

A Study About the Law of Jordanian Constitutional Court

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Abstract

The Political and constitutional jurisprudence agreed unanimously on recognizing the constitutions according to the principle of supremeness – i.e. subjective supremeness. This means that the topics discussed by such constitutions are supreme topics as they are the power and freedom laws. The principle of constitutions' supremeness also means the formal supremeness as the principle of constitution's supremeness forms the most important bases, elements and topics of the state of Law. So, it is necessary to maintain the supreme position of the constitution regarding the topics and the content or in the procedures and formalities necessary for enacting or amending the constitution. Therefore, there is an urgent need for the existence of a judicial agency or a political one undertaking to maintain the supreme position of the constitution. The Jordanian constitution has not controlled the constitutionality of the laws prior to the amendments done to some of its articles in 2011. so, the control done on the constitutionality of the laws was the abstention control. Pursuant to the said constitutional amendments, the constitutional court was established with enacting its law. It has become the sole agency entrusted to control the constitutionality of the laws whereas the researcher discussed the way of forming such court and the methods of how to defend the unconstitutionality before it. the researcher also discussed the manner of forming such court and how the unconstitutionality lawsuits can be pursued before it.

Keywords: Constitutionality of laws, Constitutional Court, Judicial Control, abstention control, political control, defending with unconstitutionality, interpreting the texts of the constitution.

1. Introduction

The constitutional courts are considered the best guarantee for protecting the citizens' rights and public liberties. The US constitution issued in 1778 is considered the first written constitution in the world. After that, the French constitution was issued after the lapse of two years from the French Revolution – i.e. in 1791. Then, the Belgian constitution appeared in 1841, the Italian constitution in 1848, The Egyptian constitution in 1882 and the Main articles of constitution in 1913. The first integrated constitution in Egypt was in 1923. Such Constitution was taken as a guide in enacting the Jordanian Constitution of the year 1952.

In 1920, Austria established the first separate constitutional court in the world. Then, the countries began to feel the importance of controlling the constitutionality of laws and objecting the rule of absolute separation among authorities and the necessity to face what is called legislative deviation.

Since the constitutional rules prevails the rules of the ordinary law regarding the subject and the form, the constitution was solid as it is the constitution that creates the powers and authorities in the state, including the legislative authority. In addition, the constitution determines the competences of the legislative authority and defines the procedures necessary to be followed regarding such competences.

From such point, it was necessary to have an agency entitled with the right to adjudicate whether a law violates the constitution or not. How can such agency enforces its judgment in this regard?

Constitutions were different in solving such problem and determine such manner to adopt. There are some constitutions adopting the political control, others adopted the judicial control while the third part left the matter with any determination. Consequently such matter was left for the jurisdiction of the judiciary but without reaching the limit to cancel those laws violating the constitution.

If we discuss the subject of controlling the constitutionality of laws in Jordan, we can say that controlling the constitutionality of laws in Jordan passed with two stages; the first stage was prior to the incorporation of the constitutional court in 2012 while the second stage was after the incorporation of the constitutional court pursuant to the Articles of Fifth Chapter of the constitution and pursuant to the constitutional court law No. 15 of the year 2012.

In the first stage which was prior to the constitutional amendments done to the Jordanian constitution on 01/10/2011, the Jordanian constitution kept silent towards such matter related to controlling the constitutionality of laws, we cannot say that there was a political control because such opinion supposed the existence of an agency authorized by the constitution to carry out such task like such case existing in the constitutional council in France.

In addition, we cannot say that there was a cancellation judicial authority since such matter was considered a violation for the principle of separating between the authorities. Such matter can be done except to be in accordance with constitutional texts. In other words, we can say that there are original lawsuits filed about challenging the constitutionality of laws. Here, it is necessary to investigate the scope of abstention control

derived from the work nature of the judge. It is called the control through secondary refutation. It means that there is a lawsuit trialed by the court; any court whether it is criminal court, civil court or administrative court. In such lawsuit, the concerned litigant party claims the unconstitutionality of the law applied to such lawsuit. At such point, the work nature of the judge necessitates him to investigate the extent of applying such law. If it is against the constitution, the judge shall have to refuse its application and not to follow the legislative authority in violating the constitution. The least thing in his hand is to refuse to apply the law that he does not have the right to cancel.

With respect to the second stage, it started after the constitutional amendments done in the constitutions and published in the official gazette in its issue No. 5117 on 01/10/2011 whereas text No. 58 of the same constitution stipulates the incorporation of the constitutional court whose main office shall be in the capital. It shall be an independent autonomous judicial authority. Its board shall consist of nine members including the chairman appointed by the king. Such court shall be concerned with controlling the constitutionality of the laws and explaining the texts of the constitution.

Pursuant to matter, Law No. 15 of the year 2012 concerning the law of constitution court with which the court becomes the sole agency concerned with the constitutionality of the laws.

The researcher shall shed the light on such law and shall discuss it through two themes; the first theme shall be assigned for the formation of the constitutional court and its competences. It is divided into two parts. In the second theme, the researcher shall discuss the matter of challenging before the constitutional court. Such themes is divided into two parts. The first part is assigned for the agencies having the right to challenge before the court. In the second part, he discussed the procedures followed by the court regarding the challenge referred to it. After that, he mentioned the conclusions and some recommendations.

2. Formation & Competences of Constitutional Court:

Some constitutions give the absolute title on the constitutionality of laws to the highest court in the state judicial systems, such as the supreme court in USA. It is not a constitutional court. Such matter reminded us with the cancellation made by this court for a law adopted by The Congress in Marbury against Madison⁽¹⁾.

The Sudan was from the countries given such authority to the highest court since the Sudanese constitution stipulates that the supreme court is the guard of the constitution. It has the authority in the following matters: C-Challenging the constitutionality of laws⁽²⁾. Other constitutions granted such authority to a competent court. Such approach was adopted by the Jordanian Constitution in 2011 when it declared after the incorporation of the constitutional court, the cancellation authority has become one of the authorities of such court. The Egyptian legislator adopted such approach by making the supreme constitutional court as the court concerned with controlling the constitutionality of laws.

The question raised here is: how is he constitutional court formed and what is its authorities?

2.1. Formation & Organization of The Constitutional Court:

The number of the members of the constitutional courts is different from one country to another. It may be simple and it may be duplicated. For example, The Syrian Constitutional Court is composed of five members as the article No. 139 of Syrian Constitution of the year 1973 stipulates: "the supreme constitutional court consists of five members including its chairman appointed by the President of the Republic pursuant to a presidential decree⁽³⁾."

With respect to the Jordanian Constitution, Article No. 58 stipulates: "A constitutional court shall be incorporated pursuant to a law. Its headquarters shall be in the capital. It is composed of at least nine members including the chairman appointed by the king.

By reviewing the law of the constitutional court regarding such matter, we will find that it stipulates: (upon effecting such law, nine members including the chairman shall be appointed. Second clause of the fifth article of this law stipulates: "Three members of the court shall be appointed every two years from the date of appointing the members stipulated on the first clause of this article.

From such matter, we notice that the legislator committed a constitutional violation representing in what follows: It is constitutionally possible to increase the number of the members to be more than nine members. By applying the text of the law, the number of the court members reached in 2016 a number of fifteen members. At the end of the 2018. the fixed number of the members shall be nine members, whereas the six year term of the nine members appointed upon incorporating the court shall expire. Every three members from those members who ended the six year term shall be substituted. So, we can say that the legal text in its phrase (at least) mentioned in the constitution made a legislative confusion and deprived the owner of the authority – i.e. the king – from appointing more than nine members. It may not be also said that the law provides the minimum number of the members. therefore, the text of the fifth article of constitutional court law does not go along with the 58th article of the constitution. It is the duty of the constitutional court – which has the authority to search the constitutionality of laws to determine the scope of the constitutionality of such articles.

With respect to the conditions necessary to be available in the member of the constitutional court, they are determined in article No. 61 of the constitution stipulating that the following conditions should be available in the member of the constitutional court:

It is conditioned that the member:

A- is Jordanian and does not bear any other nationality.

B- is 50 years old.

C- has served in court of cassation and supreme court of justice or from professors of laws in faculties who has the degree of professor or from the lawyers who passed a period no less than fifteen years in legal profession or from the professionals in whom the conditions of membership are available in the Senate.

Some professionals consider the Jordanian constitutional court may be composed of two types of members, i.e. the constitutional legislator does not limit the formation of the court on the legalists. However, it necessitates to add one of the professionals from those persons in whom the conditions of membership are available in the Senate⁽⁴⁾ to the members.

Sixth Article of constitutional court law repeated the text of article No. 61 if the constitution with a slight difference representing in the obligation of the court to appoint one of its members from the professionals instead of non-professionals mentioned article No. 61 of the constitution. Adding a phrase: (who is 50 years old).

To this point, it is necessary to discuss the matter of harmony between what is mentioned in the law and what is mentioned in the constitution. In the law, the phrase : "who is 50 years old" was added. Such phrase does not conform with what is mentioned in article No. 61 of the constitution that does not stipulate that such member is 50 years. This confirms the fact that the constitutional legislator when it drafted article No. 61/1 he did not mention the matter of age in membership conditions.

Therefore, the researcher sees that the text of the court law violates the constitution in this context. The constitution referred the membership conditions in the constitutional court in this regard to article No. 64 of the constitution determining the membership condition in the Senate including the membership age.

If we compare the formation of the constitution court in Jordan with the formation of French constitutional council, we find that article No. 56 of the current French Constitution demonstrates the manner of forming the constitutional council as it consists of two types of members, a type of members appointed provisionally throughout their lifetime. Such members are former presidents of the republic in addition to nine members appointed for nine years as follows: three members appointed by the president of the republic, three members appointed by the chairman of The Senate, three members appointed by chairman of national assembly. The French constitution stipulates that one third of the membership in the constitutional council shall be renewed every three years. With respect to the chairman of the council, he shall be appointed by the president of the republic.

Some professionals consider the purpose for appointing the provisional members who are former presidents of the republic is to benefit from their political experiences during their presidency term⁽⁵⁾.

2.2. *Constitutional Court's Authorities*

Fourth article of Constitutional court law stipulates that the court shall have the authority to do what follows:

1. Surveillance of the constitutionality of effective laws and regulations.
2. Interpreting the texts of the constitution.

Such authorities are in conformity with the text of Article No. 59 of the constitution stipulating that the constitutional court shall have the authority of Surveillance of the constitutionality of effective laws and regulations. Its judgments shall be issued in the name of the king. They are final and binding judgments to all authorities and to the all entities. Its judgments shall be effective with a direct effect unless the judgment fixes another date for its execution. The judgments issued by the court shall be published in the official gazette within 15 days from the date of their issue. Second clause of the same article stipulates: "The constitutional court shall have the right to construe the texts of the constitutions if it is requested to do so by a decree issued from the cabinet or by a decision adopted by the majority of one of State National Councils. Its decision shall be effective after having been published in the official gazette.

From the aforementioned facts, we can notice that the Jordanian constitution and the law of the constitutional court have entitled the court with two functions only: surveillance the constitutionality of laws and interpreting the texts of the constitution. At the same time and in addition to the aforementioned authorities, the authorities of the Egyptian Supreme constitutional court has other authorities including the adjudication in the dispute of jurisdiction by appointing the competent authority from judicial authorities or authorities with judicial jurisdiction if a lawsuit is filed for one subject before two places and neither of them does not leave the matter or both of them abandon it.

Then, the court adjudicates in the dispute arising from the execution of two final contradicting judgments, one of them was issued by any of judicial authorities or from an authority with a judicial jurisdiction while the other is issued by another agency⁽⁶⁾.

The supreme constitutional court has also the authority to interpret the texts of the laws issued by the legislative authority and the decrees with laws issued by the president of the republic if dispute related to the application is raised and it has the importance necessitating the unification of its interpretation⁽⁷⁾.

At this point, the Jordanian constitutional legislator was successful when it granted this court the task of interpreting the texts of the constitution, that was entrusted to the supreme council. The interpretation of the constitution means the determination of the contents and the meaning of the constitutional rule by demonstrating the real contents of the constitutional rule, reaching the intent of the constitutional legislator and the spirit of the constitutional text regardless of the nature of the constitutional rule and regardless of its source⁽⁸⁾. There is no doubt that the written constitutions are the center of the constitutional interpretation. With respect to the unofficial constitutions, the primary problem facing the entity entrusted with the interpretation is to make sure of their existence in the first place, then proving their existence and after that interpreting them. The interpretation may be overlapped with such party assured from the evidence with the existence of the constitutional rule.

The matter of interpreting the constitutional texts is so dangerous and very important. Such importance may exceed the drafting of the constitutional text itself since the interpretation may be extended or limited resulting in making indirectly constitutional amendment in the constitutional text itself.

To such point, the importance of the agency or the authority to which the interpretation is entrusted; particularly if the constitutional text raises argument in drafting or in the contents. Therefore, it is necessary not to mix between the means and the tools of interpretation and not combining them with means and tools of explanation or creation.

To such point, the researcher sees that the constitutional legislator and the law of the constitutional court have responded to the interpretation or the phrase saying that: "The Judiciary is the only interpreting source for the constitution"

It would be an excellent step if the Jordanian law grants such court the other tasks granted to the Egyptian Supreme Constitutional Court even if such court grants His Majesty – The King – consulting authorities in the possibility of referring the draft laws to such court by the king prior to being issued by His Majesty.

However, there is a gap related to the surveillance on the effective laws as there is a text stipulating that the court shall have the surveillance on the constitutionality of effective laws and regulations. Does this mean the court can impose its surveillance on the executive agencies and the independent ones? ⁽⁹⁾ To answer this question, we say with respect to the systems mentioned in articles No. 114 & 120 of the constitution including civil service system, we can say that such matters are unconstitutional because the law cannot mediate such systems and the constitution. However, does the constitutional court have the authority to control the illegality of the system. Here, we say the illegality and not the unconstitutionality since the law cannot mediate such systems and the constitution.

For such matter, some jurists say that the direct defect in the system is at most the defect of the illegality. Such opinion is supported by the fact that the violation of the systems to the law rules does not appear directly except in one type of the system which is the executive regulations. With respect to other systems, which are more in importance and in danger, i.e. the independent systems, issued within exceptional circumstances and have the force of the law. In most, such systems are defected with the unconstitutionality due to the absence of the law in the relationship between them and the constitution in most cases. Therefore, they are not defected with the illegality except if they violate the general legal fundamentals⁽¹⁰⁾.

If the constitutional legislator has granted the constitutional court the authority of surveillance on the constitutionality of the effective regulations without determining such regulations meant with surveillance as some professionals see that the constitutional court has an estimating authority in determining the type of the systems that it has the authority to control them so that the control is limited to the constitutionality of the regulations having the legislative capacity. On the other hand, some say that article No. 61/3 of the constitution referred the matter of arranging such authority to the law of the court as it was mentioned in the text of this article that the law shall determine the work of such court, how it is managed and how to challenge before it and all affairs related to it, its procedures, its judgments, its decisions and how to carry out its businesses after the effectiveness of its relevant law.

Professor. Dr. Mohamed Al-Gazoy said that the legislator has to determine the meaning of the systems mentioned in the constitutional control of the court on them⁽¹¹⁾. Professor. Al-Gazoy said the systems subjected to the constitutional control are those systems giving the legislative capacity. With respect to the executive systems, they have detailed necessary rules for the application of the laws as they are based on laws enacted by the legislative authority. At such point, the professor agrees with a lot of jurists⁽¹²⁾.

Therefore, the executive systems – according to the opinion of the researcher supported by the opinions of some jurists⁽¹³⁾ – are considered administrative decisions subjected to the control of the legality with which the administrative court of justice has the jurisdiction as it has the right to cancel them and adjudicated with compensation if their illegality are proven.

As long as the constitutional court has the authority to control the constitutionality of laws, the researcher

sees that it has the right to show its control on the decisions issued by the Diwan related with interpreting the laws. Such opinion is supported by the text of Article No. 123 – clause No. 4 – of the constitution stipulating: (The decisions issued by the diwan entrusted with interpreting the laws and published in the official gazette shall have the force of the law. So, they are subjected to the control of the constitutional court to control their constitutionality. It would be preferred if the law of the constitutional court expressly stipulates the subjection of what may be issued by the legislation diwan to the constitutional control to fill the gap and to remove the confusion related to such matter.

3. Challenging before the Constitutional Court:

The call for establishing the constitutional court with entire judicial formation was a Jordanian request raised before a lot of committees including the 2011 constitutional amendments committee. Prior to such amendments, the judicial control on the constitutionality of laws, as we mentioned hereinabove, was conferred to the courts. However, all such controls were the abstention control only. Therefore, the constitutional amendments were issued including a special chapter, i.e. the fifth chapter of the constitution, about the constitutional court demonstrating how to form the court and its authorities. Such matters were discussed in the first part. Then, the constitution mentioned the agencies that can challenge in the constitutionality of the laws and to request the interpretation of the constitutional texts. It leaves the law the task of determining matter of the work and the administration of the court, the manner of challenging before it. Its procedures and provisions Therefore, such part was divided into the two following two items:

3.1. Agencies having the right to challenge before the constitutional court:

Article No. 60 of Jordanian Constitution stipulates: "The following authorities, for example but not limited to, have the right to challenge directly before the constitutional court in the constitutionality of the applicable laws and regulations:

- 1) House of Senate
- 2) House of Representatives
- 3) The cabinet

Second clause of the same article stipulates: "in the lawsuit trialed by the courts, either if the litigant parties has the right to defend with claiming the unconstitutionality. If the court finds such defense serious, it shall refer it to the court determined by the law for the purposes of ruling out the matter of referring such defense to the constitutional court.

So, the Jordanian legislator determines the agencies that can submit challenges before the constitutional court and divides them into agencies having the direct right to resort to the constitutional court and agencies having the indirect right to challenge. This means that house of senate, house of representatives and the cabinet have the direct right to resort to the constitutional court through an application signed by the chairman of the challenge applicant agency. This means that the challenge application has to get the consent of the majority of the members of each of such agencies according to its applicable regulation. In such case, the constitutional court has to accept the application, examine it and rule it over according to what is mentioned hereinafter.

There are some agencies that can challenge the unconstitutionality of the laws. However, the application in such case is not directly presented to the court but it is submitted through a defense raised due to a lawsuit trialed before other courts. Article No. 62 of the constitution permitted in its second clause the interested litigant parties in those lawsuits trialed before to raise the defense with unconstitutionality of the laws required to be applied. The court shall have to investigate the extent of the seriousness of such defense or not. Such matter gives the court a wide estimating discretion to search the seriousness of the application. Item No. (11-B) of the court law stipulates: "The defense with the unconstitutionality is presented before the court trialing the lawsuit pursuant to a memorandum in which the challenger mentions the name of the law or the regulation whose unconstitutionality is raised, its number, the scope of the defense in a clear definite manner and the proofs for his claim that such law or regulation is duly applicable to the subject of the lawsuit and how it is against the constitution. Any other litigant party in the lawsuit has the right to present his reply within the term defined by such court provided that such period is no more than fifteen years from the date of submitting the memorandum of claiming the unconstitutionality. If the court of trial adjudicating the lawsuit finds that the law or regulation whose unconstitutionality is claimed is duly applicable to the subject matter of the lawsuit and the claiming its unconstitutionality is serious, it shall bring the trial of the lawsuit to suspension and shall refer the claim of the unconstitutionality to the court of cassation for the purposes of ruling out the matter of referring it to the court. The decision issued by the court trialing the lawsuit with the non-referral shall be challengeable regarding the subject matter of the lawsuit. Each litigant party in the lawsuit has the right to submit a memorandum to the court of cassation concerning the matter of referral within fifteen days from the date of issuing the decision of the court trialing the lawsuit to refer such defense (claim) to the court of cassation⁽¹⁴⁾.

The law mentioned that if the defense with unconstitutionality is raised before the court of cassation or

before the supreme court of justice, such court shall take over the matter of ruling out the referral. However, a question is raised to such point; particularly after the amendment taken place in the law of the administrative judiciary, which is what is the situation if the case is referred to the Court of Administrative Justice? Does it have the right to decide on the referral order and refer the case to the constitutional court or to the supreme administrative court. The researcher sees that the meant agency is the supreme administrative court.

It is necessary to indicate that law of the court is defected with depriving the judiciary itself from resorting to the constitutional court as prevention of the judge who is more able than the litigant parties in the lawsuit to observe the unconstitutionality of a law required to be applied on the occasion of a lawsuit referred to him. This means – in the opinion of the researcher – that the abstention control is still owned by the judge due to the absence of a text obligating him to resort to the constitutional court. Therefore, the nature of the judge work is to apply the law. If he finds that there is a law violating the constitution, he shall have to observe the constitution. The Egyptian legislator pay attention to such point and stipulates in the law of the Egyptian supreme constitutional court that: (all courts can bring a lawsuit to suspension and refer the documents with no charges to the supreme constitutional court when it doubts in the constitutionality of the law or the regulation so that the court determines whether it is constitutional or not. Moreover, some jurists believed that the constitutional court has the right without submitting any defense by the litigants or without any referral by any other court to rule over such matter based on conferring such right to the courts pursuant to the text mentioned in the law of the supreme constitutional court⁽¹⁵⁾. This means that the supreme constitutional court has two ways to consider the constitutionality of the laws, i.e. the referral way and the defense way.

With respect to the concerned agencies requesting to interpret the texts of the constitution, such matter is made pursuant to an application to be submitted to the court by the cabinet, the house of senate or the house of representatives with the majority of votes and in accordance with the internal system of each of house of senate and house of representatives. With the respect to the authorities of the organs of the constitutional court, it is worth to mention that the achievements done by any establishment could not be known except through its organs⁽¹⁶⁾.

By checking the texts of the court law, we find that they stipulate the appointment of a general secretary for the court and an administrative agency entrusted with supervising its permanent administrative activities in addition to the existence of a technical Bureau in the court.

The general secretary shall be entrusted with executing the administrative and financial decisions, signing on the contracts and agreements, managing the financial and administrative agencies of the court and preparing the organizational structure for the administrative agency, the formations schedule as well as preparing the annual report about the court activities.

3.2. Court Procedures regarding the challenges referred to it

The constitutional litigation is formed as soon as filing the lawsuit before the concerned court. It goes on its way immediately after being enrolled in the Court Clerks Registry till its adjudication⁽¹⁷⁾. The preparation of the lawsuit is necessary in all aspects regarding the enrollment, whether it is filed directly or is referred by the concerned agencies and making sure of the payment of the charges and implementing all other procedures.

The reasons for filing the constitutional dispute in Jordan are the direct dispute declared by House of Senate, House of Representatives or The Cabinet. In addition, there is the indirect challenge, i.e. the subject of challenge with the unconstitutionality is raised by a defense submitted by any of the litigant parties of lawsuits trialed before the court as the litigant parties of lawsuits trialed before the courts – whether they are natural persons or artificial persons – has the right to challenge with the unconstitutionality of the law or a regulation required to be applied on the trialed lawsuit. Such challenge is indirectly submitted to the constitutional court by the court deliberating the lawsuit. Such court shall issue a decision whether to refer such challenge to the court of cassation or not if the court of trial sees that the defense raised with the unconstitutionality related to a law or a regulation is not applied on the subject of the lawsuit or is not serious or does not meet any of its legal conditions. Such decision may not be challengeable. Yet, it may be challenged through the decision adjudicating the lawsuit. In the following lines, we shall mention the procedures of challenge:

First: Direct Challenge Procedures

Such procedures start before the court as follows:

If the House of Senate, The House of Representatives or The Cabinet decides to challenge the constitutionality of a law or a regulation, the chairman of the applicant agency shall present an application signed by him in which he states the name of the challenged law or regulation, its number, the scope of challenge in a clear and definite manner. The court chairman shall send a copy of the challenge submitted to him to the other two agencies. Either of them has the right to reply the court within ten days from the date of receiving the copy. The purpose of such act is to confirm the seriousness of the lawsuit⁽¹⁸⁾. The constitutional court shall adjudicate the lawsuit within a period no more than (120) days from receiving the challenge by the court but not from the date of replying to it.

Second: Procedures of Defending with The Unconstitutionality

The legislator declares the constitutional lawsuit through the subordinate defense before the court of subject. The manner of filing such challenge is as follows: one of the litigant parties defends with the unconstitutionality of a legal text or regulation required to be applied on the dispute trialed by one of the courts. The judge, then, has to determine the extent of seriousness of such defense with the unconstitutionality. In case he determines such seriousness, he shall have to adjourn the lawsuit he deliberates and refer such defense to the court of cassation to decide the matter of referring it to the constitutional court or not. The decision issued by the court referred the matter to the court of cassation is challengeable with the subject of the lawsuit. Each of the litigant parties can submit a memorandum to the court of cassation regarding the matter of referral to the court within 15 days from the date of issuing the decision of the court deliberating the lawsuit to refer the defense to the court of cassation.

If the challenge reaches the court of cassation, such court shall be held with a panel consisting of three members at least. Its decision shall be issued within thirty days from receiving the lawsuit. If it agrees on the referral, it shall notify the litigant parties with such approval.

Such notification has a great importance representing in giving each of the litigant parties the right to provide within 15 days from notifying him with the referral order to the court a memorandum in which he clearly and definitely states the law or the regulation whose unconstitutionality is raised, the extent of such defense and the aspect of violating the constitution.

Each litigant party presented a memorandum has the right to present a reply to the memoranda submitted by other parties within thirty days at most from the date of notifying him with referral decision. The court can determine to suffice with the memoranda submitted to it. Such submission shall be made by a lawyer who has the right to have oral pleading before the supreme court of justice. This means that the constitutional lawsuit needs a legal sufficient experience and certain degree of efficiency. Professor Dr. Ramzy Elsaheer said that the litigants lack to the sufficient legal experience enabling them to dispense with a lawyer directing them and attracting their attention to such important lawsuits fearing to waste time if the litigant party dispenses his lawyer directing and alerting him⁽¹⁹⁾. Then, the court chairman shall send a copy of the referral decision to chairmen of the cabinet, House of Senate and House of Representatives. Each one of them can present his reply within 10 days from receiving the copy.

Pursuant to the system of paying the charges of defending the unconstitutionality No. 12 of the year 2013, a charge amounting 250 Dinars shall be paid by the parties presenting the defense with the unconstitutionality. The same charge shall be paid in case of challenging the decision of not referral before the court of appeals or the court of cassation, as the case may be⁽²⁰⁾. These are the procedures of filing the constitutional lawsuit.

With respect to the procedures of preparing the lawsuit, it starts after the end of exchanging the replies. The lawsuit is prepared either through the Bureau of Board of commissioners in the court or through the technical bureau or through the selection of the court to carry out such role⁽²¹⁾.

With respect to the Jordanian Constitutional Court, The law of the court stipulates the establishing of a technical bureau that has a number of legalists. Its tasks shall be determined through the instructions issued for such goal. Upon deliberating the challenge of unconstitutionality, the court shall be held in a panel composed of nine members at least. In case a member or more is absent with a reasonable excuse or if cases of stepping down, the court shall be held with the attendance of seven members of its members provided the chairman or his deputy is among them. The court shall adjudicate in the challenge referred to it by the courts within a period no more than 120 days from receiving the direct challenge or from the referral date to it. The court shall issue Its judgments concerning the challenges submitted to it according to the provisions of the law accurately and in a public session at the discretion of the court. The judgments issued by the court have to be published entirely within (15) days from the date of their issuance.

The judgment shall be issued by the constitutional court in the name of the king. Here, an argument appears between the judgment and the decision whereas the decision is not conditioned to be issued in the name of the king. The issuance of the judgment in the name of the king is to be referred at the beginning of the judgment and not at its end. Such judgment shall be final and binding to all authorities and to the court itself as it is on obligatory to the litigants only as the case in the abstention control.

With respect to the procedures of the court regarding the interpretation of the constitution texts, Article No. 59/2 of the constitution and article No. 4/B and Article No. 17 of the law of the constitutional court state that the interpretation of the constitution texts is from among the authorities of the constitutional court. However, the legal texts stated that the constitutional court does not own the right to respond to and interpret the constitutional texts by itself but such interpretation authority has to be through an application it received by three agencies defined for exclusivity which are The Cabinet, House of Senate and House of Representatives.

The jurisdiction of the court to interpret the texts of the constitution is a limited jurisdiction limited in the interpretation application received by any of the said agencies. The court may not exceed the limits of what it is asked to interpret as we mentioned. The court may not go on explaining anything not mentioned in the application.

In this respect, an important question is raised which is: (what is the condition for accepting the interpretation application and the formation of the jurisdiction of the constitutional court?) Constitutional jurisprudence⁽²²⁾ and justice attributed the reason for resorting to the interpretation application to the argument about a constitutional text. So, the intervention of the constitutional court is necessary to understand the text and to determine its legal meaning. If no argument is raised about it, no resort to the interpretation application may be made and the application shall be free from the elements of its acceptance⁽²³⁾.

Another question is raised which is: (what shall be the case if a dispute arises and one of the concerned agencies submitted an application for interpretation, then such matter was settled- i.e. the resort to the court was cancelled and such concerned agency withdrew its application?) Prof. Dr. Mohamed Al Ghazoy states that the emptying the interpretation from its elements making its application submitted on no basis and so the constitutional court shall have to stop to deliberate the interpretation application and approve on its cancellation.

When they interpret constitutional texts, the constitutional courts exercise a compositional role exceeding the stage of lateral interpretation to the stage of creativity. This is because the constitutional texts are characterized with brief and generality and in some case with obscurity. Michel Kamen⁽²⁵⁾ states that although the US Constitution is composed of six thousand words, millions of words were issued by the courts with all their various classes and their judicial levels to clarify the constitution and interpret it.

In case of interpretation application, the constitutional court shall be held in the same manner followed in case of challenges submitted to it with a panel composed of nine members at least. In case a member or more is absent with a reasonable excuse or if cases of stepping down, the court shall be held with the attendance of seven members of its members provided the chairman or his deputy is among them. Its provisions and interpretation for the constitution shall be issued with the majority of five members. Upon equality, the vote of the chairman or his deputy shall be the prevailing vote as mentioned hereinabove.

4. Conclusion & Recommendations:

The constitutional legislator has responded after the lapse of a long time to the requests related to the necessity to incorporate the constitutional court. Such response came through the allocation of the fifth chapter of the constitution to the matter of the constitutional court whereas article No. 58 of the constitution considered the constitutional court as an automated independent authority. Such court is composed of Nine members at least appointed by the king. Article No. 59 determines the authorities of the court which are controlling the constitutionality of the applicable laws and regulations in addition to the right of the court to interpret the texts of the constitution after conferring such right to the supreme council composed of the chairman of the House of Senate as the chairman and eight members including three members appointed by the chairman.

The Jordanian Constitution determined the agencies having the right to challenge directly before the constitutional court. They are House of Senate, House of Representatives, The Cabinet. The constitution also stated that the litigant parties of a lawsuit trialed before the courts have the right to defend with the unconstitutionality.

The constitution also stated the conditions of membership in the constitutional court represented in the conditions of nationality and the age in addition to other conditions related to judicial, legal and political experience.

Pursuant to the constitutional text, Law No. 15 of the year 2012 was enacted with the law of the constitutional court. Such law consists of 36 articles.

The researcher discussed in his research some points related to the law of the constitutional court and expressed some remarks by comparing such court to its counterparts such as the supreme constitutional court in Egypt.

I hope to be able to present some useful points about the constitutional justice in Jordan.

Recommendations:

There is no doubt that the constitutional rules mentioned in the constitution represented the top of the hierarchical legal order in the state as it prevails over all legal rules. The constitutional document with its rules prevails all public authorities in the state that are obliged to comply with executing what is mentioned in the constitution.

Based on such fact, the inclusion of the such rules related to liberties and rights in the constitutional document is considered one of the legal guarantees for their protection; yet the supremacy of the constitution has no meaning if there is no legal means providing protection for it. This is from the most prominent means for the constitutional Justice.

However, there is a problem before the constitutional justice entrusted to control the application of legal texts represented in putting a clear limitation between the permitted regulation and the prohibited restriction. The legislator has a discretionary authority in his work. He may use such discretionary authority under the pretext of organization and so he wastes rights and liberties or limit them in the manner contradicting with the constitution. The constitutional court is required to put a measure for distinguishing between the prohibited restriction and the

permitted arrangement.

Here, there are some remarks about the law of Jordanian Constitutional Court as the other remaining courts. So, the researcher concluded the following recommendations:

- 1) Reconsidering clause (A), Item No. 1 of Article No. 5 whose text is as follows: (Upon the execution of the provisions of this law, Nine members are appointed including the chairman) as it is in default with the constitutional text related to such matter mentioned in article No. 58, clause1, of the constitution whose text is: (The court shall be formed from at least nine members, including the chairman).
- 2) Adding: In case the judge deliberating a lawsuit referred to him finds that the law required to be applied is against the constitution, he shall refer it to those agencies having the right to challenge before the constitutional court.
- 3) The exact and accurate application for the text of Article No. 61/C of the constitution related to the conditions of the membership in the constitutional court; particularly such clause related to one of those professionals in whom the conditions of House of Senate are available; i.e. paying attention to the phrase (professionals) or removing it and suffice with (in whom the conditions of House of Senate are available)
- 4) The researcher sees no necessity for the judge finding any serious defense presented to him related to with the unconstitutionality to resort to referring it to the court of cassation to rule over it regarding referring it to the constitutional court as such matter complicates the challenge process.
- 5) Clarifying the situation in case the court is unable to adjudicate the challenge referred to it within one hundred and twenty days from its receiving for the referral order.
- 6) Adding Phrase: (even for once) to the article determining the term of membership in the constitutional court for six nonrenewable years.

There is no doubt that the incorporation of the constitutional court is considered an a judicial and legal undeniable achievement. This is an indication that the legal and the constitutional life in Jordan began to take its right path.

Footnotes

- (1) Alkhateeb, Noman, Alwaseet in political systems and constitutional law, Dar Al Thakafa, Amman 2017, P: 568.
- (2) Sudanese Constitution of the year 1973, Article No. 60.
- (3) Article No. 139 of the Syrian Constitution.
- (4) Al Ghazoy, Mohamed, a published paper about the law of incorporating the constitutional court, Amman, July, 2014.
- (5) Al Baz, Ali Elsayed, Political systems and the constitutional law, Dar Al Nahda Al Arabiya, P: 44.
- Mahfouz, Abdel Moneim, Egyptian Constitutional Law, P: 43.
- Kanaan, Nawaf, Fundamentals of the constitutional law and political systems, Ethraa Publishing House, 2013, P: 108
- (6) Article No. 25 of the law of the Egyptian supreme Constitutional Court.
- (7) Article No. 26 of the law of the Egyptian supreme Constitutional Court.
- (8) Darwish, Ibrahim, The Constitutional Law, general Theory, Cairo, Dar Al Nahda Al Arabiya, P: 155; 2001.
- (9) Gamaledin, Samy, Administrative Regulations and the warranty of the administrative control, Alexandria, P: 91, 1983.
- (10) Elshaer, Ramzy, General Theory of The Constitutional Law, Cairo, P: 921, 2005.
- (11) Ghazoy, Mohamed, a published paper about the law of Jordanian Constitutional Court, 2014,
- (12) Ismail, Essam, The legal Nature of the administrative decision, Beirut, P: 539, 2009.
- (13) Gamaledin, Samy, op-cit , p:102 and afterwards.
- (14) Article No. 11 of The Law of The Constitutional Court No. 15 of the year 2012.
- (15) Darwish, Ibrahim, Dar Al Nahda Al Arabiya, Constitutional Law for the General Theory, Dar Al Nahda Al Arabiya, Cairo, P: 171, 2004.
- (16) Henry, Robsson, Translated by Mohamed Watfa, Constitutional Council, Beirut, 2001.
- (17) Zoheir, Shokr, Al Waseet in the Lebanese Constitutional Law, Beirut, Page 971 and afterwards, 2001
- (18) Abdel Basset, Mohamed Fouad, General Theory for the constitutional law, Dar Al Nahda , P: 804, 2005
- (19) Elshaer, Ramzy, General Theory of The Constitutional Law, Dar Al Nahda Al Arabiya, P: 480, 2005.
- (20) See the contradicted opinion to the judgment issued by Constitutional court No. 5 of the year 2013 with rejecting the challenge with the unconstitutionality of elections law, Dr. Mohamed Al Ghazoy.
- (21) Ghazoy, Mohamed, op-cit, P: 131.
- (22) Ghazoy, Mohamed, op-cit, P: 118.
- (23) Al Nahry, Magdy, interpretation of the constitutional texts in the constitutional justice, Cairo, Dar Al Nahda Al Arabiya, P: 32, 2003.
- (24) Kamen, Michel, Constitution in the American Culture, translated by Ahmed Zaher, Amman, P: 40,

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