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THE IMPACT OF LEGAL REGULATION OF RIGHTS AND FREEDOMS ON THE ABILITY OF THEIR EXERCISE IN THE JORDANIAN LEGAL SYSTEM

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ABSTRACT

The Jordanian constitutional legislator recognized a set of political, economic, and intellectual rights and freedoms for Jordanian citizens, within the framework of their legal regulation by the ordinary legislator who has the discretionary power to set the conditions and controls for their exercise. Therefore, several regulatory laws were issued based on the necessity of that regulation to prevent confusion to individuals due to their exercise.

Perhaps the main problem on which the effectiveness and the possibility of exercising these public rights and freedoms depends mainly on the legislator's transgression of its discretionary regulatory authority to the point of restriction, which leads to diminishing its exercise under the guise of this regulation, which is an assault on the constitution itself. This, of course, requires the presence of a judicial body that invalidates legislation that violates the provisions of the constitution.

The study concluded that the legislator's discretionary authority is the basis for establishing the ability to exercise constitutional rights and freedoms that are subject to constitutional oversight.

INTRODUCTION

Rights and freedoms in comparative, democratic, constitutional systems are of particular attention, whether in identification or regulation, for being one of

the basic pillars of the state of law. Therefore, the philosophy of contemporary constitutions tends to establish a sort of relative balance between their exercise and the right to regulate them, which is entrusted to the authority based on its responsibility to maintain public order in the state. On this basis, the constitution in democratic systems is the primary determinant in defining these public rights and freedoms from any violation by the executive and legislative authorities, especially according to what is assigned to them by the legislator during their draft. All of such is within the framework of the constitutional ideology that rules over the regulation of rights and freedoms.

However, constitutional texts alone are not sufficient to strengthen the ability of citizens to exercise public rights and freedoms owing to the images of violations and restrictions that lead to limiting their exercise in a manner contrary to what is stipulated in the core of the constitution by the legislative and executive authorities within the scope of their competence.

The effective exercise of rights and freedoms goes beyond the limits of the constitutional texts and is dependent on the way they were regulated by the ordinary legislator, i.e., not setting out obstacles and restrictions that impinge on and limit their exercise. From here, the role of the constitutional judiciary emerges in interpreting the constitutional and legislative texts and highlighting the legislative violations of the constitutional texts regulating these rights and freedoms.

Based on the above, the current Jordanian constitution of 1952 and its amendments of 2011, within the framework of the constitutional order, stipulated a set of public rights and freedoms of an intellectual, political, economic, and social nature for Jordanian citizens, and left their organization to the ordinary legislator in the form of laws, within the framework of the directives of the constitutional legislator, so that these laws do not violate the essence of those rights and freedoms.

The significance of the current research lies in knowing the legislative direction for regulating the rights and freedoms of citizens, and the extent of its compliance with the directives of the constitutional legislator, so that these laws regulating these rights and freedoms do not affect the origin and essence of them in light of the discretionary power that the legal legislator has including the regulation and penalty for violating these constitutional directives.

Perhaps the critical problem in the practical exercise of public rights and freedoms is that all constitutions provide for rights and freedoms in general and abstract textual terms, the effectiveness of their exercise with the power to regulate them by setting regulatory conditions and they refer to the ordinary legislator, according to the laws, to regulate them. In order to answer the basic questions that constitute the main axes of the problem raised by the study, it is necessary for us to answer to the following questions:

1. What is the philosophical direction adopted by the Jordanian constitutional legislator and its impact on the constitutional organization of rights and freedoms?
2. What is the nature of the provisions contained in the draft of the constitution related to public rights and freedoms?
3. What is the authority of the ordinary legislator in regulation? Is it a discretionary power or restricted?
4. What is the impact of exceptional circumstances - the theory of necessity - on the exercise of public rights and freedoms?

For this matter, a descriptive, analytical and critical legal approach will be adopted grounded on the analysis of the constitutional and legal texts related to rights and freedoms, based on the jurisprudential opinions and judicial rulings related to the subject of the study.

On this basis, the study plan will be in three sections: Chapter 1, in which we will address the constitutional treatment of the regulation of public rights and freedoms in terms of the effect of the prevailing ideology on that regulation, and the constitutional impact of stipulating it on the draft of the constitution. In Chapter 2, we will tackle the constitutional, organizational nature of rights and freedoms. Finally, in Chapter 3, we will address the impact of the defense law on the exercise of rights and freedoms.

CHAPTER 1

Constitutional treatment to the regulation of public rights and freedoms

Comparative constitutions differ in terms of the adoption of ideology that rules over the constitutional organization of public rights and freedoms. This ideology lies within the framework of three doctrines that have been applied in some constitutional systems. The individual doctrine, with its philosophy, is based mainly on the respect of individual rights and freedoms so that the state may not affect it except in regulation to ensure its individual exercise. (Al-Sharqawi, 1988, p. 290). Such contrasts with the socialist doctrine, which requires state intervention in all major and secondary functions, thus restricting individuals' freedom to own property and engage in economic activity (Shiha, 1995, p. 124). According to the implications of these two doctrines, most of the constitutions after World War II tended to adopt the social doctrine, and among those constitutions the Jordanian constitution of 1952. On this basis, we decided to divide this chapter into two section.

Section 1

Social doctrine and its impact on the regulation of rights and freedoms in the Jordanian constitution of 1952

The Jordanian constitutional legislator was influenced by the social doctrine in the draft of the aspect of the rights and freedoms stipulated in the Jordanian constitution of 1952. Such doctrine is the outcome of the combination of the individual and socialist doctrines, like most contemporary countries that avoided the disadvantages of the individual and socialist doctrines. Also, it has a moderate stance between these two doctrines, as it draw up the necessity of state intervention and management of educational and economic facilities and public health from the socialist doctrine, which are called positive rights, under which the state commits to its citizens to provide such services to achieve social and economic balances in society (Al-Khatib, 1986, p. 261 of Issue).

On this basis, rights, and freedoms within the framework of a social doctrine, and unlike individual doctrine, are facilities that the political community must work to provide to individuals, especially in the economic and social sphere (Al-Ghazwi, 1983, p. 21). Therefore, this doctrine has preserved the individual property rights of, the means of production and the exercise of traditional rights and freedoms within the legal scope that defines their basis, content and conditions for their exercise, and intervened by setting the necessary restrictions and controls to ensure that members of society to exercise the rights and freedoms established. (Shiha, 1995, p 130). In return, it allowed the state to intervene in aspects of economic and social activity to achieve a certain amount of social and economic balance in society, which required the state to establish public oversight of public benefits such as education, health and transportation matters (Raslan, 1971, p. 54).

By examining the patterns of public rights and freedoms stated in the Constitutional Document of 1952, we find that most of them are negative in nature, leaving individuals the ability to exercise them within the constitutional and legal controls stipulated in organizational laws, without the state committing to individuals any financial obligations to actually exercise them. For example, Article (9) of the constitution provides for freedom of movement for Jordanian citizens, and it means freedom to go inside or outside the state's borders without restrictions except within the limits of what is required by the public interest in the narrowest limits set by law (Nakhleh, 1999, p. 173). However, the state is not obligated to pay the travel and transportation expenses of individuals to ensure the exercise of this right. Individuals, according to their financial circumstances, have the right to enjoy this right or not. And it was stated in the second paragraph of that article, "It is not permissible for a Jordanian to reside in a place or be prevented from moving, nor to be obligated to reside in a specific place except in cases specified in the law."

On the other hand, there are some constitutional provisions that can be included in the framework of positive rights in line with the requirements of the social doctrine that create an obligation on the state to secure financial expenditures for individuals to enjoy the requirements of such rights and

freedoms. One of the most important forms of positive rights is that primary education is free and compulsory in public schools. The state commits to establishing public schools and spending on it through the Ministry of Education, and it is also mandatory to educate citizens and keep pace with civilization and the implications of education on economic and social developments. Article (6) of the constitution stipulates that “the state guarantees work and education within the limits of its capabilities and guarantees tranquility and equal opportunities for all Jordanians.” The first paragraph of Article 20 of the constitution states that “Basic education is compulsory for Jordanians and is free in government schools.”

In implementation of this constitutional provision, Education Law No. 16 of 1964 and its amendments for 2002 were issued which raised compulsory and free education for the preparatory and secondary stages. This is in contrast to university education, which the state is not obligated to perform for all except within the limits of laws and legislations that give some groups the privilege of doing so. Based on the philosophy of the economic and social balance of individuals in scholarships (Al-Hisban, 2012, p. 54 of the magazine).

Based on the foregoing, it can be said that the social doctrine that requires the state to intervene in satisfying a part of the social and economic needs of the citizens depends mainly on the financial capacity of the state, and this must be said that the social doctrine did not show the extent of the state's positive intervention, which gives it the characteristic of its lack of valid general rules To apply to all countries that adopt this principle (Shatnawi, 2013, p. 185). Perhaps this is evident in the Jordanian constitution, which only refers to educational intervention and the right to work, and overlooks the health aspect despite its societal importance, and the various free forms that are in force in the state.

Section 2

The constitutional impact of the inclusion of the provisions regulating rights and freedoms in the constitution

The constitutional document occupies the highest position in the legal system of the state in contemporary constitutional systems, and this of course leads to a very important result, which is that legislation in the legal system of the state of all its kinds must be consistent with the provisions of the constitution. Otherwise, it was unconstitutional. It has also become a given that the function of constitutional law is to establish peaceful coexistence between power and freedom within the framework of the modern state through its regulation of rights, freedoms, and legal controls for its exercise, and in the same direction it places restrictions on power to prevent it from turning into an authoritarian state in which public rights and freedoms are violated. (Al-Sharqawi, 1988, pp. 29-33; Hassan, 2011, p. 33) on the basis that the inclusion of rights and freedoms in constitutions falls within the objective meaning of the concept of constitutional law (Al-Jamal, 1976, p. 18). Therefore, the constitutional

documents have become, at the present time, the natural place for drafting the main provisions of the various rights and freedoms.

Based on the above, there are some constitutional implications that this entails including the inclusion of provisions for public rights and freedoms in the constitutions. In the forefront of which is that these public rights and freedoms are among the most important constitutional issues dealt with in constitutional documents, which gives them the advantages enjoyed by other constitutional provisions stipulated in the constitutional document as they give them the legal value of the same constitutional texts in the legal system of the state. This necessitates that it is not permissible to amend these provisions and texts regulating rights and freedoms except in accordance with the constitutional procedures by which constitutional documents are amended, which gives them constitutional protection and special importance (Abu al-Khair, 1995, p. 331). This is called the formal supremacy of the constitution, as defined in Article (126) of the Jordanian constitution, which stipulated for approval of the amendment that a majority of two-thirds of the members of each of the Senate and House of Representatives would approve it and ratify it.

Rather, we find a deeper impact in some constitutions regarding the immunization of the texts regulating rights and freedoms from the scope of the constitutional amendment, which is called substantive prohibition. Among those constitutions is the Kuwaiti Constitution in Article (175) which states that “the provisions relating to the princely regime of Kuwait and the principles of freedom and equality stipulated in this constitution may not be proposed for revision, unless the revision is specific to the title of the emirate or with more guarantees of freedom and equality.”

Thus, the constitution is an important guarantee for the exercise and protection of public rights and freedoms in a democratic state. This gives it the character of constitutional protection, by establishing a constitutional judiciary as an effect on the supremacy of the constitutional rules, as it has jurisdiction to annul legislation that violates the constitutional principles related to rights and freedoms such as the principle of equality and freedom of religious belief and other constitutional principles related to public rights and freedoms. Therefore, an attack on public rights and freedoms is tantamount to an attack on the constitution itself.

CHAPTER 2

The constitutional organizational nature of public rights and freedoms in the Jordanian constitution

By reviewing the nature of the texts governing public rights and freedoms in the Jordanian constitution of 1952, we find that they do not deviate from the organizational rights and freedoms and peremptory rights and freedoms, and the point of difference between them is the extent to which the ordinary

legislator interferes to organize them or not. Accordingly, we will address this nature in two requirements as follows:

Section 1

Organizational rights and freedoms

The most common organizational rights and freedoms are in the 1952 Jordanian constitution and comparative constitutions. The constitutional legislator merely states the origin and essence of those rights and freedoms, and then refers their organization to the ordinary legislator by a law issued by the legislative authority. This classification is inferred from the formal point of view by using the constitutional legislator with a phrase at the end of the constitutional text "within the limits of the law." Or "according to the provisions of the law." Thus, the exercise of these rights and freedoms will remain confined to the constitutional texts unless a law is issued that specifies how to exercise them and their legal controls.

With reference to the provisions of the Jordanian Constitution of 1952, we find that they are scattered between political, intellectual and economic rights. These rights and freedoms represent the area reserved for the ordinary legislator to exercise it alone without the participation of the executive authority. The existence of such legislations to regulate the exercise of public freedoms limits the administration's authority to confront and override this freedom. Otherwise, it was worth canceling.

The first image: Abstract organizational texts

The philosophy of the necessity to regulate rights and freedoms stems from the fact that they have limits emanating from the constitution or the law that cannot be crossed. Otherwise, the organization may turn into social chaos that impedes the possibility of its exercise (Al-Majri, 2017, p.10); Rights and freedoms cannot be exercised in an absolute manner. Because there are rights and freedoms their exercise depends on some of the rights associated with them, so the right to move on the public road may collide with the right to demonstrate and express opinion, so it is sometimes difficult to reconcile the exercise of these rights without colliding with each other. (Tharwat Abdel-Al, 2004, p. 12) In order to resolve this conflict in its exercise, it is necessary to regulate it by setting legal controls and conditions for the possibility of exercising it in a manner that does not contradict those controls. The principle of referral from the constitutional legislator to the regular regulator obliges the public authorities to respect these legislations; so that no It is permissible to impose restrictions on these freedoms that have no basis in law (Abu al-Khair, 1995, p. 334).

An example of this organizational picture in the Jordanian constitution is what was stated in the first paragraph of Article (16), which states that "Jordanians have the right to assemble within the limits of the law." This constitutional

text guarantees the right to assemble within the legal controls stipulated in the Public Gatherings Law. Its legal concept is defined as “the meeting that is held for discussion and exchange of opinion in which any person is allowed to attend without an invitation (Asfour, 1952, p. 333). Article 2 of the Jordanian Meetings Law of 2011 defined it as “the meeting that is held to discuss a matter related to public policy of the state.”

Based on that, the ordinary legislator issued the first law regulating the right to assemble under the current constitution of 1952 in 1953, then amending this law several times, and the temporary law No. (45) of 2001 was the most restrictive and diminishing of this right, as it linked the exercise of the right to assembly or the organization of a march With the approval of the Executive Council in each governorate and obtaining the prior approval of the Administrative Governor, otherwise the exercise of this right is described as unlawful. (Nasrawin, 2013, p. 269).

This was followed by the amendment of the aforementioned previous law in 2011, and the exercise of the right of assembly was restricted to submitting a written notification signed by the person holding the meeting or march to the administrative governor at least forty-eight hours before the specified date as specified in Article 4 thereof, in order for the administrative control bodies to be able to take control measures to maintain security and public order (Shatnawi, 1996, p. 463). Contrary to those legal conditions and requirements, it can be adapted as a matter of illegal gathering, as it was criminalized and defined by Article (164) of the Jordanian Penal Code.

It is noted from the texts regulating the right of assembly, that this organization may lead to a diminution of its exercise. If the laws of public meetings before the 2011 amendment require licensing and the approval of the administrative governor before starting the meeting who owns the grants or not, and his decision in this regard shall be final. Thus, the administrative ruling law grants wide discretionary power, and it may be absolute in taking security measures and measures to maintain public order and protect public and private funds, and he may terminate the meeting if it is estimated that it leads to endangering lives and property, and the term security and public order is a loose term, which is arranged with him. He left the freedom of assembly at the mercy of the administrative governor.

Other examples of regulatory texts are laws relating to the establishment of political parties. The first law for political parties was issued in Jordan in 1955. Article 5 of this law requires whoever wishes to license any party must submit the request to the district administrator who is affiliated with its establishment, and then submits it to the Minister of Interior and then takes over to the Prime Minister accompanied by his explanations and recommendations. Then the prime minister submits it to the cabinet, which has the right to approve the license or not, and his decision is final (Shatnawi, 1996, pp. 493-497).

In the Political Parties Law of 2015, we find that the Political Parties Establishment Committee in the event of its rejection of the party's license, this law required explanation of its rejection decision, and the founders granted the appeal before the Administrative Court, and in the event that the court canceled the rejection decision, the party is considered licensed from the day following the issuance of the ruling. This is what was stipulated in Paragraph B of Article (15) of the Jordanian Political Parties Law, which states that "If the court ruling includes the cancellation of the committee's refusal to declare the establishment of the party, the party becomes registered from the date of issuance of the ruling, and this ruling will be published in the Official Gazette and in two daily, local newspapers."

It is clear to us from the successive laws related to the formation of political parties that the effectiveness and the possibility of exercising this constitutional right depends on the requirements and conditions laid down by the ordinary legislator in those laws. The more these conditions are of a certain degree of complexity; the more this will be reflected on the ability to exercise them. If the legislator stipulated in the current law of 2015, as it was followed in the 2012 law, that they be founders of the party, which stipulated that their number should not be less than one hundred and fifty persons, and in addition to that that they be from at least five governorates, this regulatory requirement will be reflected in the obstruction and limitation Establishing political parties. It is clear from the previous regulatory laws the extent of the discretionary power that the ordinary legislator has in this regulation. This is reflected in the ability to exercise these rights and freedoms or not, or to exercise them in a manner that does not allow everyone to enjoy them. The practical reality in practicing the right to assemble, for example, indicates the administrative ruler's refusal to receive notification from the organizers as stipulated in the law on purpose, or to invoke the maintenance of traffic order and the right of movement.

And this power, upon which the administrative authorities rely to obstruct the exercise of rights and freedoms, is sometimes exercised through regulations, instructions or individual orders issued by them, which constitute a flagrant assault on them. And in implementation of the constitutional violations found in the instructions issued by the executive authority to restrict them. Accordingly, the regulation of restrictions and guarantees for the exercise of public rights and freedoms by a system issued by the Council of Ministers is a constitutional violation. As it constitutes an assault by an authority on the jurisdiction of another authority, and this organization is non-existent (Ibrahim, 2010, p. 181).

The second image: regulatory texts restricted by constitutional principles

In this organizational picture, the constitutional legislator defines some of the principles and restrictions that the ordinary legislator must adhere to while regulating some of the rights and freedoms, and if they are violated by the ordinary legislator, if they are regulated, such texts shall be invalidated.

An example of this organizational picture is what was stated in Article (67) of the constitution which states that “the House of Representatives shall consist of members elected through general, secret and direct elections ...” These constitutional principles made it necessary for the ordinary legislator in the election law to affirm them again. In Article (21) of the 2016 Jordanian Election Law, which stipulates that "voting shall be general, secret and direct." These principles are among the most important guarantees of freedom and integrity of the election, in order to spare the voter all kinds of influence that he may be exposed to, whether from the candidates or others, and promotes the exercise of his electoral right without embarrassment or fear from any party.

From the previous constitutional text, we note that the constitutional legislator, within the framework of the constitutional organization of the right to vote, obliges the ordinary legislator if he issues the election law that organizes all the procedures of the electoral process. Adoption of these principles and their legal consequences; The first of these principles is that the election should be general, that is, the adoption of the principle of universal suffrage in the conditions for the exercise of the election, the organizational conditions such as age, nationality, moral and mental capacity, and a concept to contradict it. If the legislator stipulates in the election law, for example, that the voter has a first university degree, then this law is not constitutional for violating the provisions of the constitution in accordance with the hierarchy of legal rules in the legal system of the state.

Also, the constitutional legislator defined the principle of secrecy of the election; which is meant by the voter choosing the candidates secretly, out of the eyes of others; In order to achieve this secrecy, the ordinary legislator in the election law must specify special procedures, such as allocating a closed place inside polling stations (Fouda, 2000, p. 181). And direct election, which means that the voters choose whoever they see fit from among the candidates themselves, without mediation from anyone.

The Egyptian Constitutional Court stated in one of its rulings that “even if the principle in the authority to legislate when regulating rights is that it is a discretionary power unless the constitution limits it with specific restrictions, and that oversight over the constitutionality of laws does not extend to the appropriateness of issuing them, but this does not mean launching this power in the enactment of laws without Adherence to the limits and restrictions stipulated in the constitution. Therefore, the legislature’s regulation of the right of citizens to run for office should not violate or undermine this right” (Constitutional Court ruling No. 131 of the Judicial Year 6, 1987).

Section 2

Conditions for legislative regulation of public rights and freedoms

Legal jurisprudence differed on the limits and scope of the authority of the ordinary legislator during his regulation of public rights and freedoms. This difference revolves around an essential point. Is the regulatory authority of the legislator restricted or discretionary? Also, this regulation should not contradict or waste the essence of these organized rights. This is what we will explain successively in two branches as follows:

Part 1: the commitment of the ordinary legislator to the limits of regulation

Constitutional jurisprudence goes to the recognition of the ordinary legislator the right to regulate the exercise of public freedoms and rights through various legal tools, such as licensing and obtaining permission, whether explicit or implicit, according to what is stipulated in the law (Al-Sanhouri, 1952, p. 66) and this regulatory authority should not exceed that to the extent of Prohibition or restriction of their exercise, especially prior authorization from the competent authorities specified by law; So that individuals are not allowed to exercise a right or freedom until after obtaining that license. We see that the licensing authority appears in the Jordanian legal system for individual rights and freedoms in the field of political rights, such as the formation of political parties and the freedom of printing and publishing.

On this basis, a aspect of legal jurisprudence went to distinguish between regulating freedom and diminishing it. Part of the constitutional jurisprudence allowed regulation without this amounting to restriction by the legislator, who has this discretionary power, provided that there is no deviation in the use of this power. However, the criticism leveled at that jurisprudential trend is the difficulty in establishing a specific standard between the regulation of freedom and its restriction. That is, permissible for the law in regulation and forbidden in implementation (Al-Dulaimi, 2015, p. 273).

Based on the foregoing, the constitutional jurisprudence differed over the scope of the authority of the ordinary legislator in regulating organizational rights in terms of their limits. Is it restricted or discretionary? Most of the constitutional jurisprudence believes that it is a discretionary power, and only one restriction can answer it, which is not to waste it or completely cancel the right or freedom. And this discretionary power delegated by the constitutional legislator to the ordinary legislator means that in which the law leaves the administration with some freedom of discretion in carrying out its activities without imposing a specific method on it, by granting it the ability to choose between several solutions or options for the issue in question by the administration (Al-Helou, 1999, P. 55). Accordingly, the legislator has the discretionary power to regulate rights and freedoms, but this organizational discretionary power may be misused or deviated in the use of its discretionary power to use it, so the legislator, under the guise of regulation, wastes rights and freedoms by detracting from them, and this result in (Ghorbal, 1990, p. 103).

Consistent with this trend, the Egyptian Constitutional Court ruled in one of its rulings that “if the basis for the authority to legislate when regulating rights is that it is a discretionary power, and that judicial oversight over the constitutionality of legislation does not extend to the appropriateness of issuing it. However, this does not mean launching this authority in the enactment of laws without Adherence to the limits and controls stipulated in the constitution. Hence, the legislature’s regulation of the citizens’ right to belong to political parties and their exercise of political rights should not undermine these rights or affect their survival in the way the contested text has taken if it is subject to general rights guaranteed by the constitution and deprives a group of citizens There is an absolute deprivation and support for what was previously stated in their statement, thereby exceeding the regulation department of those rights, which necessitates that it be subjected to the constitutional oversight of this court.

The Jordanian Constitutional Court also went in one of the rulings to emphasize... “By referring to the provisions of Article 128/1 of the Constitution, the court finds that the authority of the ordinary legislator in regulating the exercise of rights and freedoms, even though it is discretionary, is restricted by its controls that limit its access to the most important of which is the lack of The permissibility of obtaining the legal rules governing rights from the essence of these rights or infringing on their fundamentals guaranteed by the constitution, whether by diminishing them or distinguishing them between individuals, otherwise this would be a waste of the principle of equality” (Official Gazette No. 5348 dated 07/14/2015, Judgment of the Jordanian Constitutional Court No. (2) (For the year 2015).

The Constitutional Court also ruled in one of its rulings: “... and for those who fulfill the conditions alone and not others to exercise the rights and duties of the constitution and the law, unlike those whom do not meet these conditions, then they do not go beyond being regulatory matters according to many circumstances and considerations for violating limits of regulation. This is because the conditions set by the legislative authority are nothing more than regulatory matters according to many and multiple circumstances and considerations that are up to the legislator’s discretion, provided that they do not violate or diminish the rights and freedoms guaranteed by the constitution ... That is because the legislative authority has jurisdiction. This right is inherent in legislation, and it is the owner of the right to lay down the necessary legislation to regulate any topic, and this right is only valid if it is inconsistent with constitutional provisions and principles” (Constitutional Court ruling No. (5) 2014, the Official Gazette).

Second trend

This constitutional jurisprudential trend considers that the authority of the legislator is restricted and not discretionary if it regulates public rights and freedoms, provided that this restriction does not reach the extent that contradicts the purpose intended by the constitutional legislator in the

constitutional framework set for it (Al-Sanhouri, 1986, p.309). That's because; The principle of guaranteeing these public rights and freedoms is the constitution itself, and the exception is the mandate of the ordinary legislator to regulate them, and that any restriction of these public rights and freedoms is contrary to the constitution, and this authorization to organize is conditional on not violating the basic principles and foundations that give legal protection to public freedoms stipulated in the constitution. (Ahmad, 1968, p. 296), which ultimately constitutes a restriction on that regulatory authority established for the ordinary legislator (Ali, 1978, p. 12).

Accordingly, this issue in arranging the penalty is entrusted in accordance with the provisions of the constitution in the Constitutional Court that has jurisdiction over the constitutionality of laws, and perhaps the organizational laws issued by Parliament to verify the extent of their compatibility with the constitutional texts related to rights and freedoms, and the basis for this is that constitutional texts usually come in general forms and formulations Brief always needs an explanation of its scope in application, and clarification of its ambiguity.

Part 2: Not to prejudice the essence of rights and freedoms

The Jordanian constitutional legislator explicitly referred to this in Article 128 / P1 of the constitution, which states that "Laws issued under this constitution to regulate rights and freedoms shall not affect the essence of these rights or affect their fundamentals".

This guiding constitutional text is an obligation on the ordinary legislator during his organization of rights and freedoms not to confiscate the essence of those rights and freedoms the limits of constitutional organization in relation to rights and freedoms, and this commitment is entrusted to the discretionary power of the ordinary legislator not to confiscate or diminish freedom (Abu Zeid, 1979, p. 225) -226). Confiscation means obstruction by individuals from enabling clear contact. For example, in the political parties law, if the legislator stipulated in the party's founding committee, which is one hundred and fifty, that it be from all of the kingdom's governorates, this emphasis in this text will inevitably violate the essence of the right to form political parties stipulated in Article (16) of the Constitution. This legal requirement inevitably leads to a complete waste or curtailment of the right, which makes it unconstitutional.

When the constitutional legislator provides for freedom of religious belief and the exercise of religious rites, as defined in Article (14) of the Jordanian constitution, which states that "the state protects the freedom to perform the rites of religions and beliefs in accordance with the customs observed in the Kingdom, as long as they are not contrary to public order or contrary to morals.". This constitutional text imposes an obligation on the state to guarantee the exercise of this freedom; perhaps the essence of freedom mentioned in this text is the right to profess a specific religion or belief, and he has the freedom to exercise his rituals, in secret or in public. (Kazem, 2010, p.

99) It is a violation of this freedom and a violation of its essence forcing individuals to convert to a certain religion. In the same context, forcing a Muslim girl to remove the veil is a flagrant violation of Article 16 of the Constitution.

Section 3

Peremptory texts regulating public rights and freedoms

Within the framework of the constitutional regulation of public rights and freedoms, the Jordanian constitutional legislator has specified some peremptory texts that have been mentioned in a smaller number of regulatory texts, and these texts generally determine the origin of the right or freedom. However, it does not accept restriction or regulation in an absolute way, whether from the legislative authority or the executive authority, as is the case with regard to regulatory rights (Al-Khatib, 2014, p. 105). As a result, the legislator may not interfere in its regulation. For immediate accessibility without waiting for the legislator to intervene to regulate it; Because it defines legal centers that must be respected by the legislator; Otherwise, I consider this intervention to be an objective and explicit violation of the provisions of the constitution, on the basis that these rights and freedoms are the main pillar and pillar of the legal system of public rights and freedoms (Al-Shimi, 2001, footnote, p. 328). Usually those rights and freedoms are focused on specific topics such as the ban on dimensions, and the prohibition of the extradition of political refugees.

An example of peremptory texts cited by the Jordanian constitutional legislator is what was stated in the first paragraph of Article (21) of the constitution, which states that “political refugees shall not be extradited because of their political principles or their defense of freedom.” This text is one of the peremptory texts, which the ordinary legislator may not address this issue by regulation, this provision requires a constitutional obligation on the state, in the event of accepting the application for political asylum, to prevent his extradition to his country or his deportation to another country except according to his will.

Among the other peremptory constitutional provisions is what was stated in the first paragraph of Article (9), which states that “a Jordanian may not be deported from the kingdom's homes.” This text stipulates that it is not permissible to deport Jordanian citizens from the kingdom's homes, and it is an absolute general principle to which no exception is met (Al-Shatnawi, 1996, p. 449). That is, whatever the reasons, it is not permissible for a Jordanian to be deported from the territory of the Jordanian state from the public authorities, whether executive, judicial or legislative, according to a court ruling. If a law was issued by the legislative authority to regulate the deportation of Jordanians from the Jordanian region, this law would be considered void for violating the provisions of the constitution. For example, under the Jordanian Basic Law of 1928, there was a law called the ‘Law of

Exile and Deportation,' according to which the Executive Council was permitted to deport any Jordanian from the Emirate of Transjordan in the event that he committed some serious crimes or incited strife, according to the first paragraph of Article (3) of the Law The denial and dimensions of 1928 which state that "If the Executive Council is convinced that any person adopts an approach that is dangerous to security and order in Transjordan or seeks to stir up hostility between the people and the government in Transjordan or between the people and the Mandate State, then the Executive Council may order the deportation of that person from Eastern Jordan, to the location determined by the Executive Council, and for the period it deems appropriate."

Also included in the provisions of this constitutional text is that it is not permissible to prevent a Jordanian from entering or returning to the territory of the Jordanian state, or to obstruct that in any way, such as threatening arrest or not issuing a travel document as a result of losing that document, so some constitutions explicitly stipulate this provision. (Gabriel, 1988, p. 363) such as the Egyptian Constitution of 2014 in Article 62 which states that "Freedom of transportation, residence, and immigration is guaranteed, and no citizen may be deported from the state's territory, nor prevented from returning to it ...".

The Supreme Court of Justice ruled in one of its rulings, "Upon reviewing the applicant's passport file and the Civil Status Department file, we did not find a request submitted by the applicant's wife to the Minister of Interior to retain her Syrian nationality, and the Public Prosecution did not provide evidence of this, and she is considered Jordanian according to Article 8 of The Jordanian Nationality Law, and since Article (9) of the constitution does not permit the deportation of a Jordanian from the kingdom's homes, the decision of His Excellency the Minister of Interior to deny her permission to enter the Kingdom of Jordan contravenes the provisions of this article (The Jordanian Bar Association Magazine, Justice Alia, 2/11/1985, p. 756).

In practical exercise terms, there was an issue that sparked widespread debate in the political and legal circles about the Jordanian authorities' deportation of some Jordanian citizens of Palestinian origin from Hamas, which was considered a clear constitutional violation of Article 9 of the Constitution (Debs, 2011, p. 121).

CHAPTER 3

The impact of the defense law on the exercise of rights and freedoms

In Article (124), the constitutional legislator specified the constitutional basis for the state of emergency that necessitates the work of the defense law, which states that "If something happens that calls for the defense of the homeland in the event of an emergency, a law is issued in the name of the defense law, according to which the authority is given to the person designated by the law to take the necessary measures and measures. This includes the power to stop

the state's ordinary laws to secure the defense of the homeland. The defense law will take effect when it is announced by a royal decree issued upon a decision from the Council of Ministers.”

On this basis, exposing the state to a grave risk that cannot be paid by normal legal means; All constitutional systems must regulate how to confront it. In the Jordanian constitutional system, the declaration of a state of emergency necessitates the enforcement of the Defense Law, which grants broad powers to the Prime Minister to confront such cases that require implementation.

This exceptional system casts a perversion in the individual rights and freedoms stipulated in the folds of the Constitution and the legislation governing those rights and freedoms. Which leads to this system restricting them, and these restrictions differ from one constitutional system to another? In implementation of this, Article 4 of the Defense Law stipulated the exceptional measures that the Prime Minister is entitled to take by written or verbal order, and these measures included placing restrictions on the freedom of persons to meet, as well as assigning anyone to perform any work, and determining the dates for opening and closing public shops. The same applies to closing all or some of these stores and preventing freedom of movement and roaming. We will address this effect in two section as follows:

Section 1

The extent of the impact of the defense law on the nature of constitutional rights and freedoms

In this regard, it is necessary to distinguish between the regulatory texts and the peremptory texts mentioned in the Jordanian constitution in order to know the extent of the impact of the state of emergency and martial law on it. Conclusive texts are those texts that determine the origin of right or freedom. But it does not accept restriction or regulation in an absolute way, whether from the legislator or the executive authority (Abu al-Khair, p. 330), and usually those rights and freedoms are focused on issues. Or in the event that a law is issued by the legislative authority requiring the deportation, exile, or expulsion of the Jordanian from the state's territory, this law initially violates Article (9) of the constitution and is considered null for its violation of the provisions of the constitution in normal circumstances or during the application of the state of emergency and martial law. In addition, it is not permissible or forbidden to not allow the Jordanian to return to the Jordanian state territory or to obstruct that in any way, such as threatening detention or not issuing a travel document as a result of losing that document (Hassan, Ahmed Ali, 1978, p. 12).

As for the regulatory texts, It is the subject of restriction during the declaration of a state of emergency and martial law; The authorities implementing the state of emergency resort to restricting freedom of movement, which is one of the important and intimate rights of the individual, and to rely on the exercise

of other rights and freedoms, such as the right to trade and vote. However, the requirements of the supreme interest in the state allow it to restrict its exercise contrary to normal circumstances. They resorted to closing some areas and curfews in some areas and public streets in them for a period to be determined, and limiting the opening and closing of shops, taking into account the humanitarian conditions such as transporting the injured to hospitals (Bassiouni, et al. 1989, 369). It came in Paragraph H of Article (4) From the Defense Law “setting the dates for opening and closing all or some of the public shops.” Para. I: “Organizing and determining means of transportation between the different regions, closing any road or waterway or changing its direction and preventing traffic on it or regulating it.”

In implementation of this, and on the impact of the spread of Corona disease, which falls within the framework of dangerous diseases on public safety, the Council of Ministers decided, based on the provisions of Article (124) of the Constitution and paragraphs (a) and (b) of Article 2 of Defense Law No. 13 of 1992 declaring work According to the Defense Law No. 13 of 1992 throughout the Hashemite Kingdom of Jordan as of the date of issuance of the Royal Decree.” Accordingly, the Royal Decree was issued to enforce the Defense Law as of 3/17/2020 throughout the Kingdom. This was followed by the issuance of Defense Order No. (2) On the authority of the Prime Minister, according to which a curfew is required in the Kingdom, and some financial penalties and car seizures for violating the ban.

While persons enjoy some legal guarantees in normal circumstances, “it is not permissible to arrest and search except by a judicial order.” However, in exceptional circumstances, this principle is not reliable, as suspects may be arrested, detained, and searched for their residents. Reflecting this, it was stated in Paragraph A of Article (4) of the Defense Law, “... and the arrest and detention of suspects or those threatening national security and public order.” In this regard, we believe, even if the state of emergency is for its fundamental purpose, leading to the restriction of basic rights and freedoms, in order to enable the executive authority to face any manifestation of grave danger that threatens its security and safety; However, the interpretation and application of its restrictions on rights and freedoms should not be expanded. In addition to the fact that the Defense Law in this capacity and its legal progression must not contradict other provisions of the Constitution related to rights and freedoms; otherwise, this would lead to the demolition of the legal structure of the provisions of the constitution.

Section 2

Freedom of the press and publication

The freedom of the press and printing is closely related to the freedom of expression of opinion, and it is the most basic rights on which the building of the democratic state is based, and it is part of the public freedoms, which the

democratic system is satisfied with inserting into the core of the relationship between rulers and the ruled.

On this basis, it was stated in the third paragraph of Article (15) of the Jordanian constitution, "The state guarantees freedom of the press, printing, publishing and mass media within the limits of the law." This constitutional text requires the state to empower its citizens to have freedom of the press by not placing obstacles in the regulatory legislation, such as the Press and Publication Law, except as a matter of relative regulation rather than restriction, so that a newspaper is not confiscated, suspended, or suspended except by a court order (Shiha, 1995, p. 446). This results in a very important result, which is the freedom to print without prior authorization within the limits of the law, in addition to the contents from which the right to publish newspapers and obtain information from its various sources stems.

In spite of the above, the constitutional legislator tightened control over this freedom in a single text in addition to what was stated in the Defense Law in the fifth paragraph of Article (15) of the Constitution which states that "In the event of the declaration of martial law or emergency, the law may be imposed on Newspapers, pamphlets, literature, media, and communication Limited censorship in matters relating to public safety and national defense purposes." According to this text, the government has issued several regulations, such as the Publications Control System No. (5) for the year 1948, and System No. (1) for the year 1952. These regulations have granted administrative control powers to cancel or revoke the license of any newspaper, magazine or publication if it works at the instigation of individuals or Bodies that violate constitutional principles or laws that harm the entity of the state, provoke sedition, disturb security, order and public tranquility, or attack individuals and groups to obtain unlawful gains (Al-Shatnawi, 1996, p. 487). These regulations also authorize the publications and publishing inspector to seize and search any correspondence, telegrams and parcels. In conjunction with the postal, telegraph and customs authorities, he has the authority to issue an order prohibiting the printing and publishing of any news that harms the tranquility and defense of Transjordan (Article (2) of the Publications and Publishing System No. (5) of 1948).

The wisdom of this constitutional ruling is the implementation of strict censorship on newspapers, pamphlets and literature to avoid its negative impact on public opinion in those circumstances that require the solidarity of the state and society together with all its capabilities to confront the state of danger that threatens the entity of the state. Therefore, this text permits the right to implement effective censorship on all publishing media with regard to the goals and objectives of defending the state.

It is our estimation that this fourth authority has an active role in uncovering the excesses of the authority based on implementing the defense law, in violation of the main objective of that oversight, thus enhancing and

preserving the exceptional legitimacy that the state of emergency should not lead to its waste.

CONCLUSION

In this study, we dealt with the organizational framework of the nature of rights and freedoms in the Jordanian constitution of 1952, as it is one of the most important legal components of the state, and the effect of this regulation on the effectiveness of its exercise, as the constitutional legislator has been affected by social doctrine at the lowest levels that require the state to intervene in the fields of education and work. We also defined the nature of rights and freedoms in terms of their ability to regulate, and they were divided between organizational rights, which are the dominant form, and peremptory rights that diverge from legislative regulation.

Among the results that we reached:

First: The individualism and traditionalism prevailed over most forms of public rights and freedoms in the Jordanian constitutional organization, and this is evident through the decline in positive social and economic rights that necessitate state intervention and the necessity of financial spending on them, and the right to primary compulsory education and the right to work has clearly emerged. This has arranged an important impact, which is to push for its exercise for the vast majority of citizens in accordance with the legal controls and conditions such as the right to education and health, based on its interventionist philosophy to maintain the social and economic balance between individuals within the state. All this has begun to be evident for us through the absence of the constitutional legislator providing a special title for the constitution related to social and economic rights. Rather, it was scattered among the folds of his texts.

Second: It became clear to us that the effectiveness of exercising rights and freedoms in the Jordanian constitutional organization depends mainly on their legislative regulation by the ordinary legislator in terms of facilitation and empowerment in the organizational restrictions that should not waste the constitutional basis. Therefore, the authority of the legislature is a regulatory one and is not restricted except within the limits of preserving the rights and freedoms of others and protecting public order and the public interest. However, the practical reality indicates that some of these legislations have gone beyond the scope of regulation, dyeing it with restrictions that limit its exercise, such as including some restrictions that impede the exercise of some rights and freedoms of a political nature, including the right to assemble and form political parties, as we referred to earlier. So that the discretionary power of the ordinary legislator exceeded the limits of the organization to the point of restriction.

Third: We have seen that the constitutional regulation of an aspect of public rights and freedoms, which is called peremptory rights, constitutes by this nature a restriction on the legislative and executive authorities by not

interfering with the organization, and it is limited to a number of rights and freedoms.

Fourth: The effectiveness of the exercise of rights and freedoms stops in the event of the declaration of emergency and martial law according to articles (124 and 125) of the constitution that, according to the constitutional powers that he granted, those stipulated in the constitution provide defense to the prime minister, represented by defense orders that restrict the exercise of some personal rights and freedoms, such as the right of movement Curfews and confiscation are according to the nature of the grave degradation, which differs in the extent of its impact on the effectiveness of exercising those public rights and freedoms.

On the results of the study, we recommend the average Jordanian legislator to do the following:

- The need to review all legislation related to rights and freedoms in order to revise them from some restrictions that include some restrictions that go beyond the organizational boundaries because they violate the essence of those rights and freedoms and the requirements of the constitutional mandate of the ordinary legislator, and this requires the assistance of experts in the field of rights and freedoms when amending these legislations to be consistent with the constitutional texts.

- Include the legislation governing the exercise of rights and freedoms for some forms of punishment; To reduce the violations committed by those in charge of implementing these legislations, which relate to the deviation in the use of the powers they possess in granting permission or dangers or not to exercise part of the rights and freedoms, especially political ones, as is the case in the Political Parties Law of 2015.

Second

Enhancing the effectiveness of the Jordanian constitutional judiciary in protecting public rights and freedoms through its interpretation of the constitutional texts related to rights and freedoms, and overseeing the constitutionality of laws, to highlight its constructive role in the constitutional principles related to rights and freedoms, and this can only be achieved by granting the Constitutional Court the right to challenge laws on its own initiative as it is. Applicable in some constitutional systems, such as Egypt. Because moving the appeal according to what is stipulated in the court law stands impotent and hinders the important role assigned to the court.

Third

Since the exceptional legal system of declaring a state of emergency and martial law is exceptional, and this system will inevitably narrow and limit some of the exercise of rights and freedoms; It requires not to expand the use

of the powers granted to the Prime Minister except within the limits of the nature of the danger that requires confronting him.

Fourth

Abolishing Article 15 of the Constitution which permits the imposition of tight censorship on newspapers and publications while the defense law is in force. Because this censorship is stipulated in the Jordanian Defense Law in Article 4 thereof, and the press has an important role during this exceptional period, in enhancing the legal legitimacy and the positive role in enhancing confronting the threat.

Fifth

To achieve social and economic balances and to reinforce the manifestations of social doctrine in terms of social and intellectual rights and freedoms, especially educational and health, it is assumed that a certain percentage of the domestic product is determined for health care, education and scientific research.

LIST OF REFERENCES

First: the book and the publications

- Dr. Abu Zaid, Mustafa (1979), The Administrative Judiciary and the State Council, Fourth Edition.
- Dr. Ahmed, Tharwat Abdel-Al (2004), Legal Protection of Public Freedoms between Text and Application, Second Edition, Arab Renaissance House, Cairo.
- Dr. Al-Banna, Mahmoud Atef (1980) Limits of Administrative Control Authority, Cairo University, Faculty of Law.
- Dr. Al-Hilu, Majed Ragheb (1999) Administrative Judiciary, University Press, Egypt.
- Dr. Al-Jamal, Yahya (1976) The Egyptian Constitutional System, First Edition, Dar Al-Nahda Al-Arabiya, Cairo.
- Dr. Al-Khatib, Numan (2014) The Simple in the Jordanian Constitutional System, House of Culture for Printing and Publishing, Amman.
- Dr. Al-Debs, Essam (2014) The Mediator in the Constitutional System, First Edition, House of Culture for Printing and Publishing, Amman.
- Dr. Al-Debs, Essam (2011) Public rights and freedoms and guarantees of their protection, Dar Al Thaqafa for Printing and Publishing, Amman.
- Dr. El-Sharkawy, Souad, (1988) Political Systems in the Contemporary World, Dar Al-Nahda Al-Arabiya, Cairo.
- Dr. El-Shimi, Abdel-Hafeez (2001) Constitutional Judiciary and the Protection of Fundamental Freedoms in Egyptian and French Law, Dar Al-Nahda Al-Arabiya, Cairo.
- Dr. Al-Dulaimi, Habib (2015) Limits of Administrative Control Authority under Normal Conditions, a comparative study, Al-Halabi Legal Publications, Beirut

- Al-Majri, Khaled (2017) Regulations for Rights and Freedoms, International Foundation for Democracy and Elections, Tunisia.
- Dr. Bassiouni, Mahmoud Al-Sharif, and others (1989) Human Rights, Volume Three, Applied Studies on the Arab World, First Edition, House of Science for the Millions, Beirut.
- Dr. Hassan, Muhammad Qadri (2011) Constitutional Law with Explanation of the Constitutional System of the United Arab Emirates, First Edition, Dar Al-Afaq Publishing and Distribution, United Arab Emirates.
- Hassan Muhammad, Na'im Attiyah (2006) The Constitutional Philosophy of Individual Freedoms, a comparative study - supported by the rulings of the Supreme Constitutional Court, Dar Al-Kotob Al-Lawyah, Cairo.
- Dr. Profi, Shawky Ahmed (1968) Constitutional Aspects of Human Rights, Arab Thought House, Cairo.
- Dr. Raslan, Anwar (1971) Democracy between individual thought and socialist thought, Dar Al-Nahda Al-Arabiya, Cairo.
- Shatnawi, Ali (2013) Political Systems, First Book, First Edition, Wael Publishing and Distribution House, Amman.
- Dr. Shiha, Ibrahim (1995) Al-Wajeez in Political Systems and Constitutional Law - An Analytical Study of the Lebanese Constitutional System, University House, Beirut.
- Abdel-Majid Ibrahim (2010) the discretionary power of the legislator - a comparative study - The New University House, Cairo,
- Dr. Ali, Hassan Ahmed (1978), Public freedoms guarantees and their development in contemporary political systems, PhD thesis, Faculty of Law, Cairo University.
- Dr. Gabriel and Wajdi Thabet (1990) Protecting Freedom in Confronting Legislation - A Study in Legislative Systems of Public Freedoms and an Attempt to Differentiate Between Regulating Freedom and Its Restriction, Dar Al-Nahda Al-Arabiya, Cairo
- Fouda, Raafat (2000) The Constitutional Budgets of the President's Extraordinary Powers in the 1971 Constitution, A Comparative Study, Dar Al-Nahda Al-Arabiya, Cairo.
- Dr. Kazem, Maher Sabry (2010), Human Rights, Democracy and Public Freedoms, second edition, The Book Press, Baghdad.
- Nakhleh, Maurice (1999) Al-Hurriyat, Al-Halabi Legal Publications, Beirut.
- Dr. Nasrawin, Laith (2013) The Right to Peaceful Assembly in Jordanian Law and International Agreements, A Comparative Study, Dar Rida for Publishing and Distribution, Beirut.

Second: Research and studies

- Asfour, Saad (1952) Freedom of assembly in England, France and Egypt, Journal of the Egyptian State Council.
- Al-Husban, Eid (2012), The Effectiveness of Basic Rights in Restricting the Discretionary Power of the Legislator - A Comparative Study - Dirasat Journal, Sharia and Law, Volume 39, Number 2.
- Al-Khatib, Numan (1986), Social Doctrine and its Impact on Public Freedoms in both the Jordanian and Egyptian Constitutions, Mu'tah Journal for Research and Studies, Volume One, Issue One.

Third: Legislation and court rulings

The Jordanian Constitution of 1952
Jordanian Defense Law of 1992.
The provisions of the Jordanian High Court of Justice