

Litigation in Social Legislation - A Study with Iraqis Legislation

Assistant Professor Doctor
Saba Noaman Rasheed Al-Waisi
University of Baghdad - College of Law
Dr.saba@colaw.uobaghdad.edu.iq

Receipt Date: 15/3/2023, Accepted Date: 19/4/2023, Publication Date: 15/6/2023.

DOI: 10.35246/jols.v38i1.626



This work is licensed under a [Creative Commons Attribution 4.0 International License](https://creativecommons.org/licenses/by/4.0/)

Abstract

The judicial oversight over the administration's work and the administration's right to sue its clients is getting stronger in the face of the financial aspects in countries that refuse to continue the socialist-interventionist approach. These countries resort to the new approach of the state neutrality. This calls for an examination of the aspects of legislation that the Ministry of Labor deals with and its right to litigation and procedures prior to benefits. This is in particular the financial ones for those covered by them.

Keywords: Litigation, Social, Variables.

التقاضي في التشريعات الاجتماعية - دراسة في التشريعات العراقية

أستاذ مساعد دكتورة
صبا نعمان رشيد الويسي
جامعة بغداد - كلية القانون

Dr.saba@colaw.uobaghdad.edu.iq

تاريخ الاستلام: 2023/3/15، تاريخ القبول: 2023/4/19، تاريخ النشر: 2023/6/15.

المستخلص

ان مناط الرقابة القضائية على اعمال الادارة وحق الادارة في التقاضي ازاء المتعاملين معها تزداد قوة في مواجهة الجوانب المالية في الدول الراضة للاستمرار بالمنهج الاشتراكي- التدخلّي والالتجاء الى المنهج الجديد القائل بحيادية الدولة مما يستدعي فيما الوقوف على جوانب التشريعات التي تتعامل معها وزارة العمل وحقها في التقاضي والاجراءات السابقة للاستحقاقات خاصة المالية منها للمشمولين بها، حيث ان الظروف العالمية الناشئة في ربع القرن الماضي اعادت طرح مسألة دور الدولة الاقتصادي والاجتماعي، بعد ان نجح الاقتصاديون لكن لا يكون (الحد) في تسويق افكارهم التي تبنتها الدول والمؤسسات الاقتصادية للخلاص من الاختلالات الاقتصادية الهيكلية التي نشأت عن تدخل الدولة في الشأن الاقتصادي مما يحدو به ان يحدف دور الدولة في كثير من جوانب الشأن الاقتصادي وصولا الى المنشود ان لم يصل الى الغاء تدخل الدولة في نمط المساعدة الاقتصادية الاجتماعية لطبقات المجتمع التي كانت غالبا ما تدعمها التوجهات السياسية للدول القائلة بالمساعدة كنمط للتخلص من حالات التهميش والبطالة والعيش بحد الكفاف، ان ما تقدم ادنى الى انتهاج الدول النهج الاكثر تشددا في اعادة استيراد اموالها ومحاسبة المنتفعين منه ان سمحت له بذلك القوانين الاجتماعية الى اقصى حد بما ياتلف مع اقتصاد السوق ان تعبير مركز الوزارات المسؤولة عن العمل على مر السنين واصبحت مجالات مسؤولية العديد من وزارات العمل الان ضيقة نسبيا وكثيرا ما لا تكون ذات توجه جمهوري فيما يتعلق بالمسائل الاوسع المتعلقة بالسياسات الاقتصادية الاجتماعية وخاصة فيما تراق ذلك من تغييرات في بعض البلدان كالعراق مثلا مع غياب الموارد المالية ونقص مستلزمات العمل وضعف تدريب الكوادر (او وجود الفساد الاداري) ناهيك عن التلاعب بالتعليمات المفسرة والمنفذة للقوانين المختصة وبما يتلائم مع توجهات محددة مما يخرج القوانين من قوتها الملزمة وهدفها المحدد لها عند التشريع ان مناط الرقابة القضائية على اعمال الادارة وحق الادارة في التقاضي ازاء المتعاملين معها تزداد او قوة في مواجهة الجوانب المالية في الدول الراضة للاستمرار بالمنهج المتدخلّي والالتجاء الى المنهج الجديد القائل بحيادية الدولة مما يستدعي فيما الوقوف على جوانب التشريعات التي تتعامل معها وزارة العمل وحقها في التقاضي والاجراءات السابقة للاستحقاقات خاصة المالية منها للمشمولين بها.

الكلمات المفتاحية: التقاضي، الاجتماعية، المتغيرات.

Introduction

The emerging global conditions in the last quarter century have reposed the issue of the state's economic and social role. This is following the economists succeeded, but it is not (the limit) in marketing their ideas adopted by states and economic institutions to get rid of the structural economic imbalances that arose from the state's interference in economic affairs, which is what prompts it to eliminate the role of the state in many aspects of the economic issue to reach the desired, if it does not reach the abolition of the state's intervention in the economic and social assistance to the classes of society, which were often supported by the political orientations of the states calling for assistance to get rid of cases of marginalization, unemployment and subsistence living. It is less for countries to adopt the strictest approach in re-importing their money and holding the beneficiaries accountable if the social laws allow it to do so to the fullest extent in a way that is inconsistent with the market economy in relation to the socio-economic policy, especially in connection with the changes in Some countries, such as Iraq. For example, the absence of financial resources, lack of work requirements and poor training of cadres (or the presence of administrative corruption), not to mention the manipulation of the instructions interpret and implement the relevant laws and in accordance with specific directions. It detracts the laws from their binding force and their specific goal in legislation that the judicial control over the work. The administration and the administration's right to litigation against those dealing with it increases or strengthens in the face of the financial aspects in countries that refuse to continue the advanced interventionist approach and resort to the new approach that states the neutrality of the state. It calls for standing on the aspects of the legislation that the Ministry of Labor deals with and its right to litigation and the procedures prior to entitlements, especially the financial ones for those covered.

The First Topic

The litigation in the Social Security Law (Workers' Retirement and Social) Security Iraq's Law No. (39) of 1971, as amended

Here the competent inspection committee formed for this purpose by the Iraqis Ministry of Labor undertakes the duty of immediate investigation to ascertain the causes of the worker's injury in the project. It also indicates its circumstances accompanied it¹. It calls for heading towards the judiciary in three directions represented in the following²:

The First Requirement

The Responsibility of the Worker

The aforementioned committee may prove the responsibility of the worker in the occurrence of the injury that befell it. This is achieved in the case if the worker deliberately injured him/herself or if the injury occurred due to an outrageous misconduct. It is intended as a violation and an explicit and multiple formation of the regulations and instructions of the facts announced at the workplace such as not using protective eyewear despite being in their possession. It leads to the occurrence of injury and other cases stipulated in Article (58) of the Social Security Retirement Law for Workers No. (39) Of 1971. Therefore, it does not rise to the level of a gross error, such as if the injury occurred because of someone who lacks attention, and thus the inspection committee had to explain in the report all the facts accurately and clearly. Thus, it referred to the judiciary, so the case remains subject to judicial oversight to take the direction of the committee or otherwise³.

The Second Requirement The Responsibility of the Employer⁴

Article (62) of the law clarified the limits and scope of liability. It is all the department to apply the provisions of Article (58) of the Workers' Retirement and Social Security Law against the worker or to refer to the party that caused his injury if it disappeared from the inspection report what necessitates one of these two procedures and in all cases obliges the person who caused the injury to pay the compensation decided by the labor court to the insurance department in the light of the general rules if it is proven that the action is an unintended mistake.

It is clear from the foregoing that the law differentiates between two cases: the case if the injury occurred as a result of an unintentional mistake, and here (the culprit is obliged to pay the compensation decided by the court to the circuit) in light of the general rules of civil law. This is equivalent to the total compensation amount for the damage.

Another case is when the employer deliberately injures the worker, then the labor court orders him to pay compensation equivalent to all the financial burdens that the insurance department can bear (treatment of subsequent medical expenses and insurance salaries for the worker) according to the injury.

The responsibility of the employer often arises in the event of committing a mistake or negligence that leads to an injury. This injury occurs due to the failure to provide the means of protection or the failure to take the necessary precautions to protect the workers from the dangers of work as stipulated in Article 110 Here, the case of the workers not being equipped with protective glasses or their invalidity for use.

The question that arises about the right of the Warranty Department to claim the amounts paid in court against the employer or the contractor who has undertaken to work when an injury

happened to one of the subcontractor workers. Since the labor law in force did not deal with this, there is a jurisprudential tendency saying to apply the general rules.⁵

Here according to these rules, both the employer and the contractor are jointly liable and the option of recourse is to the employer or the contractor.

The Third Requirement The Partial Disability

It means that every person other than the employer or his/her workers. The injury may occur by the action of others. In a historical reinforcement, the private insurance companies with which employers insure pay compensation amounts to the worker and return to others for this amount, or the workers file a compensation claim on others in accordance with the general rules of civil law.

However, after the emergence of the aforementioned laws and the replacement of the insurance company by the fund, the worker receives the amount of compensation and returns the difference between the lump sum compensation and the value of the total damage by filing a civil liability lawsuit or to file a lawsuit against him/her. The compensation from the amount received by the worker in implementation of the court's decision or that you return to them. The damage is compensated for only one time⁶.

In all cases, the worker is entitled to partial compensation from the fund, as the (third party) who caused the injury may be in a state of second who cannot pay compensation to the worker. The law here is the repealed 140 for the year 1964 and 112 for the year 1965 between the accident resulting from unintentional error, as in the injury of the worker to a run-over accident by others, and the accident resulting from the intentional act, i.e. premeditation, as in the case of surveillance and killing the worker when he left work. Here, the law in force differentiates between the two cases. For the liability for

compensation, the culprit in the first non-intentional case is obliged to pay the compensation it decides, where the culprit in the first non-intentional case is obliged to pay the compensation decided by the court to the insurance department in light of the general rules of civil law. This is equivalent to the total amount of compensation for the damage. The amount of compensation is equivalent to all the financial burdens that the insurance department can bear in connection with the injury.

The law in force does not grant the injured worker the right to return to the place of the one who caused the injury. Rather, it is sufficient to refer the insurance department to the third party who caused the injury, who is obliged to pay the compensation decided by the court in accordance with the general rules of the civil law. If the injury was the result of a mistake or negligence, in the case of intentionality, i.e. providing the intention of damages. S/he is obligated to pay compensation equivalent to all that the warranty department bears.

In The Supreme Labor Court stated, the public institution is not entitled to demand from the person who trampled the worker to pay the compensation it paid to the worker. The injury must occur here a result of the trampling not occur during the work or because of or during going or returning to and from work directly and uninterruptedly⁷).

In another decision, it stated the right of the insurance department to return to the one who caused the damage to the insured worker. Also, the court estimates the amount of compensation if the committed error was unintentional, provided that the court balances. When estimating compensation, the size of the error issued and the amount of damage caused.

The Second Topic

Litigation in Iraqis Labor Law No. (37) Of 2015

The state's intervention in the social organization of work is considered one of the distinguishing characteristics of the contemporary labor law. Here, the state aims from this intervention to protect the workforce and employ work in society through the use of manpower.

Accordingly, the regulation included the mandatory aspects, represented in the state's right to inflict punishment by prosecuting the violating methods.

The First Requirement Employing a Foreign Worker

Providing job opportunities for citizens requires in most cases that the state ensures that foreigners do not compete with nationals in obtaining available job opportunities. Therefore, national legislation regulates the employment of foreign workers in accordance with the controls of certain standards, the foremost of which is the country's need and the political and security effects arising from the presence of foreign workers within the state. In this sense, articles (30 and 31) of the applicable labor law prohibited the employment of any foreign worker (unless he had obtained a work permit in accordance with the conditions and procedures determined by instructions issued by the Minister of Labor for Social Affairs). In implementation of this text, the Minister of Labor issued instructions for the practice of foreigners to work in Iraq No. (18) for the year 1987 It was considered effective from August 17, 1987, which obliges the foreign worker, whether it is outside or inside Iraq, to apply for a (work permit) for a period of one year, subject to renewal, provided that the correct personal documents and attachments are submitted. Accordingly, this permit is directly subject to the supervision of the Ministry of Labor, so that the control reaches the point of referral to the competent judiciary, with the

employer being charged with a fine of (3) three times the minimum daily wage or (3) three times the minimum monthly wage for the worker. general.

The Second Requirement Juvenile Laboring⁸

The total of the provisions regulating the employment of juveniles are considered as restrictions on the freedom to contract when one of the parties to the contract is serious. It results in a violation of the rule of employing the juveniles under the age of fifteen, while noting the provisions of employment and the prohibition of hard work and harmful to the safety and morals of juvenile workers and the prohibition from working in dangerous work and temperatures. The employer who violates the provisions for the employment of juveniles shall be punished with a penalty of no less than (100,000) one hundred thousand dinars and not more than (500,000) five hundred thousand dinars .⁹

The Third Requirement

The New Competencies of the Iraq's Labor Court

The legislator's behavior in the applicable law has taken a new approach in referring some of the issues of collective dispute to the work judiciary. It is usually specialized in the individual dispute and for two phases:

First: The stage of referring the individual or collective dispute to the Department of Employment and Loans: According to Article 157 of the applicable law, and failure to reach a solution to the dispute or failure to judge, and at that time, the Labor Court must decide on the dispute within 30 days from the date of submitting the complaint. Its decision is final and intolerable appeal to the Court of Cassation.

Second: Referring the dispute to the Iraqis Labor Court.

This happens after engaging the disputing parties collectively to find a solution through mediation and arbitration and in accordance with Article 161. They must resolve the dispute within seven days from the expiry of the 48-hour period from the date the request was received by the court. Within 15 days from the date it was notified or considered as reported, and we also decide on it within 15 days from the date of its receipt, and its decision shall be final.

Third: The worker shall have the right to resort to the Labor Court. Here, the workers file a complaint when they are subjected to any form of forced labor, discrimination or harassment from employment and profession, provided that if the act is proven. They shall be punished by imprisonment for a period not exceeding six months and a fine not exceeding one million dinars or one of these two the two penalties¹⁰.

Fourth - Collective Labor Disputes

The relationship between the employer and the workers is characterized by attraction and sensitivity at the same time. Workers and employers in general must be on one side in organizing the production process in the project, which requires cooperation and deliberation to reach organizational and administrative solutions. Recognizing the necessity of cooperation does not mean the continuation of the production process in he projects have a positive line. Also, the possibility of conflict is similar to the rest of the relations in society, especially when calculating the financial rights of workers. Here, the legal-social intellectual developments influenced by the reality of the process have prompted the legislator to recognize the possibility of the existence of collective conflict between the parties to production. It stipulates it in the labor relations legislation and giving it the biggest attention with the recent changes to the course of the economy in the country.

What is Collective Conflict and how to Resolve it?

Collective conflict occurs because of work conditions. Workers may feel that the conditions they are bound by (according to the individual contract) are not sufficient to meet their needs and aspirations. Here, the employer may demand to give him more rights. If the employer refused, the rights were divided into two parts, so all workers .¹¹

It was a collective conflict, and the employer's circumstances may also change, so there will be losses in production instead of gains. It may lead to take decisions to withdraw some of the product or health and social gains for workers, or it may come to reducing the number of workers, which prompts workers to oppose it. So the project that affects the entire productive process, accordingly, the legislator in general and the Iraqi legislator in particular was alerted to the danger of this. So s/he organized it by giving it a specific legal definition return for the means and mechanism to resolve this dispute.¹²

Definition of collective dispute and its legal conditions

There is almost unanimity among the jurists on the multiplicity of aspects of collective conflict between negative and positive work relationship¹³.

The legislator has included a specific definition of collective dispute in the introduction to the law in force.

First, The Definition of Collective Conflict:

It is any dispute that arises between a worker, a group of workers, a workers' organization or a group of them, or an employers' organization or a group of them on the other hand. The dispute could also be about existing rights represented by the provisions of this law or other applicable laws related to work and workers, or about issues related to the mechanisms of application or interpretation of an individual employment contract. It might be a valid collective labor agreement, arbitration award, or disputes arising about future interests

relating to a proposal to amend the Terms of Use or the adoption of new Terms of Use("Article 1/15, the effective labor law.,").

Second: Legal Conditions of Dispute:

The Iraqi legislator deviated by using the term (worker) to refer to a single worker in the dispute. This happens even if there is an individual dispute that took place between one worker and the employer, unless it has an impact on a common interest for workers, such as a dispute over a worker's union status or negative discrimination of a worker for gender, color, or health condition. Towards the advanced definition, the usual legal conditions for collective dispute are almost met:

A- Collective adjective: Collective is the formal element in the legal conditions, and it is assumed to be achieved at the least. It requires the presence of one of the parties to the conflict and the possibility of its availability for both, so a conflict arises between the group of workers and those who are represented by a union or federation and objectively,¹⁴ As for the other party, the employer does not prevent them from being a group of employers united by a link or a union.

b- The subject of the dispute: in order for the dispute to be collective, it must be linked to the collective interests of the group of workers, whether it is in the project, profession or industry¹⁵ .The demands of the workers that are rejected and thus become a cause for the emergence of conflict find their basis in the work performed by the workers. It can be commercial, industrial, service or agricultural, and whether the project in which they work is aimed at profit or not.

Methods of collective dispute resolution in the Iraqi labor law in force
If a dispute arises over existing rights represented by the application of the provisions of this law and other applicable laws related to work and workers, or a collective labor agreement (in force) or an arbitration decision. It is in accordance with Article (157/first)of the Iraqis Labor Law(37) of 2015 individually between the workers and

the employer or it is collective between the all workers or their organizations on the one hand of the employer or more of their organizations on the other hand. Any of the disputing parties or both of them shall have the right to the following:

Referring the Dispute to the Circuit for Settlement.

The decision is issued within 14 days from the date the department received a written notification.

-There were no previously mentioned mechanisms for resolving the dispute in a collective agreement.

The decision of the Chamber is binding on the parties to the dispute.

-In the event that a solution to the dispute is not reached or either party is not satisfied with the content of the decision issued by the department regarding the subject matter of the dispute, either party may resort to the competent court (the Labor Court) to resolve the dispute.

The Labor Court shall decide on the subject of the dispute within 30 days from the date of submitting the complaint, and its decision shall be final.

Thus, we find that dispute resolution procedures and their development needs to be researched according to the texts of the subsequent articles.

Collective dispute resolution is developing in the new labor law more broadly than previous laws, even if the same methods were used, including mediation and arbitration.

1. Mediation: This method aims to reconcile the parties to the dispute in an amicable manner. Here, the person is often an administrative official in the field of work (mediation).

Where any of the parties to the dispute notifies the circuit of the existence of the dispute, it shall be in the following form:

If the dispute is about existing rights or future interests, the department delivers a written notification of the existence of the dispute.

The party who notified the circuit must provide copies of this notice to the remaining parties to the dispute.

The notification in accordance with Article (158/Second) includes the following data:

a. Names and addresses of the parties to the dispute.

NS. The subject of the dispute and the facts and circumstances that led to its emergence.

NS. Any measures taken in all this dispute, if any.

-Upon receipt of the notice, the department shall, in accordance with Article (159) of Law No. (37) of 2015 appoint a mediator, provided that s/he has experience in labor cases. This is to reach a settlement agreement by bringing the views closer, since s/he has an interest in participating or has previously participated in any way in discussing the dispute or attempting to settle it.

The appointed mediator shall perform the following duties:

A- Making the necessary contacts with the parties by holding a meeting between them in order to review the merits of the dispute. This is when this period does not exceed five days from the date of informing the department of the dispute if the dispute is about future interests related to a proposal to change the terms of use or adopt new terms of use.

B - The mediator has all the powers to review the aspects of the dispute and the documents of the two parties related to the subject matter and embarrass the dispute and its causes, and to request data and information related to the subject of the dispute from both parties.

C- The mediator shall hear the statements of the disputing parties and provide them with assistance in order to find a settlement of the dispute.

D- In the event of communication to settle the dispute, the terms of this settlement shall be included in the minutes of the meeting and shall be binding on all parties.

E- If the mediator is not able to bring the views closer, s/he must submit to the disputing parties the recommendations he proposes to resolve the dispute in writing.

F- If the two disputing parties accept the recommendations made by the mediator, then he must establish this in a written agreement signed by the two parties.

G- If one of the parties accepts the recommendations of the mediator and the other rejects them, the person who them must explain the reasons for this submitted rejection. In this case, the mediator may give the other party a period of no more than (3) day to amend his position. After that if the other party responds, s/he retains the position in the direction of saying these recommendations. This is confirmed in a written agreement signed by the two parties and the mediator, and then the agreement is final and binding on the two disputing parties.

H- If the two parties agree to accept some of the mediator's recommendations without others, then what has been agreed upon shall be confirmed by a written agreement signed by the two parties and the mediator, and the provisions of this law in relation to (optional arbitration) shall apply to what is agreed upon.

I- If the mediation does not make a reasonable solution by the two parties in whole or in part, the mediator must submit a report to the circuit that includes a summary of the dispute, the proposed recommendations, and the two parties' position regarding them, within a period of (14) days from the date of the first session.

2. Arbitration.¹⁶ consists in referring the dispute to a trustworthy person or body to reach a strong decision that obliges the parties to the dispute to implement it.

According to Article 159, if the mediator fails in the work to bring the views closer, they propose to the two parties to submit a written

request to the circuit to resolve the dispute through (optional arbitration).

Accordingly, the following procedures are carried out in accordance with Article 160 of Law No. 37 of 2015:

- Formed by a decision of the Minister (the Arbitration Panel) to consider future conflicts of interest.

- The Arbitration Panel shall decide on the dispute before it within a period of two months from the date of the first session. The Arbitration Panel may extend the period for deciding on the subject of the dispute within the additional two months if the first period is not reached.

- For the panel of arbitration (hearing witnesses, hosting experts in the subject matter of the dispute, visiting the project, reviewing all documents related to the dispute and taking the procedures that enable it to adjudicate).

- The arbitration decision shall be issued in three copies as it is delivered to each of the parties to the dispute. Also, the third copy shall be sent to the circuit with the dispute file within a maximum period of (3) days from the date of issuance of the decision.

- The circuit shall register the judgment within a maximum period of (30) days from the date of its receipt of the arbitration decision, and the parties to the dispute or its representative shall have the right to obtain a copy of this judgment, including the date of its registration.

The decision of the arbitral tribunal shall be appealed to the Labor Court within (14) days from the date of notification of the dispute in writing with the following conditions:

a. If a fundamental error occurred in the decision and the procedures that affect the validity of the decision.

NS. If the decision was issued without a written intent.

NS. If the decision was issued based on a void agreement or if the decision was outside the provision of the agreement.

- The decision of the arbitral tribunal shall be binding on both parties after it is registered with the circuit, and it shall be executed after obtaining the final degree.

- The provisions of the Iraqi Code of Pleadings shall be applied in all matters relating to the formation of arbitral tribunals, their working mechanisms and decision-making.

- A collective dispute related to future interests (arbitration) shall be resolved in accordance with Article (161) in the following cases:

a. all parties of the dispute agree to refer it to arbitration.

NS. At the request of the labor organization or one of the parties to the dispute, if the dispute is about negotiations or the first collective agreement for the workers represented by the union.

NS. If the dispute relates to a service that interrupts the life, safety or general health of the population or some of them¹⁷.

3. Iraq's Labor Court: If the conflicting parties in the basic service sites did not reach an agreement, the Ministry has the right to submit the dispute to the Labor Court for decision, and the court should do the following:

The court shall set a date to consider the dispute within (48) hours from the date of receiving the request.

- The Labor Court shall decide on the dispute within (7) days from the date of the end of the specified period.

- The decision of the Labor Court shall be subject to appeal within (15) days from the date of notification of it or the parties counting its notification.

- The Court of Cassation decides on the appeal within (15) days from the date of receiving the request, and its decision shall be final.

Third side-Litigation in the Social Protection Law cods

The Department of (Social Protection cods) is linked to the Ministry of Labor, and it is an updated network whose mission is to provide benefits and social services to families with low or no income, the

disabled, the unemployed, and the woman who supports her family (divorced or widowed) and does not have a fixed source of income, provided that the service of the state in these groups is without racial discrimination or sectarian or on the basis of geographical location, gender, political or religious affiliation. These groups are granted amounts of cash subsidies on the basis of the tables attached to the draft, each category differently from the other.

The huge numbers were registered to benefit from the programs of the social protection network and to pay huge sums that cost the state billions of dollars. Here, successive ministries began to investigate the extent of the entitlement of the registered groups to the amounts that were then paid, which amounted to billions of dinars and to the entitlement of categories that do not fall under these features to amounts not less than ten million dinars, as these violations constituted the following designations:

- 1- Fake names ¹⁸
- 2- Employees or formal contractors under the name of what was requested for work to benefit from the unemployment grant or to obtain transport vehicles, personal or public transport (taxi).
- 3- A woman without attribute, as she is registered under the title (divorced) or (widow) the child of a breadwinner husband.
- 4- Registration in many of the programs that fall within the protection network to benefit.
- 5- The employees of the Ministry of Labor and its departments directly register themselves and their relatives to benefit from these programs. The spread of corruption in the protection network's programs has made it lose its true form, its primary goal for which this law was enacted and not to mention the weakness of oversight and the state's preoccupation with aspects other than regulation and oversight. There is also a lack of electronic operation in the early stages of these laws, and the use of political parties for (social network) programs for public

gain and access Supporters in the responses. For examples, some of them are named with the name (a grant in the name of a certain political figure), each according to his political or ministerial position, or guaranteed as being in charge of the authorities in the state.

It is noted that by alerting the supervisory authorities (financial control) to spending in these programs and then using electronic entry, the name of corruption in these programs becomes clear. This is in particular in the governorates and districts where the central authority's oversight is weak. The most prominent cases summarized in:

- 1- Beneficiaries benefit from more than one program or benefit from the protection network program while s/he is retired or an employee.
- 2- Providing the employees with the characteristics of the beneficiaries or helping them to increase.
- 3- The existence of fictitious individuals and the beneficiaries of the parties or employees.
- 4- Beneficiaries' failure to pay (in relation to loans to small projects)

The foregoing in accordance with the Social Protection Network Law requires the application of the relevant laws and their referral to the criminal court in accordance with the following articles:

- 1- Article 287: A- Material forgery occurs in the following ways:
 - 2- A signature or thumb print has been placed, parcels have been sent or changed to a signature, thumb print, or correction.
 - 3- Making any change by injury, omission, modification or change in the editor's book, numbers, pictures, bindings, or any other matter.
 - 4- Impersonate someone else to replace it.
- 2- Article 288: The official document is the one in which an employee assigned to a public service is recorded and then on his hands or received from the concerned persons in accordance with the customary provisions.

- 3- Article (289) (other than in cases) in which the law provides for a special provision, whoever commits an addition to an official document shall be punished with imprisonment for a period not exceeding fifteen years.
- 4- Article (290) replaces an employee or assigns him/her a public service during and writes down a person who is within the competence of a job, either by assuming the name of another person or by impersonating a person he does not have, reporting false facts, altering the methods for recording or proving an incorrect fact regarding a name that the document would prove.
- 5- Impersonation of Positions and Qualities Article (260) A penalty of imprisonment not exceeding three years and a fine shall be inflicted on whoever impersonates a position of relationship or deliberately interferes with one of its functions and its requirements without due right.
- 6- Article (216) (Any employee charged with a public service exploiting a position and obtaining the right to enter...) for embezzlement shall be punished with imprisonment ¹⁹
 - 1-Crimes that violate job duties (bribery), Articles (207) (308) (309) (310)²⁰(311)

Civil Penalty:

- 1- If the state pays money to the owners of cases related to a small project that has been exposed or the rules of the earner for the account of the Ministry of Labor, it often uses its right to civil litigation according to the following:
 - 2- 1The right to earn Articles (282) and (201) to refrain from payment if the creditor does not fulfill his obligation and if the debtor has provided sufficient insurance to the employee.

3- Penal clause Articles (168) and beyond("Articles (14), (15) and (126) (127) (128) of the Iraqi Civil Code,").

Conclusion

The negative societal attitude towards respect and application of the law may make it difficult for the persons charged with ensuring the enforcement of the provisions of the law. Any of its content in a societal environment does not share the collective mind in accepting the principle of obeying the law and the implementation of the provisions of laws. It unfortunately indicates that the Arab community environment in general and the Iraqi community in particular apply this right, where it lacks the successive ingredients that make the vocabulary of right, law and authority occupy a high position among the concepts that it respects. The lawlessness in general is caused by the weakness in the ability of the competent authorities to apply all the obligation of the addressees abided by it. This application with certainty makes it necessary to separate the difficulty of the stage from the weakness of the state and the fall of the prestige of the law in general and social laws in particular. Also, it seems that the claim in that may require education of new generations to follow the principles of the law and strengthen them with real authority whose goal is to serve the building of the state, not to fragment it.

Recommendations

According to the foregoing, it was necessary to recommend the higher levels of legal culture expected of the citizen when the higher authorities reach the same supreme trait. The importance of protecting workers against work risks arises when those risks threaten their lives with annihilation and that recalling texts aware of the importance of what they may go through in countries that represent relatively high levels of exposure to occupational diseases to compare them by offering legal treatments for the doctrinal contribution to push those confrontations.

There is no doubt that an occupational disease must result from exposure for long periods of time to work whose nature is dangerous

or to the danger of the materials used in it. Therefore, preventive measures such as replacing dangerous materials or closing workplaces are the best way to reduce injury, as the strength of these measures follows the mandatory legal rules that It was necessary to amend the texts of the Iraqi Labor Law in a way that would allow the inspection committees to take stricter measures when making mistakes or refusing to implement obligations related to (occupational health and safety) and to incur a heavier penalty than the fine stipulated in our law in force.

The suffering of Iraqi workers, especially after the events of the changes of 2003 and the weakness of administrative oversight and even the defect of leaving the application of the rules of the Labor and Social Security Law (similar to the rest of the laws) may leave them with no recourse other than to bow to the final authority of the employer in order to gain .

الهوامش

Footnotes

- ¹ -Dr. saba n. Rasheed , & nor abdualhmeed Legal regulation of workers' rights and privileges within the framework of social security rules for work injury, journal of legal sciences ,college of law , Baghdad university, vol 32 no one , part two , p 4 .
- ² -Dr.saba n. Rasheed ,The legal system of social insurance in the counters of the cooperation council (Sultanate of Oman as a model) ,review of international Geographical Education , 11 (5) spring , 2021 , p 4761 .
- ³ - Al-Abed, A. (1978). Conditions for compensation for work injury in comparative law. *Journal of Comparative Law*, 1989 p 13 .
- ⁴ - Dr. saba n .Rasheed Legal Righters for the workers caused by heat exusation , voprosy istorii , (2) 2 \ 2022 ,p198
- ⁵ - Dr.adnan Al-Abed, & Dr. Yosef Elias. (1988). *Social Security Law, Second Press, Added and Revised*. Baghdad, p 109
- ⁶ - Dr. Hkmet El-Gamal,.. *The Brief on Social Security*. Egypt (1989) p 71
- ⁷ -("Supreme Labor Court Decision No. 2065 ", 1979
- ⁸ -Dr .saba n Rasheed & Sura mohe Abdulkareem , Legal Allegiance to Labor Rights (Commander of Labor Rights), journal of legal sciences ,college of law , Baghdad university, special issue , part two , p 52.
- ⁹ -("Articles (104) and (105) Labor Law," 2015).
- ¹⁰ - ("Article 100 of the Labor Law in force.,")
- ¹¹ - Dr. Mohhmed Abdu Alkreem Abu Shanab,.. *Explanation of the Provisions of the Labor Law*. Amman (1997). P 234
- ¹² - ("The sixteenth chapter looks at Iraqs Labor Law No. 37 of 2015 Articles 157-161,").
- ¹³ - Al Qadi Hussein Abdel Latif Hamdan. (2009). *Social Security*, (1 ed.): Al-Halabi Publications , p98
- ¹⁴ - Dr.Saba ,N ,Rasheed. (2020). *Labor Law (General Theory of Labor Relations Law, Project Theory)*, new and revised edition..p 67
- ¹⁵ - Dr.Saba ,N ,Rasheed. Opcit . p69
- ¹⁶ Dr.Mahmoud Jamal Al-Din Zaki.. *Labor Law*. Egypt: Dar Al-Kitab Press (1989) p 432
- ¹⁷ - Dr. Aed . Elsed .Nile. (. *Provisions of the New Labor Law*. Egypt (2002-2003)p32
- ¹⁸ -("WWW.im.iq/nars/print.3095,")
- ¹⁹ - Dr.sultan Al-Shawi, , & Husen Al-Khalaf, ,(1980) .*Penal Code*. Baghdad.
- ²⁰ - Dr.sultan Al-Shawi, , & Husen Al-Khalaf,) . opcit p 217.

المصادر

References

- i. Al-Abed, A. (1978). Conditions for compensation for work injury in comparative law. Journal of Comparative Law, 1989
- ii. Dr.adnan Al-Abed, & Dr. Yosef Elias. (1988). Social Security Law, Second Press, Added and Revised. Baghdad.
- iii. Dr.sultan Al-Shawi, , & Husen Al-Khalaf, .(1980) .Penal Code. Baghdad.
- iv. Al Qadi Hussein Abdel Latif Hamdan. (2009). Social Security, (1 ed.): Al-Halabi Publications.
- v. Article 1/15, the effective labor law .
- vi. Article 100 of the Labor Law in force.
- vii. Articles (14), (15) and (126) (127) (128) of the Iraqi Civil Code.
- viii. Articles (104) and (105) Labor Law.(2015) ,
- ix. Dr. Hkmet El-Gamal,.. The Brief on Social Security. Egypt (1989).
- x. Dr.Mahmoud Jamal Al-Din Zaki.. Labor Law. Egypt: Dar Al-Kitab Press (1989).
- xi. Dr. Aed . Elsed .Nile. (. Provisions of the New Labor Law. Egypt 2002-2003)
- xii. DrSaba ,N ,Rasheed. (2020). Labor Law (General Theory of Labor Relations Law, Project Theory), new and revised edition..
- xiii. Dr. saba n. Rasheed , & nor abdualhmeed Legal regulation of workers' rights and privileges within the framework of social security rules for work injury, journal of legal sciences ,college of law , Baghdad university, vol 32 no one , part two.
- xiv. Dr .saba n Rasheed & Sura mohe Abdulkareem , Legal Allegiance to Labor Rights (Commander of Labor Rights), journal of legal sciences ,college of law , Baghdad university, special issue , part two .
- xv. Dr. saba n .Rasheed Legal Righters for the workers caused by heat exusation , voprosy istorii , (2) 2 \ 2022.
- xvi. Dr.saba n. Rasheed ,The legal system of social insurance in the counters of the cooperation council (Sultanate of Oman as a model) ,review of international Geographical Education , 11 (5) spring , 2021
- xvii. Dr. Mohhmed Abdu Alkreem Abu Shanab,.. Explanation of the Provisions of the Labor Law. Amman (1997).
- xviii. The sixteenth chapter looks at Labor Law No. 37 of 20 15Articles 157-161 .
- xix. Supreme Labor Court Decision No. 2065.(1979)
- xx. WWW.im.iq/nars/print.3095 .