

# JORDANIAN CONSTITUTIONAL AMENDMENTS AND THEIR IMPACT ON THE PRINCIPLE OF SEPARATION OF POWERS: A COMPARATIVE STUDY WITH SEVERAL ARAB CONSTITUTIONAL SYSTEMS

**FAISAL ABDULHAFIZ AL SHAWABKEH**

Associate Professor, Public Law, Al Ain University College of Law, United Arab Emirates.  
Email: faisal.shawabkeh@aau.ac.ae

**KHALED MUSTAFA AL JASMI**

Assistant Professor, Public Law, Ajman University. Email: k.aljasmi@ajman.ac.ae

## Abstract

The research aims to reveal the impact of the Jordanian constitutional amendments on the principle of separation of powers, compared with several Arab constitutional systems. The importance of the study stems from the importance of the principle of separation of powers, the importance of identifying the extent of its application in the Jordanian constitution, and the extent of the impact of the constitutional amendments of 2011 on it, in addition to the importance of identifying the extent of its application in several Arab constitutions. The researcher relied on the comparative analytical approach in terms of reading the Jordanian constitution and its amendments in force, clarifying the principle of separation of powers in it, and comparing it with the texts of the constitutions of some Arab countries. The research is divided into three comprehensive sections in addition to the introduction and a conclusion containing the most prominent results and recommendations. The research reached several results, the most notable of which are: The Jordanian constitution stipulated the separation of executive, legislative, and judicial powers, by placing the articles related to each power in a separate chapter from the other powers. They are organized in a way that ensures that the three powers do not interfere with each other. The aim of this is to prevent the concentration of power and to provide checks and balances. The Algerian, Egyptian, and Mauritanian constitutions all see that it is necessary to adopt the principle of separation of powers, and this was emphasized in the formulation of the constitutional texts, even though it was not applied on the ground to a large extent, as there is no complete separation of powers.

**Keywords:** Constitutional Amendment, Separation of Powers, Executive Power, Legislative Power, Judicial Power.

## INTRODUCTION

The principle of separation of powers is the cornerstone of any democratic system. It is often assumed that one of the basic pillars of a just government is that those in power need to balance each other.

The importance of this principle lies in the fact that it seeks to preserve basic human freedom and resistance by avoiding the concentration of powers in the hands of one person or group of people. The principle requires that each body be independent of the other because injustice and tyranny mean the concentration of power in the hands of the ruling party; the separation of powers is a means of removing the amount of power in the hands of any group, making it more difficult to abuse it. The separation of powers emphasizes the mutual exclusivity of the three powers of government: the legislative, the

executive, and the judiciary. Each of these powers must exercise only one type of function; otherwise, it will pose a threat to personal freedom <sup>(1)</sup>.

The separation of powers is of great importance in Jordan to prevent the abuse of power or the dominance of one power over another, as well as to promote the concept of respect for human rights and the protection of basic freedoms for all. Therefore, if one power exceeds its authority or violates the rights of citizens, the other powers can intervene. The Jordanian political system is based on a flexible separation of the three powers, but it operates in an integrated manner <sup>(2)</sup>.

The 2011 constitutional amendments in Jordan impacted reforming what limits the principle of separation of powers between these three powers, in addition to some challenges <sup>(3)</sup>.

This study aims to study the separation of powers in the Jordanian constitution to clarify how the principle of separation of powers works in the Jordanian system. Thus, the research problem focuses on answering the following question: What are the Jordanian constitutional amendments, and what is their impact on the principle of separation of powers compared to several Arab constitutional systems?

This study is divided into three sections. The first section discusses the principle of the separation of powers as outlined in the Jordanian constitution. The second section examines the impact of the 2011 constitutional amendments on this principle. The third section reviews the constitutional amendments in various Arab countries and their effects on the separation of powers. The research concludes with a summary of the main findings and recommendations.

### **Significance of the Study**

The significance of this study lies in the critical importance of the separation of powers principle, understanding its application within the Jordanian constitution, assessing the effects of the 2011 constitutional amendments, and evaluating how this principle is implemented in other Arab constitutions.

### **Objectives of the Study**

This study aims to analyze the impact of the Jordanian constitutional amendments on the principle of the separation of powers, particularly in comparison with the constitutional frameworks of some Arab countries.

## **METHODOLOGY**

The study employs a comparative analytical approach, focusing on the examination of the Jordanian constitution and its amendments. It clarifies the principle of separation of powers in this context and compares it with the relevant constitutional provisions from selected Arab nations.

## Scope of the Study

This research investigates the separation of executive, legislative, and judicial powers as defined in the Jordanian Constitution and its 2011 amendments, alongside a comparison with similar principles in the constitutions of various Arab countries.

## Previous Studies

Muhammad Al-Hamouri (2015). This study addresses the constitutional and legal requirements for genuine political reform. It discusses the historical necessity for reform, detailing the elements needed for change as outlined in the Jordanian Constitution of 1952. Furthermore, it examines how successive Jordanian governments have gradually deviated from constitutional provisions, leading to a disconnect between constitutional texts and the actual political landscape. The study also explores the emergence of parliamentary rule and constitutional monarchy in Jordan. It stands out by presenting viewpoints that critique the prevailing trends within the Jordanian political system regarding political reform. Al-Hamouri criticizes many of the constitutional amendments for favoring the existing system, consolidating power, and granting the king authorities not sanctioned by the constitution.

Laith Kamal Nasrawin (2013) examines the impact of the 2011 constitutional amendments on public powers in Jordan. The study analyzes these amendments in terms of their nature and their effect on public authorities, aiming to clarify how the constitutional project altered the three powers of government. The findings indicate that these amendments played a role in restoring balance among the powers, despite their limitations. However, the dominance of the executive power over the other powers remains evident in the constitutional articles.

Muhammad Turki Bani Salamah and Azzam Ali Anza (2015) provide a critical analysis of constitutional reforms in Jordan during King Abdullah II's reign, particularly in the context of the Arab Spring. Their study highlights the recent constitutional amendments, assessing their strengths and weaknesses, as well as the mixed reactions they provoked. It explains that these amendments were responses to increasing public pressure and demands for genuine political reform. However, educated classes and grassroots movements continue to call for more substantial changes. The study concludes that constitutional reform is essential for achieving meaningful reform, yet it is clear that there is a lack of genuine political will to implement these changes. Consequently, the amendments have not impeded the power's dominance over political decisions or curtailed corruption in Jordan.

Osama Al-Hanaineh (2014) investigates the impact of the 2011 constitutional amendments on the reform process in Jordan. This study considers how these amendments affected political, legislative, and economic reforms. The Jordanian regime implemented these changes to ensure that the 1952 Constitution could meet the demands of the populace. The findings indicate that after the amendments were enacted,

various reforms were pursued to address the growing public demands aimed at preserving the state and improving citizens' conditions.

### **Section One: The Principle of Separation of Powers in the Jordanian Constitution**

The principle of separation of powers is a fundamental element of the rule of law and the constitution that aims to guarantee individual freedoms. It prevents arbitrariness and tyranny by ensuring equality, balance, cooperation, and oversight among the different powers. The separation of powers divides the functions of the state into three powers: legislative, executive, and judicial, each responsible for the effective functioning of a democratic government.

The application of the principle of separation of powers varies between countries, depending on their constitutions and circumstances. The Jordanian Constitution establishes a framework for dividing functions among the three powers of government and encourages cooperation between them. It guarantees the independence of these powers: the legislative power, which enacts laws, is held by the King and the National Assembly; the executive power is vested in the King and his government; and the judicial power operates independently, free from influence by the other two powers. In Jordan, the courts are subject only to the law <sup>(4)</sup>.

The 1952 Jordanian Constitution is regarded as one of the most advanced constitutions in the Arab world. It not only aligns with international standards but also establishes a balanced, complementary, and participatory relationship among the three powers of government: legislative, executive, and judicial.

The legislative power has the authority to monitor the performance of the executive power and hold it accountable <sup>(5)</sup>. In turn, the executive power can propose draft laws and issue temporary laws when necessary. The Jordanian Constitution promotes cooperation between the legislative and executive powers in the legislative process, laying the foundation for constitutional and parliamentary life in the country while embodying democratic principles relevant to Jordanian society <sup>(6)</sup>.

The principle of separation of powers delineates the relationships among the three powers of government, ensuring that each operates independently and distinctly <sup>(7)</sup>. An examination of the 1952 constitutional system in Jordan reveals that it established a parliamentary monarchy as the form of government. According to Article 62 of the 1952 Jordanian Constitution, "the National Assembly shall consist of two chambers – the Senate and the House of Representatives." <sup>(8)</sup>

The parliamentary system is founded on the principle of separating public powers within the state, which serves as a fundamental criterion for distinguishing between different parliamentary systems. When the relationship among these powers is balanced, the system is considered parliamentary. If the executive power dominates the legislative power, the system is classified as presidential. Conversely, if the legislative power prevails, it is referred to as an assembly government system. In a parliamentary system, the separation of powers is characterized by a flexible, cooperation-oriented approach

rather than a strict demarcation among the three powers, which helps maintain a balance among them.

### **1. Executive Power**

A key feature of the parliamentary system is the principle of dual executive power, which ensures a distinction between the roles of the Prime Minister and the President of the State. The nature of such a system necessitates a Council of Ministers led by the Prime Minister. Consequently, it is not permissible for one individual to hold both the position of Prime Minister and that of President, as this would violate constitutional principles and undermine the duality of executive power.

Examining the 1952 Constitutional texts of the Jordanian Constitution, we see that it adheres to elements of a traditional parliamentary system based on the duality of executive power. Article 26 states, "The executive power shall be vested in the King, who shall exercise his powers through his Ministers in accordance with the provisions of the present Constitution <sup>(9)</sup>" Thus, the executive power consists of the King and the Cabinet, which is made up of an unspecified number of ministers, including the Prime Minister.

### **2. Legislative Power**

Article 25 of the Jordanian Constitution declares, "The legislative power shall be vested in the Parliament and the King. The Parliament shall consist of the Senate and the House of Representatives." <sup>(10)</sup>

### **3. Judicial Power**

Chapter Six of the 1952 Jordanian Constitution includes provisions regarding judicial power, specifically Articles 97 to 110. It enables the legislative body to define the operational details of the courts and their jurisdiction through specific laws. One of the most significant principles embedded in these provisions is the independence of the judiciary.

Article 97 guarantees this independence, stating, "Judges are independent, and in the exercise of their judicial functions, they are subject to no authority other than that of the law." The independence of the judicial power from the executive and legislative powers is further illustrated by the process of appointing judges, which occurs through royal decree, following appointments made by the Judicial Council, which is headed by the President of the Judicial Council appointed by the Minister of Justice, along with the issuance of a royal decree.

The Jordanian Constitution outlines a clear separation of powers among the three powers of government—executive, legislative, and judicial—while also emphasizing their cooperation and interdependence. However, the executive power, represented by the king and ministers, retains significant influence over the other powers, particularly in terms of appointing and managing the judicial and legislative powers.

The Constitution specifies the mutual oversight that each power holds over the others through several established rights <sup>(11)</sup>:

1. The executive power has the authority to propose draft laws, while the House of Representatives can amend, approve, or reject these proposals.
2. The legislative power has the right to oversee the actions of the executive power. This means that the parliament can hold ministers accountable for their actions. Specifically, members of the legislative power, represented by the House of Representatives, have the power to question ministers, withdraw confidence, and even dismiss the ministry. Conversely, the executive power, represented by the King, has the right to dissolve the House of Representatives. Therefore, the Jordanian constitution has established a flexible form of separation of powers among the three powers <sup>(12)</sup>.
3. The executive power also has the right to convene the National Assembly, postpone its regular sessions, or call for special sessions. These rights indicate that the executive power exerts a degree of control over parliamentary functions. Overall, the Constitution defines the roles and responsibilities of the three powers, establishing a partnership that is based on balance and integration. Since the legislative power has the authority to question the executive power, the government remains accountable to Parliament <sup>(13)</sup>.

The executive power has the right to dissolve parliament and call for new elections. Conversely, the legislative power has the power to grant or withhold confidence and to abstain from voting.

The 1952 Jordanian Constitution outlines the relationship between the legislative and executive powers based on the principle of flexible separation of powers. This relationship is participatory, founded on balance and integration in accordance with constitutional provisions. This means:

- A. Conducting real, transparent, free, and fair elections based on universal, equal, and secret suffrage. The objective is to ensure the integrity of the electoral process in line with constitutional provisions. Additionally, state powers must ensure that voting occurs in a way that prevents fraud and other forms of illegality.
- B. Establishing a responsible government that exercises its powers in accordance with established competencies defined by the constitution. A responsible government means the executive is accountable to parliament.
- C. Commitment from all powers and government agencies to adhere to the Constitution and established laws. Every government agency, as well as all authorities and individuals exercising legislative, executive, or judicial powers, must comply with, observe, and implement the provisions of the Constitution. This includes enforcing political rights and rules stipulated in the Constitution.
- D. The House of Representatives must effectively oversee the government's operations in accordance with constitutional provisions.

E. There should be a positive, cooperative relationship among the state's powers that promotes the national interest in accordance with constitutional guidelines.

If these conditions are met, society enjoys stability, as citizens feel their rights are guaranteed by the Constitution. The nation exercises its powers as stipulated in the Constitution. The political system in Jordan focuses on developing long-term policies that serve as stable constants for the state and its relations, allowing successive governments to operate within a unified framework.

## **Section Two: The Impact of the 2011 Constitutional Amendments on the Principle of Separation of Powers**

Nearly 40 constitutional articles have been amended, addressing the following issues:

### **First: The cancellation of the constitutional amendments that were approved during the martial law period from 1958 to 1989.**

These amendments established the dominance of the executive power over the legislative power concerning the exercise of constitutional powers in two main areas:

- a. The ability of the executive power to dissolve the House of Representatives, which represents the people's authority for an indefinite period due to the King's ability to dissolve the House of Representatives and postpone general elections without any restriction.
- b. The role of the executive power in issuing temporary laws.

In this context, the following amendments were made:

1. The ability of the King and the executive power to postpone general elections for indefinite periods has been restricted<sup>(14)</sup>, as the government formed after the dissolution of the House of Representatives must now hold legislative elections within four months of the date of dissolution, otherwise, the dissolved House of Representatives assumes, by the Constitution, its full constitutional powers as if the dissolution had not taken place and remains in place until a new House is elected<sup>(15)</sup>. The paragraph that gave the King the right to hold general elections in half of the Kingdom's electoral districts has also been canceled based on the government's recommendation<sup>(16)</sup>.
2. Another guarantee was put in place through the 2011 constitutional amendments, which appear to restrict the ability of the executive power to dissolve the House of Representatives by requiring the government under which the House of Representatives was dissolved to resign within one week of the date of dissolution<sup>(17)</sup>. If the government dissolves the House of Representatives, it must resign so that another government can hold elections and resort to the people to choose the majority that will govern in the next phase. In the same context, another amendment was made stipulating that the head of the resigned government who dissolves the House of Representatives may not be appointed to form the next government. However, sound

practices in parliamentary systems indicate that one of the reasons that prompts the head of state or the king to dissolve is to dismiss the majority government, and the purpose of this is to consult the people after this dismissal about their position <sup>(18)</sup>.

3. The role of the executive power was restricted to issuing temporary laws in the absence of the House of Representatives, i.e. granting the government legislative authorities). Before the amendments, the government could issue temporary laws if the House of Representatives was dissolved or not in session, i.e. during a holiday). This authority was then limited to the case of dissolving the House of Representatives only <sup>(19)</sup>.

This is a good practice, as it enables the government, by royal decree and at any time, to call the non-convened House of Representatives to hold an extraordinary session to pass any law. The members of the parliament can, through a petition signed by an absolute majority, request that an extraordinary session be held in the presence of the king <sup>(20)</sup>. If we take into account the amendment to Article 74 of the Constitution, the government can only issue temporary laws within four months, given that the House of Representatives may not be absent for more than this period in the event of dissolution.

The conditions that must be met to grant the government the power to issue temporary laws in the event of the dissolution of the House of Representatives were also amended, as this amendment stipulated that these laws must relate exclusively to public disasters, war, emergencies, and urgent necessary expenses that cannot be postponed. Before the amendment, the law stipulated that such temporary laws may be issued in matters that require immediate measures or that require urgent expenses that cannot be postponed. However, the amended article remained vaguely worded, allowing governments to interpret it broadly, especially the phrase “which require necessary measures which admit of no delay or which necessitate expenditures incapable of postponement.”

In any case, these texts, which give the government the power to issue temporary laws, are theoretically based on a false assumption in Jordan resulting from the historical practice of the executive power to dissolve most parliaments before the end of their term. However, the House of Representatives represents the first pillar of the system of government and therefore cannot be absent. Moreover, the dissolution of the House of Representatives is an exception to the basic rule stipulated in Article 68 of the Constitution, which requires holding general elections within the four months preceding the end of the term of the House of Representatives. If the elections are not held before the end of the term of the House of Representatives or are delayed for any reason, the House remains in office until the election of the new House <sup>(21)</sup>.

This text is a pillar of the parliamentary system that prevents the absence of any of its constituent elements, especially the House of Representatives.

The constitutional legislator has upheld the dominance of executive power over legislative power concerning temporary laws <sup>(22)</sup>. This is achieved by granting the Council of Ministers and the King the power to decide on temporary laws that the House of Representatives has rejected or failed to approve within the specified timeframe. The

amended constitution maintains provisions that require the Council of Ministers to declare a temporary law invalid and the King to approve this decision until the temporary law is officially annulled. This approach prevents the Council of Ministers from misusing its authority by either not declaring a law invalid or delaying the announcement of its invalidity from the moment it is rejected by the House of Representatives.

### **Second: Amendments to the Judicial Power's Authorities**

1. The constitutional amendments have returned the authority to try ministers to civil courts <sup>(23)</sup>. Previously, the Jordanian Constitution established a special court, the Supreme Court, to handle cases against ministers for crimes committed during their ministerial duties. The decree stipulates that the Supreme Court would consist of five judges from the Court of Cassation, selected based on seniority, with the President of the State presiding alongside three members of the Senate <sup>(24)</sup>.

Another amendment abolished the House of Representatives' capacity to act as the Attorney General before the Supreme Court in cases against ministers. Instead, the House of Representatives can refer ministers to the Attorney General by a majority vote of its members. If the Attorney General decides to prosecute a minister referred by the House of Representatives, that minister is suspended from duty. Furthermore, the minister's resignation does not prevent a lawsuit or the continuation of trial proceedings against him <sup>(25)</sup>.

2. The right of the House of Representatives to decide on the validity of trials involving its members has been canceled. Previously, challenges to the validity of the trial of any elected representative were submitted to the House of Representatives. A trial could only be invalidated by a two-thirds majority decision from its members. This authority has now been transferred to civil courts, specifically to the Court of Appeal in the district of the representative facing the challenge. The decisions made by this court are final and not subject to appeal <sup>(26)</sup>.
3. One significant amendment that guarantees the rights and freedoms of Jordanians pertains to the judiciary. Article 101 of the Constitution was amended to state that no civilian individual may be tried in a criminal case where all judges are non-civilians, except in cases involving treason, espionage, terrorism, drug-related crimes, or currency counterfeiting. This amendment is considered a safeguard for the rights and freedoms of Jordanians, as it establishes that individuals should be tried in civil courts.

### **Third: Amendments to the Government and the House of Representatives**

1. Before the amendments, the Jordanian Constitution mandated that the Council of Ministers manage all internal and external affairs of the state, except for matters specified by the current Constitution or any legislation entrusted to other persons or bodies <sup>(27)</sup>. The amendment changed the phrase "or by any legislation" to "or by any law," clarifying that the jurisdiction of the Council of Ministers may only be withdrawn through the Constitution or laws passed by the House of Representatives, not through any other forms of legislation, such as government-issued regulations.

2. The voting mechanism for the government's ministerial statement to secure the approval of the House of Representatives has been revised. Originally, the Constitution required that a decision to withdraw confidence from the government be made by an absolute majority of representatives for the government to be dismissed. After the amendment, it is now mandatory for a new government to obtain the confidence of the House of Representatives with an absolute majority of its members. This adjustment ensures that the government requires support from a majority and cannot achieve a vote of confidence with only a portion of representatives, especially if any representatives abstain from voting<sup>(28)</sup>.

#### **Fourth: Establishment of New Constitutional Powers under the 2011 Amendments**

##### **A. Independent Election Commission**

An independent election commission was established to manage parliamentary, municipal, and general elections under the law, as well as to supervise any other elections that the Council of Ministers assigns to the commission<sup>(29)</sup>. The rationale for establishing this commission was to create an independent and neutral entity to oversee parliamentary elections, rather than allowing the government and its agencies to manage the process. This approach aims to ensure a higher degree of integrity and neutrality.

This change marked the end of an era characterized by executive power's dominance over all electoral processes, such as the registration and preparation of voter lists, the nomination process, election campaigns, voting, vote counting, and the announcement of results. Experience has shown clear interference by the executive power in the electoral process, resulting in manipulation of voters' will and blatant election fraud.

Assigning an independent institution to supervise elections was a significant step toward restoring balance between the legislative and executive powers, particularly if the Independent Election Commission succeeds in fulfilling its role under democratic election laws<sup>(30)</sup>.

##### **B. Constitutional Court<sup>(31)</sup>**

The Constitutional Court was established for the first time in Jordan in 2011, shifting the oversight of the Constitution from a decentralized control—managed by various courts of different levels and types—to a centralized control under the Constitutional Court, which is tasked with interpreting the provisions of the Constitution and operates as an independent judicial body<sup>(32)</sup>.

The Constitution defines the jurisdiction of this court as monitoring the constitutionality of existing laws and regulations, in addition to interpreting constitutional provisions when requested by a decision from the Council of Ministers or by either House of Parliament with a majority vote. The Constitutional Court is notable for the strength of its decisions in interpreting constitutional texts and the scope and effects of those interpretations, which differ from those of ordinary courts handling lawsuits<sup>(33)</sup>.

The establishment of the Constitutional Court marked a significant step toward meeting popular demands, strengthening constitutional oversight of laws, and providing interpretations of constitutional texts.

### **Third Section: Arab Constitutional Amendments and Their Impact on the Principle of Separation of Powers**

The principle of separation of powers has been referenced in most amendments to the constitutions of Arab countries. Some examples are reviewed as follows:

#### **1. Algeria:**

The principle of separation of powers was clearly articulated in the 1996 Algerian Constitution. Following the 1989 pluralistic constitution, Algeria entered a new political era characterized by developments that nearly dismantled the state and its institutions, particularly between 1992 and 1996. This period had a direct impact on the enforcement of the separation of powers. The unique challenges of the transitional period necessitated finding effective methods to overcome significant obstacles. Consequently, the authorities of the executive power were expanded across all specializations, enabling it to respond swiftly to unforeseen developments and prevent the collapse of state institutions.

However, some argue that the outcomes of this transitional period led to a concentration of power in the hands of the executive power, which began to assume sovereign authority and exercise discretionary power. This situation undermined the principle of separation of powers, as the executive power exceeded its mandate by taking on a legislative role under the pretense of ensuring efficiency in governance and addressing the challenges posed by state crises.

These actions, carrying the intent of preserving the country and its institutions, often contradicted legal texts and the principle of separation of powers, yet the circumstances demanded such measures at that time <sup>(34)</sup>.

The Supreme Security Council emerged as the successor to the non-existent executive power, to establish two legislative bodies and grant them the power to legislate. The primary goal was to ensure the continuity of the state's structure and its institutions while providing a semblance of legitimacy to these institutions, particularly in the eyes of global public opinion <sup>(35)</sup>. It is important to note that the constitutional founder, despite the challenging conditions in Algeria at the time, underscored the principle of separation of powers.

This is reflected in the constitution, which organizes the executive power in Articles 70 to 97, the legislative power in Articles 98 to 137, and the judicial power in Articles 138 to 158. Article 138 emphasizes the independence of the judicial power.

Furthermore, after being informed about the constitutional review of Article Two, related to the judicial power approved by the National Transitional Council on June 1, 1997, the constitutional founder reiterated the importance of separating powers as a central rule for organizing public powers. He intended to delineate the specialization of each power,

which can only be exercised through the mechanisms and processes explicitly specified in the Constitution <sup>(36)</sup>.

Recent developments regarding the principle of separation of powers were introduced in the 2016 constitutional amendment:

Through Article 15 of this amendment, the constitutional founder articulated the principle of separation of powers, stating "The State shall be founded on the principles of representational democracy and the separation of powers."<sup>(37)</sup> This is further reinforced in the introduction, which states, "The constitution shall guarantee the independence of justice and the separation of powers."

However, there is a connection between the legislative and executive powers, demonstrated by the influence of the executive power on the legislative power in Algeria. Despite the constitutional amendment in 2016 explicitly stating the principle of separation of powers, the reality is that the executive power comprises two main bodies (the President of the Republic and the Prime Minister), which stems from the dual executive power system adopted in the 1989 constitution.

The legislative power is composed of two chambers (the National People's Assembly and the Council of the Nation. Although both powers share many responsibilities, this does not mean that Algeria has successfully implemented a complete principle of separation of powers, even though it is recognized as a constitutional principle <sup>(38)</sup>. The constitutional founder believed in the necessity of upholding the principle of separation of powers. This belief is reflected in the wording of the constitutional texts and emphasized by the Constitutional Council in its decisions and opinions.

While the principle of separation of powers was only applied in Algeria's constitutional system starting with the 1989 constitution—when public powers were functions supervised by a single party—this does not contradict the constitutional founder's commitment to establishing this principle. The founder devoted entire chapters of the Constitution to each power, confirming his intention to promote a separation of powers. This intention was reaffirmed in the latest 2016 constitutional amendment.

However, while the constitutional founder introduced the principle of separation of powers, which secures the rule of law, he did not amend the authorities of the powers in line with this principle, nor did he clarify the nature of the separation. When assessing the relationship between the executive and legislative powers, it becomes evident that the executive power has encroached upon the responsibilities of the legislative power, which is perceived not as cooperation but as control and domination.

Therefore, it can be concluded that the principle of separation of powers has not yet been fully established as a constitutional principle in Algeria. The constitutional system is based on the division of powers and responsibilities, yet it operates under a concept of unified leadership, which does not facilitate a true separation of powers. Additionally, the political system in Algeria possesses a unique nature that differentiates it from other models of governance <sup>(39)</sup>.

## 2. Egypt

We must point out at the beginning that although modern Egypt has known the constitutional system since the beginning of the nineteenth century, when the founding regulations were issued in 1882 on February 7, the Egyptian constitution issued in 1971 is considered, according to most legislators, the first constitution and the reason for this are due to the strength of its resources and the length of its duration <sup>(40)</sup>.

As for matters related to the principle of separation of powers, there is no article stipulating the necessity of adopting the principle of separation of powers, but Article 73 of the same constitution addressed the function of the head of state, with the necessity of taking into account the separation of powers, as: "The Head of the State is the President of the Republic. He shall assert the sovereignty of the people, respect for the Constitution, and the supremacy of the law. He shall safeguard national unity and the socialist gains and maintain the limits between authorities in a manner to ensure that each shall perform its role in the national action." <sup>(41)</sup>

Afterward, the role of the head of state was to manage the boundaries that separate the powers. However, this role was surrounded by an aura of suspicion and doubt, as the head of state did not effectively acknowledge these boundaries. The president, who combined the presidency of the parliamentary majority party with his position, is considered the head of the executive power <sup>(42)</sup>. The 2012 Constitution explicitly outlined the principle of separation of powers in Article 6, which states: "The political system is based on the principles of democracy and shura (counsel), citizenship (under which all citizens are equal in rights and duties), multi-party pluralism, peaceful transfer of power, separation of powers and the balance between them, the rule of law, and respect for human rights and freedoms; all as elaborated in the Constitution. A political party may not be established based on discrimination against citizens due to origin, gender, or religion." <sup>(43)</sup> However, Article 132 states: "The President is the Head of State and chief of the executive power. He looks after the interests of the people, safeguards the independence and territorial integrity of the motherland, and observes the separation between powers."<sup>(44)</sup> This recalls the provisions in the 1971 Constitution regarding the president's duties, particularly concerning the observation of boundaries between the powers, which conflicts with the content of Article 6.

Furthermore, the 2014 Constitution specified in its fifth article that: "The political system is based on political and partisan multiplicity, the peaceful transfer of power, the separation and balance of powers, authority going with responsibility, and respect for human rights and freedoms, as set out in the Constitution." <sup>(45)</sup>

## 3. Mauritania

The Mauritanian legislator who drafted the Constitution dedicated three chapters to the principle of separation of powers in the Mauritanian Constitution to clarify the distribution of the state's primary functions <sup>(46)</sup>.

The second chapter pertains to executive power <sup>(47)</sup>, which is responsible for implementing and monitoring public policies and the execution of laws passed by the legislative power by translating and applying them to practical scenarios. The third chapter pertains to the legislative power, whose duties include enacting laws aimed at reforming the country's economic and social conditions, highlighting the legislative function. The seventh chapter pertains to the judicial function, which includes protecting individual freedoms <sup>(48)</sup>.

This indicates that the theoretical framework of the Mauritanian Constitution encompasses the principle of distributing and delineating state functions. Despite this, the Constitution endows the executive power with significant power over both the judicial and legislative powers. The reason for this is that the executive function, led by the President of the Republic, holds considerable authority, which extends to the legislative roles of the President and his ministers. Consequently, there exists an overlap between the judicial and executive powers, as both are ultimately headed by the President of the Republic. This situation shows that the distribution of state functions, according to the Constitution, prioritizes the executive power <sup>(49)</sup>.

#### **4. Kuwait**

The constitutional system in Kuwait is founded on the principle of separation of powers, which promotes balance and cooperation as a means of implementing democratic principles and preserving freedoms and rights. The distribution and division of public authority are intended to prevent tyranny, as stated in Article 50: "The system of government shall be established based on separation and cooperation of powers. No Authority shall be allowed to waive all or part of its jurisdiction as prescribed in this Constitution." <sup>(50)</sup>

In Kuwait, the three powers are represented by the executive power, headed by the Emir as the head of state and the Council of Ministers; the legislative power, represented by the National Assembly; and the judicial power, exercised by the courts in the name of the Emir within the constitutional framework <sup>(51)</sup>. However, the executive power has greater responsibility for actual governance, often overshadowing the legislative power.

#### **CONCLUSION**

After exploring the principle of separation of powers within the Jordanian Constitution and the effects of its 2011 amendments, as well as the constitutional changes in some Arab countries, the following conclusions and recommendations have been reached:

1. The principle of separation of powers is essential for delineating the roles of each power and distributing functions among the three powers of government.
2. Total separation of powers does not exist in any country; rather, there is flexibility and cooperation among the three powers.

3. The Jordanian system of government relies on the separation of the three powers (legislative, executive, and judicial). The 1952 Jordanian Constitution defines the authorities of these powers, allowing each to operate without interference from the others. The relationship between the three powers is balanced, complementary, participatory, and flexible.
4. The Jordanian legislator has enshrined the principle of separation of powers in the constitution, evident through the allocation of independent chapters for each power. Each chapter specifies the formation and authorities of the respective powers.
5. The Jordanian Constitution mandates the separation of executive, legislative, and judicial powers by organizing relevant articles into separate chapters. This structure is designed to prevent interference among the powers, thereby preventing the concentration of authority and ensuring checks and balances.
6. The constitutions of Algeria, Egypt, and Mauritania recognize the necessity of adopting the principle of separation of powers. This is reflected in the formulation of constitutional texts; however, in practice, complete separation is not fully realized.

### **Recommendations**

1. The principle of separation of powers in Jordan must be firmly established and practiced to safeguard the freedoms and rights of citizens, as they are fundamental to the advancement of both the individual and the nation.
2. Amendments to Articles (41-61) of the Constitution are necessary to curtail the dominance of the executive power over the legislative and judicial powers.
3. The legislative power should take a more proactive role in proposing constitutional amendments as needed, independently of the executive power. Involvement of political forces, civil society organizations, and educated elites in the amendment process through governmental consultation is also crucial, rather than making unilateral decisions that affect the entirety of Jordanian society.
4. The Algerian legislator should enact laws and amendments to limit the executive power's control over the legislative power.
5. We urge the Egyptian legislator to explicitly incorporate the principle of separation of powers into the constitution.
6. The Kuwaiti legislator must implement significant changes to the constitution to enhance the role of the legislative power and reduce the influence of security forces.

### **Footnotes**

- 1) M.J.C. Vile's Chapter 4 in *Constitutionalism and the Separation of Powers* (Indianapolis, Liberty Fund 1998).
- 2) Amin Al-Malahqa (2012) "The King and the Three Powers", Ministry of Political Development, Amman.

- 3) Osama Al-Hanaineh (2014) The Impact of the Constitutional Amendments in 2011 on the Process of Reform in Jordan, Sharia and Law Journal, United Arab Emirates University, Year 28, Issue 57, 125-179.
- 4) Al-Shatnawi, Faisal (2002). The Origins of Constitutional Law and the Constitutional System in Jordan (in Arabic), (First Edition), Amman: Dar Al-Ulum. Hamed for Publishing and Distribution. & Muddather Abu- Karaki, Raed S. A. Faqir, Majed Ahmad K. Marashdah. (2011), Democracy & Judicial Controlling in Jordan: A Constitutional Study. Journal of Politics and Law, Vol. 4, No. 2; September 2011. doi:10.5539/jpl.v4n2p180.
- 5) The Jordanian House of Representatives.
- 6) Amin Al-Malahqa (2012) "The King and the Three Powers", Ministry of Political Development, Amman.
- 7) Muddather Abu- Karaki, Raed S. A. Faqir, Majed Ahmad K. Marashdah. (2011), Democracy & Judicial Controlling in Jordan: A Constitutional Study. Journal of Politics and Law, Vol. 4, No. 2; September 2011. doi:10.5539/jpl.v4n2p180.
- 8) Constitution of Jordan 1952, Article 56.
- 9) Constitution of Jordan 1952, Article 26.
- 10) Constitution of Jordan 1952, Article 25.
- 11) Constitution of Jordan (Articles (41-61).
- 12) Khaled Mohsen. (February 2015) Elections under the Jordanian legal electoral system A comparative study (Jordan, Britain, Germany). The International Journal for Humanities and Social Sciences Volume 5, Issue 2.
- 13) Amin Al-Malahqa (2012) "The King and the Three Powers", Ministry of Political Development, Amman.
- 14) Amendment of Article 73 of the Constitution by canceling paragraphs 4 and 5 thereof, which gave the King the power to postpone general elections indefinitely.
- 15) Constitution of Jordan (1952), amended (2011), Article 73 (1) and (2).
- 16) Constitution of Jordan (1952), amended (2011), Article 73 (6).
- 17) Article 74 (2) of the Constitution was amended to require the government whose House of Representatives was dissolved to resign within a week from the date of dissolution.
- 18) Mohammed Kamil Laila, (1969) Political Systems: State and Government, Beirut: Dar Al Nahda Al Arabiya for Printing and Publishing.
- 19) Amendment of Article 94 of the Constitution.
- 20) Constitution of Jordan (1952), amended (2011), Article 82 (1) and (2).
- 21) Constitution of Jordan (1952), amended (2011), Article 68.
- 22) Mohammed Al-Hamouri (2015) Constitutional and Legal Requirements for Genuine Political Reform, Dar Wael, Amman, 131.
- 23) Constitution of Jordan (1952), Amended (2011), Article 55.
- 24) Before the amendment of the Constitution in 1958, the Chief Justice was the head of the highest civil court in Jordan. According to Article 122 of the Constitution, the Supreme Court interprets the provisions of the Constitution upon the request of the Council of Ministers, the House of Representatives, or the Senate.
- 25) Constitution of Jordan (1952), Amended (2011), Article 56.

- 26) Constitution of Jordan (1952), amended (2011), Article 71.
- 27) Constitution of Jordan (1952), amended (2011), Article 45 (1).
- 28) Amendment of Article 53 of the Constitution.
- 29) A paragraph of Article 67 of the Constitution includes the establishment of the Independent Election Commission.
- 30) Mohammed Turki Bani Salameh, Azzam Ali Ananzah (2015) Constitutional Reforms in a Critical Analysis. Jordan Digest for Middle East Studies. Volume 24 Issue 2 p. 146.
- 31) The oversight of the constitutionality of laws was the responsibility of every judge in Jordan before the establishment of the Constitutional Court. Still, this oversight only allowed the judge to refrain from applying the law and not cancel it. Accordingly, judicial oversight of the constitutionality of statutes existed in Jordan before this amendment, as this oversight was limited to one body, which is the Constitutional Court.
- 32) Article 58 of the Constitution stipulates that a Constitutional Court shall be established by law, with its headquarters in the capital, and shall be considered an independent and separate judicial body, and shall consist of at least nine members, including the President, appointed by the King. Article 61 specifies the conditions for appointing this member, which stipulates that he must be Jordanian, not hold the nationality of another country, have reached the age of fifty, and have held the position of judge in the Court of Cassation and the Supreme Court of Justice, or be a university professor of law with the rank of professor, or be a lawyer who has practiced law for no less than fifteen years, or be one of the specialists to whom the conditions for membership in the Senate apply.
- 33) Laith Kamal Nasrawin (2013) The Impact of the Constitutional Amendments of 2011 on Public Authorities in Jordan, Studies Journal - Sharia and Law Sciences 235 Jordan), Vol. 40, No. 1, p. (235).
- 34) Bin Hamou Al-Tawus, (June 2020) The Principle of Separation of Powers under the Constitutional Amendment in 2016 through the Relationship between the Executive Power and the Legislative Power, Journal of Legal Studies and Research, Issue 2, pp. 143-162.
- 35) Moulay, Asmaa, (2002) Legislation in the Transitional Period between 1992-1996, Master's Thesis, University of Algiers, p. 120.
- 36) Alloush, Farid, Qarqour, Nabil, (2002) The Principle of Separation of Powers in Algerian Constitutions, Journal of Judicial Reasoning, Issue Four, Laboratory of the Impact of Judicial Reasoning on the Legislative Movement, University of Mohamed Khider, Biskra, pp. 234-235.
- 37) Constitution of Algeria, Amendment 2016, Article 15.
- 38) Bin Hamou Al-Tawus, (June 2020) The Principle of Separation of Powers under the Constitutional Amendment in 2016 through the Relationship between the Executive Power and the Legislative Power, previous reference, pp. 143-162.
- 39) Bin Hamou Al-Tawus, (June 2020) The Principle of Separation of Powers under the Constitutional Amendment in 2016 through the Relationship between the Executive Power and the Legislative Power, previous reference, pp. 143-162.
- 40) Al-Taniji, Ali Rashid bin Rafi, (2020) The Principle of Separation of Powers in the Constitution of the United Arab Emirates, Journal of the College of Politics and Economics, p. 7.
- 41) Constitution of Egypt, 1971, Article 73.
- 42) Constitution of Egypt, 1971, Article 141-142.
- 43) Constitution of Egypt, 2012, Article 6.

- 44) Constitution of Egypt, 2012, Article 132.
- 45) Constitution of Egypt, 2014, Article 5.
- 46) Al-Taniji, Ali Rashid bin Rafi, (2020) The Principle of Separation of Powers in the Constitution of the United Arab Emirates, Journal of the College of Politics and Economics, p. 8.
- 47) Constitution of Mauritania, 1991, Chapter Two.
- 48) Al-Taniji, Ali Rashid bin Rafi, (2020) The Principle of Separation of Powers in the Constitution of the United Arab Emirates, Journal of the College of Politics and Economics, p. 9.
- 49) Dada, Muhammed, (2013) The Principle of Separation of Powers in the Constitution of Mauritania, Journal of Jurisprudence and Law, Nouakchott, Issue 11, p. 193.
- 50) Constitution of Kuwait, 1962, Article 50
- 51) Al-Otaibi, Mubarak, (2013) Separation of the Kuwaiti and Jordanian Systems, A Comparative Study, Master's Thesis, Middle East University, pp. 6-7.

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- 1) Alloush, Farid, Qarqour, Nabil, (2002). The Principle of Separation of Powers in Algerian Constitutions, Journal of Judicial Reasoning, Issue Four, Laboratory of the Impact of Judicial Reasoning on the Legislative Movement, University of Mohamed Khider, Biskra, pp. 234-235.
- 2) Al-Otaibi, Mubarak, (2013). Separation of the Kuwaiti and Jordanian Systems, A Comparative Study, Master's Thesis, Middle East University, pp. 6-7.
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- 16) Osama, Al-Hanaineh, (2014). The Impact of the Constitutional Amendments in 2011 on the Process of Reform in Jordan, Sharia and Law Journal, United Arab Emirates University, Year 28, Issue 57, 125-179.

### **Constitutions**

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- 2) Constitution of Algeria, Amendment 2016, Article 15.
- 3) Constitution of Kuwait, 1962.
- 4) Constitution of Egypt, 1971.
- 5) Constitution of Mauritania, 1991.