Positive Trends in Jordan: Constitutional Amendments of 2011

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1 INTRODUCTION

Following the Arab Spring, the program for amending certain laws relating to human rights, such as the Law for Public Meetings was extended to include amending the Constitution of Jordan. The process leading to the constitutional amendments started in April 2011, when King Abdullah II set up a Royal Committee headed by Former Prime Minister Ahmad Al-Lozi to review comprehensively the provisions of the Constitution. In the letter setting up the Committee, King Abdullah II emphasised that the aim of the review was to “establish a balance between the three authorities in Jordan, and to improve performance of political parties and Parliament, leading to a constitutional formula which would enable Parliament to undertake its functions of legislating and monitoring the actions of the Government, as well as to devote the independence of the judiciary”.1 After a period of four months, the Royal Committee submitted its proposal to amend the Jordanian Constitution in August 2011, which included more than 42 amendments. The recommendations were later discussed and approved by the National Assembly and the Senate, with minor changes, before being ratified by the King in accordance with the constitutional procedures.2 Most of the constitutional amendments proposed by the Royal Committee and approved by the National Assembly are deemed to restore the lost balance between the legislative and executive branches, by demolishing aspects of dominance by the executive over the legislature, and to strengthen the independence of the judiciary.

2 AMENDMENT RELATING TO THE PROHIBITION OF TORTURE

Newly added paragraph 2 of article 8 reads as follow:

Every person who is arrested, imprisoned or his/her freedom is restricted, must be treated in a way that preserves his/her human dignity. It is forbidden for him/her to be tortured (in any way) or harmed physically or mentally, as it is forbidden to detain him/her in places outside of those designated by the laws regulating prisons. Any statement extracted from a person under duress of anything of the above or the threat thereof shall neither bare any consideration nor reliability.

This amendment is designed to meet widespread criticism of the alleged illegal, also under Jordanian law, practices of ill-treatment, mainly by the General Intelligence Directorate, lately reported by the European Court of Human Rights in its

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1 The Royal Decree to establish a Royal Committee to review provisions of the Constitution was issued in 26 April 2011.
2 The 2011 amendments to the Constitution were published on page (4452) of the Official Gazette No. 5117, dated 1st October 2011.
case *Qatada v. United Kingdom* [2012]. The Court held, however, that extradition to Jordan would not be in violation of Article 3.

The periodic reports by the UN Committee for torture draw a rather gruesome picture of routine practice of torture in Jordan.\(^3\) Despite the fact that Jordan has been a State Party to the Convention since 1991, it had not included the prohibition of torture in its constitution. In fact, the Committee against torture recommended in 2010, that

> The State party should incorporate the prohibition of torture into the Constitution to show a real and important recognition of torture as a serious crime and human rights abuse and to fight impunity.\(^4\)

With the current version of paragraph 2 of Article 8 of the Constitution, at least this requirement is fulfilled. Further legislative amendments to the penal code of Jordan as well as more stringent implementation-practices will have to follow in order to comply fully with the recommendations of the Committee.

### 3 AMENDMENTS RELATING TO THE EXECUTIVE AUTHORITY

The 2011 review of the Jordanian Constitution with regard to the Executive Authority has aimed to strengthen the general jurisdiction of Government over all domestic and foreign affairs except what has been entrusted or assigned to such matters under this Constitution or any other law to any person or other body pursuant to Article 45, paragraph 1, of the Constitution. This Article reads as “The Council of Ministers shall be entrusted with the responsibility of administering all affairs of the State, internal and external, with the exception of such matters as are or may be entrusted by the present Constitution or any other statute to any other person or body”.

#### 3.1 Formation and Powers of the Executive

The formation of the Executive remains unchanged. Article 35 of the Constitution provides that the King appoints the Prime Minister and may dismiss him or accept his resignation. He appoints the Ministers; he also dismisses them or accepts their resignation, upon the recommendation of the Prime Minister. However, Article 42

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\(^3\) See Report of the Committee against torture entitled “Considerations on reports submitted by States parties under Article 19 of the Convention”, concluding observations, dated 25 May 2010, CAT/C/JOR/CO/2, p. 4, par. 10; p. 6, par. 16.

\(^4\) See Report of the Committee against torture entitled “Considerations on reports submitted by States parties under Article 19 of the Convention”, concluding observations, dated 25 May 2010, CAT/C/JOR/CO/2, p. 3 par. 9. “While noting that a definition of torture has been included in article 208 of the Penal Code, the Committee regrets that Chapter Two of the Jordanian Constitution which provides for “Rights and Duties of Jordanians” does not contain a specific prohibition of torture and other forms of ill-treatment or punishment. The Committee is also concerned that article 208 refers to “any type of torture impermissible according to law” which implies the existence of forms or instances of torture that are permitted by law. The Committee is further concerned that torture is not treated as a serious crime but rather as a misdemeanour, and is not subject to penalties appropriate to its gravity (between six months’ and three years’ imprisonment). The Committee regrets the absence of a provision in the Penal Code that would exclude the crime of torture from statutes of limitations and it is concerned that statutes of limitations applicable to provisions of the Penal Code may prevent investigation, prosecution and punishment of these grave crimes (arts. 1 and 4).” (emphasis added)