

Doctoral (PhD) Dissertation Abstract

**UNFAIR TERMINATION OF EMPLOYMENT CONTRACT IN
LIGHT OF INTERNATIONAL AND EU STANDARDS: AN
APPROACH TO REVIEW IRAQI LABOUR LAW**

Omed Aziz Ismail

Supervisor: Dr. Henriett Nádasné Rab, PhD



University of Debrecen

Marton Géza Doctoral School of Legal Studies

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I. General Background and Scope of the Dissertation

The dissertation commences a massive exploration on the provisions govern the concept of termination of employment contract and what constitutes unfair termination, at both international and national levels. Nowadays, termination of employment contract has become one of the central issues of labour law and social law since it does not merely relate to the personal aspects; employers and employees, but rather related to the different aspects that play a great role in the government measures towards welfare state. In general, three aspects may get involved to that issue: humanitarian, economic, and personal aspects.

The humanitarian aspects refer to all argumentations that belief workers should be treated as human. Their fundamental rights for having a decent work and security at workplace should not be violated.¹ It requires both parties; the employer and the employee, to adhere to the concept of ‘good faith’ and ‘mutual trust and confidence’ in their contractual relationship.² The idea is that the economic interests and managerial prerogatives should not justify the violation of workers’ rights. Workers are not like the other commodities that can be extracted from the workplace whenever the employer wants to do so. A significant number of studies assert that workers cannot be productive, unless if their humanitarian needs for security and safety at workplace fulfilled along with their physiological needs.³ This perspective provides more protective rules for workers and extends the scope of unfair termination claim. The economic trends, arguing the issue from an opposite side, considering labour market fluctuations, and believing that the termination rules should not be harmful for economic interests. While humanitarian perspective tends to protect workers, the economic perspective tends to retain a high degree of employment mobility and reduce the rate of unemployment. This consequently narrow down the scope of unfair termination claim. The personal aspect, in a lower level, treats the issue from a very narrow angles, considering the interest of employers and employees within internal institutions and contractual arrangements. This often facilitate the usage of managerial prerogatives belong to the employer to discharge a worker whom he/she has failed to satisfy the employer in an undertaking. However, the worker may challenge such prerogatives depending on employment protection legislation.

The question that come to mind soon is whether there should be a trade-off or a balance between those different aspects. This is what several policies and doctrines try to answer and is what we have tried to answer in this dissertation, aiming to find out a best model to balance those various perspectives, rather than considering a single side and erasing the others. The debate over unfair termination of employment contract, nowadays, does not merely keep an eye on contractual arrangements. Rather, it rests on multiple arguments. At the first glance, each argumentation can be seen as a counterargument to the other, but ultimately, they can be

¹ Njoya, W. (2016). *Property in Work: The Employment Relationship in the Anglo-American Firm*. Routledge, p. 6.

² Johnson v Unisys [2003] 1 A.C. 518; Eastwood v Magnox Electric plc [2004] 1.R.L.R 733.

³ Ismail, O. A. (2019). *The Effect of Traditional and Modern Policies on Termination of Employment Contract*. LESIJ-Lex ET Scientia International Journal, 26(2), 34-52.

integrated with each other, serving multiple aims. While job security argumentation tends to enact stringent termination rules and expand the scope of unfair termination to protect workers, labour market flexibility argumentation tends to ease hiring and firing rules and shrink the boundary of unfair termination to activate labour market. The two different arguments can be integrated into a balanced model under which the worker can retain his employment status through an easy transfer from a job to another in an active and flexible labour market. What constitutes unfair termination, thus, shall be analyzed from different perspectives; first is a humanitarian perspective to protect the worker as being a weak party in a contractual relationship, second is a managerial perspective to enable the employer to govern his enterprise, and third is an economic perspective to keep an active labour market for sustainable development.

II. The Importance, Aims, and Relevance of the Research

Despite the attention at national level, the importance of employment termination rules and its different dimensions have also become a matter of international concern. It brought the attention of International Labour Organization (ILO), seeking to bind member states with standards that promote workers protection as a crucial element of decent work on one hand, on the other hand, provide a leeway for member states to exclude some types of workers and contracts from afforded protection to retain a degree of flexibility in labour market. In this regard, Termination of Employment Convention No. 158, and Termination of Employment Recommendation No. 166, both are concluded in 1982 by ILO are the most known international instruments referred to in this study. The two instruments draw international standards to regulate termination of employment at the initiative of the employer in reaction “to the serious problems in this field resulting from the economic difficulties and technological changes experienced in recent years in many countries”.⁴

Since the issue has an international dimension, the first aim is to summarize international standards from the relevant international instruments dealing with employment termination rules. It is also the aim of this study to summarize EU standards concluded from EU hard law and soft law governing this matter. The selection of EU law refers to the fact that EU countries are, of course, developed countries in dealing with such temporary issues. In addition, EU labour law system is quite developed model that preserve labour mobility and a high rate of employment on one hand, and a degree of protection for workers on the other hand.⁵ Subsequent to summarizing international and EU provisions, the primary aim is to improve the Iraqi Labour Law and bring a change to the realm of termination of employment as to redefine the notion of unfair termination in a way that may neither waive the right of workers in protection nor impede the economic interests. Iraq has not elaborated a successful model to enhance a modern labour market in which

⁴ International Labour Organization ILO. (1982). Termination of Employment Convention, No. 158, *Preamble*. Retrieved Jan 5, 2022, from:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C158

⁵ Ismail, op. cit.

several interests can be achieved. Being a part of Socialist Regime for a long time made Iraq evading from the involvement in many significant international treaties and not to proceed an integration between international standards and its national laws. This situation prolonged until after the collapse of Ba'ath party in 2003 and the end of Socialist Regime in Iraq.⁶ Even after the fallout of Ba'ath party, the process of progress has not been fostered soon due to the political instability. Now, it is time to launch a comprehensive review for the Iraqi laws to integrate with identified success factors, the labour law at the forefront of them.

What constitutes problem statement in this research is the deficiency of the Iraqi labour market to supply job vacancies insofar as necessary to fulfil the demand of workers. There is a gap between the supply of Iraqi labour market and the demand of workers. In addition, sufficient research made on the vulnerability of workers in employment contracts, and how they easily can be fired in their position. The Iraqi labour market problem is twofold; first, it is not an active market that has shortages in displaying job opportunities to cover demands of labour forces, second, it is not a protective market for workers who have already been engaged in employment relationships. However, to address the presented problem that has different dimensions, much research focused on the traditional methods to protect workers and strengthen their position in the current employment relationships. However, to address the presented problem that has different dimensions, much research focused on the traditional methods to protect workers and strengthen their position in the current employment relationships. Many studies have consistently devoted toward the need to increase workers protection and expand the scope of unfair termination.⁷ No research has been proceeded on how to formulate or apply identified standards in this field with different factors from developed countries to bring a change in Iraq.

The failure to transfer successful models in dealing with employment termination rules renders the current Iraqi Labour Code No. 37 of 2015 a deficient law which is not able to encounter contemporary issues raised in Iraqi labour market. Since 2014 in which Iraq faced economic crisis and the governmental agencies could not employ individuals anymore, the need to boost private sectors has gradually increased to create new jobs. This requires easing the restrictions on companies to hire and fire workers to establish a flexible environment where they are motivated to provide more opportunities. The need of labour market has not rightly studied in Iraq, this resulted an issue of the new Iraqi Labour Code in a problematic way that only strengthen contractual arrangements in favor of the workers.

This study, therefore, will be accomplished through three steps; the first step to focus on the international standards deduced from the relevant international instruments regulating termination of employment contract, the second step to reveal the impact and the applicability of

⁶ The Socialist Regime in Iraq replaced by a republican, representative, parliamentary, and democratic regime after the invasion of Iraq by allied forces and promulgation of the new Constitution in 2005.

⁷ Mohammed, A. (2020). *Termination of Employment Contract in Iraqi Labour Law*. Retrieved July 30, 2021, from <https://www.egypt-lawyer.com/>; Abid, A., Elyas, Y. (2019). *Labour Law. Legal library*, Baghdad, p. 316; Elyas, Y. (1989). A brief interpretation of Labour Code No. 71 of 1987. *Administrative institute – Rasafa*, p. 110.

international standards within the EU as developed countries, the third step to test Iraqi Labour Law in light of international and EU standards aiming to improve provisions set for preventing unfair termination in Iraq.

III. Basic Questions and Research Hypothesis

The dissertation undertakes the task of answering multiple questions that can be classified into basic and minor questions. However, the basic question that underpins the research is:

“How the international standards to prevent unfair termination of employment contract have turned to the EU flexicurity model, and what makes the Iraqi Labour Law reach to this developed model”.

The question as presented above is indeed relevant to the research problem since the answer to that question can help to find out a way to improve Iraqi labour Law and address the presented problems. Two aspects can be seen in the research question; first is to explore the applicability of international standards within developed countries represented in the EU countries in this study to prove the success of those standards being formulated in a new model, and second is to review the Iraqi Labour Law to detect the weakness sides in view of international and EU integrated model. The first aspect is crucial for the second one because the international provisions sometimes remain as theoretical standards unless if their adaptability is proven in a practical-based model.⁸ This could be an exact challenge in our study since the international instruments governing termination of employment contract have not been ratified by most states in the world.⁹ This fact may pose the prospect of dissatisfaction in most states especially developed countries with international standards derived from the ILO instruments. Through proof of the effectiveness of international standards in the EU countries, therefore, we may rebut such a prospect. The other challenge is most of the EU countries also have not ratified the ILO instruments regarding termination of employment contract. This also arises some minor questions ask whether the EU has its own system to deal with termination of employment contract away from international standards. If so, how the EU countries who have ratified the ILO instruments can keep their international commitments imposed by the ILO and EU simultaneously. However, this would not be a case, if the EU standards to transact with this matter are consistent with the ILO standards.

To build our hypothesis, different variables have taken into consideration, such as the impact of flexible and stringent termination rules on the rate of employment pursuant to different ages, especially, on the youth employment. Our hypothesis expects that:

⁸ Billett, S., Harteis, C., & Gruber, H. (Eds.). (2014). International handbook of research in professional and practice-based learning (Vol. 1383). Dordrecht: Springer Netherlands.

⁹ According to the Formal website of ILO, only 36 countries so far have ratified on Termination of Employment Convention. No. 158 of 1982, Retrieved Jan 6, 2022, from https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312303

“An ongoing assertion on the protectivity side of termination rules decreases the accessibility of labour market for workers”.

To prove our hypothesis, we start looking at the international standards to address termination of employment issue, and then collect relevant data from the EU as a union for developed countries where a successful model based on international standards can be seen to balance security of workers and flexibility of labour market. The dissertation collects and analyzes a significant number of empirical evidence, displaying various categories of EU countries in terms of rigidity and flexibility of termination rules. What the evidence reveals is the necessity of liberalizing labour market and actuality of the hypothesis.

IV. Selected Methodology

The methodology contributed to the dissertation is multidisciplinary, deductive, and qualitative approach. An avoidance from pure doctrinal research and adopting multidisciplinary approach can obviously be seen in the dissertation since we try to solve the problem from different perspectives, using the tools of different science especially law and economics together, so we can find a satisfied solution. According to Gestel and Micklitz, doctrinal legal research is dead in the United States, and in Europe, the debate over the abandonment of such type of research to be substituted by a multidisciplinary approach arose over the last decades.¹⁰ Multidisciplinary approach nowadays brought the attention of many academic institutions and renowned researcher as a proper approach to study a problem from all aspects. It allows sharing disciplines of different fields to reach a convenient conclusion.¹¹ Since the law themes are involved with different aspects of life like political, social, economic, and institutional, a multidisciplinary approach is of utmost importance in law field. This is what exactly confirms the significance of this method in our case because what constitutes unfair termination of employment contract is not only confined to a legal perspective, but rather involved with economic concepts as well. While legal scholars often tend to protect workers in case of termination of employment and portray unfair termination on that basis, economists, in contrast, demand to ease protection and liberalize labour market from hiring and firing rules. Giving consideration merely to one side of the disciplines engaged in this matter will lead to relatively unsatisfied results.

The dissertation also adopts deductive approach rather than inductive method. This is due to our hypothesis that starts from general observation to more specific facts. While inductive method initiates from specific facts reaching to general results, the deductive method, in contrast, is used to test and prove general observation through specific facts.¹² Hence, the deductive approach in our case is sort of an obligatory method to test the hypothesis. For this end, the

¹⁰ Van Gestel, R., & Micklitz, H. W. (2014). Why Methods Matter in European Legal Scholarship. *European Law Journal*, 20(3), 292-316.

¹¹ Mátyás, B. (2021). *Legal Doctrinal Scholarship: Legal Theory and the Inner Workings of a Doctrinal Discipline*. Edward Elgar Publishing, p. 173.

¹² Rahi, S. (2017). Research design and methods: A systematic review of research paradigms, sampling issues and instruments development. *International Journal of Economics & Management Sciences*, 6(2), 1-5.

dissertation encompasses relevant data from EU countries to prove the actuality of our hypothesis.

A qualitative method has also been selected to reap the results of the dissertation. Though using some numbers and statistics, it is still can be described as a qualitative study because we mainly focus on legal documents, case studies, literature reviews, and data analysis. The study is generally expressed in texts and words to understand notions, thoughts, or experiences. Even statistics and graphs are used to support concepts and to test our hypothesis. The last methodological note which is worthy to mention is that the data used in this study are secondary data as being dependent on primary data collected before. Our main sources for the secondary data are international legal instruments, legislations, books, treatises, journal articles, and statistics and graphs done by the formal and informal institutions for specific purposes that vary from our purpose in this study. Therefore, the originality and novelty of our study are not coming from the data collection, but rather come from the way to use and analyze the data.

V. The Content and Structure of the Research

In addition to the introduction and conclusions, the dissertation consisted of five consecutive chapters. The content of each chapter logically connects to the other chapter and so on. The first chapter discusses the most dominant policies and doctrines that underpin basic dogmatic concepts surrounded the topic. Job security policy and at-will employment doctrine have been introduced as the two primary paths that formulate termination rules and what consider unfair termination within different jurisdictions. The basic argumentation to rationalize each one of them have been discussed referring to the historical context to emerge these policies and doctrines. The chapter is finalized by reaching to the most common results between the policy of job security and at-will employment doctrine with indicating to the different results regarding termination of employment contract. The second chapter allocated to deduce international standards to prevent unfair termination of employment contract. For that purpose, we rely on ILO instruments as the most relevant international agency working on such issues. More precisely, we confine our research to study international standards deduced from Termination of Employment Convention No. (158) of 1982, and Termination of Employment Recommendation No. (166) of 1982.

The third chapter is to illustrate the EU standards as being developed standards that integrated with international standards to formulate the notion of unfair termination of employment contract. This chapter includes an examination of termination rules in EU hard law as presented in EU Charters, Directives, and Case law on one hand. It includes, on the other hand, an examination of the impact of the EU soft law under the Open Method of Cooperation (OMC) to improve the articulation of termination rules.

In the fourth chapter, we proceed reviewing the provisions governing termination of employment contract in the Iraqi Labour Law. We try to analyze and evaluate termination rules

in Iraq in view of international and EU standards, aiming to determine the most defect aspects in Iraqi Labour Law and the way to rectify them. From the beginning of the chapter, we provide a quick historical development on that matter and how we got here in Iraq. The chapter provides a detail on termination of indefinite contracts, fixed-term contracts, and probationary contracts. It also explains what constitutes unfair termination in the mentioned contract, and what remedies can be provided for such cases.

The last chapter designed for results and discussion to summarize findings that we reach in this study. This chapter followed by the conclusion including our recommendations to finalize this study.

VI. Research Results

The primary results that the dissertation found can be classified into three categories. First, the applicability of international standards regarding employment termination rules in the developed countries particularly in EU countries as selected in this study. Second, the actuality of EU flexicurity model in dealing with termination of employment and mutate the concept of job security to employment security. Third, the necessity to incorporate Iraqi labour law with international and EU standards, so it can bring a change to the realm of employment termination rules in Iraq. The following are the detailed capture of the research results:

1. Despite uniform issues raised in case of terminating an employment contract, the provisions to regulate such termination and what has been portrayed as unfair termination are not steady, and substantially different. This differentiation primarily refers to the different policies and doctrines adopted by states to deal with this matter. The provisions of terminating an employment contract, thereby, shall be analyzed by reference to the based policies and doctrines under which significant numbers of argumentation presented that help to clarify rules set for termination. The rightness of termination rules basically depends on the strength of argumentation each policy endorsed and the degree of involvement in preventing unfair termination.

The notion of unfair termination is extremely tied with the protection given to the worker from being fired, as this protection draws up the boundaries between what may constitute unfair termination and what may not. Under the policy of job security, the boundary of unfair termination is quite extended due to the broad protection, rendering the termination to be unfair whenever practiced contrary to such protection. The need for a valid reason to justify termination, an advanced notice period, pre and post fair procedures in case of discharge a worker are the main protection to guarantee an appropriate practice of termination. Violation of the said protection arises the ability to claim for unfair termination, meaning the scope of such claim is broadly drawn up and encompasses every single case that occurred beyond those limitations. In contrast to what has been described, the at-will employment doctrine narrowed down the scope of unfair termination due to the deficiency of workers protection as a trade-off to the efficiency of labour market in this doctrine. Efficiency as an indispensable element

dominates worker protection to activate labour market under which the economic system smoothly flows, and workers can easily access to labour market. This is an underlying target in the doctrine, simplifying procedures of termination to a degree that can be practiced even for no reason. The result for not requiring a reason to terminate an employment relationship is the ability of the employer to do so at any time without being accountable for unfair termination.

2. At-will employment doctrine is an inherent extension of freedom of contract, the notion that promotes individual choices to engage or withdraw from contracts, and to respect such natural freedoms, it seeks to non-interference of the state in contractual relationships. As far as individuals are free to engage in an employment contract, they should also be free to terminate their contracts without any interference from a third party. Job security argumentations, on the other side, rationalize the interference of the state in contractual relationships particularly in the employment contract to protect the worker from the abusive treatment of the employer. The idea is that inequality of bargaining power often places the worker in a weak position, the fact that leads to the dominance of the employer in filling out terms and conditions of the contract. In addition, the managerial prerogatives of the employer in this contract might not be practiced in a right way, being get away from the targeted points, and this may cause inappropriate discharge of the worker at the workplace. To regain a balance between the positions of both contractual parties, and then to protect the weak party from being abusively treated or from being arbitrarily fired, the law shall impose reasonable limitations to ensure the worker rights including exploitation of his position, unless an adequate reason justifies retaking thereof.

Though differences in outlooks and argumentations, at-will employment doctrine slightly getting closer to the policy of job security. This approach gained after a number of the courts in common law jurisdiction found that an absolute application of at-will employment causes a noticeable violation of the worker rights. At-will employment doctrine, thus, started to impose limitations on hiring and firing workers. To this end, the doctrine restricts the ability of the employer to fire a worker for reasons prohibited by a statutory law, as for example, discriminatory reasons, or for reasons which contradict with an established public policy or contradict with an implied contract. Based on such exceptions in the doctrine, courts initiated providing protection to the workers whose contracts have been terminated based on mentioned reasons. Consequently, the scope of unfair termination is a bit changed towards broadness.

However, the distance between job security and at-will employment doctrine regarding termination of employment contract is still distinguishable. The focal point to distinguish between them is that at-will employment permits termination for any reason or for no reason unless if a statutory law, public policy, or an implied contract invalidates the reason. While job security prevents termination unless for a valid reason subsequent by a spectrum of legal procedures to prove the presence of the reason. This reflects an effect on the procedure of appeal against the decision of termination. The general application in at-will employment presumes the validity of termination unless otherwise the invalidity of the reason proved by the worker, this places the burden of proof to win the case on the worker. As a result, the prospect to win the

claim for unfair termination is very weak due to the difficulties faced the party who bears the burden of proof. Job security, in contrast, presumes invalidity of termination unless it took place for a valid reason. Therefore, the validity of termination shall be proven, meaning the burden of proof is rested on the employer who initiated to terminate the contract contrary to the general presumption. This increases the probability to win the claim for unfair termination by the worker since the employer may not be able to prove the validity of termination or his evidence may not be sufficient.

3. The discussion over rigidity and flexibility of rules governing termination of employment contract has reached to the international level. Basic argumentations of both sides came up with international standards guiding member states to set detailed provisions of termination. In this regard, Termination of Employment Convention No. 158 of 1982 subsequent by Termination of Employment Recommendation No. 166 of 1982 contain the most known international standards for termination. As a crucial note, we should point out that the international provisions drawn up limitations merely for termination at the initiative of the employer. Termination that would be occurred based on a mutual agreement or termination at the initiative of the worker had not reached international concern. Since the basic aim of the international conventions is to prevent unfair termination and to mitigate its downsides, there are no genuine and actual risks mandating the necessity of international rules on the two latter types of termination. This is such a normal result of the nature of the employment contract as being a contract contains unbalanced parties in terms of bargaining powers. The fact that often facilitates the dominance of the employer to manage and terminate the contract arbitrarily if s/he is not restricted by several standards. This fear is not apparently raised in cases where termination depends on a mutual agreement or a unilateral will of the worker. For mutual agreement cases, the presumption is that both parties agreed on termination after the assessment of its consequences, being not harmful to both parties. There is no justification to limit the will of contractual parties since no actual fear presented to compel one of the parties accepting serious consequences. However, there may be a prospect of the agreement being generated under duress, a case that the worker pretends accepting the termination under the pressure of the employer. Since such a case is not mostly familiar and it can be addressed by national rules, has not reached international concern. And for cases in which termination depends on the will of the worker, no actual fear presented due to the availability of alternatives relatively facilitating the replacement process of the worker by the employer.

In the two mentioned international instruments, both sides have taken into consideration; the right of workers to secure their job that mandates rigid provisions for termination on one hand, on the other hand the need of flexibility that empowers member states to exclude certain workers and contracts from established provisions. However, the international standards adhere the idea that a flexible labour market and economic interests do not justify the violation of workers' rights. Considering this end, the provisions of the international instruments codified job security requirements beginning with prevention of terminating an employment relationship unless if a valid reason justifying that and ending with requiring a spectrum of legal procedures

to guarantee the right of worker from not being unfairly fired. Moreover, they contain provisions on decent remedies in case of unfair termination. The exceptions from such provisions are provided insofar as possible to flexibilize labour market. It can be said that the international standards derived from the two mentioned instruments adopted the right of worker in security as general rule and flexibility as an exception in certain cases. The aim is basically to deem the three different interests; the interest of the worker in providing security, the interest of the employer in retaining his prerogatives to manage his enterprise, and the interest of the national economy to activate labour market.

4. The applicability of international standards with multiple aims has been tested in this study within developed countries. In doing so, we tested the applicability of the international standards and the degree of their integration with EU standards as a developed model. The question raised was whether EU standards in this regard are in line with standards found in ILO instruments. If so, what are the degree of integration between them. If not, how the EU member states whose ratified ILO instruments adhere standards of ILO and EU simultaneously. In answering these questions, we examined EU legal tools including EU charters, directives, regulations, and case law. As a result, we found that EU legal tools regarding termination of employment relationships have substantially integrated with ILO tools. Though only ten EU member states have ratified ILO instruments regarding termination of employment, namely Cyprus, Finland, France, Latvia, Luxembourg, Portugal, Slovakia, Slovenia, Spain, and Sweden, the provisions of termination in the other rest EU countries have indirectly integrated with ILO standards through the EU legal tools. In the first rank, European Social Charter has integrated with ILO instruments in respect to termination, where the revision of ESC added Article 24 confirming protection of workers as the same provided in wording of Article 4 in Convention No. 158. Article 24 then inspired EU Charter of Fundamental Rights towards giving the same protection against unjustified dismissal in Article 30 thereof. The degree of integration between European Social Charter and EU Charter of Fundamental Rights with Convention No. 158 has reached to the similarity even in articulation of texts preventing termination unless for valid reasons related to capacity, behavior, or operational requirements. The same integration at the level of similarity in wording can be seen where the Appendix of RESC provided a list of invalid reasons for termination like that list provided in Article 5 of Convention No. 158. Furthermore, Article 25 of RESC protected workers in case of the employer's insolvency plus Article 29 to inform and consult the workers' representatives before collective redundancies, the same procedures that previously required in Article 13 of Convention No. 158, aiming to find the best alternatives or at least to minimize the number of affected workers and mitigate unwanted consequences.

5. The role of Convention No. 158 and Recommendation No. 166 is also not minor to revise EU Directives regarding termination of employment and the outset of unfair termination laws in EU member states. The three main EU Directives to deal with termination each in different circumstances have been revised and modified in light of Convention No. 158. First, Directive 75/129/EEC of 17 February 1975 to deal with collective redundancies modified by Directive

98/59/EC of 20 July 1998 adding the requirement of providing notification and consultation to the workers' representatives before taking any decision on collective redundancies. Those are the most substantial procedures invented at the international level by Article 13 of Convention No. 158. Second, Directive 77/187/EEC of 14 February 1977 to protect workers' rights in the event of transfers of enterprises, businesses, or parts of businesses modified by Directive 2001/23/EC of 12 March 2001. The subsequent directive ensures retaining employment status including rights and obligations of the worker in case of transfer or merger between enterprises or a part of thereof and remaining those rights and obligations as they were before that process. It renders the termination to be unfair if it solely depends on the transfer or merger process. However, the directive has provided a degree of flexibility to exclude some workers from such protection. Third, Directive 80/987/EEC of 20 October 1980 to safeguard workers when their employers involved with insolvency modified by Directive 2002/74/EC. The directive guaranteed receiving the payments that according to the employment contracts awarded for workers in case of the employer's insolvency, this includes the payment for unfair termination awarded to the workers through legal proceedings. In general, the three directives after the modification inspired by ILO instruments, especially by Convention No. 158 to strengthen the position of workers and to prevent making them redundant unless after fair procedures.

6. The application of the protection as provided in EU Charters and Council Directives has evidently confirmed through several case law. The holding of the European Court of Justice and the European Court of Human Rights (ECtHR) in several cases oblige EU member states to incorporate their national laws with protection provided for workers within EU Charters and Directives. In *Commission v UK*, the European Court of Justice held against the UK for not having national laws compelling employers to inform and consult with workers' representatives before collective redundancies as stipulated by Directive 75/129. In *Francovich v Italy*, the same court found the state's liability to compensate workers whose reason for their loss in case of the employer's insolvency refers to the member state's failure to incorporate with Directive 80/987/EEC. In *Allen v Amalgamated Construction*, the ECJ extended the application of the Transfer Directive 77/187/EEC to a level that encompasses a transfer between two firms belonging to the same group and operated by the same owner, and accordingly the protection in this directive includes a worker whose employment status is transferable between such firms. In *Hamburg case*, the ECJ concluded its decision confirming the notification send to workers' representative as required by Directive 98/59/EC should be in a reasonable time. On that basis, the German Constitutional Court in 2014 decided in favor of the bakery workers and upheld ineffectiveness of their dismissal under EU law as interpreted by the ECJ. A remarkable judgment also has been found in *K.M.C. v. Hungary*, in which the ECtHR ruled against Hungary for violating protection clause against unjustified dismissal guaranteed by Article 6 ECHR, Article 24 RESC, and Article 30 CFR. The court found that the Hungarian Act No. LVIII of 2010 authorizing dismissal without giving a valid reason is in violation of the mentioned articles enacted at the EU level. Following to that judgement, the Hungarian Constitutional Court abolished the Act and announced its unconstitutionality for the same reason reached by ECtHR.

7. Besides job security as has been found in the previous legal tools, the EU countries liberalized and modernized their labor laws in terms of flexibility so they could improve their economies. The necessity for flexibility in employment relationships especially in hiring and firing methods is increasing due to objective reasons in the labour market. Among those reasons, an increased rate of unemployment and dualism in employment composition between young and elderly workers were the most compelled reasons to flexibilize laws and regulations. By connecting Figure (1) “Employment Flexibility Index” and Figure (2) “Young Unemployment Rate” both presented in chapter 4, we found a direct relationship between flexible approach in hiring and firing and the rate of employment especially youth employment. Figure (1) indicated to a vary level of governmental intervention in labor market, starting from the most flexible approach to the most rigid approach in 2018. Figure (2) indicated to the rate of unemployment within young workers in the same year and within the same countries considered in figure (1). In the EU countries where the value of flexibility increased, the rate of youth employment has notably increased as can be seen in figure (2) indicating a low-rate degree of youth unemployment in EU countries approaching to less governmental intervention in labour market. The rate of youth employment has less increased in EU countries where the employment relationships have less categorized under flexible approach. Consequently, the relationship between employment protection legislation and the rate of employment is an inverse relationship, whenever the first increases the second decreases and vice versa. In Table (1) we have taken a group of countries with most flexible labour market into consideration, namely Denmark, United Kingdom, Czech Republic, and Switzerland. For comparison, we created Table (2) considering a group of countries with less flexible labor market, namely France, Luxemburg, and Portugal, as both tables were presented in chapter 4. The result of comparison indicated that the rate of youth unemployment rate in the first group due to flexible approach in employment relations is much less than the rate of youth unemployment in the second group of countries. In Denmark, employment flexibility index shows 96.6 and thereby the rate of youth unemployment decreased to 9.4%, while in France, the flexibility index only shows 38.4, resulting an increase of youth unemployment to 20.8% rate. Almost the same result can be seen by comparison between other mentioned countries in the two groups.

8. The result also indicated that the EU countries whose ratified Convention No. 158 and bound by its provisions have less stepped forward to flexibilize their labour laws. The group of countries, whose employment flexibility indexes were in a low score in Table (2), are all listed in the ten EU countries that ratified Convention No. 158. In those countries, the rate of youth unemployment was much higher than the EU countries who are not bound by Convention No. 158 and their employment flexibility index indicates high scores. Does it mean that the ILO instruments especially Convention No. 158 impedes EU member states to have adequate steps towards flexibility and responding market needs. If it is the case, our hypothesis about the applicability of ILO standards in the developed countries will be ruined. However, this part of the result can be argued and interpreted by referring to the criteria under which employment flexibility index categorizing EU countries from higher to lower scores of flexibilities. And then,

those criteria shall be analyzed to know whether they can be adopted from the perspective of ILO standards to deal with termination of employment relationships.

The most remarkable criteria under which employment flexibility index was revealed in Figure (2) are: first, the state non prohibition of fixed-term contracts for permanent tasks and no limitation on the length of such contracts as well as the ability to renewal without restrictions, second, the state non requirement to compel employers to inform and get approval from the third party in case of dismissal up to nine workers. There are further criteria we did not mentioned since they are not substantially related to termination of employment and protection of workers. Accordingly, Denmark has ranked the highest score in the flexibility index within EU countries because no restrictions imposed on fixed-term contracts for permanent tasks, including the length and the renewal of such contracts, and no regulation exists to inform and getting approval from competent authorities to dismiss workers up to nine persons. In contrast, France has ranked the lowest score in the index due to imposing limitations on fixed-term contracts as such contracts are not allowed for permanent tasks and obliged employers to inform and then getting approval from competent authorities before terminating a group of nine workers.

To assess provided criteria, we must refer to the provisions of Convention No. 158, so to realize whether the provisions of the convention prohibit such criteria under which states flexibility approach categorized. Regarding fixed-term contracts in which the date of terminating the contract is already determined even for permanent tasks, no provisions in the convention inhibit member states to normalize and allow such contracts. In addition, the convention permits all member states to exclude fixed-term contracts from the protection provided pursuant to its provisions, as Article 2, Section 2 (a), explicitly expresses such permission to exclude “workers engaged under a contract of employment for a specified period of time or a specified task”. The need for “adequate safeguards” as required in the convention Article 2 (3) thereof to prevent the recourse of fixed-term contracts aiming to evade the protection generating from this convention, may not be solely interpreted in a way that mandates member states to ban fixed-term contracts in permanent tasks. Rather, it can be interpreted in different ways to set other safeguards that do not impede member states to reap the benefits of fixed-term contracts even in permanent tasks. Thus, the state-mandated regulation to restrict fixed-term contracts in permanent tasks, as is the case in France and the other countries where employment flexibility index indicated a low score, is not a mandatory safeguard imposed by Convention No. 158. Instead, it is only a means to implement adequate safeguards that can be replaced by other means.

The other criteria regarding the ability to terminate up to nine workers without being obliged to inform and to get approval from the third party and considering countries allowing doing so as more flexible countries than those do not permit such termination unless after informing and getting approval from the third party, are also can be argued from the perspective of the Convention’s provisions. This criterion depends on the desire of many jurisdictions to exclude small businesses from unfair termination laws. The debate here is whether Convention 158 includes a provision to allow or prohibit such desire. This criterion measures flexibility in

view of small businesses and to what extent those types of businesses are free from employment protection legislation. There is some provision in Convention 158 that underpins this measurement, as Article 2 (5) permits member states to exclude from the protection afforded by the Convention workers in respect of which special problems of a substantial nature arise in the light of ... the size or nature of the undertaking that employs them. The desire for this exclusion to activate small businesses was raised during the drafting of the Convention and the rationality of this desire finally brought Article 2 (5) into existence on the basis that workers protection in small businesses is likely to pose difficulties to operate small businesses in labour market.¹³ Thus, we found that nothing in ILO instruments, especially in Convention 158, presents to inhibit flexibility criteria, instead, there is leeway in great areas where countries can establish flexible criteria and reap their benefits in labour market.

9. The debate over job security and labour market flexibility in the EU has not led to a trade-off between such policies. Each one of them is a fundamental tool and plays a great role in its area. Leading countries in the employment flexibility index remain bound by the basic principles of employment protection afforded in EU legal tools, namely EU Charters, Directives, and Case law. The two policies in the EU member states, therefore, got integrated and formulated in a new model which is known as flexicurity. The idea is that by virtue of soft law especially the Open Method of Cooperation (OMC), the EU has collected the best practices of its member to implement flexibility and security together in employment strategy. The result has developed the perception of job security and flexibility as both formulated into the flexicurity model.

Job security has been replaced by employment security under the EU flexicurity approach. The notion that boosts employability facilitating the ability of workers to transfer from a job to another in labour market, rather than stick to the current job. Workers' protection, in this model, lies in a rapid capability to access labour market after being out from it. This protection along with unemployment benefits provided to terminated workers can be described as workers' social protection that replaced protection within internal arrangements based on a particular employment situation. Ultimately, the successfulness of this model depends on the reliability of labour market in performing its intended functions to satisfy workers and employers on one hand, economic interests on the other hand.

In the context of distinction between different kinds of security, employment security can relatively be separated from income security since the latter is workers' ability to pay for their fundamental needs without being worried for losing their income source. Nowadays, income security is not solely employment based, rather, it could depend on state's contributions. Such as unemployment benefits, a temporary income provided to workers upon losing their jobs -not based on their fault- till they get access new jobs. Such state programs are a core element in flexicurity concept, helping workers to keep their income security in unemployment period.

¹³ ILO. (1995). *Protection against unjustified dismissal*; Heerma van Voss (n 11); Simms (1995) 34(6) International Labour Review 698-700.

Thus, unemployment period is a transitional period in which income security of workers depend on state's contributions instead of employment. Accordingly, as it is possible for workers to have employment security without job security, it is also possible for them to have income security without employment security. Nonetheless, the level of income based on the social security programs is different from what depends on a decent employment. This means despite the distinction; the concept of employment security remains in strong correlation with the concept of income security under flexicurity model.

10. Flexicurity is not only confined to more leeway for companies to hire and fire employees, and it does not erase open-ended contracts. It is a model to progress workers finding better jobs, easy mobility, and ideal development of skills. Such aims, of course, creates a flexible labour market and seems to respond typically economic concerns, but its expected outcomes on employment rates rises the underlying social concerns. From that end, some researchers initiate criticizing negative impacts of flexicurity concept, aiming to propose potential solutions during the implementation of flexicurity concept in certain countries. Therefore, the model is not flawless, and its negative impacts should be analyzed before transferring it to Iraq or any other countries.

11. The EU flexicurity approach has not a specific shape or certain characteristics through which a definition can be determined for the model. This because that the approach gradually developed within soft law; the non-binding rules to share guidelines and benchmarking of member states. Another reason refers to the degree of state intervention in labour market that significantly varies between countries as the type of such intervention is also vary. In the two of best practices of flexicurity, Danish and Dutch flexicurity models, the disparity of state intervention degree and the type of intervention in labour market can simply be seen. The Dutch flexicurity model dictated state intervention through normalizing atypical contracts, strengthening the position of workers engaged in such contracts similar to the standard contracts without curbing flexibility in labour markets. While the Danish flexicurity model extended state intervention through unemployment benefits program, empowering state to impose obligations on unemployed workers and employers limiting job protection and reducing termination costs. However, the European Commission has drawn four components of flexicurity: “flexible and reliable contractual arrangements, effective active labor market policies, comprehensive lifelong learning strategies and modern social security systems”.¹⁴ But the application of these components, of course, will be varied and takes different shapes from a state to another due to the variation of labour market challenges, and state strategy to face challenges, as well as the state ability to provide welfare systems.

In sum, the EU flexicurity approach has proved the applicability of international standards preserving security and flexibility in a unique model. It deserves to be a reference for

¹⁴ Bekker, S., & Mailand, M. (2019). The European flexicurity concept and the Dutch and Danish flexicurity models: How have they managed the Great Recession? *Social Policy & Administration*, 53(1), 142-155.

other jurisdictions where labour legislation lacks termination rules in a way that may serve multiple aims; protecting workers from unfair termination and activating labour market to respond objective purposes.

12. To this end, we analyzed termination rules in the Iraqi Labour Code in light of flexicurity as a developed model concluded from international and EU standards. From the historical background of the first Iraqi Labour code No. (72) of 1936 to the current Labour Code No. (37) of 2015, we found that termination rules in Iraq have not smoothly developed pursuant to the labor market fluctuations. The rules, rather, were and still reflect the political attitude and the ideology of the ruling party. In the first Labour Code No. 72, the ideology of the Monarchy system has been reflected. Workers remained a vulnerable group without legal protection until the Ba'ath party took the power in 1968. Since then, labor codes and their amendments reflected Socialist ideology as being an adopted ideology by the Ba'ath party. Iraqi Labor system started providing protection to workers and incorporated with very restricted termination rules. Till the year 2003 in which the Ba'ath party has been collapsed, the Iraqi Labour Codes were very protective for workers, containing undue restrictions on termination of employment contracts. This rendered termination to be categorized as unfair termination once it occurs beyond imposed restrictions. The situation prolonged even after the collapse of the Ba'ath party and the labor market remained governed by the Labour Code No. (71) of 1987, one of the restrictive laws that lack the ability to respond labor market needs. Aiming to respond such needs particularly to minimize the rate of unemployment increasing day by day, Iraq promulgated the last Labour Code No. (37) of 2015, the code that we have tested in this study in light of international and EU standards.

13. As the result of our test upon termination rules in the Labour Code No. 37, we found that the Iraqi legislative body in issuing this code have also misunderstood the needs of labor market. Though some positive amendments, the Code lacks a balance between security to protect workers, and flexibility to activate labor market. The Code mainly retains job security side including the most crucial international standards governing workers' protection as such standards guaranteed a high degree of protection against unfair termination. The result indicates that the Code lacks flexibility side and had not taken benefits from international provisions drew to keep a degree of flexibility, such as the exceptions afforded in Convention No. 158, Article (2) thereof. Under Code No. 37, fixed-term contracts, in which the date of termination is known, are still prohibited for permanent tasks while such contracts can be exempted from the application of protection as many EU countries did to flexibilize their labor market and reaped the benefits. Even for temporary tasks, the maximum duration, and the number of renewals of fixed-term contracts are very restrictive compared to the other jurisdictions. In addition, the Code has not permitted workers to terminate a fixed-term contract before the expiration of its date. This makes the worker lose a chance of finding a better position and flexible transfer from a job to another.

No flexible provision provided to facilitate and operate small businesses in the Iraqi Labour Code. While many EU countries including member states in Convention 158 excluded

small businesses, each up to different numbers of employees, from the protection of unfair termination laws, Iraq applied regular termination rules on small businesses. Accordingly, the employer to close such a business shall inform the competent authority and get approval to do so. Such restrictive rules do not incentive increasing small businesses which is crucial to create new jobs and decrease the rate of unemployment.

Another defective point is related to the role of trade unions before the procedure of collective redundancy takes place. As has been found that informing and consulting workers' representatives before collective redundancies is a mandatory procedure in many developed countries, aiming to find flexible alternatives to termination, such as job sharing, redeployment, or any other possible solutions. However, the Iraqi Labour Code has not considered the effectiveness of this procedure to minimize the risks of termination since it makes the consultation with the worker's representative an optional procedure for the employer before taking any decision on termination.

Regarding the probationary period in employment contracts, we also found some legal loopholes in the Iraqi Labour Code. The Code prohibits the employer to test a worker who possesses a professional certificate, such a worker thereby cannot be placed into probationary period, and s/he cannot be fired from job pursuant to the lenient termination rules applied on probationary workers. This is a unique provision to restrict the prerogative of the employer that may not be found in any other jurisdictions. The Code also lacks standards to review the legality of termination during probationary period and what constitutes unfair termination in that period. This is also a defective point from the perspective of flexicurity that does not neglect security side if it serves objective needs.

14. Altogether, this study found that according to the international standards and EU standards concluded in the flexicurity model, the current Iraqi Labour Code No. (37) of 2015 still needs major amendments in respect of provisions governing termination of employment contract. The amendments shall enhance flexible labour market aiming to create new job opportunities at the first place, and in the second place reorganize the employment security aspects.

VII. Conclusions and Recommendations

The results point out that the best practice-based model to determine unfair termination of employment contract is not only depends on the protectivity of termination rules for workers who currently possess jobs but also depends on the flexibility of such rules insofar as necessary to expand employment opportunities and give more workers access to the labor market. This is a model that can serve multiple interests belong to the employer and the worker and eventually enhances economic sustainability.

Since the method to combine between the protectivity and flexibility of termination rules may vary from a state to another, the international standards provide outlines to enable states in finding their way of establishing a balanced model. The purpose of international standards to

modulate termination of employment contract is twofold, to guarantee protection for workers and to increase flexibility in labour market. To guarantee protection for workers, the international standards require a spectrum of legal procedures to terminate an employment contract, namely, the need for valid reason, notice period, the right to defend against the allegation made for termination, and the right to appeal the decision of termination. As for increasing flexibility, the international standards provide leeway to exclude some types of workers and employment contracts from the protection afforded in the relevant international instruments. The latter is to ease hiring and firing process especially in small businesses and fixed-term contracts that are deemed as leading tools for increasing job opportunities and economic development. At first glance, it seems that the combination between the two different sides is insurmountable since the extension of each side causes the erasing of the other side. However, a degree of compromise from each side as much as needed for the other side may achieve a successful combined model.

The successfulness and adaptability of the international standards have been proven in developed countries, namely, in the EU countries. Even though less than a half of the EU countries have so far ratified the relevant international instruments for the prevention of unfair termination of employment, the EU took advantage of the international standards and incorporate them into its employment strategy implemented through the Open Method of Coordination (OMC). The Europe Employment Strategy based on the OMC is designed to share best practices combined hard law employment requirements with soft law employment guidelines. The strategy introduced flexicurity as a complementary model between security and flexibility of termination rules, functioning each side to a degree that does not erase the other side.

The purpose of the EU flexicurity model is not a trade-off between security and flexibility, meaning the model is not giving up security in return for flexibility or vice versa. Rather, it is to balance and redefine the concepts of security for workers and flexibility. From this perspective, it reaps the aims of the international standards to collect opposite interests in a unique practice model.

Despite a degree of ambiguity in its concept, the EU flexicurity model can be characterized through its new formulation of security for workers and flexibility of labour market. Regarding security for workers, flexicurity is seen as a transitional model from job security to employment security. The idea is that job security and getting fired from a specific job is no longer a matter for most workers, but the matter is being able to remain in employment status instead. In other words, job security secures the job, which is currently delegated to the worker and, of course, requires strict termination rules while employment security secures employment status and easy transition from a job to another. In contrast to job security, employment security as enhanced by flexicurity tends to ease termination rules within contractual arrangements insofar as necessary for balancing security and flexibility together. Meanwhile, it reduces the fear of workers and brings their attention to the accessibility of labour market as compensation to minimize the degree of security in contractual arrangements. Many factors are engaged to establish this system in practice, in some EU countries as for example,

unemployment benefits and active labour market policies, such as vocational training, and aiding in the job search process are the most seen factors that involved for that purpose. The factors are not exclusively provided under the EU flexicurity model, they may differ from a state to another pursuant to the social policy and the ability of state welfare programs. However, the successfulness of the EU flexicurity model depends on the workers to trust labour market, believing that they will not encounter long periods of unemployment.

In balancing security provisions by flexibility measures, the flexicurity model does not eradicate the need for grounds to terminate employment contract. But the model erasing the strictness of the grounds as much as they seem to be reasonable grounds that do not impede the operation of businesses and repeal undue procedures for termination. For small businesses, it allocates more internal flexibility by excluding a reasonable number of workers operated in such businesses from protection against unfair termination. The number reaches nine or fifteen workers in some EU countries. The exclusion of workers in small businesses from traditional protection does not contradict international standards because it can be classified under the exceptions made in Convention 158, where Article 2 (5) permits such exclusion of workers “in respect of which special problems of a substantial nature arise in the light of ... the size or nature of the undertaking that employs them”. The abolition of workers’ protection in small businesses is objectively justified since protection poses unreasonable difficulties to operate such businesses.

Another key distinction of the EU flexicurity model is resorting to atypical contracts in employment, responding to rapid progress in work organization. The emergence and normalization of fixed-term contracts that are terminated at an agreed time without following specific procedures is one of the features of this trend. At the EU level, fixed-term contracts have been introduced as a form of flexible employment where the automatic termination on the expiry date principally protects employers from unfair termination claim. Notwithstanding, this notable flexibility in fixed-term contracts is balanced by a degree of security in two ways; first is the limitations imposed to prevent the abuse of consecutive fixed-term contracts, and second is forbidding any treatment that seems to be less favorable to treat fixed-term workers than that to treat permanent workers. These are the two main measures that are taken in the Fixed-term Work Directive 99/70/EC in balance flexibility to increase labour supply and security for workers.

By taking the EU flexicurity model into account, it is evident that Iraq needs a variety of social and economic programs that play multiple roles for the benefit of worker, employers, and economy. Such programs cannot only be given under labour law rules. Rather, they should be outlined based on a system of social security, such as unemployment benefit programs, and active policies of labour market, such as centers for job search or training, lifelong learning, and rehabilitation services. In this regard, education system also may contribute and play a primary role particularly for educating workers relating the modern labour market programs. This would be the right approach to protect workers and simultaneously to keep an active labour market.

By considering EU flexicurity model again, we have found several legal loopholes and defective points in Iraqi Labour Law regarding termination of employment contracts and what has been portrayed as unfair termination. In general, the Iraqi Labor Law has not reasonably balanced between flexibility and security for workers in articulating termination rules. It biases to strict termination rules that are not tolerable rules to modernize labor market on one hand. On the other hand, it defaults some security provisions where there are no objective reasons to erase such provisions. Therefore, in attempting to improve the Iraqi Labour Code No. (37) of 2015, so it can reach the flexicurity model, this study is finalized with the following recommendations:

- 1) Redraft Article 38 (2) in a way that permits the recourse to fixed-term contracts even in permanent activities in favor of increasing labour supply. The prevention of fixed-term contracts in this article might be switched to the prevention of the abuse of the consecutive fixed-term contracts between the same worker and the employer, and the prevention of the less favorable treatment with fixed-term workers than that with permanent workers.
- 2) To prevent the abuse of consecutive fixed-term contracts, the Iraqi Labour Code may impose limitations either on the total duration of consecutive fixed-term contracts or on the number of renewals.
- 3) Increase the total duration of fixed-term contract or the number of its renewals in temporary activities. This requires a redraft of Article 38 (1&4) that permits fixed-term contracts in temporary activities only for one year with the ability to renew such contracts only once.
- 4) Exclude small businesses from protection against unfair termination as flexible countries did to operate small businesses for supporting a sustainable economy. This requires adding provisions to permit the employer in small businesses to terminate up to nine workers without being obliged to inform and get approval from the competent authorities. The adoption of such exclusion is not in contrast with international standards, but rather is an implementation of Convention No. 158, Article 2 (5) thereof.
- 5) Provide social security benefits for terminated workers on the condition to participate in vocational training, and establish active labour market policies, such as the establishment of professional centers to assist workers in the job search process, and public work programs.
- 6) Redraft Article 43 (1/h), to enable the worker to practice early termination in fixed-term contracts without being liable for unfair termination and giving compensation, unless if such termination damages the employer in clear instances. The failure to prove damage, thus, shall dismiss the case. Prevention the right of the worker to resign himself in fixed-

term contracts loses the chance of the worker to find a better position and flexible transfer from a job to another. In contrast, absolute permission to do so may damage the employer. Hence, this is a compromise between absolute permission and absolute prevention of early termination, that can balance the interests of both parties.

- 7) Giving a fundamental role to the trade unions in case of collective redundancies and impose a mandatory requirement to inform and consult with workers' representatives before the decision on collective redundancies takes place, aiming to find better alternatives to termination, such as job sharing, redeployment, or decrease the number of redundant workers. This also requires a redraft of Article 143 (4) that only provides an optional choice to consult workers' representatives in this case, instead of making it a mandatory step.
- 8) Redraft Article (44) to stipulate a notice period not only for the case of downsizing an enterprise but also for the case of closure or liquidation of an enterprise. The distinguish between the two above cases regarding giving notice seems to be a linguistic default, therefore, it only needs a linguistic correction to include both cases.
- 9) Pulling out the term "professional certificate" as a barrier to test workers and put them under probationary period in Article 37 (2), this makes the article to be more accurate due to not having a necessary connection between required suitability in a specific job and possessing a certificate.
- 10) Limit the power of the employer to fire probationary workers by establishing standards to test the employee's suitability of the job, as has been seen recently in case law. For that purpose, Article 37 (2) should be restated in a way that establishes suitability standards or requires the court to derive such standards while reviewing individual termination cases.
- 11) Restate Article (140) in a way that guarantees the right of the worker to defend himself against the allegation made not only in case of dismissal due to serious misconduct but also in case of terminating his contract because of incapacity or misconduct which is not reached to the level of serious misconduct. This is also to bring the Iraqi law compatible international standards guaranteed this right in both cases.



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List of publications related to the dissertation

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1. **Ismail, O. A.:** Iraqi Labour Law - Recent Amendments on Termination of Employment Contract - compared to International Labour Standards.

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2. **Ismail, O. A.:** The Arbitrariness of Employer's Decisions: An Analytical Study in the Light of Abuse of Right Theory.

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