



COMPATIBILITY OF THE CRIMINAL COURTS OF ADMINISTRATIVE GOVERNORS IN JORDAN WITH THE STANDARDS OF THE NATURAL JUDGE

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ABSTRACT

The investigators studied the crucial issue which focuses on the Jordanian criminal courts of administrative governors matching natural judge standards. The research investigation organized its sections into three different parts. The research began by examining the principle of separation of powers followed by the natural judge principle and ended with a clarification on criminal authority of administrative governors in Jordan. Research findings demonstrate that Jordanian legislators have conferred significant criminal powers upon administrative governors which enable such officials to fulfill criminal judicial duties. The courts demonstrate their infringement of three core legal principles through several violations including violations against both separation of powers and fairness in trials and violations against the rule of law when giving judicial powers to administrative employees. The established principles of natural justice together with fair trial standards become violated while the defense rights suffer impairment because of this action. According to the study findings the researchers emphasize that the abolition of administrative governor courts should occur while natural judges should regain their judicial tasks.

Keywords: Principle of the Separation of Powers; Natural Judge; Courts of Administrative Governors; Crime Prevention.





COMPATIBILIDADE DOS TRIBUNAIS CRIMINAIS DOS GOVERNADORES ADMINISTRATIVOS NA JORDÂNIA COM OS PADRÕES DO JUIZ NATURAL

RESUMO

Os investigadores estudaram a questão crucial que se concentra na correspondência dos padrões do juiz natural pelos tribunais criminais jordanianos de governadores administrativos. A investigação organizou suas seções em três partes distintas. A pesquisa começou examinando o princípio da separação de poderes, seguido pelo princípio do juiz natural, e terminou com um esclarecimento sobre a autoridade penal dos governadores administrativos na Jordânia. Os resultados da pesquisa demonstram que os legisladores jordanianos conferiram poderes criminais significativos aos governadores administrativos, que permitem a esses funcionários cumprirem deveres judiciais criminais. Os tribunais demonstram sua violação de três princípios jurídicos fundamentais por meio de diversas violações, incluindo violações contra a separação de poderes e a justiça nos julgamentos e violações contra o Estado de Direito ao conceder poderes judiciais a funcionários administrativos. Os princípios estabelecidos de justiça natural, juntamente com os padrões de julgamento justo, são violados, enquanto os direitos de defesa sofrem prejuízos em decorrência dessa ação. De acordo com os resultados do estudo, os pesquisadores enfatizam que a abolição dos tribunais de governadores administrativos deve ocorrer, enquanto os juízes naturais devem retomar suas funções judiciais.

Palavras-chave: Princípio da Separação de Poderes; Juiz Natural; Tribunais de Governadores Administrativos; Prevenção do Crime.

1. INTRODUCTION

A fair criminal trial in the legal state depends on the natural judge principle as its basic foundation and principal establishment criterion (Jha, 2023). Every state human rights system requires the principle of establishing justice because judicial protections secure all remaining human rights. The legal system maintains the position that every defendant stands innocent until a qualified final court decision establishes their guilt (Bowers, 2010). The constitutional right of fair public trial applies to every defendant who faces criminal charges no matter the assigned classification or the level of severity in the suspected offense.

All three elements of national constitutions and international agreements and criminal procedure laws feature the natural judge principle for achieving fair court proceedings that protect defendants' rights and establish justice.





The Jordanian Constitution establishes regular, religious and special courts as the three distinct judicial bodies operating in Jordan. The constitutional legislator in Jordan adopted the principle of separation of powers before defining the duties of each authority. The law-making duty rests with the legislative authority and the judicial authority handles dispute cases and accomplishes justice for both parties while the executive authority manages law implementation. A few Jordanian laws enable administrative governors to exercise judicial power that could violate natural judiciary criteria along with operating contrary to power separation principles.

The research examines the principles of separation of powers followed by natural judge principles and finishes with administrative governor courts.

The first section describes the principle of separation of powers while subsequent sections introduce criminal enforcement powers of administrative governors under the Crime Prevention Law followed by their enforcement capabilities in the Law on Tree and Plant Protection. The study ends by presenting essential findings and recommendations in the conclusion.

1.1. The Principle of the Separation of Powers

Research on the separation of powers principle demands fundamental definitions followed by historical origins of the principle and its distinct categories and subsequent examination of essential implications. The following explanation consists of three sections.

Subsection 1; Definition of the Principle of the Separation of Powers and Its Historical Origins: The first section divides into two areas wherein the initial segment explains the definition of separation of powers then the subsequent section presents an explanation of its historical evolution.

1.2. Branch 1: Definition of the Principle of the Separation of Powers

Jurist Montesquieu presented this principle in his book "The Spirit of the Laws" which was first published in 1748 AD. The system where legislative power and executive power combine either in a person or a body of officials results in the absence of liberty according to a statement from Montesquieu. The absence of judicial independence will produce no liberty because the judiciary power must remain separate from the legislative and executive. (Rabatt, 1965). A lack of distinct powers creates the most dangerous threats against both democratic systems and



legal principles (Al-Qusous and others, 1992).

This concept defines how state functions are allocated between independent bodies that separate their responsibilities to prevent each authority from becoming dominant. (Al-Khatib, 2025).

1.3. Branch 2: The Historical Origin of the Principle of the Separation of Powers forms

In the field of constitutional jurisprudence scholars recognize this principle exists due to eighteenth-century historical background. Montesquieu established this principle in his book "Spirit of Laws" to free society from royal tyranny (Al-Khatib, 2025) yet he actually derived it from English political tradition. The name Montesquieu made the separation of powers principle famous across the globe even though English predecessors produced it first.

In his book "Two Treatises of Government" philosopher John Locke discusses this principle (Al-Khalaileh, 2020). The Greek philosopher Aristotle mentioned this principle before Locke in his work "Politics" when he explained fundamental aspects of authority by declaring that three vital governing powers form any constitution and these authorities need mutual harmony for a government to succeed (based on Rabatt, 1965). Montesquieu deserves respect for his accomplishment of establishing this principle through his argument that power functions should reside in separate bodies (Hafez, 1976). Throughout history many philosophers have recognized the significance of this principle including Marsilius of Padua and Jean Bodin as well as Jonathan Swift and Henry St. John, 1st Viscount Bolingbroke. According to the English and Dutch jurist personal freedom would perish if public power remained under single control (Rabatt, 1965).

ubsection 2 - Types of Separation of Powers: The subsequent segment introduces different types of separation alongside their developed political systems within three governing branches.

Rigid Separation: This separation model represents the perfect execution of powers segregation according to original theory supporters by maintaining absolute independence between authorities. The perfect goal of autonomous authorities emerges from this type of separation that ensures each authority maintains independence from other authorities like the separation between legislative (House of Representatives) and executive authority as well as the separation between



executive and legislative authorities and the judicial authority. The state's authorities maintain equal representation because of the separation established between each of them.

A complete strict division between governmental entities defines a presidential system according to Mahfouz and Al-Khatib (1987). Under a presidential system the head of state unites both state presidency and government leadership to carry out all executive tasks independently or alongside department heads he selects from his representatives or secretaries. The United States stands as the world's first mother state of this system through which it became the traditional model that spread throughout worldwide nations (Bassiouni, 1985).

Branch II: Flexible Separation: The flexible approach to separation enables authorities to distribute responsibilities among their main bodies by developing functional cooperative ties between these bodies such as their selection of ministers from parliamentary membership. Flexible authority separation in government systems leads to parliamentary system rule (Al-Khatib, 2025) which defines executive and legislative authority cooperation and balance. The system establishes a relationship between the executive authority and the legislative authority through mutual intervention between their operations. As described in the Jordanian Constitution of 1952 the parliamentary system stands as a clear model because the King holds authority to call the two parliamentary chambers together and dissolve them apart from his power to appoint Senate members (Jordanian Constitution, 1952) while parliament can vote to strip government of its authority (Jordanian Constitution, 1952).

1.4. Branch 3 : Power assigns one entity full jurisdiction which consolidates all governmental authority.

Under this separation type the parliament emerges as the central governing authority while executive duties remain subservient to its authority for both delivering orders and defining limits and monitoring usage. Thereby both head of state and the entire ministry fall under the accountability of parliament.

A government set up by the assembly emerges whenever a governing authority holds all powers in its possession. (Al-Khatib, 2025) Switzerland has the most distinguished representative democracy that functions as an example of this system (Al-Khatib, 2025). (Mahfouz and Al-Khatib, 1987)



Many important outcomes stem from the separation of powers principle that includes guaranteeing the principle of legality and the rule of law through authority division and prevents tyranny and defends freedoms. Humans throughout recorded history has seen takeover of complete power by individuals generate oppressive governance. Montesquieu stated through his words that power acts as a counterforce against power and Gustave Le Bon explained that power functions as a mind-altering substance which aggressively affects brains. (Mutawalli, 2020) .

2. THE PRINCIPLE OF THE NATURAL JUDGE

A fair trial system requires the principle of the natural judge to be one of its essential premises. The article first explains how the principle of the natural judge has legal foundation before exploring its essential foundations through separate subsections.

3. THE LEGAL BASIS OF THE NATURAL JUDGE

The natural judge is defined as the judge appointed in advance before the occurrence of the crime and in a general and abstract manner, and not an exceptional court formed and established under emergency circumstances. Before him, the legal positions of the litigants are equal, and he belongs to the same category as the litigants. This means the trial of civilians before civilian judges appointed by law and according to the bases of appointing judges, the trial of the military before military judges, and the trial of juveniles before juvenile judges.

The natural judge finds his legal basis in constitutions and procedural laws. The Jordanian Constitution stipulates this in Article 101, where civilians may not be tried before military judges except in exceptional cases mentioned exclusively in Article 101 (Jordanian Constitution, 1952). The Italian Constitution also stipulates this, stating that no one may be deprived of his natural judge as determined by law. The Egyptian Constitution also stipulates this in Article 97 ("No person shall be tried except before his natural judge, and exceptional courts are prohibited") (Sorour, 2024). This principle also finds its roots in Article 14 of the International Covenant on Civil and Political Rights of 1966, which states that everyone is entitled to a competent, independent, and impartial tribunal established by law. Therefore, it can be said that the natural judiciary is the ordinary regular courts, where their formation

is stipulated by the general law that applies to all individuals and has the comprehensive and original jurisdiction to hear all criminal cases (Nimour, 2025), taking into account the status or capacity of the accused. Therefore, the right to resort to the natural judiciary is one of the natural human rights, which constitutions sometimes do not find the need to mention (Al-Mahlawi, 2023).

3.1. Conditions of the Natural Judiciary

A court must get established to exercise jurisdiction under laws as defined by legal stipulations. The court needs to follow legal procedures according to the laws that shape the judiciary system of Jordan particularly through the Law on the Independence of the Judiciary that establishes guidelines regarding judge qualifications and appointment and promotion and dismissal processes. According to Article 14 of the International Covenant on Civil and Political Rights of 1966 ("Everyone is entitled to a competent, independent, and impartial tribunal established by law") the stated condition applies. The court must be set up naturally during times when disputes have not yet occurred.

All court institutions need to follow standard universal principles during their creation.

The rules exist in legal statutes that outline processes concerning judicial appointments and judge advancement routines as well as protection networks and judicial oversight procedures. The Law on the Independence of the Judiciary No. 29 of 2014 established criteria for regular judges through Article (9) in its provisions related to judicial appointments in Jordan. Special courts emerge for two distinct reasons: either as a sign of mistrust towards criminal procedure laws to deliver justice in major cases or as a way to bypass protections set by those laws while rushing through verdicts which are both unfavorable since they breach the general principle of law. (Al-Kilani, 1985). Fair trial standards together with all defense guarantees must exist within the court system (Fraihat, 2024).

The institution needs to operate permanently rather than according to temporary exceptional situations.

Permanent courts exist according to the original design and do not operate only in rare circumstances (Sorour, 2024). A prohibition against exceptional courts exists within Article 97 of the 2014 Egyptian Constitutional text. Exceptional courts lack the protections which a fair trial requires. All litigants must trust court processes



because the courts use fixed and specific formal procedures which apply to everybody (Al-Badri, 2020). A fair trial system requires both procedure and principles before reaching final judgments and it does not suffice for judgments to be just when procedures leading to these judgments must follow legal safeguards of defense representation (Al-Kilani, 1985).

A person should only be tried by his designated judge within the regular judicial system whose proceedings offer complete protection guarantees.

Under this condition the judges of the court must share identical professional backgrounds as those who stand before them.

According to this legal requirement a civilian must face trial in civil settings whereas military personnel should be judged by their same-category military tribunals and juvenile offenders need juvenile judges to prosecute them even if they acted as adults. The stipulations regarding this condition appear in Article 15 of the Jordanian Juvenile Law (Jordanian Juvenile Law, 2014) as well as Article 16. Under Article 33 of the Updating Narcotic Drug and Psychotropic Substances Law there exists an exemption to the previously mentioned condition. The State Security Court received exclusive trial authority for juveniles who committed any drug-related offense under the Law on Narcotic Drugs and Psychotropic Substances, 2023 (Hijazi and Abu Anza, 2023). This constitutes an improper violation of the judge's natural position.

The inability of administrative courts to fulfill natural judicial conditions alongside deficiencies with fair trial guarantees and trial principles particularly the public trial principle shows that the courts violate the principles (Tawfiq, 2021).

These courts break the fundamental principle of power separation because it forms the practical implementation of the rule of law. According to this principle every section of the government must exercise its powers that derive from constitutional law and avoid targeting the authorities of other government parts or the law will cease to function. Some Jordanian legislative provisions regarding administrative governors depart so blatantly from the principle of separation of powers that they destroy the legal foundations of the country.

3.2. The Criminal Jurisdiction of Administrative Governors

Under some legislative frameworks administrative governors gained jurisdiction to act as judges who could apply court-like sentencing capabilities. Administrative governors receive their powers through the Crime Prevention Law and





the Law on the Maintenance of Trees and Plants No. 85 of 1966, and the Unified Joint Penalties Law No. 53/1953. 1

A natural judge requires a single supreme court with complete authority to monitor their judicial actions as well as interpret legal meaning. Such situations create disorder in the justice system because various judicial interpretations and conflicting rulings occur.

Obtaining judicial powers by administrative governors has damaged the natural judiciary system while eroding the courtesies normally provided to individuals in traditional courts. Some administrative governors lack appeal processes while cases must be resolved within short periods of time causing concern about the right to defense protection enshrined by all laws and legislations. Administrative governors lack judicial immunity for natural judges and undergo unprioritized selection and qualification processes thus presenting questions about the equality of individuals during court proceedings.

The research material will divide into two major parts. Two sections of the paper analyze first administrative governors' courts within the boundaries of the constitution and second their role under Crime Prevention Law and Law for the Preservation of Trees and Plants and Unified Joint Penal Code.

Section One

The Constitutionality of Administrative Governors' Courts

The constitutionality of the courts of administrative governors is a topic that consistently sparks broad jurisprudential debate. The courts remain under constant scrutiny regarding their constitutionality since they function outside the established judicial system known as the natural judiciary. The definition of what constitutes constitutional or unconstitutional needs clarification at this point. Undoubtedly, constitutionality has two meanings: formal and substantive. In other words, conformance with such rules as contained within constitutions are given formal meaning; whereas, substantive meaning occurs only when they are in harmony with the text and intent of the constitution. Jurisprudence tends to consider unconstitutionality as a violation of the substantive concept (Al-Khatib, 2025).

In fact, the substantive concept is more important than the formal one. As the general rule in law and Islamic jurisprudence states, what matters are the intents and meanings rather than the words and structures — as noted in Article 214 of the Civil Code (Jordanian Civil Code, 1976). There is no benefit to form if it is not supported



by substance. Jurisprudence has divided into several viewpoints regarding the constitutionality of special courts, including the courts of administrative governors:

The first opinion holds that the establishment of such courts to address exceptional circumstances does not conflict with the right to natural justice and therefore deems their existence constitutional (Hassani, 1992), under two conditions:

- First, their existence must be limited to the exceptional circumstances. Once these circumstances end, the courts must be dissolved. This view is based on the legal principle that necessity is assessed according to its extent, and that exceptions should not be generalized or expanded.
- Second, any reduction in defense guarantees before these courts must be strictly limited to what is necessary for the protection of society during the exceptional period. Thus, this opinion does not outright reject such courts, but rather views them as temporary measures that must not become permanent or infringe on defense rights beyond what is strictly required. Otherwise, such courts would be unconstitutional.

The second opinion supports the constitutionality of these courts and believes that their existence does not violate the principle of equality, provided that objective criteria consistent with the purpose of their establishment and the public interest are in place. Supporters of this view (Sorour, 2020) argue that constitutional legitimacy requires a unified judiciary because it is based on the principle of equality before the law. This equality necessitates that individuals be subject to a judiciary determined by the law in a general and abstract manner. However, this unity is not compromised by the establishment of special criminal courts to consider distinct legal statuses, whether in terms of subject matter or personal jurisdiction. Equality before the judiciary is achieved if the jurisdiction of these courts is determined based on objective criteria that align with the criminal justice aims pursued by the law, while considering the nature of the crime, the offender, and the public interest. Thus, this opinion considers such courts constitutional if these objective conditions are met, regardless of whether they are tied to a temporary exceptional period, unlike the first view which requires them to be time-bound.

- The Third Opinion (Al-Kilani, 1966) – This opinion firmly upholds the principle of natural justice and absolutely rejects the idea of such special courts. It argues that the foundation of the judiciary is unity, meaning that all courts must be subject to one supreme court responsible for overseeing the application and interpretation of the law. Therefore, there is no need for exceptional courts as long as the natural judiciary exists. Additionally, the notion of protecting state rights does not justify deviation from general legal principles, since such protection is already ensured within the natural judicial system. Any procedural shortcomings in ordinary courts can be remedied through legislation aimed at expediting proceedings and

preventing unnecessary delays in trials, which is preferable to compromising the principle of judicial unity and the guarantees of defense rights.

3.5. Researchers' Opinion

With respect to the jurisprudential views supporting the constitutionality of these courts under time constraints or with objective controls, the researcher disagrees with both the first and second opinions and supports the third opinion, which rejects the constitutionality of special courts. This stance is based on the following arguments:

1. There is no need for such courts in the presence of the regular (natural) judiciary, which is assumed to have broader experience and more professionalism in handling such cases.

2. These courts are often established by temporary laws issued by the executive authority, making them an expression of executive will, which violates the principle of separation of powers.

3. The existence of exceptional circumstances does not justify compromising litigants' rights. What is needed in such cases is expedited judicial resolution, something the regular judiciary can achieve by reducing the time between hearings. There are no procedural law restrictions preventing speedy trials, and if necessary, a law could be passed to accelerate proceedings within the regular judiciary.

4. The opinion that supports the constitutionality of these courts under the condition that they closely resemble the regular judiciary implies that they should be a replica of the regular courts. If so, why replace the regular judiciary with exceptional courts and enter into constitutional debates about their legitimacy? Constitutions have clearly provided for the establishment of natural (regular) courts, making natural justice a constitutional principal superior to ordinary laws (Al-Sharqi, 2024).

5. Even those who support the constitutionality of such courts acknowledge that they are meant to handle exceptional circumstances and should be temporary. These courts must be dissolved once those circumstances end. Necessity is to be assessed by its extent, and exceptions should not be expanded. Making such courts permanent contradicts their purpose and nature.

6. These courts can never truly be equivalent to regular courts, as they inherently reduce the rights and guarantees of litigants, thereby violating the principle of equality affirmed in constitutions and international conventions.



7. The courts of administrative governors, under the Crime Prevention Law, represent a violation of the separation of powers. They combine executive and judicial functions, which undermines the foundations of democratic governance and constitutes a blatant constitutional breach.

8. A clear indication of the unconstitutionality of these courts is that the legislator did not even designate them as “courts,” thus excluding them from the types of courts explicitly listed in Article 99 of the Constitution: regular, special, and religious courts (Al-Hilsa, 2023).

4. SECTION TWO: ADMINISTRATIVE GOVERNORS' COURTS

In this study, we will examine the criminal administrative governors' courts in three branches: administrative governors' courts under the Crime Prevention Law, the Law for the Preservation of Trees and Plants, and the Unified Joint Penal Code.

Branch One: Administrative Governors' Courts under the Crime Prevention Law

The Crime Prevention Law includes serious violations that undermine the rule of law and affect the guarantees of sound litigation procedures. Administrative governors have absolute power in determining the financial bail for the suspect, which they must pay to remain free, regardless of the suspect's circumstances or personal conditions. Administrative governors also have complete freedom to reject the guarantors who personally guarantee the suspect or pay the required bail. The law also reverses the principle of the presumption of innocence by obligating the suspect to convince the administrative governor that they have the right to remain free, and imposes vague standards of evidence – not observed in practice – on the administrative governor before imposing financial bail or ordering detention. Finally, the law does not provide for periodic review by an independent court or judicial body to review administrative detention decisions. Detainees have the right to petition the Administrative Court, but the necessary costs for this are usually so exorbitant that they practically prevent the petition.

The Crime Prevention Law grants the district governor the authority to try three categories of individuals under this law. These categories, according to Article 2 of the law, are:

1. Anyone found in a public or private place under circumstances that convince the district governor that they were about to commit a crime or assist in its





commission.

2. Anyone who habitually engages in larceny, theft, possession of stolen property, or habitually protects, shelters, or assists in concealing or disposing of stolen property.

3. Anyone whose presence at large without bail poses a danger to people.

The law authorizes the district governor to take one of the following actions against these categories: either to obtain a pledge to maintain security and order for a period of one year, or to provide a guarantor to ensure the person's commitment to the pledge they made, or to place them under police supervision for a period not exceeding one year. The district governor may detain the person until a guarantor is provided and may reject the guarantor for reasons recorded in the minutes. In the event of a breach of the pledge, the amount is confiscated, and the district governor's decision is final (Al-Kilani, 1985). Anyone who violates the restrictions imposed under police supervision is referred to court and may be sentenced to imprisonment for up to six months or a fine not exceeding fifty dinars, or both penalties (Crime Prevention Law 1954). The trial must take place before the administrative governor in accordance with the Code of Criminal Procedure. (Crime Prevention Law 1954)

The law provides administrative governors with dangerous judicial powers even though they lack judicial qualifications and training and do not represent judges as per the principles of separation of powers and rule of law. This law bypasses Penal Code general principles because it penalizes intentions while all preparatory acts and planning stages should be excluded from criminal responsibility according to Penal Code principles. (Jordanian Penal Code, 1960)

Although the Crime Prevention Law obligates the administrative governor to follow the criminal procedures in the trials held before them, Article 5/4 of the law (Crime Prevention Law, 1954), this obligation may remain ink on paper and not find its way into practical application because the administrative governor is not a judge and does not practice judicial work regularly and consistently and has not absorbed the routine of the judiciary. They are an administrative employee, and this conclusion is derived from the jurisprudence of the Supreme Court of Justice, where the court stated in its decision: (It is understood from Articles 5 and 8 of the Crime Prevention Law No. (7) of 1954 that administrative detention for the preservation of security and safety takes place after investigating the wanted person and their presence at large poses a danger to people and they refrain from providing bail... Whereas the





respondent, when issuing Decision No. 24 of 2004 mentioned above, relied on:

- 1- That the presence of the appellant at large poses a danger to people.
- 2- The absence of a crime.
- 3- The preservation of security and order.

And the release of the appellant was conditional on two requirements: -

1- Providing a judicial bail of (20,000) dinars from a reputable guarantor to ensure that the appellant does not commit any acts that would disturb public security and tranquility.

2- Completing the tribal reconciliation procedures.

Whereas it is established to the Supreme Court of Justice from the case file that the appellant had committed a murder with others in violation of the provisions of Article (326) of the Penal Code and was sentenced to hard labor for (15) years and the appellant completed his sentence for the murder on 14/3/2004. And it was not mentioned in the case file that the appellant poses a danger to people's lives or will commit any act that would breach security and there is nothing in the Crime Prevention Law on which the respondent relied that requires the detention of the appellant pending the submission of a tribal reconciliation document, which makes the continuation of his detention and failure to release him a decision contrary to the law, which requires its cancellation). (Supreme Court of Justice, 468/2005)

In another decision, the Supreme Court of Justice confirms the non-compliance with the Code of Criminal Procedure (The decision issued by the district governor judge to detain the appellant for the purpose of implementing the tribal reconciliation decision based on the provisions of Articles (2/5 and 8) of the Crime Prevention Law No. 7 of 1954, without complying with the provisions of the law and the procedures stipulated in issuing a summons or arrest warrant in the event of the person concerned failing to attend and investigating them and hearing the evidence is contrary to the law). (Supreme Court of Justice, 35/1993)

Human Rights Watch has recommended that the Jordanian government repeal the Crime Prevention Law because of its extremely broad provisions and its arbitrary application in the vast majority of cases, which in turn undermines Jordan's claims to guarantee the rule of law (. <https://www.hrw.org/ar/report/2009/05/26/255918>)

Branch Two: Administrative Governors' Courts under the Law for the Preservation of Trees and Plants





The Law for the Preservation of Trees and Plants No. 85 of 1966 authorizes the administrative governor, in the event of an assault on trees and plants, to conduct trials and issue rulings imposing fines and imprisonment for a period not exceeding two months. This law grants the administrative governor full judicial powers, considering them a criminal court with all powers and authorities, despite the fact that Article 9 of this law exempts the administrative governor from adhering to the Code of Criminal Procedure.

The administrative governor listens to the statements of the complainant, the defendant, and the suspects, and directs questions to them related to the subject of the complaint. Then, they make efforts to reconcile the parties. If they succeed in doing so, they organize a conciliation document, then read its contents to the two parties in simple language, then the concerned parties sign it, and the administrative governor approves it. They may also sentence the perpetrator to the penalties stipulated in Article 9 of the Law. (Law for the Preservation of Trees and Plants No. 85 of 1966).

If reconciliation is not reached and the investigations have shown that one or more known individuals caused the damage, and the administrative governor is convinced of this after conducting the trial, they shall rule that the perpetrator or partners are jointly and severally liable to pay the value of the damages and expenses to the injured party. If there are multiple injured parties, each of them shall be awarded compensation in proportion to the damage they have suffered, in addition to imposing the following penalty on each of the perpetrators or partners:

- a. If the damage does not exceed twenty dinars, a fine not exceeding five dinars, or imprisonment for up to one week, or both of these penalties.
- b. If the value of the damage exceeds twenty dinars, a fine equal to half of the damages awarded, or imprisonment from one week to two months, or both of these penalties.
- c. The provisions stipulated in the Penal Code regarding the accessory or instigator shall apply (Law for the Preservation of Trees and Plants No. 85 of 1966).

The law allows appealing the decision issued by the administrative governor to the Minister of Interior within ten days of its pronouncement if it was rendered in person, and in other cases, within ten days from the last date of posting either copy of the decision, as specified in Article Ten. (Law for the Preservation of Trees and Plants No. 85 of 1966)





Granting trial powers to the administrative governor and the right to appeal to the Minister of Interior is a clear violation of the principle of separation of powers and the principle of law, and it seriously undermines the standards of a fair trial. The law affirmed in Article 15 that the judgments issued by the administrative governor are considered as if they were issued by a regular court (Law for the Preservation of Trees and Plants No. 85 of 1966). In addition, Article 9 of the same law exempts the administrative governor from following the Code of Criminal Procedure. The question here is, which law will be followed, and what is the fate of the convicted person's guarantees?

Branch Three: Administrative Governors' Courts under the Unified Joint Penal Code

This law was enacted in 1953 under number 53 and is still in effect. This law pertains to an assault or breach of security in an area, and this area must be declared by a decision of the Council of Ministers. This law grants the administrative governor broad powers to issue and impose fines on those responsible for the damages, regardless of whether the perpetrator is known, as it stipulates:

If a crime is committed or damage is caused to property in any area, and the district governor or deputy governor has reason to believe that this is likely to lead to a breach of public security, and that the residents of that area:

- a. Committed that crime or caused the damage, or
- b. Conspired to commit that crime or cause the damage, or assisted in committing the crime or causing the damage in any way, or
- c. Failed to provide all possible assistance to identify or apprehend the perpetrator or perpetrators, or
- d. Conspired to help a perpetrator escape or harbored any perpetrator or person suspected of participating in the crime or causing the damage or having a role in it, or
- e. Cooperated to conceal essential evidence related to the commission of the crime or causing the damage,

They may, after conducting an investigation and with the approval of the Council of Ministers, order the imposition of a collective fine on all taxpayers residing in that area.

Article 7 of the Law (Unified Joint Penal Code, 1953) stipulates that the trial under this law shall be conducted as closely as possible to the trial procedures





followed by a Court of First Instance in criminal cases.

This law allows appealing the decision of the administrative governor to the Court of First Instance. It is noted that this law violates the general principles of criminal law as it establishes guilt against a group of people without specific evidence against each individual, and it holds people accountable based merely on suspicion and conjecture. There are also no specific trial procedures applied by the administrative governor, and there are no guarantees to protect the rights of the accused, and the law does not provide for the appointment of a lawyer to defend the accused.

5. CONCLUSION

Through this study, the researcher, k, has reached a set of findings and recommendations:

- The principle of separation of powers is one of the fundamental pillars of the rule of law in a state governed by law.
- The Jordanian legislator has granted administrative governors in the Crime Prevention Law, the Law for the Preservation of Trees and Plants, and the Unified Joint Penal Code full criminal court powers, which constitutes a blatant violation of the principle of separation of powers.
- Administrative governors' courts are always surrounded by a suspicion of unconstitutionality due to the fact that they are considered an exception to the principle, which is the natural judiciary, and which is one of the most important human rights.
- These courts differ from regular courts in terms of their formation, establishment, and the guarantees of those tried before them, and personal claims cannot be made before them.
- These courts do not meet the standards of a natural judge.
- These courts have broad powers and constitute a violation of the principle of equality and the principle of separation of powers, which are among the most important constitutional and fundamental principles that are the basic pillars of the rule of law in democratic systems.
- These courts constitute a violation of defense rights, especially the right to appeal judgments and seek the assistance of a lawyer.
- Judicial functions in these courts are performed by administrative employees and not judges in the true sense and according to the Judicial Independence Law, which constitutes an infringement on the function of the legislative authority and a violation of the principle of separation of powers.

6. RECOMMENDATIONS

To achieve the desired results of this research, the researcher hopes that the Jordanian legislator will adopt the following recommendations:





- Abolish the administrative governors' courts and assign their duties to the regular courts, thus restoring the right to its proper place, which is the natural judiciary.
- Limit the judicial function to judges only and not assign it to administrative governors, in order to achieve the principle of separation of powers and the independence of the judiciary.

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