

Ways to appeal In Labor Court rulings

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ABSTRACT

Abstract:

Methods of appeal are legal mechanisms that allow individuals convicted in a case to challenge the ruling issued against them. These methods are divided into two categories: ordinary methods of appeal and extraordinary methods of appeal. Ordinary methods of appeal, such as objection to the absentee judgment and appeal, allow the convict to challenge the ruling without being bound by specific reasons. Extraordinary methods of appeal, such as retrial and cassation, require the convict to provide specific reasons for challenging the ruling. This research analyzes the differences between ordinary and extraordinary methods of appeal in civil and labor law. The research also examines the impact of appealing a ruling on the implementation of the ruling. The research concludes that the choice of appeal method depends on the specific circumstances of the case and the grounds for challenging the ruling..

Keywords: Methods of appeal, civil law, labor law, objection to the absentee judgment, appeal, retrial, cassation

I. INTRODUCTION

Methods of appeal are the legal means that enable the person convicted in the case to submit a request to reconsider the ruling issued against him to the court competent to hear the appeal within a specific period of time, in order to invalidate the ruling, annul it, or set it aside, depending on the authority that is considering the appeal request. Legal methods of appeal are divided into two parts. There are regular methods of appeal, which include objection to the absentee judgment and appeal. Extraordinary methods of appeal include retrial, cassation, correction of the discriminatory decision, and objection by others

Ordinary methods of appeal differ from extraordinary methods of appeal in that the convict may resort to ordinary methods of appeal when he is not convinced of the ruling issued against him without being bound by specific reasons that must be available when submitting an appeal to the competent court. Unlike the unusual methods of appeal that require certain reasons to be available when the convict resorts to them. Appealing the ruling through one of the regular appeal methods leads to a reconsideration of the dispute in terms of the facts and the legal text on which the ruling was based. While appealing the ruling through one of the unusual methods of appeal only leads to a reconsideration of the legal text on which the ruling was based. In addition, appealing the ruling through one of the regular methods of appeal leads to stopping the implementation of the appealed ruling unless it is subject to expedited enforcement.

While appealing the ruling through one of the extraordinary methods of appeal does not lead to stopping the implementation of the ruling in principle. The judge may decide to suspend the implementation of the ruling, as the case may be, as an exception to the rule.

The applicable Labor Law has specified three means of appealing against labor court rulings: objection to the

absentee judgment, which is an ordinary method of appeal, and retrial and cassation, which are extraordinary methods of appeal.

Chapter One

Objection to the absentee judgment

The Iraqi legislator allowed the absent party, if he was a convicted person in the case, whether he is a plaintiff, defendant, or a third person, to appeal the ruling issued against him by the labor court by objecting to the ruling in absentia, unless he has waived his right to appeal and is given the opportunity to In defending himself before it, as long as the judgment in absentia (the one being objected to) was issued without the judge listening to the absent party's self-defense. Therefore, it is not permissible to appeal this method of ordinary appeal except by the person against whom the ruling was issued in absentia in the case. Through it, the appellant (objector) seeks to invalidate the ruling issued against him in absentia, or amend it. This does not prevent the ruling from being appealed by cassation, or from being retried after the outcome of the objection is issued.

However, if the convict was sentenced in his presence, he is not permitted to take this normal method of appeal according to the law. Rather, he has the right to appeal the ruling issued against him by the Labor Court by way of cassation, or by retrial if one of the reasons is available. At the same time, this does not mean that the absent party does not have the right to appeal the ruling by way of cassation, or to re-trial (if there is any reason for it) before objecting to the absentee ruling. Rather, he may do so if he did not initially submit his appeal, against the ruling by objecting to the absentee ruling. However, in this case he will have waived his right to object.

We point out the case of multiple convicts convicted in absentia. If one of them objects to the judgment in absentia and not the rest, this leads to the objector benefiting from his objection exclusively and not the rest, unless the non-objection of the rest of the convicts in absentia results from their failure to notify them of the judgment in absentia, then

the court will wait to consider the objection case until, it is completed. Inform them of it correctly, with the passage of the legal period for submitting an objection, but if some objected and others appealed the ruling directly before the Federal Court of Cassation. The latter shall not decide on the appeal submitted to it until after the Labor Court has decided on the objection claim, in order to avoid the issuance of contradictory rulings in the case.

The Labor Law allows the convict to submit his objection to the judgment in absentia issued against him by the Labor Court within ten days from the day following his notification. However, the law did not explain the objection procedures and provisions, nor did he specify the party to which the objection request should be submitted, nor the effects that objection to a judgment in absentia would have as a way of normal appeal against judgments. It seems that the legislator in the Labor Law left all of that to the procedures and organization stated in the Civil Procedure Law. It is the reference for all the laws of proceedings and procedures when there is no text in them regarding the procedural issues they require.

It would have been better for the legislator in the Labor Law to organize the procedures for objection to the absentee judgment, even if briefly, without limiting himself to specifying the duration of the appeal and leaving the merits of the matter and its details to the texts regulating it in the Civil Procedure Law, so that the workers would be; and employers; Their organizations are aware of their concerns when resorting to this method of appeal.

The Civil Procedure Code has drawn up a precise path for the convict when starting the procedures for objection to the absentia judgment. He stipulated that the objection case be submitted with a petition (request) to the court that issued the judgment in absentia directly, or submitted to it indirectly through the court of the objector's place of residence, provided that he indicates in it his chosen place for the purpose of notification, which, means that the Labor Court, (which is one of the first-instance courts) is the competent authority to hear the lawsuit challenging the absentee judgment within the scope of the Labor Law, as it has the specific jurisdiction in adjudicating labor lawsuits and issuing judicial rulings regarding them. If the objector submits his objection to another court of first instance, such as the court of first instance, other than the court that issued the ruling in absentia against him (the labor court), then that court that does not have jurisdiction must refer the Objection,

before considering it in form, to the labor court; As the competent court that issued the objectionable ruling

It is not permissible to submit a request to object to the judgment in absentia to the Federal Court of Cassation, as it is a higher level than the labor court that issued the judgment objected to, as long as the objection does not include an objection to the judgment in absentia.

The Civil Procedure Law stipulates that, for the objection case to be valid, it must include the reasons for the objection, in addition to other data, such as the name of the court that issued the contested judgment (the labor court), the name of the objector (the judgment debtor in the case), and the objected against (the judgment debtor in the case). With their profession; and their surname: Their description

in the case, the summary of the contested ruling, the requests of the objector, and his signature. The deficiency in these data does not lead to the rejection of the objection lawsuit. Rather, the judge asks the objector to complete the deficiency in the application within an appropriate period. If he does not complete it within the period specified by the judge, the lawsuit is considered invalid by the court ruling.

Chapter Two

The Retrial

Retrial is one of the unusual methods of appealing judgments in presence and absence, in which the law allows the convict to submit a request to the court that issued the judgment, unless he has waived his right to appeal, to reconsider the judgment issued by it in terms of the legal text on which it was based, If one of its reasons is available, whether the ruling is final or not. Perhaps the justification for its legal approval is to achieve justice in the ruling to the greatest extent, make it consistent with the law, and preserve the rights of the litigants without loss. The judge may issue a ruling in the case that he reaches through a judicial fact based on the evidentiary evidence presented before him. This evidence may not be correct in its entirety, and the judge may not be able to verify its incorrectness while examining the case in some cases, which makes the judicial fact under which the ruling was issued contradict reality, which affects the validity of the ruling ruling as well, making it based on flimsy facts, and incorrect reasons. This becomes clear if the falsity of the evidence on which the judge based his ruling is revealed after the ruling is issued.

The Labor Law allows the convicted person in a labor lawsuit to appeal the ruling issued by the Labor Court through a retrial. At the same time, the Iraqi legislator did not regulate in the Labor Law how to appeal the ruling in this exceptional way, and did not specify the duration of the appeal, nor the body that considers the appeal. It would have been better for our legislator to organize the appeal through a retrial in the Labor Code, without just approving it, and focusing on what was stated in the Civil Procedure Code regarding it. So that those convicted in labor lawsuits will be aware of their situation if they decide to take this unusual method of appealing judgments. At the same time, the Iraqi legislator did not regulate in the Labor Law how to appeal the ruling in this exceptional way, and did not specify the duration of the appeal, nor the body that considers the appeal. It would have been better for our legislator to organize the appeal through a retrial in the Labor Code, without just approving it, and focusing on what was stated in the Civil Procedure Code regarding it. So that those convicted in labor lawsuits will be aware of their situation if they decide to take this unusual method of appealing judgments.

Since the Code of Civil Procedure, is the reference for all laws of procedures and procedures if there is no text in it that explicitly contradicts it, the convicted person in a labor lawsuit has the right to proceed in accordance with the procedures and provisions contained therein if he decides to appeal the ruling by means of Retrial, if one of the reasons is available after the ruling is issued against him, and within the time specified for it in this law.

The Civil Procedure Code has specified the reasons calling for a retrial, and they are mentioned in it as an

example, not an example, which enables the convict to resort to them if they appear after the ruling was issued against him, even if the ruling was of a final degree. The legal grounds for retrial are:

1- If the other party committed fraud in the case that would have affected the ruling. Because fraud is a means of deception used by the other opponent, or his agent, to mislead the court while it is examining the case, and to make it believe that what is essentially false is true. A ruling is made in his favor based on fraud, which leads to the loss of the right of the convict, the victim of fraud. Determining what constitutes fraud or not is left to the authority of the court. If the fraud does not affect the ruling, it has no value before the court. Since fraud ruins everything, his appearance before the court after it negligently based its ruling on him leads to amending the contested ruling and issuing a new ruling in the case that does not violate the appellant's right.

2- If, after the ruling, there is a written acknowledgment that the documents on which it was based were forged, or were ruled to be forged. Because forgery is an intentional distortion of the truth. If the court issues its ruling based on a forged paper, regardless of its forgery, the convict may appeal the ruling through a retrial, even if the ruling becomes final. He cannot file this appeal before the court after the ruling has been issued against him unless he has obtained a written acknowledgment from the other opponent that the paper on which the ruling was based was forged, or if the criminal court ruled that the paper on which the civil judiciary based its ruling was forged was forged, and what was based on falsehood is invalid. Therefore, after the forgery is revealed, the court issues a new ruling in the case that does not diminish the appellant's right.

3- If the ruling was based on the testimony of a witness, and he was convicted of perjury. False testimony undermines the right to its most cherished limbs, so the person convicted as a result of false testimony may apply for a retrial, provided that the false testimony has an impact on the ruling issued against him, and that his opponent acknowledges before the court, after the issuance of the ruling based on false testimony, that his testimony was false and slanderous. He should be sentenced as a result of his giving false testimony before the court after the ruling was issued. Then the court issues a new ruling in the case in favor of the appellant.

4- If, after the ruling, the person requesting a retrial obtains papers produced in the case that his opponent had prevented from submitting them. The opponent may deliberately hide useful documents in the case that would influence the ruling, so he claims before the court that he does not have them if his opponent requests them from him for the purpose of submitting them to the court. If the ruling is issued against the latter as a result of that, he may submit a request for a retrial if he is later able to obtain those papers after the ruling was issued against him. Even if the ruling becomes final. In this case, the court issues a new ruling in the case, restoring the right to the appellant.

The convicted person shall submit a request for a retrial before the Labor Court, as the court that issued the contested ruling, within a period of fifteen days from the day following the appearance of the reason for the retrial. It is

permissible to appeal the rulings issued by the Labor Court through a retrial as long as they were issued in the final instance. It is known that the rulings of the Labor Court cannot be appealed before the courts of appeal by law, so they are subject to appeal through a retrial if they were issued in the presence or absence.

Chapter Three

Judgment discrimination

Appealing by cassation is one of the unusual methods of appeal against judgments in presence and absence, and it is before the Federal Court of Cassation. The purpose of this appeal is to scrutinize the rulings and decisions issued by the competent courts, including the Labor Court, in terms of whether or not they comply with the law. The law allows opponents to appeal the judicial ruling before the Federal Court of Cassation in the following cases :

1- If the ruling was based on a violation of the law, an error in its application, or a flaw in its interpretation.

2- If the ruling was issued in violation of the rules of jurisdiction.

3- If an error occurred in the due procedures that were followed when examining the case that affected the validity of the ruling.

4- If a ruling is issued that contradicts a previous ruling issued in the same case between the same litigants, or someone who took their place and achieved finality.

5- If a fundamental error occurred in the ruling. The error is considered fundamental if the arbitrator misunderstood the facts, or neglected to decide on an aspect of the case, or decided on something that the opponents did not claim, or ruled more than they requested, or ruled contrary to what is established in the minutes of the case, or contrary to the evidence of the papers. And the documents presented by the opponents, or the wording of the ruling contradicted each other, or the ruling did not meet its legal conditions. The Labor Law has made the rulings issued by the Labor Court subject to appeal by cassation within (30) thirty days from the day following the notification of the ruling, before the Labor Cases Authority at the Federal Court of Cassation. Without, regulating the procedures for discriminatory appeals before it. With reference to the Civil Procedure Law, an appeal against a ruling by way of cassation is submitted with a petition (request) directly to the Federal Court of Cassation, or it is submitted to it indirectly through the court that issued the ruling (the Labor Court), or

through a court in the residence of the person requesting the discrimination. The petition includes the names of the parties (the discriminated against and the discriminated against), their fame, their place of residence, and the place chosen for the purpose of notification, along with the name of the court that issued the discriminated ruling, the date of its notification, and a statement of the aspects of its violation of the law. If the discriminatory appeal petition is submitted directly to the Federal Court of Cassation, the latter will request a case file from the Labor Court to consider the appeal. However, if the petition is submitted to it indirectly through the Labor Court, the latter will send the appeal petition along with the case file to the Federal Court of Cassation to consider the appeal. If it is submitted to it

through the court in the appellant's place of residence, the latter sends the petition of appeal to the Federal Court of Cassation, and then the latter requests the case file from the Labor Court to consider the appeal.

The Federal Court of Cassation begins to consider the application submitted to it from a formal standpoint. If it does not meet the legally prescribed form, in terms of duration and reason, it decides to reject the discriminatory appeal petition. However, if the request meets the legally prescribed form, it begins examining the subject of the appeal by conducting an audit of the case papers without notifying the two parties of their appearance before it. Unless, it finds it necessary for them to appear before her for the purpose of clarifying from them some of her ambiguous points. It may also summon experts on the subject matter under challenge, to inquire from them about some of what was stated in their report on it; as a procedure to help it decide on the appeal. It may also allow the two parties to submit data or new regulations when necessary. However, the two parties may not present new evidence before it, nor present new defenses in the matter under challenge. With the exception of adversary defense, functional and qualitative jurisdiction, and the case has already been decided, because these defenses are part of the public order.

Conclusion

Thus, we have finished studying our research entitled *Methods of Appealing the Rulings of the Iraqi Labor Court*, and only the results remain, and the proposals are presented as follows:

Firstly, the results:

1 - The convicted person may not appeal the judgments issued against him in his presence by the Labor Court by objecting to the judgment in absentia, and he may not appeal them by retrial unless there is a legal reason requiring it to be returned. His right to initiate a discriminatory appeal remains preserved in all cases unless he has explicitly waived it prior to the appeal. Conducting an appeal through a retrial leads to the forfeiture of the convict's right to object to the absentia judgment in the judgments issued against him in absentia if he chooses a retrial before the objection.

2 - It is not permissible for the convict to appeal the ruling twice through the same method of appeal. The court competent to hear the appeal does not issue judgments in absentia, even against the absent party, in all legally prescribed methods of appeal. The competent court shall consider the extent to which the appeal petition fulfills the legally prescribed form (duration and reason) before it enters into the subject of the appeal.

3 - The Iraqi legislator in the labor law did not establish a fundamental organization for the procedures for appealing the rulings of the Labor Court, nor did he explain its rulings, or his reasons for them. Indeed, he did not even specify the duration of the appeal through retrial, despite it being stipulated as one of the methods of appeal. It is sufficient to specify specific methods of appeal that the convicted person may initiate in labor lawsuits, even if they lack precision in choosing. Permitting a discriminatory appeal necessarily requires stipulating the correction of the discriminatory decision, so that the judiciary does not remain hesitant about it when the labor court violates the rules of jurisdiction, at

the very least.

Second: Proposals:

Through our study of the research topic, we suggest the following:

1 - We call on the Iraqi legislator to reconsider the text of Article (168/First) of the Labor Code by submitting a retrial for discrimination; So that the sequence is more logical, since discrimination is the last path to appeal, adding the correction of the discriminatory decision to the established methods of appeal.

2 - We call on the Iraqi legislator in the labor law to regulate the provisions of appeal, explain its procedures and cases, and specify the body of appeal in each method of appeal so that workers, or employers and their organizations can know it when they resort to methods of appeal against the rulings of the Labor Court. The duration of the appeal by way of retrial shall be set at fifteen days from the day following the appearance of the reason necessitating its retrial, with a statement of those reasons so that the appellant is aware of his decision regarding them.

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