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The Jurisdiction of The Supreme Constitutional Court in Relation to Disputes and The Formation of Parliament Under the Iraqi Constitution Of 2005

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Abstract

In most cases, the constitutions grant the constitutional judiciary jurisdiction in many areas, including its jurisdiction to consider and resolve disputes that occur between the higher authorities of the state, such as disputes between one of the federal authorities and the regions in the federal state. It also considers some types of conflict of jurisdiction, determining the competent authority, and the accusations against some members of the executive authority, in addition to it interfering with the formation of the legislative authority in some respects. Where the constitutional judiciary exercises multiple competencies, and it can be divided into two main parts. The first is its jurisdiction in relation to constitutional texts, such as its jurisdiction to control the constitutionality of laws, or its jurisdiction in interpreting the constitution. While the second is its jurisdiction in what is not related to constitutional texts, such as its jurisdiction to settle disputes and conflicts and the like. The scope of the research was limited to the second section of the terms of reference without the first, our research dealt with the constitutional judiciary in Iraq in accordance with the Constitution of 2005, for that purpose the descriptive and analytical approaches were used.

Key Words

Federal Supreme Court, Jurisdictions, Appeals, Conflict of jurisdiction

1. Introduction

One of the characteristics of the rule of law is the existence of an independent and active constitutional judiciary in it, because it is he who preserves and preserves the constitution and is one of the most important guarantees of its respect. Where, in most cases, the constitutions grant the constitutional judiciary jurisdiction in many areas, including its jurisdiction to consider and resolve disputes that occur between the higher authorities of the state, such as disputes between one of the federal authorities and the regions in the federal state. It also considers some types of conflict of jurisdiction, determining the competent authority, and the accusations against some members of the executive authority, in addition to it interfering with the formation of the legislative authority in some respects. Where the constitutional judiciary exercises multiple competencies, and it can be divided into two main parts. The first is its jurisdiction in relation to constitutional texts, such as its jurisdiction to control the constitutionality of laws, or its jurisdiction in interpreting the constitution. While the second is its jurisdiction in what is not related to constitutional texts, such as its jurisdiction to settle disputes and conflicts and the like. In this research, we have tackled study some of the important competencies of this judiciary.

1.2 Research Problem

The research problem can be illustrated through the following questions: What are the disputes that be considered by the constitutional judiciary? Does it have jurisdiction over a conflict of jurisdiction and adjudication it? What kind of disputes it considers? Does it have the right to try members of the executive authority who are charged with a parliamentary indictment? Does it have the right to interfere in the composition of parliament? What are the limits of such right? In this research, we have tackled answer to these questions.

1.3 Methodology and Scope Research

The constitutional judiciary exercises multiple competencies, and it can be divided into two main parts. The first is its jurisdiction in relation to constitutional texts, such as its jurisdiction to control the constitutionality of laws, or its jurisdiction in interpreting the constitution. While the second is its jurisdiction in what is not related to constitutional texts, such as its jurisdiction to settle disputes and conflicts and the like. The scope of the research was limited to the second section of the terms of reference without the first, our research dealt with the constitutional judiciary in Iraq in accordance with the Constitution of 2005, for that purpose the descriptive and analytical approaches were used. For this purpose, the research has been divided into two main parts. In the first, we discussed the jurisdiction of the Supreme Constitutional Court to adjudicate disputes, conflicts, and accusations, and we dedicated the second to the

jurisdiction of the Supreme Constitutional Court regarding the formation of the legislative authority.

2. The jurisdiction of the Federal Supreme Court is determined by adjudicating disputes, conflicts, and accusations

The Constitution has recognized the Federal Supreme Court a trial court in the consideration and resolution of several cases. It can be referred to three main sections of the issues it decides on, as follows:" Settling matters that arise from the application of the federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law shall guarantee the right of direct appeal to the Court to the Council of Ministers, those concerned individuals, and others"

2.1 The adjudication of Disputes

The Supreme Constitutional Court was granted the power to adjudicate in three types of disputes, namely:

2.1.1 The first type: Disputes arising from the application of federal legislation and procedures

The Iraqi constitution on such jurisdiction has stated "to decide on cases that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority".¹ From such article it is shown that the court has jurisdiction over two matters, the first: disputes arising from the application of two types of legislation, the first type of ordinary legislation, which are the laws in the special sense. As for the second type, subsidiary legislation, which includes what the constitutional paragraph expressed in decisions, regulations, and instructions, all of which are organizational administrative decisions. As for the second matter that the court is competent to consider the disputes arising from it, it is the procedures, and the procedure as a legal term represents all the actions that precede the administrative decision and pave the way for its issuance, and therefore it can be defined as what the administration does in preparation for the issuance of its decision.

Committees are also examples of procedures. In some cases, the legislator may impose on the administration to take its decision based on a recommendation submitted by a committee determined and regulated by law and clarifies the procedures that the administration must adhere to it, otherwise, its action will be void, such as holding its meetings legally and following legal procedures in deliberation among its members and so on (Al-Tamawi, 2014).

The constitutional legislator has been criticized here for extending the jurisdiction of the Federal Supreme Court to include procedures that are

¹ Article 93/third of Iraq's constitution of 2005.

inferior to administrative decision, if we take the text on its absolute, the cases it is considering will be in numbers that are difficult to imagine, even with the exception of the ordinary administrations and limiting them to decisions, regulations, instructions and procedures issued by the federal authorities (which is the executive authority consisting of the President of the Republic and the Council of Ministers, the legislative authority consisting of the Federation Council and the House of Representatives, and the judicial authority consisting of From the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Authority and the Judicial Supervision Authority) how many decisions, regulations, instructions and procedures are issued daily by each of them? How often will you apply each of them? And how many disputes will arise from its application (in the regions and governorates that are not organized in a region, that is, the application of which will affect the relevant members of the Iraqi people)? In any case, it was better to keep it within the jurisdiction of the administrative judiciary and not to include it here, but the not jurisdiction or its weakness leads to such paradoxes.

2.1.2 The second type settling disputes between the federal government, the governments of regions, governorates, municipalities, and local administrations.

Every dispute in which the Federal Government is a party, the jurisdiction of the Federal Supreme Court is to consider and decide it, whether the other party is a regional government of the state's regions or a governorate that is not organized in a region, or a municipality or a local administration. It is worth noting that the criterion that defines the federal union and applying it to this jurisdiction is the multiplicity of levels of authority. Where, the first level is represented by the general authorities of the federal state (ie the federal authorities), which consist of the federal executive authority, the federal legislative authority and the federal judicial authority.

As for the second level, it is represented by the general authorities of the regions (states), as each region has its own authorities, which are the regional executive authority, the regional legislative authority, and the regional judicial authority.

A conflict may occur between some levels of authority, such as a dispute between the federal executive authority and the executive authority of one of the states, and in this case, we need a superior authority that has the constitutional authority to consider and resolve the dispute arising from this dispute, and this authority is represented in the constitution of Iraq of 2005 in the Federal Supreme Court. Such is deemed a logical matter in two aspects, the first is the presence of a party that has the authority to adjudicate constitutionally, while the second is the constitutional judiciary's consideration of a dispute arising between the different levels of authority, which is embodied in the federal authority as one party, and

the authority of one of the regions as another party, but the constitutional legislator added other parties that do not represent a level of the levels of authority, namely, the municipalities and local administrations, and it was better to leave them to the regular or administrative judiciary, not the constitutional, this is on the one hand.

On the other hand, it has added the authority to adjudicate disputes arising between the federal government and the governorates as well and did not confine them to the governorates that are not organized in a region, but rather it expanded the text to include the governorates organized in a region in this provision. But in fact, that the expanding the text in this way causes a clear imbalance, as it is evident that the governorates organized into a region do not have a direct dispute between them and the federal government, but rather the dispute is between the federal government and the regional government, so it is included in the first section of the article, which is "the settlement of disputes that occur between the federal government and the governments of the regions...".² As for the disputes between the governorates organized in a region and the government of its region, it is assumed that the jurisdiction to decide on them lies either with the Supreme Court of the region (i.e. the constitutional judiciary) or to the administrative judiciary in the region, i.e. according to what is regulated by the region's constitution, and thus no the jurisdiction to rule on them reaches the Federal Supreme Court, unless the legislator wants to utter the governorates that are not organized into a region.

The clearest form of this type is the conflict of jurisdiction between the bodies mentioned in Paragraph (Fourth) Article (93) of the Constitution of the Republic of Iraq for (2005), where the court must decide in accordance with what the Constitution has specified in line with the philosophical motives for the distribution of jurisdictions approved by the constitutional legislator, which sought through them to strengthens the regions rather than the union, so it stipulated the jurisdictions of the union exclusively,³ the common jurisdictions,⁴ and leaving the rest to the regions and governorates that are not organized in a region. From this organization we clearly understand the approach adopted by the Iraqi constitutional legislator, which is to expand the jurisdictions of the regions rather the federal authorities.

Where it added this provision to the constitution, it stipulated that "whatever is not stipulated in the exclusive powers of the federal authorities, it is within the authority of the regions and governorates that are not organized in a region, and the other powers shared between the federal government and the regions, in which priority shall be given to the law of the regions and governorates not organized in a region, in the event of a dispute between them."⁵ With this text, it was not limited to extending the powers to the regions in the face of the centre or the federal authorities, but also included the governorates that are not organized in a region.

² Article 93/Fourth, Constitution of Iraq of 2005.

³ See Article (110) of Constitution of Iraq of 2005.

⁴ See Article (114) of Iraq constitution.

⁵ Article (115) of constitution of Iraq of 2005

2.1.3 The third type: the adjudicate to the disputes that occur between local governments (governorates).

It seems that the constitutional legislator means the jurisdiction of the Federal Court to adjudicate in disputes that occur between sub-federal levels of authority and some decentralized administration bodies, such as disputes that arise between regions with each other, or with governorates that are not organized into a region, as well as disputes that occur between governorates that are not organized in the region of some of them with each other, but the text of the legislator did not clear such meaning.

The same criticism we mentioned in the second type also here, as it would have been more appropriate for the legislator to grant this jurisdiction to the administrative judiciary.

2.2 Adjudicating of conflict of judiciary jurisdiction

The Iraqi Constitution of 2005 has granted the Federal Supreme Court the jurisdiction to settle jurisdictional disputes, and it is of two types:

2.2.1 The first type: Conflict of the Judiciary Jurisdiction

It is the conflict of jurisdiction that occurs between two courts of different level or type, such jurisdiction was stated in this text "Settling jurisdiction disputes between the federal judiciary and the judicial institutions of the regions and governorates that are not organized in a region."⁶

It should in this topic of the research mention to the parallel judiciary in the federal union, as there are two similar jurisdictions are a parallel. the first is the federal judiciary with its types and instance, and the second is the judiciary of the regions (states) with their instance and types, which, it is a judiciary that specializes in cases related to the region or related to it (or say only local cases). The conflict of jurisdiction may arise between them, whether positive or negative, so the need arises for the presence of an authority that has superiority over the two judiciary to consider the dispute between them and determines the authority that has jurisdiction, and thus its decision is a final and binding of all. The Iraqi legislator has granted such jurisdiction to the constitutional judiciary, so it has lined accordance with the general principles of the federal union, but he added to it the conflict of jurisdiction between the federal judiciary and the judiciary of governorates not organized in a region, although it is not a parallel judiciary, but rather a judiciary that falls within the federal judiciary itself, so there is no need to make the judiciary of the constitutional court is competent to consider its conflict. So the legislator should have left it to the both laws of judicial system and the state council.

Where, the first has grant this jurisdiction to the expanded panel in the Court of Cassation to consider the dispute between its courts,⁷ and the second is

⁶ Article (93)/eighth/a of constitution of Iraq

⁷ See Article 13/first/b/2 of Judicial Organization Law No. 160 of 1979.

to grant it to the Supreme Administrative Court.⁸ As for the dispute between two courts, one of which is affiliated with the ordinary judiciary and the other for the administrative, the jurisdiction in its consideration and resolution is held by the authority to appoint the reference.⁹

2.2.3 The second type: conflict of jurisdiction between the judicial bodies of the regions, or the governorates that are not organized in a region.

It seems that what the legislator intends is the jurisdiction of the Federal Supreme Court to consider the jurisdiction conflict between the judicial bodies of two or more regions, or of two governorates not organized in a region, or between a judicial body of a region and another of a governorate is not organized in a region.

The tendency of the legislator to grant the constitutional judiciary such jurisdiction in relation to the conflict between the judicial bodies of the regions among them can be supported. As regarding to conflict between them and the judicial bodies of the governorates that are not organized in region, it is considered a lost jurisdiction or an expendable. Where, it is not correct to stipulate it here because it is included in the previous paragraph that stipulated the jurisdiction of the court to "settle the jurisdiction conflict between the federal judiciary and the judicial bodies of the regions and governorates that are not organized in a region".¹⁰ That is, the dispute in it is a conflict between the federal judiciary and the judiciary of the region.

As for granting the constitutional judiciary the jurisdiction to consider the conflict that occurs between the judicial bodies affiliated with the governorates that are not organized in a region, it is also criticized ,as what we have mentioned in the first type, due to the presence of a judicial body competent to consider such a conflict, whether it is between two bodies of the ordinary judiciary, or two bodies of the judiciary Administrative, or an entity from the ordinary judiciary with another from the administrative judiciary, as the first was regulated by paragraph (I/B/2) Article (13) of Judicial Organization Law No. (160) of (1979), and the second was regulated by paragraph (Fourth/c) / 2) Article (2) of the Law of the Fifth Amendment to the State Consultative Council Law No. (65) of (1979), as for the third, it was regulated by paragraph (twelfth) of Article (7) of it, with no justification for making a change it.

2.3 Adjudication of accusations

In general, the Iraqi constitution took the principle adopted by most of the constitutions of countries, which is to grant parliament jurisdiction in punitive accountability of members of the executive authority, i.e., the power that parliament enjoys according to the constitution to take the necessary measures to

⁸ Article 2/Fourth/c/2 of the Law of the Fifth Amendment to the State Consultative Council Law No. 65 of 1979.

⁹ Article 7/twelfth of the Law of the Fifth Amendment to the State Consultative Council Law No. 65 of 1979.

¹⁰ Article 93/eighth/a of Constitution of Iraq of 2005.

charge or prosecute members of the executive authority. The Constitution of the Republic of Iraq of 2005 stated in three cases representing the objective scope of such jurisdiction, which are:

The first case: High Treason

The high treason is a concept that includes all acts that are considered dishonesty. Two types of actions are included in it, the first: actions related to the internal aspect of the state, such as bribery, theft, serious neglect of job duties and damaging the state's supreme internal interests and internal security, and so on.

Second: acts related to the external side of the state, such as allegiance to enemies, joining them, providing aid and assistance to them as they are enemies of the state, and disturbing the external security of the state, and every act marred by treachery of the supreme interests of the state in foreign affairs, and therefore the most appropriate definition of high treason is gross dishonesty in performing the duties of the job.

The second case: Violation of the Constitution

Non-compliance with the rules of the constitution is achieved in three elements:

First: Violation of the constitutional rules, which is achieved when the actual constitution is suspended, not the official one, i.e., the constitution is suspended by other than the legal path.

Second: Amending the constitution in contrast to the framework established by the constitution itself to amend its texts, whether it is issued by someone who does not have the authority to amend or is issued in violation of the formal or substantive rules for its amendment (Al-Khalidi, 2011; Merzeh, 2004).

Third: perjury in the constitutional oath that is achieved by any positive act in which it exceeds any of the paragraphs of the oath, and it can also be achieved by simply taking a negative stance on its content and not seeking to achieve it.

4. Jurisdiction of the Supreme Constitutional Court regarding the composition of the legislative power

The Court indirectly interferes in the formation of the legislative authority through its competence to consider challenges to the validity of the membership of a member of the House of Representatives, and to ratify his elections. We will review both jurisdictions as follows:

4.1 The jurisdiction of the Supreme Constitutional Court to consider appeals against the membership validity decision

A person may become a member of the Parliament while he is missing some of the membership conditions, hence the need to examine the legal status of a

member of the Parliament to ensure that his membership does not violate the law, neither in terms of personal conditions, nor in terms of the procedures that were followed to win his seat in the Parliament, and this is what is meant by deciding the validity of a person's membership of the House of Representatives.

To keep the independence of the parliament, constitutions usually grant the power to decide on the validity of the membership of the House of Representatives to the Council itself, and this is what the Iraqi Constitution of (2005) did when it stipulated that "The Council of Representatives shall decide, by a two-thirds majority, the authenticity of membership of its member within thirty days from the date of filing an objection",¹¹ and the Council may take its decision on the invalidity of the membership of one of its members, and with the possibility that the decision is not legally sound (regardless of the reason), it must allow it to appeal the decision of invalidity of its membership. The important question is arisen here is which body the appeal is submitted to it and has jurisdiction to decide it?

The constitutions of states have differed in the body that has the jurisdiction to consider and decide on these appeals, and the difference may be due to what the constitutional legislator adopts a different point of view. We can show three different approaches in determining the body that decides on membership and the body that decides on appeals against the decision on the validity of membership:

The first approach: in this trend both matters are granted to the Parliament itself, the authors of such approach rely on the necessity of complete separation between public authorities and that this separation is not limited to the functional aspect but goes beyond it to include the organic aspect as well, that is, not allowing any authority to interfere in the formation of another authority. The Parliament itself has the two powers together, i.e., it has the power to decide on the validity of the membership of its members, and to decide on appeals against these decisions. The American Constitution may be the first to adopt this approach, especially since it is based on a rigid interpretation of the separation of powers, so that each House of Congress decides on the eligibility of its members and the validity of their election.¹²

Second approach: the authors of this approach remove both issues from the Parliament's consideration and refer them to another body that has no relate it, it is often a judicial body, and its clear example is the Egyptian Constitution, as it has given the jurisdiction to the Court of Cassation to handle both issues.¹³

It is noted that each of the previous two approaches is not far from extremism, as they allow one party to be the opponent and the referee at the same time, so they rotate between excess and negligence. As the first approach grants authority in both issues to the Parliament itself, which may be lenient in this issue or may be harsh with it, depending on the orientation of the majority, to which the person whose membership is being challenged may belong or belong to the

¹¹ See Article 52/first of Constitution of Iraq

¹² Article 1/Fifth of the US Constitution of 1787 amended.

¹³ Article 107 of the Constitution of the Arab Republic of Egypt amended of 2012

opposing minority. While the second approach grants the authority in both issues of them to the judiciary, and the strangest thing is what the Egyptian constitution adopted, where it made the judiciary the opponent as it judges to invalid of membership or not, and it is also the ruling because it decides on appeals against its previous decision, and this jurisdiction was granted to an ordinary court, which is the Court of Cassation. It would have been more appropriate for him to at least give it to the constitutional judiciary represented by the Constitutional Court because it is a matter of a constitutional nature.

The third approach: This approach is considered the middle between the two previous approaches, as it does not deprive the Parliament of this competence, nor does it grant it jurisdiction in both issues, but rather divides jurisdiction in them between the Parliament and the judiciary. As the constitutional judiciary grants this jurisdiction, not the ordinary judiciary, and examples of old constitutions that took this approach are the German constitution,¹⁴ and modern constitutions are the Constitution of the Republic of Iraq for 2005, which granted the Parliament the jurisdiction to consider the validity of membership,¹⁵ and the Federal Court was granted jurisdiction to consider the appeal of the Council's decision.¹⁶

4.2 The competence of the Supreme Constitutional Court to ratify the election results

Elections are often related to the formation of one of the public authorities and thus become a matter of constitutional affairs or one of its issues, and therefore it is very appropriate to grant the constitutional judiciary the right to control over it, as some relied in justifying granting the judiciary the right to control in general on the high confidence that the judiciary enjoys before the voters and the legal experience of its members whose impact is evident in the application of legislative texts related to the electoral process. The constitutions of some important countries have taken this direction, such as the French Constitution of 1958, which stipulated that "the Constitutional Council shall ensure the legality of electing the President of the Republic, consider objections, and announce the results of the poll."¹⁷ It not only did this, but added to its jurisdiction the control of the referendum that was conducted It stipulated that "the Constitutional Council ensures the legality of the referendum process stipulated in Articles (11) and (89) and Chapter 15, and announces its results."¹⁸ Article (11) relates to the referendum on laws that the President of the Republic has been granted such right to submit to a referendum, by the French Constitution. Article (89) also relates to the people's approval of the constitutional amendment through a referendum, while Chapter thirteen carries the transitional provisions relating to New Caledonia.

¹⁴ See Article 41/1,2 of the Basic Law of the Federal Republic of Germany for 1949 amended.

¹⁵ See Article 52/ First of constitution of Iraq.

¹⁶ Article 52/ second of constitution of Iraq.

¹⁷ Article 58 of Constitution of the French Republic for 1958 amended

¹⁸ Article 69 of Constitution of the French Republic for 1958 amended

Other constitutions have dealt such issue in another way, as they did not grant the constitutional judiciary this power, but rather granted it to the legislative authority in order to avoid the impact that might occur on the principle of separation of powers, including the German Constitutional, which stipulates that "verification of the election process is the matter of the Federal House of Representatives, He also decides on the issue of a member of the council losing his membership."¹⁹

The Iraqi constitutional legislator has followed the first approach and referred the matter to the constitutional judiciary, represented by the Federal Supreme Court, but he did not grant it control over the elections, nor did he grant it supervision over it, but rather granted it the right to ratify its results only. As the constitutional text stated in this wording, "The Federal Supreme Court shall have jurisdiction over the following: "Ratifying the final results of the general elections for membership in the Council of Representatives".²⁰

There are several comments on this text, including that it is not comprehensive because the legislative authority in Iraq consists of two chambers, the Council of Representatives and the Federation Council, where the constitution stipulates that "The federal legislative power shall consist of the Council of Representatives and the Federation Council".²¹

Although the constitutional legislator did not clarify how to form the Federation Council and the method of membership in it, it is in line with the democratic principles adopted by the constitution because it made membership in it by election, or at least some members reach it by election, and some of them can be made to obtain membership by appointment, where in general this council is included in the electoral process, and the legislator had to grant the Federal Supreme Court the authority to ratify the final results of the general elections related to its membership, and the comprehensive text for them could be as follows: Certification of the final results of the general elections for membership in both houses of the legislature.

The most important comment here may be that the constitution did not grant the Federal Supreme Court the right to supervise the elections or the right to control on them, but it has limited it to the right of ratification, which is no more than the signature and authorization merely, which is what the legislator here apparently wanted with the presumption of his upholding the text regarding to the final results only (i.e. by the presumption of the term 'final'),²² which is not so until after several procedures starting from preparing for the elections and they ending after the settlement of objections or appeals and the declaration of the results as the mentioned at the text, i.e. their final declaration, and with this procedure the jurisdiction of the Supreme Constitutional Court with ratification.

¹⁹ Article 42/1 of the Basic Law of the Federal Republic of Germany for 1949 amended

²⁰ Article 93/Seventh of constitution of Iraq.

²¹Article 48 of constitution of Iraq.

²² See Article 93/seventh that stated" Ratifying the final results of the general elections for membership in the Council of Representatives".

The constitution established a special body its task is implementing the electoral process and called it the Independent High Electoral Commission.²³ Logically, that it was supposed to grant an independent body the authority to control this commission by constitution, but it (the constitution) has granted it to the body which will be formed by elections, where it to make power of the control over it to the house of representatives.²⁴ This is considered a serious breach, as how does it make sense the body entrusted with an important part of its composition the one that controls it? Especially since most of the former members will be candidates in the new elections, and even all the entities represented in the existing House of Representatives will be among the entities that are running in the new elections, so how it is allowed to impose its control over the commission, where such ruling leads to inequality between the candidates because it makes some of them the power to impose his control over the commission, while depriving others, thus, it in deed considered a serious breach of equality between the candidates.

There is another problem related to the scope of the jurisdiction of the Federal Supreme Court in the field of ratification, i.e., can it refuse the ratification if it is justified, or not? In fact, the constitutional text is not adequate and does not give us the answer, as it did not refer this issue to the law to organize it and clarify the details of the scope of the court, which increases confusion in the case. As, it did not clear here how it is imagined that the constitution grants the authority of ratify to the court and deprives it of the option of refusing to ratify in the same time. But, such a situation exists in the Constitution and can be repeated, and it is what has been granted to the President of the Republic in his ratification of laws. Where, the Constitution stipulates that the President of the Republic shall assume the following powers: "To ratify and issue the laws enacted by the Council of Representatives. Such laws are considered ratified after fifteen days from the date of receipt by the President".²⁵

The some jurisprudence may have been convinced that the authority of the Federal Supreme Court was limited to ratification only, so it was judged that this jurisdiction is merely a formal and weak jurisdiction, especially since it exercises it after the completion of all electoral procedures, moreover, the constitution did not grant it the right to declaration the results (Muhsen, 2009).

In any case, the least described by this text is that it is a vague and needs explanation or incomplete that needs to be completed, and we recommend on the constitutional legislator to amend this article in a way that removes ambiguity it, organizes it clearly and expands the powers of the court to include control the elections or assigning it to a neutral body which is an independent of the body to be configured by elections.

²³ Article 102 of constitution of Iraq.

²⁴ The previous article (102) stated " The High Commission for Human Rights, the Independent Electoral Commission, and the Commission on Public Integrity are considered independent commissions subject to monitoring by the Council of Representatives, and their functions shall be regulated by law.

²⁵ Article 73/third of constitution of Iraq.

Conclusion

Finally, we have achieved number of findings and recommendations the importance ones are:

Findings

- 1- The constitutional judiciary is competent to settle disputes, which are of three types: disputes arising from the applying of federal legislation and procedures, settling disputes that occur between the federal government, the governments of regions, governorates, municipalities, local administrations, and finally settling disputes that occur between regional or provincial governments.
- 2- It is concerned with settling jurisdictional disputes, which are of two types, the jurisdictional conflict, whether positive or negative, and the jurisdiction conflict between the judicial bodies of the regions, or the governorates that are not organized in a region.
- 3- It is concerned with adjudicating parliamentary accusations against members of the executive authority or some of them when they commit one of the acts defined by the constitution, which are high treason, violation of the constitution, and perjury of the constitutional oath.
- 4- The constitutional judiciary is competent to hear appeals against decisions of the validity of membership in the House of Representatives.
- 5- It is concerned with approving the results of the legislative elections.

Recommendations

- 1- It is suggested that the constitutional legislator reconsider the granting right to the concerned individuals and others to appeal directly to the court because it will drown it in lawsuits, and will also make it a trial court, which may not be valid in such disputes.
- 2- It is recommended to the constitutional legislator to reconsider the inclusion of the procedures and instructions issued by the federal authority within the jurisdiction of the court because they are inferior to the administrative decision and will lead to severe embarrassment of the court due to the large number of appeals against these procedures that will be filed before it.
- 3- We suggest to the constitutional legislator to extend the personal scope of the parliamentary indictment to include members of the highest courts in the state, such as the Federal Supreme Court, the Court of Cassation and the State Council, in addition to employees of special grades.
- 4- It is recommended to the constitutional legislator to clearly state that the jurisdiction of the Federal Supreme Court to adjudicate parliamentary accusations does not prevent the convict from being referred to the competent criminal courts, but rather requires referral to them when the conviction is issued by the constitutional judiciary.

- 5- it is suggested that the constitutional legislator to reconsider granting the Federal Supreme Court jurisdiction over the conflict between the federal judiciary and the judiciary of governorates that are not organized in a region, because the second is part of the first, and it is preferable grant it either to the expanded body in the Court of cassation when it occurs between the lower courts, or refer it to the body to have appoint the competent if the authority of the two disputing courts differs.

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