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### TOWARDS DEFINING THE LEGAL NATURE OF TRADE UNIONS UNDER THE RULINGS OF THE JORDANIAN ADMINISTRATIVE JUDICIARY.

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**Trade unions, public law persons, private law persons, administrative judiciary, moral personality**

**Abstract:**

With many countries adopting a modern contemporary management approach, the idea of the public facility is gradually shifting, so it is necessary to grant and give these unions some of the privileges of persons of common law, in addition to granting them moral personality in order to achieve administrative independence and financial independence, so that they can carry out their work and carry out their mission.

**First: Identifying the subject of the study and its importance**

Trade unions are considered to be collective organizations aim to regulate trade public facilities where their activities concentrates in observation and directing a specific trade activity. They are the most national society institutions in spreading and doing activities; their administration are managed by trade councils chosen through election style by those who belong to a specific trade party based on specific procedures stipulated on in the law of that union or internal system. Trade unions derive their legal existence from Jordanian Constitution of 1952 and its amendments based on the Article 16/3 which sated on : “The law regulates the method of establishing associations, unions and political parties and control their resources”. The Article 23/2 that stated:”2. The state protects labor and sets it legislation based on the following principles: “f. Free trade union organization within the law”. Therefore, trade unions are considered to be

well-established legal entities as a major component of the state body in partnership with the public sector. These unions play their part in protecting interests of their affiliates and defending their rights under laws in effect. Thus, the legal text granted laws the mission of regulating trade unions, define their tasks and the mechanisms of the work of their bodies to ensure their administrative and financial independence to run their affairs and achieve their objectives.

As long as trade unions practice their activities under the principle of legality, they can definitely practice their role. We find that unions derive their legality from the text of the Article 23/2/1 of Jordanian constitution which states on: “The state protects labor and set it a legislation based on the following principles .....etc.”. **The disagreement which was and is still occupying the Jordanian jurisprudence and judiciary lies in determining the legal nature of trade unions and whether if there are persons from the public law or the private one? This study aims to define the legal nature of trade unions the rulings of the Jordanian administrative judiciary.** Therefore, trade unions have some privileges which the public law persons have in order to do their duties related to public interest and serve their affiliates such as issuing administrative decisions to regulate their relations with affiliates whether they are individual, regulatory or disciplinary laws. These privileges make trade unions subject to rules of the public law, and thus the jurisdiction of the administrative judiciary to hear appeals related to those decisions, like appeals related to disciplinary decisions issued by the disciplinary committees belong to those unions.

### **Second : Problem of the study**

The issue of defining the legal nature of trade unions is considered to be one of the issues that raised a wide juristic and legal controversy particularly to the Jordanian administrative judiciary at the time when the Jordanian legislator was silent to define the nature of those unions specially when deciding several related laws. It is noticed that the position of Jordanian administrative judiciary towards this issue which considered trade unions from the private law persons for a while, then the situation remained as it was until the Supreme Administrative Court ruling No. 62 of 2017 has been issued which is considered to be the changing point in the method of Jordanian administrative judiciary that considered trade unions from public law persons.

### **Third: Domain of the study**

The study concentrated on showing the position of Jordanian, Egyptian and French jurisprudence, then the position of Jordanian administrative judiciary and legislator on the issue of defining the legal nature of trade unions through headlines that the researchers included in the study.

### **Importance of the study:**

1. Rareness of specialized references in this field.
2. Lack of judiciary judgments issued by Jordanian administrative judiciary related to the subject of the study.

3. Lack of specialized jurisprudence studies related to this study.

#### **Fifth: Methodology**

The two researchers in this study adopted the comparative method at times and the descriptive analytical method at other times through what the Jordanian administrative judiciary has issued of judgments related to this subject at other times in different locations of the current study.

#### **Sixth: study structure**

To deal with the subject of the study the two researchers divided this study to be served as follows:

#### **The first requirement: Essence of public trade unions**

#### **The second requirement: Different trends in defining the legal nature of public trade unions**

#### **The first requirement**

#### **Essence of public trade unions**

Trade unions are considered to be among the largest components of Jordanian civil society and the most influential ones that have a major role in setting the public policies and main features to practice any trade activity. Public trade unions are characterized by large numbers of their affiliates such as the unions of lawyers, doctors and engineers where these unions take it upon themselves the issue of regulating the trade work according to the category and nature of profession of each of them; this led to setting a description of public administrative authority on some works of these unions to enable them to manage and serve affairs of their affiliates. It is worth noting that trade unions differ from unions or labor ones. In this requirement we will explain the essence of these unions through explanation of their concept and the difference between the concept of trade unions and unions or labor unions as follows:

#### **The first section: Concept of public trade unions**

#### **The second section: Distinguish between trade unions and labor unions**

#### **The first section**

#### **Concept of public trade unions**

Public trade unions are considered of private lobbyists groups that have their regulation trade roles<sup>1</sup>, where the role of trade unions lies in protection and taking care for interest of their affiliates and facing policies may imposed on them by executive authority that restrict freedom of their works and limit the performance of its duties; where the existence of this human collective in a regulated way aims to protect a specific category united in similar job characteristics service nature to be served. From here the term trade unions began to rise with noting that the different use of the

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(<sup>1</sup>) Mohammed Ahmed Migdad, Evaluation of unions performance effectiveness in Jordan, Jordanian Journal of Social Sciences, Deanship of Scientific Research, University of Jordan, vol. 5, ISS. 3, 2012, p 439.

names indicating them led to the appearance of a jurisprudential dispute in order to find a clear and definite meaning to such these groups; some of them called them professional chambers or trade unions or unions of professions and other names like the Algerian legislator <sup>1</sup>, while the Jordanian legislator satisfied with one word to indicate to these organizations which are known as (trade unions).

**First: Concept of trade unions in language:**

A. Union in language is derived from the root investigate, and investigator is the one who knows things, he investigated it and found it, and it is said the president of a group of people who is responsible for them, represent them and take care of them. It is also said the leader of workers is the one who works to achieve their interests <sup>2</sup>, so the word union means first and forefront in everything and take care of them, serve their interests and protect them against any dangers facing them.

B-Professional concept in language: It is derived from the root profession which means a service, and it is said he works them i.e. served them and means service and work <sup>3</sup>. All of professional indications mean service, profession or job in a specific field of life such as a doctor, lawyer, engineer and journalist.

Second: Concept of trade unions from the administrative jurisprudence perspective: The jurisprudence perspective deals with defining the concept of trade unions term, but there was no agreement on defining a specific concept of this term; a part of jurisprudence defined it as : “An organization consisted freely of a group of workers in a continuous and regulated way to represent their profession, defend it, protect their interests and improve their conditions “<sup>4</sup>.

Another part of jurisprudencesaid that: “public institutions which have moral personality and some public law powers consisted of all profession affiliates they belong to and they are managed by councils selected among them <sup>5</sup>. Others said that : “ Those organizations which their activities concentrate on affiliates of a profession where they control and direct their

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(<sup>1</sup>) Ibrahim Rabi’y, specialist of trade unions and their nature in the Algerian law, published study, Journal of Legal and Social Sciences, Xian Ashour University, Djelfa, ISS. 10, 2018, p 314.

(<sup>2</sup>) Ahmed bin Faris bin Zakariaabu Al-Hassan, Dictionary of language measurements- Checking by Abdel Salam Hroun, part 5, House of Thought, 1979, p 466.

(<sup>3</sup>) Jamal al-Din ibnManzur al-Ansari, The Lisan al-Arab Dictionary, 3<sup>rd</sup> ed. , vol., vol.13, house of Sader, Beirut, 2010, p424.

(<sup>4</sup>) Mustafa Ahmed Abu Amr, Collective work relations, 1<sup>st</sup> ed. ,House of new university, Alexandria, 2005, p 45

(<sup>5</sup>) QasemJamilQasem, Public institutions in France, Arab Organization of Administrative Science , 1981, Amman, Jordan, p 42.

professional activities by professional staffs usually authorized by law some privileges of the public authority”<sup>1</sup> .

On the other hand some jurists said that : “trade unions are obligatory organization or gathering includes persons practicing one or closed profession whether they are employees , work or self-employed and aims to regulate the affairs of profession and defend their affiliates’ interests and express their will ”<sup>2</sup> .

We can say that trade unions are: “Legal gathering with privileges of the public law which have their independence moral personality and consisted of a number of persons where connected by the homogeneity of work, manage their affairs, care for their interests and regulate relations and represent them before public authority managed by elected councils based on regulations and laws in effect in the country”<sup>3</sup>

**We conclude of what mentioned above that trade unions as one of civil society components and have a major role in managing, regulating and supervising a number of professions have complete administrative and financial independence, and they are the represented party of their affiliates in contact with public authorities and each issue of their profession through committees derived usually from the council of union called the committee of profession affairs where most of public authorities tend to leave the issue of regulating professions affairs to their owners**<sup>4</sup>.

**Third: Concept of public unions from the point of view of administrative judiciary and legislator:**The Jordanian legislator didn't

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(<sup>1</sup>) Profess. Nawaf Kana'an , The administrative law, second book, House of culture for publishing and distributions, Amman, Jordan, 2008, p 36.

(<sup>2</sup>) Mohammed Jamal Ahmed Asmar, Rules of unions in the light of Jurisprudence, MA thesis, Faculty of law, Islamic university- Gaza, 2017, p 10.

(<sup>3</sup>)It is legally agreed that what distinguishes professional unions is that they have their own independent moral personality. See the ruling of the Supreme Administrative Court No. 896 of 1998 - issued on 6/27/1999, which states: “On the other hand, it is shown from Law No. 17 of 1983 and the amending laws thereof, that the union is a professional, cultural institution that enjoys legal personality and practices its activities through the General Assembly and the Council of union ... etc. ” See the text of Article 3 of the Jordanian lawyers union Law and its amendments issued in the Official Gazette No. 2357 dated 06/04/1972 on page 666 amended to Law No. 25 of 2014, which states: “The union has legal personality and financial independence and its affairs are managed by a council elected by the General Authority in accordance with the rules of this law, and represented by the president before the judicial and administrative authorities and before third parties. ”See also the text of Article 3 / B of the Jordanian Medical Association Law issued in the Official Gazette No. 2357 dated 04/06/1972 on page 764. The Article 5 of the Engineers union Law issued in the Official Gazette No. 2357 dated 06/04/1972 on page 782.

(<sup>4</sup>) Dr. Sami Jamal Addin, Foundations of administrative law – Theory of administrative work, 1<sup>st</sup> ISS. , House of university press, Alexandria, 2012, p 193.

deal with the issue of defining the concept of public unions but left it to judiciary and jurisprudence. The Jordanian administrative judiciary dealt with a definition of trade unions when explaining the concept of Jordanian lawyers union as: “Jordanian regular lawyers union is a body established by a law based on caring for the category of lawyers and has a power on its affiliates derived from law and represents the interests of this category which are regulation powers to order their works and affairs and issue administrative decisions in these affairs”<sup>1</sup>.

Jordanian Administrative Court said its statement about the veterinarians as :”It is based on looking after interests of a specific category who are veterinarians affiliated to it and the decisions of their council……”<sup>2</sup>.

It is clear from the above that Jordanian administrative judiciary relied in defining the concept of trade unions on several bases which are:

\*Trade unions are independent committees where their tasks are supervision, observation and direction.

\* Trade unions are committees which have a moral personality that granted them financial and administrative independence and don’t belong to any authority.

\*Trade unions are committees managed themselves by themselves through elected councils by their public committees and ruled by internal laws and regulations.

\*Trade unions are the legal representative of their affiliates before the public authority and they have the right to object on what the public authority issues of legislations or procedures if they are against their affiliates’ interests.

\*Trade unions have privileges derived from the powers of the public law which is an essential trait to enable them to practice their works and start their disciplinary role, observation and supervisory role on their affiliates.

From our point of view we think that trade unions have an effective role in building features of democracy and participatory in the country because of their role where the public authority doesn’t issue any regulations or take any action that affects any specific category represented by trade unions without their consultation or take their opinion before starting those procedures believing that trade unions is a major part of the civil society components, but they were exposed to many criticism that threaten their existence or the idea of their establishment for many considerations such as the following<sup>3</sup> :

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(<sup>1</sup>) Judgment of Jordanian Administrative Court- Supreme Justice –previously No. 186 of 1987- on 29-3-1988

(<sup>2</sup>) Judgment of Jordanian Administrative Court- Supreme Justice –previously No. 223 of 2016- on 29-6-2016

(<sup>3</sup>) Mohammed Jamal Ahmed Asmar, previous reference , p 29 and below.

1. Trade unions will lead to establish factions or political trends which may be abused in regulating organizing sit-ins or demonstrations or calling for organized strikes that affect negatively on public facilities that aborts the idea of their existence.
2. From our point of view we think that this consideration collapses against an argument stating that unions are the safety valve against the public power overrunning the rights of their affiliates.
3. Trade unions don't believe in the role of judiciary in protecting and collecting rights where they consider that from their powers and competences. From our point of view we think that this consideration isn't valid to be adopted in order to undermine the idea of trade unions since trade unions are found to help the country and its agencies in offering services and relief for the state in meeting the individuals needs satisfying the desires of individuals as the country no matter how it becomes, needs someone to relieve its shoulders and take responsibility with it and reduce the burden on it.
4. Trade unions are organized entities and committees that may pose a threat to the policies of the country and maximize the role of the opposition of all country's programs which can't be shown to public for national security considerations and not exposed the safety and security of country for danger. From our point of view we think that this consideration won't disparage the legitimacy of the existence of trade unions as they concern with internal organizational issues related to their affiliates while practicing their interests and role based on laws and rules in force inside the country, and has no relation with what the country adopt of policies and approaches in ruling the country.

### **The second section**

#### **Distinguish between trade unions and labor unions**

Under the Jordanian legislations trade unions are divided to labor and trade unions; the legal base of the first union is in the constitution in addition to the labor law, the legal base of the second one is in the constitution and trade union law for each of them such as the lawyers union law, engineers union law and teachers syndicate which is considered to be the modernist one established in the Kingdom. Some jurisprudence defined labor unions as: **“Association consisted of persons practicing one profession, similar ones or connected where their objective is to investigate agricultural, commercial, industrial or economic interest and protect them and the perform the profession** <sup>1</sup>. Another part defined them as : “ Trade public facilities established by law to direct and observe trade activity and have organized and disciplinary power on their affiliates obligatory and have some privileges of the public authority<sup>2</sup>.

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(<sup>1</sup>) Mohammed Bakr Qabbani, Theory of trade public institution in administrative law, 1<sup>st</sup> ed. , House of Arab renaissance, Cairo, 1962, p 83.

(<sup>2</sup>) Mohammed Hajaj, The legal nature of issued decisions by trade bodies, a juristic legal study, published study, Al-Manara Journal of Legal and Administrative Studies , ISSS.7, 2014, p 51.

Concerning labor union related to labor law, the Jordanian legislator meant by employers union is that committee which represents the employers <sup>1</sup>. Jordanian legislator also defined the word definitely that union is a labor trade organization formed according to law and it cares for regulating affairs of employees in one profession such as workers union in coal mines or in the factories of textile. We can say labor unions are: grouped organizations dominated by one trade nature whether they are economic, industrial, commercial or agriculture in order to organize these areas and achieve stated goals legally<sup>2</sup>. The labor law forbids these unions to practice any action disagrees trade activity <sup>2</sup>. The labor law forbids trade unions to practice any activity based on race, doctrine or religion <sup>3</sup>.

The Jordan legislator defined the labor categories which have the right to establish labor unions which participate with work with industrial and economic fields or aspects related and crossed with those industrial and economic activities <sup>4</sup>.

It is worth noting that the Jordanian legislator has also given employers the same of what workers have been given in establishing labor unions provided that their number is not less than twenty-five people <sup>5</sup>. The Jordanian legislator has banned the owners of industrial and economic activities whether employees or employers to establish similar labor unions or any other union has been established <sup>6</sup>.

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(<sup>1</sup>) The Article 2 of labor law and its amendments issued in official Gazette No.4113 on 16/4/1996 stated on : “The Article 2 of labor law and its amendments issued in official Gazette No.4113 on 16/4/1996 stated on. P 1173 on :”These words and phrases anywhere mentioned in this law definite meanings below unless the consort means otherwise”.

(<sup>2</sup>) Dr. Ali Abbas, The role of civil society institutions ( associations and unions) in reinforcing the individual right in public participation in HKJ, an analytic applied study supported by EU, faculty of law, Petra University, Amman, 2018, p27.

(<sup>3</sup>) Article 98/C of Jordanian Labor Law mentioned before stated on ; “It is not permitted to establish any union for workers or employers which of their goals do any activities based on ethnic m religious or doctrine and it isn’t allowed to practice any of these activities after establishment.

(<sup>5</sup>) Article 98/A of Jordanian Labor Law mentioned before stated on :” The union shall be consisted of a number of workers of no less than fifty workers in the same industry, economic activity or industries and economic activities that are similar or related to each other in one production”.

(<sup>5</sup>) Article 98/B of Jordanian labor Law mentioned before stated on: “Employers of any industry or economic activity of less than twenty-five people have the right to establish a union to look after their interests related to the rules of this law.

(<sup>6</sup>)Article 98/D of Jordanian labor Law mentioned before stated on: “The minister and through the council of the union has the right to classify industrials and economic activities and it is permitted to establish unions based on the rules of the two items A and b of this article where every industrial or economic activity should have no more than a union to represent them and taken in consideration in that international and Arab classification”.



We think that the goal of hat not to create a conflict among the work of these unions because of unity of their tasks and objectives and unification the reference which manage employees affairs and employers in industrial and economic activities and this is confirmed by Supreme Administrative Court <sup>1</sup>.

The legislator also defined the objectives that the labor unions seek to achieve such as solving collective labor disagreements , achieving social , economic and cultural awareness, achieving a suitable environment of work, offering social and health services and consumption facilities <sup>2</sup>.

The difference appeared clearly between professional unions and labor ones in many positions where professional unions gave an independent moral personality and have some privileges of the public law <sup>3</sup> , and their decisions are subject to the administrative judiciary and affiliation to them is obligatory to practice the profession which contrary to labor unions as they don't have the privileges of the public law since they belong to the private law <sup>4</sup> , therefore , labor unions are established without a need to regulations to organize their works, as affiliation to labor unions is voluntary based on union freedom<sup>5</sup>. In addition to, the legal base of labor unions is found in the text of Article 23 of Jordanian constitution and twenty-first chapter of labor law”

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(<sup>1</sup>) Look Supreme Administrative Court judgment No.87 of 2015 hearing on 19-- 2016 stated on:”.... Because of the appellant's request from the appellant against whom the registrar of trade unions and employers' unions at the Ministry of Labor, in addition to his job to establish a union for workers in engineering and maintenance in it, violates the task classification decision and the industries whose workers are entitled to establish unions for them of 1999 because of similar goals, which exposes this sector to disagreement and conflicts of interest and ends, which makes the decision to refuse to register the union of Engineering and Maintenance Workers connected with the provisions of the law, and part of the jurisprudence believes that the position of the Jordanian jurisprudence and the judiciary on this issue agrees with the state standards related to freedom of association, for more detailed makes the decision of refusing registering union of workers in engineering and aircraft maintenance based on the rules of law, look Dr. Ali Dabbas, previous reference, pp. 28 & 29.

(<sup>2</sup>) For more detailed about objectives of the labor unions see the text of Article 99 of Jordanian Labor Law mentioned previously.

(<sup>3</sup>)Farhan Al-Masaeed, Bakhit Al-Khalayleh, an attempt to define the legal nature of professional unions in light of the subjection of some of their decisions to appeal before the administrative judiciary, published research, Al-Manara Magazine, ISS. 2, 2018, p 376.

(<sup>4</sup>)This is confirmed by the judgment of the Supreme Administrative Court No. 62 of 2017 hearing on 1-3-2017, in which it stated: “Even if they have a non-governmental civil formation, such as trade unions, because they are established under laws unlike labor unions that are established based on laws permitting their establishment and not considered a person of public law ... etc”.

(<sup>5</sup>)Farhan Al-Masaeed, Bakhit Al-Khalayleh, previous reference, p 376.

labor unions and employers unions” while professional unions gain their existence legality from the text of Article 16/2/3 of Jordanian Constitution and the two organizations meet on non-permission of departing from the objectives of their establishment stated legally<sup>1</sup>. **In brief we think that professional unions differ from labor unions as both of them have their independent objectives, constitutional base and a legal system rules and regulates their affiliates’ relation with their profession in addition to that professional unions cares for organizing free professions such as the lawyers , engineers and doctors, while labor unions organize those professions that are outside the circle of free profession such as hunting, agriculture, industry and trade in addition to that each of them has an independent legal system<sup>2</sup>, and labor unions are also considered of persons of the private law and don’t have any privileges of the public law which are found in professional unions.**

### **The second requirement**

#### **Different trends in determining the legal nature of public professional unions**

The emergence of profession unions is considered one of the most important aspect of methods and trends of modern administration<sup>3</sup> through which the public authority enables profession unions to practice some of their origin competences in managing affairs of their affiliates of one profession owners which is known by professional organization which is one of the most important job that cares to form the cultural and economic style of life for their affiliates<sup>4</sup>. With the variety of the role of professional unions in professional work, the need became urgent for the emergence of a legal template which shows the legal nature of those unions to practice their businesses under a legal umbrella to protect them and others who deal with since the Jordanian legislator admitted to the professional unions with the independent moral personality, so considering those unions from the persons of the public or private law has many considerations like defining the competent legal reference in managing their businesses and issued decisions. Defining this nature has also an effect to consider if professional unions money is public or private money? in addition to consider the employees of those unions as public ones. To show the legal nature of those unions we will deal with this issue through showing the position of administrative jurisprudence, then the position of the Jordanian legislator and finally the position of the administrative judiciary as follows:

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(<sup>1</sup>) See decision of the Office of the Interpretation of Laws No. 14 of 2002, session on 11-25-2002 .

(<sup>2</sup>) See in this opinion: Farhan Al-Masaeed, Bakhit Al-Khalayleh, previous reference, p 377. Ibrahim Rabi’y, previous reference, p 318.

(<sup>3</sup>) Nisreen Fathi Hussein Odwan, The legal nature of professional unions in Jordan, MA thesis, faculty of high studies, University of Jordan, 2010, p 1.

(<sup>4</sup>) Mohammed Bakr Qabbani, previous reference, p 44.

## The first section

### The position of administrative jurisprudence from the legal nature of professional unions

The position of jurisprudence towards defining the legal nature of profession unions refers to the disagreement of jurisprudence approaches and what they adopt of ideas and principles related to the public theory of public facility as a whole and trade unions as a part of modern trends for the country in managing its facilities, where the emergence of trade unions is considered the result of production and change occurred to the concept of the country; the trade organizing isn't restricted to the public authority, where the trade unions become able to practice that activity based on the laws of the country. The position of a part of French jurisprudence tend to consider trade unions from the persons of the public law <sup>1</sup>, while others thought that trade unions are private committees which manage the public facilities but they are from the persons of private law. Another part of jurisprudence thought that the legal nature of trade unions is an ambiguous issue but the most correct jurisprudence opinion in France thought that trade unions are committees that are parallel to the public facilities since they provide public services and can't be said to be separated from the public authority <sup>2</sup>, whereas the position of jurisprudence in Egypt isn't different from the French one, where the most of jurisprudence thought that trade unions are committees that have an independent moral personality which serve the public interest as they are considered to be a new type of public institution and by their nature they issue administrative decisions <sup>3</sup>. **The position of Hashemite Kingdom of Jordan** is divided into two trends, where the first part think that trade unions have a mixed legal nature that can be defined and based on the activity that they practice whereas the public trade elected councils are subject to the observation of the administrative judiciary as they considered from the persons of the public law. Concerning to what related to investing the money of trade unions and the salaries of their members which are subject to civil judiciary observation, trade unions appear to be persons of the private law <sup>4</sup>

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(<sup>1</sup>)Waddah Al-Hamoud. The public facility as a criterion to determine the extent of the administrative law, MA thesis, faculty of high studies, University of Jordan, 1992, p 38.

(<sup>2</sup>) Mohammed Jamal Othman Jibril, The administrative license, PhD thesis, faculty of law, Ain-Shams University, Cairo, 1992, p 197.

(<sup>3</sup>) Farhan Al- Masaeed, Bakhit Al- Khalayleh previous reference , p 382. Dr. Ahmed SafaYahia, The legal adaptation of trade unions, published study, Anbar University Journal of Legal and Political Sciences , ISS. 14, 2018, pp. 321 & 322.

(<sup>4</sup>) See the text of Article 5/A/1 of the administrative judiciary law No. 27 issued in the official Gazette No. 5297 on 17/8/2014 on page 4866 which stated on: “ A. The administrative Court is exclusively competent in all of appeals in the results of elections for the boards of the chambers of industry and commerce bodies. 1. Appeals related to final administrative final administrative

The second opinion adopters think that trade unions are of the private law persons regardless of the activities they practice although they have character of facility with a special nature related to their activities to run a public facility of special type, too<sup>1</sup>.

### **The second section**

#### **The legislator and judiciary position of the legal nature of trade unions**

The Jordanian legislator didn't limit the legal nature of trade unions where he satisfied of giving those unions a moral personal which resulted in administrative and financial independence<sup>2</sup>, they have also the right to issue their systems and organized regulations and elect their councils and committees under the control of public authority, and thus he didn't limit the legal nature of trade unions although he gave those unions the independent moral personality but he didn't grant them the character of public institutions. We can say that the Jordanian legislator should work on inserting the legal texts in the related laws that give trade unions the character of public persons and give them the description of public institution clearly and frankly.

The indications of position of Jordanian judiciary towards the issue of limiting the legal nature of the professional unions began to emerge with the issuing of the judgments of the Administrative Court -former Supreme Justice – where the position of the judiciary was clear concerning trade unions are of the persons of a private law and which does not fit the description of public institutions aren't even considered of the persons of the public law. The administrative judiciary confirmed this principle in many of its judgments whether issued by The Supreme Court of Justice or the administrative after cancelling the last name<sup>3</sup>. The state remains as it is

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decisions, including: 1. And unions, societies and clubs registered in the Kingdom ...etc. for more details about this trend see Prof. Hamdi Qubailat, Chapter 1, 1<sup>st</sup>. ed. Dar Wa'el for publication, Amman, 2010, p 290.

(<sup>1</sup>) Prof. Nofan Mansour Al-Ajarmeh, The principles of the administrative law in Jordan, 1<sup>st</sup> ed., Bookshop of University, 2011, 362.

(<sup>2</sup>) For more details about rules that judge trade unions see Dr. Ahmed Safa Yahia, previous reference, p 326.

(<sup>3</sup>) See the Administrative Court judgment No. 417 of 2017, hearing on 1-17-2017, in which it stated: "Before deciding for appeal, and since the court's jurisdiction is from public order and the court may raise it on its own, the court finds that the teachers' bar is like the rest of the professional unions from private law persons and not from public law people, and in order for its council's decisions to be subject to appeal with us, it is imperative that there be a text in its law that allows the appeal before our court, as Article (5 / A / 9) of the Administrative Judiciary Law No. 27 of 2014 ... etc.", and judgment No. 190 of 2015, hearing on 12-10-2015, which states: "Before responding to the reasons for the appeal, we find that the representative of the respondent raised a defense that the case was rejected as a form of lack of jurisdiction because the Bar Association, like the rest of the professional unions, is not a person of law. The general public, but rather it is one of the persons of private law, and the decisions issued by it are not administrative decisions that accept appeal before this court."

until the issue of a new ruling by the Administrative Court which considered as a judiciary precedent according to Jordanian judiciary as Supreme Administrative Court ruled in its new judgment a public principle including the public unions of the persons of public law<sup>1</sup>. Then judgment of the Administrative court rolled over on the same method and context considering trade unions of public institution and have independent moral persons and have a financial and administrative independence, and thus they considered oh persons of public law<sup>2</sup>. Therefore, we think that the Jordanian judiciary settled a wide debate about limiting the legal nature of professional unions and considered them of persons of the public law which agrees with what the council of French and Egypt have agreed on. The following question is addressed here: What is the legal nature of money of professional unions? We will answer this question in the light of what we have explained previously that the money of public unions is a private money and can't be considered as private one although the legal nature of those unions seem to be public law persons, The relation of professional with what holding of behavior with others are ruled the principles of the private law. It can't be said contrary to that because professional unions have a moral personality and can hold any contracts or investments regardless their nature where they can appear in one of the two parts as they are one person of the private law<sup>3</sup>. **It is worth noting that the Jordanian legislator although he considered the money of public unions**

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(<sup>1</sup>) Supreme Administrative Court judgment No. 62 of 2017, hearing on 1-3-2017, in which it stated: "It is based on this that the decisions issued by the various trade unions established by law such as Doctors, Lawyers and Engineers Association ... etc. and their purposes and objectives are of public interest and have the right to do so. Their members have a disciplinary authority, and even if they are not included in public institutions, they are among the people of public law, because they share the components of these persons, and it follows that its decisions in disciplinary matters or matters of registration for its records or other purposes related to the domination of the union's membership are administrative decisions that may be appealed before the administrative judiciary.

(<sup>2</sup>) Administrative Court judgment No. 9 of 2020, hearing on 06/23/2020, in which it was stated: "We find that after the issuance of the General Authority of the Supreme Administrative Court's decision No. Established by law, it is one of the public law persons ....., which means that the bar is one of the unions whose members are obligated to join them in order to practice their profession, so it is among the public law persons mentioned by the decision of the Supreme Administrative Court, and its decisions are subject to appeal before the administrative judiciary .. Etc. "

(<sup>3</sup>) See the judgment of Amman Court of Appeal No. 18059 of 2019 hearing on 15-7-2019 in which no mention of there is any rule in it that its money is public, or that it is a public or official institution, but that the Bureau of Laws Interpretation is among the essence of public institutions, and this did not apply to the Engineers union, and therefore their funds are not public funds as they are professional unions, not a government entity or a public institution or It is based on this that the letter of the Prime Minister directed to the Director of Finance, as well as the letter of the Minister of Public Works directed to the union of Engineers regarding exempting projects funded by the US government from taxes and fees are not binding on them in light of what we have shown previously

**private one, but he succeeded in setting the descriptive of public money on this money in order to offer it penalty protection and this is what we confirm on<sup>1</sup>. Our opinion of that is the issue of considering the money of unions as public money or not shouldn't be surrounded by legal restriction as obligation of considering the money of professional unions as public since they belong to a person of the public law and they are dedicated to serving union activities, whereas other unions moneys which are not dedicated for serving union activities aren't considered public moneys but private which are subject to the rules of civil law and ordinary judiciary and this doesn't contradicts our position of the legal nature of professional unions as they of persons of the public law, but we think that it is necessary to adopted mixed criteria if we expose to the issue of determining the nature of money based of what we explained before.**

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(<sup>1</sup>) See Article 2/B/4 of The Economic Crimes Act issued in the official Gazette No. 3891 on 17-4-1993 on page 722 which stated : “B. The term public funds for the purposes of this law includes all money that is owned or subject to the management or supervision of any of the following bodies: 2020, in which it was stated: “The funds of unions, federations, societies and clubs are public funds in accordance with what is contained in Article Two of the Economic Crimes Act ... etc.”

## **Conclusion**

Professional unions are considered to be supportive regulatory bodies to the public authority; they regulate affairs of the profession and supervise their beneficiaries and have an independent moral personality which grants them administrative and financial independence and are considered one of the public institutions that have a legal nature granted them the description of persons of the public law. The Jordanian administrative judiciary plays a major role in laying this principle, and thus we conclude this study with mentioning the most important results we found in this study as follows:

### **First: The results**

1. Trade unions are new public facilities which have a moral personality that are the same as public institutions.
2. Trade unions are subject to a mixture of legal rules particularly the rules of public law where trade unions are considered to be the output of development of public facilities from its modern vision.
3. The Jordanian legislator didn't put a definite criteria to show the legal nature of trade unions but set this task to the administrative and jurisprudence judiciary believing that the capacity of the last two to face this issue since what the administrative law owns of continuous development, amendment.
4. The administrative judiciary set rules and limits to specify whether trade unions of persons of the public law or private one which stipulated to admit that a union is of persons of public law is that it should be an establishment legally.

## Second: Recommendations

1. We recommend the Jordanian legislator to conduct the essential legal amendments which resolve the issue of determining the legal nature of trade unions as considered to be of persons of the public law based on explicit legal texts included in each law of a union alone as what he did when granted trade unions a moral personality.
2. We recommend the Jordanian legislator to apply what the Jordanian administrative judiciary has confirmed on concerning the legal nature of trade unions through issuing explicit legislations including that principle.
3. Activating the role of trade unions through warning their affiliations of the legal nature of the trade they belong to as an objective of the union.
4. Unification of judiciary principles and rules related to determining the legal nature of trade unions.



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