

Legal analysis

The case of the Jordanian Teachers Union

Subject	Legal analysis
of the case	The case of the Jordanian Teachers Union
Country	the Hashemite Kingdom of Jordan
Date	February 20, 2021
Report prepared by	Dr. Kholoud Al-Khatib (University Professor and Attorney) Professor Louay Obaidat (Former Judge and Lawyer)

Index

- **Introduction**
- **Methodology**
- **The facts**
- **Context of events "The crisis between the union and the government"**
- **The right to organize trade unions.**
- **International standards for freedom of association and trade unions**
- **The countries duties to integrate the provisions of international treaties in their laws**
- **Breaches and violations of international charters and conventions that regulate human rights and freedoms**

First: Disrespecting international obligations

Second: Restricting the freedom of opinion and expression

Third: Using excessive force against protesters

Fourth: An alleged offense of influencing the freedom of election

Fifth: An alleged offense of inciting an unlawful assemblage

Sixth: An alleged offense of inciting hatred

Seventh: The Public Prosecution's lack of jurisdiction to stop the teacher's union

Eighth: Arresting Union Council members

Ninth: Failure to respect fair trials in litigation procedures

Tenth: Dismantling the teachers union

Eleventh: Convicting all defendants of all the crimes attributed to them

10. Conclusion

1. Introduction

Freedom of association is a basic human right and, along with the rights to collective bargaining, it constitutes a fundamental value that contributes to strengthening democracy.¹ The right to freedom of association is an expression of human dignity, not only for the sake of defending economic interests but as a necessary pillar of the democratic system due to its close association with many other rights and freedoms². And considering that trade union freedoms are an integral part of democracy, they also play a vital role for the realization of other basic rights, especially the right to freedom and personal integrity, freedom of opinion and expression, freedom of assembly, the right to a fair trial before an independent and impartial court, and the right to protect the property of trade unions. Freedom of association is related to freedom of opinion and expression, freedom of assembly, peaceful protest, access to information, and more. This is because it complements the various freedoms and rights that are interrelated and indivisible. It is evident that freedom of association and trade unions will not have any meaning if the right to peaceful assembly and demonstration,

¹[Freedom of Association On Field Practices : lessons Learned](#)

² Human Rights Council Resolution A/HRC/20/27 states: “The right to freedom of peaceful assembly and the right to freedom of association is a means for exercising several other civil, cultural, economic, political and social rights. They represent two basic elements of democracy because they enable individual men and women to express their political views, participate in literary and artistic works and other cultural, economic, and social activities, participate in the practice of religious rites and other beliefs, form and join unions and cooperatives, and elect leaders to represent their interests and hold them accountable”.

freedom of expression, opinion, belief, conscience, the press, and the right to receive information and participate, etc., are absent.

Trade unions occupy a central position within the human rights system, so they must have a stimulating and enabling environment and a legal framework that provides them with the necessary protections and guarantees.

From this standpoint, the state should not impose restrictions on the freedom of association and trade union work that would empty it of its content except in accordance with what international human rights law permits and based on a necessity recognized by a democratic society, and within the limits of respecting the condition of proportionality that requires states to commit to measures commensurate with the legitimate goals of protecting National security, public health, public morals, or protection of the rights and freedoms of others³ .

This report is issued at an important time, after the Attorney General of the Hashemite Kingdom of Jordan issued a decision to close the independent, elected trade union that represents teachers throughout Jordan. This decision was issued after the police raided the headquarters of the "Jordanian Teachers Union" in Amman and 11 of its branches across the country, closed them

³ Mervat Ramshaw, Freedom of Association and Peaceful Assembly in International Law. Amnesty International. Regional Office for the Middle East and North Africa. Electronic magazine, number 17.

down, and arrested all members of the Union Council on July 25, 2020.

These Jordanian governmental measures against the teacher's union constitute a serious violation of the rights to freedom of expression and freedom of association and unions and constitute an illegal interference in the work of the Jordanian Teachers Union as an independent trade union. Accordingly, "closing the union is one of the most severe restrictions imposed on the freedom to form trade unions, and it can only be justified in very exceptional cases".

2. Methodology

This report has been prepared under the guidance of the national constitutional and legal texts in the Hashemite Kingdom of Jordan, and international instruments related to freedom of association and trade union formation, and the freedoms and rights associated with them, with the aim of legal conditioning of the violations contained in the Teachers Union case.

The team preparing this report worked to highlight the requirements of international human rights law regarding freedom of trade unions and their work and to emphasize international standards in this field. The working group sought to clarify the laws, regulations, and provisions governing union work in Jordan, and to highlight the

legal violations resulting from the strict and unjustified restrictions taken by the government, the judicial authorities, and the security services. These procedures can be analyzed to find out the governmental approach in dealing with associations and unions as a legal person with legal personality, which gives them the ability to implement all actions and activities necessary to achieve the goals for which they were established, such as the right to litigation and implementation of all its activities, and other rights and obligations recognized and enforced on persons, both legal and natural.

Accordingly, this report was prepared as provided by the international standards contained in the following international instruments:

- The Universal Declaration of Human Rights.
- The International Covenant on Civil and Political Rights
- The International Covenant on Economic, Social and Cultural Rights.
- The International Convention No. 87 regarding Freedom of Association and Protection of the Right to Organize.
- The International Convention No. 98 regarding the Right to Organize and Collective Bargaining.

- The International Convention No. 135 about protection and facilities afforded to workers representatives in the establishment in which they work.
- The International Agreement No. 151 regarding Protection of the Right to Organize and Procedures for Specifying Conditions of Use in Public Service.

The working team preparing this report has reviewed all data, statements, judicial rulings, memoranda, and referrals in order to reach the highest possible degree of credibility, impartiality, and objectivity in looking at the extent to which the Jordanian judicial authorities and administrative and security agencies adhere to the principles of respect, protection and fulfillment of international and national laws.

The work team was keen to obtain information of a normative nature by reviewing multiple sources, including a review of the teacher's union council members.

And the study will be presented as follows:

- **The facts**
- **Context of events "The crisis between the union and the government"**
- **The right to organize trade unions**

- **International standards for freedom of association and trade unions**
- **The countries duties to integrate the provisions of international treaties in their laws**
- **Breaches and violations of international charters and conventions that regulate human rights and freedoms**

3. The facts

The Teachers Union was established in 1952, the second Jordanian union to be established after the 1950 Bar Association. After that, the Dentists, Physicians, Engineers, and Pharmacists Unions were established, and within three years more than 30 trade unions had been formed. The Teachers Union selected Amman as its main headquarters.⁴By 1956, all the unions were dissolved, except for the teacher's union, as they posed a threat to the Jordanian political system and its stability from the regime's point of view. After that, teachers fought a long legal battle to revitalize their demands to establish a union until they succeeded in establishing the union in 2011.

Since the union's formation in 2011, the government and the teacher's union have engaged in major disputes over teacher's salaries in public schools, because low wages pushed most teachers to had to work second or third jobs to cover their expenses.

4. Context of events "The crisis between the union and the government"

⁴[The Teachers Union in Jordan is 70 years old On Apprehension And Marginalization](#)

First: In early September of 2019 and coinciding with the start of the 2019/2020 academic year, the Teachers Union Council called on all male and female teachers in the Hashemite Kingdom of Jordan to engage in a comprehensive strike and to refrain from imparting classes. This call came after the government refused to work on implementing the agreement approved by the House of Representatives with the Jordanian Teachers Union in 2014, which provides for paying a worker's bonus, which is known as the "chalk bonus".

Second: The teachers strike continued, and they stopped teaching in schools and imparting classes for a period of four weeks during which several negotiations took place between the government and the Union Council, either directly or through mediators, in serious attempts to reach an understanding and come up with solutions, especially concerning the following demands:

1. Increase the worker's bonus by 35% of the basic salary depending on the rank of each teacher.
2. Allowing the teachers union to have the right to assign (half +1) from the board of Directors Education Guarantee Fund, which is funded mainly by contributions of the teachers themselves at 7% of the basic salary per month.

3. Validate the Training Academy of the Teachers Union and approve the training certificates they issue from among other recognized training institutions.
4. Empower the teacher's union in the person of its president and representatives appointed by the Union's Board Councils of Education, Accreditation, and curricula councils to allow the Union to contribute the work of these committees by providing opinions or studies.

Third: The government tried to urge students and parents to return to schools, and millions of text messages were sent to their mobile phones, especially after all negotiations ended between the two parties without reaching any agreement. However, it did not succeed in convincing students and their parents to return to school. This cooperation had a significant on the success of the strike.

Fourth: On October 6, 2019, five weeks after the start of the strike, the government agreed to the teachers all fifteen demands, and, through the Minister of Education, signed a written agreement which was signed by the other party represented by the Vice President of the Teachers Union (the president died days before the strike). The government announced its approval of all demands and its commitment to implement them, starting from the date of their signature, unless the provisions related to some demands

provide otherwise. In return, the union has returned from the strike and asked teachers to join their schools and attend the school year.

Fifth: With the start of the year 2020, the government committed to implementing the clause related to paying the worker's bonus, but it did not implement the rest of the provisions. Then, when the country went on lockdown and declared a curfew because of the Corona epidemic, the bonus was suspended in May of 2020.

Sixth: The teachers union, represented by its council, tried to communicate with the government to reach an understanding on setting up a mechanism to implement the agreement, to no avail.

Seventh: On 6/13/2020, the Union distributed to its branches throughout the country a notice entitled "The plan to restore the bonus and implement the agreement", which included a step-by-step program aimed at applying pressure to implement the agreement. The notice was published on the social media sites of the Teachers Union.

Eighth : The notice was seized by members of the Cyber Crime Unit of the Criminal Investigation Department in the Public Security Directorate, and it was extracted with the confirmation of the incident of viewing the post and its contents in a written seizure and on 6/24/2020 the publication and the written record were sent to the Deputy General of Amman, who in turn referred it to the

Prosecutor of Amman, where the investigative case has been registered with the number (9246/2020) of the Prosecutor.

Ninth: On 7/22/2020, that is, 28 days after the investigation case had been filed - the public prosecutor began the investigation procedures and heard the testimony of law enforcement officials who seized the notice. As a result, the Amman public prosecutor decided to charge the teachers union, the teachers union council as a legal person, and members of the union council in their personal capacity for the following crimes:

1. The offense of influencing the freedom of election according to the provisions of Article 57 of the Election Law for the Council of Representatives and Article (15) of the Cybercrime Law.
2. The offense of inciting illegal gathering as provided by Articles (164 and 80/1) of the Penal Code and the offense of encouraging others to publicize and write to carry out illegal acts as per Article 161 of the Penal Code and Article (15) of the Cybercrime Law.
3. The offense of incitement to hatred as provided in Article (467) of the Penal Code.

Tenth : At the beginning of August last year (2020), the case was referred from the public prosecutor to the judge of the criminal

justice of Oman, where the criminal case was registered with number (10744/2020) and the court continued to hear the case from that date until 12/31/2020 when it issued its final judgment in the case and ruled to dismantle the Teachers Union and convict all the defendants of all crimes attributed to them and punish them for each offense separately, then it imposed the most severe punishment to each of them, which is imprisonment for one year, and fees that are calculated during the detention period.

Eleventh: On 01/10/2021, the defense committee appealed the judgment issued by the Amman Criminal Court against the Teachers Union and members of the Association Council before the Amman Court of First Instance in its appellate capacity, and the appellate decision was not issued until the date this memorandum was prepared.

5. The right to organize trade unions

Article 20 of the Universal Declaration of Human Rights regarding freedom of association states: “Everyone has the right to freedom of participation in peaceful assembly and association. No one may be forced to belong to an association”. In the same context, the declaration stipulates the principles related to the freedom of association that cannot be separated from it such as the principles of equality, freedom of thought, conscience and religion, freedom of expression, and participation in public life and others.

Article 22 of the International Covenant on Civil and Political Rights states: “Everyone has the right to freedom of association with others, including the right to form and join trade unions in order to protect their interests”.

Article 8 of the International Covenant on Economic, Social and Cultural Rights also stipulates the right to freely form and join trade unions and federations. The text of **Article 8** of the Covenant states the following:

1. The Countries Signatories to this Covenant undertake to ensure that:

A) The right of every person to form trade unions jointly with others and to join the trade union of their choice, without any restrictions other than the rules of the organization itself and to promote and

protect their economic and social interests. The exercise of this right shall not be subject to any restrictions other than those provided by the law and which, in a democratic society, constitute necessary measures to guarantee national security or public order or for protecting the rights and freedoms of others.

B) The right of trade unions to establish federations or national alliances, and the right of these to form or join international trade union organizations

C) The right of trade unions to freely carry out their activities, without restrictions other than those stipulated by law, and in a democratic society to establish the necessary measures to maintain national security or public order or to protect the rights and freedoms of others.

D) The right to strike, provided that it is exercised in accordance with the laws of the country.

2. This article does not prevent members of the armed forces, policemen, or government department employees from subjecting them to legal restrictions while exercising these rights.

3. There is no provision in this article that allows those countries signatories to the International Labor Organization Convention of 1948 on Freedom of Association and Protection of the Right to

Organize to establish measures or apply laws that would, in a way, violate the guarantees as stipulated in the convention.

By observing these two covenants, we can clearly see that they guarantee freedom of association and trade unions, and the rights and freedoms attached to them are integral and inseparable. For example, the International Covenant on Civil and Political Rights guarantees the right to a legal remedy, equality, freedom of movement, expression, thought, conscience and religion, peaceful assembly, and freedom of association, including the rights of trade unions, political parties, the family, and participation in public affairs and other rights, as well as other freedoms.

For its part, the International Covenant on Economic, Social and Cultural Rights includes, in addition to the right to form trade unions as a fundamental component of freedom of association, other rights such as the right to Health, Social Security, Housing, free public education, participation in cultural life, creative activity and scientific research, and other rights.

6. International standards for freedom of association and trade unions

International standards originated from international charters, treaties, agreements, and norms related to human rights. They

constitute the legal reference sought by international human rights laws seek to synchronize with national legal systems. These standards are represented in a set of guiding principles and values contained in international documents and that countries are urged to adopt in their national laws. These international standards represent international obligations that signatory countries have ratified or agreed to in order to achieve consistency across national legal systems with the rules of international human rights law.

Freedom of trade unions and associations was established based on many international sources such as:

- Article 20 of the Universal Declaration of Human Rights
- Article 22 of the International Covenant on Civil and Political Rights
- Article 8 of the International Covenant on Economic, Social and Cultural Rights
- Article 2 of the Convention on the Elimination of All Forms of Discrimination Against Women
- Article 5 of the Declaration on the Rights and Responsibilities of Individuals and Groups to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.
- The International Convention No. 87 regarding Freedom of Association and Protection of the Right to Organize.

- The International Convention No. 98 regarding the Right to Organize and Collective Bargaining.
- The International Convention No. 135 about protection and facilities afforded to workers representatives in the establishment in which they work.
- International Convention No. 151 concerning the Protection of the Right to Organize Unions and Procedures for Specific Conditions of Use in Public Service

At the regional level they include:

- Article 11, paragraph 1, of the European Convention on Human Rights
- Paragraph 1 of Article 10 of the African Charter on Human and Peoples Rights
- Article 16 of the United States Convention on Human Rights
- Article 28 of the Arab Charter on Human Rights.

7. The countries duties to integrate the provisions of international treaties in their laws

The aforementioned international treaties not only guarantee the right to freedom of association as well as the rights and freedoms associated with it but also hold the ratifying states responsible to act within their contents and the duty to integrate those provisions in their laws. This obligation is clearly stated in Article 2 of the

International Covenant on Civil and Political Rights, which states that each country party to this covenant is subject to:

- Respect the rights recognized therein and guaranteeing these rights for all individuals within its territory and within its jurisdiction.
- Take all necessary legislative or other measures to implement the rights recognized in this covenant.
- Ensure provisions to effectively deal with complaints and litigations for anyone whose rights or freedoms granted by this covenant have been violated, even if the violation has been committed by persons acting in their official capacity.
- The competent authorities shall ensure that those decisions issued in the interests of the complainants are enforced.

The aforementioned Article 8 of the International Covenant on Economic, Social, and Cultural Rights, stipulates that it is the country's duty to respect the right to form and join trade union organizations and all other rights arising from it freely and without restrictions.

8. Breaches and violations of international charters and conventions that regulate human rights and freedoms

First: Disrespecting the international obligations

The measures taken by the Hashemite Kingdom of Jordan, represented by the government and the judicial authorities, demonstrate they lack respect for many principles and recommendations related to freedom of association and union work. Among these principles and recommendations, it is worth mentioning the following:

- The principle of recognizing human rights and dignity
- The principle of narrow interpretation of restrictions on human rights and fundamental freedoms⁵
- The principle of striving and exerting maximum efforts to enforce human rights and freedoms⁶
- The principle of legality of controls on freedom of association and trade unions

It was mentioned in the concluding observations of the Committee on Economic, Social and Cultural Rights, "The Committee expresses its concern about the dimension of the restrictions imposed on the rights of employees in the public sector, especially those working in health and educational services, to participate in trade union activities. Furthermore, the Committee is concerned that Article 100 of the Labor

⁵ Article 30 states, "No text in this declaration may be interpreted to imply that any state or group, or any individual, has the right to carry out any activities or acts aimed at destroying any of the rights and freedoms stipulated in it".

⁶ Article 2, paragraph 1, of the International Covenant on Economic, Social and Cultural Rights states: Each Country signatory to the present Covenant agrees to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, and take the necessary steps to ensure the effective enjoyment of the rights recognized in the present Covenant and subject to it, including the adoption of legislative measures.

Code denies workers the right to strike. “The committee stresses that the right of trade unions to work freely is not subject to any restrictions other than “those provided for by law and constitute measures necessary in a democratic society to maintain National security or public order or to protect the rights and freedoms of others”. The Committee recommends that the Country ensures that the restrictions contained in the Labor Code are in full compliance with article 8 of the Covenant.⁷

Second: Restricting the freedom of opinion and expression

Amman's public prosecutor issued an order banning all news, publications, or comments about the Union closure and arrests of all board members in all media outlets and social media platforms, except for officially approved sources.

These measures are considered strict and unjustified restrictions on the right to freedom of opinion and expression and indicate an increasing pattern of suppressing public freedoms and restricting civil and democratic spaces by the Jordanian government, which did not respect fulfilling its obligations regarding the right to

⁷ [E/C.12/1/ Add.46](#)

freedom of association, peaceful assembly, opinion, and expression, as well as the rights of workers and unions.

Third: Using excessive force against protesters

Security forces used "unnecessary or excessive force" against hundreds of protesters, who gathered outside the prime minister's office on July 29, to protest the arrest and imprisonment of union leaders.

Security forces must respect the obligations imposed on them and maintain a balance between security and the right to peaceful assembly, and they must take the necessary steps to preserve the "right to peaceful assembly" in a positive manner during demonstrations in a way that respects the principles of "necessity, proportionality, and law". In practice, this means that restrictions may only be placed when exercising this right under the law and when measures are necessary to maintain security, public safety, or order, protect public health or public decency, or protect the rights and freedoms of others. The facts do not prove that the demonstrators committed an act that violated security, which confirms that the use of excessive force was not valid. As stated in the concluding observations of the Human Rights Committee on Jordan's fifth periodic report:

“The committee notes that the government has taken steps to facilitate peaceful assembly through the Public Gatherings Law of 2011, which stipulates, for example, that there is no need for permission to organize demonstrations and that notification is sufficient. However, the Committee is concerned about reports that, in practice, the law is being circumvented. It is also concerned that many demonstrations are banned, their organizers and participants are detained under the Crime Prevention Law and the Terrorism Prevention Law, and many of them are forced to sign pledges not to participate in demonstrations, and that strict restrictions are imposed on civil society organizations, including funding (articles 19 and 21-22).

The Committee recommended that the Country guarantees the right to peaceful assembly, in line with article 21 of the Covenant and international standards. The Country must not use laws and security measures to intimidate members of civil society who exercise this right, and it should ensure that they can work freely and obtain funding.

Fourth: An alleged offense of influencing the freedom of election

The Public Prosecutor considered that the notice published by the Teachers Union included an explicit call to boycott the parliamentary elections, which is thus considered a violation of the

freedom of election and constitutes a crime under the provisions of Article 57 of the Election Law of the Council of Representatives and Article (15) of the Cybercrime Law.

This description as adopted by the judge is not legal, because voting is a right, not a duty and that as long as it is a right reluctance to do it is also considered a right, and advocating for the exercise of rights is not considered a crime.

Fifth: An alleged offense of inciting an unlawful assemblage

The Public Prosecutor considered that the post included an explicit invitation to a sit-in strike and is considered an unlawful incitement to assembly, and it encouraged others to participate in unlawful acts under Articles (164 and 80/1) of the Penal Code and the offense of encouraging verbally and in writing to carry out unlawful acts is within the jurisdiction of Article (15) of the Cybercrime Law.

In fact, this interpretation contradicts the text of Article (164) of the Penal Code, which states that a gathering is considered illegal if it was intended to commit a crime or disturb public safety. Likewise, the public prosecutor disregarded the text of Article 161 of the Penal Code about encouraging others verbally or in writing to commit unlawful acts, as per Article (159) of the same law to determine what unlawful acts are intentional under Article (161). Punishable are actions directed against the Kingdom's constitution

include revolution, sabotage, and overthrowing the existing government through the use of force, violence, sabotage or destroying government property.

The summons to strike and join a peaceful demonstration is an inalienable human right guaranteed by the Jordanian constitution and by international covenants and agreements to which Jordan is a signatory and published in the Official Gazette which has become an integral part of the country's legal system which calls for Jordan's and its institutions commitment to recognize the right of people to enjoy these rights and deal with those who persist that those practices are criminal and unlawful, and punishable.

International law seeks to enhance respect for human rights, and it is not possible to talk about fulfilling one category of rights by itself, nor protecting any human right without ensuring respect for the right to freedom of opinion and expression and the right to peaceful assembly, within the principle of compatibility and indivisibility of human rights. Article 20 of the Universal Declaration of Human Rights states that "Everyone has the right to freedom of peaceful assembly and association". Article 21 of the Covenant on Civil and Political Rights also guarantees the right to peaceful assembly. These freedoms "are all guaranteed within the Law".

Sixth: The allegation of an offense by inciting hatred

The judge considered that the phrase calling for “an alliance with the downtrodden classes,” mentioned in the notice constituted a hate speech and is subject to the limitations of Article (467) of the Penal Code.

The criminal law in Jordan has established that hate speech is aimed at human beings either on the basis of religion, race, on a regional basis, or gender, and therefore the phrase in the statement calling for an alliance with the oppressed classes does not constitute a hate speech because it does not advocate discrimination on any of the abovementioned grounds.

Seventh: The Public Prosecution’s lack of jurisdiction to stop the teachers union

The authority to suspend corporate bodies from work as a precautionary measure is included in Chapter Two of the Criminal Code, which is the chapter entitled "Criminal Provisions". The inclusion of these provisions in the Criminal Code based on the fact that they are a form of criminal provisions indicates the lack of authority of the Public Prosecution Office to issue such provisions as the Prosecution. In practice, this means that issuing such judgments, whether they are original or discretionary penalties, or precautionary measures should be assigned to the case after considering the case is heard in public hearings and after all parties

had the opportunity to present their claims, defenses, evidences and pleadings.

From the foregoing it appears that the public prosecutor's decision to dissolve the union falls outside their jurisdiction, which constitutes a serious violation in this lawsuit and an assault on the terms of reference.

Eighth: Arresting Union Council members

On 07/23/2020, the Amman Public Prosecutor issued his decision to issue a writ of habeas corpus against the democratically elected members of the Teachers Union Council, which consisted of thirteen (13) teachers. On 7/25/2020, all members of the Syndicate Council were detained by the security services. Some of them were stalked while they were leaving their homes, and some had their house broken into and arrested in front of their family member. They appeared before the public prosecutor, who asked them about the crimes that they were accused of and then quickly arrested them as a precautionary measure without justifying their arrests under the provisions of Article (114) of The Jordanian Code of Criminal Procedure which specifies the reasons and justifications for the arrest, foremost among which is ensuring that evidence is not tampered with, ensuring that the accused do not escape punishment, and ensuring that they do not flee the country,

and ensuring that the victims remain calm. In the case of the Teachers Union none of this has been achieved. Having arrested them as a precaution goes against the basic rules of criminal justice and the constitutional, legal and universal principles: “The accused is innocent until proven guilty” and “the original presumption of innocence”.

The arrest of the members of the Teachers Union will continue until the end of the maximum period allowed for the arrest of the accused for misdemeanor offenses –similar to the offenses assigned to the defendants- which is a full month under the provision of Article 114, paragraph 2, of the code of Criminal Procedure. All attempts by the defense team and human rights organizations that have made several requests for the release of the defendants before the thirty-day expiration period, which is the maximum allowed for a misdemeanor arrest, have been unsuccessful.

At the beginning of August of the last year 2020, the case was transferred from the Attorney General to the Magistrate's Criminal Judge in Amman, where the criminal case was registered with number (10744/2020) and the court continued to hear the case from that date until 12/31/2020 when it issued the final judgment in the case, when it ruled to dismantle the Teachers Union and convict all the defendants of all crimes attributed to them and

punish them for each offense separately, then it imposed the most severe punishment to each of them, which is imprisonment for a period of one year, and fees are calculated during the period of detention.

The deprivation of personal freedom, although justified in certain cases, carries a risk of directly affecting human dignity. Therefore, it was more appropriate for the judicial authorities to take into account the two essential criteria for detention measures, namely the legality of this detention and the length of imprisonment.

The measures issued by the Public Prosecution which affected the members of the Union Council and led to their arrest for a full month without any proof or justifiable reason.

These procedures are inconsistent with the internationally recognized basic guarantee to self-defense (presumption of innocence) under the provisions of paragraph (2) of Article (14) of the International Covenant on Civil and Political Rights, to which Jordan is a signatory and thus became part of the binding legal system and the duty of respect as per the aforementioned paragraph:

(By law, it is the right of every person accused of committing any crime to be considered innocent until proven guilty).

The right of a person to be presumed innocent until proven guilty is a fundamental right according to the competent court under fair trial procedures and after having secured all the necessary guarantees for defense. The presumption of innocence is a fundamental guarantee to protect human rights, and as such, all accused persons shall be treated as being innocent. The accused is considered innocent until proven guilty and the suspicion shall be interpreted in favor of the accused, and all authorities shall refrain from pre-sentencing before the outcome of the court.

Ninth: Failure to respect fair trials in litigation procedures

After the defense team's evidence was presented, the union representative and the representative of the members of the Union Council submitted a written memorandum in which they asked for a group witnesses for the defense to attend as expert witnesses, but the court rejected said request.

The court's refusal to grant permission is inconsistent with Clause (e) of Paragraph (3) of Article (14) of the International Covenant on Civil and Political Rights, which states the following:

(Every person accused of a crime shall enjoy, on full equal terms, the following guarantees during the court hearings:

A/.....

B/....

C/....

D/....

E/ That the witnesses for the prosecution are interviewed in person or through others and obtain approval to summon defense witnesses under the same conditions applied to the witnesses for the prosecution).

Throughout the trial hearings, the court spared no effort in restricting the defense team, and this was clearly evidenced when the Public Prosecution ended presenting its evidence and it was the defense's turn to present his evidence, where they submitted a written memorandum containing a number of requests, including providing written documents, hearing witness testimonies, and summoning a group of experts a few days before the outbreak of the pandemic. During an interview with a satellite TV station, the vice president of the Teachers Union clearly expressed the union's position of not wanting to call for any sit-in or strike like it happened

in 2019, in the interest of the Union and the interest of students, but while the court allowed written evidence to be submitted, it refused to call witnesses and experts in a frantic endeavor to close the case in an improvised and arbitrary manner, which deprived the defendants of their right to a basic defense by impairing their freedom to present evidence, striking the court with the universal principles governing fair trial guarantees that are basically based on the principle of freedom of evidence.

Tenth: Dismantling the teachers union

On 07/23/2020, the Public Prosecutor issued a decision to suspend the Teachers Syndicate from working for a period of two years based his decision and the provisions of Articles 5/28, 36 and 38 of the Jordanian Penal Code. At the beginning of August of the last year (2020), the case was transferred from the Attorney General to the Magistrate's Criminal Judge in Amman, where the criminal case was registered with number (10744/2020) and the court continued to hear the case from that date until it issued, on 12/31/2020, its final judgment when it ruled to dissolve the teachers union.

The Public Prosecutor's office and later on, the court, violated the decision of the Jordanian Court of Cassation which is the highest statutory judicial body in Jordan - when it ruled that international agreements and conventions that met all constitutional requirements such as the aforementioned covenant - which prevail

over local laws. According to Articles (36) and (37) of the Penal Code, in view of the incompatibility of these two articles with Article 22 of the International Covenant on Civil and Political Rights, which obliges the public prosecution and the court to respect the provisions of the said covenant in line with the Jordanian Court of Cassation that states that international conventions and covenants override domestic laws and the need to being enforced and giving them priority in case they are incompatible with local laws ((kindly see the ruling of the General Authority of the Court of Cassation in its legal capacity No. (2353/2007)).

Likewise, the Public Prosecution's decision to suspend Union operations for a period of two years, and the court's ruling to dissolve the union contravened the text of Article (2/16) of the Jordanian constitution, which stipulates the following:

(Jordanians have the right to form associations, trade unions, and political parties, provided that their goals are legitimate, their means are peaceful, and have regulations that do not violate the provisions of the constitution).

Likewise, the court and the Public Prosecution violated the text of Article (128/1) of the Jordanian constitution, which states the following:

(Laws issued under this constitution to regulate rights and freedoms shall not affect these rights or affect their fundamentals).

Consequently, the Public Prosecution's decision to suspend the Union from operating according to Article (36) of the Penal Code, and the court's ruling to dismantle the Union under the provisions of Article (37) of the same law - and with an emphasis on the nullity of this ruling - is an illegal interference in the work of the Jordanian Teachers Union as an independent trade union, and damages the trade union's organization that is basically related to public rights and freedoms that are protected by international charters and agreements, including the aforementioned covenant and the 1948 International Convention on Freedom of Association and Protection of the Right to Organize whose Article (11) states the following:

(Each member of the International Labor Organization undertakes that this agreement shall enforce this convention by taking all necessary and appropriate measures to ensure the empowerment of workers).

The procedures of the Public Prosecution and the decisions of the Magistrate's Court are also inconsistent with the provisions of Paragraph (2) of Article (8) of said agreement, which states the following:

(Neither national law nor the way it is applied shall override the guarantees stipulated in this agreement).

According to the international standard, although the right to form associations and unions enjoys legal protection like all other rights and freedoms, it is not an absolute right. Rather, countries may establish some controls that are specifically defined by international human rights law without further caveats.

Article 29 of the Universal Declaration of Human Rights stipulates that these controls must be ratified:

- By law,
- If they are justified for protecting the rights of others or imposed by the requirements of Public Order and the well-being of all in a democratic system.⁸ .

According to the second paragraph of Article 22 of the International Covenant on Civil and Political Rights restrictions may be placed on this right only:

- By law,
- And they constitute necessary measures in a democratic society,

⁸ Article 29 of the Declaration states: 1. ... In the exercise of his or her rights and Freedoms, any individual shall be subject only to such restrictions as prescribed by law, with the sole purpose of ensuring the due recognition and respect of the rights and freedoms of others and the unbiased fulfilment of the requirements of dignity and public order.

2. In no case may these rights be applied in contradiction to the purposes and principles of the United Nations".

- To maintain national security, public safety, public order, protect public health or decency or protect the rights and freedoms of others.

Nevertheless, according to said Article 22 of the International Covenant on Civil and Political Rights, members of the armed forces and police may be subjected to legal restrictions on exercising this right. In addition, according to Article 8, Paragraph 2 of the International Covenant on Economic, Social and Cultural Rights, members of the armed forces, police officers, or government department employees may be subjected to legal restrictions for exercising those rights related to the right to association and the right to strike. These restrictions should be interpreted with a narrow scope and as a per needed basis so that it does not lead to depriving anyone of their basic freedoms, especially the right to organize and the right to strike, and does not damage the foundations of democracy.

More specifically, Article 8 of the International Covenant on Economic, Social and Cultural Rights states that signatory countries parties undertake to guarantee the right of everyone to form trade unions in association with others and to join the trade union of his/her choice. "The exercise of this right shall not be subject to any restrictions other than those stipulated by law and those measures necessary in a democratic society to maintain

national security or public order, or to protect the rights and freedoms of others".

The government severely restricted the right to freedom of association, and unlawfully interfered with the work of the Jordanian Teachers Union as an independent trade union.⁹

The **United Nations experts** considered that "closing the Union is one of the most severe types of restrictions imposed on freedom of association, and it can only be justified in very exceptional cases and It must be provided by law, have a legitimate aim and be proportionate and necessary in a democratic society. This decision shall not be for the legitimate interests of the state".¹⁰

It is a fact that the Hashemite Kingdom of Jordan joined the International Labor Organization in 1956, and that in 1999 this organization issued a binding declaration in the name of the International Labor Organization Declaration of Rights and Principles at Work whereby it obligated all member states of the organization to respect the eight basic conventions. Among them is the International Agreement on Freedom of Association and Protection of the Right to Organize, which leads us to confirm that

⁹ [The Jordanian : The Commission on Human Rights expresses serious concerns at the closure of the Trade Union by the authorities](#)

¹⁰ [The United Nations High Commissioner for Human | Rights : Experts of the United Nations demand the release of Union Officials and lifting , the banning orders Publishers](#)

the decisions of the Public Prosecution and the ruling of the Amman Penal Court which dismantled the Union violated Jordan's international obligations.

According to the established laws and jurisprudence, the Magistrate's Court erred in its decision dissolve the Jordanian Teachers Union without regard to the administrative legality, which considers trade unions to be professional organizations that run public activities that benefit large groups and segments of society, and as such, carry many of the burdens entrusted to the government, thus making them free of the common law immunity that a person enjoys, which was the reason for the decision to dismantle the Union. Institutions belonging to the common law system may not be dissolved except by laws promulgated by the Legislature and by the same constitutional mechanisms that created them (See the Encyclopedia of Administrative Justice - Part One of the year. 2008 - Page 389 and beyond - Dr. Ali Khattar). The Magistrate's Court erred when it decided to dissolve the Jordanian Teachers Union when it ignored in its ruling that the union bases its existence on a law, namely the Teachers Union Law No. (14) of 2011, which makes it a person of public law based on the established jurisprudence and judiciary which created professional unions based on laws issued by parliaments. Common law persons cannot be tried in a judicial judgement, there

was no way to do so except through a legislation that repealed the law that created it.

(See the judgment of the Jordanian Court of Cassation in its legal capacity No. (2766/1998), the judgment of the Jordanian Court of Cassation in its legal capacity No. (416/2016) and the ruling of the General Authority of the Jordanian Supreme Administrative Court No. (62/2017) and see the book of the Administrative Justice and its Supervision of Administration Activities - a comparative study - for the year 1955- Page 194 - Suleiman Al-Tamawi).

“The closure of one of the few independent trade unions in Jordan following a long-running dispute with the government, and for dubious legal reasons, raises serious concerns about the government's respect for the rule of law”, said Michael Page, deputy director of the Human Rights Watch for the Middle East. The lack of transparency and the prohibition of discussing this incident on social media will only reinforce the conclusion that the authorities are violating the rights of citizens.”¹¹

The United Nations experts in the field of human rights have called on Jordan to reverse its decision to close the teachers

¹¹ [Jordan : closes the Teachers Union and arrests Union members](#)

union, on the grounds that "the Jordanian government's actions against the teachers union are a serious violation of the right to freedom of association and expression". And "civil society groups and trade unions must be able to organize and express criticism of government actions."¹²

Eleventh: Convicting all defendants of all the crimes attributed to them

On 12/31/2020, the court issued its final judgment in the case, deciding to dissolve the Teachers Union and punish the members of the Council for each offense separately, then implement the most severe penalty against each one of them, a prison sentence for the period of one year and fees calculated during the period of detention.

Robert Colville, a spokesperson for the Commission on Human Rights, described the arrest of the 13 union's board of directors

¹² The [United Nations High Commission for Human Rights | Jordan : Experts of the United Nations demand the release of Union Officials and lifting , the banning orders Publishers](#)

on criminal charges after they criticized government policies and drew up plans for another possible payroll strike, as "a matter of great concern."¹³

Despite the fact that Jordanian national laws, in particular the Penal Code and the code of Criminal Procedure, do not permit such violations and do not establish a legal basis for such violations, the Public Prosecution and subsequently the Amman Court of Justice have violated the provisions of Article 27 of the 1969 Vienna Convention Law of Treaties which came in force in 1980, which stipulates that:

((It is not permissible for any party to the treaty to invoke the provisions of its internal laws as a justification for failure to implement the treaty)) and therefore the persistence of the Public Prosecution, and then the court, in taking a set of decisions and positions that have led to clear violations of the International Covenant on Civil and Political Rights and the rest of the agreements and charters represents a clear violation of Article (27) of the abovementioned Vienna Convention on the Law of Treaties.

¹³ [Jordan : The Commission on Human Rights expresses serious concerns at the closure of the Trade Union by the authorities](#)

10. Conclusion

The constitution and laws of the Hashemite Kingdom of Jordan establishes the freedom to form trade unions and the freedoms associated with them, but the practice shows restrictions and violations of the freedom of association. It is not possible to talk about freedom of association without enabling communities to effectively exercise all other related rights and freedoms and promote them within the country. Among these rights and freedoms, we mentioned freedom of expression and opinion, freedom to demonstrate and assemble peacefully, and freedom of access to information.

The decision to dismantle the teachers union indicates a fundamental discrepancy between text and practice, and is inconsistent with Jordan's international obligations to protect and guarantee union organization. Also, the dissolution decision does not comply with the principle of proportionality and necessity regarding the alleged violations of the Jordanian government. Therefore, the marginal Kingdom of Jordan must respect international standards related to freedom of association and trade unions rights, not only in legal texts, and recognize the correlation between freedom of association and trade unions and other rights and freedoms.

Every restriction of freedom of association is a restriction of all related rights, especially the freedom of peaceful assembly, the right to expression, the right to access information, the right to political participation and conducting public affairs. It is necessary for the government to ensure the existence of a legal, political, economic and social environment that guarantees an adequate freedom of association, and enables it to operate freely without interference from the authorities.