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Defense Order No. 6 and the Extent of its Compatibility to the Provisions of Individual Work Contract

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Abstract

The present study addressed the topic of defense order No. 6 of 2020, that was issued based on the defense law No. 13 of 1992 in order to identify its compatibility during this pandemic to the provisions of individual work contract. The study addressed defense order No. 6 through a detailed explanation of its items, where we addressed the statements issued based on defense order No. 6 in the first topic, then we discussed the second topic concerning the compatibility of defense order No. 6 with the provisions of the individual work contract. The study problem lies in identifying the extent of compatibility of defense order No. 6 with the provisions of individual work contract during corona pandemic. The researcher used the analytical descriptive approach to address the research problem.

Keywords: defense law, defense order, labor law, individual work contract.

Introduction

The work contract is one of the nominal contracts which are subject to the provisions of the general rules. Moreover, the civil law does not protect the laborer sufficiently, and accordingly labor legislation regulates the establishment of work relations between the parties in such a parallel way between the two parties; the laborer and the employer.

Hence, the law imposes reciprocal obligations for the two parties, whereby either party can refrain from performing as a means of implementation[1].

Despite the existence of general rules, and the existence of the labor law to balance the relationship between the two parties, the difference in the legal status of each worker from the employer makes its provisions insufficient to protect the rights of the worker who is the weak party in this relationship[2].

Based on this, it was necessary that the rights of the laborer should not be violated. Therefore, the Jordanian legislator stipulated in the Labor Law that any of the rights granted to the laborer by any other law entitles the laborer to rights better than the rights granted to him under the provisions of this

law, in addition to the nullity of every condition under which the laborer waives any of the rights granted to him by this law[1].

The Corona pandemic has cast its negative effects on the activities of individuals in all their forms; social and economic activities. The great impact was on contractual relations in particular, especially the work contract. And because the Corona virus called on countries, including Jordan, to take restrictive measures and precautions, these measures affected, and led to many problems on, the labor contractual relationship.

Consequently, many employers are trying to exploit the circumstance of this pandemic unjustly, and without legal justifications, to escape their obligations with regard to laborers' rights. In order to protect the laborer and create a balance between the two parties, and to limit the increase in unemployment, the government had to intervene.

Accordingly, the Cabinet, which is authorized by Defense Law number (13) of 1992, issued Defense Order No. 6 of 2020, under the Defense Law. This is to limit and mitigate the effects of the Corona pandemic on the parties to the work contract, namely the worker and the employer. Its aim was to balance the rights and obligations of both parties. It also issued Notification No. 7 and Notification No. 8, supplementing and amending Defense Order No. 6 of 2020.

Therefore, in the first part, the researcher will address Defense Order No. 6 of 2020, which is related to the individual work contract. Moreover, the researcher will address, in the second part, the compatibility of Defense Order No. 6 with the provisions of the individual work contract.

Significance of the Study:

The significance of the present study lies in the explication and analysis of the terms of Defense Order No. 6 of 2020, issued under Defense Law No. (13) of 1992, in order to find out the extent of its applicability with the conditions coinciding the current Corona virus pandemic concerning the provisions of the individual work contract.

Objectives of the Study:

The researcher aimed in this research to shed light on the subject of Defense Order No. 6 and its compatibility with the provisions of the individual work contract according to Jordanian legislation through the following:

1. Revealing the reasons for issuing Defense Order No. 6.

2. Revealing and explicating Defense Order No. 6.

3. Explicating Notification No. 7 and Notification No. 8 issued on the basis of the provisions of Defense Order No. 6.

4. Revealing the texts that have been suspended by Defense Order No. 6 and the appropriateness of their suspension.

Problem of the Study:

The problem of the research revolves around the explication and analysis of the terms of Defense Order No. 6 and their compatibility with the provisions of the individual work contract. Several questions arise from this problem, which are as follows:

1. Why was Defense Order No. 6 issued?

2. What is Defense Order No. 6 and what are the notifications issued and based on it?

3. What are the texts that have been suspended by Defense Order No. 6 and the appropriateness of their suspension?

Methodology of the Study:

The researcher will follow the descriptive-analytical approach to answer the problem of the research, so that the problem in question will be described and the Defense Order No. 6 of 2020, which is issued under Defense Law No. (13) of 1992, will be analyzed to find out its compatibility with this pandemic for the individual work contract.

Structure of the Study:

The present study is divided into two parts:

Part one: Defense Order No. 6 of 2020 which is related to the individual work contract.

Part two: Compatibility of Defense Order No. 6 with the provisions of the individual employment contract.

Part one: Defense Order No. 6 of 2020 which is related to the individual work contract

Defense Order No. 6 of 2020 was issued in accordance with the Defense Law by the Prime Ministry. It aimed at creating a state of balance between the two parties; the laborer and the employer, during this exceptional circumstance, as the two parties were unable to fulfill their obligations to the fullest extent as determined by the provisions of the Jordanian Labor Law. Some legal texts based on the rules of justice have been dispensed because of this new situation that overthrew and completely paralyzed the economic life during the period of complete lockdown at the beginning of this pandemic. It mainly came with the aim of restoring the health of economic activity and reducing the negative economic effects on operators, private sector companies and their employees.

Defense Order No. 6 raised many questions and ambiguous matters, as it contained texts that were almost clear, and sparked a legal debate about its legality and compatibility. Therefore, it was necessary for us, in this study, to address it, clarify and interpret its texts, and the need to find a detailed explanation of it in order to find out the extent of its compatibility with the consequences of this pandemic for the individual work contract.

Accordingly, in this part, we will clarify the terms of Defense Order No. 6 of 2020, which includes eleven articles, and we will analyze its texts, clause by clause, as follows[1]:

First: Through what was stated in the first item, we find that it is concerned with workers' wages for the period between March 18, 2020 and March 31, 2020. During this period, the government began to take comprehensive ban measures and complete lockdown of facilities, as the laborer in any of the

institutions and establishments of the private sector or any other entity, is subject to the Labor Law. Such a laborer is entitled to a full wage from the date of 3/18/2020 to the date of 3/31/2020, whether these institutions are among the sectors excluded from the Cabinet's decision to suspend or are not excluded from disruption. But concerning the sectors which are excluded from the Cabinet's decision to suspend, i.e. the sectors that work, the laborer is not entitled to any additional wage for his work during this period, unless the laborer is assigned to additional work in excess of the daily or weekly working hours provided that he receives for each additional hour of work a wage of not less than 125% of his usual wage, according to the Labor Law as it is stipulated in Article 59/A. Moreover, paragraph B of Article 59 of the Labor Law, which states: "If a worker works on his weekly day off, religious holidays, or official holidays, he shall receive an additional wage for that day of no less than 150% of his usual wage," has been suspended. The reason for suspending this paragraph was that the worker working during the period of lockdown and comprehensive bans could not claim that additional wage stipulated in paragraph B of Article 59 of the Labor Law. That is, the main point of what this clause says is that the employer must pay the due for the month of 3/2020 as usual, whether to the laborer in the institution or establishment authorized to work or those not authorized to work, and whether for laborers in the workplace or those whose work is not required. The worker is not entitled to an additional wage unless he performs an additional job.

Well, it did this by protecting wages for that period, but that was at the expense of the employer and that is not fair, as we find that the government has tried to find a balance in the interest of the two parties; the laborer and the employer, for that period only, even if the employer was the one who was affected by that item. The employer found himself forced to pay sums to the workers without any consideration, which is the work of the worker.

It is obviously noticed that the government was supposed to take care of those wages that it imposed on the employer, since the employer has no hand in those lockdowns that were imposed on all sectors including the employer, meaning that in other words, the government decided to protect laborers' wages at the expense of the employer's interest, and that is for the sectors excluded from work.

Second: Through the second clause of Defense Order No. 6 of 2020, we find that in paragraphs (A / B) the authority has been granted to the Ministers of Labour, Industry, Trade, Supply and Health, to identify institutions and establishments from the private sector that are allowed to operate during the period of lockdown, and also to grant them to determine the grounds and conditions for obtaining work permit. As there were sectors that were necessary to continue their work during the Corona pandemic, especially during the comprehensive ban and complete lockdown, which were necessary to continue their work (such as (hospitals, pharmaceutical factories and medical materials, food sectors, bakeries, etc.)

Third: It is noted here that this clause[1] was provided for the purposes of facilitating and regulating remote work mechanisms in whole or in part and to enable and encourage the economic sectors in these circumstances to carry out their economic activities and continue production in an appropriate manner that allows them to continue their work, so that the employer can commit to paying the wages due to laborers. The provisions of Articles (3), (5), (8), (10) and (12) which are related to the flexible work system have been suspended, as these articles include certain categories and conditions for doing remote work, and accordingly these articles have been suspended, due to the ability of all institutions

and establishments, without exception, to practice their work remotely, in order to encourage them to continue working and not stop.

Fourth: This clause is concerned with laborers' wages since 1/4/2020, for the laborer deserves his full wage when performing his work at the workplace, unless the worker agrees with the employer to reduce his wages by no more than 30% of his usual wages, but this reduction is provided that it includes the salaries of senior management.

And here at the beginning of this clause, the government should not have discussed the reduction of the wage by no more than 30% of the laborer's wage for the laborer who works at his place of work, even if he had stipulated a reduction in the salaries of the senior management. This clause was a legal loophole for employers whose facilities and institutions are fully functioning and the nature of their work was not affected to make the reduction, so the employer can put pressure on the laborer and the senior management staff to agree to the reduction. Then it came to determine the wages of the laborer who works remotely, i.e. 8 hours a day, where he deserves his full wages, but if the laborer performs his work remotely partially and not completely, he deserves his wages according to the working hours that he actually worked and not less than the minimum hourly wage, or 50% of the value of his usual wage, whichever is higher.

This clause is also concerned with overtime working hours for the laborer's daily/weekly working hours. The laborer is entitled to a wage of no less than 125% of his usual wage. As for laborers who are not assigned to work in institutions and establishments that are authorized to work partially or those covered by the decision to suspend and did not declare, the laborer is entitled to receive no less than 50% of his usual wage, provided that it is not less than the minimum wage. However, it is conditioned by that the employer submits a request from the Minister of Labor to allow him to do so within the basis and conditions determined by the Minister of Labor, unless the employer suspends his establishment from work. And in the absence of decisions of the Jordanian Court of Cassation during the time limits of this study, it was stated in a judgment of the Amman Court of First Instance in its appellate capacity, "Our court finds that Defense Order No. (6) has included in item I/A, laborers in private sector institutions and establishments are entitled to their full and usual wages for the month of March, 2020, specifically the period from 3/18/2020 to 3/31/2020.

The fourth clause of the aforementioned Defense Order regarding wages also included, as from 1/4/2020 onwards, that employees who perform their work at the work site are entitled to their full wages, and it is permissible if the laborer and the employer agreed to reduce the salary by no more than (30%) of the salary, where the defendant did not prove the existence and occurrence of that agreement. It also included that laborers who perform their work entirely remotely in the establishments and institutions authorized to work or those covered by the decision to suspend or not authorized to work, are entitled to their full wages. Moreover, remote workers, who work partially in establishments, which are authorized to work or those covered by the decision to suspend and not authorized to work are also entitled to their wages according to the actual working hours and not less than the minimum wage for one hour or half the wages, whichever is higher.

It is also noticed that the aforementioned Defense Order stipulates, in Clause IV/e, that the employer in the institutions authorized to work partially for workers who are not assigned to work or those covered by the decision to suspend them and were not authorized to work, may submit an application

to the Minister of Labor to allow him to pay no less than (50%) of the value of the laborers' usual wage, conditioned by that it is not less than the minimum wage[1]. Moreover, The grounds and criteria that the committee adopts in its work when considering requests to reduce the wages of workers by no less than 50% of the value of the wage or the minimum wage, whichever is higher, are [2]:

1- The ability and financial compatibility of the institution or establishment to pay the wages of laborers.

2- The size of the total employment in the institution and establishment.

3- The percentage of laborers who do not perform work in the institution or establishment, whether fully, partially or remotely, out of the total number of workers in the institution or establishment.

Then, at the end of the fourth clause, it is stated to suspend the work of Article (50) of the Jordanian Labor Law No. (8) for the year 1996 and to implement paragraphs (e) and (f) of this item. Moreover, what was stated in Article 50 of the Jordanian Labor Law was found to balance the interests of the laborer and the employer, as protecting the worker and preserving his work and source of livelihood are among the most important goals pursued by the labor law, but this goal may cost the employer additional burdens.

In order to achieve a balance between the interest of the laborer and the employer, if the employer obligates the worker to stay or pay the wage to him without submitting the work, he also gives the employer the authority to amend, as he obligated the employer if the work stops due to a reason beyond his control and he was not able to pay him to pay part of the wage to the worker without submitting the work, he is obligated to pay the laborer in full for a period not exceeding ten days, and grant the employer to reduce the wage by half if the work stoppage continues for more than that. This is conditioned by that the total period of suspension with pay does not exceed sixty days per year.

Therefore, the researchers believe that the Jordanian legislator’s text of Article 50 of the Labor Law was the best and safest solution for the both parties; the laborer and the employer, as the Corona pandemic is outside the will of the employer and he can never prevent it. Moreover, what came in Defense Order No. 6, item 4, to suspend the text of this article, reflected that the government was unacceptable. That is, the Defense Order did not specify the period in which the employer is obligated to remain paying half the wage to the laborer without performing the work. This is contrary to what the Jordanian legislator stated in the Labor Law, in the text of Article 50, which specified reducing the wage by half if the work stoppage continues for more than that, conditioned by that the total period of paid suspension shall not exceed sixty days per year. That is, the defense order was unfair to the employer by obliging him to pay half the wage to the laborer who does not perform the work, without specifying a period of time for that, especially since there are sectors, until the time of the limits of this study, that are still closed and do not work, and that the labor law was found for the benefit of both parties, not only for the laborer.

It is urging to address the Notification No. (7), issued on the basis of the provisions of Defense Order No. (6), where its texts came to regulate the wages of laborers for the month of May and June of 2020, and what the government added and amended to Defense Order No. 6 / Article IV that it added a condition that the activity of the institution of the employer that reduces the wage of the worker to 30% is one of the activities most affected by the Corona pandemic.

It did well because there are activities and sectors that were not affected by this pandemic, but rather their work required the most, such as private hospitals, laboratories, pharmaceutical factories, medical equipment, and others. With such a condition, the employer who was not affected cannot reduce the laborer's wage.

And this notification came to regulate the rates of reduction in wages for the laborer, according to the most affected sectors, where the reduction rate was not to exceed 60% for the most affected activities and not less than 150 dinars, and not to exceed 50% for the rest of the sectors and not be less than the limit of the minimum wage. This was a matter of justice and fairness according to the work of the sectors, as there were sectors that were not greatly affected, and sectors that were severely damaged to bring them to closure and stopping work. And also what was stated in this communication that the employer was allowed to reduce the wages of the laborer who is not assigned to work without requiring the approval of the laborer or the Ministry of Labor to reduce, and the employer was allowed to deduct 50% of the balance of the annual leaves for the year 2020 for the laborer who is not assigned to work for a period of 30 consecutive days or more, or intermittent from the inception of the Defense Law until the date of this notification.

This notification (Notification No. 7) came to motivate and encourage the owners of employment offices and private offices operating to recruit or use non-Jordanians to work at homes, thus benefiting from the reduction in the value of the bank guarantee by no more than 50%, as these offices can benefit from these funds to complete their work in a better manner, and mitigate the effects of the Corona pandemic on this sector.

Then, Notification No. 8[1] was issued. It was issued on the basis of the provisions of Defense Order No. 6, whereby to continue organizing matters related to laborer' wages for the month of July and August of the year 2020. Since the impact of the Corona pandemic has become less severe on the economic sectors, and lockdown hours have been reduced, and many private establishments and institutions are allowed to return to the practice of their activities and work, the government stipulated in this notification that the institutions most affected by the Corona pandemic and on the same conditions contained in Defense Order No. (6) that the percentage of the employee's wage reduction is less than 20% and that it is not less than the minimum wage and in agreement with the laborer without pressure or coercion. Moreover, the reduction includes the wages of the senior management, that is, the reduction percentage has been reduced from what was stated in Notification No. 7.

The employer has the right to reduce the monthly wage of the laborer who is not assigned to work without requiring the approval of the worker or the Ministry of Labor, a percentage of no more than 50% and not less than the minimum wage. As for the sectors and activities that were not affected, the laborer who performs his work in the workplace or remotely or the worker who is not assigned to work is entitled to his full wages for the month of July and August. It did well for the sectors that were not affected so that they would not have any outlet or arguments for not paying or reducing wages to the worker.

Fifth: The fifth clause[1] and its complete statement is concerned with institutions and establishments that are unable to fulfill the rights of the worker, and the inability of the employer to pay wages to the workers, so the employer was given the right to submit a request to a joint committee, as mentioned,

to stop the work of his establishment completely, stop the laborers' contracts and not be obligated to pay the their wages.

But this approval entails the effects mentioned in this clause on the employer so that the employer cannot practice any work or activity during the suspension period, and not benefit from any programs launched by the government for economic protection. It put a sign prohibiting disposal of the movable and immovable funds belonging to the establishment.

From our point of view, we see that it forced the employer not to engage in any work or activity during the suspension period. This is unfair to the employer, so what if the employer has two activities or two institutions, one of which operates and has not been affected by the pandemic, and the other is the opposite. It was a matter of logic and justice that the text should be clear and explicit, so that the suspension would be due to the non-performance of the activity of the same institution that was suspended, and that it should not include any other activity that was different and was not affected. It is also measured on benefiting from economic protection programs, for its deprivation should have been only on the same establishment that was suspended, and that the deprivation should not include other institutions or establishments, if any, with the employer.

Sixth: The sixth clause of Defense Order No. 6 came to explain the government's obligations and to provide incentives to employers who are obligated to pay the laborer's wages in full from the start of the Defense Law until its expiry.

It is also to benefit from the economic protection programs launched by the government within the conditions set for each of these programmes, such as the economic protection programs launched by the Social Security Corporation to assist and support establishments and employers for the permanence and continuity of work.

Seventh: In light of its capabilities, the government seeks to provide the necessary support to secure the basic life needs of Jordanian day laborers who are not participating in social security, provided that they participate in social security according to a mechanism to be determined later.

And here in this clause is also what is stated in the government's obligations and the provision of incentives, but for Jordanian day laborers who do not participate in social security, provided that social security is subscribed to, as day laborers were among the most affected by the Corona pandemic and the comprehensive lockdown of all sectors such as transportation, construction and other sectors in which the day laborers work. But the difficulty was by requiring them to subscribe to social security, as this was an obstacle to the daily laborers by not benefiting from these programs.

Eighth: And if we extrapolate what came in the eighth clause in its entirety, its texts were intended for the inability of the employer to pressure the worker and force him to terminate his services, because the effects of the Corona pandemic and the comprehensive lockdown that followed, even after the lockdown, were reducing working hours for establishments and sectors and the increase in the number of hours of the night ban has contributed to reducing the revenues and profits of establishments and sectors.

Accordingly, the employer was resorting to reducing the number of workers because he was unable to fulfill his obligation to pay the wages, so the provisions of this clause were to protect the weak party

in this relationship and provide protection to him; the laborer, so that the employer would not terminate his services. It came to stop work in the text of Article (23) of the Jordanian Labor Law[1], which gave the authority to the employer to terminate the laborer's services by giving him a notice, for the work contract for an unlimited period. It was necessary to suspend it so that it does not contradict with what is stated in Clause Eight / A of Defense Order No. 6, and so that the employer cannot use the text of this article and terminate the worker's contract (unlimited period) by giving him a notice and terminating his services. The government has done well to stop the work of this article. And also it came to stop the texts of paragraphs (b, c, d, e, and f) of Article (28) of the Jordanian Labor Law, which are:

b- If the worker fails to fulfill his obligations under the work contract.

c- If the worker commits a mistake that results in a serious material loss to the employer, provided that the employer informs the competent authority or authorities of the accident within five days from the time he became aware of its occurrence.

d- If the worker violates the establishment's internal system, including the safety conditions of work and workers, despite being warned twice in writing.

e- If the worker is absent without a legitimate reason for more than twenty intermittent days during one year or more than ten consecutive days, provided that the dismissal is preceded by a written warning sent by registered mail to his address and published in one of the local daily newspapers once.

f- If the worker discloses work-related secrets.

In fact, the clauses of Article (28) of the Jordanian Labor Law, which came in specific cases exclusively, are nothing but a measure taken by the employer against the worker and lead to the legitimate termination of the work contract, as this procedure is granted by the Jordanian legislator to the employer to terminate the work contract for a fixed-term or for an indefinite period. The employer can dismiss the laborer before the expiry of the contract term if the work contract is for a fixed term, and dismiss the laborer without giving notice if the work contract is for an indefinite period.

And if we have a look at the clauses that have been suspended and which were the reason for stopping them from the government's point of view, that the employer cannot use them to end the laborer's services, but from our point of view it was a wrong and unfair trend against the employer because these clauses or Article 28 in their entirety, that were found, have given the right and authority for the employer to terminate the worker's services if they were violated and not adhered to. It is a matter of logic and justice on which the regulation of this relationship for both parties is based. These cases pose a danger to the work of the employer, his establishment or institution, and his secrets related to the work. They are duties and obligations arising on the shoulders of the worker that must be adhered to.

If the laborer breaches these obligations and duties, the employer has the right to dismiss him, as these obligations resulting from the Corona pandemic have no relationship with them to be suspended, and the employer will not be able to dismiss the laborer and terminate his services because of them if they do not exist. And if these reasons exist, the employer has the right to terminate the laborer's services even in the presence of the conditions of the Corona virus, especially since these reasons are restricted, conditional and based on sound foundations required by justice.

It was absolutely unfair to the employer in the sense that how can a business owner not be able to terminate the contract of a worker working for him and under his command and supervision, if he did not fulfill his obligations, or by committing a serious material loss to a business owner, or for violating the internal regulations of the institution, or for his absence without a legitimate reason, or for his disclosure of work secrets. It was better to leave it and not stop working on it, because it only exists to regulate the relationship and is based on restrictive foundations and conditions and a balance between the interests of both parties.

It was the duty of government not to stop the texts of the previous clauses that were mentioned in Article 28 of the Jordanian Labor Law. They should remain in effect. Moreover, authorizing the Minister of Labor to take the necessary procedures and measures to implement clause (e), which says that "if the worker is absent without a legitimate reason for more than twenty intermittent days during one year or more than ten consecutive days, provided that the dismissal is preceded by a written warning sent by registered mail to his address and published in one of the local daily newspapers once," from our point of view, there was no reason to stop it, nor to authorize the Minister of Labor to take the necessary measures to implement them. This is because of the fact that the absence mentioned in paragraph (e), stated by the Jordanian legislator, that the absence be without a legitimate reason, and if the meaning of stopping the work of this clause is due to absence because of the lockdown that occurred between the governorates and the comprehensive ban and the infection of the laborer with the Corona virus, such absence is considered a legitimate absence. Therefore, there is no reason or point in suspending it.

Our view on the foregoing is supported by the fact that the government returned with Notification No. 7, issued on the basis of Defense Order No. 6 about its decision to suspend paragraphs (b, c, d, e, and f) of Article (28) of the Jordanian Labor Law, where it was mentioned in Article Six that the provisions of paragraphs (b, c, d, e, and f) of Article (28) of Labor Law No. (8) of 1996 shall be re-inforced, as it was a correct and necessary orientation from the outset to not stop the clauses of this article.

Here, before moving to the ninth clause of Defense Order No. 6, we must address Notification No. 7 and Notification No. 8 issued on the basis of the provisions of Defense Order No. 6, and what was stated in the fourth clause in each of the two notifications, where Notification No. 7 was mentioned fourthly, "The fixed-term employment contract for the Jordanian laborer is automatically renewed under this notification until the expiry date of the Defense Law unless it is agreed to renew it for a longer period in accordance with the following conditions:

1- The contract must have expired on 4/30/2020 and beyond.

2- The contract must have been renewed three or more times.

And here came this item from this notification to protect the laborer, as it was issued while the Corona pandemic had completely paralyzed economic life, and therefore the laborer whose contract expires on 30/4/2020 and beyond, and has been renewed three or more times, is considered to have an automatically renewed contract until the end of the Defense Law.

Then it was stated in Notification No. 8, fourth, "The fixed-term employment contract for the Jordanian worker is automatically renewed under this notification until the expiry date of the Defense Law or for a similar period for the last contract, i.e. the two terms are longer. In this case, the following is required:

1- The contract must have expired on 1/7/2020 and beyond.

2- The contract must have been renewed three or more times.

Here is the same case as what was stated in Notification No. 7, but differed by adding the phrase "or for a period similar to the duration of the last contract, that is, the two periods are longer," meaning that it gave automatic renewal for the same duration of the last contract or the expiry date of the Defense Law, whichever is longer.

From the researcher point of view, what was stated, in Notification No. 7 & 8, regarding the automatic renewal of a fixed-term employment contract is undesirable and it constitutes a clear and explicit harm to the employer who finds himself in a contract that he is forced and bound by that he has no will. Moreover, the government interfered with the contractual relationship and destroyed the principle of the authority of the will and the binding force of contracts. Its intervention was good and commendable for the laborer, but at the expense of the employer and did not take into account the achievement of economic balance in this equation between the laborer and the employer. In this context, what is stated in it contradicts what is established in the civil law and the Jordanian labor law, which is built on the principles of justice and the principle of the authority of the will and the binding force of contracts.

Ninth: What is stated in the ninth clause is protection for the laborer so that the employer cannot compel the laborer to agree to waive or diminish his rights. Any document signed by the laborer, and that is against his interest and labor rights, including his wages, is void and not legally considered, and the employer must cancel these procedures within a week from the date of publishing Defense Order No. 6 in the Official Gazette, although what is mentioned in this clause is covered by the text of Article No. 4 of the Jordanian Labor Law[1].

Tenth: What is stated in the tenth clause[1] is that the continuous monthly and periodic review will be conducted, according to the changing circumstances of the impact of the Corona pandemic, and in the light of which new notifications and orders will be issued.

Eleventh: According to what was stated in the eleventh and final clause of Defense Order No. 6, it shows that anyone who violates any of the procedures stipulated in obtaining the approval of the Minister of Industry, Trade and Supply, the Minister of Labor and Health and the concerned minister collectively to make an exception from the suspension decision and take the necessary permit to work, within procedures and conditions for obtaining this approval, shall be punished by closing the establishment for a period of sixty days. Likewise, anyone who violates any other provision of Defense Law No. 6 shall be punished with imprisonment up to 3 years and a fine of 3,000 Jordanian dinars.

Part Two: Compatibility of Defense Order No. 6 with the provisions of the individual work contract

All legal rules must be realistic, meaning any legislation must adapt to the economic and social conditions of the parties to the relationship it governs, and then be amended or changed whenever this reality changes. If this characteristic is a general characteristic of branches of law, it appears clearly in the rules and texts of the labor law, which was originally found to take care of the interests of workers, then the labor law must be characterized by realism in order to adapt to the conditions of reality[2].

The advantage of realism for the rules of the labor law is evident through texts cited by the Jordanian legislator in the labor law, such as the different provisions of the labor law according to the different age or sex of the laborer, the different provisions of the labor law according to the different type of work, the different provisions of the labor law according to the economic capacity of the employer, and the realistic nature of the law. The work opens a wide scope for amending the rules of the labor law, and for the development of many subsidiary legislations to regulate the actual situation according to the circumstances[1]. The work contract is one of the nominal contracts which are subject to the provisions of the general rules, and the civil law does not adequately protect the laborer. Therefore, labor legislation regulates the establishment of work relations between the parties to the contract in a parallel manner between the two parties; the laborer and the employer, from which the law imposes reciprocal obligations to the two parties, where any of the parties can refrain from performing as a means of implementation[2].

In spite of the existence of general rules, and the existence of the labor law to balance the relationship between the two parties, the difference in the legal status of each laborer from the employer makes its provisions insufficient to protect the rights of the laborer who is the weak party in this relationship[3].

Therefore, it was necessary that the rights of the laborer should not be violated, so the Jordanian legislator stipulated in the Labor Law that any of the rights granted to the laborer by any other law entitles the laborer to rights that are better than the rights granted to him under the provisions of this law, in addition to the nullity of every condition under which the laborer waives any of the rights granted to him by this law[4].

Moreover, the reasons for issuing Defense Order No. 6 are to preserve job opportunities as much as possible and avoid laying off laborers due to the conditions of the Corona pandemic, and to protect the private sector as much as possible under the circumstances and reduce its burdens, in addition to providing social protection for self-employed and daily laborers to secure their basic needs and ensure their participation in social security for their inclusion for they are included in the protectionist and economic programs to take advantage of them.

In this respect, a Royal Decree was issued approving the decision of the Jordanian Cabinet, announcing the implementation of Defense Law No. 13 of 1992, and in all parts of the Hashemite Kingdom of Jordan as of March 17, 2020, based on Article No. 124 of the Jordanian Constitution[1].

The Jordanian Prime Minister exercises his powers by virtue of written orders, and the Prime Minister may delegate all or some of his powers to whomever he deems fit to do so in all parts of the Kingdom or in a specific region thereof and with the conditions and restrictions he appoints, and suspends the work of any text or legislation that violates any provision of the Defense Law and the issued orders accordingly.

Defense Order No. 6 included a number of negatives more than the positives it brought as solutions and treatments to the work contract and its effects. That is, the positives for the laborer were at the expense of the employer without the government bearing the consequences of these decisions. The government introduced the Social Security Corporation as a party and launched programs to support the laborer and the employer, but it did not address the problem of daily laborers, as most of them are not registered or subscribed to social security, as the government stipulated their participation in social

security to benefit from government procedures and programs. Moreover, when extrapolating what was stated in Defense Order No. 6 and what came in the first clause, which decides that laborers are entitled to their full wages as usual from 3/18/2020 to 3/3/2020, well, it did that by protecting wages for that period, but that was at the expense of the employer and it was not fair. And it is the employer who has been affected by that item, as he finds himself obliged to pay sums to the laborers without compensation, which is the assigned work of the laborer. We find that the government was supposed to take care of those wages that it imposed on the employer, as he had no hand in those lockdowns that were imposed on the employer, knowing that during that period the lockdowns were complete and comprehensive and the work of institutions and establishments stopped completely.

Also, what was stated in the fourth clause, the government should not address the reduction of wages by no more than 30% of the laborer's wages for the laborer who works at his place of work in full, even if he had stipulated a reduction in the salaries of the senior management, as this clause was a legal loophole for employers whose establishments and institutions are fully operational and the nature of their work has not been affected by the reduction. In this way, the employer can pressurize the laborer and the senior management staff to agree to the reduction, and gave the employer the authority to pay no less than 50% of the usual wage, provided that it is not less than the minimum wage.

The effect of the text of Article 50 of the Jordanian Labor Law was also suspended, as it was the first to keep the text of this article, as the Jordanian legislator created it for such circumstances, and that what the Jordanian legislator stated in the text of Article 50 of the Labor Law was the best and safest solution for both the laborer and the employer. Since the Corona pandemic applies to this circumstance that such a pandemic is out of the hands of the employer, and he was not able to pay it, and that what came in Defense Order No.6 in order to suspend the text of this article, the government was not successful.

Truly, the defense order did not specify the period in which the employer is obligated to remain paying half the wage to the laborer without performing the work, contrary to what the Jordanian legislator stated in the Labor Law in the text of Article 50, which specified reducing the wage by half if the work stoppage continues for more than that, provided that the total period of paid suspension shall not exceed sixty days per year.

Moreover, the inadequacy of what was stated in the fifth clause forced the employer not to engage in any work or activity during the suspension period, and this is unfair to the employer, so what if the employer has two activities or two institutions, one of which operates and has not been affected by the pandemic, and the other is the opposite. It was a matter of logic and justice that the text should be clear and explicit, so that the suspension would be for not practicing the activity of the same institution that was suspended, and that it did not include any other activity that was different and was not affected, and also measured it as well on benefiting from economic protection programs, and that the deprivation does not include other institutions or establishments, if any, with the employer.

Besides, what was stated in the eighth clause of suspending the texts of paragraphs (b, c, d, e, and (of Article (28) of the Jordanian Labor Law, where we reviewed the paragraphs that were suspended and which were the reason for stopping them from the government's point of view, that the employer cannot use it to terminate the laborer's services. But from our point of view, it was a wrong and unfair decision against the employer, because these paragraphs or Article 28 in its entirety, which existed and

gave the right and authority to the employer to terminate the laborer's services if they were violated and not adhered to, are part of the logic and justice on which the organization of this relationship for both parties is based.

These cases pose a danger to the employer's work, his establishment or institution, and his business secrets. They are duties and obligations borne by the laborer that must be adhered to. If the laborer breaches these obligations and duties resulting from him, the employer has the right to dismiss the laborer. These obligations, resulting from the Corona pandemic, have nothing to do with them in order to stop working with them, and the employer will not be able to dismiss the laborer and terminate his services because of them if they do not exist. Moreover, if these reasons exist, the employer has the right to terminate the laborer's services even in the presence of the Corona virus conditions, especially since these reasons are restricted, conditional and based on sound foundations required by justice. It was better to leave it and never suspend it, because it only exists to regulate the relationship and is based on restrictive foundations and conditions and a balance between the interests of both parties.

Moreover, what was stated in the notification No. 7 and 8, in the fourth clause, issued on the basis of Defense Order No. 6, regarding the automatic renewal of the fixed-term employment contract, is an undesirable matter and constitutes a clear and explicit harm to the employer who found himself in a contract that he is obligated to, in which he has no will. And that the government interfered with the contractual relationship and destroyed the principle of the authority of will and the binding force of contracts. Its intervention was good and commendable for the laborer, but it was at the expense of the employer and did not take into account the achievement of economic balance in this equation between the laborer and the employer.

What is stated in it contradicts what is established in the civil law and the Jordanian labor law, which was structured on the principles of justice and the principle of the authority of the will and the binding force of contracts, especially since many institutions and establishments were affected and closed and were unable to complete their work and carry out their activities under these circumstances.

Therefore, it became obvious that this defense order is not compatible to the provisions of the individual work contract and is in violation of the principle of legality, as Article 124 of the Jordanian Constitution defines the powers of the Prime Minister to suspend some provisions of laws without granting hum this authority of legislation and the development of new legal rules regulating work relations. Also, the application of the Defense Law must remain within the limits of a state of necessity without the right to amend contracts and interfere with their renewal or cancellation. Therefore, the government was not successful and correct in suspending paragraphs or text of an article that would have been the first to be applied in such circumstances, as we mentioned earlier.

It was also found out that this defense order is not compatible with the rules and provisions of the individual work contract, which were found to regulate the relationship and are based on restrictive foundations and conditions and a balance between the interests of the two parties. The solutions that were found were at the expense of the employer. Moreover, the government forced a number of institutions and establishments to close and stop working, and that the employer was badly affected, so the government should compensate the employer, not that the compensation be done by allowing him to deduct the laborer's wages.

Moreover, until the time of conducting this study, the sectors returned to work, so the clause concerning deducting laborers' wages, which was necessary according to the circumstances at the time of the closures, must be canceled, but now there is no justification or need for them to return to come back into effect.

Conclusion:

The researcher reached a set of results and recommendations, which are as follows:

Results:

1- It has been found that Defense Order No. 6 of 2020 was issued under the Defense Law by the Cabinet, and that the reasons for issuing it are to preserve job opportunities as much as possible and avoid laying off laborers due to the conditions of the Corona pandemic, and to protect the private sector as much as possible under the current circumstances and reduce its burdens. Its aim was to create a state of balance between the two parties; the laborer and the employer, during the Corona pandemic. This is because the two parties were unable to fulfill their obligations to the fullest extent as stipulated by the provisions of the Jordanian Labor Law, and some legal texts based on the rules of justice were disrupted. Hence, the government was not successful in doing so.

2- It has been proven that what was stated in Defense Order No. 6, Clause Four, to stop the work of Article 50 of the Jordanian Labor Law, reflected that the government was not successful with it, as the defense order did not specify the period in which the employer is obligated to keep paying half the wage to the laborer without performing the work. This is contrary to what the Jordanian legislator stated in the Labor Law in the text of Article 50, which specified the reduction of the wage by half if the work stoppage continues for more than that, provided that the total period of the paid delay does not exceed sixty days per year. Moreover, what the Jordanian legislator came with in the text of Article 50 of the Labor Law was the best and safest solution for the both parties; the laborer and the employer, as the Corona pandemic applies to this circumstance that the employer has no hand and a reason for it, and it is obviously out of the employer’s hands.

3- What was stated in Defense Order No. 6, the eighth clause, is related to suspending the texts of paragraphs (b, c, d, e, and f) of Article (28) of the Jordanian Labor Law. In fact, the clauses of this article came in specific cases exclusively. They are nothing but an action taken by the employer against the laborer that leads to the lawful termination of the work contract. That is, this procedure is granted by the Jordanian legislator to the employer to terminate the employment contract of a fixed-term or unlimited-term. In this context, how can an employer not be able to terminate the contract of a laborer working for him and under his command and supervision, if he does not fulfill his obligations, or commits a serious material loss to him, or for violating the institution’s internal system, absenteeism without a legitimate reason, or divulging work secrets? It was better to leave it and not stop working with it, because it was found only to regulate the relationship and is based on restrictive foundations and conditions and a balance between the interests of both parties.

4- What was stated in Notification No. 7 & 8 regarding the automatic renewal of a fixed-term employment contract is not desirable and constitutes a clear and explicit harm to the employer who found himself under a contract that he is obliged and bound by that he has no will. Moreover, the government interfered with the contractual relationship and destroyed the principle of the authority of

the will and the binding force of contracts. Its intervention was good and commendable for the laborer, but it was at the expense of the employer and did not take into account the achievement of economic balance in this equation between the laborer and the employer. Truly speaking, what is stated in it contradicts what is established in the civil law and the Jordanian labor law, which is based on the principles of justice and the principle of the authority of the will and the binding force of contracts.

5- It was proven that Defense Order No. 6 included a number of negatives more than the positives it came with as solutions and treatments for the work contract and its effects. That is, the positives for the laborer were at the expense of the employer without the government bearing the consequences of these decisions. It has become clear that this defense order is not compatible with the provisions of the individual work contract and is in violation of the principle of legality, as Article 124 of the Jordanian Constitution defines the powers of the Prime Minister to suspend some provisions of laws without granting him this authority of legislation and establishing new legal rules that aim at regulating work relations. Moreover, the application of the Defense Law must also remain within the limits of a state of necessity without the right to amend contracts and interfere with their renewal or cancellation. Besides, the government was not successful and right in disrupting clauses or text of an article that was first to be applied in such circumstances as we indicated in earlier in the present research.

Recommendations:

1- Suspending the work of Defense Order No. 6 because of the number of negatives it came with and its incompatibility with the provisions of the individual work contract. Moreover, if there is a need to intervene to regulate the relationship through the Defense Law, it must remain within the limits of the state of necessity, without interfering with the development of new legal rules regulating relations the job.

2- Suspension of Notification No. 7 and 8, which stated the automatic renewal of the fixed-term employment contract, for what constitutes a clear harm to the employer, as the government interfered with the contractual relationship and destroyed the principle of the power of will and binding force on contracts, and did not take into account the achievement of economic balance between the two parties and violated what is settled on it in Civil law and Jordanian labor law.

2- The researcher wishes the Jordanian legislator to amend the Jordanian Labor Law to find solutions within its texts to such emergency circumstance and force majeure on the individual work contract and to indicate its legal effects, in such a way that organizes such a situation clearly and explicitly and balances the equation between the two parties.

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