

CORRUPTION IN THE JUDICIARY

Farouk Al-Kilani, Lawyer

I - Definition of corruption

The institution of corruption is one of the most significant manifestations of contemporary political systems. It is so much widespread and strong that no political regime has escaped from it.

The term of corruption stands for a set of crimes that cause harm to public funds, including the improper use of official office for personal benefit, getting bribes or commissions on government projects, in addition to the cases which are brought before the courts and unlawful gains.

Corrupt practices have become part of everyday business, which is most dangerous for it simply means that corruption is spreading out in an astounding way, while the reason behind this is the desire to make use of official office and benefit from its advantages since wealth is a permanent source of power.

Corruption spread out in justice as a result of the historical circumstances experienced by the state such as the weakness of administration and poor civic education. Corruption is not a new phenomenon, but it started to spread out with strength only recently.

II - Theories on the inception of corruption

There are two schools which analysed the conditions of the appearance of corruption:

(a) The moral school:

This school attributes corruption to moral, ideological and religious factors. For this school, corruption appeared in society as a result of the weakness of the moral environment and the belief in religious values and principles. Putting an end to corruption can only be achieved through re-instilling these values and principles in society and providing its members with moral education.

(b) The political school

This school ascribes corruption to the political system. Where this system is based on dictatorship and domination, it contributes to the development of corruption. This school does not deny the existence of corruption in democratic systems, but these systems are capable of combating and putting an end to corruption thanks to the existence of administrative and juridical guarantees, unlike dictatorships and autocratic systems where corruption is

considerably spreading Out due to lack of control and political accountability.

III - Definition of corruption crimes

Corruption crimes are committed by civil servants alone. Corruption crimes are typical of this social group. This sort of crimes can affect all members of society: individuals, workers, businessmen, and so on.

They are considered as financial crimes for they involve making an improper use of public office and draw benefit from it.

Corruption crimes are considered as being out of reach for justice or law, which means that they are very difficult to approach. As corruption is widespread among the ruling classes, these classes are in a position to face up to any attempt to uncover their crimes. In addition, they do own the means whereby they can have their cases closed by means of the immunity they enjoy and the authority they hold. Handling of corruption crimes which are committed by these classes does not require the convening of international conferences or the existence of an anti-corruption organisation.

As to corruption crimes which are committed by ordinary individuals other than government officials, the public prosecution can indeed track them and investigate on them and bring their authors before the courts. Therefore, such crimes can be addressed and controlled by juridical procedures.

Because the term of corruption applies to a corrupt authority and not to an ordinary person and because the corrupt leader is identified by his office and commits his crime under the umbrella of this immunity, the public prosecution cannot reach him.

IV - The serious impact of corruption crimes

Corruption crimes are a very grave affair:

1. Undermining the national economy

The spreading out of corruption has a deep impact on the national economy and can deprive some countries from the loans granted by the donor states for fear they might not be spent as provided for. The fact that the so-called “clean hands” have been unable to put an end to the institution of corruption attests to its strength.

2. Destroying national conscience

Corruption crimes in society lead to the tearing up of the social fabric, to the dislocation of the relationships of allegiance and sense of belonging to a community as well as to the destruction of values among people and to the ruining of national conscience.

Destroying the sense of law and good, while laying the foundation for deviation and plundering have become common ways of doing business in every field today. The destruction of national conscience is in favour of the hostile forces which indeed draw benefit from these practices.

3. Stripping the judiciary from its mission

Corruption crimes lead to stripping off the judiciary from its mission and wasting away citizens' rights.

4. Eroding people's confidence in government

Corruption leads to the erosion of people's confidence in government. The authority of government is undermined, and individuals need to be reassured about their rights for the good conduct of administrative and political action.

V — Reasons for corruption in the judiciary:

(i) — Domination of the executive authority

Domination of the executive authority is an essential factor in corruption. Judges are put under the pressure of this authority and are compelled to render justice in opposition with the law.

In Jordan, the executive authority exerts its full domination over the judiciary. When the Supreme Court issued in 1998 a decision ruling that the provisional law on publications and the press adopted by Najali's government was unconstitutional, this government exerted pressures on the Judicial Council with a view to pensioning off the president of the Supreme Court who then became the president of the Court of Cassation. This is indeed what happened, then the government appointed to this office a politician who had never before practised as a judge, while such a position should normally be granted to a professional who must have spent several years working in the judiciary.

Among other examples of government interference in the judiciary, there is the case of trading in children whereby the minister of justice undertook to choose some specific judges nominally to handle this case. The minister also requested the setting up of a special court structure for the trial of the person accused in Case N^o 144/97 at the Court of Appeal and asked the president of Amman's court of appeal to choose three judges whom he designated by their names for handling this case and who happen not to be the court members that were previously designated in this particular case (trading in children). This decision left a deep impact among international spheres.

The chosen court members considered the case and issued a court decision that was consistent with the minister's wish.

Such a grave practice infringes upon the judiciary and violates the principle of the independence of the judiciary which is safeguarded by the Constitution.

When the Supreme Court ruled in its decision N^o 226/97 that the provisional law of 1997 on publications and the press was unconstitutional in view of its inconsistency with the provisions of article 94 of the Constitution, the executive authority requested the president of the Court of Cassation that the High Constitutional Council which is entrusted with explaining the Constitution and which includes the president of the Court of Cassation, four judges from this court in addition to four members from the Council of Dignitaries, should undertake to construe the provisions of article 94 of the Constitution in order to demonstrate that it is the Council of

Ministers which is competent to assess whether there is a state of necessity as provided for in this article and which is a prerequisite for issuing the provisional law. The aim was to overrule the decision of the Supreme Court which had considered that it was entitled to exert its control over the state of necessity and the state of emergency which is a prerequisite for issuing provisional laws by virtue of article 94 of the Constitution, keeping in mind that the High Constitutional Council which is entrusted with explaining the Constitution is not entitled to construe a legal text which had already been construed by the Supreme Court, for the decisions of the Supreme Court enjoy pre-eminence above all other bodies. No other party is entitled to oppose this decision, and even the High Constitutional Council which is entrusted with explaining the Constitution is not allowed to provide an interpretation that is inconsistent with the principles ruled by the Supreme Court in construing the constitutional provisions, and claiming that the decision of the Supreme Court may be inconsistent with the Constitution amounts to an affront to the judiciary.

The president of the Court of Cassation rejected this request in 1998, for the constitutional principles cannot be subject to compromise and cannot be construed according to the wishes of the executive authority, and because the members of the Court of Cassation cannot be under the authority of the government and do not produce legal opinions according to the wishes of the executive authority and are only accountable for the decisions they issue by virtue of the Constitution and the law.

It is high time that the martial and dictator-oriented turn of mind which still takes its inspiration from the dark ages and which still prevails over government policy, it is high time for it to give way to democratic principles, to end its hegemony and stop giving orders as to the interpretation of constitutional texts and laws before these forces are crushed by the people and before they are asked to account for their interference in the independence of the judiciary and for the pressures they exert on the highest judicial body in the country in an attempt to obtain court decisions that are in keeping with their wishes. Following the refusal by the president of the Court of Cassation of the minister's request, he became subject to several attempts from the government to dismiss him from his office.

It is absolutely necessary to rise up against such reactionary ideas that seek to hold back the country and maintain it in underdevelopment, in order to allow for the dignity of the judiciary and the development of the country.

In the report published by the US State Department in 1998 on human rights, it was stated that in Jordan, the judiciary is not independent and that it is subject to government pressure. The report mentioned the case of pensioning off of the president of the Judicial Council because he had ruled that the provisional law on publications and the press was unconstitutional. The report also talked about the scandalous affair of trading in children and the Jordanian government's interference in this affair.

(ii) Opportunism

Opportunism among judges is one of the manifestations of corruption, whereby some judges seek to gain various material and moral advantages and benefits. Here are some examples from Jordan: One president of a court of justice handled the case of a politician on the basis of some charges. After he ruled that the accused was not guilty of such charges, he gave a reception to celebrate his innocence.

Such practices show to what extent this opportunistic judge had lost his sense of impartiality. Celebrating the innocence of the accused influential politician meant that the judge expressed his interest for this person, which is of course in total opposition to impartiality.

What is worse is that such practices are encouraged. As a matter of example, this judge got promotion and advancement to the office of secretary general of the ministry then to the office of president of Amman's Court of Appeal.

(iii) Fear of the Executive authority

The executive authority has been exerting fear and terror on judges, and such practices contribute to the corruption of the judiciary. Such pressures are exerted in different ways, such as transferring them to other occupations in case judges should issue court decisions that do not comply with the wishes of the executive authority.

(iv) Bribery

Bribery is the worst form of corruption in the judiciary.

Its expansion among judges leads to the undermining of the judiciary and to the erosion of people's confidence in the state and in its capacity to treat all citizens on an equal footing. Therefore, the state loses one of the most significant grounds for its existence.

The former president of the Judicial Council submitted to His Majesty the late King a memorandum on corruption in the judiciary which had been studied by the security authorities. Then His Majesty agreed to implement all the recommendations contained in the memorandum and informed the president of the Judicial Council of his approval of the contents in the memorandum, but the prime minister and the minister of justice did not wish to implement this reform for it would have affected the interests of several of their friends who were in charge of enforcing their orders and directives in various fields. So the memorandum was never enforced. Subsequently, Majali's Cabinet undertook to conspire against the president of the Judicial Council and requested the Judicial Council to pension him off, which the Council actually did.

Corruption crimes, as they become widespread among judges, represent a grave danger not only for justice but also for the future of the state.

The absence of anti-corruption action and the protection of the corrupt leads to the decline of law.

(v) Improper use of office

The improper use of office in various cases that are referred to the courts of justice to the benefit of private interests is disgraceful and it is one form of bribery.

Nothing is more dangerous for justice than the interference of the executive authority in the judiciary, for in that case, the judiciary loses its independence and becomes dependent on the executive authority, which leads to the erosion of people's confidence in it and to the upsetting of its equilibrium, while citizens' rights are simply ignored.

(vi) Internal interference

Jeopardising the independence of justice may also come from inside the judiciary itself and from the judges themselves who permit interference of other judges in their affairs. Such interference

corrupts the judiciary, for, should he not give satisfaction to a higher-ranking judge, the lower-ranking Jordanian judge may be subject to measures of retaliation such as transfer to remote areas or he will simply be disposed of.

In Jordan, there is indeed a famous case of such practices. It is the well-known case of tobacco and cigarettes in which the major person accused in this affair was released on bail on the basis of a deposit amounting to ten million Lebanese dinars. The president of the Judicial Council exerted pressure on Justice Mohammad Ghaith Mismar in order to replace the bank guarantee by a legal guarantee. But the judge refused to do so, then he was threatened and was treated rudely and accused of being against the state and the political authority of the country. This led the judge to resign, and as his resignation was rejected, he requested to be transferred to provisional retirement, which was also rejected. He then deliberately left his office and the Judicial Council decided that he was destitute of his position.

(vi) - Partiality

Partiality in justice is one form of corruption. Impartiality may be brought about as a result of several reasons such as kinship, common ideology, religion or nationality or political orientation.

Partiality is opposed to neutrality which is the basic component of an independent judiciary. An independent judiciary consists in issuing court decisions in total objectivity far away from any bias. Court decisions should not be influenced by any inclination.

In justice, when groups of judges belong to the same faction, the same party, or the same family, court decisions cannot be safe from these influences.

The Jordanian judiciary is subject to these factors which are strongly affecting its impartiality and independence. At least one hundred judges belong to ten factions, that is an average of ten judges for each faction who are all closely linked by blood and parent relationships.

(vii) Gifts and donations

Donations can be made in monies or in kind. Gifts are offered to the judges with a view to influencing them. This is also a form of corruption.

(viii) Drawing interest

Judges may draw all sorts of material or moral interest from their office such as a promise to get a higher position or advancement, to settle their debts or get a bank loan.

(ix) Secret payments

One of the worst practices in corruption is that practice by which the government offers secret payments to the judges, which contributes to corrupting their conscience.

The first prime minister to have offered secret payments to certain judges was Zaid AI-Rifai.

Some ministers of justice also used to offer material temptations to the judges. For instance, Minister Riad Shakaa used to offer positions in the courts of justice to the judges' sons and daughters and provide them with private cars for their personal use in order to obtain their sympathy. He also sent two judges to Abu Dhabi under the pretext of giving lectures at the Judicial Institute there in order to gain some financial benefit against their accepting to issue

court decisions in a particular case to the benefit of one of the beneficiaries from the affair of trading in children.

VI — Political coverage of corruption in the judiciary

Corruption in the judiciary draws benefit from political protection. The powerhouses acting within the state and which are interested in maintaining the judiciary corrupt do indeed provide protection for the corrupt judges in order to safeguard their interests within the judiciary.