

---

# The Concept of the Public Employee in Jordanian Law: Different Constitutional, Administrative, and Criminal Law Definitions

Hamzeh Abu Isa, Naji Alwerikat, Tareq Al-Billeh

<sup>1</sup>*Applied Science Private University, Jordan*

<sup>2</sup>*Police Institute, Qatar*

<sup>3</sup>*Applied Science Private University, Jordan*

---

## Abstract

**Objective:** The article analyzes the legislative concept of the public employee contained in the Jordanian constitution, administrative and criminal legislation, and compares it with the legal legislation in the comparative countries under scrutiny, such as French legislation and Egyptian legislation. This will be achieved through interpreting the jurisprudential, legislative, and judicial standards that appeared in the definition of the public employee, identifying the shortcomings and deficiencies in setting a comprehensive and preventative definition of the public employee, and comparing that definition with the comparative jurisprudential, legislative, and judicial trends.

**Methodology:** The comparative and analytical approaches were used in our study, which covered Jordanian, French, and Egyptian legislation, to analyze the concept of the public employee constitutionally, administratively, and criminally, and to clarify the jurisprudential, legal, and judicial definitions by referring to the jurisprudential point of view as well as the Jordanian constitution, the penal code, the Jordanian civil service system.

**Results:** We revealed through this article that it is necessary to establish a unified and comprehensive definition of the public employee constitutionally, administratively, and penally in the legislative systems of each country. .

**Research Limitations:** Public employee concept contained in the study may differ from other concepts, such as the concept of the worker in labour laws, due to the different nature of the legal system followed in each of the countries under study.

**Authenticity:** Our study proved that the concept of public employee according to the jurisprudential trends, differs from the legal and judicial concept, so it became clear to us that, the jurisprudential definitions of the public employee were more comprehensive and general than the legislative and judicial definitions.

**Keywords:** Public Employee, Jordanian Constitution, Penal Code, Civil Service, Administrative Judiciary

## 1. Introduction

The study of the public employee occupies great importance in the law, not only at the level of administrative law, but even in the constitutional and criminal fields, and the definitions that have been said about the public employee in each of these areas have differed. The importance of the article lies in finding a comprehensive and prohibitive definition/concept of the public employee in the constitutional law, administrative law and criminal law, by reconciling jurisprudential, legislative and judicial standards to find a comprehensive definition that covers all constitutional, administrative and criminal aspects, in addition to defining the concept of the public employee in the light of jurisprudential opinions in France and Egypt and demonstrate the Legislative and judicial trends in those countries.

The aim of this article aimed to clarify the extent to which the Jordanian legislator has developed a comprehensive and prohibitive definition of the public employee and to clarify the jurisprudential opinions that were stated in the definition of the public employee, in addition to illustrate the jurisprudence that defined the public employee, whether in the judiciary of the Cassation Court, or the administrative judiciary, also to clearly explain the differences between the definition of the public employee in the Jordanian constitution, administrative law, and criminal law, as well as to demonstrate

the jurisprudential, legislative and judicial definitions in the comparative countries under study, such as France and Egypt.

The research problem lies in answering several legal questions, the most important of which are:

- What is meant by the term “public employee” both linguistically and legally?
- What is meant by the “public employee” in the Jordanian and comparative constitution?
- What is meant by “public employee” in the administrative law?
- What is meant by “public employee” in the criminal law?

## 2. Methodology

In this article, the comparative analytical approach will be employed due to the diversity of legislation that differed in dealing with sections and topics within the concept of the public employee, and the differences between these legislations and their suitability in practical applications, and to identify the strengths and weaknesses of these various trends and the extent of their adoption.

Additionally, this article also requires the adoption of the analytical approach to analyze all legislation's texts that is related to the public job, in order to identify its contents, implications and goals, and to criticize it and to comment on them. Also, the critical approach will be followed, to highlight jurisprudence views and trends in the issues that were taken therein, and to highlight the critical aspect of the researcher for each aspect that was taken by the jurisprudential trend, as this study necessitated the adoption of several research methods due to its complex nature between the texts of legislation, judicial rulings, opinions and jurisprudential trends.

Accordingly, this article aims to clarify the meaning of the public employee in both the constitution and the administrative law in addition to the penal law, hence, the research will be according to the following plan:

The term public employee - we will present it in order to clarify its linguistic meaning, and this will lead us to whether the use of this term is linguistically correct.

The constitutional concept of the public employee - in which the definition provided by the Jordanian constitution for the employee will be illustrated, and whether this definition was correct and the purpose of putting it in the constitution. In addition to the clarify the administrative concept of the public employee and the presentation of the jurisprudential, legislative and judicial definitions of the employee in the field of administrative law, as well as explaining the criminal concept of the public employee, and the definition of employee adopted by the criminal legislature in texts related to functional crimes.

## 3. Statement of the Concept of the Term Public Employee

In the civil service system, the Jordanian legislator uses the term (employee) for the person who occupies a public position. In the Penal Code, sometimes the same term is used and sometimes it is called (public employee), and the High Justice Court uses in its decisions the term (employee) or (public employee), i.e. They are synonymous. As for a person who works in the private sector, he is called a (worker) in the Jordanian labor law. Accordingly, the word (employee) denotes to the public job holder, and the word (worker) refers to the one who undertakes a job in the private sector.

In the Arabic language, the word (employee) is a passive noun from the verb (employed), and it was stated in Al-Moheet Dictionary that the employee is the one who is assigned a job in one of the governmental departments or others (Al-Lajmi et al., 1994). Some linguists have argued that the word “employee” refers to the occupants of public or private positions according to its use in the context, so if we say (a government employee) then he is the one who works in one of the government's departments “state employees”, but if we say (an employee in the company), then she is working in the private sector.

In the French language, the term *Fonctionnaire* (employee) or *Fonctionnaire public* (public employee) is used to denote to the occupant of the public job (Majma'e Al-Fikr Al-Arabi, 1999). As for workers in the private sector, a distinction is made between a worker who undertakes a manual profession (handicraft), called an *Ouvrier* (worker), and a worker who undertakes clerical or non-manual work, called an *Employé (ée)* (worker) (Baalbaki et al., 2002).

In the Egyptian legislation, in the past, the laws and regulations related to the public office used several terms to express the occupants of public jobs, and the most common of these terms were: public officials, royal employees, and government employees, without distinguishing between these terms (Al-Malt, 1967).

A certain opinion stated that the legislator was limiting the use of the term “employee” to denote those appointed by decree, and the term “worker” to anyone else, furthermore, the legislator tends to use the term “employee” to denote to senior state officials, and the term “worker” to denote to the occupants of small positions (Muhanna, 1952).

Also, when Law No. 210 of 1951 related to state employees was issued, the Egyptian legislator approved this distinction, as the use of the term (employee) was restricted to those who are appointed to a job within the authority and the provisions of Part One apply to him, and the term (user) applies to those who are appointed to a job outside the authority and apply to him the provisions of Part Two (Khalaf Allah, 1991).

However, since the issuance of Law No. 46 of 1964 and after it Law 47 of 1978, the legislator has used one word to denote to the public office occupant, which is the word (worker), thus ending the distinction that existed between terms in previous laws (Khalaf Allah, 1991). In fact, I do not see the correctness of using the term (worker) on the occupant of public job, as it denotes to workers in the private sector, and this is what the Egyptian Labor Law itself stated. Based on the foregoing, we find that the Jordanian legislator was successful in using the term (employee) for the public office holder and the word (worker) for those who work in the private sector.

#### **4. The Constitutional Concept of the Employee**

The Jordanian Constitution of 1952 and its amendments for the year 2022 dealt with the concept of the public employee, but indirectly, when it stipulated in Article 76/1/b the following:

It is not permissible to combine the membership of each of the Senate or the House of Representatives with any public job whose occupant receives any money of public funds, including the Amman Municipality, the municipalities and the provincial council.

In addition to the text of Article (120) of the Jordanian Constitution, which states: “The administrative divisions in the Hashemite Kingdom of Jordan, and the formations of government departments and their ranks and names, the management methodology, the method of appointing, dismissing and supervising employees, and the limits of their powers and their competencies are determined by regulations issued by the Ministers` Council with the approval of the King ”. Hence, the employee according to those constitutional texts is every person who takes a salary from public funds, so the employee’s standard is salary only.

In fact, this concept would include many categories and consider them as employees, while with reminding that the salary is not the essence of the public job, but rather it is one of the rights resulting from the employee's joining the public job.

It may erupt in the mind that, according to this criterion, members of the National Assembly (deputies and notables/senators) are considered employees, since they receive their salaries from public funds. Is this correct?

Members of the National Assembly cannot be considered employees, as they do not receive salaries but allowances, and this is what is understood from the text of Article 52 of the Constitution. But it seems that the belief that these allowances are salaries comes from the Civil Retirement Law No. 34 of 1959 and its amendments, which stipulates in Article 5 that the following services are considered acceptable services for retirement:

(Membership term for the National Assembly) for a former minister or former employee, provided that the retirement pension for those who were retired are modified, or a retirement pension is allocated to those who left the service and did not receive a retirement pension and became a member of the National Assembly if his services are accepted for retirement, including membership in the National

Assembly, reached fifteen years... For a person who has completed fifteen years of membership in the National Assembly, the retirement salary for a National Assembly member is calculated in the two previous clauses (Article 18/e, Civil Retirement Law, 1959).

These articles explicitly violate the provisions of the constitution, as the allowances of the National Assembly members are not salaries, “and it is not possible in any way to adapt the position of the parliament member in a way that the mentioned article applies to, as the parliament member is not a public employee and does not receive a salary, but receives allowances as stipulated in Article 52 of the Constitution. The entitlement to these allowances ends with the termination of membership for any reason” (Ghazwi, 2009).

In any case, Article 76 of the Constitution came for a specific purpose, which is the inadmissibility of combining membership in the National Assembly and public job in the sense I mentioned. Accordingly, the salary criterion that came in the text of the article may not be applied except for the purpose targeted by the text.

## **5. The Administrative Concept Of The Employee**

The genuine place to study the public employee is the administrative law. There have been many doctrinal, legislative and judicial definitions of the employee in the field of administrative law, so we must present these definitions.

### **5.1 Doctrinal Identification of the Employee**

The old French jurisprudence was heading towards stretching the definition of the public employee, so (Hourio) defined it as every person who occupies a permanent position within a public facility managed by public administrations and to be appointed with the knowledge of the public authority. And (Roland) defined him as the person who occupies one of the permanent jobs of the facility to ensure that the public utilities operate in an orderly manner. As for (Doji), he defined it as every person who contributes in a permanent way to the management of a public utility, whatever the nature of the work he does (El-Desouki, 2007).

As for the modern French jurisprudence, it tends to narrowing when defining the public employee, as it is based on a formal element, which is the necessity of the employee's belonging to an administrative hierarchy that occupies one of his duties (Hashish, 1977). (Valin) defines the employee as anyone who contributes to the management of a public facility managed directly and occupies a permanent position within one of the levels of public administration cadre. The jurist (de Lopader) defines employees as workers of public facilities that are managed by public bodies, who occupy permanent jobs that fall within the cadres of these facilities, with the exception of workers in economic public facilities (Khalafallah, 1991).

These facilities, with the exception of workers in economic public facilities (Khalafallah, 1991). Arab jurists have also attempted to identify the public employee in a manner similar to the French efforts. However, it is noted in the domain of jurisprudence definition that contemporary jurisprudence often tends to adopt the legislative or judicial definition of the public employee (Shatnawi, 1998).

For example, Dr. Majid Al-Helou, after deciding that “it is not easy to put an accurate and comprehensive definition of the public employee, which is valid in all countries, or even valid for everyone who is characterized as an employee within the framework of one country,” gave an approximate definition of the employee based on the legislative definition, where he defined it as all Whoever takes a permanent or temporary job in the service of a public facility that is directly managed (Al-Helou, 1996). As well as Dr. Suleiman Al-Tamawi, where he took the judicial definition of an employee and concluded the need for the availability of three elements for the public employee, which are (Al-Tamawi, 1996):

1. Permanent service.
2. That the employee works in the service of a public utility run by the state or a person of general law.
3. That the employee be appointed to a job by the authority that legally has the right to appoint him.

## 5.2 Legislative Definition Of The Employee

The French legislator did not set a specific definition for the public employee, but he defined it indirectly (Shatnawi, 1998). The French legislator was satisfied with stating the persons to whom the public service system applies (Desouki, 2007). Article 1 of Law No. 16 of 1984 on the job system stipulates and its amendments for the year 2022, provided that “the provisions of this law shall apply to state employees and local units.”

## 5.3 Legislative Definition Of The Employee

The French legislator did not set a specific definition for the public employee, but he defined it indirectly (Shatnawi, 1998). The French legislator was satisfied with stating the persons to whom the public service system applies (Desouki, 2007). The first Article of Law No. 16 of 1984 related to the public service system and its amendments for the year 2022, “the provisions of this law shall apply to state employees and the local units” and the second article of the same law stipulates that “its provisions shall apply to persons appointed to a permanent position and occupy one of the ranks of the cadre in one of the central departments in the state or its external departments, or any public institutions of the state.”

The same applies to the Egyptian legislator, as he did not put a comprehensive definition of the public employee, but rather specified persons who are subject to the provisions of the Civil Workers Law. According to Article One of the Law No. 47 of 1978 and its amendments for the year 2022, the state’s civil employees law applies to:

1. Workers in government ministries and departments, bodies that have their own budget, and local government units.
2. Employees of public authorities in matters not provided for in their own regulations.

These provisions are not applicable to workers whose employment affairs are regulated by laws or decisions as stipulated in these laws and decisions and shall be considered a factor in the application of the provisions of this law, anyone who is appointed in one of the positions stated within each unit budget.

The second article of the same law defines what is meant by the unit as: (a) every ministry, department, or agency has its own budget. (b) every unit of local government. (c) the general body.

As for the Jordanian legislator, the employee was defined in the Civil Service System No. 9 of 2022, as in its first article is stated, that the employee is “the person appointed by a decision of the competent authority, in a job listed in the job formations table issued under the general budget law or the budget of one of the departments and the appointed employee under a contract and does not include a person who receives a daily wage”.

This definition is extensive, and although it stipulated - as it is understood from its text - that the job undertaken by the employee be in a public facility run by the state, either directly or in the manner of a public institution, it was criticized from two aspects (Shatnawi, 1998):

- 1- It did not require job permanency, as permanency is a basic condition in the public job. Permanency requires the availability of two elements: permanence of the job itself and permanence of its occupancy. The Jordanian legislator equated between the permanent and temporary jobs.
- 2- It is a contradictory definition, as the legislator initially stipulated that the employee be appointed by an administrative decision, then contradicted himself when he considered the employees with contracts as public employees.

## 5.4 Judicial Identification Of The Employee

The French State Council defined the public employee as the person who is entrusted with a permanent job within the cadre of a public facility, and what is meant by the cadre is the group of jobs whose arrangement corresponds to the sequence of degrees held by the employee according to the established rules of promotion, i.e. the career hierarchy to which the employee is attached and followed throughout

his career (El-Desouky, 2007). This indicates that the French Council of State requires the fulfillment of two conditions for a person to acquire the status of a public employee: permanent job, and tenure in it (Shatnawi, 1998).

The Supreme Administrative Court in Egypt defined the public employee by stating: "In order for a person to be considered a public employee, subject to the provisions of the public job, he must be appointed on a continuous and non-accidental basis to contribute to permanent work in the service of a public facility managed by the state in a direct way" (Supreme Administrative Court, 1959).

In another provision/ruling, it stated: "For a person to be considered a public employee, the following elements must be considered:

1. To contribute to work in a public utility run by the state through direct operation.
2. Contributing to the management of public utilities should be by appointment.
3. To occupy a permanent position, and to occupy this position in a continuous and not accidental manner (Supreme Administrative Court, 1962)

As for the Jordanian Supreme Court of Justice, its jurisprudence has settled that the public employee is the person who is entrusted with a permanent job in the service of a public facility run by a public law person (Jordan High Court of Justice, 1998). The definition that the Supreme Court of Justice opined, is a good definition and better than the definition contained in the civil service system. The court did not mention the appointment tool, whether by decision or by contract, and it also stipulated the permanence of the job.

However, the criticism directed to the Supreme Court of Justice in this regard is its expansion in considering workers in public institutions as public employees, so it did not differentiate between administrative public institutions and industrial and commercial public institutions. Workers in public, industrial and commercial establishments should be excluded (Shatnawi, 1998).

## **6. The Concept Of The Public Employee In The Criminal Law:**

Determining the capacity of the public employee is an essential issue in the field of criminal law, and this is when applying the texts related to functional crimes, that is, in those crimes committed by or against the public employee.

Faleen says: The definition of the employee in terms of the extent or narrowness of the scope from one field to another, as in in the area of responsibility and discipline the idea of the public employee widens. In the field of functional benefits, the idea is more tight (Al-Helou, 1996). In this direction, we notice that the Jordanian criminal legislator is trying to extend the idea of the public employee. Article 169 of the Penal Code and its amendments for the year 2022 stipulates that: is considered an employee within the meaning of this chapter; Every public employee in the administrative or judicial corps/sector, and every civil or military authority officer or he is one of its members, and every worker or employee in the state or in a public administration.

Accordingly, the Jordanian Cassation Court considered the director of a cooperative institution to be an employee (Jordan Cassation Court, 1999), as well as an employee of the court (Jordan Cassation Court, 2002), and employees of the Vocational Training Center whose work is limited to training drivers on vehicles and buses before they apply to The Drivers Examination Committee of the Drivers Licensing Department that examines them (Jordan Cassation Court, 1998), and the warden of the building supplies warehouse at the University of Jordan (Jordan Cassation Court, 1992), as well as police personnel (Jordan Court of Cassation, 1976), and a daily wage worker in the Ministry of Communications (Jordan Court of Cassation, 1973), but an employee of the Chamber of Commerce is not considered a public employee because Chambers of Commerce are private institutions, even if they are of public interest (Jordan's Court of Cassation, 1998).

In fact, we do not support the attitude of the Jordanian penal legislation in providing a definition of the public employee. The capacity of the public employee should be referred to the administrative law to determine it, and if the legislator's intent is to expand the criminalization circle in the functional crimes, it is a rejected matter, as the modern trend in the penal law calls for narrowing even with interpretation. In addition, the definition contained in the civil service system is broad and I think it is sufficient for the application of the Penal Code.

## Conclusion

The Jordanian legislator was successful in using the term employee related to the occupants of the public job, as this term has become stable and significantly clear, in addition to the fact that the French and Egyptian legislators have agreed in setting a comprehensive and prohibitive definition of the public employee in the administrative systems. The Jordanian constitution definition concerning public employee was inaccurate, as not everyone who receives a salary from public funds is a public employee, so this definition should be reconsidered by setting a clear standard for the public employee, although it is sufficient to apply it for the purpose set by the text, which is, It is not permissible to combine the membership of the National Assembly and a public position, but it was more appropriate to define the public employee in an accurate and detailed manner. The definition set by the Jordanian administrative legislator under the civil service system is a broad and it is a critical definition, as it did not stipulate the permanence of the job, and equated between the appointment by a decision and with the appointment by contract, in contrast to the definition set by the French and Egyptian legislators, whose definition of the public employee was a precise, comprehensive and prohibitive definition. We find that there is no need to provide a definition for the public employee in the penal code in Jordan, France and Egypt, as it is necessary to refer to the administrative law to define it, since the administrative legislation is the most capable for establishing a clear definition that includes all the elements on which the public service is based on.

## References:

1. Abdel Hamid Kamal Hashish, *Studies in the Public Service in the French System*, Dar Al-Fikr Al-Arabi, Cairo 1977.
2. Adeeb Al-Lajmi and others, *Al-Moheet Dictionary*, 2<sup>nd</sup> edition, Beirut 1994.
3. Ahmed Taha Khalafallah, *Public Employee in the Penal Code*, Ph.D. thesis, Cairo University 1991.
4. Ali Khattar Shatnawi, *Studies in the Public Service*, University of Jordan Publications, Amman 1998.
5. Maged Ragheb El-Helou, *Administrative Law*, University Press, Alexandria 1996.
6. Majma'e Al-Fikr Al-Arabi, *Law Dictionary*, Cairo 1999.
7. Muhammad Fouad Muhanna, *Comparative Egyptian Administrative Law*, Vol. 1, Cairo 1952.
8. Muhammad Ibrahim El-Desouky, *Functional Crimes*, Arab Renaissance House, Cairo 2007.
9. Muhammad Jawdat Al-Malt, *Disciplinary Responsibility of the Public Employee*, Ph.D. thesis, Cairo University 1967.
10. Muhammad Salim Ghazwi, an article entitled (The King's Directives and Electoral Law Reform), *Al-Rai Jordanian newspaper*, Thursday 12/1/2009.
11. Rouhi Baalbaki and Others, *The Triple Legal Dictionary*, Al-Halabi Al-Huqqia Publications, Beirut 2002.
12. Suleiman Al-Tamawi, *Al-Wajeez in Administrative Law*, Dar Al-Fikr Al-Arabi, Cairo 1996.