

## ARAB SPRING CONSTITUTIONS AND PROFESSIONAL ASSOCIATIONS

**Dr. Omar AL-Khataibeh**

Al-Kataibeh Center for Arbitration & Training

PO box 1196, Amman Code 11953, Jordan

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**ABSTRACT:** *The significance of this study stems from highlighting the democratic practices of the professional associations which contributed as pressure groups of interests, where they exercised a political role through democratic tools, consequently contributed in issuing democratic constitutions in some Arab countries or substantial constitutional amendments. Through these constitutions or amendments emerged a positive role of professional associations. There is no doubt that this paper will highlight a significant topic in the constitutional field, especially in the absence of previous literatures or researches on this subject.*

**KEYWORDS:** Constitutions, Professional Associations, Drafting constitutions, pleading Judicial decision, Political Pressure

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### INTRODUCTION

Arab professional associations have contributed in an active role in the Arab revolutions, or the so-called Arab Spring, either leading some revolutions, as in the case of the Tunisian revolution, where lawyers were first out in the protest against the Tunisian authorities, in the wake of attacking Mohammed Bo Azizie Cart, (the igniter of Arab revolutions) and burning himself. The first demonstration was by lawyers then followed by the public movement that lead to the Tunisian revolution which had the major role in overthrowing the removed President Zine El Abidine Ben Ali and conducting the democratic presidential and parliamentary elections. Then the formation of an institutional committee for the issuance of the Constitution.

The lawyers also contributed in Libya, particularly the lawyers in Benghazi in the demonstration against the Libyan authorities, causing a public revolution spread across Libya and lead the fall of the Libyan regime and killing of the Libyan leader Muammar Gaddafi. In Egypt, the professional associations had a weak role in the January revolution which removed the Egyptian leader Hosni Mubarak.

While in Jordan the role of professional associations was weak and did not directly contribute in movements, on the contrary, they did not take their real role in this field, which lead to the nailing the professional associations by adding the word in Article 16, thus losing mandatory affiliation.

This quick review reveals that the role of professional associations was represented in working as pressure groups or in exercising the right of expression and strike, as well as interaction with public movements in the countries of Arab revolutions. Undoubtedly, he

(The professional associations are of the private social institutions, affected, in terms of incorporation, or in terms of evolution, by the political, economic and social factors[1].

**Political Pressure:** The professional associations have exercised their role in the Arab countries through pressure on governments to activate the political action. Parties relied on the professional associations to practice pressure on government throughout the Arab world, since such associations include the educated and learned class. At the same time, they include quite a few parties' members who have found in their union activity a way to activate their partisan and political activity. While many of non-political associations' members viewed politicians' actions and practices as endorsement of associations for the benefit of the parties, especially in light of the weakness of associations' professional activities and their failure to provide satisfactory services to their members, which triggered the vast majority of the non-party members resulting in the weakness of associations' pressure on governments.

**Strike:** Many professional associations exercised a significant role in striking and demonstrating in several occasions, which contributed to a large extent in igniting the Arab revolutions, as happened in the Tunisian, Libyan and Egyptian revolutions [2].

**Drafting constitutions:** A number of members of constitution drafting committees in the Arab Spring are members of professional associations.

**Pleading** is exercising the right to defend parties in lawsuits, a constitutional right such as the trial of Mohamed Hosni Mubarak, Zine El Abidine Ben Ali, Saif al-Islam Gaddafi, and the trial of the Jordanian symbols of corruption in Jordan, where lawyers, members of professional association, contributed in pleading against the defendants or pleading for them, which is an important role in the Arab Spring revolutions.

#### **PROFESSIONAL ASSOCIATIONS IN THE ARAB SPRING CONSTITUTIONS:**

The new Egyptian constitution of 2012 included two texts, Article (52):

*Freedom to form professional associations, unions and cooperatives is guaranteed, having legal entity, and based on democratic basis, practicing their activity freely, and participate in community service and in upgrading the level of efficiency among its members and to defend their rights.*

#### **Authorities may not solve or resolve their boards except by a judicial decision.**

This text shows that the constitution has provided freedom of establishing professional associations where it became a constitutional right where no law or authority may affect this right or detract from it, since the constitutional text transcends any other legislation. The constitution also guaranteed for the professional associations or their boards not to be dissolved without a court, thus ensuring them to exercise their role effectively without any hesitation or fear for their future and the future of their members. The new text exceeded the previous negative points where the government used to resolve the professional associations and appoint committees to manage or impose guardians, with the argument of defense law.

**Article (53) added**

The law regulates the professional associations, and manages on a democratic basis, accounting its members for their behaviors regarding exercising their professional activities based on the ethical codes of honor. Only one professional association is created to regulate the profession.

Authorities may not solve its board of directors without a court order, and no guardianship is imposed on them.

Article 53 of the Egyptian constitution included not to create more than one professional association. This text aims to preserve the unity of professional associations, which demonstrates the significance and power of the current associations, and recognition of gratitude to their revolutionary role, ensure the survival of one professional association, and not to allow for more than one association per profession since it weakens the associations, and at the same time will affect on the interests of their members.

But the Egyptian constitution did not include the right to strike for the associations, unlike the Tunisian constitution.

The Jordanian amended constitution of 2011, included the right of freedom to form professional associations as well as parties and societies, since the previous text before amendment, article 16 stipulated:

- 1- Jordanians have the right to assemble within the limits of the law.
- 2- Jordanians have the right to form societies, professional associations and political parties, provided that to have legitimate purpose, peaceful means and their statutes does not violate the provisions of the constitution.
- 3- The law regulates the method of establishing societies, professional associations and political parties and monitors their resources.

Undoubtedly, the addition of the word 'and associations' to the text of Article 16 of the Jordanian constitution harmed associations, where the text stipulated 'the right to form associations' which was not organized by the constitution before amendment in 2011. There were governing laws for the freedom of professional associations' activities, with what the government has of freedom to organize public utilities. Amendment to the constitution has made the right to form the professional associations by a public text, i.e., every profession might have more than one association as in parties and societies. The Jordanian constitution equated societies, political parties and professional associations, which would weaken the role of associations, undermine their unity and jeopardize its interests and members'. The Egyptian constitution, which stated to have one association for each profession, unlike the Jordanian constitution, which added the word 'associations' in general and in a general wording. Calls started in Jordan on forming new associations for professions which already have associations.

The constitution was affected by the writings of the Jordanian unionists[3] before amendment when interpreted the word (associations) in the Belgian constitution would mean societies, associations, and political parties. Although the Belgian constitution did not include the definition of associations, parties and societies for the word associations, but by one of the opposition unionist wrote that in researches and lectures. Indeed, those who talked or added this definition in translation of the Belgian constitution text did not observe that the addition of the word professional union in general in an absolute method would result in creating more than one association for each profession. Thus, professions in Jordan are now threatened by

division based on the amended constitutional text. The author argues that the role of associations in Jordan was negative, since they did not exercise their role as pressure groups (a group of people bound together by common targets and trends, with attempts to make decisions that support their preferred values by all means to influence the political system)[4]. There is a close relationship at the historical and social levels between the emergence and the evolution of lawyers and political and economic liberalism [5].

In Morocco, the constitution of the Kingdom of Morocco stipulated in Article 29[6]:

### **Chapter 29**

Freedoms of meetings, gathering, peaceful demonstration, establishing societies, association and political membership is guaranteed. The law specifies the conditions for exercising such freedoms.

The right to strike is guaranteed, and regulatory law defines their conditions and terms of practice.

### **New Tunisian constitution**

Article 11 – Formation of political parties and professional associations is free.

Article 12 - Parties, professional associations and societies are committed in their statutes and activities to the constitution and its basic principles - sovereignty of the state and unity of the country and the principles of democracy – financial transparency and non-violence.

Article 15 - the professional association right is guaranteed including the right to strike unless it endangers people's lives, health or their security.

It is noted that the Tunisian and Moroccan constitutions guaranteed the right to strike, where the Tunisian project was implicit to the right of professional associations to strike unless it endangers peoples' lives, health or their security.

The Moroccan constitution also authorized and rationed strike in the constitution by conditions and manner drawn by law.

The International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by the UN General Assembly resolution 2200A (D -21) of 16 December 1966, which entered into force on 23 March 1976, in accordance with the provisions of Article 49.

### **Article 22**

1. Everyone has the right to freedom of association with others, including the right to form and join professional associations for the protection of his interests.

2. No restrictions may be imposed on exercising this right other than those prescribed by law which are necessary in a democratic society, to maintain the national security, public safety, public order or the protection of public health, morals or the protection of the rights and freedoms of others. This article shall not prevent to subject the armed forces and police members to the legal restrictions in exercising this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article (29):

1. ....

2. In exercising his rights and freedoms, an individual is subject only to limitations determined by law with the exclusive objective of ensuring due recognition and respect to others rights and freedoms of others, and meeting the just requirements of morality, public order and everybody's prosperity in a democratic society.

B- Article (8) of the International Covenant on Economic, Social and Cultural Rights stipulated: " *Article 8*. 1. The States Parties to the present Covenant undertake to ensure:

(a) the right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on

the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) the right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) the right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

Thus, the covenant approved individuals' right to form associations with others, and the right to submit reports of violations against individuals to the concerned commission on human rights, and their right to claim that what jeopardizes associations jeopardizes individuals.

The concerned human rights' committee decided that the original beneficiaries of the rights are the individuals, and that the Covenant does not refer to the rights of legal persons or similar entities or corporate associations, except in the article of the Covenant. However, exempted from this, that some of the rights in the Covenant, such as the right to form societies and associations, are the rights enjoyed by the person in association with others[7].

Professional associations are voluntary interest groups (representing defensive voluntary groups)[8] based on the individual.

## CONCLUSION

Professional associations have significance in the constitutions of Arab Spring countries, since it added texts that ensure the right forming associations. The Egyptian constitution included associations' right to form one association for a profession, and a term of its non-solvency or its boards nor imposing guardianship, except by a court decision, which is a significant progress from the previous constitutions.

The Jordanian constitution, article 16, added Jordanians right to form associations.

The Tunisian and Moroccan constitutions also included associations right to strike, which is also a tangible progress in freedom of expression in both countries, while such right was not included the Jordanian and Egyptian constitutions.

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Corresponding author's email address: Okhataibeh@yahoo.com