

## **Analysis of the Arbitral Labor Council as an Adjudicating Authority**

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### **Abstract**

In Lebanon, courts are categorized based on the type of conflict. Civil courts are competent to resolve civil conflicts. Criminal courts have jurisdiction over all cases that are criminal in nature. In the workplace, inevitably, conflicts happen between employer and employee. A competent tribunal that has the needed expertise should resolve such conflicts. According to the Lebanese Labor Law, the arbitral Labor Council is responsible to resolve all conflicts that might happen between employer and employee that are related to work. However, criminal acts that take place between the employer and the employee are not included within the jurisdiction of the Arbitral Labor Council. However, anything else falls under the auspices of the Arbitral Labor Council. This paper will provide a clear definition and formation of the Arbitral Labor Council. In addition, it will discuss the scope of jurisdiction of such Council. Moreover, this paper will elaborate the hearing process that takes place before the Council.

**Keywords:** Lebanon, Courts, Jurisdiction, Labor Law, Arbitral Labor Council, Employer and Employee.

## **1. What Is Arbitral Labor Council?**

The Arbitral Labor Council was founded in 1946, which aims to resolve disputes that are related to employment relationships. Article 624 of the code of Contracts and Obligations stated that “employment is any relationship that one party works for and under the supervision of another party for a specific wage or compensation.”<sup>1</sup> In addition Article 85 of the National Social Security law states that “all disputes that occur between the insured and the employer, and among National Social Security fund, employers, and employees fall under the jurisdiction of the Arbitral Labor Council.”<sup>2</sup> Thus, the council is competent to settle disputes that occur between employer and employee and among employee, employer and the Lebanese National Social Security fund. The Council has the jurisdiction to settle all the collective employment disputes.

Accordingly, all the disputes are the ones that are related to the scope of work that has brought employer and employee together. The Council has no jurisdiction over criminal attacks that might happen in the workplace among employees, or between employee and employer.

## **2. The Formation of the Arbitral Labor Council**

The Arbitral Labor Council is neither a regular arbitral tribunal that is formed by the disputants, nor a private panel. It is a special tribunal that is not part of the judicial structure. It is directly related to the ministry of justice and ministry of labor. It is a judicial constituency that is formed by the Lebanese government. The Arbitral Labor Council is formed by a judge, a member-representing employer, a member-representing employee, and governmental agent.

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<sup>1</sup> Article 624 first paragraph of the Lebanese Code of Contracts and Obligations.

<sup>2</sup> Article 85 of the National Social Security Law.

The Lebanese legal understanding considers that the labor rights should be exclusively protected by the Lebanese judiciary. Accordingly, the Arbitral Labor Council is presided by a senior judge with an extensive experience.

The judge responsibility in a regular trial other than labor dispute is to render a decision without any kind of mediation or conciliation. He/she follows the code of civil procedures and based his/her decisions on facts and evidences. However, the duty of the judge in the Arbitral Labor Council is more as an arbitrator or a conciliator. The judge has the legal authority to resolve the dispute amicably. The judge can, according to the law, override the rule of law and try to apply equity and fairness. The judge is assisted by two experts, one acts as an employers' representative and one acts as workers' representative, whose responsibilities to provide the needed understanding from the different point of view of the labor case to the presiding judge. Article 77 of the Labor Law states that "one or several Arbitration Labor Council shall be set up in each district to have jurisdiction on disputes mentioned in article 1 of this law. This Council shall be composed of: a judge, of the 11h grade or above to be appointed by Decree on the proposal of the Minister of Justice and after the approval of the Higher Council of the bench". The same Article added that the Council is also composed by "an employers' representative and workers' representative to be appointed by decree on the proposal of the minister of labor and social affairs". Since the law requires the presence of the two representatives in order to have a functional court, such Article requires the appointment of two deputies members "one representing the employers and the other representing the workers, to substitute for the incumbent in case of absence or excuse, by decree on the proposal of the minister of labor and social affairs." The main members and the deputies should be Lebanese and at least of an age of twenty years. The members should never be convicted by any offences or crimes and have been working in his/her career for at least five years. Those

representatives are not appointed to represent the disputants. They are part of the panel itself. However, the disputants, employees and/or employers, have the right to hire lawyers who can defend their cases.

Furthermore, an additional member is added to the Arbitral Labor Council. The law requires the appointment of a governmental commissioner who must have a law degree. The duties and prerogatives of the governmental commissioner were stipulated by the decree number 662 that has been issued in 1983.

The decree states that the governmental commissioner shall “attend all labor trials and provides written statement about all labor cases. The commissioner should be notified about the decisions rendered by the Arbitral Labor Council. He/she also must inform the minister of labor about the cases that are capable to be appealed before the Supreme Court and received instructions from the minister of labor about the ministry’s stance regarding the explanation and interpretation about all labor laws. All governmental commissioners who attend the Arbitral Labor Council in all the Lebanese Districts should meet once a month with the General Manager of the Labor Ministry to deliberate about the decisions that can be appealed before the Supreme Court”.<sup>3</sup>

### **3. The Jurisdictional Competency of the Arbitral Labor Council**

The competency of the Arbitral Labor Council in terms of legal scope is limited. This is true since the Lebanese Labor Council has listed its jurisdictional competency by an extensive list. The Labor Law gives the Council an exclusive jurisdiction over the listed scope. In other words, any conflict takes place between an employee from one side and an employer from the other side related to the listed topics will be resolved by the Council. Parties do not have the freedom to choose any other court to resolve their disputes such as the civil court or criminal courts. Parties are not allowed to

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<sup>3</sup> Decree No:662 issued in 1983.

opt out the Council's jurisdiction regarding the listed topics. Parties are also not permitted to include an arbitration clause in their agreement in order to avoid the Council's jurisdiction. If parties decide to do so, such agreement will be null since it is against Lebanese public policy. However, parties are allowed to choose between the Arbitral Labor Council that exists in other districts. For example, if the employment contract is signed in Tripoli, the premises of the employment and the residence of the employee and employer is in Tripoli; the parties can agree that any conflict may arise from this contract will be resolved by the Beirut Arbitral Labor Council and not the Tripoli one.

According to what has been mentioned above, Article 79 of the Lebanese Labor Code stipulates the main mandates of the Council. The Council is competent to resolve disputes relate to the assessment of the minimum wage and labor accident. It is also the responsibility of the Council to resolve issues related to the dismissal, work compensations, and all disputes between employer and employee that are related to employment relationship.

#### **4. The Exclusion of the Jurisdiction of the Arbitral Labor Council**

The Arbitral Labor Council is competent to resolve dispute related to employment. However, the law has listed some exceptions. In other words, although the Arbitral Labor Council has the jurisdiction over employment relationships, nevertheless, Article 7 of the Labor Law has excluded a group of people and organizations from being under the auspices of the Labor law. Article 7 stipulated that Labor Law will not apply upon "domestic servants, agriculture syndicates that has no connection with commerce and manufacturing that will have a special law to be abide by, family

enterprises managed by the father or mother or guardian that only hire family members, and public and municipal servants who have their own laws”.<sup>4</sup>

This exclusion has two impacts over the jurisdiction of the Arbitral Labor Council. Accordingly, the above mentioned Article has excluded the rules of Labor law to be applied upon such groups. On other words, these groups will not benefit from the minimum wage, types of paid leaves, Lebanese National Social Security benefits, and other terms stipulated to protect the employees. In addition, the Arbitral Labor Council will not have the competency to settle disputes among the groups stated in Article 7.

### **5. Trialing Before The Arbitral Labor Council**

The Lebanese lawmakers have given a special attention to the employment relationship. This is true since it gave the Arbitral Labor Council an exclusive jurisdiction over all cases that are related to employment contract. In addition, the Labor Law gives special privileges and treatment to the Council, which makes the conduct of the trial cheap, fast, and based on one level of scrutiny. According to Article 80 of the Lebanese Labor Law, the trialing before the Arbitral Labor Council is expedited that Council assign hearing from week to week in any given case. Employees are entitled to represent themselves, which save them attorney’s fees. However, if the employee would like to be represented by a lawyer and he/she does not have the money, they are eligible to have a pro bono lawyer appointed by the Bar Association. Employees are also exempted from any judicial

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<sup>4</sup> Article 7 of the Lebanese Labor Law.

fees and court expenses. This privilege allows the employee to file a lawsuit against his/her employer without bearing any financial burden.

#### **6. Types of Recourses Against the Arbitral Labor Council's Decisions**

Lawmakers have exclusively listed the types of recourses against the decision rendered by the Arbitral Labor Council. This is true since the intention is to provide a fast-track decision making process.

Before stating the remedies against the Arbitral Labor Council decisions that disputants can recourse to, it is important to mention that no appeal before the court of appeal is admissible. This is true since the appeal before the court of appeal in Lebanon, which follows the civil legal system, precludes and vacates the main objective of adjudicating before the Council.

However, if Lebanon applies the common legal system this process would not affect the disputants. The process of appeal in the common legal system is not based on trialing. It only examines whether or not the lower court has made a mistake in applying the substantive or procedural law. The court of appeal does not accept witnesses and parties' testimony. In addition, jury does not exist in court of appeal, and new evidence is totally excluded from the process. Thus, the court of appeal "reviews a transcript of the trial along with all the evidence presented at trial to determine

whether and error was made.”<sup>5</sup> This process save a lot of time and make the appeal endeavor a fast-track process that avoids any justice delay.

In contrast and in reality, the Lebanese Code of Civil Procedures considers that appealing a case before the court of appeal would follow the same procedures that would apply before the trial court.<sup>6</sup> Such procedures related to petition submitted by the plaintiff follow by an answer submitted by the respondent. This process of exchange memos before the court takes months even if the disputants do not want to purposely delay it. In addition, such appeal gives the court the mandate to review the case on the fact and merits.<sup>7</sup>

Based on the abovementioned understanding, the law has excluded the appeal process before the court of appeal from all the reviews that are accepted before the Arbitral Labor Council. However, there are other types of recourses against the Council’s decisions. Parties are able to submit an objection or to file an appeal before the Supreme Court. In addition, the law allows any person who gets affected by the Council’s decision has the right to fill an objection.

The objection is a regular procedure that aims to rebut the decision that has been rendered without the presence of the one who submits the objection. The objection should be submitted within fifteen days starting from the day in which the absent party was notified of the decision. The objection would be presented to the same court that has rendered the decision, and not to a higher

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<sup>5</sup> Business Its Legal, Ethical, and Global Environment, South-Western Cengage Learning, Marianne M. Jennings, p, 78.

<sup>6</sup> Article 657 of the Lebanese Code of Civil Procedures.

<sup>7</sup> Article 659 of the Lebanese Code of Civil Procedures.

court. The court that scrutinizes the objection has two options, either affirms or modify or reject the decision.

A second type of recourses against the Arbitral Labor Council' s decision is the objection submitted by a third party. This type of rebutting gives a third party, who is not part of the dispute between the employer and the employee, the ability to vacate the decision. The third party submit such objection only if the decision affects his interests. He/she will be only benefit from the re-trialing the case unless the implementation of the re-trialing affects the interests of the disputants.

A third and last types of recourses against the Council's decision is the appeal before the Supreme Court. The Supreme Court review is an appeal against the decision rendered by the Arbitral Labor Council. Such reviews, however, would not be in all cases rendered by the Council. The Supreme Court, according to the Code of Civil Procedure, can only view cases listed exhaustively in article 708. Article 708 of the Code of Civil Procedures states that the submission of an appeal before the Supreme Court can only be accepted if it is related to one of the following reasons:

1. The violation of the implementation or interpretation of the law
2. The violation of the rule of jurisdiction,
3. The contradiction within the same decision that make the decision itself impossible to be implemented,
4. The lack of deciding on one of the requests submitted in the case.
5. The decision that has an implication beyond what was been requested, or what was not requested,
6. The decision that was not based on legal ground,

7. Destroying the content of documents by providing facts that contradict what has been stated before,
8. The contradiction between two decisions related to one case.

It is important to mention, that the review before the Supreme Court is only on the merit of the case, and would not re-scrutinize the whole case on the fact. The appeal before the Supreme Court must be done within thirty days starting from the day in which the dissatisfied party has been notified about the decision. However, if the case was concluded through a default decision, the dissatisfied party can file an appeal before the Supreme Court after the statute of limitation of the objection is terminated.<sup>8</sup> It is important to mention that the law has imposed some monetary requirements upon the party who wants to recourse to the Supreme Court. It is stated that the party who wants to use his/her right to appeal before the Supreme Court to deposit a certain amount of money as a security deposit, which he/she will lose it if the appeal was rejected. The reason behind such requirement is to penalize the party who wants to abuse his/her right to recourse to the Supreme Court.

## **7. Conclusion**

Courts in Lebanon are divided into many categories based on the subject matter of the dispute. Criminal courts have jurisdiction over criminal cases; commercial courts are competent to resolve commercial disputes. Arbitral Labor Council is an exceptional court that has jurisdiction over disputes related to the employment in the private sectors with some exclusion as stated above. In terms of disputes related to work, the Arbitral Labor Council has exclusive jurisdiction. This court

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<sup>8</sup> Article 6, paragraph 3 of the law that has been rendered in 1980.

is formed by an expert and well trained judge and two members representing the employee and employer. In addition, a governmental commissioner is appointed in every Arbitral Labor Council. The Council has special privileges according to the law. These privileges give the Council the ability to settle the dispute in an easy, fast, straightforward, cheap, and amicable manner. According to the Labor Law, recourse is limited before the Council and no appeal before the Court of Appeal will be administered.

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Article 7 of the Lebanese Labor Law.

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Article 657 of the Lebanese Code of Civil Procedures.

Article 659 of the Lebanese Code of Civil Procedures.

Article 6, paragraph 3 of the law that has been rendered in 1980.

### **Biography:**

Khodr Fakih is an associate professor in Law. He is currently Chair of the Department of Information Technology and Operations Management. He received an LLB from the Lebanese University, an LLM in Business Law with honor and a Doctorate of Juridical Science (SJD) from Northwestern University, USA.. Dr. Fakih has published many articles in the field of law