



Mechanisms Guaranteeing the Principle of the Supremacy of the Constitution in the Iraqi Constitutional Judiciary

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Abstract:

The subject of the research is the mechanisms guaranteeing the principle of the supremacy of the constitution in the Iraqi constitutional judiciary. The topic was addressed through two sections. In the first section, we reviewed the concept of the principle of the supremacy of the constitution and the place of its supremacy in the Iraqi constitutions. The second section dealt with the constitutional organization of the Supreme Federal Court in Iraq in terms of its composition, powers, and the mechanisms followed. In a way that ensures respect for the principle of the supremacy of the constitution through oversight of the constitutionality of laws.

The study concluded the importance of the Federal Supreme Court in Iraq as the most important effective guarantee for upholding the provisions of the Constitution, achieving the principle of its supremacy, ensuring that its provisions are not violated, and ensuring respect for it by all, rulers and ruled, by monitoring the constitutionality of laws.

Introduction

The study concerns the monitoring of formal transformations within the framework and style during the period in which the artist Francisco Goya began practicing art and participating in art exhibitions, from the year 1775 until the year 1828. The artist's work was represented in Spain and France, and included paintings in oil and pastel colors and works printed with acid and wood-engraving. The study analyses the artist's unique artistic growth process, expressed in his work. The enactment, detection and reflection of a psychological nature are influenced by the data of the habitus, the environment and socialization, which in turn form a pattern of concepts that the self establishes its authorial references through which it expresses them in an independent creative manner (Gambini & Pullin, 2024). This is achieved through a selective strategy between subject, material and expression. The nature of the intellectual environment resulting from cultural, political, religious and social pressures or psychological and

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The introduction:

The constitution occupies the highest rank in the legal system in a democratic state, as it is at the top of the legal rules, and according to this hierarchy, the lowest legal rule is subject to the rule of the highest level, and since the constitution defines the system of government in the state, creates authorities, defines their powers, and defines the public rights and freedoms of individuals, It establishes the prescribed guarantees to protect them from any violation, so it requires public authorities to submit to the Constitution, not violate its provisions, and to work in accordance with the Constitution. To ensure this, it requires the presence of a judicial body that monitors the compliance of laws with the provisions of the Constitution and invalidates what violates it, to ensure the supremacy of the Constitution.

The principle of the supremacy of the Constitution is the basis on which the legal system in the state is based, and therefore requires public authorities to adhere to the provisions and principles of the Constitution, otherwise they will lose their legal status and their actions will have no legal basis, because they derive their existence from the Constitution, and failure to adhere to the constitutional rules and violate them leads to the collapse of the legal system. In the entire country.

Importance of research:

The importance lies in the role played by the constitutional judiciary in achieving the principle of the supremacy of the constitution and its supremacy over all legal rules applied in the state. The importance of the study is evident in explaining the role of the Iraqi constitutional judiciary in ensuring and respecting the constitution in light of the rulings of the Federal Supreme Court.

Objective of the research:

The aim of the study is to explain the nature of the constitutional judiciary and its role in achieving the principle of the supremacy of the constitution, and to investigate the extent to which the Federal Supreme Court in Iraq is embodied in its work to protect the supremacy of the constitution

Research Methodology:

The study relied on the analytical approach to analyze constitutional texts, in addition to following the descriptive approach to explain the concepts on which the study is based

Search structure:

The study was divided into two sections. The first section dealt with the status of the supremacy of the constitution in Iraqi constitutions, addressing the concept of the principle of the supremacy of the constitution, and the status of the supremacy of the constitution under the Basic Law and the interim constitutions. As for the second section, the constitutional organization of the Federal Court and its procedures in ensuring the principle of the supremacy of the constitution were addressed.

The first topic**The status of the supremacy of the constitution in the Iraqi constitutions****Introduction and division:**

The supremacy of the Constitution is considered the basis of the legitimacy on which the legal system in the State is based. Every activity issued by the ruling authorities in the State derives its basis from the Constitution, and any authority can only exercise the powers granted to it within the limits of the Constitution. In this study, we will discuss the concept of the principle of the supremacy of the constitution and the place of the supremacy of the constitution in Iraqi constitutions.

The first requirement

The general framework of the principle of the supremacy of the constitution

First: The concept of the principle of the supremacy of the constitution

The principle of the supremacy of the constitution constitutes the most important pillars, components and pillars of the state of law and one of the principles upon which the legal system in the state is based, because the constitution has primacy over the rest of the legal rules (i), and since the constitution expresses the legal structure that defines the state's system and its basic joints, and the state exercises its legal activity with all its powers. Which is based on the Constitution, As the primary source that obligates public authorities to respect its provisions and adhere to the limits it has drawn within its scope, the rules stipulated in the constitution are considered the primary source of legitimacy, and at the top of the pyramid is the legal system, in terms of its importance because it determines the form of the state, the organization of the various authorities within it, and determines their powers and distribution. Powers and enhancing the rights and freedoms of individuals.

The legal activity practiced by the state with all its powers is based on the constitution, as it is the basis of its legitimacy, the focus of its organization, and the scope of its activity (ii), and thus the legal state is keen to achieve the supremacy of the constitution by submitting public authorities to the constitution, and respecting the law for all, both rulers and ruled, and complying with the constitutional rules and not violating them(iii)

Achieving constitutional supremacy requires the presence of a judicial body that monitors the constitutionality of laws that violate the principles of the Constitution by exercising constitutional oversight through which all bodies in the state are forced to work within the constitutional framework.

Constitutional oversight through the judiciary has an effective role in achieving justice and equality before the law, because it stands guard against any authority that attempts to deviate from the constitutional rules while carrying out its activities, because the method of judicial oversight is one of the methods that guarantee the protection of the supremacy of the rules and principles of the Constitution(iv).

The supremacy of the constitution means that the legal system in the state is governed by the constitutional rules and any of its powers cannot exercise its powers except what is decreed for it within the limits of the constitution (v). The basis of legitimacy in the state and all its legal activity derives from the constitution It is above all activities, and it is the basic rule upon which the legal system is based. Since the constitution is the one that regulates and defines the powers of public authorities, it is above them, and any action issued by them that violates the constitutional rules is considered to have no legal effect when it is not consistent with the regulating constitutional framework. To these authorities(vi).

We find that the principle of the supremacy of the Constitution is one of the recognized principles in the jurisprudence of constitutional law, as constitutional rules are superior to other laws and legal acts, and any law issued by the legislative authority must comply with the Constitution in letter and spirit, otherwise it will be considered unconstitutional

Second: The idea of the supremacy of the constitution

The idea of the supremacy of the constitution crystallized its basis in the writings of social contract theory thinkers in the seventeenth and eighteenth centuries, and after the victory of the American and French revolutions, it appeared as a principle in the world of legal reality, and the principle of the supremacy of the constitution prevailed in American constitutional jurisprudence, and the text of the American Constitution in Article (6) "The

Constitution shall be and the laws of the United States promulgated thereunder And all treaties concluded or to be concluded under the authority of the United States shall be deemed the supreme law of the land, and shall bind the judges of every state to the contrary, regardless of anything to the contrary in the constitution or laws of any state.” The Spanish Constitution of 1927 and the German Constitution of 1968 stipulate The principle of the supremacy of the constitution. These constitutions indicate that they have the highest lofty rank in the hierarchy of mandatory rules of legal rules, and no public authority in the state may deviate from them. The principle of the supremacy of the constitution is based on the content of the constitutional rules and the provisions they contain, and on the one hand it is called the substantive supremacy of the constitution. On the other hand, it is based on the form in which the constitutional rules appear, and this is called the formal supremacy of the constitution^(vii).

1-The formal supremacy of the constitution

The formal supremacy of the Constitution gives the constitutional rules a higher status and status among other legal rules, and includes all the provisions contained in the Constitution, regardless of whether they are constitutional in terms of their subject matter or substance or not. According to the standard of formality, no legal rule can be considered a constitutional rule unless It was written in a constitutional document, otherwise it results in losing its constitutional character, even if its subject or content includes a constitutional one The constitution achieves its formal supremacy as a result of the difference between the authority competent to amend it and the authority competent to issue laws, or the difference in the procedures that must be followed to amend the constitution from the procedures for amending laws ^(viii). Based on the formal standard, the legal rules issued by the ordinary legislator do not have the status of transcendence, even if they address constitutional topics, and thus the consideration is on the form of the legal rule and not on the topic that it addresses ^(ix)What gives the constitutional rules their sublimity is the rigidity of the constitution, that is, it cannot be amended except according to stricter procedures than the rules and procedures for amending ordinary laws, and therefore all the rules included in the constitutional document, regardless of their subject matter, are all of the highest rank and place of precedence over other laws prevailing in the country. The State, and based on the formality criterion, the constitutional rules are at the top of the legal hierarchy in the State and their topics are related to regulating the exercise of public powers within the framework drawn up by the Constitution^(x).

We find that the formal supremacy of the constitution is at the top of the hierarchy of the legal system in the state and is not permissible for any authority that violates the provisions of the constitution. The procedures used in amending it differ from amending flexible constitutions, as it requires conditions that differ from amending regular laws to amend or cancel their texts.

2-Objective sublimity

The substantive supremacy of the constitution is based on the subject matter of the constitutional rules contained in it, without regard to the form of the constitutional rule or the procedures followed in establishing the rule, and it is achieved in all constitutional rules, regardless of their source, whether it is represented in the constitution document, general principles, constitutional custom, or basic laws. Complementary to the Constitution or even ordinary legislation ^(xi), the Constitution is determined according to this standard The legal idea regulates the authorities, that is, it includes a set of provisions and rules regulating matters of a constitutional nature, whether written in a document or rules resulting from custom. The objective supremacy of the rules of the constitution derives from the nature and importance of the topics it regulates Which is characterized by its seriousness and absolute importance in building the state, which makes the

constitution the key to the legal system, its foundation, and its highest summit ^(xii), and the sublimity of objectivity appears in the content and goal of the rule, so the constitutional rule is considered the backbone of any legal activity, and the primary source of legitimacy for the actions of the authorities in the state ^(xiii)

The Constitution is the legal basis for the state's authorities (legislative and executive) because it regulates the authorities' exercise of their powers and guarantees rights, and requires them to follow the constitutional rules in their actions and actions. The provisions of the Constitution constitute the legal or legitimate basis for the existence of the state's authorities ^(xiv), and any action that violates the Constitution results in the absence of legal effect. For violating work Because it constitutes a blatant violation of the principle of legality, which emphasizes the necessity of respecting the legislative authority when issuing laws in accordance with the provisions of the Constitution, and this commitment we find its basis in the principle of gradation of legal rules, at the top of which are the constitutional rules ^(xv). The legal effect of the principle of the supremacy of the constitution will not be achieved unless there is oversight of the constitutionality of laws.

The constitutional rules occupy the top of the hierarchical ladder of the legal system in the state, and the public authorities in all their activities are subject to the provisions of the constitution. Otherwise, behavior that violates the constitution is considered invalid and devoid of any legal effect because it lacks legal support. That is, the legal rule does not produce its effect except in the case of its adherence to the controls. The restrictions specified in the rule are of the highest degree^(xvi).

We find that the Constitution outlines the powers of each authority in the state. Thus, no authority has the right to delegate its functions stipulated in the Constitution to another authority unless there is a text allowing such delegation.

The second requirement

The status of the supremacy of the constitution in the constitutions of the monarchy and the republican system

First: The status of the supremacy of the constitution under the Iraqi Basic Law of 1925

The Iraqi constitutional legislator established guarantees to protect the supremacy of the constitution and included this principle in various successive constitutions, whether in the monarchy or the republican era. At the beginning of the establishment of the Iraqi state during the monarchy, and after the formation of the interim government, I was tasked with preparing a draft of the constitution, and the Basic Law was issued in 1925 It is considered one of the first constitutions of Arab countries to provide guarantees to protect and achieve the supremacy of the constitution, as the Basic Law stipulates the establishment of a Supreme Court whose mission is to monitor the constitutionality of laws. According to the law, the court consists of nine members, including the president They are elected by the Senate, four of its members, and four members of the Court of Cassation or senior judges. The President of the Senate presides over the court, and in the event that he is unable to attend, he is succeeded as president of the court by his deputy^(xvii).

The term of membership of members in the court is determined by the time period for each case pending before the court, and when the case is resolved, the term of membership ends with it ^(xviii). Members of the Supreme Court do not enjoy any special immunity, but rather the immunity they enjoy in their capacity as members of the Senate remains. As for the judges, they have immunities. Only judges, which are not many.

he basic law specifies the court's specific powers, which are: trying ministers and members of the National Assembly for political crimes or crimes related to assuming

public office, and among its tasks specified for it in accordance with the law is to try the judges of the Court of Cassation for crimes committed by them while carrying out their duties^(xix). In addition, the court assumes its original jurisdiction to consider the constitutionality of Laws and interpretation of basic law. The case is brought before the court based on an indictment decision issued by the House of Representatives with a two-thirds majority vote of the members in each case separately. The decisions of the Supreme Court are issued by a majority of the members of the court, and the rulings regarding the unconstitutionality of a law are considered null and void from the date of issuance of the court's decision, meaning that they take effect with immediate effect and not retroactively^(xx), and they have the force of a ruling, as they are binding on all and cannot be appealed before any other body. Its decisions must be applied in the courts and all state institutions^(xxi).

The court examines the constitutionality of laws at the request of Parliament without giving the right to private individuals, institutions or other bodies.

We note that membership in the Supreme Court is temporary, and the Constitution does not specify guarantees guaranteeing the independence of judges, whether from the aspect of their appointment or from the financial and administrative aspect, which consequently affects the fairness of the judiciary in issuing decisions.

Second: The status of the constitution under the constitutions of the republican system

1-The principle of the supremacy of the constitution under the 1968 Constitution

After the abolition of the Basic Law of 1925 AD, the 1968 Constitution was issued during the era of the Republican regime, which is one of the temporary constitutions, which adopted judicial oversight and was entrusted with the formation of a Supreme Constitutional Court, which would be established by law as stipulated in Article 87 of the Constitution (A Supreme Constitutional Court shall be formed by law to interpret the provisions of this law, decide on the constitutionality of laws, interpret administrative and financial laws, and decide on violations of regulations to the laws issued pursuant to them, and its decision shall be binding). Based on the Constitution, Law No. 159 of 1968 was issued to form the Supreme Constitutional Court. The law specifies the mechanisms for forming the court, its powers, the style of its members, its tasks, and the method of filing a case before it. The court consists of nine members, three members chosen according to their positions: the president of the Court of Cassation, the president of the Legal Registration Office, the head of the Financial Supervision Board, three permanent members of the Court of Cassation of Iraq, and three senior state employees. Of those whose rank is not less than A general director, and four reserve members, two of whom are judges of the Court of Cassation who replace the judges of the Court of Cassation when they are unable to attend for any reason, and two who replace the rest of the members when they are unable to attend with the rank of director general and senior state employees. They are appointed on the proposal of the Minister of Justice and a presidential decree is issued against them. . The court holds its sessions with all its members, and the head of the cassation court presides over the session, in case of inability His presence replaces a female representative in the Court of Cassation, and decisions are issued by a majority of opinions, and in the event of a tie, the side on whose side the president votes prevails. Article 3 of the court law indicates that it has the right to review the files, papers, and documents necessary to accomplish its mission, and it has the right to seek assistance and summon specialists and experts for the purpose of completing its work. It is assigned to a court^(xxii) .

Article 87 of the Constitution stipulates the powers of the Supreme Constitutional Court, and the law forming a court includes in Article 4 the powers of the court to monitor the constitutionality of laws and is concerned with interpreting the provisions of the

Constitution, interpreting administrative and financial laws, and examining the extent to which systems are compatible with the laws issued pursuant to them.

Article 5 of the Court Law specifies the bodies that have the right to address the Constitutional Court to consider cases, and they are: the President of the Republic, the Prime Minister, the Minister of Justice, the competent minister, and the Court of Cassation ^(xxiii). The court issues its decisions by a majority of opinions, and its decisions are binding on all and are not subject to appeal. If the court decides that the law has violated the constitution, it is considered null and void from the date of issuance of the ruling, meaning that the ruling of unconstitutionality is implemented directly with immediate effect and not retroactively. Since its formation, the court has not exercised any form of control over the constitutionality of laws ^(xxiv).

We find that, according to the 1968 Constitution and the Court Law, individuals are not allowed to submit an appeal to this court, but rather it is limited to the official bodies specified in Article 5 of the Court Law.

While the 1970 Constitution did not stipulate the existence of a Supreme Court responsible for monitoring the constitutionality of laws, the judges' mission was to apply the law without considering whether it violated or conformed to the Constitution. This is due to the inability of the judiciary to be independent from the political authority, as judges are subject to their appointment, transfer, and punishment to the executive authority. And protecting the acts of sovereignty from judicial oversight, which makes the judiciary unable to cancel or refrain from implementing any legal text that contradicts the provisions of the Constitution.

The 1970 Constitution did not indicate the repeal of the Constitutional Court Formation Law No. 159 of 1968. Article 69 of the Constitution stipulated (that the laws and decisions of the Revolutionary Command Council shall remain in effect before the issuance of this Constitution, and they may not be repealed or amended in the ways specified in the Constitution)

One side of legal jurists believes that the formation of the court remains in effect because the 1970 Constitution did not explicitly refer to the abolition of the court, while another side of legal jurists believes that the law was implicitly abolished, meaning the abolition of the 1968 Constitution under which a constitutional court was formed is considered the legal basis on which it was formed. The court hereby dismissed it.

The second topic

The constitutional organization of the Federal Court and its procedures in ensuring the principle of the supremacy of the

Constitution Introduction and division:

Oversight of the constitutionality of laws, which was adopted by most of the general constitutions and adopted by the Iraqi Constitution, is a work of a legal nature that consists of searching for the extent of conformity of the law with the rules established by the Constitution.

Through this study, we will address the constitutional organization of the Federal Court in terms of its composition and jurisdiction, and the procedures followed to achieve the principle of the supremacy of the Constitution.

The first requirement

The Iraqi Federal Supreme Court as a guarantee to protect the supremacy of the Constitution

Composition and jurisdiction of the Federal Court:

The Iraqi State Administration Law for the Transitional Phase stipulates in Article (44/A) the formation of a court, which shall be formed by law and shall be called the Federal Supreme Court^(xxv). Its primary mission shall be to monitor the constitutionality of laws, and with the issuance of Supreme Court Law No. 30 of 2005 AD, this law specified the procedures for forming the court. The Supreme Federal Council shall be headquartered in Baghdad and shall exercise its duties independently, with no authority other than the law^(xxvi).

The Federal Supreme Court consists, based on Law No. 30 of 2005, of a president and eight members who are appointed by the Presidency Council based on a nomination from the Supreme Judicial Council, in consultation with the judicial councils of the regions^(xxvii). In the event of a refusal to appoint any candidate, the Supreme Judicial Council shall initiate the nomination of three. The Presidency Council appoints the members of the court and names one of them as its president. The term of membership of the members is not determined by a specific age of the member, but is left according to the member's desire to end his service. As for court sessions, they take place in the presence of all its members, and court decisions are issued by a simple majority.

The Federal Court law states its powers, as it is responsible for monitoring the constitutionality of laws, by examining the legitimacy of laws, regulations and instructions issued by any party that has the right to issue them and which conflict with the provisions of the Constitution. The extent of its oversight is not limited to the constitutionality of the law, but rather it looks into the compatibility of the system, order, and instructions with the constitution as well, in addition to looking into legislative omissions, delegation, and refraining from exercising jurisdiction.

The Iraqi State Administration Law expands the scope of oversight over the constitutionality of laws (exclusive and inherent jurisdiction, based on a claim from a plaintiff or based on a referral from another court), and Article (44/C) of the Iraqi State Administration Law refers to the exclusive powers of the Federal Court^(xxviii). It is regulated by law:

The Federal Court is responsible for adjudicating disputes that arise between the federal government and the governments of regions, governorates, municipalities and local administrations, and examining lawsuits brought before it on an exceptional basis, in addition to considering appeals submitted against rulings issued by the Administrative Court^(xxix).

The 2005 Constitution stipulated in Article 93 the powers of the Federal Supreme Court, and it was broader than what was included in the State Administration Law for the Transitional Period of 2004, as it was entrusted with reviewing the constitutionality of the laws and regulations in force, and verifying the compliance of the laws with the provisions of the Constitution, in a way that is consistent with the spirit of the Constitution. It was entrusted with the task of interpreting the constitutional texts in order to avoid any controversy that might arise over the interpretation of the constitutional texts. The oversight exercised by the Federal Court occurs after the issuance of laws, and it does not consider proposals or draft laws before they are issued^(xxx). The Constitution stipulates the court's right to monitor the extent of approval of the regulations in force, regardless of the executive body that issued them or the date of their issuance, whether prior or subsequent to this Constitution. The court considered the unconstitutionality of a law issued in violation of the provisions of the abolished 1970 Constitution (upon scrutiny and deliberation by the Federal Court, it was found that the plaintiff / in addition to his job requested in the lawsuit petition to include the decisions issued in the cases pending by the judicial committees affiliated with the Real Estate Property Disputes Resolution Authority By appealing in the interest of the law to preserve public money, which is regulated by the provisions of Article 30 of the Public

Prosecution Law No. 159 of 1979 as amended, the court found that the request requires adding other paragraphs to the aforementioned article, and this is a legislative act within the jurisdiction of the legislative authorities and outside the jurisdiction of the court because it is not a legislative body by virtue of its jurisdiction. Limited by Article 93 of the 2005 Constitution and Court Law No. 30 of 2005^(xxxii).

The second requirement

Procedures of the Federal Supreme Court in achieving the principle of the supremacy of the Constitution

The Federal Supreme Court occupies an important position in the Iraqi state, because it is the focus of achieving justice and consolidating the principle of the supremacy of the constitution and ensuring rights and freedoms. The Iraqi legislator has established, through the State Administration Law and Federal Court Law No. 30 of 2005, many guarantees through which the supremacy of the constitution is achieved. The law affirmed the independence of the court for the purpose of carrying out its role and exercising its supervisory functions so as to be free from political interference.

First: Appointing the members of the court

The president and members of the court are appointed by the Presidency Council and in consultation with the Supreme Judicial Council, as stipulated in Article (39/C) of the State Administration Law, while Article (92/II) of the effective 2005 Constitution entrusted its formation to a law enacted by the House of Representatives with the approval of a two-thirds majority of its members. ^(xxxii), and its composition is not limited to judges only, but rather the constitution has strengthened it with a number of experts in Islamic jurisprudence and legal scholars^(xxxiii).

The formation of the Federal Court in accordance with the 2005 Constitution differs from the formation stipulated in the State Administration Law for the Transitional Period, and the law forming the Federal Court was not issued in accordance with the text of Article 92/Second of the Constitution. Rather, the Federal Court is still proceeding in accordance with the applicable laws that were issued before the Permanent Constitution.

Second: The financial and administrative independence of the Federal Court

Article (43/A) of the State Administration Law for the Transitional Period affirmed that the judiciary is independent and not subject in any way to the executive authority. The Federal Supreme Court enjoys administrative and financial independence and its work is purely judicial. This principle is based on Article 92/First of the 2005 Constitution^(xxxiv).

Article (43/c) of the State Administration Law stipulates that the National Assembly is obligated to establish an independent and adequate budget for judges, and Article (45) of the State Administration Law makes supervision of the judiciary carried out by the Supreme Council, which supervises the federal judiciary and manages the Council's budget. Article 1 of Federal Supreme Court Law No. 30 of 2005 stipulates that the court exercises its duties independently and is subject to no authority other than the law.

The effective Constitution of 2005 stipulated many guarantees that confirm the independence of the Federal Supreme Court. Article (87) of the Constitution referred to the independence of the judiciary, while Article (88) of the Constitution affirmed the independence of judges in their work and not to be subject to the influence of any authority other than the authority of the law, and a ban on any authority. Interference in the affairs of justice. Article 90 of the Constitution stipulates that the management and supervision of the affairs of the judicial authority shall be carried out through the Supreme Judicial Council.

Third: Oversight of the constitutionality of laws and their role in achieving the supremacy

of the constitution in light of Order 30 of 2005 and the 2005 Constitution in force.

Legislative Order (30) of 2005 was issued in accordance with the constitutional text in Article 44/A of the Iraqi State Administration Law for the Transitional Period. A court shall be established, called the Federal Supreme Court, and it shall exercise its duties independently, with no authority over it except the law. After the end of the provisions of the State Administration Law, the 2005 Constitution was issued, which Article 130 states: "The legislation in force remains in force Unless repealed or amended in accordance with the provisions of this Constitution), the effective 2005 Constitution added broader powers to the Federal Court than what was stated in the State Administration Law for the Transitional Period^(xxxv).

The Federal Court is competent to monitor the constitutionality of laws, which is its exclusive and inherent jurisdiction in accordance with what is stated in the State Administration Law. Cases are brought before it through a claim from a plaintiff or by filing it through another court. The Federal Court is responsible for adjudicating disputes related to the legitimacy of laws, decisions, regulations, instructions and orders^(xxxvi). Issued by any party that has the right to issue it Article 5 of Order 30 of 2005 stated: "The President of the Court shall call its members to convene sufficiently before the specified date, and its meeting shall not be valid except in the presence of all its members, and its decisions shall be issued by a simple majority, or decisions to settle disputes between the federal government and the governments of regions, municipalities, and local administrations shall be issued by a two-thirds majority The 2005 Constitution effective in Article (93) stipulates that the Federal Supreme Court has the jurisdiction to monitor the constitutionality of laws, including laws issued by the legislative authority and subsidiary legislation represented by the regulations in force ^(xxxvii), interpreting the texts of the Constitution and adjudicating cases that arise from the application of federal laws, administrative decisions, instructions and procedures issued by Federal authority, adjudicating conflicts of jurisdiction Conflict of jurisdiction between the judicial bodies of the region, or governorates not organized into regions, and the approval of the final election results ^(xxxviii). The Federal Court's oversight shall be subsequent oversight, and it shall not consider draft or proposed laws before their issuance^(xxxix). The law gives the Council of Ministers, interested individuals and others the right to appeal directly to the court. The Iraqi constitutional legislator centralized oversight, and made the Supreme Federal Court in Iraq exercise supervisory jurisdiction over the constitutionality of laws.

Abstention control in the Federal Supreme Court:

Text of the Internal Regulations of the Federal Supreme Court in Iraq No. 1 of 2005 in Article 3 (If a court requests, on its own initiative, during its consideration of a case, to decide on the legality of a text in a law, legislative decision, regulation, or instructions related to that case, it shall send the requested request with reasons to the Federal Supreme Court. for decision, and this request is not subject to a fee It is clear from the text that the legislator specified that oversight of the constitutionality of laws falls within the jurisdiction of the Federal Court, provided that the request is submitted by the various types of courts. The oversight exercised by the Federal Court is over a legal text, a legislative decision, instructions, or a system, and that deciding on the constitutionality of a legal text affects... The ruling issued by the court that requires the court to take a decision to postpone the case until the Federal Supreme Court issues a decision on the application submitted to it.

The legislator granted people the right to appeal the unconstitutionality of a text before the Supreme Court in an indirect manner, restricted to the acceptance of the court before which the original lawsuit is being heard, when one of the parties to the lawsuit argues that the law is unconstitutional. If it considers the argument to be serious, the court will transfer the appeal to the Federal Supreme Court after paying the fees. Here, the court

postpones consideration of the case until the Federal Court decides whether the legal text is constitutional or not. Abstention oversight is characterized by being defensive, unlike oversight through the original lawsuit, that is, it is raised on the occasion of a case presented to the courts that is intended to implement a law, and the concerned party argues that it is unconstitutional^(xI). Likewise, the task of the judge, if he is certain that the law violates the provisions of the Constitution, is limited to abstaining from applying it in the presented case. Before him, the ruling issued in the case of a subsidiary defense has relative authority limited to the subject matter of the dispute and its parties^(xII).

We find that the Federal Supreme Court has the inherent jurisdiction to consider the constitutionality or unconstitutionality of the legal text referred to it based on a request issued by the trial court on its own initiative or based on a plea from one of the opponents in the case if it is proven that the challenge is serious.

Oversight of cancellation in the Federal Supreme Court:

The Federal Supreme Court has jurisdiction to consider lawsuits to monitor the constitutionality of laws, regulations, decisions, instructions, and orders, through a direct lawsuit called an annulment lawsuit, because the party that filed the appeal filed it directly before the Federal Court based on what was stipulated in Article 5 of the Federal Supreme Court's internal regulations No. 1 of 2005, where It states that if requested by one of the official authorities On the occasion of an existing dispute between it and another party to decide on the legality of a text in a law, a legislative decision, a system, an instruction, or an order, the request is sent as a lawsuit to the Federal Supreme Court, explaining it with its supports, requesting a clarification of the constitutionality of the text, and the request is not subject to a fee (). Based on this, Article 5 of the Federal Court's internal regulations, it is assumed that there is a dispute in order to file an annulment lawsuit before the court, indicating the reasons from the official authority. The request is signed by the competent minister or signed by the head of the entity that is not linked to a ministry^(xIII).

Article (4 / Second) of Federal Court Law No. 30 of 2005 stipulates the settlement of disputes related to the legitimacy of laws, decisions, regulations, instructions and orders issued by any party that has the right to issue them and the cancellation of those that do not conflict with the provisions of the Law of Administration of the Iraqi State for the Transitional Period. It shall be based on a request from a court, an official body, or a plaintiff with an interest. Based on this text, every plaintiff, whether an entity or an individual, is allowed to file a lawsuit before the Federal Supreme Court to consider the constitutionality of laws or not^(xIII).

The authority of the decisions issued by the Federal Supreme Court shall be absolute and binding on all authorities and not subject to all forms of appeal, and its decisions shall have the force of *res judicata* ^(xIV), and a ruling of the unconstitutionality of a law requires its invalidation and cancellation *vis-à-vis* all, and a law shall be considered as if it had not existed and all courts and state bodies shall be obligated not to Its application will resolve the dispute over its constitutionality once and for all^(xIV).

Conclusion:

This study addressed the topic of (mechanisms guaranteeing the principle of the supremacy of the constitution in the Iraqi constitutional judiciary) by highlighting the status of the supremacy of the constitution in the Iraqi constitution, Iraq, and clarifying the role of the constitutional judiciary in consolidating the principle of the supremacy of the constitution by noting the constitutional organization of the Iraqi Federal Supreme Court as the only body authorized to exercise judicial oversight over the constitutionality of laws, in addition to reviewing its powers and the constitutional mechanisms followed to ensure achieving the supremacy of the constitution by subjecting public authorities to

the provisions of its constitution Carrying out its work.

We reached a number of results and recommendations, which we present below:

Search results:

1-The primary goal of judicial oversight is to achieve the principle of the supremacy of the constitution and ensure its respect, so that the constitution is supreme, and public authorities must respect its texts, adhere to its limits, and act within the scope it delineates, that is, submit to it and act according to it.

2- The basic task of the constitutional judiciary is to verify the extent of conformity of legal texts with the rules and provisions of the Constitution and to repeal laws in the event that they conflict with the constitutional rules.

3-The Iraqi Basic Law of 1925 is the first constitution among the Arab constitutions that introduced judicial oversight of the constitutionality of laws.

4-The state law for the transitional period is considered among the advanced constitutions that stipulate judicial oversight of the constitutionality of laws.

5- The constitutional judiciary plays an effective and important role in preserving the principle of the supremacy of the Constitution and ensuring that the legislator does not violate the texts, provisions and principles of the Constitution.

6- The efforts of the constitutional judiciary came in seeking to give the constitution the prestige and status that ensures its survival and respect by all, rulers and ruled.

7- The legal value of the decisions of the Federal Supreme Court is final and binding on all.

Recommendations:

1- Public authorities' commitment to and compliance with the rulings issued by the Federal Supreme Court, in application of the principle of the supremacy of the Constitution, as it is the judicial body entrusted with protecting the Constitution.

2- Judicial oversight exercised by the competent judicial body must be effective in matters related to the rights and freedoms of individuals.

3- Consolidating cooperation and solidarity between the judiciary and other authorities in order to protect the Constitution from violation and attack.

4- Reorganizing the work of the constitutional judiciary to achieve the desired goals of constitutional oversight.

5- It requires the constitutional legislator to reconsider Article 61 VI/B related to relieving the President of the Republic from his position after he is convicted by the Federal Supreme Court (of high treason, violating the Constitution, or breaking the constitutional oath). This requires a vote by an absolute majority of the number of members of Parliament, and this conflicts with Article 94 of the Constitution stipulates that the rulings issued by the Federal Court have absolute authority and apply to everyone.

Footnotes:

ⁱ⁾ D. Issam Ali Al-Debs: The Mediator in the Constitutional System, 1st edition, Dar Al-Thaqafa Publishing House, Jordan, 2014, p. 376.

ⁱⁱ⁾ D. Ali Youssef Al-Shukri: Oversight of the Constitutionality of Legislation in Iraq, Al-Alamein Publishing, 1st edition, 2020 AD, p. 34.

ⁱⁱⁱ⁾ D. Sami Gamal El-Din: Constitutional Law and Constitutional Legitimacy in Light of the Constitutional Court's Judgment, 2nd edition, Mansha'at Al-Ma'arif, Alexandria, Egypt, 2005, p. 122.

- iv) Tom Jack. Bourdon J.m: pointier J.Cl. Rice, Droit constitutionnel et institutions polit , qnes,1980 p.123.
- v) D. Ismail Marza: Constitutional Law, a comparative study of the Libyan Constitution and other Arab constitutions, Dar Al-Malak Publications, Baghdad, 2007, p. 58.
- vi) D. Abdul Aziz Muhammad Salman: Constitutional Control of Laws, Dar Al-Fikr Al-Arabi, 1st edition, 1995, p. 134.
- vii) D. Issam Ali Al-Debs: The Mediator in the Constitutional System, op. cit., p. 376.
- viii) D. Sami Gamal El-Din: Constitutional Law and Constitutional Legitimacy According to the Constitution 2014, published by Manshaet Al-Maaref, Alexandria, Egypt 2018, p. 144.
- ix) D. Noman Ahmed Al-Khatib: Principles of Constitutional Law, Mutah University Publisher, Jordan, 1993, p. 96.
- x) Andre Hauriou, Droit constitutionnel ET Institutions Politiques, 1975,P.32.
- D. Muhammad Refaat Abdel Wahab: Constitutional Control of Laws, New University House, Alexandria, Egypt, 2010, p. 22.
- xi) Dr. Sami Gamal El-Din: Constitutional Law and Constitutional Legitimacy, Al-Ma'arif Establishment, Alexandria, Egypt, 2017, p. 139.
- See also: D. Hussein Othman Muhammad Othman: Constitutional Law, University Press House, Alexandria, Egypt, 2002, p. 28.
- xii) D. Muhammad Refaat Abdel Wahab: Constitutional Law, General Constitutional Principles, New University House, Alexandria, Egypt, 2016, p. 107.
- xiii) D. Amin Atef Saliba: The Role of the Constitutional Judiciary in Establishing the State of Law, Modern Book Foundation, Tripoli, Lebanon, 2002, p. 77.
- xiv) D. Issam Ali Al-Debs: The Mediator in the Constitutional System, op. cit., p. 380.
- xv) D. Abdel-Al Sayed Ahmed: The role of the judiciary, 3rd edition, Dar Al-Muhammadi for Printing and Publishing, 2013, p. 18.
- xvi) Nari Bilal Abdullah: Master's Thesis (The Constitutional Court for the Protection of Public Rights and Freedoms) An-Najah National University, Palestine, 2018, p.20.
- xvii) Article (82, paragraph 3) of the Iraqi Basic Law 1925 indicated .
- xviii) D. Ismail Marza: Constitutional Law, a Comparative Study of the Constitutions of Arab Countries, 2nd edition, Ward Publishing House, Jordan, 2015, pp. 370-371.
- xix) See Article 81 of the Iraqi Basic Law 1925.
- xx) D. Maha Bahjat Younis: Ruling the unconstitutionality of a legislative text and its role in strengthening the state of law, House of Wisdom Publisher, Baghdad, Iraq, 2009, p. 277.
- xxi) D. Ihsan Hamid Al-Mafarji and others: The General Theory of Constitutional Law and the Constitutional System in Iraq, 4th edition, Al-Atak Publishing, Cairo, 2011, p. 321.
- xxii) Ali Youssef Al-Shukri, Oversight of the Constitutionality of Legislation in Iraq, op. cit., p. 404.
- xxiii) See Article 5 of the Supreme Constitutional Court Law No. 159 of 1968.
- xxiv) D. Tawfiq Ramadan Rawandzi: The Role of the Federal Supreme Court in Oversight of the Constitutionality of Laws, 1st edition, published by Al-Wafa Legal Library, Alexandria, Egypt, 2016, p. 154.
- xxv) Ali Youssef Al-Shukri: Oversight of the Constitutionality of Legislation in Iraq, op. cit., p. 409
- xxvi) See Article (1) of the Federal Supreme Court Law No. 30 of 2005.
- xxvii) D. Tawfiq Ramadan Rawandzi: The role of the Federal Supreme Court in monitoring the constitutionality of laws, op. cit., p. 161.
- xxviii) D. Ali Youssef Al-Shukri: Oversight of the Constitutionality of Legislation in Iraq, previous reference, pp. 417 and 440.
- xxix) See Article (4) of the Federal Supreme Court Law.
- xxx) D. Tawfiq Ramadan Rawandzi: The Role of the Federal Supreme Court in Oversight of the Constitutionality of Laws, 1st edition, published by Al-Wafa Legal Library, Alexandria, 2016, p. 172.
- xxxi) D. Ali Youssef Al-Shukri, previous reference, p. 438.
- xxxii) Ali Youssef Al-Shukri: Oversight of the Constitutionality of Legislation in Iraq, previous reference, p. 86.
- xxxiii) D. Tawfiq Ramadan Rawandzi: The role of the Federal Supreme Court in monitoring the constitutionality of laws, op. cit., p. 162.
- xxxiv) D. Tawfiq Ramadan, same reference, p. 164.
- xxxv) D. Muhammad Mutlaq Hassan: Constitutional Protection of Political and Civil Rights, New University House, Alexandria, Egypt, 2019, p. 161.
- xxxvi) D. Ali Youssef Al-Shukri: Oversight of the Constitutionality of Legislation in Iraq, op. cit., p. 417.
- xxxvii) D. Muhammad Taha Hussein: Principles and Provisions of the Constitutional Judiciary, 1st edition, publisher of Dar Al-Salam Legal Library, Najaf, Iraq, 2021 AD, p. 67.
- xxxviii)) See Article 93/Second of the 2005 Iraqi Constitution in force.

^{xxxix}) D. Farid Karim Ali: The role of the Federal Court in Iraq in ensuring the sovereignty of the constitution, PhD thesis, Faculty of Law, Alexandria University, Egypt, 2015, p. 53.

^{xi}) D. Tawfiq Ramadan Rawandzi: The role of the Federal Supreme Court in monitoring the constitutionality of laws, op. cit., p. 206.

See Article 4 of the Internal Regulations of the Federal Supreme Court in Iraq No. 1 of 2005.

^{xli}) D. Ali Sahib Jassim: Constitutional and Legal Guarantees for Human Rights, 1st edition, publisher of Al-Wafa Legal Library, Alexandria, Egypt, 2018, p. 226.

^{xlii}) D. Ali Youssef Al-Shukri, previous reference, p. 477.

^{xliii}) D. Tawfiq Ramadan Rawandzi: The role of the Federal Supreme Court in monitoring the constitutionality of laws, op. cit., p. 211.

^{xliv}) See Article 94 of the 2005 Iraqi Constitution in force.

^{xlv}) D. Raed Saleh Ahmed Qandil: Oversight of the Constitutionality of Laws, Dar Al-Nahda Al-Arabiya, Cairo, Egypt, 2010, p. 43.