

## **Ahmad Al-Chalabi and the Law of Economic Crimes**

**Written by: Dr. Hamzeh Haddad (Amman, Jordan)**

On 9/4/1992, the State Security Court passed a sentence against Dr. Ahmad Al-Chalabi, on the following counts:

1. Convicted the runaway from justice, Dr. Ahmad Abdelhadi Al-Chalabi, of embezzlement and sentenced to 15 years hard labour.
2. Convicted him of embezzling in association with others and sentenced to 15 years hard labour.
3. Convicted him of breach of trust and sentenced to 2 years imprisonment.
4. Convicted him of breach of trust in association with others and sentenced to 2 years imprisonment.
5. Convicted him of fraud in association with others and sentenced to 3 years imprisonment.

Accordingly, the court resolved that such prison terms were to be served consecutively and sentenced Mr. Al-Chalabi to 22 years with a pecuniary penalty equivalent to the amounts he had acquired by fraudulent means, namely, US\$ 27,266,000; DM 775,000; BP 9,945; and JD 332,000. Sentences passed by the State Security Court were, at that time, final, irrevocable and are not open to challenge, save that a judgment deciding death penalty or imprisonment for more than one year would not be executed unless it is endorsed by His Majesty the King or the Prime Minister respectively.

In rendering its sentence, the Court stated that Petra Bank, through Dr. Al-Chalabi, in his capacity as Head of the Board of Directors and General Manager, assisted by some of his family members then employed by the Bank, had dealings with a network of corresponding Banks, referred to as sister Banks. All such sister banks were connected in one way or another with the Al-Chalabi clan, serving his interests and those of his family. Such a front facilitated his exploitation of the Bank's assets, whether through embezzling the Bank's funds or by lending and plundering it in a manner

inconsistent with the bank's interests. This was made even more possible by virtue of Dr. Al-Chalabi being the ultimate decision maker both at Petra Bank and at other corresponding banks.

The Court became certain that Dr. Al-Chalabi has resorted to fraudulent means aimed at deceiving the Bank's shareholders and/or the Central Bank and/or the Bank's external auditors by tampering with the Bank's records, presenting false and forged documents, and distorting accounts and other instruments. His crimes also included forging record for various accounts, using fictitious accounts, plundering the assets of the banking sector, de-voiding the national economy of its sources of foreign currency, buying bad debts, using the Bank's income to trade in gold and other precious metals, currency trading, while smuggling the proceeds abroad and accumulating it in financial institutes owned by him and his clan in London, Geneva, Washington and Beirut, in total disregard to prevalent laws and rules pertinent to banking and, also, his non-compliance with any requirements imposed by the Central Bank with regard to compulsory reserve, liquidity, credits and foreign currency. Indeed, he totally ignored every single order or circular or report issued by the Central Bank's inspectors to Petra Bank, demonstrating total oblivion to whatever measure might be taken against him.

The Court also stated that Dr. Al-Chalabi has been assisted by his aura, sharpness, immense influence and dominating personality on others, traits that led his subordinates to believe that he is a symbol of probity and integrity, dedicating his life for the interest of the Bank. It never occurred to them, even remotely, that he is committing any wrongdoing. Hence, each was racing to execute his orders to gain his pleasure and trust, as he was the ultimate and sole decision maker.

As for the losses incurred by Petra Bank, the Court has determined that the total losses were in the region of JD 233,000,000, of which JD 157,290,000 were embezzled.

Last week, a daily paper published the text of a (draft) law amending the law of Economic Crimes. The rules of this Draft Law bestow powers on the Public Prosecutor at the State Security Court to reach financial settlements with those accused of committing certain crimes (the defendants) in return for not transferring them to court; I shall be returning to this matter shortly. In light of this publication, an internationally renowned Arabic

newspaper, reported that the Jordanian Government has embarked on amending the Law of Economic Crimes, in order to pave the way for “closing Al-Chalabi’s embezzlement file”, and that such amendment is likely to “open the door for settling large scale embezzlements that have rocked the Kingdom since 1990, implicating the Head of the Iraqi National Congress, Ahmad Al-Chalabi, who is backed by certain American circles to succeed the toppled Iraqi President, Saddam Hussein”; with referenced to the above-mentioned State Security Court’s sentence. In response to this publication, the Prime Minister stated that the Draft Law has nothing whatsoever to do with the case of Ahmad Al-Chalabi.

Truthfully, I had certain information about the Draft Law from an official source that participated in its preparation. This was three months ago, i.e. before the Al-Chalabi case had re-surfaced in the manner it did in the past few days, thought Al-Chalabi, just like any other person, might avail himself of this Law once it comes into force. It is apparent from the Draft Law and the circumstances surrounding its preparation that it was not intended for Al-Chalabi, but rather for what became widely known as “the Banks’ Facilities” Case. It is intended to give the Public Prosecutor wide and sweeping powers vis-à-vis the defendants and their assets, such as initiating attachment orders against their funds and those of their relatives and next of kin, imposing travel bans, confiscating their assets, and reaching financial settlements with them. The Public Prosecutor at the State Security Court originally enjoyed such powers during the early stages of the said Case. It would seem that this was conducted without any sound legal cover, a fact that prompted the legislature to prepare this Draft Law, to bestow legitimacy on these hitherto illegal practices. A matter of concern for us in this article is the power to issue an order to stop searching for a specific person and to reach a settlement with him if he agrees to return, in whole or in part, the money he had acquired through illegal means. The decision becomes final upon its endorsement by a 3-member judicial tribunal, chaired by the Public Prosecutor with the co-membership of the Civilian Attorney General and a judge of the Court of Cassation selected by the Head of the Judicial Council. It is also noteworthy that the Draft Law pre-assumed that the person concerned is still under investigation, having committed the crime but not yet judicially convicted, and is still awaiting a settlement. Undoubtedly, this is in blatant contravention of the Constitution, and the well laid down principle that the accused is innocent until proven guilty. This conviction and the finding of guilt is the task of the courts and not the Public Prosecutor, even if the accused was caught red handed and have

confessed before the Public Prosecutor that he had committed the crime. It is also worth noting that the Public Prosecutor's role in such instance is no more than that of Counsel for the (Public Interest) before the court, as is the case with the defence counsel. Here, we refer to Article 102 of the Constitution which clearly stipulates that courts, whether ordinary, religious or special, are the only competent arenas entrusted with trying and passing sentences against individuals in all civil and criminal cases (and not the Public Prosecutor).

Assuming that the Draft Law is constitutional, which is absolutely not the case, we are of the opinion that Ahmad Al-Chalabi is not destined to avail himself of such law, at least in the short term, so long as the ambit of its application is restricted to those crimes still under investigation. Al-Chalabi's case has not only left the Office of the Public Prosecutor, but also the Courts in the time being. However, it is crucial to note that it is a must to retry Dr. Al-Chalabi, if and when, he is apprehended, or has surrendered himself to Jordanian Authorities, as long as the sentence passed against him was in absentia (Article 254 of the Penal Procedural Code). In such an event, he would stand trial before the State Security Court, whose decision must be appealed to the Court of Cassation (in case of a felony) or, perhaps, could be challenged before the Court of Appeal (in case of a misdemeanour). Moreover, the entire penalty could be dropped through a special amnesty or even dropping the penalty and the crime in its entirety through a general amnesty, both of which could be issued by His Majesty the King. It is imperative to recall that neither the General Amnesty Law No. 26/1992, nor the General Amnesty Law No. 6/1999, covered the crime of embezzlement committed by Dr. Ahmad Al-Chalabi, as per the judgment passed against him.

Dr. Hamza Haddad

22 April 2001