

Legal guarantees for the salary in Iraqi law

By

Intisar Jaffar Khudhur¹

¹general Directorate of Education Thi Qar/Ministry of Education – Iraq.
Law6phd3@Utg.Edu.Iq

Waleed Khashan Zghair²

²college Of Law/ Thi Qar University, Iraq
Waleedkashankw11@Yahoo.Com

Abstract

This study aims to clarify the legal rules set by the Iraqi legislator to ensure effective protection of the right of salary, and to know the extent of the public administration's commitment to these rules. The salary is the most important financial rights enjoyed by the public employee, and the main reason for joining the public job, which is the tangible financial return for the job effort on which he depends in meeting the requirements of his daily life. Providing guarantees to protect the salary from all factors that may affect it negatively, To ensure a balance between the private interest of the employee and the general interest of the administration, the salary with its legal, economic and social dimensions is one of the most prominent topics that must be studied in a renewed and continuous manner and to reveal the flaws in the exercise of this right, any defect in the rules regulating its acquisition will inevitably lead to serious social, administrative and economic problems.

Keywords: legal guarantees, salary protection, public administration, Iraqi law, administrative control

Introduction

The relationship that links the employee with the public administration, results in a set of duties that he is committed to perform, and in return we find that he enjoys a number of different rights, including political, economic and social. Perhaps the most important of these rights are the rights of an economic nature that crystallize in financial rights. The importance of the research is that the salary is the most important of these rights, as it is the main incentive that pushes the individual to run for a job in one of the public administrations, in order to satisfy his own needs and desires on the one hand and ensure a decent standard of living away from behavioral deviations that arise due to need and deprivation on the one hand. other.

Therefore, the various public service legislations are concerned with providing the necessary guarantees to protect the employee's right to salary, in order to ensure the stability of his conditions, enhance his confidence in the administration, reassure him about his future, and motivate him to perform better.

In order for the protection to be effective, the legislator formulates it in the form of clear rules and legal texts to protect the salary from all abuses. Which leads us to pose the

following dilemma: - What are the administrative rules that guarantee the protection of the employee's financial position? And how effective is it? What is the extent of the administration's commitment to the legal rules established by Iraqi law to protect the right to salary? , What is the role of the administrative judiciary in protecting the right to salary?

In this research, we will rely on the analytical approach of the legal texts to reveal the protection established for the right to salary and the descriptive approach by describing these legal texts in the light of the views of jurisprudence and the judiciary.

First: The concept of salary

The salary is one of the most important financial rights that the employee obtains in return for performing his job duties in all countries of the world. Familiarity with the concept of salary requires us to address its definition and statement of its characteristics, and then address the salary supplements, which we will explain successively.

1- Salary definition :

The Iraqi legislation on public office () did not explicitly refer to the definition of salary, and it seems that this is due to the difficulty of setting a comprehensive definition of the concept of salary on the one hand, and because setting definitions within the legal rules limits the scope of their application and enters the core of the work of the judiciary and jurisprudence on the other hand.

The jurists of administrative law also differed in their definition of the salary and were divided in their opinions into two directions- :

The first trend: Its supporters went to the view that the salary is considered in return for the work and the job effort exerted by the employee, regardless of the place of work, whether it is within the public bodies affiliated with the state or within private projects , and it was defined as (the amount that the employee receives monthly in return for his full-time service to the administration). () It was also defined as (the employee's share in the national income, which is determined to ensure a decent standard of living according to the cultural and economic level of a country, and its amount varies according to the employee's contribution to the formation of the national income.

It is noted that the foregoing trend has linked the employee's entitlement to the salary to the amount of his contribution to the formation of the national income or the equivalent of the effort he makes in performing the work of the public office without referring to the cases in which the employee is entitled to his salary despite his temporary interruption from performing his job duties, such as the case of his enjoyment of regular or sick leaves or scholastic.

The second trend : His supporters argued that the salary is one of the elements of the system to which the employees are subject, and it must be determined to ensure a decent standard of living to allow the employee to maintain the social position corresponding to his job title . Rosier defined it as (a means that allows an employee to maintain a social position corresponding to his job.)

This trend looks at the salary within the framework of the legal positions that link the employee to the administration and to achieve a decent standard of living commensurate with the legal position occupied by the employee.

As for the Iraqi jurisprudence, it supported the two mentioned trends, in addition to defining the salary on the basis of its components, defining it as (the material amount that the employee receives monthly in return for the performance of his job obligations, and all other material benefits are attached to it, such as travel allowance, housing allowance, accommodation and other allowances).

The researcher prefers the first trend that links the salary entitlement to the employee's performance of his job obligations, although there are some exceptions that are received, such as vacations, but what confirms our opinion is the legislator's imposition of a salary cut penalty (), in the event that the employee does not perform his job duties or is dismissed from the job in the event of failure to do so. Providing a legitimate excuse for his absence from work.()

As for the position of the administrative judiciary in Iraq, its rulings varied in adopting the aforementioned two directions, including the decision issued by the General Assembly of the State Council, which approved "granting a school for her salary and all the allowances she deserves after she left work and devote herself to taking care of her blind husband during the 1980 war, based on To the decision of the (dissolved) Revolutionary Command Council No. 12 of 1988 (). Upon closer consideration of the above decision, we find that the trend that defines salary as an expense paid by the state to meet the employee's needs and special desires has been preferred. However, most of its rulings settled on counting the salary in exchange for work, including the ruling of the General Authority in its discriminatory capacity in the Iraqi State Council, which stipulated (the administration bears the responsibility The employee shall not be referred to retirement on the date specified for the assignment, and the salaries received by the employee shall be based on remuneration, such as for the work he performed.

After we have clarified the position of the legislation, the judiciary and jurisprudence regarding the definition of salary, we can define it as (the financial amount that the public employee receives periodically and regularly in accordance with the legal texts that regulate his entitlement in return for the employee's interruption to perform his job obligations.

2- *Salary characteristics*

The salary has the following characteristics

A- It has an objective characteristic determined by the legal text based on the employee's level of employment in the administrative arrangement.

B- Periodicity and regularity, as the employee is entitled to it at the end of the period of service determined by the administration, which is the end of the month.

C - Inability to deduct the salary: - The public administration does not have the right to deduct the salary, partially or completely, except according to the cases specified by the legal texts regulating it.

D- The impermissibility of withholding the salary: - As we find that the Iraqi legislator has specified the percentage that may be withheld by no more than one-fifth of the salary and allowances, including allowances for living expenses.

E - It is not possible to waive it: - It is not permissible for the employee to waive his right to the salary, even if it is by agreement between the employee and the entity affiliated to

it administratively, as this waiver is in violation of the legal rules related to the idea of public order, which entails nullity as a penalty for violating it.

3- 3- Salary Supplements (Allocations)

It means the set of financial sums that the public employee receives on a monthly basis or during a specific period according to the law, and they are granted either in the form of a specified percentage of the nominal salary or in the form of lump-sum monthly amounts. Allocations are granted to achieve various objectives, including:

Enabling the employee to meet the requirements of economic life in a way that guarantees him to live in an acceptable social level.

✓ Distinguishing the employee from the rest of his colleagues in the job cadre, because the nature of his work may require scientific or technical competence that is not required in the rest of the jobs such as professional allocations.

✓ Compensation for material losses that may be incurred by the employee due to the performance of the job, such as travel and delegation allowances and hospitality allowances.

✓ Taking into account the working conditions and the environment in which the employee exercises his job obligations, such as the geographical location allowances and the overtime allowances.

The allocations set by the Iraqi legislator are as follows:

A- Fixed allowances:

These are the allowances that are fixed with the salary and revolve with it for existence and non-existence and are not withheld in the event that the employee enjoys leave with full pay, such as sick, regular and study leaves.

These allowances are granted by force of law, and the administration's role is determined to ensure that the employee meets the special conditions for granting them, meaning that the administration's decision is considered revealing, not creating. The State Employee Salaries Law No. 22 of 2008 did not prevent the granting of allowances under special laws. The fixed allowances are as follows:-

Allocations for the certificate:

We conclude that these allocations can be increased according to the employee's scientific certificate, which creates a spirit of competition among employees to obtain the highest certificates, which is positively reflected on the job work by developing employees' skills and thus increasing the quality of services provided in public facilities.

Dependency allowances:

These are the financial amounts granted to meet the additional financial burdens, represented by the marital and children's allowances, which are disbursed to one of the spouses if he is an employee.

The Iraqi law has set the marital allowances at a range of (50,000) fifty thousand dinars, and they are not granted repeatedly by polygamy, and they continue to be spent as the marital union continues, and they are withheld in cases of divorce and death, and other laws set these allocations at the amount of (70,000) seventy thousand dinars.

As for the children's allowances, the Iraqi law has set it at (10000) ten thousand dinars (), and (15000) fifteen thousand dinars for each child up to the fourth child.()

It would have been more appropriate for the Iraqi legislator to unify the marital and children's allowances for the Union of the cause than to grant them to all groups, which is to face additional financial burdens, raise the standard of living of the public employee and stipulate the establishment of the marital union, thus eliminating the need for a difference in the percentage of allocations.

Allocations Prohibition of practicing the profession:

Allowances are granted to employees who hold certain scientific university degrees with the intention of preventing them from exercising their job duties outside official working hours, such as engineers, pharmacists and specialist doctors, so that they can devote themselves entirely to professional work.

B- Unfixed Allocations:

They are the material amounts that are granted or withheld according to the discretionary authority of the administration, and that this is within the limits of the public interest. They are as follows

Geographical location allowances:

They are granted on the basis of the place where the work is performed, whether it is in the center of the governorate or in the sub-districts or rural or remote areas. The Iraqi legislator specified it in different proportions, taking into account the location of the workplace.

Hazard Allowances

They are the amounts of money prescribed for certain jobs that require the person who occupies them to be exposed to risks that are not available in other jobs.

Allowances for additional work

It is granted in return for assigning the employee to work for a longer time than the official working hours, and accordingly it is considered as compensation to the employee for the effort he exerts in his rest time

The Iraqi law permits the administration to assign the employee to work more than the legally prescribed working hours, provided that it does not exceed 3 hours per day.

Allocations for the position

It is granted to the employee with the intent to meet the requirements of the public position according to its description and duties of expenses necessitated by the necessity of appearing in a proper social appearance for the one who occupies it.

This type of allocation was approved by the decisions of the dissolved Revolutionary Command Council No. (625 on May 24, 1977), No. (631 on 3/19/1978), No. (678 on May 10, 1980) and No. (898 on 11/22/1986).) . Article (10) of the State Employees Salaries Law also specified these allocations in different proportions according to the job position.

Allocations for Academic stipends

It is usually granted to some employees in return for their full-time dedication to research or scientific work, such as faculty members in institutes and universities or scientific researchers

Second: the legal protection of the salary

The salary and its attachments in all legislations enjoy special protection as it is the main resource for the employee and his family, and in view of this, the Iraqi legislator sought to establish this protection because he believes that the salary is the employee's right to live and his family with respect and dignity in the face of difficult economic and social conditions, and this protection is manifested through the following:

It is not permissible to withhold the salary:

Seizure is a means to compel the debtor to pay the debts he owes to the creditor, according to which execution is carried out by the public authority on the debtor's money that the law permits execution on, whereby the creditors' rights are paid from its creation after seizing and selling it.

This and that the seizure according to the implementation law can be imposed on salaries and allowances, as this is done by the implementation directorates. In this case, the employee is indebted to others, and the object of payment is the salary.

The Iraqi legislator has been keen to protect the employee's salary from deduction or seizure, because it is the main resource for the employee from which he lives and spends to meet the requirements of living, so depriving him of it will harm him and prevent him from carrying out his job duties to the fullest extent

However, the principle of the inability to withhold the salary is not an absolute principle, and therefore the protection of the salary from seizure is a relative protection, based on the discretionary authority of the legislator and this meaning was confirmed by the text of Article (82) of the implementation law, which approved the permissibility of withholding the salary and allowances received by the employee from the state and at a percentage It does not exceed one fifth of his salary and allowances, including the cost of living allowances.

The wisdom of determining this percentage is in order to leave a sufficient amount for the debtor (the employee) to live with his family members in order to prevent harming the public interest by misusing his position. Seizure cannot be imposed unless the debt is proven by a final court ruling, unless the debt belongs to the state or the socialist sector.

The employee responsible for disbursing the salary and allowances shall be obliged to implement the seizure decision notified to him by the Execution Directorate, and he shall answer it within seven days about the implementation of the required seizure and the amount of the salary and allowances, and inform the Implementation Directorate of every change that occurs to the debtor (employee) job, salary and allowances. Collection from the salary and allowances of the official or his other money, with the right to return what was collected from him by a decision issued by the just executo.

Through the foregoing, we conclude that the Iraqi legislator has balanced the interest of the creditor in fulfilling his right from the debtor and the employee's interest in meeting the requirements of living and not harming him and his family members on the other hand, by specifying a certain percentage to be seized, which is one-fifth of the salary and allowances. Anything that exceeds this percentage is not taken into account for violating the text of the law, which clearly shows the legislator's keenness to protect the employee's right to salary.

Setting a minimum salary:

The issue of setting a minimum salary is the main gateway to achieving social justice,

as this contributes to building a system that contributes to economic and social development. The employee feels stability and the ability to provide the requirements of his life by giving him the necessary and necessary amount of living, which ensures his ability to perform and increase his psychological stability

A part of jurisprudence defines the minimum salary as “the limit that cannot be reduced in determining the fixed part of the salary, since it is one of the rules of public order that cannot be violated, and which enables the average employee to live a decent and appropriate life” . It was also defined as (the amount without which it is not possible to fulfill the individual and social needs necessary for man.

The Constitution of Iraq of 2005 stipulates that (the people with low incomes are exempted from taxes, to ensure that the minimum necessary for living is not compromised, and this is regulated by law

It is clear from the text of the above article that the minimum level and the bases to be referred to for its report are not specified, in addition to the lack of enactment of a law regulating the amount of the minimum.

However, the Labor Law defines the minimum wage for workers as (it means the wage established by law or the wage established in the employer’s project according to the individual or group work contract), whichever is greater. He also explicitly indicated that the worker’s wage shall not be less than the minimum wage established by law.

When we look closely at the constitutional text that stipulates not to prejudice the minimum, we find that the latter constitutes a constitutional guarantee that guarantees the protection of the public employee’s right to salary. Therefore, it was more appropriate to point out explicitly that the minimum should be explicitly defined in the texts of the laws regulating the public job because of this limit A significant and effective impact in ensuring a decent standard of living for the prevailing economic and social level, and thus providing a decent life for the employee and his family at the same time.

Judicial oversight

Judicial control over the work of the administrative authority is one of the most prominent manifestations of protection for the rights of the public employee, if the administration violates the requirements of the law or violates the legal mechanisms to protect the employee’s right to salary.

Given the importance of the salary and its active role in securing the standard of living of the public employee, any breach or abuse by the administration that affects the right to salary allows resorting to the administrative judiciary to do justice to the employee and remove injustice from his right to his salary.

The Iraqi legislator has guaranteed the salary a special legal protection, as the Employees Judiciary Court is competent to consider disputes arising from calculating the salary for the public employee, including its ruling that the employee is entitled to the salary of his job from the date he began it . In another decision, the Employees Judiciary Court indicated that (..the Kindly consider the distinguished judgment and it was found to be incorrect and contrary to the law, because on May 8, 2009 the plaintiff's department, upon his request, changed his job title from (technical director) in the third degree to (assistant engineer) in the seventh degree for obtaining a bachelor's degree in engineering And his

salary remained in one grade and his title in another, and this situation is in violation of the law, which requires the employee to receive the salary of the degree he is in.

It is clear from the foregoing that the administrative judiciary is interested in protecting the rights of the public employee, the most important of which is the right to salary, as it is considered in return for the effort he exerts in performing his job duties. another side.

Results:

1- Salary is the material amount that the employee receives in return for performing the job duties, and some allowances are attached to it.

2- The salary is a material and moral incentive that contributes to improving work relations and developing administrative work.

3- The legal guarantees that provide protection for the salary are represented in determining a minimum salary and the inadmissibility of withholding the salary except within the limits of the fifth, and the possibility of appealing decisions that affect the employee's right to the salary before the administrative court.

Recommendations:

1- Unifying the ratio of the dependency allowances represented in the marital and children's allowances between the State Employees Salaries Law No. 22 of 2008 and the Military Service and Retirement Law No. 3 of 2010 for the Currency Union from granting them in the two laws above, which is to enable the employee to meet the requirements of economic life and the absence of justification for the discrepancy in The ratio of allocations between both laws.

2- Adding a legal article in the laws regulating the salaries of state employees to determine the minimum salary in line with the text of Article (28) of the 2005 Iraqi Constitution, which stipulates that the minimum standard of living may not be violated, and similar to what is applied in the effective Labor Law No. 3 of 2015 that the minimum The minimum is one of the legal means that guarantees the protection of the salary and provides an acceptable standard of living that cannot be waived.

3- To follow up on economic changes and developments and to reconsider and increase the salaries of state employees in the light of these changes and to contribute to protecting the employee's right to a decent standard of living on the one hand and protecting the public interest by not creating a gap between the granted salary and the prevailing economic situation and thus reducing or preventing crimes of embezzlement and bribery.

The references

First: the books

Adam Wahib Al-Nadawi, Civil Procedures, Al-Sanhoury Library, Baghdad, without a year of publication.

Ahmed Mustafa Youssef El-Sherbiny, Encyclopedia of the Public Employee (a comparative study between Islamic Sharia and man-made systems), Volume One, Dar Al-Fikr and Law, 2020.

- Amal Taher, *The Legal System for the Protection of Wages in Algerian Legislation*, New University Publishing House, 2013
- Hammad Muhammad Shata, *The General Theory of Wages and Salaries, A Comparative Study between the Capitalist and Socialist System*, University Press, Algeria, 1982.
- Ghazi Faisal, *The Guide for Employee Rights*, 1st Edition, Encyclopedia of Legal Culture, 2006.
- Ali Merhej Ayoub, *Public Service in Lebanon, Duties and Rights, Volume One*, 1st Edition, Al-Halabi Human Rights Publications, 1999.
- Muhammad Ibrahim Al-Desouki, *Protection of the Administrative Public Employee*, Dar Al-Nahda Al-Arabiya, Cairo, 2006.
- Gesture of Hamel Al-Ajili, from the Supreme Administrative Court, part 3, Dar Al-Sanhoury, Beirut, 2021.
- Noureddine Haroush, *Human Resources Management*, 2nd floor, Dar Al Ummah, Algeria, 2016.
- Maged Raghed Al-Helou, *Administrative Law*, University Press and Knowledge House, Alexandria, 1983.
- Youssef Elias, *The Practical Reference in Explanation of the Laws of Service, Discipline, and Civil Retirement*, 2nd Edition, Dar Al-Taqani for printing, 1984.

Second: University Theses:

- Areej Taleb Kazem, *Factors Affecting Determining the Employee's Salary*, Master's Thesis, Al-Nahrain University, College of Law, 2005.
- Asos Muhammad Salih Ahmed, *The Rights and Duties of the Public Employee within the Scope of the Public Job (a comparative study between Iraqi positive law and Islamic jurisprudence)*, Master's thesis, Van Yusengwill University, Institute of Social Sciences, 2018.
- Hamidi Lotfi, *Legal Guarantees of Salary*, Master's Note, Abdelhamid Ben Badis University Mostaganem / Faculty of Law and Political Science, 2018-2019
- Abdullah Saadoun Al-Shammari, *the legal system for the allocations granted to employees (a comparative study)*, a master's thesis, Faculty of Law, 2008.
- Kazem Khudair Muhammad, *the financial rights of the public servant in Iraqi law (a comparative study)*, a master's thesis, Babylon University, College of Law, 2013.
- Kawthar Hazem Sultan, *the privileges of the public employee and their impact on the effectiveness of the administration (a comparative study)*, a master's thesis, University of Baghdad / College of Law, 2000
- Dahrawi Abdel Karim and Shafei Abdullah, *The financial rights of the public employee and their paradoxes between the various wires of the education sectors*, Master's note, Ahmed Deraya University, Faculty of Law and Political Science, 2015-2016.

Third: Research and periodicals

- Ban Salah Abdel Qader and Saji Karim Saleh, *the minimum salary for an employee in Iraqi legislation (a comparative study)*, research published in the Journal of Legal Sciences, University of Baghdad, special issue 5, 2019.
- Ammar Mohsen Kazar Al-Zarfi, *Seizure of the Debtor's Money*, Research published in Al-Kufa Journal, Issue 7, 2010

Atika Moawi, Legal Protection of the Salary, Journal of Ijtihad for Legal and Economic Studies, Volume 8, Issue 1, 2019.

Fourth: Laws and Judicial Decisions

Iraq's constitution for the year 2005

State and Public Sector Employees Discipline Law No. 14 of 1991

Iraqi Civil Service Law No. 24 of 1960 (amended.)

Military Service and Retirement Law No. 3 of 2010.

University Service Law No. 23 of 2008.

Execution Law No. 45 of 1980

State Employee Salaries Law No. 22 of 2008.

Labor Law No. 37 of 2015

Execution Law No. 45 of 1980

Decision of the Public Authority in its Discriminatory Capacity No. 408/Discipline/Discrimination/2010 on 19/8/2010

Decision No. 1500 / Judiciary of Employees / Discrimination / 2018 on October 11, 2018

Resolution No. 1045 \ Employee Judiciary \ Discrimination \ 2016 on 23 \ 7 \ 2017

Fifth: The Internet

. M . Ali Saad Omran, Financial rights of civil servants - a reading of Iraqi laws, an article published on the website: [law.http://fcds.com](http://fcds.com).