

# Criminal Constitutional Policy for Protecting the Right of the Accused: A Case Study of the Jordanian Constitution

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State constitutions seek to protect society from the threat of crime and punish the perpetrators, as well as protect the rights of individuals accused of committing a crime. Fighting crime requires taking measures to impose restrictions on the rights and freedoms of individuals. However, criminal proceedings may be used to violate those rights and freedoms under the pretext of fighting crime. Therefore, the constitution is required to establish a criminal policy that defines the controls and principles that criminal law must adhere to when criminalising acts and punishing perpetrators. Similar to international covenants on human rights, the Jordanian constitution provides for some principles and controls that state authorities must adhere to when stipulating measures to combat crime, without prejudice to the rights of the accused and to fair trial guarantees. It stipulates the principle of legality, which includes, in one of its forms, the principle of non-retroactivity of criminal laws. It also stipulates the principle of presumption of innocence and the criminalisation of attack on freedoms and the inviolability of private life. However, the Jordanian constitution legitimised the exceptional judiciary by allowing civilians to be tried before military courts, which means violating the principle of the independence of the judiciary and fair trial guarantees. Using descriptive and analytical methods, this study examines the criminal policy represented in the principles and controls adopted by the Jordanian constitution in light of its impact on protecting rights and freedoms. The study concludes that, despite the importance of these principles and controls, they are not sufficient to establish a clear and comprehensive constitutional criminal policy. Consequently, the Jordanian constitution must include other provisions that explicitly guarantee a fair trial and prohibit exceptional courts.

**Key words:** *Constitution, Criminal Policy, Criminal Principles, Jordan, Rights and Freedoms.*

## Introduction

Criminal policy can be defined as the means and measures adopted by the State to combat crime and preserve its security and stability. It outlines criteria regarding the state's concern for the protection of human rights and freedoms. It is designed to combat the criminal phenomenon and punish the perpetrators, with the aim of protecting the interests of society and individuals from the threat of crime and criminals. On the other hand, this policy should also aim to preserve the guarantees of a fair trial, and to create appropriate conditions for the establishment of a judicial system based on impartial justice that guarantees the rights and freedoms of all (Terziev & Krastev, 2018).

Criminal policy in the state is mainly shaped by the constitution and activated through criminal law on the basis of the framework specified in constitutional provisions. This framework is developed by adopting some constitutional principles that contribute to shaping criminal policy in a way that ensures a balance between conflicting interests. Therefore, the legislature must abide by this framework when defining criminal acts, by the courts when imposing the penalties stipulated in the law, and by the executive authority when implementing punishments imposed by the courts (Gilling, 2001). The Criminal Law seeks to protect the rights, security and safety of others, to prevent and combat crime, and to preserve the stability of society in general. However, it imposes restrictions on the rights and freedoms of individuals during the phase of determining criminal acts, in the trial phase, and in carrying out the punishment. It may deprive individuals of their freedoms and impose penalties on them. Thus, the law can be used as a tool for tyranny and attacks on rights and freedoms, and it can also be used as a tool to protect those freedoms (Tulkens, 2011). This is clearly related to the criminal policy stipulated in the constitution, as the constitution is supposed to include the basic principles and define the general framework for this policy. If this policy is based on valid and fair grounds, the required protection of human rights will be achieved. However, if this policy is vague and not based on clear foundations, criminalisation and punishment become a means of tyranny and injustice. Therefore, criminalisation of acts must achieve the presumed goal. It is not permissible to criminalise any act with the aim of restricting rights and freedoms for political motives, or for the purpose of suppressing citizens, or imposing strict penalties that are not commensurate with its purpose to protect society and deter criminals. It is also assumed that the criminal law criminalises actions committed by the public authority in the event that it violates the law or exceeds its powers in a manner inconsistent with the rights and freedoms of citizens (Al-Safu, 2018).

The Jordanian constitution expressly or implicitly includes some provisions that aim to find a balance between combating crime on the one hand, and both preserving rights and freedoms and ensuring a fair trial on the other hand. These provisions, mentioned in Articles 6, 7 and 101, include the principles and controls that define a criminal policy to protect the rights and freedoms of individuals so that they are not violated under the pretext of fighting crime. These principles are: the principle of legality, the principle of non-retroactivity in criminal provisions, and the principle of the presumption of innocence. These principles serve as a general framework for the rule of law that the legal state cannot override in its legislation, as these principles have become universal human values (Al-Safu, 2018). Applying descriptive and analytical methods, this study deals with the principles, constitutional controls and fair trial guarantees stipulated in the Jordanian constitution that provide a criminal policy to protect the rights and freedoms of individuals.

### **The Principle of Legality**

The principle of legality, in its general sense, means that it is not permissible to criminalise any act or punish its perpetrator except with a legal text issued by the legislator. The legislator is the one who determines the acts that are considered crimes and clarifies their circumstances and elements. They also determine the penalties for these crimes in terms of type and duration (Chen, 2019). Consequently, any act that is not explicitly criminalised by law must be considered permissible, and its perpetrators may not be punished even if this act violates the rules and moral values of society. Accordingly, this principle embodies the legal state that is based on imposing the rule of law on all individuals in their behaviour and activity, as well as imposing it on all central and local state bodies and other public facilities (Iman, 2019).

### ***The Principle of Legality in National and International Instruments***

The principle of legality is a result of the historical development that, in one of its aspects, represents the conflict between the ruling authorities and the people who demand freedom and resistance to tyranny. This principle was referred to in some of the ancient covenants that were imposed on kings by force, such as the Charter of Liberties, which was proclaimed by Henry I of England in 1100, and the Magna Carta in England of 1215. It was also stipulated in Article (7) of the French Declaration of the Rights of Man and of the Citizen in 1789 that states, “No person shall be accused, arrested, or imprisoned except in the cases and according to the forms prescribed by law.” At the international level, the principle of legality has been affirmed in Paragraph (2) of Article (11) of the Universal Declaration of Human Rights, 1948 (UDHR), which provides that: “No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed

than the one that was applicable at the time the penal offence was committed.” This text has been provided for, in the same wording, in Article (11), Paragraph (2), of the International Covenant on Civil and Political Rights of 1966 (ICCPR).

The Jordanian Constitution has not explicitly provided for the principle of legality, however, it implicitly referred to it in Paragraph (1) of Article (8) which states that “No person may be seized, detained, imprisoned or the freedom thereof restricted except in accordance with the provisions of the law”. This text narrows the instruments restricting freedom, confining it only to the law and not to other sources of legislation that are lower than the law. Therefore, the restriction of freedom must be a punishment issued by a competent court in accordance with the provisions of the law. It should not be an precautionary administrative measure carried out by the governmental authority without relying on a judicial ruling, such as preventing a person from leaving their home according to a regulation issued by the executive authority, or by an administrative decision issued by the administrative governor. As such, this constitutional text is a guarantee for individuals against arbitrary detention imposed on them by state authorities. It also constitutes a guarantee of the right to personal security and the right to freedom.

On the other hand, laws should not extend the scope of detention and confiscation of liberty. Rather, they must observe the provisions of Article 128 of the constitution stipulating that laws issued under the constitution to regulate rights and freedoms may not affect the essence of these rights or touch their essentials. Consequently, this text is the constitutional basis for nullifying laws that affect the essence of rights and freedoms and their fundamentals, based on the principle of the supremacy of the constitution. It must also abide by the international covenants ratified by the state authorities, given that these covenants are higher than the laws. Therefore, if the national law includes criminalising an act or imposing a punishment contrary to the international conventions ratified by the state, this authority has been used arbitrarily, and in violation of Article 128 of the Constitution.

The Jordanian Constitution also criminalises any assault on rights and freedoms. Paragraph 2 of Article 7 states, “Every violation of public rights and freedoms or the inviolability of private life for Jordanians is a crime punishable by law.” This text is the constitutional container for the principle of legality, as it is the constitutional basis and reference for all legal texts that criminalise attacks on rights and freedoms. It also sets a general framework and a protective fence against attacks on public freedoms and the sanctity of private life, whether this attack was committed by individuals, the press, or government authorities. This constitutional text requires the criminal legislator to include violations of rights and freedoms within the framework of criminal acts and to impose deterrent penalties on perpetrators, including criminalising all types of torture used to extract information or recognise a crime.

### ***The Importance of the Principle of Legality in Protecting Rights and Freedoms***

Determining the acts that are considered crimes and describing the punishment required for them is one of the most accurate functions exercised by the legislature. This is because of its direct association with the freedoms of individuals. Leaving harmful acts without criminalisation and punishment would threaten the rights of others and society at large, since the freedom of individuals remains threatened if there is no criminal law that outlines the criminal acts and the penalties prescribed for them (Abdallah & Al-Nasrawi, 2019). The principle of legality constitutes a fence that protects the individual from tyranny and abuse of power, whereby the authority may exaggerate the punishment in the absence of a law specifying the elements of the crime and the penalty prescribed for it. Therefore, this principle plays a preventive role that protects society from the occurrence of crime, as the determination of criminal acts and the prescribed penalties constitute a psychological deterrent to individuals preventing them from committing a crime. In addition, the principle of legality enhances the general sense of justice, where it gives the punishment a legal basis and makes it acceptable by public opinion, as long as it is issued by people's representatives and with the aim of achieving the public interest (Abdallah & Al-Nasrawi, 2019).

Accordingly, the principle of legality is an important safeguard of human rights, as it defines the legal framework for the protection of those rights. This principle also constitutes a control of the actions of the ruling authority and a reference that can be relied upon in the case of the abuse of authority. In addition, it is an important criterion for distinguishing the authoritarian state from the legal state. In the authoritarian state, the law mixes with the will of the ruler, so the ruler has the absolute authority to take whatever actions and measures they deem necessary to achieve their desires without any regard for the interests of the people or the provisions of the law and its rules. The legal state is subject, with all of its actions, to the principle of legality in which the rule of law prevails alone, without the will of the ruler having any role. The principle of legality requires that criminal and punitive texts be formulated in a clear and specific way, so that these texts are not nets or traps to hunt individuals as a consequence of their breadth or ambiguity. Therefore, this principle aims to ensure that the individuals concerned with criminal and punitive texts are aware of the details of this text so that their behaviour does not contradict them (Schane, 2006).

### **The Principle of Non-Retroactivity of Criminal Laws**

The principle of non-retroactivity of criminal laws is one of the basic constitutional principles that defines the criminal policy of the state. This principle, which is inevitably linked with the principle of legality, means that provisions for criminalisation and punishment apply only to acts committed once the law is in force, whether these actions were permitted before the enforcement of the law, or if it is punishable by a lighter penalty than the new law stipulates.

Therefore, the new criminalisation text does not apply if it stipulates a more severe punishment than the one provided in the previous text. The principle of non-retroactivity of criminal laws contains some exceptions required by the interests of individuals and their rights. The new criminal law can be applied to acts committed before it is enforced if this law is more appropriate for the accused, as in the case that it makes the act permitted after it was a criminal, or imposes a penalty lighter than those imposed by the old law.

### **The Principle of Non-retroactivity in Criminal Laws in the Regional, International and National Legislations**

The importance of the principle of non-retroactivity in criminal laws led to its inclusion in regional and international instruments. It is stipulated in Article (8) of the French Declaration of Human Rights and of the Citizen in 1789 that “the law shall provide for such punishments only as are strictly and obviously necessary, and no one shall suffer punishment except it be legally inflicted in virtue of a law passed and promulgated before the commission of the offense”. It is also mentioned in Article (7) of the European Convention for the Protection of Human Rights of 1950 (ECHR) “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. At the international level, it has provided for in Article 15 of ICCPR. This Article used almost the same meaning and the same wording mentioned in Article (7) of the (ECHR). This covenant is one of the binding covenants for those states that have ratified it. Therefore, it is considered part of its legal system, and the provisions contained therein are binding on states parties. The Jordanian Constitution does not explicitly stipulate this principle. However, it is an inevitable and logical result of the principle of legality, since applying the provisions of the new criminal law to an act committed before this law came into effect means imposing a penalty for this act without relying on a legal text.

### **The Importance of the Principle of Non-Retroactivity of Criminal Laws in Protecting Rights and Freedoms**

The importance of this principle is that it is an important human rights guarantee. It is also required to achieve public interest. That is, individuals will not feel the necessary security or reassurance for exercising their rights and freedoms if they are later held criminally responsible for acts that were permissible at the time of action (Walad Arous, 2017). Similarly, applying the legal rule to the past violates the due stability of transactions and wastes due confidence in the law. In addition, individuals often have legal rights and positions in light of the legal rules in force, and it is not just that amending these rules or abrogating them with new legal rules form a mean to prejudice these rights and legal status

that were valid under the old legal rules. Furthermore, the public interest necessitates preserving the confidence of individuals in the legal system and assurance in the legal status that they acquire under the system. Moreover, this principle is consistent with considerations of justice and legal logic, as the legal rule is a message addressed to people that includes a command or assignment of a certain behaviour, and the command does not imagine that it is directed to what has passed, but rather, to what will come. Therefore, it is not fair for individuals to carry out permissible acts and then have new laws issued that impose penalties applicable to those acts. Accordingly, the principle of non-retroactivity of the law is essential in ensuring the freedoms and rights of individuals, and in ensuring confidence in the law, and in providing stability and order in society ( Mantovani, 2003).

### **The Principle of the Presumption of Innocence**

The principle of the presumption of innocence means that the accused is innocent of any charge, regardless of its gravity, until proven guilty by a final judicial ruling, and in a public trial by a competent court after providing the accused with all means of self-defence. The importance of this principle is demonstrated by the fact that it leads to the absence of judicial error in condemning innocents. Meanwhile, the accused who fails to prove their innocence in the absence of this principle is considered guilty, which leads to the absence of justice and shakes people's confidence in the judiciary. The Principle of the Presumption of Innocence is a fundamental rule in criminal law as it is a cornerstone of any fair trial. It is also an important safeguard of rights and freedoms, as it protects the accused person from being harmed, and protects their rights and freedoms from the abuse of the authority. It also leads to the avoidance of damage that might be inflicted upon them if they were treated guilty and then proved innocent.

### ***The Principle of the Presumption of Innocence in the International and National Law***

The principle of the presumption of innocence is stipulated in Paragraph (1) of Article (11) of the (UDHR, 1948), which states “Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence”. It is also stipulated in Paragraph (2) of Article (14) of the (ICCPR, 1966). “Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law”. In Jordan, this principle is one of the constitutional principles, which forms part of the criminal policy established by the Jordanian Constitution and must be observed in the Criminal Law, where Article (101) of the Jordanian Constitution states that “the accused is innocent until proven guilty by a final judgment.” It is also confirmed in Paragraph (1) of Article (147) of the Jordanian Criminal Procedural Law.

The importance of stipulating this principle in the constitution lies in preventing the ordinary legislator from passing legislation that contradicts it. On the other hand, the lack of stipulation of this principle in the constitution, and only being stipulated in the Criminal Procedural Law means that the legislator can override this principle with private legislation on the pretext that the legal principles state that private legal rules have priority over the application of general legal rules, and the following legal rules have priority over the application to previous legal rules. However, when this principle is stipulated in the constitution, there is no justification then for not sticking to it, because there is a more important and fundamental legal principle, which is that the higher legal rule restricts the lower legal rule. The stipulation of this principle in the constitution also means that the constitutional legislator added a very important guarantee of personal freedom and strengthened the right to security, which is one of the most important human rights. It built a strong fence that protects personal freedoms from abuse by the competent authorities in revealing the crime.

### ***The Consequences of the Presumption of Innocence***

The stipulation of the principle of the presumption of innocence in the constitution arranges very important results that would establish the rules of justice. These results are as follows:

1. The burden of proving the charge rests with the Public Prosecution, which falls within its primary function to uncover the truth. Consequently, the accused is not required to provide evidence of their innocence, as it is assumed. The Public Prosecution, as an accusatory body, must prove all the elements of the charge assigned to the accused. Meanwhile, the criminal judge is obliged to investigate the truth by searching for evidence, whether it is evidence of guilt or innocence. Likewise, the accused is not obligated to provide evidence of the validity of their defence, such as the claim that there is a criminal responsibility contraindication, or the presence of a state of legitimate defence, where it is the duty of the Public Prosecution to investigate the validity of the accused's claim and the validity of their defence (Ferguson, 2016).
2. Suspicion is explained in favour of the accused. When the criminal judge directs the guilty verdict to the accused, they must base their verdict on assertion and certainty, based on preemptory evidence, not on intuition and guesswork. If there is doubt about any evidence, this doubt is interpreted in favour of the accused, based on the principle of the presumption of innocence. Innocence may also be based on unlawful evidence, while conviction may only be based on legitimate and incisive evidence (Gray, 2017).
3. The accused must be treated as innocent throughout the investigation and trial proceedings until proven guilty by a final court ruling. It follows that the arrest and interrogation process required by the trial procedures must take place within the guarantees established by law, as it affects personal freedom.

4. The preventive detention must be in a narrow range required by the interest of the investigation, without expanding it. The arrest without a clear reason would affect the personal freedom of the accused. Therefore, arrest and deprivation of liberty must be restricted to narrow limits stipulated by the law. It is not sufficient to give legitimacy to the deprivation of liberty, i.e. that an arrest is made by a decision of the competent authority in accordance with the legislation in force. Rather, the decision must be consistent with the general principles of the law, which require that deprivation of liberty is necessary to achieve the public interest, and that leaving the accused free will threaten this public interest (Das, 2016). The intended public interest in an arrest during an investigation or trial is the fear of losing justice if there are serious doubts that the accused will not flee or constitute a threat to society, or that alternative preventive measures for arrest (such as bail or travel ban) will not be effective in dispelling these doubts. In this case, the rules of justice require that the investigating judge determine the reasons for the arrest and justify clearly that the alternative procedures for the arrest are not sufficient. The arrest in itself is an exceptional procedure that the legal principles and standards refuse to resort to easily, except in narrow limits and in line with the principle that the accused is innocent until proven guilty by a final judicial ruling. In addition, detention should not in itself be a punishment, nor should it last for a long time. Neither should its use and renewal be used as a way to pressure the detainee to confess to a crime.

### **Fair Trial Guarantees**

The right to a fair trial is part of the human rights system, where fair trial standards are one of the most important guarantees that protect a person from discrimination or attacks on their humanity and dignity at all stages of the trial, whether during the arrest of the accused, during their detention, before being brought to trial, or during the trial. On the other hand, a fair trial requires that the judiciary be an independent and impartial authority, and that it is not subject to authority other than the rule of law (Human Rights Committee. General Comment No. 32, 2007). As the principles of justice require that the judiciary be independent, an independent judiciary is the most capable of protecting justice and protecting the rights of litigants within the framework of legality.

### ***The Concept of a Fair Trial in International Instruments***

The right to a fair trial is a right that has been enshrined and standardised in international instruments. According to the UDHR, “Everyone is fully entitled to a fair and public trial by an independent and impartial court, in determining his rights, obligations and any criminal charge against him” (ICCPR, 1966). The right to a fair trial is considered one of the standards of international human rights law, which aims to protect individuals from bias, derogation or denial of their rights. Article 14 of this covenant states that “all persons are equal before the

courts and tribunals. When determining any criminal charge against him or his rights and obligations in a lawsuit, everyone has the right to a fair and public trial. By a competent, independent and impartial court established by law.”

The international instruments set a number of mandatory criteria for achieving a fair trial for each accused, and can be summarised as follows:

1. The right not to be subject to arbitrary arrest or detention in any way, and in any situation. It is not permissible to deprive anyone of their freedom except in accordance to the conditions and in the manner stipulated by law. Arbitrariness is not limited to actions that violate the law; rather, it includes injustice, dishonour, the element of surprise, and everything that affects human dignity in any way.
2. The right to realise rights: Every person has the right to know of their rights relating to protection, defence, preservation of dignity and guarantee of access to justice and equity. This right has been affirmed through Principle (13) of the United Nations Principles relating to the protection of persons under any form of arrest or detention, which states that the authority responsible for arrest or detention must provide and explain to the arrested person all information regarding their rights, and how to benefit from it.
3. The right to a lawyer: The detainee has the right to appoint a lawyer to defend him at all stages of arrest, investigation, and trial.
4. The right to inform the family of the accused of their arrest: This right is stipulated in Rule (68) of the "UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)". The detainee has the right to immediately inform their family about their detention, while granting them all reasonable facilities to contact them (UN General Assembly, 2015).
5. The right to investigate allegations of torture: Article (13) of "the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment" states that the authorities must ensure that impartial investigations are conducted promptly into all allegations of torture. The Commission on Human Rights stressed the need for the authorities to urgently and in a spirit of neutrality investigate every complaint of torture (Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984).
6. Not to invoke confessions extracted under torture and not to rely on them as evidence of proof and conviction by the accused.

### ***Fair Trial Guarantees in the Jordanian Constitution***

The Jordanian Constitution provides for rights and freedoms in the second chapter. In this chapter, it does not mention any of the guarantees of a fair trial as a human right, except for the principles mentioned above. However, in Article (101), which comes under the heading

“The Judicial Authority”, it affirms the independence of the judiciary. It also provides an important criterion for fair trial guarantees, which is that an accused civilian may not be tried except before a competent neutral judge, but the second part of this text gives legitimacy to exceptional courts and opens the way for military courts to try civilians. Article (101) of the Constitution states that “1. The courts shall be open to all and shall be immune from interference in their affairs. 2. No civilian may be tried in a criminal case where all its judges are not civilian, the exception to that are the crimes of treason, espionage, terrorism, the crimes of drugs and currency forgery”.

It is well known that giving exceptional courts the jurisdiction to try civilians is incompatible with the principle of independence of the Judiciary and does not meet the criteria of a fair trial. It is true that the Jordanian Constitution defines the crimes that can be considered by exceptional courts composed of military judges, but questions around describing these crimes, defining their scope, and determining the formation of the Courts are left open. Article 2 of the State Security Court Law authorises the Prime Minister to establish a special court called the State Security Court. This Court may consist of one body or more made up of civil or/and military judges. The military judges are appointed by decision of the Prime Minister, upon the recommendation of the Chairman of the Joint Chiefs of Staff, while the civil judges are named by the Council of Judiciary. Article 7 of the State Security Court Law clarifies the method of appointing prosecutors to the State Security Court. The Chairman of the Joint Chiefs of Staff shall appoint the president of the military courts or one of their assistants as the public prosecutor at the State Security Court, and then the public prosecutor can appoint their assistant from the military judges. They also have the power to appoint one or more military judge to act as a prosecutor.

The formation of this Court contravenes the provisions of the Constitution. The Jordanian Constitution provides that judges are independent and subject to no authority other than the law, whereas the judges of the State Security Court are subject to a power other than the power of law, which is to obey the superior officers. The military judges are officers in the armed forces, and are subject to the regulations of the army, which oblige them to obey the superior officer under whom they are responsible, and where they have sworn an oath to implement orders issued by their superior officers. The Penal Code and the Anti-Terrorism Law have expanded the scope of crimes considered terrorism and included them within the jurisdiction of the State Security Court as an exceptional court. For instance, this Law included any speech that would disturb relations with a foreign country, or criticise the political system of government, to be within the scope of terrorist acts and thus, included them within the jurisdiction of the State Security Court.

Hence, giving the State Security Court (which consists of military judges and military prosecutors) appointment by the Prime Minister on the recommendation of the Chairman of

the Joint Chiefs of Staff, the authority to try civilians in cases relating to freedom of expression is a clear violation of the principle of the separation of power and the principle of the independence of the Judiciary, in addition to being a strict means of depriving individuals their freedom of expression. Therefore, the State Security Court has been the subject of controversy and debate with regard to its compatibility with the principle of the independence of the judiciary and in regard to its violation of the rights and freedoms of citizens, in particular, freedom of expression.

## **Conclusion**

The constitutionality of the criminal law is one of the most important topics that the constitution must take into account in the context of preserving rights and freedoms. The criminal law and its criminalisation of some acts, and the imposition of punishment on those who commit them, have a direct impact on the rights and freedoms of individuals. Therefore, leaving the regulation of these subjects to ordinary laws, without control by the constitution, may give way to these laws expanding criminalisation and punishment at the expense of rights and freedoms. Moreover, it is assumed that the constitution enshrines the legal state, which must protect everyone's interests and balance conflicting interests, where constitutional protection must not only apply to the protection of society from crime, but also to the protection of the rights and freedoms of individuals. These rights and freedoms should not be lost under the pretext of fighting crime and protecting the interests of society. Therefore, interests must be reconciled within the framework of criminal justice and fair trial. Accordingly, the constitution must include general provisions that define a binding and clear criminal policy for the legislator in issuing the criminal law, so that the law does not become a tool for violating rights, rather than an instrument of justice. This constitutional policy must include clear and explicit principles and standards to protect the procedural rights of suspects or accused persons in criminal proceedings.

This approach is enshrined in international conventions that provide fundamental guarantees for those accused of crimes. These guarantees aim at balancing society's interest in protecting against crime with the interests of accused persons, whose rights protect them from abuse and injustice throughout their trial procedures. Therefore, international conventions expressly state the principle of legality, the principle of non-retroactivity in criminal laws, the principle of the presumption of innocence, in addition to all fair trial standards and guarantees.

The Jordanian Constitution includes provisions through which the constitutional policy of criminalisation and punishment can be extracted. The principle of the legality of criminalisation and punishment can be inferred from the provisions of Article 8 that prevent anyone from being arrested, imprisoned or restricted in their freedom except in accordance with the provisions of the law. This article also stipulates that, for any person arrested,



imprisoned, or for whom freedom is restricted, their dignity must be preserved, and they may not be tortured in any way, whether physically or morally. In addition, the article states that no confession shall be taken from any person under torture, harm or threat. With regard to the principle of non-retroactivity in the penal law, this principle was not stipulated in the Jordanian constitution, but can instead be considered an inevitable result of the principle of legality. As for the principle of the presumption of innocence, the constitution considered it one of the constitutional principles that was explicitly stipulated.

Accordingly, the Jordanian constitution provides basic principles that guarantee a fair trial. However, it has opened a path for exceptional judiciary through allowing for the trial of civilians before the State Security Court as a military court. This undermines the principle of judicial independence, given that the military courts belong to the executive authority, and not to the judicial authority. Likewise, this approach undermines fair trial guarantees and thus undermines the rights and freedoms of individuals, especially since the Jordanian Penal Code and the Law of the State Security Court have expanded the scope of crimes that fall within the jurisdiction of the State Security Court. These two laws now include cases that fall under freedom of expression to be within the jurisdiction of the State Security Court, as they have been classified as terrorist acts.

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