

A Right to Fair Trial

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This paper addresses the issue of the right to a fair trial. This right has become the standard of the Legal State. Numerous texts establish this concept, but fundamentally we find Article (6) of the European Convention on Human Rights, which provides for the right of every person to consider his case impartially and in public within a reasonable period of time. Access to justice is one of the pillars of this right: there is no respect for the individual if he is not able to bring cases before an honest judge who accepts his request and "strives" to accept his request. This is the responsibility of the state, the primary guarantor of access to justice. Our research addresses the basic judicial decisions that established this right, such as Golder's decision: The court should be impartial and independent, and judges should not be subject to any political or financial influences. We then address one of the issues of the right to a fair trial; the right of litigants to make judgments within a reasonable time. Equality must prevail between litigants on the one hand, and between litigants and the court on the other hand. This is called the equality in arms, that is, the litigants must have the same capabilities during the course of the procedures. This paper will also highlight the issue of application i.e. how things work in practice. One might find that in a country like France, which is in the race in the field of law and legal democracy, so to speak, there are many problems and countless obstacles to applying the principle of the right to a fair trial, whether in the matter of access to justice, delay in issuing judgments or even equality in arms. This was confirmed by the rules of the Jordanian constitution and various legislations in force.

Key words: *Fair Trial, Access to Justice, Judicial Independence, Principle of Neutrality, Equality.*

Introduction

The right to a fair trial includes three topics: access to justice, for the trial to be conducted properly, and that the judicial decisions are implemented in the best manner. This concept is confirmed by Article (6) of the European Convention on Human Rights. It is a concept more and more courts rely on and is in most legal systems of the world. The right to a fair trial is the responsibility of the state that bears the burden of ensuring access to trial (or justice). This right

began to be applied in many countries, but the disparity is great between country and state. There is no doubt that the European countries are the first, thanks to the jurisprudence of the ECHR (the 1972 law and the amendment of the French Code of Civil Procedure, for example). In Theme (1), we address an important point; the concept of equality in arms. Equality in arms is the core principle of a fair trial. This principle exists in the civil, penal and administrative judicial. The principle of a fair trial aims at ensuring a balance between defense and accusation, whether in the administrative or penal courts based on the principle of constitutional equality.

The decisions of the ECHR are bold as they imposed the duty of precens principles, and to accuse the judges of collusion. It was natural for me to address fundamental rights related to the right to a fair trial on which the administrative and constitutional judicial system of Jordan regularly relies on, such as the right to the defense, for example, which is a fundamental right of constitutional value. The use of this term by constitutional courts affirms the supremacy of the principle over laws, and therefore the legislator must apply procedural rules that guarantee before every judiciary, respect for defense rights.

We will address a special problem; the problem of judicial independence: if we proceed from the fact that a fair trial means any text converges this issue, such as the independence of the judiciary, we will find that most Arab constitutions provide for the independence of judiciary. Depending on the comparative analytic methods, this paper aims to deliver the definition of the concept of the right to a fair trial, where the right to a fair trial is the indicator of the democratic state. The paper also aims to urge the legislature to issue new or amendment laws that add this concept in text and content in order to consolidate the pillars of a state of law and equality in Jordan. This is so as the more this principle is established in a certain country, the higher this state will rise to the ranks of democratic states that respect the rights of its citizens.

The Concept and the Starting Point of Article (6) of the ECHR

In the first requirement of this theme, we will provide the safest definition of the right to a fair trial and the texts that established this principle, which takes on an increasing importance, taking in a wide range of legal writings. We present Article (6) of the ECHR, which the national courts and ECHR rely on. This Article takes us directly to the principle of access to justice; a principle not enshrined in any law, clearly and in detail, but should be inspired from many laws. The right of a judge is not yet established in any law.

As for the second requirement, we pause before Article (6) of the ECHR where we present established decisions such as the French “Golder” decision issued on February 21, 1975, where the court decides that Article (6) does not only mean that a fair trial must be secured, but also that the individual can appeal. We then present the principle of neutrality which must be subjective and objective. We also address the issue of a reasonable period that should not be

exceeded for the issuance of judgments. We also present the principle of equality in arms, which means that litigants in cases should enjoy equal procedures and all of them must equally benefit from the facilities provided by the judge in the conduct of procedures.

Definitions and Propositions

We will divide the study of this requirement into two parts. This section will address the safest definition of the principle of fair trial, or why there are many definitions. Then it will explain how to address the principle of accessing justice which contains all types of civil, criminal and administrative cases, as well as other types of complaints related to special judicial bodies, such as disciplinary jurisdiction.

Initial Definition

The right to a fair trial is the main criterion for the legal state. We find this text in Article 14 of the Covenant on Civil and Political Rights and in Article (6) of the ECHR as well as in Article 47 of the European Fundamental Rights Charter which was confirmed by the ECHR and the European Union Court.

Article 6-1 of the ECHR states that everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be issued publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice (ANDRIANTSIMBAZOVINA, 2003; B. BEIGNIER, C. BLERY, 2001).

As mentioned earlier, the right to a fair trial in its general sense includes three topics drawn from 25 years of European jurisprudence experience. Face-to-face principles must be secured in the trial, as also the right to an independent judge, the right to seek the assistance of a lawyer, for the trial be free, the principle of defence immunity, the right to submit judicial reviews, and the right to implement judicial decisions.

The concept of the right to a fair trial, affirmed by Article (6) of the ECHR, is a concept that is increasingly used by national courts and the European Court of Human Rights. This principle appears to have become the cornerstone of a global legal order because it invades judicial institutions all over the world. This concept is based on another principle that is the principle of equity and fairness; this principle does not approximate by itself but objectively, as the case with the British judge (the rule of the precedent) and as permitted by some other statutory laws

such as the rules that govern contracts with Islamic jurisprudence which has a long tradition of devising high principles linked to the concept of justice and fairness.

Hard Core: Access to Justice

Access to justice includes, horizontally, all types of civil, criminal and administrative cases, as well as other types of complaints related to special judicial bodies and it relates vertically to all stages of the trial, up to the Court of Cassation. Indeed, neither in France nor in Jordan nor in any country, do we see a law that enshrines the right to a judge that is, anyone can access justice and the state shall be obligated to secure a fair case and a judge to decide the case. The French Constitutional Council considered the right to submit a review before the administrative judiciary is a constitutional right based on Article 16 of the Universal Declaration of Human Rights. We conclude from this dedication to the right to a fair trial at the European and constitutional levels, therefore that the state has a burden to secure access to a trial (or justice). This also means that the state must secure financial aid for litigants from the Court of First Instance to the Court of Cassation and also approximate the courts geographically so that the litigants can reach the court headquarters without much trouble. But it was the French jurisprudence that established the right to access justice in the sense of the right to accept the lawsuit in several major decisions such as the decision "Dame Lamotte" and "Dewee"

The state also has a negative obligation, which is to refrain from denying the litigant an appeal to defend his rights. The European Court of Human Rights totally rejects the so-called legislative validations (les validtions legislatives), which means that in order to obstruct the course of the judiciary, the state issues a law that contradicts the judicial decision or what will be achieved by judicial reviews.

Article (6) of the European Convention on Human Rights

We will divide the study of this requirement into two parts. In part one, we present established decisions, such as the Golder decision, February 21, 1975, where the court decides that Article (6) does not only mean that a fair trial must be secured, but also that the individual can file an appeal and judgments be issued as quickly as necessary. In part two, we address the principle of equality in arms, a principle that was extracted by the European Court, and it is a principle that will ensure a balance between defense and accusation, whether in the administrative or criminal courts, and its source is the principle of constitutional equality.

Established Decisions and the Principle of Neutrality

First: Established Decisions

Article (6), clause 1, of the ECHR established, as we pointed out, the right to a fair trial which was strengthened by the jurisprudence of the Strasbourg Court. Let us mention the decision of this founder and famous court, Golder, February 21, 1975 (CEDH, 21 Février 1975). In other decisions, it went further in affirming the right to a fair trial.

In Golder's decision, the court decided that Article (6) means not only that a fair trial be secured, but also that an individual be able to file an appeal. We read in this decision that the court's decision, speeding up the issuance of the ruling, and so on; all this is of no use to him/her if there is no trial, and it is intended that the access of the judiciary must first be secured.

The European Court is not satisfied with this, but also relies on the principle of the supremacy of law and the fundamental principles, including the necessity of not denying justice. The right to access the court should be respected, that is, the right to litigate with the subsidiary rights that this right includes: refusal to prohibit the submission of appeals, facilitating and expediting judicial proceedings to start a trial, no strict formalities, activation of judicial aid ... etc. We then move to other principles such as the right to a good case, and the correctness of the procedures during the course of the case (after the admission stage) and finally the right to implement judicial decisions.

Let us also remember the Deweer decision of February 27, 1980, which falls under the penal code: Everyone charged with a certain accusation must be able to benefit from the right to a proper trial or the right to a court. The French judge does not rely on the right to judge, but he admits this by acknowledging the right to prosecute. (Cons. Const., n°80-119 L., 2 Décembre 1980, RCJ II-9).

Second: Independence, Impartiality and Non-Delay in Issuing Judicial Rulings

With regard to the necessity for the court to be impartial and independent, the European Court was not a pioneer but was preceded by the ordinary and constitutional courts in relying on this principle. According to the jurisprudence of the European Court, "the impartiality of the judiciary must be subjective and objective. Therefore, regardless of the constraints that the judge can be subjected to, one must search whether there are some facts that lead to suspicion of the judge's impartiality." (SUDRE (F.), Chronique Droit de la Convention EDH, JCP G 1993, I, 3654).

In addition to impartiality and independence, another principle of fair trial principles or conditions is that judgments must be issued within a reasonable period. Individuals have the right to make their own judicial decisions within a reasonable period of time, as issuing them after a long period is like denying justice. After a certain period, the complainant cannot benefit from the ruling, especially if he passed away.

France has been punished several times by the European Court for the exaggerated slowness of the ruling, whether before the judicial, administrative, or criminal courts. A law was passed in France in 1972 (amending the principles of civil trials) allowing compensations for damages from the state when rulings are issued too late. Everyone doubted that the administrative judiciary would be attached to this matter.

We know that the principle is that the state is not responsible for its judicial activity except in case there is a legal text, and this rule prevails with regard to both the judicial and administrative courts.

In French law, until the issuance of the law of July 5, 1972, the exception to this rule was related only to cases of judicial errors and the personal accountability of judges. Compensation should be made for the person whose retrial led to the admission of a judicial error (Code of Criminal Procedure). As for the personal accountability of judges and the judiciary officers, the principles of civil trials were noticed in the case of theft and bribery. But the law of July 5, 1972 related to amending the principles of civil trials, established a system of responsibility inspired by the administrative law: distinguishing between the responsibility of the state based on the fault of the public utility and the responsibility of the judge based on his personal mistake and the rule of combining responsibilities. The state should compensate for the damages caused by the poor functioning of the judiciary, but only in the event of a grave error or the judge's failure to judge (not including delay in issuing judgments). On this issue, we recall the famous French decision, "Magiera", where the Consultation Council decided to obligate the state to compensate public utility users for waiting seven years before ruling on his case. (SUDRE .F, Chronique Droit de la Convention EDH, JCP G 1993, I, 3654). The state is not initially responsible for the delay in issuing court rulings because jurisprudence in general has not moved in this direction.

In the decision of "Magiera", Mr. Magiera waited seven years to issue the ruling in his case. The court considered that certain and direct damage was caused to him due to the "anxiety and confusion in his life" which justifies compensation for material and moral damages. This opinion was contrary to the minister's opinion that the complainant was not entitled to any compensation based on the nature of the case and the positive result that he won, and that the court made a legal error if it decided otherwise.

However, the Consultation Council wanted to achieve harmony between its jurisprudence and the modern jurisprudence of the Strasbourg Court regarding the national judicial systems respect of the principle of a reasonable time to issue judgments. However, at the same time, it was keen to point out that the traditional principles of administrative law itself are applied here.

In this case, the government commissioner, Mr. Rogvin Pavel, considered that among the cases that open the way for accountability of the administration even after issuing a final ruling, we find what he calls “certain behaviour, or absence of the judiciary, such as the very long time to issue judgment.” It should be noted that it was the European Court that pushed for judgments to be issued with the necessary speed, although the concept of a reasonable period is only deemed realistic.(CEDH 28 juin 1978; König c/ Allemagne).

Equality in Arms

According to Professor Frédéric Sudrei, equality in arms (the defence weapon before the courts) is the fundamental principle of a fair trial. This principle exists in the civil, penal and administrative courts. (F. SUDRE, Paris, 2003). From the general principle provided for in Article (6) of the ECHR, the European Court concluded an unwritten principle: the principle of equality in arms, and that was in Delcourt's decision (CEDH, 17 janvier 1970, Delcourt c/ Belgique, Série A, n°11.)

The court says this principle is "one aspect of the concept of a fair trial." This principle aims to ensure a balance between defence and accusation, whether in the administrative or penal courtsii, and its source is the very important principle of equality for the European Convention on Human Rights, which we find in all European texts and in all fields(R. ERGEC, ULM, Bruylant, 2004, pp. 238).

This principle, i.e. the principle of equality in arms is very successful before the national courts in Europe. Indeed, in France, the Constitutional Council approved this principle on the occasion of considering the Security and Financial Transparency Law July 28, 1989, considering that this law makes the regulatory committee a ruler and arbitrator and at the same time this violates the rule of respecting balance between the litigants. It is remarkable in this decision that the Constitutional Council decides equality in arms, even in other words and without relying on Article (6) of the ECHR.

Finally, it is important to point out that the European Court imposed the duty of presence principles because it accused the judges of collusion: "The inability to respond to a government commissioner's reading makes the judges, in the court's view, the substantive opponents of the litigants (CEDH 30 Octobre 1991 ; Borgers c/ Belgique).

Practical Applications in France and Jordan

The French application of the principle of a fair trial should be approached objectively. It should be noted that the common origin of this principle is the Universal Declaration of Human and Citizen Rights for the year 1789, which contains in its articles 7, 8 and 9 elements related to a fair trial, just as the Jordanian Constitution. It is true that the French texts don't contain clear text related to the right to a fair trial, but this does not mean that it does not exist, as it can be found in the provisions of the constitution and in various laws, but indirectly. The French approach is close to the Jordanian one. In these cases, this principle can be enforced by applying other principles such as the principle of equality before the law approved by the 1958 Constitution (the first article of this Constitution), as well as the Jordanian Constitution, which stipulates in one of its wonderful articles that the Jordanians shall be equal before the law. There shall be no discrimination between them as regards to their rights and duties on grounds of race, language or religion (Article 6(1)). In Jordan, if the principle of a fair trial is absent, then it is commonly found in a manner reminding us of the common oversight of the constitutionality of laws. We mean here that there are many texts that are elements of the right to a fair trial, such as the independence of the judiciary, the right to defence, the acceptance of cases, and reciprocity with all litigants. We also end our research with a brief presentation and analysis of some Jordanian judicial decisions that implement the principle of the right to a fair trial, even if indirectly (Requirement 2).

French Approach

We address in this requirement the origin of the concept, specifically the Universal Declaration of French and International Human Rights. We stress that the principle of a fair trial has had a great repercussion in all countries that signed the Covenant on Civil and Political Rights and the importance of the principle of “freedom of litigation”, based on Article 16 of this declaration; this section also covers the principle of the independence of the judiciary and the rights of defence and French application as the French Constitutional Council adopted the principle of separation of powers .

Outside of Texts' Principle

It is important to highlight that the common origin of this principle is the Universal Declaration of Human Rights and the French Citizen of the year 1789, which contains in its Articles 7, 8 and 9 elements related to a fair trial as well as the English and American texts. We also find basics for this principle in the African Charter on Human Rights and in the texts of Jordanian legislation (La Grande Charte de 1215).

There are differences in the terms used in the ECHR, in the Covenant on Civil and Political Rights and in French law, especially the constitution. It remains that the text of Article (6) of the ECHR contributed to imposing the principle on all European countries and in France, even though the attempt to implement it still collides with loopholes that some French jurists call "neural resistance regions", which we will mention later.

If the French texts are devoid of an explicit text on a fair trial, this does not mean that it is not a fundamental right because we find this right in established texts as well as in the constitution and through decisions of the Constitutional Council.

Contrary to other European constitutions, the French constitution does not explicitly provide for the right to a fair trial, but the Constitutional Council decides to establish this right by imposing the need to respect the right to litigation (L. PHILIP, 2003). It gives the legislator alone the freedom to pass laws that guarantee the right to litigation (R. RENOUX, JCP, I 3675, 1993). In Resolution 96-373 of April 9, 1996, the French Constitutional Council explicitly enshrined the "right of the persons concerned to submit an actual review before the courts in accordance with Article 16 of the Universal Declaration of Human Rights of 1789, which states "every society that neither guarantees rights nor separates powers does not have Constitution." (Décision 96-373 DC du 9 avril 1996).

In another decision issued on January 21, 1994, the French Constitutional Council acknowledged the right to judge "le droit à un juge" and always in accordance with Article 16 of the Universal Declaration. The truth be told that even before the decisions of the French Constitutional Council, French jurisprudence had considered that the right to a judge (i.e. the right to judicial review) is of constitutional value despite the lack of text (RENOUX .T, Le droit au recours juridictionnel, JCP, 1993, I, 3675).

In another decision issued on January 21, 1994, the French Constitutional Council recognised the "right." We do not forget that the principle of separation of powers, which is a French legal principle, was the basis for the emergence of an independent judicial institution and the protection of rights, which necessarily entails the right to judicial reviews (Décision n°93-335 DC, consid. 4).

We also mention the unwritten principles expressed in the phrase "the fundamental principles recognised by the Republic" provided for in the preamble of the 1946 constitution. It is enough to mention that among these principles we find the principle of preventing the denial of justice, that is, the judge must rule in all cases, otherwise he falls in the crime of not establishing the right.

It is noteworthy that the French jurist, Ronne Chabot, announced in 1989 during a conference on the foundations of the state organisation and the importance of the declaration of the year 1789 that the Constitutional Council was right when it adopted the principle of "freedom of litigation" based on Article 16 of this Declaration.

We should also mention Article 11 of the Declaration of the 1789 which states that the law guarantees all people should benefit from the potential of (lawsuits) and that the state's weak financial capabilities cannot be an obstacle.

We said that there is no provision for the right to a fair trial in the French constitution. However, Article 66 of the 1958 constitution stipulates that the judicial judiciary guarantees respect for the principle "no one can be arrested except under conditions established by law" (Article 66: Nul ne peut être arbitrairement détenu).

The Constitutional Council, based on this article, decided that only a judicial judiciary can deprive a person's freedom. In conclusion, for France, the constitutionality of the right to a judge in the absence of a clear text in this framework, can only be indirectly by granting a constitutional value to the right to litigation (Décision 22 Novembre 1978, consid. 6). Therefore, there are separate texts close to the right to a fair trial, but there is no clear and general text in France on the right to a fair trial, which also means that the situation is close to the Jordanian legal system as there is no clear text on the right to a fair trial. (RENOUX. T, 25 et 26 avril 1997, LGDJ, 1998). As in Jordan, there is no constitutional principle that guarantees the right to a fair trial, nor the right to a judge in France too; however, the French constitutional judge was able to enforce this right to some extent through other principles such as the principle of equality before the law established by the 1958 constitution (Article 1 of this constitution), and the judicial protection of equality that leads to the establishment of the principle of equality before justice and consequently the right to provide every person with an impartial judge to consider his case.

This is what the constitutional jurist Louis Favoreu says: En effet, les droits du justiciables, par exemple, manquent de protection directe et solennelle en droit constitutionnel français mais leur étude est possible indirectement, sous couvert d'autres garanties.

The Principle of the Independence of the Judiciary, Defence Rights and Timid French Application

First: Judicial Independence and Defence Rights

The Independence of the Judiciary

There is another principle attached to the principle of the right to a judge; that is the principle of the independence of the judiciary which we referred to in Theme One. The judicial guarantee of the right to a trial is accompanied by institutional guarantees guaranteeing the quality of justice. It is the principle of the independence and impartiality of the judiciary. However, independence is one thing and neutrality is another. The first is necessary for the second to exist. The unindependent judge cannot be impartial. The French Constitutional Council endorsed the principle of separation of powers in its decisions May 23, 1979 and gave it its true meaning, which means the independence of the judiciary as a whole, judicial and administrative, from the legislative and executive powers.(Décision n°79-104 du 23 Mai 1979).

The French constitutional provisions establish the principle of the independence of the judiciary, as well as the special characteristic of this position .Article 64 of the French Constitution states that the President of the Republic is the guarantor of the independence of the judicial judiciary, that is, he has the authority to appoint judges and presides over the Supreme Council of Judges.

Defence Rights

The Constitutional Council decides that the right to defence is a fundamental right of constitutional value. The rights to defence (droits de la défense) in the view of the Constitutional Council constitute a fundamental right of constitutional valueⁱⁱⁱ for anyone, whether French, foreigner or without nationality.

The use of this term by the Constitutional Council confirms the supremacy of the principle over laws. Consequently, the legislator must implement the procedural rules that guarantee respect for defence rights before every judiciary. The constitutional judge considered the right of defence one of the fundamental rights recognised by the Republic, which is the phrase provided for in the preamble of the 1946 Constitution (Décision n° 98- 408 DC du 22 janvier 1999, *Traité portant statut de la Cour pénale internationale*). This means that from now on, the legislator has no right to deny anyone the exercise of defence rights, which entails recognition of this important component of the right to a fair trial.

We clarify an issue related to the right of defence: We often read that the right to defence is respected only in the case of punishment^{iv}. This is not true because, despite the correctness of this statement; it does not mean that defence rights are applied only in the case of punishments. The truth is that, in general, the Constitutional Council ensures respect of constitutional guarantees, including defence rights, and in all kinds of cases.(Décision n°97- 389 DC du 22 avril 1997, Certificats d'hébergement, consid. 30).

It was said that this achievement was a thundering or resounding constitutionalisation (i.e. making the principle constitutional), especially because it stems from an unwritten principle. Today it can be said that the French Constitutional Council enshrines the right to a judge and defence rights as if they were one right and tries to make sure every time that the legislator respects the rights of the defence and the right to submit judicial reviews.

Second: French Application, Timid Application

Serge Guinchard, in a brilliant paper on the subject of a fair trial, wrote that the application of this concept in France remained timid even though France tried to follow the requirements of the European Court of Human Rights. However, Professor Guinchard believes that the European Court has gone beyond the same limits that it drew. The problem, in his opinion, is the method used by the European Court^v to include the components of Article (6) of the European Convention on Human Rights . The court has gone beyond the limits monitored by author Guinchard in many areas: the field of traffic decisions, decisions of prison directors, financial and tax decisions(CEDH 21 Février 1984, Oztürk c/ Allemagne, série A, n° 73 ; Clunet 1986, p. 1051, obs. P. Tavernier ; V. Vincent Berger, préc., n° 99, § 736 et ss)

The Principle of a Fair Trial in Jordan and some Arab Countries

In this requirement, we address in one part the concept in some Arab countries, such as Tunisia, where Chapter 108 of the Constitution of the Republic of Tunisia has devoted the right to a fair trial (everyone has the right to a fair trial). What is interesting is that the text is detailed through the consecration of its guarantees constitutionally. Part Two presents the situation in Jordan, where, as we already indicated, if the principle of a fair trial has not yet taken place in the legal and constitutional texts in the Kingdom of Jordan, this principle exists in practice, and this is what relaxes our view of the future of safeguarding litigation freedoms in Jordan.

The Launch in some Arab Countries

In Tunisia, Chapter 108 of the Constitution of the Republic of Tunisia, enshrined the right to a fair trial by stipulating that everyone has the right to a fair trial, and the constitutional text, as Dr. Fadel Moussa says, between the capacity of citizenship and the right to a fair trial, which

would indicate the orientation to the constitutionalisation of the right to a fair trial as one of the basic human rights in accordance with the requirements of Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Human Rights. It becomes clear from looking at the articles of the constitution that its legislators did not only establish the right to a fair trial, but rather were keen to elaborate its requirements through the consecration of its guarantees constitutionally, whether those related to follow-up procedures, trial and execution of punishment, or those related to the right to trial before an independent court.

The principle of presumption of innocence was enshrined where Chapter 27 of the Tunisian Constitution stipulated that “every accused person is innocent until proven guilty.” Chapter 29 confirms the principle that the detention is considered an exception not used except in the cases of “flagrante delicto or by judicial decision” for a detention period legally specified. Dr. Fadel believes that this text benefits a constitutional prevention of all forms of arbitrary detention after extending this concept to include arrest and detention in cases other than those specified exclusively or for a period that exceeds the legal period, with reference to the right to a appoint defence attorney as a basic right of the accused. We consider that the rules derived from the constitution, although some of them are related to the criminal judiciary, can be applied before the administrative judiciary without any hindrance since the important thing is the principle and not the detailed rule.

Although the new text of the Tunisian constitution made a qualitative leap with regard to a fair trial, some criticise that other articles came to mitigate this positivity, as Article 143 stipulates that the state "is committed to applying the transitional justice system in all its fields according to the relevant legislation and the non-retroactively of laws or the existence of previous pardon is not accepted in this context." According to the researcher Abdul Jalil Moftah, "The Law of Laws is the Constitution" and any research on any legal issue that inevitably passes through it," and "imposes the starting from and reliance on it for the purpose of establishing". Since the constitutions stand usually when deciding principles and foundations and drawing trends and put controls while leaving the normal details to the legislator, the search in the principles of fair trial must be based on the Constitution (Moftah, 2010).

Morocco's Constitution

If we consider that a fair trial means any text that comes close to it, such as the independence of the judiciary, we will find that most Arab constitutions provide for the independence of the judiciary. Let us mention the constitution of Mauritania, which stipulates in Article 89 that the judiciary is independent of the legislative and executive authority, and Article 90 stipulates that the judge is subject only to the law. In the Libyan constitution, Article 32 stipulates that the judicial power shall be independent. It shall be exercised by the different courts. It shall issue

judgments in accordance with the law. The judges shall be independent and shall be subject to no other authority except the law and their conscience. The establishment of exceptional courts shall be prohibited.

Application of a Fair Trial in Jordan

A fair trial is one of the fundamental guarantees confirmed by the Jordanian legislations, and they must be available during the trial stages. The most important basic rules for a fair trial include the following:

The Principle of a Public Trial

This principle means the right of every person to attend the trial without condition, restriction or impediment in order to have the opportunity to witness the trial procedures and enables the public to be informed of the procedures and the discussions taking place in them. This right is guaranteed by the Jordanian Constitution and the laws in force in Jordan, (Article (101) of the Jordanian Constitution). This could also be found in article 16/b of the Administrative Judicial Law No. (27) of 2014. This principle is considered to be one of the fundamental principles of the trials which should not be violated, and nullifying the violation of the provisions of this principle constitutes a guarantee of human rights in general. The importance of this principle lies in the fact that the public nature of the trial procedures is a means to effectively monitor justice and gives the public the means to verify and monitor the course of justice.

The Principle of Oral Trial Procedures

A basic rule of trial is the principle of oral trial procedures. In other words, all procedures related to the trial must be conducted orally, since the basic rules of the criminal trial require that judgments are held only on investigations, discussions, and public arguments that take place orally before the courts and against litigants, which leads to clarifying the evidence, eliminating their ambiguity and revealing its truth so that the court is convinced in weighing evidence and assessing its value (Article (148) of the Rules of Penal Trials Code).

The Litigants and Their Attorneys to Attend the Trial Procedures

All litigants and their attorneys must attend the trial sessions in order to guarantee the right to defence and the achievement of justice. The court must inform them of the case because the attendance of the parties to the case is one of the basic rules of fair trial and constitutes an important guarantee for the litigants (Articles 18-20 of the Jordanian Administrative Judicial Law).

Recording the Trial Procedures

The law requires organising trial minutes to reflect an honest image of what has been done at the trial stage and the recording of the trial procedures has great benefit in enabling the court in question to monitor and ensure its review of the trial minutes that the procedures required by law have been taken into account by the court by recording in official records (minutes); this indicates the court's compliance with the procedural rules governing the consideration of hearings and good application of the law. It is also considered a means of evidence that clarifies the facts and procedures that took place during the consideration of the case in the court sessions. In addition, the importance of recordation enables the second instance court to know what took place in the sessions of the court of first instance.

The recordation gives the authentication to the judgment regarding the minutes of the sessions that establish a basis for the validity of judgment as it is based on procedures that are supposed to be valid based on the minutes that have been proven.

Conclusion

Entrenching the right to a fair trial is a contemporary burden on the state and it is seen that the Jordanian judiciary is in full swing on this path, even without relying on this designation that has not yet fully entered into the editorial use. The political and financial authorities must act to secure financial aid for the litigants from the instance to the cassation, and to have the courts close to each other geographically so that the litigants can reach the court headquarters without much trouble.

The Jordanian judge enforces the principle of the right to litigation very well, keeping pace with the path of the French jurisprudence, which enshrined the right to access justice in the sense of the right to accept the lawsuit, in several established decisions such as "Dame Lamotte" and "Dayer". The state must also refrain from denying the litigant an appeal to defend his rights, which entails rejecting the so-called legislative validations (*Les validations législatives*.) We saw how important the principle of the right to a judge is (Article 16 of the Universal Declaration of Human Rights). I hope that this right becomes a constitutional right in Jordan.

It goes without saying that the research also highlights the importance of the principle of the independence of the judiciary. We also learned from our work that the principle of a fair trial is not an accessible principle and we must wait many years to reach a satisfactory application. Even in France, the leader in applying the progressive legal principles, this application is still timid because the French courts are still resisting the directives of the European Court and do not want to apply the rules of fair trial in its entirety, especially the French Consultation Council, which strongly resisted this trend, despite the fact that it began to submit to the status

quo. We also concluded that Arab laws and Arab courts began to apply the principle of a fair trial and we addressed the exerted efforts (the Constitution of Tunisia, for example, regarding the presumption of innocence).

We fully realise, after such presentation, that the principle of the right to a fair trial is a contemporary right and will take on increasing importance because it affects the core of the judicial work and human rights: because this right guarantees three extremely important rights, which is the right to access the judiciary, the right to conduct the trial according to sound and respectable principles and rules to the rights of the litigants and finally the right to implement the judicial rulings as quickly as necessary.

Recommendations

1. The principle of the right to a fair trial cannot be enforced without the independence of the judiciary. Despite the efforts that were made and the Jordanian texts that were approved, we wish that the Jordanian judge gains his full independence, because the right to a fair trial does not exist without this independence. The legislature should issue laws that relieve the individuals and the judiciary and ensure the right (or rights) to fair trial.
2. The researcher recommends to enact the law for the principles of administrative trials and not to refer to the Civil Procedure Law to follow up the work of the Administrative Court and the Supreme Administrative Court and to consider the administrative disputes referred to them by applying the provisions of this law.
3. Jordan must ratify the rest of the international agreements and declarations related to the principle of the right to a fair trial and apply its provisions.
4. Finally, we call to issue legislative texts related to the right to defence and all its branches (including the state's intervention to assist citizens financially to appoint a lawyer and to proceed with the case).



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