



**Arab Center for the Development of the Rule of Law and  
Integrity-ACRLI**

**Project of the “Promotion of the Rule of Law and Integrity in  
the Arab World”**

**Report on the  
Status of the Media in Jordan**

**Second Draft**

**Prepared by: Mr. Yahia Shukair**



## Table of Contents

### **I- Introductory Chapter (To be written by the Center)**

#### **II- Chapter one: Historical Background**

- 1- International Conventions on Freedom of the Press
- 2- International Covenant on Civil and Political Rights (ICCPR)
- 3- Arab Charter on Human Rights
- 4- Media Reform Attempts
- 5- Higher Media Council
- 6- Draft Law of Guarantee of the Right to Obtain Information:

#### **III- Chapter two: Analysis of Principles**

##### **1-Independence**

- 1-1 Guarantees of Independence of the media
  - 1-1-1 Freedom of speech and opinion
    - 1-1-1-1 Publications and Publishing Law
  - 1-1-2 Freedom of the press
  - 1-1-3 Freedom of association for journalists, media outlets and media watchdog groups
  - 1-1-4 The possibility of obtaining information

##### **1-2 A clear and fair system of media business**

- 1-2-1 Establishment of a media outlet
- 1-2-2 An impartial and transparent administration for media
- 1-2-3 Conditions for granting a license
- 1-2-4 Slander and libel laws
  - 1-2-4-1 The right for criticism (open criticism) and for challenging the civil servant's acts or judgments.
  - 1-2-4-2 Reasons for exception in the libeling and slander
  - 1-2-4-3 Crimes of slander, libeling and defamation offending the International Law
  - 1-2-4-4 Impairing the standing of the State
  - 1-2-4-5 Crimes impairing the national unity or damaging the relations between the elements of the nation
  - 1-2-4-6 Impairing the financial standing of the State
  - 1-2-4-7 Crime of verbal offense
  - 1-2-4-8 Contraventions against morale and public trust
  - 1-2-4-9 The law of violating the reverence of courts number 9 for 1959
  - 1-2-4-10 The juvenile law number 24 for 1968 amended by law 7 for 1982



- 1-2-5 Reasonable causes for suspending a journalist and confiscating the press card
- 1-2-6 Specific laws for closing and confiscation
- 1-2-7 Specific reasonable laws for the Arabic and non-Arabic speaking media
- 1-2-8 Clear and reasonable basis for penalties
  - 1-2-8-1 Penalties which the Jordanian journalist might face
    - 1-2-8-1-1 Supposed liability (of the editor-in-chief)
    - 1-2-8-1-2 Joint liability: (between the editor-in-chief and the writer and the article)

### **1-3 Lack of censorship**

- 1-3-1 Absence of official censorship
- 1-3-2 Specific and limited official directives concerning inappropriate contents
  - 1-3-2-1 Internet
  - 1-3-2-2 Confiscation of foreign publications
- 1-3-3 Fair and responsible editing censorship of the media

### **1-4 Independence of the media from government and non-government influences**

- 1-4-1 Independence of the media
- 1-4-2 Economic viability of the media

### **1-5 Personal independence of the media persons**

- 1-5-1 Reasonable control of content
- 1-5-2 Freedom of movement of journalists
- 1-5-3 Penal cases limited and not arbitrary in respect of journalists
  - 1-5-3-1 Secrecy of the information sources
  - 1-5-3-2 Penal law
- 1-5-4 Physical safety, economic and social protection
  - 1-5-4-1 Aggressions against journalists
  - 1-5-4-2 Low salaries of the journalists
- 1-5-5 Capability of the civil society organizations to protect journalists
- 1-5-6 Absence of discrimination

## **2-Integrity**

### **2-1 A clear code of ethics and standards for the journalism profession**

- 2-1-1 Clear standards for journalistic professionalism
- 2-1-2 Specific and implemented laws for fighting corruption
- 2-1-3 Specific and implemented laws for fighting discrimination
- 2-1-4 Specific and implemented standards for recruiting and promoting journalists

### **2-2 Media diversity**

- 2-2-1 A diverse ownership of the media
- 2-2-2 Pluralist media
- 2-2-3 Accessibility of media to all fringes of the society



### **3- Efficiency**

#### **3-1 Suitable qualifications for journalists**

3-1-1 Clear criteria for becoming a media person

3-1-2 Capacity of obtaining a periodical specialized training

#### **3-2 The door is opened for embarking on the profession**

### **IV- Chapter III: Detailed description**

#### **Summary**

### **V- Chapter four: Policy Recommendations**

#### **Appendixes**

#### **Reference Page**



## **I--Introductory chapter** (To be written by the Center)

### **II-Chapter one: Historical Background**

The 1989 "April uprising", that protested the government's decision to increase the prices of oil derivatives, means of transportation and basic food supplies, constituted an important turning point for Jordan towards democracy and the market system. It became obligatory that political pluralism, freedom of expression and freedom of the press accompany such uprising<sup>1</sup>. Parliamentary elections were held after a 33-year ban on parties.

With the democratic change process, pluralism was adopted through:

- 1- Pluralism of opinion via the enactment of the Publications and Publishing Law No. 10 for the year 1993.
- 2- The multi-party system, Law of Political Parties, No. 32 for the year 1993.

In addition, many relevant laws were enacted, such as the Supreme Justice Court Law and State Security Court Law, with all rulings thereof subject to the control of the Cassation Court. All martial laws were annulled.

Since then, Jordan has shifted slowly towards "restricted democracy", as described by one of the Jordanian historians<sup>2</sup>.

The laws of publications and publishing constituted the principal tool used by the successive Jordanian governments to control the press. Ever since the beginning of the democratic transformation, many publications and publishing laws were promulgated, with a variable degree of harmony with the human rights guaranteed in international conventions.<sup>3</sup>

"Following a comprehensive review of the laws and regulations of publications between 1920 and 2000, it turned out that they derive from the Ottoman Publications Law of 1909. Both the Ottoman Publications Law of 1909 and the Palestinian publications law of 1933

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<sup>1</sup> For more information, see "Democratic Transformation and Freedom of the Press in Jordan" by Dr. Jamal Al-Shalabi, The Emirates Strategic Researches and Studies, 2000. The author says that "man's freedom to express his opinion and the freedom of the press which publishes, interprets and defends such opinion are the main indicators of the occurrence of a democratic transformation.

<sup>2</sup> Restricted Democracy, by Dr. Ali Mohafaza, Arab Unity Studies Center, Beirut 2002. The book was banned in Jordan until the end of 2005.

<sup>3</sup> "The laws of the Jordanian publications 1993-2000 and the extent of conformity thereof with the international standards of human rights" by Mohammed Ayyash, in "Human Rights Studies", Amman Human Rights Studies Center, 2003, p.82.



remained in effect in Jordan until they were annulled with the Publications Law of 1953<sup>4</sup> Another example on the spirit of Ottoman laws and their influence on Jordanian legislations is the Ottoman Copyright Law issued in 1910 and effective in Jordan<sup>5</sup> until 1992, when then the Copyright Law No.22 of 1992 was promulgated.

In a study issued by the Higher Media Council on the publications and publishing laws since the establishment of the principality until early 2003, the following main remarks were deduced:

The first remark that may be deduced as a result of perusal of the history of legislation of the Publications and Publishing Sector is the many changes and substitutions that occurred throughout the past years in the legislations regulating this sector.

The second remark is that, except for the Publications Law promulgated in 1953, as well as the Publications and Publishing Law promulgated in 1993 and the amendments in 1999 to the Publications and Publishing Law of 1998, the other laws regulating the said sector tended to restrict freedoms and put restrictions on the press.

The third main remark on the publications laws mentions a clear characteristic of the management's dealing with the said laws. Despite the fact that they include certain strict articles, the management always chose not to fully implement the said laws. First, it did not need to adopt them to regulate the press in the phase of martial laws. After the end of the said phase, the management started encouraging journalists to adjust their performance by inviting them to meet professional criteria at times and through direct contact with the media at other times, to request dealing with certain cases in specific ways that, in the end, would reduce the possibility of occurrence of anything that may be considered by the management as excesses requiring recourse to court.

Until recently, the government had monopolized radio and TV broadcasting. In the framework of the government's trend towards privatization in the past few years, 17 FM radio stations were licensed, with only one entitled to broadcast news and political programs. (There are three foreign stations entitled to re-broadcast in Jordan: British Broadcasting Corporation (BBC), Radio Monte Carlo, and Sawa radio station).

The audio-visual media law is criticized for imposing fees of more than 50% on stations that broadcast news and political talk shows.

The law stipulates that the Cabinet is granted powers to refuse giving a license without explaining the reasons, even if the applicant for such license had all the prerequisites.

In 2005, the private Jordanian channel "Mamnoo" was permitted to have satellite broadcast from the Media Free Zone. However, as a first test, the government prohibited the employees at the station from entering their offices after sealing them with red wax for

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<sup>4</sup> See "Course of the Jordanian Press 1920-2000" by Dr. Shafik Obaidat, Al Rai Printing House, 2003, p.17.

<sup>5</sup> The Higher Court of Justice Ruling No. 76/1981 stated that: "The Ottoman copyright law is considered an effective law in the Kingdom unless any legislation is issued canceling the said law."



airing the TV series "Al-Shatat" (Diaspora) whose broadcast was said to have been protested by Israel and the United States. At the end of the same year, Amman's Secretariat sealed the office of the periodical "al-I'lam al-Badil" (Alternative Media) with red wax, under the pretext that it did not renew the profession license held by the office.

Many other stations were granted license, but have not started broadcasting yet. We also note that the government imposes 15 Dollars every year on citizens for each TV set<sup>6</sup>.

Before discussing the status of the media in Jordan and the rule of law, there are two factors that should be highlighted:

- 1- Existence of powerful executive authorities in Jordan, in comparison with legislative and judicial authorities. (The executive authority is even accused of exercising hegemony over other authorities.<sup>7</sup>)
- 2- Practical implementation and the reality of the freedom of the media may not be an implementation of the laws, but reflects the extent to which the executive authority is strict or tolerant. However, even in such cases, governments try to cover up their sway with the law to add some legitimacy to its resolutions.

A country governed by the rule of law commits fully to democracy in its constitution and laws and meets the international human rights standards.

### **1- International Conventions on Freedom of the Press:**

During the first session held by the General Assembly of the United Nations on 14/12/1946, a resolution was passed that confirmed: "The freedom of information is a fundamental human right and is the touchstone of all the freedoms to which the United Nations is consecrated." (Resolution 59-A)

The promulgation of the Universal Declaration of Human Rights (UDHR) in 1948 was the starting point to influence the updating of legislations on human rights at the international, regional and national levels. The said legislations included one related to the freedom of speech.

### **2- International Covenant on Civil and Political Rights (ICCPR):**

The Universal Declaration of Human Rights represents a moral value in the international law whereas the International Covenant on Civil and Political Rights is an international treaty.

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<sup>6</sup> The first regulations for licensing television sets were issued in 1971 and provided for the collection of a fee for issuing an annual license for the possession of any TV set. See: Radio and Television in Jordan, Farouk Jarar, Publications of Jordan's History Committee, Royal Academic Association Publishing House 1997, Amman-Jordan.

<sup>7</sup> We note that the Cabinet of Ali Abu Al-Ragheb promulgated a provisional law No. 211 in the period 2001-2003, exploiting the permission granted by the Constitution to promulgate provisional laws with a summary capacity in the event where Parliament does not meet, which was confronted by a lot of criticism. Since the Kingdom was established and until 2001, Jordanian cabinets promulgated 150 provisional laws.



The Jordanian government signed the Covenant on 30/6/1972 and ratified it on 28/5/1975. However, the Covenant is still not implemented practically, as no laws were passed stipulating for abidance by its provisions<sup>8</sup>, nor were they published in the official gazette<sup>9</sup>. In order for a covenant to have the force of a law, it should be passed according to the methods stipulated in the Constitution.

If such covenant is not integrated in national legislation, courts are not obliged to implement it.

Article 19 of the International Covenant on Civil and Political Rights stipulates:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) For respect of the rights or reputations of others;
  - (b) For the protection of national security or of public order or of public health or morals.

**3- Arab Charter on Human Rights:** Jordan ratified this charter early, and it was published in the official gazette.<sup>10</sup>

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<sup>8</sup> Pursuant to Article 2 of the Covenant, membership of a country means its acceptance of the commitment to:  
a-Adopt legislations and amend the existing legislations to guarantee the rights recognized in the Covenant.  
b-Compensate any person whose rights have been violated by any government official and take legal action against the violator.  
c-Publish international conventions of human rights within a wider scope to guarantee the citizens' awareness of their rights.

<sup>9</sup> The different Jordanian Cabinets promised to publish the international conventions relating to human rights in the Official Gazette, but such promise was not kept. The former High Commissioner for Human Rights (May Robinson who visited Jordan in 2000) obtained undertakings to publish such conventions in the Official Gazette for application in the national legislation but no such publication took place.

<sup>10</sup> Article 32 of the Charter stipulates:  
1- The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers. (All Arab states do not allow the entry of Arab publications without pre-censorship)



Article 32 of the Charter stipulates:

1- The present Charter guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas through any media, regardless of frontiers. (All Arab states, including Jordan, do not allow the entry of Arab publications without pre-censorship)

2- Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.

The best definition of democracy is, as put by Monesco, “the amount of separation of powers. Another definition by Hobbes is “divided freedoms”.

The Jordanian constitution mandates the separation of the three branches of government (with the possibility of legislative authorization):

The legislative power: elected fairly to represent the people (Article 25).

The executive power whose legitimacy is derived from the representatives of the people and which applies the laws (Article 26).

The judicial power exercised in the disputes between the State and the citizens and individuals (Article 27).

The separation of the powers aims at defining their respective boundaries to guarantee that branch of government shall overstep its prerogatives or infringe upon the powers of the other branches, and to achieve balance among the powers.

Although the Jordanian Constitution does not stipulate that the press is a power as provided in the Egyptian and Yemeni constitutions, it mentions in the preamble that the freedom of speech and press are among the fundamental rights of citizens.

The press plays many roles in democratic systems, including the known roles of the press and the media in:

1- The provision of information (a journalist is an information multiplier) that helps the public reach a decision.

2- The provision of an environment for national debate.

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2- Such rights and freedoms shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals.



3- Culture and entertainment.

4-Stimulation of the role of citizens in society through participation in voting, parties, etc.....

5- The press and the media acting as a watchdog. The free independent media is a monitoring and alarm device for early and quick detection of violations. It uncovers and stops such violations and prevents their aggravation. (Most human rights violations are blacked out by the media). This device also acts as public opinion that exerts pressure on the State and other parties to stop or curb their violations. The propaganda media (most often the public media) exaggerates human rights achievements and minimizes negative aspects. (The media are sometimes tools for violation of human rights and incitement to violation and hatred).

6- Control over the executive and its resolutions which affect millions of citizens.

It is understandable that the freedom of the press can only be achieved in a democratic society, in which other freedoms closely linked to the freedom of the press are also guaranteed, such as peaceful gatherings, joining volunteer organizations and not placing any barriers to the publication of new newspapers.

To guarantee such freedoms, the law should stipulate for such guarantees as a right reserved for the press and not as tolerance shown by the executive.

Jordan publishes seven daily newspapers, one of which is in English, as well as 23 political periodicals, most of which are weeklies and four of which are monthlies.<sup>11</sup>

Press in Jordan can be classified as Loyal, as it falls under the control of property or the loyalty of those in charge.<sup>12</sup> The Loyal press, as stated by the journalist Jamil Al-Nimri, becomes clearer when: "In turning points, all media outlets become a mouthpiece mobilized in favor of the government."<sup>13</sup> The pro-government editorials and articles in crucial times also reflect such loyal press. When the prices of oil derivatives were increased in September 2005, "Al Rai" daily published 21 articles in one day to justify the

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<sup>11</sup> Daily newspapers: According to the priority of establishment: Al Doustor, Al Rai, Jordan Times, Al Arab Al Youm, Al Ghad, Al Diyar, Al Anbat. With regard to periodicals, please see the appendix.

<sup>12</sup> See Arab Press: News Media and Politics in the Arab World, by William Ro, translated by Dr. Moussa Al-Kilani, Jordanian Books Center, 1989, p.113. The researcher Maan Al-Bayari also deduces what has been already deduced by the American researcher William Ro in that: "The Jordanian Press was also a pro-government press during the period in which he conducted his research under the title of "The Understanding and Reality of the Freedom of the Press, press laws in Jordan, 1927-1973." The research is a thesis for a higher studies diploma in journalism from the High Press Institute in Rabat in the Kingdom of Morocco 1993.

<sup>13</sup> See "The Role of the Media in Democracy-Jordanian Case", by Jamil Al-Nimri, Strategic Studies Center of the Jordanian University, 1995, p.181. The phenomenon of "mobilization" behind the executive became clearer in February 2006 when the two newspapers "Shihan" and "Al Mihwar" republished caricatures that had been published by a Danish newspaper.



price increase. When the Human Rights Watch organization issued a report on the status of the freedom of press in Jordan, the national news agency issued a report, entitled "Journalists and intellectuals hail the freedom of opinion and expression in Jordan."<sup>14</sup>

Media is considered as a main tool of control<sup>15</sup>. Therefore, controlling the media or placing it in the control area is an objective for ruling elites across the world. Jordan does not seem to be unaffected by this theory.

The law is also a main tool of control. In addition to the Jordanian Constitution, there are around 24 laws and regulations pertaining to the press and the media in Jordan.<sup>16</sup> Moreover, there are unwritten laws and taboos<sup>17</sup> that influence the status of the media in Jordan in one way or another.

Before the democratic transformation in the early 90s, security officials exercised control over the Jordanian press and interfered not only in selecting editors-in-chief but in each and every detail. Therefore, the number of court judgments in which the country was the initiate was rare.

#### **4- Media Reform Attempts**

Some journalists believe that there is a reform language in Jordan but without real reform actions. Governments desire reform but without any price, as real reform and change are costly. From time to time, governments come up with "reform project films" that have a tactical target to distract citizens and foreign countries pressuring Jordan. An example on this is the term of "political development" invented by the government of Ali Abu Ragheb to beat around the bush of real reform<sup>18</sup>. The functions of the Ministry of Political Development were reduced since it intended to establish a Hyde Park for freedom and a coy dialogue between parties and the government in order to reach a modern electoral law<sup>19</sup>. The ministry then became a sign of "public relations" for the government.

Within the context of discussion of political development and reform in general, the issue of reform of the Jordanian media is brought up from time to time, or in other words, the restructuring of the Jordanian media.

In 2005, the National Agenda Committee recommended that real media reform be undertaken in Jordan but its recommendations in this field were totally rejected by the media circles. It seems that the error committed by National Agenda Committee was its recommendation for canceling the compulsory membership of the Journalists' Union and

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<sup>14</sup> The daily newspapers published the report on 21.01.2006.

<sup>15</sup> The best book on the said subject was "the Mind Managers" by Herbert I. Schiller, Boston: Beacon Press, 1973, translated in Kuwait, Alam Al-Fiker Series, 243.

<sup>16</sup> For more information about the said laws, see the appendices.

<sup>17</sup> Taboos include for example criticizing the Kingdom of Saudi Arabia.

<sup>18</sup> Interview with Bassam Badarin at his office on 29.01.2006.

<sup>19</sup> We should note that all elections that took place in Jordan since the end of the 80s were subject to provisional laws.



dissolving the Higher Media Council itself. Therefore, the two parties entered into an alliance to thwart the Agenda's plan<sup>20</sup>.

Despite the cancellation of the designation of the Ministry of Information in 2001, the presence and role of the latter was still obvious through legislations. The Minister of Culture or the Prime Minister acted as Minister of Information<sup>21</sup>.

The absence of the Ministry of Information coincided with an unclear distribution of roles of media outlets, such as the Higher Media Council, the Jordan Media Center, the Publications and Publishing Bureau, the Radio and Television Union, media spokesmen or consultants of ministries and government institutions and press attachés of the Jordanian embassies, which led to an ineffective overlapping of roles in the said outlets and kept areas free from any role played by any of the above outlets<sup>22</sup>.

There are demands for the tools of the Ministry of Information because its dissolution left a void. When the Radio and Television Union was given independence, a disagreement arose between the Chairman of the Board of Directors and the Television Director General that paralyzed the powers of the latter who submitted his resignation as a result.

It seems that the restructuring the Jordanian media comes under foreign pressure. It is also strange that, at the end of 2005, the US Agency for International Development (USAID) proposed the grant of US Dollars five million to restructure the media laws in Jordan. Ever since, the government has been ambiguously talking about restructuring Jordanian media<sup>23</sup>.

## 5- Higher Media Council

Within the plans of restructuring of the Jordanian media, the Information Minister was dissolved in 2001, and the Higher Media Council, a non-executive regulatory reference entity, was established. The Council enjoys financial and administrative independence<sup>24</sup>.

The Council is established by virtue of a noble royal will, as the Prime Minister may deem appropriate. It is composed of 9 members, including the president, from among competent and experienced Jordanians that serve for three renewable years<sup>25</sup>.

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<sup>20</sup> We note that the President of the Union of Journalists is the Deputy President of the Higher Media Council.

<sup>21</sup> Hashem Khoraisat, Secretary General of the Higher Media Council, lecture given by him on 08.02.2006 before the Council.

<sup>22</sup> See: Roman Haddad, Al Rai Newspaper, issue of 22.09.2005.

<sup>23</sup> See the Jordanian daily newspapers issued on 21.01.2006 which published the statements of the Prime Minister who indicated that "the restructuring of the Jordanian media institutions should be carefully reconsidered" following his visit to the Higher Media Council. Al Doustor newspaper had already published on 07.01.2006 two topics under the title of "Media Restructuring –Is it a temporary motto or the expression of a conflict of interests and opinions?". At his weekly press conference, the official spokesman of the government, Nasser Joda stated: "The Government is currently carrying out a comprehensive review of the state-run media and its institutions for restructuring". See Al Ghad newspaper, Tuesday, 03.01.2006.

<sup>24</sup> The King established the Council on 13.12.2001 under the Provisional Law No. 74 of 2001.



For reference<sup>26</sup>, the council relies on three principal documents:

- 1- The Constitution of Jordan
- 2- The National Pact
- 3- And the Royal Vision of Jordanian Media

The Royal Vision of the Jordanian Media<sup>27</sup> includes the following:

- Building a modern Jordanian media system that constitutes the foundation of political, economic, social and cultural development, and would keep pace with the policy of openness adopted by Jordan, and the recent developments that the world is witnessing.
- Developing a new vision for the Jordanian media that takes into consideration the spirit of the era, serves the objectives of the Jordanian State, expresses the conscience of the nation and its identity with all its categories and sects, reflects the will and aspirations of the nation, and paves the way for the Jordanian media to compete with other media.
- Encouraging pluralism, the respect of different opinions, by presenting different points of view in a climate of independence and responsible freedom.
- Enabling media outlets to play its monitoring role in the society in a climate of responsible freedom, independence, advanced professionalism and credibility.

The Higher Media Council aims to contribute to the development of the media sector to express the identity of the nation with all its categories and sects, keep pace with the spirit of the era, including developments and changes, and promote the competitive capability of the Jordanian media. The Council also aims to support media outlets to play their monitoring role in society. This is in addition to encouraging pluralism, the respect of different opinions, creating a motivating environment for media investment, and cooperating with the academic and vocational institutions concerned in training in the development of the human resources of the media sector.

The Council, in cooperation with the parties concerned, draws the guidelines for media orientations and starting points. It also cooperates in setting plans that regulate the media sector, contributes in drafting the professional media honor codes, and takes part in setting a common and integrated perception with governmental bodies to regulate media institutions.

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<sup>25</sup> The Council is currently chaired by the former Minister of Information Ibrahim Ezzedine and his deputy, the President of the Union of Journalists, with the membership of the Morale Guidance Director of the Armed Forces and the representative of the Ministry of Awqaf and other journalists.

<sup>26</sup> Interview with the President of the Higher Media Council, Ibrahim Ezzedine on 25.01.2005.

<sup>27</sup> On 07.01.2002, the King submitted his vision for the Jordanian media to the President of the Higher Media Council. For more on the royal vision for the Jordanian media, please visit the website: [www.hmc.org.jo](http://www.hmc.org.jo).



The Council proposes draft laws and regulations related to the media sector. It also conducts studies and researches, prepares and publishes reports related to the Council's objectives, encourages pluralism and the respect of different opinions, creates a motivating environment for media investment, and cooperates with academic and vocational institutions concerned in training in the development of the human resources of the media sector.

It also follows up the media performance to make sure that the opportunity to freedom of expression is available to all categories and sects of society, seeks to preserve the independence of the media and to protect the journalism and media freedom and professionalism through the establishment of two committees for ensuring the opportunity to freedom of expression and the independence of the media, and settling any media-related issues.

The committee for ensuring the freedom of expression and the independence of the media<sup>28</sup> is in charge of looking into the complaints received by the committee and any violation of the freedom of the press or illegal intervention in the work of the media outlets.

The committee of settlement of media-related issues examines the complaints lodged with the council by media parties then tries to settle them in the light of the adopted media honor codes, and to effect conciliation upon the request of the parties concerned in events of media-related conflicts.

The Council organizes training sessions for journalists to increase their legal knowledge and professional skills<sup>29</sup>.

One of the attempts of the Higher Media Council to reform the media and raise the ceiling of media freedom in Jordan was its preparation of an amended draft-law of the Publications and Publishing Law<sup>30</sup>, as well as a draft-law for the guarantee of obtaining information, both currently subject to jurisdiction of the National Assembly.

The main proposed amendments on the Publications and Publishing Law include:

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<sup>28</sup> The Council shall, following perusal of the recommendations of the committee, and after ensuring that none of the events of not giving the freedom of expression of the different parties and opinions of society, of events of non-observance of the independence of the media outlets or events of any journalist or media person undergoing pressure that affects his professional activity, take any of the following measures as required:

- Corresponding with the party that committed any excess or violation to stop and remove the effects thereof.
- Carrying out the necessary follow up to ensure that any excess or violation is stopped and the effects thereof removed.
- Ensuring that such excesses or violations are not repeated.

The Council may issue statements about such excesses or violations in the event of stoppage and removal of the effects thereof or in the event of repetition thereof.

<sup>29</sup> The Media Training Center of the Council organized 21 sessions attended by 334 journalists and media persons in 2005.

<sup>30</sup> See the provisions of the two drafts in the appendixes.



Article 7:

- e- The competent authority in ministries, institutions or public bodies shall provide a journalist with information, statistics or news within a period of not more than 24 hours in case they had an urgent informative nature, and a period of not more than 2 weeks if they did not have such nature, provided that such news, statistics or information do not conflict with the Law on the Protection of State Secrets and Documents and are not subject to ban by virtue of other laws in force.
- f- A journalist shall, within the limits of his job, and in accordance with the regulation set for this purpose by the authorities concerned, have the right to attend public meetings, public court sittings, Senate sessions, Parliament sessions, and the general assemblies of parties, unions, federations, clubs, associations and other public institutions, unless such sessions or meetings are closed or secret in accordance with laws and regulations, or in effect instructions.

The amendment allows the printing of books without pre-censorship and license from the Publications and Publishing Directorate, as is the case at present.

Article 58:

- e- A journalist shall not be arrested for crimes perpetrated via publications, except for crimes that are stipulated in Article 195 of the Penal Code. (The mentioned article prohibits lèse-majesté (insulting the dignity of the King)).
- f- A journalist shall not be arrested for crimes perpetrated via publications except upon a request by the public prosecution.
- g- A journalist who is suspected or accused of committing a crime via publications may delegate an attorney to attend and follow up the proceedings of the trial unless the court requests that he attend in person.

The amendments to the Publications and Publishing Law are criticized for not having been conducted as a result of a general dialogue with journalists, parties and civil society associations. Therefore they were not only insufficient<sup>31</sup> but the major part of the new draft law is but a recycling of the existing law.

The advantages of the said amendments include “prohibiting pre-censorship of books and giving the author the right to print his book without pre-censorship. In the event where, after publication, it is found that the book contains any violation of the law, the government may confiscate the book or prohibit the circulation thereof.”

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<sup>31</sup> The London-based “Article 19” Organization prepared an important study on the draft law in English that included recommendations for making essential amendments to the said law. The study is detailed in the appendices.



A study carried out by Justice Walid Kanakriah of the amendments to the Publications and Publishing Law indicates that: “The proposed provision in the draft law concerning the impermissibility of arrest and detention in publication lawsuits did not offer anything new, since all the penalties provided for in the Publications and Publishing Law are fines and arrest is only permissible in the crimes punished by imprisonment or a more severe penalty, pursuant to Article 114 of the Law of Penal Procedure. Furthermore, the provisions of the Publications and Publishing Law and the draft amendment thereto does not prevent the application of the provisions of the other laws which stipulate for the penalty of imprisonment for crimes committed through publications. The provisions of the Publications and Publishing Law and the draft amendment thereto do not prevent the State Security Court to hear publications and publishing cases that fall within its jurisdiction under law. The amendments include a clear exaggeration of increase of the fines imposed for violation of the law provisions”<sup>32</sup>.

#### **6- Draft Law of Guarantee of the Right to Obtain Information:**

The Higher Media Council prepared a draft law to guarantee the right to obtain information and presented it to the government to proceed with the approval thereof via constitutional means.

The justifying reasons of the draft law indicate that the freedom of obtaining information has become the cornerstone of the freedom of the press and freedoms in general. It goes without saying that the major part of information is available with the executive and its institutions. In order to translate the principle of transparency and participation in the taking of a resolution, it is necessary to take the legislative and executive measures that will facilitate journalists and citizens’ access to information.

It should be noted that the right to obtain government information and documents and information from public institutions is not an absolute right but there are acceptable restrictions on such right aiming at respecting the rights or reputations of others and protecting national security or the public order or public health or public morals.

In the event of ratification of the said draft law, there is hope that the “Law of Guarantee of the Right to Obtain Information” will constitute a major step toward enforcing the right of journalists and citizens to obtain information, especially if major amendments are made to the Law of Preservation of State Secrets and Documents. The draft law contains exclusions concerning inaccessible information such as that relating to national security, public order, public health, public morals, personal freedom, or prejudice to the material and moral rights of others or damage to their reputation.

The Higher Court of Justice is competent to hear any ruling rejecting the request for information or to refuse to respond to such request.

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<sup>32</sup> A study submitted by Justice Walid Kanakriah to a specialized seminar held by the Higher Media Council on 19.11.2005.



A number of authorities have found certain flaws in the draft law.<sup>33</sup> Such flaws include the definition of information, the many exclusions contained in the draft law and the absence of a clear mechanism for categorizing the government documents that may be excluded from disclosure<sup>34</sup>.

Following the democratic transformation and the issue of the Publications and Publishing Law No. 10 of 1993, the expiry of martial laws and the cancellation of the defense law, the governments chose to exercise their rights to sue the newspapers.

Since the promulgation of the Publications Law No.10 of 1993 and until the end of 2004, around 300 cases were filed against journalists, and conclusive judgments were pronounced. Half of the said cases were activated by the government and its apparatuses

The analysis of the judgments revealed that:

- 1- The government lost 90% of the cases that it activated.
- 2- No journalist was sentenced to imprisonment in a lawsuit before a civil court (except for one journalist sentenced to one month imprisonment instead of being fined, and another sentenced to one month imprisonment with stay of execution.) (Three journalists from the weekly "Al-Hilal" were sentenced to imprisonment by virtue of a ruling by the State Security Court, in accordance with Article 150 of the Penal Code before cancellation of its amended text with a provisional law and re-adoption of the original text).
- 3- Total fines amount to Dinars ten thousand.
- 4- The judge was using mitigating circumstances<sup>35</sup>, and often resorted to the minimum fine.

This means that the judiciary is the first advocate of the freedom of the press in Jordan and that governments used to exercise their right in litigation abusively<sup>36</sup>.

The most important ruling by the Jordanian judiciary was the historical ruling of the unconstitutionality of the Provisional Law of Publication and Publishing No.27 of 1997 that ordered the suspension of the said law and annulled all decisions issued thereunder

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<sup>33</sup> The London-based "Article 19" Organization prepared an important study about the draft law which included recommendations for making essential amendments to the said law. The study is detailed in the appendices.

<sup>34</sup> See the results of the meeting of discussion of the draft law held by the Journalists Freedom and Protection Center, Al Doustour 25.01.2006.

<sup>35</sup> The Egyptian lawyer Najad Al-Borii analyzed the rulings of 32 judgments rendered by the Jordanian courts in press publication offenses. See: How to defend yourself. A guide for media persons by Najad Al-Borii, issued by the Journalists Freedom and Protection Center, 2005.

<sup>36</sup> The Court of Cassation has already rendered a ruling in which it stated that when the complainant "the lessor" requested the tenant to vacate the leased premises for not paying the amount of ten piasters a month, deducted the said amount from the rent, which is considered an action in bad faith on the part of the lessor. Therefore, his request for vacation shall not be granted.



and closing 13 weekly newspapers<sup>37</sup>. Human Rights activist, Lawyer Asma Khodor who later became the Information and Culture Minister, had described the law at the time as “a stain on democracy, and a blatant and clear expression of the executive authority's determination to defy the constitutional principle of separation of powers by abusing the powers of the legislative authority<sup>38</sup>”.

The court explained the event of urgency and necessity that entitles the government to promulgate provisional laws in accordance with Article 94 of the Constitution. It described the said case as any imminent risk or urgent situation, such as catastrophes or wars that suddenly break out, or strife that necessitates quick confrontation to prevent the spread of sectarian conflict from destroying the entity and the institutions of the State.

Although the ruling of the Higher Court of Justice unveiled the circumstances that allow the promulgation of provisional laws, the Cabinets continued promulgating such laws. The Cabinet of Abu Ragheb (2001-2003) set a record, as it promulgated 211 provisional laws in three years, knowing that since the establishment of Jordan as an emirate in 1921 until the formation of the Abu Ragheb Cabinet, previous cabinets had promulgated 150 provisional laws. The promulgation of laws by the cabinets reminds us of the saying of the political intellectual Hubs who called for the separation of powers, in such manner that “the body that enacts a law is not the same body that implements it because the implementing body would be clearly and conclusively suspected of passing a law that suits him best.”

The rulings of the Jordanian courts in publication offenses include for example the ruling by the Court of Appeal of Amman which reads: “In penal lawsuits, in order for establishment of an offense, the moral element consisting in knowledge and will should be realized in such manner that the perpetrator of the offense should be aware that what is published does not correspond to reality and distorts it and nevertheless agrees to the publication thereof.”<sup>39</sup>

In another ruling, the Penal Court of First Instance of Amman ruled: “The court finds that the two accuseds did not provide any proof confirming and/or indicating the validity of what they published and that they lacked accuracy, objectivity and integrity, although journalists are entitled to obtain and publish information and news. However, such freedom is restricted by the requirement of examination and inspection of the obtained information to verify its validity before publication”<sup>40</sup>.

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<sup>37</sup> See the ruling by the General Panel of the Higher Court of Justice, published in the Bar Association Magazine, 1<sup>st</sup> and 2<sup>nd</sup> issues, January and February 1998, p.389. (Upon promulgation of the Law in 1998, the Committee for the Protection of Journalists CPJ and the then Prime Minister were included in the list of ten enemies of the press because of his promulgation of the said law.)

<sup>38</sup> See: Amendments to the Publications and Publishing Law 1997 by Asma Khodor, Hani Al-Hourani and others, issued by New Jordan Studies Center, p.57.

<sup>39</sup> See: The Court of Appeal of Amman, Lawsuit 382/2004, judgment rendered on 14.04.2004.

<sup>40</sup> See the ruling 1377/96 rendered on 16.07.1998.



Though the Jordanian press succeeded for few times in bringing about change when it revealed the contamination of drinking water<sup>41</sup> in summer 1998, causing the carrying out of investigations by the public prosecution and a parliamentary investigation, it failed to follow up the issue of the collapse of Petra Bank in the 80s and a corruption case of millions of Dinars, in which a former intelligence head was accused in 2002. This might be due to the lack of the freedom of press in the first case and the historical control of this apparatus in the second one.

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<sup>41</sup> Certain officials still hold the press responsible for causing the collapse of the tourism season at the time and blame the press for causing the non-import by the Gulf states of Jordanian fruits and vegetables because of the allegation that they were polluted.



### III- Chapter two: Analysis of principles

#### 1-Independence

##### 1-1 Guarantees of independence of the media:

The most significant guarantee of the freedom of speech and opinion and the press in Jordan is what is stipulated in Jordan's Constitution.<sup>42</sup>

Article 15 of the Constitution of Jordan stipulates:

- 1) The State shall guarantee freedom of opinion. Every Jordanian shall be free to express his opinion by speech, in writing, or by means of photographic representation and other forms of expression, provided that such does not violate the law.
- 2) Freedom of the press and publications shall be ensured within the limits of the law.
- 3) Newspapers shall not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law.
- 4) In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law.
- 5) Control of the resources of newspaper shall be regulated by law.

The National Pact, regardless of its legislative force, and hence, binding force, includes the following under the section of the media and communication and their role in promoting democratic practices:

- 2- Freedom of opinion, speech and expression is a right guaranteed to every citizen. It is also the right of the press. It is a freedom guaranteed by the Constitution that should not be limited or violated.
- 11- The freedom of circulating information and news is an integral part of the freedom of the press and the media. The State shall guarantee the freedom of access to information within the limits that do not harm the security and higher interests of the country.

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<sup>42</sup> The appendixes contain the text of the Jordanian Constitution.



### 1-1-1 Freedom of speech and opinion

When the Constitution stipulates that "The State shall guarantee freedom of opinion," this means that the State, with all its branches of government, has positive obligations to guarantee the freedom of opinion of every Jordanian citizen and to punish whoever breaches such freedoms. For example, when the Publications Law stipulates that a journalist's access to information shall be facilitated, such stipulation should be translated into positive obligations that the State should fulfill and negative obligations that it should not, otherwise the State would be breaching this constitutional guarantee.

The expression "every Jordanian" was used by the constitutional legislator only twice, the first in the freedom of opinion and speech guaranteed to every Jordanian and the second the right of every Jordanian to be appointed to public offices (Article 22). In the rest of the constitution articles, the legislator used the plural form, "Jordanians shall be equal before the law", "Jordanians have the right to form associations and parties", etc... The legislator had used the plural form in the main constitution of East Jordan in 1928, Article 11 of which provides that "All Jordanians shall be free to express and publish their opinions...."

The constitutional legislator had, every wisely, used the singular form because the aim is not to have a single opinion for all Jordanians. Thus the expression "every Jordanian" was employed to ensure plurality of opinion.

Article 17 of the 1946 Constitution provides that "the freedom of opinion is guaranteed and everyone shall be free to express his opinion by speech or writing within the limits of the law."

#### 1-1-1-1 Publications and Publishing Law

The Publications and Publishing Law No.8 of 1998 and the amendments thereto includes 31 criminalizing acts punishable by a fine, among which 27 crimes for which a violator has to pay a fine that does not exceed Dinars one hundred, 3 crimes, the fine per crime amounting to Dinars one thousand Dinars, and 1 crime, the fine of which amounts to Dinars ten thousand.

The Publications Law contradicts with the principle of "personality of a penalty". The editor-in-chief is considered the original actor responsible and responsible along with the writer for what is published in the newspaper. Justice Walid Kanakriah gave an unprecedented interpretative judgment in this regard by refusing to apply this article because of its non-constitutionality in the Lawsuit 876/2002 on 30.10.2002 against "Al Rai" newspaper, referring to a similar judgment rendered by the High Constitutional Court in Egypt. However, the Court of Appeal cancelled the said judgment and the editor-in-chief was once again, as before, responsible as an original actor in publications and publishing cases.

We note that press-related misdemeanors are not challengeable before the Jordanian Court of Cassation without permission or a written request from the Justice Minister in favor of



the law. For this reason, there are very few judgments rendered by the highest court of law in Jordan in this regard.

The Publications and Publishing Law 8 of 1998, as amended in 1999 in Article 38 prohibits a publication from publishing all that relates to any phase of investigation into any case or crime committed in the Kingdom unless the Public Prosecution authorizes such publication.<sup>43</sup>

The Public Prosecution relied on this article with the State Security Court to issue tens of circulars to newspapers, forbidding the publication of news or information about cases it was investigating<sup>44</sup>. The interpretation of the said article<sup>45</sup> was expanded and journalists, even in the public sittings of a court, were requested not to mention the names of the judges of the court and the witnesses that stood before it if they were of the security bodies investigating terrorism-related cases under the pretext of not giving the terrorists the chance to become acquainted with them.

This means that the original consideration is prohibition and the exception thereto is publication. The public has the right to know and be informed of what is happening around him. It would have been better if the original consideration was publication and the exception thereto was prohibition in certain events allowed by the law such as cases relating to juveniles, family and national security. It is true that the investigation and

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<sup>43</sup> Article 38 of the Publications Law No. 8 of 1998 and the amendments thereto provides: a-“A publication shall be prohibited from publishing all that relates to any phase of investigation into any case or crime committed in the Kingdom unless the Public Prosecution authorizes such publication.

b-The publication shall have the right to publish and cover the trial sessions unless the court decides otherwise.

c-The provisions of Paragraph a of this article apply to the correspondents of the foreign media to whom apply the penalties provided in Paragraph c of Article 47 of the said law.

<sup>44</sup> A form of such circulars is that issued by the Publications and Publishing Directorate and the Public Prosecutor with the State Security Court on 19.03.1998 prohibiting the publication of any news or information about the case of the then famous deputy, the engineer Laith Shabilat. Al Arab Al Youm newspaper published at the time in the front page an article for the journalist Yahia Shakar in which he said “the circular is a breach of the freedom of the press and control of the public opinion”. A complaint was activated against the writer and editor-in chief of the newspaper. Later, the penal court of first instance of Amman (Lawsuit 4012/98) ruled that the writer and editor-in-chief was not liable for the contents of the article. The court said: “The said article contains certain constitutional principles which provide for public trials as the main defense and public interest guarantees, because they support the judiciary and independence thereof. See the text of the ruling in Press Freedoms in Jordan-Comparative Study of Legislations by Yahia Shukair, Al Doustour Publishing House, 2001, p.65.

<sup>45</sup> Of the said circular issued by the Public Prosecutor of the State Security Court on 01.12.2002 in which he required the daily and weekly newspapers not to publish any statements attributed to the residents of Maan City. In the event where such instruction is not observed, the newspaper that publishes them shall be held legally accountable. In another circular of the Labor Minister on 03.08.2003, he required the newspapers not to publish any advertisement of vacant posts outside the Kingdom for Jordanian workers without the prior approval of the Labor Ministry, under the pretext that certain advertisements contain imaginary posts to exploit workers and extort money from them. In addition to the circular issued by the Tourism Ministry on 02.09.2003 addressed to all the local daily and weekly newspapers not to publish the advertisements of tourism companies and offices about their tourism programs without the Ministry approving such advertisements.



deduction phase is secret but the right of the public to information and the confidentiality of the investigation. The public is avid for information that may be a fertile environment for rumors if it is not provided with information.

It is established that Article 38 obstructed the enforcement of the principle of the right of the public to information and the right of the press to publication.

In such events, we should ask ourselves first: “Which of the two rights deserves more care? The right of the press to publication or the right to keep an investigation secret?”

The meaning of keeping an investigation confidential means that if the press publishes the proceedings in this phase, it shall assume liability for such publication. If the publication includes any libel or slander against others or influence on the litigation, the press shall be held accountable and shall not be exempt from liability.

### **1-1-2 Freedom of the press**

Article 15-2 of the Constitution provides that: Freedom of the press and publications shall be ensured within the limits of the law.

This means that the Jordanian Constitution combined the freedom of opinion of every Jordanian citizen and the freedom of press in one article, similar to most constitutions. Those who drafted the Constitution were fair when they used the expression "every Jordanian citizen" in this article.<sup>46</sup>

The expression "Freedom of the press and publications shall be ensured" implies the inadmissibility of pre-censorship, i.e. imposing censorship over the material that will be published. This is implied in Article 15(4) of the Constitution that states: "In the event of the declaration of martial law or a state of emergency, a limited censorship on newspapers, publications, books and broadcasts in matters affecting public safety and national defense may be imposed by law."

Pre-censorship on books is provided by law. Article 35-a of the Publications and Publishing Law No.8 of 1998 provides: “Whoever wishes to print a book in the Kingdom should submit two copies of the manuscript to the competent directorate before starting printing. The director may authorize or forbid printing of the book if it contains anything that violates the law, provided that he notifies his decision to the author of the book within one month from the date of submittal of the manuscript.

I believe that pre-censorship on books is unconstitutional <sup>(1)</sup>. My argument is why is pre-censorship on the press prohibited, and allowed on publishing books, although they are both free within the law?”

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<sup>46</sup> John Mill says in his book On Liberty: “If all people, except for one person, agree on one opinion, and silence the said person, they will not be fairer than him if he takes over and silences them.”



This is the opinion of the Chairman of the Higher Media Council, the former Minister of Information, Ibrahim Ezzedine who submitted to the government an amended draft law of the Publications Law canceling pre-censorship of all forms.

The Publications and Publishing Directorate prohibited the licensing and the circulation of 73 books in 2005. The director-general explained that "the reasons behind the ban are related to moralities, insult to religion, national interest and personal matters."<sup>47</sup> The Publications and Publishing Directorate had already prohibited the circulation of around 1248 books during the period from 1955 to 1987.<sup>48</sup>

The Jordanian journalist, Dr. Fahd Al-Fank commented on the ban of these books by saying: "The controller of publications is not necessarily wiser than all citizens to decide what may harm them or not and to be relied on to protect them from harmful and imported ideas, especially if they do not go along with our glorified traditions! What is shameful regarding the duties of the directorate is not only the books it bans but also those that it allows. The director does not have the right to give permissions and does not enjoy custody of our minds. We live in an era where banning ideas and news is impossible."<sup>49</sup>

The banned books included "Jordan, Where To?" by Dr. Wahib Shaer<sup>50</sup> and "Restricted Democracy" by Dr. Ali Mouhafaza, published by the Arab Unity Studies Center in Beirut in 2002. The book was banned in Jordan until the end of 2005. The novel "Biography of an Arab Lad in America" by the novelist, journalist and university professor Dr. Rafka Doudin was also banned. "The paradox is that the novel was awarded the prize of Amman the Capital of Arab Culture for 2002 and was printed at the expense of the Culture Ministry."<sup>51</sup> "The Scent of Summer" by the novelist Farouq Wadi has been banned since 1998, in addition to the collection of stories "Death of Azrael" by Moufleh al-Adwan.

A book on Jordanian prisons by the political activist and journalist, Ali Saneid, was also banned. In the book, Saneid reports on his observations inside prisons where he was detained. In previous years, "The Restricted Democracy", a book by Dr. Ali Mohafaza was also banned in Jordan.<sup>52</sup> The Publications Directorate may be considered an extension of the Publications Directorate established under the Publications Regulations of 1939. Accordingly, it is the first and oldest censorship body in Jordan. The task of the said directorate has not changed much since then.

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<sup>47</sup> Statement of the Director General of the Publications and Publishing Directorate of the Official Jordanian News Agency-Petra-28.12.2005, [www.petra.gov.jo](http://www.petra.gov.jo), published by the Jordanian newspapers on the following day.

<sup>48</sup> See Al Arab Al Youm, 20.02.2006, Supplement of Day 7.

<sup>49</sup> See the entire article in the Jordanian daily Al Rai on 06.01.2006, Issue No. 12889, p.16.

<sup>50</sup> The book was printed in Beirut. The Deputy Prime Minister and Minister of Information Dr. Marwan Al-Moashar had authorized the distribution of the book in Jordan then shortly thereafter the license was withdrawn in October 2005 because Dr. Al-Moashar was not reappointed to his ministerial post.

<sup>51</sup> See Al Arab Al Youm on 20.02.2006, Supplement of Day 7.

<sup>52</sup> Dr. Ali Mohafaza, Jordanian historian and former president of a public university. The book is published by the Arab Unity Studies Center, Beirut.



Publisher Maher Al-Kiyali says: "The issue of censorship in Jordan breeds anxiety to publishers and libraries owners. Though we admit that there has been relative improvement recently, and the ceiling of freedoms and permissibilities has been raised, the sword of the censor is still pointed at a number of innovative and political books".<sup>53</sup>

The constitution also states that "Newspapers shall not be suspended from publication nor shall their permits be revoked except in accordance with the provisions of the law". This means that negative obligations are imposed on the State not to suspend the publication of newspapers out of the context of law. At the end of 2001 and the start of 2002, the Minister of Information closed down the two newspapers Al Wahdat and Al Fasili, the mouthpieces of the two famous sports teams, without any legal ground. Unprecedentedly, the decision was welcomed because they published material that harmed national unity. Al Wahdat team is Palestinian and Al Fasili Jordan.

There are other guarantees of the freedom of the press, including the authorization given by the law<sup>54</sup>, such as:

- a- Parliament deliberations: The Constitution of Jordan<sup>55</sup> grants immunity to the member in the National Assembly under the dome or during the meetings of parliamentary committees. This authorization extends to the media if it reports the opinion of a deputy or a member of the Senate or any speech he delivers during the House sessions or during meetings of parliamentary committees.
- b- Trials: Article 101-2 of the Constitution of Jordan Constitution provides that: "The sittings of the courts shall be public unless the court considers that it should sit in camera in the interest of public order or morals."  
This publicity extends to the coverage of the media (except for what is banned from publication, especially in matters related to juveniles and the family). In all cases, the pronouncement of the judgment shall be public.<sup>56</sup>
- c- The right to report crimes, administrative violations and to correspond with the public authorities<sup>57</sup>.

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<sup>53</sup> See interview with Al-Kiyali published by Al Doustour on 09.02.2006.

<sup>54</sup> Article 59 of the Penal Law provides: "Any act performed in the exercise of a right without abuse of such right shall not be considered a crime." Article 62-a provides: "No act allowed by law shall be considered a crime."

<sup>55</sup> Article 78 of the constitution provides: "Every Senator or Deputy shall have complete freedom of speech and expression of opinion within the limits of the Internal Regulations of the Senate or Chamber of Deputies, as the case may be, and shall not be answerable in respect of any vote which he had cast or opinion expressed or speech made by him during the meetings of the House."

<sup>56</sup> Article 183/4 of the Penal Law of Procedure No. 9 of 1961 with the amendments thereto provides: "The President of the Court or his deputy shall read out the judgment at a public session. The judgment shall bear the date on which it is understood."

<sup>57</sup> Article 17 of the Constitution of Jordan provides: "Jordanians are entitled to address the public authorities on any personal matters affecting them, or on any matter relative to public affairs, in such a manner and under such conditions as may be prescribed by law."



### 1-1-3 Freedom of association for journalists, media outlets and media watchdog groups

The Union of Journalists Law No. 15 of 1998

The Union of Journalists Law and the Publications and Publishing Law require that a journalist be Jordanian<sup>58</sup> and a registered member in the Register of Practicing Journalists. A non-journalist shall be forbidden to practice this profession or work as a correspondent for foreign publications. The Union of Journalists shall request the government from time to time not to hire members from outside the Union to cover press conferences and events in order to "limit the excesses and violations that non-members inflict upon the profession journalism." On 22/8/2005, the Prime Minister issued a circular to ministries and public institutions in this regard.<sup>59</sup> In spite of compulsory membership, there are around "150 journalists who practice this profession outside the framework of membership of the Union, either because they are not convinced about the use of such membership, or do not satisfy the conditions of membership, or simply because they do not believe in compulsory membership in the first place."<sup>60</sup> The Union uses "compulsory membership as a permanent weapon against member and non-member journalists. It threatens to revoke the membership of the members and non-members when they write or publish unacceptable material in general."<sup>61</sup>

Although compulsory membership of the Union of Journalists constitutes a violation of human right conventions<sup>62</sup>, the government adopts double and selective standards in implementing the law. The government had suspended the publication of the two newspapers "Al-Bilad" and "Hawadeth Al-Saaa" administratively due to the vacancy of the post of editor-in-chief. The two decisions were annulled by a ruling of the Higher Court of Justice<sup>63</sup>. The post of the responsible editor-in-chief of Jordan Times remained vacant for two years 2002-2004, and the law was not implemented. And whereas the readers of Jordan Times are mainly the personnel of embassies and international

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<sup>58</sup> An Arab or foreign journalist may be the correspondent of periodicals and foreign media provided that he is granted permission by the Board of the Union of Journalists, with the approval of the Minister of Information. Article 23 of the Publications and Publishing Law provides that the editor-in-chief of a Jordanian publication should be Jordanian. Likewise, any person not holding the Jordanian nationality may not be the editor-in-chief of a Jordanian newspaper. If we applied the provision to Lebanon, Rami Khoury, a Jordanian, would have been forbidden to be the editor-in-chief of the newspaper. If a similar provision was applied in the Gulf states, tens of Jordanian journalists would have not been given the opportunity to work there.

<sup>59</sup> Prime Minister Abdul Raaouf Al-Rawabida had previously issued a similar circular in June 1999. The circular enclosed a list of the names of the members of the General Assembly of the Union of Journalists for reference. In June 2004, a number of journalists were prohibited from becoming members of parliament at the request of the Union of Journalists because they were not members of the Union. See *A History Caused to Disappear and an Absent Reality* by Saida Al-Kilani, Union of Jordanian Journalists, Arab Archives Institution, 2005, p.124, p.154-155.

<sup>60</sup> *A History Caused to Disappear and an Absent Reality* by Saida Al-Kilani, Union of Jordanian Journalists, Arab Archives Institution, 2005, p.121..

<sup>61</sup> Al-Kilani, op.cit. p.148.

<sup>62</sup> Article 20-2of the Universal Declaration of Human Rights provides:" No person should be forced to join any association."

<sup>63</sup> The Rulings 126/95 and 92/95 of the Higher Court of Justice.



organizations and foreign visitors to Jordan, the government overlooked this issue to improve Jordan's image before these parties. When Jordan Times was established in 1975, the government had a project in mind “closer to public relations than to total independence whose, main objective of was to refine Jordan's image.”<sup>64</sup>

Compulsory membership of the Union of Journalists was criticized time and again but remained stipulated in the law. There were two serious attempts to abolish compulsory membership of the Union but they failed. The first attempt was when the draft law on publications and publishing No. 10 of 1993 was submitted to Parliament. The second was when the National Agenda Committee recommended in 2005 the abolishment of compulsory membership of the Union of Journalists.<sup>65</sup> Fear of abolishing compulsory membership of the Union of Journalists is attributed to the fear that it could be an introduction to cancel compulsory membership of other professional unions, as governments were not pleased with the intervention of unions in politics, and tried several times to restrain these unions.

The Union Law requires that the journalist take the legal oath before practicing the profession, even if he satisfies all conditions of membership. For reasons of conscience, a journalist once refused to take the oath, and his membership was suspended for several years, after which he was forced to choose another profession.<sup>66</sup>

The Union of Journalists was criticized for its weakness and compromise with governments, as well as its quest for financial privileges for its members more than its concern with the freedom of the press and the training of journalists. Researcher Saida Al-Kilani released a book recently entitled, "The Union of Journalists in Jordan, a History Caused to Disappear and an Absent Reality"<sup>67</sup>. In the book, Al-Kilani criticizes the role of the Union of Journalists, describing it as a tool in the hands of the government.

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<sup>64</sup> See Role of the Media in Democracy-Jordan's Case, by George Hawatmeh (former editor-in-chief of Jordan Times), Strategic Studies Center at the Jordanian University, 1995, p.190.

<sup>65</sup> Human Rights Watch issued a statement on 23.10.2005 in which it supported the recommendation of the National Agenda Committee for cancellation of compulsory membership of the Union of Journalists.

<sup>66</sup> Article 12 of the Law of the Union of Journalists provides: Any person whose membership of the Union has been accepted may not practice the profession before:

a-Taking the following oath without increase or decrease before the minister and in the presence of the President of the Union or his deputy: “I swear by Allah Almighty to be loyal to my country and to the King and to perform my duties and practice my profession with loyalty and impartiality and to preserve the honor of the profession and respect the laws and regulations relating thereto.”

“This means that the Union of Journalists is considered a union that can only be joined following taking of an oath. The story of the political oath first originated in France. The political oath taken by lawyers was cancelled in 1848. With regard to the subject, see “The Press and the Media in Jordan: Facts and Aspirations” by the late lawyer Salim Suweis, a lecture given at the Jordanian Center for Studies and Information, May 1996 and published in a book in 1997.

<sup>67</sup> Saida Al-Kilani, Union of Jordanian Journalists, A History Caused to Disappear and an Absent Reality, Arab Archives Institute, Amman 2005.



#### **1-1-4 The possibility of obtaining information:**

The Publications and Publishing Law No. 8 of 1998 mentioned the right of the journalist to obtain information and news.

Article 6 of the Publications Law provides that: The freedom of the press covers the following:

c- The right to obtain information, news and statistics of concern to citizens from the different sources thereof and to analyze, circulate, publish and comment on them.

Article 8 thereof provides that: “A journalist shall have the right to obtain information and the official authorities and public institutions shall facilitate his mission and give him access to its programs, projects and plans.

To achieve the right mentioned in the two preceding articles, the State has positive obligations to guarantee such right. In reality, the flow of information from the government to the media is a form of tolerance and not an enforcement of a legal right, because in the event where the government refuses to give information to the media, the refusal decision is not challengeable before the Higher Court of Justice.

At the end of 2005, the government submitted to the Parliament a "draft law to guarantee the right of access to information"<sup>68</sup>. It is hoped that if enacted, the said law would be one step forward to implement the said right.

The draft law stipulates for the right of the citizen and not only the journalist to obtain information, as a right guaranteed by law and not a bonus or tolerance by the government and its institutions.

The draft law provides that the Higher Court of Justice is competent to hear the decision to reject the request for obtaining information within 30 days from the day following the date of expiry of the period granted under the said law to grant such request or refuse to respond thereto.

The draft law specifies the exceptions which allow an official not to disclose information, namely:

- 1- Secrets and documents protected under any other legislation.
- 2- Classified information obtained by agreement with another country.
- 3- Secrets relating to national defense or state security or foreign policy.
- 4- Information including analyses, recommendations, proposals or advice provided to an official before any decision is taken with respect thereto, including correspondence

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<sup>68</sup> See the text of the draft law of guarantee of the right to obtain information in the appendices



and information exchanged among the different government departments about such analysis, recommendations, proposals or advice.

- 5- Information and personal files relating to the academic, medial or employment registers, accounts, bank transfers or professional secrets of persons.
- 6- Correspondence of a personal and confidential nature, including post, telegram and telephone correspondence or by any other means with government departments and replies thereto.
- 7- Information whose disclosure will influence negotiations between the Kingdom and any other state or party.
- 8- Investigations carried out by the Public Prosecution or the judiciary police or security officials concerning any crime or case falling within its jurisdiction, as well as investigations carried out by the competent authorities to reveal financial, customs or bank violations unless the competent authority permits disclosure thereof.
- 9- Information of a commercial, industrial, financial or economic nature and information about tenders, academic or technical researches whose disclosure may lead to infringement upon copyrights and intellectual property rights or upon fair and legitimate competition or may lead to illegitimate profit or loss for any person or company.

The draft law sets a maximum period of 30 years for confidential documents after which such documents may no longer be described as confidential.

#### **1-1-4-1 Law of Protection of State Secrets and Documents**

Provisional Law No. 50 of 1971

In this context, it should be underlined that without introducing a radical amendment to "the Law on the Protection of State Secrets and Documents No. 50 of 1971"<sup>69</sup>, the draft law guaranteeing the right of access to information shall be efficient enough, as the Law on the Protection of State Secrets and Documents constitutes a comprehensive secrecy system and contradicts with the principle of maximum disclosure of information.

The "Article 19" Organization was absolutely right when describing the Law of Protection of State Secrets and Documents as octopus-like in a previous study on the freedom of the press in Jordan.<sup>70</sup>

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<sup>69</sup> See the provisions of the Law of Protection of State Secrets and Documents No. 50 of 1971 in the appendices.

<sup>70</sup> See Blaming the Press-The Crisis of Democracy in Jordan, Article 19, London 1997 which provides: "This octopus-like law, the Law of Protection of State Secrets and Documents actually turns all information in the possession of the State into confidential information unless publication thereof is authorized" p.107.



We note that the Law of Protection of State Secrets and Documents is a provisional law ratified in the absence of Parliament in 1971. Under the Jordanian Constitution, it should have been submitted to the first session held in Parliament. Thirty-five years on, the said law has still not been ratified or returned or amended in Parliament.

This law has been approved in the absence of the parliament in 1971 as a temporary law that should be discussed on the first session held by the parliament, nevertheless, 35 years passed over this constitutional requirement without discussing this law<sup>71</sup>.

And the law for protecting the secrets and documents of the State almost forms a comprehensive system for the secrecy of the official documents.

The government has already refused many times to provide the courts with documents requested by the litigants given the fact that they are classified according to the said law. The government also refused to in the mid nineties to provide the parliament with letters of intentions concluded with the International Monetary Fund (IMF). And the parliament session on 25/01/2006, as a reply the questions one of the MP's, the government provided the parliament with the report of the State Audit Bureau relating to contraventions which took place in the vocational training institution, but the reply of the government included the expression: "Secret and Limited" on all the reply papers with a warning to the press against publishing the reply with an explaining expression stating: "this document and its annexes are classified as "limited" and it is subject to the law for protection of the State secrets and documents number 50 for 1971 and anyone revealing it to people that are not authorized to be informed of, print, copy or publish it shall be subject to legal and penal responsibility, according to the provisions of the mentioned law which condemns to temporary penal servitude for a period of 10 years at least.

And according to the law, the documents and secrets of the State are classified into four categories: top secret, secret and limited; and all the other official documents that are not encompassed by the provisions of this law as "regular documents". And the official must preserve and protect the regular documents from abuse or loss and their content should not be revealed to other than the concerned parties unless their publication was authorized.

This law contradicts with the principle of maximum limit of reveal, which states that the government should justify the reason for concealing. And the concealment decision shall be examined by an independent body that is often judicial.

And it is known that the international pacts allow the restriction of the expression liberty in order to protect the national security of the State. Nevertheless these standards imply the conduction of what is called the ternary examination when imposing the restriction whereas the restriction should be defined by the text of the law and necessary for protecting an interest related to the protection of the society. And "the principles of Johannesburg" offer an equilibrium between the right of the State to keep the secrecy of the information and the right of the society to know<sup>72</sup>.

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<sup>71</sup> As for the required legislations, it is to be mentioned that the Egyptian constitution for example has stipulated that each legislation shall be null and void starting the day following the inauguration of the parliament sessions in the event the government does not refer it.

<sup>72</sup> Cf. the principles of Johannesburg as for the national security and the liberty of expression and the right to know. [Ww.article19.org/pdfs/standards/joburgprinciples.pdf/](http://Ww.article19.org/pdfs/standards/joburgprinciples.pdf/)



And as an indication to the protection provided for issues that are far from the national security classified as "limited access" according to the law for protection of the secrets and documents of the State, we state for example article (8 – F): "any protected information or document impairing the reputation of an official personality or the standing of the State".

In addition to the above mentioned relating to this law, the court of State security is competent to examine the crimes committed in contravention to its provisions.

A flexible word such as "standing of the State" may be a tool used by the State against the liberty of expression and its political opponents and it can be like the sword of Damocles over the heads of the journalists<sup>73</sup>.

Some circulars are released from time to time by officials to civil servants which prohibits revealing any information to the press other through the minister or the senior official. The civil service system prohibits the servant from providing newspapers, magazines and news agencies with information without authorization under the penalty of disciplinary measures<sup>74</sup>.

## 1-2 A fair and clear system for media work

### 1-2-1 Establishment of a media outlet

The press law requires a previous authorization for publications<sup>75</sup>, and anyone issuing a publication without authorization shall be penalized with a fine of 5,000 Dinars minimum and 10,000 Dinars maximum<sup>76</sup>. And it is known that most of the democratic States do not

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<sup>73</sup> Many journalists and politicians have been prosecuted under the allegation of erroneous or exaggerated news which are susceptible of impairing the standing of the State thus contravening the provisions of the article 132/1 of the penal law. And lately, the chief deputy of the Islamic work front Abu Jamil El Bakr was referred to the State security court at the beginning of 2006. And according to the accusative decision of the case, Abou Biker, being the officer of the electronic site of the party, has published information on the said site mid December 2004 in which two MP's of the party accuse the government of non-objective assignments.

<sup>74</sup> The civil service system for 2002 stipulates in the article 66: civil servants are prohibited, under the penalty of disciplinary measures, of undertaking the following acts:

c – keeping any official document or correspondence or a copy or photocopy thereof or providing the said or any information relating to it to the media without authorization.

d – Taking part in any demonstration, strike or sit-in.

e – Distributing any political publication or bulletin and drafting or signing any petitions or letters susceptible of impairing the reputation of the State.

f – Working as an editor in a periodical or temporary publication or taking part, directly or indirectly, in its administration, unless it is released by one of the official services.

<sup>75</sup> In democracies, no previous authorization is required, and the European Court for Human Rights states that the authorization is unacceptable in democratic. Cf. the judgment in the case of "Jawida versus Poland" request number 26229/95 and its judgment issued on 14/03/2002 in: Freedom of Expression of the European Convention of Human Rights, Council of Europe, Human Rights files No 18 (revised) 2002.

<sup>76</sup> The government has already filed a lawsuit against "Al Badil" newspaper issued by the "Popular democratic national movement" party for being issued without authorization. Nevertheless, the penal court of first instance in Amman presided by the judge Walid Katakriyeh ruled innocence in its judgment number



require an authorization; in Great Britain for example, the authorization requirement was abolished by 1695.

### 1-2-2 An impartial and transparent administration for media

The press law stipulates in the article 17: pursuant to the referral of the minister, the council of ministers shall decree its decision as for authorization request duly applied by the press publication within 30 days after the application date, or else the application shall be considered accepted. And in the event of rejection, the decision must be justified. And the government has rarely rejected the authorization of a press publication.

### 1-2-3 Conditions of granting a license

The law defines a minimum sum for the capital of the publication: half a million Dinar for the daily newspaper, 50 thousand for a non-daily newspaper, and five thousand for the specialized publication. And it is known that in democracies, no minimum sum is imposed for the capital of the press publication other than the one required by the by-laws.

The law also prohibits foreigners from investing in publications.

And the press law exempts party newspapers from the minimum capital and from the condition of editor-in-chief's membership in the association of journalism. Though Jordan has 34 registered parties: "none of them managed, after years of the resumption of the democratic journey, to own a successful or newspaper or publication enjoying a concrete popular and political presence."<sup>77</sup>

Now, the law allows the government to own newspapers and acquire shares therein.

The government controls – through its funds – 53% of the actions of "Al Ra'y" (the opinion) and 35% of "Al Dustur" (The constitution) newspapers, and the interference in the editing policy takes place through this ownership<sup>78</sup>. In August 1988, the government had obliged the owners of newspapers, in a coercive way, to sell the major parts of their shares to the government.

Press law number 10 for 1993 , article 19 – c had allowed the government to the government or its public institutions to keep a maximum of 30% of its shares in the daily newspapers. Nevertheless, this percentage has been abrogated by the law press number 27 for 1997 which has been later judged as unconstitutional. And the following laws did not stipulate the prevention of the government from acquiring shares in newspapers. Thus, the

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2872/2001 issued on 10/06/2002, and the court said that the newspaper is considered as authorized by law as long as the request of authorization has not been answered within 30 days.

<sup>77</sup> Samih Al Ma'ayta, "Al Arab al Yaoum" (Arabs Today), 12/08/1999

<sup>78</sup> With the beginning of the establishment of the Jordanian emirate in 1921, four issues "al haqqu ya'lu (the Truth prevails) news paper was published in Ma'an city where the then-prince Abdullah resided, which can be considered to be the premiere of the country. Then in 28/03/1923, the "Al sharq al'arabi" (Arab Orient) newspaper, the official gazette of the Transjordan Government followed by many private publications.

Nevertheless, it can not be said that the real press started in Jordan until after the Palestinian press moved to the country. And the press remained within the activity of the private sector until 1967 when Wassfi el Tall undertook an unprecedented step by merging the newspapers and introducing the government as shareholder.



government remained controlling about 53% of the shares of the "Al ra'y"<sup>79</sup> newspaper shares and the third of "Al Dustur".

Many calls have been launched by newspapers owners and journalists for the government to renounce its shares in newspapers, it has been proved that the governments exploited their contribution in newspapers to influence their editing policies for political reasons.

In spite of the governmental eagerness to privatization<sup>80</sup>, it still insists on keeping these percentages in the two largest daily newspapers while journalism should be a control tool over the executive power and not the opposite.

Despite the fact that Jordan still lacks a phenomenon of concentration of media, it would be wise to rise this issue. Publisher Mohammed 'Alayan owns for example the most successful weekly free advertising newspaper, the "Al Ghad" (Tomorrow) newspaper, "Fann FM" radio station and obtained an authorization for a TV station.

Though the code of the Jordanian news agency "Petra" stipulates its editing, financial and administrative independency, the government controls all the news it publishes. The content of the Petra news are often more like Public Relations for the government and its institutions. A study of the content analysis for Petra agency indicated that the quota "of the political opinion opposed to the government reached less than 1% of what the agency publishes"<sup>81</sup>.

And by virtue of the press law "it is prohibited for any press publication or senior editor-in-chief or editor or any journalist working or writer usually writing therein to receive or accept due to this ownership or relation any financial help or grant from any Jordanian or non Jordanian party"<sup>82</sup>. The director of the "center for journalism protection and liberty" was dismissed for receiving funding from foreign parties and organizing training seminars for journalists. And this center along with other human rights center has become a target for the opponents of foreign funding like the journalism association which warned its members against dealing with it"<sup>83</sup>.

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<sup>79</sup> It is strange that "al Ra'y" newspapers was released by virtue of a temporary law 76 days before its authorization. Cf. Bassem Sakkajha in "press and liberties in Jordan", collective work, publications of the new Jordan center for studies and Sindibad house of publishing, 1998, 45

<sup>80</sup> Cf. Jamal al-Shalabi and Mohammad Mahafthah, Globalization and institutional development of Jordan's press P17 [http://www.iue.it/RSCAS/WP-Texts/05\\_29.pdf](http://www.iue.it/RSCAS/WP-Texts/05_29.pdf)

<sup>81</sup> Cf. the Higher Council for press, analysis of the structural content of the daily Jordanian newspapers and the news agency in annexes.

<sup>82</sup> article 39 of the press law.

<sup>83</sup> the controller of companies in the Ministry of Industry and Commerce a draft regulation for non profit companies that prohibit the latter, without a written authorization from the minister pursuant to the proposal of the controller, to receive or accept any financial help, donation or endowment or funding from any Jordanian or non-Jordanian party; to organize, invite to or taking part in the preparation of any seminars or conferences of political aspect within and outside the Kingdom. Cf. "Al Arabu Lyawm" 21/02/2006.



## 1-2-4 Laws of libeling and Defamation

### 1-2-4-1 The right for criticism (open criticism) and for challenging the civil servant's acts or judgments.

Articles 188 – 199 of the penal law regulate the libeling and slander crimes, their sanctions and exceptions. And the exemption from penalty is granted if slander committed through publishing – and that is our point of interest – was addressed to the civil servant provided that its content is related to the duties of the said servant or a crime requiring a penalty according to the law. And if the libeling action is restricted to the job duties and is proved to be true, the libeler shall be considered innocent (article 192)<sup>84</sup>.

Articles 188 to 199 of the penal law number 16 for 1960 regulates the libeling crimes and their punishments and exemptions.

The penal law defines the libeling and slander in article 188 as follows:

1- Libeling: attributing a given material to a person – even if by way of doubt and questioning – that are susceptible of impairing his/her dignity and honor or expose him/her to the hatred and repel of people whether or not the said material requires penalty.

2- Slander: Aggressing the dignity, honor or standing of others – even if by the way of doubt and questioning- without proving any material.

3- If the name of the offended is not expressly mentioned or the proofs stated are ambiguous when the libeling crime is committed, nevertheless indications undoubtedly reveal that these allegations are referring to the offended and their nature is clear, the offender should be then regarded as if he/she mentioned the name of the offended and as if the nature of criminal act was express.

And the exemption from penalty is granted if slander committed through publishing – and that is our point of interest – was addressed to the civil servant provided that its content is related to the duties of the said servant or a crime requiring a penalty according to the law. And if the libeling action is restricted to the job duties and is proved to be true, the libeler shall be considered innocent (article 192)<sup>85</sup>.

### 1-2-4-2 Reasons for exception in the libeling and slander:

Article (192):

In order to reach the goal aimed at in this section, the publication of any material being libeling and slander shall be considered illicit unless:

1 – If the subject of slander or libeling is true and its publication benefits the public interest.

2 - If the subject of slander or libeling is exempt from accountability pursuant to one of the following reasons:

a – If the subject of libeling or slander has been published or the national assembly in a document or minutes or...

<sup>84</sup> Cf. the texts of the articles relating to the libeling in the press law in the annexes.

<sup>85</sup> Cf. the texts of the articles relating to the libeling in the press law in the annexes.



b – If the subject of slander or libeling has been published against a person that is a member of the military discipline or the disciplinary squad of the police, and is related to his/her behavior as a person coming under the authority to this disciplinary, and the publication comes from a person having authority on him/her regarding this behavior and addressed to another person enjoying the same authority or...

c – If the subject of libeling or slander had been published during judicial procedures from a person that have taken part in the said procedures such as a judge, attorney, witness, party to the lawsuit or...

d – If the subject of libeling or slander is in fact a true statement for something said or submitted during judicial procedures taken before any court provided that the latter had not prohibited the publication of the said or of the prosecution in which the said procedures have been taken secretly or...

e – If the subject of slander or libeling is a true copy, photocopy or summary for material already published, and the publication of the subject exempt from accountability according to the provisions of this article.

3 – If the publication is exempt from accountability it will be the same – in order to reach the goal aimed at by this section – whether the material that has been published true or untrue or if it took place with sound intentions or other. and this requires that the provisions of this article does not exempt any person from the penalty to which he/she is exposed by virtue of the provisions of another section of this law or the provisions of any other legislation.

And the article 91 of the penal law stipulates that: the slander shall be penalized with a prison period varying between three months and two years in the event it is addressed to the national assembly or any of its members during his/her work or because his deeds related to his/her work; or to any official bodies, courts, public administrations, army or to any employee during performing his/her duty or for his deeds dictated by the latter.

And this article is like a Damocles sword brandished by governments against any criticisms to ministries, security forces or the military<sup>86</sup>. And the strange thing is that the first case to be filed against a journalist after the democratic conversion was generated by the parliament<sup>87</sup>. And on June 1994 Jamil Nemri and Ramadan El Rawashdeh for defaming the security services. They have been condemned to pay a fine for publishing that the accused in a given case were subject to torture. And the Jordanian cassation court acquitted all the accused in the case since it was convinced that the confessions were taken by force.

For example, no democratic government in recent history ever filed a lawsuit against a newspaper or a journalist under the allegation of slandering the institutions of the State or

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<sup>86</sup> The European Court for Human Rights says that: "the liberty of expression does not end at the gates of the military camps" in its judgment in the Grigoriades case on 25/10/1997 Cf. the decision in: Freedom of Expression of the European Convention of Human Rights, Council of Europe, Human Rights files No 18 (revised) 2002 p 55

<sup>87</sup> On March 1994, the first judgment according to the press law number 10 for 1993 stating the non-responsibility of Raed Salha, the editor-in-chief of "Al Bilad" from the charges addressed to him, namely: "slandering and defaming the parliament" and offending the President of an Arab State and libeling the security services.



the civil servants despite the fact that the laws of some of these countries encompass texts incriminating these deeds. Moreover, the cases of publication prohibition are scarcely a dozen in all democratic States altogether<sup>88</sup>.

Many lawsuits have been filed against journalists under the pretext of slander. In one case, the plaintiff demanded one million Dinar for the damage he suffered, and after 30 sessions he dropped the lawsuit. In another case, the plaintiff (a hospital) demanded a ten-million dollar compensation. The fear felt by the journalist from such demands and compensations and prison augments his/her self control and leads to the loss of many news which considered to be a limitation of the journalism liberty.

#### **1-2-4-3 Crimes of slander, libeling and defamation offending the International Law:**

Article 122 of the penal law stipulates the following:

The same penalties indicated in the above mentioned article<sup>89</sup> shall be imposed pursuant to a lawsuit filed by the damaged party for the following crimes, if committed without a valid justification:

- 1 – The public defamation of a foreign country, its army, flag or national emblem.
- 2 – Public slander, libeling or defamation committed against the head of a foreign State, its ministers or political representatives in the Kingdom, the deed being subject to slander may not be proved.

#### **1-2-4-4 Impairing the standing of the State:**

Article 132 of the penal law:

Each Jordanian, abreast of his deeds, publishing wrongful or exaggerated news susceptible of impairing the standing of the State shall be penalized with prison for a minimum duration of 6 months and a maximum fine of fifty Dinars.

#### **1-2-4-5 Crimes impairing the national unity or damaging the relations between the elements of the nation**

Article 150 of the penal law stipulates the following:

Any writing, speech or deed aimed at or leading to kindling sectarian or racial feuds or inciting conflicts between sects and different elements of the Nation shall be penalized with a minimum prison period of 6 months to three years and a fine of 50 Dinars maximum.

#### **1-2-4-6 Impairing the financial standing of the State**

Article 152:

Whomever publishes in any of the medias mentioned in paragraphs two and three of article (73)<sup>90</sup> fabricated facts or wrongful allegations in order to cause deterioration in the

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<sup>88</sup> Cf.: Journalism from the perspective of the Human Rights, Cairo Center for the Human Rights, 1995, p. 21.

<sup>89</sup> (Article 122 of the penal law stipulates: the provisions of the articles 119 – 122 shall not be implemented unless alike provisions are promulgated in the pertinent country or stipulated in the agreement concluded therewith).

<sup>90</sup> Article 73 of the penal law mentions the public aspect of which publishing through newspapers.



value of the national devise or to destabilize the trust in the monetary status and the deeds of the State and all deeds relative to the general financial trust shall be penalized by a prison between six months and three years and a minimum fine of one hundred Dinars.

#### **1-2-4-7 Crime of verbal offense**

Article 195:

1 – Shall be penalized by prison between one and three years anyone who:

a - Is proved to have dared to verbally offend His Majesty the King.

b – Sends a written, oral, electronic letter or any caricatured picture or drawing to His Majesty or features the said letter, picture or drawing in an aspect leading to the to offend the dignity of His Majesty; the same penalty shall be implemented in the event she/he incites others to commit any of the said deeds.

c – Transmits with any media and spreads among people what was mentioned in clause b of paragraph a of this article.

d – Wrongfully attributes statements or deeds to His Majesty or attempts to spread the said among people.

2 – Shall be penalized as stipulated in paragraph (1) of this article if what is mentioned therein addressed against Her Majesty the Queen, the Prince of Throne, a regent or a member of the deputyship body.

#### **1-2-4-8 Contraventions against morale and public trust**

Article 468 of the penal law stipulates the following:

Whoever prints sells or features gravures, pictures or drawings leading to misconceptions regarding the Jordanians and susceptible of impairing their dignity and their respect shall be penalized with prison up to one week and a maximum fine of five Dinars and the said gravures, pictures and drawings shall be confiscated.

#### **1-2-4-9 The law of violating the reverence of courts number 9 for 1959**

Challenging the right of a judge or a court: article 15 of the law of violating the reverence of courts number 9 for 1959:

Anyone who publishes a challenge against a judge or a court or publishes remarks on a judgment aiming through that at exposing the steps of justice to questioning and defamation shall be penalized with a maximum prison period of one year and a maximum fine of one hundred Dinars or both.

This law is considered to be a demarcation line between journalism and press and the independency of the judiciary in implementing justice.

This law penalizes by prison – from six months to one year – and by a fine on any public publication susceptible of affecting the judges, the prosecution or the public opinion or exposing the justice to questioning and defamation<sup>91</sup>.

Despite the fact that international standards allow the imposition of restrictions on the liberty of expression for the sake of justice, nevertheless the penalty of prison in this law – from six months to one year – is exaggerated and has a chilling effect in the augmentation

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<sup>91</sup> Cf. the law of violation of the reverence of courts number (9) for 1959 in the annexes.



of self censorship for journalists and editing decision makers and it shall deter them from exercising their right for control over the domain of justice.

Many journalists have been prosecuted for being accused of publishing materials contravening the provisions of this law<sup>92</sup>.

#### **1-2-4-10 The juvenile law number 24 for 1968 amended by law 7 for 1982 Prohibiting the publication of the picture of the juvenile or the proceedings of the prosecution**

Article (12) of the law stipulates the following: it is prohibited to publish the name and picture of the delinquent juvenile or the proceedings or a summary thereof in any publication mean such as books, newspapers and cinema, and anyone contravening the above mentioned shall be penalized with a fine between five Dinars and twenty five Dinars, and the judgment may be published without the name or surname of the juvenile.

#### **1-2-5 Reasonable causes for suspending the work and confiscating journalistic cards**

The government does not interfere in the registration of the journalists or in the retrieval of their cards. The law of the journalism association regulates the bases for adhering to the association. The law establishes condition for membership of which years of study and the dedication to the career. And the registration of the member shall be eliminated by virtue of the association council. If it is proved that that one or more conditions stipulated in the said law were not available at the time of application for membership, or any of the said conditions is lacking after his/her adhesion to the association and the president of the association shall inform the member of the matter.

And the law of the association penalizes the journalist for contravening the ethics of the career<sup>93</sup> with many penalties: notification, warning, temporary prohibition from practicing journalism and elimination from the record of practicing journalists, i.e. the definitive prohibition from practicing journalism<sup>94</sup>.

And the decision of the disciplinary council to permanently prohibit practicing journalism, even for one day only, means depriving the journalist for life from becoming editor-in-chief for a journalistic publication, president of the association or member in the council of the latter. These sanctions are considered to be exaggerated and aiming at avenging on the

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<sup>92</sup> One of the major cases in this domain is the decision number 26/98 issued by the court of first instance of Amman on 29/06/1998 in the prosecution of the editor-in-chief of "Al 'Arabu Lyawm" Taher Al'Adwan and the writer Mansur Shmutt who published an article in the newspaper on 04/03/1998 in which he accused the Minister of Justice of interfering in the judiciary and the decision 494 issued by the penal court of first instance of Amman on 28/03/2004 during the prosecution of the then-editor-in-chief of "Al Ra'y" for publishing a topic relating to the delay in settling cases before courts in addition to facts impairing the Jordanian judiciary.

<sup>93</sup> Articles 26 to 51 of the law of the association. The text of the law is attached in the annexes.

<sup>94</sup> In an early judgment by the European Court for the Human Rights in 1960 in the case "De Beker vs. Belgium, it was said that forbidding a journalist from practicing journalism contravenes article 10 of the European covenant for the Human Rights. Thus Belgium abrogated the penalty of prohibiting the journalist from practicing journalism. Freedom of Expression of the European Convention of Human Rights, Council of Europe, Human Rights files No 18 (revised) 2002 p 55.



contravener rather than achieving reform, especially if one knows that in all crimes, the criminal can reestablish his dignity.

### **1-2-6 Specific laws for closing and confiscation**

The government may not close or confiscate the journalistic publication, it should rather occur by virtue of a decision from the court. The latter may eliminate the permit of the publication in the event it contravenes the conditions of the permit including the content of specialization without requiring a beforehand approval from the minister, provided that the latter had already addressed two warnings to the publication for contravening these conditions.

The owner of the journalistic publication must provide the minister with a copy of its annual budget within the four first months of the next year and the minister or any of his representatives is entitled to be informed of the financing sources. And in the event the owner fails to implement the provisions of the above mentioned paragraph, he/she shall be penalized with a fine of 100 Dinars maximum. If the failure continues, the court shall have the right to suspend the publication of the periodical for a period it reckons compatible.

### **1-2-7 Specific and reasonable laws for Arabic and non-Arabic press**

There is no segregation against publishing non-Arabic periodicals. And anyone who is to work as an editor-in-chief for a non Arabic periodical must be capable of fluently write and read the language of the periodical. And in the event the latter is issued in more than one language, the editor must be fluent in the main language of the periodical and be fairly fluent in the other languages.

### **1-2-8 Clear and reasonable basis for penalties**

The penalizing texts of publishing crimes in the penal law and other are known to be generally complicated and their terms are flexible and ambiguous, here it is hard to discern between what is allowed and what is penalized. Attorney Muhammad Koteishat says that that the main problem lies in "the legislations that affect and control the media process in Jordan. The legislator did not start from a vision broadening the space of the press liberty and did not inspire from the spirit of the Jordanian constitution as for guaranteeing the liberty of press and expression. Moreover, the legislator did not go along with the international standards and covenants from the liberty of the press.

Hence, many of the press and other legislations leaned to building obstacles hampering the press and journalists. Some articles in the legislations became "traps" and "mine fields" that complicate the free practicing of journalism without fearing being victimized by their nets."<sup>95</sup>

Away from the legislatives problems, as Koteishat says, the practical experience also revealed that the issues of journalism in the last years were interfered by politics and

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<sup>95</sup> Cf.: Attorney Muhammad Koteishat: Jordanian legislations and the freedom of press [http://cdfj.org/articles/content\\_display.php?id=64](http://cdfj.org/articles/content_display.php?id=64)



consecutive governments and their services exercised pressures on the judiciary especially in the past years whereas the government filed many lawsuits against the press and mostly against weekly periodicals.

### **1-2-8-1 Penalties which the Jordanian journalist might face**

Jordanian journalists face many difficulties that could deter them from achieving their wished role since they fear the penalties they could be subjected to. Some legal texts turned into "traps" that hamper their free work without fearing to fall in their nets. Jordanian journalists are subject to four kinds of penalties:

- 1 – Penal: aiming at limiting their personal freedom (such as detention or prison).
- 2 – Civil: financial fine.
- 3 – Complementary: temporary or permanent prohibition from practicing journalism, or publishing the verdict in one or more newspaper.
- 4 – Disciplinary: such as the ones imposed by the journalism association on its members and which could also prohibition from exercising journalism thus sometimes depriving from the right of candidacy to the position of president of the association or editor-in-chief.

And the Jordanian legislations do not observe the principle of "the personality of the penalty"; there is the supposed liability of the editor-in-chief even if he has committed the crime, the joint liability and the liability based on continuity.

**1-2-8-1-1 Supposed liability (of the editor-in-chief): article 23 – c** of the press law number 8 for 1998 that: the editor-in-chief is responsible for what is published in the concerned periodical. Moreover, he is considered to be responsible for the article with the writer.

**1-2-8-1-2 Joint liability: (between the editor-in-chief and the writer and the article):** article 41- b of the law press number 8 for 1998: the common right lawsuit in the crimes of periodicals shall be filed against the editor-in-chief and writer of the material as principal actors; and the owner of the periodical shall be jointly and severally responsible for the personal rights resulting from these crimes and for the expenses of the court. The Supreme Egyptian Court judged the unconstitutionality of the article 195 of the Egyptian penal law which stipulated the responsibility of the editor-in-chief and the writer of the material as principal actors for contravening the principle of presumption of innocence and for the principle of the personality of the penalty).

Liability based on continuity: which was mentioned by the text of the article 41/c of the press law which stipulates: the common right lawsuit in the crimes of the non-periodical against its committer as a principal actor and on its publisher as a principal accomplice. And if the writer or the publisher of the periodical is anonymous, the owner and director of the printing house shall be prosecuted together in the penal prosecution.

This article limits the responsible parties as for the law and their classification in a given manner whereas none of them is to be accountable as long as there is another party enjoying priority according to the classification of the law; thus the liability is transferred in the event the writer and publisher are anonymous to the director and owner of the printing house altogether.



Jordanian journalists are prosecuted – according to the nature of the committed crime – before four types of courts:

1 – Court of conciliation : is competent to examine the contraventions and misdemeanors that are not included in the competencies of the court of first instance.

2 – Court of First Instance: Article 41/a of the amended press law number 8 for 1998 stipulates:

The Court of First Instance shall be competent to examine all crimes that are committed against the provisions of this law, provided that all press publication crimes shall be considered as summary matters.

3 – The criminal court: is competent for the crimes which penalize, in case of validity, by prison for more than 5 years.

4 – The court of the Security of the State: is competent to examine the crimes committed against the provisions of the second chapter of the penal law, namely the crimes against the internal and external State security, crimes affecting the public safety stipulated in articles (157) to (168) from the penal law, crimes breaching the provisions for the protection of the secrets and documents of the State number (50) for 1971 and breaching the provisions of the penal law number 195 (verbal offense of the King).

### **1-3 Absence of censorship**

#### **1-3-1 Absence of official censorship**

The Jordanian constitution allows a limited previous censorship only in the case of state of emergency and the implementation of the law of defense<sup>96</sup>. Nevertheless, the previous censorship still often exists, especially the weekly newspapers which are printed in daily newspapers since they do not have their own printing house.

Among the newspapers that are mostly subject to censorship: "Al Majd"<sup>97</sup> and "Al Wehda".

As for "Al Wehda" weekly newspaper, it has been subjected many times to previous censorship and was obliged to eliminate certain topics before allowing its publication, e.g. the confiscation of issue 106 on 02/09/2003 from the print plant because it featured a core topic called "Al Wehda discusses the file of torture in Jordan". The strange thing is that the topic mostly relied on the analysis of the decisions stated by the Jordanian court of cassation which acquitted many accused because their confessions were taken by force

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<sup>96</sup> And according to the constitutional law, the Defense law number 13 for 1993 stipulates in article (4): the Prime Minister is entitled to exercise the following prerogatives:

j – Supervising, controlling, confiscating, suspending letters, newspapers, periodicals, publications, drawings and all means of expression, publicity and advertising before publishing and even closing the premises that issue them.

The decision number 2 of the supreme council for interpreting the constitution for 1991 stated: the enforcement and enactment of the Defense law is a following and independent phase from the promulgation of the law and falls within the competency of the executive power. The law defense comes in effect when this is announced according to a royal order pursuant to an order from the council of ministers. It is to be mentioned that the law of defense for Transjordan for 1935 remained in force until 1992; it allowed "controlling, supervising and banning publications, passport photos and radios".

<sup>97</sup> This report includes a separate "a study case" concerning "Al Majd" newspaper.



and under torture, and the said decisions were published in the police magazine issued by the General Directorate of General Security in Jordan.

Jordan does not have a Ministry of Information and it is believed that the security services are still interfering in the journalistic work.

In its periodical reports concerning the status of the press, the supreme council for press detected a number of summoning cases by the security services in the frame of obstacles which journalists are subjected to.

### 1-3-2 Determined and limited official steering as for indecent contents

The journalistic writer Jameel El Nemri says: "officials often says that there is no censorship on newspapers.. and that the newspapers reserve on publishing news, information or opinions is a personal attitude imposed by the free will of each newspaper; nevertheless, important and main journals have huge interests and their owners can not afford to disregard official trend"<sup>98</sup>.

Usually, contacts with journalists are conducted by officials to inform them of the events, and often it is understood that these contacts aim at publishing given information<sup>99</sup> or concealing others or lowering the profile thereof.

In other cases some weekly newspapers are informed that they must not publish certain news, and since the latter do not have their own print plants, they fear that if these information are not omitted, the print plant will not accept to print the newspaper.

Among the banned topics for journalists under risk of harassment:

- 1 – Armed forces and security services
- 2 – Offending religions
- 3 – "Higher interests of the nation"
- 4 – Sexual topics
- 5 – Criticizing the policies of some Arab countries.

journalistic writer Muwaffak el Muhadeen says that the Jordanian press enjoys an acceptable level of liberty in economic and political issues and enjoys a good space of independency, but it suffers schizophrenia when it approaches "what is known as the red lines such as corruption in certain services"<sup>100</sup>. Surveys regularly conducted by the center for strategic studies in the Jordanian university indicate that the majority of the Jordanians are afraid from criticizing governments<sup>101</sup>.

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<sup>98</sup> Cf. Jameel El Nemry: "Role of the media in democracy – the case of Jordan", center for the strategic studies in the University of Jordan, 1995, p.181.

<sup>99</sup> Writer Muwaffak Mahadeen says: "the Jordanian press is largely penetrated by the security services". Interview on 19/01/2006.

<sup>100</sup> Interview with the journalistic writer Muwaffak Muhadeen on 19/01/2006.

<sup>101</sup> Cf. "Al 'Arabu Lyawm" 07/09/2005 "in a survey conducted by the center for strategic studies: 77% are afraid of publicly criticizing the government". Cf.: the survey of the center for strategic studies July 2003 which considered the following: generally, the average of people who believe they can express their opinions without running any risks is very little and they represent the ones who believe that these liberties are largely guaranteed". A total of 3,2% of the surveyed said they can not publicly criticize and disagree with the government without risking security and living consequences on them and their families. Thus the fear average would have increased from 69.9 % in 1999 to 83.2% in 2003. <http://www.css-jordan.org/arabic/polls/democracy/2003/index.html>



### 1-3-2-1 Internet

The connection of Jordan to the World Wide Web (Internet) began in April 1996, and the first Internet café was founded in 1997. Opportunities for Jordanians to access to the net are accelerating yearly<sup>102</sup>. According to the latest survey, 13% of the Jordanians have access to the Internet.

The Jordanian government had already attempted to regulate the work of the Internet centers and cafés in order to ban teenagers from entering them. By the end of 200, it issued instructions published in the official gazette forbidding any person under the age of 16 from entering these centers and the latter should not be distant for more than 500 meters from the nearest mosque or church – it is strange that the same text is implemented for the stores offering alcohols -. The owners of the said centers should also keep records including the names of the PC users and the time of usage in addition to a file including the works of the last month. And when these instructions were proved to be illegal, the Minister of Interior abolished them three weeks later<sup>103</sup>.

Some Internet sites are subject to filtering which complicates their access. In some limited cases, the security services monitor some sites and summon their owners and in rare cases they are detained for limited periods. In 2002, Tujan Feissal, the first female elected for the parliament was prosecuted before the court of State security for publishing a letter on the Internet criticizing a former Prime Minister and she was condemned to prison. And later she was prohibited from candidacy to the legislatives.

### 1-3-2-2 Confiscation of foreign publications

The press law forces the owner of the library, the distribution company or the publishing house to submit to the Director to early copies of each publication usually imported from abroad to obtain authorization before distributing or selling them. And te director is entitled to ban the publication in the Kingdom in the event it included material encroaching the provisions of this law<sup>104</sup>.

Generally, foreign publications are allowed in Jordan; copies of periodicals and books have rarely been banned.

Lebanese "Al Adab" magazine have been banned in Jordan in October 2003 because it contained a topic in which the writer, political militant Dr. Hisham El Bustany, details his sights in Jordanian prisons when he was arrested in that period<sup>105</sup>. In addition to the book "His shadow on the Earth – Titles of Muslim Governors in Holy declarations" by Ussamah El Aissah published by Cadmus house in Damascus.

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<sup>102</sup> It is to be mentioned that Shafiq Arsheedat street in Irbid city in the north of the country reached a world record as for the number of Internet cafés thus was included in the Guinness Book.

<sup>103</sup> "Al 'Arabu Lyawm" published on its first page on 08/01/2001 a study by journalist Yahya Shoukair as for the illegality of these instructions, which incited the Minister of Interior to abolish them.

<sup>104</sup> Article 31 of the press law.

<sup>105</sup> Cf.: Arab Press Freedom Watch (APFW), The State of the Arab Media 2003 p 69.



### 1-3-3 Fair and responsible censorship of the media

Under the legal restrictions and the penalties imposed, the editor-in-chief, the journalist and the gate guards become representatives for the publication controller when deciding what should and should not be published. And the self-censorship is still common amongst the gate guards, i.e. the staff of medias in Jordan such as editors and publishing decision makers.

Moreover, the restrictive laws which bear exaggeration in their penalties, increase the self-censorship exercised by journalists and prevent the flow of information, which limits the liberty of press.

Journalistic writer Dr. Fahd el Fatek<sup>106</sup> refers many of the interference aspects in the journalistic works to the self-censorship imposed by the editors-in-chief which leads sometimes to the refusal of publishing some articles or omitting and amending some paragraphs.

He also reckons that the space of liberty differs from a newspaper to another, and it decreases with the augmentation of the rate of governmental ownership represented with the public institution for social security in some newspapers.

There are other kinds of control on medias of which "soft censorship" whereas an augmenting number of governments around the world to more ambiguous and complicated means to control the press, such as retrieving advertisings and exercising pressures on distributors and print plant owners<sup>107</sup>.

"Soft or concealed censorship is almost inevitable for any society and we suffer from it in Jordan some way or another" the editor-in-chief of "Al Dustur" daily newspaper Hilmi El Asmar says. "we have what is worst: The self-censorship" he adds.

### 1-4 Independence of the media from government and non-government influences

#### 1-4-1 Independence of the Media

It could not be said that press in Jordan is independent from the interference of the State.

The Supreme Council of Information in Jordan conducted an unprecedented study concerning the journalistic liberties in Jordan which revealed that the journalistic liberty in Jordan is of 49.2% namely less than the average<sup>108</sup>.

This indication approaches the position of Jordan in the annual reports of "reporters without borders" regarding the liberty of journalism, whereas Jordan ranked 96 in the world in 2005 and the third in the Arab countries after Kuwait and Qatar<sup>109</sup>.

In the study conducted by the Supreme Council of Information in the second semester of 2004, 420 journalists were surveyed and the content of 1021 issues of daily and weekly newspapers were analyzed, whereas the results of that analysis were compared to the results of analysis of the answers of the journalists.

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<sup>106</sup> Cf. Dr. Fahd El Fatek "The problem of liberties in Jordan", "Al Mustaqbal Al 'Arabi" Magazine.

<sup>107</sup> Cf. Helmi El Asmar. "Al Dustur" Newspaper, 14/02/2006.

<sup>108</sup> Cf. the text of the study in the annexes.

<sup>109</sup> [www.rsf.org/rubrique.php3?id\\_rubrique=554](http://www.rsf.org/rubrique.php3?id_rubrique=554)



The study indicates many obstacles suffered by journalists in Jordan, at the top of which features the difficulty of obtaining information, a hamper mentioned by half of the journalists; in addition to the interference in the journalistic work, preventing the participation in public gatherings in addition to the referral to the courts, detention and exercising pressures for preventing openness on other opinions and performing previous censorship.

In another study conducted by the Supreme council of Information in 2005, the average of journalistic liberty in Jordan improved and reached 56%; nevertheless, it remained **below** the average. Dr. Walid Abdulhay, professor of political science in Al Yurmuk University<sup>110</sup>, who supervised the two studies says that the improvement was not due to the change in the approach of the State in dealing with journalistic establishments, it was rather due to the lack one or to events such as closing a newspaper by virtue of a governmental decision, thus the average may deteriorate again.

"The problem of press – in Jordan – is the existence of a security theory to control it under the pretext that press may cause collective unrest. This is the core issue and everything else is mere details. Hence the interference in journalistic work and the attempts to control the journalism association<sup>111</sup>" says journalist Bassam Bdarein.

#### 1-4-2 Economic viability of the media

It is prohibited for any owner, senior editor-in-chief or editor of a press publication or any journalist working or writer usually writing therein to receive or accept due to this ownership or relation any financial help or grant from any Jordanian or non Jordanian party<sup>112</sup>.

Power of the advertisers: newspapers only rely on advertisements and subscriptions as financial sources.

The volume of advertisement market in Jordan reached about 160 million dollar and witnesses an annual growth of around 20%. The share of periodicals, and especially daily newspapers from advertisements 130 million dollars<sup>113</sup>. And as a comparison, the per capita in the USA amounts to 300 dollars yearly, in KSA 22 dollars and in Jordan 5 dollars<sup>114</sup>.

Advertisements represent 70% of the revenues of "Al Ra'y" whereas its income in 2005 around 25 million dollars, and 60% of the revenues of "Al Dustur" which achieved an income of advertisements of 3 million dollars in the same year.

A research conducted by the Supreme Council of Information<sup>115</sup> that advertisements in "Al Ra'y" form 50% of its volume, followed by "Al Ghad" newspaper with 20%, "Al Dustur"

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<sup>110</sup> Interview with Dr. Walid Abdulhay, 13/06/2006

<sup>111</sup> Bassam Bdarein (director of the office of "AlQuds Al 'Arabi newspaper which is issued in London): Interview at his office on 29/01/2006.

<sup>112</sup> Article 39 of the press law.

<sup>113</sup> Cf.: "Al Dustur" 09/02/2006.

<sup>114</sup> Mohammad 'Alayan, publisher of "Al Ghad" daily newspaper and "Al Wasseet" free weekly advertising publication in a seminar held in "Hayatt" hotel in Amman on 19/02/2006.

<sup>115</sup> The research was conducted during the period between 15/06/2005 and 15/09/2005 and it features in its integrity in the annex.



(19%), "Al 'Arabu Lyawm" (5%). As for the three other newspapers, the rate of advertisement reached less than 3%.

Advertisers, and especially the largest ones, represent forces of pressure on the journalism liberty. The government and its institutions are the greatest advertiser in the newspapers.

The governments use the carrot and stick of publicity to penalize and recompense the newspapers. And in an extreme case, the government of "Abdul Ra'uf Al Rawbida" in June 1999 asked ministers and official services not to advertise or subscribe in "Al 'Arabu lyawm" newspaper. It even disconnected it from the official news agency.

There are also many examples of the influence of advertisers. In one year, the governorate of Amman prohibited any advertisement in a daily newspaper for many months because it published a topic considered to be negative. And due to pressures from a mobile company, the famous caricaturist Imad Hajjaj was licensed from "Al Ra'y" newspaper in 2000.

### **1-5 Personal independence of the media persons**

Some journalist look after satisfying the government and its partisans. (Some journalists aim at being nominated as counselors).

#### **1-5-1 Reasonable control of the content**

Conflict of interests and non-accountability of journalists: in relation to the same subject, a rare group of journalists are obliged to work with more than a party; they become thus a delegate of the mentioned party in the newspaper in which they work and seek not writing negative material about that party and promote its huge achievements. Such kind of journalists can not serve two masters at the same time; the interests of the people are most often sacrificed.

#### **1-5-2 Freedom of movement of journalists**

There are no restrictions on the freedom of movement of the journalists in Jordan. Moreover, foreign journalists enjoy facilitations. There are no areas restricted on journalists but for the known military sites.

#### **1-5-3 Penal cases limited and not arbitrary in respect of journalists**

The department of press filed in 2005: "five penal lawsuits against four and weekly daily newspapers of which a case because of offending the prime minister and the government, two cases because offense and satire against two ministers and two cases for not being precise and honest which leads to the raise of unrest and panic whereas one of the newspapers mentioned that the earthquake that hit Jordan was due to the burial of Israeli nuclear waste while a writer of one of the newspapers broached the issue of corruption in an unprofessional way<sup>116</sup>.

The government also filed six prosecutions against journalists in 2006.

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<sup>116</sup> A statement by the director of the press department published in daily Jordanian newspapers on 26/01/2006.



"When governments are incapable of controlling the press recourse to penalizing legislations" says Journalistic writer Samih El Ma'ayta<sup>117</sup>. Attorney Mohammed Koteishat mentions around 200 cases against journalists and newspapers are still pending before judiciary and have been judged<sup>118</sup>.

**1-5-3-1 Secrecy of the information sources:** the press law stipulates the right of the periodical and the journalist to preserve the secrecy of the news and information obtained<sup>119</sup>.

The law of the journalism association also stipulates that the journalist should preserve the secrecy of the information source<sup>120</sup>.

Thus the Jordanian journalists enjoy the best legal protection for preserving the secrecy of their information source even before the judiciary.

**1-5-3-2 Penal law:** There are many articles in the penal law number 16 for 1960 that affect the liberty of journalism and the right of access to information, especially articles pertinent to the crimes against the internal and external State security. The danger in these articles lies in the fact that the Court of State security is competent to examine the crimes committed<sup>121</sup>.

Main articles on the basis of which journalists have been judged:

Article 118: shall be penalized by temporary detention for minimum period of five years whoever performs acts, writings or speeches not allowed by the government thus exposing the Kingdom to the danger of hostile acts or impairing its relations with a foreign country or endangering the Jordanians to avenging acts against them or their assets."

The government may interpret any critic addressed to an Arab country as impairing the relations of the Kingdom with this country" and the journalist would then be exposed to judgment before the State Security Court and a condemnation to temporary penal servitude for a minimum of five years and a maximum of ten years. It is noted through the text of the article that he who writes material allowed by the government shall not be penalized even if it exposes the Kingdom to the danger of hostile acts or impairs its relationships with a foreign State or expose the Jordanians to vindictive acts that take place against their person or their assets.

Many journalists<sup>122</sup> and citizens have already been prosecuted under the allegation breaching this article<sup>123</sup>.

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<sup>117</sup> From a gathering organized by the branch of the Arab center for the Development of the Rule of Law and Integrity in Amman to discuss the draft of the study on 06/07/2006 in Sheraton hotel in the presence of about 30 journalists and experts and the Minister of political development Dr. Sabri Rbeihat.

<sup>118</sup> From the meeting for discussion of the draft of the study on 06/07/2006 in Sheraton Amman.

<sup>119</sup> Article 6 – d of the press law.

<sup>120</sup> Article 6 – d of the press law.

<sup>121</sup> Cf. the mentioned articles in the annex.

<sup>122</sup> Among the journalists who have been prosecuted for breaching this article: the editor-in-chief of "Al Majd" weekly publication Fahd Al Rimawi who has been prosecuted before the Supreme Crime Court after being accused of affecting the relations of Jordan with Bahrain by publishing an article written by a Bahraini writer in which the latter called his government to follow the example of King Hussein who, in 1956, "arabized" the commandment of the Jordanian Army and to lay off the British director of the Bahrain intelligence "Henderson". After about 30 audiences, Al Rimawi was discharged.



Article 150:

Any writing, speech or act aiming at or resulting in kindling sectarian or sectarian unrest or inciting on conflict between sects and different elements of the Nation shall be penalized by prison for period varying between six months and three years and a maximum fine of five hundred dinars.

Article 163: anyone who prints or publishes a statement or publication for an illicit association or for its benefit or issued thereof shall be penalized by prison for a maximum period of six months or maximum fine of fifty dinars.

Many lawsuits have been filed against journalists by virtue of this article whereas they have been accused of publishing statements of the banned "Al Tahrir"<sup>124</sup> (Liberation) party or the Higher Committee for confronting normalization with Israel. And verdicts often acquitted them from the latter accusation. Article 273: Whoever is proved to have dared verbally offended one of the prophets of the religions shall be imprisoned for a period varying between one and three years.

Article 278: shall be penalized by a maximum prison of three months and a maximum fine of twenty dinars whoever:

- 1 – Publishes a written material, manuscript, picture and drawing or symbol that is susceptible of offending religious sense or belief of other people
- 2 – Utters in a public and clearly a word or sound that may offend the religious feeling or belief of another person.

Two Jordanian weekly publications, "Shihan" and "Al Mihwar" had re-published the caricatures that have already been published for first time by a Danish newspaper and the editors-in-chief of the two newspapers have been prosecuted<sup>125</sup>.

The current global trade is towards an increasing referral to the civil law on the expense of the penal law as for the journalistic cases.

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<sup>123</sup> Since 2001, the State Security Court has become competent to prosecute the accused of breaching article 118. Since that time dozens of accused have been prosecuted before it under the allegation of disturbing the relations with Iraq by collecting donations for the Iraqi resistance or planning to fight in Iraq against the forces of occupation.

<sup>124</sup> The competency for judging the violator of this article used to be for the Court of first instance. Abdullah Ben Issa for interviewing the spokesman of "Al Tahrir" party Ata Abul Rashneh and the court of first instance condemned him to a six-month prison period and a fine of five hundred dinars. Nevertheless, the court of appeal revoked the verdict and acquitted the accused saying that: "publishing such ideas and answers does not represent a crime in the meaning aimed at in the article 163 since what has been published was not pre-settled by the spokesperson for goals aiming at spreading among people.

In comparison, the constitutional court in Spain had revoked in 1986 a verdict condemning a journalist that had published a statement for the Eta organization. This court said that the Supreme Court failed to discern between the opinionsupportig terrorism and the publishing of a statement drafted by a person who does not work for the newspaper and that the publication of "Eta" is protected by the constitution. Moreover, it reckoned that journalists have the right to inform the readers and that the public is entitled to receive complete and accurate information, thus he should not incur any sanction for publishing these information. The Court considered that such texts would lead to a self-censorship by journalists whereas they will fear the outcomes of writing about terrorist acts; which does not suit with the right of publishing and receiving information. Article 19, Manual of freedom of expression,p120((

<sup>125</sup> A detailed and separate study is featured in the annexes about this case.



Amongst the arguments stated concerning the necessity of substituting the penal sanction with a financial one (fine) features the decision of the legislator that the owner of the publication shall be responsible for the personal rights resulting from the publication crimes and shall not incur any penal responsibility unless she/he is proved to have been a participant or a principal actor in the crime.

The journalistic company originally founded for gaining profit shall be financially penalized; thus the journalist should be treated the same way. Moreover, the penal law stipulates in article 27 – 2 that prison may be substituted with a fine as above mentioned.

#### **1-5-4 Physical, economic and social protection**

**1-5-4-1 Aggressions against journalists:** this type of aggressions is rare; nevertheless, in August 1998, in an unprecedented act, the journalistic writer Nahed Hitr was assaulted and severely beaten and more than 2 meters of his intestines have been removed due to the complications of the assault and the assaulters have never been revealed. Sometimes, photography films of the journalists are confiscated in certain events such as demonstrations or sit ins.

- Fear of the security services and their summons<sup>126</sup>

Article 44 of the law of the journalism association number 15 for 1998 stipulates: during achieving his/her tasks, the journalist shall be granted all suitable facilities by all parties through which and with which he/she exercises journalism or deals. He/she may not be arrested or pursued for an act accomplished in the respect of his/her duties unless they are done in a manner comprising a penal crime.

Nevertheless, journalists are being contacted or summoned to security services in a manner aiming at exercising soft pressure and sometimes bearing threatens in the event of non-compliance. In other cases, the involved journalist is referred to the courts in vindictive cases aiming at "humiliating" the latter even if acquitted by the end of the day. Jordanian laws require the personal appearance of the accused before the courts in all audiences. And representation is not allowed in press cases like in Egypt whereas articles 40 and 41 of the press law stipulate "in crimes occurring through newspapers that the presence of the accused is not necessary provided that he/she appoints a representative (attorney) unless the court orders his/her personal presence". The editor-in-chief and the accused journalist are obliged to personally appear in all sessions of the trial from the beginning until the verdict is announced. This represents a great hamper for their works in addition to other difficulties if the trial is taking place in cities in North Jordan such as Irbid or the South like Aqaba. According to the enforced laws, the journalist shall be prosecuted before many courts such as the State Security, First Instance and conciliation courts.

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<sup>126</sup> among the examples: Bassam Bdarin, the reporter of "Al Quds Al Dawli" newspaper in Amman was summoned 39 times between 1994 and 2004 and received hundreds of contacts. As for influence of that matter he says: "I still feel their presence, they have managed somehow to establish a censor within me". Interview in his office on 29/01/2006.



Referral to the courts is considered to be "the main mean of intimidating journalists"<sup>127</sup>. Amongst the most interesting cases in this domain features what happened in 1996 when Nayef Al Toura, the publisher of "Al Bilad" newspaper was arrested for possession of fake dollars and was referred to the State Security Court. The general prosecutor had dropped the charge of receiving aids from foreign parties before prosecuting him and in 19/07/1996, the court acquitted him.

#### **1-5-4-2 Low salaries of the journalists**

The average income of journalists in Jordan is less than the per capita income in Jordan"<sup>128</sup>. Thus they are exposed to sacrificing the interests of the public. "Though journalists are demanded to be a watchdog for the public interest and fight corruption and derivation, their low revenue exposes them to temptations and corruption, whereas some allow themselves to accept aids and present services to certain parties having private interests" says the renowned Jordanian journalist Dr. Fahd El Fanek.<sup>129</sup>

#### **1-5-5 The capability of the civil society organizations to protect journalists**

The association of journalism plays a role in interfering to protect journalists. But civil community organizations such as the Human Rights centers, have little efficiencies in this framework and does not exceed issuing a statement.

#### **1-5-6 Absence of discrimination**

There is no discrimination as for religion, sex, ethnic or any other against journalists in Jordan.

Most of the above mentioned meets with the report of the poll conducted by experts in Jordan concerning the press which revealed that: "the important result is that the situation of the press in Jordan leans toward negative assessment by experts; out of 26 clauses, 20 were assessed as negative.

The most negative domains lead to the following synthesis:

- 1 – Journalists do not obtain suitable salaries.
- 2 – Journalists do not have effective potential to obtain governmental documents that interest the public opinion
- 3 – Self-censorship significantly hampers the independency of media.
- 4 – Journalists do not enjoy an efficient freedom of expression without fearing any oppression.
- 5 – Journalists do not enjoy a sufficient legal protection to perform their tasks."

Those who answered the questions indicate fears concerning the independency of press due to the lack in core guarantees, which undermines the independency of press in Jordan.

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<sup>127</sup> Bassam Bdarin: interview in his office on 29/01/2006. H also mentioned that he has been referred to courts in seven cases seven of which were dropped and he was condemned to a fine in one.

<sup>128</sup> Cf.: Dr. Jawad Al Annabi in "press and media in Jordan: reality and aspirations". Seminar held by the Jordanian center for studies and information in May 1996 and published in a book in 1997, p. 239. And the average income of journalists - According to Dr. Al Annabi – is ranked sixth after teachers. It is to be mentioned that the average income of journalists in the USA is greater than that of congressmen.

<sup>129</sup> Cf. Dr. Fahd El Fanek, in "role of the press in democracy – the case of Jordan", center for Strategic studies, University of Jordan, 1995, p. 24.



The organizational frame is express and clear but some behaviors or decisions taken by the responsible authorities raised the fear of those who answered the question. The existence of censorship and the incapacity of journalists to freely diffuse core topics undermine the independency of press. Those who answered indicated the excessive usage of influence and pressure which threatens the freedom of press. They also indicated the lack of personal independency of journalists which enfeebles more the independency of press<sup>130</sup>.

## **2 – Integrity:**

### **2-1 A clear code of ethics and standards for the journalism profession**

The journalism association in Jordan issued the journalistic pact of honor that was the result of governmental pressures in 2003, whereas it has been endorsed in a meeting for plenary assembly of the syndicate which was attended by only 35 journalists out of 600 journalists.

The internal regulation of the association also stipulated the necessity of abiding by the said pact; it is more like a penal and reprimand law rather than an example of the globally adopted journalistic pacts of honor.

#### **2-1-1 Clear standards for journalistic professionalism**

The journalistic pact of honor imposes obligations on journalists and any breach thereof shall be considered as a behavioral contravention and an act impairing the honor of the profession. Thus the journalist can be called to account before the disciplinary panel of the association.

According to the pact, journalist are committed to protect their sources of information and they shall not reveal the sources of secret information to people or colleagues since this would partially impair the said sources or they might progressively refrain from revealing information, which damages the flow of the latter to the society.

It also stipulates that the mission of the journalist requires accuracy and objectivity and that exercising it implies the assertion of the consistency of news and information before publishing them.

One should also clearly discern between truth and commentary or opinion and news.

Journalists also engage not to publish low level artistic works which generates lust or promotes vice or crime or raises insane feelings which spread contradicts the values and morale of the society.

Journalists engage to respect the reputation of families and individuals as well as the secrecy of the private issues of the citizens; in addition to the refusal of any financial or in kind or any other aid of any nature or form.

The internal regulation of the journalism association and the pact of honor also stipulate the commitment to preserving the secrecy of the information sources.

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<sup>130</sup> Cf.: "Report on the Poll of the experts: the press" conducted by the center.



The editing and advertising materials should never be mixed; and the difference between the opinion and the advertisement must be clear to prevent any insertion of any political and advertising concepts and opinions in the form of editing material to the reader.

And the pact does not stipulate the protection of informers or whistle-blowers.

It also stipulates accuracy, objectivity and integrity in presenting the journalistic material, and featuring contradicting opinions and respecting the individual privacy.

### **2-1-2 Specific and implemented laws for fighting corruption**

The law press and the code of the journalism association stipulate the prohibition of journalists from accepting any kind of support from any internal or external party.

### **2-1-3 Specific and implemented laws for fighting discrimination**

Positions in the public sector – theoretically and legally at least – are subject to competition based on competence. Any infringed may refer to the judiciary if his/her rights are transgressed. As for the private sector in the journalistic domain, it is subjected to the considerations of the market and the owners.

### **2-1-4 Specific and implemented standards for recruiting and promoting journalists**

## **2-2 Media diversity**

### **2-2-1 A diverse ownership of the media**

The government used, until recently, to monopolize the TV and Radio diffusion. Within the governmental privatization trend, 15 FM radio stations have been authorized and of which one only is allowed to diffuse political news and programs. (there are three external radio stations that are allowed to rerun inside Jordan: BBC, Radio Monte Carlo and Sawa Radio).

The audiovisual law is criticized for encompassing tariffs of over 50% on stations that diffuse political news and programs.

The official TV is also exempted from authorization and diffusing tariffs.

The law also stipulates bestowing the cabinet the prerogatives of rejecting the authorization without revealing the reasons even if the application meets all conditions.

And the government controls –through its funds – 53% of the shares of "Al Ra'y" and 35% of "Al Dustur".

### **2-2-2 Pluralist media**

A study of analysis of the content for the Jordanian news agency – Petra – conducted by the Supreme Council of Information indicated that the share "of the political opinion of the opposition to the policy of the government" has reached less than 1 % of all what the



agency diffuses<sup>131</sup>, which confirms that the content of what it diffuses does not exceed being Public Relations for the government. Most of its news "have an advertising aspect to show the activities of politicians; some news come from certain ministries and governmental services and are diffused without any change and even the reporter or the writer does not interfere therein" says one of the journalists working in the agency.

A study conducted by the Supreme Council of Information (15/06/2005 – 15/09/2005) to analyze the structural content of the Jordanian daily newspapers and news agency "Petra" revealed that the local political matter obtained the lowest coverage rate comparing to Arab and International news; the average of local news in all newspapers was 40.24% of the total political themes whereas Arab issues was ranked first with 38.65 % followed by International news 36.93%.

The study also revealed that the reliance of the Jordanian newspapers on "Petra" for political topics is less than 8 %.

Though it seems at a first glance that "Petra" news agency affects the political coverage of the newspapers, nevertheless the latter are rarely obliged to publish this insignificant average since it relates to official statements.

Despite the fact that the weekly newspapers in Jordan are perceived as a stirring press though its limited distribution, it assumed a major role in increasing the space of journalistic liberties. No numbers are available as for the volume of distribution of weekly newspapers; nevertheless they are estimated to 100,000 issues, i.e. the same number of daily newspapers distributed in one day altogether.

### **2-2-3 Accessibility of media to all fringes of the society**

The price of one copy of the daily newspapers 20 piaster (around 30 cents), which is a reasonable price. And the lowest price for a receiver is around 70 dinars – 100 dollars -. It could be said that the cost of accessibility to the media in Jordan is relatively reasonable.

The State also promotes the usage of computers and a plan has been established to generalize on the schools and its presence in universities is facilitated.

## **3- Competency**

### **3-1 Suitable qualifications for journalists**

#### **3-1-1 Clear standards to become a journalist**

The code of the journalism association stipulates a mandatory membership for anyone who wishes to work as a journalist. He who exercises journalism without adhering to the association shall be penalized by prison or fine.

Article 5 of the code of association stipulates that anyone registering in the association should be:

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<sup>131</sup> Cf. the Supreme Council for Information, analyzing the structural content of the daily Jordanian newspapers and the news agency in the annexes.



**A** – Jordanian

**B** – Not condemned with a crime or misdemeanor offending honor.

**C** – Enjoying legal capacity.

**D**–Enjoying one of the following academic qualifications from an acknowledged university or faculty:

1 – PhD in Journalism or Information.

2 – Diploma of MBA or Masters in Journalism or Information and trained in journalism for a minimum period of six months.

3 – First University Certificate in Journalism or Information and training in Journalism for a minimum period of two years.

4 – Certificate of Diploma of a Community College in Journalism or Information and training in Journalism for a minimum period of two years.

5 – First University Certificate at least in any specialization other than Journalism and Information and training in Journalism for a minimum period of three years.

6 – Certificate of Diploma of a Community College in any specialization other than Journalism or Information and training in Journalism for a minimum period of three years.

7 – Certificate of General Secondary studies or the equivalent and training in Journalism for a minimum period of four years.

**E** – Anyone having less than the above mentioned qualifications and having worked in journalism within Jordan before the enforcement of the present law for a minimum period of eight years provided that the statuses of all the concerned with the provisions of this paragraph would be settled within a maximum period of six months after its enforcement.

**F** – Being totally dedicated to the effective practicing of Journalism.

Estimations reckons the existence of 300 practicing journalists or reporters for foreign medias that are not members of the association, nevertheless the latter is overlooking them despite the fact it yearly publishes an announcement to remind them of penalty incurred to anyone practicing journalism without being a member therein.

There are two universities teaching journalism in Jordan on the level of First University Certificate: Yarmuq Public University and Petra Private University in addition to the University of High Studies which recently inaugurated a program for masters in journalism.

### **3-1-2 Capacity of obtaining a periodical specialized training**

Low professionalism and poor training<sup>132</sup>:

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<sup>132</sup> An analysis report concerning "the training needs of journalists in Jordan" conducted by "the center for protection and liberty of journalists" in mid 2005 on a sample of 101 journalists revealed that quarter of them can speak English. And more than half of them have attended various training sessions. As for the priority of their training needs, 80% mentioned the promotion of professional competency and 75% the enhancement of the legal awareness. Half the sample reckoned that the laws governing their journalistic work represent a restriction on freedom of work while 25% considered it does not affect them directly.



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Despite the fact that the responsibility of organizing training seminars for journalists, especially new ones, befalls on the association of journalism, the latter is not deploying any efforts in this regard. The Supreme Council for Information started in 2005 the organization of training sessions for journalists<sup>133</sup>. Some civil community organizations also cooperate with foreign parties to deploy efforts in this domain, especially the center of "protection and freedom for journalists". Nevertheless the association warned the journalists many times against dealing with it under the pretext it receives financing from foreign parties.

### **3-2 Open opportunities for entering the profession**

Article 6 of the code of the association of journalism stipulates:

A – The training shall be accepted for the objects of the present law in the two following cases:

- 1 – If it is performed through effective practicing in any official press establishment.
- 2 – if the training is performed in any institution specialized in journalism or Information within or outside the Kingdom recognized by official authorities.

Pursuant to the above mentioned, employees under training in party newspapers shall not be registered in the record of practicing journalists.

Women represent about quarter of the members of the journalism association and no gender discrimination is practiced in the adherence procedures in the association.

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<sup>133</sup> The media training center in the council organized in 2005 21 training sessions attended by 334 journalists.



### Chapter III: Detailed Description

In addition to the known roles of the press in society, there are additional duties to guarantee the freedom of expression and the freedom of the press during election times, especially in countries undergoing a process of democratic transformation where freedoms had been severely restricted.

This role becomes more important than elections in terms of:

- Promoting pluralism and acquainting electors with the ideas of the opposition regarding the status quo.
- Non-discrimination in coverage based on the political opinions of the parties or candidates.
- Educating electors so they would know their rights, the dates of registration and objection, and giving them information about the candidates and their programs to offer them a better chance of selection.
- Monitoring the independence of the commission supervising elections.
- Revealing election-related offenses.
- Controlling the conduct standards of the candidates and their followers.

To allow the media to play its role in this regard, governments have certain obligations: positive obligations, like facilitating the access of the different parties to the state-run media. Ownership by the government of radio and television and certain newspapers often affects the media coverage of elections. It is the duty of a journalist to monitor the public media and the extent of its neutrality upon coverage of the elections.

The government also has negative obligations not to act discriminately based on the political opinions (a civil servant should not interfere in favor of a party or candidate or reward or hinder any candidate if he performs or refuses to perform any action).

The media themselves have obligations, including:

- Notifying the public of election-related cases and raising their awareness thereof.
- Achieving balance, accuracy and neutrality of coverage.
- Granting parties and candidates the opportunity to access the media with fairness and without any distinction to find a wide spectrum of viewpoints.
- Giving equal periods of time for the different viewpoints.



- Guaranteeing the right of response and rectification to parties and candidates of statements that cause them damage or of the criticism addressed to them.
- Publishing all that relates to the elections, except for the very clear articles that incite violence and hatred.

The main role played by the media during elections is to ensure that the winners won fair elections. The media plays a role in revealing election-related offenses:

- Bribe: Money or promise of election of a candidate or refraining from election of a candidate.
- Ensuring the neutrality of the committee in charge of elections and the non-interference of a civil servant in favor or against a candidate.
- Inadmissibility of voting more than once (repeated election cards, voting on behalf of dead people or in an imaginary name).
- Inadmissibility of delegation to cast a vote.
- Examining the extent to which the nomination conditions agree with the candidates in terms of impediments to election (Penal Law, qualification of the candidate, nationality, foreign protection, employee without having resigned, lawmen).
- Controlling the dates of election campaign and the expiry thereof.
- Examining the extent to which the electors satisfy the election conditions: The army and the police.

We can say that the media in Jordan re-produces what the is produced by the official authorities, according to Dr. Walid Abdul Hay, Professor of Political Science at Al Yarmouk University<sup>134</sup>.

The media raises awareness of the right to participate in elections and informs the electors of their rights, the dates of the elections and the objection to the electoral lists. However, its role in revealing election offenses and holding candidates accountable remains limited.

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<sup>134</sup> Interview with Dr. Walid Abdul Hay on 13.06.2006.



## Summary

There is an increased recognition of the link among democracy, respect for human rights, fighting corruption and development. The freedom of the press is not a luxury but a fundamental factor in development.

In “Al Hak Fi Al Iblagh”, a book translated from the original written by Economy Nobel Prize Winners Joseph Stiglitz and James Wolfensohn, Siglitz says: “The freedom of the press and the freedom of speech not only reduce the risks of abuse of power but also increase the chances of meeting the basic needs of the residents. Wolfensohn, the former director of the International Monetary Fund says: “To reduce poverty, we should free the access to information and improve its quality.”

(In the report issued by Reporters Without Borders in 2005 on the freedom of the press around the world, the Arab States appear at the end of the list whereas the Scandinavian states appear at the beginning, followed by the more developed nations, which confirms the close relationship between the freedom of the press and economic growth.



#### IV- Chapter four: Recommendations

- 1- A provision should be set forth stipulating that pre-censorship is impermissible (except in the event of announcement of the defense law) and that any action violating such right is challengeable and compensable.
- 2- Freedom-depriving penalties in offenses committed by publications and opinion-related penalties should be cancelled. A clear and explicit legislation should be issued prohibiting detention and imprisonment in publications and publishing cases.
- 3- The “personality of the penalty” principle should be enforced and the penal liability of the editor-in-chief cancelled unless it is established that he actually participated in the offense.
- 4- All forms of pre-censorship of the freedom of speech, the freedom of the press and the media should be cancelled and new legislations passed to punish anyone that carries out such censorship by any means other than those specified by law.
- 5- All terms mentioned in the legislations that may have more than one meaning or explanation should be cancelled.
- 6- A draft law should be submitted to guarantee the right of access to information and guarantee the principle of maximum exposure.
- 7- The Law of Protection of State Secrets and Documents No. 50 of 1971 (a provisional law, although passed 35 years ago) should be amended to agree with Article 19 of the International Covenant on Civil and Political Rights to facilitate the access to information.
- 8- A provision should be set forth stipulating that journalists shall be exclusively tried before civil courts and that the State Security Court shall have no jurisdiction with respect to such trials.
- 9- The Union of Journalists Law should be amended and compulsory membership of the Union cancelled and the door for the journalists working for partisan newspapers and electronic newspapers opened.
- 10- A provision should be set forth stipulating for the right to criticism for the press and non-punishment for the objection-through publication-to the actions of a civil servant or a person having a general representation capacity or entrusted with a public service or a public figure, unless such publication was carried out in bad faith. The injured party should prove that. The right of criticism for the press is a known right, especially if it covers the actions of civil servants in good faith. Good faith is assumed for all, and the injured party should prove any action in bad faith on the part of a journalist. Therefore, good faith may not be established upon exercise of any right because it is originally assumed and constitutes proof of innocence. The burden of proving the contrary shall fall upon the other party.



Public and political figures shall be more forbearing toward the criticism of the press and shall even be more tolerant of what may be described as an excess.

- 11- A provision should be set forth stipulating that provisional detention in offenses committed by newspapers is impermissible.

Such immunity of a journalist or writer in newspapers is found in Egypt pursuant to Article 41 of the Press Regulation Law which prohibits the arrest of a journalist except in one event, namely the slandering of the President of the Republic.

Article 135 of the Law of Criminal Procedure provides: “Provisional detention is impermissible in the offenses committed by newspapers.”

Such immunity of journalists results from the necessity of emphasizing the freedom of the press and providing them with the largest amount of assurance while they perform their duties.

Since the creation of Jordan, rarely has a journalist been imprisoned under a court judgment, but the events of detention of a journalist before the Public Prosecutor or with other security bodies have increased.

It is time to replace a punitive penalty with a financial penalty especially in press cases and with civil compensation to the injured party.

The arguments we make concerning about the necessity of replacing a punitive penalty with a financial penalty (a fine) with regard to a journalist include the decision of the legislator to have the owner of the publication jointly and severally liable for the personal rights resulting from printing offenses. The owner shall not assume any penal liability unless it is established that he actually participated or interfered in the offense.

A press company originally established to make profits should be punished by paying money. The judgment should be rendered against the journalist. The European Court of Human Rights declared that the freedom of the press requires special protection to be able to play the vital role assigned to it, namely the role of public guard and to provide information and ideas of concern to the public opinion. The European Court of Human Rights said that the imprisonment penalty, because of a defect in the government or defamation thereof, is a penalty that does not match the intended legal objectives.

- 12- A new code of honor or guide of conduct of journalists should be formulated and based on their free will. The current code was imposed under government pressure and is similar to the penal code.
- 13- Training workshops should be organized with the aim of raising the professional competence of journalists and increase their legal knowledge in such manner as would increase their qualification and practice of the profession up to the maximum limits of freedom and at the same time, not take away the freedom of others.



- 14- The government should be invited to merge the international conventions on human rights in national legislations and publish them in the Official Gazette to give the judiciary the opportunity to implement them.
- 15- A provision should be set forth stipulating that judgments relating to publication offenses may be cassated.
- 16- A provision should be set forth stipulating that, in the event where a journalist is interrogated in the absence of the President of the Union of Journalists or his representative, such interrogation shall be null and void.
- 17- A provision should be set forth stipulating for the termination of the ownership of the government or the public sector of newspaper shares.
- 18- Article 38 of the Publications Law which provides: “And making a journalist liable for what he publishes according to the rules of public law in relation to slander or influencing the witnesses) should be cancelled.
- 19- Delegation: A provision should be set forth stipulating that delegation is permissible in offenses committed by publications. The Jordanian laws require the appearance of the suspect or the accused in person before the court at all the sessions thereof. In Egypt, Articles 40 and 41 of the Press Regulation Law provide that, with respect to offenses committed by newspapers, the appearance of the suspect or accused in person is not required, provided that he delegates an attorney (lawyer) unless the court orders that he appear in person.
- 20- Taxes on the inputs of the production of the press, especially the sales tax on the paper of newspapers should be cancelled.
- 21- A provision should be set forth stipulating for non-discrimination when the government and its bodies make announcements in newspapers (by rewarding pro-government newspapers and punishing those that criticize the government).
- 22- A provision should be set forth stipulating that cases in offenses committed by publications shall not be heard after the lapse of three months from the date of occurrence of the offense.
- 23- Discriminatory fees on radio stations that wish to broadcast news and political talk-shows should be cancelled.
- 24- A provision should be set forth stipulating that the government and public institutions should not be discriminatory when publishing their announcements in newspapers in such manner as to give the impression of rewarding certain newspapers and punishing others.

We note that certain government institutions deliberately publish their announcements in specific newspapers and deprive others to guarantee the praise given by the first and to punish the others. There are many examples of the aforesaid. Such provision would raise



the subject of justice in distributing government announcements. An announcement should not be a tool of reward or punishment of the press used by government institutions.

The publisher of a newspaper in the State of Andhra Pradesh in India filed a case against the state, accusing it of discrimination against his newspaper upon its publication of official announcements. The higher Court of the State of Andhra Pradesh called on the state not to discriminate against any particular newspaper when publishing government announcements. The court said: “Although the government cannot be forced to sign a contract of announcements with a particular newspaper, it is obliged however to allocate announcements fairly.” The court added: “The government pays a considerable share of revenue for the publication of government announcements aiming at informing the public of its activities and the activities of its subsidiaries. The government is not expected to use such authority in the interest of a specific newspaper that it approves of and against another that it does not like. The government should not use such announcements to seek the satisfaction of newspapers or as a weapon to punish other newspapers that criticize its policies and actions.”

- 25- The publication of a reply should be considered a mitigating circumstance upon rendering a finding of guilt.

The right to correction and reply to what is published in the newspapers is a right of the parties and individuals to whom the published material relates. The publication of the reply of the said parties may reduce the effect of publication especially in slander and libel, and damage cases. Therefore, the publication of the reply should be considered a mitigating circumstance upon assessment of the penalty of compensation to the injured party.

- 26- A provision should be set forth stipulating that it is impermissible to impose customs duties on the requirements of printing and journalism. The Jordanian Government imposes customs duties on the paper of newspapers (at 25%, although it often exempts the newspapers thereof every six months, in violation of the relevant constitution provision. Indeed, no legislative authorization has been granted to the government to impose any tax or duty or exempt from either without a law stipulation. Articles 111 and 118 of the Constitution). Jordan is one of the few countries of the world that does so. Such grant or denial thereof may be used to influence the editing policies of the newspaper.

The government of the late Rajiv Gandhi had imposed tax on the import of publications from abroad. The resolution was challenged before the Higher Court of India represented in similar cases presented to the United States Supreme Court when the State of Louisiana imposed a similar tax on imported publications. The US Court said: “Tax damages and limits the circulation of information guaranteed by the constitution. The press is one of the main interpreters between the government and the people. Allowing the chaining of the press means chaining ourselves.”



Regarding other taxes imposed on the press, the court called on the government to study the effect of tax on the journalism industry and reconsider the publications imported from abroad within six months and to refuse to collect tax until results have been deduced from the study of the said considerations.

The court said: “The freedom of distribution of newspapers is necessarily linked to the freedom of opinion and speech. Thus, it is the subject of constitutional protection.”

- 27- The concept of the “conscience condition” should be introduced to media legislations. A provision should be set forth stipulating that it is impermissible to oblige a journalist to act contrary to his conscience and that he has the right to leave work without notice if he is required to act contrary to his conscience or if the newspaper changes its policy contrary to the circumstances under which the contract of employment was concluded. The journalist shall reserve the right to compensation equivalent to arbitrary dismissal without any prejudice to his other rights. The “conscience condition” has become of the global rights of journalists around the world, including certain Arab countries, especially countries in North Western Africa. This guarantee aims at protecting journalists from being pressured to perform action of an advertising nature or to cover events and write material using a formulation contrary to their beliefs and professional conscience.
- 28- A provision should be included in the constitution stipulating that the press is an authority that carries on its mission freely and independently and that journalists are independent with no power over them when performing their duties except that of the law.

Calling the press “the fourth branch of government” was an international recognition of the importance of its role around the world. This provision is set forth in Articles 206 and 210 of the Egyptian Constitution and Articles 1 and 6 of the Law No. 96 of 1996 concerning the regulation of the press and is also set forth in the Yemeni Constitution. Introducing such article means that the law gives the press the title of “a branch of government”. Historically, the press had already acquired such title a long time ago as ‘the fourth branch of government’. The second paragraph already stipulated in Article 97 of the Jordanian Judges Code and in the Egyptian Judges and Journalists Code will give journalists more independence.



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