

Ministers Trials: A Comparative Study Between the Jordanian and the French Laws

Dr. Moayad Hosni Ahmed Al -Khawaldah

Assistant Professor- Criminal Law-Philadelphia University, Jordan

Email: mkhawaldah@philadelphia.edu.jo

Dr. Khaled Khalaf Aldrou

Assistant Professor- Faculty of Law – Jadara University, Jordan

Email: aldrou1970@yahoo.com

Abstract

The Jordanian constitutional stipulated special measures for trying ministers, and specified a special law therefor, which is the Law on Trial of Ministers, as in the French constitutional Act. In Jordan, when ministers have committed crimes relevant to their functions, a decision is made by the House of Representatives to remit them to the Public Prosecutor. These offenses are being tried under the Law on Trial of Ministers as offenses of high treason, misuse of authority, and breach of duties. The result of the research showed that a decision must be issued by the House of Representatives approving the referral of the Minister to the Public Prosecution to pursue the trial procedures and by the majority of the members of the Jordanian Parliament. The researchers recommended that the Jordanian legislature must revoke the authority of the House of Representatives to approve the referral of Minister to the Public Prosecution on the ground that the issuance of a referral decision by the House of Representatives violates the public right and the significant role of the Public Prosecution in Jordan, since the criminal case may be postponed either by the fact that, the House of Representatives is not in session, being in an exceptional session, or does not approve the referral decision. Hence, it will be difficult for the Public Prosecution to proceed with its criminal procedures

Keywords: Trail of Ministers, Criminal liability, Legislative Authority, Judicial Authority,

Introduction

The origins of the concept ministerial responsibility in general dates to Britain, which referred to the established maxim that “the king can do no wrong” to preclude the monarch from shielding his ministers from parliamentary criticism. And it states that the king is not accountable for his actions, since he exercises his powers through his advisers, who are legitimately and civilly liable before the ordinary courts. The British were aware of the importance of creating a court with special procedures to try ministers, due to their lack of confidence in the ordinary judges who may lack sufficient courage to inflict punishment on the ministers, especially in terms of their functions.

From here, the idea of accusing the ministers criminally by the House of Representatives before the House of Lords as a Supreme Court has emerged (Waheed,1937)

It should be noted that there are three types of ministerial responsibility the government or one of its members may exercise which are political, criminal, and civil, although ministerial responsibility includes the three types, but ministerial responsibility is usually used to express the term political responsibility. However, the difference between the criminal responsibility of ministers and political responsibility lies in the knowledge of the goals and procedures of each of them. Criminal responsibility aims to punish the minister with a criminal penalty that affects his person through the criminal accusation, while the political responsibility aims to the removal of the minister from the ruling, which is purely political, and its procedures differ from criminal responsibility .(Hassan , 2006)

And criminal acts committed by ministers according to the Jordanian Ministers Trial Law No. 35 of 1952 and its amendments, and according to Article Two, that ministers are tried before the competent courts in the capital if they commit one of the following crimes resulting from the performance of their functions: 1- High treason 2- Abuse of authority 3- Breach of duty.

The importance of the research

The trial of ministers is a sensitive issue in Jordan, given Jordan's position in a volatile area and its poor economic status. The prime minister and ministers are the ones responsible for maintaining state affairs, and their decisions are critical as they reflect on the Jordanian people. Therefore, their criminal responsibility must be equal to the powers bestowed on them by the Jordanian Constitution, and that criminal responsibility must lie in the hands of an autonomous, impartial, and specialized authority, which is the judicial authority and not the legislative authority represented by the Jordanian House of Representatives; Considered to be one of the weakest parliaments and legislative bodies in Jordan, due to the influence of the executive authority for many of its decisions and the preference of the deputies for their interests over the public interest. Thus, the importance of the research comes from the topic it discusses. Moreover, will shed light on the position of the French legislation in this issue and the difference between it and the Jordanian legislation.

Research problem:

The approval or inability to hold a criminal trial for ministers under a resolution of the House of Representatives shall be regarded as a violation of the function of the judicial authority and the Public Prosecutor in Jordan because waiting for the decision to refer the case to the House of Representatives could be postponed for different reasons, the most important of which is that the House of Representatives is not in session or an exceptional session or that the House of Representatives may not support the decision to refer the case, and so it will be difficult for the Public Prosecution to pursue its criminal procedures. The research will state the position of the French constitutional legislation in this issue in comparison with the Jordanian constitutional legislation.

Research questions:

- 1) Is the approval/disapproval of conducting the criminal trial of ministers by a decision of the House of Representatives is considered infringing on the authority of the judicial authority and the Public Prosecution in Jordan?
- 2) Do both the in-service minister and the resigned minister hold criminal responsibility?
- 3) Does the Public Prosecution have a role in the criminal responsibility of ministers?
- 4) Who is the competent authority to issue a decision to refer ministers to trial?
- 5) What is the position of the French constitutional legislation on the trial of ministers?

Research Methodology:

The researchers adopted an analytical study and comparison between the latest constitutional amendments to the Jordanian constitution regarding the trial of ministers, the Jordanian ministers trial law in effect, and the relevant French laws, especially the French constitution.

Research Terminology:

Trial of ministers, criminal responsibility, the legislative authority, the judiciary authority.

Research Topics:

1. The concept of ministers
2. The criminal responsibility of ministers in Jordan
3. The criminal responsibility of ministers in France

Section One

The concept of ministers

In the Arabic language, the word minister " wazeer" is derived from the word "wizer", which means a heavy, cumbersome and difficult burden, and it is thought that it is taken from the Wazar" which is the refuge, While the word minister in English and French is derived from Latin origin and means servant, and it refers to the partnership between the ruler and the minister in making decisions and imposing them (Salah El-Din, 2017)

Minister: is a political figure who bears responsibility and mission in one of the areas within the government, and the government consists of several ministers. The Jordanian constitution dedicates Chapter 4, Part 2 for ministers as they are an important part of the executive authority. Article (41) stipulates that: “ President, and of such number of Ministers as may be needed and as public interest may require

The Council of Ministers shall be composed of the Prime Minister and a number of Ministers according to need, the public interest.” In Jordan, the number of ministers varies from one government to another, and according to the Prime Minister's point of view, and regardless of their number, they do not make any difference on the economic side that the people of Jordan are still worried about.

According to the text of Article (43) of the Jordanian Constitution, the Prime Minister, and Ministers before assuming their duties, take the constitutional oath before His Majesty the King. Article (47) of the Jordanian constitution also regulates the duties and powers of the minister and the prime minister, according to the text: (i) Every Minister shall be responsible for the conduct of all matters of his Ministry. He shall refer to the Prime Minister any matter not falling within his competence; (ii) The Prime Minister shall dispose of all matters within his powers and competence and shall refer other matters to the Council of Ministers for such decision as may be necessary.

Regarding the minister's concept to require the issuance of a referral decision by the House of Representatives to initiate the public right lawsuit against it, the Supreme Council for the Interpretation of the Constitution issued its Resolution No. (1) for the year 1990 which included expanding the concept of the minister to include, the in-service minister and the resigned minister. The council said, "The ministers intended in Article (55) of the Constitution are both the in-service ministers and the resigned ministers as long as they have committed the crime while performing their duties."

Consequently, we support the Supreme Council's interpretation of the constitution that the term "minister" includes the minister in service and the resigned minister because they committed the crime while performing their duties and they breach their oath so that there is no evasion of responsibility on the part of the minister

It is also the kind of strictness required so that every minister realizes the responsibility that falls on his shoulders and that he is accountable before the Jordanian people and the king. This fact is generally consistent with the law especially the criminal law, that the critical matter is when the crime is committed. If the crime is not related to their jobs, then they are considered ordinary citizens and the general rules in the criminal law apply to them.

It can be said that the Jordanian legislation must explicitly stipulate in the Jordanian constitution in the text of Article (55) that it includes in-service ministers as well as the resigned ministers as long as they committed the crime while exercising their functions and this is to prevent doubt or speculation, especially as it relates to criminal responsibility, whose most important principles are judgments based on assertion. Certainty is not on suspicion and guesswork.

Finally, we conclude that the minister is a member of a state's government, led by the prime minister, who is appointed to take over a specific ministry, usually appointed by the prime minister.

Section Two

Criminal responsibility of ministers in Jordan

Article (55) of the Jordanian constitution of 1952 and all its amendments indicated that "Ministers shall be tried by a High Tribunal for offenses which may be attributed to them in the course of the performance of their duties," in the capital city, and Article (56) of the same constitution gave the public prosecution the right to refer ministers to the Chamber of Deputies who approve to refer the minister to the public prosecution at its request, to proceed the court procedures by a majority of the members of which the Council of Representatives is composed, these constitutional articles are among

the essential constitutional amendments that were made by the Jordanian Constitutional Legislator in 2011 as a result of popular demands for the implementation of the several political reforms. Likewise, Article (57) of the Jordanian Constitution, stipulates that “ a Minister who is impeached by the Chamber of Deputies shall be suspended from office until his case is determined by the High Tribunal. His resignation shall not prevent the institution of criminal proceedings against him or the continuance of his trial.” The trial of ministers is requested by the High Tribunal office, as it has the primary jurisdiction to prosecute crimes under the Jordanian Code of Criminal Procedure No. 9 of 1962 and all its amendments.

The minister must have the competencies that qualifies him to manage his ministry, as the minister is an administrative and technical employee at the same time, and he must have the qualification that suits the ministry he is in charge of because this is one of the important aspects that, its absence, may lead to the minister's criminal responsibility according to the Law of Trial of Ministers No. 35 of 1952 and its amendments in Article (2) including misuse of authority or breach of job duty. As a matter of fact, the first case reported in Jordan was in the eleventh council in 1992 when the council voted not to indict the former prime minister, Zaid al-Rifai, while Mahmoud Hawamdeh, the Minister of Public Works in the Rifai government, was accused of misusing power and squandering public money.

But the verdict of the High Council for the Trial of Ministers at that time considered the Minister Al-Hawamdeh innocent. The second case in Jordan, that the former Minister of Tourism, Osama Al-Dabbas, was accused of the casino case in 2011 and several crimes were assigned to him, but the High Council for the Trial of Ministers at that time decided not considering this case because it was not within its jurisdiction and that it was within the jurisdiction of the regular courts.

While the third case in Jordan was that Minister Taher Al-Shakhshir was referred to the judiciary after the House of Representatives approved his referral and lifting his immunity in 2019, but the legal problem that was raised in this case is that he was a member of the Jordanian Senate, so does he need the approval of the Senate or Parliament ?? The legal opinion here is that the High Tribunal must initiate the common right lawsuit after the parliament referred the minister for questioning, and the High Tribunal is supposed to ask the Senate to lift his immunity, and until so far the approval has not been issued by the Senate.

The fourth case in Jordan: The Minister of Works, Sami Helsa, was referred to the Public Prosecution, according to which the investigation file was referred from the Public Prosecution to the Legal Committee in the Jordanian House of Representatives to study it and then submit the appropriate recommendation to the House of Representatives to vote on whether or not to refer the Minister to the Public Prosecution. The deputies voted by majority on the referral decision on the date 12/18/2019, which is a case pending before the judiciary until now. Accordingly, it is obvious that the trial of ministers in Jordan includes several axes, the most important of which are the misuse of power and breach of the duty in addition to the crimes committed against public administration under the Jordanian Penal Code. Where no minister was referred to trial for high treason.

Suspending criminal liability waiting for the issuance of a referral decision by the House of Representatives violates the public right and the significant role of the Public Prosecution in Jordan

because this suspends the criminal case if the House of Representatives is not in session, in an exceptional session, or it decided not to accept the referral decision, in these cases, it will be difficult for the Public Prosecution to take the required criminal procedures according to the interpretation of the decision of the High Council of the constitution in its Resolution No. (4) of 2012 in which it was stated that the authority of the Council of Representatives to try ministers is the exclusive right of the House of Representatives alone and that if it exercises this right no authority shall revoke his decisions in this regard.

Thus, it can be said that the Jordanian legislation must abolish the authority of the parliament regarding approving to refer the minister to the public prosecution because the issuance of a referral decision by the House of Representatives violates the public right as mentioned before, and at the same time, it is one of the powers granted to the judicial authority which we are proud of. That is considered right is to award these full powers to the Public Prosecution which is the main representative for the public right and for the important role that the Public Prosecution plays in Jordan. On the other hand, when the referral of the minister is postponed because the House of Representatives is not in session or an exceptional session, or it refuses to assent the referral decision.

The previous situations constitute a difficulty for the Public Prosecution to proceed with its criminal procedures, which is considered an overlap between the legislative and judicial authority. If we look at this matter from the other side, the members of the House of Representatives are citizens who under the Jordanian legislation, and according to the Code of Criminal Procedure they shall report the crimes that are committed and they have knowledge of them. This applies to the crimes stipulated in the Law on Trial of Ministers.

Likewise, it can be said that the Jordanian legislature must grant the Public Prosecutor a general mandate to refer ministers directly to the Jordanian judiciary since it is the most capable of achieving justice because it is an institution which has its autonomy according to the principle that judges are autonomous and has no institution over them except by statute.

Section Three

The criminal responsibility of ministers in France

Article (67) of the French constitution in 1958 stipulated that the court of justice shall be formed by election from among the members of the National Assembly and the Senate equally, and each council elects its members to the membership of the court by a decision taken by the majority and three judges of the Cour de cassation, one of whom shall preside over the Court of Justice of the Republic. The second paragraph of Article (68) of the constitution of 1958 indicated the responsibility of members of the government criminally for the acts committed during their tenure before this court, and that the French Court of Cassation confirmed that the jurisdiction of the Court of Justice is its exclusive jurisdiction .(Saud Falah ,2017)

The authorities of the Court of Justice concerning the Prime Minister and ministers are broader than they are for the President of the Republic, as for the accusation, it must be issued by both chambers by

public vote, and by an absolute majority of the members of the National Assembly, without counting the votes of its elected members as judges of the Court of Justice, and in the event that citizens participate with Ministers in committing criminal offenses, the 1958 Constitution created a compromise solution that combines the situation that prevailed in the Constitutions of 1875 and 1946. In the Constitution of 1875, citizens were summoned before the Court of Justice, whether they were partners with ministers or not.

As for the 1946 Constitution, the Court of Justice was not competent in these cases, and the compromise adopted by the 1958 Constitution was that it established jurisdiction for the Court of Justice, and its rulings were restricted to what was stated in the Penal Code, and thus it competes with the ordinary courts in their consideration of these cases. Rather, the investigation committee abides by the facts and the legal situation under the penal code in cases that are shared between ministers and citizens, and the trial is conducted in public, and it can be made secret for reasons decided by the court, and it issues judgments after voting by an absolute majority, and it is not subject to appeal. (Sayed Rajab , 1987)

As a result of the inability to prosecute the French ministers accused under the previous text, and as a direct result of what the case of the blood contaminated with HIV / AIDS raised, the ministers involved in that case could not be tried, despite their clear responsibility, thus, constitutional law No. 7/27 Concerning amending some provisions of the 1958 Constitution 10/4/4 This amendment stipulated new provisions for the criminal trial of ministers, as the text of the second paragraph of Article 68 was canceled and replaced by two new articles, and the new text came as follows:

Article (68/a): Members of the Government shall be criminally liable for acts performed in the holding of their office and classified as serious crimes or other major offenses at the time they were committed. They shall be tried by the Court of Justice of the Republic. The Court of Justice of the Republic shall be bound by such a definition of serious crimes and other major offenses and such determination of penalties as are laid down by statute.

Article (68/b): The Court of Justice of the Republic shall consist of fifteen members: twelve Members of Parliament, elected in equal number from among their ranks by the National Assembly and the Senate after each general or partial renewal by-election of these Houses, and three judges of the Cour de cassation, one of whom shall preside over the Court of Justice of the Republic. Any person claiming to be a victim of a serious crime or other major offense committed by a member of the Government in the holding of his office may lodge a complaint with a petitions committee. This committee shall order the case to be either closed or forwarded to the Chief Public Prosecutor at the Cour de cassation for a referral to the Court of Justice of the Republic. The Chief Public prosecutor at the Cour de cassation may also make a referral ex officio to the Court of Justice of the Republic with the assent of the petitions committee.

As an example of the practical application of the criminal trial of French ministers, was the case of the former prime minister (Alain Juppe) who was tried in 2004 on charges of mismanaging public funds when he was mayor of Bordeaux - imprisonment for eighteen months, depriving him of his civil rights for five years and depriving him of his right to run for office For ten years, (Juppé) did not appeal the

ruling before the Court of Cassation, and this did not prevent him from returning to political life in May 2007 by appointing him as Minister of State and Minister of Environment and Sustainable Development in the government of (François Fillon), which is the third precedent in the history of the French Republic, after (Michel) And Laurent.

When comparing the French constitutional legislation with the Jordanian's, we find that the French constitutional legislation stipulated that the court competent to try ministers is the Republic Court of Justice, and it consists of 12 parliamentarians and 3 judges, whereas the Jordanian legislation gives full competence to the Jordanian judiciary, hence, the position of the Jordanian constitutional legislation is better because it gives the competence to the judicial authority and there is no need for the legislative authority to interfere even if there is a simple judicial representation, as the French constitutional legislation did.

Likewise, the law concerning the trial of Ministers is the French Penal Code, and members of the government are criminally responsible for acts committed to holding their office, which are considered felonies or misdemeanors when they are committed, and This is in contrast to Jordan's statutory law. that has specified a special law for that, which is the law on a trial of ministers, Thus, it is preferable to set specific texts regarding the trial of ministers, since it gives a kind of emphasis to the value and duty that will rest on their shoulders and to bear the full liability of their duties, otherwise they will be punished with the most extreme penalty.

Finally, it can be said that the French constitutional legislation has explicitly stipulated that any person (citizen) claiming to be a victim of a serious crime or other major offense committed by a member of the Government in the holding of his office may complain of a petitions committee. This is considered a legal text par excellence and it achieves the main goal of special deterrence for members of the French government in any behavior or any action they perform, unlike the Jordanian constitutional legislation, which is implicitly stated in the Jordanian constitution, and It can be interpreted by referring to the rules of the Code of Criminal Procedure of Jordan.

Conclusion

The criminal responsibility of ministers and their trial is one of the most important things that reinforce the principle of integrity and affirms a basic principle, which is that everyone is equal before the law. The Jordanian legislation confirmed this in the Law on Trial of Ministers.

Results

1 -The Public Prosecution in Jordan has the right to refer ministers to the House of Representatives according to the Jordanian constitution and the law on the trial of Ministers, and these crimes are high treason, Malfeasance in office, breach of the duty.

2 -A decision must be issued by the Jordanian House of Representatives approving the referral of the Minister to the Public Prosecution to proceed with the trial procedures by the majority of the members who make up the Jordanian Parliament.

3- The authority of the Jordanian Parliament to refer ministers and try them is the exclusive right of the House of Representatives alone, and that if it exercises this right, its decisions in this regard are not revoked by any other authority.

- 1) According to a decision issued by the High Council for the interpretation of the Jordanian constitution, the ministers intended in Article (55) of the Jordanian constitution are the in-service ministers and resigned ministers as long as they have committed the crime while performing their duties.
- 2) The court competent to try ministers in France is the Republic Court of Justice and the Republic Court of Justice consists of fifteen members; twelve parliamentarians elected by the National Assembly and the Senate from among its members with an equal number of each, after each general or partial renewal of the two chambers and three judges from the Court of Cassation and one of them presides over the Republic's Court of Justice, in contrast to the Jordanian legislator, which gave full jurisdiction to the Jordanian judiciary.
- 3) The law concerned with the trial of ministers in France is the French Penal Code, and members of the government are criminally responsible for acts committed during the holding of their office, which are considered felonies or misdemeanors when they are committed, while the Jordanian constitutional legislation has set a special law for this, which is the law on the trial of Ministers.
- 4) The French constitution clarifies any person claiming to be a victim of a serious crime or other major offense committed by a member of the Government in the holding of his office may lodge with a petitions committee. This committee shall order the case to be either closed or forwarded to the Chief Public Prosecutor at the Cour de cassation for a referral to the Court of Justice of the Republic. The Chief Public prosecutor at the Cour de cassation may also make a referral ex officio to the Court of Justice of the Republic with the assent of the petitions committee. Whereas, the Jordanian Constitution, which does not explicitly provide for the complaint to be submitted explicitly by the citizens, but this is understood from the provisions of the Criminal Procedure Law.

Recommendations

- The Jordanian legislator must grant the Public Prosecution the general mandate the right to refer ministers to the Jordanian judiciary directly because it is the most capable authority for achieving justice and it is the authority that has its independence as no authority over them except by law.
- The Jordanian legislator must abolish the authority of the House of Representatives concerning the referral of the Minister to the Public Prosecution because it disrupts the public right and the postponements of the penal case in case the Parliament is not in session, in an exceptional session, or it may not approve the referral decision, and at that time it will not be easy for the Public Prosecution to pursue its criminal procedures, and this is also an overlap between the legislative and judicial authority. On the other hand, the members of the House of Representatives are

considered citizens and according to the Criminal Procedures Law citizens shall report the crimes that are committed and they have knowledge of them and this applies to the crimes stipulated in the Law on Trial of Ministers, and this is what the French constitutional legislator explicitly stated that a complaint can be submitted by any French citizen. A complaint against a member of the government if he has committed a felony or a misdemeanor while exercising his functions.

- The Jordanian legislator shall explicitly includes in the Jordanian constitution, the text of Article 55 "in service ministers" and "resigned ministers" as long as they committed the crime while holding their office, and this is to prevent doubt or speculation, especially as it relates to criminal responsibility, whose most important principles are judgments based on assertion. Certainty is not on suspicion and guesswork.
- The Jordanian constitutional legislator shall explicitly stipulates that a complaint may be submitted to the public prosecutor against the ministers if they commit any crime, whether it is a felony or a misdemeanor they committed while holding their office, as the French constitutional legislator did.

References

1. Al-Harbi Saud Falah (2017) , Criminal Responsibility of Ministers in the Saudi Constitutional System and Comparative Regulations, University of Sharjah Journal of Sharia and Legal Sciences, United Arab Emirates, Volume 14, Issue 1, p..
2. Abu Al-Rub Salah Al-Din (2017), Al-Dustour newspaper, Wednesday, September 13, .
3. Al-Bahri Hassan (2006), Mutual control between the legislative and executive authorities as a guarantee for the enforcement of the constitutional rule, Ph.D. Thesis, Ain Shams University, AD.
4. Ismail Essam Neamah (2006), The Trial of Ministers between the Judicial and Political Judiciary, Al-Halabi Legal Publications, 1st Edition, Beirut-Lebanon, AD.
5. Al-Sayed Syed Ragab (1987) , Ministerial Responsibility in Contemporary Political Systems Compared to the Political System, 1st Edition, AD.
6. Raafat Waheed(1937), and Waite Ibrahim, Constitutional Law, Cairo - Egypt, AD.