

The Three Most Important Features of Jordan's Legal System

Dr. Mohamed Olwan
Dean of Faculty of Law
Yarmouk University
Irbid, Jordan

Jordan was a part of the Ottoman Empire for more than four centuries. The country was then placed under the League of Nations' mandate which lasted until the achievement of independence on 5, May 1946. This article aims to outline the main features of the legal system of the Hashemite Kingdom of Jordan which is known to be a new system and a dynamic one:

First

Jordan: A Constitutional Monarchy

Jordan is a constitutional monarchy based on the constitution promulgated on January 8, 1952. Executive authority is vested in the King and the Council of Ministers. Legislative power rests in the bilateral national assembly, and the 110 members of chambers of deputies, elected by universal suffrage to a four year term, subject to dissolution by the King. Nine seats are reserved for Christians, six for women, and three for Caucasians and Chechniens. The forty members Senate is appointed for a four year term. Judges are appointed (and not elected) by the Judicial council which comprises high ranking members of the legal system and cases are decided only by judges and not juries. The Constitution adopts "the separation of power" doctrine but this doctrine is not adequately applied as the executive possesses excessive and arbitrary powers in its relations with the parliament and therefore the latter is confined, in several cases, to a somewhat marginal role.

Although democratic parliamentary elections have been held regularly since 1989, the government can delay the elections beyond the constitutional deadline of the ballot and during the dissolution of parliament or in cases where the National Assembly is not sitting the Government has the power to issue provisional laws. Those laws do not always meet the conditions clearly stipulated in the constitution and in particular the one requiring that these laws cover matters which admit of no delay or which necessitate expenditure incapable of postponement.

Elections of the parliament and the municipalities are still mainly based on 'tribal' criteria, irrespective of candidates' qualifications. In fact, this tendency has increased through the so-called "one person; one vote" principle adopted in the election act of 1993. The said act ended the previous system, whereby voters were entitled to as many votes as the numbers of parliamentary seats allocated for their districts. The result is that Jordanian electoral districts are unequal in size and the electoral law of the country over-represents rural and conservative districts while under-representing urban areas that tend to be bastions of Palestinians and Islamist-supporters. This structure ensures that elections in Jordan are not always 'free and fair'. Laws made by the parliament are not subject to adequate examinations to ensure that they are constitutional and therefore there is a need to establish a specialized constitutional

court. The Decision of the Executive, which has the power to enforce laws on ground, are subject to an examination to ensure that they are legal but the role of the High Court of Justice in examining the legality of the administrative actions concerning the rights and freedoms of individuals must be improved.

Basic human Rights and freedoms are incorporated in the Jordanian constitution. However, there are still certain shortages in Jordanian Law in this regard because there is no explicit reference in the constitution to some very basic rights and freedoms.

The right to establish political parties and societies is recognized in the Jordanian constitution but the abundance of political parties make it difficult for them to play an effective role in the political life of the county. This role is still very weak; many government policies have passed with no effective opposition by the parliament – even when these policies may contradict basic human rights and freedoms. Civil society in Jordan is still small and weak.

Jordanian media tends to be partially state-owned and controlled by the government. As such it is subjected to censorship although this censorship has led to intense debate recently. In 2007, a new law on Press and Publications was enacted, as well as a law guaranteeing the right to access to information. The former law prohibits the taking of journalists into custody, but fines imposed on publications found to be in violation of the press law have been raised considerably.

Genuine efforts are being made towards democratic reform and modernization is taking place. Specialized human rights institutions and consultative Human Rights councils are being set up. Recently, new laws have been enacted and several laws have been amended in order to enhance Human Rights and democracy in the country but the condition of human rights in the Kingdom is not at its best. For example, torture is practiced and citizens are being consistently deprived of their nationality following the disengagement with the West Bank resolution issued in 1989, and foreigners are sometimes deported at random. Jordan, as other Muslim countries, experiences a conflict between the exigencies of international human rights on one hand and some fundamental characteristics of the society on the other.

Second:

Codification:

Jordan follows the codification system. Therefore, all legal rules that are applicable by the courts are codified. Hence, there is no place for applying common law system which is known in some countries such as the United Kingdom and the United States. Within this codification system, the constitution is considered as the highest legal instrument, whereby all other laws must observe its general principles and rules. The Laws enacted by the parliament come in the second place and after that come the regulations which are made by the executive authority by virtue of the laws themselves.

Courts in Jordan apply the written laws in their constitutional sequence of enforcement and priority. They are not, therefore, bound by the ruling of other courts even if they have been issued by a higher court nor are they bound by their own previous ruling, but only by what is provided by the law. In short, Jordan does not apply the precedent system.

The constitution provides for the establishment of three categories of courts: civil courts, religious courts and special courts. Civil ordinary courts comprise courts of first instance: courts of appeal, the High court of Justice, and the Supreme Court. These courts have jurisdiction over all persons in all matters, civil and criminal, including cases brought by or against the government. The religious courts are Shariah courts which have jurisdiction in respect to matters relating principally to personal status of Muslims and tribunals of other religious communities with jurisdiction over the personal status of non-Muslims. Special courts deal with different matters and comprise courts such as state security courts administered by the Jordanian military. The jurisdiction of the state security courts has vastly expanded in the last years. The judiciary is declared independent but in fact subject to political pressure and interferences by the executive branch.

Third:

Diversification and Modernization:

Enacted in 1976, the current Jordanian civil Law replaced the Ottoman Majallah of 1876 which is highly influenced by Islamic Law. The Civil Law comprises rules derived from the Egyptian civil code of 1948 which in turn was modelled on the Napoleon code. Despite this fact, it can be generally said that the civil law of Jordan remains an Islamic-oriented one. Section two of the Civil code makes this clear when it provides that Islamic jurisdiction is the second source of the civil law and Shariah the third. In this sense, wherever a judge does not find a specific rule within the provisions of the Civil law code, he shall try to find the solution by referring to Islamic jurisdiction, and Shariah principles, respectively.

The Jordanian civil code deals with the main following topics: the formation of a contract, performance of obligations, the contract of sale, some other specific contracts, rights of ownership, real securities. It includes also some general rules relating to evidence and some provisions that regulate labour contract and lease contract. However, and given the importance of these contracts, the legislator regulated them by independent acts. Therefore, we have an independent evidence act, lease act, civil procedure act, labour act, insurance act, among others.

Family laws, such as marriage, divorce and custody fall out of the scope of the Civil Law, as these matters are governed by independent acts. Family laws for Muslims are derived from Islamic law, whereas family laws for Christians are derived from the Christian faith. Some other laws of Jordan are highly influenced by French law such as the Criminal law. On the other hand, English law is found to be the prime source for other laws, such as company law, insurance and trade laws.

Moreover, customs and trade practices are considered a source of the legislation, especially in civil and commercial law. It is generally believed that such diversification enriches the legal environment in Jordan and makes it more exposed to international legal standards.

The legal system in Jordan is flexible in the sense that it is open and ready to adopt new laws. In a number of instances, laws were enacted or amended in order to reflect the requirements of new circumstances, or to cater to political and economic reform needs. Laws governing businesses in Jordan have undergone a fundamental change in 1995 in an attempt to attract foreign investment and create a self-sustaining economy. Several laws are enacted as a result of Jordan's accession to WTO in 2000 and the signing of free-trade agreements with the United States and the European Union the following year. The new laws regulate matters such as intellectual property, line-contracting, electronic signature and certification, arbitration and companies.

Jordan is subscribing more and more to universal human rights standards. During the last two years, the main international rights conventions have been published in the official gazette, making these conventions part of the Jordanian legal system. These conventions include the international convention on the elimination of all forms of Racial Discrimination, the International covenant on civil and political rights, the International Covenant on Economic and Social and Cultural Rights, the Convention Against Torture and other cruel, inhumane, or degrading treatment or punishment, the Convention on the rights of the Child and the convention on the elimination of all forms of discrimination against women. Reservations made upon ratification or accession to international human rights conventions are regrettable, but the withdrawal of these reservations may be possible in the near future. International conventions of human rights have become part of the national law endorsed by the competent authority and replaced any current law to the extent that such law is not in line with the constitution.