



CRITICISMS OF THE DIRECT APPEAL BEFORE THE JORDANIAN CONSTITUTIONAL COURT

HASHIM AHMAD MOHAMMAD BALAS

Ajloun National University

h.balas@anu.edu.jo

Abstract: *Constitutions vary in granting the authority to exercise the power to challenge the constitutionality of laws between individuals, bodies and the head of state. Some of the constitutions have granted cancellation control or direct appeal of unconstitutionality to the head of state, government and bodies only without individuals, given that the type of control that followed is cancellation control, so the research aimed to clarify Type of control over the constitutionality of laws and regulations in Jordan and development who obtained this oversight, and the negatives and positives in the approach of the Jordanian legislator to limit the method of direct appeal to public authorities without individuals, and the most important results reached is that the Jordanian constitutional legislator adopted a method of limiting the power of direct appeal to the authorities without individuals, and this limitation was limited to the Senate And the House of Representatives and the Council of Ministers, while maintaining the power of individuals to indirectly challenge the unconstitutionality of laws by means of a secondary defense. Constitutional oversight is the protection of individual rights and the safeguarding of constitutional legitimacy.*

Keywords: *constitutional oversight, revocation oversight, direct appeal.*

Introduction:

A part of jurisprudence gives the name censorship of abstention to the direct appeal of unconstitutionality, and they consider it an offensive method in the sense that it directly requests the court to cancel the law because it violates the constitution, and this method requires filing a lawsuit before the Constitutional Court directly by the concerned person affected by the existence of the contested law as unconstitutional. Without requiring that the law be applied to him through the existence of a substantive case brought before the ordinary judiciary to which he is a party, and the ruling issued by the Constitutional Court in this regard is an argument against all, and it may be applied retroactively and its effect may be withdrawn for the future only according to the conditions decided by the Constitution in this regard. Some constitutions have adopted this method of oversight over constitutionality, but they vary in granting the authority to exercise it between individuals, bodies and the head of state. It was followed by an oversight that preceded the issuance of the law, and therefore it is inconceivable that the individual would be harmed by a law that has not yet been issued.

Some constitutions have adopted the method of subsequent repeal oversight and also granted authority to authorities and bodies only without individuals. This is the case in the way of payment by individuals. On the other hand, there are constitutions that grant individuals the right to appeal directly before the Constitutional Court on the grounds that depriving individuals of the right to appeal loses the content of constitutional oversight and its purpose of protecting rights and freedoms and ensuring the supremacy of the constitution.

Research problem:

The problem of the research arises in the extent to which the Jordanian legislator agrees to allocate the method of direct appeal before the Constitutional Court to the public authorities, so does this limitation and restricting it to the legislative and executive powers cause harm to individuals? Is there a single constitutional court in the country?

Search goal:

The research aims to explain the type of control over the constitutionality of laws and regulations in Jordan, the development that took place in this control, and the negatives and positives in the approach of the Jordanian legislator to limit the method of direct appeal to public authorities without individuals.

Research Methodology:

In view of the importance of the subject, the researcher will rely on a number of scientific approaches, the most important of which is the descriptive approach, in order to study the research topics and its details, depending on the various reliable sources.

The first topic

Methods of exercising constitutional control over laws and regulations

Constitutional jurisprudence presents three ways to exercise judicial control over the constitutionality of laws. This control may be achieved by refraining from issuing the law if it has not yet been issued, or by not applying it to the dispute, or by canceling it after it has been issued ()¹, Through this topic, methods and means of monitoring the constitutionality of laws practiced by the Constitutional Court will be reviewed, as follows:

The first requirement: oversight by direct lawsuit (cancellation oversight)

What is meant by abolition control, or as it is sometimes called control, by means of the original lawsuit, which can be harmed by the law by appealing it before the competent court initially and without waiting for the law to be applied to it, asking that court to rule to cancel that law because it violates the provisions of the Constitution². If the court competent to monitor the constitutionality of laws finds the validity of what the appellant claims, it cancels it and annihilates it from existence, but if the court finds otherwise, it decides to reject the case and the law remains applied and in force³. This control assumes that there is a law that has been issued and has become effective or applied to people, and that the application of this law will harm them if they do not challenge its validity, independent of any other dispute. The court, through the original stand-alone lawsuit and not related to another dispute, requests the abolition of the law because it is unconstitutional, that is, because it violates the provisions of the constitution⁴. Also, the judicial court's oversight through the direct lawsuit or the original lawsuit or the so-called revocation oversight in two ways, as it may be prior to the issuance of the law and may be subsequent to it. Previous annulment oversight: It is the oversight that proceeds in the stage of forming the law, that is, it takes place in the stage of proposing the law. Subsequent revocation control: It is a subsequent control over the issuance of the law, or it is an offensive method *Allow some authorities or references to challenge this law directly, that is, independently of any dispute through the original case*⁵.

In Jordan, the Jordanian Constitutional Court has adopted its oversight through direct lawsuit or oversight oversight, provided that it states its violation of the legislative text of the provisions of the constitution, as Article (9/b) of the Jordanian Constitutional Court Law stipulates that: "B- If one of the parties specified in Paragraph A of This Article Contesting the constitutionality of a law or a system The appeal is submitted to the court with a request signed by the head of the appellant, provided that the following is indicated in it: 1- The name of the contested law or system, its number,

¹ Shatnawi, Faisal, and Al-Hatamleh, Salim, Judicial Oversight of the Constitutionality of Laws and Regulations before the Constitutional Court in Jordan, Studies, Sharia and Law Sciences, Volume 40, Issue 2, 2013, p. 619.

² Nasraween, Laith, and Al-Adwan, Ziyad, The Role of the Constitutional Court in Monitoring the Constitutionality of Laws in Jordan, Studies Journal, Sharia and Law Sciences, Volume 45, Issue 4, 2018, p. 4.

³ Al-Obeidi, Muhammad Abdullah Suhail, The Independence of the Judiciary in the Iraqi Legislation in force, Baghdad, 2012, p. 109.

⁴ Shiha, Ibrahim Abdel Aziz, General Constitutional Principles, University House, Alexandria, 2008, p. 233.

⁵ Mirza, Ismail, Principles of Constitutional Law and Political Science, Dar Al Malak for Arts, Literature and Publishing, Damascus, 2004, p. 45.



and the scope of the challenge in a clear and specific manner, whether it is focused on the entire law or system or on One or more Articles 2- The way the law or order violates the Constitution. Paragraph (a) of the same article specifies the parties that have the right to appeal directly to the court regarding the constitutionality of laws and regulations in force.

They are: 1- The Senate. 2- The House of Representatives. 3- The Council of Ministers. Thus, the official bodies and professional associations in Jordan cannot practice the method of direct challenge to the constitutionality of laws, even the judicial authority. Thus, the Jordanian legislator restricted this method to the legislative and executive authority only. The second requirement: censorship by arguing that it is unconstitutional (sub-argument) It is also called the censorship of abstention, which is the censorship in which the court refrains from applying the law that is contrary to the constitution based on a plea submitted by the stakeholder or on the initiative of it in a case pending before it, in order to give priority to the rule of the higher law over the rule of the lower law in the hierarchical ladder of the legal system in the state⁶. Accordingly, the sub-push control presupposes that there is a pending case before the court, whatever the nature of this lawsuit, civil, criminal, or administrative, with the aim of obtaining a specific right through the application of the law. perspective ahead. This type of censorship is represented by the fact that there is no original case for the abolition of a law because it is unconstitutional, but rather it is related to the unconstitutionality of the law to be applied whose content is submitted by one of the parties to the dispute in a case before the court, meaning that censorship in this case does not take an offensive form as is the case In the previous case, it takes a defensive form according to which the person concerned waits until a certain law is intended to be applied to him in a case brought before a court, and then argues that this law is unconstitutional, so the court takes over the matter, and if it determines that the law violates the constitution, it refrains from applying it in the case. in respect of which the payment was raised, That is, the court, in the case of an argument of unconstitutionality, does not rule to cancel the law, but rather refrains from applying it only in the case in connection with which the defense was raised, and this law remains in place⁷. In addition to the two previous methods, there is the method of mixing the two methods of secondary defense and the original lawsuit, and according to this mixed method in the constitutional jurisdiction, it is permissible to challenge the unconstitutionality of a law during the consideration of a lawsuit related to the application of the law whose constitutionality is disputed, and this is by a defense raised by the court on its own as a constitutional issue The law, and in this case the latter stops and refers the challenge to the constitutionality of the legislation to the competent court in order to issue a binding ruling with absolute authority, meaning that it nullifies the law for all, if the court finds that it is unconstitutional⁸. The Jordanian constitutional legislator has adopted this system, according to the Jordanian constitution issued in the year 1952, which granted the parties to a case pending before the courts the defense of the unconstitutionality of a law or a system applicable to the merits of the case, and the defense of unconstitutionality must be submitted before the trial court examining the case according to a memorandum in which the appellant indicates The name and number of the law or system whose unconstitutionality claim was raised, the scope of the claim in a clear and specific manner, and what supports his claim that that law or system is applicable to the subject matter of the case and is in violation of the Constitution. Fifteen days from the date of submitting the payment note of unconstitutionality. Article 11 / C / 1 of the Constitutional Court Law states: "With due regard to the provisions of Paragraph (D) of this article, if the court examining the case finds that the law or system to which the claim of unconstitutionality was raised is applicable to the subject matter of the case and that the claim of its unconstitutionality is serious, the consideration shall be stopped. in the case and refer the plea to the Court of Cassation for the purposes of deciding on the matter of referring it to the court, and the decision of the court examining the case not to refer it is subject

⁶ Raad, Nazih, General Constitutional Law, Modern Book Foundation, Lebanon, 2011, p. 154.

⁷ Ahmed, Sonbol Abdul-Jabbar, The principle of supremacy of the constitution and ensuring its respect: a comparative analytical study, published research, Journal of the College of Law for Legal and Political Sciences, Volume 4, Issue 4, 2015, p. 189.

⁸ Al-Jamal, Yahya, The Theory of Necessity in Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, 2015, p. 85.

to appeal along with the merits of the case. Through the foregoing, the researcher finds that if the oversight of the revocation is described as offensive, then the oversight is a defensive method whose aim is not to abolish the unconstitutional law, but rather the aim is not to apply the unconstitutional law to the subject of the dispute pending before a specific court, so that the court verifies the correctness of the payment. The person concerned with the unconstitutionality of the law to be applied in a particular dispute, it refrains from applying it and decides the case based on the constitutional rule prevailing over the ordinary rule.

The second topic

Areas of criticism directed to the direct appeal before the Jordanian Constitutional Court

The legislation that adopted the method of judicial control over the constitutionality of laws did not unanimously follow a single approach to move and practice this control. Rather, the methods and methods varied and multiplied according to what each country decides in its constitution and in line with its circumstances, although all of them aim to protect constitutional legitimacy and guarantee the rights and freedoms of individuals. The jurisprudence and constitutional judiciary have unanimously agreed that there are two basic methods for moving this control, as we referred to them in the first topic, and they are the direct lawsuit.

(control of revocation) and sub-adjection (control of abstention) ⁹, and the Jordanian legislator adopted these two methods, but the first method, which is the direct lawsuit, was subject to many criticisms, which we mention as follows:

The first requirement: the criticism directed at identifying the authorities authorized to appeal directly before the Constitutional Court

As for the Jordanian constitutional legislator, the constitution and the law of the Constitutional Court specified within its articles the parties that have the right to directly challenge the unconstitutionality of a law or a system before the Constitutional Court. The power of direct appeal is in the hands of the authorities, not the individuals, while retaining the power of individuals to indirectly challenge the unconstitutionality of laws by means of a subsidiary plea.

This method of appeal has been criticized before the Constitutional Court, which the Jordanian constitutional legislator referred to as inconsistent with logic, in terms of granting the authority to directly challenge the unconstitutionality of a law to the legislative authority, which is essentially the one that enacted this law. Challenge the unconstitutionality of the system issued by it at a time when the same authority can amend or cancel it or put a new system in its place, as the owners of this opinion believe that the Council of Ministers' challenge to the unconstitutionality of a system issued by it will make him have a dual status in the constitutional lawsuit as a plaintiff and a defendant, as well as The matter is in the case of the House of Representatives and the Senate, in their capacity as having the power to enact laws.

The direction of the Jordanian legislature in this field is also subject to criticism, as it granted the power of direct appeal to the Council of Ministers, the Senate and the House of Representatives, without granting the same power to local bodies with public and independent moral personality such as municipal councils, parties and unions, especially the Bar Association, so that the Jordanian legislator did not grant This right belongs to the judiciary and not to the Constitutional Court itself, as the law did not permit it

It has the right to direct appeal or the right to address the constitutionality or unconstitutionality of a particular law or system. Also, despite the advantages that characterize the direct case method, which is represented in assigning jurisdiction over constitutional control to one specialized court, which contributes to the stability and stability of legal rulings and positions, and takes into account in it mostly political considerations and the compatibility between them and legal considerations, but it has been subjected to many criticisms. Among them is the fear that the Constitutional Court

⁹ Darwish, Ibrahim, Constitutional Law, General Theory and Constitutional Oversight, Published by Dar Al-Nahda Al-Arabiya, 1st Edition, 2004.

will extend its control over all the activities of the legislative authority, which leads to a collision between them, and that it is not easy for individuals to reach the only Constitutional Court and its location is usually the capital, in addition to the possibility of backlogs of cases in the Constitutional Court and prolonging litigation¹⁰.

The second requirement: criticism of the conditions for filing a direct appeal before the Constitutional Court

With regard to the conditions for submitting a direct appeal against the unconstitutionality of the law or the system by the legally defined bodies, according to Paragraph (b) of Article 9 of the Jordanian Constitutional Court Law, the appeal is submitted by the competent authorities with a request signed by the head of the appellant body, and the name of the law or the system must be indicated in it. The appealed objection, its number, the scope of the legal challenge, and the point of violation of the law or the system of the Constitution. These conditions are related to the form of the appeal so that the court can extend its control over the constitutionality of the law or order in question.

Referring to the conditions required by the Jordanian legislator in Article (9), we find that the Jordanian legislator has been lenient in imposing conditions for the appeal submitted directly by the Council of Ministers or the Senate and the House of Representatives, and in comparison to those conditions imposed in the indirect appeal submitted by individuals, as the legislator did not stipulate explicitly. In this direct appeal, it must be a serious one, and it did not require the submission of evidence in support of the claim that the law or system under challenge is unconstitutional. The parties are also evident by allowing them to challenge the unconstitutionality of the law or the entire system, which cannot happen in the case of the indirect appeal available to individuals, which necessitates defining the scope of the appeal very narrowly. A part of jurisprudence attributes this leniency on the part of the Jordanian legislator to the nature required by the work of these authorities in terms of preserving the public interest and the rights of individuals, as facilitating procedures for direct appeal to the legislative and executive authorities will have a great impact on the rights and freedoms of citizens, respect for the constitution and the balance between powers. Also, with regard to the procedures followed when submitting a direct appeal against the unconstitutionality of a law or a regulation by the Council of Ministers, the Senate or the Representatives, after the referral of the appeal by one of these bodies, the President of the Constitutional Court must send a copy of the appeal submitted to him to the President as a whole from both sides. The other two, The Jordanian legislator did not expressly state the legal basis for this procedure, except that he added, in the inability of the same article, that any of these two parties has the right to submit his response to the court within ten days from the date of receiving the aforementioned copy, and it becomes clear that the legislator wanted to grant the other parties the right to respond to what The authority raised it, requesting it to be informed, and it is not correct to say that it exercised the right of reply without first receiving a copy of the submitted appeal. However, the problem that arises in this area is not related to the right of reply to the other two parties, as much as it is related to the requirements of the aforementioned response. For example, the executive authority is supposed to challenge the unconstitutionality of a law issued by the legislative authority. Here it can be said that the right of reply and defense of the constitutionality of the law is a right of the legislative authority as long as it is The first concerned in this appeal and its implications, as it is also assumed that the executive authority will challenge the unconstitutionality of a system issued by itself, so what is the lesson in informing the legislative authority in this case as long as it is not the one who issued the system

¹⁰ Al-Ajmi, Fuhaid Abdullah Hajraf, and Prejudice, Salim Salameh, Arheel. (2018). Legal Protection of the Right to the Sanctity of Private Life in the Jordanian Constitution and the Kuwaiti Constitution: A Comparative Study (Unpublished PhD Thesis). International Islamic Sciences University, Amman, p. 17.

subject to the appeal and as long as it is not concerned with defending it. The main reason for granting the right of reply to the legislative authority in this imposition may be to defend the legal positions and acquired rights established under this system, Regulations may directly affect a specific interest of the citizen or the Legislative Council itself, and therefore the defense of the constitutionality of these centers and rights becomes a duty in this case, but the absence of that interest or legal position in the system under challenge is what raises questions about the extent of the productivity of responding to the appeal request. Unconstitutional, which does not have a sufficient and logical answer by the Jordanian legislator, which made application problems arise on this issue. Therefore, the text must be amended to give the right to respond to the appeal to the concerned party if it becomes available or the need arises.

Conclusion

At the end of this research, through which we dealt with the approach of the Jordanian legislator in allocating the direct appeal to the constitutionality of laws and determining the parties that are entitled to exercise this right, which exposed the approach of the Jordanian constitutional legislator in it to several criticisms that were dealt with in this research, and based on the above, a set of results were reached. The most important recommendations are:

First: the results

- 1- The Jordanian constitutional legislator adopted the method of limiting the power of direct appeal to the authorities and not to individuals. This limitation was limited to the Senate, the House of Representatives, and the Council of Ministers.
- 2- The Jordanian constitutional legislator retained the authority of individuals to indirectly challenge the unconstitutionality of laws by means of a secondary argument.
- 3- Despite the criticisms directed at the method of the Jordanian constitutional legislator to limit the validity of the direct lawsuit, it is a successful method to prevent individuals from the right of direct appeal to prevent malicious lawsuits and prolong the period of litigation, especially in light of the existence of one constitutional court in the country.

Second: Recommendations

- 1- The necessity of granting the right to direct lawsuits to individuals within specific controls, such as establishing a consulting chamber at the Constitutional Court whose mission is to verify the seriousness and feasibility of the lawsuit, because the basis of constitutional oversight is the protection of individual rights and the preservation of constitutional legitimacy.
- 2- Granting local bodies with public and independent legal personality such as municipal councils, parties and unions, especially the State Bar Association, the right to directly challenge the constitutionality of the laws regulating these bodies so that there is no abuse in organizing the work of these bodies and joining them by the executive and legislative authorities.

List of references used:

First: books

1. Al-Jamal, Yahya, The Theory of Necessity in Constitutional Law, Dar Al-Nahda Al-Arabiya, Cairo, 2015.
2. Darwish, Ibrahim, Constitutional Law, General Theory and Constitutional Control, Published by Dar Al-Nahda Al-Arabiya, 1st edition, 2004.
3. Raad, Nazih, General Constitutional Law, Modern Book Foundation, Lebanon, 2011.
4. Shiha, Ibrahim Abdel Aziz, General Constitutional Principles, University House, Alexandria, 2008.
5. Al-Obeidi, Muhammad Abdullah Suhail, The Independence of the Judiciary in the Iraqi Legislation in force, Baghdad, 2012.



6. Mirza, Ismail, Principles of Constitutional Law and Political Science, Dar Al Malak for Arts, Literature and Publishing, Damascus, 2004.

Second: University Theses

1. Al-Ajami, Fuhaid Abdullah Hajraf, and his prejudices, Salim Salameh Arheel. (2018). Legal Protection of the Right to the Sanctity of Private Life in the Jordanian Constitution and the Kuwaiti Constitution: A Comparative Study (Unpublished PhD Thesis). International Islamic Science University, Amman.

Third: Journals and Research

1. Ahmed, Sonbol Abdul-Jabbar, The principle of the supremacy of the constitution and ensuring its respect: a comparative analytical study, published research, Journal of the College of Law for Legal and Political Sciences, Volume 4, Number 4, 2015.
2. Shatnawi, Faisal, and Al-Hatamleh, Salim, Judicial Control over the Constitutionality of Laws and Regulations before the Constitutional Court in Jordan, Studies, Sharia and Law Sciences, Volume 40, Number 2, 2013.
3. Nasraween, Laith, and Al-Adwan, Ziyad, The Role of the Constitutional Court in Oversight of the Constitutionality of Laws in Jordan, Dirasat Journal, Legislative Sciences and Law, Vol. 45, P. 4, 2018.