
The Jordanian law approach concerning the conditions of a decision subject to judicial review^(*)

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Abstract:

This study examines the issue of what decisions are subject to judicial review in the Jordanian Legal system. The subject of this study is of great importance bearing in mind the fact that administrative decisions are the cure of judicial control over the Executive. The importance of this study emerges also from the fact that there is no relevant study in English has been made in this regard in the Jordanian legal system. The study is divided into two parts. The first one considers the main aspects and developments of the Jordanian Administrative law, whereas the second examines the conditions for a decision being subject to challenge before the High Court of Justice, the Jordanian "administrative" court.

Introduction

This study is an attempt to answer the question of what decisions are subject to judicial review before the High Court of Justice in Jordan, the court which has the jurisdiction to examine the legality of administrative decision. It contains of two main chapters. The first one is a general glance of the Jordanian administrative law, whereas the second is allocated to consider the issue of what decisions are subject to judicial

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review proceedings in the Jordanian law from a legislative and a judicial perspective.

The study will show that only decisions made by public, national and "administrative" bodies are subject to challenge. Laws enacted by the Parliament and judgments made by the courts are, therefore, not subject to challenge before the High Court. It will also show that not all decisions made by public, national and "administrative" bodies are subject to challenge. The nature of a decision is an important factor in this regard. A decision under attack must be a unilateral act taken by the administration in the course of exercising its public functions, imposing upon affected parties a change in their legal situations without consent on their part. It must also be a "justiciable" administrative decision; therefore "acts of State" are usually not subject to challenge before the High Court of Justice.

It is worth noticing at the very outset that there are three types of judicial review in general: judicial review of administrative decisions, judicial review of judicial judgments and judicial review of legislation. The concept of judicial review in this study refers basically to proceedings made against illegal administrative decisions and it is out of the scope this study to consider other types of judicial review.

Chapter one

A general glance of the Jordanian Administrative law

This chapter consists of two main sections. The first one considers the historical and constitutional background of the Jordanian legal system, whereas the second examines the main aspects and developments of the Jordanian Administrative law. This would be necessary before examining the main issues of this study.

Section one

A general background of the Jordanian legal system

A general background of the Jordanian legal system both from historical and constitutional perspectives is respectively considered in the current chapter.

(A) A historical perspective

Jordan was under the rule of the Ottoman State from the first quarter of the sixteenth century to the first quarter of the twentieth century. In the First World War (1914-1918) the Ottoman State was defeated. Britain and France agreed, at the San Remo Conference on 25 April 1920, to impose a French mandate on Syria and Lebanon and a British mandate on Iraq, Palestine and Jordan. Upon his arrival on 11 November 1920, Prince Abdullah bin Al-Hussein received the full support of Jordanians. On 29 March 1921, the British Government reached a political settlement with Prince Abdullah calling for the establishment of the first unified national government in Trans-Jordan, over which he would rule.⁽¹⁾

(1) For more details about the history of Jordan see: Madi, M. *The history of Jordan in the Twentieth Century*, (Amman - 1959) pp 32- 146; Al-Salah, M. A., *Trans-Jordan Imerat Administration, 1921-1946*, (Amman, Dar Al-Mallahi Press, 1985) pp. 23-27; Awamlah, M., *The Constitutional System in Jordan*, (Amman, Al-Marqez Al-Arabi Il-khadamat Al-Tulabeh, 1995) Chapter 1; Al-Qodah, A., and others, *Jordan: Truth and Figures*, Press and Publications Department, Amman, 1985) pp. 35-52; Al -Khateeb, N., *Political Systems and Constitutional Law* Chapter 4; Abo- Shakeh, N., *Public Administration in Jordan*, Amman, 1985) pp. 90-105.

The first constitution in Jordan (which is called the Jordan's Organic Law) was promulgated on 19 April 1928. Emir Abdullah was recognized as the Head of the State with hereditary rights and Islam was declared to be the formal religion of the State. The said Constitution provided for consultative parliament and led to the first elections that were held in April of 1929. After the Second World War the United Kingdom signed another treaty with Emir Abdullah (on 22 March 1946) according to which the mandate was terminated and Jordan became independent. The Jordanian Legislative Council met on 25 May 1946, and voted unanimously to declare Jordanian territories a fully independent State with a representative, hereditary, monarchic government, to pronounce loyalty to King Abdullah bin Al-Hussein as the constitutional monarch at the head of the Jordanian State, with the title of His Majesty the King of the Hashemite Kingdom of Jordan. New Constitution was, therefore, promulgated in February 1947.

As a result of the 1948 Arab-Israeli conflict, Jordan annexed the West Bank which was until then a part of Palestine which was also under British mandate. In 1950, the East Bank (Jordan) and the West Bank were united under the same name, viz., the Hashemite Kingdom of Jordan. This was the main reason for promulgating a new constitution, the Constitution of 1952, which remains in force - subject to some amendments- till now.

(B) A constitutional perspective

Constitutionally, the 1952 Constitution provides that Jordan is a constitutional hereditary monarchy with a parliamentary system. The nation, Section 24 of the Constitution reads, is the source of all powers which are exercised in the manner prescribed in the constitution. The Doctrine of Separation of powers is clearly adopted in this Constitution. The government of Jordan consists, as it is provided, of three main organs: the Executive, the Legislative and the Judiciary.⁽²⁾ In 1954, the Constitution was amended to strengthen the democratic base. Coming

(2) Section 25 of the Constitution.

into effect on 1 November 1955, the amended constitution ensured that government is answerable to parliament. The government is required to present its program to parliament and to seek a vote of confidence.⁽³⁾

The Executive authority is vested in the king and his council of ministers.”⁽⁴⁾ The king is the head of the State, and his prerogatives are wide ranging and numerous. The Council of Ministers, led by a Prime Minister, is appointed by the king. It is responsible before the Chamber of Deputies on matters of general policy and can be forced to resign by a two-thirds vote of "no confidence" by that body. The Cabinet is, in general, entrusted with the responsibility of administering all affairs of the State, internal and external, with the exception of such matters as they are, or may be, entrusted by the Constitution or by any other legislation to any other person or body.⁽⁵⁾

The legislative authority is vested in the National Assembly and the King. The National Assembly (Majlis Al-Umma) consists of a House of Senates (Majlis Al-Ayan) and a House of Representatives (Majlis Al-Nuwaab).⁽⁶⁾ The House of Representatives, which is empowered to pass a vote of confidence or no-confidence in a government, consists of 110 members elected by a universal suffrage for four years.⁽⁷⁾ The Senate, on the other hand, consists of not more than one-half of the number of the members of the Chamber of Deputies appointed by the King for four years. A Senator, according to the 1952 Constitution, must have completed forty calendar years of age and must belong to certain classes.⁽⁸⁾

Laws are proposed by the Council of Ministers for the approval of Parliament who also has the right to propose the promulgation of laws.

(3) Sections 53 and 54 of the Constitution. For more details see Al - Gazwi, M., *The Political and Constitutional System in the Hashmiate Kingdom of Jordan*, (Amman, Dar Al-Thaqafah, 1996) pp. 65-69; Massadeh, Abdel Mahdi, "The Structure of Public Administration in Jordan: A constitutional and Administrative Law Perspective" (English Text) (1999).

(4) Section 26 of the Constitution.

(5) Section 45 of the Constitution.

(6) Section 25 of the Constitution.

(7) Section 67 of the Constitution.

(8) See Section 64 of the Constitution.

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 it to the Senate, where it becomes subject to a similar process. If approved by the both Houses, it is submitted to the King, who may grant consent through a Royal Decree.

As for the control of Government, the Council of Ministers is constitutionally responsible before the House of deputies.⁽⁹⁾ In addition to addressing questions concerning public matters to the Prime Minister and Ministers,⁽¹⁰⁾ 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.⁽¹¹⁾ As it will be further discussed below, the House of Deputies may raise a motion of no confidence in any time concerning the Council of Ministers or any individual Minister.⁽¹²⁾

As for the Judiciary the Jordanian law is based on Civil Law and Islamic legal principles. The Judicial Power is exercised by the courts of law in their varying types and degrees.⁽¹³⁾ The Constitution guarantees the independence of the judicial branch, stating that judges are "subject to no authority but that of the law."⁽¹⁴⁾ While the king must approve the appointment and dismissal of judges, in practice they are supervised by the Higher Judicial Council, which forms independent decisions regarding the periodic recommendations submitted to it by the Ministry of Justice.

Civil courts exercise their jurisdiction in respect to civil and criminal matters in accordance with the law, and they have jurisdiction over all persons in all matters except cases which are entrusted to the High Court

(9) Section 51 of the Constitution.

(10) Section 96 of the Constitution.

(11) Section 54 of the Constitution.

(12) Section 53 of the Constitution.

(13) Section 27 of the Constitution.

(14) Section 97 of the Constitution.

of Justice.⁽¹⁵⁾ The Civil courts include Magistrate Courts, Courts of First Instance, Courts of Appeal, and the Court of Cassation (Supreme Court). The religious courts, which include Shari'a courts and the tribunals of other religious communities, deal only with matters involving family law such as marriage, divorce, inheritance and child custody. On the other hand, the High Court of Justice is an administrative court which has the power to nullify certain administrative decisions and to compensate those who are injured by them.⁽¹⁶⁾

Section two

The main aspects of the Jordanian Administrative law

This chapter will examine two main issues: the arisen of the Jordanian Administrative law and the current state of the administrative law in Jordan in the light of the High Court of Justice Act 1992.

(A) The arisen of the Jordanian Administrative law

The Ottoman State, under which Jordan was ruled for almost four centuries, had applied the Islamic Law, but since the middle of the nineteenth century it had been influenced by the Civil law system as it was applied in France.⁽¹⁷⁾ Thus, in 1868 a *Turkish Council* similar to the French *Conseil d'Etat* was established with a jurisdiction to hear administrative disputes and to impeach senior officials. *Administrative Councils* similar to what are called in France '*les Conseils de prefecture*' were also established in most provinces within the Ottoman State including those in Jordan.⁽¹⁸⁾

At the end of the First World War, Jordan and Palestine were put under the British mandate according to *Sykes-Picot* agreement. While the United Kingdom, during its rule, applied its own legal system in Palestine, it left the legal system already applied in Jordan without

(15) For more details see the Regular Courts Act 1952.

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

(17) See Brown, J., *The rule of law in the Arab world*, (Cambridge University Press 1997) Chapter 1
Madi, M, op. cit., no 1 pp 32- 146.

(18) Khanian, N., *Administrative Law in Jordan* (Al- Dostor Press, 1993) chapter 2.

significant changes.⁽¹⁹⁾ Thus, in 1922 the Regular Courts Act was enacted providing that all kind of civil and criminal law disputes should be decided by the regular courts. Along with that an administrative council (the Advisory Council) was established for the purpose of deciding 'administrative law' disputes. It had also the jurisdiction to interpret statutes and impeach senior officials.⁽²⁰⁾

When the 'modern' Jordanian State was established at the beginning of the second half of the Twentieth Century, Parliament considered whether to continue following the civil law system in the field of judicial review, or to follow the English law style as it was applied in Palestine. The arrangements of the 1952 Constitution show that Parliament decided to follow the civil law system. Section 100 of the Constitution provides for the establishment of a 'High Court of Justice' with the exclusive jurisdiction to hear administrative law disputes. The High Court of Justice was accordingly established in 1952.⁽²¹⁾

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 Justice's 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

(19) Ibid.

(20) Al-Khatat A, *the Cyclopedia of Administrative Adjudication*, (Amman, Dar Al-Thaqafah, 2004) p. 190.

(21) According to Section 10 the Regular Courts Act 1952.

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.⁽²²⁾

Bearing in mind the circumstances of a newly established country including 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 should be formed of judges who are members of the Supreme Court.⁽²³⁾ The jurisdiction of the High Court was provided in Section 10 of the 1952 Act to hear applications relating the following matters:

- 1 - objections related to the election of municipal, local and administrative councils;
- 2 - disputes related to salary pensions which are due to public officials or their successors;
- 3 - applications against final administrative decisions concerning the appointment in public offices or the annual increase of the remunerations of public officers;
- 4 - applications which are submitted by public officials to quash final decisions of disciplinary authorities;
- 5 - applications which are submitted by public officials to quash final administrative decisions by which they were dismissed from their offices in a way not justified by the law; applications which are submitted by individuals or public authorities to quash final administrative decisions issued against them. Such applications should be based however on (i) the lack of jurisdiction; (ii) violating statutes or statutory instruments or applying or interpreting them incorrectly [substantive *ultra vires*]; (iii) failing to follow procedures provided [procedure *ultra vires*]; and, (iv) abuse of power.
- 6 - applications which are submitted by an injured person to quash

(22) For a full account of the French law model see; Brown, N and Bell, J, *French Administrative Law*, (Clarendon Press, 5th ed., 1998) chapters 2 and 3.

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

any decision which is made in pursuance of a regulation which violates the provisions of the Constitution or an Act of Parliament.

In 1989 the High Court of Justice Act 1989 was enacted. Little change was made in this Act concerning the jurisdiction of the Court. The basic change concerned the formulation and membership of the Court. According to section 3 of the 1989 Act, 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⁽²⁴⁾, who are of a similar rank to judge members of the Supreme Court.

(B) The current state of the administrative law in Jordan

The High Court of Justice Act 1992, the one now in force, was promulgated in 1992. The main changes provided in this Act are the following:⁽²⁵⁾

Firstly, the High Court of Justice has now the jurisdiction to compensate a person affected and not only to quash a decision complained of. After enumerating matters which are within the jurisdiction of the Court in section 9(a) of the 1992, it is provided, in section 9(b) 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 separately or together with the application to quash a decision complained of.”

Secondly, for the first time the non- exclusion of judicial review by statutes is provided for. 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 challenge has been given an immunity from being challenged according to a statute concerned”.

Thirdly, the High Court of Justice may now examine the legality of different types of delegated legislation. Section 9(a) (7) reads: “The High

(24) Section 8 of the 1989 Act.

(25) See Al-Tahrawi, H., *Administrative Law*, (Amman, Dar Al-Thaqafah, 1998) pp. 62-65.

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.⁽²⁶⁾

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

Chapter two

The conditions of a decision subject to challenge

Examining the substance of a challenge would not be allowed according to what has been established in Jordanian law unless the challenge is made against a decision or an action which is of the challengeable kind. To be so, a decision must be emanated from a public administrative body, and it must be itself amenable to review. These two main issues are respectively examined.

Section one

The body from which a decision is emanated

To be challenged before the High Court of Justice a decision in question must have emanated from an administrative national body. There is no statutory reference in the Jordanian law as to what bodies are considered so, and the matter has been left to the judiciary to decide. Little difficulty would be found in deciding this question where a body is deemed to be wholly private, such as a private company. In this case, we have a private law body providing a 'private' service, so its activities would be governed by private law principles. The same extent of difficulty in deciding this question would also be found where a body is deemed to be wholly public, such as a central government department. Here, we have a public authority seeking, through exercising power, to satisfy a public need, so emerging disputes would be subject to judicial review proceedings so long as a body is not acting privately (i.e., as a private person).

Difficulties may arise however when a challenge is made to a body that cannot be classified in such a straightforward way, including non-governmental bodies performing functions similar to those performed by government.

It is to be noted that although matters within the jurisdiction of the High Court of Justice in Jordan are legislatively enumerated it is still for the Court itself to answer the questions of which bodies and decisions are subject to judicial review. This is simply because Section 9 of the High

Court of Justice Act 1992 provides the jurisdiction of the Court in such a general sense that it leaves the final word in answering these questions to the Court itself. The mentioned section says that the High Court may entertain applications submitted by individuals or authorities against “final administrative decisions” affecting them. This would require the Court, therefore, to decide whether a decision complained of is an administrative decision or not, which, in turn, require it to decide whether the body from which a decision has emanated is an administrative body subject to judicial review or not.

(A) The intention of the Parliament

The case law shows that the High Court of Justice pays primary attention to the relevant statute to see whether the Parliament intended, explicitly or implicitly, to consider a body as to be subject to judicial review or not.⁽²⁷⁾ When the will of Parliament is explicitly provided, judges would find little difficulty in deciding whether a body is subject to judicial review or not. This is the case, for instance, in relation to ministries, central governmental departments and local authorities, where statutes usually provide that they are (so long as not acting as a private person) public administrative bodies.⁽²⁸⁾

When the will of Parliament is not so explicit the position is less clear and a variety of judicial approaches are used to discover the intention of Parliament.⁽²⁹⁾ A body may be considered subject to judicial review if a relevant statute provides that its functions have to be performed under the direct supervision of the government.⁽³⁰⁾ A body may be considered so if it is provided that its employees are civil

(27) See Al-Khatat A, *Principle of Jordanian Administrative Law*, (the University of Jordan 1996) p. 41-47; Al- Shoubaki, A., *Administrative Jurisdiction/ Comparative Study* (Dar Al-Thaqafah 1996) p. 196.

(28) For more details, see Al-Khatat A, *The Applications of 'Public Corporations' Theory in the Hashmiate Kingdom of Jordan* (Dar Al-Fekr Al-Arabi 1990) p.60.

(29) *Ibid.*, p. 44.

(30) On this ground, the Jordanian Doctors' Association was considered subject to judicial review (L.A.J., 30, 1396), whereas the Charitable Assemblies Union held to be subject to private law principles (L.A.J., 21, 821).

servants,⁽³¹⁾ or its budget is part of the Public Budget.⁽³²⁾ A deciding authority may also be considered so if other 'similar' bodies have been legislatively considered as being subject to judicial review. This was the case for example in the High Court of Justice's decisions in cases 85/80,⁽³³⁾ and 150/84.⁽³⁴⁾ In case (85/80) an application for judicial review was made against the decision of the Jordanian Doctors' Association to move the applicant's private surgery to another place. The High Court of Justice rejected the contention made on behalf of the respondent that access to challenge the decision should not be allowed, as the said Association was not subject to judicial review. According to the Court, the mentioned association is subject to judicial review, partly because its functions are performed under the direct supervision of the government, and partly because Parliament considers some other professional associations, the Jordanian Lawyers' Association for instance, to be subject to judicial review,⁽³⁵⁾ which implicitly means that other associations, including the one here, are similarly treated. In case (150/84) the Jordanian Pharmacists' Association was held to be subject to judicial review on a similar ground.

Performing a public function (a function that may affect the public) is not sufficient, according to the High Court of Justice, to consider a body as to be subject to administrative law proceedings if there is no explicit or implicit parliamentary intention to this effect. Thus, although performing functions of a public nature and most, if not all, Jordanian farmers are affected by its decisions, the Jordanian Farmers' Union was held not to be subject to judicial review, and accordingly access to challenge its decisions has been denied. This is partly due to the absence

(31) On this ground, the Jordanian Press Corporation (L.A.J., 22, 514) and the Jordanian Free Zones Corporation (L.A.J., 27, 659) were held to be subject to judicial review.

(32) On this ground, the Jordanian Co-operative Organisation was held to be subject to judicial review (L.A.J., 26, 1202), whereas the Jordanian Establishment for Marketing Agricultural Products was considered a private law body (L.A.J., 33, 56).

(33) L.A.J., 29, 1396.

(34) L.A. J., 34, 760.

(35) Section 99 of the Jordanian Lawyers Association Act 1972 provides that decisions of the Association Council are challengeable before the High Court of Justice.

of any reference in the Jordanian Farmers' Union Act 1974 to consider the mentioned union as subject to the jurisdiction of the High Court of Justice, and partly because it has its own private budget and its own non-official employees. Thus, for example, in case 66/84⁽³⁶⁾ two citizens applied for a job announced to be available in the Jordanian Farmers' Union. When it was decided to offer the job to one of them, the other candidate sought proceedings, according to Section 10/3 of the Regular Courts Act 1952 (now Section 9 of the 1992 Act), to challenge the decision on the ground that the deciding authority had abused its power to select a proper candidate. As we have seen in the previous chapter, the High Court of Justice has the jurisdiction, according to the mentioned section, to hear applications against "final administrative decisions concerning the appointment in public service...". In this case the applicant was denied access to the substance of the case when the High Court came to the conclusion that, although the Union performing functions having effect on the public, there was no explicit or implicit statutory reference to consider it subject to judicial review.

On similar grounds, proceedings were denied to challenge the decisions of the Jordanian Union of Public Transportation Owners⁽³⁷⁾ and the Jordanian Union of Tennis,⁽³⁸⁾ although satisfying a public need and their decisions would affect a large sector of the society.⁽³⁹⁾

(B) Actions of Parliament and Judiciary

Requiring a body from which a decision is taken as to be an administrative body means that laws enacted by the Parliament are not subject to challenge before the High Court of Justice. Notwithstanding,

(36) L.A. J., 33, 56.

(37) Case 29/87 (L.A. J., 35, 73.)

(38) Case 199/96 (L.A. J., 44, 4224.)

(39) In case (199/96) two professional Tennis players were denied access to judicial review to challenge the decision of the Jordanian Union of Tennis not allowing them to participate in the Davis Cup 1997. The High Court was of the view that the decision was not challengeable since it has emanated from a body which is not subject to judicial review. According to the Court, "there is not explicit or even implicit reference in the Sport Unions Act 1987 to consider the Tennis Union subject to judicial review".

primary legislation made by the Parliament may be brought indirectly under the control of the Jordanian administrative court. All the courts in Jordan including the High Court of Justice may refuse to apply the provisions of a primary legislation to the extent that they are inconsistent with the Constitution. The 'supremacy of the constitution' doctrine requires the courts, whenever facing a case of conflict between provisions of a primary legislation and the provisions of the Constitution, to give superiority to the constitutional provisions.⁽⁴⁰⁾ Thus, for example, in case 58/77,⁽⁴¹⁾ the Supreme Court upheld the decision of a 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 secret. Similarly, the High Court of Justice, in case 27/68,⁽⁴²⁾ was of the view that Section 3 of the Reclamation Act 1957, which provides a way of appointing a deputy head of the Reclamation Council, was inconsistent with Section 120 of the Constitution, requiring the matter to be decided according to a 'system' made by the Council of Ministers rather than primary legislation.⁽⁴³⁾

Requiring a body from which a decision is taken as to be an administrative body means also that judgements made by the courts are not subject to challenge before the High Court of Justice. They are only subject to an appeal procedure according to the relevant statutes. Nonetheless, decisions made by the Chief of the High Judicial Council concerning judges and decisions made the presidents of courts concerning civil servants under their supervision are considered as to be adminis-

(40) 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.

(41) J.A.L, 25, 826.

(42) J.A.L, 16, 217.

(43) 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.

trative decisions and subject to judicial review proceedings. Such actions are of an administrative nature and they are taken for administrative purposes, therefore subject to challenge before the High Court of Justice.

Section two

The nature of a decision subject to challenge

If a decision subject to challenge is emanated from a body subject to judicial review proceedings as we have seen above the next question will be then whether it is of a nature allowing such proceedings to be sought. This issue is the subject of our discussion in this section.

It was stated before that there is no exact statutory definition in the Jordanian law to a decision or an action that may be challenged by way of judicial review. An indirect reference to this effect is contained in Section 9 of the High Court of Justice Act 1992. It is provided that a decision that may be challenged before the High Court of Justice must be a “final administrative decision”.⁽⁴⁴⁾ In its attempts to define what is ‘final administrative decision’ the High Court of Justice, influenced by the position in the French law,⁽⁴⁵⁾ has held on several occasions that it is an “unilateral act taken by the administration in the course of exercising its public functions, imposing upon affected parties a change in their legal situations without consent on their part.”⁽⁴⁶⁾

(A) Effective and unilateral administrative decisions

According to what has been established in the case-law of the High Court of Justice a decision subject to challenge must affect the party concerned (i.e., making an intended change in his legal position). It has been established, accordingly, that a decision subject to judicial review is

(44) This was also the case in the two previous Acts. (See Section 10 (3) of the Regular Courts Act 1952 and Section 9 (6) of the High Court of Justice Act 1989).

(45) See Brown, N and Bell, J, op. cit., no. 22, p. 158.

(46) See this definition in the following cases: (132/84) L.A.J, 33, 50; (82/79) L.A.J, 28, 602; (137/79) L.A.J, 28, 1480; (28/200) decided in 24-4-200; (106/2000) decided in 26-6-2000. For more details see Al-Zoubi, K., *The Administrative Decision Between Theory and Practice: A Comparative Study of France, Egypt, Lebanon and Jordan*, (Amman, Al-markez Al-Arabi Le Alkhadamat Al Tulabeh, 1993); Al-Khatat A., *Studies of Administrative Decisions*, (Amman, the University of Jordan, 1998).

different from the case, for example, of a vehicle belonging to the administration causing damage to others as the administration does not intend here to change the legal position of the person or persons injured. Therefore, the affected person would not allow access to judicial review in such a case unless his or her claim for compensation was refused by the administration. A decision made to this effect (not to compensate him) can then be challenged before the High Court of Justice as an administrative decision affecting the legal position of the person concerned.⁽⁴⁷⁾

A 'confirmative' decision (a decision merely taken to confirm a primary one) is also unchallengeable before the High Court of Justice since this would make no real change in the legal position of any party affected. Thus, in case 409/98⁽⁴⁸⁾ the decision of the Minister of Tourism, taken on 26 September 1998, to close some restaurants (which did not meet legal conditions) was held not challengeable before the High Court of Justice. According to the Court, this action was merely confirmation of the Minister's primary decision to this effect on 9 December 1997. Similarly, the decision of the Minister of Health, on 2 February 2000, not to allow an applicant to establish a private clinic (as some requirements had not been met) was not accepted as a subject of challenge in case 66/2000⁽⁴⁹⁾ on the ground that it was merely confirmation of the primary decision to this effect taken on 9 May 1999.⁽⁵⁰⁾

An 'executive' decision (such as a decision made by the administration to implement a judicial ruling) is also not accepted as a subject of challenge since the decision itself does not make changes to the legal position of any party involved. Thus, in case 539/99⁽⁵¹⁾ an application for judicial review was made against the decision of the Interior Minister not to allow the applicant to travel abroad. It was successfully argued on

(47) An injured person may, of course, directly claim damages in a private law action.

(48) L.A.J., 47, 2913.

(49) Decided in 18-6-2000.

(50) It should be noted that the applicants in such cases would mostly have no chance to challenge the primary decision on the ground of delay.

(51) L.A.J., 49, 3032.

behalf of the Minister that the challenge should not be accepted since the decision under attack was merely an implementation of a judicial ruling preventing the applicant from travelling abroad before paying amount of 1000 J.D. to the Ministry of Finance.

Similarly, in case 265/99⁽⁵²⁾ the Magistrate Court in Jarash Province decided to remove some buildings found to be illegally built. The Governor of Jarash sent, accordingly, a notice to the owners of the buildings telling them that their buildings would be soon removed. The High Court of Justice did not accept a challenge against the Governor's act as it was not an administrative decision affecting the applicant's legal position, but merely an implementation of the court's decision.

An administrative decision, in this sense, is also different from a contractual act since contracts are 'bilateral' and not 'unilateral' in nature, requiring the consent of all the parties involved. It is also different from both primary legislation (which usually includes general rules concerning the whole society) and courts' judgments (which are taken in the course of solving legal disputes).

(B) Administrative decisions of a judicial nature

While the difference between administrative decisions and court judgments is clear enough, it is a controversial issue whether the High Court of Justice may review what is called an 'administrative decisions of a judicial nature'? The administration may be empowered to decide certain disputes through following certain 'judicial' procedures provided in the relevant statute. The question then is whether a decision of this type is an administrative decision (because it emanates from the administration), or is it a judicial decision (because of the judicial procedure that has been followed)?

Traditionally, the High Court of Justice has not allowed access to judicial review to challenge decisions of such a type on the ground that these decisions include judicial elements similar to court rulings. Thus, for example, in case 58/63,⁽⁵³⁾ the Governor of Ajloun Province, acting

(52) L.A.J., 48, 781.

(53) L.A.J., 11, 555.

according to the Agriculture Act 1972, imposed a fine against the applicant who did pluck trees from a public place contrary to the provision of the said Act. When the applicant sought for the decision in question to be quashed, he was denied access on the grounds that the decision was not an administrative one. The decision was taken, the Court said, in pursuance of a claim made by the police after examining the evidence presented. A similar conclusion was arrived at in case 68/82.⁽⁵⁴⁾ An application for judicial review was made to quash the decision of the Governor of Amman to impose a fine against an applicant who had built some constructions on a piece of land belonging to the Government. Once again, the High Court of Justice dismissed the application on the grounds that the decision in question was arrived at through certain 'judicial' procedures provided in the Agriculture Act 1972, which rendered it a 'judicial' rather than an 'administrative' decision.

This approach has attracted much criticism amongst commentators as it has restricted the possibility of access to judicial review.⁽⁵⁵⁾ The position changed, however, when Parliament, responding to these criticisms, interfered in 1992 to make it clear that the High Court may entertain applications submitted against decisions of this type. Section 9 (a) (11) of the 1992 Act, reads: "administrative decisions of a 'judicial' nature are subject to the jurisdiction of the High Court of Justice, except decisions taken by arbitral bodies in the course of solving labour disputes."

(C) Collective or 'regulatory' decisions

Broadly speaking, proceedings can be sought against 'collective' or 'regulatory' decisions (decisions affecting the whole or a large sector of a society) as well as 'individual' decisions (decisions affecting a specific person or a body of persons). This position is only adopted after the interference of Parliament in the 1992 Act. Regulatory decisions in the

(54) L.A.J., 30, 415.

(55) See for example: Nadeh, H., *Administrative jurisdiction in Jordan*, (Amman 1972) pp. 264-276; Al- Gwairey, A., *Administrative Jurisdiction in Jordan*, (Dar Al-Thaqafah 1989) pp. 180-183.

Jordanian law system include: (i) 'provisional laws' (issued by Government in cases where Parliament is not sitting or dissolved concerning matters requiring urgent and necessary measures)⁽⁵⁶⁾, (ii) 'executive regulations' (issued by Government for the purpose of enforcing primary legislation)⁽⁵⁷⁾, (iii) 'administrative regulations' (issued by Government concerning the control of appropriations and expenditures of public funds⁽⁵⁸⁾ and the establishment of Government departments, their classification, designations, plan of operations and the manner of the appointment of civil servants, their dismissal and their discipline)⁽⁵⁹⁾ and (iv) 'defence regulation' and 'martial instruction' (issued by Government in the event of an emergency).⁽⁶⁰⁾

Traditionally, the High Court of Justice has declined to examine the legality of 'regulatory' decisions on the grounds that they include, similarly to primary legislation, general rules affecting the whole society. The Court only allowed access to judicial review when a challenge was made against individual decisions taken in pursuance of illegal delegated legislation. Thus, in case 44/67,⁽⁶¹⁾ a challenge was made against the government's decision to prevent the applicants from using their private cars to transport tourists between cities in Jordan. During the course of the trial the 1967 'Martial Instructions' were issued (according to Section 125 of the Constitution) to face the exceptional circumstances expected to arise from the Arab-Israeli war. Given that these instructions may override any primary legislation in cases of inconsistency,⁽⁶²⁾ Section 20 of the Martial Instructions had restricted the jurisdiction of the High Court of Justice to the effect that it could not continue hearing the application in question. It was argued on behalf of the respondents that

(56) Section 94 of the Constitution. Provisional laws, according to this Section, should not be contrary to the provisions of the Constitution or the primary legislation and they must be placed before Parliament at its next session

(57) Section 31 of the Constitution.

(58) Section 114 of the Constitution.

(59) Section 120 of the Constitution.

(60) Section 125, 124 of the Constitution.

(61) L.A. J., 15, 749.

(62) Section 25 of the Constitution.

the application had accordingly to be dismissed, whereas the applicants' counsel contended, in vain, that Section 20 itself should be invalidated as it was contrary to the constitutional right to access to justice.⁽⁶³⁾ The High Court of Justice refused to examine the legality of the Instructions in question and the challenge was accordingly dismissed.

A similar view was made in case 88/61.⁽⁶⁴⁾ The Council of Ministers, acting according to the provisions of the Civil Aviation Act 1961, purported to cancel the licence of a private airline company. The decision was taken, contrary to the said Act, without giving reasons and so it was held to be invalid. Consequently, the Council of Ministers issued, in the absence of Parliament, a 'provisional' law according to which it could take the same decision without stating reasons. The applicant company claimed again, but this time against the 'provisional' law according to which the respondent could act. Access to the substance of the case was denied. It was unsuccessfully argued that the condition of 'necessity' (stipulated in Section 94 of the 1952 Constitution to allow government to issue 'provisional' laws) did not exist. The High Court rejected the argument declining to examine the legality of the 'provisional' law in question or any of the constitutional conditions upon which it might be issued.

This approach has also attracted much criticism by Jordanian commentators as restricting access to judicial review and leaving governmental actions beyond judicial control.⁽⁶⁵⁾ The position has changed however since Parliament interfered in the 1992 Act providing explicitly that secondary legislation is disputable before the High Court of Justice.⁽⁶⁶⁾ According to the 1992 Act, the High Court has no power to quash secondary legislation, but to declare it 'unenforceable'. No reference is made as to what 'unenforceability' in this context means.

(63) Section 101 of the Constitution.

(64) L.A. J., 10, 707.

(65) See Massadeh, Abdel Mahdi, 'The Legality of Central Government Administrative Delegation - Comparative Study of Jordan and the United Kingdom' (Cardiff, 1982), Thesis p. 573-575; Hiyria, A., 'The Provisional Acts in Jordan' (1977) L.A. J.; Nadeh, H., op. cit. no. 55, p. 215.

(66) Section 9 (7) of the High Court of Justice Act 1992.

The dominant view is that a secondary legislation declared to be unenforceable is of no force and the Government must reissue it again.⁽⁶⁷⁾

Exercising its 'new' jurisdiction, the High Court of Justice has examined the validity of the provisional law of 'Printed Matters and Publication' issued by the Council of Ministers in 1997.⁽⁶⁸⁾ In this case, the applicants, owners of some Jordanian newspapers, sought proceedings against the 1997 provisional law on the grounds that the constitutional conditions to issue such a provisional law did not exist here. To issue a provisional law, a matter, according to the 1952 Constitution, must be urgent and cannot be postponed until Parliament starts its next session. Organizing matters of journalism, it was successfully argued, is not so urgent and it could be dealt with by Parliament in its coming session. The High Court of Justice allowed the case to be substantively examined and ultimately held the provisional law in question to be unenforceable.⁽⁶⁹⁾

It is worth indicating here to the relationship between reviewing the legality of 'regulatory' decisions and the issue of standing. The restrictive 'personal' interest formulation adopted in Jordanian law may not offer a real chance to challenge 'regulatory' decisions at practical levels. Decisions of this kind have, as mentioned above, a 'general' rather than a 'personal' effect, so access is unlikely allowed to challenge a regulatory decision on the lack of the applicant's 'personal' interest to seek proceedings. In the example referred to above access has been allowed however because the applicants (the owners of some Jordanian newspapers) had a personal interest in quashing the 1997 provisional

(67) Al-Khatar A, op. cit., no. 38, pp. 424-431; Kan'an, N., *Administrative jurisdiction in Jordan* (the University of Jordan 1999) pp. 151-154.

(68) Case 226/97 L.A.J., 47,389.

(69) See more recently case 336/98 (L.A.J., 47,2884) where, albeit unsuccessfully, a group of Jordanian lawyers could challenge the validity of the a system issued by the Council of Ministers (on 23 June 1998) amending some provisions of the Interior Legal System of the Jordanian Lawyers Association 1966, and case 344/99 (L.A.J., 49, 3057) where a group of female civil servants in Al-Yarmok University could challenge the legality of Health Insurance Instructions issued in 1999.

Act. This approach has rarely been adopted by the High Court in similar challenges.

(D) "Oral" and "implicit" administrative decisions

If a decision subject to challenge is of such a nature proceedings before the High Court of Justice is also allowed no matter whether a decision is an 'oral' or a 'written' administrative decisions. This approach is right in principle; otherwise deciding authorities would be able to escape from judicial review whenever expressing their decisions orally.⁽⁷⁰⁾ Proceedings are also accepted against what is called 'implicit' administrative decisions and not only "explicit".⁽⁷¹⁾ This may happen when the administration gives no answer to an application made before it. According to the 1992 Act, a silence on the part of the administration in the face of a citizen's request constitutes, after one month, is an implied rejection to his request, so it can be challenged on this ground. Cases 2/64⁽⁷²⁾ and 130/97⁽⁷³⁾ are illustrative examples.

In the first case the applicant asked the Planning Committee in Naples Province for permission to build commercial stores on his land. After a two-month silence on the part of the respondent, the applicant could, according to Section 10 (3) of the Regular Court Act 1952 (now Section 11 of the 1992 Act), successfully challenge the Committee's silence as a refusal of his application. In the second case, although the application for judicial review was dismissed on merits, the applicants, postgraduate students holding diplomas of 'practical engineering', were allowed to seek proceedings against the Jordanian Engineers' Association which gave no answer to their applications to become professional

(70) See for example case 74/56 (L.A.J., 3 607.) where an application for judicial review was accepted against an oral decision made by the Governor of Amman to move the applicant's family from their leased house to solve a dispute between the applicant (the tenant) and the landlord.

(71) Section 11 of the High Court of Justice Act 1992.

(72) L. A. J., 12, 194.

(73) L.A.J., 45, 3760.

members. The application for judicial review was made after almost a three-month silence on the part of the respondent association.⁽⁷⁴⁾

(E) Final decision

The decision subject to judicial review must be a "final" one. The High Court of Justice defines a final decision on more than one occasion as 'the decision which is taken by a competent body and needs no confirmation or approval of other bodies to be implemented'.⁽⁷⁵⁾ Accordingly, challenges are denied in regard with:

- 1 - A recommendation made by the Head of the 'Public Intelligence Department' not to accept an applicant in the Jordanian Phosphate Corporation for security reasons.⁽⁷⁶⁾
- 2 - A preliminary decision taken by a Planning Committee that needs the approval of the minister concerned.⁽⁷⁷⁾
- 3 - A suggestion made by the High Council of Education regarding study abroad.⁽⁷⁸⁾
- 4 - An official request made by the Minister of Interior to the Head of the Public Passports Department to carry out an investigation concerning the way in which an applicant could get a 'forged' passport.⁽⁷⁹⁾
- 5 - A consultation between the Head of a High School and the

(74) Proceedings against 'implicit' decisions may however be dismissed if it is proved that the silence on the part of the administration was due to a serious investigation of the subject matter. This was the case, for example, in the High Court's decision in case 163/86 (L. A. J., 34, 73). In this case the applicant, a Palestinian citizen, applied for a Jordanian passport on the grounds that his father had a Jordanian passport and accordingly he was eligible according Jordanian law. After a month's silence on the part of the respondent, the Head of the Public Passports Department, an application for judicial review was made before the High Court of Justice. It was successfully argued on behalf of the respondent that the silence was due to a serious investigation about the application in question, including consultations with other governmental departments. The challenge was accordingly dismissed.

(75) See for example case (6/66) L.A. J., 14, 460.

(76) Case (286/98) L.A. J., 46, 4000.

(77) Case (6/66) L.A. J., 14, 460.

(78) Case (185/87) L.A. J., 35, 1625.

(79) Case (211/96) L.A.J., 44, 1491.

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- Director of the Education Department in the same area to transfer an offending student to another branch within the same school.⁽⁸⁰⁾
- 6 - An announcement made by the Foreign Minister of a competition concerning various diplomatic jobs.⁽⁸¹⁾

(F) Non- justiciable decisions

The decision subject to challenge must be a "justiciable" one. This term basically refers to what is called, in Section 9 of the High Court of Justice Act 1992, 'Acts of State'. The said section reads: 'Applications which are lodged against Acts of State are not allowed'.⁽⁸²⁾ Neither an enumeration nor a definition has been provided of 'acts of state' in the 1992 Act, and the High Court of Justice is left, once again, to decide what decisions are classified under this umbrella. In doing so, the Jordanian Court has adopted, looking to the matter from the access to judicial review perspective, a restrictive approach, classifying a large number of administrative actions as being acts of state.

The first occasion in which this issue was discussed before the High Court was case 34/52.⁽⁸³⁾ In this case, the Government, after deliberation with the British Aviation Ministry, decided to make maintenance to the Amman Military Airport in which a group of British Aviation Forces had been remained after the independence of Jordan. When a Lebanese contractor was asked to do the maintenance, a Jordanian contractor sought proceedings against the decision on the ground that the priority should be given to Jordanian contractors to do such maintenance, according to the British-Jordanian agreement, 1946. The High Court of Justice dismissed the application. The decision was held to be an 'act of state', involving matters of 'high policy'. For the purpose of judicial review proceedings, a distinction was made in this case between 'administrative' and 'governmental' functions of public authorities: when

(80) Case (177/96) L.A.J., 44, 4337.

(81) Case (32/98) L.A.J., 46, 101.

(82) A similar provision was made before in section 10 (3) of the Regular Courts Act 1952 and in section 9 (b) of the High Court of justice Act 1989.

(83) L.A.J., 1, 53.

the administration performing administrative functions (according to the relevant statutes), its decisions are subject to judicial review, but when acting politically (deciding matters of a high policy), decisions arrived at would be considered 'acts of state', so non-justiciable.

The issue of non-justiciability has since been examined on many occasions. In short, the following types of decisions are considered 'acts of state', so non-justiciable.⁽⁸⁴⁾

1 - Decisions which are constitutionally preserved to the King.

Including declaring war or conducting peace negotiations,⁽⁸⁵⁾ granting a special pardon or remitting a sentence,⁽⁸⁶⁾ the appointment of a Prime Minister,⁽⁸⁷⁾ and conferring and withdrawing civil and military ranks and honorific titles.⁽⁸⁸⁾

2 - Decisions concerning relations between Government and Parliament:

According to the system of government in Jordan, the Executive has considerable discretionary powers concerning relations with Parliament, which held to be non-justiciable on more than one occasion. Examples of these powers include:⁽⁸⁹⁾ ratifying the laws and promulgating them, convening the National Assembly, inaugurating, adjourning, and proroguing it, dissolving the Chamber of Deputies, appointing members and the Speaker of the Senate and dissolving the Senate or relieving any Senator of his membership.

3 - Decisions concerning relations with other countries.

This group of non-justiciable decisions includes the ratification, interpretation and application of international treaties. It also includes an admission of a new State or Government, the appointment of Jordanian diplomats in other countries as well as accepting diplomatic representatives in Jordan. The case law shows that the High Court of

(84) See Nadeh, H., op. cit., no. 55, p. 240; Al-Shoubaki, A., op. cit., no 47, pp. 94-98.

(85) Section 33 of the Constitution.

(86) Section 38 of the Constitution.

(87) Section 35 of the Constitution.

(88) Section 37 of the Constitution.

(89) See case 34/52 (L.A.J., 1, 53.) referred to above and more recently case 34/97 (L.A.J., 44, 4575).

Justice adopts a restrictive approach in dealing with cases concerning the implementation of international treaties, even when the decision being challenged has a direct effect on the people concerned. Thus, in case 7/82⁽⁹⁰⁾ the applicant, an Iranian company working in Jordan, was denied access to seek proceedings against a Government decision to cancel a tender that it gained as a result of public competition. The High Court of justice was of the view that the decision was an act of state taken to support Iraq in its war against Iran. According to the High Court, both Jordan and Iraq were parties to what is called the 'Common Arab Defence Treaty', 1967, so decisions made to implement this treaty are non-justiciable.

Access was also denied in case 188/91⁽⁹¹⁾ and case 208/91⁽⁹²⁾ on similar grounds. Following the decision to dissolve the legal relationship between Jordan and the West Bank (Palestine) in 1988 (to enable the Palestinian National Authority to proceed with the peace process with Israel), the Government in Jordan decided to withdraw national passports of some citizens who were originally from Palestine and to give them, instead, what is called 'temporary' passports. In these two cases proceedings were sought to challenge decisions taken to this effect as they made an adverse changes to the legal position of the applicants. The applications were dismissed in both cases when the High Court of Justice came to the conclusion that the decisions under attack were acts of state and so non-justiciable. According to the Court, these decisions were arrived at in the light of the government's decision to dissolve the legal relationship with the West Bank, which, in turn, was made with the agreement of the Palestinian National Authority and other Arab States.

4 - Decisions taken in emergency cases or exceptional circumstances.

As previously mentioned, the Government in Jordan has the power, according to Sections 124 and 125 of the Constitution, to issue defence

(90) L.A.J., 31, 341.

(91) L.A.J., 39, 378.

(92) L.A.J., 39,381.

regulations and martial instructions and to declare a state of emergency when this is necessary to keep 'public order'.⁽⁹³⁾ The dominant approach is that while the decision declaring a state of emergency is an act of state and so non-justiciable, administrative decisions accordingly taken are justiciable.⁽⁹⁴⁾ Thus, although it refused to examine the validity of declaring a state of emergency, the High Court of Justice had accepted applications made against the decision of the Governor of Nables to detain an applicant who tried to smuggle goods to Israel,⁽⁹⁵⁾ the decision of the Governor of Jenien to detain an applicant who was found to have a piece of hashish in his cafe,⁽⁹⁶⁾ and the decision of the Minister of Interior to confiscate an applicant's pistols.⁽⁹⁷⁾

The 'Act of State' theory has attracted the criticism of Jordanian commentators. In most, if not all, administrative law textbooks, a call is made for its abolition.⁽⁹⁸⁾ This, with due respect, seems to be exaggerated. It should be admitted, on balance, that there are some acts of state which are so important from the point of view of preservation and defence of the society that they should not be limited by legal considerations. They are largely concomitant to the sovereignty of a state, so it is in the public interest to leave them unchallengeable before the courts. Examples of such acts may include decisions concerning the relationship between government and parliament, an admission of a new state or government, declaration of war and so forth. But, there are, on the other hand, some decisions which should not be classified so, partly because of their direct effect on the people concerned and partly because judicial examination to these decisions would not necessarily conflict with the sovereignty of a state. In other words, there is no constitutional justification to exclude

(93) For a full account see Al-Tahrawi, H., *The Theory of 'Necessity' in Constitutional and Administrative Law and its applications in Jordanian Law: A Comparative Study*, (University of Cairo, 1992) Thesis

(94) Nadeh, H., op. cit., no. 55, p. 241; Al- Shoubaki, A., op. cit., no. 47 pp. 96, 97.

(95) Case (87/56) J.A.L.,5, 134.

(96) Case (26/67) J.A.L.,15, 39.

(97) Case (237/61) J.A.L.,9,671.

(98) Nadeh, H., op. cit., no. 55, p 239- 243; Al-Shobaky, O., no. 47 p 92-94.

them from being challenged. Examples of such acts may include administrative decisions taken in the course of implementing international treaties which have direct effect on the people concerned (such as the decisions in cases (7/82) (188/91) and (208/91) referred to above) and the declaration of an emergency.

The acts of State theory is largely narrowed in French law from which the 'acts of state' doctrine has been imported to Jordanian law. The 'acts of state' doctrine in French law has been progressively cut down to extent that it includes, presently, only the relations of the government with the parliament and with foreign states. Moreover, in the field of international relations, the doctrine has been outflanked by accepting challenges against decisions that can be severed from a treaty itself (*acte detachable*)⁽⁹⁹⁾

Conclusion

This study has examined the Jordanian law approach concerning decisions that can be challenged before the High Court of Justice in Jordan. A general glance of the Jordanian administrative law was presented in the first chapter, whereas an attempt to answer the question of what decisions are subject to judicial review proceedings in the Jordanian law from a legislative and a judicial perspective was made in the second chapter.

The study concludes that only decisions made by public, national and "administrative" bodies are subject to challenge, and that not all such decisions are subject to challenge. A decision under attack must be "final administrative decision". It must also be "justiciable" administrative decision; therefore acts of State are not subject to challenge before the High Court of Justice. A more liberal approach in the Jordanian law concerning the doctrine of "acts of State" is suggested. This would be an effective guarantee for rights and freedoms of people.

(99) For more details see Pollard, D., *Sourcebook on French Law*, (Cavendish Publishing Limited, 2nd ed. 1998), p-p. 85,86; Brown, N and Bell, J, op. cit., no. 22, p. 162.

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