



Commercial Extent of Private Employment Offices

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Private employment offices are commercial projects that receive wide attention at both the internal and external levels. They are effective in raising the economic level of countries and eliminating unemployment, by providing employment opportunities for job seekers, both inside and outside the country, and the nature of their work is predominantly commercial. Whether companies or natural persons (individuals), it was necessary to regulate them within the provisions of the Trade Law and remove them from the Department of Labour Law, and this is what prompted most countries and international labour organizations to regulate their work mechanism.

Key words: *Private employment offices, Trade Law, international labour organizations.*

Introduction

Definition of the subject

Private employment offices have the leading role in reviving the economic situation of job seekers, eliminating unemployment and upgrading the state's economic level. Private employment offices are the organizing tool in the labour market to reconcile job applications and offers, so countries and the International Labor Organization (ILO) have sought to regulate their work mechanism, to prevent any breaches in their work, through specific controls.

Research Importance

The importance of research in several axes

1 - The importance of private employment offices, especially in countries that have defined the legal form of companies and offices which reflected on the facilitation of the tasks of job seekers, whether at the international level or internally.



2 - The importance is also apparent in the granting of commercial status to private employment offices, and the extent to which that grant can subject them to the provisions of the commercial law which apply to commercial bodies.

Problematic research topic

The problem of the research revolves around the nature of the work of private employment offices, whether civil or commercial, and their subjection to commercial law principles, and therefore to dispute in the Commercial Court.

Research Methodology

In our study we will rely on the analytical and comparative approach, through analysing legal texts and comparing Iraqi and Egyptian legislation and international agreements.

Structure of the research topic

We divided this research into three demands. The first requirement is the need to examine the concept of private employment offices. The second is to examine the application of trade law to private employment offices. The third requirement is to examine the granting of commercial status to private employment offices. The research ends with some conclusions and recommendations.

The first requirement

The concept of private employment offices

The employment of workers is a key factor in determining society's ability to exploit its material and human resources, to fully promote the state, domestic and internationally. Thus, employment offices are an important tool for regulating employment in the labour market (Mansour Ibrahim Al-Atoum, 1989).

Private sector prosperity and the upgrading of the state, at various levels, have led to the emergence of private employment offices, which were previously monopolized by the public sector. This led to the recognition by the ILO of the role of private employment offices, the organization of a special convention for private employment agencies No. 181, and the provision of their texts. (Abdullah Al-Qassimi, 2019) (Private Employment Agencies convention No. 181 of 1997)

The Iraqi legislature allowed the opening of private employment offices in the Labor Law No. 37 of 2015. Article 23/1 stipulates that: the State shall issue licenses for the establishment of private employment offices, provided that such offices do not charge any commission or



wage from the worker for his employment. In this manner the Iraqi legislature provided for the private sector to run employment offices. Previously employment offices were monopolized by the public sector. Privatisation occurred because of the role of the private sector in prospering the country domestically and internationally, especially in the employment of labour and exploitation of the development of the state, and the elimination of unemployment. However, the Iraqi legislature did not mention the definition of private employment offices and good deeds because defining them and revenue is the work of scholars.

As for the Egyptian legislator, private employment offices were allowed to work, in the Egyptian Labor Law No. 12 of 2003 in Article 17. It states that (without prejudice to international conventions related to employment), the practice of linking Egyptians to work inside the country or abroad, is through private sector companies and the public business sector. The Egyptian private sector concluded contracts with foreign bodies within the limits and nature of its own activities, recommending shares or limited liability after obtaining a license from the competent ministry. But the private sector cited its own controls and created work.

The ILO produced the international “Private Employment Agencies Convention No. (181) of 1997”. Article 1 defines private employment offices, which relates to any natural or legal person (such as a corporation) independent of public authorities. It then considers one or more of the following labour market services: And demand without the private employment agency becoming a party to employment relationships that may arise... (B) Services in which the employment of the rest is made available to a third party who may be a natural or juridical person, referred to below as the “enterprise” used, which defines their functions and supervises their execution of these tasks. Other services related to searching for jobs are determined by the competent government authority, after consulting the most representative organizations of employers offering a limited number of jobs. Thus, the agreement of private employment agencies clarified the concept of employment agencies (employment offices) and explained the work they do.

The work of private employment offices is not limited to physical work. Instead they can do their work electronically, as electronic employment offices rely on electronic drivers, based on the harmonization of supply and demand in the labour market confidentially (Abdullah Al Qasimi, 2019).

Electronic services provided by employment offices are one of the most important services that can be provided for the development of business, and for the commercial sector in the labour market (Abdullah Al Qasimi, 2019).



The Iraqi Electronic Signature and Electronic Transactions Law No. 78 of 2012 defined the electronic intermediary in Article 1/8, as “a computer program or any other electronic means used for the execution of a procedure or response to a procedure in connection with the creation, transmission or receipt of information”. It also defined United Nations Commission on International Trade (UNCITRAL) law. The electronic medium is related to electronic intermediaries, in Article 2 (b): in respect of a particular data message, the person who, on behalf of another person, sends, receives or stores a data message or provides other services in connection with this data message. The private employment offices could do its work electronically and through electronic programs.

The second requirement

Provisions of the application of trade law to private employment offices

Firstly, we must determine the legal form of employment offices so that we can apply the provisions of the commercial law to them. Determining the legal form is important because it is a legal guarantee for job seekers, (Salah Ali Hassan, 2013) and is also about the efficiency of employment offices to meet the challenges of the labour market (Magdy Fouad Abdel Qader, 2001). The Iraqi legislature, when allowing employment offices to practice work, in the Labor Law No. 37 of 2015, defined the legal form of offices. This is stipulated in Article 23/1 which states: the Ministry shall issue licenses for the establishment of private employment offices and Operating offices can be considered as (the shop).

Likewise the Egyptian legislature also specified the legal form, in Labor Law No. 12 of 2003: Without prejudice to employment agreements, the operations of joining Egyptians at home or abroad shall be through joint stock companies or limited shares or limited liability companies . Thus, the Egyptian lawmaker determined its work exclusively through companies of any moral persons sub natural, (Hisham Mohamed Mahmoud, 2008) unlike the Iraqi law which identified natural persons through offices which are run by natural persons, not artificial legal entities like corporations.

The legal form of employment offices is subject to the commercial law. The Iraqi Trade Law No. 30 of 1984 in Article 5 stipulates that certain enterprises described below are commercial businesses if they are for profit, and this intent is presumed unless the opposite is proven Its seventh provision is thus: Services of tourism offices, hotels, restaurants, cinemas, stadiums and other cinemas Its sixteenth: commercial agency, commission agency, transport agency, and other commercial brokerage business. Herein the legislature (Samiha El-Qalioubi, 2008) presumes them to be commercial businesses if they are for profit (presumably). The contrary has not been established in relation to employment offices. This view is also mentioned more generally “For other mediation”. Thus, the work of employment offices is for profit as well as the mediative nature of its work, between job seekers and

employers. Therefore we apply the provisions of the commercial law to them, as well as the jurisprudence that requires confidentiality in the commercial work of the offices, to protect in a practical way those dealing with the owners of offices.

To return to the Egyptian legislation, the Egyptian Trade Law No. 17 of 1997 was stipulated in Article / 5, which states: (n) the work of tourism offices, export, import, customs and employment offices (Samiha El-Qalioubi, 2008).... The Egyptian legislature explicitly stipulated the commercial activities of employment offices, but limited their legal form to companies and limited them to joint stock companies and recommended limited liability shares. The above-mentioned commercial law is not problematic, because this term was adopted by customary traditions, and manifested in tourism offices with the legal form of companies (Magdy Fouad Abdel Qader, 2001). One of the most important commercial effects of private employment offices is the application of the provisions of the commercial law to them, and the commercial obligations placed on them. (Abdel Hamid El Shawarby, 2001)

Third requirement

Conditions for granting commercial status to private employment offices

The Iraqi Commercial Law No. 30 of 1984 stipulates that: any merchant who is a natural or legal person practicing in his name and for his account on a professional basis shall be considered a commercial act in accordance with the provisions of this law (Article (7/1) of the Iraqi Trade Law No. 30 of 1984). Employment offices are practices where a natural person acts through a private employment office.

First: - Professional employment of private employment offices

In order for private employment offices to become commercial, their work must be professional, and the meaning of professionalism is the routing of the activity in a habitual and permanent way to do a certain work to achieve a specific purpose (Basem Mohamed Saleh). It can also be defined as the routing of the activity to do a particular business and making a living. Professionalism inevitably includes the meaning of habitual and repeated work on a regular basis (Mostafa Kamal Taha, 1995). Therefore the work of employment offices must be on a professional and continuous basis, and be the main profession of the employer of the employment office, (Samiha El-Qalioubi, 2008) although more professional than mere work (Mostafa Kamal Taha, 1995).

Jurisprudence and differentiations between professionalism and customary law, and the basis of the living income of the person, differentiate between whether the main income of living is professional or is not a major income, as habitual work. (Latif JabrKomani, 2013) Thus it

must be income from the work of employment offices, and it must be key to the employer of the employment office, to give his work a professional character.

However, the repetition of the practice of employment offices is not necessary, because it does not require the person to walk hundreds of corridors, to be a professional occupation of the profession, but enough to get used to and maintain the practice of the profession (Samiha El-Qalioubi, 2008).

Second: The employment offices should have their own name and account:

The work of employment offices, as well as their professionalism, must be in the name of employment offices and for their own account exclusively, to be granted commercial status. Without the fulfilment of this requirement, they cannot be granted the status of commercial employment offices. This is confirmed by Article 7/1 of the Iraqi Commercial Law No. 30 of 1984. However, there are people who do not list their business in their name or their account, yet they are granted commercial status, so that they can be fully independent from others. These include public attorneys, businesses and brokerage firms. This is an exception to the rule (Bassem Mohammed Saleh).

This view is confirmed by Article / 5/16 of the Iraqi Commercial Law, as brought by “commercial agency and the agency commission and transportation agency and **significance of the work and other commercial mediation**”.

Third: The employment offices should have commercial eligibility.

Here, private employment offices must be eligible to conclude legal acts so that they can be commercialized. Iraqi Law No. 40 for the year 1951, states that “the age of majority is eighteen years full”, as the eligibility provided for in the Iraqi civil law, which applies to civil and commercial work (Latif JabrKomani, 2013).

After listing the legal conditions stipulated in the Commercial Law, and applying them to the private employment offices, they can be commercialized and consider their business purely commercial, and as applying the Commercial Law.

As for the Egyptian legislator, we have seen that he specified the legal form of employment offices of companies and limited to shareholding companies or companies limited to shares or limited liability. This is confirmed by article / 17 of the Egyptian Labor Law as “... joint stock companies or limited partnership companies or limited liability companies after obtaining a license from the competent ministry ...”, and in order to give commercial status to companies that practice the work of private employment offices must take the forms provided



for in the commercial law which states: To be a trader, each company takes one of the forms stipulated in the laws pertaining to companies, whatever the purpose for which the company was established (Egyptian Trade Law No. 17 of 1997). Thus, private employment companies are considered commercial companies because they have taken one of the forms provided, and all their business and the provisions of commercial law apply to them, whereas the Egyptian legislature is a convert to the formal doctrine of identifying commercial companies instead, as legal actors (Samiha El-Qalioubi, 2008).

Conclusion

In this research, we have reached some conclusions and recommendations, which are as follows:

Results

1. Private employment offices may be financially or physically “electronic”, through electronic programs that reconcile supply and demand to work in the labour market.
2. Private employment offices shall be commercial in substance and in terms of their obligations.
3. The possibility of applying the conditions of granting commercial status to them, whether natural or legal person.

Recommendations

- 1 - We recommend that the Iraqi legislature make private employment offices joint-stock companies, because they are giant companies and provide guarantees more than those that apply to natural persons.
- 2 - We recommend that the work of private employment offices be electronic, as structured in special legislation, which speeds the work and provides confidence when dealing with them.
- 3 - We recommend that the organization of the work of private employment offices be included in the Trade Code, because its functions and nature have a commercial character.



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