

A legal opinion paper and a request for a withdrawal of the Draft Court Fees Act Amendment of 2019

The Government of Jordan is currently planning to make an amendment to the Court Fees Act No. 43 of 2005 as amended. The Draft Amending Act as published at the Legislation & Opinion Bureau's website is as follows:

Article 1: This Act shall be cited "Amending Act of the Court Fees Act of 2019" and shall be read together with Act No. 43 of 2005, hereinafter referred as the Original Act, and the amendment thereto as one Act and shall come into force as of the date on which it is published in the official gazette.

Article 2: Article 16 of the Original Act shall be amended by the omission of the provision thereof, which shall be replaced with the following:

- a. All fees and expenses including a verdict enforcement fees and expenses shall be added to the adjudicated amount and collected from the charged party with no need for a verdict to be made with respect thereto.
- b. A guaranty equivalent to the cassation fee shall be collected from a person who appeals before the Court of Cassation a legal verdict made by the Court of Appeal. Such guaranty will be returned if the Appellant is deemed to have been right to appeal.
- c. Except for the first-time-appeal, a guaranty of 50 JOD shall be collected from a person who appeals a decision made by the Head of the Execution in the same subject of the decision subject matter of the first appeal in a reconciliatory executive lawsuit. If the appeal is made in protest over the Execution Head's decision in a first instance executive lawsuit, the guaranty shall be 200 JOD. Either way, such guaranty shall be returned if the Appellant is deemed to have been right to appeal.
- d. In execution of the provisions of Clause C of this Article, the other executive exhibits shall be treated as verdicts in accordance with the values thereof, and the guaranty set above shall be collected for them accordingly.¹

Such amendment, which is limited to Article 16 of the Original / current Act and revolved around the imposition of a guaranty amount upon protestation over verdicts before the Court of Cassation or in the cases of appeal or over a decision made by an execution judge, is a new barrier for the justice. It violates the Constitution of Jordan and international conventions; furthermore, the amendment breaches the royal instructions and the recommendations to develop the Judiciary made by the Royal Committee formed in 2018 for the purpose of developing the Jordanian Judiciary, easing its burdens and enabling everyone to gets its right to access to justice.

¹ Legislation & Opinion Bureau http://www.lob.jo/View_LawContent.aspx?ID=1078/
http://www.lob.jo/List_LawsLegislations_Public.aspx

Consequently, the Aid Department-Legal Aid section of Arab Renaissance for Democracy and Development (ARDD) recommends for the withdrawal of this Draft Amending Act and demand the Ministry of Justice and the Prime Ministry to disapprove it due to the constitutional violations and discrimination contained therein. It result in adverse effects on the Justice Sector of Jordan, the right to access to justice, the right to litigate and the citizens' trust in justice-related departments for the below reasons:

- The cash guaranty imposition on anyone willing to protest a decision made against it is just a new barrier for access to justice. It is another challenge for the poor and vulnerable groups of women, refugees, migrant workers and others. It will prevent them from getting their legal empowerment and access to justice considering the fees are a key barrier in the road to justice including the expenses of travels to courts, Court Fees and attorney's fees. Such imposition of additional fees as set forth in the Draft Amending Act would make it even harder, given that a person may be right to protest but cannot do so because he/she cannot afford it; therefore, the economic barrier takes place and prevents the right to access to justice.

ARDD had already clarified this in a study published in 2017 titled "Justice in Jordan: Needs & Satisfaction Degree 2017," conclusions of which included:

"Although the trust in courts is 3rd placed among the public departments comparing to other entities, around half people who live in Jordan believe that the resort to courts is only affordable for the rich, unlike the ordinary people – the poor due to the economic fee, which is deemed by some people to be high and not affordable. The agreement with this statement rises among those who stated that they faced at least one legal issue during the past four years."²

This confirms that the road to justice is already too feely; imagine when additional fees are imposed as proposed in the said Draft Act.

- In many cases based on the reality, a person may be right to protest and right to file a lawsuit from his own point of view; however, the required cash guaranty would be a burden and prevent him/her from exercising his/her legal right in avoidance of the guaranty loss risk, especially before the Court of Cassation. Therefore, such potential appellant would be deprived of this chance just because he/she cannot afford the required guaranty amount or cannot afford the loss of such amount.

Everyone is entitled to appeal before courts of higher degrees against any decision made against him/her (whether he/she was or was not fund to be right to protest). No one may be deprived of such right or be restricted in any way whatsoever so long as the right to access to justice is reserved under the Constitution and international conventions and covenants.

² A study published by ARDD in 2017 titled "Justice in Jordan: Needs & Satisfaction Degree 2017" https://ardd-jo.org/sites/default/files/resource-files/justice_needs_and_satisfaction_in_jordan_2017- ar.pdf

A requirement to pay a guaranty amount is also against the Constitution articles stating that justice is for all and litigation at multiple stages shall be available for everyone, whether a litigant is or is not right to litigate; and also stating that the judiciary shall decide and determine whether one is or right with no restrictions or limitations.

- The imposition of a guaranty amount and the loss thereof by an appellant in case he is deemed to be not right to appeal is against the legal rule that states: "An appellant shall not be harmed by the appeal solely made by him/her." The loss of such guaranty amount is harmful for the appellant; therefore, the Act breaches the general guidelines and the Law. The guaranty amount seems to be a punishment for losing the appeal, which also violates the provisions of Article 169 of the Civil Proceedings Code stipulating:
 1. Protest over a verdict shall be for the charged person.
 2. The winning party shall have the right to protest over a verdict on grounds other than those on which the prosecution was based or on one of these grounds. He/she may not protest over the previous verdict, explicitly or implicitly, unless the Law provides for otherwise.
 3. The court may not worsen the appellant's position by the appeal solely made by him/her.

No act may be against the Law or the Constitution.

- The imposition of a guaranty amount on the filed appeals is a social discrimination in terms of the right to access to justice. It violates and breaches the international conventions, human rights covenants and Constitution of Jordan. It simply means that only rich people, whether they are or are not right to appeal, would be able to protest over verdicts no matter how much it would fee or how much the required guaranty amount is. On the other hand, the vulnerable people would be deprived of such right although the Constitution of Jordan states that "All Jordanians are the same in the Law"

In the light of this Act and in case of approval thereof, many groups of people and society classes would not be able to exercise their right to litigate at various stages due to their inability to afford the same. On the other hand, the rich people would not be affected or be hindered by any difficulties in this respect, which means the resort to courts for justice would be limited to the rich only!

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