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The Specificity of the Concept of the Approval of the National Assembly according to Article (33/2) of the Jordanian Constitution and its Reflection on International Agreements

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Abstract

As is well known, the constitutions varied among themselves regarding the authority to ratify the agreement. The Jordanian constitution took a medium ground between giving it to the legislative and executive branches and limiting the enforcement of treaties and accords with several conditions, chief among them the National Assembly's consent. These situations hinge on the importance and durability of the international agreement's position. Since the Jordanian constitution made National Assembly approval a requirement for the execution of international treaties that affect Jordanians' public or private rights, the researcher's study was influenced by the importance and value of those agreements and their enforcement. It is crucial to understand the scope of the notion of prejudice that the Jordanian constitution intends as a requirement for the National Assembly to approve the treaty. This is because the treaty may entail significant obligations. Failing to include international agreements that affect public and private rights is a serious constitutional violation that could put the state in a humiliating position in front of its citizens or other contracting states.

Keywords

Not given

JEL Classifications: J11, F43

1. Introduction

International agreements have a prominent role in the relations concluded by states at all levels, whether political, economic, or other issues, as states cannot live in isolation from other states. This basis depends largely on the state's inability to meet all its requirements and needs in isolation from the world. Therefore, it concludes international agreements between it and other countries, and this great openness is justified ⁽¹⁾.

The conclusion of an international agreement is not as simple as the ordinary contracts concluded; This is due to the special nature in which the international treaty enjoys, the effects it entails, and the obligations arising from it. Therefore, the treaty goes through several stages, starting with negotiations and ending with enforcement. Between those two stages, a path needs to be signed and ratified for the treaty to enter into force.

The special nature that was previously referred to is how the state expresses its will in concluding the treaty. Natural persons usually represent states despite the state being a legal person. Hence, the methods of states vary in expressing that will; it may be by the king, the head of state, the prime minister, the foreign minister, or any other person chosen by the state to express its will, and this is not a problem as it is a matter of form; As for the formation of that will, it differs between the state, some of which are made by the head of state or the executive or legislative authority, as the mechanisms for making the will vary from one state to another.

The Jordanian constitution has adopted a middle position between that, as it divides the formation of the will, some of which are considered the powers of the king, others are in the hands of the executive authority, and others are in the hands of the legislative authority, as Article 33 of the Jordanian constitution stipulates that.

- 1- The king is the one who declares war, concludes peace, and concludes treaties and agreements.
- 2- Treaties and agreements that result in charging the state treasury with some expenses or infringing on the public or private rights of Jordanians shall not be enforceable unless approved by the National Assembly.

By reviewing the text of the previous article, it is clear that the Jordanian constitution stipulates that agreements that prejudice the public and private rights of Jordanians require the approval of the National Assembly, but the concept of prejudice here is not clear. The study reaches the depth of the issue related to the specificity of the concept of prejudice against the rights of Jordanians in accordance with Article (33) of the Jordanian Constitution.

2. The Problem of the Study

The failure to present the agreement that affects the rights of Jordanians to the National Assembly, the non-implementation of that treaty, and its presentation are related to the concept of prejudice. Still, some agreements are presented to the National Assembly and others are not presented. This practical application leads to major problems and exposes the Kingdom of Jordan to a critical situation, both with the people or the countries with which these agreements were concluded. The problem of the study emerges in answering the following questions:

- 1- What is the impact of violating the constitution by not presenting the international agreement that requires the approval of the National Assembly on international agreements?
- 2- Can the agreement affecting Jordanians' public and private rights be challenged if it is not submitted to the National Assembly, and what is the competent judicial authority?

3. The Significance of the Study

The importance of the study stems from the significance and value of the international treaty and its enforcement, as the Jordanian constitution made a condition for the enforcement of treaties that affect the public or private rights of Jordanians, coupled with the approval of the National Assembly. It is important to study the extent of the concept of prejudice intended by the Jordanian constitution as a condition for the National Assembly's approval of the treaty because the treaty may entail serious obligations and the failure to present international agreements affecting public and private rights in it is a grave constitutional violation that may expose the state to embarrassment, whether before the people or before the other contracting states.

4. Objectives of the Study

This study aims to clarify the position of the Jordanian constitution on the authority of the National Assembly in concluding treaties and clarifying the concept of violating the rights of Jordanians by extrapolating the position of the Jordanian judiciary and jurisprudence regarding this issue and showing the danger represented in not submitting agreements affecting Jordanian rights to the National Assembly.

5. Study Approach

In order to achieve the desired purpose of the study, the researcher adopted the comparative analytical descriptive approach in his study by reviewing the penal legal texts that dealt with the issue of the legislative authority represented by the National Assembly's oversight of international conventions and then standing on

their content and analysis. To reach a full conception of the concept of prejudice to public and private rights as a condition for submitting the agreement to the National Assembly as a condition for its enforcement.

6. Study Methodology

The researcher relied on the study's methodology on the binary division of the study. The answer to the study's questions requires talking about the methods of ratification of international treaties in international law in the first requirement, then talking about the concept of prejudice mentioned by the Jordanian constitution as a condition for the implementation of the treaty in the second requirement.

The first chapter

Ratification of international treaties in international law and its methods

Article (110) of the Charter of the United Nations stipulates that "this Charter shall be ratified by the signatory states, each of them according to their constitutional conditions." With various political, social, and religious ideas, the researcher reviews this requirement in the concept of ratification of the international treaty in the first section, while the second deals with the methods of ratification of international agreements.

First section

The concept of ratification of the international treaty

Article 33 of the Jordanian Constitution stipulates that "1- The King is the one who declares war, concludes peace and concludes treaties and agreements. 2- Treaties and agreements that entail charging the state treasury with some expenses or infringing on Jordanians' public or private rights are not effective unless he agrees to them. The National Assembly, and it is not permissible in any case for the secret terms of a treaty or agreement to contradict the overt terms."

By reviewing the aforementioned text, it becomes clear that the approval stage is the stage prior to ratification, which is one of the stages of conclusion ⁽²⁾, and ratification is defined as "the approval of the treaty's internal organs in the state in a manner that obliges the state to it at the international level ⁽³⁾, and ratification in the Jordanian constitution is in the hands of the king because to say otherwise. Such consent must be exchanged between its parties and deposited with a certain body ⁽⁴⁾. The Vienna Convention confirmed the concept of ratification as the international procedure by which the state recognizes at the international level its consent to be bound by the treaty ⁽⁵⁾.

The importance of ratification lies in several parts, including allowing the contracting state to agree to present it to the competent authorities specified by

the constitution ⁽⁶⁾. However, the distinguished Jordanian Court of Cassation has ruled that “the jurisprudence of the Court of Cassation has established that extradition treaties among the treaties that affect the public and private rights of Jordanians are not effective unless approved by the National Assembly pursuant to Article 33/2 of the Constitution and it is not sufficient for the purposes of implementing the provisions of the Constitution. These treaties are published in the Official Gazette, as a constitutional law that puts their provisions into effect must be issued. Therefore, the failure to complete the treaty of extradition of fugitives between the government of the Hashemite Kingdom of Jordan and the government of the United States of America, its constitutional stages, with the approval of the National Assembly and the issuance of a law that puts its provisions into effect, renders it ineffective. The effect on which the non-acceptance of the extradition request is based ⁽⁷⁾ and by analyzing the previous ruling, it is clear that the court had confused the concept of consent and ratification. Riyadh Arab Judicial Cooperation for the year 2001), and the researcher here believes that the approval can be said that it is a stage of the formation of the state’s will before it proceeds to ratification. Accordingly, it can be said that the approval of the Convention by the National Assembly is a stage prior to ratification since His Majesty the King is the one who concludes treaties. Therefore, if His Majesty the King refrains from agreeing to the ratification law, the agreement has not reached the stage of ratification because all of these procedures are tantamount to forming a will and the ratification procedure is a Concept in international law, not an internal.

As for the time of approval, Article (18) of the Vienna Convention on the Law of Treaties stipulates: “The obligation not to disrupt the object or purpose of the treaty before its entry into force. The documents establishing them are subject to ratification, acceptance, or approval until they clearly show their intention not to become a party to the treaty.” Countries must move forward in good faith in proceeding with approval procedures without delay in bad faith or in haste ⁽⁸⁾.

Second section

Forms of approval of international treaties

The constitutions differed among themselves in the methods of ratifying international treaties, some of which are unique to the executive or legislative authority, or the executive and legislative authorities meet in the ratification authority. The researcher reviews the most prominent of those methods used and the constitutions adopted by them, as follows:

First: The executive authority is singled out for ratification

This method is considered one of the oldest methods of ratification, and it was said that it was prevalent in dictatorial, tyrannical, and absolute monarchies ⁽⁹⁾. This method is represented by the exclusive ratification of the executive

authority alone ⁽¹⁰⁾, and this method shows the control of the executive authority over all aspects of political life ⁽¹¹⁾ and this domination is reflected in foreign relations, which is drawn up by the head of state and is unique to it, especially his authority regarding international treaties and ratification, he does not refer to any party, whether parliamentary or oversight, but is the only authority to ratify ⁽¹²⁾.

Among the systems that adopted this method was the Second Empire in France and the Japanese Constitution in 1889, as well as National Socialist Germany between the period 1933 and 1945 ⁽¹³⁾, and this method declined due to the spread of ideas of democracy and political participation, and that this model represented an era with its political and historical data ⁽¹⁴⁾.

Second: The legislature is singled out for ratification

This method is represented by the legislative authority alone by ratifying international agreements without the executive authority ⁽¹⁵⁾. This opinion is based on the fact that the legislative authority is the representative of the people. Therefore, it has the right to do so, as it is the most capable of determining their interests ⁽¹⁶⁾. Some constitutions have adopted this method, including the Soviet Union with a constitution The year 1936 ⁽¹⁷⁾ also followed the same approach as the Turkish Constitution of (1924-1960) ⁽¹⁸⁾.

Third: The participation of the legislative and executive authorities in ratification.

This method is characterized by the right of the head of state to ratify the treaty after the approval of the legislative authority, whether the legislative authority consists of a council or two chambers ⁽¹⁹⁾. This method is the most followed by the countries of the world. The agreements in which the legislative authority participates in its ratification are determined ⁽²⁰⁾, and this method is characterized by balance. It confers between the executive and legislative authority in the ratification of international treaties without one of the two authorities encroaching on the other ⁽²¹⁾.

Among the constitutions that adopted this method, which is considered the pioneer of this method, is Belgium ⁽²²⁾, as the Jordanian constitution also adopted it. The constitutions varied in organizing this method. Some constitutions stipulated the participation between the two authorities in all treaties, and some of them took political treaties and treaties related to the state's treasury, lands, and sovereignty, such as the Belgian constitution, and some of their others took the treaties related to peace, trade, international organization, the state treasury, and its lands, or amended its legislation, such as the French constitution, and some constitutions stipulated treaties related to loans, peace, trade, navigation, alliance, or treaties related to state lands or sovereignty, such as the Egyptian constitution.

After reviewing the three aforementioned methods, the researcher believes that the third method is the most effective method because it includes democratic thought, and the defects of the first method, which are overriding in the exercise of power and the tyranny of the executive authority, and that the second model

may contradict the logic for several reasons, including the lack of knowledge of the legislative authority. In some agreements, whether political, commercial, peace or war, this is primarily due to the difference in cultures and political considerations that may be hidden from the representatives of the people. On the other hand, this may hinder the work of the executive authority and may reach the stage of invading its powers and the exercise of its work. The last model agrees with Between the advantages of each of the two models and avoids the mentioned criticisms; it is worth noting that the latter model varies in the space exercised by each of the authorities due primarily to the constitutions of the states and their political, historical and cultural circumstances.

The second chapter

The position of the Jordanian constitution on the authority to ratify international treaties

The Jordanian constitution has adopted the third model, which is represented by the participation of both the executive and legislative authorities in forming the will in the approval leading to the ratification procedure. Therefore, the researcher's review in this requires two things. In the first section, review the cases requiring the National Assembly's approval on international treaties. The second section deals with the problems of implementation and their reflection on the agreement. International.

First section

Cases that require the approval of the National Assembly on international treaties

The Jordanian constitution has identified two types of treaties that require the approval of the National Assembly in both the Senate and the House of Representatives as a condition for their enforcement. To clarify these treaties, the researcher reviews them as follows:

First: Treaties and agreements that entail charging the state treasury with some expenses.

It is required for this agreement to be presented to the National Assembly that it be an agreement, meaning that it is concluded between two states or a state and an organization ⁽²³⁾ and legal disputes arose in the Jordanian arena in this regard as to whether the financial agreement concluded by the government with a foreign private bank falls within the concept (agreements) provided It should be mentioned in this article and whether it requires the approval of the National Assembly on the grounds that it entails charging the state treasury with some expenses. The High Council for the Interpretation of the Constitution responded to that with its decision, "As the word (treats) in its general sense refers to agreements concluded by two or more states, whether it is related to political, economic or other interests, and in its specific sense, it refers to important

international agreements of a political nature, such as peace treaties, alliance treaties, and the like. The word "treats" in the aforementioned Article 33 indicates that the drafter of the constitution, when using these two terms, restricted the aforementioned specialization. These are agreements in which two or more states are parties and related to non-political affairs.

As for the financial agreements that the state concludes with any natural or legal person, such as banks and companies, for example, they are not covered by the provisions of this article, and their enforcement does not require the approval of the National Assembly, even if these agreements incur some expenses for the treasury.

A dispute arose over the loans concluded by the Hashemite Kingdom of Jordan Government with the International Monetary Fund. Perhaps the response is evident in the same previous decision: "Some foreign constitutions that contain a text similar to the text of Article 33 to be interpreted have included another text related to public loans that require obtaining Parliament's approval of these loans because of their general importance, and such a special provision would not have been placed in the public loans obtained by the government from non-states were included in the concept (agreements) stipulated in the article corresponding to the aforementioned article 33. As for the public interest, It requires that loans be subject to the approval of the National Assembly, as this requires an amendment to the constitution and a special provision for that, not to derive this provision from texts that cannot be tolerated since the task of the High Council is limited to interpreting the current texts in force, not adding new provisions that are within the jurisdiction of the legislator ⁽²⁴⁾ while The Jordanian Constitutional Court ruled that "whatever agreements are concluded, the parties to them must be governments of persons of public international law, and therefore any agreement concluded between the government and natural or legal persons, or between legal persons among them, is outside this framework. M "⁽²⁵⁾. The researcher here sees at the outset that the Vienna Convention on the Law of Treaties indicated in Article Three in the meaning of the treaty or agreement that it may be between states and other persons of international law. Therefore it is accepted in international jurisprudence that organizations have the capacity to conclude treaties ⁽²⁶⁾ and that the International Monetary Fund The International is a specialized agency of the United Nations system, established by an international treaty in (1945) to work to strengthen the safety of the global economy ⁽²⁷⁾. Still, the position of the High Council or the Constitutional Court overlooks the saying that the treaty may be concluded between an organization and a state, which is a suitable saying view.

Second: Treaties and agreements that affect Jordanians' public or private rights.

A jurisprudential dispute arose over the concept of prejudice against the public or private rights of Jordanians. In this regard, the esteemed Jordanian Court of Cassation ruled that "the agreements concluded by the Kingdom with other countries that result in prejudice to the public or private rights of Jordanians, and

since the intended infringement of these rights is the negative impact on the public or private rights of Jordanians, whether those stipulated in the second chapter of the Constitution in Articles (5-23) or other rights that are related to and infringe upon them, so as to lead to a derogation from the public or private rights of Jordanians and since Article (215/b) of the Maritime Trade Law has stipulated that (in spite of what is stated in any other law, every condition or agreement that strips the jurisdiction of the Jordanian courts to consider disputes arising from shipping or maritime transport documents) is considered null and void. In its decisions related to the interpretation of Article (2/33) of the Constitution, the esteemed court does not include a definitive clarification of what is meant by negative prejudice and what distinguishes it from positive prejudice for the purposes of submitting to the National Assembly or not ⁽²⁸⁾. The method of drafting the International Covenant on Civil and Political Rights finds that It includes in the first section of it the dedication of many individual and collective rights in a way that can be described as a positive violation of these rights. However, the second section of it included the imposition of a set of restrictions and obligations on the member states in the face of the Human Rights Committee, represented by the periodic reports system that states are obliged to submit to the International Committee as a manifestation of a negative infringement of rights and freedoms ⁽²⁹⁾. What he said also lies in the lack of clarity in the position of our esteemed court that there is nobody specified by law that determines what affects the public or private rights of Jordanians and what does not affect them. Some have argued that the body that determines this is the executive authority ⁽³⁰⁾, and in fact, this is a clear and explicit transgression, especially if the executive authority has not deviated from that limitation or specified it far from the standard set by the Jordanian constitution.

Second section

Problems of misapplication of the constitution with regard to approval and its reflection on international agreements

Exceeding the text of Article (33/2) of the Jordanian Constitution raises legal problems that are naturally reflected in international treaties and agreements. The researcher reviews the most prominent problems as follows:

First: incomplete validation

Violating the constitution and ratifying international treaties without submitting them to the National Assembly in the cases specified by the constitution may expose the state to two things: either fulfilling its international obligations and subject it to embarrassment and popular pressure, or vice versa, by being embarrassed before the contracting state in the international agreement, by nullifying the treaty. Violating the text of Article (33/2) of the Jordanian Constitution is considered a fundamental violation that may lead to invalidity of the agreement; based on the text of Article (46) of the Vienna Convention on the Law

of Treaties, "The state may not argue that the expression of its consent to be bound by the treaty was done in violation of a provision in its internal law related to jurisdiction contracting treaties as a reason to nullify this consent unless the violation is clear and relates to a basic rule of internal law." The Kingdom of Jordan or repudiated or withdrew from an international agreement under a parliamentary or popular demand, as this matter may affect the reputation of the Kingdom and be broadcast in the contracting countries with it. The lack of confidence in signing treaties and agreements and this matter is criticized at the international level and puts it in a position of embarrassment.

Second: Observing the rights of citizens and enforcing constitutional entitlements

Article 1 of the International Covenant on Civil and Political Rights states, "All peoples have the right to self-determination, and by virtue of this right, they are free to determine their political status." It was stated in the text of Article (33/2) of the Jordanian Constitution that it is a commitment expressed by the Hashemite Kingdom of Jordan by approving it and that the implementation of the constitutional entitlements is of great importance and in it is a consolidation of the concept of human rights, which is called for by the political, human rights laws, which is a right of great importance.

By reviewing the problems above, the researcher sees that circumventing and bypassing legal texts, especially in terms of implementation, is a clear and explicit transgression of the constitution and leads to problems and embarrassment at the international and popular levels, especially since the live application of the text of the article presents some agreements to the National Assembly without presenting other agreements, although they are in the same In light of the legislative deficiency that regulates and the lack of specification of the competent authority to challenge the constitutionality of international conventions ⁽³¹⁾, this transgression may lead to problems at the international level and prejudice the strength of treaties. It is constitutionally accepted, not even at the international level, especially in the rights related to political and human rights. Therefore, it is necessary to reconsider those texts in terms of legislation and implementation completely.

7. Conclusion

The constitutions varied among themselves regarding the powers of ratification of the agreement. The Jordanian constitution adopted a middle position between granting it to the legislative and executive authority and restricting the enforcement of treaties and agreements with several restrictions, most notably the approval of the National Assembly. These cases depend on the value of the international agreement and the stability of its position. Through this research, the

researcher reached several conclusions and recommendations, which he summarises as follows:

8. Results

- 1- The concept of approval differs from ratification, as approval is an internal national procedure to form the will of the state to undertake the ratification procedure, which is an international concept and a stage of international agreements.
- 2- Constitutions differ in defining the authorities that constitute the will of the state to ratify agreements, and perhaps the most effective method is represented by the participation of the executive and legislative authorities in forming the will of the state.
- 3- Many problems have arisen over the concept of treaties that burden the state in its budget, but the Jordanian judiciary has settled on the concept that loans do not constitute an international agreement unless they are between states, thus excluding loans that the state takes from banks and private institutions, despite the fact that the International Fund is a subsidiary agency. for an international organization.
- 4- The Jordanian judiciary, represented by the Jordanian Court of Cassation, affirmed that what is meant by prejudice is negative prejudice without clarifying its standard and concept.
- 5- There are no clear legal mechanisms in the body that define the infringement criterion, and the legal texts do not specify the body before which the constitutionality of the international agreement can be challenged.
- 6- Failure to follow the constitutional procedures is reflected in international agreements, as this leads to the embarrassment of the Hashemite Kingdom of Jordan with countries in the event that it adheres to the invalidity of the international treaty on the incomplete ratification document and its credibility decreases among countries; In the event that it adheres to the agreement that contradicts the provisions of the constitution, it will be subjected to embarrassment and popular pressure.

9. Recommendations

- 1- The researcher recommends that the legislator refute the text of Article (33/2) of the Jordanian constitution and identify the Constitutional Court as a judicial body that determines whether the agreement affects Jordanians' public or private rights before proceeding with the ratification procedures.
- 2- The researcher recommends that the legislative authority in Jordan oblige the executive authority to present all treaties and agreements that fall within the competence of the National Assembly, and in the event that it is not affected, it should be stated with reasoning.

- 3- The researcher recommends the Jordanian legislator amend Article (33/2) of the Jordanian constitution by requiring the approval of the National Assembly on all loans requested by the government from any external party, whether international or non-international organizations as a form of control over the executive authority.
- 4- The researcher recommends the executive authority in Jordan take into account the text of Article (33/2) of the Jordanian constitution, as it is a constitutional entitlement and a human right, and in a manner that does not expose the Kingdom of Jordan to embarrassment if the violation is discovered and adheres to the incomplete ratification under pressure and popular demands.

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