

In the Name of Allah, the Gracious, the Merciful

**Temporary laws**  
**Between Constitutional Provisions and Political Sins**

**By Attorney: Professor Mohammad Hammouri**

**The full text of the lecture given by**  
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## Temporary Laws

### Between Constitutional Provisions and Political Sins

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**By: Professor Mohammad Hammouri**

On 19/5/990, an Egyptian Court nullified the formation of the National Assembly on the grounds that its members were elected according to a non-constitutional election law. Following the ruling, the executive authority was fully preoccupied identifying its consequences and the legal means that ought to be adopted in order to organize them. A number of jurists supporting the government immediately gave their legal opinions that put the government's mind at rest in this respect. However, keen to employ an infallible legal means, the President sent one unified letter to three jurists who did not know that the letter was being sent to the three of them. Each of these jurists believed himself to be the only one to have been requested to provide his legal opinion. One of those jurists belongs to the opposition, while the second one was from the government's party, and the third one was known for his impartiality. As the three jurists gave their legal opinions, the government adopted that of the majority. It was one of those jurists, a jurist ranked among the opposition, who told me this incident and assured me of the government's insistence to handle such sensitive legal issues with such a transparency as to prevent any potential complications.

I have remembered this special incident on the evening of Tuesday 13/05/2003, as the Jordanian Television was broadcasting a debate between his Excellency the Prime Minister and a number of political leaders among whom was the Chairman of the Lawyers Bar Association, Mr. Hussein Mujalli. The debate was watched by the Jordanian people who followed the dialogue and the discussions which took place throughout it. As he replied to a comment regarding the non-constitutionality of temporary laws, his Excellency stressed the fact that the making of these laws was legitimate under the Constitution, hereby defying the statement that "the making of temporary laws by the government may be non-constitutional". In my turn, being well acquainted with the Prime Minister to whom I have been a colleague at various positions, I may say that he must have been assured by councilors that the government would not be contradicting the Constitution by making temporary laws. The Prime Minister is not required to be knowledgeable in law or any other discipline before he can hold his post, but on the other hand, he has the authority and capacity to employ the best expertise in each field, in order to obtain the best legal opinions regarding the domain in which the government

wishes to legislate. Within this perspective, I believe that the Prime Minister is convinced of what he said and that he is fully confident in the soundness of the legal opinions he has been given, whereby the making of temporary laws bears no violation to the Constitution, especially that he is known for his strictness and certain knowledge that the government ought to abide by the legal system of the State, beginning with the Constitution that stands at the top of the pyramid in this system. Additionally, I believe that His Excellency cannot tolerate or accept to have his record of achievements marked with a violation to the Constitution, and therefore could not possibly have doubted that his government was violating the Constitution by making temporary laws.

In the light of the above, I have deemed it to be my duty as a committed jurist, to study the constitutionality of the temporary laws made by the government, starting with the dissolution of the parliament by the government on 16/6/2001, and the postponement of the elections on 24/7/2001 which resulted in the suspension of all parliamentary life in Jordan for two years now, before it was decided to hold the elections on 17/06/2003. This study required me to carry out a comparison between some constitutions of the parliamentary system adopted by the Jordanian Constitution, as well as to discuss the relevant constitutional texts.

**On this issue, I say that:**

1. Despite the incurred amendments, the Jordanian Constitution remains one of the most mature constitutions of the Arab Countries, for it is based in the parliamentary system whose foundations have been totally shaped over two centuries ago. Its provisions have been drawn from the Belgian Constitution of 1921, following the model of the Egyptian Constitution of 1923. It is worth noting that the first Belgian Constitution was made in 1831, and re-written in 1899, and edited in 1921, to produce the version we have used to follow the model of the Egyptian Constitution. The Belgian Constitution of 1831 had been based on the English Constitution that is in the majority of its provisions, a customary, non-written Constitution, and whose main features were at the basis of the development of the parliamentary system in the world during the reign of George III (1760-1820). It is easy for an expert in the research methodology of legal studies to track every rule of this parliamentary system down to its origins, revealing the period of its birth and the way and circumstances in which it emerged, and how it was recurrently applied, but the fear of losing the focus on our study of temporary laws to the dealing with historical origins would prompt us to contend ourselves with saying that in the parliamentary system, the Constitution is a complete structure at the level of the foundations, basic elements and features; otherwise, the Constitution would not belong to the

parliamentary system. Therefore, immature amendments and changes in the constitutional provisions which do not take into consideration the foundations, basic elements and features of the parliamentary system, lead to the establishment of a 'hybrid' system of no identity, a system that is neither parliamentary nor presidential, but that has been especially designed to serve particular wishes and interests that are in total contradiction with the spirit of contemporary democracies which genuine constitutional systems are keen to establish.

2. Praise be to God that the amendments made to the provisions of the Jordanian Constitution did not abolish its foundations, basic elements and features, as the original unchanged provisions remain able to prevail over the bad ones, and able to reduce them to their proper size, if they are understood in their actual significance, in accordance with the reality of their application and the historical origins of similar texts of the constitutions of the parliamentary system.
3. According to the texts of the Jordanian Constitution, the Legislative Authority is generally in charge of legislation. However, given the administrative necessities that require quick procedures, the Jordanian Constitution has exceptionally given the Executive Authority (for more clarity, we shall use the term 'government' instead of 'Executive Authority'), a provisional and limited authority to legislate. This exceptional and temporary authority has resulted in two aspects: firstly, the issuing of independent regulations by virtue of the constitutional clauses 45, 114 and 120 only. That is to say, the setting of the powers of the Prime Minister and Council of Ministers in respect of the running of the affairs of the country, and the monitoring of the allotment and spending of public funds and the organization of the government's deposits, as well as the regulations relating to the administrative divisions in the kingdom and the organization of the civil service. Within these restricted, delimited and exceptional domains, the task of legislation is entrusted to the government who may thus issue regulations, and taken away from the party in which it was originally vested, that is the Legislative Authority who may no longer legislate in the aforementioned domains. As for the remainder of the regulations made by the government, they are merely executive regulations detailing the laws issued by the Legislative Authority, who holds the power to legislate provided that it does not contradict the Constitution. Secondly, the issuing of temporary laws, according to the conditions set out by the Constitution.

4. Given the exceptional nature of the authority provided to the government to enact temporary laws, and the danger this exceptional power constitutes on rights and liberties, texts have been established in the constitutions of the parliamentary system that make the balance between the need of the government to face exceptional circumstances that may only be dealt with by means of legislative rules that have the force of law in the form of temporary laws, and a parliament who holds the general power to make such rules, but who is currently not able to legislate being at a legislative interim period. This balance is ensured by strict conditions and restrictions that were imposed on the government who has to observe them when making the aforementioned rules as temporary laws, under the relevant constitutional texts without which there would be no question of the principle of the separation of powers, or a constitution that belongs to the parliamentary system, or any democracy which that system aims to attain. To clarify the significance of the aforementioned balance in this respect, it is enough to quote and examine the texts that govern temporary laws in four constitutions which belong, just like our constitution, to the historically English-originated parliamentary system:

a. Article 123 of the Indian Constitution made on 26/11/1949 stipulates that:

“(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for taking immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing a resolution from the second House”.

b. Article 64 of the Constitution that was in force in Libya during the royal reign, issued on 7/10/1951 stipulates :

“If, when Parliament is not in session, exceptional circumstances arise which necessitate urgent measures, the King may issue decrees in respect thereof which shall have the force of law provided that they are not contrary to the provisions of this Constitution. Such decrees must be submitted to the Parliament and if they are not

submitted or approved by either of the Houses they shall cease to have the force of law.”

- c. Article 41 of the Egyptian constitution issued on 19/4/1923 stipulates that:

“If in between parliamentary sessions, circumstances arise that require immediate measures which admit of no delay, the King may issue decrees in respect thereof which shall have the force of law provided that they are not contrary to the provisions of the Constitution. The parliament should be invited to hold an extraordinary session, and these decrees must be placed before said parliament at its first session and, if they are not placed before it or not approved by either of the Houses they shall cease to have the force of law.”

- d. Article 54 of the Japanese constitution of 3/11/1963 stipulates that:

“(1) When the House of Representatives is dissolved, there must be a general election for a new House within forty days from the date of dissolution, and the Diet must be convoked within the thirty days following the date of the election.

(2) When the House of Representatives is dissolved, the meetings of the House of Councilors (Senators) is suspended at the same time.

(3) However, the Cabinet may in time of national emergency convoke the House of Councilors in emergency session.

(4) Due to the temporary nature of the Measures taken at such session as mentioned in the preceding paragraph such measures shall become null and void unless they are approved by the House of Representatives within a period of ten days after the opening of the next session of the Diet.

It is noticeable that the constitutions of the previous parliamentary system have set, each in its own way, rigorous restrictions for the making of what is known to us as temporary laws.

On one hand, the Indian, Libyan and Egyptian constitutions do not grant the government the power to enact temporary laws, except in the cases where the parliament is not sitting, that is between the parliamentary sessions. In this respect, during legislative interim periods, that is between the dissolution of the House of representatives and the election of a new one, the government is not permitted to make temporary laws so as not to

be able to use the period of dissolution to make such exceptional laws, especially that the constitutions known do not foresee a case of absence or suspension of parliamentary life. As for the Japanese Constitution, it has given the power to make provisional laws to the House of Councilors (the Notables) and not to the government. Additionally, this power may not be put to practice except in one case, i.e., during the legislative interim period, that is during the 70-day maximum period that begins with the dissolution of the House of Representatives. Whereas if the House of Representatives is not dissolved, no temporary laws can be issued because the said House may be convoked, , even if it is not at a sitting period, and make ordinary laws that deal with the situation of emergency.

On the other hand, it is noticeable that in the four previous constitutions, the issuance of temporary laws is conditional upon these laws being necessary to undertake emergency measures (the Indian Constitution), or to face an exceptional situation that has emerged and requires necessary measures which admit of no delay (the Egyptian Constitution), or if it is necessary in the interest of the State (the Japanese Constitution). What the cases of the making of temporary laws have in common is the exceptional circumstances to be faced which admit of no delay.

Thirdly, it is noticeable that, under the previous constitutions, the temporary laws must be placed before the parliament at its first session, not only for informative purposes, but also for the parliament to decide the fate of these laws that were not made by the representatives of the people in the House of Deputies. Therefore, the constitutions known stipulate that these laws must be considered void and null, if they are not placed before the House of Deputies at its first session. The Indian Constitution has set a period of six weeks, while the Japanese Constitution set a period of ten days, starting on the date of the first session of the House of Deputies, and during which the temporary laws must be placed before the House, or else they shall be considered void and null. In any case, the four constitutions grant the parliament who is generally in charge of legislation the authority not to approve the enacted temporary laws, thus rendering them void and null.

Thus, the constitutions of the parliamentary system, represented by the aforementioned four constitutions, seem keen to grant the government an exceptional authority that enables it to deal with any emergency circumstances the State might face, by issuing temporary laws. In the same time, they are keen to tie that exceptional authority with a number of conditions and restrictions to keep its use conditional upon urgent need, in order for the government not to be able to abuse the rights and the liberties or to usurp the authority of the parliament or the National Assembly.

5. Before it was amended, Article 94/1 of the Jordanian Constitution was more strict and rigorous than at present, as it stipulated the following:

“In cases where the National Assembly is not sitting, the Council of Ministers has, with the approval of the King, the power to issue temporary laws covering the emergencies detailed below:

- a- General catastrophes
- b- A state of war and emergencies
- c- The need to meet expenses which admit of no delay

These temporary laws that must not contradict the Constitution shall have the force of law provided that they are placed before the Assembly at the beginning of its next session. In the event of the rejection of such temporary laws, the Council of Ministers shall, with the approval of the King, immediately declare their nullity, and from the date of such declaration these temporary laws shall cease to have the force of law provided that such nullity shall not affect any contracts or acquired rights.”

It is noticeable that the previous article restricts the making of temporary laws by the government to three cases strictly, as under sections, a, b and c of the said article. These cases are emergency and exceptional ones, and the aforementioned article requires the relevant temporary laws to be placed before the National Assembly at its first session to decide upon them. It also restricts the cases where temporary laws may be enacted to the periods during which parliament cannot sit. Under the aforementioned text, the government may not make temporary laws while the House of Deputies is dissolved in preparation for the elections, so the government cannot take advantage of the House’s absence in the making of these laws.

However, the aforementioned article, that is Article 94/1, was amended in 1958 by virtue of the constitutional amendment published on page 518 of No 1380 of the Official Gazette issued on 4/5/1958. Its text has become the following:

**“In cases where the National Assembly is not sitting or is dissolved, the Council of Ministers has, with the approval of the King, the authority to issue temporary laws covering matters which require necessary measures that admit of no delay [...] provided that they are placed before the Assembly at the beginning of its next session, and**

**the Assembly may approve or amend such laws. In the event of the rejection of such temporary laws, the Council of Ministers shall, with the approval of the King, immediately declare their nullity, and from the date of such declaration these provisional laws shall cease to have the force of law provided that such nullity shall not affect any contracts or acquired rights.”**

It is noticeable that the amendment added the word “dissolved” to the original text in order to give the government the authority to enact temporary laws during the period that extends from the date of the dissolution of the Assembly until the holding of the elections. However, the Jordanian Constitution did not foresee that at any time Jordan might go through a period where elections would be postponed and parliamentary life suspended. Furthermore, the amendment of Article 94/1 cancelled the restriction of the exceptional circumstances to three cases, and replaced it with a more encompassing expression that includes the matters that may require necessary measures which admit of no delay. However, despite the expansion incurred by the amendment of the text of Article 94/1, the circumstances, conditions and ties imposed to the government’s authority to make temporary laws remained within the boundaries of the parliamentary system, as we have seen in the examples of the four constitutions mentioned above, and the aforementioned exceptional authority remained valid only within the limits of necessity, that is as required to undertake the necessary measures which admit of no delay. Despite the maturity of the new text and the fact that it is rooted in the parliamentary system, the error was made in the way it was applied, and the weak control over the government, or the lack thereof.

According to this article, that is Article 94/1, the government has the right to make temporary laws when the following two conditions are met:

First condition: This condition relates to the timing and requires that the National Assembly be not in session or be dissolved. The term ‘in session’ is used here to refer to the periods between the sessions, while the term ‘dissolved’ means the actual or legal non-existence of the National Assembly, thus referring to the period of time extending between the dissolution of the Assembly and the holding of elections of the new parliament. There was no dispute among politicians or jurists about the significance of this condition that relates to the timing of the legislation of the temporary laws.

Second condition: This condition is circumstantial, objective and meant to provide a remedy for the situation of necessity; it relates to emerging matters that would need to be dealt with. In other words, matters that may emerge while the Assembly is not sitting or is dissolved and require necessary measures which admit of no delay. Despite the clearness of the words and terms used in the Constitution to specify the matters that would require necessary measures which admit of no delay, political fancies and desired legal opinions that are made to serve them or that reflect them disregarded these words and terms of the Constitution, and cut them off from their parliamentary roots as they are applied so that the acts of the government in this respect become totally different from what the parliamentary concepts of the constitutional texts we have used in our comparison imply.

This happened as a result of a deliberate or remunerated, or at best unforgivable mistake that was made under previous governments. This mistake was repeatedly reiterated as the successive governments took over, until the present one who took the expansion of the practice of temporary laws' making which is originally a mistake, to be a rule, thus believing itself to be generally, and not exceptionally, in charge of legislation.

The matters requiring necessary measures which admit of no delay must not be ordinary ones. It is true that the amendment made to Article 94/1 in 1958 has cancelled the restriction of the emergencies to the three cases consisting in catastrophes, war and emergencies and expenses which admit of no delay, but it has in the same time replaced them with expressions that make the circumstances that require the making of temporary laws of extremely exceptional nature, thus drawing the jurists' attention to Article 13/1 of the Constitution, where examples of the 'necessary' are given to be such as cases of war, fire, floods, starvation, earthquakes, epidemics... etc. We have never been through such circumstances since the dissolution of parliament on 16/6/2001, thank God. On the other hand, legal studies books in general, and Jordanian and comparative judicial provisions in particular provide plenty of examples of what is considered to be a necessity which admits of no delay, and that do not differ in kind or in nature or urgency from those mentioned in the aforementioned Article 13/1, and that were observed by the governments of the parliamentary system by virtue of similar texts. However, we do not need to go through these books and judicial provisions; it is enough to look carefully at the provisional laws made by our government to know

how many of these laws have been made to deal with emergencies which admit of no delay, even if we choose to adopt the linguistic, and not the legal meaning of the expression ‘emergency [measures] which admit of no delay’.

6. I have gathered 160 provisional laws which the government made since it has dissolved the thirteenth House of Deputies on 16/6/2001 until the issuing of the official gazette number containing Provisional Law No 160. Prior to the dissolution of the House of Deputies, the Jordanian State was not a barren desert with no legislations to organize life in it. There was therefore no need for this huge number of temporary laws, each one of which the government believed to have made following the dissolution of the parliament for emergency reasons which admit of no delay. Before giving examples of these laws and how they were affected by the successive amendments, let us mention the following facts:
  - a. The first provisional law ever to be made by the government was the ‘Law of General Election to the House of Deputies’ No 34 of 2001 issued on 19/07/2001, and the last one, according to the information I have gathered, is the ‘Law No 32 of 2003 amending the Law on Food Safety’ issued on 16/4/2003. Thus, the period of time extending between the issuance of the first temporary law and that of the last one (according to the information I gathered), and during which 160 temporary laws were made, is 21 months.
  - b. Dividing 160, that is the number of the temporary laws known, by 21, which is the relevant number of months, we realize that the average amount of time used by the government to make temporary laws is about 8 laws per month or 2 a week. Since the Council of Ministers normally meets twice a week, the average is revealed to be one law in each session of the Council of Ministers over the last 21 months, should the Council have been meeting up twice in every week in these 21 months.

We wonder here, how many hours on average is needed for the discussion of each law in every session of the Council of Ministers? Furthermore, if many of these laws require executive regulations that need to be discussed and issued by the Council, how much time does the Council of Ministers allocate in each one of its sessions to the internal and external affairs of the State.

c. During their ordinary sessions, and also their extraordinary ones- despite the length of the latter- the last three Houses of Deputies made the following laws:

- The 11th House of Deputies made 146 laws during its term of 4 years.
- The 12<sup>th</sup> House of Deputies made 99 laws during its term of 4 years.
- The 13<sup>th</sup> House of Deputies made 190 laws during its term of 4 years.

Thus, the total number of laws made by the last three parliaments in 12 years is 435 laws, and the average of the number of laws made by the legislative authority is 30 laws a year, that is 3 laws per month.

d. Given that Article 94/1 of the Constitution requires the submission of provisional laws to the House or Chamber of Deputies at its first session, the average of the number of laws made by the three Houses of Deputies in the last 12 years means that if the coming House of Deputies allocates its whole four-year term to the discussion of the provisional laws made by the government, without being preoccupied by any other law which the circumstances of the Jordanian State may call for, the House would look at 140 laws, and 20 laws remain to be considered by the Houses next to the coming one, provided that the government does not continue to make temporary laws after 16/04/2003 or else the successive House of Deputies would need more years to deal with the said temporary laws.

In fact, the placement of temporary laws before the House of Deputies at its first session is not required merely for informative purposes, but also for the House to decide upon these laws, as we have seen, for they are exceptional laws made by governments that do not have the legislative power to issue them, if exceptional circumstances did not exist. Consequently, only may remain of these laws those deemed convenient by the party in which is vested the power of legislation in general, that is the National Assembly, at its first session.

7. The 160 temporary laws issued by the government hold the attention of jurists and arouse in them many questions that make it hard not to regard these laws but as a black mark on the records of the Jordanian legislation.

On the one hand, many temporary laws enacted by the government have included a unified text stipulating that “no provision of any other legislation may be applied should its application incur a contradiction with the terms of this law”, that is the new temporary law. This has been the case with a high percentage of the temporary laws known, as for example in the following cases:

- The Law on Higher Education, Temporary Law No 41 of 2001, Article 15.
- The Private Universities Law, Temporary Law No 34 of 2001, Article 28/a.
- Amended Law on Insurance Practice Monitoring, Temporary Law No 76 of 2001, Article 109/b.
- The Law on Public Funds Exemption, Temporary Law No 41 of 2002, Article 4/b.
- The Law on Road Transportation of Goods, Temporary Law No 46 of 2002, Article No 37.
- The Law on Jordanian Naval authority, Temporary Law No 47 of 2002, Article 21.
- The Law on Monetary Notes, Temporary Law No 67 of 2002, Article 122/b.

To the best of my knowledge, the aforementioned unified text which is, unique in the legal systems of our civilized world, implies that these temporary laws that were made in Jordan have implicitly cancelled, either totally or partially, an endless number of texts of indefinite laws that have been in force since the time of the Emirate till now, for these temporary laws do not clarify which laws are affected by the amendments, and which provisions in these laws have been made void and null, and which ones have remained valid. Therefore, judges, lawyers and legal consultants in general who wish to be aware of the nullified texts or the valid ones that govern the cases they are dealing with need to do a comparative study of a huge number of texts and laws. Furthermore, the results of this research will definitely be controversial and will have serious results affecting judicial proceedings as well as local or international consultations; they will also be problematic for professors in charge of teaching law. We do not know in the interest of which party it would be to cause this disturbance and non-stability, and to abuse the legal system in Jordan!

On the other hand, under Article 94/1 of the Constitution, the House of Deputies may **“approve or amend such laws. In the event of the rejection of such provisional laws, the Council of Ministers shall, with the approval of the King, immediately declare their nullity, and from the date of such declaration these provisional laws shall cease to have force of law provided that such nullity shall not affect any contracts or acquired rights”.**

We wonder what the situation would be like in Jordan if the next House of Deputies used the authorities vested in it and refused to approve all or most or some of these laws, and what would become of the provisions that were implicitly abolished, as we have mentioned above. Would this not result in shaking and disturbing the legal system, and even the social system? As for the past and for the refusal of the next House of Deputies to approve the aforementioned temporary laws that are consequently declared void and null, does it not allow the continuation of the contracts concluded under these laws, and that they remain valid and financially binding? And does it not spare the rights acquired by virtue of these laws and protected by them? If it was merely a question regarding a few temporary laws made to face emergency and exceptional circumstances as foreseen by the makers of the Jordanian Constitution and those of Article 94/1, and by the Constitutions of the parliamentary system, it would have been easy for the legal and social system in the state to cope with the invalidation of those few temporary laws and the continuation of the contracts concluded thereunder, as well as with any consequential financial issues or acquired rights that would have ensued therefrom. But we are looking at an unprecedented number of temporary laws made in a short period of time that is in its turn unprecedented in the history of Jordanian governments, and thus there is a question of a certain flaw and an extreme harm done to the general welfare.

On a third level, to go into the subjects of 160 temporary laws and to discuss their content would fill up entire volumes. We shall therefore merely discuss the titles of a number of laws while wondering what that urgent necessity could be that required measures which admit of no delay to be undertaken, and consequently the issuing of the temporary laws made by the government concerning: public Jordanian universities, youth care, education and teaching, the Higher Council for Youth, the Housing Foundation, the public funds exemption, Higher Education, Monetary Notes, Road Transportation of Goods, the Naval authority, the Veterinarians Syndicate, the Personal Status Law (known as Divorce Law), the Companies Law, the Code of Procedure, labour, insurance, execution, the Jordanian Orphans Fund, radio and television, and passports...etc., which we give as examples of the aforementioned

temporary laws that were made under circumstances that do not meet the conditions of urgent necessity or need to undertake necessary measures which admit of no delay.

On a fourth level, does a certain law not require careful thinking, followed by a mature formulation that accounts for all sides of the issue, before that law is issued? And if so, have the issued laws been dealt with appropriately? Let us consider some examples in their form:

- a- On 28/8/2001, the government issued Temporary Law No 42 of 2001 on Jordanian Public Universities; on 1/7/2002 was issued an Amending Law No 34 of 2002 relating to the aforementioned law, published in the Official Gazette, and on 01/12/2002, an Amending Law No 69 of 2002 was issued, relating to the same.
- b- On 17/2/2002 was issued Temporary Law No 4 of 2002 amending the Law on Companies'; on 16/07/2002 was issued Amending Law No 40 of 2002 relating to the same; on 23/12/2002 was issued Amending Law No 74 of 2002 relating to the same, and on 16/03/2003 was issued Amending Law No 17 of 2003 relating to the same.
- c- On 01/11/2001 was issued Amending Law No 63 of 2001 on Education and Teaching; on 17/02/2002 was issued Temporary Law No 6 of 2002 amending the same, and on 15/8/2002 was issued Temporary Law No 45 of 2002 amending the same.
- d- On 8/10/2001 was issued Temporary Law No 54 of 2001 amending the Criminal Code; on 13/12/2001 was issued Temporary Law No 68 of 2001 amending the same, and on 01/07/2002 was issued Temporary Law No 33 of 2002 amending the same.
- e- A good number of additional laws have also been similarly legislated and amended at speedy pace, such as the laws on private universities, professions, labour, the juristic, criminal and religious procedural laws, and the laws on higher education, public meetings, traffic, transport, taxation, expropriation, municipalities, communications, tourism, roads, ...etc.

If the aforementioned examples of temporary laws assuredly relate to ordinary subjects that are organized by laws which have been in force for years, and if the nature of these subjects does not imply a case of emergency requiring the issuing of temporary laws to make possible the undertaking of measures which admit of no delay, the quickness in which the aforementioned laws have been issued and repeatedly amended

assuredly means that the deliberation needed in legislation, as well as the careful study and mature formulations accounting for every side of the relevant issue, were lacking.

8. If, as we have already mentioned, the subjects of the temporary laws indeed do not meet the criteria of emergency cases and may not possibly require measures which admit of no delay, has the government concluded that the legislations in force in Jordan have become out of date and need to be improved and modernized? If the government believes that, from a juristic point of view, legislation and legislative amendments in the aforementioned subjects are a question of law improvement and modernization that is subject to the principle of convenience, even if it does not subject to that of necessity, then the government should have held the parliamentary elections conformingly the provisions of the Constitution concerning their timing, that is two years ago, for the House of Deputies who is originally the competent authority to take upon itself the convenience task of improvement and modernization known. It should not have dissolved the House and postponed the elections on 24/7/2001 and subsequently suspended parliamentary life for two years until it was decided to hold them on 17/6/2003.

On a second level, we wonder whether the government has not dissolved the House of Deputies and postponed the elections in order to replace the National Assembly for whatever reason, and issue the aforementioned 160 temporary laws. If the answer is positive, knowing that facts leave no room to doubt the actual goal of the government, then the government's claim that it has issued these temporary laws due to the absence of the House of Deputies whose elections were postponed by the government itself is not acceptable. For it is not acceptable that the government commits a constitutional sin by suspending parliamentary life and issuing afterwards that number of temporary laws under the pretext that the parliament is absent, as it is the government itself that caused this absence. To this case applies the rule that governs interpretation in the parliamentary system since it ever started in Britain: **“He who comes to equity must come with clean hands”**.

On a third level, the government does not have the right to seek protection or take cover with the King, by saying that it was the King who dissolved the House of Deputies and who issues orders for the holding of elections to the House of Deputies (Article 34 of the Constitution), and who postpones the holding of the elections, as in paragraph (iv) of Article 73 of the Constitution that stipulates: “the King may postpone the holding of the general elections if a **force majeure** has occurred which the Council of Ministers considers as rendering the holding of elections impossible.”

The reasons why the government does not have the right to seek protection or take cover with the King are the following:

- a. Under Article 40 of the Constitution, for the royal decree to take effect, it must be countersigned by the Prime Minister and the Minister or Ministers concerned and, under Article 49 of the Constitution, “verbal or written orders of the King shall not release the Ministers from their responsibilities”. Additionally, under Article (30) of the Constitution, the King “is immune from any liability and responsibility”. Such rules are considered to be basic in the constitutions of the parliamentary system. And since, under Article 51 of the Constitution, it is not the King, but the Prime Minister and Ministers who shall be collectively responsible before the House of Deputies in respect of the public policy of the State, the King’s decree postponing the elections or dissolving the House of Deputies makes the government alone responsible for that decree. Thus, according to the principle of the inseparability of power and responsibility that is considered to be a key element of every constitution of the parliamentary system as established since 1770 in Britain that is the country of origin of the parliamentary system, the Prime Minister and Ministers who are responsible for their actions in this respect and who may therefore be questioned and held answerable for them before the House of Deputies and the public opinion, have the full right and authority not to countersign the aforementioned decree if they believe, or one of them believes its content to be inappropriate and that they or he will be accountable for it. Not countersigning the decree renders it void and null, for it can only take effect if it is countersigned by them. To back up the above we mention that on 19/12/1955, a royal decree was issued to dissolve the House of Deputies. The decree was signed by the King and countersigned by the Prime Minister, but the Minister of the Interior did not countersign it. This put in question the constitutional legitimacy of this decree, and the matter was thus placed before the High Tribunal that is in charge of the interpretation of the provisions of the Constitution who issued their Explanatory Decree No 1 of 1956 (published on 5/1/1956 on page 1149 of No 1255 of the Official Gazette) as follows:

“Since by holding the executive authority, the Council of Ministers is responsible for the general policy of the State, it must countersign the royal decrees whereby the King exercises the powers vested in him so it can be responsible thereof according to the rules of ministerial responsibility as in the Constitution. Therefore, every royal decree whereby the King exercises one of the authorities vested in him in respect of the general life of the State does not fulfill the constitutional conditions unless, in addition to the King’s signature, it is countersigned by the Prime Minister and the Minister or Ministers concerned.”

Based on the above decree, the House of Deputies was reinstated by virtue of the force of the provisions of the Constitution to resume its duties.

- b. The above stresses the fact that the government alone, and not the King, is responsible for the content of the relevant royal decree, be it in relation to the postponement of the elections or to the dissolution of the House of Deputies, in principle. However, paragraph (iv) of Article 73 makes the postponement of the elections conditional upon a **force majeure** which renders their holding impossible. On the practical level, there is of course no doubt that when the royal decree postponing the elections was issued on 24/7/2001, no force majeure had occurred to prompt the Council of Ministers to consider the holding of the elections impossible. In order to clarify the nature and kind of a force majeure that constitutes an excuse and a legitimate reason to postpone the elections conformingly with paragraph (iv), it is necessary to know how the notion of the postponement of elections entered our constitution through the aforementioned paragraph (iv), and consequently see how its application in 2001 may be considered as irregular within the perspective of the constitutions of the parliamentary system. Until 1973, the Jordanian Constitution did not contain any provision allowing the postponement of the elections. However, in 1973, paragraph (iv) was introduced to it following the occupation of the West Bank by the Israeli enemy, and the expiration of the constitutional period of the ninth parliament despite the extension of its term, and thus the occupation was the force majeure that made necessary the introduction of paragraph (iv) to our constitution. In other terms, the introduction of paragraph (iv) that allows the postponement of the elections for an unspecified period of time was necessary under the pressure of a force majeure that consisted in the impossibility of holding the elections in the West Bank, under the Israeli occupation. This fact is known, or should be known, to every citizen who is interested in the public or the national affairs. To give more details, we say that the elections of the ninth House of Deputies were held on 15/4/1967, and that on 6/6/1967, Israel occupied the West Bank which was part of Jordan at the time. When the four-year term of The House expired, on 18/4/1971, it was extended for two years, which is the maximum period allowed under Article 68/1 of the Constitution. This period expired on 18/4/1973 while the West Bank was still under occupation. It was then resorted to Article 68/2 which stipulates that, if the elections have not taken place by the end of the term of the House, the House shall remain in office until the election of a new House. The ninth House was thus reinstated by virtue of the Constitution and accordingly, on 10/11/1974, it was convened to hold an extraordinary session in which it added a fourth paragraph to Article 73, thus making possible the

postponement of the elections for one calendar year only. It has also added a fifth paragraph to the article known stipulating that “should a force majeure occur during the period of postponement of the elections [...] the King may, upon a decision taken by the Council of Ministers, reinstate and convene the dissolved Chamber for this purpose.” On 23/11/1974, the ninth Chamber was dissolved, and on 17/3/1975, a royal decree was issued postponing the elections for one calendar year. As the situation of occupation had not changed, and as the elections were not held within four months from the end of the year, it was resorted to the aforementioned paragraph (v), (amended in 1984), and the National Assembly was convened to hold an extraordinary session on 4/2/1976, where the already added paragraph (iv) was amended. Conformingly with the aforementioned paragraph that has become part of the Constitution, the one-year deadline for the holding of the elections was cancelled and time restrictions were removed, while the condition for the postponement of the elections became the occurring of a “force majeure” which the Council of Ministers considers as rendering the elections ‘impossible’.

Thus we come to see that the reasons and the situation in view of which paragraph (iv) was introduced to the Constitution are the Israeli occupation of the West Bank which constituted a force majeure rendering the holding of the elections impossible. As the West Bank has ceased to be part of Jordan since 1988, then the application of the aforementioned paragraph (iv) which remained part of the Constitution up till now, regarding the postponement of the elections necessarily requires a force majeure that equals in its intensity and severity the circumstances covered in the aforementioned paragraph (iv), that is the circumstances of occupation.

Given that, God be Praised, since the dissolution of the House of Deputies and the postponement of the elections, Jordan has not been subject to any circumstances which are similar in their intensity and severity to those of the Israeli occupation of the West Bank in 1967 for one to be able to consider them a force majeure that justifies the postponement of the elections, the government’s postponement of the elections may well be considered as a flagrant legal mistake. Additionally, the government’s issuing of this huge number of temporary laws after the postponement of the elections without the existence of any circumstance requiring necessary measures which admit of no delay is another flagrant legal mistake, even more so that the first mistake was made deliberately as a preparation for the second one.

On the moral and social levels, if the government did not know the actual meaning of the constitutional texts, despite the means it has at its disposal to find out what it needs to know, that would be an unforgivable ‘sin’. If it did

know the said meaning, the ‘sins’ committed by the government would equal in number the number of the temporary laws it made.

To sum up the above, if the flagrant mistakes and unforgivable sin, as we have detailed above, have actually been committed, then it is my right as a citizen to ask the following question to be answered by the competent authority:

**Will the next House of Deputies be calling the responsible parties to account in order to prevent future governments from emulating those that preceded it? I will say no more.**

On 15/7/2001, before the government had issued any temporary law, I have published an article in al-Dustur newspaper entitled: “To his Excellency the Prime Minister, in order for us not to contradict the Constitution”. I begged the government in this article, for reasons that I have detailed with a patriotic spirit, not to issue any temporary laws in order not to contradict the Constitution and harm the legal system in Jordan, for only a case of necessity justifies the making of such laws. I have also asked the following question: “who could guarantee that no provisional laws will be issued that serve individual political interests or that are in the interest of some parties and might, should they be declared void and null in the future, leave enacted the benefits of the contracts concluded or the rights acquired thereunder?” But my advice was undermined by the government’s political sins, although I had given it in the interest of the country. It seems that, regardless of their level of patriotism or competence, the people of this country are never heard, while they give their opinions with every good will and in return for nothing; for the political sins of the governments have blinded the eyes, and deafened the ears so they would not see or hear the real meaning on the provisions of the Constitution.