**Questionnaire**

**Prepared by the Special Rapporteur Concerned with the Independence of Judges and Lawyers**

**Question One:**

Statement of whether there exists a body or national mechanism responsible for selecting or appointing or transferring or suspending or terminating the eservices of judges.

What is the name of this body or mechanism?

What are the legal grounds for establishing it?

The Jordanian Constitution (1952) and its amendments adopted implicitly the principle of flexible separation of powers, which entails the independence of the judicial branch of government from the other two powers (legislative, executive). Actually, Article (27) of the Constitution alludes to the independence of the judicial branch of government upon endowing the courts of various types and degree with it,[[1]](#footnote-1) and as an embodiment of the concept of such independence Article (97) affirms definitively the independence of the judges, given that they are the basic axis of the litigation process.[[2]](#footnote-2)

As regards the competent authority to appoint judges, it would be necessary to state initially that Jordan did not adopt the unified judicial system, but rather, the courts are divided into **three types**: special courts, religious courts, regular courts, and hence there are clear distinctions insofar as the quarter that is authorized to manage the affairs of judges whether in terms of appointment or dismissal or promotion.[[3]](#footnote-3)

**First**: **The Quarter competent to manage the affairs of civil judges**:

Article (98) of the Constitution laid down the principle which constitutionally guarantees the independence in the appointment and dismissal of civil courts judges, such through establishing a special commission that assumes responsibility for all the affairs related to the civil judges whose name is the Juridical Council.[[4]](#footnote-4)

**Second**: **The Quarter competent to administer the affairs of religious courts judges**:

The religious courts, based on the stipulation of Article (104) of the Constitution are divided into two categories: religious courts, and the religious sects councils.[[5]](#footnote-5)

As regards the competent quarter for managing the affairs of religious judges, it is represented in the Religious Juridical Council based on the text of Article (4) of the Formation of Religious Courts Law Number (19) of 1972, that is the law in the parliamentary legislative sense, which occupies the second level in the legislative pyramid in Jordan, which is what established the Religious Juridical Council and not the Constitution.

At the same level, the President of the Christian Denominations councils, their judges, and members are appointed and dismissed by virtue of the resolution of the Council of Ministers based on the recommendation of the higher spiritual head of the sect in the Kingdom provided that the said resolution is accompanied by a Royal Decree, such in accordance with Article (3/b) of the Christian Denominations Law number (28) of 2014.[[6]](#footnote-6)

**Third: The Quarter competent to manage the affairs of the judges of special courts.**

**The special courts, insofar as appointment, are of two types: courts of a civil nature, and courts of a military nature.**

1. **Courts of a civil nature:**

The judges of these courts are considered to be civil judges, and the Juridical Councils are competent to administer and manage their affairs whether in terms of appointment or dismissal or promotion, and the foremost examples of this kind of courts are: the Grand Criminal Court, the Municipalities, and Income Tax Court.

1. **Courts of a military nature.**

The quarter competent to administer the affairs of those judges differs based on the type of court, such as per the following:

1. **Military Courts**: The military court is competent to consider penal cases committed by persons working in the Jordanian Armed Forces, and the courts are formed by military judges in accordance with a decision from Head of the Joint Chiefs of Staff based on the Formation of Military Courts Law Number (23) of 2006.[[7]](#footnote-7)
2. **Police Court**: The Police Court is competent to consider the penal cases committed by persons working in the Public Security Directorate, and the courts shall be formed by military judges in accordance with a decision from the Public Security Director based on the Public Security Law Number (38) of 1965,[[8]](#footnote-8) and the Formation of Military Courts Law Number (23) of 2006. Moreover, a number of judges are appointed in the formation of this court from among the civil courts judges based on the decision of the President of the Juridical Council.
3. **State Security Court**: This Court’s legitimacy is grounded in Article (101/b) of the Constitution,[[9]](#footnote-9) which sanctioned trying civilians before non-civil judges that is military judges in particular crimes which are exclusively identified as: treason, espionage, terrorism, narcotics crimes, and currency counterfeiting.

As regards the quarter competent to administer the affairs of those judges, it may be stated that based on the State Security Court Law Number (17) of 1959 competence to form this court belongs to the Prime Minister (in his capacity as the Minister of Defense), whereby the military judges are appointed based on the recommendation of the Head of the Joint Chiefs of Staff, while the civil judges are appointed by virtue of a decision issued by the Juridical Council as civil judges.[[10]](#footnote-10)

**Second Question**: Formation of the body or mechanism (number of members and their qualifications), the procedures related to their appointment and the term of their office?

Kindly provide information on the human and financial resources of this body or mechanism, the number of employees and their qualifications, and the budget?

**First: Juridical Council**: Regarding the formation of the Juridical Council which is vested with authority to administer the affairs of civil judges in accordance with the Judicial Independence Law Number (29) of 2014 as amended, it is represented in the President of the Court of Cassation as chairman of the Juridical Council and the following members: President of the High Administrative Court as Deputy Chairman, the President of the Department of Public Prosecutions at the Court of Cassation, the most senior judge in the Court of Cassation, and the Presidents of the Courts of Appeal (three in number), the Secretary General of the Ministry of Justice,, President of the Amman Court of First Instance, and the two President of the Courts of First Instance outside of Amman in accordance with the age of creating those courts, and they shall be replaced at the end of their tenure by the next most serious members.[[11]](#footnote-11)

The period of membership has not been defined by the Law except as regards the two members who are the President of the courts of first instance outside of the capital, where their tenure is for two non-renewable years, in accordance with Article (4) of the Juridical Independence Law Number (29) of 2014.[[12]](#footnote-12)

As to the budget of the Juridical Council, Law Number (26) of 2017 which amended the Juridical Independence Law in accordance with Article (3) obligated creating a special chapter in the General State Budget Law relating to the Juridical Council after a time when the Council allocations were within the scope of the allocations of the Ministry of Justice, that is Jordan will witness for the first time a separate chapter for the Juridical Council in the Budget of the year 2018.

**Second**: **The Religious Juridical Council**: As regards the formation of the Religious Juridical Council which possesses jurisdiction to manage the affairs of religious judges in accordance with the Religious Courts Establishment Law Number (19) of 1982 as amended, it is represented in the President of the High Religious Court as President, and the membership of: the most senior three judges in the High Religious Court where the most senior in grade is the deputy chairman, and the Presidents of the Religious Courts of Appeal, the director of religious courts, the religious attorney general, and the inspector with the highest grade in the inspection commission.

**Third**: **As regards the judges of the Christian Denominations** **judges their appointment and dismissal is based upon Article (3/b) of the Christian Denominations** **Councils Law Number (28) of 2018 abovementioned in accordance with the resolution of the Council of Ministers based on the recommendation of the higher spiritual leader of that sect in the Kingdom.**

1. **Fourth: Judges of Special Courts**: The management of the affairs of the judges of special courts of a civil nature is within the jurisdiction of the Juridical Council - that is particular to civil judges. As to the judges of courts of a military nature their affairs will be administered by the military institution to which they are affiliated.

**Question Three: Includes requesting information on more than one item as follows:**

**Item One:**

As regards the mechanism of selecting and appointing judges and the adopted standards in this regard (for example: academic credentials, integrity, competence and aptitude).

The selection and appointment of judges and the conditions that must be fulfilled by those who are chosen to occupy the judicial position have been clearly and explicitly stipulated in the Judicial Independence Law as amended Number (29) of 2014, which is the law related to organizing the affairs of the civil judiciary. Thus the candidate for the position of judge must fulfill the following conditions and possess the following qualification stated in Article Nine of the Law of Judicial Independence:

1. Jordanian national.
2. Reached the age of thirty years and is physically fit for the job.
3. Possesses civil capability and he must not have been convicted of a felony.
4. Is not convicted by a court or disciplinary council resulting in a breach of honor or trust, even if he has been rehabilitated.
5. Is of good repute and conduct.
6. Has earned the first university degree in law from one of the faculties of law affiliated to Jordanian universities, or an equivalent degree in law that is accepted by the Council after engaging the opinion of a quarter specialized in degrees equivalency in the Kingdom, provided that the said degree is accepted for appointment in the judicial system in the court in which it was issued.
7. A) Has worked as an attorney for a period not less than five years for the one who received the first university degree in law or for a period not less than four years for the one who received the second university degree (Master’s) in law or for a period of three years for the one who received the third university degree (Ph.D) in law.

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7- B) Has received a diploma from the Judicial Institute.

**As regards integrity, capability, and selection based on the standards of competition, the Judicial Independence Law provided in Article Ten thereof that:**

* It is impermissible to appoint a person to the position of judge except after ascertaining his competence, good moral character and fitness for the judicial position, providing a competition is held for the applicants to fill the vacant positions from grades six to one by a committee whose members are not less than five judges appointed by the Council from among judges of the first grade at least in case the vacant position are of the sixth, fifth and fourth grades, and from among the higher grade judges in case the vacant positions are of the third, second and first grades, providing that the President announces those vacant positions and the time of the competition.

It is noteworthy that the law excludes from the conditions of the competition persons who received the diploma of the Judicial Institute prior to the application of putting in force the provisions of this Law provided that a period of more than five years had passed since his receiving the diploma on the date of the announcement of the competition.

As to the decision of appointment, and based on the provisions of Article (13) of the Judicial Independence Law the law provided:

1. The appointment to judicial positions shall take place by virtue of the decision of the Council based on the recommendation of the President provided that the decision is accompanied by a Royal Decree and provided that more than one person is nominated for the vacant position to the extent possible.
2. Notwithstanding what is stipulated in any other legislation, the Council may appoint the person desired to the judicial position at the grade it deems suitable for him based on his academic credentials and professional experience on condition that he is not appointed in a grade higher than that held by his peers from among the working judges who graduated in the same year in which he graduated and who hold the same academic qualifications.

As regards the probationary (trial) period; Article (11) of the Judicial Independence states that the judge upon being appointed for the first time to any grade under trial for a period of three years from the date of commencing work, and the Council has the right to terminate the services of the judge during that period in case it becomes evident that he is incapable or is lacking in personal or moral character based on the considerations adopted by the Council, and this rule applies to persons appointed in the judicial institution prior to the provisions of this law taking effect and had not completed the abovementioned probationary period in judicial service.

The judge is considered established in the service upon expiry of that period unless a decision by the Council determines otherwise.

**Item Two:**

As regards the terms of service, the tenure of the judges, and the immunities associated with them:

The Judicial Independence Law organized and regulated this matter, where Article forty second thereof provides that:

1. The service of the holder of the higher grade in judicial service shall continue until the attainment of seventy years of age.
2. The service of any other judge shall continue until reaching the age of sixty eight years of age.
3. The service of all the judges mentioned in Paragraphs (a) and (b) of this Article shall expire automatically and is renewable upon reaching the specified age without need for a decision for its termination issuing from any quarter.

Moreover, Article Twenty Four tackled the matter of the resignation of the judges whereby it provided that the resignation of the judge shall be accepted by virtue of the decision of the Juridical Council based on the recommendation of the Chairman of the Council.

Furthermore, the law sets forth the necessary rules for the process of dismissing the judges or terminating their services; where Article Twenty Five stipulates that it is impermissible to dismiss a judge or terminate his services except disciplinarily and based on the decision of the Council and a Royal Decree. Moreover, it stipulates that it is impermissible to demote a judge except by a decision from the Council.

And to provide greater guarantees to the judges the Law stipulates in Article Twenty Eight that it is impermissible to pursue the judge legally or to arrest him or detain him except upon obtaining the permission of the Juridical Council.

Also, the same law provides that a judge shall not be pursued for any penal complaint related to the activities of the office he holds or due to them or stemming from them or in the course of exercising them except with the permission of the Council.

**Item Three:**

As regards the promotion of judges, the Judicial Independence Law regulated this matter clearly and expressly in Article Eighteen which stipulates:

1. A judge is promoted from one grade to a higher grade based on merit and competence as evaluated by the Council and the reports of the inspectors, while giving due regard to the disciplinary punishments imposed on them, and in case of parity in the grade the more senior judge is given preference provided that the promotion to a higher grade is accompanied by a Royal Decree.
2. The seniority of a judge in grade is determined as a follows:
3. One who receives a higher salary within the single grade.
4. In case of equal salary within the single grade a judge who received that salary at an earlier time is considered the more senior.
5. And in case of equal salary the one who received the grade earlier is considered to be the more senior.
6. And in case of parity reference is made to the previous grade and so forth so that in case of parity the one in service at an earlier time is given priority and in case of parity consideration is given to the older in age.
7. The seniority of a judge who is restored to service or is appointed for the first time is specified in the decision of appointment.

Moreover, the Judicial Independence Law defined some of the issues related to the process of promotion including what was provided in Article (19):

1. It is impermissible to promote a judge to a higher grade directly prior to the passing of three years from attaining that grade unless he is appointed to the higher level whereupon it would be permissible to promote him after the passage of one year from the time of his appointment, while priority in promotion in case of parity is given to the more capable for those that attended the courses of the Judicial Institute determined by the Council.
2. A judge is mandatorily promoted after the passage of five years at a single grade.
3. Any judge who served five continuous years as a judge in the higher grade shall acquire the title (Vice President of the Court of Cassation) irrespective of the position he occupies.

**Item Four:**

As regards the process of transferring the judges Article (21) of the Judicial Independence Law provides the following:

1. A judge is transferred from one position to another within the judicial body by virtue of the decision of the Council while giving due regard to the rotation of jobs to the extent possible.
2. It is impermissible to transfer any judge to the Court of Cassation unless he worked in the Court of Appeal for a period not less than three years.
3. It is impermissible to transfer any judge to the Court of Appeal unless he served:
4. For a period that is not less than five years in one of the courts of first instance or the Grand Criminal Court, or
5. For a period that is not less than five years in the public prosecution or as assistant attorney general.
6. It is impermissible to transfer any judge to the Court of First Instance unless he served as a Magistrate Judge for a period not less than five years.
7. The position of Assistant Attorney General or Public Prosecutor at the courts of first instance shall only be held by those who served as judges for a period of three years at the courts of first instance.

**Item Five:**

As regards the disciplinary measures related to judges, the Juridical Independence Law organized this matter clearly and precisely and set forth the necessary rules for disciplinary procedures related to judges.

In this context Article (30) of the Judicial Independence Law provided for forming a disciplinary council and the mechanism for issuing its decisions, such as follows:

1. The disciplinary council shall consist of at least three Court of Cassation judges appointed by the Council who are not among its members for a period of two years, and it is permissible for the Council to form more than one disciplinary council.
2. The disciplinary council shall adopt decisions by consensus or based on a majority within a period not in excess of four months.

As regards the disciplinary suit, the mechanism of filing it, and its procedures Article (32) is indicative in this regard:

1. The disciplinary suit shall be filed against a judge by a plea including the accusation(s) (charges) brought against him and the supporting evidence which shall be submitted to the disciplinary council to proceed with the procedures within a period not exceeding fifteen days from the date of presenting the plea.
2. The Disciplinary Council shall conduct the investigations it deems suitable and may deputize one of its members to perform this, and the disciplinary council or the member it deputizes possesses the jurisdictions and powers of the courts insofar as calling witnesses whose statements it wishes to hear or to request any other evidence.
3. Upon completing investigations in case the Disciplinary Council does not deem the case to have merit then it shall decide to keep it in file.
4. In case the Disciplinary Council finds merit in the lawsuit concerning all or some of the violation then the judge shall be called to court provided that the period between the request to attend and the time of the trial is not less than seven days, and the order to attend must include a sufficient statement of the subject matter of the lawsuit and the evidence for the accusations or charges.
5. Upon proceeding with the disciplinary lawsuit it is permissible for the Disciplinary Council to suspend the job activities of the judge until the trial ends.
6. In case it becomes evident to the Disciplinary Council that the violation committed by the judge involves a penal crime then this is cause for ceasing the disciplinary measures and referring the judge, the investigation report, and the other papers and documents related to the charge(s) to the public prosecutor or the competent court for purposes of proceeding with the suit in accordance with the provisions of the law, and it is impermissible in such case to take any disciplinary measure concerning the judge or to continue any measures adopted until a categorical judicial decision is rendered.
7. The decision rendered convicting or acquitting the judge or the decision that he is innocent of the charges or the prevention of his trial or including him in the general amnesty does not prevent effectuating the necessary disciplinary measures in accordance with the provisions of this law concerning the violation he committed, while imposing on him the suitable disciplinary punishment.

As to the decision rendered in the disciplinary suit it was tackled in Article (35) of the Judicial Independence Law which provides that the decision issued in the disciplinary suit shall include the reasons upon which it was grounded where the reasons shall be recited upon pronouncing it, and the decision may be challenged at the competent administrative court. Actually, the disciplinary council may impose the following disciplinary punishments in accordance with Article (37) thereof:

1. Notification.
2. Warning.
3. Demotion.
4. Termination of services.

It is worthy of mention that Article (36) of the Judicial Independence Law provided that every violation of the duties of the job and any action impinging on honor or dignity or propriety constitutes an error that is punishable by the judge in a disciplinary fashion. And dereliction in performing the duties of the job includes delaying decisions on lawsuits, not specifying a time for pronouncing the decision to the litigants, disclosing the secrecy of deliberations, absence without excuse, failure to comply with official working hours and contravening the judicial code of conduct.

Question: There is a quarter or special body that is responsible for organizing the affairs of judges in Jordan which was referred to in the previous questions.

1. The Jordanian Constitution of 1952 as amended, Article (27), which provides that (The Judicial Power shall be exercised by the courts of law in their varying types and degrees. All judgments shall be given in accordance with the law and pronounced in the name of the King.) [↑](#footnote-ref-1)
2. The Jordanian Constitution of 1952 as amended, Article (97) which provides that: (Judges are independent, and in the exercise of their judicial functions they are subject to no authority other than that of the law.) [↑](#footnote-ref-2)
3. The Jordanian Constitution of 1952 as amended, Article (99), which provides that: (The courts shall be divided into three categories: 1- Civil Courts, 2- Religious Courts, 3- Special Courts). [↑](#footnote-ref-3)
4. The Jordanian Constitution of 1952 as amended, Article (98), which provides that: (Judges of the Civil and Sharia Courts shall be appointed and dismissed by a Royal Decree in accordance with the provisions of the law.). [↑](#footnote-ref-4)
5. The Jordanian Constitution of 1952 as amended, Article (104), which provides that: (The Religious Courts shall be divided into: 1- The Sharia Courts, 2- The Tribunals of other Religious Communities). [↑](#footnote-ref-5)
6. Christian Denominations Council’s Law Number (28) of 2014, Article (3/b) which provides that: (The president and members of the court and its members are appointed and dismissed by virtue of a decision from the Council of Ministers and based on the recommendation of the higher spiritual head of that denomination in the Kingdom provided that such decision is accompanied by a Royal Decree). [↑](#footnote-ref-6)
7. Establishment of Military Courts Law Number (23) of 2006, Article (3), which provides that: (The military courts are formed and their judges appointed by virtue of the decision of the head of the Joint Chiefs of Staff as follows: a) One or more military court headquartered in Amman which may if necessary hold its session at any other location by a decision of its president. b) Temporary military court or more whose jurisdictions, place of convening are determined by the Head of the Joint Chiefs of Staff in the decision of its formation. C) Court of a single judge who is appointed in military formation as per the demands of work. D) A military court of appeal headquartered in Amman. [↑](#footnote-ref-7)
8. Public Security Law Number (38) of 1965, Article (85), which provides that: (Formation of the police court of appeal is formed of a panel or more, and each panel is formed of a president whose rank is not less than a colonel and two members at least, provided that one of them is a civil judge to be designated by the chairman of the Juridical Council.) [↑](#footnote-ref-8)
9. The Jordanian Constitution of 1952 as amended, Article (101/b) which stipulates: (It is impermissible to try any civil person in a penal case in which all of its judges are not civilian, and excluded from this are crimes of treason, espionage, terrorism, narcotics and currency counterfeiting). [↑](#footnote-ref-9)
10. State Security Court Law Number (17) of 1959, Article (2), which provides that: (In special cases dictated by public interest the Prime Minister has the right to form a special court named the State Security Court consisting of one or more panels from among civilian or military judges, and the military judges are appointed by virtue of a decision from the Prime Minister based on the recommendation of the Head of the Joint Chiefs of Staff, and the Juridical Council shall designate the civilian judges and the decision will be published in the Official Gazette) [↑](#footnote-ref-10)
11. Judicial Independence Law Number (29) of 2014, Article (4/a), which provides that: (The Council consists of the Chairman and the membership of each of the 1-Chairman of the Higher Administrative Court as Vice Chairman, 2-Head of Public Prosecution at the Court of Cassation. 3-The most senior judge in the Court of Cassation. 4-Presdients of the Courts of Appeal. 5-Secretary General of the Ministry of Justice. 6-President of the Amman Court of First Instance. 7- Two presidents from among the presidents of the Courts of First Instance outside the capital based on the years of establishing those courts, and they are replaced upon the expiry of the period of membership those that follow them in terms of oldness) [↑](#footnote-ref-11)
12. Judicial Independence Law Number (29) of 2014, Article (4/b/1), which provides that: (The term of membership of the two members shown in Item (7) of Paragraph (a) of this Article is two years that are renewable) [↑](#footnote-ref-12)