Current Developments

Recent Developments to the Jordanian Execution Law

Hisham Ababneh | ORCID: 0000-0002-1821-0212
Ababneh Law and Arbitration, 314 Zahran Street, Amman 11821, Jordan
hisham@ababnehlaw.com

Abstract

This article examines the recent amendments made to the Jordanian Execution Law in respect of imprisonment for failure to pay debts of civil and commercial nature. While the amendments made on the Law are long-awaited and are an improvement to the administration of justice in the Country; it remains that these amendments came below expectations. First, the recent amendments to the Law are short from the international obligations of the Country under the International Covenant on Civil and Political Rights (ICCPR) which Jordan is a signatory of. Second, the recent amendments still use the “one size fits all” approach whereby it does not provide a distinction between a procrastinating debtor and a debtor that is indeed not able to pay; to determine imprisonment in civil and commercial debts. Hence, while the recent amendments had made some positive changes to the imprisonment for debtors in civil and commercial debts; this article finds that Jordan must adhere to its international obligations by providing alternatives to imprisonment for civil and commercial debts; or at least provide a distinction between a procrastinating debtor and a not able to pay debtor to determine whether imprisonment of the debtor is due.
Keywords

execution law – imprisonment for debt – ICCPR – Jordanian Law – procrastinating debtors

1 Introduction

When the COVID-19 pandemic hit in early 2020, the Jordanian Government, like many others, took some precautionary and elevating producers to help sustain the interests of the country and ease the harsh economic and health effects of the pandemic. Hence, the Government put the Defense Law number 13 (hereafter Defense Law”) into effect.1 The Defense Law is similar to the “Emergency Law” found in other countries; which gives the Executive Authority the power to issue decrees that can go against — and override — regular laws to preserve the Country’s higher interests in unusual and urgent circumstances.2 Upon the enforcement of the Defense law; and pursuant to it, the Jordanian Prime Minister issued Defense Order number 28 which halted the imprisonment of persons for financial obligations that are less than 100,000 Jordanian Dinars (JOD) which is equivalent to approx. USD 141,000.3 The purpose of this Defense Order was twofold.4 First, the pandemic caused financial stress in the Country and hence there was a need (and pressure) on the Government to alleviate some of the financial stress on citizens by relaxing the execution procedures for financial obligations. Second, to prevent the overcrowding of state rehabilitation facilities during the pandemic which could cause a virus outbreak inside these institutions.

This Defense Order came as a relief to those facing financial stress due to the pandemic. Before the mentioned Defense Order, the Jordanian Execution Law number 25 for the Year 2007 (hereafter Execution Law) provided that a creditor may request the imprisonment of his debtor if the latter fails to pay the debt or does not offer a settlement that conforms with their financial situation (nonetheless, if such settlement is offered, the first payment should not be less than

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2 Article 3(a) of the Defense Law states: “this Law shall be applied by the Prime Minister by taking the necessary actions and procedures required to ensure public safety and defend the Kingdom without regard to the regular laws usually applicable”.
4 Article 1 of Defense Order number 28.
25% of the debt amount). Such imprisonment of a failed (or procrastinating) debtor was considered a “civil” enforcement action to compel payment and ensure that the debtor does not have any hidden assets or money that can pay for their outstanding debt. Hence, in the regular course of matters, enforcement procedures in Jordan enabled imprisonment for purely financial/contractual obligations in civil and commercial transactions. However, a recent amendment to the Execution Law (hereafter Amended Execution Law) made a critical change to the imprisonment of debtors. The Amended Law has been a hot point of discussion among lawyers, civil society institutions, and human rights activists.

This Article shall discuss the Jordanian Legislature’s position of allowing imprisonment for financial contractual obligations, the recent amendment to the Execution Law in this respect, and discuss the conformity of such recent amendment with the Country’s obligations under international conventions (namely the International Covenant on Civil and Political Rights).

2 Imprisonment for Financial Obligations: Two Tales of a Story

Jordan is a Civil Law jurisdiction and its laws were originally inspired from the Egyptian legislation, which in turn were imported from the French legal system. As such, the Civil Law doctrine of imprisonment or confinement of persons for financial obligations in civil and commercial transactions is — as a general rule — prohibited. The legal theorem behind it is that the debt relationship between two parties is subject to the financial liability of each party and not to their personas. The financial capacity of the parties is the guarantee for non-adherence to mutual obligations of a civil or commercial contract, not the parties themselves. Based on that, if any of the parties fails to fulfill its part of the mutual obligations of a contract, then the other party may refrain from performing its part of the obligations as a counter-measure to compel

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adherence to the contract. Refraining to provide the counter obligations in a contract is to equalize the financial standing of the parties. As such, as a general rule, imprisoning or confining the liberty of a debtor for failing to commit to a contractual obligation is prohibited. Any actions to be taken against such uncommitted debtors should be taken against their financial capacity not their personal capacity.

Based on the above legal theorem, if one party fully performs its obligations and the other does not; then the Jordanian Civil Law provides that the non-defaulting party may request compensation for damages. So, the question moves to what if a party required to pay compensation for damages fails to do so? The Civil Law also answers this question by stating that all the debtors’ assets and money are considered as a security to the creditor, and the latter can request the Execution Department to cease any of the debtor’s assets and sell them for the creditor’s benefit. However, what if a defaulting party does not have any assets that can be sold to the benefit of the creditor? Here is where the Jordanian Legislature — in the Execution Law — allowed imprisonment of the creditor.

Imprisonment here is a method of compelling the debtors to pay their dues and pressuring them to surface any hidden assets or money that can be used to pay off the debt or financial obligation. Therefore, imprisonment for a financial/contractual obligation is an exception to the general rule. The purpose of this exception is to compel a procrastinating debtor to pay its dues. Under this light, imprisonment is not a ‘punishment’ to the debtor; but rather a deterrent to them from entering into financial transactions that will not be fulfilled and/or compensated for non-fulfillment. It is also a means of pressure on the debtor to surface any hidden assets or money they may have to cover for their outstanding obligations.

This view — that imprisonment for financial obligations under Jordanian law is an exception to the general rule — can be confirmed by reading the circumstances when imprisonment cannot be requested even if the debtor is procrastinating or not paying its debts; for instance, if the debtor was a public servant, was pregnant, or was under the age of 18 years, imprisonment cannot

9 Article 203 of the Civil Law.
11 Article 246 of the Civil Law.
12 Article 365 of the Civil Law.
13 See AlKilian, supra note 6, pp. 189–190.
14 Ibid.
be requested by the creditor.\textsuperscript{15} If imprisonment for not paying civil or commercial dues is a ‘punishment’, then the legislature would have made this punishment apply to all people equally without discrimination based on occupation (i.e. being a civil servant) or being a pregnant female, for example.

While the above may seem logical on its face; there is another side to the story which must be examined. The Execution Law — when allowing imprisonment — did not differentiate between a procrastinating debtor who is likely to have hidden his assets and money to avoid payment (which is the main reason why imprisonment is stipulated for in the Law); and a debtor that is actually not able to pay because they have no means or assets that allow them to pay. The same Law also did not differentiate between debtors of small amounts and debtors of higher amounts. The Execution law also did not take into consideration some cultural norms. For instance, many women had taken out small loans to help their husbands with household expenses — and some others were forced by their husbands to take such loans — and then were not able to fulfill these obligations, which resulted eventually in their imprisonment for trivial amounts taken at the request of their families.

Another criticism to the Execution Law is that it does not conform with human rights and international covenants in this respect. Namely, the International Covenant on Civil and Political Rights (\textit{ICCPR}), which was signed by Jordan in 2006, provides in Article 11 that “[n]o one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.”\textsuperscript{16} Hence, imprisonment arising out of the failure to fulfill financial/contractual obligations in civil and commercial transactions which ultimately result in the imprisonment of a debtor is — under the \textit{ICCPR} — prohibited; while the Execution Law allows for it although that the Country is a signatory to the \textit{ICCPR}.

The deficiencies of the Execution Law and its contradiction to the international commitments of Jordan under the \textit{ICCPR} rightly triggered the voices of many human rights organizations and activists; which called for a reform to end the suffering of persons and families from this Law.\textsuperscript{17} However, in a small developing economy that is heavily based on debt transactions between traders and regular people; removing the imprisonment option from creditors would leave them with no avail in case of procrastinating debtors. Moreover, the Jordanian law does not offer any other remedy to compel payment of such

\textsuperscript{15} Article 23 of the Execution Law.


debtor. Although many countries do not provide for imprisonment in commercial and civil transactions, they do however adopt alternative measures that serve as a deterrent for non-fulfillment of financial obligations; such as the credit score system. Such a system (Credit Score system) implicitly compels payment of outstanding dues to keep a sufficient credit score that allows its holder to conduct regular day-to-day activities; such as renting a house or taking a loan. In Jordan, no other alternative is provided (nor does the country adopt the credit score system or any similar system). Therefore, requesting imprisonment for procrastinating debtors was the only viable option to creditors for induce payment from procrastinating debtors.

In light of the COVID pandemic and the Defense Order that halted imprisonment for obligations less than JOD 100,000; an amendment to the Execution Law was suggested by the Government and eventually passed by Parliament (Amended Execution Law). This amendment entered into force on 24 June 2022.

3 The Amended Execution Law

Under the recently Amended Execution Law; several changes were made however the most critical were the provisions relating to the imprisonment of procrastinating debtors; as follows:

3.1 The Introduction of a Minimum Threshold Amount to Request Imprisonment

The Amended Law provided a minimum amount for the financial/contractual obligation that would allow the creditor to request the imprisonment of its procrastinating debtor. This minimum amount is JOD 5,000 which is equivalent to approx. USD 7,000. Hence, if the financial obligation is worth

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19 A credit score is a number between 300 and 850 that depicts a consumer’s creditworthiness. The higher the score, the better a borrower looks to potential lenders. A credit score is based on credit history: number of open accounts, total levels of debt, and repayment history, and other factors. Lenders use credit scores to evaluate the probability that an individual will repay loans in a timely manner.” See https://www.investopedia.com/terms/c/credit_score.asp (accessed 2 July 2022).
20 Amended Execution Law number 9 for the Year 2022, Official Gazette 5796 (2022) 3583, dated 25 May 2022 (Amended Execution Law).
21 Article 23(a/3) of the Amended Execution Law.
less than the minimum amount of JOD 5000; then imprisonment cannot be requested by the creditor. This has alleviated the criticism to the pre-amended version of the Execution Law that in many instances imprisonment happened for trivial or minor amounts. However, the Legislature inserted a caveat to this minimum threshold amount which relates to financial/contractual obligations arising from lease contracts or employment contracts. In the latter contracts the creditor (which is typically the landlord or the employee respectively) can request the imprisonment of its procrastinating debtor even if the financial obligation is less than the minimum threshold amount of JOD 5000. This caveat is indeed well placed in relation to employees claiming their rights from unpaying employers. However, in relation to landlords and tenants it could be seen both ways. On one hand, the landlord has the right to be paid rent for its leased property and the legislature wanted to ensure that tenants adhere to their financial capabilities when renting. On the other hand, a non-procrastinating tenant who is actually not able to pay the rent amount would be imprisoned for failure to pay, in addition to being forcefully evicted from the property under the provisions of the Landlords and Tenants Law. It seems that the Amended Law wanted to ensure that landlords and employees are not faced with procrastinating debtors when claiming their rights and have the ability to induce the payment of their rights; which are usually less than the minimum threshold amount prescribed in the recently Amended Execution Law. Nonetheless, it would have been fairer had the legislator subjected lease obligations to the minimum threshold amount for imprisonment.

3.2 Limiting the Number of Imprisonment Days, and the Number of Imprisonment Times

If debt amount is over JOD 5000 the creditor can request the imprisonment of their debtor; however — unlike the pre-amendment Execution Law — imprisonment is now capped at a maximum of 60 days for each debt per year. Previously, imprisonment was capped at 90 days maximum for each debt per year. Moreover, the pre-amended Execution Law provided that each debt is dealt with separately and a creditor of multiple debts (or multiple creditors) can request the imprisonment of the debtor for each debt separately. Hence a debtor with multiple debts or multiple creditors can enter into a never-end cycle of imprisonment and may remain in person for years serving 90 days.

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22 Article 22(f/1) of the Amended Execution Law.
24 Article 22(c) of the Amended Execution Law.
of imprisonment for each debt per year which is renewed every year. The Amended Execution law came to rectify this shortcoming by stating that a debtor can be imprisoned for a maximum of 120 days per year irrespective of the number of debts they have and irrespective of the number creditors claiming their debts (i.e., can imprisoned for two debts a year only even if there are more than two debts or creditors). By inserting this amendment in the Law; the legislature managed to confirm that imprisonment for procrastinating debtors is a deterrent measure and not a punishment per se.

3.3 The Ability to Ban a Procrastinating Debtor from Travelling Outside of Jordan

Although this is not a new introduction to the Amended Execution Law; it is now a useful tool for creditors who cannot request the imprisonment of their debtor because the latter had already served the maximum 120 days of imprisonment per year for other financial/contractual obligations or any other reason.

3.4 Relaxing the Minimum Settlement Amount

Both the pre-amended Execution Law and the Amended Execution Law provide that an imprisonment request by a creditor shall be dismissed if the debtor offers a settlement that suits their financial status/situation. However, under the per-amended version of the Law, the first payment of the settlement should not be less than 25% of the debt amount. Now, under the Amended Execution Law, the legislature has relaxed this requirement to be 15% of the debt amount.

There were some other amendments in the Amended Law but the above are the most notable and critical of them. In essence, the abolishment of imprisonment for small debts is a major milestone in the Jordanian legal system. However, the legislature did not provide any provisions that touch on the differentiation between a procrastinating debtor and a not-able-to-pay debtor. While this may be a subjective issue that the legislature did not want to deal with or make reference to in the Amended Law; it was hoped that the legislature would have given the court the ability to decide if the debtor is a procrastinating one or really cannot make payment, and in that light decide on the imprisonment question. Objective criteria to determine whether the debtor is procrastinating or not can be, for example; the prior nature of the business or

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25 Article 22(d) of the Amended Execution Law.
26 Article 23(c) of the Amended Execution Law.
27 Article 22(a) of the Amended Execution Law.
occupation of the debtor; the style of living of the debtor and his family (type of schools for their children, residence, travel history, level of education, prior debt lawsuits ... etc.). Ironically, a Jordanian lawyer published an op-ed about the Amended Execution Law in a local newspaper and claimed that years ago “an Execution Judge decided to imprison a procrastinating debtor based on evidence submitted to the Judge that a lavish wedding was held for one of the debtors’ sons just weeks ago; which proves the debtors’ ability to pay the outstanding debt although the latter claimed otherwise”. It is worth noting that the approach of having the Court determine the financial capacity of a person is used in other scenarios under Jordanian Law. Although there is no legal provision under Jordanian Law that provides certain subjective criteria to determine such financial capacity of a person, it is the practice of the Courts take some indicators on a person’s financial situation using discretionary criteria such as previous bank account statements, lifestyle, nature of business ... etc. For example, Religious Courts — which deal with divorce cases — determine the husband’s ability to pay alimony (Naflaqa) to his wife and children based on the former’s financial situation. Article 64 of the Personal Affairs Law reads:

The wife’s alimony amount is determined according to the husband’s financial condition, whether it is easy or difficult, and it may be increased or decreased according to his capabilities, provided that it is not less than the necessary minimum in terms of food, clothing, housing and medical care. Alimony is determined either by mutual agreement between the spouses or by a Court’s ruling ... Hence, the Jordanian legislature could have used similar language in the Amended Execution Law that would have allowed the Court to determine the debtors’ ability of payment of its outstanding dues based on some objective criteria and consequently determine whether imprisonment of the debtor in question is due or not. In addition, since the debtor is the one who has failed to pay its outstanding dues towards his creditor, the burden of proof should move to the debtor to prove to the Court that he is not procrastinating, and that he is truly unable to pay in order to avoid imprisonment. However, the creditor may


rebute any evidence provided by the debtor in this respect to prove the contrary (i.e. that the debtor is in fact able to pay and is procrastinating).

Nonetheless, the changes made are indeed a step forward towards the enhancement of the justice system in Jordan. However, one may question whether this came as a result of Jordan’s commitment to its international obligations under the ICCPR or merely as a response to the internal criticisms aimed at the Execution Law?

4 The ICCPR and Jordanian Law

The ICCPR provides a blanket statement that no person shall be imprisoned for failure to commit to a contractual obligation.\(^\text{30}\) The ICCPR does not provide an exception to the nature of the contractual obligation, nor does it specify any minimum or maximum amount for such contractual obligation. Hence, by looking at the Amended Version of the Execution Law and the exceptions and caveats it contains; one can easily infer that the Amended Law did not come to align with the Country’s international obligations under the ICCPR. This is demonstrated by the exceptions made under the Execution Law pertaining to lease contracts and employment contracts where the creditor can request the imprisonment of debtor and allowing imprisonment for obligations beyond the JOD 5,000 minimum threshold amount.

In addition to the above, Jordanian Courts were consistent to responding to any defense submitted to it by creditors facing imprisonment (that the ICCPR stipulates a prohibition on imprisonment for non-fulfillment of contractual obligations); by stating that imprisonment for procrastinating debtors is based on a court judgment to pay a certain amount to the creditor which the debtor failed to pay in accordance with the internal laws of the Country.\(^\text{31}\) The Courts explained that a debtor is not directly imprisoned for failing to commit to a contractual/financial obligation, but rather the debtor was first sued in a court of law, which found the latter liable to the creditor and issued a judgment to that effect. Hence, the source of obligation is the court judgment requiring the debtor to pay a certain sum of money (the debt amount) and not the contract between the parties which leads to the court judgement.\(^\text{32}\)

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30 Article 11 of the ICCPR.
31 E.g., Judgement No. 71/2022 by the Amman First Instance Court in its Appellate Capacity.
32 Ibid.
It seems that Jordanian Courts had found this justification as a leeway not to answer the question raised under Article 11 of the ICCPR. The justification provided by the Courts in this respect is not convincing in any way; as Court Judgments that determine the liability of a debtor are not a new source of obligation created by the Court. Rather that Court’s role is to confirm -in accordance with the evidence presented to it which is mainly based on the ‘contract’ between the parties- whether there is a liability arising from one party towards the other. Hence, the Court determines whether an already existing contractual/financial obligation is due or not in accordance with the contract itself and the domestic laws of the country. The Court cannot create a new liability; except in cases of awarding damages or interest; and even in such event, the liability the court creates is based on a legal provision and/or an already existing liability which is the contract or the breach thereof. Interestingly, one court judgment dealt with Article 11 of the ICCPR differently by stating that it:

Find[s] that Article 11 of the 1966 International Covenant on Civil and Political Rights states that “No person may be imprisoned merely because of his inability to fulfill a contractual obligation.” It is learned from that article that before a decision is made to prevent the debtor’s imprisonment, two conditions must be met: the first: that the obligation is contractual, and the second is that the debtor is unable to pay. We find that there is nothing in this lawsuit to indicate the inability to pay the debt, and the debtor has not presented any evidence to prove this conditional inability. What is proven in this case is the debtor’s failure to pay the amount of the debt, not his inability to pay it, and there is a difference between non-payment and inability to pay it.33

Hence, Jordanian law remains outside the commitments of the ICCPR, although the Jordanian Constitution provides for the superiority of international conventions above national law.34 It is worth mentioning that although the Jordanian Government signed on the ICCPR it did not follow the constitutional path of passing the ICCPR to Parliament for review and approval. The Constitution provides that “Conventions and agreements that burdens the treasury with any expense or affect the public and private rights of Jordanians

33 Judgment No. 1533/2019 by Jarash First Instance Court in its Appellate Capacity.
shall not be enforceable unless approved by Parliament ...”\textsuperscript{35} Hence, while Jordan has signed the Agreement; it has not passed the same to Parliament for review and approval; a move that may be seen as intentional to avoid the contradictions the ICCPR may cause with national laws, such as the Execution Law, and which renders the ICCPR — \textit{de facto} — ineffective.

5 Conclusion

The recent amendment to the Jordanian Execution Law is a major step forward on the path to a more modern execution system for debts of civil and commercial nature. Nonetheless, the recent amendment did not deal with an important question that was frequently asked; that is, why does Jordanian law not differentiate between a procrastinating debtor that merely does not want to pay its civil and/or commercial dues, and a debtor that is “actually” not able to pay due to financial stress. Although this can be a subjective categorization of debtors; the legislature could have put some indicators or criteria where a Court could make a sound judgment on the ability of the debtor to pay or not; and consequently, determine whether such debtor should be imprisoned for their failure to pay. Moreover, being one of a few countries that still allows for the imprisonment of debtors to compel payment from procrastinating debtors, Jordan must embark on a new endeavor to provide an alternative system to compel payment. Perhaps gradually introducing the credit score system in the Country can help in that respect.

Another issue that is not yet solved by the recent amendment to the Execution Law is the conformity of the said Law with the ICCPR which Jordan is a signatory to. The government should either submit the ICCPR to Parliament for review and approval as per the requirements of the Constitution; or alternatively withdraw its signature due to the contradictions of national law with the international obligations under the ICCPR.

\textsuperscript{35} Article 33(2) of the Jordanian Constitution for the Year 1952 and its amendments, \textit{Official Gazette} 1093 (1952) 3, dated 8 January 1952.