

Jordan



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I. INTRODUCTION

The constitutional reforms in any country are the main support for developing a state applying the rule of law. A state in which all persons, institutions, and entities are accountable to publicly promulgated laws. Measuring the progress of states in its way of the democratic sphere and the protection of human rights is based on the efficiency of the constitutional system that governs them, which lies in the set of written general rules that define the system of government, the form of the state, the formation of the public authorities in the state, the functions and tasks of each of them, the persons in charge of their administration, and the relationship of these authorities to each other, Individuals' rights and fundamental freedoms, and the constitutional guarantees available to guarantee those rights and freedoms.

II. PROPOSED, FAILED, AND SUCCESSFUL CONSTITUTIONAL REFORMS

There are three main constitutional reforms occurred in Jordan recently, the first is the response for the Arab spring. The second is an amendment concerning the Minister dual nationalities. The third is a result of COVID-19 pandemic which has reached a constitutional level of ambiguity.

The constitutional amendments of 2011, to limit the manifestations of the domination of the executive authority over the legislative authority in various occasions and situations, the most important of which is the issuance of temporary laws, where the state of necessity that allows the Council of Ministers to issue temporary laws in the absence of the Council of Representatives has been redefined and limited to limitation. The executive authority's powers to postpone parliamentary elections for a general delay were also cancelled, and an independent election body was established to supervise and manage parliamentary elections instead of the Ministry of Interior.

However, other manifestations of hegemony by the executive authority over the legislative authority remain present in the Jordanian constitutional system that needs to be reconsidered in any future amendment to the constitution, the most important of which is the right of the executive authority to postpone the constitutionally scheduled National Assembly meeting on October 1st of each year and postpone it. Its sessions and its right to extend the House of Representatives' term for no less than one year and not more than two years.

Whether the parliamentary government in Jordan is based on appointing the leader of the winning party as prime minister or the matter is limited to selecting the prime minister by the nation's representatives, the constitutional frameworks for the relationship between the legislative and executive authorities in the Jordanian constitution remain unclear and need to be reconsidered towards devoting The principle of full cooperation and harmony between the two authorities, and avoiding all manifestations of competition and rivalry between the legislative and executive authorities.

The importance of re-demarcating the relationship between the legislative and executive authorities also emerges in the fact that the supreme constitutional reform that the Jordanian state intends to undertake, which is to implement the idea of the parliamentary government, may include the inclusion of ministers in the executive authority who are originally representatives in the legislative authority, and this is known as the principle of parliament ministers, which It would threaten the principle of separation of powers unless the foundations and pillars on which the relationship between the legislative and executive authorities are based are clear and predetermined in such a way that the deputy who works as a minister does not fear that there will be a conflict or inconsistency in his work tasks in both authorities.

The Royal Decree was issued with the approval of the Council of Minister's decision, announcing the implementation of Defense Law No. 13 of 1992, throughout the Hashemite Kingdom of Jordan, effective March 17, 2020.

The aim of activating this exceptional law is to provide an additional tool and means to protect public health, maintain Jordanians health and safety, improve performance, and raise the coordination level among all to confront this epidemic.

The Prime Minister of Jordan issued Defense Order No. 21 of 2020, to ensure the continuation of the right to litigate, and the regular functioning of the courts in light of the repercussions of the spread of the Corona epidemic on the allegation that Defense Order 21 supported this order, just as all defence orders issued are Article 124 of the Constitution and Article 3 of the Defense Law and the procedures issued according to Defense Order 21; For the benefit and safety of lawyers, judges, employees, and citizens who review the courts.

The issuance of the defence order was until some texts in the Code of Civil Procedure or other provisions were dealt with. This defence order was a shock to the lawyers and those interested in the justice sector, as it included interference in court procedures, which prompted the Bar

Association to implement a comprehensive strike to prevent pleading before the courts.

III. THE SCOPE OF REFORMS AND CONSTITUTIONAL CONTROL

In light of the 2011 constitutional amendments, an administrative judiciary of two degrees was established in Jordan through the Administrative Judiciary Law No. (27) of 2014, which provided for the establishment of primary administrative courts and other appeals, which replaced the Supreme Court of Justice. An independent constitutional judiciary was also established, represented by the establishment of the Constitutional Court according to its own law No. (15) of 2012 to act as the original oversight body over the constitutionality of laws and regulations in force and the interpretation of the provisions of the constitution. Members of the Senate and five judges of Jordan's highest regular court.

The question always arises regarding the judicial authority about the extent to which Jordanian laws and courts devote fair trial standards and the right to litigation, especially with regard to judicial procedures before special courts, specifically those that are established by a special law, and courts of a military nature, such as the State Security Court, the Police Courts, and the Military Court. Although the 2011 constitutional amendments limited the jurisdiction of the State Security Court to five crimes, namely treason, espionage, terrorism, drug crimes and currency counterfeiting, the laws and ordinary laws that were issued that addressed the definition of previous crimes, especially the Jordanian Terrorism Prevention Law, have expanded into the crimes that can be Consider them as images of the crimes mentioned in the body of the constitution.

The legal system applied in Jordan is the Latin system that relies on legislation as a basic source for the legal base in addition to custom. The principles of Islamic Sharia, jurisprudence, the judiciary and general principles of law are informal and reserve sources that help the judge in the interpretation and application of legal texts, with the exception of personal status issues where Islamic Sharia is the main source of Jordanian personal status law. This is in contrast to the situation in the Anglo-Saxon legal systems that rely on case law and the decisions of the higher courts as a primary source of legal basis.

With regard to the strength and compulsion of the legal rules in Jordan, they fall within a legislative hierarchy on which the constitution rests as it is the supreme law in the country and which no other legislation that contradicts or opposes the texts of which must be issued. In the legislative hierarchy, the constitution follows the laws issued by the National Assembly, followed by the regulations issued by the Council of Ministers, and the instructions issued either by the Council of Ministers or any of the ministers. It follows from this legislative hierarchy that no lower legislation may contravene a higher one, and if any law violates the provisions of the constitution, then that law is considered unconstitutional and can be challenged by annulment before the Constitutional Court. If a system violates the provisions of the law, then it is considered an unlawful system, and it shall be challenged by cancellation before the administrative courts.

Monitoring the constitutionality of laws and regulations in Jordan is a subsequent monitoring after the law has been issued and becomes

enforceable, so that the unconstitutionality of any law or system is not challenged unless it is adhered to by one of the parties in a case pending before the courts, unlike the situation in many courts. Arab and foreign constitutional reviews that exercise constitutional control prior to the promulgation of the law, so that if it is proven to the court that the draft law violates the constitution, then it is not issued in the first place.

Regarding international conventions that Jordan ratifies and enter into force, the jurisprudence of the Jordanian Court of Cassation has settled on considering it higher than ordinary law and less than the constitution, meaning that no international agreement may violate the provisions of the constitution, and that in the event of a conflict between a text in an approved international agreement According to the rule of law, the priority in application is the international treaty ratified.

Nevertheless, the main problem remains in the unconstitutionality of the status of international treaties and agreements in the Jordanian legal system as an explicit text in the body of the constitution, and the disagreement over the scope of international treaties and agreements that are subject to the supervision of the National Assembly and which are currently limited to treaties and agreements concluded between states only and which carry something to the state treasury. Treaties and agreements concluded between the state and natural or legal persons and which affect the public or private rights of Jordanians, and the state treasury bears some of the expenses.

IV. LOOKING AHEAD

The current reality that the Jordanian constitutional system suffers from due to the lack of clarity of the constitutional vision in the relationship between the three authorities in the state and the governmental and judicial agencies related to the practice of the system of government increases the importance of forming a future outlook to improve this reality based on the following foundations:

1. PUSHING FOR THE FORMATION OF A PARLIAMENTARY GOVERNMENT

At the top of the hierarchy of reform endeavors in Jordan is the achievement of greater harmony between the various parties of the political system in Jordan, from an executive authority chosen by the people in fair, fair and periodic parliamentary elections called a parliamentary government, and a legislative authority capable of exercising its constitutional powers in legislation and oversight of the executive authority, An independent judiciary has its own legislation that guarantees the right to litigation and a fair trial.

In terms of implementing the parliamentary government, the monarchy in Jordan spares no effort in highlighting the positive aspects of that reform step and its role in redrawing the constitutional map in Jordan through discussion papers it issued dealing with the priorities and approaches of political reform, and defining the roles of each of the parties to the equation from political parties. The Council of Representatives, the Council of Ministers, individuals, and even the king himself has a role in the approach of the parliamentary government, which is to change his role in favor of considering him the safety valve of the Jordanian constitutional system, so that his constitutional

powers are reduced and considered merely a protector of the nation's den, and the head of state is resorted to in cases that require protection of the higher interest of the state.

In this context, constitutional reforms have not yet succeeded in approaching the implementation of the concept of parliamentary government. What happened on the ground since the beginning of the constitutional reform process was merely adopting a simplified model for parliamentary government represented in applying the consultative rule with the parliament in choosing the prime minister. These consultations, which were implemented for the first time in Jordan in 2012, raised doubts regarding their seriousness and objectivity in choosing the prime minister from the womb of the parliament, due to their failure to be based on clear legal and constitutional grounds.

Therefore, the political and constitutional reform process that took place in Jordan must be reviewed and evaluated in order to initially agree on the form of the parliamentary government that we seek to implement, and whether the matter will stop at the point of adhering to the basis of consecration with the House of Representatives in choosing the prime minister, in this case it is necessary Focusing on the importance of the parliamentary blocs and activating their constitutional and parliamentary role within the House of Representatives in favor of considering them the nucleus of political parties in the Representative Council, or for the overarching goal of reform to push towards the concept of parliamentary government in its full concept, which is based on choosing the head of the winning party as prime minister. The situation We must focus on conducting another review of the constitutional texts and laws regulating political life, foremost among which is the election law, the law on political parties and the law on public meetings, in addition to the law on associations.

2. REFORMULATION OF THE RELATIONSHIP BETWEEN THE LEGISLATIVE AND EXECUTIVE AUTHORITIES

The implementation of the idea of the parliamentary government entails the necessity of working to reformulate the relationship between the legislative and the executive authorities, based on the fact that the executive authority in the parliamentary government will be partisan or at least include party ministers or members of Parliament. This government must prove to it the principle of general mandate in managing the internal and external affairs of the state in a way that enables it to implement its programs and political goals that were elected by the people on its basis. Hence, the general formation of the executive authority in the Jordanian constitution from the king as president and the ministers must take into account this new concept of governance, so that the activation of the general mandate of the parliamentary government must be matched by the gradual push towards the implementation of the restricted constitutional monarchy, which is based on reducing the powers of the king in the constitution in favor of Parliamentary government.

It should be noted in this context that the Jordanian constitutional system has already begun reformulating the relationship between the two parties of the executive authority in 2014, when Article 127 of the constitution was amended and the determination of the king's sole right to appoint the army commander and the director of the General

Intelligence. The implementation of the parliamentary government does not in any way mean stripping the king of his full constitutional powers in favor of the prime minister. Rather, it is consistent with the concept of the parliamentary government that the elected prime minister exercises public powers in managing the internal and external affairs of the state and that the king retains part of the constitutional powers he exercises alongside the prime minister. The elected person, provided that these constitutional powers established for the king in the system of parliamentary government are limited to matters articulated in the state related to protecting its security and stability and protecting the supreme interest of the state. Whoever the king chooses as commander of the army or director of intelligence will remain governed by the constitution in spirit and by the law in text, and he will be subject to the supervision of the judiciary, which will impose on him the penalties stipulated in the legislation related to his work in the event that he violates its provisions and provisions.

Such an approach, which was devoted by the Jordanian constitutional legislator to affirming the king's right to appoint the army chief and the intelligence director, was preceded by many comparative constitutions that restricted the authority to appoint to the highest civilian and military positions and dismiss them with the head of state despite its determination of the principle of elected representative governments in order to avoid potential negative effects. To form representative governments upon appointment to those positions, such as the Moroccan Constitution of 2011 in Chapter Thirty, Article (153) of the Egyptian Constitution of 2014, Article (40) of the Bahraini Constitution of 2002, and Article (106) of the Syrian Constitution of 2012.

V. FURTHER READING

Bani Salameh MT and Ali Ananzah A, *Constitutional Reforms in Jordan: A Critical Analysis*, (2015) 24(2) Digest of Middle East Studies 139.

Torki Bani Salameh M, *Political Reform In Jordan: Reality and Aspirations*, (2017) 180(4) World Affairs 47.