

Condition of Interest in the Constitutional Lawsuit in Accordance with the Jurisdiction of the Jordanian Constitutional Court

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Abstract

This study aimed to highlight one of the most important conditions for the validity of filing a constitutional lawsuit before the constitutional courts, which is the condition of interest. By demonstrating and describing the concept of interest as a condition for accepting a constitutional lawsuit, besides, the right that protects the constitutional lawsuit shall be a right guaranteed by the constitution, and its breaches shall be considered a work of public authorities. As It may take the form of a law issued by Parliament, and it may take the form of a system or administrative decision issued by the executive authority, with the characteristics which shall be fulfilled in the condition of interest in the constitutional lawsuit, as there is a link between the interest in the constitutional lawsuit and the interest in the substantive lawsuit, as well as it shall be a legal, personal and direct interest that prescribed by law. And that the condition of the interest in the lawsuit shall be present throughout its stages, as it is required that it be present at the time of filing it, and to continue standing until the ruling is issued. If the interest was absent before the court issues its ruling for any reason, the constitutional lawsuit will be terminated.

Keywords: Constitutional Lawsuit, the condition of Interest, The Constitutional Court .

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Introduction:

By virtue of the principle: Where "there is no interest, there is no lawsuit" The lawsuit shall be bounded to respond, if it was filed without being based on an interest bases; this is what the claimant seeks from filing the lawsuit, as advocating unconstitutionality is one of the cases that countries accept, including Jordan, and shall consider a legal means that enables stakeholders to postpone consideration of the original dispute or suspend it until after deciding on the subject of the submission, on which the ruling on the original dispute depends. Therefore, it shall not be possible in any way to imagine the possibility of provoking the unconstitutionality unless there is a dispute pending before the competent court, as there must be a link between the interest in the constitutional lawsuit and the interest in the substantive lawsuit, which is being considered by the competent court; as the approval of the competent court, after confirming the seriousness of the submission and basing it on real facts, is considered one of the essential conditions that are considered from the public order in order to achieve the public interest represented by the necessity to adhere to the letter and spirit of the constitutional rules, Otherwise, the requirement of interest in the constitutional lawsuit is denied in the case of the assignment of the claimed right holder in the substantive case, and the absence of the status of some of the parties to the substantive lawsuit, the case of stating from the unconstitutionality contested text, as well as the state of the constitutional issue that has already been decided by an authoritative ruling.

Accordingly, this study will be divided into two chapters, the first chapter in which the researcher will address the concept of interest as a condition for accepting the constitutional lawsuit, and the second chapter in which we will address the absence of interest in the constitutional lawsuit.

Research Problems and Questions:

Research problems revolves around the condition of Interest as a basic concept for accepting the case before the Jordanian Constitutional Court, to indicate this case, this research seeks to answer the following questions:

1. What is meant by interest in the constitutional lawsuit, and what are its most important conditions and characteristics.
2. What are the cases in which the concept of interest is denied in the constitutional lawsuit?

Research Importance:

The importance of this research comes in the prominent role of the condition of interest as a basic concept for accepting the lawsuit before courts of general jurisdiction in general and constitutional courts in particular. Whereby it cannot accept any request or payment in which the owner does not have a personal and direct interest prescribed by law, otherwise, there is no point in filing a lawsuit for which the claimant has no interest.

Research objectives:

These objectives are shown below:

1. Demonstrating and describing the concept of interest in the constitutional lawsuit, its characteristics and conditions.
2. Determining the cases in which the concept of Interest is denied in accordance with the jurisdiction of

the Jordanian Constitutional Court.

Research Methodology:

In this research, the researcher will rely on the descriptive analytical method, through describing and analyzing the condition of the clause of favor in the constitutional lawsuit. as some of the rulings of the Egyptian Supreme Constitutional Court mentioned as a guidance as Precedent in the comparative judiciary.

The first topic

The concept of favor as a condition for accepting the constitutional lawsuit

One of the recognized principles for filing lawsuit in general and accepting it by the competent court, is that there is an interest for the claimant in filing the lawsuit. If the right to initiate a lawsuit shall be one of the rights that establishes directly for individuals from the provisions of the Constitution, then it should be noted that all individuals shall not have the right to file this lawsuit without restriction, but it is required that the person who filed the lawsuit have a serious interest in repealing the law. It is not required in this interest that the law to be sued shall violate one right of the claimant or one of his interests. Rather, it is sufficient that the law required to be abrogated would, if applied, violate a right or interest to him, and in this case the claimant can fill his lawsuit. And without the need to wait for the application of the law.¹

The interest is not only a condition for accepting the lawsuit, but rather a condition for accepting all requests, whether original or incidental, and it is also a condition for accepting all defences in merits and form, or motions for not accepting, just as it is a condition for accepting any appeal.²

Accordingly, this chapter will be divided into three topics, the first topic in which the researchers will address the definition of the interest in the constitutional lawsuit, and the second topic will show the terms of the interest and its characteristics, and the third topic, we will allocate to the status and the interest.

The first topic

Definition of the interest in the constitutional lawsuit

The word interest shall be sometimes used in the law as an element of the right, saying: "The right has a material or moral interest protected by law." At other times, as "the practical interest or benefit accruing to the claimant from ruling on his requests, the interest is the motivator for filing the lawsuit, and the intended purpose of it, and participates in the interest in preparing the basis for accepting the lawsuit to be legal, personal and direct, and existing."³ It is not sufficient here to accept the public lawsuit that only those who actually claim a legal interest have a legal interest, but that the interest must be realistic and existing at the time of its filing⁴. so that the purpose of the lawsuit is to protect this right or the legal status of its report if we distribute it, prevent aggression against it, or compensate for the harm caused to it⁵. No application or pleading shall be admissible unless it proceeds from a party with a legitimately valid interest therein. However, a potential interest shall suffice if the purpose of the application is by way of precaution for the prevention of imminent injury or to establish a right whose proof is likely to disappear at the time of the litigation⁶.

Others define it as "the interest that the claimant can achieve by resorting to the judiciary⁷."

However, the constitutional lawsuit shall distinguish from other lawsuits in the field of determining the condition of the interest that the right protected by the constitutional lawsuit is a right guaranteed by the constitution and that the aggression against it is the work of public authorities, it may take the form of the law issued by Parliament, and it may take the form of the regulations or administrative decision issued by The executive branch, and with the occurrence of the aggression, an interest is created that authorizes the right holder to take unconstitutional appeals procedures⁸.

Second topic

Characteristics of the interest in a constitutional lawsuit

The interest in a constitutional lawsuit shall be met by the conditions for the interest in any lawsuit, so the interest shall be legal (not economic). It shall be an existing interest (not potential) such as it shall not be suspended on a condition of the situation. It shall also be a current interest (not future) as if it were suspended for a future time. However, the potential interest is sufficient if it is intended to assert a right that its evidence is feared to disappear when the dispute arises therein, or if it is intended to reserve precious damage. It is also sufficient for the opponent to have a moral interest in filing this lawsuit⁹.

¹ - Attar, P(2003). Political Systems and Constitutional Law, Arab Renaissance Publishing House, Cairo. P.261., Abdel Aal, W (2004). Judicial policy the Supreme Constitutional Court, Dar Arab renaissance to post.p.155 .

² - Zoubi, A (2006). Code of Civil Procedure, c 2, 2nd Volume, Dar Wael for Publishing and Distribution, Amman, Jordan.p.441 .

³ - Abdul Basit, M (2002). Mandate of the Supreme Constitutional Court in constitutional matters, knowledge, Alexandria.p.629 .

⁴ - Al-Tahioa, M (2010). Conditions for accepting the lawsuit in the Egyptian pleadings and Comparative Law, the new university publishing house, Egypt.p.114 .

⁵ - Ramzy, A (1974). Civil and Commercial Procedure Code and in accordance with Kuwaiti law, Kuwait University Publications.p.146 .

⁶ - Tabatabaei, P (2000). Interest clause in the constitutional suit, Journal of Law, Kuwait.,p.17 .

⁷ - Fouda, P (1997). Payment preclusion capacity or interest in a civil dispute, knowledge, Alexandria.p.48 .

⁸ - Salman, A (1995). Control of the constitutionality of laws, Dar Arab Thought for publication, Egypt .p.252 .

⁹ - Kamel, M (1989). Terms of reference of the Supreme Constitutional Court, the world of books, Cairo.p.97 .

Just as the case in the characteristics mentioned in the interest condition in general, among the characteristics that shall be met in the interest condition in the constitutional lawsuit is the existence of a correlation between the interest in a constitutional lawsuit and the interest in a substantive lawsuit. Such an interest shall be a legal, personal and direct interest, as well as an existing interest established by law.

First characteristic: The interest in the constitutional lawsuit shall relate to the interest in the substantive lawsuit.

The connection between the interest in the constitutional lawsuit and the interest in the substantive lawsuit is that the ruling in the constitutional lawsuit would affect the requests made in the substantive lawsuit in two respects: The first one: If the ruling on the unconstitutionality of the contested provision does not affect the ruling in the substantive lawsuit, so that the court of merits can settle the dispute without this being dependent on deciding on the constitutionality of the contested provision, then in this case the appeal of unconstitutionality is not valid because of the lack of the correlation of interest in the substantive and constitutional lawsuits.

Second: The substantive lawsuit shall be independent, as it shall have requests other than the ruling that certain legal provisions are unconstitutional, otherwise the lawsuit was in fact a direct constitutional lawsuit that was filed other than the way established by law¹.

The acceptance of an appeal for unconstitutionality requires that the legislation contested by its application to the appellant contradicts the constitution. The interest in the constitutional lawsuit is that the direct personal interest shall be available, not only in the lawsuit before the Constitutional Court, but also in the lawsuit against which the constitutionality of the law or the system was initiated, or that which has referred the lawsuit to the Constitutional Court. In this regard, there shall be a correlation between the interest in the constitutional lawsuit and the existing interest in the substantive lawsuit, and that the ruling on the constitutional issue is influential in what has been expressed in the requests in the lawsuit.

This is what the Jordanian Constitutional Court has decided by saying, "The direct personal interest is a condition for accepting the appeal of the unconstitutionality of the law or any provision therein, and such an interest shall have a correlation between it and the existing interest in the substantive lawsuit before the courts. Where the facts of the appeal filed by the appellant itself before the Amman Court of Appeals are to nullify an arbitration decision in accordance with Article (50) of the Arbitration Act, then its appeal against the unconstitutionality of Article (54) of the Arbitration Law, which examines the principles of the request to implement the arbitrators' ruling, as well as the order to implement it after exhausting the methods of appealing it, does not achieve any interest thereto in the appealed lawsuit referred thereto, which shall lead to the inadmissibility of the appeal against the constitutionality of Article 54 of the Arbitration Act²."

It is established in the jurisdiction of this court that the direct personal interest is a condition for accepting the constitutional lawsuit, and it shall have a correlation between it and the interest in the substantive lawsuit, which is represented in that the ruling on the constitutional lawsuit shall be necessary to adjudicate the substantive requests related thereto, which are submitted to the court of merits.

Accordingly, the Constitutional Court alone has the right to investigate the availability of the condition of interest in the lawsuit brought before it to ascertain the extent of the availability of the condition and no party has to dispute it. There is no correlation between referral from the trial court to the Constitutional Court and the availability of the condition of interest, as the first does not mean the second. If adjudication in the constitutionality of the referred provisions does not have an effect on the substantive dispute in the constitutional lawsuit, it is unacceptable³. This is what the comparative judiciary has decided upon, which is something that the Constitutional Court has to address before discussing the constitutionality of the contested provision, because it is as an intrinsic assumption or prerequisite for delivering the judgment issued by it⁴.

Second characteristic: Legal, personal and direct interest

The legal effect of the Authority is that the texts have guaranteed it and have given it legal protection and legal coverage⁵. The interest must be legal, based on the fact that the lawsuit protects the legal statuses. As for the interest that does not apply to a legal rule approved by it, it is only a realistic status that the lawsuit does not protect⁶.

Whereas the jurisdiction of the Supreme Constitutional Court has established that the constitutional lawsuit may not be accepted, unless the conditions necessary for it to be accepted are fulfilled in accordance with the conditions stipulated in its law, Under which are the conditions of interest, which were identified by the Supreme Constitutional Court as being the direct personal interest. The judgment of this court established that the concept

¹ - Ibrahim, M (1996). Interest in the constitutional suit, Arab Renaissance Publishing House, p.66 .

² - Appeal No. (3) of 2013, Jordan Bar Association, sixty-third year, 2015.

³ - Tabatabaei, P (2005). Kuwait's constitutional court composition, terms of reference and procedures, comparative analysis, Academic Publication Council, Kuwait University, p.35 .

⁴ - Al-Saeed, K (2017). The General Theory of Constitutional Judgment - A Descriptive Analytical Descriptive and Comparative Guidance Study, Dar Al-Thaqafa Publishing and Distribution, p.118 .

⁵ - Zoubi, A (2006), p.447 .

⁶ - Khalil, A (2015). Code of Civil Procedure, legal publications Halaby, Lebanon, p.179 .

of the direct personal interest, Which is a condition for accepting a constitutional lawsuit - is identified in light of two elements, which together define their content, the first of which is that the Claimant shall have, within the limits of the capacity by which it appealed the legislative provision , the evidence that a real damage, economic or otherwise, has been inflicted thereon, and this damage shall be direct, independent with its elements, perceived, and accepted by the judiciary, not an illusory theoretical or anonymous damage. Second: This damage shall be related to the contested legislative provision. If this provision was not applied to the claimant in the first place, if this provision did not address the Claimant, if the claimant benefited from the advantages thereof, or if the violation of the rights it claims does not return thereto-- therefore, the direct personal interest does not exist. This is because nullifying the legislative provision in all of these situations will not bring the claimant any practical benefit with which its legal status, after deciding on the constitutional lawsuit, may be changed from what it was when filing it¹.

The Constitutional Court Decision No. (2) of 2015 stated: Instilling the constitutional principles governing the nature of the constitutional lawsuit and its independence from the lawsuits brought before the judicial courts, the ruling of the constitutional lawsuit No. (3) of 2013 stated that it is an in-kind lawsuit focused on specific legal provisions and the opponent in the constitutional lawsuit is not one of the parties of the lawsuit, but rather is the legal provision as long as it is applicable in any part of the substantive lawsuit(substantive dispute) even if it is attached to a procedural aspect of the lawsuit. It is the same as in the present lawsuit, which is the inadmissibility of the judgment issued by the Court of Appeal to implement the arbitration award in accordance with Article (54 / A) of the Arbitration Law No. 31 of 2001. That is because the substantive dispute in this particular lawsuit, which was challenged as unconstitutional, revolves around accepting the appeal for cassation according to the order judging with the implementation of the arbitration award, which necessitated being appealed, along with the appeal for cassation and the cessation of the Court of Cassation from considering the appeal for cassation and referring the appeal of its unconstitutionality to the constitutional court for adjudication. The consideration and acceptance of cassation becomes in form and/ or merits that hinges on the decision of the Constitutional Court on the appeal submitted for unconstitutionality².

It is implied in the Constitutional Court Law No. (15) of 2012 that this court has jurisdiction exclusively to adjudicate appeals related to the constitutionality of laws and regulations and that its rulings in this regard shall be published in the official gazette. Since the constitutional lawsuit is an in-kind lawsuit in the sense that it focuses on specific provisions, therefore what is based thereupon is what the court judges with has an authority to confront all, representatives or non-representatives in the constitutional lawsuit, as well as with regard to the state throughout its various regulations. This authority prevents arguing about this issue again. When the Constitutional Court judged, in appeal no. (2) of 2013, with the unconstitutionality of Article (51) of the Arbitration Act and when this judgment was published in the official gazette, then this judgment shall have been authoritative upon all³.

Article (11) of the Jordanian Constitutional Court Act stipulated that whoever challenges the constitutionality of a law or system, then the provision shall be applicable to the substantive lawsuit and that the appellant shall have a personal and direct interest in not applying this provision to its lawsuit because the implementation of this provision would harm it. Since the current challenge included challenging the constitutionality of Paragraph (b), in particular, and Article (5) of the Landlords and Tenants Law No. (11) of 1994, in general, since the challenge to its reality focuses on Paragraph (b) of Article (5) concerning the automatic renewal of a rental contract , and since the said article dealt with different legal situations that are not a matter of application to the substantive lawsuit, there is no interest for the appellant to defend the unconstitutionality of Article (5) in all of its paragraphs, but its appeal is limited to paragraph (B) thereof. Therefore, the plea challenging the unconstitutionality is unacceptable in form⁴.

It follows from this that the condition of direct personal interest aims that the constitutional court shall judge in the constitutional dispute, which shall be limited to the challenges that the ruling of the constitutional court affects the validity or its invalidity thereof in the substantive dispute, and thus it is a necessary condition to accept the constitutional lawsuit⁵.

Third characteristic: Improbable current interest

The general rule is that the acceptance of the lawsuit requires that the interest therein is duly established, and this means that the right or the legal status of the person filing the lawsuit that he intends to protect by filing the lawsuit has already been violated.

consequently, the interest in the constitutional lawsuit is duly established during its consideration. It is not

¹ - Supreme Constitutional Court ruling , Case No. 28 of 29 judicial year “Constitutional”, hearing of 15/1/2012, Official Gazette Issue 4, bis, January 29 2012 - Journal of Egyptian State Lawsuits Authority, First Issue 2013.

² - Parliament Association Journal, 63rd year, 2015.

³ - Parliament Association Journal, 63rd year, 2015.

⁴ - Appeal No. (5) of 2014, Jordan Bar Association, sixty-third year, 2015.

⁵ - Al-Saeed, K (2017),p.118.

permissible for the court to waste its time by adjudicating an unreal and unestablished dispute, and a sufficiently determined, which leads to the lack of its correlation with a dispute that is still in its beginning¹.

As for the potential interest, it is the case of the existence of a protected right or legal status in light of legal texts, however the violation or amendment on it has not occurred yet, that means: The violation was not occurred during the filing of the lawsuit, however, it is potential matter that shall occur later, despite this, the legislator decided that the possible assault on the right or legal status is sufficient to initiate the lawsuit, and accept it in form².

Whereas, in the case of the interest, the prejudice to the right has led to its damages immediately, so that the owner was deprived of the benefit of the right. As for the future or postponed interest, the violation of the right has already occurred, but the deprivation of his benefits has not yet happened, as this violation did not cause damages when it occurred, so the interest was emerged, however its defense has not yet instituted, and in light of the potential interest, the violation on the right has not yet occurred, but it may happen at any time as a result of current established grounds³.

Accordingly, the nature of the probable interest differs from the nature of the interest in the lawsuit. If the basic principle is that the lawsuit is only a remedy aimed at correcting the actual infringement of the right, then the lawsuit filled on the basis of the probable interest is characterized by being a preventive lawsuit that is intended to initiate it before the judiciary to prevent the occurrence of the infringement⁴. If the nature of the probable interest, and describing it as an exception to the general principle required to file a lawsuit against the interest case, the goal of this exception is to prevent a serious danger or expedite the confirmation of an already existing situation⁵.

The decisive thing that we support and which the Egyptian Supreme Constitutional Court confirmed, is that the probable interest is not sufficient to accept the constitutional lawsuit, where the court declares explicitly: The interest in the constitutional lawsuit, as available if the claimant has an existing interest established by law, then its probable interest shall not be sufficient to accept it.

The third topic

The capacity and the interest

The Capacity shall be defined in language as a sweetener of a thing, and it is the source of describing the Capacity. It is thus the condition required to be available for the object and the state that it has of its ornament and attribute, such as ignorance and knowledge⁶. As for the Capacity of lawsuits in general, it is the authority whereby a certain person shall fill a lawsuit before the court, or the bond that allows a certain person to ask the judiciary to decide the basis of the dispute⁷.

As for the Capacity of the constitutional dispute, the law restricts it in a specific definition. Not every rightful person has the right before the constitutional court. Rather, the comparative constitutional judiciary shall specify those who have the right to resort to the constitutional judiciary, and it is not permissible for others to resort to it even if he has an interest in that⁸.

This condition has been stabilized in many rulings issued by the Egyptian Supreme Constitutional Court, where it ruled that it must be available to accept the lawsuit, and therefore the lack of quality is one of the arguments that can be adhered to to dismiss the lawsuit. In this context, the court says in one of its rulings: (... The law has assigned the president of the university the capacity to act on its behalf in all its correlations with other bodies that fall within the general judicial bodies, and the capacity to sue this prosecution in relation to those correlations, including contracting to purchase equipment for university colleges, and the disputes that may arise from it, which requires the claimant shall argue per se in the substantive lawsuit, and the consequence of provoking an unconstitutionality in it - the claimant's filling of the same lawsuit- and consequently, not accepted the lawsuit to be filed without a capacity is unfounded⁹. Also, the court tried to emphasize the need to bind with the procedures of the constitutional lawsuit by the claimant, otherwise his lawsuit and defence shall be dismissed because of the unconstitutionality of the form and capacity procedures.

In the Egyptian system, the right to resort to the court to appeal the unconstitutionality of laws shall be limited to certain parties, and no other person may exercise this right. This right shall be restricted to individuals if one of them defense before the trial court and the latter considered that the defense is serious, so it delays the

¹ - Tabatabaei, P (2005),p.46.

² - Shawarby, A (2014). Substantive comment on Procedures Act -general provisions of the Code of Procedure, Knowledge facility,p.52.

³ - Khalil, A (2005),p.180.

⁴ - Khalil, A (2005),p.181.

⁵ - Khalifa, A (2007). administrative decisions in jurisprudence and spend the State Council, facility knowledge, Alexandria p.350.

⁶ - Al-Tahioa, M (2010). Conditions for accepting the lawsuit in the Egyptian pleadings and Comparative Law, the new university publishing house, Egypt,p.80.

⁷ - Othman, A (2007). The general theory in the field of administrative Cancel decades, the Arab Office talk, Egypt,p.140.

⁸ - Salman, A (1995). Control of the constitutionality of laws, Dar Arab Thought for publication, Egypt,p.365.

⁹ - Ibrahim, H (2000). Judicial control over the constitutionality of laws in jurisprudence and the judiciary, Arab Renaissance Publishing House, Cairo,p.174.

substantive lawsuit and authorizes him to file the dispute before the Constitutional Court. Hence, it is not permissible for anyone other than the litigants in the substantive lawsuit, particularly the litigant who shall defend the unconstitutionality, and the court authorized him to file the constitutional lawsuit to file the lawsuit. If the lawsuit shall be filled by another way, so, it was not acceptable.

In addition to individuals, the capacity to file a constitutional lawsuit for courts of various types and degrees shall be established, whether in ordinary or administrative courts, as well as for bodies with jurisdiction. And if any of these bodies, during the consideration of a lawsuit, shall consider that a text in a law or regulation is unconstitutional, then it shall assign this text to the Supreme Constitutional Court in the manner stated above. the capacity shall approve to the Supreme Constitutional Court itself, on the occasion of exercising its powers, as the law gave it the right to address any text it deems other than a constitution¹.

While we find that the Constitution of Jordan for the year 1952, and the Jordanian Constitutional Court Law No. (15) for the year 2012 in Article (60) Item (1) has granted the following authorities exclusively the right to appeal directly with the Constitutional Court in the constitutionality of laws and regulations in force (Prime Ministry, Council House of Representatives, and Senate. So that an appeal shall be made by one of these bodies by a decision authorized by the council and to be submit and signed by the head of the appellant body including (the name of the law or the contested system and its number or any or more of it and directed his violation of the constitution), provided that a copy of the submitted appeal shall be sent to the other two bodies, Neither of them can submit his response to the court within ten days of receiving it. In the same article in Clause (2), it is stipulated that in the lawsuit before the courts, any party to the lawsuit may raise the defense of unconstitutionality, and the court, if convinced of the seriousness of the defense, shall refer it to the court that defines the law for the purposes of deciding the matter of referral to the Constitutional Court. Provided that this law or regulation shall be applied to the merits of the lawsuit, because in its application the interest shall be realized and without its application the interest shall be negated.

The Second chapter

lack of capacity in the constitutional lawsuit

And that the condition of the interest in the lawsuit shall be present throughout its stages, as it is required that it be present at the time of filing it, And to continue standing until the ruling is issued. If the interest was absent before the court issues its ruling for any reason, the constitutional lawsuit will be terminated².

Accordingly, the condition of the interest in the constitutional lawsuit shall be lack in the case of: If the claimant shall waive the right in the substantive lawsuit, and the lack of interest of some of the parties to the substantive lawsuit, and the status of benefiting from the contested text of being unconstitutional, And if the contested ,to be applied on the application for being unconstitutional, shall be Lack , as well as, the state of the constitutional issue that has already been decided By virtue of an authentic holder.

The first topic

Waiver of the claimed right in the substantive lawsuit

The Waiver of the claimed right shall be carried out on its own volition as a legal act, Causing the forfeiture of this right, and considering the claim to it as if it were not. As the issued award of this lawsuit shall not be have any effect in the claimed right in this substantive lawsuit because it shall be waived. which gives rise to the lack of the claimant's interest in the constitutional lawsuit.

If The appellant shall Waive of its personal claimed right in the substantive lawsuit, the interest in the constitutional lawsuit will be lack as it is not necessary to decide on it after the Waiver.

If this waiver shall not affect the continuation of the consideration of the substantive lawsuit, but it has occurred during it, it shall lead to the lack of interest in the constitutional lawsuit, and thus it shall be cancelled³.

This is which the Egyptian Supreme Constitutional Court confirmed by saying: If the aim of the presented constitutional lawsuit is the extent of the constitutionality of the articles... And the claimant shall waive his substantive request which presented before the trial court, in his personal confirmation of that, ... If the waiver of the claimed personal right shall be a legal act that takes place with the sole will and results in its removal, then the claimant's relinquishment shall result in the lack of his interest in deciding on the constitutionality of the appeals, if this is no longer necessary to adjudicate the substantive lawsuit from what is required with him to rule not to accept⁴.

The Second topic

The lack of capacity of the substantive lawsuit parties

The correlation of interest in the constitutional lawsuit with the right claimed in the substantive lawsuit that the ruling in the constitutional lawsuit shall be necessary and binding to rule on the substantive lawsuit , leading to

¹ - Al-Kilani, G (2012). Challenged the constitutionality of the law-a comparative study, Master Thesis, Najah National University,p.106.

² - Tabatabaei, P (2005). Kuwait's constitutional court composition, terms of reference and procedures, comparative analysis, Academic Publication Council, Kuwait University,p.55.

³ - Tabatabaei, P (2005),p.416.

⁴ - lawsuit No. 30 for 2011 hearing of July 28, 1990.

the lack of the capacity of some of the lawsuit parties, necessarily following the lack of the interest in the constitutional lawsuit.

In implementation of this, the Jordanian Constitutional Court shall state in a ruling in which it include as there was neither in the file of the substantive lawsuit nor in the request for defense after the constitution another private agency in this regard, which means and states that this appeal (payment) of unconstitutionality is submitted by someone who does not have to submit it, and therefore it is not acceptable The response requires a form, and therefore, based on the foregoing, we appreciate the response to the appeal in form¹.

The capacity of the constitutional lawsuit is proven to the litigant in the substantive lawsuit, and accordingly, if he is not a party to the substantive dispute, it is considered as lack of capacity in the constitutional lawsuit, and the Constitutional Court shall have the authority to decide on its own not to accept the lawsuit if it is filed without a capacity².

Accordingly, the capacity of the constitutional lawsuit establishes (for deduction) in the substantive lawsuit, whether it is a genuine or joined litigant, therefore, whoever is not a party to the substantive litigation shall lack the capacity of the constitutional lawsuit.

Another ruling of the Constitutional Court stipulates that: "In terms of the direct personal interest is a condition for accepting the appeal of the unconstitutionality of the law or any provision of it. The facts of the appeal No. (164/2012) filed by the appellant Itself before the Amman Court of Appeal, are used to nullify the arbitration award in accordance with Article (5) of the Arbitration Law. His appeal of the unconstitutionality of Article (54) of the Arbitration Law, which examines the principles for requesting the execution of the arbitrators' ruling and the sentence to execute it after exhausting the methods of contesting it, shall not achieve any interest to It in the aforementioned appeal, and the resulted failure to accept the appeal from this party and consequently Its return³.

The third topic

The benefit of the contested text for its unconstitutionality

The Jordanian Constitutional Court shall, and according to its law, to adjudicate the appeal either directly or by referral to it from the Court of Cassation or Supreme Administrative Court within a period not exceeding twenty-one days from the date of the referral decision to it. In the text of Article (15) Clause (C) of the Law of the Constitutional Court, the ruling issued by the court will be enforced with a direct effect unless the ruling specifies another date for its enforcement, so if it ruled that the law or regulation are unconstitutional, and if the ruling specifies another date for its enforcement, the law or regulation are invalid from The date specified in the ruling, and if the court ruled that existence of more than one unconstitutional text imposes a penalty, the execution of the judgments decided according to that text shall be suspended and its penal effects shall be terminated. if the court ruled that more than one text in the law or regulation are unconstitutional, the court may differentiate the date of the enforcement of its ruling from one text to another according to what it deems appropriate.

In this regard, it is clear that the Jordanian Constitutional Court has deemed the express annulment of any text stipulating its unconstitutionality from the date of the ruling, and it is stipulated that the law or regulation contested for its unconstitutionality shall be effective, if it was not effective, then the appeal shall not be accepted, and if it is enforceable, or valid when the appeal or plea of unconstitutionality, but the legislation was not enforced for any reason. The court ruled that the litigation shall be settled and reject it in form. The settlement of litigation shall be decided when the interest expires, in this case, as of the date in which the ruling (Judgment) becomes final (unappealable), the law or the regulation become ineffective for any reason, it shall be decided not to accept the peal (the appeal) for two reasons: The first reason is that the law or system is no longer in force as required by the constitution and the law; and the second reason is that there is no longer any interest in contesting it as it has become inapplicable to the merits of the lawsuit as required by the law of the Constitutional Court⁴.

Fourth topic

The contested text did not have the reference to apply the appellant for unconstitutionality

It is not possible to talk about Instituting a ruling for unconstitutionality as result of damages caused to the appellant from a text that has no place or room to apply to it. The lack of interest shall be deemed through instituting it by not accepting it entirely if the contested texts for unconstitutionality are wholly unrelated to the legal position of the appellant and intended to be changed by the constitutional lawsuit. Due to the lack of application, in its entirety, to it, and the lack of the link, consequently, between all of them and the requests for substantive dispute. Failure to accept the lack of interest may only involve a part of the lawsuit, if some of the

¹ - Jordan Constitutional Court, award No(2) for 2014.

² - Abu Al- Ethem (2016). Constitutional Jurisdiction between theory and practice, the House of Culture for Publishing and Distribution. Amman Jordan,p.402-403.

³ - Ruling of the Jordanian Constitutional Court No. (2) of 2013.

⁴ - Khatib, N (2017). Simple in the constitutional order. House of Culture for publication and distribution. Amman,p.315.

contested texts were the one that affected the appellant application and was then related to consequently Its requests in the substantive lawsuit, to be limited to this scope only¹.

As it is decided that the jurisdiction of the court in constitutional lawsuits shall only be instituted when it is correlated entirely with the conditions prescribed for it in its law and that they may not deviate from it as essential rules imposed by the legislator for public interest in order to regulate the consideration of constitutional issues in accordance with the rules It set, and it follows that all of this is that the appeal allowed the unconstitutionality of a legislative or legal text by contesting the validity of the authority of members of the House of Representatives to a direct appeal that individuals are not entitled to, but rather it is limited to the Council of Ministers, the Senate, and the House of Representatives in accordance with Articles (60/1) and (9 / A) of the constitution and the law of the Constitutional Court. This has not been realized, the matter which leads to the failure of the appeal to institute the unconstitutionality of the election law, in whole or in part, in the jurisdiction of the Constitutional Court only in accordance with the methods and conditions established for it in its law.

Whereas, due to the above, the lack of jurisdiction of Constitutional Court or its competence to consider the lawsuit at hand, the inadmissibility of rehearing a lawsuit any other formal condition, whatever its type of characteristic or direct personal interest, and accordingly any objective challenge to the unconstitutionality of any legal text raised by the appellant voter in Its challenge, which shall reject what the appellant submitted in form².

Whereas, in order for the direct personal interest to be provided in the constitutional lawsuit, the provision in the constitutional issue is necessary for the adjudication of a major or sub-issue around which the litigation institutes in the substantive lawsuit, with the result that the interest is not granted if the violation of the rights claimed is not directly attributable to the contested text, or if the correlation between the alleged damage and the contested text has been discontinued by the fact that the claimant was not addressed to this text due to the lack of conditions for its applicability³.

The fifth topic

The constitutional issue had already been decided by an Res Judicata in ruling

The Res Judicata in ruling issued by the Constitutional Court includes the ruling has Res Judicata of the judged therein on one hand, and the effect of Res Judicata on the other hand, and this means that the ruling issued by the appeal of unconstitutionality has the effect of judged thereof as other final rulings, as a proof for and against it, is an mandatory and liable to judged thereof⁴.

Accordingly, the lawsuits filed against the same text that the Constitutional Court previously ruled on regarding its constitutionality, whether by unconstitutional or rejected, as these lawsuits are not acceptable only because of the absolute Res Judicata, but also for the lack of interest⁵.

Accordingly, there is a lack of interest in the constitutional claim if the challenged wording judged to be unconstitutional before issuing the decision by constitutional court. As if the claim was filed against wording, then the court discovered that it has pervious jurisdiction for unconstitutionality of such wording, the court has to refuse the claim for the lack of interest, as the constitutional litigation of the nature of constitutional claim in rem is final without reconsideration. That for its litigation directed to the challenged wording for being unconstitutional. It added an absolute jurisdiction in the face of all individuals, powers, and organizations not relative jurisdiction has an effect only on the adverse parties.

Conclusion:

After finishing the research, the researcher suggested the following results and recommendations :-

Firstly: results:

- The right preserved by the constitutional claim is a right secured by constitution, as the public authorities shall govern any offence against it.
- The characteristics required in the interest condition of the constitutional claim shall be founded, such as relation between interest in the constitutional claim and interest in the subjective claim, the interest shall be legal, personal, direct, outstanding not eventual, and stated by law.

The interest condition provided along the claim stages, as it should be founded while filing the claim. It shall be continue until issuing the judge thereof. If the interest ended before issuing the judge for any reason, the constitutional claim shall be expired.

¹ - Abdul Basit, M (2002). Mandate of the Supreme Constitutional Court in constitutional matters, knowledge, Alexandria,p.112.

² - Violation decision regarding the ruling of the Jordanian Constitutional Court No. (1)/2014 of the Election Law.

³ - Ruling of the Supreme Constitutional Court - In lawsuit No. 158 of 27 Judicial "Constitutional" Session 4/12/2011 Official Gazette No. 50 Duplicated on 12/18/2011 - Journal of the State Lawsuits Authority Fourth Issue 2012.

⁴ - Khatib, N (2017). Simple in the constitutional order. House of Culture for publication and distribution. Amman,p.537.

⁵ - Abu Al- Ethem (2016). Constitutional Jurisdiction between theory and practice, the House of Culture for Publishing and Distribution. Amman Jordan,p.411.

Secondly: Recommendations:

- 1- The study recommends that interest condition may not be provided along the claim stages, it is enough to be provided at the time of filing the claim.
- 2- The study recommends Hashemite Kingdom of Jordan Constitutional Court to provide itself the right in its law to appeal for unconstitutional law or the regular that contrary to the constitution.

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