

The Extent of the Continuity and Protection of the Public Entity during Coronavirus Pandemic in Light of the Provisions of the Jordanian Legislation and Judiciary

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Abstract: the administrative activity has two main aspects, namely: the administrative control and public entities management. As a consequence, it is responsible for the well-functioning of these entities and for maintaining the public system and its four elements, so it was granted by the legislator certain powers whether in normal or exceptional circumstances, and its works were put under control during all those circumstances however this control is the least possible on some of the pillars of the administrative decision during exceptional circumstances compared to normal circumstances in order to face the emergency through which the country is going, for example, the current exceptional circumstance due to Coronavirus outbreak, so the public administration, during the exceptional circumstances, may carry out from the administrative control authorities what it cannot carry out during the normal circumstances. However, that does not mean it is behaving without any restriction or control, rather it is subject to many restrictions and controls that the administrative jurisdiction is trying to ensure the commitment to it, so the administration will not take advantage of the exceptional circumstance to overthrow the public freedoms of individuals. The administration, even with the emergence of the exceptional circumstances, acts within the framework of the principle of legality and according to its rules, but it is legitimate of a special kind or exceptional one, which the administrative jurisprudence calls the term legitimacy of crises . Public entities are of a great importance in the life of the community, as they are created to satisfy the public needs that the state considers its duty to satisfy them regularly and without interruption, regardless of the difficulties and costs.

Keywords: public entities, public office, administrative decision.

مدى استمرارية وحماية المرفق العام في ظل (جائحة كورونا) في ضوء أحكام التشريع والقضاء الأردني

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المستخلص: إن للنشاط الإداري مظهران أساسيان هما الضبط الإداري وإدارة المرافق العامة. وبالتالي فهي المسئولة عن حسن سير هذه المرافق وعن المحافظة على النظام العام بعناصره الأربعة، وقد منحها المشرع صلاحيات معينة سواء في الظروف العادية أو الاستثنائية ووضع رقابة على أعمالها في جميع تلك الظروف إلا أن هذه الرقابة تكون أقل ما يمكن على بعض أركان القرار الإداري في الظروف الاستثنائية مقارنة بالظروف العادية حتى تستطيع مواجهة الطرف الطارئ الذي تمر به البلاد مثل الطرف الاستثنائي الحالي بسبب تفشي فيروس كورونا، فيكون للإدارة العامة في الظروف الاستثنائية أن تمارس من سلطات الضبط الإداري ما لا يمكنها ممارسته في الظروف العادية، إلا أن ذلك لا يعني أنها تتصرف من غير قيد أو ضابط، وإنما تخضع لقيود وضوابط كثيرة يسهر القضاء الإداري على

التحقق من الالتزام بها حتى لا تستغل الإدارة حالة الظرف الاستثنائي للانقلاب على الحريات العامة للأفراد، فالإدارة وحتى مع قيام الظروف الاستثنائية تتصرف في إطار مبدأ المشروعية ووفقاً لقواعده ، ولكنها مشروعية من نوع خاص أو مشروعية استثنائية يطلق عليها الفقه الإداري تعبير مشروعية الأزمات. وللمرافق العامة أهمية بالغة في حياة الجماعة كونها تنشأ لإشباع حاجات عامة ترى الدولة أن من واجبها إشباعها بانتظام ودون توقف ومهما كانت الصعوبات والتكاليف.

الكلمات المفتاحية: الهيئات العامة، الوظيفة العامة، القرار الإداري.

1. Introduction

Legislators have made sure in all countries on the necessity to provide public service for the citizens through the different public entities, including health facilities, and during all the bad circumstances whether they are normal or exceptional ones.

So the public entities, which are a project or an organized entity that includes a group of different administrations and departments which are run by a group of workers and employees and being devoted with a combination of funds, administrations, and agencies. Also, it is subject to an integrated legal system that governs all its components, in a way that contributes to achieving the general goal that the body or organization was set up to achieve.

1.1. The Research Problem

The research problem is centered on explaining the adequacy of Jordanian legislation that are currently valid in order to face such cases that threaten the function of the public entity regularly and increasingly during the exceptional circumstances (emergency). Hence, the question is raised about how to achieve a state of balance between the broad powers that are granted to the public administration to be able to face this emergency and between the requirements of the principle of legality and the need to respect and preserve individual freedoms under all circumstances?

1.2. Research questions

- 1- What is the foundation for the continuity of the public entity in light of Coronavirus pandemic?
- 2- What are the principles that govern the public entities?
- 3- How far is the need of the country and citizens to the continuity of the entity?
- 4- To what extent is the principle of the continuity of the public entities legally and judicially protected in light of Coronavirus pandemic?

1.3. Research proposes

- 1- The researcher addresses this problem by answering the previous questions, in which he explains the continuity and protection of public entities in light of Coronavirus pandemic.

- 2- The researcher addresses the most important judicial pronouncements and jurisprudential opinions in this subject, so the Jordanian courts have access into them and take advantage from the cases which are ongoing or will be foreseen later.
- 3- The researcher organizes an integrated legal framework, which regulates the continuity and protection of the public entity during Coronavirus pandemic as intended and keeps up with the requirements of this age and in context of the region's development and combines all the legal aspects related to this activity.

1.4. The importance of the study

In spite of that necessity, which doesn't need an explanation or demonstration, we notice that there are no specialized studies that address this subject in the Jordanian law in addition to the absence of a special legislative regulation that regulates the continuity and protection of public entity during Coronavirus pandemic, and that cannot be imaginable because of the huge risk, represented by this pandemic, on all sections and levels. Therefore, this study will tackle for explaining the continuity of public entity in light of Coronavirus pandemic in the legal framework, demonstrating the extent of legal and judicial protection, and other relevant concerns.

2. Research Methodology

This study will use both the descriptive and analytical approaches through which the researcher is going to analyze the texts addressing the subject and describe it guided by what has been done in the court, and resorted to the legal jurisprudence. However, this study is centered around the Jordanian law, the comparative law will be indicated, when necessary, in order in order to find out the shortcomings in this law to remove them or to show an advantage for them, by explaining and describing the impact of Coronavirus pandemic on the continuity of the public entity and availability of the judicial protection for it.

3. Research Plan

the researcher has divided the study into two study sections in addition to a conclusion with its results and recommendations for the purpose of tackling the different aspects for the subject of the study in a clear view and coming up with a legal framework coping with the provisions of this subject as follows:

The first section: the basis for the continuity of public entity in light of Coronavirus pandemic.

The second section: the legal and judicial protection in the time of Coronavirus pandemic.

Conclusion: results and recommendations.

The first section: the basis for the continuity of public entity in light of Coronavirus pandemic

The principal of continuity for public entity is considered essential. Also, it is considered one of the general principles for law, and it enjoys a strong protection to ensure the continuity and performance of public service in all circumstances, especially the exceptional conditions which require, in the first place, the existence of a legal base in order to resort to it when taking a set of exceptional decisions in time of crisis, such as this crisis through which the country is going (Coronavirus crisis), as well as securing public services and providing them to all citizens.

In order to achieve a specific task, the administration did not only have to do a courtesy act to establish the entity, but rather the public entity must be distinguished on the basis where there is, indeed, a collective need that the administration must meet. This behavior issued by the administration aims to meet the need regularly and continuously. Consequently, this continuity finds its basis according to one aspect of the administrative jurisprudence, as well as to the law of nature, which is based on the on of the rules for the customary constitutional law that made all state officials and public officials adhere to what it contains and through one of the public institutions.

The public institution is a public entity managed by a public authority, and it enjoys a public legal personality.⁽¹⁾

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Hence, this subject of the research will be tackled by demonstrating the importance of the public entity and defining it (first requirement), the base of the principle for the continuity of the public entity during the time of crisis (the time of spread of Covid-19 pandemic) that the continuity of public entity is a need for the state (the second requirement), the continuity of public entity is a necessity for all citizens (third requirement), and the principles governing the public entities (fourth requirement).

First requirement: the importance of public entity

The jurisprudence has been so far divided on the definition of public entity. According to the view on the public entity, there are those who look at the public entity from a formal perspective, finding that it is the authority, organization, or the public entity that carries out the activity of public benefit, and that the main element in defining the public entity is one of the administrative authority in the state regardless of the activity that it performs.⁽³⁾

(1)Ali Khattar Shatnawi, Al Wajeez in Administrative Law, Wael House, Amman, 2003, p. 270.

(2)Mahmoud Hafez, The Public Utility Theory, Dar Al-Nahda Al-Arabiya, Cairo, 1981-1982, p. 16.

(3)Ibrahim Muhammad Ali, Administrative Law, Menoufia University, 1994, p.9.

On the other hand, there are those who look at the public entity from an objective perspective focusing on the nature of the activity that is being carried out for serving the individuals but not for serving the entities by which this activity is carried out.

the common judgment in the administrative jurisprudence and court, supported by the researcher, combines the two previous criteria (the formal criteria and the objective criteria) and thus considers that the public entity is every activity which is carried out by the administration ,either by itself or by private individuals working under its supervision and directing it with the intention to satisfy the needs of the public by using some of the privileges of the public authority.⁽⁴⁾

In the Jordanian jurisprudence, Ali Khattar Shatnawi believes that the public entity is a project that carries out an activity having public benefit and following the people under the public law, either directly or indirectly, and is subject to the legal system of public entities.⁽⁵⁾

In order to determine what is considered a public entity from the projects established by the state, it is necessary to research every case about the will and intention of the legislator and whether he intended to establish a public entity or a private project. If the will of the legislator in such a context is an explicit and clear will, there is no disagreement in determining the truth of the project whether it is a public entity or not, and if the legislator does not explicitly disclose his will, this implicit will can be identified through the usage of a set of clues, among which is that the texts organizing the entity include what confirms the management's interference in its activity and control over it, or that the supreme word in organizing the project and his administration of public authority, or that the project undertakes a monopolistic activity that individuals refrain from doing it and so on.⁽⁶⁾

The French jurist, Dojy, had defined the public entity according to its objective tangible significance that is concerned with the activity carried out by the public entity. The public entity had listed every activity that the rulers should ensure that its establishment, regulation, and control because carrying out this activity is necessary for the principle of social solidarity, and because its nature does not help its accomplishment without the interference of the public authority.⁽⁷⁾

De Soto defines it as: "the activity that makes moral commitment and common circumstances a duty for rulers."⁽⁸⁾

(4)Taima Al-Jarf, Administrative Law, 1978, p. 514

(5)Ali Khattar Shatnawi, Al Wajeez fi Al Admin Law, Previous Reference, pg. 219.

(6)Hani Al-Tahrawi, Administrative Law, Book One, Dar Al-Thaqafa for Publishing and Distribution, Amman, 1998, p. 263.

(7)Duguit L.Traite de droit constitutionnel T.11 P3

(8)De soto J: Grands services publiset entre prises nationaux. Paris.1971.p.4

The second requirement: The Continuity of public entity is a necessity for the nation

Starting with realizing the principle of continuity of the public entity, the administration has to provide all the means that ensure securing the continuity of the activity for public entity. The jurists have considered the continuity of the public entity as the continuity for the whole country, and that was used to justify many legal theories used in the administrative law and many other areas such as public service, administrative decisions, administrative contracts, administrative responsibility, administrative control, etc. Not only did he say that the country is developing and establishing the public entity, but it is calling for securing its continuity in which the principles of continuity of the public entity is a necessity for the country working out to achieve it for the citizens.

And to accomplish a specific task, the administration has not only have to carry out a work as a matter of courtesy in order to establish a public entity, but rather the public entity, indeed, must be characterized according to the existence of a collective need that the administration must meet. This practice done by the administration aims to fulfill the needs regularly and continuously.

The continuity of the public entity, as being considered a necessity to ensure private services in the time of crisis, for example, COVID-19 crisis, it is required to announce some legal contexts that include a group of measures and exceptional legal procedures, which are taken during emergencies. As it is the case with the health emergency that we are witnessing, the spread of Coronavirus pandemic, the measures and legal procedures taken during these conditions took into account ensuring the continuity of the public entity. This is what was indicated by different defense measures announced according to the country's defense measures number 31, year 1991 which are being activated. There is no doubt that the administration is marked by this decision that we don't find any equivalent decision in the private law, which allows the administration to impose decisions from one side on the individuals and those who have to subject to these decisions even if they are not happy. These decisions are clear for implementation as a kind of decision announced by the administration in the time of crisis and emergency like COVID-19. Given that the nature of the decisions must be implemented, it allows the forcible implementation for these procedures. These rules apply equally to the public economic and commercial entities, as well as to the public administrative entities.

Moreover, the elements of the public system must be protected carrying out the duties of the administrative control authorities. Without protecting the elements of the public system, neither the public entity nor the private activity can carry out their duties.⁽⁹⁾

(9)Chinot.D organization Econmique L Etat Dolloz.1965.p. 82.

As well as the comment of the government commissioner in the case Bacd ElokLong. Well, Braibant. G Les Bacd, Grands arrest de la Jurisprudence adminstratif sirey.1978.P 164.

Article number 124 in the Jordanian Constitution states⁽¹⁰⁾: "In the event of an emergency necessitating the defense of the Kingdom, a law, which shall be known as the Defense Law, shall be enacted giving power to the person specified therein to take such actions and measures as may be necessary, including the suspension of the operation of the ordinary laws of the State, with a view to ensuring the defense of the Kingdom. The Defense Law shall come into force upon its proclamation by a Royal Decree to be issued on the basis of a decision of the Council of Ministers." As for Article number 125, it states⁽¹¹⁾: " If the actions and measures in Article number 124 are considered insufficient for the defense of the Kingdom, the King may by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the Kingdom."

As for the second paragraph of article number 125, it states that all these powers which were given to the administration, among which his royal majesty, provides in one way or another on the principle of continuity of the public entity and ensures the public service for all citizens and residents on the national territories.

As a consequence, the defense law has been in force since it was issued, but its activation and elimination need a royal decree. The royal decree was enacted beginning of March, 17th 2020, corresponding with the second article of the defense law which states the conditions in which the defense law may be activated, including the spread of an epidemic or a plague. Therefore, the curfew falls within the authorities of the prime minister during the period of its activation. The defense law No. 2 also included restrictions of some liberties, which are constitutionally guaranteed, to prevent the spread of the pandemic, but a mechanism has been defined to exclude the individuals who are authorized by the prime minister and defense minister, and whose work requires maintaining the public entity and thus allowing citizens meet their needs according to a specific mechanism. As for emergencies, the citizens have to inform the civil defense to take the necessary procedures in order to protect their health as recommended.

The third requirement: the continuity of public the entity is a necessity for everyone

The continuity of the public entity is defined as a necessity for the citizens and residents in the national territories, and the activities, which are carried out by the public entity, continue, regularly and increasingly, without any interruption or distribution for the conduct of operation of the public entity which negatively affects the lives of people and thereby affects the economic, political, and social aspects in the nation, especially that the public entity often monopolies a specific kind of services that is needed by the community such as education, water, and electricity, which may not be provided by another entity. Taken into account repercussions caused by the discontinuity of the public entity services and represented by the interpretation which affects the lives of people in the community, especially in the periods of crisis.

(10)Article 124 of the Jordanian Constitution of 1952

(11)Article 125 of the Jordanian Constitution of 1952

Therefore, the citizen plans for his life according to the existence of public entities that work regularly and increasingly. This planning is distributed when one of these difficult circumstances is interrupted which is marked by the spread of COVID-19 pandemic to all countries, including our country, which forced the government to take a group of precautionary measures and declare emergency by activating the defense law No. 31, year 1992, which provides the government exceptional powers that are not being possessed in normal conditions. However, it was always ensured to exclude vital entity from curfew, as it continued to operate and even doubled its work such as health facilities, security facilities, educational facilities, etc.

When individuals claim that there is a violation for the principle of continuity in order to gain compensation, the administrative judge can take a step into the jurisprudence in order to ensure the continuity of the service for clients from the entity. Also, it is considered necessary for securing this as they organize their lives and future according to the public entity, and they placed a huge importance on its function regularly⁽¹²⁾. Therefore, this principle was one of the most important principles controlling the function of public entities and its permanence regularly, especially in the period of crisis such as (the spread COVID-19 pandemic).

Carrying out the defense law No.13, year 1992 entitled that the prime minister is given the right to issue written defense orders which stop the work through the normal order in accordance to Article No. 124 in the Jordanian constitution, year 1952. 16 different defense orders have been issued since 1952 as they differed in terms of its contents and subjects. But, how much is the judicial control over the issued defense orders?

The defense law in Article A/8 from the defense law mentioned above provided the right for anyone, who has been arrested under this law or any other law, or took over or violated the public money or money under his responsibility or for any stakeholder, to contest against the issued order to the supreme court of justice (the administrative court).

The formal measure adapted by the defense law and represented in what legislation it included, as considering the defense law an administrative decision which is controlled by the administrative court, since issued by an administrative party, does not correspond with the nature of the issued defense orders and what it included of legislations for new legal provisions. So, there are defense orders that were issued and included with public and mere legal rules fairly applied to every one and coupled with a penalty in case violation. And this opposes the administrative nature of the defense orders, so the defense order No.8 which stopped the work on Article B/22 of the public health law and included a group of criminal acts which may be committed by individuals who are infected with COVID-19 and their contact persons and imposing penal punishments that could reach up to three years' imprisonment.

(12)Nawaf Kanaan, Administrative Law, Book One, Administrative Activity, House of Culture for Publishing and Distribution, First Edition, 1993, p. 335

This is the case for the law defense No.11 which considered people's lack of commitment to the precautionary measures in order to stop the spread of Coronavirus, as a penal punishment, and impose a financial penalty on the offenders with determining a shutdown penalty for the violated establishment.

Many defense orders have been issued among them the defense order No.12 which exaggerated the penalties on the curfew that was indicated in the defense law No. 3. As for the defense law No.12, it came to provide support from the government the affected sectors due to Coronavirus pandemic and help them to provide liquidity and minimize the damage caused to them. It is also indicated in the defense law No. 14 creating protection and empowerment programs to protect the national economy and help it sharing the burden thereof.

As for the defense order No. 15, it is associated with the Initiatives of the Jordanian public institution of social security to support the phase of economic recovery and continuity of the private sector and to minimize the burden on the institutions and individuals. As for the final defense order No.16 which was issued in September 17th, 2020, it was issued due to the increase of the reported COVID-19 cases in the kingdom and to control the unnecessary assemblies which could increase the spread of the virus and threaten people's health. This defense law included banning widening, social invitations, assemblies of different forms (more than 20 people), funeral houses, and thus penalties on the lawbreakers of people and individuals were issued. In addition, they have stopped the work on any text or legislation that violates any order or provisions of mentioned defense orders.

Article No. 124 in the Jordanian constitution allowed the written defense order to cease the work on normal laws, and thereby the constitutional legislator upgrades the defense order, as being considered a legislative work, according to the formal measure that distinguishes the legislative work from the administrative work. This is according to the purpose of activating the normal laws, so a law can be disabled only by an equal or higher law. Article No.10 of the defense law No. 13, year 1992 indicated:" Working with any text or legislation that opposes any provision of this Law and the orders issued according to it is ceased."⁽¹³⁾

Hence, the legislative nature for the defense orders and which includes Enactment of new legal rules that requires thinking of imposing it to the principle of the constitutional control in order to ensure no violation for the constitutional documents and to promote the previous opinion that the defense orders that were issued and containing constitutional document that will be applied by the public prosecution and penal court; this is because it is being followed by persons violating it. As a consequence, it is subject to provide payments due to being unconstitutional, and that is according to the other legislative rules in the law and the system.

(13)Article 10 of Defense Law No. 13 of 1992

Among the most important realistic cases in Jordan that occurred during the spread of the Corona pandemic regarding exceptional circumstances, rights and freedoms, and with the majority of countries in the world, including Jordan, continued to impose strict measures and restrictions on movement and work within policies to prevent the spread of the Corona pandemic that is sweeping the world and caused tens of thousands of victims and hundreds of thousands of Injuries, workers in many countries face multifaceted violations of their fundamental rights.

Jordan and most of the countries of the world also used curfews on a large scale, and declared a state of emergency in many countries, including Jordan, which gave exceptional powers to the ruling authorities at the expense of the laws and the constitution. As the army closed the capital, Amman, and all the kingdom's governorates, preventing movement between them. Hundreds of people were arrested for not complying with the curfew orders, although the Prime Minister and Defense Minister Omar Al-Razzaz pledged to apply it in the narrowest limits, stressing that it would not affect political rights, freedom of expression or private property. Human Rights Watch urged Jordan to abide by not detracting from the basic rights of citizens.

The fourth Requirement: The Principles Governing Public Entities

in spite of the variety of public entities and administrative methods of these entities, they are linked with each other under a group of principles governing them. These principles include the principle of operation of public entity regularly and increasingly, the principal of applicability of public entity for change and adjustment, and the principle of equality for public entities. What matters to our research is the first principle which is the principle of regularly and increasingly operation of the public entity.⁽¹⁴⁾ given the importance that public entities have in the life of the community and given the fact that these entities were established to fulfill the public needs, the country believes that its duty is to regularly fulfill these needs despite the expenses and difficulties. The suspension of services or regular and increased function of the public entity is resulted a huge disruption in the community system or people's lives. The executive authority is the responsible for organizing the public entities in the nation.⁽¹⁵⁾

This principle is considered one of the deep-rooted in the public law and which does not need to a special legal legislation because the nature of public entities and the nature of the services they provide require ensuring its function regularly and increasingly. This principle is fixed everywhere inside France, Egypt, and Jordan where they made it essential for most of the legal administrative theories in the public service areas, administrative decisions, administrative contracts, administrative responsibility, administrative control, etc.⁽¹⁶⁾

(14)Sulaiman Al-Tamawi, Al-Wajeez in Administrative Law, Dar Al-Fikr Al-Arabi, Cairo, 1979, p. 401.

(15)Mahmoud Hafez, The Public Attachment Theory, 1982, previous reference, p. 122.

(16)Muhammad Al-Khalayleh, Administrative Law, Book One, Dar Al-Thaqafa for Publishing and Distribution, 2018, p. 257

As well as, the jurisprudence and legal jurisdiction have agreed on the necessity of the principle of continuity of the public entity for all benefited people from the entity's services and on the necessity of providing public protection and penal protection that guarantee maintaining the public entity's services without suspending. This will be touched upon in the next section.

The second section: the legal and judicial protection for the public entity in the time of Coronavirus

As we talked in the beginning about the continuity of the public entity, as being considered a necessity for the nation, we clarified this matter through a group of opinions that is considered the continuity of the public entity a continuity of the national which is used to justify many legal theories, or considering the continuity of the public entity as a part of the continuity of social life. If these public entities are aiming to fulfill public and necessary needs, it will be hard for the citizens to give up on them due to their urgent need. Therefore, it was necessary for the public entity to continue in fulfilling these needs and then ensuring the continuity of public entities regularly and increasingly. Based on that, it is possible to consider this principle one of the important rules that govern the function of entities, whether administrative or economic, and which is based on the importance and vitality of services carried out by public entities and on the extent of damage that affects the country and individuals due to the suspension of a vital entity or being disabled for a period of time. It is not possible to imagine what damage and disruption would affect the society if one of these entities, which are important for citizens, were ceased such as the electricity sector, water sector, and other important sectors.

Therefore, we find that the administrative jurisprudence and judiciary always make sure of the importance of the base or the function of the public entities. So, the public entity originally was established only for fulfilling public needs touched upon the importance of a level that made the public authority a public entity regularly and continually⁽¹⁷⁾. And due to the dangerous repercussions resulted by the suspension and represented by the disruption that affects the individuals' lives in society since they organized their lives according to the public entities and attached a great importance on its continuity regularly which affects the citizens in these entities were ceased from carrying out their job, it was necessary to take into consideration ensuring the legal needs, especially in the time of crisis such as the crisis of COVID-19, Especially the legal documents that are issued around this crisis and whose requirements ensure the continuity of the vital public entities for the country. Moreover, these requirements must be provided with judicial jurisprudence that explains this issue. Starting from here, we will touch on the legal and judicial protection for the continuity of the public entity.

(17)Saeed Al-Sayed Ali, Foundations and Rules of Administrative Law, Abu Al-Majd House for Printing, 2007-2008, p. 279

The First Requirement: The Legal Protection for The Principal of Continuity of The Public Entity in Light of Coronavirus Pandemic

If it is rare to find the constitutional requirements plainly provide for the continuity of the public entity during the period of crisis, in the constitutions of some countries. Therefore, we find that the previous constitutions in Jordan don't provide plainly for what is currently provided in the constitution of 1952 and its amendments on the insurance of the continuity of public entity, so they always referred to the provisions of judiciary in such cases, as it has become the right of the administrative authority, but rather its duty, to carry out the work all the time to ensure the continuity of the function of public entities. Based on the provisions issued by specialized judicial authorities, they have violated their duties towards individuals, and despite the modernity of the administrative judiciary in Jordan which was found according to Article No. 100 of the Jordanian constitution, year 1952; and its amendments, and according to the enactment of the supreme court's temporary law No. 11, year 1989 which formed independent administrative judiciary from the normal one which gave exclusive specialties for the administrative court. This also remained in the permanent law of the court No.21, year 1992 and in the current administrative law No. 27, year 2014 which kept the specialties the court exclusively with expanding in some specialties from the previous ones, based on the constitutional amendments of 2011, which made the degrees of litigation in two stages.

It was stated in the Jordanian constitution for year 1952 Article No.124, In the event of an emergency necessitating the defense of the Kingdom, a law, which shall be known as the defense Law, shall be enacted giving power to the person specified therein to take such actions and measures as may be necessary, including the suspension of the operation of the ordinary laws of the State, with a view to ensuring the defense of the Kingdom. Indeed, the royal decree was issued on the approval of the decision of the Council of Ministers to activate the defense law in March 17th, 2020. And since the constitution authorizes his Royal Majesty this authority, and that he is heading the three authorities, in accordance to the constitution, as being the president of the country⁽¹⁸⁾, the royal decree is going to be legally protected to ensure the operation of the public entity regularly and increasingly. This appears through the context of the royal message pointed to and in which his Royal Majesty confirmed on the necessity of taking proactive procedures, creating plans, and taking measures to serve the nation and citizens. In addition, his Royal Majesty confirmed in the noble royal decree on that the government must take all the decisions ensuring the continuity, stability, and safety of the private sector and its institutions and running the public entities regularly, especially those which are concerned with serving the citizens.⁽¹⁹⁾

(18)Article 30 of the Jordanian Constitution of 1952

(19)From what was stated in the text of the royal message that was issued approving the Cabinet's decision to activate the Defense Law on 3/17-2020 and based on the text of Article 124 of the Jordanian Constitution.

As well as, Article 125, paragraph 1 stated, " In the event of an emergency of such a serious nature that action under the preceding Article of the present Constitution will be considered insufficient for the defense of the Kingdom, the King may by a Royal Decree, based on a decision of the Council of Ministers, declare martial law in the whole or any part of the Kingdom."

What was reported in these Articles of the current Jordanian constitution confirms the importance of giving the executive authority the full permissions to ensure the country's security and to defend it against any violation, threat, danger, or pandemic that threatens the public entities that matters to people. This permission is restricted according to the defense requirements of the kingdom (what is meant is maintaining the providence of services of the public entities for the citizens in the country without suspension), and keeping each of these entities unaffected of new threats for the public system, including its four elements: the public security, public health, public tranquility, and the public morality. Today, this principle, which is usually used to refer to the insurance of its continuity and to the judicial jurisprudence and public rules of the law, became stipulated in the constitution and included in the contexts related to the health emergency state and in its proclamation through the activation of the defense law No. 12, year 1992, which aims to sustain the continuity of the public entities and its performance of duties.

The Jordanian legislator explained of what is meant of public entities, its kinds, and its principles which governs with its administrative ways by what was issued of different legislation. Also, the public entities were defined as every activity carried out by the administration by itself or by normal workers who are working under its supervision and control in order to fulfill the public needs using some of the privileges of the public authority.⁽²⁰⁾

Moreover, it provided for the principles, which governs the public entities and the most important is the principle of the operation of the public entity regularly and increasingly. This principle organized many issues which have to be considered, namely what is related to the public employee, and organizing his retirement since the relationship that links him with the nation is an organizational relationship, in addition to the necessity of preventing the employee from leaving the work after his resignation, so he will stay and keep providing the public service inside the entity until the approval of the administration on his resignation- considering the work of the employee as the citizens' interests and their daily needs. As a consequence, it is fairly enough to take consideration when approving the resignation of the employee⁽²¹⁾, thus it is prohibited to strike as it was provided in the public service system which considers the public duty as "it is prohibited for the employee under legal Liability to do one of the following acts: joining a protest, strike, or demonstration."⁽²²⁾

(20)Taima Al-Jarf, Administrative Law, Modern Cairo Library, 1972, p. 514

(21)Anwar Raslan, The Public Service, Dar Al-Nahda Al-Arabiya, Cairo, 1981, p. 79

(22)Article 68 of Civil Service Law No. 14 of 2007.

A strike means that workers abstain from doing their work for a temporary period without completely giving up their jobs, either in protest of certain conditions or in hope of achieving specific demands.⁽²³⁾

The constitutional legislator has already organized the emergency, through which the country is going through the context of Article 124 and 124 of the Jordanian constitution, year 1952, as we mentioned. As opposed to the British legislator who has not defined the measures and authorities that may be followed in the case of danger threatens the civil system, but the Council of Commons is invited to a meeting in order to define the need of granting additional authorities to the executive authorities to face this danger, and to define the given authorities. As for the French and Egyptian legislators, they already have organized this issue in their valid constitutions, and they explained that through the legislative organization of these issues in the constitutions of these countries. And if anything happens that requires taking measures and procedures to maintain the public system with its known four elements, the executive authority is going to proclaim an emergency and given these authorities as it's the case in Jordan, especially in the exceptional conditions through which the country is going, for example, the current situation of the spread of coronavirus pandemic which require alternative measures to ensure the principle of the continuity for the public entities. Also, the executive authority was given the permissions by the constitution, and that by given it the permission of activating the defense law and issuing or organizational defense orders and singular decisions in order to manage an immediate and urgent intervention to prevent the epidemic conditions from getting worse and prepare all available means to protect the individuals and ensure their safety. The mentioned measures do not work without the continuity of the vital public entities and ensure the services they provide and ensuring the continuity of the public entity at the level of the legal text is reflected at the level of reality, the continuity of public entities in providing their services to citizens, whether they are public entities for the state or belong to citizens, such as economic or private entities run by citizens that provide public service but are not of the state's public institutions.

The Jordanian legislator, out of his concern for the operation of public entities, gave the administration in the civil service system the right to reject the resignation request submitted by the public employee whenever the public interest required it. This is deduced from the text of Article 167 of Civil Service Law No. 30 of 2007 that "thirty days the submission of the resignation request without answering it by the administration is considered a rejection of it."⁽²⁴⁾

(23)Abdel Moneim Mahfouz, *Officials and the Government between Submission and Confrontation*, Dar Al-Nahda Al-Arabiya, Cairo, 1986, p. 206.

(24)Muhammad Al-Khalayleh, *The Provisions of the Resignation of the Public Employee and Their Effects on the Civil Service System and the Supreme Court of Justice Judiciary*, a research published in *Mu'tah Journal for Research and Studies*, Volume (20) Issue (4) of 2005.

This legislative approach means the administration's right to reject the resignation request when compared to other public office legislation, such as the Egyptian law, which gives the administration the right to a period of time to respond to the resignation request, so that period without an answer makes an acceptance of the resignation and with the force of law. ()

And that periods of crisis raise many problems and questions regarding ensuring the continuity of the public entities, and legal and judicial means are being searched to ensure this continuity, and among these crises we are currently experiencing is the outbreak of the Corona pandemic (COVID- 19), which posed a new challenge about the possibility of the public facility continuing to provide its services, especially with the issuance of many measures and measures that have been taken by the government in order to protect this facility and consequently the citizen's health in a step considered preemptive by which the government aimed to besiege this pandemic and work to limit its spread, the most important of which is the activation of Defense Law No. 13, year 1992 and the issuance of many orders Defense based on this law in the Hashemite Kingdom of Jordan in order to secure the continuity of public services and protect citizens from this pandemic.

And after the spread of the Coronavirus pandemic, COVID-19, the government took many precautionary measures to protect citizens from this deadly epidemic, as it took the decision to close the land, sea and air borders to avoid the virus entering the Kingdom's territory, canceling sports, cultural and artistic gatherings and demonstrations, and suspending various sessions. The governorates of the Kingdom, and the temporary closure of mosques, leading to imposing a quarantine for citizens, isolating the injured and preventing movement, except with exceptional licenses issued by the authorities in an attempt to stop the spread of this virus.

The researcher believes that the viewpoint taken by the Jordanian legislator in this field is that it gives the administration, which is responsible for the proper functioning of public entities in the state, sufficient opportunity to satisfy the needs of citizens, run their interests and maintain the regular and steady functioning of public facilities in the state, but not sacrifice the employee's interest and achieve a state of affairs. From the balance between his interest on the one hand and the public interest on the other hand, it is necessary to give him the opportunity to resort to the judiciary to challenge the administration's decision to refuse his resignation and to examine the legality of this decision, which is not covered by a text in the Supreme Court of Justice Law No. 12, year 1992, and the current Administrative Judiciary Law No. 27 of the year 2014, which defined the jurisdiction of the administrative judiciary exclusively, and the court did not accept, on more than one occasion, the appeals related to the refusal to accept the resignation of the public servant, since these specializations are limited to limitation and not including the

acceptance of the appeal rejecting the resignation of the public employee, so the court rejects the case in the form of lack of jurisdiction.⁽²⁵⁾

So based on the constitutional requirements, the defense law's requirements, and the orders issued according to it and related to the state of emergency, legal protection has been established to ensure the continuity of vital public entities in providing their services.

The second requirement: the judicial protection for the principle of continuity of the public facility

The legislator of the jurisprudence keeps up with what is related to ensuring the continuity of the public entity. The French Council took the lead in this matter which is demonstrated through a group of decisions that the judiciary and the administrative jurisprudence approved the importance of this principle. The judicial authority has defined, a long time ago, the continuity as a general principle of law, as the authority in French permitted the right to strike, but it excluded the vital public entities in the country which provides us with a better understanding of the concept of development since the beginning of the twentieth century. As opposed to the Jordanian legislator, which, unfortunately, had not organized the strike in its legal texts that govern the civil job, there is no legislative text that organizes the strike and thereby created a legal void that governs this issue. The fact that the Penal Code did not criminalize strikes in the field of public office copes with the constitutional right of expression of opinion⁽²⁶⁾ and with the Jordanian approval on the national convention for economic, social, and cultural rights, which acknowledge the right of striking in article No. 8 except what was provided in Article 68 of Jordan Civil service system No.14, year 2007, which prohibited joining a strike, demonstration, or protest.⁽²⁷⁾

Therefore, we find that the French council ruled in some of its provisions on illegality of workers' strike in some public entities and emphasized its resistance and narrowing it as possible. As well as, the council defined some special regulations of organizing the strike of the workers in the public entities taking into consideration the harmony between the principle of striking right and the principle of operation of public entities regularly and increasingly. The most important regulation is taking into consideration the type of the public entity, which is affected by strike, when banning the type of strike, refusing to recognize the right to strike unless to protect professional interests and not to accomplish political purposes, and acknowledging the legitimacy of banning strikes on certain categories of employees, such as employees of post and telephone facilities, who are essential for the security of persons, the protection of things and the operation of communications, which only can be achieved when

(25)The ruling of the Supreme Court of Justice in Case No. 442/1997 issued on June 30 1998.

(26)Article 15/1 of the Jordanian Constitution of 1952

(27)Article 68 of the Jordanian Civil Service Law No. 14 of 2007

these facilities operate regularly and steadily, and workers in public transportation, whether on buses or railways.⁽²⁸⁾

This is what the administrative court in Jordan took into account when there was what is called as teachers' strike, so the court's decision is not a solution for dissolving the council of the union, but it suspended the decision of the teachers' union for a period of time until the court issues the judgment on the case⁽²⁹⁾. The court decided on the judgment in September, 29th 2019, to stop the work on the decision of the teachers' union related to strike, and according to Article 1-6 of the Jordanian judiciary No. 27, year 2014, which gives the permission to cease carrying out the contested decision tentatively of there is a real danger that imminently threatens the rights which has to be preserved, and this right is the right of students to learn since the execution of this decision leads to unrecognizable results, thus affecting the principle of the regular and steady operation of the public entities. Most of the decisions issued by the Administrative Court in Jordan and the French Council were related to either the strike, the employee's resignation, or the emergency conditions theory⁽³⁰⁾

Some of the jurisprudence in French under health emergency is the decision which is lately issued by the French council and related to the curfew imposed due to the spread of coronavirus pandemic, COVID-19. It is the decision No. 439674 which is issued in March, 22th 2020 and related to the necessity of imposing a total ban. This decision was issued due to a legal action by the young doctors' union in French, the national union of doctors, and the national council of doctors association.⁽³¹⁾

The demands submitted by the bodies made the prime minister and the health minister adhere to take measures in order to ensure the production in the industrial sector, thus increasing the tests, taking organizational measures of testing the workers in the medical sector, preventing the public from going out unless they have a permission given from a doctor with a special excuse, ceasing public transportation, and ceasing vocational facilities except the vital ones. The measures, which are not considered enough and provided in the decree of March 16th, 2020, are clearly and illegally dangerous and devastating, and it has an influence on the right of life respect and other demands.

The French council considered in accordance to this decision that the prime ministers, according to his authorities, can legislate identical police measures on whole French territories, especially in the

(28)Rapp, D, Mandelkren sur la continuité du service public en greve dans les transports, commission pour la continuité de service publics dans le transport terrestresde voyageurs, ministered l'Equipment, des transports de l'Amenagement du territoire, du tourisme et de mer, 22 juillet 2004.

(29)Muhammad Al-Khalayleh, Administrative Law, Book One, 2014, previous reference, p. 258

(30)Muhammad Al-Khalayleh, Administrative Law, Book One, 2014, previous reference, p. 258.

(31)The French council decision No. 439674, dated March 22, 2020, related to the request for blanket seizure on French soil, and the lawsuit filed by the Young Doctors Syndicate, the Internal Medicine Syndicate and the Council of French Doctors against the Prime Minister and the Minister of Health and Solidarity.

exceptional conditions such as COVID-19 pandemic with which they are struggling currently, in addition to the provisions of Article 1-3131 of the public health law which confirms on: "In the event of a serious health threat requiring emergency measures, particularly in the event of a threat of an epidemic, the Minister responsible for health may, by a reasoned decree, legitimate any measure fits with the risks incurred and appropriate to the circumstances of time and place in order to prevent and limit the consequences of the possible threats to the health of the population. The Minister also may empower a representative for the State with territorial take all measures for the carrying these provisions, including individual measures. Based on these underpinnings, a decree was adopted in March 16th, 2020⁽³²⁾ which included many measures and orders for the representative of the country on country level, including travel ban as a part of the war against the spread of COVID- 19, in light of the new conditions and based on a set of techniques specifically identified in the Code of Territorial Communities and the Determination of Powers, i.e. the authority of taking measures that fall within the measures of regions and groups, these measures are the most guaranteed measures of safety, public health and health security in particular in the event of an pandemic, taking into account the domestic sphere.

First: Conclusion

After we have read the legal requirements and thus the jurisprudence related to protecting the public entity during health emergency due to the spread of coronavirus pandemic, we find that the Jordanian legislator was accurate and balanced with what is related to the legal texts in health emergency, whether through the legal texts related to procedures and measures or to what is related to maintaining the continuity of the public entity by activating the defense Law No.13, year 1992 to face the spread of coronavirus in a way that does not affect the continuity of the vital public entities in providing its services.

This procedures and measures which have been adopted made Jordan succeed on level of applying quarantine which has considered a model in this area, as opposed to the French legislator who was very easy and careful in carrying out proactive measures; the thing that exposed him a huge criticism.

Thus, we conclude from our reading of a group of legislative provisions and analysis of the judicial decisions that there is indeed a legal and judicial protection for the continuity of the public entity in the period of emergency, especially the health case of emergency due to the spread of Coronavirus pandemic, COVID- 19. Through studying this subject, the study concluded into the following findings and recommendations:

- 1- The Jordanian government has taken many measures to ensure limiting the spread of this pandemic Coronavirus pandemic (COVID- 19).

(32)Decret, n 2020-260 du 16 mars 2020 portant reglementation des déplacements dans le cadre de la lute contre, la propagation du virus covid 19 [https / www.legifrance. gouv.fr/eli/decret/ 2020/3/16/PRMX200785/jo/texte.](https://www.legifrance.gouv.fr/eli/decret/2020/3/16/PRMX200785/jo/texte)

- 2- The Jordanian legislator has organized the issue of resignation of the civil employee, but he does not find a state of balance between the employee's right of an effective control over the decisions of the administration of refusing the resignation in which it was not provided in the administrative jurisdictions and their different laws since creating the permission of such appeals.
- 3- There is a shortcoming legislation regarding the inexistence of an organization for the right of strike in the public sector, and this is legislative gab that must be avoided.
- 4- The practice of the administration to its works represented by the administrative control and managing the public entities always creates a problem between two considerations, namely: the necessity to maintain the public system and continuity of the public entities and forcing the individuals to prevent doing any disruption to the public system, and the second is the necessity of commitment of the control authorities to the principle of legislation and not to violate the rights and general motilities for individuals, even under exceptional conditions.

Second: Recommendations

- 1- We hope that the Jordanian legislator will tighten control over the administration's decisions in the exceptional conditions, so that the rights and freedoms are not affected except to the mandatory level to protect public system and the continuity of providing public service without interruption through the various public entities.
- 2- To urge the administrative judge on the purpose of his job, the generally recognized laws of legal buildings, and the balance between interests, as necessities are being valued by their value, and the verdict against the state in such cases, or obstruction to its work, or obstruction of its work as a state law.
- 3- We wish the Jordanian legislator to amend the terms of reference of the Administrative Court exclusively, and that the jurisdiction of the court becomes to consider cases in which the public administration is a party similar to some of the comparative administration.
- 4- We hope that the Jordanian legislator will amend the Penal Code and provide in it the criminalization of strike for the civil job, as it is the continuity of the public entities.

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