter Two, which includes the rights and duties of Jordanians. The article states that "the state guarantees freedom of opinion and every Jordanian has the right to freely express his opinion in speech, writing, photography and all other means of expression, provided that it does not go beyond the limits of the law."

As usual, the constitution is read as an integrated whole, and its texts are organically linked together. Hence, it is necessary to examine the text of Article 128 of the Jordanian constitution, which is considered a constitutional protection for the exercise of freedom contained in Article 15 of the Jordanian constitution. Article 128/1 stipulates that "laws issued under this constitution to regulate rights and freedoms shall not affect the essence of these rights or affect their fundamentals."

By clarifying the above constitutional texts, we find that the Jordanian constitutional legislator has made rights and freedoms a general principle that cannot be restricted or prejudiced to its essence and origin. At the same time, the constitutional legislator created a constitutional guarantee explicitly in the text, as it stipulated the legality and legitimacy of the regular laws dealing with rights and freedoms with regulation and their commitment to the essence of the rights and freedoms and their foundations stipulated in the constitution. Here, we note that the constitutional legislator has emphasized the necessity that the ordinary laws issued under its provisions take into account the rules of legality by being consistent with the will of the constitutional legislator and not violating it, and that any deviation from this will takes it out of the scope of legitimacy to lack thereof.

One of the axioms of the rules of legality is the harmony and compatibility of all the legislations of lower and even subordinate levels with the supreme and supreme legislation, that is, the constitution. It is only for a legitimate and important interest, so it is neither sacrificed nor transgressed. Rather, it is the role of the ordinary legislator to organize and frame how to practice it without prejudice to its essence, origins and fundamentals.

The rulings of the Jordanian Constitutional Court were clear in this context, with its interpretative decision No. 1 of 2020, which came based on the provisions of Paragraph 2 of Article 59 of the 1952 Constitution and its amendments, and this interpretative decision included saying that "In light of the text referred to above, what is required to be interpreted is a statement. Whether it is permissible to issue a law that contradicts the obligations of the parties to a treaty ratified by the Kingdom by virtue of a law or includes an amendment or cancellation of the provisions of the treaty. As long as it remains current and enforceable, "the decision concluded that" and since the Cabinet's response to the request for interpretation requires its division for the purposes of clarity of interpretation regarding each part as follows: First: It is not permissible to issue a law that is completely inconsistent with the obligations established by the parties to a treaty that the Kingdom has ratified Secondly: It is not permissible to issue a law that includes an amendment or cancellation of the provisions of that treaty. Third, those international treaties have binding force for their parties. States respect them as long as they remain in place and enforceable, as long as these treaties have been concluded and ratified, and the procedures established for their enforcement are fulfilled. "(The Jordanian Constitutional Court, 2020).

With the issuance of this interpretative decision, we find that the International Convention, specifically the International Covenant on Economic, Social and Cultural Rights of 1966, specifically Article 8/D, which stipulates: “States parties to this covenant undertake to guarantee the following: the right to strike, provided that it is exercised in accordance with the laws of the country concerned. Hence, it is considered binding on Jordan.

Accordingly, this agreement is an integral part of the Jordanian laws in effect, and it is binding on all authorities in the countries, and it is not permissible to issue any law that amend or cancel the provisions of that treaty.

In light of the constitutional provisions mentioned in the Jordanian constitution and the International Covenant on Economic, Cultural and Social Rights-referred to previously and ratified by the government of the Kingdom of Jordan, we find that the enforceable Jordanian Penal Code No. 16 of 1960 did not criminalize the suspension of a public employees from work or his strike in line with the International Covenant. Concerning economic, social and cultural rights, this was ratified by the government of the Hashemite Kingdom of Jordan.

However, we find that the text of Article No. 681 of the civil service system in force No. 83 of 2013 criminalized and prohibited an employees' strike in contradiction to the International Covenant on Economic, Social and Cultural Rights of 1966, and the provisions of Articles 15,128,31 and 15 of the Jordanian Constitution. Therefore, we find that the text of Article 68 of the Jordanian civil service system constitutes a waste of rights and freedoms, given that the employees' strike constitutes a form of expression of opinion, and in implementation of the provisions of the Jordanian constitution and the International Covenant on Civil, Cultural and Social Rights. Therefore, it is unlawful to violate the basic constitutional rights, whether by denying or diminishing them, and the ordinary legislator or the executive authority, through the same subsidiary legislation, does not replace the will of the constitutional legislator, especially since the Jordanian civil service system issued in accordance with Article 120 of the Jordanian Constitution of 1952, which is Of the independent systems that have the force of law.

From the researcher's point of view, this text is considered a violation of the regulation of the exercise of the right to strike, which is constitutionally guaranteed and recognized in the International Covenant on Economic, Social and Cultural Rights, and the interpretative decision issued by the Constitutional Court that takes the provisions of the constitution down to its status.

The authority of the ordinary legislator, whether the legislation is subsidiary or ordinary, is only limited to regulating the exercise of constitutional rights and freedoms and restricted by the restriction contained in Article 128 of the Jordanian constitution, which emphasized that there is no harm or prejudice to the essence of these rights and their foundations. Therefore, this constitutional text provided a guarantee and protection from the constitutional legislator for the freedom of expression of opinion, considering the public employees' strike as one of its manifestations and forms.

In light of the foregoing, the recognition of the public employees of their right to strike is permanent and valid and constitutes legislation in the Jordanian legal system in the light of Article 8 of the International Covenant on Economic, Social and Cultural Rights ratified by the government of the Kingdom of Jordan and the interpretative decision issued by the Jordanian Constitutional Court - referred to above, and this what is reflected in the judicial application through the interpretation of the Constitutional Court's decision, which affirmed that, which included the impermissibility of amending or canceling any international agreement under an ordinary law and thus determines a new legal reality, which is the supremacy of the international treaty over legislation or ordinary law, which means violating Article 68 of the statute Civil service, according to the rules of legality, by prohibiting it is an order that the Constitution and

the International Covenant on Social, Economic and Cultural Rights considered legitimate and permissible according to a legal regulation that does not affect its origin and does not affect its essence. Accordingly, the right to strike in Jordan is well established and legitimate and does not constitute a legal violation that requires punishment.

This leads to the illegality of disciplinary decisions taken by the administrative authorities against employees based on the provisions of the Civil Service Law No. 65 of 2013. The same applies to Article 68, which is considered illegal and insults to a constitutional text. Accordingly, the civil service system would also be in contravention of the provisions of Articles 15 and 128 of the Jordanian constitution.

The Position of the Jordanian Judiciary Regarding the Public Employees' Strike

The amendments to the Jordanian constitution in 2011 formed a new approach, as before these amendments the Jordanian administrative judiciary had a single degree, and this is what was stipulated in Article 100 of the Jordanian Constitution of 1952, which was amended in 2011, which explicitly stipulated the establishment of an administrative judiciary at two levels. In 2014, Administrative Justice Law No. 27 was issued, which provided for the establishment of an administrative judiciary at two levels, thus abolishing the former Supreme Court of Justice.

According to 2001 constitutional amendments, the Constitutional Court was established through Article 58, which stipulated the establishment of a Constitutional Court to be based in the capital and considered an independent judicial body. As for Article 59, it indicated that the Constitutional Court is concerned with "overseeing the constitutionality of laws and regulations in effect in the name of the King. Ten days from the date of its issuance." (The Jordanian Official Gazette, 2006).

It should be noted that the importance of this amendment specifically stems from the establishment of a constitutional court that is specialized in monitoring the constitutionality and legality of laws and regulations and the interpretation of the texts of the constitution.

The Constitutional Court shall issue its rulings in a final and non-appealable manner in the name of the King, and they shall be enforceable with direct effect from the date of their issuance in the Official Gazette, unless the judgment specifies another date for their enforcement.

The constitutional legislator has specified the parties that have the right to challenge the constitutionality of laws and regulations in force before the Constitutional Court. The Senate, the House of Representatives, and the Council of Ministers have the right to challenge the constitutionality of laws, as well as the right to request an interpretation of a vague or ambiguous constitutional text. In the same context and in the cases pending before the ordinary courts, any of the parties to the lawsuit may raise the claim that it is unconstitutional, and the court, if it finds that the payment is likely to be serious, shall refer it to the court specified by the law for the purposes of deciding on the matter of referring it to the Constitutional Court.

The Jordanian constitutional legislator did not grant ordinary individuals the right to challenge the unconstitutionality of laws and regulations in force before the Constitutional Court except through the subsidiary plea of unconstitutionality through which ordinary individuals could raise this before the trial judge regarding the unconstitutionality of a law or system in force on the basis of an objective case pending before the ordinary judiciary. If the court finds that the payment is serious and has justification, it may refer it to the Court of Cassation to decide and decide whether or not to refer it to the Constitutional Court (Nasraween, 2017).

Based on this, the right of ordinary individuals to challenge the unconstitutionality of any of the laws and regulations in force is restricted by the constitutional legislator with restrictions not to directly raise it except on the basis of a substantive case and also the approval of two

judicial bodies, the trial court and the court of cassation, which has the right to refer the plea of unconstitutionality. Challenging the unconstitutionality of the laws and regulations in force, and that the constitutional legislator surrounded him with restrictions that emptied this right from its content and weakened the role of the Constitutional Court in protecting basic rights and freedoms.

We have previously indicated that the most important and essence of the constitutional amendments that took place to the Jordanian constitution is the first paragraph of Article 128, which came with an explicit text that forms important constitutional guarantee for the protection of rights and freedoms, as it stipulates that it is impermissible that laws issued to regulate rights and freedoms affect or affect the essence of these rights.

From the researcher's point of view, this text constitutes the most important guarantee and protection for rights and freedoms, and this was clearly demonstrated through the Constitutional Court's adherence to it on more than one occasion and ruled that "the right to litigation is a genuine constitutional principle and that he has left to the ordinary legislator a matter of regulating it, provided that the means that ensure his protection, enjoyment and lack of consideration are taken into consideration. Detracting from it, but enabling citizens to fully exercise it through its two-degree report, otherwise it would go beyond the limits of undermining and contrary to the spirit of the constitution, which guarantees enabling citizens to fully exhaust all methods and means that fully guarantee them their rights, including the right to litigate in two degrees.

By extrapolating this ruling, we find that it embodied, in practical and practical terms, the text of Article 128/A, which stipulated the unconstitutionality of any law affecting the essence and foundation of the right, as it approved the unconstitutionality of the text contained in the Law of Landlords and Tenants No. 11 of 2011, which forbade challenging the ruling related to the remuneration of the same, considering that the right Litigation is based on two levels of original rights, and that the owners and tenants law No. 11 of 2011 prohibits appealing against the provisions related to the determination of the remuneration fee, which affects the essence of the right to litigate and breaches the constitutional protection established in this right, and that preventing the appeal and not allowing it violates Article 128/2 of the Jordanian constitution Which included this law in the circle of unconstitutionality and confirmed by this ruling.

In another ruling, the Jordanian Constitutional Court ruled - and by referring to the provisions of Article 128/1 of the Constitution, the power of the ordinary legislator to regulate the exercise of rights and freedoms, even if it is discretionary, is restricted by controls that limit their launch, the most important of which is the inability to obtain legal rules governing rights from the essence of those rights or Violating its fundamentals, which are guaranteed by the constitution, whether by diminishing them or distinguishing them between individuals, otherwise that would be a waste of the principle of equality. (Constitutional Court Decision, 2015)

It is evident through this ruling that the court fully embodied the constitutional text of Article 128/A of the Jordanian Constitution and echoed its texts directly and went on to say that the authority of the ordinary legislator - even if it is discretionary, but that it is restricted by a restriction and is governed by an officer who limits its release and restrain it is that the legislator abides by Ordinary, whether the legislation took the form of a regulation issued by the executive authority, such as the Civil Service Law No. 13 of 2013 and specifically Article 68 of the inadmissibility of obtaining laws and regulations from the essence of these rights and infringing on their foundations.

In light of the above and from the researcher's point of view, it is concluded that Article 68 of the Civil Service Law No. 65 of 2013 has undermined the essence of the public employees right to strike, touched its basics and banned him under penalty of disciplinary responsibility.

Therefore, we find that its unconstitutionality and its violation of international conventions becomes a clear truth.

As for the Jordanian administrative judiciary, it has not kept pace with the judiciary of the Jordanian Constitutional Court with regard to the protection of rights and freedoms, the most important of which is the right to strike as a form or manifestation of the expression of opinion, and the Jordanian Supreme Administrative Court has dealt with the strike of the public employee from work, as the jurisdiction is held by the Administrative Court to consider In the final administrative decisions issued by public law people, professional unions were considered according to the jurisprudence of the Jordanian administrative judiciary that professional unions are persons of law, and that the decisions issued by them related to organizing professions and disciplining their affiliates are final administrative decisions issued by public law persons that accept appeal before it. And subject to his supervision. (The Jordanian Supreme Court of Justice Decision, 1995)

Perhaps the most important and prominent of these administrative decisions issued by professional unions is the famous decision issued by the Teachers Syndicate Council in its Resolution No. 4 issued on 7/9/2019, in which it declared an open-ended strike until the professional and financial demands of teachers, who are public employees, are met.

This decision was appealed as a final administrative decision and an urgent request was submitted to stop the implementation of the appealed decision. The Administrative Court ruled as follows: "to audit and regarding the urgent request submitted by the summoning party, through which it demands the issuance of an urgent decision to stop the open strike on the work announced by the Teachers Union with its decision No. 4 and the appealed against it issued on 7/9/2019 and includes the announcement of an open strike starting on Sunday 8/9/2019 and ends with a bonus (50%), so we find, by reference to Article (6/a) of the Administrative Judiciary Law No. 27 of the year 2014 that the jurisdiction of the court as a court of urgent matters is entrusted with the fulfillment of the conditions stipulated in this article, which are:

1. That the issue is one of the issues that fear the passage of time.
2. The implementation of the contested decision should lead to results that are difficult to correct.
3. That the urgent request regarding an appeal or a lawsuit within it is within the jurisdiction of the administrative court.

The court added in its ruling, "Since this request was submitted to our court according to the administrative case no. (381/2019), our court is considered competent to look into it, and accordingly, as the urgent judiciary requires the fulfillment of the conditions referred to above, that there is a real danger to the right to be preserved. Which requires it to be prevented quickly without delay or delay and that the implementation of the contested decision leads to results that are difficult to correct and that the urgent decision does not affect the subject matter of the case, and by examining the apparent evidence presented in the request, we find that the conditions of the request are available, so the court decides to temporarily suspend the implementation of the decision to announce the open strike until a time Decide on the case. "(Administrative Court ruling No. 381, 2019)

Since this decision is subject to appeal, it was appealed to the Supreme Administrative Court, which rejected the appeal after addressing its reasons and confirming the validity of the findings of the Administrative Court.

We find that the decision to declare an open strike and stop education issued by the Union, that is, its members are public employees and that the members of the Syndicate Council and the Syndicate are also public employees and that the Teachers Syndicate and its specializations are formed under the Teachers Syndicate Law No. 14 of 2011, which stipulated

Article 5 of it To resort to legitimate means in adopting teachers 'demands, and its law did not prohibit or organize strikes, and in compliance with the provisions of Articles 15 and 128 and the International Covenant on Social, Economic and Cultural Rights ratified by the government of the Hashemite Kingdom of Jordan, as these national and international legislation emphasized its guarantee and that laws and regulations That which regulates it should not affect its essence and basis, but we find in light of the absence of legislation regulating the strike of the public employees in Jordan and the actions of the total jurisprudential rules, that the originality of things that are permissible, and that the prohibition is an exception from a general principle from our point of view and its objective and careful view, despite the absence of legislative regulation However, the strike in the form, appearance, and mechanisms announced by the Teachers Syndicate Council impeded and disrupted the regular and steady functioning of the facility and wasted the rights of its beneficiaries. More important in this case than complete paralysis is the absence of an orderly acceleration of the general employees' strike.

The administrative court, while dealing with this decision, even if it was an urgent request, had to deal with the principle of the regular and steady functioning of the public facility, as it is one of the well-established and stable principles of the law and the administrative judiciary, and it had to carefully balance the right to strike as a manifestation of the expression of opinion and from the basic rights and freedoms guaranteed through National constitutions and agreements and the principle of the regular and steady functioning of the public facility, and it had to clearly establish the rules of legality, considering the administrative judiciary as legitimate judiciary, which is its stronghold, its safe haven, its cornerstone, and its faithful guard.

CONCLUSION

This research paper dealt with the public employees' strike in the Jordanian and comparative legal system, in terms of its concept in language and convention, and the jurisprudential trends related to the legality or illegality of the public employees' strike, and the legal regulation of the public employees' strike by international conventions and treaties, the judiciary and the French legislation, and shed light on the legal regulation of the employees' strike mainly in the Hashemite Kingdom of Jordan, and the position of the Jordanian judiciary on this issue by reviewing the judicial rulings issued by the Constitutional Court and the Jordanian Administrative Court. The study has reached a set of results, the most important of which are (1) public employees' strike is one of the basic rights guaranteed by national laws and constitutions and the international agreement, (2) the right to strike, even if it is protected and guaranteed by international conventions, is not an absolute right, but rather is bound by what the laws and legislations of any state party to these treaties subjected to it without this restriction or regulation preventing it,

(3) The public employees' strike is a form of freedom of expression of opinion that dealt with Article (15) of the Jordanian Constitution as one of the means that dealt with this article absolutely, and that Article (128) of the Jordanian Constitution of 1952 placed a restriction on the will of the ordinary legislator not to prejudice its essence and fundamentals under pain of unconstitutionality. (5) Article (68) of the Civil Service Law No. 82 of 2013 constitutes the general sharia of the legal association that governs The legal relationship between the public employees and the public administration (the executive authority) is illegitimate, and criminalizes and prohibits a right approved by the laws and agreements, and guaranteed by the constitutional protection, the texts of articles (128 and 15) of the Jordanian constitution, (6) the French legislator has the right to organize a public employees' strike and set legal rules for him in a way that does not violate the principle of regular and steady functioning of the facility. (7)

Jordanian legislation related to public employment ignored the right of a public employees to strike, and even prohibited this right and its crime.

And based on the results of the study, it recommends the necessity to abolish Article (68) of the Jordanian Civil Service System No. (82) for the year 2013, this criminalized the public employees' strike, as it is tainted with unconstitutionality. In addition to preparing national Jordanian legislation dealing with the right of the public employee to strike in a manner consistent with the International Covenant on Economic, Social and Cultural Rights, and in line with the provisions of Articles (15 and 128) of the Jordanian Constitution of the year 1952. In the same context, the Jordanian legislator must harmonize in the event that adopting legislation for the public employees' strike between the right to strike as one of the guaranteed constitutional rights and freedoms, and the regular and steady functioning of the public service, so that one of them does not overwhelm the other, and it is appraised for the Jordanian legislator to follow the example of the French legislator in adopting an integrated law that organizes the public employees' strike.

REFERENCE

- Abdel-Hamid, M. (1999). *Al-Wajeez in Administrative Law*. Cairo: Dar Al-Nahda Al-Arabiya.
- Abd, W.M.R., & Othman, H.M. (2011). *Principles of Administrative Law*. Alexandria: University Press.
- Abd, R.K. (2014). The right to strike between prohibition and permissibility: A Comparative Study. *Tikrit University Journal of Legal and Political Sciences*, 4(13), 190.
- Abu Hamza, A.M. (2005). The legal framework for exercising the right to strike in public facilities. Cairo: Dar Al-Nahda Al-Arabiya, 93-100.
- Abu Zaid, M.A. (2002). *Principles of Administrative Law*. Cairo: Dar Al-Nahda Al-Arabia.
- Akash, B.S. (2015). Legal organization of the strike (Unpublished master's thesis). University of Aleppo.
- Al-Helou, M.R. (1996). *Administrative law*. Cairo: Alexandria Publications House.
- Al-Jubouri, M.A. (1999). *Al-Wajeez in Administrative Law*. Cairo: Dar Al-Nahda Al-Arabiya.
- Al-Shimi, A. (2010). *Constitutional Judiciary and the Protection of Fundamental Freedoms in Egyptian and French Law* (Unpublished master's thesis). Ain-Shams University.
- Al-Tamawi, S. (1980). *Al-Wajeez in Administrative Law*. Cairo: Ain Shams University Press, Dar Al-Fikr Al-Arabi.
- Decision No. (2), Issue No. (5348) *Official Gazette 6750* (Constitutional Court January 7, 2015).
- Explanatory Decision No. (1), *Official Gazette 2155* (Constitutional Court May 13, 2020).
- Habib, M.A. (1996). *Public employee and the Practice of Rights and Freedoms*. Cairo: University Culture House.
- League of Arab States. (2004) *Arab Charter on Human Rights*, 23 May.
- Manzur, I. (1993). *Lisan al-'Arab, Juz 11*. Beirut: Dar Sadir.
- Muhammad, A.A. (2007). *Freedom of Political Practice for Public employees (Restrictions and Guarantees)* (pp. 475-476). Alexandria: New University House.
- Nasraween, L. (2017). Constitutional reforms after the arab spring. *The Kuwaiti International Law College Journal*, 5(2), 18th ser.
- Qasim, M.A. (1986). Public employee and the practice of union work. 87-90. Cairo: Dar Al-Nahda Al-Arabiya.
- Supreme Court of justice Decision No. (1992). (153/91), *Bar Association Magazine*.
- UN General Assembly. (1966). *International Covenant on Economic, Social and Cultural Rights*. United Nations, Treaty Series.
- The French Civil Servants Act, Article 17 (1941).