

A- The Rule of Law and Constitutional Justice in the Modern World

I. The Different Concept of the Rule of Law

1- The sources of law in Jordan are formal and informal; the formal sources include legislation “Constitution, Ordinary Law & Regulations”, whereas the informal sources of law include customs, Shari’a Law, court precedents, principles of natural justice and jurisprudence.

2- The principle of the Rule of Law in Jordan is interpreted to the effect that all authorities and individuals should abide by the laws in effect equally, and that they must be held accountable in the event of breaching any of their provisions. This is the only wide concept of the rule of law principle.

3- The Court in Jordan ensures that the principle of the rule of law is respected in all sorts of laws. Once the law is enacted and promulgated in accordance with the proceedings prescribed in the Constitution, the Court seeks to ensure that everyone adheres to its rules.

4- In two recent cases concerning challenging the unconstitutionality of the Jordanian Arbitration Law, the Court ruled that two provisions were unconstitutional, on the ground that the legal rule was not equally applied to all parties involved in arbitrary proceedings.

5- The concept of the Rule of Law remains unchanged in Jordan, however, further constitutional and institutional safeguards were set up to ensure that all people subject to a legal rule are treated equally, and are fully abide by its content.

6- The international law has an impact on the interpretation of the principle of the Rule of Law in Jordan. International conventions and treaties signed and ratified by the State are considered as a primary source of law, which should not contravene a written provision in the Constitution.

II. New Challenge to the Rule of Law

7- There are always major national threats to the full implementation of the Rule of Law in Jordan. The economic, social and political crises stand in the way of ensuring that the law is enforced over everyone equally and impartially. The economy in Jordan has always been under severe deficit and the structure of the Jordanian society changes rapidly. As a result, the competent authorities have had to reconsider the way of implementing the principle of the Rule of Law accordingly.

8- The international events and developments had a serious repercussion on the interpretation of the Rule of Law in Jordan. The civil war in Syria, which has been going for more than 6 years, and the war against terrorism have had negative impact on the full implementation of the Rule of Law principle. At present, Jordan hosts more than 2.5 million Syrian refugees in campuses and within the local society. This has caused difficulties to the local authorities in applying the law in the same way as if the State was in peace.

9- In the case relating to the right of public officers to set up their own unions, the Court referred to the international legal norms for human rights in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Constitution of the International Labour Organisation to accredit public officers the right to set up their own union, despite being employees in the public sector.

III. The Law and the State

10- The Constitutional Court has the competences to oversight the constitutionality of applicable laws and regulations and to interpret provisions of the Constitution. These powers work at guaranteeing that all authorities of the state act within their constitutional limits, taking into account that the judgments of the Court are final and binding on all authorities.

11- Article (59) of the Jordanian Constitution states that judgments of Court are final and binding on all authorities and on all. They are effective immediately unless the judgment specifies another date for its effectiveness. Therefore, decisions of the Court have binding forces on all other courts, and they are obliged by the Constitution to respect the decisions of the Court.

12- The Court has issued decisions defining the mechanism for the implementation of the principle of equality before the law, that it is only applied to individuals enjoying the same legal status and position. It also ruled in favour of guaranteeing the right of appeal of judicial decisions issued with respect to the relationship between landlords and tenants.

13- No.

14- Public Officers in Jordan are accountable for their actions judicially before administrative courts, and politically before elected members of Parliament. Administrative Courts can always overturn decisions issued by public officers on the grounds that they are issued against the provisions and proceedings of the law. Also, members of Parliament can practice a vote of no confidence against a Minister for any act or decision issued in contradiction with the Constitution and applicable laws. The principle of immunity is not an issue in this regard, as the law provides for certain proceedings that courts and competent authorities can apply requesting that the immunity is waived.

IV. The Law and the Individual

15- Individuals are not allowed to directly challenge laws for being unconstitutional. The Law of the Court provides only for the indirect challenge of unconstitutionality for individuals. According to Article (11) of the Law any of the parties to a case pending before the courts, in their various types and instances, may put forward the defence of unconstitutionality of any law or regulation that is applicable to the substance of the case. If the court considering the case finds that the law or regulation in respect of which the defence of

unconstitutionality has been raised is applicable to the substance of the case and that the defence of unconstitutionality is substantive, it shall suspend consideration of the case and refer the defence to the Court of Cassation for the purposes of deciding on the issue of its referral to the Constitutional Court.

16- Yes, the Court has developed case-law concerning the seriousness of the defence of unconstitutionality, the interest of the challenging party in the case before it, the need to pay fee for the constitutional challenge to be considered, and that there should be specific authorisation in the power of attorney allowing the lawyer to represent the client before the Constitutional Court.

17- Yes, the Court has ruled in favour of ensuring the compliance of fundamental human rights for individuals such as the right of equality before the law, the right of public officers to set up their own unions, the right to fair trial and the right to challenge decisions issued by courts of First Instance to the Court of Appeal.

18- Yes, the Rule of Law is used as a general concept in the Jordanian Constitution in the absence of specific rights or guarantees in its text. Article (128) of the Constitution, adopted in 2011, provides that “The laws issued in accordance with this Constitution for the regulation of rights and freedoms may not influence the essence of such rights or affect their fundamentals”.