
The Role of The Constitutional Judiciary in Developing Constitutional and Political Systems

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Abstract

This study deals with the issue of the role of legitimate judges in the development of constitutional and political systems through the mistake of the constitutionality of statutes and rules and the interpretation of the texts of the Constitution, and this, in turn, ensures an important and basic guarantee of the constitutional system that the people accepted. This study deals with the emergence of constitutional oversight in Jordan and the status of the constitutional judiciary within the ideological dimensions and the political, economic, social and cultural influences related to the Constitution, as well as studying everything related to the constitutional judiciary in terms of the nature of the constitutional judiciary's authority and the constitutional judge's methods in developing the constitutional system and exposing some of the problems in controlling the legality of laws and regulations and determining their fate for confirmation or cancellation. As well as standing on the issues through which the constitutional judiciary develops the constitutional system. This study also sought to identify the view of jurisprudence on constitutional jurisprudence in developing the constitutional system. The study came to a conclusion with a number of findings, the most significant of which was that the constitutional judiciary must develop the system's respect for rights and freedoms, the principle of the separation of powers, and the judiciary's independence, in addition to maintaining the fairness and transparency of elections.

Keywords: The constitutional judiciary, The constitutional court, The political system, constitutional system, The trial court

Introduction

Development in any country's constitutional and political system means making positive changes in the structures, values, and performance of the constitutional and political system. The development issue may sometimes be done through the constitutional judiciary, which may be available to the constitutional judiciary directly in the Constitution, through explicit powers on which it is based to develop the constitutional system. Alternatively, it may be available indirectly through the exercise of his functions in deciding the constitutionality of laws and regulations or interpreting the Constitution's provisions.

The oversight of the constitutional judiciary is a fundamental guarantee for protecting the political system with all its components in normal circumstances, and it is imperative to protect these freedoms in exceptional times. No matter how sophisticated it is when drafting by stipulating the components of the political system, the constitutional text remains useless if it does not include effective mechanisms to protect these components from any violation that any authority may affect. To ensure this protection, constitutional oversight was established to protect the political system. In this study, we try to stand on the understanding of the Jordanian legitimate judiciary in the issue of developing the Jordanian constitutional system, by identifying the role of constitutional jurisprudence presented by the Jordanian constitutional judiciary since its inception, through which it developed constitutional rules and principles, and made contributions to the interpretation of the Constitution and the development of constitutional determinants. The work of the three authorities, with the intent of carrying out the task entrusted to him by the Constitution, which is to ensure the protection and respect of the Constitution, we address this while bearing in mind the development the world is witnessing, and the trends and discussions taking place in the global forums for constitutional judiciary, which are the attempt to establish democracy through the law, and what this means is the development of mechanisms for the supremacy of constitutions and the subordination of the state to the law on the one hand, and the establishment and consecration of rights and freedoms.

The Study Problem

With all its components, the political system is the goal that constitutions seek to protect. Whether groups or individuals, people have struggled to conclude a social contract between the ruler and the ruled that guarantees the

recognition of their rights, whether civil, political, economic, social, or cultural. The question arises: Does the constitutional judge have to abide by what was stated in the constitutional text? Especially since the constitutional texts are short and short. In addition to the possibility of ambiguity in the constitutional text or the silence of the legislator about regulating something in the joints of the political system. Here, we find that comparative law and the jurisprudence of the constitutional judge worked to expand the meanings and dimensions of these texts, as they are linked to the contents of some national texts, such as the preambles of constitutions or some principles of constitutional value, or supra-constitutional principles that find their roots either in the text of the Constitution itself or in declarations of universal human rights and international treaties, and thus linking the constitutional judge's jurisprudence to the texts of the constitutional bloc that without recourse to them, the constitutional judge cannot protect the essence of the political system.

The Study Approach

The method followed by the researchers in preparing this study is; The comparative analytical approach, by analyzing the constitutional texts and comparing them, by comparing the Jordanian constitutional system with some comparative systems whenever the need arises.

Constitutional control in Jordan

The emergence of constitutional control in Jordan

The three Jordanian constitutions (1952, 1946, 1928 before the amendment)¹ did not include any text that grants any judicial body the right to monitor the constitutionality of laws and regulations. Nevertheless, this judiciary, with its various types and degrees (conciliation, beginning, appeal, discrimination, and supreme justice), addressed the issue of oversight over the constitutionality of laws and regulations and ruled that some texts were unconstitutional while looking into various civil, criminal or administrative cases. However, this oversight did not exceed its right to refrain from applying the law or the system that is contrary to the Constitution, and therefore the oversight at that stage was described as the control of abstinence.

However, a whole chapter was added to the 1952 Constitution titled "Constitutional Court" to be with its five articles a constitutional basis for the establishment of a constitutional court to be based in Amman and to be an independent judicial body that would rule on constitutional disputes. These extensive constitutional amendments were made to the Hashemite Kingdom of Jordan's 1952 Constitution and were published in issue (5117) of the Official Gazette on October 1, 2011. We can say that the Jordanian judiciary, and specifically the regular judiciary of its various types and degrees, extended its constitutional control over laws by issuing Constitutional Court Law No. (15) of 2012 in accordance with the provisions of Chapter Five of the (amended) Constitution, which outlines the Constitutional Court's operations, administration, how to appeal before it, and all matters related to it.

The Constitutional Court Law No. (15) of 2012 made this court the only body authorised to monitor the constitutionality of laws and regulations through direct appeals from bodies specific to those bodies. However, the constitutional amendments that took place on October 1, 2011, established an independent constitutional court that exercises its right to monitor the constitutionality of laws and regulations and interpret the Constitution's provisions.

As for the nature of this oversight, and in accordance with these constitutional and legislative amendments, it has become an abolition control. In the sense that the court may rule the unconstitutionality of the law or system that is directly challenged before it, or the unconstitutionality of either of them is argued before the subject judge. The result is that the law or regulation is considered invalid from the date of issuing the judgment or the date specified by the judgment.

Hence, we can say that the Jordanian courts of all kinds and degrees had extended their constitutional control over laws and regulations without a constitutional text authorizing them to do so, but they were oversight by refusal. The situation remained in this state until the Jordanian Constitution, following the amendments made to it on 1/10/2011, laid the basis for establishing the Constitutional Court, which was already established by law No. (15) of 2012, and it becomes a judicial body capable of ruling the invalidity of a law, system, or text in any of them due to

¹ The first is the Basic Law of Transjordan issued on April 16, 1928, and published in the Official Gazette (Al-Sharq al-Arab) No. 188 (excellent issue) on April 19, 1928; the second is the Constitution of the Hashemite Kingdom of Jordan issued on December 7, 1946, and the third is the 1952 Constitution of the Hashemite Kingdom of Jordan issued in January 1952 and published in the Official Gazette No. 1093 dated January 1952, which followed the following of the amendments more than sixty amendments, the most recent of which was the amendments issued in October 2011, which affected about one-third of the articles of the Constitution

unconstitutionality so that the nature of constitutional oversight changes from the control of abstention with relative authority to the control of annulment of absolute authority.

The Position of The Constitutional Judiciary Within Constitutional Engineering

Constitutional engineering is a newly established term like educational engineering, which means taking into account all ideological dimensions and political, economic, social, and cultural influences related to the Constitution, which explain and clarify its provisions based on what they should be, bringing it closer (the Constitution or constitutional law) to the political system, whose image and nature are not determined by the texts of the Constitution alone, but also by hidden influences that are absent from the constitutional text, such as ideological, religious, cultural, economic, political and other factors.

The Nature of The Powers Vested in The Constitutional Judiciary

The question arises about the nature of the powers vested in the constitutional judiciary. Is it judicial or merely advisory? The power of the constitutional judiciary is judicial, whether in the form of abstention (before the constitutional amendments) or the form of annulment. In addition to his right to interpret the Constitution², here, some other aspects may overlap, which may reach in nature advisory, but indirectly, as happens in requests for interpretation of the texts of the Constitution submitted to the court by the Council of Ministers, the Senate or the House of Representatives. Here, According to the Constitutional Court, "... Based on the preceding and an answer to the question posed by the Council of Ministers in this regard, the court considers that, except for the two cases referred to above, it is not permissible to arrest or try a member of the Senate and the House of Representatives during the duration of the meeting of the house whether in the case of criminal acts committed by him before he acquired this capacity or after he acquired it, except after lifting his immunity by a decision by a total mainstream of the council to which the member whose arrest or trial belongs."³ In fact, several constitutions allow the head of state (either a king or president of a republic) to send bills to a Constitutional Court or Constitutional Council to decide whether or not they are in accordance with the Constitution. The decision of the court or the council in such a case shall be final and binding on all relevant authorities.⁴

The constitutional judge's curriculum aims to develop the constitutional and political system.

Interpreting the texts of the Constitution, its types, and standards

According to the Jordanian Constitution, the Constitutional Court has the authority to interpret the text of the Constitution upon request from the Council of Ministers or one of the two parliaments. The court's ruling will take effect after it is published in the Official Gazette, which implies that the court's interpretation of one or more constitutional texts will be included in the analysis and conclusion of those texts. The court has the right to interpret another text in the context of this request if such interpretation is necessary for the completeness and clarity of its interpretative decision.

The expression of the constitutional judge's interpretation refers to the interpretation of the court body and not to the individual judge in it because the interpretation decision, as well as the enforceable and binding judgment of the court, refers to the court body unanimously or by the majority and not to the interpretation of any opposing member. The interpretation and interpretation of the texts of the Constitution may be subjectively contained within the Constitution.⁵

² The Supreme Council was in charge of interpreting the provisions of the Constitution before the recent amendments and the issuance of Constitutional Court Law No. (15) of 2012

³ Constitutional Court. Jordan. Interpretation Resolution No. (7) of 2013.

⁴ See the Constitution of the Arab Republic of Egypt, the Constitution of the Bahrain Courts, the Constitution of the Algerian Republic, the Constitution of the Moroccan Court, and the Constitution of the Lebanese Republic. For more information on some of these decisions, see the Journal of Constitutional Oversight. The Union of Arab Constitutional Courts and Councils, Year 4, Issue 2012.

⁵ For example, clause (1) of Article (6) of the Jordanian Constitution gives us apparent basic aspects of inequality in the rights and duties of Jordanians (discrimination), which the ordinary legislator may not enter into any of its regions in original legislation (law) or subsidiary (system). Otherwise, it would be unconstitutional. It states, "Jordanians are equal before the law, and there is no discrimination between them in rights and duties, even if they differ in race, language or religion." As well as Article (28), which explains the meaning of monarchy, as well as the recent amendment to Article (94) of the Constitution, in which he interpreted the phrase "things that require taking necessary measures that cannot be delayed" replaced by "the following matters: a-public disasters b-case War and emergencies c- The need for urgent and necessary expenditures that cannot be delayed."

or judicially entrusted to the Constitutional Court or the Constitutional Council, or jurisprudentially entrusted with jurisprudence. The first and second are mandatory, and the third is for guidance only.⁶

The goals and objectives of the Constitution, which is the supreme law that outlines the system of government as well as the fundamental elements of the state and society, including rights, freedoms, and authorities, as well as how they relate to one another and to other members of society, are linked to how the Constitution's texts should be interpreted. The stability of the public order in all of its singularity, with the implications of this stability being growth and prosperity for the country and the citizen within the confines of the current political and constitutional system, is its ultimate objective

Techniques Of the Constitutional Judge's Work to Help the Development

The individual constitutional judge or the Constitutional Court has a stock of constitutional, political, and judicial information that must be invested objectively in exercising its powers and competencies. This intellectual stock must be constantly nourished through comparative legal and constitutional studies and access to the reality of the constitutional and legal situation as it exists in the state, and work to develop it to become what it should be within the framework of the basic components and capabilities of society. This, in turn, requires a wide culture for the constitutional judge to develop through traditional sources such as encyclopedias, court rulings, books, specialized legal journals, written reports and periodicals, and other electronic means of communication of various kinds.

Contribution Of the Constitutional Judiciary to The Development of The Constitutional System

The general inspection of the constitutionality of laws and regulations and the interpretation of constitutional provisions form the foundation of the constitutional judiciary's functions, and this, in turn, is an important and basic guarantee of the constitutional system that the people approved (referendum) or the people and the ruler (the contract) in most cases and the stability of the political system in it, which constitutes an appropriate incubator for the factors of development of the constitutional system, to meet the requirements of the political, social and cultural entity of the vast majority of the total members of the society referred to as the nation.⁷

Topics Through Which the Constitutional Judiciary Develops the Constitutional System Respect For Rights and Freedoms

In addition to regulating the fundamental issues of the state, the Constitution also regulates the issue of individual rights and freedoms, whether these rights are personal, political, social, or economic. In order to respect these rights and freedoms, they must be stipulated in the heart of the Constitution.⁸ Hence, the constitutional recognition of rights and freedoms by stipulating them at its core or in its introduction - which also has a constitutional value - makes these rights and freedoms enjoy constitutional protection so that if the legislator assaults these rights and freedoms by detracting from them or wasting them through the legislations that he issues, such legislation is liable to be declared unconstitutional.⁹ In light of this, the constitutional judiciary played an important role in ensuring that people enjoy public rights and freedoms through a constructive interpretation of the concept of right and freedom,¹⁰ He was constantly in contact with the legislator in directing him not to enact any law that violated or detracts from a right or freedom contained in the Constitution. It did not stipulate that the violation of the Constitution be directly in its text, but also in its spirit, according to which it was ruled that texts in some laws related to public rights and freedoms are unconstitutional. Indeed, the constitutional judiciary towards protecting and respecting public rights and freedoms was also directed to the constitutional legislator by stipulating this in the core of the Jordanian Constitution. As amended, such is what was stated in paragraph (1) of Article 128: "The laws issued under this Constitution regulating rights and freedoms shall not affect the essence of these rights or affect their fundamentals." The Constitutional Court, in its Decision No. 5 of 2014 dated 1/22/2015, went on to say that since it is one of the established and established principles that equality as a constitutional principle, and what was stipulated in paragraph (1) of Article (6) of the Constitution (Jordanians are equal before the law, there is no discrimination between them In rights and duties, even if they differ

⁶ Dr. Numan Al-Khatib, Mediator in Political Systems and Constitutional Law. Fourth Edition. House of Culture and Publishing. Amman 2012, p. 385.

⁷ Dr. Kamal Abul-Magd: Oversight of the constitutionality of laws in Egypt. A comparative study. Cairo 1982 pg 460.

⁸ Judgment of the Supreme Constitutional Court of May 19, 1990. Compilation of Court Judgments, Part IV, p. 256.

⁹ Dr. Eid Ahmed Al-Hasban, "Constitutional Protection of Fundamental Rights and Freedoms," Sharia Journal, Issue 28, Ramadan 1427 AH / October 2006, p. 323

¹⁰ Hajar Al-Arabi: The Constitution and the Status of Rights and Freedoms, Academy Journal for Social and Human Studies, p. 16, Hassiba Ben Bouali University of Chlef, 2016, p. 191.

in race, language, or religion), the requirements of this text to prevent discrimination in rights and duties are that the equality stipulated in the Article mentioned above is not arithmetical because the legislator has the discretionary power. To achieve the requirements of the public interest, conditions shall be established according to which the legal positions in which individuals are equal before the law are determined so that if these conditions are fulfilled in a group of individuals, equality must be implemented between them due to their similar circumstances and legal positions. Among them (is Jordanian Constitutional Court Decision No. 5 of 2014, dated 1/22/2015).

The constitutional judiciary's role in ensuring the protection of rights and liberties extended beyond the national Constitution's provisions, requiring the legislator to uphold the bounds of their organisation and preservation. This included international conventions and treaties, which the legislator was also required to uphold and not violate. Otherwise, the relevant legislation was unconstitutional. In this regard, according to the Constitutional Court's Interpretative Decision No. (1) of 2020, "And since the Council of Ministers' response to the request for interpretation necessitates that it be divided for clarity of interpretation with regard to each portion, as follows:

First: it is prohibited to enact legislation that entirely conflicts with the requirements set forth by the signatories to a treaty that the Kingdom has ratified by legislation.

Second: It is not legal to enact legislation that modifies or nullifies the terms of the treaty.

Third: International treaties have legal validity and binding effect on the parties, and governments are required to abide by them as long as they are signed and ratified and as long as they are still in effect. On the Prime Minister's letter with the last letter number (9299) dated 4/29/2020, which was submitted to our court, we reached the following conclusion about the request for interpretation.

Separation and balance of powers

Since the separation of powers has become one of the principles of modern democratic systems and a fortress of protection of public rights and freedoms, whether stipulated in the Constitution or not, basically one of the foundations of parliamentary representative systems, the constitutional judiciary should have enshrined this principle in its provisions to ensure the distribution of the three functions of the state to independent bodies called by constitutions authorities, realizing that the monopoly of these functions by one body takes it out of the field of required oversight and the desired balance.

The principle of separation of powers is no longer absolute, even in presidential systems such as the United States of America. Instead, all presidential and parliamentary systems are keen to activate this principle even if it is stipulated in the Constitution, such is the Jordanian constitutional system. The ordinary judiciary played its role in this field and expressed its opinion in preserving the principle of the parting of controls or the necessity of each authority's commitment within the limits of its powers granted to it by the Constitution and that it is not permissible to exceed them otherwise its work will be invalidated.¹¹ In this regard, the Court of Cassation says, "...After scrutiny, we find that the constitution, which is the legal source of the state's powers, has distributed legislative powers between the legislative and executive authorities and requires that some issues be regulated by a law issued by the legislative authority and others (by a system) issued by the executive authority. Since the right of the executive authority to organize personnel affairs is limited under Article (120) of the Constitution to issues related to their appointment, dismissal, supervision and the limits of their powers and that the issue of appointing the competent court to try employees for the crimes they commit does not fall within the concept of the aforementioned issues rather, it is one of the issues related to assigning the ranks of the courts and determining their jurisdiction, the order to organize it falls within the jurisdiction of the legislative authority by law, and the provision of Article (162) of the personnel system that entrusted the Court of Appeal with the right to try the employees of the Court of First Instance is contrary to the provisions of the Constitution, and it may not be invoked in the trial of the accused before the Court of Appeal."¹² In this, the Supreme Court of Justice also says, "...and it is understood from these texts (Articles 24-27 of the Constitution) that the Constitution distributed the three legislative, executive and judicial powers to three bodies, he separated them in such a way that the authorities use of their functions was always regulated by cooperation between them based on each of them respecting the principles established by the Constitution."¹³ In its consideration of case No. (157/71), the Court of Justice took a very important decision as long as we called for it to be taken into account and taken into account in the Jordanian laws that have expanded to grant the administration the right to legislate with instructions it issues based on a law directly and without going through an executive system in which it says: The capability of the Council of Ministers and the King's permission are required for the creation of the appropriate rules for the

¹¹ Saeed Ghafeel: Separation of Powers as a Basis for Regulating Power in Constitutional Legislation, Journal of the Kufa Studies Center, p. 3, Kufa University, Kufa Studies Center, 2011, p. 349.

¹² Court of Cassation 74/1958.

¹³ High Court of Justice 44/67.

implementation of legislation. The legislative authority may not delegate or refer an order to implement the purposes of Article (12) of the Village Administration Law to orders or instructions issued by the Minister of Interior instead of regulations, so the text of the Article mentioned above (12) is unconstitutional and is not enforceable."¹⁴ Moreover, the rule that instructions, standards, foundations, or administrative, organizational decisions, whatever they are called, must be issued based on a system that is not limited to the executive system only but also includes the independent or private system in which the executive authority is vested in legislation following the provisions of Article (114) and Article (120) of the Constitution. This is confirmed by the High Court of Justice, saying, "If the Jordan Valley Authority Council had issued the contested decision based on Article (9) of the Jordan Valley Authority Law and Qom (18) of 1977 and not under a system as required by Article (120) of the Constitution, as it was interpreted By the decision of the Higher Council for the Interpretation of the Constitution No. (1) of 1965, its decision is based on an unconstitutional law."¹⁵

The principle of separation of powers does not stop in its meaning and objectives when distributing powers to three independent constitutional institutions each other. Instead, it must go hand in hand with the separation of powers, a balance that allows each of them to control the other with sufficient constitutional weight. Therefore, if the Constitution in parliamentary systems shows the multiple aspects of balance by granting the executive authority multiple means in forming, working, and dissolving the legislative authority, and granting the legislative authority the right to question, interrogate, cast confidence, charge the minister criminally or refer him to the Public Prosecution, the constitutional judiciary is very keen that every authority exercises its powers without exaggeration or exaggeration, in order to maintain balance and ensure cooperation among them. This is accomplished by the court's interpretation of the Constitution's clauses and control over the legality of laws and regulations. In this regard, the Constitutional Court states in its interpretation of Article (73) of the Constitution, which confirms the flexible separation of powers, cooperation, and balance between them, that the King may postpone by royal decree in light of what was previously stated and in accordance with Article (73)'s provisions and in the context of Article (78) of the Constitution. the National Assembly's convening to a different date as long as the postponement doesn't last longer than the two months allowed by the Constitution."¹⁶

In Egypt, and through the text of Article 192 of the 2014 Egyptian Constitution;¹⁷ The Egyptian Supreme Constitutional Court has exercised broad powers regarding constitutional oversight of all laws issued, whether ordinary or basic; an example of those powers and authorities that are exclusive to the Supreme Constitutional Court is the ruling issued on June 3, 2000, unconstitutional of Law No. 153 of 1999 regarding N.G.O.s and foundations, which is one of the laws complementing the Constitution, this is because the Shura Council's opinion was not taken on it prior to its issuance, as stipulated by Article (195/2) of the amended 1971 Egyptian Constitution, which says: "The Shura Council's opinion is taken on the following: 1-....., 2- Draft laws complementing the constitution."¹⁸

Integrity And Transparency of Elections

The Jordanian Constitutional Court has no powers concerning monitoring the elections or accepting any challenge. Monitoring the parliamentary and municipal elections was entrusted by the constitutional legislator to the Independent Election Commission following the constitutional amendments that took place on 10/1/2011,¹⁹ As for the appeals against the decisions and procedures of the elections, they are entrusted to the regular judiciary.²⁰ Regarding the

¹⁴ High Court of Justice 177/71.

¹⁵ High Court of Justice 303/87.

¹⁶ Constitutional Court. Interpretation Decision No. (3) of 2013.

¹⁷ Article 192 of the 2014 Egyptian Constitution stipulates that (the Supreme Constitutional Court shall exclusively assume judicial control over the constitutionality of laws and regulations, the interpretation of legislative texts, and the adjudication of disputes related to the affairs of its members, and the conflict of jurisdiction between judicial authorities, and bodies with judicial jurisdiction, and settling disputes that arise regarding the implementation of two contradictory final rulings, one of which is issued by any judicial body or a body with judicial jurisdiction, and the other issued by another body, and disputes related to the implementation of its rulings and decisions issued by it, and the law determines the other jurisdictions of the court. In addition, it regulates the procedures to be followed before it).

¹⁸ Case No. 153 of Judicial Year 21 "Constitutional," June 3, 2000 A.D., Collection of Judgments of D.D.A., Part Nine, Volume One, pg. 580, see the details of this case in Dr. Ibrahim Muhammad Hassanein, The Impact of the Ruling on the Unconstitutionality of the Law of Civil Associations, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 203.

¹⁹ For more, see the House of Representatives Election Law No. (25) of 2012, as amended by law No. (28) of 2012.

²⁰ See Article (67) of the amended Constitution and the Independent Election Commission Law No. (11) of 2012.

Constitutional Court's function in this area, it is restricted to, on the one hand, interpreting the Constitution's election-related provisions and, on the other, accepting any appeals or defences of the unconstitutionality of the electoral law or any system issued in accordance with it, or of any text in them.²¹

This is in accordance with what the Egyptian legislator stated in Article 88 of the Egyptian Constitution, which, following its amendment in 2007, states that a supreme committee enjoying independence and impartiality shall oversee the elections in the manner prescribed by law and that among its members should be current and former members of a judicial body.²²

In America, the legislators of the states, for an extended period of the history of the state of the American union, have consistently failed to observe the principles of justice and equity, and they are in the process of carrying out the process of dividing districts, as often the legislator in each state deliberately draws those districts in an arbitrary manner, this is in the interest of the white residents of areas or rural communities at the expense of the interests of the city's residents of color, which prompted some of them to resort to the Federal Supreme Court to challenge the unconstitutionality of the existing district division legislation at the time based on its violation of the principle of equal legal protection, which was guaranteed and obligated to be observed in the Fourteenth Amendment to the American Constitution. Nevertheless, the Federal Supreme Court refused to enter into this matter, as it has traditionally avoided issues related to the distribution of legislative seats because they are "political" matters that fall outside the jurisdiction of the courts.²³

The Federal Supreme Court maintained this opinion for eighteen years until it finally changed it by a landmark ruling issued by it in 1962 in the case (*Baker v. Carr*),²⁴ Where it explicitly decided to deny the political nature of the process of dividing the state into electoral districts and then permitted the judicial challenge to it on the grounds of unconstitutionality if the legislation issued in this regard included a violation of the principle of equality in legal protection.²⁵

In this context, the Iraqi Federal Supreme Court ruled that the third step of the parliamentary seat distribution system issued by the Independent High Electoral Commission No. 12 of 2013 was unconstitutional. The reasons for the unconstitutionality ruling stated that this step contradicts Articles (14, 16, 20, 38/first) of the Constitution and that it is contrary to the voter's will because it makes the voter's vote to go to someone other than his vote and change his will.²⁶

Independence Of the Judiciary

Judges are independent, and only the law has any influence on their decisions.²⁷ This constitutional provision was insufficient to establish the independence of the courts, especially in light of other legal provisions granting the Minister of Justice some administrative control over court operations, raising questions about the full degree of the judiciary's independence. As a result, on October 1, 2014, the Judicial Council, which oversees all things relating to regular judges and has sole authority to select regular judges, was established and given legal standing.²⁸ In this regard, the Constitutional Court said in its ruling No. (2) of 2018, "Whereas paragraph (d) of Article (15) referred to, authorizes the Judicial Council, upon the recommendation of its President, to terminate the service of any judge, who has not completed the period of retirement or provisional retirement, for inefficiency derived from the annual report issued by court inspectors with a rating of (less than good), for two consecutive years, the well-established postulates that the quality of the judge's competence qualifies him to undertake the tasks of adjudication in the disputes presented to him and to accomplish them, even if he did not complete the retirement or retirement period, the matter with which

²¹ Dr. Afifi Kamel Afifi, *Parliamentary Elections and their Constitutional and Legal Guarantees - A Comparative Study* -, Dar Al-Jameen Publishing House, Cairo, 2002, pg. 785

²² Dr. Muhammad Saeed Hussein Amin: *The Impact of Constitutional Amendments on the Path of Political, Social and Economic Reform in Egypt*, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 2225

²³ 1 See: *Individuals' Rights, Individual Freedom and Bill of Rights*, U.S. State Department Information Center, Washington, 2004, p. 93, and see *Case Colegrove v. Green* (1946) which the Federal Supreme Court refused to enter because it was a political issue: Epstein (Lee) and Walker (Thomas G.); *Constitutional Law for A changing America* 4th Ed. 'Congressional Quarterly INC. Washington 'D.C. 2001 'P.P. 768 – 769.

²⁴ *Baker V. Carr* case 369 U.S. 186 (1962) citing: Epstein (Lee) and Walker (Thomas G.), *Ibid*, P.P. 769 – 774

²⁵ Dr. Afifi Kamel Afifi, *Parliamentary elections and their constitutional and legal guarantees*, previous reference, p. 787

²⁶ Federal Supreme Court Decision No. 36 / Federal / 2013.

²⁷ Article (97) of the Jordanian Constitution.

²⁸ Article (98) of the amended Jordanian Constitution.

the appeal against the unconstitutionality of the aforementioned paragraph (d) would be destroyed because the provision contained in it did not violate the provisions of Articles (97, 98/1, 128/1) of the constitution, as it went to that body." The Constitutional Court's existence will ensure the independence of the judiciary since 10/1/12 and the use of its authority to interpret the Constitution and check the legality of legislation and regulations. It gives the bodies specified by the Constitution and any party to the case to challenge or argue the unconstitutionality of any text in law or system that contradicts any constitutional text or principle in the independence of the judiciary in all its types and degrees.

Aspects Of the Constitutional Judiciary's Contribution to The Development of The Constitutional System

Contribute To His Constructive Interpretation of The Constitutional Rule

The constitutional judiciary contributes to the development of the constitutional system through its constructive interpretation of the constitutional rule, whether while considering a challenge to the unconstitutionality of a law or system or if it is requested by the authorized authorities, and we wish that the Jordanian Constitution gave the King the right to request interpretation. The King can indeed request that indirectly through the Council of Ministers, but granting him this right directly implies a specific interest from the head of state in a specific matter, asking for its interpretation, it is also an indirect indication of the necessity of removing ambiguity from a constitutional text, even if this requires a constitutional amendment in the future.

The decisions of the constitutional judiciary regarding the interpretation or its representative in nations without a constitutional judiciary (such as Jordan prior to the establishment of the Constitutional Court, where the High Council served in this capacity) had a significant impact on some of the recent constitutional amendments made to the provisions of the Jordanian Constitution, as well as the fundamental laws and those pertaining to public rights and freedoms.

Thus, the Constitutional Court's (the constitutional judiciary's) job is to interpret the Constitution's provisions and to challenge or argue that a legislation or system is unconstitutional in order to advance the evolution of the constitutional system, because this is a consolidation of the constitutional text and a confirmation of it, a signal to the legislator that it is not permissible to violate it or put its texts in doubt and doubt their constitutionality. The Constitutional Court, although its powers do not extend to expressing an opinion or providing constitutional advice to any party, the request for interpretation is usually accompanied by request for the opinion of the Constitutional Court on a specific issue related to the text or texts to be interpreted. In the same way, the Constitutional Court, while interpreting some articles of the Jordanian Constitution, says, "Based on the foregoing, our court, in its interpretation of Article (93/2), states that it is not permissible for a law with a financial impact to provide for the retroactive effect of its provisions to amend legal centers completed under previous law and that entails an increase in public expenditures...etc."²⁹

The role of the constitutional judiciary varies from state to state, with the different competencies and powers of the Constitutional Court or the Constitutional Council. This casts a shadow over the space in which the constitutional judiciary can move in developing the constitutional system.

In this instance, the question that needs to be answered is whether the Constitutional Court has the authority to interpret one or more constitutional texts when exercising its jurisdiction to do so, at the request of one of the bodies listed in the Constitution or when it is examining an appeal or a defence of the unconstitutionality of a text in an existing law or regulation?

We believe that the Constitution is not issued to show the authorities their powers and competencies only but also to define their duties as well, in what is reflected in their relations with individuals and the ensuing public rights and freedoms. Therefore, it helps her make her decisions and rulings and understand and interpret the relevant constitutional texts, even if she is not asked to do so if that interpretation is closely related and does not accept separation from the subject before her. This is consistent with the nature and objectives of the Constitutional Court related to the nature and objectives of the specific judiciary, which mainly aims to protect the principle of legitimacy and the rule of law. Thus, even if the jurisdiction of the Jordanian Constitutional Court was mentioned exclusively in the interpretation of the provisions of the Constitution and the ruling on the constitutionality of a text in a law or regulation referred to it by the trial court, this does not restrict the court's hand from interpreting a constitutional text related to the text required to be interpreted, if it finds that there is a link between them that benefits the court in the interpretation process. It is not fooled by that as long as the interpretation of that text is part of the interpretation process in its entirety. In our opinion, and despite the absence of a text in Constitutional Court law, the court has the power to judge the unconstitutionality of a text in law or system before it. It exercises its jurisdiction if it is related to

²⁹ Constitutional Court. Interpretation Resolution No. (2) of 2014.

the issue before it because this situation is consistent with the goals and objectives of the establishment of the constitutional judiciary, which, in its highest and foremost, reaches the preservation of the sovereignty and supremacy of the Constitution.

The Authority of The Provisions of The Constitutional Judiciary in Cases, Appeals, And Defenses

The Jordanian Constitution makes it explicit that the Constitutional Court's decisions are final, binding on all parties, and practical with immediate effect unless the decision specifies a different time for their implementation. The law of the court also stated that the ruling made by the court is conclusive, enforceable, and applicable to all parties.³⁰ Unless the same ruling specifies a different date for its enforcement, in which case the law or regulation shall be deemed invalid as of the date specified by the ruling, a law or regulation or any text therein that is found to be unconstitutional shall be deemed invalid as of the date of the ruling³¹. On the date that its decision is put into effect, the court may make distinctions between one text and another if it determined that more than one section of the statute or regulation is unconstitutional.³²

It is evident from the foregoing that court decisions are authoritative and binding on all authorities after they are published in the Official Gazette within 15 days of their issuing. The judgment's issuance determines constitutionality and nullity, but execution is postponed pending official publication in the Gazette.

The comparative constitutional judiciary, including the Supreme Constitutional Court in Egypt, has explained the reasons for the absolute authenticity of its rulings and linked them to the concrete nature of the constitutional case; in this she says, "The judgments issued in constitutional lawsuits, which by their nature are in-kind lawsuits directing the litigation to legislative texts that are challenged with a constitutional defect, have absolute authority, so that its effect is not limited to the litigants in the cases in which (the parties) were issued, but this effect goes to all, and all state authorities are bound by it."³³

Moreover, if the absolute authenticity of the judgment justifies the commitment of all authorities and all to it, then the matter seems to be agreed upon and stable if the judgment is unconstitutional. However, this position may seem distracted and weak when the judgment or decision is to reject the appeal or the defense (reject the defense objectively). The phrases used by the constitutional legislator and the ordinary legislator "and its rulings are final and binding on all authorities and for all did not differentiate between the case of accepting the appeal and the ruling that a text was unconstitutional and the case of rejecting the appeal. This means that the absolute authenticity of the ruling goes to both cases. This is what the rulings of the constitutional judiciary have established, including the rulings of the Egyptian Supreme Constitutional Court, and what it decided in this regard is "that the rulings issued in constitutional cases may have absolute authority so that their effect is not limited to the litigants in the cases in which they were issued, and this effect goes to all and all parties are bound by it, whether these provisions have ended in the unconstitutionality of the contested legislative text or to its constitutionality and the rejection of the case on this basis."³⁴

Despite the foregoing clarity in legislative texts and expressions and stability in legal principles about the absolute authenticity of the ruling, we believe that the constitutional judiciary, including the Egyptian Supreme Constitutional Court, the Jordanian Constitutional Court and the Bahraini Constitutional Court, he still uses different expressions in the two cases, and it explicitly requires the unconstitutionality of a text when the case or appeal is accepted in form and substance and reaches the conclusion of unconstitutionality. In this, the Supreme Constitutional Court in Egypt says, ".... for these reasons, the court ruled that the contents of the second paragraph of Article (123) of the Code of Criminal Procedure were unconstitutional."³⁵

The Jordanian Constitutional Court further states in this regard, "Based on the foregoing, the court finds that the appeal against the unconstitutionality of the paragraph containing denying the convict of appealing the Court of Appeal decision issued in support of the arbitrators' judgement is valid, which results in considering this paragraph of Article (51) of the Arbitration Law No. (31) of 2001 as a violation of the provisions of Article (6/1) and Article 128/1."³⁶

The Bahraini Constitutional Court also says, "...for these reasons, the court ruled that Article (83) of the Press and Publication Law is unconstitutional."³⁷

³⁰ See item (1) of Article (59) of the amended Jordanian Constitution.

³¹ See paragraph (b) of Article (15) of the Constitutional Court Law.

³² Paragraph (d) of the Constitutional Court Law.

³³ Encyclopedia of Constitutional Provisions. Part Two, p. (314).

³⁴ Encyclopedia of Constitutional Provisions of the Supreme Constitutional Court. Dr. Magdy Mahmoud Hafez. Cairo. Part Three, p. (29).

³⁵ Encyclopedia of Supreme Constitutional Provisions (the previously mentioned encyclopedia). Part III, pg. 1614.

³⁶ Constitutional Court: Judgment No. (5) of 2014, issued on January 22, 2015.

³⁷ Set of Principles and Provisions of the Constitutional Court. Bahrain. 2010, Part Three, p. 63.

Indeed, the Constitutional Court in Jordan has arranged the explicit nullity of any text stating that it is unconstitutional from the date of the ruling, and it has included the phrase "worthy of repealing" in the ruling, which is a phrase directed to the legislator to amend the law and remove illegality in it. In this it says ... and based on the foregoing, the court decides that what is stated in the text related to the inadmissibility of appealing the ruling related to the estimation of the wage of the example issued by the court of the first instance is unconstitutional and that this text is considered null and worthy of revocation from the date of this ruling."³⁸

In fact, the United Arab Emirates Constitution went beyond this cap and outlined the following in Article 101:

1. Decisions of the Federal Supreme Court, including those declaring something unconstitutional, are final and enforceable by everyone.
2. The relevant authority in the Federation or the Emirates shall take the initiative to take the necessary measures to remove or correct the constitutional infractions if the court determines that federal legislation violates the Federation Constitution or that the local legislation or regulation under consideration contains a violation of the Federation Constitution or federal law..

*.... But if the lawsuit or appeal did not reach this conclusion, then it has been rejected in form or rejected in a substance:

The lawsuit, appeal, or payment shall be rejected when the court finds that the conditions for its acceptance are not met, whether it is related to the interest condition, the term condition, the fee payment condition, jurisdiction, or any other condition required by law. In this, the court says, "...for these reasons and the lack of a condition of interest, the court decided not to accept the case."³⁹

The Constitutional Court has used the phrase rejecting the appeal as a form because one of the conditions of the appeal is not met, such as the condition of interest in one case, and the phrase that the appeal is not accepted because one of the conditions of the appeal is not met, such as the condition of interest in another time, and in this it says: Based on the foregoing, the court decides the following:-

Appeal against the unconstitutionality of Paragraphs (A) and (C) of Article V of the Landlords and Tenants Law in form.⁴⁰ Another ruling says: "Third: The appeal is not accepted as a form in relation to Article fifty-four of the Arbitration Law because the appellant has no interest in his appeal. Fourth, another ruling says that the appeal was not accepted concerning the instructions for government works bids for the year 1987 due to lack of jurisdiction."⁴¹

But when these conditions are met, including the condition of interest, and the court proceeds with the lawsuit or appeal, and then the condition of interest is absent for some reason, the court decides that the litigation ends, and in this the Kuwaiti Constitutional Court says, and for these reasons, "the court ruled that the litigation in the appeal has ended."⁴²

Sometimes the court decides not to accept the case or to reject the appeal in form because it is decided by a final ruling that has the authority of the order . In this, it also says: and since the ruling of this court of unconstitutionality has absolute authority in the issue decided upon, and it is an argument in itself that prevents arguing about it or re-proposing it to it again, the litigation in the current case becomes terminated, and for these reasons, the court ruled that the litigation is terminated."⁴³

In response to the appeal, the Jordanian Constitutional Court used multiple phrases in the same case that are consistent with the reason for the response, including, and based on the preceding, we decide:

Second: Failure to accept the appeal in the form concerning what was stated in Article fifty-first of the Arbitration Law due to a court ruling declaring its unconstitutionality.

Third: The non-acceptance of the appeal in form with respect to Article fifty-four of the Arbitration Law because the appellant has no interest in his appeal.

Fourth: Non-acceptance of the appeal concerning the instructions for government works tenders 1987 due to lack of jurisdiction.⁴⁴

Suppose the lawsuit, appeal, or defense of unconstitutionality did not achieve the desired result due to a formality as indicated previously. In that case, it shall be decided not to accept the lawsuit, appeal, plea, or reject it; the prevention of achieving the goal and reaching the result may result from objective reasons after the court has fully communicated

³⁸ Constitutional Court: Judgment No. (3) of 2013 issued on 12/6/2013.

³⁹ The Egyptian Supreme Constitutional Court. Appeal No. (42) for the year 16. Encyclopedia of Supreme Constitutional Provisions. Dr. Magdy Mahmoud Hafez. Legal Library. Cairo. Part Three, p. 1702.

⁴⁰ Constitutional Court. Judgment No. (2) of 2013.

⁴¹ Jordanian Constitutional Court. Judgment No. (13) of 2013.

⁴² Kuwait Constitutional Court. Appeal No. (9) of 2012. Kuwait Today No. 1137, p. 29.

⁴³ Encyclopedia of Supreme Constitutional Provisions (the previously mentioned encyclopedia). Part III, pg. 1614

⁴⁴ Constitutional Court: Judgment No. (5) of 2014, issued on January 22, 2015.

with the text that is claimed to be unconstitutional when the court does not find any reason to base its ruling of unconstitutionality, it decides to reject the case, dismiss the appeal or the defense, and here comes the refusal as a subject and possessing its absolute authority within the limits of the utterance of the judgment and the reasons associated with it on which it was based.⁴⁵

Hence, all the rulings that we were able to see, which included the rejection of the case, the appeal, or the defense of a subject, the phrase rejecting the case (the Egyptian Supreme Constitutional Court) and rejecting the appeal (the Jordanian Constitutional Court), the appeal was rejected (Kuwait Constitutional Court), without acknowledging the constitutionality of the contested text. Among these provisions:

- Judgments of the Egyptian Supreme Constitutional Court saying:
"Because of the preceding, what the plaintiffs in the decision by law (117) of 1961 denounce from violating the Constitution, whether in terms of formality or terms of substance, is unfounded, which is why the case must be rejected. For these reasons, the court decided to reject the case, confiscate the bail, and impose the plaintiffs' expenses and an amount of thirty pounds in return for attorney's fees."⁴⁶
- Moreover, in another ruling: "And since whenever the above is the case, the plaintiffs' denunciations of the appealing text are not based on the basis of the constitution, which must be rejected... for these reasons, the court decided to reject the lawsuit..."⁴⁷
- The provisions of the Jordanian Constitutional Court said:
Based on the preceding, we decided on the following:
First: The challenge to the unconstitutionality of Articles Three and Eight of the Arbitration Law and Article (27) of Government Works Law No. (71) of 1986.⁴⁸
Furthermore, "...and therefore, based on the preceding, we decide to dismiss the appeal."⁴⁹
Although the Jordanian Constitutional Court used the phrase "response" and not "refusal" to denote the adverse ruling on the subject matter of the case and the appellant's failure to respond to his request on the subject of the appeal, the court went further than that and recognized the constitutionality of the contested text in one of its rulings.

In this, she says, "Therefore, Article (66/A/2) of the Temporary Income Tax Law No. (28) of 2009 is constitutional and does not violate its provisions."⁵⁰

The Kuwaiti Constitutional Court used the phrase (rejection) to denote the ruling not to respond to the appellant as a matter, the natural appeal is not based on reality and the law, and therefore the judiciary must reject it; for these reasons, the court ruled to reject the appeal.⁵¹

As for the Constitutional Court in the Kingdom of Bahrain, it used different terminology in rejecting the case or appealing in the form to distinguish between the response due to the lack of one of the conditions for accepting the case, including personal interest, and it used the phrase "...the case is not accepted," the dismissal of the case indicated a form for any other reason, as it used the dismissal of the case.

In this, we say, "And since from the foregoing, the plaintiffs had benefited from the advantages of the texts of the decree-law and the contested regulations in the manner that the court concluded, and the causal relationship between these texts and the alleged harm was nullified, the invalidation of their texts will not bring them any benefit by which their legal positions may be changed after the constitutional case is decided as it was before it, in a way that negates the personal and direct interest of the plaintiffs in the present case. The case obligated the plaintiffs to pay the expenses and an amount of three hundred dinars in return for the attorney's fees."⁵²

⁴⁵ Encyclopedia of Judgments of the Supreme Constitutional Court (prev. reference) appeal (154) for 2004/24. Part Two, pg. 951 and with the same ruling content, see: Set of Principles and Rulings of the Constitutional Court. Bahrain. Book Two, p. 63.

⁴⁶ The Egyptian Supreme Constitutional Court (the encyclopedia referred to previously) Appeal No. (18) Year 1 Session 5/2/1983 p. 1128.

⁴⁷ Dr. Mohamed Refaat Abdel Wahab: Control of the constitutionality of laws (theoretical principles and essential applications). Alexandria University House 2011, p. 29.

⁴⁸ Constitutional Court. Judgment No. (3) of 2013.

⁴⁹ Constitutional Court. Judgment No. (4) of 2013.

⁵⁰ The Constitutional Court (same judgment).

⁵¹ Kuwait Constitutional Court. Appeal No. (46) for the year 2013. Kuwait Today No. 1166 p. 82.

⁵² Constitutional Court, Bahrain. Judgment issued on April 19, 2010. Published in the Constitutional Control Journal. Union of Arab Constitutional Courts and Councils. Fourth-year. Issue 2012, p. 44.

The Supreme Court of the Palestinian National Authority, while exercising its powers as a constitutional court, used the appeal response for lack of jurisdiction, as it says: "And since the error in the application of either of the two laws is one thing, and its legitimacy is another since the appeal by mistake in the application of the law is outside the jurisdiction of this court, whose powers are limited to addressing the constitutionality of laws and not the error in the application of the law, the appeal submitted becomes not based on a legal basis and we decide to reject it."⁵³ Nevertheless, the court's use of the phrase "the appeal submitted is not based on a legal basis" was misplaced, as if the response was objective and not formal.

Does the court have the right to address the examination of the constitutionality of a law or regulation in any of them while it considers an appeal or a plea in front of it?

Some legislations have granted the Constitutional Court the right to address any provision in a law or regulation and to rule that it is unconstitutional when it is presented to it on the occasion of exercising its powers if it is related to the subject before it.⁵⁴ As for the law of the Constitutional Court in Jordan, it did not explicitly grant it this authority. However, we believe the court can address this as long as the text is related to the appeal presented in a connection that does not accept division or neglect. Provided that the necessary procedures for announcing the parties involved in this, or those that the law requires, inform them of this to allow them to submit their defenses and memos according to the rules.

Adopting The Theory of International Integration

The contribution of the constitutional judiciary to the development of the constitutional system does not require an explicit constitutional text, but rather comes through the theory of international integration, in which every state in this one human world is not isolated by the international community with what it has and what it is, and with the consequences that the state has to take in terms of legislation and procedures that are commensurate with its international obligations, and what the constitutional and ordinary judiciary adopts in this field.

The theory of integration was an entry point for the constitutional system's commitment to the provisions of international law, which succeeded at the legislative, executive, and judicial levels. This is what we could deduce and derive from the successive national legislative amendments and executive decisions in them. However, more importantly, the provisions of the Jordanian judiciary, which gave precedence to international treaties and agreements ratified according to the Constitution, outweighed national legislation and gave it a rank above ordinary law.⁵⁵

Furthermore, a ruling by the Court of Cassation states that "it is not permissible to invoke any local law when its provisions conflict with the provisions of the agreements because international treaties and agreements transcend local laws and have priority in the application when they conflict with them."⁵⁶

International treaties and agreements that transcend laws with approval and confirmation from the Court of Cassation do not stop at bilateral or legal international treaties and agreements; instead, it extends and includes regional treaties and agreements, and in this, it says: "International treaties and agreements take precedence over local laws and have priority in application when they conflict together, and no local law may be invoked before the 1981 Arab Economic and Social Council Convention."⁵⁷ The crucial question that we pose here, and in the context of the ordinary Jordanian judiciary, is whether the Jordanian Constitutional Court will adopt this stance and recognise the highness of international treaties and agreements concluded by the King or approved by the National Assembly and issued by the King by law in accordance with the provisions of Article 3 of the Constitution. What happens to the claim of unconstitutionality or legality of a law or system made by one of the parties to a case being heard before the trial court, regardless of its nature or degree, if the response is yes? Will the trial judge respond to this argument and position himself as an observer of the validity of the paragraph that was cited as being illegal before proceeding with the case? As an alternative, he dismisses the matter and refers the appeal to the Constitutional Court in accordance with the Constitution's requirements. And if this was done and the procedures for accepting the payment before the trial court

⁵³ Constitutional Court. Palestine. Appeal No. (1) of 2011.

⁵⁴ See Article (27) of the Law of the Supreme Constitutional Court in Egypt.

⁵⁵ In this regard, the Court of Cassation says, "... the jurisprudence and judiciary of all countries of the world, including Jordan, have unanimously agreed that international conventions and treaties are superior to domestic laws and that it is not permissible to apply any domestic law that contradicts these conventions and treaties" Distinction 3965/2003 "because treaties and agreements are rank superior to local laws and have priority in the application when they conflict together, and it is not permissible to invoke any local law whose provisions conflict with the provisions of the agreements" discrimination 7309/2003. For more, see Dr. Noman al-Khatib al-Basit in the constitutional system. House of Culture for Publishing and Distribution. Amman 2014, p. 178.

⁵⁶ Court of Cassation. Rights 7309/2003 dated 22/4/2004.

⁵⁷ Court of Cassation. Right, Penalty 818/2003, 9/6/2006.

were completed and the appeal was referred to the Constitutional Court, would it accept that as a form, given that the subject is within its competence and within its constitutional oversight in preparation for a decision on its subject, or will it return it for lack of jurisdiction?⁵⁸

Whatever the difference between the jurisprudence of international law and the jurisprudence of constitutional law about the nature of the relationship between international law and national law in the theory of the unity of law and the theory of dual law, in light of the communication and integration that currently exists between states and the international community (international law and national law), the research did not stop at the impact of international treaties and agreements on national laws, and the superiority of the first over the second in most cases, rather, attempts and studies must emerge on the horizon showing the importance of internal national laws, especially the Constitution, and their impact on international declarations and treaties, such as the Universal Declaration of Human Rights, the International Covenant on Cultural, Social and Economic Rights, and the International Covenant on Civil and Political Rights, more than half a century after its issuance. It is ratified by most countries. And the emergence of some substantive and procedural gaps that require new international efforts to reformulate some of them in line with the need of the international community and countries to support some rights and freedoms and to combat some abuses and negatives, the most important of which is terrorism, and how to deal with it and fight it internationally and nationally within a legal framework and understanding that provides a balance between the rights and public freedoms stipulated in international charters, treaties, and global constitutions, and between the requirements of the national interest, especially national security.

The Relationship of The Constitutional Judiciary with The Three Authorities and Their Role in Developing the Political System

The constitutional system refers to a set of rules that show the system of government and the three authorities, their relationship to each other and their relationship to individuals, and the ensuing rights and freedoms, which are codified rules in an official document called the Constitution. They are abstract legal rules that show what the system of government and its relationship with individuals should be. As for the political system, it is broader in meaning than the constitutional system because it does not depend on its meaning and components on the constitutional rules set out in the constitutional document but instead includes other active components. However, they are not officially included in it, such as parties, pressure groups, economic, social, cultural, and geographical forces, which some call the hidden forces. And that any ruling or decision of the constitutional judiciary is a contribution to the consolidation of the constitutional texts on the one hand, and the development of the work and institutions of the system of government and its relationship with individuals, and the consequent respect for the principle of legality and the protection of public rights and freedoms. Constitutional oversight, in particular judicial oversight, has played and continues to play an active and vital role in preserving the principle of the supremacy of the Constitution and ensuring the actual implementation of its respect, and ensuring that the legislator does not violate the provisions, provisions, and principles of the Constitution. This oversight was likely to be adopted in most constitutional systems, including the Jordanian constitutional system.

Since the constitutional judiciary in Jordan began its oversight on the constitutionality of laws and regulations (abstention or cancellation), it provides the appropriate mechanism to protect the Constitution and ensure its sovereignty while at the same time directing its successive speeches to all authorities with the necessity of respecting the Constitution and not violating it or deviating from it in letter and spirit.

The Constitutional Court, within the limits of its powers granted to it by the amended Jordanian Constitution and Law No. 15 of 2012, was able, during the date of its establishment, to issue rulings in appeals and defenses of the unconstitutionality of some legislations, and decisions in the requests for interpretation that were submitted to it, along with its views on various aspects, which it expressed during its examination of the appeals or requests for interpretation. All of them focus in their final opinion on the text and content of a constitutional rule and the components of its provisions, or an ordinary rule (law) or a sub-rule (system) with the consequent binding letters

⁵⁸ The Jordanian Constitution did not specify the rank of international treaties and agreements and their status in the Jordanian legal system, and all that it contained in this regard was stated in Article 33, where it states:

1. The King is the one who declares war, concludes peace, and concludes treaties and agreements.
2. Treaties and agreements that entail charging the state treasury with some expenses or prejudice the public or private rights of Jordanians shall not be effective unless approved by the National Assembly. In no case may the secret terms of a treaty or agreement contradict the overt terms.

addressed to the three authorities with the necessity of respecting it and transferring it to reality.⁵⁹ Suppose the constitutional system is based on creating central constitutional authorities and institutions represented by the legislative authority, the executive authority, and the judicial authority that work together following the provisions of the Constitution. In that case, the type of government system is parliamentary or presidential, the most prominent constitutional system in the contemporary world. It also deals with individuals with the rights and freedoms that result from this interaction as the (constitutional system) is affected by all the stability and development consequences of the work of these authorities.

The Relationship Of The Constitutional Judiciary With The Legislature

Indeed, the constitutional judiciary cannot replace the legislative authority in legislation by the principle of separation of powers and its powers specified in the Constitution.⁶⁰, but as it is said, he can “empty the law of its poison” .. by ruling that the law or the system is unconstitutional, with the consequences of this ruling being invalid with immediate and direct effect from the date of issuance of the ruling or the date specified by the ruling.⁶¹ Rather, this court went by using the phrase "worthy of revocation," sent to the legislator to make the necessary legislative amendments in which this nullity is overridden and the aspect of legality removed from the text judged to be unconstitutional and void.⁶² The legislative authority (and under the control of abstinence and before the establishment of the Constitutional Court) went to amend some laws following the failure of the subject court to implement a law contrary to the Constitution. For example, the High Court of Justice abstained from applying paragraph (c) of Article (17) of the House of Representatives Election Law No. (24) of 1960, it stipulated that a candidate for membership of the House of Representatives must have reached the age of thirty on January 1 of the year in which the election takes place because this condition, as found by the court, is contrary to the provision of Article (70) of the Constitution, which only required that he had completed thirty solar years of his age, which prompted the Jordanian legislator to address this defect and amend this condition later to be in line with the Constitution, since the establishment of the Constitutional Court and its assumption of the authority to monitor the constitutionality of laws and regulations and the interpretation of the Constitution, its rulings have become in direct appeals or defenses referred to it by the trial court, effective with direct effect, unless the judgment specifies another date for its enforcement, and it has absolute authority over all if it decides that a law or system is unconstitutional. This means the invalidity of the law or the system from the date the judgment was issued or from the date specified in the judgment and its fall from the legislative system contained therein. It is not permissible for any party to apply it because it is in the ruling that is legally repealed. The legislator, in particular, must take the initiative to amend the law or the system to be in line with the court ruling to remove any confusion. As for the ruling of the Constitutional Court rejecting the appeal, whether direct or indirect, its argument is absolute within the limits of the elements and framework of the appeal. For this reason, the utterance of unconstitutionality is evident in the wording of the ruling..." Our court, therefore, decides that the text of paragraph (b) of Article 14 is unconstitutional. From the system of the employees of the Jordanian News Agency referred to, and considering it null and void, as for the utterance of dismissing the case as a subject matter, it does not include a provision on the constitutionality of the contested text. Instead, it is sufficient to use the phrase "the court ruled to dismiss the appeal as a matter" or to reject the appeal or the case..."⁶³

⁵⁹ The constitutional judiciary played a modest role in the development of the constitutional system because the oversight of constitutionality was an exercise of the ordinary judiciary in the form of oversight only by abstention. However, as we explained previously, this judiciary had a role in various fields in the principle of separation of powers and public freedoms and the relationship between international conventions and treaties and national legislation. However, the hoped-for role is highly dependent on the Constitutional Court, which was established only about two and a half years or less, and It has had the provisions and decisions issued by the compelling resonance.

⁶⁰ Hani Mohamed Mohamed Kamel Fahim: The Constitutional Judiciary's Oversight of the Work of the Legislative Authority and Legislative Deviation, Faculty of Law, Alexandria University, 2012, p. 45.

⁶¹ Consider the role of the French Constitutional Council in the field of legislation and the importance of its decisions in this field. Documents in the multi-faceted equality. From the book The French Constitutional Dictionary. Translated documents in the Constitutional Court Library, p. 1071.

⁶² In this, it says, "...Based on the preceding, the court decides that the above is unconstitutional... related to the inadmissibility of appealing the judgment relating to the estimation of the wage of the same issued by the Court of First Instance, and considering this provision null and worthy of revocation from the date of issuance of this judgment." Constitutional Court. Judgment No. (4) of 2014.

⁶³ Constitutional Court. Judgment No. (6) of 2013.

The Relationship of The Constitutional Judiciary with The Executive Branch

Likewise, just as the constitutional judiciary cannot replace the legislative authority, it cannot replace the executive authority (or the administrative authority as the French call it) for the same considerations previously stated, and even more, because this authority has multiple and branching tasks, it works collectively, as in the Council of Ministers, or individually, as is the case with all its employees who have effective executive decision-making. The powers the Constitution gives the Constitutional Court, whether in the area of overseeing the constitutionality of the system put in place by the executive authority, have helped to forge a strong relationship between it and the Executive Authority. A temporary law issued in accordance with Article (94) of the Jordanian Constitution, an independent system based on Articles (45, 114, and 120) of the Constitution, an organisational system based on Article 31 of the Constitution or the law issued in accordance with it, or the scope of their interpretation of the provisions of the Constitution based on requests from certain bodies specified by the Constitution, including the Council of Ministers.⁶⁴

In actuality, the relationship between the Constitutional Court and the executive authority is wider than that due to the establishment and formation of this court on the one hand, and the King's authority to ratify and issue laws on the other, and does not stop at the administrative apparatus of this authority, or as it is called "the administration." Following the King's ratification of the modified Constitution's Clause (1) of Article (58), the Constitutional Court was established. "A constitutional court shall be established by statute, with its seat in the capital, and it shall be recognised an independent judicial body in its own right," the law that was promulgated on January 10, 2011, declares." ... As for its formation, it was stipulated in the same Article, which stated, "...and it consists of at least nine members, including the president appointed by the king."⁶⁵ However, this appointment does not prejudice the independence of this court and its members, "and it is considered an independent judicial body in its own right" because of the membership term (six years), and their service may not be terminated during it except for the reasons stated in the law of the court.⁶⁶

However, due to the importance and results of the work of the Constitutional Court, whether it is represented by rulings issued in appeals, defenses, or explanatory decisions, the King's ratification of any law or system only takes into account all the way things have happened with the Constitutional Court, in order to avoid exposing that law or order to constitutional suspicion defeat him in the future. The interpretation of the Constitutional Court No. (2) of 2014 had an important impact on the King's disapproval of the 2014 Civil Retirement Bill, which was approved by the House of Representatives and notables and returned by His Majesty the King within the constitutionally prescribed period for it and was not ratified following the provisions of Article (93) of the Constitution, due to the presence of suspicion of unconstitutionality was confirmed with this decision.⁶⁷

Consequently, the executive authority has responded to the provisions of the constitutional judiciary and has amended some of the regulations in which some of the texts contained therein have been ruled unconstitutional, such as the civil service system, which has been amended more than once in this regard.

Indeed, the principle of separation of powers and its flexible form in the Jordanian constitutional system allows the executive authority to initiate a proposal to amend the law or issue the system to avoid any constitutional defect in either of them. Indeed, the King's authority to reject any draft law within six months is commensurate with his right to control the constitutionality of laws and to respect the rulings of the constitutional judiciary issued in this matter.

The Constitution of the United Arab Emirates has gone even further, stipulating in the second paragraph of Article 101 that if the court determines, when determining the constitutionality of laws, legislation, and regulations, that federal legislation is in conflict with the Constitution of the Federation or that the laws or local regulations under consideration contain a violation of the Constitution of the Federation or federal law, it is necessary for the relevant authority in the relevant jurisdiction to:.

The Relationship of The Constitutional Judiciary with The Judiciary

As for the relationship of the Constitutional Court with the ordinary judiciary with its various types, whether legal, religious or private, and its various degrees, it is no more than a relationship that is as defined by the Constitution

⁶⁴ Clause (2) of Article (59) of the amended Jordanian Constitution states as follows: "The Constitutional Court has the right to interpret the provisions of the Constitution if it is requested to do so by a decision issued by the Council of Ministers or by a decision taken by a majority of the National Assembly, and its decision shall be effective after its publication in the Official Gazette."

⁶⁵ Clause (1) of Article 58 of the amended Constitution.

⁶⁶ It is death and resignation coupled with a royal will or for reasons specified in Article (21) of the Constitutional Court Law.

⁶⁷ For more details, see the Constitutional Court. Interpretation Resolution No. (2) of 2014 issued on 17/11/2014.

through a flexible separation of powers and the consequences of this principle, in addition to the absolute authenticity of the rulings and decisions made by this court.

In light of this, we conclude that the Court of Cassation and the Administrative Judiciary's positions had an influence on the judiciary's commitment to its various types and degrees in the provisions and constitutional principles it decided upon. Additionally, the judiciary is currently addressing the question of the constitutionality of laws and regulations on the occasion of the defence of their unconstitutionality before the relevant judge. The Constitutional Court was established, and although if the ordinary judiciary of this court is not subordinate to it, the court's decisions and rulings will have total authority before all categories and levels of courts and must be respected.

To protect the constitutional system and uphold the principle of the Constitution's supremacy on the one hand, and to guide constitutional institutions toward joint cooperation and the advancement of politics on the other, the constitutional judiciary in general and the Constitutional Court in particular, have an essential role. They are competent to oversee the constitutionality of laws and regulations and have the authority to interpret the Constitution's provisions. It is dependent on the constitutional institutions, on the one hand, having a solid understanding of the nature, function, and goals of the constitutional judiciary, and on the constitutional judge, on the other, having a solid understanding of the nature and goals of the oversight he exercises in upholding the Constitution's rule in letter and spirit.⁶⁸

In addition to the wealth and judicial experience of the majority of the members of the Constitutional Court, which represents a rich legal and judicial repertoire of substantive and procedural legal rules. Many of the principles decided by the judiciary, especially the administrative judiciary, as the other aspect of the judiciary in kinds, such as the principle of separation of powers, the principle of equality, the principle of no lawsuit without interest and the principle of supremacy Treaty on the law and the principle of non-referral and inviolability of acquired rights. Instead, it moves positively to the constitutional judiciary as it implements and interprets the Constitution, in line with the public interest related to the security and stability of the state and ensuring that individuals enjoy their rights and freedoms.⁶⁹

Suppose the Constitutional Court does not require the legislator, in its ruling of the unconstitutionality of a provision in a law or regulation, to take the initiative to amend the law or regulation to make it consistent with that ruling. In that case, this ruling, as it is said, "having emptied the poisons from the legislation," the judge must abide by the principle of legality and go to apply the sound rule consistent with the ruling of the Constitutional Court., this is because the litigation in the constitutional case is litigation with the legislation (law or regulation), with the absolute authority of the court's ruling and binding on all authorities, including the judicial authority, with its various types and levels of courts.⁷⁰

From the above, it becomes clear to us multiple forms of the types and levels of development performed by the constitutional judiciary in pushing for the constitutionalizing of the work rules of the central constitutional institutions and the importance of constitutional principles in judging the relationship between the Constitutional Court and the three authorities including the judiciary and the importance of adopting international constitutional principles to solve some legal problems, especially those related to human rights.

The View of Jurisprudence on Constitutional Jurisprudence on The Issue of Developing The Constitutional System

Jurisprudence was not in complete agreement on the importance and role of the constitutional judiciary in developing the constitutional system, affected by the opposing currents in support or opposition to the idea of judicial oversight on the constitutionality of laws, where we find support, we find an optimistic view of the role of the constitutional judiciary in the development of the constitutional system, and where we find an objection, we find a pessimistic view of this role and the expansion of the functions of the constitutional judiciary and the consequent loss of confidence, or doubt in the law.⁷¹

⁶⁸ For more, see Dr. Kamal Abul-Majd: Oversight of the Constitutionality of Laws (prev. reference), p. 694.

⁶⁹ For more, see Equality and its Multiple Faces. From the French Constitutional Lexicon (the documents referred to earlier) p. 1073.

⁷⁰ Moreover, this is what the Lebanese Constitutional Council confirms: "Based on this, the council decides: First...Second...Thirdly nullify Law No. 679/2005 for violating the provisions of the Constitution and constitutional principles enshrined or approved by the Constitutional Bloc. A decision issued on 6/8/2005 published in the Journal of Constitutional Control (the previous reference), p. 119. See the ruling of the Constitutional Court in Bahrain in Case No. (D 6/11 of Judicial Year 9).

⁷¹ See Dr. Abdel Hamid Metwally's "Constitutional Law and Political Systems " for more details. Alexandria, pg. 1964, p. 212. Dr. Numan Al-Khatib. The Mediator in Political Systems and Constitutional Law (previous reference) pg. 479. Dr. Muhammad Refaat Abdel Wahab, constitutional review of laws (prev. reference) p. 35.

But the follower of the emergence of the constitutional judiciary and its development in form and thought discovers the enormous legal value of the jurisprudence of the constitutional judiciary, especially the independent constitutional judiciary represented by specialized constitutional courts and councils, whose tasks are mainly determined in controlling the constitutionality of laws and regulations (regulations), whether its ruling is the unconstitutionality of the law or the system or the refusal of the case (pushback, appeal or lawsuit).

The result implied by the judgment is not reached by the court except after perusal of all the documents related to the appeal, the relevant facts, the conditions for accepting the case (the appeal), the texts whose unconstitutionality is challenged, the constitutional texts, rulings and principles that are invoked, and the rationale and reasons for the judgment. All of this represents a jurisprudential process of great value that enriches the references and those familiar with it, whether he is a judge, a lawyer, or a legal researcher, whether this result was established before the specialized constitutional judiciary (constitutional courts) or before the ordinary judiciary, especially in countries where precedents are highly respected, to the extent that some have called for considering the judiciary in this area as one of the official sources of common law. That is why Hews, one of the former chiefs of the Supreme Court of the United States of America, says, "The Constitution governs us, but the Constitution is what the judiciary says."⁷²

The constitutional judiciary of all kinds (abstention or abolition) and its nomenclature (courts or councils) have played and continue to play active roles and have important legal value in comparative constitutional systems, whether this value is represented by its provisions and the binding effects on constitutional institutions or all, or by its principles and the consequences based on constructive jurisprudence and jurisprudence, preserving the proper application of the Constitution's texts, provisions, and principles, and preserving their rights and freedoms for individuals, and the extension and impact of these provisions and principles on the legitimacy and work of the constitutional institution, clarity, and protection of right and freedom. This, in turn, is an essential element in the development and stability of the constitutional system⁷³

Conclusion

By addressing the role of the constitutional judiciary in developing constitutional and political systems and by studying the state of the Jordanian constitutional judiciary, we concluded that the Jordanian experience in constitutional oversight began with the establishment of the modern Jordanian state with the issuance of the 1952 constitution, despite the absence of a text authorizing it. The Jordanian judiciary, with its various types and degrees, addressed the issue of oversight over the constitutionality of laws and regulations and ruled that some texts were unconstitutional while considering various civil, criminal, or administrative cases, and oversight at that stage was described as censorship of abstinence. Subsequently, the Constitutional Court was established under the constitutional amendments made to the Constitution of the Hashemite Kingdom of Jordan for the year 1952 in 2011, and constitutional control became abolition control. It can be described as a judicial power, whether in the form of abstention (before constitutional amendments) or in the form of annulment in addition to his right to interpret the Constitution.

Among the most important issues through which the constitutional system is developed through the constitutional judiciary is respect for rights and freedoms, the principle of separation of powers, and ensuring the independence of the judiciary, in addition to preserving the integrity and transparency of elections. The role of the constitutional judiciary in the matter of respecting rights and freedoms did not stop at the necessity of the legislator's commitment to the limits of their organization and preservation following the provisions of the national Constitution, but went beyond them and obligated the legislator to respect international conventions and international treaties and not to violate them as well. Concerning the principle of separation of powers, the constitutional judiciary has dedicated in its rulings what guarantees the distribution of the three functions of the state to independent bodies that constitutions call powers, realizing that the monopoly of these functions by one body removes it from the required oversight and the desired balance.

The existence of the constitutional judiciary and the exercise of its powers in interpreting the Constitution and oversight over the constitutionality of laws and regulations will guarantee the judiciary's independence and give the bodies specified by the Constitution and any party to the case to appeal or the defense of the unconstitutionality of any text in law or system that contradicts any constitutional text or principle in the independence of the judiciary in all its types and degrees. Also, the constitutional judiciary has an undeniable role in ensuring the integrity and transparency of the elections by interpreting the provisions of the Constitution related to the elections on the one hand and accepting any challenge or defense of the unconstitutionality of the electoral law or any system issued under it, or any text in them. The role of the Constitutional Court (the constitutional judiciary) contributes to the development of the

⁷² Keir.D.lawson F.and Bentley.D: Cases in constitutional law. E.L.B.S. Edition Sixth 1979.P9

⁷³, equality (the many aspects of it. From the book of the French Constitutional Dictionary, referred to earlier), p. 1084.

constitutional system by interpreting the provisions of the Constitution and by challenging or pleading for the unconstitutionality of a law or system. It has the right to fly high to see and perceive all the components that help it make its decisions and rulings and to understand and interpret the relevant constitutional texts, even if it is not requested to do so.

One of the findings of this study is that the constitutional judiciary has the right to address the examination of the constitutionality of a law or a system in either of them while considering an appeal or a defense that is brought before it, as long as the text is related to the appeal presented to it in a connection that does not accept division or negligence, taking into account the necessary procedures for announcing the interested parties in that. Finally, it must be noted that jurisprudence was not in complete agreement on the importance and role of the constitutional judiciary in developing the constitutional system, affected by the opposing currents in support or opposition to the idea of judicial control over the constitutionality of laws.

Moreover, suppose we have some suggestions or recommendations. In that case, we can say that the constitutional judiciary in Jordan, now represented by the newly established Constitutional Court, needs someone to support and strengthen it to play its desired role in protecting the Constitution and ensuring the freedoms and rights of individuals. This support and strength can only come from within him and through the intellectual and scientific formation of the members of the court, their integrity, their impartiality, and the respect for the oath they took before the King, the head of the state and the symbol of its components, which is... loyalty to the King and the homeland, preserving the Constitution, serving the nation, and faithfully carrying out the duties entrusted to them.

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- [3] Abdel Hamid Metwally "Constitutional Law and Political Systems. Alexandria
- [4] Afifi Kamel Afifi, *Parliamentary Elections and their Constitutional and Legal Guarantees - A Comparative Study -*, Dar Al Jamia'een for Printing, Cairo, 2002.
- [5] Eid Ahmed Al-Hasban, "Constitutional Protection of Fundamental Rights and Freedoms", *Sharia Journal*, Issue 28, Ramadan 1427 AH / October 2006.
- [6] Kamal Abul-Magd: *Oversight of the constitutionality of laws in Egypt. A comparative study*. Cairo 1982 p. 460.
- [7] Magdy Mahmoud Hafez, Cairo. *The Egyptian Renaissance House*. 2001 part three.
- [8] Mohamed Refaat Abdel Wahab: *Control of the constitutionality of laws (theoretical principles and essential applications)*. Alexandria University House 2011.
- [9] Muhammad Saeed Hussein Amin, *The Impact of Constitutional Amendments on the Path of Political, Social and Economic Reform in Egypt*, Arab Renaissance House, Cairo, 2008.
- [10] Noman al-Khatib al-Basit in the constitutional system. House of Culture for Publishing and Distribution. Amman 2014, p. 178.
- [11] Numan al-Khatib, *the mediator in political systems and constitutional law*. Fourth edition. House of Culture and Publishing. Amman 2012.
- [12] Hajar Al-Arabi, *The Constitution and the Status of Rights and Freedoms*, The Academy for Social and Human Studies, 16th edition, Hassiba Ben Bouali University of Chlef, 2016.
- [13] Hani Mohamed Mohamed Kamel Fahim: *The Constitutional Judiciary's Oversight on the Work of the Legislative Authority and Legislative Deviation*, Faculty of Law, Alexandria University, 2012.
- [14] Epstein (Lee) and Walker (thomas G.); *Constitutional Law for Achanging America* 4th Ed. ' Congressional Quarterly INC. Washington 'D.C. 2001.
- [15] Keir, D., Lawson, F. & Bentley, D. (1979). *Cases in constitutional law*. E.L.B.S. Edition Sixth.
- [16] *Individual Rights, Individual Freedom and Bill of Rights*, US State Department Information Center, Washington, 2004.
- [17] *The French Constitutional Dictionary Book*. Translated documents in the Jordanian Constitutional Court Library.
- [18] *Journal of Constitutional Oversight*. Union of Arab Constitutional Courts and Councils Year 4 Issue 2012.

Endnotes

- [1] The first is the Basic Law of Transjordan issued on April 16, 1928 and published in the Official Gazette (Al-Sharq al-Arab) No. 188 (excellent issue) on April 19, 1928, the second is the Constitution of the Hashemite Kingdom of Jordan issued on December 7, 1946, and the third is the 1952 Constitution of the Hashemite Kingdom of Jordan issued in January 1952 and published in the Official Gazette No. 1093 dated January 1952, which followed the following of the amendments more than sixty amendments, the most recent of which was the amendments issued in October 2011, which affected about one third of the articles of the constitution.
- [2] The Supreme Council was in charge of interpreting the provisions of the constitution before the recent amendments and the issuance of Constitutional Court Law No. (15) of 2012
- [3] Constitutional Court. Jordan. Interpretation Resolution No. (7) of 2013.
- [4] See the Constitution of the Arab Republic of Egypt, the Constitution of the Bahrain Court, the Constitution of the Algerian Republic, the Constitution of the Moroccan Court, and the Constitution of the Lebanese Republic. For more information on some of these decisions, see the Journal of Constitutional Oversight. The Union of Arab Constitutional Courts and Councils, Year 4, Issue 2012.
- [5] For example, clause (1) of Article (6) of the Jordanian Constitution gives us clear basic aspects of inequality in the rights and duties of Jordanians (discrimination), which the ordinary legislator may not enter into any of its regions in original legislation (law) or subsidiary (system), otherwise it would be It is unconstitutional. It states, "Jordanians are equal before the law, and there is no discrimination between them in rights and duties, even if they differ in race, language or religion." As well as Article (28), which explains the meaning of monarchy, as well as the recent amendment to Article (94) of the Constitution, in which he interpreted the phrase "things that require taking necessary measures that cannot be delayed" replaced by "the following matters: a-public disasters b-case War and emergencies c- The need for urgent and necessary expenditures that cannot be delayed."
- [6] Dr. Numan Al-Khatib, Mediator in Political Systems and Constitutional Law. Fourth Edition. House of Culture and Publishing. Amman 2012, p. 385.
- [7] Dr. Kamal Abul-Magd: Oversight of the constitutionality of laws in Egypt. A comparative study . Cairo 1982 pg 460.
- [8] Judgment of the Supreme Constitutional Court of May 19, 1990. Compilation of Court Judgments, Part IV, p. 256.
- [9] Dr. Eid Ahmed Al-Hasban, "Constitutional Protection of Fundamental Rights and Freedoms," Sharia Journal, Issue 28, Ramadan 1427 AH / October 2006, p. 323
- [10] Hajar Al-Arabi: The Constitution and the Status of Rights and Freedoms, Academy Journal for Social and Human Studies, p. 16, Hassiba Ben Bouali University of Chlef, 2016, p. 191.
- [11] Saeed Ghafeel: Separation of Powers as a Basis for Regulating Power in Constitutional Legislation, Journal of the Kufa Studies Center, p. 3, Kufa University, Kufa Studies Center, 2011, p. 349.
- [12] Court of Cassation 74/1958.
- [13] High Court of Justice 44/67.
- [14] High Court of Justice 177/71.
- [15] High Court of Justice 303/87.
- [16] Constitutional Court. Interpretation Decision No. (3) of 2013.
- [17] Article 192 of the 2014 Egyptian Constitution stipulates that (the Supreme Constitutional Court shall exclusively assume judicial control over the constitutionality of laws and regulations, the interpretation of legislative texts, and the adjudication of disputes related to the affairs of its members, and the conflict of jurisdiction between judicial authorities, and bodies with judicial jurisdiction, and settling disputes that arise regarding the implementation of two contradictory final rulings, one of which is issued by any judicial body or a body with judicial jurisdiction, and the other issued by another body, and disputes related to the implementation of its rulings and decisions issued by it, and the law determines the other jurisdictions of the court. It regulates the procedures to be followed before it).
- [18] Case No. 153 of Judicial Year 21 "Constitutional", session of June 3, 2000 AD, Collection of Judgments of D.D.A., Part Nine, Volume One, pg. 580, see the details of this case in Dr. Ibrahim Muhammad Hassanein, The Impact of the Ruling on the Unconstitutionality of the Law of Civil Associations, 1st Edition, Dar Al-Nahda Al-Arabiya, Cairo, 2000, p. 203.
- [19] For more, see the House of Representatives Election Law No. (25) of 2012, as amended by Law No. (28) of 2012.
- [20] See Article (67) of the amended constitution, and the Independent Election Commission Law No. (11) of 2012.

- [21] Dr. Afifi Kamel Afifi, Parliamentary Elections and their Constitutional and Legal Guarantees - A Comparative Study -, Dar Al-Jameen Publishing House, Cairo, 2002, pg. 785
- [22] Dr. Muhammad Saeed Hussein Amin: The Impact of Constitutional Amendments on the Path of Political, Social and Economic Reform in Egypt, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 2225
- [23] 1 See: Individuals' Rights, Individual Freedom and Bill of Rights, US State Department Information Center, Washington, 2004, p. 93, and see Case *Colegrove v. Green* (1946) which the Federal Supreme Court refused to enter on the grounds that it was a political issue: Epstein (Lee) and Walker (Thomas G.); Constitutional Law for Achanging America 4th Ed. •Congressional Quarterly INC. Washington •D.C. 2001 •PP. 768 – 769.
- [24] Baker V. Carr case 369 U.S. 186 (1962) citing: Epstein (Lee) and Walker (Thomas G.), Ibid, PP. 769 – 774
- [25] Dr. Afifi Kamel Afifi, Parliamentary elections and their constitutional and legal guarantees, previous reference, p. 787
- [26] Federal Supreme Court Decision No. 36 / Federal / 2013.
- [27] Article (97) of the Jordanian Constitution.
- [28] Article (98) of the amended Jordanian constitution.
- [29] Constitutional Court. Interpretation Resolution No. (2) of 2014.
- [30] See item (1) of Article (59) of the amended Jordanian Constitution.
- [31] . See paragraph (b) of Article (15) of the Constitutional Court Law.
- [32] Paragraph (d) of the Constitutional Court Law.
- [33] Encyclopedia of Constitutional Provisions. Part Two, p. (314).
- [34] Encyclopedia of Constitutional Provisions of the Supreme Constitutional Court. Dr. Magdy Mahmoud Hafez. Cairo. Part Three, p. (29).
- [35] Encyclopedia of Supreme Constitutional Provisions (the previously mentioned encyclopedia). Part III, pg. 1614.
- [36] Constitutional Court: Judgment No. (5) of 2014, issued on January 22, 2015.
- [37] Set of Principles and Provisions of the Constitutional Court. Bahrain. 2010, Part Three, p. 63.
- [38] Constitutional Court: Judgment No. (3) of 2013 issued on 12/6/2013.
- [39] The Egyptian Supreme Constitutional Court. Appeal No. (42) for the year 16. Encyclopedia of Supreme Constitutional Provisions. Dr. Magdy Mahmoud Hafez. Legal Library. Cairo. Part Three, p. 1702.
- [40] Constitutional Court. Judgment No. (2) of 2013.
- [41] Jordanian Constitutional Court. Judgment No. (13) of 2013.
- [42] Kuwait Constitutional Court. Appeal No. (9) of 2012. Kuwait Today No. 1137, p. 29.
- [43] Encyclopedia of Supreme Constitutional Provisions (the previously mentioned encyclopedia). Part III, pg. 1614
- [44] Constitutional Court: Judgment No. (5) of 2014, issued on January 22, 2015.
- [45] Encyclopedia of Judgments of the Supreme Constitutional Court (prev. reference) Appeal (154) for the year 2004/24. Part Two, pg. 951 and with the same ruling content, see: Set of Principles and Rulings of the Constitutional Court. Bahrain. Book Two, p. 63.
- [46] The Egyptian Supreme Constitutional Court (the encyclopedia referred to previously) Appeal No. (18) Year 1 Session 5/2/1983 p. 1128.
- [47] Dr. Mohamed Refaat Abdel Wahab: Control of the constitutionality of laws (theoretical principles and essential applications). Alexandria University House 2011, p. 29.
- [48] Constitutional Court. Judgment No. (3) of 2013.
- [49] Constitutional Court. Judgment No. (4) of 2013.
- [50] The Constitutional Court (same judgment).
- [51] Kuwait Constitutional Court. Appeal No. (46) for the year 2013. Kuwait Today No. 1166 p. 82.
- [52] The Egyptian Supreme Constitutional Court (the encyclopedia referred to previously) Appeal No. (16) Year 22 Session 7/5/2006 p. 1057.
- [53] Constitutional Court, Bahrain. Judgment issued on April 19, 2010. Published in the Constitutional Control Journal. Union of Arab Constitutional Courts and Councils. Fourth year. Issue 2012, p. 44.
- [54] Constitutional Court. Palestine. Appeal No. (1) of 2011.
- [55] See Article (27) of the Law of the Supreme Constitutional Court in Egypt.
- [56] In this regard, the Court of Cassation says, “.. the jurisprudence and judiciary of all countries of the world, including Jordan, have unanimously agreed that international conventions and treaties are superior to domestic laws, and that it is not permissible to apply any domestic law that contradicts these conventions and treaties.” Distinction 3965/2003 “because treaties and agreements are rank superior to local laws and have priority in application when they conflict together, and it is not permissible to invoke any local law whose

provisions conflict with the provisions of the agreements” discrimination 7309/2003. For more, see Dr. Noman al-Khatib al-Basit in the constitutional system. House of Culture for Publishing and Distribution. Amman 2014, p. 178.

[57] Court of Cassation. Rights 7309/2003 dated 22/4/2004.

[58] Court of Cassation. Right, Penalty 818/2003, 9/6/2006.

[59] The Jordanian constitution did not specify the rank of international treaties and agreements and their status in the Jordanian legal system, and all that it contained in this regard was stated in Article 33, where it states:

[60] The king is the one who declares war, concludes peace and concludes treaties and agreements.

[61] Treaties and agreements that entail charging the state treasury with some expenses or prejudice the public or private rights of Jordanians, shall not be effective unless approved by the National Assembly. In no case may the secret terms of a treaty or agreement contradict the overt terms.

[62] The constitutional judiciary played a modest role in the development of the constitutional system due to the fact that the oversight of constitutionality was an exercise of the ordinary judiciary in the form of oversight only by abstention. However, this judiciary had a role in various fields in the principle of separation of powers and public freedoms and the relationship between international conventions and treaties and national legislation, as we explained previously. However, the hoped-for role is highly dependent on the Constitutional Court, which was established only about two and a half years or less, and with It has had the provisions and decisions issued by the effective resonance.

[63] Hani Mohamed Mohamed Kamel Fahim: The Constitutional Judiciary’s Oversight of the Work of the Legislative Authority and Legislative Deviation, Faculty of Law, Alexandria University, 2012, p. 45.

[64] Consider the role of the French Constitutional Council in the field of legislation and the importance of its decisions in this field. Documents in the multi-faceted equality. From the book The French Constitutional Dictionary. Translated documents in the Constitutional Court Library, p. 1071.

[65] In this it says, “...Based on the foregoing, the court decides that the above is unconstitutional... related to the inadmissibility of appealing the judgment relating to the estimation of the wage of the same issued by the Court of First Instance, and considering this provision null and worthy of revocation from the date of issuance of this judgment.” Constitutional Court. Judgment No. (4) of 2014.

[66] Clause (2) of Article (59) of the amended Jordanian Constitution states as follows: “The Constitutional Court has the right to interpret the provisions of the Constitution if it is requested to do so by a decision issued by the Council of Ministers or by a decision taken by a majority of the National Assembly, and its decision shall be effective after its publication in the Official Gazette.”

[67] Clause (1) of Article 58 of the amended constitution.

[68] It is death and resignation coupled with a royal will or for reasons specified in Article (21) of the Constitutional Court Law.

[69] For more details see the Constitutional Court. Interpretation Resolution No. (2) of 2014 issued on 17/11/2014.

[70] For more, see Dr. Kamal Abul-Majd: Oversight of the Constitutionality of Laws (prev. reference), p. 694.

[71] For more, see: Equality and its Multiple Faces. From the French Constitutional Lexicon (the documents referred to earlier) p. 1073.

[72] And this is what the Lebanese Constitutional Council confirms: “Based on this, the Council decides: First...Second...Thirdly nullify Law No. 679/2005 for violating the provisions of the Constitution and constitutional principles enshrined or approved by the Constitutional Bloc. A decision issued on 6/8/2005 published in the Journal of Constitutional Control (the previous reference), p. 119. See the ruling of the Constitutional Court in Bahrain in Case No. (D 6/11 of Judicial Year 9).

[73] For more details, see Dr. Abdel Hamid Metwally, “Constitutional Law and Political Systems. Alexandria, pg. 1964, p. 212. Dr. Numan Al-Khatib. The Mediator in Political Systems and Constitutional Law (previous reference) pg. 479. Dr. Muhammad Refaat Abdel Wahab, constitutional review of laws (prev. reference) p. 35.

[74] Keir, D., Lawson, F. & Bentley, D. (1979). Cases in constitutional law.E.L.B.S. Edition Sixth 1979.P9

[75] Equality (the many aspects of it. From the book of the French Constitutional Dictionary, referred to earlier), p. 1084.