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The Judicial System in the Federal State U.S as a Model

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Abstract

The judicial or the system of courts in the United States of America is characterized by duality, in the sense that there are two types of the judiciary that differ according to the territorial scope of each. The first type of the courts has jurisdiction over the entire territory of the state, which are the federal courts, while the second includes state or local courts, and its jurisdiction is limited to the geographical region of the state. In addition, the Federal Supreme Court is the highest court in the U.S and has a set of jurisdictions, the most important of them may be exercising the role of the constitutional judiciary in addition to other jurisdictions. For this purpose, the descriptive approach was employed to study and analyse the characteristics and jurisdictions of the federal judicial system in the United States of America.

Key Words

Constitutional Judiciary, Federal System, Supreme Court, Appeal.

1. Introduction

In fact, the jurisdiction of the Supreme Court in the United States, regarding the constitutional judiciary is of judicial origin. Where, the Supreme Court itself has established it and has stranded up to all those who has opposed it, and finally it has managed to withstand the strong and influential attacks led by some presidents to make it to stop exercising this jurisdiction. However, all the opposition efforts have failed to dissuade the court from hold to its right to constitutional control or exercising the jurisdiction of the constitutional judiciary. Hence, the focus of such topic will be the Supreme Court and its main competencies, and to realize its importance and position among the different courts. Therefore, we need to know the judicial system in the United States of America, as the Supreme Court only one court there, in addition there are nearly (94) federal courts and many courts of different states. So, this study has endeavored determine the position of supreme court in the judicial system hierarchy, in addition to examine the characteristics of the judicial system in the United States of America.

As for the research problem, it is represented by the questions that the research seeks to answer, which are: What are the characteristics of the judicial system in the United States of America as a federal state? What are the judicial systems in it? What does the judicial system of states or territories consist of? What is the composition of the Federal Supreme Court? And what are its functions? For this purpose, the descriptive and analytical approach was used to study the composition of the court that exercises constitutional justice from one state to another and to analyze its jurisdiction, taking account the U.S as a model since it the mother state of the federal system, which it granted such jurisdiction to the Supreme Court. To achieve this purpose, the topic divided into two parts. In the first, we study the characteristics of the judicial system in the U.S, while the second we deal with the jurisdiction of the Supreme Court.

2. Characteristics of The Judicial System in the US.

That the criterion adopted to determine the federal state is the multiplicity of levels of authority. Since the United States of America is a federal state (indeed, it is the first country to adopt the federal system), so such criterion must be met in it. Indeed, we find that the levels of authority are multiple, and at least two of them can be identified: first represented by the federal authorities (federal) and the second by the states (regional) authorities, which is expressed by the duality of a public authorities in the federal state. This means that there are two levels of the judiciary, or say two systems of justice, the first is the judicial system of the states (regions), while the second is the federal (federal) judicial system. The two systems can be unified and included under one term, which is the judicial double system.

2.1 Judicial System of States (State Courts)

The judicial system of states or territories is stemmed out from the dual judicial system, so that each state has its own courts (Tony M. Fine, 2001), and the courts in the states is considered the original, while the federal courts have been newly established relatively. As the state courts were established after the settlement operations that accompanied the large migrations made by the Europeans to the new land in North America (currently the United States of America). Therefore, each of the states under British colonialism has its own judicial system, which may be distinguished from the judicial system of the other states. Also, each state had its own character, which it took from the origins of most of its settlers. For example, Louisiana was affected by the French system, and the Dutch character had an impact on New York, and so for the rest of the states. But such does not mean that the judicial system was affected merely only by what prevailed in the countries that represented the origins of immigrants, rather the English system that colonized these states for a long time, had has the great effect on the judicial systems. The English have tried to clone their systems, where the judicial systems are existed before they gathered to create together a new state under the name of the United States of America, which after its founding established its three powers according to the new constitution (Constitution of 1787).

The American Constitution has granted the states their own legislative powers, that they must be able to issue laws and legislation that are implemented within the geographical area of the state and its administrative borders only. Such it obligated the state courts to apply these local laws and to decide on them all disputes that arise within the limits of the state, without distinction between civil and criminal cases, thus, they exercise their judicial function almost completely independently of the federal judiciary. The states differ in the degrees of their courts, but in general, three degrees can be distinguished are:

2.1.1 First Instance Courts

They are the courts of first instance, these courts have the general jurisdiction to adjudicate all cases, whatever their subject matter, except for the issues that the federal courts are competent to consider. According to their jurisdiction, courts of the first degree are divided into two parts. The first, it includes courts that have general jurisdiction, they hear various civil and criminal cases (misdemeanors), except for those that are beyond their jurisdiction by law. Because, they consider serious criminal cases, and the same applies to value civil cases which cases. As for the simple ones, are an under jurisdiction of the courts of the second instance. They may also exercise the role of courts of the second instance, and they hear appeals against the rulings of the courts of first instance from the second division.

Generally, the courts of first instance, as a rule, consist of a sole judge, as well, there is no difference between whether the case brought before them is civil

or criminal, in both cases the sole judge adjudicates them, as he can use a jury (it is stipulated in the Bill of Rights issued in 1791). The same matter as regards lower courts of this degree. But, that what the strange in matter is that its sole judge is not required him a qualification commensurate with his job, so it is not required that he obtain a legal academic qualification or join a training course in the field of law or the judiciary, despite its importance for him, since, he hears the most general of the county cases, as they constitute no less than (90%) of the courts in the United States of America.

Hence, the judges of the Court of First Instance are appointed either by appointment, which is a common jurisdiction between the governor and Parliament of the state, or by election through the people of the state, where has elected him by the direct general voting.

2.1.2 Courts of Appeal

Courts of Appeal are considered newly established courts, as the US had not known them during the era of the British occupation of it, nor after independence and the formation of the confederation in 1776, but rather not even in the first century after the establishment of the federal union in 1787. The establishment of the first court of this degree dates to Ohio, which established the First Court of Appeals in the American states or territories, and that was in 1883, nearly a century (or 96 years to be exact) after the issuance of the United States Constitution of the year (1787). After such courts have succeeded in its action and other states found that they relieved the pressure on the Supreme Court, they adopted its system and established them in its territories, such led to increase its number until it reached nearly forty courts of appeal at the end of the twentieth century. Some states grant jurisdiction over appeals to first instance courts of general jurisdiction, as they hear appeals against judgments of courts of limited jurisdiction (Wikipedia contributors, 2022).

The claimant may challenge the judgment directly before the Court of Appeal, but this is not a stablished procedure, where, some states prevent direct recourse to the Court of Appeal, but rather it imposes him to challenge the primary ruling before the Supreme Court which consider the ruling by its appellate capacity. The Supreme Court then examines the challenging and decides whether it will consider it by itself or refer it to the Court of Appeals in the state or province, and thus the appeals are not filed before it, but rather are referred to it from the Supreme Court only.

2.1.3 State Supreme Court

Such type of court is considered the highest rank of the courts in the entire state, is expressed as the court of last reference. Because, it represents the last resort before the litigant to challenge the judgments or is considered as a substantive court, if is granted such jurisdiction by the law. If we look at the

judicial system in the state and visualizing it in the form of hierarchical, we will find that the Supreme Court occupies its top, while the courts of first instance lie at the base. As for the courts of appeal, they have the middle position between them. It is superior to the courts of first instance, and the supreme court above it in the same time, which consists of a judicial body from seven to nine judges depending on the state system, and its jurisdiction does not exceed its the administrative limits (Sulieyman, 2013).

The primary jurisdiction of the state Supreme Court is to hold appeals against judgments of appellate courts. In addition, it may be grant to it the general jurisdiction to consider appeals against judgments of the Court of Appeal, regardless of their nature, that is, to consider them, whether the case is civil or criminal alike. This is the rule or the origin, and only two states differed from it, the state of Oklahoma and the second being the state of Texas, as both states separated the two lawsuits and distributed them to two courts. Therefore, it has established a Supreme Court that specializes in hearing appeals against appellate rulings in civil cases, and another Supreme Court that specializes in hearing appeals of appeal rulings in criminal cases. Moreover, the jurisdiction of the constitutional judiciary is the second jurisdiction it exercises.

3. Federal Judicial System (Federal Courts)

The federal judiciary was formulated on the basis of three degrees (Toni M. Fine, 1999), the first included the courts of first instance, which are the courts of the first degree, and the appellate courts came to occupy the intermediate degree, and the higher degree is to the Supreme Court. There is a great convergence between the organization of the federal judiciary and the judiciary of the states, therefore we will study the degrees of the federal courts briefly as follows:

3.1 Federal Courts of Trial

They are the federal first instance courts; their rulings are subject to appeal before the Federal Court of Appeal. It has more than one name, but the most famous of them is called the district courts because they are in the provinces of the states. But distribution them to the provinces does not mean that every province should have a federal court of first instance. Since, that is not possible for more than one reason: first because lawsuits of a federal nature are relatively few, but the majority of lawsuits are of a local nature under to the state, this means that federal disputes are relatively few, which led to reduce the need for Federal courts. In addition to, the very large number of provinces makes the presence of a federal court in each of them is not possible, as the number of provinces in the United States of America exceeds 3000 provinces. Therefore, several provinces participate in one federal court of first instance, provided that there is at least one in each state, as their number in each state is subject to more than one element, such as the number of populations, the geographical area, and the number of states

covered by these courts. Today, their number reaches nearly (94) courts (Administrative Office of the U.S. Courts, 2011b), which is approximately one federal court of first instance compared to four state courts of first instance.

Foregoing, the similarity between the two terms, which is the federal courts of first instance and the district courts, which is intended by federalism as well, is evident. Both terms for one concept, so one should not be confused of the states' courts of first instance, even if each of them is first-degree courts, and is composed of a single judge (Toni M. Fine, 1999), but the first belongs to the federal state and the second to the states. To clarify this meaning some said:(The U.S. district courts are the federal trial courts) (Administrative Office of the U.S. Courts, 2011a).

Cases with issues related to the Federation are subject to its jurisdiction, such as those arising from the application of the Federal Constitution or from the application of federal laws, as well as cases in which not all the parties are from the same state or citizens, it has general jurisdiction over all cases with subjects related to the Federation or say of federal origin to the Federal Courts.

In general, the cases under the jurisdiction of the federal courts can be specified in three types, which are the cases in which the United States of America is a party, whether it is a plaintiff or a defendant, and whether the other party is a state, an organization, or an individual.

The second includes cases that are subject to federal laws, while the third includes cases that arise from disputes between citizens of more than one state, or one of its parties is a citizen of a foreign country.

The Federal courts of first degree hear these three types of lawsuits, whether they are civil or criminal cases, unless a special court has been specified for its consideration, such as disputes of a commercial nature which within the jurisdiction of the International Trade Court, or the jurisdiction of the Federal Claims Court, each of are considered a parallel court for it. However, the jurisdiction of the Federal Court of First Instance is a jurisdiction that is restricted to specific subjects exclusively, while the rest of the issues are within the jurisdiction of the states' first instance courts. Where, the subjects that under the jurisdiction of the states' first instance courts, have not been determined exclusively, this gives it the quasi-absolute jurisdiction over all cases, except for those that are within the jurisdiction of the courts of the first instance or federal districts.

That is, the majority of cases are considered by state courts, not federal courts, it is based on that the appeal is assigned to the litigants obligatory. It means they can to choose to review the State or Federation Court of First Instance (Administrative Office of the U.S. Courts, 2011a).

3.2 Federal courts of appeals

They are courts that adopt the system of the judiciary, not the individual judge, it consists of a number of judges not less than three. As for the number of judges in the electoral district, it varies according to the same district in terms of its population and the number of states under it. It may also be affected by the

number of cases brought to it. In general the number of judges in the various Federal Courts of Appeal circuits ranges between (6) to (28) judges (Zebari, 2013).

These courts represent the opportunity for the second litigation, and to be precise, the first opportunity available to the two parties to the case to correct the judgment issued by the Court of First Instance.

This is the general function of the courts of the second degree or the courts of appeal, and there is no difference in this jurisdiction between the state courts of appeal and the federal courts of appeal. Its oversight is on the federal ones exclusively, (ie on the provincial courts).

There is another difference, which is almost a formal difference, but it is influential, it is embodied in the number of cases heard by each of them, and its determination is dependent on the number of cases heard by courts of first degree. We have previously shown that the greatest number of cases are heard by the state courts of first instance, comparison, to the cases which are heard by the federal courts of first instance. This is reflected in the number of appeals filed before the federal courts of appeal, which are less in number than those filed before the state courts of appeal, which means that there is no need for many courts Federal Appeal. Therefore, that their number is very small compared to the number of the states' courts of appeal, and they are distributed in the form of groups called circuits, each of which includes a number of states not less than three, and the number of circuits of the courts of appeals reaches eleven circuits, and the Special Circuit for the District of Columbia joins it, which is unique in it and does not share it with any another state. Each district may differ from the other in several things, or some of them unite with others, each of which has its own organization and emblem, and the like, regardless of whether or not to participate. The following is a showing of the official names of these departments and the states under each of them:

3.2.1 United States Court of Appeals for the First Circuit

This department includes five regions, and the headquarters of this department is in the city of Boston in Suffolk County, Boston is the capital of the state of Massachusetts. There are five federal courts operating within these regions, the Court of Appeals for each of these regions consists of 6 judicial offices.

The First Circuit Court of Appeals hears appeals against judgments issued in civil lawsuits, which must be submitted within a period not exceeding (14) days, that it is accompanied by an introductory statement that includes basic information about the appeal and the contested judgment. In addition, appeals are considered against the rulings of criminal cases, which should be submitted by the convicted person or his representative within the same period above, that the appeal is not accepted in form unless the owner pays the specified judicial fees basically.

Courts of appeal are not limited to this type of lawsuit, there are other courts of appeal in the same district, such as the Federal Bankruptcy Appeals Court or courts of appeals related to public administration.

This judicial system is distinguished in that it continues to open the door to

settlement even when the appeals court considers the case or the appeal, as it strengthens the direction of achieving social peace if the two parties reach a settlement of the dispute without being forced to implement the judgment issued by the court and thus satisfaction with the outcome is achieved.

It also reduces the burden on the court itself by reducing the cases that it will consider, and so that the settlement does not deviate from its goal, as it can only take place under the supervision of a competent authority to which the court employee refers the case, and it holds a settlement session attended by the lawyer after he has obtained an authorization granting him wide authority in the matter. Conducting the settlement, agreeing on its axes and details, and accepting them in the outcome.

During the negotiation period, the two parties or their lawyers must continue to contact the case with the court and abide by all that is required of them, such as adherence to the court's deadlines, submission of memoranda and others. And the entity in charge of managing the settlement. Rather, it is not included in the court's files, and the circuit judges are not allowed to view it. At the end of the negotiations and when a positive or negative result is reached, the court must be notified of it by submitting a report to the office of the clerk of the court (Hooper et al., 2011).

3.2.2 United States Court of Appeals for the Second Circuit

This department includes three main districts, and it was natural to make the headquarters of this department in New York City, which is the capital and hosts the headquarters of the United Nations, where it can be considered the international political capital.

Where six courts are included under this circuit, and since the federal appeals courts adopt the system of the judiciary body and the number of its members is not less than three, naturally the number of judges in this circuit increase according to its six courts. As for the second circuit, it consists of thirteen judges, who meet individually with the president Circuit judges to obtain from him the necessary instructions before assuming his duties.

The Courts of Appeals of this Circuit consider same what the Courts of Appeals of the First Circuit hear, as they are competent to examine appeals against judgments issued in civil and criminal cases, in addition to the jurisdiction of the Federal Bankruptcy Court of Appeals in the same circuit, and the Courts of Appeals whose jurisdictions relate to the public administration, it is previously mentioned no need for repetition.

3.2.3 United States Court of Appeals for the Third Circuit

The Third Circuit of the Federal Courts of Appeals covers three provinces, and to the advanced provinces is added the Virgin Islands Group, which is well known in the books of the Virgin Islands and has one Federal Court of Appeals that

joins the four courts of the Third Circuit to form its five courts.

The headquarters of this department is in Philadelphia, the capital of the state of Pennsylvania, which is the fifth largest city in the United States of America in terms of population, as it is inhabited by at least one and a half million people.

The Third Circuit, which has five courts, consists of several judges, up to a maximum of about fourteen judges. It hears cases of a nature that are heard by the Federal Appeal Courts of the two previous circuits, primarily appeals against judgments issued in civil or criminal cases. The same applies to judgments issued in Bankruptcy lawsuits and public administration matters.

3.2.4 United States Court of Appeals for the Fourth Circuit

It is a broad circle that includes three states and nine regions, and its headquarters are in Richmond, the capital of Virginia.

The Fourth Circuit consists of fifteen judges and is one of the most active judicial circuits. This circuit is famous for not delaying the consideration of the appeals submitted before it, and it is also characterized by some customs and traditions with an honorable tinge that may not be found in others, such as the distinctive greeting that judges and collectively to lawyers upon completion of pleading and presenting their arguments (verbal).

3.2.5 United States Court of Appeals for the Fifth Circuit

This circuit includes three states or counties, but each of them includes several regions and is located in the largest city in the state of Louisiana, which is the city of New Orleans in the southeast of the province or state.

This circuit has more judges than other previous circuits, as their number reaches nearly seventeen, and the new judges in it are treated like the old judges who are considered experts in their field of work.

The new judges are granted after the completion of his training program the same number of cases referred to the old judges, the equality is not limited to the number of cases only, but also their type, as any kind of cases can be referred to him, whether civil or criminal, and the only difference between them and the old ones is Not allowing them to consider criminal cases in which the penalty incurred by the defendant if it is proven that he committed the act attributed to him is the death penalty, because of its seriousness because it is a judgment of taking the life of the accused or the convict, and it is not given to a new judge "beginning" until after he obtains a measure of experience and knowledge To gain an important aspect of experience and know-how.

Thus, his acquisition of experience may require a long or short period, and therefore he is not allowed to consider such cases until after a period of time ranging from (6) to (12) months has passed from the date of their appointment to the judicial position, and in fact this is a very short period and it is likely that he is not It is sufficient to provide the judge with what major or important cases require

in terms of experience and competence.

This Court of Appeal was established in (1891) and covered six counties or states, including Florida, Georgia, Alabama, Louisiana and Texas, and it continued in this situation for more than half a century before adding the Panama Canal Zone to it, and after spending nearly a century, specifically in October of the year (1981) the provinces of Alabama, Georgia and Florida separated from it, and joined the Eleventh District, which had just been established, as for the Panama Canal area, which the United States of America had bought its rights from the French in (1902) who were the owners of control over it, and then regained the Republic of Panama It was annexed to its sovereignty again, and the Fifth District lost it, then the Mississippi Province joined it, and today it includes the counties and regions we mentioned before.

3.2.6 United States Court of Appeals for the Sixth Circuit

This circuit includes four provinces (states), and each province includes some regions. Nine federal courts follow this circuit and their work is distributed among the provinces and regions mentioned above, and a number of judges belong to it, reaching nearly sixteen judges authorized to hear appeals in Circle (Hooper et al., 2011).

As for the department's permanent headquarters, it is in Cincinnati City, Ohio, which is one of the largest cities in the state of Ohio, and it is an important industrial and commercial center for the region in which it is located, which is the western region of the United States of America.

3.2.7 United States Court of Appeals for the Seventh Circuit

This district includes three counties, which are subdivided into a group of up to seven districts. The headquarters of the seventh district is in the city of Chicago in the province (state) of Illinois, and it occupies the Derrickson Federal Building.

The circuit is made up of eleven judges who exercise its federal jurisdiction and whose services cover the seven districts under it.

3.2.8 United States Court of Appeals for the Eighth Circuit

The jurisdiction of this circuit extends to six states or counties and its headquarters is in St. Louis, Missouri, and is composed of eleven judges authorized to hear appeals before the ten circuit courts (United States Court of Appeals for the Eighth Circuit, n.d.).

3.2.9 United States Court of Appeals for the Ninth Circuit

This circuit includes a number of states and their regions. The permanent headquarters of the Ninth Circuit is located in San Francisco, California. It includes thirteen courts distributed over the regions we mentioned above. It also consists of a large number of judges, up to (29). Therefore, this circuit is one of the largest

Federal or Federal Courts of Appeal circuits, and due to the size of this circuit and the difficulty of managing it, three regional administrative units were established to assist the Chief Justice in performing his administrative duties, and these three units were divided geographically and according to the northern, middle and southern regions (Hooper et al., 2011).

3.2.10 United States Court of Appeals for the Tenth Circuit

The Tenth District consists of nearly six districts, and it is a newly established district. It was part of the Eighth District since its inception until the year (1929), in which it was separated from the Eighth District and the establishment of its own district, the Tenth District.

The Tenth Circuit is in Denver, Colorado, and occupies the Byron White House of Justice Building, which is one of the city's historic buildings and is listed on the National Register of Historic Places. The federal appeals courts for this circuit consist of twelve magistrates (Wikipedia contributors, 2022).

3.2.11 United States Court of Appeals for the Eleventh Circuit

The Eleventh Circuit covers three provinces or states, and each of them has several regions. The Eleventh Circuit did not exist before (1981), and its districts were affiliated to the Fifth Circuit, and in (1981) a new circuit was created under the name of the United States Court of Appeals. of the Eleventh District, and to it the counties we have just mentioned.

This circuit is in Atlanta, Georgia, and consists of twelve judges authorized to work in its appellate courts.

3.2.12 United States Court of Appeals for the District of Columbia Circuit

The District of Columbia is located only in Washington, D.C. and is usually denoted by the symbol (D.C. Cir.) and may be called a metropolitan district (albeit unofficially), and it is the smallest district in terms of the counties it covers. Despite its smallness, it is considered the most important because it considers appeals against the rulings of the federal courts of the first instance affiliated to the capital, as well as the decisions issued by the federal agencies of the government of the United States of America, which are based in Washington, DC. In addition, it may consider these decisions and take a ruling against them, even if a court of first instance has not previously considered and issued a ruling on them.

Therefore, this circuit or court plays an important role in influencing national policy, and hence it is described as one of the most powerful courts in the United States of America, or the second most powerful court in the country after the Supreme Court. Because of its large work, it needs many judges, as it consists of eleven authorized judges to work in it.

3.2.13 United States Court of Appeals for the Federal Circuit

In addition to the twelve advanced circuits, there is a final circuit that can be considered the thirteenth circuit, which is the United States Court of Appeals for the Federal Circuit, a court that was created in (1982) by merging some courts into one court, such as the Customs Court of Appeals and the Court of Appeals Claims as well as about commerce International, government contracts, trademarks, etc.

It is headquartered in Washington, DC, occupies Howard T. Markey National a building in historic Lafayette Square in Washington, DC, and is composed of twelve judges (Hooper et al., 2011).

We have noted in the previous circuits that all of them have adopted their division according to the geographical region that they cover, and the only court or circuit in which the geographical location was not adopted is this circuit, in which the subject was adopted instead of geographical, such as customs or patents, and its decisions related to patents are distinguished With absolute authenticity, while the decisions of other circuit courts do not exceed the relative authenticity, it is an argument in its geographical region without exceeding it to others.

3.3 Supreme Court of the United States

It is the last court in the order of the federal courts, as it occupies the top of the federal judicial hierarchy in the United States of America, hence its name "The Federal Supreme Court" because it is the highest rank federal judicial body, and it is the only court stipulated by the Constitution and its establishment, and its rulings are final and not subject to review before any court Other (A-Bahaji & Al-Masry, 2013), we will refer the detailed research to the next section.

3.3.1 Jurisdictions of the Supreme Court

It is worth noting that the Supreme Court represents the highest judicial body in the United States of America, and the general rule is that the body competent to establish courts is Congress, except for the Supreme Court, which was established by the Constitution itself. (Article 3/1 of U.S Constitution 1787).

It consists of several judges, starting with six, then increasing the number and decreasing until recently settled at nine with the head of the court called the Chief Justice. The matter of appointing a person as a judge in it is up to the President of the Republic, who is the one who nominates whomever he deems suitable for the position and submits him to the Senate to obtain his approval for the nomination. In fact, the selection or nomination is subject to a number of considerations, and the most important of them may be political considerations, as the president of state needs someone to support him and his party in the Supreme Court, so the closest to his party is preferred in terms of ideology or affiliation, and notes the sectarian and ethnic diversity of the American people, so judicial positions are distributed in court in the manner of quotas between them. As it was customary for one of them to be a

Catholic Christian, and the second a Jew, and a black man or African origin was added to this diversity or balance, this happened for the first time in (1967), as well, a woman is supposed one of the members to be. The woman was granted the membership of the Supreme Court for the first time in 1981, the members are not impeachable under normal circumstances (Al-Awadi, 2008).

Parliament includes the jurisdiction for criminal accountability of federal civil servants, including federal judges, these procedures have been taken throughout the constitutional history of the United States of America (such as indictment at least) against more than fifty civil servants, most of whom were federal judges.

Some justify this by the impossibility of dismissing judges by any other means. Therefore, the parliamentary trial is used to remove and get rid of them (Mahmood, 1982), or at least threaten them with it to force them to resign, as it is considered the only available way to make one of the nine seats in the court vacant, which would allow the president of state and his party to fill it with the person they want.

What concerns us here is the jurisdictions that the Supreme Court enjoys, especially those related to the constitutional judiciary. Therefore, we will discuss the jurisdictions regarding to the constitutional judiciary and the ordinary judiciary in follows:

3.3.1.1 The Jurisdictions Related to the Constitutional Judiciary

There are several activities exercised by the Supreme Court within its jurisdiction related to constitutional justice, such as hearing and resolving disputes in which the United States of America is a party, or those that arise between different states or between a state and a citizen of another state. What concerns us here is its control jurisdiction over the constitutionality of legislation, this activity in its clearest form is the control of the constitutionality of laws, as it does not impose its control on the constitutionality of federal laws only, but extends to the constitutionality of state laws (even if they are limited by certain conditions) and the examples of such control are numerous of that:

The case of *Thomas v. Colin* in (1945), its facts are summarized in the fact that the Texas legislature passed a law regulating the membership of labor organizations, it was stipulated to join and work with them that they had to obtain special cards and register their names in certain records, after which they can join labor bodies and work with them. Furthermore, the law had granted the judicial authority in the state of Texas to issue prohibition orders when if needed to ensure respect for the law. But the constitutionality of the law was challenged on the grounds that it contradicts the freedom to express an opinion, after examining the decision by the court, it decided that this law It contradicts the Constitution as it contradicts the fourteenth amendment, which established for protection the freedom of opinion and assemblies, and its decision stated, "If the state has the right to organize labor unions and organizations, this right may not affect the protection established for freedom of opinion and expression by constitutional texts" (Abu-Almajd, 1960).

The same in the case of *Lechner v. New York*, its facts are summarized in that

the State of New York issued a law regulating work in bakeries, which prohibited the employment of workers in bakeries for more than sixty hours a week, or more than ten hours a day. The court found that the law under consideration unconstitutionally and violates the freedom of workers to contract, and it constitutes a violation of the condition of the availability of sound legal means contained in the fifth constitutional amendment. The court also stated that the control authority that the state enjoys is a restricted and not an absolute authority, and its limits that must be adhered to are the Constitution, so when these limits are exceeded, they have exceeded the freedoms of individuals, which makes the state authority inconsistent with the principle of constitutional government (Abu-Almajd, 1960).

And its ruling issued in (2008) in the case of Davis v. Federal Election Commission, as the court decided the unconstitutionality of Article (319) in its paragraphs (A and B) of the Reform Law of (2002), where its content relates to donating to the electoral campaign and the obligation to disclose expenses, and the reason of the unconstitutionality is due to violation the right to privacy, and the same time contradicts the first constitutional amendment.

In any case, it can be said that the Supreme Court imposed its control on two types of laws, the first being federal laws, and the second being state laws.

The Supreme Court's control of the constitutionality of laws appears directly through the lawsuit brought before it to dispute the law, and as the competent court to control the constitutionality of laws, it has the right to repeal the law that violates the constitution, and the following is a brief statement of it:

In general, in this way of judicial control on the constitutionality of laws, it is possible to adjudicate the abolition of the law that contravenes the constitution, but which body in the state has the right to issue such a ruling? The reason for this question is that the challenge to the unconstitutionality of the law has a way other than this way, and we will explain it later.

Constitutions often organize this type of control by their articles, as they stipulate the judicial authority competent for such control, as is the case with the Federal Supreme Court in Iraq, (Article 93 of Iraqi's Constitution 2005) and it may be granted according to jurisprudence, as we have seen in relation to the Supreme Court in the United States of America.

Whatever, this way of controlling the constitutionality of laws represents the direct way to challenge the law that is allegedly in violation of the constitution, where the plaintiff, whether an individual or a state body, files a case before the competent Supreme Court against the law allegedly violating the constitution and calls the court to repeal this unconstitutional law. From the foregoing, this lawsuit is considered an attacking procedure through which the law itself is attacked.

Constitutions differ in the organization of this control, as it can be prior to the issuance of the law, and it can also be post-issuance control, as its unconstitutionality is challenged before the competent court (Darwish & Darwish, 2007). The Supreme Court has adopted the post-issuance control.

As for the other form of control, it is control by pleading for unconstitutionality,

and this control is not within the jurisdiction of the Supreme Court.

Such that needs clarification to clarify the difference between the two methods of control over the constitutionality of laws, so we can say: Such control is called abstinence control or control by pleading unconstitutionality:

The main difference between the two methods lies in the fact that this method is not based on attacking the law, challenging unconstitutionality it and petition abolition it, as the previous method does. But rather it based on the request the law not be applied to the case considering by judiciary.

When the court examines the law, it may prove the correctness of the plea, i.e. it is proven that the law violated the provisions of the constitution, and in this case the court must abstain from applying the law to the case before it, but if it finds that the argument raised is incorrect, that is, the law to be applied is not contrary to the Constitution, therefore it must decide to reject the plea of the unconstitutionality of the law and continues to hear the case and apply the law (Shuber, 2006).

Such method does not affect the validity of the law and the continuity of implementation it. The validity of its decision here is relative and does not entail the invalidity and repeal of this law (Obaid, 2012). It is a defensive and not offensive method, and the Supreme Court uses it as a court of first degree.

3.3.1.2 Jurisdictions Related to The Ordinary Judiciary

In the field of the ordinary judiciary, the Supreme Court enjoys many and varied jurisdictions. It exercises this judiciary in two capacities, as a court of subject (facts) and as a court of judgment (law). The following is a statement of these jurisdictions:

3.3.1.2.1 Its Jurisdiction as A Court of First Instance

The Supreme Court considers and decides on specific types of cases as a court of first instance, this its jurisdiction is a genuine and exclusive jurisdiction that no other court can exercise. The Constitution has expressed this jurisdiction as it stipulates that the Supreme Court shall have the power to hear essentially all cases involving ambassadors, ministers, other plenipotentiaries, consuls, and those in which one of the states is a party. The Supreme Court has the power to adjudicate in all the aforementioned cases on appeal in both facts and law, taking into account the exceptions and regulations established by Congress, (Article 3/1 U.S Constitution 1787) and it has a wide discretionary to consider any lawsuit brought before the lower courts, as it can be referred into a trial court or a court of first instance (Albaze, 1978).

3.3.1.2.2 Its Jurisdiction as A Court of Second Instance

The Federal Court has appellate jurisdiction as it can consider rulings issued by courts of a lower degree, whether they are courts of first instance or others. In general, it can be said that the appellate jurisdiction of the Supreme Court includes

the rulings of all courts in the judicial authority, with the possibility of overlapping its jurisdiction in constitutional and ordinary judiciary, as it includes:

1. Judgments of the courts of first instance, and it considers appeals on issues of a special nature, such as the topics of cases in which the United States of America is a party, and it considers cases arising from civil laws brought by the federal government in order to implementation them if those laws stipulate the jurisdiction of the court in them, in addition to the foregoing considering an appeal in the first instance rulings related to prohibition orders.
2. Judgments of the courts of the second instance, which are judgments issued by the courts of appeal that are of a nature related to the constitutional judiciary, such as a ruling that a legislation is unconstitutional because it is in violation of the Federal Constitution, whether that legislation or law is specific to a state or federal legislation.
3. Judgments of the Supreme Courts of the States, which are the final judgments issued by them that include an unconstitutionality of a federal law or a treaty entered by the Union, or an unconstitutionality of certain legislation issued by a State.

4. Conclusion

At the end, we achieved several results and a number of recommendations, the most important of them as follows:

4.1 Findings

- 1- The judicial system in the United States is characterized by duality, where there is a federal judicial system, and a local judicial system for each state.
- 2- In general, there are three degrees of courts in the states, which are courts of first instance, courts of second instance, and courts of last instance.
- 3- The federal judiciary generally has three levels of courts, which are courts of first instance, courts of appeal and the Supreme Court.
- 4- The Federal Court consists of several judges, starting with six, then gradually increasing the number until it is settled at nine.
- 5- The Supreme Court has two types of jurisdictions, the jurisdictions of the constitutional judiciary as well as the usual jurisdiction that no relate with the constitutional judiciary.

4.2 Recommendations

- 1- It is recommended that the Iraqi constitutional legislator to adopt the dual judicial system, because the disputes in the federal state arise in two ways, some of which affect the entire territory of the state, or two or more states, and some of them do not exceed the influence of the region or the state in which they occurred.
- 2- In order to facilitate access to the federal courts of different degrees, it is

recommended that the Iraqi constitutional legislator to establish one of them in each region and should not be involved a more than regions in a single court of a certain degree, except for the Federal Supreme Court, as it is only valid for there to be one Federal Supreme Court in the country.

- 3- It is recommended to the Iraqi constitutional legislator granting the Federal Supreme Court the jurisdictions that affect the union in whole or in part, without inundating it with jurisdictions that can be exercised by other courts.
- 4- One of the jurisdictions exercised by the Federal Supreme Court is to rule on accusations against the President of the Republic, the Prime Minister, and the ministers. It recommended that the Iraqi constitutional legislator grant this jurisdiction to the Federation Council.

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