



Arab Center for the Development of the Rule of Law and Integrity

“Promoting the Rule of Law and Integrity in Arab Countries” Project

Report on the State of the Judiciary in Jordan

Prepared by: Attorney Abdel Ghaffar Freihat

Draft



Chapter One The Birth of the Judicial System and its Development

Introduction:

The idea of the judiciary has always been linked with the idea of justice, and the protection of rights and freedoms. The civilizations of ancient history has known forms of judicial systems that aimed towards the fulfillment of justice. Thus, judges became a necessity for any human society needs security, stability, conflict resolution and the protection of rights, for these are the backbones of a democratic state.

The task of the judge was granted utmost respect and organization that goes in par with the role of the judiciary as a balance of justice. Hence, for his/her safety, the judge has to be impartial, free of any influence related to interests and personal emotions.

It was recounted that Prophet Mohammed said, “the hand of God is with the Judge when he judges”. In another account, it was told that the Prophet said that “God is the Judge unless he is influenced”.

With such talks, Islam stated the magnitude of the judge’s responsibility and that to protect the practice of justice, to rule between people and to prepare the judge and train him/her to be perceptive, virtuous and upright in his verdicts and to perform his duties without nepotism and favoritism.

The mission of the judiciary is to protect rights and freedoms. This requires that the judge be awarded personal autonomy in specific, and the judiciary independence in general. The Universal Declaration of Human Rights issued by the UN General Assembly in 1948 on proclaimed the right of every individual to an independent and impartial tribunal where by Article 10 of this Declaration stated, “**Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.**” This principle was reiterated in Article 14 of the International Covenant on Civil and Political Rights in 1966.

The vision of the efforts for the reform of the judiciary is the establishment of an autonomous authority endowed with the components of a fair judiciary. Such a reform is based on a professional reform of the components of the judiciary since the latter is one of the three authorities on which a democratic state is founded. The judiciary plays its role in a complimentary and harmonious manner with the other authorities; for the realization of the vision and the achievement of the goal does not only rely on professional reformation and development. Despite its importance this will not achieve the legitimacy fo the state and its democracy and



does not ensure the rule of law in it unless it is accompanied with a political will and efforts to reform the political system in the country in the framework of a national strategy that aims at ensuring the right of the people to an effective political participation in managing their affairs and reforming the national institutions and placing them under the rule of law, respecting their human rights and freedoms, securing their security and socioeconomic stability, promoting the freedom of speech as a human and democratic necessity, in addition to being an important popular means to control the work of the state authorities.

This was reiterated in the national Jordanian pact issued in 1990. This pact defined the state of law as follows: (A democratic state that abides to the principle of the sovereignty of law and exacts its legitimacy, authority and power from the free will of the people.

First: Constitutional Authorities:

The constitution of the Hashemite Kingdom of Jordan of 1952 set the rules which the Jordanian State is based on. Article 1 of the Constitution stated: "**The Hashemite Kingdom of Jordan is an independent sovereign Arab State. It is indivisible and inalienable and no part of it may be ceded. The people of Jordan form a part of the Arab Nation, and its system of government is parliamentary with a hereditary monarchy.**"

Chapter 2 of the Jordanian Constitution, which has to do with the rules regulating the rights and duties of Jordanians, set the rule of equality before the law and bound the Government to guarantee the right to work, education, a state of tranquility and equal opportunities for all Jordanians.

The constitution guaranteed as well the personal freedom, as per Article 7: "**Personal freedom shall be guaranteed.**" It is noticed from this rule that the Jordanian Constitution guaranteed personal freedom in an absolute and directly applicable manner, without referral to the law regarding the conditions to enjoy this freedom. The Jordanian Constitution adopted this methodology to underline that setting any legislations or rules that might diminish personal freedom or tamper with it would not be valid unless based on a similar constitutional base.

As for the powers of the Jordanian State, **Chapter 3** of the Constitution included the fundamental principle on which every democratic state is based: "**The people are the source of all powers.**" It also included the method by means of which the people practice this power. It defined as well the three powers: Legislative, Executive and Judicial Powers.



Second: Brief Overview of Judicial System in Jordan:

1- Origin of System¹:

The history of the judicial organization and the history of litigation in Jordan could be summed up as follows:

- a- **Pre-Islam:** During this period, Arab pagan tribes in the Valley of Jordan and Arab Canaanite tribes in Palestine were subject to their customs in resorting to arbitrators and clergy. When Christianity spread among those Arab tribes, there was barely any change in the arbitration system for different reasons. For instance, Christianity did not have a judicial legislation and organization, as it was only limited to spreading the Good News of humanitarian belief and ethics, which are ethics of compassion and tolerance.
- b- **Post Islamic Conquest:** Since that date until the era of Ottoman system, the Islamic Judiciary prevailed. It was built on the basis of litigation before a single judge who should give his ruling pursuant to the principles of Islamic Sharia' which are aimed at establishing justice based on the rejection of unfairness and the will of the stronger. The Islamic judiciary emanates from equality between good people since in the eyes of the Sharia', all people are equal. According to the Sharia', justice is a must, even with the enemy. Allah said: **"O' ye who believe! Stand out firmly for Allah, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be Just: That is next to Piety."**²

And Jordan as part of the Greater Syria that was subject to the ruling of the Ottoman State, used to implement the Islamic judicial system at the beginning. At the end of the era of the Ottoman State, it derived rules from some European systems that are related to sanctions, commerce and civil procedures. The judicial system at that time became a combination of the Islamic judicial system and the European one.

2- Judicial System in the Hashemite Kingdom of Jordan:

After the French occupied Syria in 1920, Jordan was set under the British Mandate, where the Emirate of Eastern Jordan was announced in 1921. The Statute was promulgated in 1928 which included an organization of the Judicial Power. Besides the religious and regular judiciary, Jordan witnessed the so-called **Tribal Judiciary**. A law was promulgated on this judiciary in 1924 entitled, "Law of Tribal Courts". Its competency was limited to some Bedouin tribes. This system

¹ Dr. Salaheddine al-Nahi, Judicial Organization, Litigation and Proceedings in the Hashemite Kingdom of Jordan.

² Chapter of the Table Spread "Al-Ma'ida" (8).



was cancelled later on. In 1946, Jordan announced its independence under the name of the Hashemite Kingdom of Jordan.

In 1952, the Jordanian Constitution was issued. It included the rules of the regime in Jordan, the Government's powers, including the Judicial Power and its independence.

3- Features of Jordanian Judicial System:

The judicial system in Jordan is founded on the principle of the judiciary's independence. The independence of the judiciary as a power held by courts is provided for in Article 27 of the Jordanian Constitution. Moreover, the judge's personal independence while practicing his work is also guaranteed, as per Article 97 of the Constitution: "**Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.**"

Moreover, the judicial system in Jordan is based on the principle of equality among litigants before the judiciary, the principle of public trials, and the support of rulings with elaborate justifications. The judicial system in Jordan is marked as well by the existence of religious courts and tribunals of other religious communities, which are in charge of deciding on personal status and inheritance matters. This is in addition to the regular courts that enjoy the general jurisdiction to look into and adjudicate all the civil and penal disputes, even if these disputes are linked to administrative decisions which are issued by administrations affiliated with the Public Authority, if not related to administrative contracts concluded between persons of the Common Law and persons of the Private Law. The Supreme Justice Court- which is the Administrative Judiciary Court- stated in many of its rulings that its competency has to do with the final administrative decisions that are issued to express the autonomous will of the administration since it is a public authority. As for behaviors related to or based on administrative contracts, as well as the results influencing their parties, any emerging disputes fall within the competency of regular courts, in implementation of the rule that says: The contract is the law governing contractors.

This constitutes a practical implementation from this party of the principle of equality before the law and a confirmation that regular courts enjoy the general jurisdiction over all civil and penal matters and over all people, including persons of the Common Law.

Among the features of the judicial system as well is that the term "judge" applies to the judges of court and judges of public prosecution, which means that the public prosecution apparatus is part of the Judicial Power.

4- Judiciary's National Role:

The Judicial Power is one of the public constitutional powers in the State. The Judicial Power has the major role in protecting freedoms and human rights, guaranteeing the rule of law and equality before it, achieving the message of the judiciary in adjudicating disputes emerging among individuals or between



individuals and State institutions in accordance with the law. Furthermore, the Judicial Power enjoys a significant role in spreading tranquility and security and protecting properties. As much as the Judicial Power is capable of exercising its functions in independence, proficiency and transparency, it would greatly contribute to depicting a better image of the country before other countries, which would help establish diverse political, economic and social relations that would benefit the country on the political, economic and social levels. In addition, this would promote the kingdom's competitiveness in its international surroundings in terms of compliance with international standards regarding the rule of law, judiciary's independence and the respect of human rights.

Third: Influential Factors in the Judicial System:

The Jordanian Constitution issued in 1952 included principles on which the political, economic and social system is based. The prevalent political, economic and social factors in the Hashemite Kingdom of Jordan influenced the judicial system and in different degrees as follows:

1- Political Framework:

The political system is based on the fact that the ruling system is parliamentary with hereditary monarchy. Though the Jordanian Constitution included the rules regulating the functions of the three powers, which reveals their independence while practicing their duties, it included other provisions that hinder the establishment of the State of Law and Institutions, and at some times, they lead to a mixture of jurisdictions or a diminishing of the authority of one power for another at the expense of the principle of legitimacy and guarantee of the rule of law. For example, Article 34 of the Jordanian Constitution³ provided for the King's right to issue orders to hold Parliament's elections and thus the right to postpone these elections. He also has the right to postpone the convening of the National Assembly, with its two branches: the Parliament and the Senate, and the right to dissolve them.

Doubtlessly, the dissolution of the National Assembly or the postponement of its exercising its duties is a hurdle of the principle stated as per Article 24/1 of the Constitution that stipulated: **The Nation is the source of all powers.** If we take into account that the Parliament, which is one of the two councils constituting the

³(i) The King issues orders for the holding of elections to the Chamber of Deputies in accordance with the provisions of the law. (ii) The King convenes the National Assembly, inaugurates, adjourns, and prorogues it in accordance with the provisions of the Constitution. (iii) The King may dissolve the Chamber of Deputies. (iv) The King may dissolve the Senate or relieve any Senator of his membership.



National Assembly, is directly elected by the people who are the source of all powers, then hindering this utility or the capacity to hinder it is an essential violation of the principle of legitimacy and the basic rule that defined the political system in the kingdom as a parliamentary monarchy. This reflects on the Judicial Power as one of the State's powers.

Moreover, the legislative jurisdiction given to the Executive Power in case of the National Assembly's absence is considered as one of the means that constitute a breach of the respect of the principle of separation of powers, giving the Executive Power the capacity to have a firm grip over the authority and set legislations which the judiciary finds itself obligated to implement even though the necessity conditions, included in Article 94 of the Constitution and which enable to the Cabinet to issue provisional laws⁴, are not well-established.

2- Economic Framework:

On the economic level, the Jordanian society is based on the rules of free economy and respect of individual property, with the emphasis on the citizen's right to work and achievement of the principle of equality and social justice when imposing taxes, based on the principle of progressive taxation.

Jordan witnessed large changes in different economic sectors, affected by the developments that the global economy saw. The requirements of openness to the global economy bred many challenges related to economic patterns, investment environment and harmony with economic standards imposed by states and international economic blocs on developing countries to integrate in the global economy, such as lifting the protection off national industries, reducing custom tariffs, opening the market before foreign goods and services, updating legislations, protecting intellectual property rights and protecting environment. Among the changes witnessed by the Jordanian economy is the government's privatization of many public institutions and their transfer into commercial companies operating in different economic sectors, such as aviation, communication, minerals and energy. It engaged in the running and management of these projects foreign capitals and expertise.

Jordan adhered to many international trade agreements, such as the free trade agreement between Jordan and the European Free-Trade Agreement (EFTA) States. It also signed the protocol of Jordan's adhesion to the Marrakech agreements that founded the World Trade Organization (WTO). It also signed the agreement to establish a free-trade zone between Jordan and US Government. Moreover, it adhered to the international anti-corruption agreement and signed

⁴ Article 94 of the Jordanian Constitution entitled the Cabinet to set provisional laws when the National Assembly is not sitting or dissolved, defining the conditions when such powers could be exercised: *necessary measures which admit of no delay or* disburse expenditures incapable of postponement. The Cabinet has always exploited the provisions of this article many times through promulgating provisional laws without the establishment of any of the cases entitling it to do so. For instance, 216 provisional laws were promulgated while the National Assembly was dissolved from mid 2002 to the first half of 2003.



many bilateral trade agreements and agreements to prevent fiscal overlapping with many countries across the world. Such changes gave the hope for promulgating many legislations, which were then called economic laws. This was followed by increasing investment in different economic sectors, growing local and foreign investment in the sector of financial securities and mega real-estate projects, IT, tourism and others. These economic changes led to an acute increase in prices of goods and services, which eliminated the financial resources of the limited income middle class, which most of the judges belong to. The purchasing power of their incomes increased to an extent it touched the poverty line classifications, which is one of the negative influential factors on guaranteeing the judge's neutrality and integrity.

The quick changes that affected the Jordanian economy, as well as meeting the prerequisites of openness to the global economy and creating an attractive investment climate necessitate the enhancement of the institutional capacity of all the State sectors, including the Judicial Power, where it should be provided with the competence and expertise that are capable of keeping pace with economic progress and meeting its needs, and benefiting from the results of economic development in terms of achieving social justice, eradication of poverty and unemployment.

Studies, reports and the practical reality relevant to the reform and the improvement of the judicial system indicate that the Judicial Power has not reached yet the institutional capacity level that enables it to keep pace with economic developments and guarantees that it plays its role in protecting and promoting the national economy. This will be examined when analyzing the elements on which a just judiciary is based in the following report.

3- Social Framework:

In spite of the high percentage of education, the Jordanian society is still one of a tribal structure which dominates the thinking and the conduct of a large number of its individuals. That feature enhances factors of significant influence on the conduct of individuals, such as legislations, the method how the State views people, as well as the political and economic repercussions of this tribal dimensions on the individual and his conduct. For instance, this contradicts the form and content of the Jordanian Constitution⁵. Ever since the establishment of the Jordanian State, the electoral law of the Parliament, has divided the Jordanian voters into Bedouins, urban people, Christians, Muslims, Circassian and Chechian minorities. It allocates special electoral constituencies for them and prevents some of them, such as Bedouins, to run as candidates for the cities' seats, even if they were born and lived in it⁶. In fact, this pushes people to fortify themselves behind

⁵ Article 6 of the Jordanian Constitution: "Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion."

⁶ Parliament's Electoral Law No.34 of 200, and the Regulation of governmental constituencies division and seats allocated for each of them No.42 of 2001.



tribal, sectarian, racial, party-based and regional shields that constitute a major hurdle to establish the State of Law and Democracy. Moreover, some legislations and the administration's behavior promote tribal statuses and contradicts with the rule of law. The intervention of tribe leaders is approved by the administration and courts to solve problems emerging from offences that sometimes reach the level of crimes, via the reconciliation that is reached through social and financial pressures which a lot of people can't resist, especially when in terms of car accidents, murder, quarrels and others. Their perpetrators could only be deterred if they previously knew that the law is not tolerant and that only law and justice could be the means to solve such disputes and impose sanctions on perpetrators and those causing them.

On the other hand, the Jordanian State still deals with large categories of the Jordanian society as tribal blocs that could be contacted via their leaders. This matter enhances these individuals' feeling that these blocs are tribal in terms of rights and obligations, which is the opposite of what the citizenship feeling that a citizen must sense in the State of Law. This makes a tribe individual to look to his fellow or other tribes differently than the way he views remaining individuals of society in terms of rights, obligations and common interests.

Through adding this social dimension to the impact of the political and economic dimensions, the tribal social structure is undoubtedly reflected to a great extent on the structure and composition of the Judicial Power, and hence, on the pattern of thinking and conduct of judges and the administrative apparatus of the judiciary. Judges and other members of the administrative apparatus are individuals in the Jordanian society enjoy what a Jordanian citizen enjoys, in terms of behavior and traditions, constituting a natural reflection of the Jordanian social map. It is worth noting that this map leaves behind repercussions and impact on the Judicial Power, whether in terms of appointments in the judicial apparatus or the neutrality and integrity of the apparatus's members in general.

It goes without saying that the tribal pattern of thinking and the resulting conduct and decisions opposes the implementation of law in a modern State that seeks to become a democratic state governed by the law and where it deals with all people on the basis of citizenship. Moreover, this pattern of tribal thinking does not represent all categories of the Jordanians and neither the orientations of the people, regardless of their tribal affiliations.

Hence, the social factor, as it is described here, is very significant and influential on the status of the judiciary in Jordan, which necessitates that the status of the judiciary should be examined from a broader and more angle of the international recognized technical standards. In addition, the social dimension and the political and economic motives should be taken into account.

Fourth: Reform Efforts:

a- Background of Reform Efforts:



Looking after the independence of the judiciary, as it constitutes a main pillar of the principle of legitimacy, and guaranteeing the rule of law constitute a continuous push for many sectors of the Jordanian society to call for the judiciary's independence and to ensure the means that sets the Jordanian judiciary among the world judicial apparatuses that achieved many elements on which a just judiciary is based in their legal systems. It is worth-noting that the judicial system in Jordan has a large share of any Jordanian discourse allocated to talk about the reform of the State institutions and the establishment of the State of Law and Institutions, or freedoms or human rights or economic development, etc... Almost every governmental program submitted to the National Assembly to win the confidence in the Cabinet stresses the support of the judiciary's independence principle and the support of the Judicial Power so that it can fulfill its significant national role. However, in the years preceding 2000, this issue did not lead to the emergence of reform plans that could be examined and observed, except for the Jordanian National Pact (December 1990) set by the Royal Committee for drafting the Jordanian National Pact. The pact diagnosed some of the problems hitting the judicial and legislative system in Jordan and submitted proposals aimed at finding solutions for these problems. This pact was issued in parallel with the First Gulf War as well as the repercussions related to the peace negotiations with Israel, the embargo against Iraq, in addition to the circumstances that placed Jordan before many crises and challenges. All of these doubtlessly greatly influenced the enhancement of the principles mentioned in the Jordanian National Pact. It can be summed up that most of the previous reform efforts remained ink on paper.

On 29/8/2000, his Majesty King Abdullah II addressed a letter to the Prime Minister, which included directives to enhance the judicial apparatus and the supporting apparatuses. In the framework of the conviction that **"the qualified and honest judiciary plays a vital role in achieving justice, promoting national development with its different dimensions, safeguarding stability for citizens and enabling them to live safely in light of the Constitution and the Rule of Law"**, and in the context of this orientations, the **Royal Committee to Enhance the Judiciary** was established. The committee examined the status of the judiciary and diagnosed some of the problems it suffers from, as well as the necessary reforms to promote it as an independent power that is capable of exercising its national role. The Judicial Power took part in the proceedings of this committee, represented by the head of the Judicial Council at that time and the secretary-general of the Justice Ministry, who is a member in the Judicial Council as well. This committee finished its work and in September 2001, it submitted a report to his Majesty in which he briefed the axes on which the committee's work has been based, as well as the reforms implemented and those recommended for implementation in the coming years. Among these reforms are:

- 1- **Axis of Legislation:** The Royal Committee mentioned in its report that the enhancement of the judiciary requires first of all the enhancement of the legislations relative to the judiciary and those related to the procedures



adopted by courts when examining the disputes referred to the. The committee suggested the introduction of amendments to 17 laws entered in force, among which 11 entered in force while the committee was working. The committee also completed the procedures of promulgating and enforcing the remaining legislations after the committee's work is over.

- 2- **Axis of human resources:** The Royal Committee for the Enhancement of the Judiciary reached the fact that social and economic progress in the country, which was reflected on the increase in the number of cases referred to courts, was not accompanied by an increase in the number of judges to suit the large quantity of cases referred to courts. The committee said: "**among the priorities of enhancing the judiciary is increasing the number of judges in the kingdom.**" It recommended the multiplication of the number of judges during 3 years to reach 800 judges by the end of 2003. It is worth-noting that the period following the report issued by the Royal Committee for the Enhancement of the Judiciary saw the appointment of a few judges. However, this number hasn't reached 800 judges until now.

Moreover, the Royal Committee for the Enhancement of the Judiciary recommended a raise in the salaries of judges and an end-of-service remuneration for every judge whose service is over. Such recommendations were implemented through the promulgation of the Judicial Service Regulation for Regular Judges No.26 of 2001.

Furthermore, the committee reached the necessity to promote the administrative apparatus backing the judicial apparatus through increasing the numbers of qualified employees and providing training programs and sessions that promote the skills of the administrative staff and enable them to access the job's necessary skills. In response to the Royal Committee's recommendation, the government created 560 vacant posts for different administrative jobs on the appointments list of 2001.

In addition, regarding human resources as well, the Royal Committee recognized the significance of the Judicial Institute's role in preparing and training people who are qualified to take up the post of the judiciary, as well as undertaking the responsibility of continuous training for judges of different grades. The committee believed that achieving the aspired goals of the Judicial Institute necessitates that this institute be under the supervision of the Judicial Power in terms of its administration, implementation of its program and supervision of teaching and training.

- 3- **Infrastructure Axis:** In this regard, the Royal Committee for the Enhancement of the Judiciary recommended the necessity to ensure buildings, devices, necessary items, furniture and essential communication means and introduce modern technology and IT systems to all the utilities of the judiciary and supporting apparatuses.



b- Reform Efforts in Reality:

After the Royal Committee for the Enhancement of the Judiciary finished its task, the following period witnessed remarkable activity of the Jordanian Justice Ministry and the Judicial Council (regular courts) to set a judicial enhancement plan. The Justice Ministry set a strategy to promote the Jordanian judiciary (2004-2006) with the cooperation and the financing of the following parties:

- Ministry of Planning- Economic and Social Transformation Program
- USAID
- European Union
- United Nations Development Program (UNDP)
- World Bank

The strategy of developing the Jordanian judiciary was a response to the recommendations of the Royal Committee for the Enhancement of the Judiciary and an implementation of its recommendations, which is a significant and unprecedented initiative. It is worth mentioning that the previous efforts of different sectors that had interest in developing the judicial system in Jordan bred recommendations only, which were not translated into strategic visions and executive plans, as is the case with the strategy to promote the judiciary (2004-2006), which defined its goals, the axes and the executive plans of these axes. This strategy included many principles and elements that constitute a pillar of a just judiciary. We indicate hereunder some of the elements on which this strategy is based:

1- Objectives of the Strategy to Promote the Judiciary:

- a- Enhance the independence of the judiciary, guarantee its competitiveness and harmony with the best world practices.
- b- Promote the Justice Ministry's competitiveness (including the Judicial Institute and the Inspection Directorate) to enable it to perform its duties.
- c- Ensure the necessary regulations and cadres of courts to promote their efficiency.
- d- Ensure services and efficient support to all partners in litigation to enhance the capacity of each of them to promote its role in serving justice.

2- Axes of the Strategy to Promote the Judiciary:

1. Axis of promoting integrity and judicial independence.
2. Axis of developing the competence and reliability of the judicial apparatus.
3. Axis of reducing demand on courts
4. Axis of promoting inspection and monitoring
5. Axis of enhancing the courts' infrastructure and facilitating access to justice.
6. Axis of building the ministry's competitiveness
7. Axis of computerization and automation of the Justice Ministry and the Judicial Power's functions



8. Axis of developing human resources, in terms of judges and their assistants.
9. Axis of promoting the competence of services provided by the departments of the public prosecution, notary public, enforcement, police and informants.
10. Axis of building relations with concerned partners, such as the bar association and faculties of law.
11. Axis of the continuous revision of laws and their applications.

The Strategy to Promote the Judiciary included executive plans to achieve their objectives, part of which have been completed or work has started in other parts, knowing that the implementation of these plans in accordance with the defined priorities and time-tables and a total implementation framework have not been achieved until now. Among the most significant obstacles facing the total implementation were the numerous changes introduced to the post of the Justice Minister. Year 2005 witnessed the succession of three justice ministers, each of whom had a vision in defining the development priorities and means, which negatively influenced the implementation of the strategy.

Based on the foregoing, it becomes clear that the judicial system in Jordan witnesses some dispute regarding this system's capacity to bear the duties and responsibilities entrusted to the Judicial Power and to achieve the aspired objectives of the Judicial Power in light of the internationally recognized principles and elements of the just judiciary. Moreover, the idea of reforming the judicial system is highly welcomed amidst many categories of the Jordanian society, including the judicial apparatus and the Justice Ministry.

It is noteworthy that the reform efforts are mostly addressed to develop the judicial system in regular courts. There is lack of interest in the remaining parties exercising judicial jurisdiction in Jordan. Perhaps the reform efforts undertaken by the Royal Committee for the Enhancement of the Judiciary, the Justice Ministry's follow-up of the recommendations of this committee and the Strategy to Promote the Jordanian Judiciary, as well as the accompanying activities such as the conferences, seminars, workshops and training sessions inside and outside Jordan clearly highlight that the concept of the Judicial Power, meant for development and reform, are regular courts, even though regular courts are not the only ones practicing the right of prosecution in Jordan. We will depict hereafter in this report the multiple parties exercising the right of prosecution, which supposedly are part of the Judicial Power as meant by Article 27 of the Jordanian Constitution that stated: **"The Judicial Power shall be exercised by the courts of law in their varying types and degrees"**. This indicates that the current and former reform efforts failed to fulfill the requirements of the complete building of the Judicial Power, in terms of its independence, integrity and competitiveness in order to reach efficiency with which the judiciary's objectives and mission in protecting the rights, freedoms and rule of law are achieved. The reform efforts and plans will



not level with the directives included in the Jordanian Constitution which stated that the Judiciary is independent and equal Power to the remaining powers of the State, or with the principles included in international instruments, unless they were comprehensive and complete to build the one Judicial Power, which is composed of all the courts that exercise the right of prosecution in the Kingdom, whether regular or religious or special, whereby these courts are unified in their institutional framework, on top of which is a judicial council that is formed in a way that guarantees the representation of all judges of courts different types and degrees.

Chapter 2

Analyzing the Status of the Judiciary in the Light of the Elements of a Fair Judiciary

This report highlights the status of the Judiciary in the Hashemite Kingdom of Jordan and aims at assessing the status quo of the Judiciary in the light of the principles instituted by the International Foundation for Election Systems (IFES) to guarantee judicial integrity. All over the world, these principles are considered to be almost one of the finest methods stipulated by international and regional governmental and non-governmental covenants on the status of the Judiciary. The aim of these principles is to create a proper environment and an essential legal culture to empower the principle of the sovereignty of the law in general. Other aims call for introducing the principles that are the basis of a fair Judiciary in particular, highlighting the strengths of the judicial system and the weaknesses that cause this judicial system to violate the international criteria of a fair Judiciary. This report proposes recommendations to prevail over the weaknesses and overcome obstacles. For these reasons, the research on the chapter that deals with the components of a fair Judiciary will be divided into four main according to the principles on which a fair Judiciary is based on:

Part One

1-Independence of the Judiciary

1-1: The Legal Texts:

First: The Constitution:

The Constitution of the Hashemite Kingdom of Jordan which was promulgated on 8/1/1952 characterized the Judiciary as an independent authority. The constitutional rules called for guaranteeing the independence of the Judiciary as



one of the powers of Jordan's three state powers, and also for guaranteeing the personal independence of the judge in such a way as to protect him from any outside interference on the part of other state powers and ensure that he is only subject to the rule of law.

Chapter Three of the Constitution which defined Jordan's three powers asserted that the Judiciary is one of the three powers of the state and that the various courts with their various types and degrees exercise the Judicial Power.⁷

Chapter Six of the Constitution regulated the Judicial Power stressing its independence, and the independence of the judges who are appointed and dismissed by a Royal Decree in accordance with the law. The Chapter also divided the courts into three: Regular Courts, Religious Courts and Special Courts. It further stressed the people's right to resort to courts, which are free from any interference in their affairs.

Articles 97-110 of the Constitution dealt with the rules regulating the work of the Judiciary. It is noted that the Jordanian Constitution clearly set out the rules that assert the independence of the Judiciary and the judges without giving any further details of this Power, its limits, and its procedural aspects. In most of the Constitution's texts regarding the law, a lot of issues related to organizing the work of the Judiciary were entrusted to the legislator. The Constitution did not call for the monitoring of the constitutionality of the laws that are passed by the Legislative Power.

Second: The Laws of the Judicial Entities:

Jordan introduced different kinds of judicial entities that were organized by virtue of several laws mentioned here below:

1- Law of the Independence of the Judiciary number 15 /2001:

The Law of the Independence of the Judiciary reaffirmed the constitutional rule and asserted the independence of the judges and the fact there is no authority above them besides the law. This law regulates the affairs of the Regular Courts as to the establishment of a Judicial Council that was authorized to appoint the judges of the Regular Courts, upgrade them, discipline them, dismiss them from their services, and develop legislative proposals related to the Judiciary, Public Prosecution and litigation procedures.

⁷ Article 27 of the Constitution says "The Judicial Power shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and shall be pronounced in the name of the King."



2- Regular Court Establishment Law and its Amendments number 17/2001:

The Regular Court Establishment Law asserted the jurisdiction of the Regular Courts as defined in the Constitution by: “Having jurisdiction over all persons in all matters, civil and criminal, except those matters in respect of which jurisdiction is vested in Religious or Special Courts.” This law classified the types of Regular Courts and their degrees that have jurisdiction in the civil and criminal matters that fall within its jurisdiction and they are:

- A-Conciliation Courts
- B-First Instance Courts
- C-Courts of Appeal
- D-Court of Cassation

3- The High Court of Justice Law number 12/1992:

Article 100 of the Constitution called for the establishment of the High Court of Justice, and the Court of Cassation, in its capacity as the High Court of Justice, exercised jurisdiction over administrative cases till the above-mentioned law was promulgated and established the High Court of Justice. The rules that apply on the judges of Regular Courts also apply on the President and Judge of this court (High Court of Justice) and on the Head of the Administrative Public Prosecution and his assistants, including the Law of the Independence of the Judiciary that is in force. This court is treated as a court that exercises jurisdiction over administrative matters that examines the appeals brought against the decisions or procedures that fall within the context of its jurisdiction as defined in Article 9 of this particular law.

4-The Religious Courts Establishment Law and its amendments number 19/1972:

The Religious Courts Establishment Law organized the affairs of the Religious Courts and by virtue of this law, the Religious Judicial Council appoints the judges of Religious Courts, upgrades them, disciplines them and dismisses them from their services. It also supervises the affairs of the Regular Courts that are composed of the First Instance Courts and Religious Courts of Appeal.

5- Councils for Non-Muslim Communities Law and its amendments number 22/1938:

This law recognized the right of the non-Muslim communities in Jordan to establish courts known as Tribunals of Religious Communities. Along with this



law, a table was annexed listing the religious communities recognized by the Jordanian Government and that have a right to establish Tribunals, and these are:

- a- The Roman Orthodox community
- b-The Roman Catholic community
- c-The Armenian community
- d-The Latin community
- e-The Arab Episcopal Evangelical community

These Tribunals examine and decide on cases that involve individuals of one community provided that these cases are related to all kinds of personal status matters that fall within the jurisdiction of Religious Courts.

6-Special Courts:

The Jordanian judicial system introduced many Special Courts. Some of the judges of these courts are appointed by a regular judicial authority that also manages the judicial process according to the Law of the Independence of the Judiciary. On the other hand, and some of the judges of these courts are appointed by a power besides the Judiciary that also manages the judicial process. The Special Courts include:

a-The Supreme Council for the Trial of Ministers: Upon the establishment of this court, it relied on Article 55⁸ of the Constitution. The Chamber of Deputies exercises the tasks of the Public Prosecution before this court.

b-The Superior Criminal Court: This court was established by virtue of temporary law number 33/1976 that became a permanent law number 19/1986. The judges of this court and members of the Public Prosecution are subject to the provisions and legal status that apply on the judges of Regular Courts. This court deals with crimes of murder, rape, kidnapping and attempted murder.

c- Income Tax Appellate Court: This court was established by virtue of the Income Tax Law number 25/1964 that called for the establishment of a special court to examine the appeals brought against the appraisal decisions and the re-appraisal decisions that are passed by the officer in charge of the income tax appraisal.

d- State Property Court: This court was established by virtue of Law number 14/1961 as a Special Court that was named the State Property Court. The law's

⁸ Ministers shall be tried by a High Tribunal for offences which may be attributed to them in the course of the performance of their ideas.



memorandum of interpretation reasons the establishment of such a court as follows: **“The slow court procedures and the lack of special urgent importance given to the cases of violation of state property, makes it easy for the perpetrators to continue their abuse. The sentences pronounced against the perpetrators were lenient; and also remained unimplemented.”**

e- State Security Court: This court was established by virtue of the State Security Court Law and its amendments number 17/1959. It is one of the most controversial courts because it is established by the Prime Minister who also assigns some of its jurisdictions. Article 2 of this law says: “On special circumstances pertaining to public interest, the Prime Minister has the right to establish one or more Special Court known as the State Security Court. Each of these courts is composed of three civilian judges and/or military judges who are appointed by the Prime Minister based on the assignment of the Minister of Justice for the civilian judges and the joint Chief of Staff’s assignment of military judges. This decision is published in the Official Gazette.” Article 3 of the same law defined the crimes that fall under the jurisdiction of this court. However, Paragraph 11 of the same article (3) granted the Prime Minister jurisdiction to refer any case to this court if he deems that this case is a crime related to economic security. The joint Chief of Staff (Armed Forces) appoints the Public Prosecution that exercises its jurisdiction before this court.

f- Customs Court:

1- The Customs Court of First Instance: This court is comprised of a presiding judge and several judges who are appointed by the Judicial Council. This court examines the crimes perpetrated in violation of the provisions of the Customs Law and the disputes arising from the application of this law. Besides that, this court examines the crimes and disputes that result from a general tax law imposed on sales.

2- The Customs Court of Appeals: This court examines the appeals made against the decisions and the judgments passed by the Customs Court of First Instance.



g-The Settlements Court:

This court was established by virtue of the Land and Water Settlement Law number 40/1952. It is composed of a single judge who is appointed by virtue of the Regular Courts Establishment Law. This court examines disputes related to any right of disposal or the right of land or water appropriation or right of beneficial ownership or rights related to them and that can be registered in the areas where settlement procedures were initiated in addition to irrigation-related lawsuits.

h- Military Courts:

This court tries military personnel for crimes perpetrated while performing military service. By virtue of the Temporary Military Criminal Procedures Law number 31/2002 the sentences pronounced by the military courts regarding crimes, felonies and misdemeanors, may be appealed before the Military Court of Appeals.

i- Police Court:

This court was established by virtue of Law number 38/1965. It examines the crimes perpetrated by members of the General Security and its students who attend universities, institutes, and the Police Academy. This court is established by an order from the Director General of the General Security and is composed of a president and two officers from the General Security provided that one of the members holds a law degree.

j-The Military Council for the Department of General Intelligence:

According to the General Intelligence Law number 24 /1964, the provisions of the Law of Armed Forces related to the trial are applicable on all staff and members of the General Intelligence Department. The Director General of the General Intelligence has the same jurisdiction entrusted to the Joint Chief of Staff in relation to the appointment of military councils and the ratification of judgments they pronounce against the staff and members of the General Intelligence.

1-1-2: Limiting the establishment of Special Courts and defining their jurisdiction:

As a rule, Regular Courts are the courts that examine all conflicts in civil and penal matters that emerge between individuals or between individuals and the State. If we refer to the Constitution of the Hashemite Kingdom of Jordan, we see that the rules and spirit of the Constitution stipulate that the Judiciary is one of the State's three powers for which the Constitution guaranteed them independence as a Power. It also asserted at the same time the independence of the judge as a



person. Article 102 of the Jordanian Constitution⁹ clearly stated that the Regular Judiciary is the judiciary that has ordinary and general jurisdiction in practicing the right to sue all people.

Based on what has been presented so far, there is a large number of Special Courts that practice the functions of the judiciary, which means that the Jordanian legislator used extensively the exception for establishing Special Courts at the expense of the basic rule on all matters. The Special Courts are strongly criticized for the negative effects they leave on the unity of the Judiciary that the Constitution appointed as an independent power that balances the Legislative and Executive Authorities. In this context, Judge Farouk Al Kilani, the President of the Jordanian Court of Cassation mentioned a quote from the former President of the Judicial Council¹⁰ in his book *Special Courts*: **“Special courts have a strange way in achieving justice that many Arab countries have resorted to.”** The reasons that highlight its strange character: **“Basically, Regular Courts are the courts that examine all disputes between individuals or between individuals and the State.....The transfer of the citizen from Regular Courts to Special Courts to stand trial in some matters that take away the jurisdiction of Regular Courts is on certain occasions a violation of the general rule and constitutes an infringement in achieving justice.....and because these courts lack the minimum requirement of the guarantees for fair trials.....”**

As the former Head of the Bar Association¹¹, the late Ibrahim Bakr said: **“The comprehensive mandate of the judiciary is for the Judiciary with its compositions, degrees, divisions, competences and management. Any removal of the Judiciary is a violation of the above-mentioned basic principles, and hence, the elimination of the legal state by definition.....”**

In the same context, Dr. Ahmad Fathi Srour¹², a professor in Egyptian law and President of the Egyptian People’s Council wrote in his book: **“These courts are not considered to be a natural judiciary for citizens; therefore, they should not be established according to constitutional legitimacy. The State Security Courts (Emergency) that are established due to an emergency situation are considered to be extraordinary courts that should not be established unless**

⁹ The Regular Courts in the Hashemite Kingdom of Jordan shall have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the Government, except those matters in respect of which jurisdiction is vested in Religious or Special Courts in accordance with the provisions of this Constitution or any other legislation in force.

¹⁰ “Special-Courts, A Comparative Study” published in 1980.

¹¹ “Human Rights in Jordan between Sovereignty of the Law and the Independence of the Judicial Power,” page: 86.

¹² “Constitutional Protection for Rights and Freedoms,” published in 2000, page:638.



there is an emergency situation. This analysis was asserted by the Universal Declaration of the Independence of the Judiciary in Montreal in 1983 about the illegality of establishing any specialized courts (extraordinary) to take the place of justice in its exclusive sense in courts.....”

Perhaps, the State Security Court is one of the most special courts in Jordan that is heavily criticized for the constitutional and administrative violations the establishment of this court creates, such as:

1-The decision to establish this court is entrusted to the Prime Minister, and he has the jurisdiction to appraise the circumstances that call for the establishment of this court. That is considered to be a violation of Article 100 of the Jordanian Constitution that stipulates that the establishment of the various courts, their categories, their divisions, their jurisdiction and their administration shall be by virtue of a special law. The violation here is that **the Jordanian Constitution granted the legislator that mission without granting him the right to mandate his jurisdiction to any other power, which means that the mandate granted to the Prime Minister stipulated in Article 2 of the Law of the State Security Court number 17/1959 entirely violates Article 100 of the Constitution and hence the non-constitutionality of the Law of the State Security Court.**

2- The appointment of the judges of the State Security Court is done by the Prime Minister, there is no doubt he is overriding the jurisdiction of the authority that appoints the judges of the courts and a violation of the independence of the Judiciary since this step constitutes an interference from the Legislative and Executive Powers in the Judiciary affairs. Still, it also constitutes a violation of the international criteria of Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Convention for Civil and Political Rights of 1966. It is also considered to be a violation of the 7th and 8th Conferences of the UN on Combating Crime and Treatment of Criminals that were held in Milan in 1985 and in Cuba in 1990.¹³

3- The mandate from the Jordanian legislator stipulated in Paragraph 11 of Article 3 from the Law of the State Security Court that granted the Prime Minister the jurisdiction to refer any crime related to economic security to the State Security Court is also a violation of the constitutional rules and the above-mentioned international covenants. The jurisdictions of the courts do not stipulate that the Executive Power, represented by the Prime Minister, is the party that decides the jurisdictions. Moreover, such a mandate is a continuous violation of the

¹³ “The principle of the independence of the Judicial Power is the basis of the legitimacy and equality before the law, and the independence of the Judicial Power means it’s power is liberated from any interference from the Legislative and Executive Powers, and the judges are not subjected to non other than the law....”



jurisdictions of the Regular judiciary, for which the mandate is solely vested in since the Prime Minister can at any time override the jurisdiction of the Regular Courts under the pretext of claiming that the crimes are related to economic security.

4-The State Security Court in Jordan has become a permanent court that practices its jurisdiction according to the Law of the State Security. Therefore, in fact, it even violates the law that called for its establishment and that coupled the condition for establishing this court with the prevalence of special circumstances. To practice its jurisdiction as a permanent court is not linked to any special circumstance especially that the instructions of the martial administration were cancelled on 8/7/1991. This means that there is no emergency situation or special circumstance that require the establishment of such extraordinary courts that should not be established unless under such circumstances.

5- The State Security Court Law constitutes a violation of the independence of the Judiciary and undermines the principle of the neutrality of the judge represented in his protection from any foreign influence of state powers in order to guarantee that he is not influenced by no power but the rule of law. That undoubtedly constitutes a violation of the international criteria that asserted that the independence of the Judiciary is a basic pillar in the principle of legitimacy, and that the independence of the Judiciary and its immunity are two basic guarantees for the protection of rights and freedoms. This is clearly highlighted in the “Basic Principles for the Independence of the Judiciary” issued by the Committee to Ban and Control Crimes based on decision number 16 issued by the 6th UN Conference for Banning Crimes and the Treatment of Criminals. Article 1 of these principles called for: “The independence of the Judiciary: 1-The state guarantees the independence of the judiciary and is respected by the Constitution or the law of the country. It is also the duty of all state and non-state institutions to protect the independence of the judiciary and adhere to it....”

6-The text of Article (7/b/2) of the State Security Court Law stipulated the violation of the Constitutional rule in Article 1/6 of the Constitution: “Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion.” The violation here is that the above-mentioned article of the State Security Court Law granted the Prosecutor-General of the State Security Court jurisdiction to arrest the defendant who committed a felony that falls under the jurisdiction of the State Security Court although the defined legal methodology in the Law of Criminal Procedure for provisional custody, whereby Article 114 of the Law of Criminal Procedure, and the conditions that necessitate provisional custody provide that the defendant should be punished by imprisoning him for more than two years for the offence perpetrated. Or, or he should be sentenced with a temporary punishment



which means that the crimes the defendant is being punished for by imprisoning him for up to two years, he should not be held in custody unless for crimes of harm or theft.

Accordingly, the jurisdiction of the Prosecutor General of the State Security Court that passes a sentence of provisional custody, even if the crime was punishable by a two-year prison sentence is a breach of the principle of equality before the law.

7-The presence of this court within military levels is a breach of justice.

1-1-3: Limiting Judicial Appointments to the Judiciary:

It was previously mentioned that the judicial system in the Hashemite Kingdom of Jordan is based on several types of courts. Therefore, the judicial appointments are not limited to one authority, and so one can say that the Jordanian Constitution asserted the independence of the Judiciary and its unity by establishing one of the three powers that promote the system of governance in Jordan. However, the legislator was not consistent with either the Constitution or its essence, he divided this power whereby it became distributed between the courts and according to the rules that regulate it and define its jurisdictions. The judicial system in Jordan does not have one entity that supervises the Judiciary's utility in the state, although Article 100 of the Jordanian Constitution can be a reference when promulgating a special law for the independence of the Judiciary that calls for regulating one Judiciary that includes the Regular Judiciary and the Religious Judiciary and all other courts that exercise judicial power in the state. In this regard, and according to the legal rules in force in Jordan, the judicial appointments are not limited to the Judiciary due to the various courts, their different authorities when they are formed or when their judges are appointed. This constitutes a breach of the independence of the Judiciary and that is obvious from the following:

1-The Special Court for Trying Ministers “Supreme Council”:

The judges of this court were appointed by virtue of Article 57 of the Constitution, which comprised of:

- a- Speaker of the Senate as President.
- b- Three members of the Senate who are appointed by ballots by the Senate.
- c- Five members to be appointed from among the judges of the highest Regular Court.

From that we can deduce that the judges of this court are not appointed by the Judiciary.



2-Councils for Non-Muslim Communities:

According to the Councils for Non-Muslim Communities Law number 22/1938, the Community Council is the council that establishes the court known as the Council for Religious Community that has the jurisdiction to examine and decide on the internal cases under its jurisdiction. The president and the members of the Community Council are appointed by a decision from the Senate based on the assignment of the religious president of that community.

It is clear from that that the judicial appointments for such courts are made by the Executive Power, and the Judiciary is not involved in the appointments of such courts.

3-State Security Court:

As it was previously mentioned, the judges of the State Security Court are appointed by the Prime Minister upon the Minister of Justice's assignment of civilian judges, and upon the joint Chief of Staff's assignment of military judges. Therefore, the judicial appointment of this court is limited to the Executive Power, an issue which constitutes a blatant breach of the principle of the independence of the Judiciary and its neutrality.

4-Judges of the Regular Courts and some Special Courts:

By virtue of the Law of the Independence of the Judiciary promulgated in 2001, the Judicial Council which was formed by virtue of Article 4 of the aforementioned law is composed of the following members:

- A-President of the Court of Cassation.....President
- B-President of the High Court of Justice....Vice-President
- C-President of the Public Prosecution at the Court of Cassation....member
- D-Oldest judges in the Court of Cassation...members
- E-Presidents of the Courts of Appeal.....members
- F-Oldest Inspector of Regular Courts...member
- G-Secretary-General of the Ministry of Justice.....member
- H-President of the Amman Court of First Instance...member

The judges of the Regular Courts are appointed by the above-mentioned Judicial Council upon the assignment from the Minister of Justice. The conditions to appoint the judges include the issuance of a Royal Decree approving of the Judicial Council's decision. From that, it is evident that although the judges are appointed by a decision from the Judicial Council, however the promulgation of such a decision is linked with the assignment from the Minister of Justice and its



enforcement is linked to the issuance of a Royal Decree to approve of it. This could lead us to say that the judicial appointments are not limited to the jurisdiction of the Judicial Council.

5-Judges of Religious Courts:

By virtue of the Religious Courts Establishment Law number 19/1972, the Judicial Council that is established by virtue of Article 14 of the aforementioned law is composed of:

- A- The oldest President of the Religious Appellate Court....president
- B-Presidents of other Religious Appellate Courts...members
- C-Director of Religious Affairs
- D-Highest two members in status of/among Appellate Courts.....two members
- E-Highest inspector in the Inspection Entity

The appointment of the judges of Religious Courts is done by a decision from the aforementioned Judicial Council that is coupled with a Royal Decree. And although the appointment of judges for Religious Courts does not need an assignment from the Supreme Judge who falls under the jurisdiction of the Executive Power, however, Article 18 of the aforementioned law granted the Supreme Judge the right to supervise all the religious courts and their judges. This matter is a flaw in the independence of the religious Judiciary and places it under the influence of the Executive Power.

It is noticeable from the above-mentioned Articles 4 and 5 that there is a Judicial Council for Regular Courts and a Judicial Council for Religious Courts where each one of them practices its jurisdiction independently.

We can summarize from all that has been mentioned that the element of “limiting the judicial appointments to the Judiciary” as one of the elements that guarantee the independence of the Judiciary and its integrity does not exist in the Jordanian legal system. There must be a revision of the composition of the Judiciary that guarantees its establishment as an independent unified power. One of the requirements of a unified power is that one judicial council should supervise all its affairs. This council is formed and its jurisdiction and specialization are defined by virtue of a law that covers the provisions regulating the independence of the Judiciary provided that the Judicial Council that manages the affairs of the Judiciary guarantees the representation of all practicing courts in Jordan. The rules regulating the formation of the Judicial Council should include provisions that secure the democratic aspect of representation in the council where the council is composed of members by virtue of their judicial functions and other



members get elected by judges who represent the judges of the courts according to their types and degrees.

1-1-4: The compatibility of the laws of judicial regulation and litigation procedures with the constitutional guarantees for the independence of the Judiciary:

First: The Laws of Judicial Regulation:

The Judiciary is one of Jordan's three state powers that are stipulated in Chapter 3 of the Jordanian Constitution. Activating the principle of the separation of powers with a guarantee that each power exercises its functions without being under the influence of intervention of the other powers requires the Judiciary to be a unified power that is able to achieve the principle of the independence of the Judiciary. This can't be achieved properly unless the Judiciary is protected against any external interference from the State's authorities to guarantee that the Judiciary is not influenced by none other than the rule of law.

Therefore, we can deduce that the Jordanian Constitution aimed to establish an independent Judiciary, then the laws of judicial regulation in force were not compatible with this constitutional trend. It is noticeable that the Jordanian legislator divided the Judiciary by establishing a large number of courts and that are not united by one authority. Some of the laws related to judicial regulation and the breaches of the principle of the independence of the Judiciary according to the constitutional rules and international covenants have been mentioned earlier in this report.

The compatibility of the laws of judicial regulation with the constitutional guarantees for the independence of the Judiciary require a re-examination of the judicial system in the Hashemite Kingdom of Jordan for the sake of guaranteeing a judicial system that unifies the Judiciary. This Power should be entrusted with manage and supervising the facility of the Judiciary with all Regular and Religious Courts including the Special Courts that can be established according to the provisions of the Constitution within the judicial body and without having other powers of the State interfere in the Judiciary or influence it. All this is a guarantee for the principle of the legitimacy of Jordan and a preservation of the principle of the legitimacy that the rule of law enforces.

Adopting a system that guarantees the unity of the Judiciary can be referred to in Article 100 of the Jordanian Constitution that stipulated: "The appointment of the kinds of courts, their degrees, divisions, specializations and its ways of management by a special law provided that this law stipulate the establishment of a Higher Justice Court."



Upon examining the text along with Article 27 of the Constitution that granted the Judiciary independence status from among the three powers of the State it is evident that there is a possibility to promulgate a special law that regulates the work of the Judiciary, whereby a Higher Judicial Council is formed with a jurisdiction to supervise the Regular and Religious Courts, the Denomination Councils and Special Courts if the need arises to establish them. This special law should entail the criteria for appointing judges, promoting them, transferring them, mandating them, disciplining them and their dependency to the one Judiciary. The Higher Judicial Council must be formed in a way that guarantees a representation of the judges of the various types of courts. There is no harm that after that, if the legislator promulgates other laws that regulate the litigation procedures according to the different types and specializations of courts.

Second: The Laws of Litigation Procedures:

One of the most important duties that the judges perform is examining and deciding on cases of disputes between individuals or individuals and the State, and whether the lawsuit was a civilian or a criminal one, it is a method to demonstrate the dispute before the Judiciary. Therefore, the most important laws of litigation procedures laws in Jordan are the Law of Civil Procedure, the Law of Criminal Procedure and the Law of Religious Procedure. These laws determine how legal action is taken with the civil or criminal lawsuits and that should consist of guarantees for a fair trial. The Laws of Civil and Criminal Procedure took into consideration the basic principles of litigation as follows:

- 1- Abiding to the principle of confrontation and equality.
- 2- Abiding by the rules of the general system
- 3- Public court hearings
- 4- Abiding by the subject of conflict
- 5- Abiding by the procedural laws
- 6- Abiding by the objective laws that govern the subject of conflict.
- 7- Pronouncing judgments.
- 8- Litigation on two degrees
- 9- Guaranteeing the contest of verdicts.

However, some of the special laws comprised provisions that violate the principle of the independence of the judiciary by overriding the jurisdiction of the Judiciary to examine some of the conflicts unless some of the conditions are fulfilled. Article 5 of the law of filing lawsuits against the Government number 25/1985 stipulated: “The courts don’t examine any lawsuit filed against the government whether it is an original or a cross-action lawsuit, unless if it was for the sake of: a- Obtaining movables or claiming for a



compensation for the movables with a sum of money that is worth its value. b- Owning movables or disposing of them, lifting responsibility from them, or retrieving them or claiming for compensation of the movables with a sum of money worth its value or rent. c- Obtaining funds or compensation from a contract that the government was a party in. d-Banning the request for compensation on condition that the plaintiff pays the required sum or presents a sponsor.”

Moreover, Article 3/53 of the Law of Municipalities number 29/1955 conditioned that in order to object the decision of the mayor related to claiming any sum of money for the municipality at court, the individual concerned has to pay the sum of money or pay the insurances for it.

Article 2/231 of the Customs Law number 20/1998 included a provision that no lawsuit filed against the Treasury at the Customs Court should be examined unless the plaintiff had deposited a sum of money as insurance or a bank guarantee that is equal to 25% of the funds required from him.

It is evident that the above-mentioned texts are a violation of the principle of the independence of the judiciary by placing conditions on it when exercising its jurisdiction on all people and in all civil and criminal matters. This is in addition to another violation of the constitutional rule stipulated in Article 1/10 of the Constitution that says that the courts are open to everybody and are protected against interference in their affairs. It also constitutes a violation in the principle of equality before the law that is stipulated in Article 6 of the Constitution when the conditions mentioned in the above-mentioned Articles were imposed on the individuals as condition for exercising his right to resort to the judiciary if the party he was not in dispute with one of the above-mentioned administrative divisions. Such a condition is not considered to be a condition to accept the lawsuit in general, which implies it is a violation of the principle of equality before the law.

Furthermore, the conditions stipulated in Article 5 of the above-mentioned Law of lawsuits filed against the Government to accept the lawsuit filed against the Government defined the types of lawsuits that can be filed against the Government in a way that violates the provisions of Article 9 of the International Convention for Civil and Political Rights ratified in 1996 in Paragraphs 1 and 5 of Article 9. Paragraph 1 stipulates: “Every individual has the right to freedom and personal security and should not be arbitrarily arrested or detained. Nobody should be deprived from his freedom unless for reasons called for in the law and in conformity with the procedure in force. Paragraph 5: Every person who was the victim of illegal arrest or detention has the right to claim compensation.”



It is therefore obvious that the international criteria call for a guarantee of the individual's right to claim compensation if he is arrested or detained in a way in an illegal way, while the Law of lawsuits filed against the Government prevents the individual from resorting to justice to claim compensation for the damage incurred upon him due to his illegal arrest and detention.

Regarding the litigation procedures before the Criminal Courts, the Law of Criminal Procedure is considered as one of the most controversial laws that violate public freedoms. The reason is because this law comprises rules regulating the implementation of the Law of Sanctions that aims to acknowledge the State's power in protecting the society from crime and to acknowledge its sanctioning power. Accordingly, the Law for Criminal Procedure is one of the laws that regulates the personal freedoms, that is because the criminal procedures are initiated on the basis of suspicion and accusation and whatever investigations of crime tend to do such as following the perpetrators and gathering evidence to reveal the truth. In this way, it is infringing the freedom of the accused or endangering it. This is why democratic countries, when trying to develop rules regulating criminal procedures, they aim to create a real balance between the goal to reveal the truth and to guarantee the sound application of the Law of Sanctions, and the goal to guarantee the accused person's personal freedom while facing the criminal procedures that are initiated against him. If this goal is achieved, then it will be an achievement for the principle of the legitimacy of the Law of Criminal Procedure that derives its legitimacy directly from the Constitution. We can say that that rules of the Law of Criminal Procedure number 9/1961 includes the principle of basic litigation that was mentioned before when we were talking about the litigation procedures in civil lawsuits and that are one of the basic principles to guarantee a fair trial. And with that, we will not discuss it in this stage, we will gear our research towards knowing to what extent other guarantees are provided for a fair trial regarding criminal procedures and we can highlight them in the following:

A-Principle of innocence of the accused: The Jordanian Constitution did not include a sincere text related to the guarantee of this principle similar to many international Constitutions, and international covenants like the Universal Declaration of Human Rights 1948. This declaration said: "Each person accused of committing a crime is innocent till proven guilty in a fair trial that provides him the necessary guarantees to defend him," unless the guarantee for the respect of this principle in litigation procedures in the Jordanian judicial system can be derived from the constitutional rule stipulated in Article 7 that said: "Personal freedom is protected."



The Jordanian Law of Criminal Procedure did not include a legal rule that safeguards the principle of innocence of the accused till the amended law of the Law of Criminal Procedure number 16/2001 was promulgated when this principle was added to Article 147 of the Law of Criminal Procedure: “The accused is innocent till proven guilty.” Article 147 was mentioned in the proceedings of criminal lawsuits while the achievement of this principle needs to be comprehensive for the investigation and trial. This matter confirms that the need still exists to make the Jordanian Constitution include a direct text that guarantees this principle that is binding for the legislator and for all the sides related to initiating the criminal procedures and the litigation procedures.

B- The judicial guarantee in criminal courts: The investigation into crimes and following their perpetrators are considered to be the jurisdiction mandated in the public prosecutor who heads the justice department in his area of jurisdiction, and the judges of the public prosecution in Jordan are considered to be part of the regular Judiciary. The Law of Criminal Procedure included the rules that confirm the respect of the “principle of judicial guarantee in criminal court litigation” and defined the specializations or regular courts in criminal matters, and the Law of Criminal Procedure in this regard is compatible with the rules of the Constitution that limited the right of the Judiciary in all civil and criminal matters by court.

C-The guarantee of the right for defense:

According to the provisions of Article 63 of the Law of Criminal Procedure, the defendant has the right to appoint an attorney before the public prosecutor and the public prosecutor is supposed to warn the defendant that this right can be annulled since the legal system in Jordan does not take account of the guarantee for the defendant to have an attorney provided for him during investigation if he is not able to appoint an attorney contrary to the principle mentioned in Article 14/3/d of the International Pledge for Civil and Political Rights signed in 1966 and that compelled criminal courts to provide the accused with an attorney to defend him if he doesn't have the sufficient funds to cover an attorney's fees.

The legal system in the United States of America calls for the need for the state to appoint an attorney for the accused to defend him for whatever crime he is being punished by imprisonment if he is not able to appoint one by himself. The legal system established governmental and non-governmental institutes under the name of “Public Attorney” and it is an institution that confronts the public prosecution and guarantees the defendants the right for defense by appointing an attorney for them.

As for guaranteeing the right of defense of the accused on the personal level before courts, the Law of Civil Procedure guarantees this right in article 175 of the



Law of Criminal Procedure for felonies that fall under the jurisdiction of the First Instance Court and it was also included in Article 232 of the same law for the crimes. Article 208 of the same law included a text only for persons accused of crimes they committed that are punishable by sentencing the defendants by execution or hard labor for life or life in prison. By virtue of this text, the court should appoint an attorney for the defendant if he hasn't appointed one to defend himself. The Treasury bears the cost of the attorney who is appointed; the cost is stated by the law at no more than 500 Jordanian Dinars.

1-1-5- Respect of Constitutional Assurances in the Exercise of Judicial Functions:

The constitution has guaranteed judiciary independence and immunity as two main pillars to protect rights and liberties. According to Article 27 of the Constitution, the Judicial Power shall be exercised by the Courts of law in their varying types and degrees, and according to Article 97, judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law. However, in practice different types of violations that might jeopardize judicial independence are being recorded. These violations include the division of the judiciary power into many types of courts that do not refer to one authority, the thing that obstruct the existence of a one independent Judiciary Power. They also include the emergence of Special Courts that are sometimes formed by the Legislative Power such as the State Security Court and the Community Council Courts, in addition to the violations related to the competences of the Minister of Justice as to his relationship with the applicants for regular judicial positions, and the supervision exercised by the Supreme Judge on Religious Courts and their judges. All of the above shows that the respect of the assurances vested by the Constitution to guarantee an independent and impartial Judicial Power in the exercise and enforcement of judicial functions is not being up to the level of the Judicial Power in Jordan and does not meet with international standards.

2 - Institutional Judiciary Independence:

2-1: Financial Independence:

2-1-1: Independent Budget:

The Jordanian Laws in force do not contain any provisions that insure financial independence of Judicial Power. This is due to the fact that the latter functions through the Courts that are various as we previously mentioned; Regular Courts along with all their related financial affairs are affiliated to the Ministry of Justice



and the Regular Judiciary budget is part of the budget of the Ministry of Justice. Therefore, the Judiciary Council has no jurisprudence in financial affairs. Similarly, Religious Courts are governed by the Supreme Judge who is in charge of all the financial affairs.

Consequently, the current judiciary situation in Jordan reveals a lack of institutional judiciary independence as to allocating an independent budget to the Judicial Power.

2-1-2: Appropriate Financial resources:

The judges of Regular and Religious Courts and Military Judges act in accordance with the judicial service codes specific to each category, and they do not act in accordance with the Civil Service Code like governmental departments' officers. Judicial degrees, salaries and allowances provided for each degree have been identified in accordance with the judicial service codes. If we are to compare the salaries and allowances provided to the judges in the different positions with their counterparts in the governmental sector, we would be led to the fact that the salaries of the judges are much higher than the salaries of governmental officers.

Although the judges' financial resources, as to their salaries, are better than the ones of governmental officers, the importance of the judge's mission and the conditions in which s/he should live sufficiently enough to preserve impartiality and integrity, require the re-examination of the judges' financial resources in light of the decrease of the purchase power due to the continuously increasing prices of the products and services.

3-1-2: Administrative Independence:

- a- Supervision on Regular Courts: Article (27) of the Judiciary Independence Law states the following: “a- the Head (of the Judiciary Council) shall have the right for administrative supervision on all judges, this right is vested to every presiding judge of a court on all the judges hereunto, and for the purposes of this paragraph, the Conciliation Judges assuming duties in the Courts of First Instance are considered judges hereunto. b- The Minister and the Chief of the Offices of Public Prosecution shall have the right for administrative supervision on all the members of the Public Prosecution, and the Public Prosecutor shall have the right for supervision on the affiliated members of prosecution. c- The Minister of Justice shall have the right to supervise the performance of the Civilian Prosecutor and his assistants in accordance with the rules and regulations in force.”
- b- Supervision on Religious Courts: Article (18) of the Law on the Formation of Religious Courts states the following: “a-the Supreme Judge shall have the right to supervise all Religious Courts and their judges. b- The director



of the Offices of Religious Courts shall assist the Supreme Judge in the monitoring of Religious Courts...”.

Article (23) of the same Law indicated the responsibility of the Supreme Judge – affiliated to the Legislative Power – in pointing out the violations of religious judges.

This reveals that the administrative supervision process related to Regular Courts is distributed among the Head of the Judicial Council and the presiding judges in the Courts of First Instance who practice these functions along with their judicial functions; this supervision is restricted on the Court judges. As for the supervision of administrative personnel, it falls within the jurisdiction of the Ministry of Justice and this is the case of all buildings, maintenance services, equipment and others. As for Religious Courts, in pursuance of article (18) of the aforementioned law, they are supervised by the Supreme Judge who acts as the Minister of Justice as to Religious Judiciary.

In conclusion, the Judicial Power lacks administrative independence as it lacks an organizational chart that organizes the courts' administration.

It is worth mentioning that this matter has received has become an issue of interest lately, and financial and administrative independence of Regular Judiciary is being discussed within the “**Rule of Law Project -MASAQ- implemented in collaboration with the United States Agency for International Development (USAID)**”, whereby the interest is being spared to the formulation of an organizational chart for the Judicial Council in order to enhance its institutional capacities and consequently, identify the functions that should be introduced, produce job descriptions and the relevant organizational charts, set work procedures which would allow the Judicial council to accomplish its legal functions and achieve administrative independence that constitutes the base for building financial institutional independence.

3-1: Personal Independence of Judges:

The judge is the means of Judicial Power in achieving Judiciary mission and assuming judicial functions. Consequently, assuring his/her personal independence and protecting him/her from any external influences that would deter his/her independence and impartiality is one of the main factors in building an independent judicial power which is considered a main pillar in achieving legitimacy in general. Therefore, assuring the judge's personal independence is closely linked to the achievement of judiciary independence and vice versa; the independence of Judicial Power does not ensure Justice unless judges decide matters impartially without any restrictions or improper influences from any quarter or for any reason.

The main factors of the personal independence of judges will be exposed in the following paragraphs.



3-1-1- Guarantees of Physical and Economic Security of Judges:

1- Physical Security:

The Law at the Hashemite Kingdom of Jordan guarantees the physical security of judges and magistrates and clearly aims at providing assurances to protect the judge's physical security, describing the acts that are considered assaults on judges as crimes punished by the law, or more stringently punishing some crimes if the victim is a judge who was offended while carrying out his/her functions or because of a decision s/he made by virtue of his/her functions. Relative texts¹⁴ reveal that the ultimate objective is to protect the physical independence of the judge from any external influence whenever the matter is linked to his/her judicial position. As for the physical security of the judge, regardless of his/her functions, the judge is a citizen like any other citizen, and the state, in pursuance of the Constitution, ensures his/her security and quietude. There are no provisions that differentiate the judge from other citizens in this concern as to provide him/her with special guarding. We don't think this is required to ensure the personal independence of the Judges.

2- Economic Security:

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- ¹⁴ - Article (2) of the Contempt of Courts Act no. 9 dated 1959, "the word (Court) in this Act refers to any Regular, Religious, Special, Municipal or Conciliation Court and to any judge or magistrate".
- Article (3) of the Contempt of Courts Act: "Shall be immediately arrested by an order of the court, referred to the Public Prosecutor for punishment in virtue of the arrest order issued by the court, and sentenced in accordance with Article (188) of the Penal Code any person found guilty of a contempt of court during the due course of a trial".
- Article (187) of the Penal Code for the year 1960: 1- Shall be sentenced from 6 months to 2 years any person who beats, assaults, violently treats, threatens, intimidates or draw weapons on an employee while performing his duties or due to act he accomplished in virtue of his functions. 2- If the victim is a judge, the perpetrator shall be sentenced from 1 up to 3 years...".
- Article (191) of the Penal Code: "Shall be sentenced to imprisonment from 3 months to 2 years any slander or libel if addressed to the National Assembly or any of its members while on duties or due to an act he accomplished in virtue of his functions, to official bodies, courts, public administrations, the army, or to any other employee while performing his duties or due to an act he accomplished in virtue of his functions."
- Article (3/196) of the Penal Code: "slander or threatening gestures against a judge on the stage shall be sentenced from 3 months up to 2 years".
- Article (327) of the Penal Code: "shall be sentenced to life hard labor for intentional murder if committed against: 1-....2-an employee while performing his duties or due to an act he accomplished in virtue of his functions..."
- Article (2/12) of the Conciliation Courts Law no. (15) for the year 1952: "the Security Department shall assign a police officer to execute the orders of the judge to maintain the order during the proceedings".



We previously pointed out to the salaries of the judges in paragraph (2-1-2) of this report. Although those salaries are considered high in comparison to the salaries of governmental officers, these salaries are in fact low in relation to their purchase power. Judges complain of the ineffectiveness of health care they and their families receive through medical centers and public hospitals that lack the needed capacities. This lack is reflected through the quality of medical services provided, the thing that led to a raising demand to improve that quality by providing the judges with a more convenient health insurance similar to the one provided by governmental institutions having financial and administrative independence such as the Central Bank and the Financial Regulatory Institution.

3-1-2- Guarantees for the Protection of Judges from any Internal or External Influence:

In pursuance of the Jordanian Constitution, the judges shall be independent and only ruled by the law, nothing but the law, and they shall not be subject to any inappropriate or unwarranted interference with their judicial process. The Judiciary Independence Law applied on the judges of Regular Courts enshrined the judges' personal independence.

Any external interference or influence on the judges is considered a crime punished by law in accordance with Article (223) of the Penal Code that states: **“The author of any written or oral solicitation addressed to a judge in an attempt to illegally influence the results of judicial procedures, shall be sentenced to imprisonment that does not exceed one month or to a fine of a maximum of 10 Dinars or to both.”**

The Judicial Conduct Code, formulated by the Judicial Council, also stated that the Judge shall himself preserve his own independence and shall not accept any interference from other authorities in the matters he decides. The Code also forbids the judge neither to interfere in the matters of any of his colleagues nor to solicit before them, and it also forbids him to accept such interference or solicitation.

Therefore, the law prohibits any interference in and influence on the judgments of the judge. In reality, however, some violations are being recorded, and we did not detect any suits filed in pursuance of the provisions of Article (223) of the Penal Code. The results of a survey on the Judicial Branch conducted in the year (2005) within the Rule of Law Project – MASAQ – funded by USAID, revealed that (42%) of the respondents mentioned that judges are subject to pressures from individuals and different groups in an attempt to affect their judgments, and some respondents declared that the judges comply with these pressures. (27%) of the judges who were surveyed said that some individuals or groups exercise pressures on the judges. Moreover, less than (50%) of the respondents from the five samples



think that judges are not immunized against social and sometimes professional pressures. The following table that was reported in the above mentioned survey reveals the feedback on the sources of pressure on the judges and their compliance with these pressures¹⁵.

Percentage of the respondents who stated that judges are subject to pressure

	Lawyers	Security Services	Private sector actors	Minister of Justice	Members of Parliament and Houses of Notables	Senior Judges	Relatives and friends	Members of the Judicial Council	Average
Citizens	32	37	41	44	44	44	48	49	42
Employers	26	28	37	33	33	33	41	45	33
Employees	24	27	34	30	30	34	43	36	32
Lawyers	28	36	47	37	46	41	49	50	42
Judges	19	24	27	22	35	29	36	23	27

Percentage of the respondents who declared that the judges comply with the pressures

	Lawyers	Security Services	Private sector actors	Minister of Justice	Members of Parliament and Houses of Notables	Senior Judges	Relatives and friends	Members of the Judicial Council	Average
Employees	20	24	30	28	24	29	37	32	28
Citizens	24	27	28	29	29	30	33	32	29
Employers	21	25	31	29	28	29	34	31	29
Lawyers	25	30	37	35	33	39	38	47	36
Judges	8	12	11	15	17	17	17	19	15

Consequently, it is clear that the rules and regulations protect the judge from any internal or external influence. In practice, however, the above results reveal that these rules and regulations are subject to various violations. The violations of the Judicial Council come in the first place since they are the most serious and most common ones although the latter is the highest authority in charge of Regular Court judges' affairs such as promotions and disciplinary actions. Then, comes the

¹⁵ Table (36) of the survey conducted on the Judicial Branch in 2005.



influence of relatives and friends, senior judges, members of the parliament, Minister of Justice, private sector actors, Security Services and lawyers which indicates that the judges are subject to internal and external pressures and factors that affect their personal independence. Moreover, the absence of an institutional organizational chart proves that the judges are subject to external influences that jeopardize their personal independence.

2- Integrity / Neutrality

The independence of the judicial authority is not enough to guarantee the principles that the fair judiciary is based on, knowing that the judge's sentence should not be affected by any controlling factors. On these bases, the neutrality of the judiciary is considered a complementary factor contributing in its independence because it ensures the trust in the judiciary system and the value of the law depends on being neutrally implemented. Ensuring the neutrality of the judiciary in the legal system is considered through the legislator's technique at first in protecting more and more the rights, freedoms as well as to preserve the public interest which requires that the judge should not be subject to any external influence.

The Declaration of the basic principles of the independence of the judiciary, one of the achievements of the 7th UN Conference to prevent the crime in 1985, assured that the disputes under the jurisdictions of the judiciary authority must be dealt with in a neutral manner.

Article 1, (1)..... (2) The judicial body should rule the cases referred to it with integrity and on the basis of facts, in conformity with the law without any restrictions, any indecent effects or without any temptations, pressures, threats or interference whether directly or indirectly regardless of the party or the reason of interference..... (3) The judiciary should deal with the issues of judicial nature. It will also have the complete authority to take the decision if the case dealing with falls under its jurisdiction as defined by the law..... (4) There should not be any inappropriate or unexcused interference in the judicial procedures..... (5) Everyone should have the right to a trial before a regular court or a court formed of three judges through well-known legal procedures as well as prohibiting the formation of a court of three judges that do not implement the legal procedures to replace the jurisdiction of regular courts or judicial court bodies formed of three judges. Based on the above, ensuring the integrity/neutrality in the judicial system requires guaranteeing to the judicial authority in general and to the judge in particular. We will analyze hereinafter the



situation of the judiciary in Jordan in order to guarantee the integrity of the judicial system in general in the light of the IFES principles.

2- (1) Effective and specific jurisdictions for the courts:

Article 100 of the Jordanian constitution mentioned that the jurisdictions of the courts and the way to administer such courts are determined by a law. Article 2 of the law of forming regular courts number 17 issued in 2001 also stipulates that the regular courts are practicing the judicial right in the Kingdom on all the people in all the civil and penal articles except the articles where the right of having access to law is empowered to the spiritual courts or special courts according to the provisions of any other law.

On the practical level, the laws determining the competences and jurisdictions of the courts vary and can be briefed as follows:

1) Regular courts:

The regular courts are specialized to study and solve civil and penal conflicts. The jurisdictions of the regular courts are organized according to four major laws. The laws are as follows: law of forming regular courts, magistrate's courts' law, civil procedure law and the penal procedure law. According to its jurisdictions, the magistrate's courts are specialized in dealing with legal conflicts stipulated in article 3 of the magistrate's courts' law number 15 issued in 1952. Such court has ad valorem jurisdiction in the cases of the rights that does not exceed 3000 dinar. The court also has a qualitative jurisdiction in certain conflicts regardless its value, in cases such as the partition; eliminating coparcenaries, the right of ravine, the right of drinking, and others... However, according to article 5 of the mentioned law, the magistrate's courts jurisdiction concerning the penal cases study all contraventions and felonies where the sanctions do not exceed two years of imprisonment as well as the crimes of false testimony and the false oath in similar cases.

The first instance court has a general jurisdiction in dealing with the cases of rights according to the article 30 of the civil procedure law: "the first instance court is specialized in studying and settling the cases that do not enter in the jurisdiction of another court according to any law that entered into effect. It also studies and settles urgent cases and cases related to the initial case no matter of its value or quality. Concerning the penal jurisdiction of the first instance court, it studies the penal cases that do not enter in the jurisdiction of another court according to any other law" as stipulated in the article 140 of the penal procedure law: "The first instance court studies, according to its jurisdictions, all felonies transferred by the public prosecutor or his representative who is from outside the magistrate's court. It also studies, due to its penal nature, all crimes that are considered offenses and the felonies linked



to the offense transferred to it according to the decision of accusation.” Furthermore, the law of forming regular courts has dealt with the detail of penal jurisdiction of the first instance courts concerning the formation of the court according to the provisions of paragraph (b) of the article 5 of the mentioned law. Then, the first instance court should hold to deal with the penal cases as follows:

- a) Sole judge to study the felonies outside the jurisdiction of the magistrate judge.
- b) Two judges to study the offenses outside the jurisdiction of the Higher Crime Court according to its law.
- c) Three judges to study criminal cases where the sanctions, imposed by the law, reach the death penalty, life penal servitude, life detention, temporary detention or temporary penal servitude for a period not less than 15 years outside the jurisdiction of the Higher Crime Court.

The first instance court also has the competence to study the challenges of certain verdicts issued by the magistrate’s courts such as the contraventions or if the sanction lifted does not exceed one-month-prison and a fine of 30 dinar.

Concerning the courts of appeal, its jurisdictions are in the rights and penal cases in studying and settling challenges of the verdicts issued by first instance courts having a right and penal nature.

The Supreme Court or the court of cassation is the court of law. Its jurisdictions is to study the challenges issued by the courts of appeal in the cases of rights that exceeds 10000 dinar and to permit the study of the appealed verdicts where the case ad valorem is less than the mentioned amount or is undetermined and also to study the verdicts issued by the first instance court in criminal cases. It has also the right to study the challenges lifted against the sentences of the criminal court and the National Security Court.

2) Religious courts:

According to the law of forming spiritual courts and the spiritual procedure law, the religious courts have the right to study personal cases between Moslems and to study cases related to endowments and its internal administration for the Moslems interests.

3) Councils of Confessions:

They are courts for non-Moslem confessions that have the rights to study the cases of religious courts jurisdictions namely the cases of non-Moslem confession that follows the confessional court.



4) Private Courts:

They hold the laws that formed the private courts - where we have previously mentioned in details in the report – the statement of jurisdictions of these courts.

Needless to say, the legal system in Jordan includes certain legal rules to determine the jurisdictions of the courts except the law of the national security court concerning the empowerment of the prime minister to transfer any penal case deciding that it is related to the national economy to the national security court. Such empowerment is considered a breach against the principles of integrity and neutrality of the judiciary. Among the elements of neutrality is that the jurisdictions and powers of the courts should be previously specified according to the law. This empowerment is also considered among the external pressures exerted by the executive authority on the judicial authority. This empowerment has also the capacity of taking away the power of the regular courts formed in accordance with the law which is in the interest of the courts that should not be formed except in extraordinary situations.

The elimination of the national security court in particular and the private courts in general and entrusting the right of the judicial body to all individuals and in all cases as well as the regular judiciary in the frame of its independent unique power according to the constitutional rules and international instruments is considered a paved way to achieve the principle of neutrality and integrity of judiciary.

2) 1- 2) Determined and compulsory rules and systems to fight corruption:

The judicial authority is one of three state authorities, and the judges are public employees in a public authority in accordance with the law that organizes their judicial jobs. Since the corruption with all its actions that can be described as corruption in the form of crimes sanctioned by the law; fighting corruption in the judicial authority considering that the corruption may affect the neutrality and integrity of the judge is found in the texts stipulated by the penal code in incriminating and sanctioning the crimes that the public administration is responsible of.

In this context, article 169 of the penal code stipulated: “Every public employee in the administrative or judicial body is considered in this chapter an employee as well as every officer in the civil or military authority or one of its individuals and every worker or servant in the state or in a public administration.”

Based on the above, the judges, similar to other public employees in general, are abided by the legal rules of incriminating and sanctioning. Consequently, the actions leading to the corruption of the conscience and being affected by personal interests that oust the integrity and neutrality of the judge and lose the trust in the judicial authority are stipulated in the Jordanian penal code as crimes sanctioned



by law. Among the crimes sanctioned by law are bribery, embezzlement, exploitation of the jobs, violation of freedoms, misusing the power and breaching the jobs' duties. All such crimes are sanctioned by the law and they are nominations to crimes that can be classified under the term corruption.

Nevertheless, Jordan has ratified on the UN treaty on fighting corruption issued in 2004 and was published in the public newspaper number 4669 on 1/8/2004. Consequently, this treaty became an effective law in the Hashemite Kingdom of Jordan. The text of article 2 of the above-mentioned treaty included a definition of the public employee for goals of fighting corruption treaty. The article considers the judicial job as a public job where the actions of the individuals joined to it should abide by provisions of the treaty aiming at preventing and fighting corruption and enhancing integrity and accountability for the public affairs and properties.

In conclusion, the legal system in Jordan includes specified and compulsory legal rules to prevent and fight corruption.

3) 1- 2) Judicial Ethics Law:

In the law of judiciary independence (regular judiciary), article 37 has referred to certain rules that if breached, it would be considered as a wrong action where the judge sanctions in a disciplinary way and several judicial ethics can be extracted of article 37 as follows:

a) Comply with the job duties:

Breaching job duties such as the delay in settling the cases, not determining a date to issue the sentence, differentiate between the parties, and disclose the secret of the deliberation, absence without an excuse and disrespecting the official working hours.

Article 183 of the penal code prohibit that an employee – as defined by the judge - breaches his job duties as stipulated: “1- Every employee neglects his job duties or does not carry out the orders of his employer without an acceptable reason according to the legal provisions, will be sanctioned by paying a fine varying from 10 to 50 dinar or by one week to three months imprisonment.”

b) Commitment to the principles of honor and dignity

c) Commitment to courtesy

It is worth mentioning that the “Code of Judicial Behavior” that included certain rules for the judicial ethics and the commitments of the judge while practicing his



judicial job as well as his commitment in his private life in a way that increase the trust in his honesty, loyalty and his suitability to practice his judicial job.

The context of the “Code of Judicial Behavior” is in great harmony with the rules of the document on the major principles of the independence of the judiciary issued in the 7th UN conference on preventing crimes treatment of the criminals.

Moreover, the second paragraph of article 41 stipulated: “Article 41: The judge should study any jurisprudence issued by the Supreme Courts and notice the stable jurisprudence concerning the disputable cases.

The judge should also follow the jurisprudence of public bodies of the courts until explicit decisions are issued.”

It is noted that the second paragraph of the above-mentioned article stipulated that the judge must abide by the jurisprudence of public bodies of a Supreme Court. Consequently, if the judge neglects, while issuing his sentence, the jurisprudence of a public body in a Supreme Court, it is considered one of the contraventions where the judge will be subject to a disciplinary pursuit. I believe that this rule may prevent an explicit corruption since the judge has no power other than the law. This is a rule stipulated in the constitution and in the law of judiciary independence. Moreover, the verdict of the above-mentioned article opposes the provisions of article 2 of the civil law number 43 issued in 1976 and which specified the sources of legislations that the judge should work with without including the jurisprudence unless in case of guidance provided not breaching the law.

Furthermore, the sentence of the above-mentioned article requires to close creation and renewal and to be only committed to traditions which oppose the independence and neutrality of the judge. Consequently, there is no way that the creation and renewal be limited only to the judges of the Supreme Courts.

2) 2- Personal Integrity:

The rules that guarantee the neutrality and integrity of the judicial authority, by ensuring that it is not affected by any external factors from any other authority, is in itself the only authority that guarantee the personal neutrality and integrity of the judge. All the rules ensured by the constitution, the laws of prosecution and the international instruments addressed to guarantee the neutrality of the judge while practicing his judicial job since the judge is the tool of the judicial authority to achieve the mission and goals of the judiciary. According to the principles of the judicial integrity issued by the IFES, achieving the personal integrity of the judge is seen through analyzing the elements of the principle which we will discuss as follows:



- 1) 2- 1) Objectivity in taking the decision and respecting the principle of equality before the law:

The Islamic Shariaa which is the official religion in Jordan and which is a major source between the legislation sources aims, in its provisions, at establishing justice that starts from the equality because the people, according to the Shariaa, are equal and abiding by the law is a duty even with the enemy. God says: “.....” In the same context, the message of Al Khalifa Al Rachid Omar Bin Al Khattab to Abou Moussa Al Achaari included rules about the principles of prosecution. This message about the principle of equality during the prosecution was: “.....”

In the context of the legal rules in Jordan, abiding by the principle of equality is one of the judge’s duties and the source of this commitment is stipulated in the Article 6 of the Jordanian constitution; that is the Jordanians are equal before law. However, if the Jordanian constitution has set bases of equality in the frame of the rules that organize the job of the judicial authority, then it would have been more committing to the rules of the Islamic Shariaa as well as to the international instruments established on the idea of equality between the people.

According to Article 18 of the Code of Judicial Behavior, when the judge is practicing his judicial job, he should speak and behave in an equal manner between the people whether they were parties in the case or not. The judge should not also discriminate between the parties due to their religions, ethnics, color or any other reason...

Needless to say, respecting the principle of equality in the judicial procedures and the provisions issued by the judges should be provided by legal rules that ensure it and when the judge neglects this principle, it is considered a breach to the duties of the judge and a reason to annul his verdict. However, there are also certain breaches due to the interference in the work of the judge and its effect on his final decision. We have previously mentioned in the report the survey study related to the judicial body for the year 2005 concerning the pressure exerted on the judges by individuals, lawyers, colleagues, judges of the Supreme Courts and different groups. This means that the respond of the judge to the pressures or to external factors that might affect his judicial decision is a breach to the principle of equality before the law and it threatens the judge’s neutrality and personal integrity.

- 2) 2- 2) Rules guarantee that the interests of the judge and the parties are not conflicted:



Ensuring the neutrality and integrity of the judge requires that he should be detached from any personal feelings or from any pressures that might affect the interests. This issue should not be related to the personal believe of the judge to decide whether the interests or the personal feelings affect his judicial decision. So, there should be clear rules that determine the cases where the judge is not allowed to study a certain case that might requires setting him aside if there are necessary reasons.

Studying the rules that guarantee the absence of any conflict between the judge and the parties in the Jordanian judicial system varies because there are several types of courts that the judicial system in Jordan is quite aware of. So, we found it determined and cleared from one side, ambiguous from another side and absence in the other side. We can review this through the legal texts stipulated in the Jordanian legal system and its effect on the judges:

First: Regular Courts

In the independence of the judicial body law, article 39 stipulated: “It is not allowed to have in one committee in any court two judges who are relatives or have any relationship by marriage till the fourth degree. It is not allowed as well that the prosecutor, the representative of any of the parties or the experts to have the same mentioned relations with one of the judges who are studying the case.”

Having such a text in the law of independence of the judiciary means this law is implemented on all the judges of the regular courts and on those of the private courts. Knowing that those judges follow in their appointments and surveillance the judicial council. Consequently, this text includes as well the judges studying civil and penal cases and the law of independence of the judiciary did not mention other texts that clarify the cases where the judge cannot study.

Deciding to what extent the rules ensuring the non-confliction of interest between the judge and the parties are clear and compulsory can be seen through the organized legal texts in the laws of prosecution procedures. So, we can find that these rules are clear to a certain extent in the Civil Procedure Law and are not found in the Penal Procedure Law. So, it depends on the case’s type that the judge is studying. If the case is civil and its procedures are subject to the civil procedure law, the law has study this point in chapter one of the seventh section under the title of “Non competency of the judges and setting them aside” by rules that guarantee the non-confliction of the interests between the judge and the parties. The Civil Procedure Law article 132 has stipulated the cases where the judge is allowed neither to study the case nor to attend the



hearing even if the parties did not ask so. The situations are as follows: “1- If the judge was a spouse, a relative, or has any relationship by marriage till the fourth degree to one of the parties. 2- If the judge or his spouse has a dispute with one of the parties or the spouse. 3- If the judge was a guardian in his private business, a trustee, or if he might inherit him, or if he is a spouse to the guardian of one of the parties or a trustee, has any relationship by marriage till the fourth degree with the guardian, trustee or with one of the members of the board of directors of the parties company or a manager. This member or manager should have not a personal interest in the case. 4- If the judge, his spouse, his relative or any of his relationship by marriage and his guardian or trustee has an interest in the case. 5- If the judge was a relative or has any relationship by marriage till the fourth degree with any judge in the court and if the judge was a relative or any relationship by marriage till the second degree with the lawyer of one of the parties. 6- If the judge has decided or defended one of the parties in the case even if it was before being a judge, or if he was previously studied the case as a judge, an expert or even a witness. 7- If the judge file a lawsuit asking for compensation from one of the claimant.

Concerning article 133, it stipulated the annulment of the judge’s job in one of the above-mentioned cases and gave one of the parties the right to annul the verdict if the annulment is related to an issued verdict from one of the committees of the Cassation Court.

The texts of the mentioned chapter also included the rules where one of the parties has the right to ask for setting the judge aside and not to study the case and the followed procedures to submit this demand and to study it and the party that has the right to study the case and to take the decision. These rules allowed the judge to submit to the **high judge** of the court where he worked the order of setting him aside if he did not feel at ease for any reason.

Concerning the civil cases, since the civil procedure law is implemented on the civil case, the rules of the non-confliction of the interests are implemented on the judges of the civil cases. Concerning the penal procedure law determining the procedures of the penal case, it is free from any rules that guarantee the non-confliction of the interests between the judge and the parties. Consequently, the only controller to this issue is stipulated in article 39 of the law of judiciary independence and which does not form determined and clear rules where we can know the cases where the penal judge is not allowed to study the penal case before him. In this step, there is big risk concerning that of the penal case due to its nature and its effect on human freedom and his life.



In fact, the one who follows this issue finds that the court is studying the rules of non-conflicting the interests as the case in the civil procedure law although this law is not applied on the penal case. Concerning the penal procedure law, its rules did not include the transfer to the civil procedure law except in case of submitting the judicial documents as mentioned in the article 136 of the penal procedure law. Although this issue did not lead to real problems, however, the validity of the legal system and its capability of providing itself the guarantees is a need that requires studying once again this issue by mentioning these rules in a clear and specific way in the law of judiciary independence or in an independent law where its verdicts are implemented on all judges including the military courts and the courts of confessions.

Second: Religious Courts

The religious procedure law, chapter 20 has mentioned in the articles from 125 till 129 the rules that organizes the cases that requires the demand of not allowing the judge to study the case before him and which is similar to the provisions of the civil procedure law with the only exception that the civil procedure law has determined the cases where the judge is not allowed to study the case before him and annulled his work de facto in any of the above cases among other cases that gave the right to the parties to ask setting the judge aside and not studying the case. While the religious procedure law did not include any verdict that lead de facto to the annulment of the judge's work if he has faced any of the cases where he is not allowed to study it. This issue was linked to submit the demand of setting the aside, from the claimant or the defendant, although article 129 of the religious procedure law has mentioned that facing any of the cases stipulated in the article 125 is a reason to prohibit the judge from attending the sessions of the case and issuing a verdict.

Accuracy, clarity and obligation requires that a similar text to the article 133 of the civil procedure law should be included in the religious procedure law which stipulated the annulment of the judge's work if any of the cases that prohibit him from studying this case.

Third: National Security Court and the Military Courts

The laws of establishing military courts do not include texts that guarantee non-conflicting interests between the judge and the parties. The military penal procedure law number 31 issue in 2002 did not mention such rules.

Concerning the national security court which is formed of military judges, what is applicable on the judges of military courts also applied on the judges of national security court. Concerning its civil judges and knowing that the jurisdiction of this



court is limited only to the penal cases, we notice the judges of this court are civil and there are no clear rules that guarantee the non-confliction of interest between the judge and the parties and which was previously clarified in the first item above.

Fourth: Religious Courts (Council of Confessions)

There are no legal rules that guarantee the non-confliction of interests between the judges of these courts and the parties.

3) 2- 2) Periodical and obligatory declaration on the income and the properties:

There are no legal rules that force the judges to disclose their financial situation when holding their judicial jobs. Consequently, the legal system which rules the work of the judicial authority does not include provisions that oblige the judge to submit a periodical declaration about his income and properties or any changes during his judicial job. The law of judiciary independence issued in 2002 should have put the legal rules of disclosing the judges' financial situation namely that this law was issued in the occasion of the work of the Monarchy Committee for the Judiciary Development.

It is worth mentioning that there is a law under the name of “the law of financial disclosure” which is submitted to the Council of Nation since more than 5 years. This law is passing from the parliament and the House of Lords without considering it an effective law. If the law has been issued, then its draft will include in its provisions the judges as a party abided by the provisions of disclosing the financial situation.

4) 2- 2) To what extent the judges are aware of the judiciary mission:

It is difficult to answer the question related to the awareness of the judges in the judiciary mission. That is to express the opinion on the level of the judges holding their responsibility and appreciating their power according to the law. This law was empowered to the judiciary as an authority and to the judge as an individual whose role is to practice the mission of his judicial job in order to achieve the message of the judicial authority. The message that aims at protecting the rights and freedoms as well as to preserve the rule of law since objectivity requires that the answer should be based on facts that were reached through analyzing the legal rules and to what extent it is suitable and sufficient. It should also be examined by application and practice. That was our work in this report and because the answer on the question about the awareness of the judges in the judiciary mission does not depend on examining legal rules or certain facts then knowing this issue can only be done through a fact-finding



study where specific answers are determined about the role of the judicial authority in achieving the principle of legitimacy and the principle of legality – the rule of law - as well as protecting the rights and freedoms and the role that the judicial in building the national economy, increasing the trust, achieving the legal security, establishing the balance between protecting the human dignity and his freedom and preserving its security and stability. Consequently, this is the role and the mission of the judge in achieving these points.

4) 2) Integrity in the procedures of the trial:

Integrity during the procedures of the trial means to provide guarantees “fair trial” and which depends on several constitutional principles and other legal rules that ensure “the principle of innocence of the accused person and the rights to defend, and the judicial guarantee in the penal and civil trials. There is no sanction without a penal verdict, the disclosure of the trial procedures, the quick decision in the case, equality before judiciary and protecting personal freedom.” In a verdict issued by the High Constitutional Court in Egypt on February 2, 1992 published in the High Constitutional verdicts, part 5, 1st book, p.185 stipulated: “The guarantees of a fair trial affect every judicial party no matter of its nature whether penal, civil or disciplinary. These guarantees are more essential in a penal case.” Hereafter is a statement for the facts through analyzing the elements of this principle.

1) 3- 2) Transparent and neutral procedures in the trial:

a) The accused is innocent:

The Jordanian constitution was not directly affected by the report of this principle. However, we can ensure this principle in the Jordanian Judicial System can be done by referring to article 7 of the constitution “personal freedom is protected.” The text was comprehensive and subject to implementation without the interference of the law. Since the penal case in all its steps is a breach to the personal freedom in a way or another. Guaranteeing of the principle of innocent of the accused can be summarized from the mentioned constitutional rule as well as what we have previously mentioned that the amendment of the penal procedure law in 2001 added a verdict to the article 147 including this principle. If we believe that the importance of this principle requires mentioning it directly in the provisions of the constitution.

This principle was mentioned in the article 14, paragraph 2 of the in International Covenant for political and civil rights in 1966: “Every accused has the right to remain innocent until proven guilty.”

b) The right of defense:



The Jordanian Constitution did not include constitutional base that guarantee the right to defend similar to several constitutions such as the Egyptian constitution. This should not cause a practical problem in the Jordanian courts knowing that the laws of the procedures of the prosecution have mentioned this right. In the penal case, article 63 of the penal procedure law has mentioned that the right of the defendant not to answer on any accusation except in the presence of a lawyer. The public prosecutor should notify the defendant on this right or the testimony will be annulled in the absence of the lawyer. The two articles 175 and 232 of the penal procedure law have guaranteed for the accused his right to defend himself and to submit the documents to the general prosecution.

Consequently, the legal system in Jordan has guaranteed the right of defense to the accused, however, the guarantees provided is not in harmony with the international standards from one side, as well as the breach of several courts sometimes to the principle of the right of defense. Concerning the harmonization with the international standards, paragraph “d” of article 14 of the International Covenant for Political and Civil Rights stipulated: “the accused should be trialed in person and has the right to self-defense or through a lawyer that he chooses and accepts who will defense him and that the court should provided him de facto a lawyer when necessary to defend him without paying any fees if he does not have the adequate means to pay the fee.”

It is clear that the international standards require providing a lawyer to the accused if he could not afford that no matter of the type of the crime or the term of the sanction. The Jordanian legal system does not include such provision unless in one case stipulated in article 208 of the penal procedure law that is implemented when the accused is sentenced to death or to life penal servitude, or to life detention. In this context, it is preferable that the Jordanian legal system includes the provisions that require providing a lawyer to defend the accused in any crime where the sanction exceeds one year of imprisonment.

Concerning the breaches of the courts sometimes for the principle of the right of defense, this is revealed often by non-implementing the preamble of the two articles 175 and 232 from the penal procedure law which stipulated that the court should decide, after studying the documents of the prosecution, that there is no case and to issue its final decision. The provision of the text is based on the ground of innocence which its effects are: first, the duty of the general prosecution to submit the adequate and convinced proves that accused committed this crime. Second, the accused is not obliged to submit the negative proves to show that he is innocent. On



the ground, the courts do not consider the penal case as it is, however, it waits for the documents of the prosecution and tell the accused his right for self-defense before knowing if the prosecution had the prove whether the accused committed the crime or not. Consequently, several cases stay for a long period of time before the courts in hearing the defense party before the prosecution submitted proves showing that the accused committed the crime. This is a clear breach for the right of defense and the personal freedom as well as the burdens of the courts from the so many cases without issuing a decision.

Concerning the other breach of some courts against the defense namely before the National Security Court and the military courts is refusing to call certain witnesses namely if they were in high political position or high-ranked positions. In several cases, these courts refused to call such witnesses under the alibi of non-productivity in the evidence although the court has no choice in calling the witnesses of the defense according to the texts of the law which stipulated to call the witnesses of the defense according to the main base of the principle that stipulated that the general prosecution should prove that the accused committed the crime in all its elements and according to the legal description of the crime as determined in the penal code. The accused has the right to defend in all means.

Concerning the right of defense in civil cases, the civil procedure law, and article 59 has mentioned the right of the defendant to show his defense against the case files against him. The mentioned law has organized the procedures of the defense in a clear way including the points that can be raised so the case will not be accepted.

The case is similar in the religious procedure law which guaranteed for the defendant the right to respond on this case and submit the documents curbing that of the claimant.

c) The right to judiciary in the civil and penal trial:

Article 102 of the Jordanian constitution has stipulated: “The regular courts in Jordan gave the right of judiciary to all individuals in all the penal and civil articles including the cases filed by the government or against it, except the articles where the right of judiciary is empowered to religious or private courts according the provisions of the constitution or any other valid legislation.”

Consequently, the constitution has formed a base for the right of judiciary in the civil and penal courts; however, this right is not free from breaches which most often are committed by the legislator. For instance, the law of



the National Security Court and the court established according to this law and which we previously faced all its obstacles. Since this court is not considered a real judiciary for the individuals similar to what is happening in the military courts and the court of officials and members of the public intelligence which is not guaranteed by independence, neutrality and competency. This is clearly against the right of human in having a fair trial before a judiciary where its system is fair. The members of armed forces or intelligence are above all citizens where their freedoms and rights should be guaranteed such as the right to judiciary in penal and civil trials. The examples are breaching the principle of the right to judiciary in studying and deciding in the commercial and civil conflicts. These problems due to legislative chaos witnesses by the legislative system in the Kingdom and which leads to ousting the powers of the judiciary in several issues in the interest of the executive authority. The examples are mentioned in article 32 of the law of public taxes on purchases number 6 issued in 1996 and where the manager of the public taxes on purchases department allowed to imposing a fine not less than 100 dinar and not exceeding 500 dinar against those who perpetrate any above mentioned contraventions in the said article. If we took into consideration that the crime is classified by contraventions, felonies and crimes and that the fine is only imposed on contraventions and felonies. This might lead to ousting the power of judiciary for the interest of the executive authority. The powers given to the administrative judge, according to the law of prohibiting crime and the law of agriculture and that might be seizing freedom and paying a fine, is also ousting the powers of judiciary and finally wasting the principle of the right to judiciary issued according to the constitution and the international standards.

d) Disclosure of the trial:

Article 2/101 of the Jordanian Constitution has mentioned the disclosure of the trial. The laws of the prosecution procedures have guaranteed this principle. The law and constitution have determined the case where the court is allowed to hold the trial in secret which is preserving the public system or public ethics.

e) Equality before the judiciary:

Article 6 of the Jordanian constitution has mentioned that the principle of equality before the law is guaranteed; however, the constitutional rules were free from a provision that should ensure guaranteeing equality before the judiciary.

f) Deciding the case quickly:



The Jordanian constitution did not mention a provision that guarantee the speediness in deciding in a case. The civil and penal procedure law did not also include a provision in this sense although certain private laws such as the law of labor and the law of credentials and others that mentioned the speed in studying and deciding on the cases related to the mentioned laws.

It is worth mentioning that after preparing the first draft of this report, the law amending the civil procedure law number 16 was issued in 2006 and published in the public newspaper on March 16, 2006. This law includes certain amendments that aim at deciding quickly on the case such as the amendment in the text of the article 116 of the initial law where the provision of the amendment included the necessity for the claimant to submit a list annexed to the list of the case. Before this amendment, the defendant has the right to file a lawsuit in facing the initial case without specific time. This lawsuit can be filed at any period of the trial before the first instance court in a way that contributes so often in prorogating the term of studying the case. Among the amendments that contribute in deciding on the case quickly, the amendment of the article 61 of the initial law and according to the amendment, the legislator has forced the court not to postpone the session of the trial for more than 72 hours if the case is considered urgent according to any effective law. The amended law included raising the value of the case for the verdicts issued by the court of appeal which can be challenged in the Cassation Court where the verdicts of the Court of Appeal and the cases of the rights not exceeding 10,000 dinar were issued finally without any appeal in case of obtaining a permit to be transferred to the cassation court from the supreme judge.

Article 14/3/c of the International Covenant for political and civil rights has mentioned that every person accused of committing a crime should be trialed without an unexcused delay. The necessities of the public interest require to study and decide on a case quickly. In the penal case, implementing the principle of public deterrence which is one of the goals of the sanction require speed in issuing a sanction after committing the crime because the delay might negatively affect the deterrence. Concerning the civil case, protecting the rights and empowering the beneficiaries to implement it according to the provisions of the law is a public goal needed to achieve justice. Consequently, the speed in the trial procedures is benefit to the public interest. Moreover, long procedures and unexcused delay increase the expenditures of the treasury without any benefit. They also contributed in overburdening the courts with accumulated cases that negatively affects the influence of the judicial system and his power to guarantee the achievement of rights and freedoms. Ensuring quick decision in the cases is also a guarantee for the private interest. For instance, the



accused in a penal case has the right to a quick trial that put an end to his suffering due to his situation as an accused which affects his dignity and honor between people. The claimant in a civil case has an interest in obtaining a judicial verdict that decided his rights or protect him. This verdict has the nature of validity in any acceptable time. Concerning other considerations such as the long delay in deciding on the cases before the court destabilize the trust in all the judicial system. It also decreases the confidence of the people in the capacity of the judiciary to protect their rights and freedoms.

It is necessary to develop the system that control the procedures of the trial in a way that guarantee the speed in deciding on it without wasting the principles of prosecution and the major guarantees for the rights of prosecution.

2) 3- 2) Effective judicial Censure on the trial procedures:

The legal system in Jordan does not include organizing the censure on the trial procedures while studying the case. The issue of censure on the trial procedures in the context of the missions held by the Judicial Inspection Department in the Ministry of Justice issued according the system number 12 in 1994 which was replaced by the system number 47 in 2005. According to this system, the judges of the first instance court, the executive judges, the judges of public prosecution and the two assistants of the public civil lawyer are subject to inspection on the cases which they studied for at least one time per year. Among the standards adopted by the inspection judges in evaluating the work of the judges: Implementing the law safely, safety of the procedures of prosecution, respect the rules of proves, the reasons of delaying the case, the term taken from studying the case until deciding on it, meeting the verdicts to its legal conditions and determining the ratio of the cases decided by the judge. The reports of the judicial inspection is considered among the bases that the judicial council depends on while evaluating the judge's competency and his qualifications that contribute in promoting him from one position to another.

3) 3- 2) Means of challenging the judicial verdicts:

First: Concerning the legal rules that permit challenging the verdicts:

The civil procedure law has organized in its 10th section the means of challenging the judicial verdicts issued in the civil cases. It organizes the regular means of challenging which are the appeal that challenges the verdicts of the first instance court and appeal before the Cassation Court that challenges the verdicts of the Courts of Appeal. This law has also organized the irregular means of challenging a verdict, so it stipulated the



protesting of the party and holding the trial once again as irregular means to challenge the verdicts.

Concerning the penal procedure law, it organizes in its 8th section the means of challenging the penal sentences which are the appeal and cassation as well as challenging in written and holding the trial once again.

Concerning the verdicts issued by the religious courts, the religious procedure law has assume the statement of means of appeal which started by protesting the verdicts in abstention to the same court that issued the verdict. The law has revealed in chapter 22 the rules of appeal the verdicts of the religious courts before the religious court of appeal where the verdicts are final. The law also includes an irregular path to the appeal the verdicts which is the protest of the others.

Concerning the private courts, the verdicts issued by the High Council for the trial of the ministers is not subject to appeal.

Concerning the verdicts issued by the first instance and the appeal court of customs, the law of customs organized the verdicts of appeal by the verdicts of these courts as well as the court of appealing the cases of income tax. The law of income tax and the systems issued accordingly determined specific rules to challenge the verdicts.

Concerning the National Security Court, the law of this court allowed the challenge of its verdicts before the court of cassation. This law has included breaching the stabilized rules where the Cassation court is legal court only according to the article a/10 of the above-mentioned law: “The Cassation Court will be held to study the challenged verdicts according to the two paragraphs b and c of article 9 of this law in the presence of at least five judges and it is considered in this case a court of subject...”

Concerning the courts of non-Moslem confession, the law of the Council of non-Moslem Confessions did not include any rules to issue verdicts or challenge them.

Concerning the military courts, the military penal procedure law has stipulated the right of appealing the verdicts issued by the military courts in the crimes and felonies before the military court of appeal. It also stipulated the right to ask for trial once again as an irregular mean of appeal.

Concerning the military council for the public intelligence department, according to article 6 of the public intelligence law number 24 in 1964, the



verdicts applied on the armed forces according to its laws in the trial is also applied on the employees and members of the public intelligence. Consequently, the verdicts issued by the military council for the public intelligence department is supposed that it accepts challenging the verdict before the military court of appeal. In fact, in a well-known case in Jordan concerning a former manager in the public intelligence department, the military council in the department has sentenced him to prison for 8 years and paying a fine of 17 million dinar on July 10, 2003. When challenging the verdict before the military court of appeal, it decided to refuse the appeal because the private court in the department is not considered among the courts where its verdicts are subject to appeal before the military court. When challenging the verdict of the military council before the Cassation Court since the actions that were pursued is of the National Security Court jurisdictions and that the mentioned military council according to article 7 of the public intelligence law is responsible for the jurisdictions of the national security court in case the crime is related to the employees and the members of the public intelligence department. The cassation court issued a verdict that refused the appeal because the verdicts of the private court formed in the public intelligence department do not accept the appeal before the cassation court. In conclusion, a verdict of a sanction was issued by a court which breaches freedom without giving a chance for the sentenced person to challenge the verdict.

Second: Possibility of Appealing All Judgments without Exception

- 1- Conciliation courts:** All judgments pronounced by the conciliation courts in penal actions are approved for appeal, however in juristic actions all sentences rendered by cash or through movables that do not exceed two hundred and fifty (250) Dinars are conclusive and not liable to appeal, otherwise the conciliation court sentences in juristic actions are appealed in the Court of Appeal.
- 2- Courts of first instance:** All sentences pronounced by courts of first instance in penal actions related to misdemeanors and felonies are subject to appeal, in addition to sentences rendered in juristic actions, provided that judgments rendered by the appeal court in misdemeanors are conclusive sentences liable to appeal before the Court of Cassation only by an extraordinary procedure, which is written cassation (Article 291 of the Code of Penal Procedures).

As to the sentences of the courts of appeal in criminal actions, they are appealed through the cassation. As for the sentences pronounced through



juristic actions, the sentences of the court of appeal that are liable to appeal through cassation only by an authorization from the Head of the Court of Cassation or his delegate, are those judgments pronounced in summary proceedings or in actions that do not exceed ten thousand (10, 000) Dinars.

Otherwise, sentences of the courts of appeal are appealed through cassation.

3- Sentences rendered by legal courts of appeal are not liable for appeal through cassation, however sentences pronounced by the appellate court of customs in juristic and penal actions, are liable to appeal before the Court of Cassation if the value of the action or the customs fines and the confiscations fees are not less than five thousand (5000) Dinars, but all other sentences are liable to appeal only by an authorization from the head of the court of appeal or the Court of Cassation.

However, the sentences rendered by the court of appeal of income tax actions are liable to appeal before the Court of Cassation only if the tax amount exceeds 5000 Dinars.

4- Sentences pronounced by the military council in the intelligence services, as already mentioned, are not liable to any legal appeal.

5- Sentences pronounced by the military court of appeal are conclusive and not liable to appeal by cassation.

Thus, it appears that even if includes special provisions for appeal, some sentences cannot be appealed for reasons mentioned above.

4-3-2: Possibility of Acquiring Legal Information and Judicial Verdicts:

The official way to publish laws and regulations is through the Official Gazette, which is not easily acquired by the people since it is exclusively distributed to governmental departments and subscribers and there is no other means to obtain it through a point of sale. However, it is worth mentioning that the Ministry of Finance has recently published the Official Gazette on the internet, thus facilitating access to it. Yet, this method of publication, despite its importance, remains limited to a number of people who have access to the internet. The same applies to judicial verdicts, which are also difficult to acquire.

Judges also face a problem in acquiring legal information and verdicts since it is not an easy matter and the judge has sometimes to pay out of his own pocket to have access to them. Perhaps this problem will soon be solved if the Ministry of Justice implements the project of computerizing works of the different courts and linking them to a central network that connects the different courts of the Kingdom with the possibility of connecting them to governmental and non-government internet sites.



Third Section

3- Competency

In language, competency means “a state in which something is equal to the other...and equality for the Arabs is to be equal by applicability”. So, if we take this meaning as a stepping stone to look for competency as one of the principles of a fair judiciary, we can say that the competency of a judge is formed balanced qualifications, capabilities and characteristics that are appropriate for the position of a judge. Judiciary means “judging, deciding and concluding”.

In its lexical meaning, as it is known in our age and time, judiciary could be defined as: “Judging litigants according to the law by special rules”, and thus it appears that the judge’s work consists of solving conflicts and ending dispute with binding judgments whose implementation is guaranteed by the state according to the rules and regulations governing disputes, procedural rules that control the presentation of the dispute to the judiciary, methods and restraints to which the judge and litigating parties adhere to, means of proving the disputed right, and ways to pay for the lawsuit at the end of which the judge should pronounce a decisive and binding verdict. Thus, the matter requires the determination of the judicial post qualifications regarding knowledge, experience and understanding necessary for any judiciary position, and the qualifications related to moral and behavioral codes that should be met in the person to occupy this job, with the determination of objective means he refers to in order to show equality among objective qualifications of the judicial job, and the general information about the person who will occupy this position.

Moreover, the standards set to measure a judge’s competence do not differ from those instituted for judiciary assistants, such as the necessity of determining their duties, and the required knowledge and experience to occupy the post. So, currently, discussing the state of the judiciary in the Hashemite Kingdom of Jordan requires us to research the laws that govern judiciary post and the criteria for choosing the appropriate person for each post and the correspondence of their education, experience and conduct with the requirements of the job they undertake at the onset of their assumption of the judiciary post and their continuity during all the phases of the judge’s work. All these are discussed according to the following analytical elements:

3-1: Appropriate Qualifications for Judges and Judiciary Assistants

3-1-1: Determined and objective criteria for judiciary qualifications:

The laws in vigor in Jordan do not stipulate set qualifications for the judicial post, contrary to the types of courts that exercise litigation and its competences. Yet the establishment of these rules and taking recourse in them is not impossible if we look at the situation from the standpoint of things that fall within the competence of each court, and thus extract objective criteria for the necessary judicial



qualifications required for any judicial post in any court according to its competence.

Even if the judge's duty consists of solving conflicts and ending enmities in general, this mission varies according to the contentious right. The development currently witnessed by the human society in the fields of economy, trade, technology, environment, human rights, and the diversity of conflicts between individuals, groups and state interests has led to the creation of several forms of rights that might be source of conflict, including the characteristics of these rights and ways of dealing with them that sometimes cover aspects of privacy; thus a certain amount of knowledge is required to settle the conflict resulting from or related to these rights, whether this knowledge is legal or other. Moreover, the branches of law have increased in number and varied in order to put legal jobs and among them the judiciary in a wide professional context with various specializations. This drives us to state that the appropriate judiciary qualifications in our current era must be integrated within comprehensive strategic givens aiming at developing the law, and that in order for them to be determined within objective criteria that aspire to realize the idea of specialization in judiciary work in the light of the courts' jurisdictions that are determined by law and what falls within these jurisdictions of cases and lawsuits, such that it becomes possible to determine the knowledge, professional requirements and experience necessary to fill a judicial post in a certain court. Taking the specialization system of courts into consideration became a *de facto* necessity, and should not be left without a binding system that governs and regulates it. Implementing the courts specialization system is the most objective means to determine the required qualifications for each specialty. Further, its results will lead to the crystallization of the vision vis-à-vis the organization of the work of the Judiciary Institute with respect to the academic and training methodologies in the light of the need and requirements of the judicial body in each specialization, whether for the aim of preparing the people to fill judiciary posts or preparing judges working on all levels according to the appropriate requirements of judiciary departments with their different specializations.

As to the posts of judiciary assistants, a systematic structure should be established for the courts employees, in addition to a description of each post, its duties and the required qualifications in order to fill it.

3-1-2: The Appropriate Educational and Professional Competencies:

Articles (10, 11 and 12) of the Law of the Independence of the Judiciary have mentioned the conditions for nomination in the judicial post.

However, Article (13) of the same law included an additional provision to those stated in Article (10) of the same law with respect to the post of the Head of the Court of Cassation. This article stipulated that:



- A- In compliance with the conditions mentioned in paragraphs (A, B, C, D, E, F) of Article (10) of this law, the Head of the Court of Cassation should have worked in the fields of regular judiciary and law for a period not less than 25 years and his judiciary service should not be less than 15 years.**
- B- The Head of the Court of Cassation is appointed and his term of office ends by a high royal decree.**

Thus, it is clear that paragraph B of the above mentioned article has established a special rule for appointing the Head of the Court of Cassation and ending his term of office. This authorization was originally entrusted to the king and the Judicial Council established *de jure* with the power of nominating the judges of the regular courts and the judges the public prosecution had no role to play in this respect. The provisions of this article were different than those of article (49) the Law of the Independence of the Judiciary of 1972 and its amendments, whereas article (14) of the aforementioned Law stipulated that: **“Despite what was mentioned in any other law or legislation issued by the council upon recommendation from the minister to refer to retirement any judge who had achieved the retirement period stipulated in the Civil Retirement Code in vigor, his decision is not liable to appeal before any judicial or executive authority, and the head of the Judicial Council or any of its members are not allowed to attend the council meeting when its agenda includes discussions about his retirement.”**

If we take into consideration that all appointments in judicial posts, including that of the Head of the Court of Cassation, falls under the competence of the Judicial Council, as per the aforementioned law, we note that the provisions of article (13) of the Law of the Independence of the Judiciary no. (15) of the year 2001 has removed the appointment of the Head of the Court of Cassation and ending his term in office from the hands of the Judicial Council. It is clear that the addition made to the text of Article 13 has led to a grave problematic highlighted below in two main points:

First: removing this competence from the hands of the Judicial Council is a disparagement of the independence of the judiciary and deviation from the stability based on ensuring the neutrality of the judiciary via eliminating all factors of external influence. Thus, there is no valid excuse to take away this competence from the Judicial Council, especially that all judges are appointed by Royal Decree as per the stipulation of article (98) of the Jordanian Constitution, upon announcement of the appointment decision issued by the Judicial Council, especially if we take into consideration the means of the issuance of a Royal Decree delineated in the Jordanian Constitution. Whereby article (40) of the Constitution has stated that: **“the king exercises his powers by a royal decree and the royal decree should be signed by the head of the government and the minister or the competent ministers, and the king**



ratifies his approval by confirming his signature over the aforementioned signatures”. Thus, it is clear that the nomination of the Head of the Court of Cassation by a royal decree is in the hands of the executive power whereby the decision of the Prime Minister and the Minister of Justice in this case is dependent on the issuance of the Royal Decree ratified by the royal signature after the signature of the Prime Minister and the Minister of Justice. This judgment is extracted from Article 40 of the above mentioned Constitution, and in conformity with what Article 26 of the Constitution that stipulates: **“the executive power is entrusted to the king who exercises this power through his ministers according to the provisions of the Constitution.”**

Second: Article 2 of the Law of the Independence of the Judiciary related to definition has defined the judge as follows: **“each judge is nominated by the council according to the stipulations of this Law”**. According to this definition, the description of judge in regular courts is only applicable to those appointed by the Judicial Council formed according to the provisions of Article 4 of the same Law. Since the appointment of the Head of the Court of Cassation and the end of his term in office do not fall within the competence of the Judicial Council, the definition of ‘judge’ as per that stated in article (2) mentioned above does not apply to him. The rhetorical question to be asked here is whether it is legal for a person who does not fit within the definition of a ‘judge’ to head the Court of Cassation? Is it legal for the Head of the Court of Cassation to preside—in his legal status according to the Law of the Independence of the Judiciary—a judiciary body responsible of examining and adjudicating appeals submitted to the Court of Cassation? I believe that the chairmanship of the Court of Cassation is a judicial post that should be filled only by persons with the description of judge according to the definition mentioned in the Law of the Independence of the Judiciary. Further, the bodies of the Court of Cassation enjoy judicial competence that cannot be exercised without judges. The most important question now is about the validity of the verdicts issued by the Court of Cassation from bodies headed by the head of the Court since the issuance of Law number (15) of 2001 up to this date?

Henceforth, we will shed light on the educational and professional qualifications as one of the necessary elements to evaluate the concept of competency.

As to the judges of the Supreme Court of Justice, article 4 of the Law of the Supreme Court of Justice number 12 of 1992 has determined the conditions of filling the post of the head of this court, its judges and the head of the public prosecution: **“the head of the Supreme Court of Justice or the judge or the head of the public prosecution should meet the following requirements:**

A- He should have worked in the judicial field for a period not less than 20 years



- B- Has occupied the position of a legal advisor in one of the ministries or civil governmental departments or a judicial post in the armed forces or the general security in addition to his work in the judiciary and practicing law for a period not less than 15 years.**
- C- Has practiced law for a period not less than 15 years**
- D- Worked as a professor for a period not less than 5 years in teaching law in one of the Jordanian universities and worked in judiciary or law in Jordan for a period not less than five years.”**

As to the judges of the religious courts, Article 3 of Law number 19 of 1972 on the Formation of Religious Courts stipulated the following conditions for the appointment of judges:

A- the one who occupies the religious judiciary should:

- 1- Be a Muslim Jordanian enjoying full legitimate, civil, sensory and bodily capacity.**
 - 2- Has completed the age of 28 at least**
 - 3- Has obtained at least the first university degree in Islamic Law**
 - 4- Has performed clerical work in religious courts for a period of at least three years after obtaining a Bachelor Degree or has practiced when a professor the profession of religious law for a period not less than six years.**
 - 5- Be of good reputation and conduct, not condemned of any felony or misdemeanor except for political crimes, and not condemned by a court or a disciplinary council on matters of honor even if his honor was restituted or he has been included in a general amnesty.**
- B- In compliance with the provisions of paragraph A of this article, it is not allowed to appoint a person as a judge for the first time unless he passes the judicial competition. In this case, he shall be appointed for a three-year trial period the Council can offer him a permanent post or reappoint him to his clerical job or relinquish his services.”**

One can notice from the above mentioned text that the requirement for appointment in a judicial post in the religious courts is the acquirement of at least a Bachelor Degree in Islamic Shari'a. This verdict came as a result of the amendment of the aforementioned article as per Law no. (83) of 2001, whereby before its amendment the text allowed the appointment in a post in the religious judiciary all those who have a university degree from the Islamic Shari'a College or from any law school that has Islamic Shari'a in its curriculum. In my opinion, this amendment has restricted the appointment to this position to graduates of Islamic Shari'a Colleges, and this forms a step backward. This is justified in the fact that the religious judiciary is part of the legal professions and the exclusion of graduates of other law schools from this profession will contribute in its deterioration. Hence, the Jordanian legislator



was not successful in the mentioned amendment of the Law of the Formation of Religious Courts.

Regarding the State Security Court, and as already mentioned several times in this report, its judges are appointed by the Prime Minister. In the case where the judges are part of the civil judiciary, the conditions for their appointment and the required qualifications are those stated in the Law on the Independence of the Judiciary. As for Military Judges, according to the Judiciary Service Code of military judges and their Allowances number (45) of 2004, the qualifications and conditions of appointment in a military judiciary post were taken from the Law on the Independence of the Judiciary except for the fact that the appointment of a military judge requires the availability of conditions provided for in the Law on the Service of Officers in the Armed Forces.

As to the qualifications of the Police Court judges, these can be deduced from Article 85 of the General Security Code number 38/1965: **“the director should form a court called the Police Court consisting of a head and at least two members provided that the rank of the head of the court should not be less than a colonel and one of its member should be a law degree holder...”** Thus, it appears that the required qualifications are related to the grades of officers, who will occupy the position of judges in the police court, since it appears that two of this court judges may be officers with no degrees in law.

With respect to the Confessional Courts for non Muslims, there are no specified legal rules that stipulate conditions for appointing the judges of these courts and their qualifications whether their appointment – as council for the confession working within the framework of the religious courts competencies regarding the affairs of the community—occurs by a recommendation from the supreme spiritual leader of that confession and by a decision from the Council of Ministers.

3-1-3: Criteria of Moral Conduct

At the beginning of the year 2006, the Judicial Council of Regular Courts endorsed rules that include the criteria of the judicial code of conduct entitled **“The Judicial Code of Conduct”**. The rules included in this Code of Conduct go in par with the main principles of the independence of the judiciary ratified by the UN 7th Congress on the Prevention of Crime and the Treatment of Criminals of 1985, in addition to what was previously mentioned in this report on the stipulations of article (41) of this Code vis-à-vis obliging judges to uphold the rulings of the public bodies of supreme courts until they revoked by sincere judgments.

The report entitled **Establishing an Independent Judicial Authority: Supporting the Jordanian Judicial Council** issued in January 2006 by the



project of the sovereignty of the law—and sponsored by USAID—has included in page 10 a recommendation to form a permanent committee derived from the Judicial Council for supervising the commitment to the Code of Conduct. Here, it is essential to stress the importance of this recommendation and the necessity of forming a permanent committee to control the commitment of the judicial body to the rules of this Code, since the implementation of these rules undoubtedly requires a practical means to ensure the respect of and commitment to these rules and applying the principle of accountability in case they were violated. In this respect, perhaps it is important to quote the saying of the Caliph Omar Bin Al-Khattab in his famous message: **“it is worthless to speak of an inapplicable right”**.

3-2: Objective Criteria for the Selection of Judges

3-2-1: Specified and Objective Criteria:

Achieving the intended target of the judicial post requires the selection of the appropriate person who enjoys the educational, professional qualifications that fit the describe missions for each judicial post. The problem here lies in the manner of choosing the right person for the judicial post, for if this procedure is based on previously set objective bases then the criterion for choosing must be objective. Otherwise, there is ample means to choose judges under the influence of different factors such us the influence of other state powers or bodies or personal and regional interests, nepotism and other factors that ruin the choosing process and do not guarantee objectivity in choosing the right person for the judicial post. Here, one should note that choosing the right person to fill in the post of a judge is a quintessential element in guaranteeing the autonomy and integrity of the judiciary. In order to study the current state of affairs in Jordan in this respect we will tackle the following analytical elements.

3-2-1-1: Specified Criteria to Evaluate Qualifications

Article 22 of the Jordanian Constitution stipulates the following:

“(i) Every Jordanian shall be entitled to be appointed to public offices under such conditions as are prescribed by law or regulations.

(ii) Appointment to any government office or to any establishment attached to the Government, or to any municipal office, whether such appointment is permanent or temporary, shall be made on the basis of merit and qualifications.”

Thus, it is clear that the Jordanian Constitution has defined competency and qualification as basis to occupy a public office, such as a judiciary office.



Going back to the Law on the Independence of the Judiciary, we find that article (10) has determined the required educational qualification with at least a law degree from one of the Jordanian law schools or an equivalent degree in law accepted by the council. The Law has added requirements related to experience after obtaining the required law degree. These requirements are as follows:

- 1- The nominee to the office should have worked as an attorney for a period not less than four years after acquiring his first university degree or for three years after obtaining the second university degree (masters) or for three years after obtaining the third university degree in law (doctorate).
- 2- Or should have worked as a clerk in courts for three years after obtaining his first university degree, and he will be informed by the council for a session in the judicial institution for one year
- 3- Or should be holder of a diploma from the judiciary institution.

The conditions for appointment in the judicial post do not differ between the regular judiciary, the religious judiciary and the military judiciary in determining a minimum limit for the educational qualification and professional experience.

3-2-1-2: A Competitive Entrance Exam:

Article 11 of the Law on the Independence of the Judiciary stated that appointment in the judicial posts requires a verification of the person's competence, his conduct and his capability to serve the judiciary. In this respect, the law did not include any specified means to ensure competence, good conduct and aptitude for the judicial post. If we take into consideration that the institution of the Judicial Council is limited to the members of the Judicial Council in the light of the definition mentioned in the law without the presence of any administrative structures that help the Council in filling its posts, which indicates that the issue of verifying the element of competency, conduct, and aptitude is subject to a personal criterion related to the head of the Judicial Council and some of its members. On the other hand, the same article of the Law mentioned the setting of a test for applicants for the vacant positions of fourth, fifth and sixth levels by a committee that the Council forms from senior judges with the same grade, and the declaration of vacant positions and the competition would be pronounced by the head of the Judicial Council. Article 3 of the Law of the Establishment of Religious Courts stated the possibility of nominating a judge for the first time only after passing the judicial competition, and the statement was decisive with respect to the passing the judicial competition if the nomination was for the first time regardless of the position and rank of the judge, since the Law of the



Independence of the Judiciary has differentiated in its rules among appointment in judicial posts of fourth, fifth, and sixth levels and conditioned the passing of the judicial competition, whereas Article 14/B of the same Law has granted the Judicial Council the power of nominating judges in grades higher than the fourth without the condition of passing a competition. In fact, such judicial appointments occur for lawyers who have worked in law for more than ten years, and the Judicial Council has the right of evaluating the competence and experience of those appointed in such a manner without the restraints of any objective criteria. Such appointments have provoked many paradoxes and flaws because of the lack of objective criteria for there are many complaints among judges relating the loss of principles of appointing lawyers such as in judicial posts and determining their grades at the beginning of the nomination, and examples are numerous in the judicial organ in addition to the complaints of inequality in determining levels despite equality among the years of experience and educational qualifications.

It is worth noting that the Jordanian legislator was able to draft a successful law for the religious courts by setting as condition the passing of the judicial competition for all those who will be appointed in the judicial post for the first time. This came as an improvement from the Law on the Independence of the Judiciary – for regular judges – whereby it limited the condition of passing the competition to fill a vacant judicial post in the forth, fifth and sixth grades, for the validity of choice and the establishment of the principle of equality and the appreciation of the importance of the judicial post necessitates that no judge be appointed without having passed the judicial competition that fits with the vacant judicial post, even if this appointment is for a higher grade.

As to the judges of the military courts, Article 4 of the Judiciary Service Code for Military Judges stated the way of occupying required vacancies in the military judiciary by mentioning the vacant positions in daily newspapers and setting a test for the applicants.

3-2-1-3: Psychological Exam

Among the main requirements of occupying a public post in the Hashemite Kingdom of Jordan is the availability of the full civil rights and health capacities necessary for the assumption of the job. However, the legal system in Jordan does not stipulate that candidates to any public office, including the judiciary office, sit for a psychological exam. Here, it is primordial to point out that the importance and gravity of the judicial post necessitates the verification of the health of the



candidate to this post, in order to ensure that he is psychologically stable and free of psychological illnesses. For it is not enough to require the availability of the proper health conditions for appointment, which is usually checked through an examination of the senses and normal disease that might impede the fulfillment of the required tasks. The work of a judge requires an impressive amount of balance, wisdom, tranquility, intelligence and preponderance of mind. In explaining Article 1794 of the judicial rules review in the book **The Aphorisms of Rulers**, seventh volume, we read: **“the judiciary is not addressed to the idiot, for the idiot is not able to satisfy the requirements of justice due to his mental inferiority...And the Prophet Issa said: “I have cured the dumb and the leper through God’s will but I wasn’t able to cure the idiot”**. Further, we read in the book of Dr. Abdul Fattah Murad, **Disciplinary Violations of Judges and Members of the Public Prosecution**, 1st ed., 1992, p. 436: **“the best guarantees of the judge are the ones he takes from his own decision, and the best fortress he refers to is his conscience, thus before looking for the judge guarantees, look for the man under the state order, the order won’t make him a judge if he doesn’t enjoy the spirit of a judge, his self-esteem, his dignity, his passion for his sovereignty and independence...”**

Thus, we can say that mental health and its safety is an essential guarantee that should exist in the candidate for the judicial position. This should be ensured according to an objective criteria and a mandatory psychological exam.

3-2-2: Compulsory Evaluation System:

We did not notice in the laws related to nominating judges any obligatory regulations concerning the evaluation of competences, qualifications and experiences.

3-2-3: Equality in Appointment between Men and Women:

The Jordanian Constitution has established equality between Jordanians in rights and obligations without any discrimination between men and women. Further, the Law on the Independence of the Judiciary – for regular Judges – has instituted this same equality in the appointment of men and women, such that manhood is no more a condition to occupy a judicial position. In reality, all judicial positions were occupied by males in Jordan until 1996 when the first woman was appointed in the judiciary. The arena of the regular judiciary has witness an increase in female judges, legally and actually there is no obstacle that might stop a woman from occupying a judicial position if she has fulfilled all necessary qualifications and conditions.



As for religious and military courts, the Law of the Formation of Religious Courts and the Code of Judicial Service for Military Judges do not stipulate manhood as conditions for appointment in a judicial post. This means that the principle of equality between men and women is guaranteed by law. However, in fact we see that women face difficulties in acceding to religious and military courts. Perhaps the difficulty that women face in occupying positions in the religious judiciary is due to a dispute over jurisprudence, **“Masculinity is a condition for the jurists and women are not allowed to take over the judiciary...However, the Hanafite jurists allow women to occupy a judicial post except in those related to penalties and punishments since fall beyond her capacity...The Imam Ibn Jarir Al-Tabari said that masculinity is not a condition to occupy the judiciary since the judiciary is like legal counseling which does not set masculinity as condition.”**

As for the religious courts for non-Muslims, the issue is absent because of the lack of regulation at first in practicing judicial activities in these court, whereas the confessional council formed by religious men in the confession occupies the judiciary post in the personal status affairs relating the confession, and woman has no role in this field.

3-3: Objective and Clear Promotion System:

3-3-1: Specified and Objective Criteria for Promotion and Transfer:

Reference: We have mentioned in paragraph (5-1) of this report entitled **“Guaranteeing Job Stability”** the legal rules that govern the promotion and transfer of the judiciary, which relieves us from re-discussing the issue.

3-3-2: Periodical Performance Evaluation:

Article 4 of the Judicial Inspection Code number 47 of 2005 stipulated that: **“the directorate will assume the following missions:**

- A- Inspect the works of court judges, the public prosecution members, assistants to the public civil advisor and the implementation judges except for those of high grades.**
- B- Evaluate the works of judges as to the good application of the law, the collection of adjudication fees, evidence, reasons for postponement, the duration of the issuance of the verdict, collecting decisions and judgments with their causes and reasons, the safety of the results, determination of the winter season...”**

Further, article 5 of the same Code stated: **“All activities of those concerned with code will be inspected at least once a year.”**



According to the provisions of the Judicial Inspection Code, evaluation from an objective point of view is entrusted to the service of the judicial inspection department which is linked to the Minister of Justice. As to the regularity of the evaluation, the Code stated that inspection, which means for evaluating the works of judges, is to be done at least once a year.

In this respect, it is worth to mention the provisions of article (19) of the Law on the Independence of the Judiciary, which has set competence and merit as criteria to promote judges in grades, and these are evaluated by the Judicial Council. Thus, this means becomes limited to the reports presented by the judges of the judicial inspection, which is a department in the Ministry of Justice. This was confirmed by article (41) of the Law on the Independence of the Judiciary. Despite the fact that the law and the code stipulated the presentation of reports on the works of the regular courts judges to the head of the Judicial Council and the Minister of Justice, this does not negate the fact that the department is part of the executive authority.

The importance that lies in the process of performance evaluation and its relation to the autonomy and neutrality of the judge requires the detachment of the executive authority from the process since it is possible that this authority place some influence on the judge through the control of the bodies affiliated to it. Hence, the judge will feel threatened and insecure in his job considering that the inspection reports, as mentioned above, are a means to evaluate the judge's performance and its recommendations will lead to the promotion of the judge and the forming of an opinion on his judicial competence.

Concerning religious courts, the work of judges are also subject to inspection through the inspection committee set in the judges' service related to the prime ministry.

3-3-3: Specified and Compulsory Criteria for Performance Evaluation and Implementation:

The Law on the Independence of the Judiciary does not include specified criteria in order to evaluate the performance of regular judges. However, the Judicial Inspection Code number 47 of 2005 cited some objective criteria. An agenda based on the provisions of the Code was adopted and it included elements that should be examined by the inquisitor in the dossier of the action subject to inspection, such as ensuring that the judge exercises good treatment vis-à-vis court employees by making sure that the file with all the necessary information is duly filled, by examining the competence of the judge in looking into the case, paying the fees, the accuracy of judicial



notifications, the validity of procedures during adjudication, evidence, reasons for postponement of the case and the number of postponements, review the pronounced verdict and evaluating its reasons and causes in addition to the accuracy in the implementation of the law.

The setting of objective criteria to evaluate performance is an important step towards the guarantee of maintaining the good performance in the judicial process and the fairness of judgments, provided that the implementation of these criteria in evaluating good performance should be entrusted to a directorate of judicial inspection completely linked to the judiciary authority and with appropriate financial and human resources.

The Judicial Council is demanding the establishment of objective criteria with more capacity than the criteria taken from the Inspection Code rule, in order to be more inclusive of the elements by which we can know the competence and proficiency of the judge, and from that determine the courts obligations or what can be called the basics of adjudication to which the judge should be committed, **such as the commitment to the principle of equality and confrontation, abiding by the subject of dispute, respecting the rules of the general regulations, respecting the procedural rules applied on the case, committing to the objective law, and also the judge's commitment to begin the hearing on in its due date.** On the other hand, we should give the process of evaluation a more democratic form in order to steer it away from any means of control by discussing the evaluation report with the concerned judge and giving him a chance to clarify his point of view or benefit from the remarks on his performance and consulting him about means that would boost his fairness and aptitude in the light of weak points highlighted in the report. Also it is important to mention that controlling the judge's behavior and the manner in which he manages court hearings and respecting the principle of equality and non discrimination in dealing with parties requires the establishment of criteria able to measure the judge's commitment to the rules of the judiciary conduct, such as the mission of supervision, assumed by the head of the court, of the judges activities in order to be an objective means to evaluate performance, which in turn will be added to the inspection report, and allowing the head of the court to suggest the necessary appropriate training and rehabilitation sessions for each judge in the light of the information received on the judge's performance and its weak points.

3-3-4: Balance and Equality in Evaluation between Men and Women:



We have already mentioned that the legal rules related to the judicial post in the regular judiciary are applied equally on men and women. Consequently, the performance evaluation criteria that are applied on male judges are also applied on female judges, and no complaint was presented about any discrimination between women and men in the evaluation process; and if there were any complaint about the inspection judges commitment to objectivity in drafting their reports or about their legal capacities and their knowledge in the ways of implementing the evaluation mechanisms, judges of both genders are equal in this complaint.

3-4: Code of Judicial Discipline:

There is no contradiction between the principle of the independence of the judiciary and auditing it. Auditing is only useful if it is followed by a specified rule determining the judge's obligations and the judiciary code of conduct to which the judge should commit, and then determining the rules of accountability and putting the right sanctions that maintain the reverence of the judicial authority, and spreads confidence among people and other authorities that the judicial body is capable of establishing justice, give the rights back to their owners and protect freedoms. This is an important and grave mission entrusted to the judge by law, and thus it is only entrusted to the holder of competent qualifications, such as educational aptitude and professional experience that corresponds with the job descriptions, in addition to high moral standards such as honor, loyalty and pride, and these qualifications are required in the beginning and continuously. Moreover, auditing and the rules of accountability have many important positive effects such as **motivating the judge to deploy more efforts in achieving his obligations including integrity of performance and distancing himself from all what may harm his judicial dignity and honor, and also consolidating the institution of work that is capable of keeping the appropriate individuals and discarding those who showed a low level of competence or misconduct.** Further, the safety of the disciplinary Code and its capability of carrying its aims, require the determination of obligations and the codes of judicial ethics, elaboration of criteria for disciplinary violations while linking them to the disciplinary sanctions in a context of clarity and transparency, and we will mention below the disciplinary code for judges and member of the public prosecution in Jordan according to the following elements of analysis:

3-4-1: Clear and Transparent Criteria for Discipline:



3-4-1-1: A System that Determines Violations and Sanctions with the Right for Defense:

First: Legal Regulations:

The Law on the Independence of the Judiciary number 15 of 2001 in articles 26-38 has organized rules for holding judges and the members of the public prosecution accountable on the disciplinary level. As to the violations requiring discipline, they are related to the judge's obligations. These obligations were mentioned in the Legal Rules that determine the competence of the courts, court proceedings, investigation, and sentencing. These rules are distributed between procedural rules that govern the proceedings of a civil and criminal case, the Law on the Independence of the Judiciary, the Law on the Formation of Regular Courts and the Judicial Code of Conduct.

Perhaps the legal oath taken by judges before acceding to their judicial offices includes comprehensive rules included in the obligations of the judicial office and the judicial code of conduct cited in article (15/a) of the Law on the Independence of the Judiciary, in addition to the provisions of article (18) of the same Law, and the rules of the Judicial Code of Conduct. These could be summed up in the following duties:

- 1- Allegiance to the nation and king
- 2- Judging people with justice
- 3- Achieving the job obligations
- 4- Maintaining integrity and loyalty at work
- 5- Abiding to sincerity and honor in the personal and judicial behavior
- 6- Devoting the official work hours to the work entrusted to the judge
- 7- Not being absent from work or abstain from working without the approval of the concerned authority
- 8- Devotion to the judicial work.

Second: System of Breaches/Violations:

Article (37) of the Law on the Independence of the Judiciary pointed out that any violation of the job's duties and any act that tampers with honor, dignity or courtesy constitute an error that is disciplinarily punished by the judge. The said-article stated, comprehensively not exclusively, some of the cases that are regarded as a violation of the job's duties:

- 1- Delay in the adjudication of lawsuits
- 2- Non-appointment of a date to explain the verdict
- 3- Discrimination between litigants
- 4- Reveal the deliberations' secret
- 5- Unexcused absence
- 6- Non-abidance by official working hours



To the above-mentioned acts, which constitute disciplinary violations, the following violations can be added:

- 1- Combination between the judiciary and practice of commercial activities.
- 2- Combination between the judiciary and any other job or profession in a public authority or in the civil sector (Article 17 of the Law on the Independence of the Judiciary).

It can be said that the rules mentioned in the Law on the Independence of the Judiciary, the judicial code of conduct, as well as the other legislative texts in the codes of procedures and others that address the judge and members of the public prosecution constitute a regulation that includes clear standards in disciplining judges.

Third: Sanctions:

Article (38) of the Law on the Independence of the Judiciary pointed out the disciplinary sanctions that the Judicial Council is entitled to impose as a sanction for judges' violations. They include:

- 1- Warning
- 2- Notice
- 3- Deduction from salary
- 4- Demotion
- 5- Lay-off
- 6- Revocation

Article 28 of the same law highlighted the powers of the chair of the Judicial Council, whereby he is entitled to warn the judge in writing vis-à-vis any violation of the duties or the requirements of his job.

Concerning the justice of these sanctions, what is seen as a flaw in the disciplinary system of judges and members of the public prosecution, which is defined by virtue of the Law on the Independence of the Judiciary, is the non-determination of the violation and its counter sanction. Moreover, there is no text that prohibits the imposition of more than one sanction against the one violation, which renders the evaluation of the justice of the sanctions imposed by the Law on the Independence of the Judiciary difficult. Another flaw in the judicial disciplinary system is that the institution of a disciplinary lawsuit is not obligatory for the public prosecutor. On the contrary, instituting a disciplinary lawsuit by the public prosecutor is subject to a decision by the Judicial Council and a request by its chair, as per Article 32 of the Law on the Independence of the Judiciary. This means that instituting a disciplinary lawsuit is not subject to objective standards that equally apply to everybody. Lack of objectivity sometimes paves the way for nepotism and temptation at other times. Hence, the text should provide for the



obligation of establishing a disciplinary lawsuit in accordance with objective standards, and it should not be left up to personal caprices.

Fourth: Right to Defense:

Articles 33 and 35 of the Law on the Independence of the Judiciary pointed out that the procedures of the disciplinary trial take place against the judge, against whom a disciplinary complaint has been filed. The judge has the right to attend in person or be represented by a lawyer. The rules regulating the discipline of judges did not include a clear regulation of the right to defense. This shortage is added to the flaws in the disciplinary system of judges.

This is the case with respect to judges of civil courts and members of the public prosecution. As for judges of religious courts, the law on the formation of religious courts included provisions similar to the ones in the Law on the Independence of the Judiciary, in terms of the disciplinary system, save Article 30 of the law on the formation of religious courts. Article 30 was clearer in terms of the provisions guaranteeing the right to defense of a judge who is under disciplinary trial. This is in addition to the powers given to the judge of judges, as per Article 23, to warn judges against any violation they commit. With respect to Tribunals of Other Religious Communities, which exercise jurisdiction in civil status matters of non-Muslims, there is no judges' disciplinary system in such courts. So is the case with respect to the High Tribunal for the Trial of Ministers. As for judges of military courts, the judicial service regulation for military judges did not include provisions relating to the disciplinary system of judges, except for Article 16 of the mentioned regulation. This article vested in the director of military judiciary the right to administrative supervision of all military judges, as well as the right to warn judges in writing vis-à-vis any violations of the duties or requirements of their jobs.

Fifth: Right to Challenge:

Article 36 of the Law on the Independence of the Judiciary stated that the decision issued by the Judicial Council in a disciplinary lawsuit is subject to challenge before the Supreme Justice Council. With respect to judges of religious courts, Article 32-a of the law on the formation of religious courts pointed out that the Judicial (religious) Council decision provided for the imposition of an unchangeable disciplinary sanction.

3-4-2: Management of Disciplinary Procedures by the Judiciary:

The Law on the Independence of the Judiciary regulated the procedures of disciplinary prosecution of judges of civil courts in Articles (26-38). The powers of looking into and adjudicating disciplinary lawsuit were vested in the Judicial Council. Article 31 stated of the Law on the Independence of the Judiciary: "**a- The Disciplinary Council is formed of at least 3 judges of the council that are**



appointed by the council. A president is named among them. The council may appoint more than one body. b- The Disciplinary Council issues its decisions in consensus or based on majority." Thus, it becomes obvious that the powers of examining and adjudicating a disciplinary lawsuit have been vested in a Disciplinary Council which is composed of members in the Judicial Council. The regulation did not indicate whether the Disciplinary Council's decision is final or it is subject to the Judicial Council's approval. The judges' disciplinary system included a paradox in terms of the decision issued in the disciplinary lawsuit, where it is issued by the Disciplinary Council. This means that this decision should be fulfilling all of its elements, including the sanction the council decides to impose in case there is conviction. However, article 38 of the Law on the Independence of the Judiciary, which included a definition of the sanctions that could be imposed against disciplinary violations, vested the imposition of the sanction in the council. The introduction of the said article stipulated: "**The council is entitled to imposed the following disciplinary sanctions:....**", and referring to the definition of the term "**council**" as it is defined in Article 2 of the same law, we find that it means the "**Judicial Council**". Moreover, Article 26 of the same law stated that a judge may not be revoked or laid off or demoted, except with a Judicial Council decision. Since among the sanctions mentioned in Article 38 of the same law are the sanctions of revocation, lay-off and demotion, it is clear that imposing these sanctions takes place by the Judicial Council only, which constitutes a paradox regarding the legal status of the Disciplinary Council decision. Whether the Disciplinary Council enjoys the powers of imposing the sanction of revocation, lay-off and demotion or not, in this case, what is the role played by the Disciplinary Council? Shall it conduct investigation and trial and submit the result, in the form of a decision, to the Judicial Council which has the jurisdiction to impose the sanction. Hence, what is the decision that could be challenged before the Supreme Justice Court? Is it the Judicial Council's decision or the Disciplinary Council's decision which is supposed to be the crucial decision in the disciplinary lawsuit? What makes it more complicated is the non-clarity of the image in terms of enforcement. According to the available information, there are no clerk formalities regarding disciplinary lawsuits, and there is nothing that indicates that the disciplinary council has records and files that include disciplinary lawsuits and their relative decisions. We did not find any published or announced precedents of decisions issued by the Disciplinary Council or the Judicial Council on lawsuits related to the disciplining of judges for violations they committed, even though people working in the judicial milieu, whether judges or lawyers, declare disciplinary violations perpetrated by judges. However, these cases were solved via one of the two methods. The **first** one has to do with warning the judge or blaming him by the chair of the Judicial Council or the Disciplinary Council without documented procedures of a disciplinary trial. The **second** was pushing the violating judge to resign or request his referral for retirement, which would end the disciplinary lawsuit. This means that even though



there are rules governing disciplinary violations, such rules are not reinforced and implemented in an institutional, clear and transparent way which would constitute a guarantee to safeguard the competence of the judicial system.

As for the procedures of disciplining judges of religious courts, the disciplinary trial is vested in the Religious Judiciary Council. The council has to delegate one of its members to conduct the necessary investigations regarding the disciplinary violations attributed to judges, provided that examination and adjudication of a disciplinary lawsuit are the jurisdiction of the Religious Judiciary Council. The disciplinary system in religious courts suffers from the same flaws that civil courts suffer from, as monitoring and accountability over the judicial apparatus are not applied in an institutional and efficient manner. Besides, there are no published or known precedents of disciplinary trials and relevant decisions.

In conclusion, based on the foregoing, the importance of having objective rules governing monitoring and discipline are not less important than the enhancement and implementation of these rules. The lack of implementation or implementation in a manner, other than that defined by the law, makes these rules lose their objective value. What is the use of a right that could not be accessed?

3-5: Adequate and Continuous Judicial Training:

The judge's independence, impartiality, integrity and capacity to fulfill the duties of a judicial job that carries within significance and risks could not be valid, even if guarantees of independence and impartiality exist, if the judge has not received a certain level of training, knowledge and know-how that enable him to have independence opinion. The following is the judiciary's status quo in this regard according to the following analysis elements:

3-5-1: Judicial Training Programs:

Before 1988, judicial training and rehabilitation did not acquire much interest. Judicial legislations did not include rules relevant to the rehabilitation of judges before commencing judicial work or the capacity building of those working in the judicial apparatus through the specialized training sessions or scientific lectures. The experience was limited to some delegations that benefited a small number of judges to study at universities to earn an academic degree higher than the first certificate. This was not a privilege for judges. It used to take place in the context of delegations system which civil servants are subject to in general. In 1988, the Jordanian Judicial Institute Law No.3 of 1988 was promulgated. Among the law's objectives were: **"enhance the legal skills of judges and legal employees working in ministries, departments and public official institutions and promote their competencies during training sessions that the institute holds for this purpose."**



The regulation No.57 of 1994 was promulgated, entitled "**System of session and researches for civil judges.**"

The kingdom witnessed intensive activity in the period following 2000 in the wake of specialized sessions in the different branches of law and training on many modern topics, such as the protection of childhood, protection of the environment, household violence, insurance, securities, terrorism and others. This activity was not limited to the sessions held by the Judicial Institute only but rather exceeded it to many sessions or seminars that are held for judges from governmental and nongovernmental local business sectors and from foreign parties. In the meantime, there is extensive activity for programs run and funded by governmental and nongovernmental international institutions. Such programs enhance the holding of specialized sessions and seminars inside and outside the kingdom. A large number of training programs have been set up for judges in specialized topics in the United States, Great Britain, France and many other countries.

Most of judicial training programs are addressed to judges of civil courts, save some participation for judges of religious courts and military judges in some sessions or seminars that are held by foreign parties or NGOs. It is noteworthy that subscription in sessions and seminars that are held inside and outside the kingdom are often addressed to the judges of Amman's courts since the participation of court judges in governorates are rare, except for the sessions that are held in the Judicial Institute. Moreover, their participation is very rare in the training sessions that are held outside the kingdom.

3-5-2: Specialized Judicial Institute:

As per Law No.3 of 1988, a Judicial Institute was established in the Justice Ministry that is affiliated with the Justice Minister. It is aimed at:

- 1- Prepare people who are qualified to take up judicial posts.
- 2- Enhance the legal skills of judges and legal employees working in ministries, departments and public official institutions and promote their competencies during training sessions that the institute holds.

With respect to the training of people qualified to take up judicial posts, the law pointed out conditions of enrollment at the Judicial Institute, defining the period of theoretical and application studies in two years. The Judicial Institute has commenced activity since its inception, admitting students. A large number of students who take up judicial posts in civil courts graduated. The experience has achieved great success in spite of the significance of the Judicial Institute as one of the means that provide the judicial apparatus with the human cadres in terms of judges. Huge controversy has been evoked on the feasibility of the Judicial Institute and its capacity to achieve the aspired objectives. This controversy focused on the level of training that students obtained at the Judicial Institute and the



extent of its adequacy with the conditions of the competence required to take up judicial posts. Reasons of weakness in the level of graduates were attributed to the management of the Judicial Institute and its incapacity to run the educational process at the institute, with its theoretical and practical dimensions, in the required competence. This is in addition to the lack of the adequate human resources to take up the process of teaching and training at the Judicial Institute, the weakness of the academic plan at the institute and the lack of adequate financial resources. In the framework of the Royal Committee for the Enhancement of the Judiciary, the Judicial Institute has been one of the committee's interests. A sub-committee has been established to examine and reconsider the Judicial Institute Law, and to submit the convenient recommendations on the topic. At the beginning, the committee reached a conclusion that said that the Judicial Institute, as it is now, is considered as one of the Justice Ministry's departments, and that its organization pursuant to a law, even though it does not constitute an independent legal entity, violates the provisions of Article 120 of the Jordanian Constitution. The said-article stipulated that the establishment of the Government Departments, their classification, designations, and the plan of operations shall be determined by regulations issued by the Cabinet with the approval of the King. Thus, the Justice Ministry, the administration of which is organized by a regulation, cannot have one of its departments established by virtue of a law. This resulted in the proposal of promulgating a law to abolish the Judicial Institute Law, where the law would be replaced by a regulation, called the Jordanian Judicial Institute Regulation. In fact, the Judicial Institute Law was annulled, and regulation No.68 of 2001 was promulgated. Its provisions regulated the work of the Judicial Institute. The management of the institute was entrusted to a board of directors that is controlled by the Judicial Council to a certain extent. However, it was remarked that the Judicial Institute, ever since the promulgation, ceased for a long period the task of training people qualified to take up judicial posts. Its work was restricted to holding training sessions and seminars held by the institute itself or in cooperation with local and international parties for working judges. This weakened the role of the Judicial Institute. Many people working in the legal milieus believe in the significant role that the Judicial Institute could play in training people qualified to take up judicial posts and other judicial professions if this institute was provided with the adequate financial and administrative potentials, as well as the teaching cadres who are capable of rendering the educational process, with its theoretical and practical dimensions, an objective basis for the qualifications and the knowledge that students in the institute should obtain. Hence, in this way, the Judicial Institute would be an important supplier of qualified cadres to the judicial apparatus and judicial professions.



3-5-3: Sufficient Resources:

The Judicial Institute is part of the departments related to the Justice Ministry. This institute does not have any independent resources. There is continuous complaint due to the lack of the sufficient resources. The few financial resources are reflected on the adequate human cadres, including the capacity to ensure the qualified teaching cadre to achieve the educational process in the institute.

3-5-4: Training on foreign languages:

The training on foreign languages witnessed remarkable activity in the years following 2002. It was noticed that many judges were registered in sessions to learn English or French, whether these sessions were at the Judicial Institute or in other institutes such as the British Council Institute or the French Cultural Center. In addition, some judges have been sent to sessions outside the kingdom to learn foreign languages.



Chapter Four

4- Efficiency of the Judicial System

4-1: **Transparent, Clear and Efficient Codes of Trial Procedures**

Codes of procedures are highly significant in practical life. They are regarded as an application instrument and the guide of judges and litigants in the management of litigation procedures. The clarity and the development of these laws are considered as the efficient means in deciding on the conflicts submitted before the judiciary. Procedural codes of procedure are tightly linked to the extent of recognition and competence of those working in the legal professions regarding the scientific procedures and application arts of these rules. Whoever shows proficiency in understanding the science of procedures and the arts of their implementation would have acquired tools of legal professionalism. In application, it is not enough to know about the legal rules regulating the procedures of trial before courts only. Aware knowledge must be formed and developed in terms of the obligating reasons of every rule and how they are linked to the judiciary's role through its implementation of the rules in protecting rights and freedoms. This is in addition to revealing the objective value of the law, in affirmation of the principle of the rule of law. An example on that full awareness is the linkage of the rules of procedures to the constitutional rights and the rights protected and confirmed by international instruments. Procedures of trial in civil, religious, private and military courts rely on laws regulating the procedures of instituting a lawsuit, trial, pronouncement of verdicts and methods of challenge. We clarify hereafter the rules regulating the procedures of trials in the Hashemite Kingdom of Jordan.

4-1-1: **Laws governing litigation procedures:**

First: Civil Procedural Code:

The Civil Procedural Code No.24 of 1988 was promulgated, replacing the Rights Legal Procedural Code No.42 of 1952. Many amendments were introduced to this law, aiming at facilitating procedures of litigation and guaranteeing quick adjudication of lawsuits. The past five years witnessed significant developments on civil procedural rules. Among these developments was the amendment proposed by the Royal Committee for the Enhancement of the Judiciary, the work of which were in parallel with active cooperation between Jordan and the USA. Law No.14 of 2001 was promulgated. It included the addition of many provisions aimed at benefiting from the technological development and the experiences of countries in resolving some problems which their judicial systems suffered from. The civil lawsuit management system was introduced after knowledge and training on this system were provided to a few judges and lawyers by US governmental



and nongovernmental institutions. Many amendments were introduced pursuant to the mentioned amended law. Among these amendments are:

- 1- Notification of judicial papers via express courier companies, where Aramex company has been adopted.
- 2- Introduction of computer as a means to write down the proceedings of the trial sessions.
- 3- Organization of the procedures of filing a lawsuit, evidence, introduction of the defense and its exhibits within definite and obligatory procedures and time limits.
- 4- Establishment of a judicial department under the name of the civil lawsuit department, which is in the first instance court of Amman until now.
- 5- The right to challenge the verdicts issued regarding requests relating to lack of competency, prescription and payment with the existence of an arbitration condition, the complete lawsuit, requests of intervention and introduction.
- 6- Adoption of the expertise system and definition of expert charts.
- 7- The court's jurisdiction to bind the civil attorney general or any civil servant to reveal the documents and papers related to the lawsuit.
- 8- Existence of clear rules to deal with the request submitted to dismiss a case before having to do with its topic.
- 9- Referral of the lawsuit to another court in case of lack of competency.

While preparing this report, Law No.16 of 2006 was promulgated as an amending law of the Civil Procedural Code. Among the most significant amendments is the amendment of Article 61, by adding a paragraph to the said article, reading as follows: "If any enforced law gives the state of urgency to any of the lawsuits filed by virtue thereof, the period of postponing the trial session of this lawsuit should not exceed 72 hours." Moreover, there is the amendment of Article 67, which entitled the court to annul a lawsuit in case the plaintiff could not be notified and he could not follow-up with the lawsuit within 3 months of its registration date. There were also amendments regarding **counter prosecution** and the necessity of submitting it with the inquisitive list, raising the ceiling of the value of the lawsuit, the verdicts of which could be challenged through cassation, to become 10,000 Dinars instead of 5,000 Dinars.

Hence, the orientation to render the Civil Procedural Code renewable and developing becomes clear in light of the emerging practical problems in implementation or to benefit from technological developments. All of this is aimed at resolving the problem of accumulating lawsuits, or rapidly adjudicating the lawsuits submitted before courts, organizing the litigation procedures in a way that guarantees the fulfillment of the judiciary's mission in protecting rights, and benefiting from the experience of countries through the active cooperation



programs in the past five years in the field of enhancing the judiciary and the efficiency of the judicial system.

We previously pointed out in clause 4-1-1 of this report the characteristics of the Civil Procedural Code, in terms of guaranteeing the basics of litigation and criticizing some of the aspects that could constitute a violation of the constitutional rules and international instruments, which would spare their reconsideration.

It is worth-mentioning that while preparing this report, Law No.12 of 2006 was promulgated, and it was published in the official gazette on 16/3/2006. As per law, a judicial department was established in the first instance courts, called **Mediation Department**. This law adopts mediation as one of the substitute means to settle disputes. This department would alleviate the burden off the courts through referring some disputes to judicial or private mediation, which undoubtedly, contributes to the quick access of right-holders to their rights and to the solution of the problem of increasing number of cases submitted before courts. The promulgation of this law is regarded as a positive step along the way to improve the level of the judicial system's efficiency. In fact, this law should be enhanced rapidly.

Second: Penal Procedural Code

We previously highlighted in clause 4-1-1 of this report the features of the Penal Procedural Code and the guarantees it ensures, such as the publicity of trial, the right to defense, equality before the law and the presumption of innocence. We also mentioned some legislations, the promulgation of which constituted an underestimation of these guarantees or a breach of the principle of equality. The Penal Procedural Code witnessed some amendments in the past five years. Law No.16 of 2001 as an amending law of the Penal Procedural Code. Pursuant to this law, the theory of annulment was introduced to penal procedures. The Jordanian legislator adopted the legal annulment, the annulment related to the rules of public order, and annulment decided for the sake of parties. Moreover, judicial guarantee was underlined in the procedures of tracking and investigation. In addition, the public prosecutor should set off to practice his competencies by himself, and the mandate he issues to employees of the judicial police should be in writing and in accordance with a certain sample. The amended law included the right of the defendant to seek the assistance of a lawyer, or else the statement he gives before the public prosecutor would be considered as nil if the public prosecutor does not entitle him to delegate a lawyer. Furthermore, a defendant should not be prohibited from contacting his lawyer. The procedures of arrest were also reexamined. A sample was set for that as per Article 100 of the Penal Procedural Code, where it would ensure greater guarantee for the defendant. A sample was set, and it should be followed, or else annulment would be the case. Moreover, the defendant should be brought before the public prosecutor within 24 hours maximum. Besides, the



provisional detention system was reconsidered, where it was limited to the crimes punished by imprisonment for a period exceeding 2 years, except for crimes of theft and harm. A provision was added to Article 147 of the Penal Procedural Code, based on the rule "**A person is innocent until proven guilty**". This is in addition to many amendments which were all aimed at achieving the principle of equilibrium between a person's dignity and freedom and the preservation of security and public safety, including the guarantee of quick adjudication of a penal lawsuit.

While working on this report, Law No.15 of 2006 was promulgated as an amending law of the Penal Procedural Code. This law included a new matter necessitated by technological developments in means of communication. As per article 2 of the said law, a paragraph (4) was added to Article 5 of the original law, stating: "**It is possible to establish a common right lawsuit against the defendant before the Jordanian judiciary if the crime is committed via electronic means outside the kingdom, the impact of which influenced, totally or partially, any of the kingdom's citizens.**" The law included some texts that amended the procedures of the trial (escaping defendant) in order to guarantee rapid adjudication of penal cases. It is necessary to point out the large number of international cooperation programs, which Jordan actively shares with many countries regarding the reform of the penal procedural code and the solutions adopted in some countries to overcome the hurdles confronted by the criminal system. It can be said that most of these programs are ensured by the US Government in the context of the Justice Enhancement Project. Among the projects that are being examined and trained on is the introduction of the substitute solution system in the penal lawsuit. The criminal judiciary system in many US states adopted this system, such as the compromise, deal and quick track system in the criminal trial, as well as the public attorney.

The Penal Procedural Code is implemented before civil courts and special courts exercising penal competency.

Third: Religious Procedural Code

The Sharia' courts in Jordan are in charge of examining and adjudicating personal status matters for Muslims and issues of inheritance, endowment (*waqf*) and the will. The competencies of Sharia' courts and the procedures of litigation before these courts were regulated as per the Religious Procedural Code No.31 of 1959 and the amendments introduced to it. The legal rules governing a lawsuit before religious courts are rules close to the rules of the civil procedural code. Guarantees in the Civil Procedural Code do not differ from those stipulated in the Religious Procedural Code.

4-1-2: Rules and Obligation of Instituting a Lawsuit:

**First: Civil Lawsuit:**

It was previously mentioned that the Jordanian Constitution stressed the judicial guarantee through stipulating that courts are open for everybody, and they are protected from intervention in its affairs. This role was affirmed by the Law on the Establishment of Civil Courts. The Constitution also underlined the judicial guarantee through vesting the adjudication of all civil and penal matters in the judiciary. As the lawsuit has been the legitimate means of a right holder, through which he could resort to the judiciary to obtain a verdict that is binding in terms of protecting or deciding the right, the legal system in the kingdom, does not define the lawsuits that may be filed. However, it sets a condition to accept the lawsuit, which is: the holder of a lawsuit should have an interest that is acknowledged by the law. Potential interest is enough if the purpose of request is a precaution to get rid of imminent harm or to document a right for fear of loss of its evidence when it is disputed. Article 3 of the Civil Procedural Code states: **"1-No request or payment shall be accepted if its owner does not have an existing interest that is acknowledged by the law. 2- Potential interest is enough if the purpose of request is a precaution to get rid of imminent harm or to document a right for fear of loss of its evidence when it is disputed."** The litigation system in Jordan adopted the rule: **"Every lawsuit has a judge."** It prohibited the **"denial of justice"**. This was confirmed by Article 4/a of the Law on the Establishment of Civil Courts and Article 30 of the Civil Procedural Code that stated: **"The first-instance court enjoys the competency to examine and adjudicate lawsuits that do not fall within the competency of another court as per the provisions of any law in force. It also has the right to examine and adjudicate urgent requests and all requests relating to the original request, regardless of its value or type."** This regulatory rule is based on the provision that says that the first-instance court enjoys the general jurisdiction in examining and adjudicating any lawsuit, which the law has not defined another judicial party to examine and adjudicate. The said provision is considered as a rule of public order which courts have to abide by. In practice, Jordanian courts would abide by this rule constantly if nor for some breaches emerging from the provisions of some laws which sometimes define non-judicial parties to decide on matters that fall within the judiciary's competency and prohibit the hearing of lawsuits before courts. For instance, there is the decision of the Economic Security Commission No.(4/90) on 15/7/1991, which has become part of the National Economy Protection Law No.3 of 1992 that is relative to the liquidation of the Petra Bank. In Article 10, the said-law included a provision that prohibited courts from hearing any lawsuit against Petra Bank that is under liquidation or that is liquidated since the bank was put under liquidation on 15/7/1990. The Jordanian Court of Cassation abided by the provisions of the said-article by not hearing the lawsuit against Petra Bank under liquidation except in accordance with the rules mentioned in it. By reviewing Article 13 of the same decision, it is clear that the lawsuit that can be instituted against Petra Bank is the challenge of the liquidator's decision to dismiss the



objection of one of the indebted regarding the notice of debt issued for him or dismiss the request of one of the creditors. The court of appeals was designated as a competent court to examine and adjudicate such disputes. Hence, it is clear that the Economic Security Commission's decision did not designate a competent court to examine and adjudicate any dispute emerging from the liquidator's work during liquidation. In spite of this, judicial verdicts have been pronounced by Jordanian courts in order not to hear any lawsuits against Petra Bank under liquidation, which do not constitute part of the lawsuit's legal description provided for in Article 13 of the said-law. This resulted in denial of justice, embodied in the courts' prohibition of themselves from examining and adjudicating disputes that do not fall within the competency of another court, which is a violation of the constitutional rule that says that courts are open for everybody and that the right of prosecution in civil matters is vested in courts. Courts did not pay attention that Article 16 of the same decision gave the liquidator the right to establish a civil or penal court or to resort to enforcement departments in any lawsuit. It is worth noting that enforcing Article 16 and Article 10 of the Economic Security Commission means a violation of the principle of equality before the law, as per Article 6 of the Constitution since the liquidator had the opportunity to resort to courts and others were prohibited from practicing this right to face him. This is on one hand. On the other hand, we previously pointed out the obstacles that hinder the right holder's practice of the power of filing a lawsuit before the judiciary, as per the Law of Government Lawsuits, Municipalities Law and Customs Law, in terms of setting as a condition the presentation of a bail or payment of a sum in order to hear the lawsuit. Such conditions constitute a violation of the judicial guarantee and equality before the law.

Second: Penal lawsuit:

Article 2 of the Code of Penal Procedures stipulated the following:

“1- The Public Prosecution is competent to file common right lawsuits and begin prosecution. No other authority files such lawsuits unless under circumstances defined in the law.

2-The Public Prosecution is compelled to file such lawsuits if the injured party was the plaintiff according to the conditions defined in the law.

3-This lawsuit should not be neglected nor discontinued nor have its process interrupted unless under the circumstances defined in the law.”

Article 17 of the same law stipulated that the public prosecutor is entrusted to investigate crimes and pursue their perpetrators. Article 25 of the same law



stipulated that every official authority or employee should immediately report a felony or crime to the competent Public prosecutor upon learning it was committed while he was serving his duties. He should also send the public prosecutor all information, procès-verbal and documents related to the crime. Accordingly, it is evident that the Code of Penal Procedures stipulated clear legal rules about the prosecution in a common right lawsuit. These rules are regulatory rules that are considered to be the rules of the general system that the public prosecution, the courts, official authorities and employees should abide by.

Third: Revocation lawsuits/administrative lawsuits:

The High Court of Justice is the court of administrative justice, which has been entrusted with the right to adjudicate the appeals made against the administrative decisions and procedures that fall within the jurisdiction of this court that was established by virtue of the High Court of Justice Law number 12/1992. Article 9 of this law stated the jurisdictions of the High Court of Justice by stipulating the procedures or decisions that the Court is entitled to adjudicate the appeals made against it. Item 10/Paragraph A of Article 9 granted the High Court of Justice jurisdiction to adjudicate any appeal made against any final administrative decision even if it was protected by the law under which it was promulgated. Paragraph C/Article 9 said that the High Court of Justice does not have the jurisdiction to adjudicate the requests or the appeals related to sovereignty. The Paragraph also stipulated the articles of the law and the rules that govern the prosecution of revocation lawsuits and the procedures to examine them. The verdicts passed by the High Court of Justice are final and cannot be objected or reviewed. They should be enforced in the way they were passed.

Fourth: Religious lawsuits:

The Code of Religious Procedures number 31/1959 organized the rules that define the competence of religious courts and the provisions to begin prosecution, the procedures to adjudicate the lawsuits and the methods to appeal against the verdicts that religious courts passed. These rules are clear and regulatory that are related to the general system. Therefore, they are binding. There are no essential differences in the procedures for prosecution between religious and regular courts.

4-1-3: The right human resources:

First: The competence of the human resources:

Providing the right human resources is one of the problems that the judicial system in Jordan faces regarding effectiveness. We previously indicated what the Royal Committee recommended in its report about enhancing the judiciary on the human



resources level. The report highlighted a lack of many clerks in courts in the light of the increasing number of cases being brought to court, although the Ministry of Justice created many jobs for the position of judicial assistants. However, this number hasn't reached the number recommended by the Royal Committee for enhancing the judiciary. This issue still gets a lot of attention regarding the reforms that the Ministry of Justice and the judicial body are undertaking with the cooperation of many organizations and international governmental and non-governmental institutes. This is besides the interest shown in benefiting from the development of technology and introducing the computer system for the courts' work. In case the computer system is introduced, it will be a main factor in reducing the burden of the need for a large number of clerks.

The staff employed in the court does the clerical work starting with the registration of the lawsuit, serving the judicial papers and the court procedures. It is perhaps important to note that the assistance provided to the judges such as providing them with court clerks is limited to clerical and follow-up work. Meanwhile, the major developments that occurred in the socio-economic field that entail major legislative developments including the legislations related to international communal and bilateral agreements and treaties require that each judge should be provided with a qualified staff to undertake research work, provide information about the legislations, verdicts and juristic opinions. In this way, the judge has control over the cases that he is in charge of and reduces the time that the judges usually allocate for each case. In general, this reflects the quality of the performance during court proceedings and the value of the verdicts.

Regarding the experts, and although the **Expertise System** number 78/2001 was passed calling for the establishment of a committee of registration experts to be chaired by the President of the Court of Appeals and presidents of courts that fall within its jurisdiction and that are competent to define the fields of expertise and organize the schedule of experts. However, this experience is still new and not capable of fulfilling the needs of the courts by qualified experts who can be trusted to put their experience into work. At many times, the adjudication of some lawsuits **depends on the expertise of experts and all obstacles that occur are due to the qualifications of experts and the gap in some kinds of expertise in the fields of technology, computers and others.** Accordingly, the need still exists in order to solve the problems of making available experts in all fields according to objective and scientific bases.

4-2: Managing the courts' judicial work:

4-2-1: The system of distributing cases:



The rules of the Codes of Procedures were not clear and objective regarding the distribution of cases to the judges. The distribution is made in the order made by the court's president. In some courts, the cases are distributed to the judges according to the registration number of each case. In other courts, the president of the court distributes the cases to the judges himself with the cooperation of the bureaus. It can be said that the absence of a clear and transparent system for the distribution of cases to the judges is one of the significant problems that the judicial system in Jordan is facing because the absence of such a system entails a lack of objective criteria in the distribution of cases to judges. At many times, this can also mean that a case is referred to a judge based on the request of the litigant or their attorneys, the interference of the judges of the First Instance Courts or even interference of officials and staff from other governmental entities. The distribution of cases in the absence of objective criteria is sometimes used as a method to pressure some judges by referring to them a large number of complicated cases. Sometimes it becomes a method to be used out of courtesy with some judges due to personal relationships by referring to them simple cases or cases whose procedures don't need a lot of time. In these cases, there is no organized monitoring of the distribution of cases to judges.

To **summarize** what has been stated, the distribution of cases to judges needs clearly defined criteria for the judges, attorneys and litigants, whereby the element of personal control by the presidents of the courts and the possibility of staff and attorneys' interference are ruled out as much as possible in the way the cases are distributed.

4-2-2: Distributing cases according to specialization:

The prosecution system in Jordan lacks defined rules for the specialization of judges according to the types of cases presented before the courts. In most times, the judges examine different types of cases that fall within the jurisdiction of their penal and civil courts except for some of the personal interpretation made by some of the presidents of the courts who assign judges to examine some types of cases.

At the time being and in the light of the major economic and technological developments that the societies are witnessing and the advancement of international relations and other fields, the effectiveness of the judicial system requires an urgent need to examine with much attention the specialization of courts. Binding objective rules should be developed for this system due to the importance of shaping specialized and qualified expertise to perform the judicial task that aims to settle disputes by adjudicating the lawsuits, whereas the judge is always the most important element in the prosecution process and in securing the components of a fair judiciary. For the judicial system to be effective, the judge should be competent and he should have the expertise and qualifications needed to



perform his duties. First of all, the judicial system needs to adopt a specialization system of as an important method to define the qualifications that are required for the judicial job, and then the judges should acquire experience in the different branches of law and the different types of lawsuits.

4-2-3: The competence of financial resources:

The judicial system in Jordan is not financially independent, and in general, the financial resources of the judiciary come from the allocations of the governmental authorities that are concerned with the management of courts' affairs. With respect to the financial resources, the judicial system is under the authority of the Ministry of Justice, and the religious judiciary is under the authority of the judges of judges. The military courts are under the authority of the army or police. Therefore, there are no financial allocations to measure their sufficiency to see how effective and suitable they are for the court management and judicial procedures. This matter is linked to the achievement of an independent financial authority for the Judicial Power and the provision of an independent and appropriate budget to carry out the tasks entrusted that the Judicial Power is entrusted to carry out in general.

4-3: The time needed to pass the final verdict:

4-3-1: A defined and logical timeframe for the procedures in accordance with the lawsuit classification:

The legal system responsible for regulating the prosecution procedures in Jordan did not stipulate rules for classifying lawsuits, and thus it did not define a logical timeframe to complete the lawsuit procedures at its different stages. Therefore, the duration for examining lawsuits is not specified, and lawsuits still take a long time till the final verdict is passed. This matter requires us to note that the Code of Civil Procedures included some rules that reduce the time frame that prosecution procedures consume and they are included in Articles 56-60 of the Code of Civil Procedures, defining binding timeframes for the defense, presenting evidence, responding to them and applying the urgent lawsuit system to consume less time for some of the cases. Article 77 of the same law stipulated that the examination of a lawsuit should not be delayed for a period exceeding 15 days unless there was an urgent situation. The case examination should not be postponed more than one time for a reason attributed to the adversary. The case should not be detained for more than 30 days awaiting verdict. The Law of the Independence of the Judiciary and the Judicial Code of Conduct note that any delay in adjudicating the lawsuit without justification is a violation of judicial duties for which a judge could be held accountable for his conduct. Nevertheless, this matter entails a lot



of violations that flaw the prosecution procedures that lead to extending the duration of adjudicating a lawsuit and extending the duration for all degrees of prosecution.

Adjudicating lawsuits in a quick manner is a right for the parties concerned in the lawsuit because it is important for any person to claim his right through a binding judicial verdict. This entails making the litigants be confident in the Judicial Power and in its ability to protect the rights and freedoms and achieve justice. It is also the duty of the judge when carrying out his legal and moral commitments in settling disputes and discounting adversaries in a logical timeframe. In this manner, the rights do not lose their value and man's dignity and freedom are not wasted in the penal lawsuit. Accordingly, the promptness in adjudicating a lawsuit way is one of the basic elements to measure how effective the judicial system is and to what extent it is able to achieve its goals. Therefore, there must be objective criteria to classify the lawsuits according to their types, and the judges should be bind to draft a timetable for the procedures of each case they are responsible for. In this context, it is worthy to mention that the Ministry of Justice and the Judicial Council of Regular Courts pay great attention to this matter through many programs that deal with international cooperation with the aim of reforming the judicial system.

4-3-2: Disciplinary procedures to be adopted in case the prosecution is stalled by the court:

Previously, when we were discussing the disciplinary system, we mentioned the rules that govern the disciplining process, and we said that the unjustified delay in the adjudication of a lawsuit is a disciplinary violation. However, this system is ineffective, and the authority that oversees the system for disciplining judges does not function in a transparent and institutional way.

4-3-3: Holding the attorneys who stall the cases disciplinary accountable:

Article 56 of the Regular Bar Association Law and its amendments number 11/1972 indicated that it is the duty of the attorney to perform his duties in court in a way that does not encroach upon the dignity of being an attorney. The attorney should avoid saying or doing anything that obstructs the course of justice. There is no doubt that stalling the lawsuit procedures is an obstacle for the course of justice. Article 63 of the same law says that every attorney who violated his professional duties as stipulated by the law and the systems or in the Code of Professional Conduct, or every attorney who overrides his professional duties, failed to perform them, misled justice or did something that encroached upon the honor and dignity of the profession makes him liable to disciplinary sanctions as defined in the above-mentioned Article. He will receive a warning and will be



rebuked. Furthermore, he will be banned from to continuing to practice his job as an attorney for a period not that does not exceed five years. Or, his name can be cancelled from the attorneys' register. The Bar Association Law defined rules for establishing a disciplinary council and defined the procedures of a disciplinary trial. Article 68 of the same law indicated the parties which have the right to initiate the prosecution of a disciplinary lawsuit against an attorney are the Minister of Justice, or the president of the public prosecutions or the public prosecutor. It can even be a complaint lodged by one of the attorneys, or a written complaint lodged by one of the litigants. These procedures are related to the legal aspect, from which we can deduce that an attorney can be held accountable for his conduct in stalling the procedures of the lawsuit he represents. As for the effectiveness of this system, there is no effective monitoring on the attorneys' performance. The parties who were entrusted with the jurisdiction to initiate the lawsuit and particularly the Minister of Justice or the president of the public prosecutions or the public prosecutor do not give this matter importance. And there are no clear procedures that compel the court which is examining a lawsuit regarding a violation to inform any of the afore-mentioned parties that the attorney stalled the prosecution procedures in order to hold him accountable for his conduct. The same thing applies to the Bar Association's council that does not give importance to follow-up the conduct of attorneys in hindering the course of the lawsuit without a justification. From this aspect, there is a need for cooperation between the Ministry of Justice and the courts on one hand, and cooperation between the Ministry of Justice and the Bar Association on another hand in order to guarantee that the rules for holding attorneys accountable for their conduct i.e.: for stalling and obstructing the course of justice, are activated.

4-4: A fair and effective system to enforce verdicts:

4-4-1: The legal rules to enforce verdicts:

First: Penal verdicts:

Chapter 3 of the Code of Penal Procedures stated the legal rules for the enforcing the penal verdicts. Article 353 of this law indicated that the penal verdicts are enforced by the public prosecutor at the court that issued the verdict or by whoever replaces the public prosecutor. And the district judge enforces the penal verdicts in the areas that are not represented by a public prosecutor. Article 354 of the same law stipulated that the enforcement of penal verdicts related to the civil bindings is entrusted to the Department of Enforcement according to the enforcement of righteous verdicts. Articles 357-362 of the same law stipulated the rules regulating the enforcement of the death penalty, whereby its enforcement depends on the approval of His Majesty the King of a decision from the Council of Ministers. Article 363 of the same law talked about the rule of examining the



problems of enforcing penal verdicts. From that, it is evident that the Code of Penal Procedures stipulated rules that defined the enforcement of penal verdicts.

Second: Juristic Verdicts:

Juristic verdicts and writs of execution are enforced in accordance with the rules defined in the Enforcement Law number 36/2002 that replaced the Code of Procedures number 31/1952 and a law annexed to the Code of Procedures number 25/1965. By virtue of the above-mentioned Enforcement Law, the enforcement of juristic verdicts and writs of execution are in the hands of a department called the Department of Enforcement at each First Instance Court. This department is headed by a judge who is called the President of Enforcement who is not less than the fourth degree of judges. He is assisted by one judge or more.

The above-mentioned law defined the legal rules that govern the Department of Enforcement, its specializations, writs of execution and the procedures of compulsory enforcement which include the seizing and selling of properties of the convicted person to pay up the debt, imprison the debtor. It also defined in which cases it is not permissible to imprison a person for failing to pay up the debt or in which cases a settlement is made that is approved by the President of the Department of Enforcement, and the methods for appealing the decisions made by the President of this Department. It can be said that the enforcement of jurist verdicts is subject to specific legal rules.

Third: Executing religious verdicts:

On 16/3/2006, the Law of Religious Verdict Enforcement number 11/2006 was published in the Official Gazette. This law goes into effect 90 days after its publication in the Official Gazette. This law entrusts the Religious Courts to enforce the verdicts they pass. The president of the competent court or the competent district judge was entrusted to preside the Department of Enforcement. This law defined the rules for enforcing the verdicts passed by the religious courts and the enforcement procedures. Article 14 of the law called for referring the verdicts to the Law of Enforcement in force for the cases that were not mentioned in the Law of Religious Verdict Enforcement. As it is defined above, this law was promulgated and its enforcement has been scheduled to go into effect with the passing of 90 days since its publication in the Official Gazette. And until this law goes into effect, the verdicts of the Religious Courts are enforced by the Departments of Enforcement of First Instance Courts. Accordingly, the verdicts of the religious courts are enforced according to the defined rules.

4-4-2: The accountability system for enforcement:



There is no specified system of accountability in the Departments of Enforcement, and an employee or more are appointed in the Departments of Enforcement to do the accountability.

4-4-3: The effectiveness of the enforcement system:

First: Against the persons of the private law:

The Departments of Enforcement are in charge of enforcing the verdicts and juristic writs of execution by force on the convicted persons such as persons of the private law whether they were natural persons or artificial persons, although this department faces many obstacles for it to perform in an effective way. Those obstacles result from a weakness in the way the documents issued by the Departments of Enforcement are notified, a weak accountability system in addition to the non availability of qualified human resources to face the large number of executive cases. Added to those obstacles, there are many appeals made against the decisions of the President of the Department of Enforcement that the Court of Appeals has the jurisdiction to examine where the enforcement process is stopped when the appeal is made even if these appeals were repeated for more than once and for the same decision leading to obstructing the enforcement of verdicts. The Departments of Enforcement still have with a large number of cases for which enforcement of those cases' verdicts started over five years ago. The enforcement system will be effective when these obstacles are legally solved by stipulating that the appeal made for the second time does not impede the enforcement procedures. The enforcement system will be effective also when the obstacles will be solved on the administrative level, by hiring a large number of qualified staff in the Departments of Enforcement, by benefiting from the technological development and computerizing all the work of the Enforcement Departments.

Third: Against persons of the common law:

The Departments of Enforcement are not competent to enforce the juristic verdicts passed against persons of the common law such as ministries, governmental institutes and departments. Such verdicts are enforced depending on the rules defined in the Law of Government Proceedings which defined a way for enforcing the verdicts by a request that the convicted submits attached with the final verdict issued against one of the persons of the common law to the prime minister. The prime minister will pass an order to the competent authority to enforce the verdict. The process of enforcing verdicts against persons of the common law does not face obstacles that the process of enforcing verdicts issued against persons of the private law. The enforcement of juristic verdicts against government interests is



much easier, its process is quicker and no problems have been reported in this matter.

4-4-4: The appropriate entity for enforcing verdicts:

Things are not different for the employees of the Departments of Enforcement than the rest of the courts' staff. They are subjected the same provisions related to the number of jobs in the system of the appointments of governmental jobs. Therefore, the sufficiency in the number of employees is contingent to the jobs that are created to bridge the gap in the Human Resources Department of courts. The Enforcement Departments have a large number of cases that are concerned with the enforcement of verdicts that are not proportionate with the number of staff in each department of the Enforcement Departments, particularly those departments that are located in heavily populated areas. As for the criteria according to which the employees of the enforcement entity are selected, they are considered as assistants to the judges and undergo the same criteria according to which the employees of the courts are selected in general.

Chapter 3

Results and Recommendations

From our review of the status of the judiciary in the Hashemite Kingdom of Jordan, we have reached some of the results related to the Judicial Power regarding independence, neutrality, competence, and effectiveness of the judicial system. These results came as a result of a study of the legal system and the reality in Jordan that is related to the judicial system and its power as one of the three powers that form the Jordanian state. Upon analyzing the legal system and the status of the Judicial Power, this study relied on defining the principles that form a basis for a fair justice and the elements that form each principle and its application on the legal system. The study also analyzed the status in order to estimate to what extent the judicial system in Jordan is in harmony with the criteria of a fair justice based on the fundamental elements. Those elements are represented in the knowledge of the existence of legal rules that are implicitly a guarantee for the establishment of the independent Judicial Power. The study also aimed at analyzing to what extent these rules are efficient to guarantee the principles on which a fair justice is based on, and to what extent they abide by the legal rules and respect them in practice, noting the importance of considering the elements that influence the Jordanian judicial system that were mentioned briefly in Chapter One of this study. These elements lead us to conclude a common indicator that says that reforming and enhancing the judicial system in Jordan is influenced to a great extent by the current political, economic and social factors and that cast its shadow and which is still casting its shadow on the judicial system in Jordan.



Based on what has been stated, we can deduce a general conclusion for this study that **“professional reform of the judicial system urgently requires the reform process to take place in the frame of a macro-examination to achieve the components of the democratic state that abides by the principle of the sovereignty of the law and derives its legitimacy and authority and effectiveness from the free will of the people.”**

The results and recommendations that we carry in this chapter of the study are directly linked to the results that this study has reached in the frame of a research methodology in analyzing the elements on which the principles of the fair justice is based on in the following order:

- 1- Results related to the independence of the Judicial Power.
- 2- Results linked to the neutrality of the judicial system.
- 3- Results linked to the competence of the judicial body.
- 4- Results linked to the efficiency of the judicial system.

These results are explained in the following manner:

First: Results related to the independence of the Judicial Power:

1- The Jordanian Constitution asserted the independence of the Judicial Power and the independence of the judges without mentioning the details of this power and its limits. The Constitution entrusted the legislator with the power to organize and establish practicing courts and define their competence and jurisdiction. The Constitution did not lay constitutional limits on the legislator’s authority in organizing the right to prosecute and distribute the authority of the Judicial Power on the courts.

2- The Jordanian legislator promulgated several laws for regulating the judiciary that don’t go in harmony with the rules and spirit of the Constitution that entrust the judiciary with an independent judicial power. The laws for regulating the judiciary entail the distribution of the mandate of the judiciary to a large number of different courts (regular courts, religious courts and special courts) and that do not have a unified authority which led to the lack of the concept of the unity of the Judicial Power in the Jordanian judicial system as a basic pillar for the independence of the Judicial Power. It also led to a violation of the principle of separating the three powers of the state, the Executive Power, the Legislative Power and the Judicial Power which are represented by the domination of the Executive Power on a part of the jurisdictions of the judiciary through its jurisdiction which call for the establishment of some types of courts that fall outside the control of the judicial power such as the establishment of the State Security Court, and appointing its judges, the Councils of Non-Muslim Religious



Denominations, Military Courts for the Military Forces, Police Court, General Intelligence. The situation is the same when things concern entrusting the Legislative Power the right in trying ministers.

3- The Jordanian Constitution did not directly mention the issue of the monitoring of the constitutionality of laws, and the Jordanian judiciary was not able to activate the judicial monitoring system.

In the light of the results that this study has reached, the independence of the judiciary in Jordan faces the following challenges:

- 1-The absence of the concept of a unified Judicial Power.
- 2- The absence of a regulatory structure and institutional frame for the work of the Judicial Power.
- 3-Establishing courts that don't fall under the authority of the Judicial Power, but which are dominated by the Executive Power.
- 4-The non-compatibility of the laws of the judicial regulation in Jordan with the constitutional guarantees for the independence of the judiciary.
- 5- The laws of judicial regulation lack guarantees for the independence of the Judicial Power financially and on the level of the administration, and the dependence of all the practicing courts on the Executive Power financially and on the level of the administration.
- 6- The presence of two judicial councils that have no relation in regards to function and that are not united by a unified Judicial Power (judicial council for regular courts and judicial council for religious courts).
- 7- Not limiting the judicial appointments to the Judicial Power.
- 8- The lack of unified objective standards for the appointment of judges.
- 9- The inefficiency of the disciplinary system and inefficiency of the accountability of judges.
- 10- The absence of the Constitutional Court.
- 11-The absence of a club or association for judges that is involved in the judges' career and their cultural and social affairs.



Recommendations related to the independence of the Judicial Power:

- 1-Incorporating rules that control the legislator’s authority in regulating the right to prosecute and in distributing the mandate of the Judicial Power to the courts in the Jordanian Constitution. These rules should ban the legislator from establishing any court or party in Jordan that practice duty outside the frame of the judicial power and supervise it.
- 2- Incorporating guarantees for the unity of the Judicial Power in the Jordanian Constitution.
- 3-Re-examining the constitutional rules for establishing special courts to try ministers for the crimes they commit when performing their duties, and restoring this competence to ordinary courts or to a special court that falls under the authority of the Judicial Power.
- 4- Establishing Constitutional Courts that are in charge of monitoring the constitutionality of laws.
- 5- Re-examining the laws of judicial regulation and promulgating a law for the independence of the judiciary that is in charge of defining the organizational structure and the institutional frame for the Judicial Power. This law should encompass all practicing courts in Jordan with their different types and jurisdictions (regular, religious and special).
- 6- Incorporating guarantees in the legal system to see the establishment of a judicial council that represents the judges of all types of practicing courts in Jordan provided that more than half of the members of the council of judges are elected directly from amongst the judges with their different specializations. This council should be competent only to appoint the judges of all courts and promote them, transfer them, train them and discipline them and develop regulatory rules that govern the work of the council and that executes its jurisdiction. The council should also build an institutional structure of the judicial council.
- 7- Incorporating guarantees in the legal system for a true independence of the Judicial Power, and separating the powers, and guaranteeing the financial and administrative independence of the Judicial Power. The judicial council should draft the budget of the Judicial Power and define the budget's resources and how it is spent. It should be enlisted as an independent item in the State's general budget.
- 8- Annexing the Directorate of Judicial Inspection to the judicial council.



9- Annulling the jurisdiction of the Justice Minister by recommending the names of the candidates to be in charge of the judicial tasks, and limiting this matter to the judicial council in conformity with the rules of regulating the judicial council's practice of its jurisdiction and functions.

10- After unifying the Judicial Power and placing it under the supervision of the unified judicial council, cancelling the Department of the Judge of Judges that plays the role of the Justice Ministry for the religious courts.

11- Annulling the State Security Court Law and incorporating the rules that regulate the establishment of such a court and appoint its judges, if there was a need to establish such a court, in the Law of the Independence of the Judiciary

12-Reducing the jurisdictions of the military courts, the police courts, the military council and transferring them to the members of the General Intelligence. These courts should be limited to trying persons who fall under their jurisdiction for disciplinary issues only, and the jurisdiction of the regular courts besides that.

13- Unifying the objective rules to appoint the court judges.

14- Activating the system for disciplining and holding judges accountable, establishing disciplinary courts to adjudicate all disciplinary violations that the judges perpetrate.

15- Supporting the establishment of a club for judges of regular and religious courts, including the judges of the councils for Non-Muslim Religious Denominations for professional, cultural and social purposes.

16- Re-examining a strategy to develop the judiciary and expand its scope to have it include religious courts and the councils for the Non-Muslim Denominations besides the regular courts.



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