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Iraqui Labour Law – Recent Amendments on Termination of Employment Contract – compared to International Labour Standards

This paper is an attempt to examine the new Iraqi labour law No. 37 adopted on October 15, 2015, to show whether the recent amendments on termination of employment contract have met the international labour standards or not. Since the international labour organization (ILO) adopted general principles for termination of employment contract through international conventions and recommendations, the majority of member states in ILO tried to reach and apply those standards in their national laws. The application of international standards in termination of employment contract also has taken into consideration by Iraqi labour law and begins to practice in labour market which may positively impact on employment security.

I. INTRODUCTION

Labour Law is a part of Iraqi legal system that has been changed rapidly over the decades. Compared to the other fields of law in Iraq, Labour Law is one of the most changeable aspects by the legislative power. The reason is because Labour Law is always connected with political system, economic doctrine, and business marketplace.[1] Accordingly, labour law often react the above mentioned categories within a society to reach the goal. In regards to termination of employment contract, For instance, the aim is to provide a system, which protects employees from being fired in inappropriate way, and provide employment security enhanced by the marketplace doctrines.

Since, the first Iraqi Labour Law, No. 72 has been enacted in 1936; Iraqi legislator passed six amended bills until now. The first Iraqi Labor Law followed by an amended legislation No. 1 in 1958, then in the same year another Labour Law had been codified with the number of 82. That means Iraqi Labour Law has been amended twice during one year because of changing the political system from the monarchy system to republican system.[2] Another Labour Law, then adopted soon in 1959,

[1] Parkinson – Andrew, 2000, 51.
[2] Ismael, J. S. – Ismael, T. Y. – Perry, 2016, 237.

which remains in force until 1970, when another Iraqi Labour Law adopted under the number 151. Prior to the last amendment, Labour Law No. 71 has been ratified in 1987, which had many different points compared to the previous codifications in principles and legal articles. However, the last Iraqi Labour Law No. 37 adopted on October 15, 2015, and came into force in the same year.

The major questions that this research asks, then, are:

- Whether the Iraqi Labour Law with a huge number of amended codification, has reached to the International Labor Standards related to termination of employment contract?
- Whether the new Iraqi Labour Law provides a protective system to the Iraqi employees to protect their employment contract or not?

II. "JOB SECURITY" AS A COMMON LEGAL DOCTRINE FOR TERMINATION LAW

In the comparative approach, there is always need for finding legal doctrines that might involve with the topic. The most important principle that scholarly provided at that area is the principle of job security.[3] This principle can be taken into consideration as a measurement for evaluating termination rules. The hypothesis in this article, then, depends on the relationship between the job security and termination rules. Job securities for employees will be increased by enacting restrict rules on termination of employment, because one of the basic values of the job security is the protection against unfair termination of employment, where the law must be tested, whether its rules aims to provide job security for employees, how often employees are satisfied and confidant for not losing their jobs easily. This principle, then, requires strict rules to limit the power of employers who have broad discretion in the employment contract.

The law on termination of employment, however, must be reflected and impacted by this principle to be acceptable and has a positive impact on the economic stability and satisfying employees under thereof. Although, the principle does not waive the right of employers to terminate the employment based on the fairness and legal process, it does require restrict procedures to protect employees from unfair termination at the initiative of employers.

III. INTERNATIONAL LABOUR STANDARDS ON TERMINATION OF EMPLOYMENT

Owing to the fact that termination of an employment relationship is an expected damage for an employee, in which he/she may loss the income and has a direct

[3] Pruijt – Dérogée, 2012, 91–114. http://www.jstor.org/stable/j.ctt46mw53.8 (23-01-2019).

impact on her/ his family's well-being. Therefore, the job security is always taken into consideration by the international labour organizations.[4] As more countries try to find a balance between employers' right to terminate worker's contract for valid reasons and the right of workers to have a security for their jobs and not being worry for losing their jobs improperly. On one hand, employers seek to ensure the quality of job and requirements of the undertaking from the side of workers. On the other hand, workers need to be secured from dismiss unsatisfactory from the side of employers.

After the adoption of the Termination of Employment Convention, 1982 (No. 158)[5] entry into force on Nov 23, 1985, and the Termination of Employment Recommendation, 1982 (No. 166),[6] this issue has become an international matter, and many countries seek to find a good solution within international standards. Through the mentioned convention and recommendation, the international labour organizations laid down some restrict requirements for termination of employment contract at will of employers. We will try focus on those requirements and procedures that should be fulfilled in the termination decision in the light of the principle of job security as bellow:

1. Termination of Employment Convention, 1982 (No. 158)

This is one of the most effective international instruments for preventing unjustified termination of employment contract at the initiative of the employer. This international convention sets requirements for termination decision by employers in following articles:

Article 4

The employment of a worker shall not be terminated unless there is a valid reason for such termination connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service.

Article 5

The following, inter alia, shall not constitute valid reasons for termination:

a) Union membership or participation in union activities outside working hours or, with the consent of the employer, within working hours;

b) Seeking office as, or acting or having acted in the capacity of, a workers' representative;

c) The filing of a complaint or the participation in proceedings against an employer involving alleged violation of laws or regulations or recourse to competent administrative authorities;

[4] Servais, 2005, 680.

[5] Convention concerning Termination of Employment at the Initiative of the Employer (Entry into force: 23 Nov 1985) Adoption: Geneva, 68th ILC session.

[6] Recommendation concerning Termination of Employment at the Initiative of the Employer Adoption: Geneva, 68th ILC session.

d) Race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin;

e) Absence from work during maternity leave.

Article 6

1. Temporary absence from work because of illness or injury shall not constitute a valid reason for termination.

2. The definition of what constitutes temporary absence from work, the extent to which medical certification shall be required and possible limitations to the application of paragraph 1 of this Article shall be determined in accordance with the methods of implementation referred to in Article 1 of this Convention.

Article 7

The employment of a worker shall not be terminated for reasons related to the worker's conduct or performance before he is provided an opportunity to defend himself against the allegations made, unless the employer cannot reasonably be expected to provide this opportunity.

Article 8

1. A worker who considers that his employment has been unjustifiably terminated shall be entitled to appeal against that termination to an impartial body, such as a court, labour tribunal, arbitration committee or arbitrator.

2. Where termination has been authorized by a competent authority the application of paragraph 1 of this Article may be varied according to national law and practice.

Simply, the convention requires some basic elements for termination of employment at the initiative of employers, which could be collected in three points as follow:

i) Having a valid reason

ii) The reason must be related with the job issues

iii) Following fair procedures by giving a chance to employees to respond the allegation, and providing appeal procedures

Those standards required by the international labour organization are the basic requirements and very reasonable for such a valid termination. A balance has taken into consideration between the right of employers to terminate the contract at will and providing job security to employees as well.[7] It is clear that the convention does not preclude employers from termination of the employment, rather than requiring them to show a valid reason.[8] This means that the convention

[7] Berger, M. (1997). Unjust Dismissal and the Contingent Worker: Restructuring Doctrine for the Restructured Employee. Yale Law & Policy Review, 16(1), 1-57. Retrieved from http://www.jstor.org/stable/40239494 (Accessed 21-01-2019).

[8] "Developments in the Law: Public Employment." *Harvard Law Review*, vol. 97, no. 7, 1984, 1611–1800. JSTOR, www.jstor.org/stable/1340983. (Accessed 25-01-2019).

neither prevent employers to terminate the contract at will, nor provide this right absolutely.

With having a valid reason for termination, the employment might not be exist anymore and the principle of job security cannot be argued for employees. The real questions, then, can be raised here are what can be considered as a valid reason? What is the measurement for such a valid reason? Does the convention provide any regulation or standard for recognizing a valid reason? Answers for those questions seem to be left by the convention for the domestic laws and local rules. Hence, the convention does not name any reason as an example for a valid reason, but rather simplified the process by connecting between valid reason "with the worker's capacity or conduct or based on the operational requirements of the undertaking, establishment or service". Under those categories, a state can determines valid reasons through legal rules, where employment can be terminated thereof. By referring to the job security principle for employees, we should say that it is really a good step added at the level of international labour standards, which limits the power of terminating the employment contract at the initiative of employers. Moreover, it protects workers and put them in a safe side from being fired for any reason des not related to job issues.

Notably, the convention prevents considering some issues as valid reasons for termination, such as being a membership in a union, or "discrimination issues such as race, color, sex, political opinion, or religion" or having a lawsuit from the side of an employee against an employer, or absentee for such a good reason. This provision requires state members in international labour organization to ban those categories in their domestic laws and describing them as void reasons for employment termination.

For determining a valid reason, there must be also fair procedures to be followed by employers; otherwise an allegation for having a valid reason will not be enough for termination and turns to be void.[9] Assume that an employee get fired without having a chance to defend him/herself and giving a chance to respond the allegation, this is always going to be unfair under the principle of justice. During the process of defense, the employee may defeat the allegation or prove that he/she is not responsible for the reason. If the employer is not convinced with the employer's response and issue the decision of termination, the worker also can challenge the termination through going to appeal procedures, which are considered the last step of job security provided to workers. In the appeal procedures, the third party gets involved to the case as impartial side to finalize the decision and to decide whether the termination depends on legal procedures. The competent authorities, eventually, will decide upon a valid reason instead of employer.

[9] Employment. (2006). *Mental and Physical Disability Law Reporter*, 30(4), 597-616. http://www.jstor.org/stable/20786869 (Accessed 27-01-2019).

2. Termination of Employment Recommendation, 1982 (No. 166)

Another international instrument in that area is the Recommendation concerning Termination of Employment at the Initiative of the Employer. This recommendation also seeks to provide employment security to employees through national laws, regulations, or collective agreements.[10] From the beginning, the recommendation focuses on the same strategy that provided previously by Termination of Employment Convention, 1982 (No. 158), especially having a valid reason for termination, which can be challenged by the employee and then tested by the competent authorities or courts. It also determines those reasons, which not constitute valid reasons for termination, and adds some more reasons for not considering them as valid reasons for termination as follow:

3. Justification for Termination

5. In addition to the grounds referred to in Article 5 of the Termination of Employment Convention, 1982, the following should not constitute valid reasons for termination:

(a) age, subject to national law and practice regarding retirement;

(b) absence from work due to compulsory military service or other civic obligations, in accordance with national law and practice.

6. (1) Temporary absence from work because of illness or injury should not constitute a valid reason for termination.

(2) The definition of what constitutes temporary absence from work, the extent to which medical certification should be required and possible limitations to the application of subparagraph (1) of this Paragraph should be determined in accordance with the methods of implementation referred to in Paragraph 1 of this Recommendation.

The recommendation also provides some rules for "misconduct" and "poor performance" from the side of employees. For misconduct, it could not be a valid reason for termination, unless if it is repeated for one or more time, and "the employer has given the worker appropriate written warning."[11] The employment also should not be terminated based on poor performance of a worker, who is not satisfy the employer, unless after giving appropriate instructions and written warning to the worker, and he or she continues on providing such a poor performance within a reasonable time.[12] In addition, the recommendation provides the way to terminate the contract within formal documents, and an appropriate appeal procedure that might lead to rebut the employer's decision.[13]

As has been noted, this recommendation has extended the principle of job

[10] I. Methods of Implementation, Scope and Definitions, Termination of Employment Recommendation, 1982 (No. 166).
[11] II. Standards of General Application, 7.
[12] II. Standards of General Application, 8.
[13] II. Standards of General Application, 14-15.

security for employees more than the previous convention. The reason is because under the above convention, misconduct and poor performance which is related to the worker's capacity can be listed as valid reasons for termination at all. But, the recommendation adds some other requirements to give more safety to workers for not losing their job and forcing employers to provide more chance to employees until they reach to the level of satisfied job capacity. Those requirements for "misconduct" and "poor performance" are very reasonable and logically adopted; otherwise they could be an easy way for employers to terminate the employment contract.

IV. IRAQI LABOUR LAW AMENDMENTS ON TERMINATION OF EMPLOYMENT

For answering the question that whether New Iraqi Labour Law has reached to the international labour standards, we have to testify it and measured by the international principles provided through the international convention and recommendations. Generally speaking, the new Iraqi labour law No. 37 in 2015, has reached to the international labour standards in regards to termination of employment. Prior to the recent amendments, rules of Iraqi Labour Law No. 71 in 1987, were not sufficient to secure employment contract from unjustified termination. It was one of the most important reasons that led to adoption a new code. According to texts, the new labour law meets several conventions' standards of International Labor Organization and is a good step towards improving the fundamental rights of Iraqi workers.

The new Iraqi Labour Law provides the following articles for termination of employment contract to be valid:

Article 43

2 – The employer may terminate the employment contract in one of the following cases:

a- If the worker has contracted an illness which makes him unable to work and has not been cured within (6) six months, as substa ntiated by an official medical report.

b- If the worker has become incapacitated to the extent of (75%) seventy five percent or more and is unable to work, as substantiated by an official medical report.

c- If the worker has reached the age of retirement, and he shall be entitled to the end-of- service gratuity in accordance with the workers' Pension and Social Security Act.

d- If the working conditions in the enterprise call for a reduction in the volume of work, subject to the Minister's consent.

e- If the worker commits a breach of any of his essential obligations under the contract.

f- If the worker assumes a false identity or submits forged documents.

g- If it has been proved that the worker under probation is not sufficiently qualified to perform the work.

h- If the worker has committed a serious error causing material damage to the work, workers or the production, by virtue of a judicial judgment.

This article above in Iraqi labour law No. 37 (2015), requires employers to have such a valid reason for termination the employment of a worker, otherwise the termination will be unfair. The article also describes those reasons and conducts that considered as valid reasons in general. The way of Iraqi Labour law is apparently different from the international labour standards established by the international conventions, regards to a valid reason for termination of employment contract. Under the international labour standards, determining a valid reason for termination decision vested to employers, who they decide based on their discretion.[14] But, Iraqi labour law has decreased the scope of the employers' discretion by determining valid reasons in advance according to a legal article mentioned above. The reason is because valid reasons for termination of employment might be different from a country to another country or from a culture to another culture, or from some different economic values. In my opinion, the logic of Iraqi labour law is quite right when it determines valid reasons categories and does not vest it to employers at all; this is a good way to protect employees for being fired improperly. What is remaining under the discretion of employers is to decide upon the upcoming cases whether they could be a reason for termination of employment based on the mentioned categories in the article.

There is no doubt that giving an absolute power to employers for recognizing valid reason to terminate the employment will lead to arbitrariness, meaning that employers might terminate the contract for any reason that he/she believe it is a valid reason for termination. In such a case, the challenge would be difficult for workers to prove that the reason is not valid, because no restrict rules will be apply in favor of workers, and to limit the discretion of employers. With the provision of article 43, workers can challenge the termination decision of employers by testifying the reason of termination, which should be categorized under one of the section of the article.

Another question might be raised related to valid reasons for termination of employment. The question is whether those reasons mentioned in article 43 are exclusively provided, or they are just examples for such a valid reason, and they can be measured for other reasons. By referring to the context of the article, we can notice that reasons for the termination of employment are provided exclusively, which means no reasons can be added by employers. Section 2 in

[14] Harcourt – Hannay – Lam, 2013, 311-325. http://www.jstor.org/stable/42001985 (Accessed 25-01-2019).

article 43 states "The employer may terminate the employment contract in one of the following cases..." There is no any indicator in the text giving the power to employers for considering some situations as valid reasons for termination of contract out of listed in the provided article.

Furthermore, the new Iraqi labour law determines those matters that could not be counted as a valid reason for termination of employment, such as, union activities, filings of a lawsuit against an employer, temporary absence due to illness or unexpected incident.[15] This is another way to limit the discretion of employers towards workers in regards to terminate the employment.

Article 46

1- The employer may challenge the decision of his end of service before the End of Service Committee established under the instructions of the Minister, or before the Labor Court, within (30) thirty days as of his notification of his end of service. The worker is deemed to have waived this right of challenge if the challenge is not submitted within this period, and if he chooses any of these two means, he shall loose his right to the other.

2- The decision of the End of Service Committee may be challenged before the Labor Court within (30) thirty days of the notification of the decision or of the date the notification is deemed served.

3- The employer shall bear the burden of proof of termination of the worker's service when the worker challenges the end of service decision before the End of Service Committee or Labor Court.

Several guarantees have been provided by this article, which increase job security for workers against unfair termination. The stipulation of having a valid reason for termination will not be effective, if it is not backed by strong procedures to appeal the decision of termination.[16] Under this article, there are double guarantees granted to workers to struggle the termination of employment. In the first step, workers may challenge the decision before Service Committee provided in the article, and then they are allowed to challenge the decision of termination again before Labour Court, if the decision of Service Committee is not satisfied. This means two competent authorities are assigned to check the validity of termination of employment instead one. Moreover, what makes the position of workers more strong is putting the burden of proof of termination on employers, which means it is the responsibility of an employer to prove that

[15] Iraqi Labour Law No. 37 (2015), Art. 48.

[16] Application of International Labour Standards 2010 (I), Report of the Committee of Experts on the Application of Conventions and Recommendations. Page 597, available at https://books.google.hu/books?id=mKQYAP67eh8C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false (Accessed 29-11-2018).

there is a valid reason[17] for the termination according to those reasons stipulated in Art. 43, otherwise he/ she will loss the case, and the termination will be invalid.

V. CONCLUSION

Altogether, the new Iraqi labour law with the new rules on termination of employment is much better than the previous Iraqi labour code. This evaluation that we have reached depends on the following findings in this research:

1. The principle of job security has taken into consideration in the new Iraqi labour code by focusing on the right of employees to not loss their job easily.

2. The new Iraqi labour code has reached and met international labour standards adopted through the international conventions and recommendations related to termination of employment, which came into force based on principles of International Labour Organization (ILO).

3. Valid reasons for termination of employment must be related with the job capacity and behaviors of employees within categories described by the new Iraqi labour code, and the reason can be tested by competent authorities upon the worker's complain against the termination decision.

4. The code put limitations on the power of employers by imposing restrict rules, such as; the law requires employers to follow fair procedures in termination of the contract, and giving a chance to workers to respond or file a lawsuit without being responsible, because in such a case the employer cannot terminate the contract.

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