

The Constitutional Protection of Public Funds in Jordan

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Abstract

The protection of public money for each futility or sabotage is the main objectives of which state is keen to achieve because there is no money in the hands of the state is the strength of her, because this is obliged to maintain it and place it in the hands of secretary to the preservation of the futility of those who abuse and assault the aggressors, especially in these days, which multiplied by the phenomenon assault.

And this study reached to result: the protection of public money tedious process requiring the concerted efforts of segments of society all the result of the importance of the legislature declare and identify how to handle it by the State, individuals and ways of protection due to the seriousness of the infringement upon through the adoption of the rules of several legal such as not prohibiting the disposal of public money and not be owned by the statute of limitations and the inadmissibility of seizure upon emphasis in some articles of the Penal Code when he was attacked.

Keywords: Constitution, Public Money, Civilian Protection, Forensic Protection, Criminal Legislation,

1- Introduction

The protection of public money each futility or sabotage of the main objectives of which state is keen to achieve because there is no money in the hands of the state is the strength of her, because this is obliged to maintain it and place it in the hands of secretary to the preservation of the futility of those who abuse and assault the aggressors, especially in these days, which multiplied by the phenomenon assault. As these funds related to public benefit it is in this case needs to be subject to different legal rules from those of private money to this brings a legislator in the various countries of the world special protection of public funds.

2- The Importance of Study:

The recent legislation has paid special attention to them and has developed rules and provisions to achieve their intended purpose because the protection of this money means to protect the state's economy. The importance of the study of this subject because it is important topics in legal terms it addresses an important topic in real life, in addition to the large number of corruption and the corrupt who attacked public funds and took advantage of their jobs and their positions to achieve their personal interests and the interests of their relatives and loved ones or bound together with a common interest or transaction suspicious.

So the researchers gave the subject of constitutional protection of public money a careful consideration, so that it can achieve its objectives in the service of the public interest and to learn about this topic in some detail will be divided as follows:

3- Constitution and Public Money

The law is set legally binding rules governing the relations of abstract individuals in the community, and every group, no matter how small or large size need to be law, it must be for any political group or cultural, social or higher law contains rules governing how the exercise of judgment by the referees in addition to organizing relationships between individuals and a statement of their rights and duties, and called on the supreme law of the term basic law or constitution.

The constitution has a great importance in the life of nations and peoples as it is located in the top of the pyramid legal state, lies the importance of the Constitution in that it sets the political organization of the state, and contains principles are outlined in a manner necessary legislator normal to abide by this face and presence through the application of those principles in full and impartial investigation of on the other hand, and this is what will be recognized in the following sections:

3.1. The Position of the Jordanian Constitution of public money:

The increased of economic activity has resulted in the part of states to the direction of most of the constitutions of contemporary towards the allocation of a special chapter of the organization of the Economic and Social her and has this organization on the rules governing public funds in terms of the kinds of objectives and means of protection, and the Jordanian Constitution did not come out of this position, he has to put texts imposed on citizens constitutional duty to respect and protect public property where text on the following: ⁽¹⁾

Do not impose loans algebraic and confiscated money, movable or immovable, but under the law, the treaties and agreements that result in load state treasury certain charges or prejudice the rights of Jordanian

public or private shall not be valid unless approved by the National Assembly shall not in any case be the conditions in secret treaty or agreement contrary to the terms of the public. ⁽²⁾

The Minister cannot purchase or rent any Assets of government even it at auction also is not permissible for him during his ministry to be a member of the board of directors of a company, or to participate in any business, financial or receive a salary from any company⁽³⁾

It also does not impose a tax or fee except the law does not fall within the competence types of wages charged by the Treasury in exchange for what the government departments of services for individuals or for the benefit, state property and the government should take in the taxation principle of commissioning upward with equality and social justice, and that does not exceed the ability of holders to performance and the need for the state to money. ⁽⁴⁾

For all is received from taxes and other state imports should lead to the treasury and that falls within the state budget unless the law provides otherwise does not allocate any part of the general treasury funds spent for any purpose whatsoever except by a law. ⁽⁵⁾

No given any concession to grant any right to invest mines or minerals or public utilities, except by law. ⁽⁶⁾

3.2. The position of the constitution for the international agreements that relating to public money:

The international conventions or treaties meant consensus the two or more parties belonging to international law raised certain legal according to the rules of international law ⁽⁷⁾

The international conventions & treaties in the present time have a great importance for being one of the most important sources of international law either side or quantum, Never mind that the penalty levied on the penetration the content of any treaty is achieved international responsibility, which could result in the use of force to ensure the implementation of international commitments and disrespect that state by the international community. ⁽⁸⁾

In an effort to regulate this issue as a result of frequent attacks which lies on public money and in order to reduce the rampant corruption in all countries of the world, which would threaten the stabilization and security of societies, undermining State institutions, values and ethical values and justice and displays of sustainable development and the rule of law, and the belief that corruption did not longer a local matter but is a phenomenon affects all societies and economies initiated by the United Nations to call for the conclusion and the issuance of several international charters and conventions relevant to where they were approving the United Nations Convention against Corruption in 2004 and, most importantly what is stated in the Convention for the Protection of public money at the domestic level is:

3.2.1. As stipulate in Article 2, concerning the definition of the public employee and state property and it meant the general employee:

- I. Any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, paid or unpaid, irrespective of that person's seniority.
- II. Any other person performing a public position, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party.
- III. Any other person defined as (a public official) in the domestic law of the State party. However, for the purposes of some specific measures contained in chapter II of this Convention, may be means (a public official) any person who performs a public function or provides a public service as defined in the domestic law of the State Party and as applied in the relevant field of the law of that State party.

3.2.2. As defined article "2", "d" property of the State as:

Assets of every kind, whether tangible or intangible, movable or immovable, and legal documents or instruments evidencing title to or interest in such assets presence right.

The importance of this agreement lies in that it obliged states to take legislative and other measures to establish as criminal offenses, when committed intentionally:

- I. Replace or transfer of property, knowing that the proceeds of crime, for the purpose of concealing or disguising the source of that property is the project or assist any person who is involved in the commission of the predicate offense to evade the legal consequences of her action; hide or disguise the true nature of the property, source, location or how to behave movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.
- II. The acquisition of property, possession or use with the knowledge, the time of receipt, as the proceeds of crime; participate in the commission of an criminalized in accordance with this Article, or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling. ⁽⁹⁾
- III. Although the Jordanian Constitution not been exposed to the issue of merger the treaties in the domestic legal system, the judiciary Jordanian implemented international treaties whether conflicted with domestic legislation and this is what it took of the Court of Cassation Jordanian In the decision to

interview them decided to "learned from Para. 43 of the Code of Jordan's accession to the Convention WTO that Jordan committed in the event that the Jordanian laws or any other regulations contradict international treaties or conventions the terms of international treaties or conventions that will implement " ⁽¹⁰⁾

4- Protection's Aspects of the Public Money

Although it important public funds, both internal and external to the state, but that the phenomenon of assault exists and scattered and almost devoid of society.

The Jordanian legislator approved a set of legal rules that can be committed with many images, so as to ensure the ultimate safeguard of any legal or physical assault is located it can lead to disruption of its purpose and will be addressed as follows:

4.1. The Civilian protection for Public Money:

civilian protection meant the output of public money from the legal department to deal approved by the civil law of individual ownership in order to secure a role in achieving the public interest that have been allocated. ⁽¹¹⁾

Establishing protection of public funds on the principle of material crystallized in the importance of preserving the allocation of its elements for public benefit objectives for as long as possible and fill all the gaps that may lead to obstruction aspects of customization and is civil protection aspects of public money in the inadmissibility of the disposition of the following:

4.1.1. The Prohibited to Dispose of the Public Money

As the public money intended for the benefit of the public, it is not permissible for management, which owns the money that the act contrary to customize it, whether paid this act such as selling or no charge it endowment, meaning the output of public money from the legal department dealing rule of law . Article "60" Para "2" of the Civil Code: "shall not in all cases, the disposition of the money " .

shown in this paragraph that these protections apply to public funds real estate was or immovable, and therefore in order to continue the allocation of public money for public benefit, it must be kept in the possession of the person administrative and under his control which requires preventing engage in any conduct that would result in the output of this money from the possession and endangering allocated.

The application of this rule applicable to public funds alone without fruits or products that may be exploited by the money, because the latter not be intended for the benefit of the public and then have to hand the administration freedom to dispose of them without the conduct to be tainted invalidity. ⁽¹²⁾

It should be noted that the administration can proceed with all administrative actions from the sale, purchase or rent with other administrative people move money from the state to edema and regional administrative units as mayor and vice versa. ⁽¹³⁾

Accordingly, if the state wants to dispose of public money must first end the allocation of this money for the benefit of the public so that they can dispose of it as special money, and be end customization law or decision of the competent minister.

- **From the point of view of the researchers** : Although emphasize the inadmissibility of the disposition of public money in many of the laws, but it with reference to the Civil law of Jordan, we find that the text explicitly in the article "149" on: "Do not terminate the contract of injustice obscene without induction only in money interdicted and money endowment and state funds," and this is what is useful to the concept of the offense it is possible to dispose of public money even if the legislature has ensured the dissolution contract in case of injustice obscene.

It is also the reference to Article 2 "/ b" of Rental System and the delegation of state property for the year "1977" has passed explicitly to the Minister of Finance, upon the recommendation of the Central Committee rental of state property for any of the industrial projects, mining, tourism or housing projects and similar services allowance rent determined by the Central Committee out of the estimated amount of for toddler rent allowance.

4.1.2. Inadmissibility of the acquisition of public money by time obsolescence:

This principle is an inevitable consequence of the principle of the inadmissibility of the disposition of the public money, since that public fund may not be disposed of, it may not be as well and a fortiori to acquire ownership limitations by placing the hand. ⁽¹³⁾

And extends the scope of application of this principle to include all elements of public money, and is a way to protect it from attacks by third parties upon the acquisition of limitations because the administration rarely act in public money because they are keen on, nor interest in the disposition. ⁽¹⁴⁾

This principle is launched for the benefit of management only as her the mandate over public money, and applies to recipients of these funds, whether in good faith or in bad faith.

It also confirmed the article "" 1183 "paragraph" 2 "of civil law by saying:" ... May not have the funds and the real estate owned by the state or its public bodies, as well as funds and real estate charitable endowments and abandoned Real Estate, or make any other protected right in rem over time .

4.1.3. Inadmissibility Appropriation of the public money

The content of this principle is to prevent any action by the Executive as attachment by individuals on public funds, as a means to force the state or other public persons on fixed solvent for the benefit of individuals. The scope of application of this principle all the elements of public funds in various forms and no matter how varied aspects of the allocation for utilities.

Extending the concept of book covers all forms of execution Forced known in the Civil Code and therefore refrain arrangement subject to formal or possessory right or privilege or the jurisdiction of public money so as not to be decided preferential right or trace as happens when you sell your money against his will because this sale is out of the question public money.

In this Clause "2" from the article, "60": "shall in all cases, the disposition of these funds or seizure."

It also emphasized the article "27" of the Jordanian implementation of Law No. "25" for the year 2007 this rule which stipulates: "No one shall be on the implementation of the following:

- I. Public funds and endowment funds.
- II. Funds of foreign embassies and diplomatic agencies which enjoys judicial immunity.
- III. Concessions and licenses granted by the country"

4.2. The Forensic Protection of Public Money

Forensic Protection meant in this regard are those provisions and rules stipulated by the Penal Code or the laws and regulations of other scattered, and which requires the criminalization of any assault is located on public money and inflict criminal punishment on each of assaulted it and we will in this section on a statement of criminal legislation relating to the protection money General in accordance with the following:

4.2.1. General criminal legislation for the protection of public money

Various legislations gave to this subject of great importance and earmarked located on the crimes of public money penalties commensurate with the gravity of the harm it, have varied in the punishment of crimes of public money, but the common element among them is the emphasis.

the legislature Jordanian for Penal crimes has addressed of aggression on public money in section XI of the Penal Code number "16" for the year 1960 by stating on crimes that fall on state property and punished all of the demolition or ruined intentionally buildings and monuments and memorial statues or other construction and real estate owned by the state or the stomach for the benefit of the public or the public for decoration or anything movable or immovable has historical value.⁽¹⁴⁾

It also punishable by the legislature each of the acts of prospecting for water located underground or explosive or confined unless the intended drilling is explosive in private property, and both exceed in any form on the banks of springs and streams temporary and permanent swamps and lakes, ponds and or border corridors of irrigation and drainage canals or water crossings or authorized created for the public benefit, and on each of any permanent or temporary work will impact the amount of public water and its neighbors.⁽¹⁵⁾

Also Punishable by the legislature each of the demolished or ruined all or some construction built for the use of water-sheet and save, or in order to protect themselves from the tyranny of these waters, especially bridges, dams, crossings and irrigation canals, drying or drainage pipes water phenomenon or buried either been granted water concession or not, and all of the assaulted on the main network of the water or link household sabotage or access to water illegally or tamper counter measure the amount of water consumed.⁽¹⁶⁾

And punishable anyone who vandalized public squares and roads and preventing free traffic and safety, hindered freedom of passage and all of dehydrated paintings and figures set out in the streets or junctions on the buildings or sabotage.⁽¹⁷⁾

It also punishes all of the latest sabotage intentionally in the way of a year or Bridge In one public facilities or the right by the damage on purpose, and if resulted done a danger to public safety, and punished all of the malfunction line railway or machinery movement or signal related or put nothing prevents the functioning of, or use any means lead to a collision between trains or train derailment plan,⁽¹⁸⁾ and punished every one of the oldest intentionally cut telecommunications or wireless or broadcast any of the radio stations to radio or television stations or lines of electrical networks, whether damage to machines or wiring or in any other way to regular conditions or during sedition or insurrection.⁽¹⁹⁾

It also punishable each of the torrent in the public water given by the franchise or not, or poured or threw the fluids or substances harmful to health or public convenience or proof of good utilization of water, threw Fertilizers animal or put waste in the territory falling within the range set by the Authority for the Protection of spring benefit from the public, held any action that would contaminate the spring water or drinking of others.⁽²⁰⁾

In addition to a number of laws that protect public money, such as: Antiquities Law No. "21" of 1988, as amended, and the Law of Administration of State Property number "17" for the year 1974, as amended, and the law of conservation of state funds number "20" for the year 1966 and its amendments. The notes, which were mentioned that the Jordanian legislator did not wrap to protect public money against attacks, located him criminally.

4.2.2. The Special Criminal Legislation for the Protection of Public money

Turn Jordanian legislator towards the development of criminal legislation for the protection of public money to face the infringement cases located him by individuals working in the state or public sector institutions These are crimes in the crime of embezzlement, where is the crime of the most important crimes that affect public money where the offense Jordanian legislator this crime promised theft employee of the funds in his possession because of his crime described as one of the crimes that fall on public administration, which applies Article (174) of the Criminal Code, which stipulates: "Every public official Log in owes what and all to him by virtue of employment or under mandate from the boss something management or save money and other things to the state or to one of the people punished temporary hard labor and a fine equivalent to the value of what embezzled"

And on the other hand, punishable by Jordanian legislator each one has not been implemented in time of war or is expecting a war all the obligations imposed on him by the contract pledge or creative, or to provide services related to national defense and public interests of the State or Bureau of participants.⁽²¹⁾

Notes in the article that the Jordanian legislator punishes such acts only in time of war, it was better to determine punishment for this crime is permanent, and that is tightening this punishment a time of war

It also punishable by Jordanian legislator each of all him sell or buy or manage the funds of movable or immovable for the State or for the account public administration, committed fraud in one of these actions or violates the provisions applicable to them either drag the booty self or taking into account the team or damage the team the other or damaged public administration.⁽²²⁾

And punishable by the Jordanian penal code each employee received a personal benefit from a transaction administration, which belongs to either do it directly or by someone pseudonym or resorting to instruments sham, representatives of the administration and police officers and gendarmes and other general police if they make publicly or to resort to instruments sham directly or alias by someone on trafficking in the region where exercising power with grain and other related needs of primary necessity is what produced their property.⁽²³⁾

The Jordanian legislator punished every employee used his authority directly or indirectly to hinder or delay the implementation of the provisions of the laws, or regulations or the collection of fees and taxes prescribed by law.⁽²⁴⁾

5- Conclusion

It became clear to us through this study that the subject of public money is of great importance to document relates to the economy of the state and its existence, and its role in achieving the interests of individuals, if the afflicted defect the interests of individuals exposed to loss and the consequent harm to the State and its continuity.

As a result, the protection of public money tedious process requiring the concerted efforts of segments of society all the result of the importance of the legislature declare and identify how to handle it by the State, individuals and ways of protection due to the seriousness of the infringement upon through the adoption of the rules of several legal such as not prohibiting the disposal of public money and not be owned by the statute of limitations and the inadmissibility of seizure upon emphasis in some articles of the Penal Code when he was attacked.

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