PRESUMED RESPONSIBILITY OF THE EDITOR-IN-CHIEF FOR CRIMES COMMITTED BY PERIODICAL PUBLICATIONS IN JORDANIAN LEGISLATION

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Abstract - This paper exposed one of the most important legal problems raised by the Presumed responsibility of editor-in-chief in the criminal Jordanian legislation, which is the extent to which this responsibility contradicts the presumption of innocence as a constitutional principle, as its conclude that the Jordanian Press and Publications Law was considered unconstitutional in this part which the Jordanian legislator established a presumption of conviction against the editor-in-chief and in a manner that does not accept proof of the contrary.

Keywords - Presumed responsibility, presumption of Innocence, Jordanian Press and Publications Law.

I. INTRODUCTION

Jordanian legislation is one of the legislations that embraced the assumed responsibility of the editor-in-chief, or more precisely the supposed error as a basis for the editor-in-chief's criminal responsibility, in particular the Press and Publication Law as a special law regarding publishing crimes, as Article (42) of it considered the editor-in-chief to be an original actor in the crimes committed in periodical publications.In fact, the Jordanian legislator's embrace of the editor-in-chief's supposed mistake raises several legal problems, perhaps the most important of which is the extent to which this error is inconsistent with the presumption of innocence, especially since the presumption of innocence has become a constitutional principle guaranteed by the Jordanian constitution under the amendments of 2011 as a guarantee of a fair trial.Hence this research paper came to examine this legal problem in particular, which the researcher will study in an analytical study of the texts of the Jordanian Constitution and the Law of Publications and Publications.

II. THE CONCEPT OF PRESUMED FAULT AS A BASIS FOR THE EDITOR'S CRIMINAL LIABILITY

Fault is the basis for establishing criminal responsibility. There is no responsibility without error, this is one of the results of adopting freedom of choice as a basis for criminal responsibility.However, this principle, although it is one of the well-established principles in criminal legislation, is in fact no longer an absolute truth because the implementation of this principle in publishing crimes is considered a thorny issue due to the nature of these crimes. This special nature of publishing crimes has led the comparative legislations to find solutions to the difficulties facing the judiciary in implementing the provisions of the general rules of responsibility, as these solutions were to establish criminal responsibility in publishing crimes on the basis of the supposed fault, in order to get rid of the restrictions contained in the general provisions of criminal responsibility[1].The supposed error in the criminal field is a presumption, This presumption is either legal or judicial based on the assumption that a mistake has been proven in one of its forms, intentional and unintentional on the side of the accused, and thus transferring the burden of proof from the authority charged with proving it, so that the accused falls on the shoulders of the accused to deny this mistake if the law permits it[2].The presumed error as a presumption of proof or conviction is of two types: a judicial presumption of evidence whose source is the judiciary in crimes whose nature requires such a presumption, or a legal presumption of proof in cases in which the legislator assumes the error on the side of the accused and shifts the burden of proof from the authority charged with proving it to receive it on the accused, in contrast for the original[3]. Therefore, the supposed error according to this concept is considered a presumption in favor of the evidence against the accused, that is, it is a presumption of guilt[4]. Referring to the provisions of the Jordanian Press and Publication Law as a special law with regard to crimes committed by periodical

[1]Fawarah, Mohmmad, Criminal Responsibility for Press Crimes, Mutah Journal for Research and Studies, volume23, issue (3), 2007, p107.

[2] Al-hiati,mohmmad, The assumed error in criminal responsibility, dar al-thaqafa for Publishing and Distribution, first edition, 2005, p. 128

[3] Al-hiati, mohmmad, p129.

[4]Fawarah, Mohmmad, Presumption of conviction in criminal legislation, a comparative study, Sharia and Law Journal, Emirates, twenty-ninth issue, twenty-sixth year, January, 2012.

and non-periodical publications, we find that the public lawsuit in crimes committed by periodical publications is filed against the press publication whose editor is in the head or director of specialized publications and the writer of the press article as original representatives. Thus, we find that the Jordanian legislator has agreed to the comparative legislation in deciding the editor-in-chief's criminal responsibility, and the basis of the editor-in-chief's responsibility goes back to his job description, where he put forward the responsibility for the supposed error, which is based on the assumption that the editor-in-chief knows everything that is published in his newspaper[5].We conclude that deciding the responsibility of the editor-in-chief on the basis of the supposed fault leads to a conflict of this presumption with the presumption of innocence as an origin and principle of the basic principles in democratic systems.

III. THE LEGALITY OF ASSUMING THE EDITOR-IN-CHIEF'S FAULT AS A PRESUMPTION OF CONVICTION IN JORDANIAN LEGISLATION

The origin of the accused is his innocence, and this origin refers to the state that the accused is in before the judiciary proves the validity and integrity of the accusation, as this principle is considered one of the basic principles upon which the democratic system in any country is based as a guarantee of a fair trial, to the extent that The British House of Lords would describe this principle as the golden thread in the fabric of criminal law[6].The presumption of innocence in the field of criminal proceedings means that a person must be treated in any capacity as innocent until proven guilty by a final court ruling[7],Thus, the burden of proof in the criminal case falls on the shoulders of the Public Prosecution, as the plaintiff in the public lawsuit, and it is the one who claims contrary to the original, but the Public Prosecution, as a general litigant, is looking for the full truth, whether it is in the interest of the accused or against him. About the truth, not judging the innocent[8].The Jordanian Code of Criminal Procedure, although it does not expressly stipulate that the burden of proof falls on the Public Prosecution, but it explicitly stipulates the presumption of innocence in Article 147/1 and also includes a set of texts that place the burden of proof on the Public Prosecution[9]. Now, after briefly explaining the meaning of the presumption of innocence, and returning to our question about the legitimacy of the presumption of conviction that the Jordanian legislator established on the editor-in-chief, assuming his responsibility for the crimes committed by means of publications and punishing him with the same penalty as the crime as the original perpetrator, We find that the Jordanian constitutional legislator, according to the amendments it made to the constitution in 2011, explicitly stipulated the presumption of innocence in Article (101/4) which text "The accused is innocent until proven guilty by a final verdict". Thus, the presumption of innocence has become a constitutional principle that must be respected, as it is one of the guarantees of fair trial, in a way that enhances the rights and freedoms of citizens[10].Therefore, since the Jordanian constitution stipulates the presumption of innocence, making it a constitutional principle, it is not permissible for any lower-ranking legislation to contradict this constitutional principle, and therefore the text of Article (42/g) of the Press and Publications Law explicitly violates the Jordanian constitution as it detracts from personal freedom as a right A constitutional nature that requires the principle of personal criminal responsibility, as well as its conflict with the presumption of innocence as a guarantee of a fair trial.

IV. CONCLUDE

This paper reached the following results: -

1. The fault, as a basic feature on which criminal responsibility is based, must be proven by the accusing party that claims it, in implementation of the basic rule of proof, which is that the evidence is on the one who claimed.
2. The Jordanian constitution legislature stipulates the presumption of innocence in a way that made it a constitutional principle that must be respected and obeyed.
3. The establishment of the editor-in-chief's criminal responsibility under the Press and Publications Law on the basis of the presumed responsibility as a principal actor in the crime committed by the newspaper he supervises and punishing him with the same penalty prescribed for the crime, and not providing the opportunity

[5] Article (42), the Jordanian Press and Publication Law.

[6]Srour. Ahmad, Constitutional Criminal Law, Constitutional Legitimacy in the Penal Code, Constitutional Legitimacy in the Code of Criminal Procedure, Dar Al-Shorouk, Cairo, second edition, 2002. P 271.

[7]Muhammad,Muhddah, Guarantees of the Accused During the Investigation, Part Two, First Edition, Dar Al-Huda, Algeria, 1992, p. 225

[8]Al Jokhdar, Hassan, Explanation of the Code of Criminal Proceduredar al-thaqafa for Publishing and Distribution, First Edition, 1992, p. 354

[9]Look :articles (8), (17) and (162/2), The Jordanian Code of Criminal Procedure.

[10]Bakkar,Hatem, Protecting the Accused's Right to a Fair Trial, Mansha'at al-Maaref, Alexandria, 1997, p. 60

to push the accusation against him on the grounds that the presumption established by the Jordanian legislator is a conclusive and inadmissible presumption To prove the contrary, he makes the text of Article 42/g unconstitutional because it clearly contradicts the text of Article 101/4 of the Jordanian Constitution.

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