

PROCEDURES OF CRIMINAL MINISTERIAL RESPONSIBILITY

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ABSTRACT

Countries with their various regimes of legislation have adopted the system of criminal ministerial responsibility, but differed in the procedures followed, whether in terms of accusation and the authority empowered to accuse, or in terms of investigation and trial.

Criminal responsibility means the responsibility of members of the government for the crimes they commit while performing their functions.

This responsibility is considered one of the important fundamental bases of balancing the broad powers that ministers enjoy in the parliamentary system. Therefore, political responsibility, in general, and criminal responsibility, in particular, contributed to establishing a kind of balance between authority and responsibility, on the one hand, and between the Legislature and the Executive on the other hand.

The Jordanian constitutional legislature has applied this responsibility through establishing special laws for that, but amended the provisions thereof. After it decided to give the right of accusation and investigation to the House of Representatives, and the trial to a special court, it gave the Attorney General the role of accusation and investigation and made the trial before regular courts.

As for the French legislature, it chose to try the ministers before a special court, while giving the House of Representatives the right to accuse.

Keywords: Criminal Ministerial Responsibility, Accusation, Investigation, Competent Court, Referral- Bill of Indictment.

INTRODUCTION

Criminal ministerial responsibility is earlier than the emergence of political responsibility. The former means that the members of the government, with the exception of the king, who commit a punishable offence while performing their functions and duties, shall be declared to be responsible for it before the Legislature, as a kind of striking a balance between authority and responsibility.

Accordingly, if a minister, or one of the members of the government commits an act that constitutes a punishable offence, then his responsibility for what he committed shall be declared, like any citizen or individual, in order to achieve legal equality among citizens as a constitutional principle.

Therefore, countries with their various systems of legislation have adopted the system of criminal ministerial responsibility, but differed in the procedures followed, whether in terms of accusation and the authority empowered to accuse, or in terms of investigation and trial.

The French legislature was affected by the political nature of criminal ministerial responsibility. As a result, it declared a special system for this responsibility, as it singled out a special court for the trial of ministers.

As for the Jordanian legislature, after it was affected by the French approach in assigning this task to a special court, it assigned it later to regular courts under several amendments.

RESEARCH PROBLEM

Criminal ministerial responsibility raises several challenges represented in knowing the extent of the success of the procedures followed in accusing, investigating, and trying ministers, whether in France or in Jordan, on the one hand.

On the other hand, it is necessary to evaluate the success of the Jordanian legislature in its constitutional amendments and its transformation from assigning a special court for the trial ministers to making the trial available before regular courts, with an indication of all the legal effects thereof, and whether these amendments provided adequate guarantees to ministers during the period of investigation and trial.

Research Importance

The importance of the research lies in shedding light on the laws related to the trial of ministers, whether in France or in Jordan; the presentation of constitutional amendments made by the Jordanian legislature in this regard; and the identification of positive or negative its approach of achieving a better system that governs the criminal responsibility of ministers.

The Procedures Followed in the Trial of Ministers

The procedures followed in the trial of ministers begin with investigations and are concluded with the trial thereof. Each stage has a competent authority that undertakes this task. This will be explained in the following:

Accusation and Investigation with Ministers

The procedures for accusing and investigating ministers differed in Jordan before the amendment of the Constitution. Before the amendment, the task of the House of Representatives was to form commissions to investigate the facts, which are one of the most important means of the House of Representatives' oversight of the work of the Executive. It had the authority to accuse and investigate ministers, institute criminal proceedings and refer them to a specialized court for trial. It had all the powers required for this task; it had the authority to investigate, collect evidence and hear witnesses. Here, we find that one of the negative aspects of the parliament's possession of these powers in investigation and accusation is the mixing of criminal

ministerial responsibility with a political nature, as the Legislature has the parliamentary investigation to uncover the flaws in the work of the administrative apparatus, i.e. it is as if it does a fact-finding process without paying attention to the criminal aspect of investigation and accusation that is assigned to a competent authority.

Some have considered that there is no dispute over the right of the Legislature to institute criminal proceedings and accuse ministers, as this constitutes one of the rights of the Legislature (Shushary, 2001).

Therefore, the rules of procedure of the Jordanian House of Representatives stipulated the House of Representatives' right to establish temporary commissions whenever it deems it necessary to form such commissions, and the House of Representatives shall then define the functions and tasks thereof (Article / 51 / of the rules of procedure).

Accordingly, Article 56 of the Jordanian Constitution stipulated before its amendment: *"The House of Representatives shall have the right to accuse the Ministers. The bill of indictment shall be issued only by a majority of two-thirds of the votes of the members of whom the House of Representatives is composed. The House of Representatives shall appoint from its members that who shall submit the bill of indictment and support it before the High Council."*

This Article has been amended according to the Constitutional amendment, which gave the House of Representatives the right to refer the Ministers to the Attorney General along with stating the justifying reasons. The decision of referral shall not be issued except by the majority of the members of whom the House of Representatives is composed.

Through the provisions amended, we can observe that this amendment raised several questions represented in the following: If the House of Representatives has the right to refer to the Attorney General, does this mean that it has some powers before referral, which are to investigate, collect evidence and hear witnesses, or in other words, is the authority of the House of Representatives limited to accusing the ministers and referring them to the Attorney General, without conducting an investigation and the procedures that follow?

To demonstrate this, the matter was brought up to the High Council, which decided by the majority the competence of the House of Representatives to initiate criminal responsibility against the minister who commits an offense resulting from the performance of their functions.

The reasoning of this decision was as follows: (... Based on the foregoing, the Higher Council believes that the right of the House of Representatives to accuse the ministers and submit the bill of indictment to the High Council, and support the same before it, gives the House of Representatives the power to institute proceedings against the minister, and this authority includes conducting an investigation and gathering evidence, given that these two are necessary for the bill of indictment submitted as they represent the bases on which the rulings will be delivered. The meaning of the word accusation is to assign the accused the crime attributed thereto, so the Constitution has empowered the House of Representatives to investigate the charge attributed to the minister and collect evidence to prove it). Decision of the High Council for Interpreting the Constitution, issued on 29/9 (Cases, 1992).

Through this, we conclude that the powers of the House of Representatives did not differ from those given before the amendment of the Constitution, as the House of Representatives remained having the powers of investigation and accusation. Moreover, the Constitutional

amendment added another authority, which is the Attorney General, with the House of Representatives to conduct the investigation because the Attorney General is the original authority that undertakes the investigation in accordance with the Code of Criminal Procedure.

Accordingly, if we recognize that the investigation is an inherent right of the legislature, we see the necessity that the decision of the House of Representatives at the end of the investigation be justified as is the case in the decision of the Attorney General.

Thus, the House of Representatives, which used to act as the Attorney General to pursue and investigate the crimes committed by the ministers, has become, according to the Constitutional amendment, having this right in parallel with the Attorney General. Here we have to ask whether the House of Representatives is qualified to investigate the ministers and uncover the circumstances of the crime committed by them or not. Do the members thereof have the characteristics of impartiality and integrity that characterize the judges of the Attorney General? Is it not better to limit the investigation to the Attorney General without the House of Representatives?

In fact, this Constitutional amendment is shrouded in mystery and confuses, as well as it opens the way for the ongoing investigations conducted by the House of Representatives to clash with the investigations of the Attorney General. We see that the role of the House of Representatives is limited to only referral and that the Attorney General alone has the authority to investigate and collect evidence, as the Attorney General is the best authority to do this.

However, this clashes with the fact that the Attorney General does not have the right to play its role in investigation and prosecution unless the referral decision is issued by the House of Representatives, and therefore the jurisdiction of the Attorney General will depend on this procedure and the Attorney General alone will not be able to investigate the crimes committed by the ministers on its own (Shatnawi, 2003).

In France, criminal responsibility emerged in the first constitution of the Revolution issued in 1791, which gave Parliament the right to accuse ministers and try them before a special court (the Supreme Court), and this remained the case under successive constitutions (Constitution of 1814-1815- 1875), and the current Constitution of 1958 of the Fifth Republic, whose Articles (67-68/2) stipulated that Parliament has the right to accuse, and the trial shall be before the Supreme Judicial Court, which shall be formed by election and equality among the members of Parliament (Senate - National Assembly).

Thus, Parliament shall have the right to accuse, according to Article 68 of the 1958 Constitution, which states: *"... and the accusation shall be by the two assemblies and by a consolidated resolution issued by public vote and by an absolute majority of the members that compose the two assemblies."*

Thus, we find that both assemblies have the right to accuse the ministers. Some jurisprudence has gone against the situation of the Constitutional legislation in giving the Senate this right, and demanded to be limited to only the National Assembly, given that the ministers are politically responsible before the National Assembly without the Senate (Hauriou, 2021).

The proposal that includes accusing ministers is not acceptable unless it is signed by at least one tenth (1/10) of the members of the Assembly, according to what is stipulated in Article 156 of the National Assembly regulations.

The office of the Assembly shall review the proposal to ensure the availability of the required quorum, and then the proposal shall be referred to a special commission for the study thereof. This commission consists of fifteen members who are elected by way of representation and parliamentary groups (as stipulated in Article 157 of the National Assembly Regulations). The commission shall then conclude its work by submitting a report to the Assembly.

The president of each Assembly shall notify the resolution issued by its Assembly to the president of the other Assembly, as stipulated in Article 20 of the January 2, 1959 Law related to the Supreme Judicial Court System.

Then, after the bill of indictment is issued, it shall be notified to the Attorney General, who shall, within 24 hours following this notification, report the same to the President of the Court and the investigation commission (Article 22 of January 2, 1959 Law) (Fattoush, 2001).

However, the French legislature was not satisfied with that, but took a distinct step in this regard, as it gave the right to private persons to accuse and institute proceedings, according to Constitutional Law No. 1252/93 of 1993, whereby every person affected by a felony or misdemeanor committed by a member of the government, and resulting from the performance of the functions of this member, shall submit a complaint to the Petitions Commission, which shall take the appropriate procedures to expose the case or refer it to the Attorney General, to the Court of Cassation, with a view to instituting proceedings before the Supreme Court if that is required.

The Authority Competent to Try Ministers

After the minister is investigated and accused by the Attorney General, he shall be referred to the authority responsible for the trial thereof. Referring to the Jordanian Constitution before the amendment, we find that it referred to the criminal responsibility of the ministers, and that the trial thereof shall take place before a high council, based on the crimes attributed to them, which are resulting from the performance of their functions (Article 55 of Jordan's abrogated Constitution).

Through this we conclude that, with the exception of the crimes committed and resulting from the performance of the function, the minister's trial shall take place before the courts specialized in criminal proceedings in accordance with the Code of Criminal Procedure.

That is, the Jordanian Constitution before the amendment, as well as the Minister Trial Law, made the crimes committed by the minister, which are resulting from the performance of the minister's function, subject to the jurisdiction of a special court established for this purpose, which was represented by the High Council. This court was composed of the Senate President and eight regular members, according to the order of seniority. The number shall, when necessary, be completed by the presidents of the courts that follow it by order of seniority as well). (Article 57 of Jordan's abrogated Constitution).

We note here that the Constitutional legislature took into account the status of the perpetrator, being a representative of the government with its political nature, and therefore the legislature was affected by the political nature of criminal responsibility. A special nature was created for the crimes committed by the ministers, which are resulting from the performance of

their constitutional duties, since the actions of ministers are subject to political oversight through the Legislature, and as a result it was necessary to have a special court to try them.

The jurisdiction of the High Council is considered an exclusive jurisdiction, so that no other party may try them or take any action against them. The Court (High Council) applies the Minister Trial Law that stipulates the crimes of the ministers in addition to the general rules mentioned in the Penal Code. The decisions of the High Council shall be issued by a majority (i.e. five out of nine members), and the resolution issued, whether it is conviction or acquittal, is final and shall not subject to appeal before any other party.

However, after the Constitutional amendments, the trial of the ministers moved from the High Council to the competent regular courts. Article 55 of the amended Constitution stipulates: *“Ministers shall be tried for the crimes attributed to them, which are resulting from the performance of their functions, before the competent civil courts in the Capital, in accordance with the provisions of the law.”*

Thus, the constitutional legislature removed the crimes of the ministers from the jurisdiction of the High Council and made them subject to the regular courts, which have the jurisdiction to consider the crimes according to the Code of Criminal Procedure.

The High Council became not competent to consider such crimes, and this is already what the High Council decided in the bill of indictment of a minister in the CASINO CASE, where it decided to return the minister’s bill of indictment to the House of Representatives because it became not competent to try the ministers in accordance with the provisions of the Constitution, and what came in this decision is: *“It was decided unanimously: (1) the High Council has jurisdiction to try the former Tourism Minister, Osama Ad-Dabbas, who was accused by the House of Representatives in the Casino Licensing Case; (2) submitting all the documents submitted to us to the House of Representatives.”* Decision of the High Council for Interpreting the Constitution, Decision No. 3 on 11/10 (Cases, 2011).

The consequence of this is the application of the provisions of the amended Constitution, that is, the House of Representatives shall refer the minister’s bill of indictment to the Attorney General to investigate the crime, and then refer the same to the competent regular court for consideration.

For our part, we support the situation of the Jordanian legislature in its Constitutional amendments related to removing the crimes of the ministers and trying them from the jurisdiction of a special court to make such crimes subject to the competent regular courts, because that is to achieve the principle of equality before the judiciary and non-discrimination among people. Moreover, justice and judicial safeguards require the presence of litigation at two levels and not at the same level as was the case before the amendment of the Constitution, where the trial before the High Council, whose decisions were final and could not be appealed.

Thus, we find that making the trial of ministers within the jurisdiction of the regular courts achieves a constitutional interest in equality and justice, on the one hand, and provides safeguards for the accused at the stage of challenging the rulings issued, as well as guarantees the accused’s rights of objection in accordance with the constitutionally and legally defined methods, on the other hand.

In France, the Constitution of the Fifth Republic decided in Article 67 that the ministers' trial shall take place before the Supreme Court of Justice, and therefore we find that the French legislature relied on special courts that are established for specific reasons related to either the type of crimes, such as political crimes, or the status of the perpetrator. The Court of Ministers is one of the types of criminal courts with special jurisdiction that defines its functions according to the status of perpetrators, who are the ministers (Sorour, 1993).

Some jurists have justified the reason for resorting to a special court in the trial of ministers, that ordinary court judges may not have the strength and courage necessary to try the influential ministers (Fekry, 2020) but some jurists have opposed the previous interpretation, noting that this interpretation is old and applies to the stage before establishing the judiciary and its independence. However, at this time, and with the spread of the principle of the independence of the judiciary in contemporary systems, it is an old interpretation and does not fit with the current situation (Waheed, 2021).

According to this opposing jurisprudence, the justification for trying ministers before a special court is that the ministers have a political status, and that a political judiciary shall be established. However, it is possible to respond to this jurisprudence, that there is no political judiciary in the strict sense, but rather a judiciary for political matters as is the case in the administrative or military judiciary. As for the political judiciary, its existence is not conceived in the presence of democratic States, in which politics is the subject of concern of individuals and society, and therefore it cannot be excluded from the jurisdiction of ordinary courts (Khatwa, 1991).

Another opinion supported opposition to the idea of establishing a special court to try ministers because the immunity established for the head of State and ministers contradicts the principle of equality before the criminal judiciary, being one of the basic principles of human rights (Khalil, 1999).

Legal Effects of the Procedures Followed in the Trial of Ministers

The legal effects of the minister's trial procedures relate to the necessity of knowing the legal effects of the investigation and trial of the minister, whether in terms of issuing a decision to suspend him from office during the investigation, or clarifying his legal status during the trial, and this is what we will explain in the following:

Legal Effects of Investigation Procedures

The Jordanian legislature did not stipulate the legal effects of the investigation procedures, and therefore the minister cannot be suspended from office at this stage, and here we note that if the accused minister is a member of Parliament at the same time, here we shall apply the general rules in this area as the member is under the cover of parliamentary immunity, which prevents taking any action against the member except after obtaining permission from the House of Representatives, except in cases of flagrante delicto.

Thus, we find that if the accused minister is a member, then no action may be taken except with the permission of the House of Representatives, and any action taken by the Attorney General against the member (the accused minister) is absolutely null and void as it relates to public order (Habboul, 2002).

Parliamentary immunity aims to protect the member in his person, without preventing some other criminal procedures, such as inspecting his house, hearing witnesses, or delegating an expert, as taking such procedures is not related to the need to obtain permission from the House of Representatives, and accordingly, parliamentary immunity prevents the Attorney General from arresting, suspending, or oversighting the member (Al-Saeed, 2005).

This is what the Jordanian Court of Cassation has affirmed by saying: *“If the Defendant is under the cover of parliamentary immunity on the date of submitting the complaint, until he lost his membership and his immunity was removed, then the trial procedures that took place during the immunity period with the ruling issued in the case are tainted by violating the Constitution, because the aforementioned default judgment is based on the procedures that took place during the immunity period.”* Court of Cassation’s Judgement No. 152/89, published in the Journal of the Bar Association (Cases, 1992).

Needless to say, when parliamentary immunity attaches to public order, the court shall then rule with the inadmissibility of the trial for nullity of its proceedings if the member of Parliament does challenge the same. Moreover, the member (accused minister) cannot waive his immunity, and this is confirmed by Article 142 of the regulation of the House of Representatives: (The member shall not have the right to waive his immunity without the approval of the House of Representatives).

For our part, we believe that after the constitutional amendments, which result in the referral of the accused minister to the Attorney General which is made by the House of Representatives, this referral made by the House of Representatives will dispense with the permission of the House, in the event that the accused minister is also a member of Parliament.

In France, before the issuance of the 1958 Constitution, the investigation was made by a commission composed of purely political characters. Then, during the era of the 1958 Constitution, it was assigned to a purely judicial commission composed of three members of the judges of the Court of Cassation for a period of three years by ballot of all judges. The chairperson is chosen from its members by ballot.

It is worth noting that this commission is independent of the court concerned with the trial, and is subject to the general rules established for criminal trials, in terms of adherence to the bill of indictment submitted thereto by Parliament (persons and facts). If this commission considers that the case requires the introduction of new accused persons, it shall send the papers to the Attorney General, who in turn submits the same to the president of one of the two Assemblies in order to amend the bill of indictment.

The Commission’s work ends with the issuance of a referral decision to the Supreme Court, in the event of a conviction, and all of its decisions shall be considered final and not subject to appeal (Lavroff & Jean-D, 1985).

Legal Effects of Accusation and Trial Procedures

The Jordanian legislature stipulated, before the amendment, these effects in Article 61 which states, *“the minister who is accused by the House of Representatives shall be suspended from office until the High Council decides on his case; his resignation shall not prevent the institution of proceedings against him nor the continuation of his trial.”*

Through these provisions, the accused minister will be suspended from office until a decision is issued by the High Council, and this includes former ministers for their crimes committed while performing their functions (Yaqoub, 2004).

Thus, the suspension of the minister from his office was carried out immediately as soon as the bill of indictment was issued by the investigation commission in the House of Representatives.

However, after the Constitutional amendment, the minister's accusation is now being made by the Attorney General, so the Attorney General has the authority to decide whether or not the minister will be suspended from office, not just because the referral decision is issued by the House of Representatives, as was the case before the amendment.

Article 57 states that: *“The Minister who shall be accused by the Attorney General upon the issuance of the decision of referral by the House of Representatives shall be suspended from office; his resignation shall not prevent the institution of proceedings against him nor the continuation of his trial.”*

Through the above provisions, we support this Constitutional amendment, but it is better to consider the accused minister's suspension from office as an implicit leave with a full salary from the date of his accusation until the court's decision becomes final, because accusing the minister does not mean his conviction, as every accused person is innocent until found guilty further to a reasoned court judgement.

Thus, we find that the effect of the accusation and trial procedures is the suspension of the minister from office, and if the (accused) minister is a member of Parliament, then the cover of immunity shall be removed, then action shall be taken against that accused minister.

Finally, it should be noted that the Minister's Trial Law specified the penalty imposed on ministers, as it referred the crimes committed in violation of its provisions to the Penal Code. As for other crimes, the Minister's Trial Law shall be applied.

In France, the High Court of Justice is composed, according to Article 68 of the 1958 Constitution, of the members of Parliament (the National Assembly and the Senate), equally, of twenty-four regular members and twelve alternate members, who are chosen by secret ballot and by an absolute majority, following every renewal, in whole or in part, of the two assemblies. Then Law No. (952/93) of 1993 was issued, to restructure the court to become twelve members who shall be elected by election and equally from both assemblies.

What is noticeable in the composition of this commission is its predominant political nature, whereby members shall be chosen from the parliamentary majority that supports the government, which may cause the latter to side with it and its members. The proceedings shall be referred to the court in accordance with the referral decision issued by the Judicial Commission after its completion of the investigation.

The court sessions shall be public, and the president of the court shall determine the dates of the sessions. When the case is heard, the court shall follow the general rules that the misdemeanor court will follow, according to what is stipulated in Article 32 of the court law. (Lavroff & Jean-D, 1985).

It should be noted that the court shall also adhere to the referral decision, whether in terms of persons or facts, so that it may not add new facts or new persons outside the scope of the referral decision.

If the court finds new evidence or facts, it shall send the papers to the Attorney General, who shall, in turn, return the same to Parliament.

As for the procedures for issuing judgments by the High Court, they differ from those followed by ordinary courts, where the Court decides on each charge separately, which shall be voted on by an absolute majority of the members of the Court under secret cards (Articles 34-33 of the court law).

The court's rulings are final and not subject to appeal by any method, as stipulated in Article / 35 / of the Court's Law.

It is worth noting that the Paris Court of Appeal considered the High Court's jurisdiction over the ministers' trial to be exclusive (Jeandidier, 1987), and this was confirmed by the Court of Cassation, as it indicated that its jurisdiction was not shared by common law courts.

It should be noted that the former minister in France is subject to criminal responsibility, as the special court (the High District Court of Justice) specializes in the crimes committed by former ministers, for example, in 1978 Parliament voted to accuse Christian Nucci, the former Minister of Cooperation, of causing damage to public property (Fekry, 2020).

The Supreme Court applies the provisions of the criminal law in force. Article 68 of the French Constitution stipulates: *"Members of the Government shall be criminally liable for acts performed in the exercise of their duties and classified as serious crimes or other major offences at the time they were committed."*

RESULTS AND DISCUSSIONS

Through this research, we conclude that the ministers, according to the Constitutional amendments made by the Jordanian Constitutional legislature, shall be tried before the regular courts. However, the procedures to be taken against them differ according to the crimes committed by them; if they are crimes resulting from their functions, then these measures depend on the referral of the House of Representatives, where it shall refer the accused minister to the Attorney General, which has the authority to decide to suspend him from acting upon his accusation.

If the crimes are not the result of his function, or crimes related to violating the penal law, then the general provisions shall be applied, and all measures can be taken against the minister like any ordinary person.

However, if the conduct of the Constitutional legislature in its constitutional amendments is praiseworthy, then we support it, especially in terms of investigating the crimes committed by the ministers, which is done by the Attorney General, then trying them before the regular courts,

which achieves the principle of equality and non-discrimination among citizens. It also provides the necessary guarantees for the minister regarding the right to defense.

However, the Constitutional legislature is criticized in these amendments for maintaining the authority of the House of Representatives to refer to the Attorney General, that is, giving the Attorney General the authority of a preliminary investigation, and this gives rise to confusion and suspicion, especially in light of the political nature of the legislative control over the actions of the Executive.

Therefore, we suggest that the authority of referral be given to the Attorney General, as it has the inherent competence to institute public proceedings as we as it possesses judicial elements more efficient than members of the Legislature, on the one hand, and the House of Representatives may dissolve or be not held, on the other hand. In such cases, the authority of referral will be suspended depending on the presence of the House of Representatives.

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