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Direct Constitutional Lawsuits

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Abstract

The study indicated Fundamental guarantees of rights and liberties come in different forms, some of which are realistic and attempt to improve the state of affairs so that people can enjoy their rights and freedoms. The constitution is the pinnacle of the legislative pyramid and cannot be disregarded. When passing new laws, lawmakers must consider the constitution's provisions. As a result, these laws' constitutionality must be scrutinized. The researcher will focus on judicial oversight, particularly concerning the methods of filling constitutional cases. He will also discuss the direct lawsuits, Based on the foregoing, the study reached several results, the most important of which are: establishing a constitutional court tasked with overseeing the constitutionality of laws is, in essence, a success that merits praise, as the court's existence is regarded as a guarantee of the rights and liberties that the constitution comes with.

Keywords:

constitutional lawsuit, Constitutional Court, individual liberties

Introduction

To claim that public rights and freedoms exist in reality, are guaranteed to all people, and that the state upholds the rule of law and puts people's rights and freedom above all else does not put us on an equal footing with states that practice actual democracy. However, the state must offer solid protections to exercise these rights and liberties. It is better to grant an individual some rights and freedoms with a guarantee that he would be able to exercise and enjoy them than to be given all rights and liberties without considering this guarantee of enjoyment.

Fundamental guarantees of rights and liberties come in different forms, some of which are realistic and attempt to improve the state of affairs so that people can enjoy their rights and freedoms. The constitution is the pinnacle of the legislative pyramid and cannot be disregarded. When passing new laws, lawmakers must

consider the constitution's provisions. As a result, these laws' constitutionality must be scrutinised. The researcher will focus on judicial oversight, particularly concerning the methods of filing constitutional cases. He will also discuss the direct lawsuits.

Direct Constitutional Lawsuits

Initiating constitutional proceedings cases directly before the competent judicial authority differs from one legislation to another. Therefore, the researcher will explain the mechanism of filing the constitutional lawsuit before the Egyptian and Jordanian constitutions, and for this, the researcher will divide this topic into three sections:

- Section 1: Methods of initiating direct constitutional proceedings in Egyptian legislation.
- Section 2: Methods of initiating direct constitutional proceedings in the Jordanian legislation.
- Section 3: Constitutional Court oversight by the mechanism of response.

Section 1: Methods of initiating direct constitutional proceedings in Egyptian legislation.

Articles (27 and 29) of the Law of the Egyptian Supreme Constitutional Court specify the Court's method of review over the constitutionality and the procedures of bringing cases before it. Article (27) stipulates that "*the Supreme Constitutional Court (SCC) may, in all cases, rule the unconstitutionality of any provision in a law or regulation presented to it on the occasion of exercising its competences and related to the dispute before it, after following the established procedures for preparing constitutional cases as stipulated in Article (29)*".

A plea by one of the adversaries was the only method by which a constitutional case could be brought under the Supreme Court. This is because its law did not define referral by the trial court of its own accord in case of doubt regarding the law's constitutionality. Nor did the Court grant the right of response. However, the issuance of the Supreme Constitutional Court law led to amend this situation; as a result, the plea remains the most common method.

This indicates that the trial court finds, during the consideration of a case, that it is obliged to address a legal issue related to the constitution, as it is necessary to decide on the lawsuit. For example, one of the litigants claims that a clause in a statute or rule is unlawful. The trial court, in this instance, must assess how serious this claim is. If it determines its significance, it must postpone the case and set a deadline for the parties to submit a constitutional lawsuit that does not exceed three months. The plea will be deemed invalid if the suit is not filed on time. Seriousness is intended to allow the Court to confirm that there are no intentions to postpone or extend the litigation period⁽¹⁾, which is done by ensuring two key points:

First: The constitutionality decision should be productive. That is, the statute

¹ Mohamed Abdel-Wahhab, *The Constitutional Control of Laws: Theoretical Principles and Fundamental Applications*, New University Publishing House, Alexandria, (2008).

or regulation whose constitutionality is challenged is related to the subject of the dispute in the original lawsuit in any way, and the ruling of non-constitutionality will benefit the party concerned in the pending case. However, the judge may choose to dismiss the claim of non-constitutionality and proceed on to the substantive matter without considering the plea of constitutionality if he is confident that the statute or regulation whose non-constitutionality is being contested is not related to the dispute before him (Mercy, Dorothy, & Catherine, 2021).

The Supreme Administrative Court ruled in its session (16) March of the year (1974). "The appellant company challenged the non-constitutionality of Article (49) of the Public Sector labours' Codes, including the prohibition of appealing against some judgments of the disciplinary courts before the Supreme Administrative Court. And based on the provisions of State Council Law No. (47) for (1972); and on the basis that the litigation system refuses to limit litigation to one degree in disciplinary disputes related to employees in the public sector, to the exclusion of the rest of those disputes related to other labours, and since whatever opinion is in the permissibility of appealing the provisions referred to in the application of State Council Law No. (47) of (1972), The current dispute has nothing to do with the provisions of the law above-concerning cases of appeal before the Supreme Administrative Court. Therefore the argument that Article (49) is non-constitutional in the present dispute is not severe, and the Court shall reject it ⁽¹⁾.

Second: To confirm that the conformity of the law or regulation with the constitution is subject to differing points of view. In other words, there is a suspicion that the legislation or regulation is non-constitutional. This suspicion is justified when determining the seriousness of the challenge by looking at the law's non-constitutionality. Although the judge's verdict on seriousness is not final, the individual in dispute has the right to appeal it using the established channels, such as by appeal or cassation, if it falls under the purview of the regular judicial system. If it falls under the administrative judiciary's purview, the appealing party could also bring the case before the Administrative Court or the Supreme Administrative Court.

The claim of non-constitutionality is a substantive defence that may be brought up at any time during the litigation process, including before the Court of Cassation. It is related to public order defence because the trial court can handle it independently or refer the constitutional case to the Supreme Constitutional Court. The Supreme Constitutional Court's law explicitly states this in its wording. The Court may postpone the case for a period not exceeding three months to bring the opponent's claim of non-constitutionality before the Constitutional Court if the opponent pleads non-constitutionality and the Court determines that the challenge is serious. This date is one of the dates for forfeiture; thus, once it has passed, the litigant loses the ability to enter a plea, and the Court proceeds on to the case's issues without taking the challenge into account.

We believe that the substantive lawsuit resumes its course by force of law

¹ A set of legal principles approved by the Supreme Administrative Court, 19th year, Egyptian Research Journal, Cairo.

if the constitutional lawsuit was not filed on time because it was not suspended but was postponed. When the period is due, it considers the case by force of law, considering the rules of deletion and attendance contained in the pleadings law.

Section 2: Methods of initiating direct constitutional proceedings in Jordanian legislation.

The Jordanian legislator has limited the right to directly challenge the constitutionality of the applicable laws and regulations at the Constitutional Court to two entities; the legislative and the executive. The legislative body is represented by the House of Representatives and the Senate, which formed the National Assembly⁽¹⁾. Restricting the right to appeal directly to the legislative and executive authorities will profoundly impact the rights and freedoms of the citizen, their respect for the constitution, and achieving the balance between powers, mainly if they belong to the same ideology. Furthermore, this can lead to the lack of a balance between powers, as it does not include the judiciary or Constitutional Court (Milo, Xhomara, & Paparisto, 2021).

However, the constitutional legislator did not grant the trial court judge the authority to resort to the Constitutional Court if he believes that a provision of a statute or regulation to be used to adjudicate the dispute before him is debatable in its constitutionality ⁽²⁾, regardless of whether the parties to the substantive dispute recognise the legitimacy of this legislation or system.

We had hoped that the constitutional legislator would grant any court in the judicial system the right to refer any text it deems non-constitutional to the Constitutional Court directly as the Egyptian legislator did, as this naturally expands how the Constitutional Court communicates with the case and the constitutionality.

The Jordanian legislator did not authorise the Constitutional Court, which is competent to exercise control over the constitutionality of laws, the right to address a law whenever it deems a text related to a dispute before it as unconstitutional, as the response is one of the methods of oversight. While the Court is exercising its jurisdiction, whether penetrating reviewing the constitutionality of laws, the interpretation of the provisions of the constitution, or a provision in a statute or regulation on the dispute presented to it in a constitutional provision, it responds to this provision and examines its constitutionality and judges either its constitutionality or its non-constitutionality.

To enable the Constitutional Court to exercise "response" of one of its jurisdictions, which is one of its rights ⁽³⁾ and according to the text of Article (9/b) of the Jordanian Constitutional Court Law, a challenge to the constitutionality of a

¹ Lectures by Dr. Faisal Al-Shatnawi, International Islamic Sciences University, PhD students, (2015).

² Faisal Al-Shatnawi and Dr. Salim Al-Hatamleh, a paper entitled: Judicial Oversight on the constitutionality of laws and regulations before the Constitutional Court in Jordan, *Dirasat Journal*, International University of Islamic Sciences, Amman, (2013).

³ Ibrahim Darwish - *Constitutional Law, General Theory and Constitutional Oversight* - (2004)

law or regulation shall be submitted by (the Senate, the House of Representatives, and the Council of Ministers) before the Constitutional Court, at a request signed by the head of the appellant party, stating the following:

1. The name and number of the contested law or regulation and the scope of the appeal precisely, whether it is based on the law or the system as a whole or one or more articles.
2. The violation made to the law or the constitutional order.

The President shall send a copy of the challenge submitted to him to the heads of the other two bodies and either of them may submit its response to the Court within ten days from the date it is received.

The date on which the public authorities submit the appeal (the Senate, the House of Representatives, the Council of Ministers) is crucial because it is the period specified in the law for the Court to begin to take effect. Accordingly, the Court shall decide on the challenge within a maximum of one hundred and twenty days from the date it reaches it.

The Court shall issue its judgment on a challenge put to it in the name of the King at a public hearing, mentioning the date and number of the session and the judicial year for the Constitutional Court.

In addition to mentioning the subject of the session (the number of the law or regulation, the Article, and the year of its issuance). Furthermore, the Court includes legal arguments and factual evidence in its rulings, which must be reasoned enough. Then, the Court issues its verdict based on the reasons mentioned in the judgment. Finally, the Court's decisions are published in the Official Gazette within fifteen days from the date they are issued ⁽¹⁾.

Section 3: Constitutional Court oversight by the mechanism of response.

Egyptian law authorised the Supreme Constitutional Court the right to challenge the exercise of control over the constitutionality of statutes whenever it deems non-constitutional text relevant to the dispute before it. Article (27) of the Law of the Supreme Constitutional Court stipulates that "the court may, in all cases, rule the non-constitutionality of any provision in a law or regulation that is presented to it on the occasion of exercising its jurisdiction and related to the dispute before it, after following the established procedures for preparing constitutional cases."

The response is one of the novel oversight methods in the law of the Supreme Constitutional Court ⁽¹⁾. It was not assigned to the Supreme Court when it was established, and it was not, of course, to the judiciary prior to establishing the Constitutional tribunal.

The preceding text demonstrates that if the Constitutional Court finds that

¹ Faisal Al-Shatnawi and Dr. Salim Al-Hatamleh, a paper entitled: Judicial Oversight on the constitutionality of laws and regulations before the Constitutional Court in Jordan, previous reference.

a provision in a law or regulation relating to the dispute before it is not constitutional, it can address this provision and consider its constitutionality. This competence includes oversight of the constitutionality of laws as well as interpretation, conflicts of jurisdiction, and implementation of contradictory provisions. Then it shall decide if it is constitutional or non-constitutionality following the regulations stipulated in Article (27). These regulations include:-

1. For the Constitutional Court to exercise response, it must be within the practices of its authorities, and it is a right that it exercises by itself without requesting it. However, individuals with capacity in the dispute before the court have the right to alert the Constitutional Court to practice response by submitting a request or including memoranda.

Undoubtedly, this will be done if the court exercises its jurisdiction by adjudicating disputes of jurisdiction, implementing conflicting rulings, or its authority over the constitutionality of laws. Logically, this does not apply to the interpretation of laws because the individuals have no relation to this jurisdiction. Nevertheless, this does not invalidate the court's independent decision to respond to the constitutionality of the text at hand in the context of its interpretation.

2. The response does not denote that the court shall examine the constitutionality as soon as it discovers the constitutional violation. Instead, it must follow the customary steps to prepare the cases to use the response authority. In other words, the court sends the text to the commission of commissioners, who then compose the case and a report with their views and submit the documents to the court president to schedule a session to consider the constitutional matter.
3. The court usually responds when there is a link between the text submitted and the text it deems unconstitutional. However, the law did not require that the text subject to the challenge be necessary to determine the case. Still, it was satisfied with the mere fact of any connection whatsoever, which is a development of the field of direct oversight by using response. Nevertheless, the court required that the text be related to a dispute before it per the established legal conditions. If the court has not legally associated with the argument raised before it, there is no way to exercise the response authorisation.

The court has implemented this legal conclusion in several verdicts in which it was requested to exercise the response, but it was rejected. For example, in its ruling issued at the session (11/6/1983) in Case No. 31 and its verdict at the hearing (12/21/1985) in case No. (18) the court stated: "And since there is no place for what the plaintiff raises that this court has an authority to practice response of the unconstitutionality of the contested text under the provisions of Article (27) of its law, which states that "the court may, in all cases, rule the unconstitutionality of any provision in a law or regulation that is raised to it in the course of exercising its jurisdiction and related to the dispute in question after following the procedures

established for the preparation of constitutional lawsuits." The text in which a request was made to use the response was required to be relevant to a dispute before the court for the court to execute the right to response under Article 27. The authority to practise response is nullified if the dispute is not put forward to the court, as in the current cases where the litigation was ceased previously ⁽¹⁻²⁾.

The Constitutional Court Law authorised it to resort to the right of response to establish more guarantees of constitutional legitimacy. Therefore, it was unjustifiable and unacceptable for the legislator to grant the courts the right of referral and then deprive the Constitutional Court itself of the right of appeal since it is the competent court for the constitutionality of laws and regulations.

Thus, the right to response is complementary to challenge and referral, considering that they are three interlinked circles cooperating in confirming constitutional legitimacy. The legislator has imposed all these circles to oversight the constitutionality of laws ⁽³⁾.

We must point out that the constitutional oversight exercised by the Constitutional Court through its use of the right of appeal is not bound by a deadline, similarly to the referral of the constitutional matter from the trial court.

The Court has exercised its right to address a few lawsuits, among which we mention its ruling issued in the session (16) May (1982) in case No. (10) for the year (1 s constitutional) ⁽⁴⁾, where a member of the State Council challenged the unconstitutionality of the first paragraph of Article (104) and the second paragraph of Article (119) of the State Council Law. It was decided that "Whereas Article (104) of the State Council Law issued by Decree-Law No. (47) for the year (1972) stipulates that one of the departments of the Supreme Administrative Court shall have the exclusive jurisdiction to adjudicate in requests submitted by State Councilmen to cancel final administrative decisions related to any of their affairs, except for transfer and delegation, when the request's building was defective in form, violation of laws and regulations, errors in their application or interpretation, or abuse of authority.

Therefore, in its judgment, it is similar to the first paragraph of Article (83) of the Judicial Authority Law promulgated by Decree Law (46) for the year (1972) and amended by law (49) for the year (1973) as it stipulates that the departments of civil and commercial matters of the Court of Cassation are exclusively competent to adjudicate on Requests submitted by the judiciary and the Public Prosecution to cancel the final administrative decisions related to any of their affairs, except for transfer and assignment.

Therefore, whenever the request was defective in form, violation of laws and regulations, errors in their application or interpretation, or abuse of authority, which called the court implemented the permission to challenge it following Article (27) of

¹ A set of legal principles approved by the Supreme Administrative Court, op.

² Abdul Aziz Muhammad Salman - Monitoring the constitutionality of laws - Arab Thought House (1995).

³ Abdul Aziz Muhammad Salman, op, cit.

⁴ A set of legal principles approved by the Supreme Administrative Court, op. cit

its law concerning this last Article due to its connection to the dispute before it.

Conclusion

Unquestionably, establishing a constitutional court tasked with overseeing the constitutionality of laws is, in essence, a success that merits praise, as the court's existence is regarded as a guarantee of the rights and liberties that the constitution comes with. Moreover, the introduction of centralisation of oversight so that one court is concerned with determining the constitutionality of laws is preferable to the decentralisation system in oversight because it prevents the spread of anxiety and instability in transactions and legal centres where conflicting court rulings on the constitutionality or unconstitutionality of a particular law may result from the decentralisation system. Additionally,

The centralisation of oversight-related annulment penalties highlights the potential issues that could follow from the court's simple refusal to apply particular legislation in a case that is before it, despite the law continuing to exist in all other instances and producing all the results of its enforcement.

The researcher believes that the law of the Egyptian Constitutional Court came more broadly than the law of the Jordanian Constitutional Court, where the Egyptian legislator expanded the methods of oversight and triggering the constitutional case more than the Jordanian legislator. Therefore, we demand, through this research, that the texts that specify the bodies authorised to initiate the constitutional lawsuit in the Jordanian legislation be amended, such as their counterpart, the Egyptian legislator, and that there be powers for private and governmental institutions and bodies to initiate the constitutional lawsuit directly based on the principles of human rights that the Jordanian street sings about and to keep pace with legal development and thought international policy.

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