
Legal Guarantees for Maintaining Basic Human Rights and Freedoms in Jordanian Law^(*)

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Résumé

This study examines the main legal factors that may maintain basic human rights and freedoms in Jordanian Law. This issue is examined on the ground that maintaining human rights becomes today the criterion upon which the development of countries and people can be evaluated, and on the ground that there is no relevant “English” study in this regard in Jordanian Law has been conducted as far as we know. Having a constitutional reference, the adoption of the “separation of powers” theory, examining the constitutionality of legislation and reviewing the legality of administrative decisions are considered to be the main factors for maintaining basic human rights and freedoms on the national level. These issues are examined in four separate chapters, concluding that there is yet plentiful efforts to maintain basic human rights and freedoms of people in Jordanian Law.

Introduction

This study aims to examine the legal factors through which the basic human rights and freedoms in Jordanian law can be maintained. It is not enough to talk about the rights and freedoms of people in national and international occasions and to teach them to students. There must be a

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group of guarantees through which these rights and freedoms are protected in reality. The scope of the study is limited to consider factors that may maintain human rights on the national level. Factors on international levels, such as the role of specialized international agencies, are out of the scope of this work.

The main issues to be discussed are the following: Does the Jordanian Constitution provide an adequate reference to the basic human rights and freedoms? Does it adopt the “separation of powers” doctrine, so that each branch of the government has "checks and balances" against the others for the purpose of maintaining rights and freedoms of people? Are laws made by Parliament subject to an adequate examination to ensure that they are consistent with the Constitution? Are decisions of the Executive, which has the power to enforce laws on ground, subject to an examination to ensure that they are legal?

This study, which examines these issues respectively, will show that there are certain shortages in Jordanian law in this regard. There is no explicit reference in the Constitution to some very basic rights and freedoms, the “separation of powers” doctrine is not adequately applied as that the Executive is the dominant, the style of examining the constitutionality of legislation adopted in Jordan is not adequate and there is a need to establish a “specialized constitutional” court. In addition, the rule of the High Court of Justice in examining the legality of administrative actions concerning the rights and freedoms of people must be improved.

Chapter one

A Constitutional Reference to basic human rights

In countries where the constitution is the sovereign, like Jordan, the first step to maintain basic human rights and freedoms, this study suggests, is to have a reference to those rights and freedoms in the constitution, the highest legal document. The significance of this step is that all statutes enacted then by Parliament or secondary legislations

made by the Executive must not be violating citizens' human rights and freedoms provided in the constitution.

This guarantee is principally adopted in Jordanian law. The second chapter of the 1952 Jordanian Constitution is allocated to numerate the basic human rights and freedoms under the title of "Rights and Duties of Jordanians". These rights and freedoms can be classified to two main groups: (a) the civil and political rights (b) the economic, social and cultural rights.

This chapter, which contains three sections, will review briefly the two mentioned groups of rights and freedoms and then, in section three, suggest some amendments in this regard.

Section one

Civil and Political Rights

Civil and political rights referred to in the 1952 Constitution include:

- 1 - The right to liberty and security of person, including the right of people not to be subject to arbitrary arrest, torture, or inhuman treatment. This is provided in Section 7 of the Constitution which reads "Personal freedom shall be guaranteed". It is also provided in Section 8 which reads "No person may be detained or imprisoned except in accordance with the provisions of the law". It is in the light of this constitutional reference that a group of significant legal principles have been provided in the Criminal Code and other relevant statutes, including that everyone charged with a penal offence has the right to be presumed innocent until proven guilty,⁽¹⁾ no one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence at the time when it was committed, nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed⁽²⁾, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest, and

(1) There is no explicit reference to this principle in the Jordanian Constitution but it is applied frequently by the courts as an established principle referred to in most international covenants.

(2) See Sections 3, 4 and 5 of the Jordanian Criminal Code 1960.

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- that anyone arrested or detained on a criminal charge shall be brought promptly before the court.⁽³⁾
- 2 - The right to freedom of movement and to select the place for residence. Section 9 of the 1952 Constitution reads that “No Jordanian may be deported from the territory of the Kingdom... No Jordanian may be prevented from residing at any place. or be compelled to reside in any specified place, except in the circumstances prescribed by law”.
This comes as a response to Section 13 of the Universal Declaration of Human Rights which provides that everyone has the right to freedom of movement and residence within the borders of each State and that everyone has the right to leave any country, including his own, and to return to his country.
 - 3 - The right of a person that his dwelling houses being inviolable and not be entered except in the circumstances and in the manner prescribed by law. This right, which is provided for in Section 10 of the Constitution, has a protection in the Criminal Code. Section 347 of the Criminal Code considers the entrance of houses without permission as an illegal action. This is only allowed in certain circumstances and within certain limits referred to in Section 93 of the Procedures Criminal Code.
 - 4 - The right of a person not to be subjected to arbitrary interference with his privacy correspondence. Section 18 of the Constitution reads “All postal, telegraphic and telephonic communications shall be treated as secret and as such shall not be subject to censorship or suspension except in circumstances prescribed by law”. This right, which is protected in the Criminal Code,⁽⁴⁾ is not absolute as well. Section 88 of the Procedures Criminal Code allows the General Prosecutor to interfere in this right if this would help in detecting crimes.
 - 5 - The right of a person to take part in the government through freely chosen representatives. This right is provided, albeit implicitly, in Section 67 of the Constitution which reads “The Chamber of

(3) See Sections 100 - 105 of the Jordanian Criminal Procedure Code 1969.

(4) 1 See section 356 of the Criminal Code.



Deputies shall consist of members elected by secret ballot in general direct election and in accordance with the provisions of an electoral law which shall ensure the following principles: the integrity of the election, the right of candidates to supervise the process of election and the punishment of any person who may adversely influence the will of voters”.

Several election laws have been enacted as a response to this constitutional approach, the latest one was made in 2001. The 2001 Election Law increased the number of electoral districts by redrawing district boundaries and redistributing seats among districts, required verification of polling results by members of the Judiciary, and lowered the voting age to 18 years. It is also provided for a six-seat quota for women in the House of Deputies.

- 6 - The right of citizens to be appointed in public offices. Section 22 of the Constitution reads “Every Jordanian shall be entitled to be appointed to public offices under such conditions as are prescribed by law or regulations...”. This right is regulated through the “Civil Service Regulation” and other relevant statutes, which provide for the requirements and the qualifications for the appointment in public offices.⁽⁵⁾
- 7 - The right of citizens to address public authorities on personal matters or on any matter relative to public affairs. This is provided in Section 17 of the 1952 Constitution which reads “Jordanians are entitled to address the public authorities on any personal matters affecting them or on any matter relative to public affairs, in such a manner and under such conditions as may be prescribed by law”.
- 8 - The right to freedom of peaceful assembly and association. This is provided in Section 16 of the Constitution which reads:
 - (i) Jordanians have the right to hold meetings within the limits of the law.
 - (ii) Jordanians are entitled to establish societies and political parties provided that the objects of such societies and parties are lawful, their methods peaceful, and their bye-laws not contrary to the provisions of the Constitution.

(5) See Sections 44, 46 of the Civil Service Regulation 2002.



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- (iii) The establishment of societies and political parties and the control of their resources shall be regulated by law.
- 9 - Freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media. Section 15 of the Constitution reads: “(i) The State guarantees freedom of opinion. Every Jordanian may express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law”.
- 10 - Freedom of press. This right is provided in Section 15, referred to above, which reads:” (ii) Freedom of press and publications shall be ensured within the limits of law. (iii) Newspapers shall not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law. (iv) when martial law or a state of emergency is declared, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law”.
- 11 - Freedom of belief and free exercise of worship, including the right of people to change their religion or belief, and freedom to manifest religion or belief in teaching, practice, worship and observance. Section 14 of the Constitution reads: “The State shall safeguard the free exercise of all forms for worship and religious rites in accordance with the customs observed in the Kingdom, unless such is inconsistent with public order or morality”.
- It is provided, in Section 2 of the Constitution, that “Islam is the religion of the State”. This does not mean however that only Moslems have the right of free exercise of worship. It means rather that Jordan is an Islamic country, and that others have the same right of free exercise of worship.

Section two

Economic, Social and Cultural Rights

This group of rights and freedoms include the right of people to own property, the right to work and the right to education. The following is a brief review of the constitutional reference to these rights and freedoms.

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- 1 - The right of citizens to own property. Section 11 of the Constitution reads: “No properties of any Person may be expropriated except for purposes of public utility and in consideration of a just compensation, as may be prescribed by law”. The right to own property is also referred to in Section 12 of the Constitution, which reads: “No loans may be forcibly imposed and no property, movable or immovable, may be confiscated except in accordance with the law”.
 - 2 - The right of citizens to work, including their right of free choice of employment, just and favorable conditions of work, protection against unemployment, equal pay for equal work, joining relevant unions and associations. This right is referred to in more than one place of the 1952 Constitution. Section 6 reads: “Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquility and equal opportunities to all Jordanians”.

Section 23 reads: (i) Work is the right of every citizen, and the State shall provide opportunities for work to all citizens by directing the national economy and raising its standards. (ii) The State shall protect labour and enact a legislation therefore based on the following principles:

- (a) Every worker shall receive wages commensurate with the quantity and quality of his work.
- (b) The number of hours of work per week shall be defined. Workers shall be given weekly and annual days of paid rest.
- (c) Special compensation shall be given to workers supporting families and on dismissal, illness, old age and emergencies arising out of the nature of their work.
- (d) Special conditions shall be made for the employment of women and juveniles.
- (e) Factories and workshops shall be subject to health safeguards.
- (f) Free trade unions may be formed within the limits of the law.

Section 13 of the Constitution reads: “Compulsory labour may not be imposed on any person, but any person may be required to do any work or to render any service in circumstances prescribed by

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- law, like (in a state of necessity, such as a state of war, the occurrence of a public danger, or fire, flood, famine, earthquake, serious epidemic among human beings or animals or animal diseases, insects or pests or any other similar events, or in any other circumstances which might endanger the safety of the population, in whole or in part. Compulsory labour may also be imposed as a result of the conviction of the person concerned by a court of law, provided that the work is done and the service rendered under the supervision of an official authority and provided further that no convicted person shall be hired to, or be placed at the disposal of, any persons, companies, societies or public bodies.”
- 3 - The right of education, including, at least at the elementary and fundamental stages, the right of free education. This is provided in Section 6 of the Constitution, referred to above, which reads: “Government shall ensure work and education within the limits of its possibilities, and it shall ensure a state of tranquility and equal opportunities to all Jordanians”. It is also the subject of Sections 19 and 20 of the Constitution. Section 19 reads: “Congregations shall have the right to establish and maintain their own schools for the education of their own members provided that they comply with the general provisions of the law and be subject to the control of Government in matters relating to their curricula and orientation”. Section 20 reads: “Elementary education shall be compulsory for Jordanians and free of charge in Government schools”.

Section three

An Evaluation

It appears from the previous review that the 1952 Constitution of Jordan provides indeed for many of the rights and freedoms of people which have been established and adopted in international covenants and many other legal systems. That is not to say however that this "guarantee" for basic human rights and freedoms (having a reference to basic human rights and freedoms) is adequately and appropriately adopted in Jordanian law. The following are the main defects that this study would suggest to be tackled in this regard.

First, the 1952 Constitution does not make a direct reference to some very basic human rights and freedoms. The right of life is an example. Despite the significance of the right of life it has no direct reference and commentators usually consider it as it is indirectly and implicitly implied in Section 7 of the Constitution, which provides that “personal freedom shall be guaranteed”. The rights of people not to be subject to torture or inhuman treatment, and their right not to be subjected to an arbitrary interference with their privacy are other examples.

This study would argue for having a direct and explicit reference to such rights and freedoms, bearing in mind the fact, referred to above, that all statutes enacted by Parliament or secondary legislations made by the Executive must not be violating rights and freedoms provided in the constitution. The absence of an explicit reference to this effect is not justified.

Second, the 1952 Constitution numerates the basic human rights and freedoms of people under the title of “Rights and Duties of Jordanians”. This draft is, with respect, imprecise. It may indicate that only Jordanians would enjoy these rights and freedoms rather than others who are reside in Jordan. This study would argue for a more appropriate title under which the rights and freedoms of all people in Jordan can be provided.

Third, some of the basic rights and freedoms, despite of their importance, are provided in an uncertain way that leaves to Parliament the full discretion to regulate This can be noted from the draft of the related sections, which include expressions like “in accordance with law” or “within the legal limits”. This study may argue that fundamental rights and freedoms should not be always left to the Legislative Authority to deal with and that the Constitution itself must set up, at least in general terms, the limits within which the right can be regulated. To avoid repetition, one can goes through the two previous sections to see examples of such case.

Chapter two

Separation of Powers

This chapter will examine the separation of powers as another factor for maintaining basic human rights and freedoms. The meaning and implications of this theory are considered first. The discussion moves then to examine the applications of this theory in Jordanian law to see the extent to which it may prevent public authorities from violating human rights and freedoms of people. An evaluation is made at section three of this chapter.

Section one

Meaning and implications

The separation of powers is considered as to be one of the most important principles in maintaining basic human rights and freedoms. It simply means that no one person or government agency has the power to do anything entirely on its own. Each branch of the government has what is called "checks and balances" against the other branches for the ultimate purpose of avoiding any sort of concentration of power that would deprive people of their rights and freedoms.⁽⁶⁾

In a State based on law there are legislative, executive and judicial functions to be respectively performed by the legislature the executive and the courts. This threefold division of power is a necessary condition for the rule of law and for democratic system of government.⁽⁷⁾ The doctrine implies that there should be a clear demarcation in function between the legislature the executive and the courts in order that none of them should excessive power and that there should be a system of checks

(6) For a full account of the "separation of powers" theory see: Vile MJ, *Constitutionalism and the Separation of Powers* Clarendon Press, Oxford, 1967; Mitchell JD *Constitutional law* Edinburgh, W Green and Son Ltd. 1978; Marshall G, *Constitutional Theory* Oxford University Press 1971; Blackstone W, *Commentaries on the Law of England* London 1965; Abiola O, "Separation of Powers in the Presidential systems of Government" in *Public Law Journal* [1981] pp. 105 - 115.

(7) Mitchell JD *Constitutional law*, Ibid. p. 40.

and balances between the institutions of a State. In 1690 John Locke wrote:

“... It may be too great a temptation to humane frailty, apt to grasp at power, for the same persons who have the power of making laws, to have also in their hands the power to executive them, whereby they may exempt themselves from obedience to the laws they make and suit to law, both in its making and execution, to their own private advantage.”⁽⁸⁾

The French jurist Baron Montesquieu has considerably contributed in the development of the separation of powers theory. His main thoughts on how separation of power might be regulated can be found mainly in his work "The Spirit of Laws", which was first published in Geneva in 1748. He wrote:

"...There would be an end of every thing were the same man, or the same body, whether of the nobles or of the people to exercise those three powers that of enacting laws, that of executing the public resolutions, and that of judging the crimes or differences of individuals."⁽⁹⁾

The doctrine of separation of powers has been applied in varying degrees and with some modification by many legal systems today.⁽¹⁰⁾ In the US Constitution the separation of powers was clearly expressed. The legislative power is vested in Congress, consisting of a Senate and a House of Representatives, Executive power in the President, and Judicial power in the Supreme Court and other federal courts.

In the United Kingdom the legislative power is vested to the monarch and Parliament, which consists of the House of Lords and the House of Commons. The monarch is the King or Queen Regnant for the time being and holds the position of the Head of State. The House of

(8) Quoted in Vile MJ, *Constitutionalism and the Separation of Powers*, op. cit., no. 6, p. 62.

(9) Quoted in Vile MJ, *Constitutionalism and the Separation of Powers*, op. cit., no. 6, p. 90.

(10) For a full account see: Corry J. A., and Henry J, *Elements of Democratic Government* Oxford University Press 1964, p. 93-107; Major, W.T., *Basic English Law*, (Macmillan, Second edition, 1990) Chapter 3; John, A., *Constitutional and Administrative Law*, (Macmillan education Ltd, 1989) chapter 8; Bradley, A. W., and Ewing, K. D., *constitutional and administrative law* (Longman, twelfth ed., 1998), chapter 9; Abiola O, "Separation of Powers in the Presidential systems of Government" op. cit., no. 6, p. 105-115.

Lords is a non-elected Chamber, whereas the House of Commons is a representative assembly. The government is normally formed from the party, which has the largest group of members in the House of Commons.

In France the President is elected by people to a powerful position. The President, who appoints the Prime Minister and presides over the Cabinet, does not have veto power over legislation, but can ask Parliament to reconsider a bill. Parliament consists of the Senate and the Assembly. The Senate, the upper house in Parliament, is more powerful than the House of Lords in Britain.

Section two

Separation of Powers in Jordanian law

The 1952 Constitution of Jordan adopts the doctrine of separation of powers. Jordan is a constitutional hereditary monarchy with a parliamentary system.⁽¹¹⁾ The nation, as Section 24 of the Constitution reads, is the source of all powers which are exercised in the manner prescribed in the constitution. The government of Jordan, Section 25 of the Constitution reads, consists of three main organs: the Executive, the Legislative and Judiciary.

The Executive authority is vested in the king and his council of ministers.⁽¹²⁾ The king is the head of the State, and his prerogatives are wide ranging and numerous.⁽¹³⁾ The council of ministers, led by a prime minister, is responsible to the Chamber of Deputies on matters of general

(11) Section 1 of the Constitution.

(12) Section 26 of the Constitution.

(13) The King signs and executes all laws. He appoints the Prime Minister and may dismiss him or accept his resignation. He also appoints the Ministers, dismisses them or accepts their resignation, upon the recommendation of the Prime minister. He appoints and may dismiss all judges by decree, approves amendments to the constitution, declares war, concludes peace, signs treaties, orders elections, convenes, inaugurates, and adjourns the House of Representatives, appoints the members and the president of the Senate and the prime minister, and confirms death sentences. He is the Supreme Commander of the Land Naval and Air Forces. Cabinet decisions, court judgments, and the national currency are issued in his name. His Majesty may create confer and withdraw civil and military ranks, medals and honorific titles. (see Sections 30-39 of the 1952 Constitution)

policy and can be forced to resign by a two-thirds vote of "no confidence" by that body. It is entrusted with the responsibility of administering all affairs of the State, internal and external, with the exception of such matters as are or may be entrusted by the Constitution or by any other legislation to any other person or body.⁽¹⁴⁾ The Council of Ministers may, with the approval of the King, issue regulations for the control of appropriations and expenditures of the public funds and the organization of Government stores.⁽¹⁵⁾ It has also the power, in cases where Parliament is not sitting or is dissolved, to issue what are called provisional laws concerning matters which require necessary measures and cannot be delayed.⁽¹⁶⁾

The legislative authority is vested in the National Assembly (Majlis Al-Umma) and the King. The National Assembly consists of a House of Notables (Majlis Al-Ayan) and a House of Representatives (Majlis Al-Nuwaab).⁽¹⁷⁾ The House of Notables (Senates), which is appointed by the King for four years, consists of not more than one-half of the number of the members of the Chamber of Deputies. A Senator, according to the 1952 Constitution, must have completed forty calendar years of age and must belong to certain classes.⁽¹⁸⁾ The House of Representatives, on the other hand, consists of 110 members elected by universal suffrage for four years.⁽¹⁹⁾ Some seats of the House of Representatives are reserved

(14) Section 45 of the Constitution.

(15) Section 114 of the Constitution.

(16) Section 94 of the Constitution. It should be noted that Parliament may approve such provisional laws or amend them. If they are rejected, the Government should immediately declare their nullity under a constitutional guarantee that such nullity would not affect any contract or acquired rights.

(17) Section 25 of the Constitution.

(18) Section 64 of the Constitution provides that Senators must be a Present and former Prime Ministers and Ministers, persons who had previously held the office of Ambassador, Minister Plenipotentiary, Speaker of the Chamber of Deputies, President and judges of the Court of Cassation and of the Civil and Sharia Courts of Appeal, retired military officers of the rank of Lt. General and above, former Deputies who were elected at least twice as deputies, and other similar personalities who enjoy the confidence of the people in view of the services rendered by them to the Nation and the Country.

(19) Section 67 of the Constitution.

for religious and ethnic minorities like Christians, Circassians, Bedouins, and Chechens. Some seats are recently reserved for women as will.

The two main functions of Parliament in Jordan are to enact laws and to control the Executive. Laws are proposed by the Council of Minister for the approval of Parliament who also has the right to propose the promulgation of laws. All laws have to be approved ultimately by the king. A bill is initiated in the House of Deputies, referred to the appropriate committee for study and report, and then put before the House of Deputies to a vote. If it receives the approval of deputies, the Speaker of the House forwards the bill to the Senate, where it becomes subject to a similar process. If approved by the both Houses, the bill is then submitted to the King, who may grant consent through a Royal Decree.⁽²⁰⁾

As for the control of Government, the Council of Ministers is constitutionally responsible before the House of deputies.⁽²¹⁾ In addition to addressing questions concerning public matters to the Prime Minister and Ministers,⁽²²⁾ every newly formed Council of Ministers shall within one month of its formation, place before the House of Deputies a Statement of its policy requesting a vote of confidence on the basis of this Statement.⁽²³⁾ The House of Deputies may however raise a motion of no confidence in any time concerning the Council of Ministers or any individual Minister. If Deputies pass a vote of no confidence in the Council of Ministers by an absolute majority of all its members, the Council of Ministers shall resign, and if the vote concerns an individual Minister he shall resign as well.⁽²⁴⁾

The Judicial Power is exercised by the courts of law in their varying types and degrees, and all judgements are given in accordance with the law and pronounced in the name of the King.⁽²⁵⁾ The Constitution

(20) See Sections 91,92 and 93 of the Constitution.

(21) Section 51 of the Constitution.

(22) Section 96 of the Constitution.

(23) Section 54 of the Constitution.

(24) Section 53 of the Constitution.

(25) Section 27 of the Constitution.

guarantees the independence of the judicial branch, clearly stating that judges are "subject to no authority but that of the law." While the king must approve the appointment and dismissal of judges, in practice these are supervised by the Higher Judicial Council, which forms independent decisions regarding the periodic recommendations submitted to it by the Ministry of Justice. The courts are divided into three categories: civil, religious and special courts.⁽²⁶⁾ The civil courts include Magistrate Courts, Courts of First Instance, Courts of Appeal, High Administrative Courts and the Court of Cassation (Supreme Court). The religious courts include Shari'a (Islamic law) courts and the tribunals of other religious communities, namely those of the Christian minority. They deal only with matters involving personal law such as marriage, divorce, inheritance and child custody.

Although the 1952 Jordanian Constitution adopts in theory the "separation of powers" doctrine as we have seen, the Executive has great powers in reality and indeed it is the dominant branch of Government. This, it can be argued, may undermine the importance of this guarantee in maintaining the basic human rights and freedoms of people. The provision of the 1952 Constitution shows that the Executive has tremendous powers in its relation with the Parliament and therefore the latter becomes unable to effectively control the former.

Examples of the fields in which the Executive interferes in the formation and the function of Parliament are many. The King, who is the head of the Executive, may issue orders for the holding of elections to the Chamber of Deputies.⁽²⁷⁾ He appoints members of the Senate and appoints the Speaker from amongst them and accepts their resignation.⁽²⁸⁾ The King may convene the National Assembly, inaugurates, adjourns, and prorogues it in accordance with the provisions of the Constitution. He may also dissolve the Chamber of Deputies, dissolve the Senate, and relieve any Senator of his membership.⁽²⁹⁾

(26) Section 99 of the Constitution.

(27) Section 34 of the Constitution.

(28) Section 36 of the Constitution.

(29) Section 34 of the Constitution.

The King summons the National Assembly to an ordinary session on the first day of October of each year,⁽³⁰⁾ and whenever necessary he may summon the National Assembly to meet in an extraordinary session for an unspecified period for the purpose of deciding matters to be specified in the Royal Decree.⁽³¹⁾

Although the term of office of the Chamber of Deputies is four calendar years, the King may prolong the term of the Chamber for a period of not less than one year and not more than two years.⁽³²⁾ When the King dissolves the Chamber of Deputies, a general election shall be held, and the new Chamber shall convene in an extraordinary session not later than four months from the date of dissolution.⁽³³⁾ Nonetheless, the King may postpone the holding of the general elections if a force majeure has occurred which the Council of Ministers considers as rendering the holding of elections impossible.⁽³⁴⁾ If a force majeure continues, he may, upon a decision taken by the Council of Ministers, reinstate and convene the dissolved Chamber.⁽³⁵⁾

The Executive in Jordan has also remarkable power in the “legislative process” itself. The Council of Ministers may issue regulations for the control of appropriations and expenditures of the public funds and the organization of Government stores.⁽³⁶⁾ It may also in cases where Parliament is not sitting or is dissolved, issue what are called provisional laws concerning matters which require necessary measures and cannot be delayed. Provisional laws, it is provided, must be placed before Parliament at the beginning of its next session. It is worth noticing however that such Provisional laws have the force of laws made by Parliament.⁽³⁷⁾ Moreover, in the event of an emergency, the Council of Ministers, with the assent of the King, has the power to issue Defence Regulation and Martial Instruction which have not only the force of the

(30) Section 78\1 of the Constitution.

(31) Section 82\1 of the Constitution.

(32) Section 68 of the Constitution.

(33) Section 73\1 of the Constitution.

(34) Section 73\4 of the Constitution.

(35) Section 73\5 of the Constitution.

(36) Section 114 of the Constitution.

(37) Section 94 of the Constitution.

law made by Parliament but it constitutionally may override provisions of any “Primary Act” to the extent of any inconsistency.⁽³⁸⁾

In an attempt to create a case of balance between the two branches of Government, it is provided that Parliament may examine Government’s policies and ministerial individual conducts. Every newly formed Council of Ministers shall within one month of its formation, in cases where the Chamber of deputies is in session, place before the Chamber of Deputies a Statement of its policy and request a vote of confidence on the basis of the said Statement.⁽³⁹⁾

In addition, the Prime Minister and Ministers are collectively responsible before the Chamber of Deputies in respect of the public policy of the State. Each Minister shall also be responsible before the Chamber of Deputies in respect of the affairs of his Ministry.⁽⁴⁰⁾ Deputies may raise a motion of no confidence in the Council of Ministers or in any Minister. If it casts a vote of no confidence by an absolute majority, the Council of Ministers shall resign, and if the vote concerns an individual Minister he shall resign his office.⁽⁴¹⁾

Members of Parliament (Senators and Deputies) have the constitutional power to address questions or interpellations to the Prime Ministers and Ministers concerning any public matters.⁽⁴²⁾ The Chamber of Deputies has, additionally, the power to impeach Ministers before what is constitutionally named “the High Tribunal”. The bill of impeachment shall not be passed, as it is provided, except by the majority of two - thirds of the members of the Chamber.⁽⁴³⁾

Section three

An Evaluation

As it is mentioned above, although the 1952 Constitution of Jordan adopts the “Separation of Powers” doctrine in theory, the Executive has the great powers in reality to the extent that one may argue that this

(38) Sections 124, 125 of the Constitution.

(39) Section 54\3 of the Constitution.

(40) Section 51 of the Constitution.

(41) Section 53 of the Constitution.

(42) Section 96 of the Constitution.

(43) Section 56 of the Constitution.

factor for maintaining the basic human rights and freedoms is not as active as it must be. There are several obstacles in reality undermining the role of Parliament to examine actions of the Executive and accordingly to prevent cases of violating the rights and freedoms of people.

First, members of Parliament in Jordan have many functions to carry out and they are not entirely engaged to control Government and to prevent cases of violating human rights and freedoms of citizens.

Second, members of Parliament are not always qualified to examine actions of ministers; this is mainly because election in Jordan is still mainly based on “tribal” criteria irrespective of what "qualifications" that candidates may have. This study argues that the so called “one - person - one - vote” principle adopted in the Election Act 1993 has increased tendency in this trend. The said Act ended the previous voting system, whereby voters were entitled to as many votes as the number of parliamentary seats allocated for their district.

Third, the role of political parties in Jordan is still very weak, so that governmental policies would normally be passing with no effective check by the Parliament even if they are violating basic human rights and freedoms.

Chapter three

The Examination of the constitutionality of Legislations

This chapter considers the examination of the constitutionality of legislation as another factor for maintaining basic human rights and freedoms. The meaning and implications of this theory are considered first. The discussion moves then to examine the case in Jordanian law, whereas an evaluation is made at the last section of this chapter.

Section one

Meaning and implications

Having a constitutional reference to basic human rights and freedoms and the adoption of the “separation of powers” theory, important as they are, are not enough to maintain human rights and freedoms of citizens. There must be also an examination of legislation

made by Parliament to check whether it is consistent with the constitutional provisions concerning basic human rights and freedoms or not. If the legislation in hand is contrary to constitution, no matter whether this is intentionally or by mistake, it must be declared illegal and invalid.

This mechanism, which is usually called “Judicial review of the constitutionality of the legislation”, is an important means to protect basic human rights and freedoms provided in the constitution. It is said that “constitutional complaint is of utmost significance and is designed as a means by which the Constitutional Court can remedy individual violations of any of the fundamental rights defined as such in the Constitution...”⁽⁴⁴⁾ Examining the constitutionality of the legislation in any country will prevent the legislature from enacting any law which violates provisions of the constitution, including those concerning basic human rights and freedoms.

The emergence of the contemporary theory of the “constitutionality of legislation” dates back to the early nineteenth century when the U.S. Supreme Court, in 1803, decided that the Judiciary Act of 1789 was unconstitutional.⁽⁴⁵⁾ The Court based its power to examine the constitutionality of that legislation on the province and duty of judiciary to check whether laws are consistent with the U.S. Constitution, the supreme legal document in the country. Section VI of the U.S. Constitution, referred to in this case, provides that, “this constitution... shall be the Supreme law of the land.

Although the theory has always been subject to controversy amongst constitutional writers in the U.S. since the power of the courts to examine the constitutionality of that legislation is not expressly mentioned in the Constitution, it has indeed a great impact on the

(44) Luis Lopez Guerra, “The role and competence of the Constitutional Court” in *The role of the constitutional court in the consolidation of the rule of law*. European Commission for Democracy through law, Council of Europe Press, 1994, p. 29.

(45) *Marbury v. Madison* 1 cranch 137 (1803), referred to in Jane S. Williams, *Constitutional Analysis*, Minnesota, West Publishing Company, 1979, p. 7.

American Constitutional system and it has gained wide acceptance worldwide.⁽⁴⁶⁾

pre-requisites for the examination

There are certain pre-requisites for the examination of the constitutionality of legislation.⁽⁴⁷⁾ First, the Constitution should be a “written” one, meaning that there should be a formal document organizing the State and contains the basic rights and freedoms of citizens. Such a written document will illuminate the limitations imposed on the legislator and, at the same time, serve as a fairly reliable yardstick to the court to review the constitutionality of legislation.

Secondly, the Constitution should be the supreme law of the land and it may only be amended through special procedures. Otherwise, if it is not so supreme and rigid, any ordinary law violating the constitution would be no more than a mere amendment to it and thus there is no need to examine the constitutionality of that legislation.

Thirdly, judiciary should be independent on the ground of the “separation of powers” theory; otherwise it would not be able to examine the Executive actions nor the laws made by Parliament. Fourthly, the Constitution must provide for the establishment of the judicial review of the constitutionality of legislation, or at least does not prevent it.

Forms of examination

The constitutionality of legislation can be examined either before its promulgation (by the courts or, as it is the case in France for example, by a political institution) or after the enactment of the legislation, where only the courts may do that. The second form includes two types of judicial review: the centralised and decentralised systems of judicial review. The deference between these types of judicial review is basically based on the body that has the jurisdiction to examine cases in this

(46) Martin M. Shapiro, *The Supreme Court and Constitutional Rights: reading in Constitutional law*. Scott, Foresman, 1967, pp. 1-4.

(47) See Wihelm Karl Geck, “Judicial Review of Statutes: A comparative survey of present institutions and practices” 51 *Cornell law Quarterly*, 250, 1966, p. 252.

regard. In the centralised system the power to examine the constitutionality of legislation is exercised by a single judicial organ (either a specialised constitutional court or the highest court in the judicial hierarchy), whereas in the decentralised system all the courts may exercise this power on the ground that it is part of the judge's task to respect the constitution and to disregard any ordinary law in cases of conflict between them.⁽⁴⁸⁾

Section two

Examining the constitutionality of Legislation in Jordanian law

The 1952 Constitution of Jordan does not make any reference to the examination of the constitutionality of legislation. That is, legislation cannot be examined neither by a “political institution” as it is the case in France, nor by a “specialised constitutional court” as it is the case in many other countries. These types of examination require a clear constitutional reference to this effect, which is not available yet in the Jordanian legal system. The only available means for reviewing the constitutionality of legislation is, therefore, through what is called the “decentralised system” of judicial review, where the courts, all the courts, may refuse to apply legislation whenever it is inconsistent with the Constitution.

This type of examination, as it is mentioned above, does not require a constitutional reference. It is simply based on the ground that it is part of the judge's task in case of conflict between statutes to respect the constitutional provision and to disregard any other conflicting provisions. On other words, the 'Supremacy of the Constitution' doctrine adopted in Jordanian law requires the courts, whenever facing a case of conflict between provisions of a primary legislation and the provisions of

(48) 1 Ibid. The main reason for establishing a “political” body to examine the constitutionality of legislation in France after the revolution of 1789 was the bad reputation of the courts at the end of the ancien regime. for more details see: Louis Favoreu, American and European models of Constitutional Justice, in David S. Clark (ed.) Comparative and private international law, Berlin, Duncker and Hamblot, 1990, p. 106-111.

the Constitution, to give preference and priority to the constitution over ordinary law.⁽⁴⁹⁾

The entire judiciary in Jordan are, thus, empowered to act as constitutional judges and they have the power to declare whether an ordinary law is constitutional or not and to apply or reject it in the dispute raising before them. Examples of cases in which the constitutionality of legislation has been examined on this ground are many. The following are three illustrative examples.

In case 75/67,⁽⁵⁰⁾ the High Court of Justice was of the view that the provisions of the Election Act 1960 which requires a candidate to be of 30 years old at the first day of the year in which election is conducted were unconstitutional. It was held that Section 70 of the 1952 Constitution requires expressly that such a candidate must be of 30 years old at the date of the election and not at the first day of the year in which election is expected to take place.

In case 27/68⁽⁵¹⁾ the High Court of Justice came to a similar conclusion. The Court was of the view that Section 3 of the Reclamation Act 1957, which provides for the way of appointing the deputy head of the Reclamation Council, was inconsistent with Section 120 of the Constitution. The said constitutional section requires explicitly that the matter in question must be dealt with in accordance with a 'regulation' made by the Council of Ministers and not by a primary legislation enacted by Parliament.⁽⁵²⁾

(49) For a full account see Hiyria, A., *Constitutional Law and the Constitutional System in Jordan: Comparative Study*, (University of Jordan, 1972) pp. 223-240; Irsheed, A., *The constitutionality of Laws in Jordan*, (the University of Jordan 1988) Thesis.; Al- Khatar, A, *The Inadequacy of the Constitutionality Control on the Provisional Acts in Jordan* (1997) *Al-Dirasat Journal-University of Jordan*.

(50) *The Jordanian Law Association Journal (J.A.L)* 15, 389.

(51) *The Jordanian Law Association Journal (J.A.L)* 16, 217.

(52) Section 120 of the Constitution reads: "the manner of the appointment of civil servants shall be determined by regulations issued by the Council of Ministers with the approval of the King." It should be noted however that most of Jordanian commentators believe that this way of controlling the constitutionality of primary legislation is not enough and that a constitutional court for this purpose should be established.

In case 58/77⁽⁵³⁾ the Supreme Court was of a similar view. The said Court upheld the decision of the Court of First Instance not to apply Section 10 of the Infants Act 1968 which provides, contrary to Section 101 of the Constitution, that trials should be secretly held.

Section three

An Evaluation

This study would argue that the style of examining the constitutionality of legislation adopted in Jordanian law is not adequate and not appropriate to maintain basic rights and freedoms in Jordanian law. There is a need to establish either a “specialised constitutional court” within the Jordanian judiciary or, at least, to give the Supreme Court or the High Court of Justice the power to examine the constitutionality of legislation.

Our argument is based on more than one ground and it is worth noticing before moving to these grounds that the “High Tribunal”, referred to in Section 57 of the 1952 Constitution, is not a constitutional court. It has merely the power to try ministers and to interpret the Constitution. It is worth noticing also that the High Court of Justice has no power to examine the constitutionality of legislation. The Court may only, according to the High Court of Justice Act 1992, invalidate an “administrative decision” taken by virtue of unconstitutional statute and not to cancel the statute itself.⁽⁵⁴⁾

For an effective protection to basic human rights and freedoms of citizens in Jordan it is suggested to amend the 1952 Constitution of Jordan to establish a “special constitutional court” with the jurisdiction to review the constitutionality of legislation rather or, at least, to give this jurisdiction to the Supreme Court or the High Court of Justice rather than to follow the current inappropriate approach of examination. This view is mainly based on the following grounds.

(53) 1 The Jordanian Law Association Journal (J.A.L) 25, 826.

(54) 1 See Section 9 of the High Court of Justice Act 1992.

First, the scope of judicial review of the constitutionality of legislation in Jordanian law is so limited. A constitutional question cannot be raised under this model of judicial review except if there is a case before the court and only when deciding this question is an essential part of that case. The courts in Jordan have no power, to put it another way, to examine the constitutionality of legislation on an abstract claim as it is the case in many other legal systems, where it is possible to seek proceedings independently before the highest court of the land or before what is normally called a “specialised constitutional court”.

Second, when the court decides the constitutionality of a statute under the model of judicial review adopted in Jordanian law the taken decision would only have an effect on the parties involved and on the case in which the question is raised. That is, a statute declared to be unconstitutional will remain in force even if it is violating human rights and freedoms of people. With the absence of a constitutional reference, the courts in Jordan would have no power to remove an unconstitutional statute or to ask the Parliament to repeal it.

Third, it is not enough under this style of judicial review to prove that the application of a statute in the given case is violating the constitution and infringing basic human rights in general. A person raises the constitutionality of a statute must have “personal” and “direct” standing that can be negatively affected if a statute is applied on his case. He must show to the court, on other words, that he is immediately in danger as a result of enforcing the statute in question.

Fourth, unlike the case in other legal systems having a “specialised constitutional court” with judges experts in constitutional questions, it is difficult to provide all the courts in Jordan with judges who have such an experience and with knowledge needed to deal with constitutional questions.

Fifth, under the style of judicial review of the constitutionality of legislation adopted in Jordan there is always a possibility to a case of conflict between decisions taken in this regard if the same question arises in different courts.

Chapter four

Judicial Control of the Executive

This chapter will examine the role of courts in controlling actions of the Executive as another guarantee to maintain basic human rights and freedoms of people. The meaning and implications of what is usually called “judicial review of administrative actions” are considered at the first section of this chapter. The discussion will move then to examine the case in Jordanian law and to see the extent to which the "High Court of Justice" may prevent public authorities from acting in a way that can violate human rights and freedoms. An evaluation is also made at the last section of this chapter.

Section one

Meaning and implications

Even with the existence of a constitutional reference to the basic human rights and even when there is a mechanism to examine the constitutionality of legislation, there must also be an examination of the legality of actions and decisions taken by the Executive which has the power to enforce laws on ground. The “check and balance” rule adopted under the “separation of powers” theory requires that administrative actions must be examined both by Parliament and Judiciary to prevent an illegal exercise of power and accordingly to prevent cases of infringing basic human rights and freedoms.

The very simple idea of giving the Judiciary the power to examine administrative actions is that a public body must not act outside the statutory powers given to it or abuse that power. If it does so, then the court may intervene and declare the action in hand as to be invalid.

The constitutional basis

The legitimate question in this regard is that: upon what basis may judges examine the validity and the legality of decisions taken by politically accountable ministers or other official bodies?

In countries having written constitution, as it is the case in Jordanian law, the answer of this question can be found in certain constitutional provisions to which the discussion will move below.

When there is no written constitution, as it is the case in the U.K., the answer can only be found through examining a group of constitutional principles upon which the Constitution is founded.⁽⁵⁵⁾ Relying on the “Rule of Law” principle, some English commentators argue that the courts have the constitutional power to ensure that public bodies and officials are only acting inside their given powers. The courts may interfere, they say, even when Parliament does not lay down expressly the limits within which power should be exercised on the assumption that Parliament has not intended powers conferred in such a way to be illegally exercised.⁽⁵⁶⁾ Others argue that judicial review is a ‘judicial creation’ applying standards of a higher-order law that is logically ‘prior’ to the command of the legislature. Although they are bound to follow the will of Parliament when this will is explicitly made, the courts have their own source of power to review administrative actions which is the “common law” itself.⁽⁵⁷⁾

Models of judicial review

Broadly speaking, there are two main models of judicial control of administrative actions over the world: the Common Law system (the English law is always taken as an example) and the Civil Law system (where a reference is always made here to the French law). The main points of divergence between the two mentioned systems can be summarized as follows.⁽⁵⁸⁾

(55) For a full account see Hadfield, B., *The Foundations of Review, Devolved Power and Delegated Power* in Forsyth, C., (ed.) *Judicial review and the Constitution*, (Hart Publishing, Oxford, 2000) Chapter 9 p. 193.

(56) Wade, H. W. R., and Forsythe C. F., *Administrative law* (Clarendon Press, 8th. Edition 2000)p 36.

(57) Laws J *Is the High Court the Guardian of Fundamental Rights?* (1993) P.L 59.

(58) For more details see Schwartz, B., *French Administrative Law and The Common - Law World*, (New York University Press, 1954); David, R., *English Law and French Law*, (London, Stevens & Sons, 1980); Martin, J., *English Legal System*, (Hodder and Stoughton, Second ed., 2000); Wade, H. W. R., and Forsythe, op. cit., no.56 chapter 1; De Smith, Lord Woolf & =

First, in common law systems the ordinary courts, and not special administrative law courts, have the jurisdiction to examine the validity of administrative action. Advantages of this model are that “the citizen can turn to courts of high standing in the public esteem, whose independence is beyond question; that highly effective remedies are available; that there are none of the demarcation problems of division of jurisdiction; and that the government is seen to be subject to the ordinary law of the land”.⁽⁵⁹⁾ The main advantages of having separate administrative law courts, on the other hand, are that judges of these courts would mostly be expert in administrative law, and that the courts will apply rules which recognise the disparities between ‘administrative’ and ‘other types’ of disputes and ultimately improve the system of judicial review.⁽⁶⁰⁾

Second, remedies available in each system are different, which is mainly attributed to the different models of ‘separation of powers’. In civil law systems a strict line is usually drawn between the courts and the administration so that the courts should not intervene in the day-to-day work of the administration. Understanding the ‘separation of powers’ in this sense means that the courts cannot tell the administration to do this and leave that. The principal power held by judges in civil law systems is to quash a decision complained of or, in cases of damage, to compensate the person affected. The remedies available in common law systems, on the other hand, are various and may allow judges to examine the legality of a ‘preliminary’ and not only a ‘final’ administrative decisions. In

= Jowell, *Judicial Review of Administrative Action*, (Sweet & Maxwell, 5th ed. 1995) chapter 1; Jennings, *The Law and the Constitution*, (University of London Press Ltd, 5th edition, 1959) chapter 4; Brown, N and Bell, J, *French Administrative Law*, (Clarendon Press, 5th ed., 1998) chapters 2 and 3. See in Arabic: Muhanna, M.F., *Arabic Administrative Law* (Cairo, 1964) pp. 55-70; Lela, M.K., *Judicial Control of Administrative Actions: A comparative study*, (Cairo 1971); Al-Badawi, A., *Administrative jurisprudence: a comparative study*, (Cairo, 1993) Chapter three; Hafez, M. *Administrative jurisprudence in Jordan*, (University of Jordan, 1987) pp. 27-34; Al-Jammal, Y., “Some Aspects of the Developments of the English Administrative Law during the Twentieth Century” [1970] *Administrative Sciences Journal*, Cairo, 116; Al-Khatar, A, *Administrative Jurisdiction in Jordan*, (Dar Waael 1995) pp 211-227.

(59) Wade, H. W. R., and Forsythe, *op. cit.*, no. 56, p. 12.

(60) De Smith, Lord Woolf & Jowell, *op. cit.*, no. 58, p. 5.

addition to quashing a decision complained of the court may order an authority to perform its duties (Mandamus⁽⁶¹⁾). It may also prevent an authority from acting outside its jurisdiction (Prohibition⁽⁶²⁾), or ask it to act, or desist from acting, in a particular way (Injunction). It may make a statement of the legal position between two parties (Declaration). In addition, a public body which is said to be detaining a person unlawfully is subject to the writ of Habeas Corpus, "which became the traditional safeguard of the Englishman's liberty."⁽⁶³⁾

Third, in common law systems courts have traditionally been "unwilling to enter upon disputed questions of fact in judicial review proceedings."⁽⁶⁴⁾ The traditional view is that the courts may examine the existence of certain facts where the finding of facts is a condition precedent to the exercise of power (the questions of jurisdictional fact), but will not examine 'non-jurisdictional' factual mistakes.⁽⁶⁵⁾ This kind of examination would blur the distinction between appeal, which may be concerned with the question of whether a decision is 'right' or 'wrong', and review, which is concerned with whether a decision subject to challenge is 'lawful' or 'unlawful'. In civil law systems, on the other hand, although the reviewing courts are basically concerned with issues of legality, it is accepted that an intervention in the factual background would be, in some cases, a necessary step towards examining whether power has been legally exercised or not.⁽⁶⁶⁾ Judicial review procedures are therefore designed to be of an 'inquisitorial' nature, allowing the courts to play what may be called a 'positive' role in investigating the facts and discovering the truth.

(61) Now called the mandatory order

(62) Now called the prohibiting order

(63) Stein, P., *Legal Institutions: The Development of Dispute Settlement*, (Butterworths, 1984) p. 117.

(64) Wade, H. W. R., and Forsythe, C. F., *op. cit.*, no. 56, p. 266.

(65) *Ibid.*, p. 33.

(66) See Al-Khatat A, *op. cit.*, no. 58, p 699; Al- Araj, M., *The lack of adequate reasons of administrative decisions* (Thesis, the University of Jordan, 1999) p. 75

Section two

Judicial Control of the Executive in Jordanian law

The Executive in Jordan is subject to the control of both the Parliament and the Judiciary. As it has been stated above, the Council of Ministers is constitutionally responsible before the House of deputies. In addition to addressing questions to the Prime Minister and Ministers,⁽⁶⁷⁾ every newly formed Government must place before the House of Deputies a Statement of its policy seeking for a vote of confidence. Deputies may also raise a motion of no confidence in any time concerning the Council of Ministers or any individual Minister.

As for the power of Judiciary to examine the legality of administrative actions, the 1952 Constitution of Jordan provides for the establishment of the “High Court of Justice” with the exclusive jurisdiction to hear administrative law disputes. When the ‘modern’ Jordanian State was established, at the beginning of the second half of the Twentieth Century, the Parliament considered whether to follow the civil law system in the field of judicial review (having separate administrative courts) or to follow the English law model as it was applied in Palestine (giving the ordinary courts the jurisdiction to examine the validity of administrative action). The arrangements of the 1952 Constitution show that the Parliament decided to follow the civil law model by establishing a separate administrative law court.⁽⁶⁸⁾ Bearing

(67) Section 96 of the Constitution.

(68) It is worth mentioning here that having a separate administrative court does not necessarily mean that Jordanian law is a copy of the French law model. First, unlike the case in Jordan where judges members of the High Court of Justice are professional lawyers and follow the Ministry of Justice, most members of the Conseil d’Etat are special administrative judges trained and educated in the State College of Public Administration (SCPA). The Conseil d’Etat may be considered from this perspective as an independent body exercising its power like a court within the administrative hierarchy; it is not a fully judicial body. Secondly, while the French administrative courts have a general jurisdiction to hear all kinds of administrative law disputes, the High Court of Justices jurisdiction is, as shall be seen below, exclusively enumerated. Thirdly, unlike the case in Jordan, the Conseil d’Etat plays a central role in the process of legislation and advising government. The Conseil is split into five sections, four of them administrative and only one judicial. Fourthly, while in France there are several administrative courts culminating in the Conseil d’Etat, the High Court of Justice is the only administrative court in Jordan.

in mind the circumstances of a newly established country and the lack of staff and judges, the Regular Courts Act 1952 provided that while administrative law disputes are heard by the High Court of Justice, this Court is part of the Supreme Court and it is formed of judges who are members of the Supreme Court.⁽⁶⁹⁾

This was the case until 1989 when the High Court of Justice Act 1989 was enacted. The said Act established “separate” court with the exclusive jurisdiction to hear administrative law disputes as a response to Section 100 of the 1952 Constitution. Section 3 of the 1989 Act stated that the High Court of Justice must be formed of a President, who is of a similar rank as the President of the Supreme Court, and at least four other members who are of a similar rank to judge members of the Supreme Court.

The High Court of Justice Act 1992, the one now in force, was then promulgated. The said Act includes some improvements enhancing the power of judiciary in examining the legality of administrative decisions, which can be seen as a further protection of the basic human rights and freedoms. The most important improvements can be summarized as follows.

First, the High Court of Justice Act 1992 gives the High Court of Justice the power to compensate people affected and not only to quash illegal administrative decisions. After enumerating matters which are within the jurisdiction of the High Court, it is explicitly provided that “The High Court of Justice has the jurisdiction to compensate applicants who suffered damage as result of any illegal administrative decision... Applications for damages may be sought either separately or together with the application to quash a decision complained of”.⁽⁷⁰⁾

Second, the 1992 Act provides that judicial control over the Executive cannot be excluded by statutes. Section 9(a) (10) reads: “The High Court of Justice has the jurisdiction to examine the validity of all administrative decisions no matter whether a decision subject to

(69) Section 10/3 of the Regular Courts Act 1952.

(70) Section 9 (b) of the High Court of Justice Act 1992.

challenge has been given an immunity from being challenged according to a statute concerned”.

Third, the 1992 Act gives the High Court of Justice for the first time the power to examine the legality of all types of regulations made by the Executive, including the so called “provisional laws”.⁽⁷¹⁾ Section 9(a) (7) reads: “The High Court of Justice has the jurisdiction to hear applications which are submitted by an injured person to nullify a regulation which violates the provisions of the Constitution or an Act of Parliament”. Traditionally, the Court could only examine the legality of administrative decisions which are made in pursuance of illegal delegated legislation and not the delegated legislation itself.⁽⁷²⁾

Section three An Evaluation

Despite the legislative developments concerning the power of the High Court of Justice to examine the legality of administrative actions, just referred to them, the current situation is still inadequate and the High Court is arguably still unable to offer a guarantee to basic human rights and freedoms of Jordanians. This argument is basically based on four grounds.

First, unlike the case in French law and many other legal systems, the High Court of Justice in Jordan does not have a “general” jurisdiction to hear all kinds of disputes in which the Executive is a part. The jurisdiction of the Court is still exclusively enumerated, so that one can imagine cases of infringing basic human rights and freedoms where an affected person would not have an access to justice simply because the matter in question is not one of those exclusively enumerated

(71) Section 94 of the 1952 Constitution reads that: “In cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the approval of the King, the power to issue provisional laws covering matters which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement. Such provisional laws, which shall not be contrary to the provisions of the Constitution, shall have the force of law, provided that they are placed before the Assembly at the beginning of its next session. and the Assembly may approve or amend.”

(72) Section 10 (3) of the 1952 Act and section 9 (7) of the 1989 Act.

in Section 9 of the High Court of Justice Act 1992. It is therefore suggested to enlarge the umbrella under which the High Court may provide an adequate protection to the basic human rights and freedoms by giving the Court a “general” jurisdiction to hear all kinds of disputes in which the Executive is a part.

Second, the High Court of Justice is yet the only administrative law court in Jordan. That is, people seeking proceedings against public bodies infringing their rights and freedoms would have only one chance to challenge illegal administrative actions. There is no “appellate” administrative law court as it is the case in France and many other countries. It is therefore suggested to establish administrative law courts in each district of the Kingdom and thus giving people the chance to challenge decisions of these suggested courts before the High Court of Justice, which can be considered then as an “appellate” administrative law court.

Third, it is not always possible for people in Jordan to challenge decisions of the Government even when they are infringing their basic human rights and freedoms. According to Section 9 of the High Court of Justice Act 1992 “applications for judicial review which are made without ‘personal interest’ in the subject matter would not be allowed”. That is to say, there would be many illegal administrative decisions passing without “judicial” examination on the ground that a person seeks proceeding is not directly and personally affected by a decision in hand. There is no chance, to put it another way, to claim on behalf of the public as whole or on behalf of a group of people when the decision complained of is infringing the rights and freedoms of all or a group of citizens.

Fourth, not all administrative decision infringing people human rights and freedoms can be challenged before the High Court of Justice even when the requirement of standing is met. Section 9 of the 1992 Act reads that “applications which are lodged against Acts of State are not allowed”. Neither an enumeration nor a definition has been made in the 1992 Act of what are considered as “acts of state”. The High Court of Justice is rather left to decide what decisions are to be so, and it has, unfortunately, adopted a restrictive approach in this regard classifying a

large number of administrative actions as being acts of state and therefore not subject to challenge before the High Court.

Conclusion

This study has examined the factors that may maintain and safeguard basic human rights and freedoms in Jordanian law. In examining these factors an attempt was made to explain the meaning and implications of each factor and to focus then on the position in Jordanian law. The study showed that basic human rights can be guaranteed through having a constitutional reference, the adoption of the “Separation of Powers” theory and by examining the constitutionality of legislation and the legality of administrative decisions concerning the rights and freedoms of people.

The study concluded that there is a need to reconsider the factors through which basic human rights and freedoms in Jordanian law can be maintained. It suggested to have an explicit reference in 1952 Constitution to some very basic rights and freedoms, notable among them the right to life. It also suggested to establish a “specialized constitutional” court to examine adequately the constitutionality of legislation. In addition, a suggestion is made to improve the rule of the High Court of Justice in examining the legality of administrative actions concerning the rights and freedoms of people. The High Court must be given a “general” jurisdiction to hear all kinds of disputes in which the Executive is a part, and there is a need to establish administrative law courts side by side the High Court of Justice to give people more than one chance to challenge illegal administrative decisions. The adoption of a more flexible approach with respect to the requirement of standing and in reviewing acts which has been considered as acts of state is also suggested..

