

Irrefutable Argument 2

A Study of Jordanian Judiciary trends in dealing with Media Cases

2006 - 2008

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Executive Summary



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This summary presents a general overview of Part II of the "Final Say" study. Part I of the study, which was published in 2007, had covered trends of the Jordanian judiciary in publication related cases during the period 2000 - 2006. Part II covers trends of the Jordanian judiciary in publication related cases during the period 2006 - 2008.

The study is composed of an introduction, four chapters and a conclusion that includes closing abstracts and recommendations.

Chapter I discusses the most significant developments to factors affecting the Jordanian judiciary's trends in press and publication related cases during the period of the study. The study indicates that it is possible to describe developments to the factors affecting the judiciary's trends for the period 2006 - 2008 as "a period when new aspects were born and these are very different from the previous 'fetal' scenes. The most important law related to the judiciary's trends has been amended, and the form of the media has changed from print media to electronic media. Moreover, the judiciary's openness to media outlets and civil society institutions has matured." The study adds: "Since this period is one of birth-giving, the features of the new-born are not yet entirely and visibly clear. The features of previous changes have not appeared in a tangible and profound manner on the trends of the Jordanian judiciary in dealing with press and publications related cases during the period 2006 - 2008. Yet it is possible to identify its main features in some judicial provisions issued during this period."

Regarding the legislative developments in journalism and media laws during the period 2006 - 2008, to which the first part of Chapter I was dedicated, the study says that "the amendment made on the Press and Publications Law No. 8 for the year 1998 via the amended Law No. 27 for the year 2007 had a clear impact on the trends of the Jordanian judiciary in press and publications related cases. This is evident in the emergence of new trends that resulted from the legislator's introduction of new crimes that were unknown before on one hand, and changes in some trends resulting from poor judicial articulation and the ambiguity of the amended texts on the other. The study examined the legislative development of the Press and Publications

Law in 2007, and made several remarks.

First Remark:

The amended Law added to the commitments imposed on journalists in article (7) of the original Law a new commitment, represented in respect for the journalistic code of ethics. This is despite the fact that this code is a code of ethics that attempts to set a number of professional and behavioral controls for the profession of journalism, and does not carry any legal obligation, but is rather based on a moral and ethical commitment. As such, it is a blatant constitutional violation when the Jordanian legislator considered the items and texts of the journalism Code of Ethics as part of the legislation, and when it considered the violation of this Code a crime in itself. The Constitution, in its Article 25, has assigned the legislative power to the Parliament and the King. The Constitution also stipulated the constitutional stages for enacting legislation within the Upper and Lower Houses of Parliament and up to its ratification by the King. The journalism Code of Ethics, however, was prepared by the Jordan Press Association, which does not include among its members all those working in the field of journalism and the media. This, in turn, affects the depth and value of this Code's texts.

Second Remark

The legislator attempted to lift the constraint imposed on the right of access to information, and to obtain such information and use it, whether at the practical or legal levels. It did not, however, add anything new to the original Law, but was rather aware of rationing the journalist's right to attend the sessions of the Upper and Lower Houses of Parliament, as well as the journalist's right to protect his sources and not to be compelled to reveal them. The study saw, however, that the legislator's attempt did not succeed to achieve the actual practice of journalists' right to obtain information for various reasons it referred to.

Third Remark

The legislator insisted on maintaining prior censorship imposed on specialized publications, and maintained the original text of the Law as it is. This is also a blatant violation of the Jordanian Constitution, as well as the international conventions that Jordan had ratified.

Fourth Remark

Although the legislator was attentive to the prior censorship in the original Law that is imposed



on the content of the information arriving from outside, and tried to remove such censorship by making specific arrangements to facilitate the entry of publications published outside the country, the study however, saw that this attempt may provoke some practical problems upon implementation, and may result in hindering the entry of subject publications.

Fifth Remark

The legislator was stringent in the amended Law when he added a new criminal item to Press and Publications Law that was not there before. This is namely Article 38 Publications, which is considered a major restriction on the freedom of the media for a number of reasons addressed by the study.

Sixth Remark

In the amended Law, the legislator attempted to help the journalist avoid appearing before the State Security Court, and gave jurisdiction in all crimes committed in the field of publications to the Court of First Instance. The legislator also prohibited the detention of journalists and gave the journalist the right to refrain from appearing before the court throughout the process of litigation, and to appoint a representative, provided that the court approved this. The Law also prohibited the imposition of prison sentences on journalists for crimes committed in the field of publications. At the same time, however, the legislator continued to insist on the prior responsibility of the chief editor for crimes committed in the field of publications.

Seventh Remark

In the amended Law, the legislator raised the fines imposed for all crimes committed in violation of the Press and Publications Law, and the fine for some crimes reaches JD 20,000. The legislator did not take into consideration that such fines go to the public treasury, and that their presence does not prevent imposing large amounts of money as compensations for individuals complaining in media related cases.

The first section of Chapter I addressed the Right of Access to Information Law number 47 for the year 2007, and concluded that "the mechanism set by the Jordanian legislator to obtain information is a complicated one and renders the request for information void of its content." It also said that "one of the most important complaints about this Law is that the legislator continues to insist on leaving the issue of classifying information and the level of its importance

either for the legislation, whereby the Law itself sets classifications, or for the party that owns the information, without the presence of a mechanism whereby these classifications could be complained about or appealed, or even the manner by which they are classified. This allows for the classification of information as being protected, which ultimately allows the official to not make it available.”

In the second section of Chapter I, the study addressed the development of the form of the media, from a print to electronic media, given that one of the most significant developments in the reality of the Jordanian media during the period 2006 - 2008 was the emergence of the electronic media as a major player in the Jordanian arena. This has led to the emergence of a new type of cases that were not familiar before. The first three cases against two websites were filed in 2007. This has led to the emergence of new judicial trends related to this new type of media, which led us to talking about the legal provisions related to this type of media in more detail in this sense. The study also discussed the misconceptions about the legal responsibilities in the operation of electronic news media, and the responsibility of the news website's owner and the writer / editor of the material, as well as the person uploading the information or journalistic material. It also addressed the concept of electronic journalism and its advent into the arena of the Jordanian media.

The third section of Chapter I was dedicated to the developments that took place in the judicial authority during the period 2006 - 2008. It monitored the development in the functions of the courts and examined the annual report that Judge Ismail Al-Omari, Chairman of the Judicial Council and Head of the Court of Cassation, presented to His Majesty King Abdullah II about the court's activities during the period 2007 - 2008, showing noticeable increase in the number of court cases initiated, ruled on, and forwarded during 2008 compared with 2007. There were 378,777 cases filed in 2008, while those filed in 2007 were 364,380, an increase of 4%. The number of cases ruled on in 2008 reached 373,528, while cases ruled on in 2007 reached 356,762 cases, an increase of 5%. The total number of cases forwarded in 2009 reached 91,076 while those forwarded in 2008 reached 85,340, an increase of 7%. The report also presented the measures taken to address those increases, including increasing the number of judges, which was 710 judges in state courts at the end of 2008, of whom 42 were female judges, representing about 6% of the total number of judges. The number of judges at the end of 2007 was 692, of whom 39 were female judges, and of whom 633 judges were active, while 22 judges retired in 2008 and two were suspended. Members of the General Prosecution



working in state courts and the Supreme Criminal Court, including those seconded to the Anti-Corruption Department and the State Security Court reached 140 judges.

Among the other solutions was the amendment of some legislation that could reduce the burden on some Courts of First Instance and Courts of Appeal, addressing the deficiency in the number of judges there and increasing the number of cases they address.

The third section of Chapter I addressed developments in the field of specialized judicial training. The study said that when reviewing courses, seminars and lectures attended by judges during the period 2006 - 2008, it was evident that most of them were concerned with human rights, child rights and domestic violence. Statistics by the Judicial Council indicate that only about 17% of Jordanian judges participated in seminars or conferences during the two-year period (2007 - 2008). Only one conference was related to the media, namely a judicial gathering held in 2007 in cooperation with the Center for the Defense of the Freedom of Journalists (CDFJ). As for the judges' financial situation, the study indicated that the Judicial Service Regulation for State Judges No. 121 for the year 2007 granted an increase in the salaries of judges at different levels ranging from 25 - 30%.

The study dedicated the Chapter II to present general indicators in trends in the Jordanian judiciary in press and publication related cases, and stated that:

- The number of cases registered at the courts during the period 2006 - 2008 was set at 199 cases.
- 151 cases of the total of 199 cases were obtained and photocopied from the Amman Criminal Court bureau . These are the cases for which first level judgments were passed and are still subject for appeal, and other cases that have final judgments . The rest of the cases, numbering 48 cases, were not obtained, because they were still under litigation until the time of preparing this study.
- While analyzing the 151 cases obtained, it was evident that 27 cases were recurrent, meaning that they share the subject-matter, the litigants and the reason. The recurrence was the result of appeals, and as such were re-registered but under different numbers. This means that the study covered about 76% of the total number of cases registered in court records. This is a more logical percentage for building an idea about the trends

of the judiciary in press and publication related cases. The Chapter also addressed legal texts referred to by General Prosecution when referring investigative cases to the litigation process, with the amount of judgments passed with guilty verdicts, based on these legal texts. The study considered, in three items, the foundation of the legal texts, on which the provisions under study relied, and a brief about Jordanian newspapers under study, and finally the trend of the both the investigation and ruling parties vis-à-vis the most common legal texts in press and publication related cases. The study also addressed legal texts on which it is based and which were used by the investigation and ruling authorities. It also presented the Jordanian newspapers that are being pursued, showing that of the eight daily newspapers published in Jordan, five faced lawsuits, and of the 40 weekly newspapers, sixteen faced lawsuits, in addition to Al-Arab Radio and Television, which faced one lawsuit. There are also lawsuits filed against some publishers or printing presses for publishing or offering books. The study stated that the volume of cases filed against weekly newspapers is larger than those filed against daily newspapers. This is not an unusual ratio if we take into consideration the reality of the weekly press in the midst of the prevalent political, professional, economic, and legislative conditions. The study further stated that twelve sentences of fines were passed against dailies, representing 40% of the total number of cases filed against dailies, which are 32 cases. There were 28 verdicts of acquittal or no responsibility, representing 60 % of the total number of cases raised against newspapers, while no prison sentencing had been passed. For weekly newspapers, verdicts of fines were passed in 74 cases, representing 55% of the total number of verdicts passed, which is 148 verdicts in 80 cases. There were four verdicts of prison sentences, representing 5% of the total number of verdicts. There were 70 verdicts of acquittal, representing 45% of the total number of verdicts. As for publications (books), 12 verdicts of fines were passed, 5 of which were acquittals, and one was for terminating the litigation. The three cases filed against websites included three guilty verdicts where fines were imposed for certain related crimes, and four verdicts of innocence were passed for the rest of the crimes.

- The study pointed out that the number of verdicts passed in these cases under study is different from the numbers of the cases themselves. This difference is attributed to the recurrence of accusations referred by the Public Prosecutor. The case file issued by the Public Prosecutor in a single case may include more than one crime, reaching



six in some cases. A verdict of acquittal may be passed for all alleged crimes, or for some of them, with a guilty verdict passed for the rest. The study attributed this to two issues: First is the numerous and variety of legislations, which the journalist or the newspaper is subjected to in Jordan, and this makes it possible for the media item to be subject to more than one legal criminal text. This is essentially has to do with the Jordanian legislator's viewpoint of media freedom as one form of freedom of opinion and expression. The second is the General Prosecution accumulation of the largest number possible of charges against the journalist or the newspaper in the single lawsuit. This could be the result of not having sufficient specialization on the part of the General Prosecutor in media related cases, or the desire to rally as many charges as possible against the journalist, so that the court would in turn address each charge separately, which would be much more convenient for the General Prosecution.

- Finally, the study showed that throughout the period of the study, only four verdicts of imprisonment were issued, two against Shihan, one for Al-Mihwar, and one for Al-Safir, and these are all weekly newspapers.
- The study said that "the Jordanian judiciary deals with the daily and weekly newspapers equally, without consideration of the newspaper's size and weight with the public opinion." At the same time, the study indicated that "the weekly press is facing a genuine crisis resulting from several difficulties, most important of which are professional and legal weakness. The internal structure of the weekly newspaper does not allow it to function within a professional and legal environment. The weak economic capabilities prevent it from creating professional departments. Therefore, we see that the journalist is himself the editor and the proofreader, and the relationship between the journalist and the chief editor is governed by the speed with which news is obtained, and most of the time, and due to the low number of journalists in that newspaper, news items are not supported with evidence. This is in addition to the interference exercised by the newspaper's owner on such news items in the last minutes before going to print. This is the same reason that does not allow the weekly newspapers to provide specialized and professional legal defense and assistance in press and publication related cases." The study also said that "the weekly newspapers are facing obstacles in obtaining information from ministries and government departments, while some dailies may not experience this difficulty due to the relationship they have with the government, as well as for professional and quality related considerations that are set internally." The study

said that there is clear negligence on the part of the weekly newspaper or by journalists who have lawsuits filed against them in following up on the cases filed against them. This is clear from the numerous appeals resulting from absentia from court sessions.

- In the third item of Chapter II, which is dedicated to the trends of the public prosecution and the judiciary related to the most used criminal articles in press and publication related cases, the study noted the most common crimes in press and publication cases, which were studied during the period 2006 - 2008, as follows:
 - The crime of violating Articles 4, 5, and 7 of the Press and Publications Law. It noted that Article 4 of the Law, despite the fact that it is a regulatory and not a criminal item, was leveled in 13 cases. Article 5 of the same Law was leveled in 60 cases, and Article 7 of the same Law was leveled in 50 cases.
 - The crime of violating Articles 188, 189, and 190 of the Jordanian Penal Code and Articles 358 and 359 related to libel, slander, and contempt. The prosecutor general referred 23 cases to court on charges of libel, slander, and contempt, constituting 18.5% of the total 124 cases examined by the study.
 - The crime of violating Article 278 of the Penal Code, related to insulting the religious feeling of citizens. This Article was used only in one case.
 - Articles 16 and 18 of the Press and Publications Law, related to the practice of the profession of journalism without registration in the Jordan Press Association. This was used in only one case.
 - The crime of violating Article 27 of the Press and Publications Law, related to banning the publication of a response or a correction. The study showed that this Article was used in 14 cases.
 - The crime of violating Article 31 of the Press and Publications Law, related to the sale of banned books that have not been approved by the Press and Publications Department. The study said that the Prosecutor General referred four cases to the court using this legal text, and ruling was given on its basis in three cases.
 - The crime of violating Article 150 of the Penal Code, related to inciting prejudice and abuse of national unity. The study showed that the Prosecutor General used this in one case.
 - Article 191 of the Penal Code, related to slandering an official entity or public servant while performing their job. The study showed that this was used in



three cases only.

- Article 273 of the Penal Code, related to cursing prophets and religious figures. The study said that this was used once.
- The crime of violating Article 26 of the Press and Publications Law, related to writing in a field that has not been approved or licensed. The study said that this Article was used in two cases.

The study indicated that ruling in favor of personal claims was given in 19 cases, and ruling against personal claims was given in 17 cases. It also showed that charges were made against 209 entities (newspapers) and against 56 natural persons. Complainants ranged from regular citizens to government employees and organizations. The number of citizen complainants in press and publication related cases were 64 citizens, while the number of complainant employees was 40 public service employees, and the number of complainant government organizations was 42.

In Chapter III, which was dedicated to the general trends of the prosecution's decision and the problems of the defense in press and publication related cases 2006 - 2008, the study said, although it is dedicated to examining the Jordanian judiciary's trends in press and publication cases, it found it suitable to examine the general trends of the prosecution's decisions in this type of cases on one hand, and to present the ways that defense is done by refuting the accusations of the prosecution on the other. The study indicated that "during the period 2006 - 2008, it became apparent that there is no specialized public prosecutor to investigate this type of cases. During this period, more than 10 public prosecutors investigated the 124 cases, the subject of the study, and only two judges rendered verdicts in these cases in the same period. This raises the issue of specialization in media related cases for the public prosecution."

This Chapter focused on the examination of the trends of the General Prosecution in dealing with and methods of resolving press and publication related cases. The Chapter included a criticism of the Court of Cassation's decision that neither the Prosecutor General nor the Deputy General is permitted to weigh the evidence in such cases.

This part of the study indicated that there is one decision issued in the case number 11/1968 that has violated this trend, and the Public Prosecution admitted the role that has been set for it in the Law. The first section of Chapter III presented the general aspects of the decisions of

the Public Prosecution in press and publication related cases, as follows:

1. The Public Prosecution usually settles for making charges of the crime by stating the legal texts in general without specifying the type of crime leveled against the journalist. The study also said that "there were two cases out of 124 studied cases where the charges were made against the journalists in detail."
2. The Public Prosecution relies on regulatory texts of law to make the charges in many cases.
3. The Public Prosecution does not usually give importance to the words and phrases in the journalistic material in charging decisions.
4. The Public Prosecution verifies the fulfillment of the ethics and morals of the journalism profession usually by verifying the offense that the journalistic material caused for the complainant.
5. The Public Prosecution considers news websites as newspapers subject to the Press and Publications law.

The study dedicated the second section of Chapter III to discussing the ways lawyers defend their clients in press and publication related cases 2006 - 2008. After defining the profession of a lawyer, the study said that this profession is facing several challenges, including the significant increase in the number lawyers. The number of lawyers registered with Lawyers Association in 2006 reached (6436) practicing lawyers, and this increased to (7118) practicing lawyers in 2007, and in 2008, the number reached (7881) practicing lawyers. By the end of December 2010, there were 9113 practicing lawyers. Despite this, the study noted the presence of only 8 lawyers whose names recurred in press and publication related cases as advocates on behalf of journalists or media organizations, and four of them acted as advocates on behalf of daily newspapers. Additionally, the law departments of all Jordanian public and private universities do not include in their curricula a special subject on media legislations. The study also noted that trained lawyers face major difficulty in finding trainee lawyers to supervise, because a lawyer trainee tends to look for a law firm of experience and expertise and to refrain from training with young lawyers, who make up the majority of registered practicing lawyers. A lawyer trainee also looks for a lawyer that pays a monthly salary or transportation allowances, and these are few in number. Additionally, the lawyer trainee faces great difficulty in finding good cases of quality and diversity with lawyers he trains with in order to gain experience and expertise. This leads to a situation where several trainee lawyers are registered under the supervision of lawyers, but are actually training in the offices of other lawyers, because some



lawyers are not practicing the profession on the ground, or because there is not a diversity of cases to be handled. With regard to training at the Lawyers Association, the study said that training depends on lectures for a large number of audiences, where more than 150 trainee lawyers would attend a single lecture in the same room. The majority of them appear at the lectures just to register their attendance and then leave. This is because trainee lawyers are required to attend a specific number of lectures in order to get accepted in the registry of practicing lawyers. Moreover, the contents of those lectures are in dire need of review in order to ensure that they match the legal progress of the Jordanian legislation scene, given the technological developments and Jordan's entry into several binding international agreements and conventions. Examining the schedule of lectures given to trainee lawyers in the past decade, we found that training at the Lawyers Association is not systematic and is not based on any fixed and institutional foundation against which the professional progress of trainee lawyers could be measured.

The study expressed several remarks about the defenses provided in press and publication related cases 2006 - 2008, of which are:

1. Defense using traditional generalities without addressing the reasons and details of the defense or proposing new legal ideas.
2. Majority of defenses rely on facts provided by the Public Prosecution and/or the complaints petition. At the same time, the majority of defenses do not provide a different viewpoint of the facts as seen from the defense's point of view, and facts and defenses are mixed up.
3. Majority of defenses do not give consideration to the type of the journalistic material and do not discuss their content, as if reading it from the defense's point of view only.
4. Most defenses do not provide defenses particular to the crimes charged against the journalist, and some of them settle for reading the legal texts only at best without explaining them.
5. Some defenses could be described as typical, whereby a single form and content is used for the majority of the defenses, despite the fact that cases are numerous and varied, and defense lawyers are numerous.
6. Majority of defenses lack jurisprudence efforts that would serve the idea of the defense, and most of them are void of any jurisprudence testimony that explains or indicates the bases and elements of the charged crimes.
7. Majority of defenses lack legal precedence as the basis for the defense.

8. Majority of defenses lack the use of claim on unconstitutionality.
9. All the defenses did not include any arguments related to international agreements that Jordan had ratified and that are related to freedom of opinion, expression, and the media.

As for Chapter IV of the study, it was dedicated to the trends of the Jordanian judiciary in press and publication related cases, and the study concluded that there are several major judicial trends in this regard.

1. In the issue of crimes violating Articles 5 and 7 of the Press and Publications Law, related to the lack of respect for or investigation of the truth, lack of balance, objectivity, integrity, and neutrality in presenting the journalistic material, the study concluded several principles, of which are:

- The Jordanian judiciary's viewpoint of the balance, objectivity, and integrity is linked to the correctness of information and occurrences stated in the journalistic material.
- The judiciary distinguishes between news and occurrences in the journalistic material on one hand and comments made by the writer of the journalistic material on the other, and considers comments that are based on non-factual occurrences as a transgression against public and private freedom and a violation of balance and objectivity.
- Not taking the opinion of the other party involved in the journalistic material is considered a violation of objectivity, integrity, and balance in some cases.
- The judiciary sets four conditions for allowing the publication of the news: that the news is correct, that the news is not banned from publication, that the news is of a social nature, and that the publisher has good intentions. In the presence of the four conditions, the material is considered balanced, objective, has integrity, and does not affect the private lives of others.
- The Jordanian judiciary weighs the right of the public to know against the plaintiff's interest in maintain his public freedom and private life.
- Consideration must be given to the core event in the journalistic material and not its particulars when examining the bases of objectivity, balance, and integrity.
- The judiciary identifies the materialistic basis of the crime of violating Articles 5 and 7 of the Press and Publications Law as being the conscious expression via means of expression and representation, and identifies the moral basis as being an approach through which the defendant wanted to commit the act, knowing that the act is a crime.



- Knowing of a certain occurrence requires by necessity truly knowing that occurrence in the area of establishing the moral basis for crimes related to violating objectivity, integrity, and balance.
- The judiciary explains the journalistic material by reading it as a whole without extracting any parts of it, and bases its ruling on the consideration of the journalistic material as a whole and not its parts.
- The article is considered balanced and objective if it fulfills the conditions the conditions of the right to contestation.
- A caricature is identified on the basis of its in-depth meaning and not its literal meaning for the purpose of identifying the bases for crimes related to violating objectivity, balance, and integrity.

2. The Jordanian judiciary's position on proving occurrences stated in journalistic materials.

The Jordanian judiciary continues to cast the burden of proving the actuality of occurrences stated in journalistic materials on the journalist, in order for him to avoid rulings on crimes related to violating the morals and ethics of the journalism profession.

3. The Jordanian judiciary's position on the assumed responsibility of the newspaper's chief editor.

The Jordanian judiciary usually tends to adopt the assumed responsibility of the chief editor for the publication of materials in his newspaper, applying the text of Article 42 of the Press and Publication Law, which assumes the responsibility of the chief editor, along with the writer of the material, as the initial actor.

- Claims of libel, slander and contempt through publications are not accepted from non-governmental employees except after making claims of personal right and paying the set fees.
- The Jordanian judiciary does not envision the occurrence of the crime of contempt through press and publications.
- The Jordanian judiciary believes that Article 135 of the Law on the Principles of Criminal Trials compels the Public Prosecution to indicate the statements and phrases that are deemed as libel or slander.
- The Jordanian judiciary assumes the right of contestation according to its own conditions

and considers it a reason for establishing crimes related to libel and slander, and takes into consideration the contestant's good intention as being the original intent.

- Slander against the chief of an official organization does not mean slander against the organization itself.
- The authority to determine slander and libel in statements is for the subject judge and is not up to the understanding of complainant.
- The purpose for which the journalistic material was written and published has maximum importance in crimes related to libel and slander.
- The burden of proving the materialistic and moral bases of the crime of libel and slander.

4. The Jordanian judiciary's position on provisions related to literary texts and news websites:

- The writer of a book is not considered a journalist as defined in Article 2 of the Press and Publications Law.
- The book is read as one unit and separate pages cited by the Public Prosecution are relied upon.
- The news websites are not subject to the Electronic Transactions Law.
- The news website is considered one of the advertising means stated in Article 73 of the Penal Code.
- Writing, drawings, handmade pictures, photographs, films, and signs of various types, if they are placed in a public place or a public access area or if they are exhibited, sold, offered for sale, or distributed to more than one person.

The study concluded with several recommendations, most important of which are:

1. In the area of developing legislation applicable to press and publication related cases:

The legislative structure in Jordan, particularly the one that governs freedom of expression and opinion and especially press and publication related lawsuits, still seems to be severely retarded and backward, so much so that it does not help the growth and prosperity of freedom or the encouragement of public discussions on issues and subject-matters of concern to the public. Consequently, we reiterate the recommendation made in Part I of this study, namely forming working groups that encompass experts from the Judicial Council in Jordan,



specialized lawyers, and members from the Upper and Lower Houses of Parliament, as well as several experts from the Center for Defending the Freedom of Journalists (CDFJ), whose task would be to review media related legislation and laws on which judicial rulings are based in Jordan, so that they match international standards in the formulation of such legislative texts. In particular, the texts of Articles 4, 5, 7, and 38 of the Press and Publications Law must be reconsidered, as well as other criminalizing items in other laws, which include penalties that harm freedom or protect feelings or do not stipulate the protection of reputation against organized campaigns or do not punish reasonably for hatred, bigotry and racism. In other words, all legal texts that we have stated in this part or Part I of the study need to be revised at the core in light of international principles that govern the formulation of media related laws, as well as rendering them compatible with the texts of international conventions and agreements ratified by Jordan, and even before that, with the Jordanian Constitution, whereby good texts would be reformulated in order to become compatible with the crime and punishment principles. The task of this committee, which could continue for two or more years, will not be limited to those texts or the formulation of alternative legal texts, but will also involve the organization of briefings for lawyers, judges, and journalists about the flaws of applying the current texts, as well as listening to their proposals about making amendments. In other words, the task of this committee would be to examine the legal provisions related to the work of the electronic media (the new media), and highlighting the best and most important experiences that could control their work without restricting the freedom of their work. The committee, at the conclusion of its work, would present disciplined legal texts that would, at a later time and if Parliament approves, become binding legislation.

2. In the area of training and qualification:

2-1. In the area of training law students:

The study showed, from the stage of collecting information, that the law departments in public and private universities do not include media legislation in their curricula. As such, it is vital to prepare a special curriculum for media related legislation in order to teach these laws and regulations to law students. This curriculum should provide a realistic picture of the Jordanian media laws and a comparison with international standards for media freedoms, as well as the constitutional framework set for freedom of expression, opinion and the media. The judicial applications and the Jordanian judiciary trends in dealing with press and publication related cases must also be included in this curriculum. Practical applications related to the Public Prosecution's charges in this type of lawsuits must also be presented, as well as the best

defense strategies that could be used in such cases.

2-2. In the area of training lawyers

In view of the number of lawyers specialized in press and publication related cases, which does not exceed a total of eight lawyers, compared with a total of 7000 practicing lawyers, and reviewing the legal defense that the majority of lawyers presented in the cases that the study examines, there is dire need for in-depth training about several issues, most important of which is the method of discovering the unconstitutionality of legal texts and using this argument before the courts, the method of using international agreements and conventions before the Jordanian judge, the method of writing petitions in press and publication related lawsuits, and proving the actual occurrence of libel and slander related crimes. The training must include judicial applications, as well as international and Arab applications in the area of defamation and legal precedence in the various countries that could be applied before the Jordanian judge in such lawsuits. One of the most important subjects that must be included in this type of training is the legal provisions related to the work of the news websites, as well as the most important frameworks that are related to the audio-visual media, particularly in as far as the Jordanian judge's specialization in crimes committed through these means is considered, as well as in relation to the legal responsibility for such crimes. The study also showed that there is a major deficiency in the legal training on press and publication related cases and that this does not have the attention of the Lawyers Association.

The study calls on the Center for Defending the Freedom of Journalists (CDFJ) to complete its program for training lawyers, focusing on specific points of concern.

2-3. In the area of raising awareness among the journalists

The study showed beyond any doubt that an important sector of journalism in Jordan is experiencing a serious and severe crisis from the professionalism point of view. Many journalists use harsh and inflexible terms and carry out unjustifiable campaigns that target individuals' reputation, and in many cases, they fail to prove the correctness of the information they publish, which makes the legal rulings and verdicts very much justifiable.

The Journalists Education Program that is implemented by the Center for Defending the Freedom of Journalists (CDFJ) must be continuously developed and it must function horizontally in order to cover the largest number of journalists. It must also encompass professional capacity



building for journalism, particularly in the area of gathering and classifying information and journalistic formulations and others. It must also begin to provide training and consultations for improving the economic status of the newspapers in a manner that would protect their professionalism.

At the same time, a curriculum related to media legislation and laws must be prepared in order to teach those legislation and laws at media departments in the Jordanian universities. This curriculum must include the provision of a legal education that helps students, the journalists of the future, avoid perpetrating legal transgressions, and this is done by being informed of the legal texts and legal applications related to the media.

Kempinski Hotel, Dead Sea
Thursday June 16, 2011

Report on the Discussion Trends in the Judiciary and Media Meeting

This report presents a summary of the main discussion trends in the conference held at the Kempinski Hotel at the Dead Sea, the Hashemite Kingdom of Jordan, on June 16, 2011, which was organized by the Center for Defending Freedom of Journalists (CDFJ), in cooperation with the Judicial Council, and with support from the Ministry of Planning and International Cooperation, the Ministry of Political Development, and the European Union Mission in Jordan. The conference was dedicated to discussing the study that was prepared by attorney and researchers, Mr. Mohammad Qtaishat, Director of the Media Legal Aid Unit at CDFJ (MELAD), on trends in the Jordanian judiciary in dealing with media issues in the years 2006 - 2008, entitled "The Final Say 2".

The conference activities, which continued for one full day, from 9:00 a.m. until 6:00 p.m. and half an hour after the scheduled time, were attended by 103 participants, of whom 44 were judges, 34 were lawyers and 25 were media professionals . The conference was composed of five sessions that were moderated by Judge Mansour Al-Haddidi, Director of the Judicial Council, H.E. Dr. Nabil Al-Sharif, H.E. Sharif Al-Zu'bi, and H.E. Hisham Al-Tall, during which the participants discussed the aspects covered in the study. The first session, during which Mr. Mohammad Qtaishat, researcher and lawyer, and Najad Al-Bar'ei, cassation lawyer, spoke, discussed the study and its abstracts and recommendations in general. The second session was dedicated to discussing the environment that nurtures the freedom of the media, during which journalist Yahya Shuqair presented "Developments in the Media Scene", attorney Ayman Abu Sharkh addressed "The Reality of Media Legislation", and Judge Dr. Nash'at Al-Akhras addressed "The Reality of Judicial Work". In the third session, Judge Dr. Ashraf Al-Habashneh, Judge Nassar Al-Halalmeh, lawyer Ahmad Al-Najdawi, and lawyer Mudar Al-Jeyroudy spoke and the session was dedicated to discussing the role of the public prosecution and defense in media cases across four interjections, namely, "Public Prosecution and the Media: A Reading in Application and Work Mechanisms"; "The Reality of Legal Defense in Media Cases"; "Shadows of the Law Profession's Problems in Jordan and their Ramifications in Media Issues"; and "Lawyers' Specialization in Media Cases." The fourth session discussed

"Trends of the Judiciary in Dealing with Media Cases" and "Lawyers' Specialization in Media Cases." The fourth session addressed "Judiciary Trends in Dealing with Media Cases," in which three judges spoke, namely, Judge Dr. Mohammad Al-Tarawneh, Judge Walid Kanakriyeh and Judge Shuja' Al-Tall . In addition to these four sessions, a closing session was organized and moderated by journalist Nidal Mansour, in which the reports prepared by the session's moderators, lawyers Khaled Khleifat, Taghrid Al-Dughmi, Kanan Laswi, Ma'moun Al-Sukhni, Majed Arabiyyat, and Marwan Salem, were presented for the ideas, comments, additions, and recommendations they involved.

Working papers were presented by the following:

1. Lawyer Ahmad Al-Najdawi
2. Lawyer Ayman Abu Sharkh

Explanatory presentations were also presented by:

1. Journalist Yahya Shuqair
2. Judge Walid Kanakriyeh

First: Discussion Trends

The main discussion trends can be summarized as follows:

1. Session 1

A general overview of the "Final Say 2" Study: Direction and Abstracts"

The first session was dedicated to presenting the study in general, and listening to comments in more detail from the participants. The main researcher, lawyer Mohammad Qtaishat presented the general outline of the study, and the methodology used in completing it. He stressed the cooperation exhibited by the Judiciary Council, which permitted the photocopying of files on which the research team worked. He also presented the main factors that affected judicial trends towards media cases between 2006 and 2008, compared with the previous study trends followed by judges in media cases between 2000 and 2006. He also presented legislative amendments on some legal texts governing the media, and presented a critical reading of the public prosecution behavior towards media cases. He included in his presentation a



discussion of the defense position towards this kind of cases as the study proved, pointing out to the lack of specialized legal references in explaining the Press and Publications Law, inviting scholars to bridge this gap rapidly. He then presented the main judicial provisions towards media cases during the period 2006-2008, which he had taken from courts that were researched and analyzed. He concluded with the main recommendations as the executive summary of the study showed.

The scientific advisor of the study, cassation lawyer Najad Al-Bur'ei said that the study had have delved deeper into the political, social and economic conditions affecting the media, such as the effects of high prices on the cost of publishing various media outlets and methods of operating them, and the extent to which advertising affects the direction of media, which may get it involved in violating the sanctity of the law, as well as the effect of the social environment in the Jordanian society with its well-known tribal components on the media's performance of its neutral and fair role. The study's scientific advisor emphasized that the legal texts that govern the media in general are characterized by generality and non-specific terminology that may carry more than one meaning, which is considered a violation of a basic constitutional principle, namely, the principle of criminal and penal legality, the most important of its elements being having clear texts that cannot be assigned different or multiple meanings, since criminal texts should be disciplined so that those addressed by its provisions can discern the elements of the crime which it penalizes on one side, and appreciate the repercussions of violating the legal text on the other. As a result of all this, the scientific advisor of the study called upon the Jordanian judges to use their legal rights in refraining from applying any text that violates the Jordanian constitution, which provides a unique opportunity to draw the legislator's attention to such texts and to work at any possible flaws in their articulation.

On the other hand, the scientific advisor stressed the need to review decisions passed by the Jordanian Court of Cassation that could be understood as depriving the public prosecution of its right to weigh the evidence, leading to a decision of banning litigation or referring the case. He stressed that this is a genuine right for the public prosecution afforded to it by a law text, and it should not be deprived of it.

The scientific advisor added that the study exposed a severe shortage in the training of lawyers in general, which draws attention to the need to look into the development of lawyer training methods and encouraging them to specialize in a specific type of cases, as well as present

the idea of establishing a higher institute under the supervision of a respectable university, which graduate lawyers can join to specialize in one or more of the law branches, which helps improve their performance and helps judges forge ahead attentively and fairly towards the truth.

During the comments' session, many participants lauded the effort exerted in the study. Lawyer Ahmad Al-Najdawi explained that there is a historical reason that caused the public prosecution to not use its power in evaluating the evidence. It is summarized that until 1951, Jordan knew the investigation judge and the referral judge system, which is what ended practically in that year, and their work and specialization were transferred to the public prosecution, which had no right at that time to use the evidence and research and manipulate it, because this is supposed to be the job of the investigation judge.

He also added that the public prosecution's piling accusations and referring the accused to the court on more than one charge results in dispersing the lawyer's work as a result of the dispersion of the texts, being unspecific, which leads to confusion in preparing the defense., and may be considered an act of aborting the court justice principle.

On the other hand, many interjectors praised the methodology employed by the study, pointing out to the fact that the time has come to drop the traditional method and to resort to methods of applied research followed by the study.

Some interjectors demanded that lawyers be trained and organized on printing and publications cases under the supervision of the Lawyers' Association. They further demanded that a new course be created dealing with media legislation to be taught in Law Schools under the supervision of relevant authorities, in addition to supporting scientific research in media legislation in order to fill the deficit in the Jordanian legal library in this important legal branch. Others demanded that the legislation dealing with estimating compensation for publishing crimes be amended, and that the court carries this out according to specific controls instead of resorting to experience. They also demanded that media legislation be reviewed as far as the compliance of many of them with the principles of the constitution.



2. Session 2

Environment Nurturing the Freedom of the Media: A Point of View and Approaches with the Study

The second session addressed the environment incubating the media. Discussions addressed a number of basic remarks that are not far from what the study mentioned in any manner.

The discussions shed light on the fact that the legislation system governing the media in Jordan are ramified and many laws are intertwined within it, which exhausts the judge and the parties in the litigation process. In this context, some participants shed light on the fact that the Jordanian Constitution comprises some principles that guarantee the freedom of opinion and expression, but delegated the law with the mission of setting parameters to control and regulate these freedoms and rights. The legislator, however, has misused his authority in legislation, and obscured the spirit of the law instead of regulating it and facilitating citizen enjoyment of this right.

Regarding the legislative environment that regulates the freedom of the media, some interjectors said that most laws regulating the freedom of the media are temporary laws that violate the constitution, in addition to placing exaggerated constraints on media freedom. This opens the door for demands to reconsider them and discussing them in depth, presenting them to the parliament so they can reflect society's point of view, and accompany positive political developments.

Some interjectors warned that the law guaranteeing access to information in Jordan is a faulty law in its formulation, and was issued without sufficient discussions, and almost prevents access to information. It may even contradict some other current laws and regulations.

Some interjectors pointed out that the judiciary is the protector of rights and freedoms, and that the administratively and financially independent judiciary is the one capable of protecting rights and freedom. Henceforth, efforts should be exerted to guarantee the independence of the judiciary and to preserve this independence.

A number of interjectors focused on the balance between freedom and responsibility, and that if the journalist has rights that should be observed and protected, citizens have rights that

should also be protected and preserved. Henceforth, the judiciary should protect the freedom of the media, but it should also do what it can to protect the freedoms and rights of individuals, and to prevent campaigns that lead to the moral assassination of people exposed to them. Many interjectors also warned that there are expressions currently in use that need some control, such as the term "character assassination," considering them illegal terms that should not be used often. On the other hand, many interjectors said that attempts to put exaggerated controls for the purpose of preventing or reducing public figures criticism is, in fact, a true invitation to the spreading of corruption.

The same interjectors also warned that it is imperative that the journalist who exerts the right effort in order to access information should not be exposed to criminal litigation in case the information acquired proved faulty or inaccurate.

Despite the interjectors' acknowledgement that the financial status of judges does not affect making decisions in media disagreements, they also acknowledged the need to improve the standard of living for judges, since they need more exposure and access to references and the internet, in addition to providing the peace of mind to issue decisions that not only comply with the law, but also carry new interpretations of legal texts that are more modern and contemporary.

Other interjectors demanded that judges take specialized training courses based on previous knowledge and specialized and continued training. Many interjectors also demanded that the information law be amended in a way that punishes the official who intentionally conceals information and refuses to provide it. Many interjectors demanded a legislative amendment that permits appeal in printing and publishing cases through cassation, in order to standardize legal principles. They also demanded the cancellation of criminal penalties in media cases, and restricting them to civil compensation.

3. Session 3

Public Prosecution and Defense: A Reading in Application and Work Mechanisms

This session discussed four basic issues; namely, "Public Prosecution and the Media: A Reading in Application and Work Mechanisms", "Reality of Legal Defense in Media Cases: A Point of View and Approaches to the Study", "Shadows of the Law Profession Problems in



Jordan and their Ramifications”, and ”Lawyers’ Specialization in Media Cases”.

Discussions asserted that Public prosecution is an integral part of the Judicial Authority, and that it performs its mission neutrally and objectively, regardless of the disputes and parties it investigates. Public prosecution receives disputes related to political, economic and social factors, which are neutralized and addressed in legal terms only.

Interjectors pointed out that the public prosecution is committed to what it receives from higher courts, and works accordingly.

Regarding what the study alluded to, in terms of consecutive court of cassation decisions to deny Public prosecution the authority to evaluate evidence, some interjectors said that there must be a legal text that gives Public prosecution the right to evaluating evidence. This is what other interjectors opposed strongly, saying that the law gave public prosecution the right to issue decisions to stop pursuits, which cannot take place in the absence of evidence evaluation between acquittal and conviction evidence, and that there is no need for a legal text in this context.

Public prosecutors who participated in the discussions mentioned that the law does not require that there should be detailing of the journalistic material under litigation, and it is sufficient to mention a brief of the actions committed by the journalist in the case file. There is no objection for public prosecution to refer the defendant to court with a number of legal restrictions. Public prosecutors participating emphasized that Public prosecution considers electronic websites subject to the Printing and Publications Law, based on the interpretative judgment of the esteemed Court of Cassation. They demanded that there be a partnership with one or more public prosecutor when preparing such studies, in order to clarify some facts missed by the study. This was opposed by some interjectors, since court decisions issued in printing and publications cases require the public prosecution to show statements on which it based its accusations as mentioned in the judgment decision.

At the same time, other interjectors pointed out that the decision by the esteemed Court of Cassation regarding electronic website being subjected to the Printing and Publications Law issued in 2010, while the study addressed decisions issued between 2006 and 2008.

Regarding defense in media cases, interjectors emphasized what the study concluded, that lawyers do not interpret in order to present defenses of non-constitutionality, and that their defense is characterized by generality and copying, and does not carry new ideas that could help the judge extract modernized legal principles.

Other interjectors mentioned that rarely do defenses include any reference to international conventions signed by the Kingdom, and that it is rare to distinguish during defense among the different facets of the media.

A speaker mentioned that defense is restricted to negating the charge, which is referred to as negative defense.

One of the interjectors warned that the small number of specialized lawyers in media cases is due to the limited number of cases, leading to the absence of specialization in the judicial field.

Discussions revealed that there are many difficulties facing lawyer specialization in media cases. In addition to the small number of cases, there is defendant lack of cooperation, ambiguity of legal texts and loose terms, and small number of legal references. Some interjectors warned that there is some interference in certain cases, but others denied that such interference exists, and condemned that these rumors are promoted in the absence of any evidence. Some interjectors warned that when lawyers submit complaints regarding printing and publications, lawyers should specify criminal material in order to reduce the efforts by the Public prosecution. Some interjectors mentioned that 80% of cases raised against journalists were for violations 5 and 7, and decisions passed for them were innocence and absence of responsibility.

4. Session 4

Judiciary Trends in Dealing with Media Cases

Discussions resulted in a number of basic points.

Point 1: The judiciary has always favored the media in more than one benchmark throughout a long and honorable history, and today, it favors electronic media, protects and helps it develop and grow.



Point 2: Despite the fact that the most difficult cases are those in the media and information, since the defendant is being prosecuted for his ideas and beliefs, Jordanian judiciary succeeded easily to protect people of opinion, and to narrow down, as much as possible, loose legal texts.

Point 3: Conviction decisions in printing and publications cases are not highlighted since they are very few, and if there is a conviction at the first level, the defendant is acquitted at the second level.

Point 4: All courts, at all levels react positively with media cases in favor of media freedom.

Point 5: Allocating a specialized legal board for publications cases helped unify the direction and principles, and prevent what used to happen in the past in terms of conflicting decisions.

Point 6: The Jordanian Judiciary implements human rights agreements after 2007, in the wake of ratifying the International Charter of Civil and Political Rights.

Point 7: The judiciary is not a closed institution any more. It has become open to the media outlets now. On this point specifically, conference participants demanded that commenting on court decisions be open, as is the case in other countries, which represents the people's control over the judiciary.

Point 8: The Jordanian judiciary sought to reduce the pressure on the media professional, putting the burden of proof of a false new item and its contradiction with the truth on the public prosecution.

Point 9: The Jordanian judiciary set controls on the right for appeal, despite the fact that the Jordanian constitution did not address the right to appeal, unlike the Egyptian constitution. Furthermore, the Jordanian law did not include conditions or provisions for the right of appeal, and the whole concept was initiated by the advanced Jordanian judiciary.

Point 10: This point concerns civil compensations, which represent, in total, a case of profiteering without a reason, which instigated everyone to demand that civil compensation

amounts be specified, and the judge concerned be given the authority to do this directly without having to refer to technical expertise in the field.

Second: Recommendations by Participants

Some interjectors presented some recommendations, in addition to the recommendations emanating from the study.

1. On Legislation

Interjectors recommended the need to interfere in refining the laws that govern the media in Jordan to accompany positive developments taking place in the Kingdom. They recommended the following:

1.1 The formation of a scientific committee from judges, lawyers and members of the Parliament, as well as media professionals to revise the Printing and Publications Law, the State Security Court Law, the State Secrets and Documents Protection Law and the Penal Code in light of criticism waged against them, and to propose replacement legal texts that can be adopted by the Parliament, to be enacted as laws.

1.2 Totally revise the Information Law, and develop it to accompany the information revolution at the international level, to inhibit rumors and provide the opportunity for the media to play its role in combating and exposing corruption.

1.3 Form a committee to include, in addition to judges, lawyers, media professional and professors of sociology, to attempt to identify controls for literary compensations in media cases, in order to reduce exaggerations in estimating literary compensations, so that the compensation would alleviate the harm done, but not be a means to profiteering without reason or cause.

2. On Public prosecution

The interjectors recommended the need for holding one or more workshops, bringing together cassation judges, public prosecutors and lawyers, in order to root and consolidate the public prosecution right in evaluating evidence and issuing decisions to prevent litigation, in order to lift the burden off the judiciary.



3. On Lawyers

The creation of a generation of specialized lawyers in media cases, defending media specialists, providing advice to those who wish to establish new media outlets, and other matters related to supporting the freedom of the media have become an important issue. Henceforth, interjectors recommended the following:

3.1 The need to change the manner in which lawyers are trained, and to work at establishing a lawyers' institute in cooperation with a respectable Jordanian university, where the study period is two years, after which the lawyer graduates specialized in specific areas of the law. This institute shall offer a scientific degree in this specialization.

3.2 Form a committee to prepare an integrated curriculum for media legislation and to teach it in Law faculties in the Kingdom during the third and fourth years.

3.3 Encourage lawyers to express defenses on the non-constitutionality of the legal texts, and to train them in defense methods on non-constitutionality, and to prepare a listing of legal texts thought to be non-constitutional, and to prepare model memoranda for defenses of non-constitutionality using legal advisors, making them available to interested lawyers.

3.4 Hold educational courses for lawyers on international human rights conventions, especially those that guarantee the freedom of expression and opinion, and methods to protest them before the national judiciary.

General Recommendations

1. Establish a high constitutional court to decide on the adequacy of laws enacted on the Constitution, provided these laws are discussed on a broader scale before they pass through the legislative stages stipulated by the Constitution.
2. Continue to hold technical courses in-depth for public prosecutors and judges on media issues in the field of printing and publishing, and on terms and expressions related to the media, as well as informing judges of advanced countries' experience in printing and publishing issues.
3. Recommend to the Chairman of the Judiciary Council to permit the discussion of decisions issued in journalism cases at the widest level, for the purpose of benefiting from these decisions and addressing their negative side in order to improve and develop the structure of these provisions.
4. Cancel the specialization of the State Security Court in Printing and Publishing cases.

5. Hold training courses for journalists in the Printing and Publishing Law.
6. Amend the Printing and Publishing Law by adding the permissibility to drop public right case commensurate to drop the private right in printing and publishing cases.
7. Establish a special court to try journalists.
8. Work at the potential for exposing judges to decisions issued in international and Arab courts in printing and publishing cases.
9. Independence of the judiciary from the executive authority in areas like appointment, promotion and decision-making in financial matters.
10. Amend the law related to fines imposed on journalists in such a way that it is possible to pay on installment basis rather as one-time payment, because this means imposing the prison sentence on the journalist for non-ability to pay.
11. Establish a publications court instead of assigning a publications judge.
12. The availability of a judge or a court to settle disputes before referring to the court system.

