

The Impact of Explanatory Decision of the Constitutional Court in Jordan

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Abstract

This study examines the subject of interpretative decision of the Constitutional Court through several legal axes, where the definition of what began interpretative decision, Through the provisions of the law, and then clarify the jurisdiction of the Constitutional Court controls the interpretation explaining the conditions that must be met in this decision for the interpretation of legislative texts, and then explained researcher interpretative nature of the decision and the formal nature of the decision.

And among the topics that gained the attention of the researcher is the extent of the commitment of the authorities of the State interpretative decision of the constitutional judge explaining the point of view of the legislature and the judiciary in non-compliance with the resolutions and explanatory study time scale of these decisions.

And, finally, Researcher talked about the limits of the binding force of decisions explanatory, the researcher relied on legislative texts and the prevailing legal materials in the Arab world in general and in Jordan in particular to illustrate the gap between them

Keywords: Explanatory decision, the Constitutional Court, the legislature, the judiciary, the judge constitutional, legislative texts.

1. What is Explanatory Decision :

When the Constitutional Court with the task of interpreting the texts bear in mind the following fact "To what extent can be explained by the Act of Parliament interpretation that makes it consistent with constitutional principles?" Especially those that protect individual rights. Here, the Court does not pay the will of the legislator any interest, and does not pay attention to version of the law, all judges bend the law is consistent with what they see as a project from a constitutional side

The matter here is the matter of explanation of law and not of substantive issues, so that the provisions of the Constitutional Court to consider the legislation in order to be explained either be explained to the provisions of the Constitution and either complementary to those marred shortages.

And in some detail about this topic, this topic will be divided into the following demands:

2. Section I :

2.1.1. Definition of the explanation of the provisions of the law:

Intended interpretation of legal texts as one of the Specialties the Constitutional Court is to clarify what happened with spent by the provision required interpretation of ambiguity or thumb to determine the truth of what meant the court judgment, so that the audit judgment in conformity with this context without prejudice spent by the rule interpreter shortages or increased or amend.

Explanation in the language: is a taken from explain the convention a statement, detection and disclosure and encased revealed.

If the explanation text contained the mysterious and that tags flaws according to the apparent meaning to the word explanation, but it is also provided the text, which clear or caused by defects or ambiguity, This is because the true interpretation of the statement, which is the best legal judgment, as evidenced by the words of the legislature, in preparation for its application to real-life situations that generated in practice before the judge that the Egyptian jurisprudence.

Explanation includes all branches of law and legal rule and in broad sense it means legislative base written and non-legislative such law natural law and custom....Etc.

3. Section II :

3.1. Controls competence of law Constitutional Court for explanation

In order for the Court to exercise constitutional interpretive competence must be the availability of several substantive and formal controls.

3.1.1. Substantive controls under the jurisdiction of the Constitutional Court interpretation of legislative texts should be the availability of two conditions:

3.1.1.1. The first Condition to be interpreted as required text had the effects of the difference in the application, the Jordanian and Egyptian legislator did not identify this requirement and also didn't explain when achieved this condition until the judge constitutional interpretation of this difference.

The elimination of constitutional scholars has worked hard to determine this condition where some see that the disagreement in the application is the contradiction in the application of the rule of the asymmetries in investigating the real legislature, which is reflected in the application contradicted applications is to shout intervention uniformity of interpretation in order to prevent such disagreement in the application.

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The Supreme Constitutional Court declared that the authority of the Court in the area of statutory interpretation and the shows of the text of the article (26) of its unconditional and that this text - over its importance - have implications when applied, unlike on its content, vary with the legal effects of provisions among audiences, without prejudice to the generality pursuant to rule of law issued by the drop-shaped symmetrical texts respect their legal status for the .thus threatening the required by equality, including in the field of applied which necessitates a response this rule to the content of the standard.

Determined in the light of what the legislature intended when approval decisive for its significance and to ensure their equal application of audiences.

According to the provisions of Article (2) from the Law of the Jordanian Constitutional Court that there are two conditions for the exercise of constitutional judge and his explanatory toward the disputed text, namely:

(A) Application the text actually:

Require the Constitutional Court to explain what the law is to apply this provision in practice, and disputes occurs upon in the actual effect during the application of this provision, and therefore exclude the judge requests for constitutional interpretation of legislative texts that have not been achieved by this condition. In the view on the part of the jurisprudence that text should be interpreted as required had the effects of the difference in the application.

(A) Inequality between identical party:

The principle of equality of the constitutional principles of equality and indigenous focus of research here party relative to those who equals on their position and legal circumstances.

The Constitutional Jurisdiction cohered on this principle, Constitutional Court decided Supreme Egyptian that the focus of the acceptance request interpreting the provisions of laws passed by the legislative authority and decisions laws issued by the President of the Republic, according to Article (26) of the Act 48 of 1979 is to be these texts have raised disputed in the application ... in a manner not achieved equality between audiences its provisions the law ...

3.1.1.2. Second Condition Importance of required text interpreted:

The legislator stipulated in article ...Of the Law on the Constitutional Court of Jordan that is the legal text required explained of fundamental importance were numerous circumstances that reveal the importance of the text to be explained, noted that the legislature did not put a specific concept in the importance of the text to be explained.

In this regard, some believe that the degree of importance of the text measured in various aspects such as the extent of connected with important and vital things or regulatory sensitive and delicate issues such as the rights and liberties.

And must be in according with one the Constitutional Court article in the explanation request shows the importance of the legal text to be explained.

Therefore, the burden of proving the existence of the importance of the legal text, which happened dispute in its application because of the variation in words and understanding variation in awareness in order to street behind it, and the wisdom of the legislation is the responsibility of the applicant to explanation.

In the view of the jurisprudence of the Supreme Constitutional Court in its supervision to assess the degree of importance on the part of her right to request explanation guided by certain principles such as the extent of contact desired text explained the basic principles of the Constitution, such as the principle of equality and the rule of law and the right of litigation.

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rule of law and the right of litigation.

3.1.1.3. The third condition Ambiguity of the text that needed to interpret:

Although the legislature has approved to eliminate the constitutional issue binding explanations but some believe that this condition is obvious realization need to make explicit reference to and from the legislator.

The exercise of the mandate of the Constitutional Court explanation is given the existence of a kind of mystery in the legislative text, and then it is in the case of the failure to extend the terms of that text is not the explanatory jurisdiction of the Court of clear texts in a sense, is not an obstacle to applied without recourse to the constitutional judiciary.

And require that up to a certain degree of ambiguity applied lead to a breach of the constitutional principle of equality between audiences although its provisions similar to their positions and their circumstances.

4. Section III

4.1. Formal controls

So that the judge of the Constitutional carry out its task of interpretation has to be the availability of several pro formal controls, including in the competent authority to move the request interpretation Stipulated Article 17 of the Law of the Constitutional Court that the Court is concerned with the interpretation of the provisions of the Constitution if requested by a decision of the Council of Ministers or the decision of a parliament majority.

The researcher believes that the executive power is one of the neediest authorities to request explanation except that I would be better if the controls are put clear to direct the Prime Minister here jurisdiction so as not to make mistakes using this right and starts unwarranted crises.

There was an odd in Jurisprudential and judicial on the nature of the explanation decision from the Constitutional Court whether is a judgment or decision.

Team believes that the role of the judicial ruling issued for separates in a feud between two or more in explanation request does not dispute and even if we consider who requested is the Minister of Justice to provide explanation request, where the second party is?

5. Section IV

5.1. The nature of the decision explanation

And in agreement with the decisions are not provisions is a tool the Supreme Constitutional Court to request interpretation, and we prefer to call these decisions describe the judiciary, to prevent mixing with administrative decisions, and to indicate the nature of the side issued by it, but the separation of the Supreme Constitutional Court in for explanation requests the decisions not the provisions are not practical impact.

While another sees aspect of jurisprudence that although agree with the previous opinion on what issued by the Supreme Constitutional Court in the fact that requests for explanation is the decisions and not the provisions and pays for his opinion, "the fact that the Supreme Constitutional Court, although a judicial body as stipulated in the Constitution but it is a body with a special nature and the development of particularly in the exclusive constitutional system

This is apparent from the first hand in its formation, which involves not only the components of a lawsuit, but also other elements, although working as law professors Faculty of Law and senior lawyers, but they are not members of the judicial bodies, and on the other hand in specialties given by the Constitution , the most important control of the constitutionality of laws, which shows the subjective and the privacy of the tasks assigned to them, the constitutional control is the fact of the matter The legislation issued by the legislative authority to the extent of disagreement or agreement with the provisions of the Constitution, it is in this jurisdiction act as honest of the provisions of the Constitution.

6. Section V

6.1. The commitment of the State's authorities to the decision of the constitutional judge explanatory:

Features explanatory decision to the judge that he has the constitutional power of absolute public which requires mandatory for all state authorities and all, they are:

6.1.1. Legislative authority :

According to the provisions of the Constitution, Parliament is the law shall be issued, and this means that the parliament does not comply inherent to practice its competence in the interpretation of legislative texts issued interpretations of constitutional judge

So some sees that "the right of the legislative authority to issue legislative explanation at any time contrary to the previous interpretation of the decisions of the Supreme Constitutional Court, in this case have to obey interpretations and abide by the legislature because it is best placed to know the true will have from behind these texts.

In this regard must be criticism of Parliament was unable to explain the normal regulations in a manner inconsistent with the executive decisions of the Supreme Constitutional Court.

6.1.2. Executive authority :

Committed to the executive authority and interpretative decisions and look the importance of this commitment if the issuance of administrative decisions, in the issuance of decision interpretative management taking into what spent in administrative decisions that are foreseen otherwise marked by its defect breaking the law.

In this regard must differentiate between the cases of the expiry of deadline to appeal the revocation for administration to withdraw its decision, which has become described as illegitimate due to contrary of the binding interpretation of the Supreme Constitutional Court.

The other case is the expiry of deadline to appeal the revocation, and since the deadline to appeal is renewed again in administrative decisions based on the text of the law passed after its constitutionality and barricaded before judgment, and can measurement on that base, depending on the provisions of unconstitutionality joint decisions explanatory in the regressive effects.

At administration to pull the administrative decision contrary to the interpretative decision issued by the Supreme Constitutional Court, but failed administration may appeal its decision to the explicit or implicit rejection of cancellation, taking in mind the exception of non-prejudice to the acquired rights or legal centers provisions unqualified.

6.1.3. High Constitutional Court:

The Supreme Constitutional Court should be compliance interpretative with the decision. This does not undermine it is released in the binding interpretative inherent decision of a general formula to include the constitutional judge.

It follows from what has been said on the following results:

- 1- May not be the Supreme Constitutional Court explain a text previously explained.
- 2- High Constitutional Court's commitment to its decision when interpretative conducted of other powers.

7. Section VI:

7.1. Failure to comply with the resolutions of explanatory

Question arises about the impact of the non-compliance of interpretative decisions and this issue will be addressed according to the following:

7.1.1. Legislative authority:

It is possible to take the legislature's refusal to implement the decision of the Supreme Constitutional Court one of two methods:

Issuing Authority legislative law interpretation is contrary to the interpretation issued by a decision of the judge constitutional, in this case performs law interpretative issued by the Parliament because legislative authority is the owner of the inherent jurisdiction of the legislation and interpretation, and implement resolution interpretative issued by the court of law. ⁽²⁾

If Parliament issued legislation of explanatory texts regard to issuing such provisions of the Constitution or normal regulations, and those interpretations opposed with the interpretative decisions of the constitutional judge, in this case it must be taken interpretative decisions of the Supreme Constitutional Court in this regard.

7.1.2. The Executive Authority:

This feature achieved if one side has the executive authority interpretation and application of the text of a particular law to the contrary interpretation issued by the Supreme Constitutional Court, the any interested individual should take the following actions:

- 1- Appeal against the decision in this regard to the source of the decision or the highest authority of it, the answer grievance ended up, but if he refuses to justice and resorted taken the following.
- 2- Institute cancel suit against the administrative decision base on, contrary to interpretation of the interpretation of the Constitutional Court.

7.1.3. Judicial authority:

Per significant affected by the lack of commitment by a court in one of the cases before it issued interpretative decision of the Constitutional judge to take the following actions:

Appeal against the rule of High Court on the basis of violating the law, ruled cancel the provision has finished the conflict but if refused appeal the person concerned bring an action dispute implement the Constitutional Court, in this case, will issue the Supreme Constitutional Court provision the implementation of the decision to interpretation and executes judgment.

8. Section VII :

8.1. Time range for interpretative decisions

That the main purpose of the establishment of the Supreme Constitutional Court interpretation is to maintain the legal legitimacy of the state, and this court is keen to seek truth incoming legislature and investigate purposes according to the general rules in the interpretation of legal texts, it starts the impact interpretation binding from the date of work by providing legal replace interpretation, and not from the date of publishing the decision interpretative here it was logical to apply the decision interpretative constitutional judge, retroactively back to the moment of the release of the text does not date the decision interpretative.

However, the realization of this effect collides with some of the legal considerations that prevent the taking of interpretation issued by the judge of the constitutional previous cases to its release are:

Interpreting the provisions of criminalization and punishment: Does not allow the legislature to decide validity of criminal legislation on the past and you can exclude this rule apply criminal laws more favorable to the accused retroactively.

It is a legally recognized The judge's interpretation of the constitutional text Criminal since the entry into force of the text applies the same interpreter, but this rule collide with some considerations and even some established rules applicable in criminal law, such as the rule of law more favorable to the accused.

Accordingly, there is a question arises whether the rule is that the interpretation of the Constitutional Court the text of a criminal is valid from the date of explanatory text or does not work on the date of the decision explanation , what is the solution if the interpretation is the interest of the accused?

Some see the lack of validity of this explanation only to crimes after the publication of explanatory decision, this represents a departure and a restriction on a retroactive basis for interpretation and selection, No explanation is valid from the date of the text, as is the rule interpreter, but the date of publication.

Shall not compromise the legal centers sedentary legal principle, the scope of this principle to the explanatory decision and constitutional provisions that may not be the decision, despite the impact of explanatory reactionary prejudice stable legal centers before its release so as to achieve stability to be ensured in the legal relations. ⁽¹⁾

But the legal centers that have not yet settled the explanation applies will take effect on it even if it had originated and generated before its release, because what ruled in this legal text interpreter who appeared in the shadow, and appears Interpretation and is applied even if the rule is issued now, may in this case be challenged and adhere to the Court's interpretation of the constitutional text applicable to the case where the provision issued isn't pending in it.

9. Section VIII:

9.1. Limits the binding force for decisions explanatory:

Scholars had been disagreed among themselves on whether the force mandatory interpretative decisions for the constitutional judge or is it a border without controls. Scholars had been disagreed among themselves on whether the force mandatory interpretative decisions for the constitutional judge or is it a border without controls.

Side of the jurists believe that the judicial authorities mandatory the interpretation issued by the Supreme Constitutional Court must be applied when need to apply the text authentic and may not track it because they do not own it legally, whether I thought wrong or right, that explanation did not follow the technical assets or it's explanation came from the familiar boundaries for explanation that included new provisions are not likely the text explanation.

In the other hand , another team sees that the Constitutional Court have to committed in their explanatory decisions and keep in mind the controls of the interpretation and the clear scientific rule , so the courts in different authority may address the interpretations of the Supreme Constitutional Court if it is proved that the explanation may be marked by a defect formality in terms of the conditions for issuing formal or defect objective it is to refrain from taking this explanation and address itself to the interpretation of the text do not have a legal interpretation of the Supreme Constitutional Court in this case the binding force.

It is the right of unconstitutional Judge to test interpretation issued by that court to determine the extent of agreement with the rules of interpretation funded by If saw that it has come out the limits of interpretation to the construction phase, he had to refrain from applying the new rules added by the Supreme Constitutional Court arguing interpretation of situation of the right to control the health legislation, because the Supreme constitutional Court commissioner in the interpretation and not in the legislation and have been release issued by the competent authority.

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