
The Urgent Constitutional Judiciary and Its Applications in Iraq (A Comparative Study)

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Abstract

The issue of the urgent constitutional judiciary is one of the renewable topics in the majority of countries that embrace judicial control over the constitutionality of laws. States in this regard, as the first trend of constitutions and laws of constitutional courts goes to adopting a position of silence regarding granting the Constitutional Court the authority of urgent constitutional judiciary, and only referring to the general rules of the idea of urgency stipulated in the laws of pleadings and civil procedures, and this was demonstrated through the lack of organization of the court's authority. Constitutionalism is to stop the implementation of the law or system (the regulation) whose unconstitutionality is challenged, as is the case in Iraq and Egypt, also we find that the second trend of countries has tended to organize and address the authority of the Court or the Constitutional Council in the exercise of the urgent constitutional judicial powers, as in the United States of America, as the courts retained the power to issue temporary or preliminary judicial prohibitions, and the same provision applies to France, Germany and Belgium and Spain.

Keywords: Constitutional judiciary, Iraq, urgency, stopping the law.

Introduction

The importance of the study is in many theoretical and practical aspects, as the first of these images is the absence of specialized constitutional studies on stopping the implementation of the law by the constitutional courts, as well as the presence of many subtle details that arise from the exercise of the power of the constitutional courts to stop the implementation of the law, whether in the face of Public authorities or individuals, and what reality imposes on the court of the necessity to preserve the principle of acquired rights and legal security, and the concrete nature of the constitutional case requires the urgent constitutional judiciary to be singled out with a specificity that distinguishes it from the ordinary summary judiciary.

Literature

As for the practical aspect, the importance of the study is to review the judicial principles followed by the comparative countries, and to analyze the judicial trends that the Iraqi constitutional judiciary has settled on stopping the implementation of the law, whether it was in the period before the amendment of Federal Supreme Court Law No. (30) of 2005, Or the subsequent period, which culminated in the issuance of Law No. (25) of 2021, without losing sight of the statement of the position of the internal system of the Federal Supreme Court No. (1) of 2022 on the issue of the court's jurisdiction to exercise the powers of the urgent constitutional judiciary, and a review of its formal and objective rules.

Based on the foregoing, the problem of the study is to determine the extent of the conflict between the principle of the independence of the constitutional judiciary and the principle of separation of powers with concerning granting the Constitutional Court the authority to suspend the implementation of the law. Does the authority of the urgent constitutional decision have implications for the final decision issued by the Constitutional Court? As well as examining the efficacy of the Iraqi constitutional legislator's position in regulating the idea of urgency during the court's exercise of its jurisdiction over the constitutionality of laws and regulations, and other competencies.

Methodology

Many of the following questions arise from the above-mentioned problems:

What is meant by the urgent constitutional judiciary, and does it have autonomy independent of the ordinary judiciary and the constitutional judiciary? Is its nature consistent with the concrete nature of the constitutional case?

- Who is the competent authority to issue the urgent constitutional decision and what are its procedures?

Are there objective conditions and restrictions imposed on the Constitutional Court when it wants to issue a ruling to suspend the implementation of the law until a decisive decision is issued regarding the constitutionality of the law or not?

To understand these provisions, we will divide this study into the following sections:

The first topic: Is the concept of the urgent constitutional judiciary and its consolidation.

The second topic: the formal and objective rules of the urgent constitutional judiciary in Iraq and the comparative countries.

The third topic: the effectiveness of practical applications of the urgent constitutional judiciary in Iraq and comparative countries.

The first topic

The concept of the urgent constitutional judiciary and its rooting

The summary judiciary is one of the exceptional systems established for the protection of litigants and their rights. For this reason, the majority of the pleadings and procedures laws deal with its provisions. However, the question that arises in this regard is whether the urgent constitutional judiciary is identical to the summary judiciary in the branches of civil and administrative law or not.

Based on the foregoing, we must define the definition of the urgent constitutional judiciary, and clarify its characteristics, and its distinct personality from the general rules of the urgent judiciary, without losing sight of the constitutional and legal basis for it, and we will address that in the following demands:

The first requirement/Introducing the urgent constitutional judiciary and its subjectivity

Many names are given to the urgent judiciary, as some call it (suspending the implementation of the law or decision), or (standing urgency).

First branch/Definition of urgent constitutional judiciary

The general origin is that legislation and laws do not include a specific definition of the urgent constitutional judiciary, whether it is in Iraqi or Egyptian legislation, which is what is understood as the legislator's desire to leave this issue to jurisprudence and the judiciary.

However, he notes that the Iraqi Civil Procedures Bill of 1986 deviates from this, as the summary judiciary defined it as "a temporary decision taken by the court to the procedures specified by law, to prevent the risk of delay in protecting a right that is likely to exist" (Article (484) of the amended French Civil Procedure Code of 1975).

Referring to the jurisprudential definitions, we find their diversity according to the multiplicity of jurists who addressed this issue, as some define it as "a temporary judiciary that does not touch the origin of the right, but rather it is called to remedy an imminent danger with urgent rulings issued by the court after short procedures and on short dates" (Tariq Asrawi,2003).

Others also defined it as "a temporary judiciary that does not affect the origin of the right, and it is urgently required to protect the rights from loss" (Dr. Ibrahim Saleh Al-Sarayrah,2013).

While the second opinion of jurisprudence went to make the urgent constitutional judiciary synonymous with the urgent lawsuit, and they defined it as temporary requests submitted to the constitutional judge that does not affect the origin of the right, or end the dispute before the Constitutional Court (Dr. Muhammad Fathallah Allam,2020).

As for the judicial definition, we did not find a specific definition of the urgent constitutional judiciary in judicial decisions, but some courts have described it as "based on the availability of danger and urgency, which justifies its intervention to issue a temporary decision, intended to respond to aggression that appears at first glance to be unjustly, and to prevent a danger that is not It can be rectified or it may be rushed." (The decision of the Egyptian Court of Cassation)

In what some judges define as (a decision taken by a competent court to issue it, at the request of an interested party, when his interest is threatened, and it is feared that it will be too late to grant temporary protection to that interest, without prejudice to the origin of the right that protects this interest) (Medhat Al Mahmoud,2019).

Because of the lack of comprehensiveness and generality of the definitions, we define the urgent constitutional judiciary according to the broad objective criterion as "the procedures and measures issued by the constitutional courts on an urgent and temporary basis until the issue of the case is resolved, in order to protect the apparent conditions and acquired rights, whether they take the form of stopping the implementation of the law, or stopping the implementation of the contested decision"

Second branch/Characteristics of the urgent constitutional judiciary

The urgent constitutional judiciary is characterized by many characteristics that make it a distinct system from the system of control over the constitutionality of laws, and other systems, and these characteristics can be summarized as follows:

1- It is an accessory system: the general principle is that the urgent constitutional judiciary follows the original lawsuit or defense filed before the Constitutional Court, whether it is related to challenging the unconstitutionality of the law or the unconstitutionality of the contested decision. Implementation of the law for unconstitutionality appeals independently of the original appeal petition before the court, or submitting it individually without submitting the original appeal, so this right of the appellant is established only as a subordination to the original appeal, and it revolves around existence and non-existence.

2- It is an exceptional system: the general principle established is the presumption of constitutionality, meaning that the law or regulation holds its validity and constitutionality unless proven otherwise. Therefore, in the event of a challenge to the unconstitutionality of the law or regulation, and a request from the urgent judiciary, such as stopping the implementation of the law or regulation, it carries with it an explicit indication that it is considered one of the exceptional systems established for the benefit of the appellant, as the law and the judicial applications of the constitutional courts have settled on considering it an exceptional system of general rules and procedures for appeal, and it is not resorted to except in some exceptional cases represented by the presence of a state of urgency and fear of the lapse of time, which necessitates the urgent intervention of the court, due to the immediate danger, to avoid the damages that may result from the implementation that cannot be remedied later.

3- It is temporary: the purpose of the urgent constitutional judiciary is to protect the rights of the appellant and to avoid the negative effects of implementation, and for this reason, the requests of the urgent judiciary are described as temporary decisions that end with the issuance of the decisive and decisive decision in the case, and often the court takes them for protecting the rights in dispute. In it, whether it is related to stopping the implementation of the law, or the effects that result from the implementation of the decision based on what it deems to be in accordance by the evidence and the reasons for the court to issue its temporary and urgent decision.

4- It is based on two basic pillars, namely, the idea of urgency and not prejudice to the origin of the right: The idea of urgency constitutes the essence of urgent constitutional justice, which is often embodied in two elements, as the first of them is the objective element that takes the form of the potential harm or the interest that is protected from the lapse of time. The second element is the temporal element, which requires the court to intervene urgently to prevent irreparable damages arising from the implementation of the law or the contested decision. (Dr. Ali Mohsen Tawaib al-Khorsan, 2020)

Third branch/Distinguishing the urgent constitutional judiciary from the suspected approach terms

The urgent constitutional judiciary is similar to other similar terms such as the state judiciary (order on petitions), as well as the urgent judiciary in civil and administrative law, but it differs from it in many aspects, which we will address in turn as follows:

First: Distinguishing the urgent constitutional judiciary from the summary judiciary in other laws:

The urgent constitutional judiciary is similar to other branches of law in the unity of the legal provisions regulating it, as a result of the fact that the laws of the constitutional courts in Iraq and Egypt do not include texts regulating it, by being satisfied with what is provided by the general rules in the civil procedure laws, and despite the foregoing, the differences can be summarized as follows :

1- In terms of the nature of the appeal: the constitutional appeal is characterized as an appeal of a real nature, in contrast to the nature of the case in other branches of law that are described as personal, and the other differences that result from that.

2- In terms of the legal basis: At a time when the Constitution, Court Law No. (30) of 2005 as amended, and Court Rules of Procedure No. (1) of 2022 were silent about dealing with the provisions of the urgent constitutional judiciary by being satisfied with referring to the general rules, we find, on the other hand, that the judgments of the summary judiciary in civil law were regulated by the Iraqi legislator in the amended Civil Procedure Law No. (83) of 1969, and the provision also applies to Egypt.

3- In terms of images and cases: The images of urgent decisions in the constitutional judiciary differ from those in civil or administrative law, as the concrete nature of the constitutional challenge shows us one case, which is the suspension of the implementation of the law or the contested decision until the final decision on its constitutionality is issued or not, unlike for the urgent civil judiciary, which takes various forms and cases, such as preventing the defendant from traveling, cutting off public utilities, proving the case, acknowledging the ordinary document, and judicial receivership(8), which resulted in a violation of the formal and objective controls of the urgent constitutional judiciary on behalf of others.

Second: Distinguishing the urgent constitutional judiciary from the state judiciary:

Both the summary and state judiciary are similar in their consideration of temporary decisions that belong to the courts in general and the constitutional courts in particular, in addition to the fact that the

civil procedure and procedure laws in the countries under study ensure that their rulings are dealt with, despite that, they differ in many of the following aspects:

1- In terms of the means of communication with the court: the general principle is to submit the request for the urgent decision within the original lawsuit petition or separately from it, in contrast to the state order that is submitted without the requirement of a pending lawsuit before the court, as it can be submitted independently.

2- In terms of procedures: The procedures for obtaining the urgent decision require the court to inform the parties to the case to attend, and to listen to their statements before issuing the decision, in contrast to the state order in which the presence of the two parties is not required, or the obligation to adhere to the rules of attendance and absence or the rules of pleading.

3- In terms of the authority of the decision: the urgent decision has temporary authority that does not rise to the authority of the thing decided, as it settles a temporary and urgent dispute, unlike the state order that does not have any authority, as it does not settle the dispute as it is a permission or a legal license to take a specific action with the approval of the judge.

4- In terms of causation: The urgent judicial authority is described as a judicial authority, and for this reason, the causation of the decision is required in contrast to the state order, which is a state authority, not a judicial one, and this is not required except in the case of violating a previous state order.

5- In terms of appeal: The methods of appealing the urgent decision differ from the state order, as the methods of appeal established for judicial rulings are followed and the urgent decision is distinguished, unlike the state order that is challenged through a grievance, and the decision issued as a result of the grievance is subject to appeal in cassation (Dr. Abbas Al-Aboudi, 2016).

The second requirement/The legal basis and nature of the urgent constitutional judiciary

The urgent constitutional judiciary is one of the temporary decisions granted to the constitutional courts. Therefore, it is necessary to address the definition of the constitutional and legal basis for it, as well as its nature, which we will explain in turn as follows:

First branch/Constitutional and legal rooting for the urgent constitutional judiciary in Iraq and comparative countries

First: The constitutional and legal basis in Iraq:

If we look at the Constitution of the Republic of Iraq for the year 2005, we will find that it remained silent about organizing the urgent constitutional judiciary, as Article (92/Second) of it was content to refer to everything related to the formation of the court, the method of selecting its members and the work of the court to a law issued by the House of Representatives by a majority of two-thirds of the members of the House of Representatives, that is: by a majority (220) deputies.

Referring to the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021, we find that it followed the approach of the constitutional legislator by not including texts and provisions related to the urgent constitutional judiciary, as the legislator was satisfied in Article (9) of it referring to everything related to The procedures of litigation before the court are based on internal regulations to be legislated by the court.

The implementation of this, the Federal Supreme Court's internal system was issued No. (1) of 2005, and it was also free from addressing the urgent constitutional judiciary rulings, by simply referring them to the general rules stipulated in the Civil Procedure Code as stipulated in Article (19) of it.

The Iraqi legislator has reiterated the aforementioned legislative omission in the Federal Supreme Court's internal system No. 1 of 2022, as Article (50) of it states, "The provisions of the Civil Procedures Law No. (83) of 1969, as amended, and Law of Evidence No. 107 of 1979, as amended, shall apply, or any other law that replaces them unless there is a provision in this system.

Based on the foregoing, the provisions of the summary judiciary stipulated in the Civil Procedure Code must be applied to the urgent constitutional judiciary issues before the court (10), which is why it is understood that no independent entity is allocated to the urgent constitutional judiciary from the summary judiciary in the civil law, which is a shortcoming that should be addressing it in the Federal Supreme Court law to be legislated in the future.

Despite the foregoing, however, a closer examination of the decisions issued by the Federal Supreme Court reveals to us many cases of the following urgent constitutional decisions:

1- Issuance of a decision to stop the implementation of the contested law as being unconstitutional (The Federal Supreme Court Decision No. (43) and (44) of 2010 are considered).

2- The court's issuance of a decision to suspend the implementation of the contested decision of its unconstitutionality (Federal Supreme Court Decision No. (127) of 2017), whether at the level of federal, regional or, local authorities .

3- Issuance by the court of a decision to suspend the compulsory execution of the case in the event of a conflict of the jurisdiction (positive or negative) between the courts

We conclude from the foregoing that the legal basis for the Federal Supreme Court's exercise of urgent constitutional justice is the Civil Procedure Code, as well as the court's case law.

Second: The constitutional and legal basis in Egypt:

Referring to the Egyptian Constitution of 2014, we find that it was expressly silent about dealing with the provisions related to the urgent constitutional judiciary, as Article (192) of it was content with enumerating the court's jurisdictions, without addressing the court's authority to suspend the implementation of the law, decision or judgment as one of the applications of the urgent judiciary.

Thus, it cannot be recognized that the Law of the Supreme Constitutional Court No. (48) of 1979 followed the same constitutional approach, as it was satisfied by the Civil and Commercial Procedures Law in accordance with Article (28) thereof, which states: "Except for what is stipulated in this chapter, it applies to referral decisions." Cases and requests that are submitted to the court are the provisions stipulated in the Civil and Commercial Procedures Law in a manner that does not contradict the nature of the court's jurisdiction and the conditions established before it." Conflict of jurisdiction over the appointment of the competent judicial authority or entities with judicial jurisdiction, as well as settling the dispute related to the implementation of the two final judicial rulings issued by the judicial authorities or judicial bodies.

Based on the foregoing, cases of the urgent constitutional judiciary before the Egyptian Supreme Constitutional Court can be determined in one of the following cases:

1- The first case: Compulsory suspension of execution: Article (31) of the Egyptian Supreme Constitutional Court Law deals with the "system of mandatory suspension of execution of lawsuits" as "submission of the request entails halting the existing lawsuits related to it until a decision is made."

2- The second case: Suspension of Court Execution: Article (32) of the Law of the Supreme Constitutional Court allowed the court to suspend the enforcement of the court ruling for the two disputed judgments or one of them in the text "The President of the Court may order - at the request of the concerned parties - to stop the execution of the two judgments or one of them until the dispute is settled." (Articles (25), (31) and (32) of the Egyptian Supreme Constitutional Court Law).

Thus, it is noted that while the legislator identified cases of summary justice, he did not address the procedures for submitting a request for the issuance of an urgent decision, which is the matter with which it is necessary to refer to the general rules established in the Civil and Commercial Procedures Law.

We conclude from the foregoing that the legal basis for the urgent constitutional judiciary in Egypt is the law of the Supreme Constitutional Court, the law of civil and commercial pleadings, as well as the principles contained in the court's decisions, as we will see later.

Thus, it is clear that the applications of the urgent constitutional judiciary in Iraq are broader than the scope of the applications of the urgent constitutional judiciary in Egypt. While the legislature and the Egyptian constitutional judiciary identified them in only two cases, we find that the Iraqi legislature and the constitutional judiciary identified them in three cases.

Second branch/The nature of the urgent constitutional judiciary

After we have clarified the legal basis for the urgent constitutional judiciary, we must define its legal nature of it. It is noted in this regard that the judiciary and jurisprudence unanimously agreed that summary decisions and judgments are temporary measures imposed by the circumstances and facts of the case before the court, to deflect or deflecting the imminent danger of the right, without affecting its origin or addressing its basis.

In other words, the judgments issued by the summary judgments that do not have the validity of the matter *res judicata*. From the concept of approval, the court that issued this decision is not obligated when deciding or deciding on the dispute before it, the necessity of taking into account the reasons and rationales it relied upon when issuing the summary decision. As the court enjoys a wide discretionary authority to rescind it in the event of new circumstances or reasons that justify it, and at the same time, the court is obliged when issuing the final or decisive decision to take into account the circumstances it took in its urgent decision if that they did not change, provided that it did not address the basis of the constitutional challenge (Dr. Abbas Al-Aboudi, 2017).

In Iraq, it is necessary to distinguish between the nature of the law's suspension from the nature of the suspension of the decision, as for first, we find that it is no more than a temporary decision that is not decisive for the origin of the dispute, but can be described as preliminary decisions because its result depends on the final decision that will be issued in the case by the court Federal Supreme Council on the unconstitutionality of the law or not.

The same provision applies to the nature of the court's decision to suspend the implementation of the parliamentary or executive decision, as this suspension is temporary until the original case is resolved.

In Egypt, a distinction must be made between the two cases about to a request to resolve a dispute over jurisdiction as one of the urgent constitutional cases, the law of the Supreme Constitutional Court has

necessitated the suspension of the two cases before the two courts or judicial authorities until the issue of the dispute is decided by the Supreme Constitutional Court.(17), Hence, this endowment is described as an obligatory endowment by the law if it is properly connected with the court. It is not required for the court or its president to rule it, i.e., the endowment ruling derives its existence from the text of the law, not from the court, and therefore the court is not allowed to impede the implementation of this endowment.

That is why some go to describe the nature of this endowment as a preventive role, and it is one of the cases of urgency or urgent precautionary measures stipulated by law, based on the great harm that cannot be remedied in the event of the continuation of the substantive cases in dispute, as the endowment aims not to reach the second case is represented by the conflict of enforcement of judgments, which is manifested by the fact that the legislator's will has been directed beyond any doubt or interpretation to the repetition of the subject of one united litigant case between two different courts that involves forms of urgency, which necessitate stopping those cases until the decision is made by The Supreme Constitutional Court(Dr.Muhammad Fathallah Allam,2018).

As for the second case of the urgent constitutional judiciary in Egypt, which is represented in a lawsuit in conflict with the implementation of judicial rulings, it is worth noting that the role of the Supreme Constitutional Court is no more than a remedial role, as the court addresses the conflict between two contradictory rulings in implementation, and for this the Egyptian legislator his explicit will has tended to grant the court the authority to issue a stay of execution of the two contradictory provisions or one of them, as the stay order is described in this supposition as a permissive endowment, the president of the court enjoys wide authority over its issuance, if we know that the law of the court is not strict in the conditions that must be met to issue the suspension decision, and the president of the court can rely on the evidence available to him for the purpose of ruling to suspend both judgments, or to suspend one of them and to continue the enforcement of the other judgment, which gives it a purely judicial nature, as it is not permissible to appeal against the suspension decision, and despite the effectiveness of this authority, it is Some demanded that the endowment authority be restricted to all members of the court and not to its president, as it is one of the dangerous powers that affect the stability of final judgments.(Dr. Muhammad Fathallah Allam,2016)

We believe that the nature of the suspension decision issued by the president of the court is described as a temporary measure that should not be considered a determinant of the final decision on the contradiction, as this decision relates to the urgent part of the dispute case for face the risk of urgency, and therefore its purpose is nothing more than a freezing of the situation before the court, and the unwillingness to develop its future damages.

The second topic/The formal and objective rules of the urgent constitutional judiciary in Iraq and comparative countries

The legislator in Iraq and the comparative countries have surrounded the urgent constitutional judiciary with many rules, formal (procedural) controls and, the objective conditions necessary for its issuance, to achieve the purpose for which it was intended.

We will discuss these controls in turn as follows:

The first requirement/formal rules

Formal rules and regulations mean that they are a set of provisions related to the competent authority to request consideration of the urgent constitutional judiciary, and to determine the procedures to be followed by the applicant, which requires addressing them in the following sections:

First branch/The authority competent to submit and decide on an urgent court request

The body for submitting the urgent constitutional court request differs from the body that adjudicates it as follows:

First: The body for submitting an urgent constitutional court request:

The authority for submitting an urgent judicial request in Iraq differs from that in comparable countries, as Article (150) of the Civil Procedure Code requires the submission of a petition, and the opponent is notified 24 hours before the date of the hearing, with the requirement to attach documents.

Thus, it becomes clear that the urgent request must be submitted by the person of interest, in two forms: either it is included in the original lawsuit petition, or by an independent petition that includes his demands.

It cannot be accepted that the above article did not require the fulfillment of the conditions of interest and other conditions for filing a lawsuit, as long as the legislator referred to the term (petition), this indicates an indication that it must include the general conditions.

As for the condition of interest, the endangered interest is the subject of the urgent decision that justified the submission of the petition, and is feared over time, which requires the court to verify and verify this condition.

Thus, the personal “interest” condition is one of the basic procedural conditions for accepting the lawsuit petition and proceeding with its specific procedures in the application of the rule (where there is interest, there is the lawsuit), and the general rules stipulate that the interest should continue at the time of filing the lawsuit until it is decided upon.

The second condition that must be fulfilled in the matter of submitting the petition is the necessity of having the capacity as expressed in Article (4) of the Civil Procedure Code.

Regarding to the Law of the Federal Supreme Court and the Court’s internal system No. (1) of 2022 and the decisions issued by it, it is clear that the authorities that may submit a request for urgent justice, such as stopping the implementation of the law or the contested decision of its unconstitutionality, are represented by one of the following:

1- One of the presidencies of the public authorities (the President of the Republic - the Prime Minister - the Speaker of the House of Representatives - the President of the Supreme Judicial Council).

2- Ministers or those of their rank.

3- Prime Minister of the Kurdistan Region - Iraq.

4- Citizen.

5- Chairman of the provincial council that is not organized in a region.

In Egypt, by referring to Article 31 of the Law of the Egyptian Supreme Constitutional Court, we find that it specified the party to file a request to stop the case in the event of a conflict of jurisdiction, as it is the first case of the urgent constitutional judiciary, as it states, “Every interested person may request the Supreme Constitutional Court to appoint a judicial body competent to consider. It is clear that every person has the right to apply to the court, provided that he is one of the concerned persons, can capacity to submit it, as one of the parties to the two cases, in addition to the necessity of having the interest in applying, and then in the absence of the capacity or interest in the case. The applicant shall have no effect in stopping the case in dispute (Dr. Muhammad Fathallah, 2017).

The same provision applies to submitting a request to resolve a conflict of judgments before the Supreme Constitutional Court, as it must be submitted by the concerned parties as well. (Article (32) of the Egyptian Supreme Constitutional Court Law)

Second: The authority competent to issue the urgent constitutional decision:

The position of the legislator differed in determining the authority to which the urgent constitutional court request should be submitted.

The same provision applies in Egypt, as the Supreme Constitutional Court is the competent authority to submit a dispute resolution request to it (Article (31) of the Egyptian Supreme Constitutional Court Law.), and one of the parties to the case or the litigants can submit the request to the court clerk directly, and therefore the request may not be referred from the trial court, as the court must respond The case and its inadmissibility in this case (Dr. Muhammad Fathallah, 2016).

The same provision applies to a case that contradicts the rulings issued by the judiciary or judicial authorities, as the Supreme Constitutional Court has jurisdiction to consider and decide on the request. (Paragraph (3) of Article (25) of the Egyptian Supreme Constitutional Court Law.)

Second branch/ Expedited constitutional court procedures

The urgent constitutional judiciary procedures in Iraqi legislation differ from Egyptian legislation, which we will address successively as follows:

First: The urgent constitutional judiciary procedures in Iraq:

If we look at the text of Article (150) of the Civil Procedure Code, we find that it specified the procedures for issuing a petition for an urgent constitutional decision and the procedures for adjudicating it, on the necessity of attaching the original and photocopies of the documents to the extent of the number of persons (litigants) against whom the decision is required to be issued.

As for the court’s procedures, after submitting the petition, annotating it by the president of the court, and then registering it in the main register, after which the litigant is served with a copy of the lawsuit petition and its documents and invited to attend the pleading, provided that the interval between his notification and the date of the pleading is not less than (24) hours.

Thus, it is clear that the procedures for filing a petition for the urgent constitutional judiciary are similar to the procedures for filing constitutional cases and appeals before the Federal Supreme Court.

Second: The urgent constitutional judiciary procedures in Egypt:

Because of the absence of the Egyptian constitution from explaining the procedures of the urgent constitutional judiciary, we must refer to the law of the Supreme Constitutional Court, as Paragraph (2) of Article (31) of it specified the procedures for stopping the case in the event of a conflict of jurisdiction as it is the first application of the urgent constitutional judiciary, and the applicant must the inclusion of any data in the application, including the subject of the dispute, as well as the judicial authorities that examined the dispute, as well as a statement of the measures taken, as well as the requirement of Article (34) of the Court Law to sign an attorney acceptable to appear before the

Supreme Constitutional Court and to attach an official copy of the two judgments in dispute. The court ruled not to accept the case in form (Dr. Muhammad Fathallah,2016).

The same procedures apply in a case of conflicting judgments before the Supreme Constitutional Court, as the application must indicate the dispute over enforcement, the contradiction between the two judgments, the signature of the application by a lawyer acceptable to attend before it, and an official copy of the two contradictory judgments must be attached.

The second requirement/Objective rules

Many conditions are required of the Constitutional Court to exercise its jurisdiction related to the urgent constitutional judiciary, and the first thing to notice in this regard is the difference of jurisprudence regarding these conditions, on the other hand, others define it with two conditions: urgency and seriousness, which we will address successively as follows:

First branch/General conditions for the urgent constitutional judiciary

The general conditions that must be met to issue an urgent constitutional decision vary, which are as follows:

First: Availability of a state of urgency:

Urgency is the basic and main condition for the exercise of urgent constitutional justice, and for this reason, some have satisfied themselves with the availability of this condition to say that the court can exercise the powers assigned to it in this regard.

Urgency has been defined by many definitions as “the real danger to the right that is required to be preserved, and which must be averted quickly, may not be available if the plaintiff resorts to the ordinary judiciary” (Muhammad Ali Rateb and others,2019).

It is noted that this definition is characterized by inaccuracy, as it is closer to description, and for this reason, others have defined it as “the accompanying situation that affects the right under protection - and claims danger or damage - which cannot be remedied by resorting to ordinary litigation procedures in its fastest cases” (Dr. Muhammad Fathallah Allam,2016).

The same ruling applies to the Egyptian Court of Cassation, which followed the same directions as the jurisprudence regarding its definition.

It is clear that no fixed criterion for urgency has been established. Rather, it is sufficient to set a general rule that leaves its estimation to the judge in each case separately. The objective criterion must be taken into account according to the circumstances and facts of the case of danger or damage to the victim(Dr. Muhammad Fathallah,2016), as urgency is subject to the fulfillment of two combined conditions, the fear or prevention of harm as a result of execution, as well as the impossibility of redressing this harm, which are objective elements that the judge can deduce from the circumstances surrounding the right and its nature, which indicate the actual or expected danger if the judge does not address his protection through the urgent judiciary.(Medhat al-Mahmoud,2018) .

In other words, the damage necessary to fulfill the condition of urgency is represented by the serious, serious, irreparable or irreversible damage, whether it is material or moral damage, and that the implementation affects the self-center of the appellant, that it is necessary to pay the damage suffered by the appellant(Dr. Ali Mohsen Tawaib al-Khursan,2017) However, the question that It is raised in this regard: Do the legislator in Iraq and the comparative countries require the continuation of urgency until the issue of the case is decided upon, or is it sufficient for it to be available only when the appeal is lodged.

The estimation of the availability of a state of urgency in terms of time is comprehensive, and therefore it must be available until the time for a decision on the urgent constitutional court request, as the original is determining it at the time of issuing the judgment, and it is not satisfied with its availability at the time of submitting the request.

Referring to the Iraqi Civil Procedure Code, we find that it was devoid of any explicit text that requires continued urgency until the case is decided upon.(Hadi Aziz,2012)

In Egypt, jurisprudential opinions were divided into two directions. The first opinion sees the availability of a state of urgency at the time of filing a lawsuit, while the majority of opinions are not satisfied with the availability of a state of urgency at the time of filing a lawsuit only, but rather the necessity of its continuation until a decision is made, and otherwise if this condition is available initially, and its absence at the time of issuing the judgment, the court must rule that it lacks jurisdiction (Dr. Muhammad Abdul Latif,1991).

Second: The condition of seriousness:

The condition of seriousness is the second condition that must be fulfilled in the urgent constitutional judiciary. It is not only sufficient to have urgency, but also to require the existence of serious reasons that the judge seeks to issue the urgent decision (Dr. Ali Mohsen Taweeb,2014).

Seriousness means that the plaintiff's requests should be based on serious reasons that leave its assessment to the court in the light of the documents and according to the circumstances of each case separately.

It should be noted in this regard that there is no conflict between the seriousness requirement and the absence of prejudice to the origin of the right in the urgent constitutional judiciary. From addressing the proper legal adaptation to the plaintiff's requests and correcting them - if necessary - in addition to the permissibility of addressing the previous issues stipulated in the summary judgment decision (Dr. Muhammad Fathallah, 2019).

Second: Special Conditions for the Urgent Constitutional Decision:

Legislations differed in defining the conditions for the applications of the urgent constitutional judiciary according to the prevailing idea espoused by the legislator. However, this does not preclude the application of the general conditions mentioned above, which are represented by the conditions of urgency and seriousness.

In Egypt, the legislator has specified in the law of the Supreme Constitutional Court many conditions that must be met in the applications of urgent constitutional justice, about the conflict of jurisdiction between courts or bodies with judicial jurisdiction, as it is the first case of urgency, we find that Article 31 of the Law of the Supreme Constitutional Court specifies the conditions for endowment. Compulsory to claim the following:

- 1- The existence of a case of positive or negative conflict if a lawsuit is filed on one subject before two independent bodies.
- 2- Availability of the conditions of quality and interest in the applicant for the dispute to the Supreme Constitutional Court.

It can be said that in the event of the absence of the capacity condition in the request to resolve the dispute, it has no effect on stopping the case in dispute, and the same provision applies in the case of the absence of interest, as in the case of its establishment after a final decision is issued in the case.

As for the conditions for stopping the provisional case in the event of a conflict of provisions, as it is the second urgent constitutional court case that the Supreme Constitutional Court is competent to consider, these conditions are as follows:

- 1- Existence of a case of conflict before the court regarding the implementation of the two contradictory final judgments.
- 2- Availability of the conditions of capacity and interest in cases of conflict.
- 3- Availability of a condition of urgency (Dr. Muhammad Fathallah, 2017).

The third topic/ The effectiveness of the practical applications of the urgent constitutional judiciary in Iraq and comparative countries

There have been many judicial applications related to the urgent constitutional judiciary, and to review these decisions, and indicate their effectiveness, as well as their consistency with the procedural and objective rules necessary for issuing decisions of the urgent constitutional judiciary, so we will address this in the following two demands:

The first requirement: Is the effectiveness of the decisions of the Federal Supreme Court in Iraq

The Federal Supreme Court has gone through many changes that affected its decisions and judicial trends, whether that was before the legislation of the First Amendment Law of Court Law No. (25) of 2021 or its subsequent periods. Others take the form of suspending the implementation of the contested decision of its unconstitutionality, to demonstrate the effectiveness of these decisions, we will address this in the following sections:

First branch/ The effectiveness of urgent constitutional court decisions

In the period before to the issuance of Law No. (25) of 2021

A variety of decisions issued by the Federal Supreme Court related to urgent justice, including Resolution No. (43) of 2010, Resolution No. (44) of 2010, and Resolution No. (140) of 2018, and we will address them successively as follows:

First: The effectiveness of Court Decision No. (43) of 2010:

The Prime Minister, in addition to his job, had previously challenged the unconstitutionality of the Law on Disengaging the Departments of the Ministry of Municipalities and Public Works No. (20) of 2010, and the court issued Resolution No. 43/Federal/2010 on 12/7/2010 "and on 14/6/2010 the court decided By consensus, the implementation of Law No. (20) of 2010 was suspended until the result of the judgment that will be issued in the case for reasons related to the public interest and its protection, and based on Article (151) of the Civil Procedures Law No. (83) of 1969, as amended.

It is clear from the above decision that the court approved the first case of the urgent constitutional judiciary, represented by (stopping or suspending the implementation of the law whose unconstitutionality is contested), and the court relied on two conditions of the urgent constitutional

judiciary, namely: urgency, and the seriousness condition represented by the serious damages that result from its implementation. , which the court expressed as (reasons of public interest).

It is also noted that the court accepted to stop the implementation of the law based on the request contained in the original lawsuit petition, as well as its provision of the temporary character of the decision, until the issuance of the decisive or decisive decision in the appeal that ended with the ruling of the unconstitutionality of the law, and the annulment of its effects, which indicates the commitment. The court has the formal and substantive rules necessary to issue the urgent decision and its specific objectives to preserve the right that is feared to be lost by temporary decisions that do not address the origin of the matter.

First: The effectiveness of Court Decision No. (44) of 2010:

The Federal Supreme Court issued its decision No. 44/Federal/2010 on 12/7/2010 based on the appeal submitted by the Prime Minister/in addition to his job, regarding the unconstitutionality of the Law of Disengaging Social Affairs Departments in the Ministry of Labor and Social Affairs No. (18) of 2010, which stated in it "The court examined the request submitted by the plaintiff to stop the implementation of the law and the status of the case to the outcome of the judgment to be issued in the case, and found that the request was based on reasons related to the public interest and protection for it. Therefore, the court decided to suspend the implementation of the law until the outcome of the judgment that will be issued in the case."

The court reiterated the principles that it settled on in its previous decision related to stopping the implementation of the law, after ensuring that the conditions for issuing the urgent constitutional decision, represented by the conditions of urgency and seriousness, are met, as well as reliance on the requirements to protect the public interest from serious damage in the event of the implementation of the law, which is evidenced On the effectiveness and efficacy of the above court decision.

Third: The Effectiveness of Court Decision No. (140) of 2018:

The Federal Supreme Court issued its decision No. 140/Federal/2018 on 7/23/2018 based on the appeal submitted by the Prime Minister/in addition to his position on the unconstitutionality of Parliament Law and its formations No. (13) of 2018, which stated, "It was found that the request to stop the implementation of the provisions of The aforementioned articles have fulfilled the formal aspects required in the law and were based on legal reasons, as the constitutional judiciary represented by the Federal Supreme Court has a general jurisdiction to consider such a request, and based on the provisions of Article (151) of the Civil Procedures Law No. (83) of 1969 about Article (93 of the Constitution and Article (152) of the Civil Procedures Law, the Federal Supreme Court decided to suspend the implementation of the provisions of the aforementioned articles of the House of Representatives Law and its formations until the case is resolved on the issue of challenging its unconstitutionality.

It is clear from the above decision that the court's judiciary has continued to follow the approach of previous decisions issued by it, which is evidence of the court's recognition of its authority to suspend the implementation of the law, based on the availability of the necessary conditions for the issuance of urgent constitutional court decisions, including the conditions of urgency and seriousness, in order not to arrange serious damages to the public interest, as well as approving the timing of this suspension until the outcome of the original appeal, which is a matter with which it can be said with the efficacy and effectiveness of the foundations and rationales on which the court relied in this decision.

Fourth: The Effectiveness of Court Decision No. (89) for the year 2017:

The Federal Supreme Court issued Decision No. 89, 91, 92 and 93 / Federal / 2017 on 20/11/2017 based on the appeal submitted by some of members of the House of Representatives against the regional order issued by the President of the Kurdistan Region - Iraq No. (106) on 9/6/2017 That includes holding a referendum that includes the independence of Kurdistan and the establishment of a Kurdish state independent of Iraq, and the court's decision stated that the referendum was unconstitutional on 9/25/2017, and that it would cancel all the consequences and results that would result from it (41).

It is clear from the above decision that the court considered the subject of the lawsuit the second case of urgent constitutional justice, as it based its decision on the unconstitutionality of the provisions of Article (93/Third) of the Constitution, and then this decision was issued after the availability of the conditions of urgency and seriousness and the protection of the national public interest, which is demonstrates the effectiveness of this decision in preserving the political system, consolidating the principle of the supremacy of the constitution and nullifying all constitutional violations by the provisions of Article (13/Second) of the constitution.

Fourth: The Effectiveness of Court Decision No. (150) for the year 2022:

The Federal Supreme Court issued its decision No. 150/Federal/2022 on 7/18/2022 based on the referral submitted by the Federal Court of Cassation related to the settlement of the jurisdictional conflict between the federal judiciary and the judicial bodies of the Kurdistan Region.

It is clear from the foregoing that the suspension of judicial procedures in cases of conflict of jurisdiction between courts is the third case of urgent constitutional justice in Iraq.

Although the court's decision did not explicitly refer to the decision to stop the obligatory consideration of the case by the courts before which the negative conflict occurred in the consideration of the two cases under appeal, the Federal Supreme Court relied on the provisions of Article (93/VIII/A) of the Constitution, as well as its reliance Paragraph (1) of Article (208) of the Civil Procedures Law, which states that "The Court of Cassation may issue a decision to stay the execution until a decision is made on the outcome of the appeal," which shows the effectiveness of the Federal Supreme Court's decision.

Fifth: Effectiveness of Court Decision No. (97) for the year 2021:

The Federal Supreme Court issued its decision No. 97/Federal/2021 on 1/8/2021, which stated, "Whereas the implementation of Cabinet Resolution No. (251) for the year 2021 at present time arranges a change in the legal positions of those covered by it, which requires and based on the provisions of Articles (151) and (152) of the Civil Procedures Law suspend the implementation of the aforementioned decision until the case is resolved, and for the foregoing, the court decided to suspend the implementation of Cabinet Resolution No. (251) for the year 2021... until the case is resolved 97/Federal/2021.

It is clear from the decision that suspending the implementation of the Council of Ministers decision (executive decision) is the third case of urgent constitutional justice in Iraq. decision and its efficacy.

However, it is noted in this regard that the court did not follow a unified approach regarding the issuance of the decision to stop the decisions issued by the Council of Ministers in all the cases before it stated in one of the decisions, "The Federal Supreme Court finds that what the Council of Ministers has done is to stop all the measures taken by all the governorates." And its councils regarding what was stated in Article (45/First) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, is to stop organizational procedures and did not disrupt the aforementioned law, but rather to stop the procedures that must be stopped until the end of the Supreme Committee for Coordination between the provinces.

Rather, we find that the court has gone in other decisions to reject the requests of the urgent judiciary by recommending the appointment of the heads of independent bodies or special grades, due to the lack of the specific conditions of urgency or a state of extreme necessity, and not entering into the origin of the right and deciding on it, by giving a prior opinion on the constitutionality of the contested decision in it.

The second requirement/The effectiveness of the decisions of the Supreme Constitutional Court in Egypt

In order to determine the effectiveness of the decisions issued by the Egyptian Supreme Constitutional Court regarding cases of the constitutional judiciary, we will address that in the following sections:

First branch/Decisions of the Supreme Constitutional Court on settling disputes of jurisdiction

The Supreme Constitutional Court in Egypt followed a unified judicial direction regarding its jurisdiction to settle jurisdictional disputes. It did not stipulate the finality of the decision in a question of jurisdiction by Paragraph (Second) of Article (25) of the Supreme Constitutional Court Law No. 48 of 1979 and what was stated in one of its decisions "When one of the two parties has rendered a final judgment in the case brought before it, and before the matter is submitted to the Supreme Constitutional Court, thus exhausting its jurisdiction due to the litigation having left its hand by issuing a final and conclusive judgment in it, the resolution of a jurisdictional dispute has no place after the dispute has ceased to exist. echoed between two different judicial authorities".

In another decision, the Supreme Constitutional Court decided to "submit a request to designate the authority competent to hear the case, which has the effect of stopping the existing cases related to the dispute case until it is decided upon(45). It is inconsequential and irresponsible for any of the judicial authorities to have taken measures or issued decisions following this date."

In another decision of the court, it went, "The papers attached to the lawsuit statement do not, by themselves, indicate that the lawsuit of the same subject has already been filed before two judicial bodies...which is the matter with which a judgment must be made that the lawsuit is not accepted."

Thus, it is clear from the above decisions that the Supreme Constitutional Court has played an important role in exercising the powers of the urgent constitutional judiciary. 31) of the Law of the Supreme Constitutional Court, as well as the preventive nature of the court's decision to suspend the positive and the effectiveness of the role assigned to the court in the exercise of its functions.

Second branch/The efficacy of the decisions of the Supreme Constitutional Court regarding inconsistency of rulings

The Supreme Constitutional Court intervenes in the dispute that occurred with the implementation of the two judgments after both courts insisted on their jurisdiction to consider the case. Therefore, the court's role is limited to giving priority to the judgment issued by the functionally competent court, according to the discretionary authority granted to it, and in line with the nature of the request submitted by the plaintiff, in other words The court does not base its ruling on just the form and words of the request, or the plaintiff's adaptation only, but rather it must focus on its content and essence, and this is why the role of the Constitutional Court in this assumption is described as a remedial role, as it mostly comes from cases after the subject court issues the decision separator in the topic.

Result And Discussion

The Constitutional Court exercised its control over this form of summary justice in many of its decisions, as it stated in one of them, "While ... one of the parties to the dispute in the present case ... is a foreign judicial decision, there is no conflict between two final rulings." Two contradictory statements, both issued by a national judicial authority or body, which necessitates a ruling that the case is not accepted"

In another decision, the Constitutional Court also concluded that there is no conflict in the event of a contradiction between two rulings, one of which is a substantive ruling, and the other is an urgent ruling, since the latter is only exposed to the appearance of the papers without the substance, and the Constitutional Court has also determined the scope of its mandate by not extending its mandate to research. The extent to which those provisions are in conform with the law or their correction, but rather is limited to determining which of the two contradictory rulings has been issued by the authority that has the jurisdiction to rule in the dispute, and then it is concerned with the priority of implementation .

While the Constitutional Court, in another decision in 2016, decided to stop the implementation of the administrative judiciary ruling invalidating the maritime border demarcation agreement between Egypt and Saudi Arabia, as the President of the Supreme Constitutional Court issued a temporary judicial order to stop the implementation of contradictory and conflicting provisions on the implementation in question, under the third paragraph of Article (32 of the Supreme Constitutional Court Law (51).

We conclude from the foregoing that the judiciary of the Supreme Constitutional Court follows a unified approach, as the court begins to check the legal conditions for the conflict of implementation of the two judgments, and then the court must then rule not to accept the case in the absence of a contradiction between the two judgments or the inconclusiveness of the two judgments, and it can be said the Constitutional Court when exercising this jurisdiction, is not considered an appellate body, but rather exercises an original jurisdiction entrusted to it by law.

Conclusion

After completing our study, we reached many of the following conclusions and recommendations:

First, the results:

1- The urgent constitutional judiciary is one of the branches of the constitutional judiciary, and it is described as one of the powers granted to the constitutional courts that take the model of judicial oversight on the constitutionality of laws, whether in Iraq or the comparative countries. The general rules of civil procedures and pleadings are applied if it is not stipulated, and thus it is similar to the summary judiciary applied in other branches of law, provided that the specific nature of the constitutional lawsuit and the nature of the constitutional judiciary are taken into consideration.

2- The Iraqi legislator, in the 2005 Constitution and Federal Supreme Court Law No. (30) of 2005, adopted a position of silence about regulating the explicit authority of the court in the exercise of urgent judicial powers, such as stopping the implementation of the law or stopping the contested decision of its unconstitutionality, and this can be deduced from the provisions of Article (93/III). Eighth) of the Constitution, which allowed the court to consider disputes between the authorities, in addition to referring to the provisions of Article (50) of the Federal Supreme Court's internal system No. (1) of 2022, which referred to the Civil Procedures Law in what is not stipulated in the text, and includes the summary judiciary, As well as Article (30) of the internal system, with which it can be said that there is a constitutional and legal basis for the exercise of the urgent judicial powers of the Federal Supreme Court in Iraq.

Contrary to the Egyptian legislator, who determined the authority of the Supreme Constitutional Court to issue a positive and precautionary stay of the contested decision with explicit provisions in the Supreme Constitutional Court Law No. 48 of 1979, and at the same time he referred to the texts of the Civil and Commercial Procedures Law regulating the powers of the urgent constitutional judiciary.

3- The forms and images of the urgent constitutional judiciary in Iraq varied, as we find it sometimes embodied in stopping the implementation of the contested law of its unconstitutionality, while we find it sometimes takes the form of suspending the implementation of the decision issued by the House of Representatives (the Parliamentary decision) or the decision of the Council of Ministers (the executive decision) or the decision issued by the Council of Representatives. The Kurdistan Region or the Provincial Council, or the court's decision to suspend the implementation of the judicial decision related to the conflict of jurisdiction before the federal courts and the courts of the region, unlike Egypt, where the urgent constitutional judiciary took one form before the Supreme Constitutional Court represented by the positive or legal endowment decision for the contested judicial decision, and with this it is clear the diversity of urgent constitutional cases in Iraq and its superiority over the Egyptian legislator in this regard.

4- The constitutional courts are not free to exercise the authority to stop the implementation of the law or the decision before them, as this affects the principle of separation of powers, and for this reason the legislator and the jurisprudence gave them many conditions necessary to issue urgent constitutional judicial decisions, as these conditions are represented in the presence of urgency or extreme necessity. Which requires the intervention of the court to issue the suspension decision, as well as not to touch or prejudice the origin of the law or the contested decision, it is not permissible as a general principle for the court to give a prior opinion by using its authority to stop the implementation of the law or the contested decision, in addition, we have noticed the expansion of the courts The constitutionality is to verify the conditions of the appeal, which is the availability of capacity and interest in the appeal, especially if we know that the law has given the court a wide discretionary authority to verify the availability of these conditions, which was confirmed by the judiciary of the Federal Supreme Court in Iraq and the Supreme Constitutional Court in Egypt.

5- It became clear to us that there is a real and effective role for the Federal Supreme Court regarding the applications of urgent constitutional justice in Iraq, despite the suspicions that are raised about the court's violation of the principle of separation of powers according to Article (47) of the Iraqi constitution regarding the court's issuance of the decision to stop the implementation of the law in Iraq. However, the stable judicial norms in the Federal Supreme Court, we find that it has proceeded not to extend the issuance of the decision to suspend the law, except in the case of strong suspicions of unconstitutionality, and the same provision applies to court decisions to stop the implementation of the parliamentary or executive decision, as the court did not hesitate to rule by rejecting many Of the requests for lack of the conditions required by law or the judiciary to issue a suspension decision.

The same provision applies to the judiciary of the Supreme Constitutional Court in Egypt about decisions to stay the implementation of the contested judicial decision, as it exercised the role of watchdog over these decisions, in line with the legal conditions and controls necessary for the exercise of the powers of the urgent judiciary.

6- The decisions issued by the Iraqi Federal Supreme Court and the Egyptian Supreme Constitutional Court enjoy absolute authority regarding endowment decisions issued by them, whether for public authorities or individuals. The case, whether it is unconstitutional or not.

Second: Recommendations:

1- We call for addressing the urgent constitutional judiciary with explicit provisions in the new court law to be legislated by Article (92/first) of the Constitution, and not to rely on referral and general rules in the Civil Procedure Code, due to the specificity of the constitutional judiciary.

2- We call on the Iraqi Federal Supreme Court to amend the internal system of Court No. (1) of 2022 and expressly regulate the court's authority to issue urgent constitutional judiciary decisions such as stopping the implementation of the law or the contested decision of its unconstitutionality, and not relying on precedents and constitutional judicial norms applied in this regard.

3- We call on the Egyptian legislator to expand the cases of urgent constitutional justice and follow the path of what the Iraqi constitutional judiciary has followed about expanding the cases of endowments to include the law whose unconstitutionality is challenged, as well as decisions issued by the legislative or executive authorities in case of grave and flagrant violation of the provisions of the constitution.

References

- [1] See Article (484) of the amended French Civil Procedure Code of 1975.
- [2] Tariq Asrawi, Urgent Judgment in the Jordanian Civil Procedure Code, published in Amman Arab University, No. 2, 2003, p. 2.
- [3] Dr. Ibrahim Saleh Al-Sarayrah, The Effectiveness of the Urgent Judiciary and the Mechanism of Its Implementation According to Jordanian Legislation, published in Anbar University Journal of Law and Political Sciences, No. 2, 2013, p. 83.

- [4] Dr. Muhammad Fathallah Allam, *The urgent constitutional judiciary (a study of the idea of urgency before the constitutional judiciary)*, New Friday House, Alexandria, 2020, p. 101.
- [5] See the decision of the Egyptian Court of Cassation, Civil Cassation, session 18/2/1966, Technical Office Group, Year 17, p. 148.
- [6] Judge Medhat Al Mahmoud, *Explanation of Civil Procedures Law No. (83) of 1969 and its practical applications*, Al-Rafidain, Beirut, 2019, p. 275.
- [7] Dr. Ali Mohsen Tawaib al-Khorsan, *The Authority of the Supreme Administrative Court in Iraq to suspend the execution of a judicial ruling (a comparative study)*, Comparative Law Library, Baghdad, 2020, p. 34.
- [8] See Articles (142-149) of the Iraqi Civil Procedure Code No. (83) of 1969.
- [9] Dr. Abbas Al-Aboudi, *Explanation of the Provisions of the Civil Procedure Code (a comparative study and reinforced with judicial applications)*, Al-Sanhouri Library, 2016, pp. 384-385, Judge Medhat Al-Mahmoud, previous source, p. 277.
- [10] See Articles (141-150) of the Iraqi Civil Procedure Code.
- [11] The Federal Supreme Court Decision No. (43) and (44) of 2010 are considered.
- [12] See Federal Supreme Court Decision No. (127) of 2017.
- [13] For example, at the federal level, the court stops the implementation of the decision issued by the House of Representatives or the Council of Ministers, while at the level of the region, the court issues a decision to stop the procedure issued by one of the authorities of the region, such as the decision to stop the referendum on the secession of the Kurdistan region of Iraq, while at the local level it is to stop The decision of the provincial council.
- [14] The Federal Supreme Court Decision No. (150) of 2022 is considered.
- [15] See articles (25), (31) and (32) of the Egyptian Supreme Constitutional Court Law.
- [16] Dr. Abbas Al-Aboudi, a previous source, pp. 370-371.
- [17] See Article (31) of the Egyptian Supreme Constitutional Court Law.
- [18] Dr. Muhammad Fathallah Allam, previous source, pp. 210-211.
- [19] Dr. Muhammad Fathallah Allam, previous source, p. 240 and beyond Dr. Maher Abul-Enein, pp. 346-347.
- [20] Interest is defined as the benefit or benefit that accrues to the claimant if the court responds to his request.
- [21] It was stated in the Federal Supreme Court Decision No. 33 / Federal / 2015 on 06/29/2015 (the head of the provincial council has the legal capacity to file this case).
- [22] Dr. Muhammad Fathallah, previous source, 216-207
- [23] See Article (32) of the Egyptian Supreme Constitutional Court Law.
- [24] See Article (31) of the Egyptian Supreme Constitutional Court Law.
- [25] Dr. Muhammad Fathallah, previous source, pp. 214-215.
- [26] See paragraph (3) of Article (25) of the Egyptian Supreme Constitutional Court Law.
- [27] Dr. Muhammad Fathallah, previous source, pp. 219-220.
- [28] See Articles 32 and 34 of the Egyptian Supreme Constitutional Court Law.
- [29] Muhammad Ali Rateb and others, *Judgment of Urgent Matters, Part One*, World of Books, Cairo, p. 297.
- [30] Dr. Muhammad Fathallah Allam, previous source, pg. 60.
- [31] The Jordanian Court of Cassation goes to define the summary judiciary as “the danger to the right that is required to be protected by a temporary procedure that does not help the normal litigation procedures. The origin of the dispute is over the judges of the matter. See Jordanian Court of Cassation Decision No. 1379/2010 dated 28/4/2010.
- [32] Dr. Muhammad Fathallah, previous source, pp. 128-129.
- [33] Judge Medhat al-Mahmoud, previous source, p. 276.
- [34] Dr. Ali Mohsen Tawaib al-Khorsan, previous source, p. 137 and beyond.
- [35] Judge Hadi Aziz, *Urgent Judiciary*, p. 23.
- [36] Dr. Muhammad Abdul Latif, *Legislative Correction*, Dar Al-Nahda Al-Arabiya, 1991, pg. 60, d. Muhammad Fathallah, previous source, pp. 136-137.
- [37] Dr. Ali Mohsen Taweeb, previous source, p. 154.
- [38] Dr. Muhammad Fathallah, previous source, pp. 146-147.
- [39] The conditions for accepting a case of conflict of by Article (25) of the Law of the Supreme Constitutional Court were that the same subject is brought before two or two judicial bodies, and that the litigation is before two or two judicial bodies, in addition to the functional independence of the two disputing courts or judicial bodies, as well as the unity of the subject The litigants in the two lawsuits subject to dispute, and that neither of the two judgments was issued by the Supreme Constitutional Court, and that each of the two courts or two parties

issued a judgment regarding their jurisdiction (positive dispute) or their lack of jurisdiction to consider the case (negative dispute).

[40] Dr. Muhammad Fathallah, previous source, p. 249 and beyond.

[41] See the explanatory decision of the Federal Supreme Court No. 122/Federal/2017 issued on 6/11/2017.

[42] See Federal Supreme Court Decision No. 33/Federal/2015 on 06/26/2015.

[43] The Federal Supreme Court Decision No. 23/Federal/2022 dated 7/18/2022, as well as Resolution No. 13/Federal/2022 dated 7/25/2022, and Resolution No. 20/Federal/2022 dated 7/19/2022, are considered. No. 21/Federal/2022 on 06/26/2022, and Resolution No. 22/Federal/2022 on 06/26/2022.

[44] See the decision of the Supreme Constitutional Court No. 14 of Judicial Year 17 - Dispute issued on 2/12/1995.

[45] See the decision of the Supreme Constitutional Court No. 3 for the year 10 dispute issued on 5/1/2991, as well as the decision of the court No. 36 for the judicial year 28-dispute issued on 10/2/2007.

[46] See the decision of the Supreme Constitutional Court No. 19 of Judicial Year 9 - Dispute issued on 1/4/1989.

[47] The decision of the Supreme Constitutional Court No. 3 of 12 Judicial Year - Dispute issued on 4/1/1992 was referred to by Dr. Muhammad Fathallah Allam, a previous source, p. 219.

[48] See the decision of the Supreme Constitutional Court No. 1 of Judicial Year 7 - Dispute issued on 3/3/1987.

[49] See the decision of the Supreme Constitutional Court No. 11 of Judicial Year 16 - Dispute issued on 3/7/1995.

[50] See the decision of the Supreme Constitutional Court No. 1 of Judicial Year 5 - Dispute issued on February 23, 1984.

[51] The decision of the Supreme Constitutional Court No. 12 of Judicial Year 39 issued on 9/29/2016 was referred to by Dr. Muhammad Fathallah, previous source, p. 257 and beyond.