

# The Mechanisms of Constitutional Judiciary in protecting the Rights of Future Generations

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## Abstract

The subject of the constitutional judiciary occupies a great place in consolidating the legal rules identical to the constitution, especially those related to public rights and freedoms, not at the local level, but beyond that to the global level, where there is agreement between all countries through the legal systems belonging to them that constitutional law is the supreme and supreme law in the state, based on the fact that the constitution is the best to express the will of the people and their aspirations and the constants that they believe in from religion, language, culture and cultural heritage. And human rights and freedoms in general. This is what makes the constitution immune from prejudice or work to violate it, as the researcher seeks through this research to highlight the importance of the constitutional judiciary, including its means to ensure the protection of rights and freedoms guaranteed by the constitution, and the extension of this protection of the rights of future generations and we will address this topic through two main sections, the first section will be allocated to protect the rights of future generations through control over the constitutionality of laws and the extent of the impact of this control in maintaining The rights of future generations and a review of the position of the Iraqi constitutional judiciary in this field. As for the second section, it will focus on other means of constitutional justice in protecting the rights of future generations, including (interpretation / confrontation / justice) with the mention of some practical applications in this regard.

**Keywords:** Constitution, Constitution's supremacy and supremacy, Public rights and freedoms, Future generations Constitutional judge, Deduction and analysis, Justice and equality, Equal opportunities.

## 1. Introduction

The aim of all peoples of the world is to adopt the principles of justice, equality and equal opportunities through the elevation and supremacy of the provisions of the Constitution in the various legal and political systems in order to enjoy a life for all individuals in which democracy and freedom prevail under laws and regulations that are not tainted by any defect that distances individuals from their right to enjoy their freedoms and a decent life, or in return impose burdens on them that limit or prevent them from enjoying the benefits of their rights and freedoms guaranteed to them by the Constitution.

If this is the goal of all peoples, it requires that there be means and requirements to achieve this end, provided that these means are in the hands of an authority capable of activating these means to achieve the goal of the peoples that we mentioned, and this authority is the best represented by the constitutional judiciary, where it has many means that represent the best effective guarantee to endorse the principles of legitimacy and uphold the provisions of the constitutional document and maintain the supremacy and superiority of this document over the provisions of other laws and regulations, and this What we will address during this research.

First: The importance of research:

The importance of the research lies in how the constitutional judge uses the means and mechanisms available to him and employs them to protect the public rights and freedoms guaranteed by the constitution, and the skill of the constitutional judge in extending this protection and extending it to include the protection of the rights of future generations, based on the goal and will of the constitutional legislator emanating from the ambition and hopes of the people and their aspirations for a better future, because the constitutions of peoples generally reflect the state of the future in all its aspects and dimensions, as they do not look at the past except with the aim of drawing lessons and lessons and do not stop at the present only , especially with regard to rigid constitutions that are difficult to amend, which makes the constitutional legislator look with broad horizons towards the future as well, and this comprehensive view of the broad horizon and features of which the constitutional judge deduces the skill of protecting the rights of future generations.

Second: Research Objectives:

This research aims to achieve a set of goals and objectives, most notably:

- 1- Clarify the foundations on which the constitutional judge relies in ensuring the protection of public rights and freedoms guaranteed by the Constitution, and preventing prejudice to them under any pretext whatsoever.
- 2- Highlighting the importance of the means possessed by the constitutional judge, namely (monitoring the constitutionality of laws, interpretation, confrontation, justice) and its role in securing the necessary protection of public rights and freedoms stipulated in the constitution for current and future generations.
- 3- Work to encourage and revive the legal culture among all spectrums of society through research, analysis and deduction on the right of future generations to the rights and freedoms guaranteed by the constitution like their peers from the current generations based on the principle of justice, equality and equal opportunities contained in most of the world's constitutions

Third: the problem of research:

The problem of the research emerges from the absence of explicit constitutional provisions in some constitutions related to the protection of the rights of future generations, and how the constitutional judge with the existence of this case can secure the guarantee and protection of the rights of future generations, including the Constitution of the Republic of Iraq for the year (2005),

which will be the focus of our study in this research, and the following questions branch out from this problem:

- 1- How can the constitutional judge derive rulings and reasons from other constitutional texts related to public rights and freedoms and from the preamble of the constitution in order to impose and ensure the protection of the rights of future generations?
- 2- Can the constitutional judge, whenever the public interest requires, use the means available to him to defend the rights of future generations, even if this does not fall into the heart of the constitutional lawsuit pending before him based on his role described as the protector and defender of the constitutional document?
- 3- How can the will and interest of the people, who always aspire to a better life and future, be closely linked on the one hand, and the goal and goal of the constitutional legislator and the vision of the constitutional judge, on the other hand, with regard to the duty to protect the rights of future generations?

#### Fourth: Research hypothesis:

The hypothesis on which this research is based is that the constitutional texts in general when they were developed and formulated, they simulate the future and not the past (except for rare and for some limited cases), which entails the inability to frame these texts with a specific time frame Hence we assume in this research that there is constitutional protection for the rights of future generations even if they are not explicitly stipulated in the Constitution, where they can be introspected and disclosed through the other provisions of the Constitution and the preamble assuming that the Constitution Each part is complementary to the other, thus forming an integrated constitutional framework that protects and preserves the rights of future generations.

#### Fifth: Research Methodology:

The researchers followed in this research the method of descriptive analytical approach and sometimes be comparatory, whenever the need for comparison through the analysis of the constitutional texts of some countries that have come a long way in the field of constitutional laws, in addition to studying the reality of the Federal Supreme Court in the Republic of Iraq through the analysis of the judicial issued by it in the field of means used by the constitutional judge in the protection of the constitution and a statement of the importance of these judicial and what you need to reach the model situation of the constitutional courts in Other countries.

#### Sixth: Research Plan:

We will rely in this research on the bilateral division to cover the research material to reach the expected results of it by dividing it into two main sections as follows: The first section is entitled (Protection of the rights of future generations through oversight of the constitutionality of laws) The second section will be on (Protection of the rights of future generations through another constitutional judiciary means).

The first topic: protecting the rights of future generations through monitoring the constitutionality of laws

In order to clarify the role of constitutional oversight of laws and the effectiveness of this oversight in consecrating and protecting the rights of future generations, we must address through two demands:

The first requirement: the concept of oversight of the constitutionality of laws

In fact, there is no benefit to talk about the principle of the supremacy of the constitution if there is no penalty imposed on those who affect this principle and violate the constitutional rules, and on this basis we find that the close relationship between constitutional stalemate and the principle of the supremacy of the constitution, because transcendence imposes stagnation, and stagnation is a logical result of the principle of supremacy, and in order to ensure and protect the principle of supremacy decided the principle of control over the constitutionality of laws and on this basis the legal rules contrary to the provisions of the rigid constitution are void even in the absence of the text. Therefore, in the heart of the constitutional document, the control over the constitutionality of laws is not raised unless we are in front of a rigid constitution and it is not possible to talk about censorship if we are in front of a flexible constitution, because the flexible constitution does not enjoy any formal supremacy over ordinary legal rules.<sup>1</sup>

The adoption of oversight of the constitutionality of laws in various democratic systems (albeit in different forms and powers) constituted a qualitative leap, if not radical, in the field of traditional constitutional law, as this matter was considered a basic joint, and a development in the science of public constitutional law because the application of this control was the basis for the creation of a new constitutional authority that has a fundamental role in protecting the principle of the supremacy of the constitution, human rights and freedoms, and preserving the principle of national sovereignty represented in the constitution<sup>2</sup>.

Since modern constitutional documents all determine the competencies of state bodies, including legislative and executive bodies, they have in many countries regulated the issue of finding control over the activity and work of those bodies, including the organization of control over the conformity of judicial decisions issued by them to the principles contained in the Constitution, and in a way that restricts state bodies within the context of the In the light of this, the work and activity of the State organs is renewed, so that they do not depart from what the Constitution has decreed for them, and the supervision has moved to stop and abolish the transgression, thus guaranteeing the supremacy of the Constitution and His Highness<sup>3</sup>.

Forms of control over the constitutionality of laws:

It is recognized that oversight of the constitutionality of laws is achieved by two different methods of oversight, namely political oversight and judicial oversight, and each method has its own pattern and justifications, and that the preference of one method over the other in applications is to the extent that it achieves results in protecting the provisions of the Constitution

Dr<sup>1</sup>. Ihsan Hamid Al-Mufarji, Dr. Katran Zughayr Nehme, Dr. Raad Naji Al-Jeddah, The General Theory of Constitutional Law and the Constitutional System in Iraq, Al-Ata Company for Book Makers, Cairo / Fourth Edition / 2010, p. 171.

Dr<sup>2</sup>. Amin Atef Saliba, The Role of Constitutions and National Sovereignty in the Light of International Treaties and Resolutions , Modern Book Foundation / Lebanon / 2013.

Dr<sup>3</sup>. Faiq Zaidan / Constitutional Judiciary Control of the Constitutional Boundaries between the Authorities, Dar Al-Warith for Printing and Publishing / Iraq / Karbala / 202332.

and preventing their transgression, in order to achieve the end for which censorship was imposed<sup>4</sup>.

#### 1- Political oversight of the constitutionality of laws (non-judicial control):

Some constitutions have entrusted control over the constitutionality of laws to a political body in order to verify the conformity of the provisions of the law with the constitution, and this body may be formed either by appointment, whether by the executive authorities or by the legislative authorities, or through elections, and political control is a previous control because it is mostly focused on the law before its issuance (i.e. on the draft law) and therefore it is considered preventive control aimed at getting rid of the unconstitutionality of the law before it occurs, Many countries have taken political control over the constitutionality of laws, especially the constitutions of socialist countries, but the forms of censorship in these countries vary from one constitution to another, and one of the prominent examples of countries that have adopted political control is France<sup>5</sup>.

#### 2. Judicial oversight:

It consists of the judicial authority undertaking the task of monitoring the constitutionality of legislation, and this control takes one of two forms: -

a - Abstention control: - It is intended that the judiciary has the right to refrain from applying legislation in the case at hand, because of its violation of the Constitution, whether on the same court or at the request of one of the litigants, and the court in this case does not rule on the invalidity of legislation or its cancellation, but its authority stands at the limit of refraining from applying it, and thus its judgment does not restrict other courts that It may adopt the same legislation if it deems it not contrary to the Constitution.

b- Oversight of repeal, which means that the judiciary, if the order is submitted to it to decide on the constitutionality of a particular law, shall have the right to rule on its repeal when it is found to be contrary to the Constitution, and its judgment shall result in the invalidity of that legislation and consider it as if it were not.

Originally, the ordinary courts are not competent to rule on the repeal of legislation contrary to the Constitution, but rather to a special constitutional court established for this purpose, whose ruling on the repeal shall have absolute force before all other courts and various bodies in the State.

And the control of cancellation in terms of its timing, either to be:

1- Precedent for the issuance of legislation: - Where legislation is referred to a Supreme Court for constitutional examination, and if it decides that it is unconstitutional, it is returned to the legislative body to amend it within the limits of the constitution.

2- Subsequent to the issuance of legislation: In this case, the court entrusted with the control of the constitutionality of the legislation will be exposed to legislation already issued, and not as in the previous control, where it is exposed to a mere draft legislation, and the issue of

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<sup>4</sup>Judge Abdul Sattar Nahi Abed Aoun, Constitutional Advocacy and its Procedures in the Iraqi Legal System / Dar Al-Masala Baghdad / 2024 / p. 21.

<sup>5</sup> Dr. Ihsan Hamid Al-Mufarji, et al., op . cit ., pp. 171-172 .

unconstitutionality in this case is raised through a lawsuit filed by the stakeholder before the court entrusted with constitutional oversight<sup>6</sup>.

The United States of America was one of the first countries to take judicial control over the constitutionality of laws, as for Iraq, it took judicial control over the constitutionality of laws, and entrusted this task to the Federal Supreme Court.

The second requirement: the role of monitoring the constitutionality of laws in protecting the rights of future generations

The control of the constitutionality of laws is one of the important legal means to devote the protection of the rights and freedoms guaranteed by the Constitution through the objective of this control of emphasizing respect for the principle of the supremacy of the Constitution and thus the non-issuance of any law that is contrary to the Constitution, and there is no difference in the fact that the Constitution is written or customary, in addition to another very important fact that the principle of the supremacy of the Constitution is one of the principles recognized in the jurisprudence of constitutional law, even if it is not stipulated in the original constitutional document<sup>7</sup>.

Thus, we are in front of a guarantee that does not accept interpretation, which is not to prejudice the rights and freedoms stipulated by the constitution explicitly or implicitly, which stands in the way of the issuance of any legislation that violates the constitution, especially the constitutional texts that deal with rights and freedoms in general, and the extent to which this reflects on the protection and maintenance of the rights of future generations in particular, and we will try to highlight the importance of the role of oversight of the constitutionality of laws in protecting the rights of future generations through the position of the constitutional judiciary in this area in Iraq.

The importance of the role of constitutional oversight of laws in Iraq to protect the rights of future generations under the 2005 Constitution:

The Federal Supreme Court is the main protector of the principle of constitutional legitimacy, and the true image of constitutional justice that every specialist and citizen dreams of achieving in light of the principles that have been established in the Constitution of the Republic of Iraq for the year 2005, represented in the principle of the sovereignty of the people, the principle of separation of powers, the principle of the rule of law, and other basic principles, as well as that the Federal Supreme Court has direct contact with the existing political situation in Iraq, so the constitutional judiciary is one of the most important guarantees provided by the regulations Constitutionalality for the protection of freedoms and rights in constitutions with a democratic approach<sup>8</sup>.

We have already explained that the Constitution of the Republic of Iraq (2005) did not explicitly address the provision for the rights of future generations, but it is assumed that the constitutional

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<sup>6</sup>Dr. Abdel Hamid Al-Shawarbi, Counselor Ezz El-Din Al-Danasouri / The Constitutional Case / Knowledge Foundation / Egypt (Alexandria) / 2001 / pp. 25-26.

<sup>(7)</sup> The principle of supremacy has been explicitly stipulated in the Constitution of the Republic of Iraq for the year (2005) , see Article (13) of the Constitution, in addition to has been Confirmation Based on this Principle In many resolutions Federal Court Supreme Numbered Resolution (156 and unified 160 / Federal/٢٠٢٢) On 26 / 9/ 2022 Publish on the STL website <https://www.iraqfsc.iq> Date of visit 20/7/2024.

<sup>8</sup> Judge Awwad Hussein Yassin Al-Obaidi / The Constitutional Case in the Light of the Opinions of Jurisprudence and the Rulings of the Constitutional Judiciary / Arab Cen Publishing and Distribution / Cairo / First Edition / 2022, pp. 112-113.

texts when they are developed, they simulate the future and not the past, especially rigid constitutions, which results in the inability to frame these texts with a specific time frame after their development, and from here we will learn about the role of the Iraqi constitutional judiciary through monitoring the constitutionality of laws in accordance with the text of Article (93 / First) of the Constitution of the Republic of Iraq for the year (2005) and Article (4/ First) of the Federal Supreme Court Law No. (30) of (2005) as amended by Law No. (25) of (2021) and Article (19) of the Internal Regulations of the Federal Supreme Court No. (1) of (2022), this oversight that plays an important role in consolidating the protection of the rights of future generations, those rights that are deduced through many constitutional texts and the preamble of the constitution, which constitutes an integrated constitutional framework, to activate the role of the basic constitutional judiciary from the fact that it protects and preserves the constitution, especially public rights and freedoms, Therefore, we will review some of the judicial decisions of the Federal Supreme Court in this regard:

Federal Court Judicial Decision No. (59/Federal/2012 and its Unified 110/Federal/2019) issued on 15/2/2022.

According to this judicial, the Oil and Gas Law of the Kurdistan Regional Government No. (22) of 2007 was ruled unconstitutional and canceled for violating the provisions of Articles (110, 111, 112, 115, 121 and 130) of the Constitution of the Republic of Iraq for the year (2005).

Comment on the judicial:

The above resolution stated that Article (111) of the Constitution stipulates that oil and gas belongs to all the Iraqi people in all regions and governorates, and accordingly, the expression of the Iraqi people includes all Iraqis without exception from north to south and from east to west, regardless of nationality or religion, and that oil and gas throughout Iraq is the property of the Iraqi people. etc. It requires the knowledge and knowledge of the Iraqi people of the amount of oil and gas revenues as he is the owner of them to determine how to distribute them, it is not possible that the owner does not know the revenues of his property and how to distribute them.

The researcher believes that the expression (Iraqi people) which was mentioned in this resolution is based on the broad concept of the people, which includes the past, present and future, the people is a homogeneous and interconnected fabric of these times with their past, present and future linked to each other by historical, civilized, social, economic and political links, and we calculated in that what was stated in the preamble of the Constitution (2005) (We are the people of Iraq who are just emerging from its depression, and looking confidently forward to its future ... This means that the present and rising people look forward with the same confidence to the future, in addition to that, the aforementioned Federal Court judge came to confirm the adoption of the method of fair distribution of wealth, and granting equal opportunities to all, and here the role of the constitutional judge emerged in protecting the rights of future generations in natural and mineral resources, including (oil and gas), even if this was implicitly, and this is what gives importance to the above-mentioned Federal Supreme Court's judicial decision.

Federal Supreme Court Judicial Decision No. (233 and its units 239, 248 and 253/Federal/2022) issued on 30/5/2023.

According to this judicial decision, the law on the continuation of the fifth session of the Iraqi Kurdistan Parliament No. (12) of (2022) issued by the Iraqi Kurdistan Parliament in its regular session No. (11) on (9/10/2022) was ruled unconstitutional, and the term of the fifth session of the Kurdistan Regional Parliament of Iraq was considered unconstitutional at the end of the legal period specified for it under Article (51) of Law No. (1) of (1992) amended by Article III of Law No. (5) of (1998). The law of the first amendment to Law No. (1) of (1992), and considering all that was issued by the Parliament of the Kurdistan Region of Iraq after that legal period constitutionally invalid based on the provisions of Article (13/II) of the Constitution of the Republic of Iraq for the year (2005).

#### Comment on the judicial:

The researcher believes that the above-mentioned judicial has come to confirm what has been approved by the majority of the constitutional judiciary in the world, as well as to consolidate what resulted from constitutional jurisprudence of the principle of great importance, which is the principle of periodic elections in line with the text of Article (5) of the Constitution (2005) of the fact that the people is the source of authorities and their legitimacy exercised by direct public secret ballot, i.e. the citizen's right to vote and nominate, as the Constitution guarantees the rights stipulated in its core protection from its practical aspects. It is not one of its theoretical data, and it was stated in the merits of the aforementioned judicial decision that maintaining the continuity of the electoral process periodically is very important, as the periodicity and continuity of elections constitute a pillar of the democratic system based on the existence of an elected parliament for a specific period of time, so the importance of this criterion should not be underestimated because periodicity, restriction and timetables largely create the principle of government accountability from the people, and a continuous renewal of the principle of the sovereignty of the people, charters and instruments. The international constitutions confirmed the periodicity of elections of various kinds, parliamentary and local councils, and the above resolution included that the right to vote, i.e. the right of the citizen to be (voter or elected), is one of the constitutional rights that embodies the democratic principle on which the constitutional system in Iraq is based.

The researcher also believes that the importance of the judicial of the Federal Supreme Court mentioned above lies in preserving the right of future generations in elections and candidacy, because if the parliamentary session continues its work despite the end of the legal period specified for it, this means confiscating the right of the next generation to vote and nominate <sup>(9)</sup>, and express what it wants in which represents its will because the people are the source of powers, and each generation has aspirations and hopes that differ from the generation before it and this is the nature of life for what is characterized by of renewed future changes according to the circumstances and data of each time stage.

The second topic: protecting the rights of future generations through other means of constitutional justice

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<sup>9</sup>Article 20 of the Constitution of the Republic of Iraq (2005) (Citizens, men and women, have the right to participate in public affairs and enjoy political rights, including the to vote, vote and be elected).

The constitutional judiciary in most countries of the world has other means in addition to controlling the constitutionality of laws, where these means meet to achieve one very important goal, which is the maintenance and protection of the constitutional document expressing the will and purpose of the constitutional legislator, and we will address in this section these means, namely (interpretation, address, justice) through three demands and a statement of their role in protecting the rights of future generations, whether these are stipulated Rights expressly in the Constitution, or when these rights are derived from constitutional texts related to public rights and freedoms in the absence of explicit provision for these rights.

The first requirement: constitutional interpretation

The original in the constitutional text to be clear indication of what is meant by it and does not bear the indication of others, because the legislator clarified what he meant and appointed what he wanted, but may be contained contrary to this original texts in which a kind of invisibility or ambiguity or there is a possibility to indicate more than one meaning and then the judge must remove this invisibility and that ambiguity, or weighting one of the meanings and set the intended, and some jurisprudence believes that the word (interpretation) must be seen as a legal term so that the interpreter is not restricted by the literal interpretation of the text, because in such a case he is a translator of the constitutional text and not an interpreter of it, the real interpretation is the one that discloses the real intention of the legislator to establish the constitutional text without being restricted by its literalism, and the constitutional rule is characterized by generality and abstraction, and there are often difficulties in determining its precise scope, and standing on its true meaning, and this is done only through interpretation<sup>10</sup>.

As for the meaning of the terminological interpretation, it differed according to the different vision of the purpose of the interpretation, and its scope, as those who look at the meaning of the interpretation with limitations and restrictions believe that (inferring the legal rules of the provision and determining the meaning they contain so that they can be applied in realistic circumstances).<sup>11</sup>

While another side of the jurists look towards expanding the meaning of interpretation and define it as (clarifying the vague words and complementing the brief texts and graduating what is missing from its provisions and reconciling its contradictory parts<sup>12</sup>).

In the expanded course of the meaning of the interpretation itself, some of them defined it as "a process prior to finding judgment and necessary to obtain it... Any application of the law requires its interpretation."<sup>13</sup>

Thus, it is clear that the meaning of narrow interpretation is limited to the evacuation of the meanings of the texts, while the meaning of the broad interpretation takes cases of clarifying ambiguity, lifting the conflict and completing the legislative deficiency, and then the function of

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Dr<sup>10</sup>. Sabih and Haoh Hussein Jassim Al-Atwani, Dr. Maytham Sharif Handal / Means of interpreting the texts of the constitution, a comparative study / research published in Journal of Al-Muhqiq Al-Hilli for Legal and Political Sciences issued by the Faculty of Law / University of Babylon / Fourth Issue / Ninth Year / 2017.

Dr<sup>11</sup>. Tawfiq Hassan Farag / Introduction to Legal Sciences / Modern Egyptian Office / 1970 - 1971 / p 209.

<sup>12</sup> Dr. Abdul Razzaq Al-Sanhouri, Dr. Ahmed Heshmat / Principles of Law / Press of the Committee for Authorship, Translation and Publishing, Cairo 1938 / p 200 / as reported by Dr. Ali Hadi Attia Al-Hilali / enlightened from the interpretation of the provisions of constitutions, Zain Human Rights Publications, Beirut, first edition, 2016, p. 50.

<sup>13</sup> See Dr. Malik Duhan Al-Hassan, Introduction to the Study of Law, vol. 1, University Press, Baghdad, 1972, p. 466. As reported by Dr. Ali Hadi Attia Al-Hilali / the previous source / p. 50.

interpretation expands and its importance increases, especially in view of the shortcomings of legislative drafting and the length of the era of legislation, which creates a difference between the texts and reality .

As for the meaning of the interpretation of the Constitution or the constitutional interpretation, it is confined to the constitutional rules, specifying their meanings and the scope of their application, by revealing the ambiguity that afflicts them, removing the conflict that may permeate them, or completing the deficiency that has resembled them<sup>14</sup>.

There are means of interpretation, including internal means and external means, either internal means, Verad by a set of means that are based on the analysis of the text directly logical analysis and the conclusion of the provision required of him without resorting to any evidence or documents outside it, and the most important of these means logical conclusion and conclusion by analogy and conclusion of the first door and conclusion concept of violation and this needs to stand on the significance of the texts in terms of linguistic and terminological to carry in their idiomatic meaning if required ().<sup>15</sup>

As for external means of interpretation, if internal rules or means do not help the interpreter to reach the desired meaning, he can resort to external means, including the purpose or wisdom of legislation, travaux préparatoires, historical sources, social conditions<sup>16</sup>.

There are applications of comparative constitutional justice in the logical interpretation of constitutional texts, for example, the use of the US Supreme Court of the method of coordination and integration of texts, in the case of (Mccollough v. Maryland), in which the court was called upon to decide whether the federal constitution gives the US Congress the authority to establish a bank or not, and although the provisions of the Constitution grant Congress the power to regulate trade with foreign countries and regulate trade between states as well as the power to mint money without declaring the authority of Congress to establish a bank The Supreme Court recognized the existence of a constitutional authority for Congress to establish a bank based on the provision of Article 1 item 8<sup>17</sup>, called the Necessary and Proper Clause, which transfers Congress the power to make such laws as it deems necessary and appropriate to advance its constitutional powers. The Supreme Court also indicated that the meaning of the word (necessary) if it comes alone as stated in the disputed text is different from the word (absolutely necessary) or (absolutely necessary). Contained in Article 1, item 10, of the Constitution, which prohibits the constituent states of the Union without the consent of Congress from imposing duties or revenues on imports or exports that are absolutely necessary for the implementation of their inspection and customs laws, since only in the latter case may the provision be made to cover only cases of extreme necessity<sup>18</sup>.

<sup>14</sup> Dr. Ali Hadi Attia Al-Hilali, The General Theory of Constitutional Interpretation and the Trends of the Federal Supreme Court in Interpreting the Iraqi Constitution, Z Human Rights Publications / Beirut / First Edition / 2011 / p. 17.

See<sup>15</sup> Dr. Ramzi Taha Al-Shaer / The General Theory of Constitutional Law / Dar Al-Seyassah Press / Kuwait / 1972 / p 320 and beyond / as reported by Dr. Sarhang Hamid Barzanji / Research entitled Interpretation of the Constitution in the Light of the Provisions of the Iraqi Constitution in Force and the Applications of the Federal Supreme Co published in the University of Duhok Journal for Humanities and Social Sciences / Special Issue Volume 14 / Issue (2) December 2011.

Dr<sup>16</sup>, Ramzi Taha Al-Shaer / previous source / p. 326 / and beyond, as reported by Dr. Sarhang Hamid Al-Barzanji, previous source.

<sup>17</sup>Article 1, item 8, of the amended U.S. Constitution of 1789 (1992) provides that: "Congress shall have the right to enact such laws as may be necessary and appropriate for foregoing powers to be put into effect, and all other powers conferred by this Constitution on the Government of the United States or any administration or employee thereof." Dr<sup>18</sup>, Jawaher Adel Al-Abd Al-Rahman / The Role of the Constitutional Judiciary in Interpreting Constitutional Texts / Dar Al-Nahda Al-Arabiya for Publishing and Distr Cairo / First Edition / 2022 / pp. 181-182.

It is clear from this judgment that the Supreme Court has relied on the approach of coordinating and integrating texts by understanding the meaning of the word (necessary) contained in Article (1) item (8) of the US Constitution in light of its meaning in Article (1) item (10) thereof to reach the correct interpretation of this word used by the legislator, as well as its use of the verbal approach, because if the Constitution mentions the word (necessary) in a particular text and does not restrict it to being maximum or absolute, unlike its use of the phrase (necessary as absolute) in another text of the Constitution.

The Egyptian Supreme Constitutional Court used the approach of coordinating and integrating texts, holding that constitutional texts must be taken as complementary and that the meanings that they generate must be linked to contradictions or disharmonies<sup>19</sup>.

Constitutional texts may not be interpreted in a way that distances them from their intended final purpose, nor be seen as wandering in a vacuum<sup>20</sup>. The Constitutional Court affirmed this meaning by stating that the final say, its controls in rooting and its methods of interpretation are its gateway to disciplined standards that achieve the provisions of the Constitution and their organic unity<sup>21</sup>, since the provisions of the Constitution are complementary and not incompatible<sup>22</sup>. In interpreting the provisions of the Constitution, they should be seen as a single and complementary unit, so that none of them should be interpreted in isolation from other texts, but must be interpreted in a mutually supportive manner that understands its meaning in an understanding that balances them and distances them from conflict<sup>23</sup>.

The role of constitutional interpretation in protecting the rights of future generations:

Constitutional interpretation in general plays a fundamental and important role no less than the importance of constitutional oversight in protecting the provisions of the constitutional document, and creating confidence and reassurance to apply everything contained in this document properly and correctly, and the importance of constitutional interpretation is evident when the rules, provisions and principles are deduced and deduced from the texts of the constitutional document for topics and issues that were not explicitly stipulated by the constitutional legislator, and this is what applies to the subject of our study for constitutions that have not been expressly stipulated On the rights of future generations, including the Constitution of the Republic of Iraq for the year (2005), because the constitutional legislator, no matter how accurate he is in setting constitutional rules, cannot be aware of all the developments and renewed needs of society with the renewal of times and the accompanying circumstances .

Here, the role of the constitutional judge emerges in how to breathe new life into the provisions of the constitution, which is called in constitutional jurisprudence the idea of (living constitution), which means that the interpretation of the constitution must change and adapt to

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Judgment<sup>19</sup> of the Supreme Constitutional Court in Case No. (19) of (8) Constitutional Judicial " issued on April 18, 1992 - The official website of the Egyptian Supreme Court [www.sccourt.gov.eg/SCC/faces/PortalHome.jspx](http://www.sccourt.gov.eg/SCC/faces/PortalHome.jspx) visit date 18/6/2024

Judgment<sup>20</sup> of the Supreme Constitutional Court in Case No. (22) of (8) Constitutional Space issued in the session of January 4, 1992 – The official website of the Egyptian Constitutional Court [www.sccourt.gov.eg/SCC/faces/PortalHome.jspx](http://www.sccourt.gov.eg/SCC/faces/PortalHome.jspx) Visit Date 18/6/2024

Judgment<sup>21</sup> of the Supreme Constitutional Court in Case No. (45) of (13) Constitutional Judicial " issued in the session of March 20 , 1992 - The official website of the Supreme Constitutional Court [www.sccourt.gov.eg/SCC/faces/PortalHome.jspx](http://www.sccourt.gov.eg/SCC/faces/PortalHome.jspx) Visit Date 18/6/2024

<sup>22</sup>Judgment of the Supreme Constitutional Court in Case No. (29) of (11) Constitutional Judicial " issued on March 26, 1994 - The Official Website of the Egyptian Constitutional Court [www.sccourt.gov.eg/SCC/faces/PortalHome.jspx](http://www.sccourt.gov.eg/SCC/faces/PortalHome.jspx) Visit Date 18/6/2024

Judgment<sup>23</sup> of the Supreme Constitutional Court in Case No. (37) of (9) Constitutional Judicial " issued in the session of May 19, 1990 - The official website of the Egyptian Constitutional Court [www.sccourt.gov.eg/SCC/faces/PortalHome.jspx](http://www.sccourt.gov.eg/SCC/faces/PortalHome.jspx) Visit Date 18/6/2024

the evolving political, social and economic conditions in the state, and although the interpretation still begins with the words contained in the text of the constitution, but the emphasis on the literal meaning of those words is less than it is on the spirit that revives them <sup>0.24</sup>

At the heart of this is the issue of the rights of future generations and how to protect and maintain them, hence the role of the constitutional judiciary in interpreting constitutional texts and deriving these rights from them, and we will address this as far as the Federal Supreme Court is concerned under the Constitution of the Republic of Iraq for the year (2005) through some judicial judicial s issued by the aforementioned court in this regard, as the jurisdiction of the Federal Supreme Court to interpret the provisions of the Constitution is held in accordance with Article 93 / II of the Constitution of the Republic of Iraq of 2005 and article 4/second of the Federal Supreme Court Law No. 30 of 2005 as amended by Law No. 25 of 2021 and article 24 of the Internal Regulations of the Federal Supreme Court No. 1 of 2022<sup>25</sup>.

We will classify these judicial judicial s into resolutions that provide direct protection for the rights of future generations, and judicial judicial s that indirectly protect the rights of future generations.

First: Judicial judicial s issued by the Federal Supreme Court that include the direct protection of the rights of future generations:

Federal Supreme Court Judicial Decision No. (97/Federal/2021) issued on 30/3/2022, according to this judicial, the Council of Ministers' judicial decision No. (251) of (2021) issued on 24/7/2021 related to withdrawing the candidacy of the President of the Iraqi University was ruled incorrect.

Comment on the judicial:

The researcher believes that the lack of conditions for requesting interpretation for the lawsuit subject to the aforementioned Federal Court judicial , did not discourage the court from its role in showing the basic concept of the constitutional text through explanation and analysis, based on the goal of the constitutional legislator real, and this is the leading role entrusted to the constitutional judge to protect and maintain the constitutional document even if he is not asked to do so, and this is what distinguishes the constitutional judge from the ordinary judge.

This is evident if we analyze the item s of the aforementioned resolution, to find them interconnected and linked to each other and to reach direct protection of a very important right, if not the most important constitutional right, which is the right to education, and through the explanation and clarification contained in the item s of the above resolution, the right to education was linked to building a generation armed with science and knowledge to be influential and effective in society in its positive form, and the resolution stressed that the future of the country depends on the maturity of human thought. The judicial judicial also stressed that education occurs among the members of society a real fruitful cultural resurgence through which the members of society have the foundations of understanding the present and looking forward to

<sup>24</sup>Rehnquist, W. H. (2007). The Notion of Living Constitution, Harvard Journal of Law & Public Policy. p. 401-415

<sup>25</sup> See article 24 of the Rules of Procedure of the Federal Supreme Court No. 1 of 2022, which stipulates that the authorities and bodies stipulated in article 19 of this system (internal system of the court) Submit a request to the court to interpret a constitutional text that has caused a dispute in application, in accordance with the following procedure etc).

building a better future, and the aforementioned judicial decision also had an important role in establishing a legal principle to protect the rights of future generations, when Article (34 / I / II) of the Constitution was analyzed and interpreted<sup>26</sup>.

Where he stressed that no civilization can be built without science being one of its pillars because it is the main pillar on which civilizations are built and that this can only be done by creating a generation that knows science and appreciates its importance in building society and civilizations, and this has not been enough, but the explanation of the above constitutional text has been continued within this judicial decision to emphasize a constitutional commitment that falls on the relevant authorities, especially the executive authority, to abide by and implement it. By providing the real ingredients for free education at all stages in order to advance the individual and society and developing educational strategies through which all the negatives are overcome and the positives are diagnosed, all this was explained by the constitutional judge down to the emphasis on starting to find a real educational system, why? In order to create a generation capable of advancing society.

The researcher also believes that the process of linking the right to education to create a generation capable of advancing society as stated in this judge on the one hand, and that education leads to building a better future on the other hand, all of this has clear and explicit indications of the intention of the constitutional judge to protect the right of future generations because they are the bright future that the constitutional legislator wanted to extend protection for their rights at all times and times, as the researcher believes that if it were not for the interpretation of the Federal Supreme Court of the constitutional text in question on As mentioned above, the text was taken only at face value, where the Lord asks what the right to education has to do with creating a new generation armed with science and knowledge, and aspiring to build a better future. etc.

But the interpretation and explanation of the Federal Supreme Court had the greatest role in showing the real and basic purpose of the constitutional legislator of the aforementioned text, and the rest of the relevant articles of the Constitution that the right to education is one of the basic rights of great importance for its great impact on the work of other human rights, and that the right to education is linked to many other rights through which one can claim and protect his rights, which is one of the basic rights and we mean (the right to education) that falls within human rights<sup>(27)</sup>.

Second: Judicial issued by the Federal Supreme Court that include indirect protection of the rights of future generations.

judicial of the Federal Supreme Court No. (121/Federal/2022) dated 15/5/2022 According to this judicial, the Federal Supreme Court reached the interpretation of the phrase "caretaker government" as follows:

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<sup>26</sup> Article 34 (first) of the Constitution of the Republic of Iraq of 2005 (education is a key factor for the advancement of society and a right cost by the state, which is mandated the primary stage, and the state guarantees the fight against illiteracy) and second (free education is a right for all Iraqis at all stages).

(<sup>27</sup>) To find out more details of the texts related to education in the Constitution of the Republic of Iraq for the year (2005) See Federal Supreme Court judge decision issue (4 its combination 50 and 51 / Federal / 2020) on 27/10/2021 Published on the website of the Federal Supreme Court <https://www.iraqfsc.iq/index-ar.php> Date of visit 25/6/2024

((The caretaker government means that it is that government transformed from a normal government with full powers to a government with limited powers, and this is achieved in two cases, the first by withdrawing confidence from the Prime Minister until a new cabinet is formed based on the provisions of Article (61 / eighth / a / b / c / d) and the second when the House of Representatives is dissolved in accordance with what is stated in Article (64 / first) of the constitution, and in both cases the Council of Ministers is considered resigned and continues to conduct daily matters that include making judicial s and procedures. Which would continue the work of public utilities regularly and the sustainability of the continuation of the provision of services to the people, and does not include judicial s that involve political reasons and motives that have a significant impact on the political, economic and social future of Iraq, and does not include as well as proposing draft laws and holding loans or appointment to senior positions of the state and exemption from them or restructuring ministries and departments))

Comment on the judicial:

The researcher believes that the interpretation of the Federal Supreme Court of the phrase (conduct of daily affairs) contained in Article (64 / II) <sup>028</sup> of the Constitution has put points on the letters and did not leave any room for diligence and interpretation of the resource of the text mentioned above and this is not new to the constitutional judiciary, which has always been keen through the judicial of the Federal Supreme Court to protect constitutional texts and not to deviate from the will of the constitutional legislator, especially with regard to public rights and freedoms, that the interpretation of the Federal Supreme Court of the functions of the caretaker government that It does not include among its tasks judicial that involve political reasons and motives that have a significant impact on the future of Iraq. It also does not fall within its competence to propose bills and contract loans etc., this is a clear and explicit indication of securing indirect protection for the rights of future generations in all fields, where the caretaker government may take some judicial decision that entail dimensions, results and effects that are not in the interest of the future of Iraq (and its future generations), in addition to another very important issue addressed by the interpretation of the Federal Supreme Court in this judicial decision , which is the issue of holding loans and making them outside the powers of the (caretaker government) because of the negative consequences of these loans in the long term During the shackling of future generations with debts and interests that have nothing to do with them, but are the product of irresponsible and ill-considered actions of previous generations did not appreciate the seriousness of such actions and their impact on the future, so the Federal Supreme Court was successful in removing the issue of holding loans from the tasks of the caretaker government, as the researcher believes that the interpretation of the aforementioned court was compatible and consistent with the principle of equal opportunities guaranteed by the Constitution of the Republic of Iraq for the year 2005<sup>29</sup>. For all Iraqis, as it is just and fair that the present and the next generation enjoy the same rights, privileges and all other opportunities, and thus we see that the Federal Supreme Court has taken an indirect path to extend its protection

<sup>28</sup> Article 64/II of the Constitution of the Republic of Iraq of 2005 (Upon the dissolution of the House of Representatives, the President of the Republic shall call for general elections in the country within a maximum period of sixty days from the date of dissolution, and the Council of Ministers in this case shall be deemed to have resigned and shall continue to conduct daily affairs).

<sup>29</sup> See article 16 of the Constitution of the Republic of Iraq of 2005.

of the rights of future generations and preserve them through its interpretation of the phrase (caretaker government) mentioned above.

### Second Requirement: Response

The response is one of the basic concepts in the judiciary in general, whether it is a constitutional or administrative judiciary or an ordinary judiciary, as the response represents an exception to the general rule governing the work of the judiciary, which is to limit the role of the judiciary to the application of laws by deciding on the lawsuits filed before it and within the limits of the requests mentioned in the lawsuit and not to exceed the scope of those requests, and the response represents one of the means of communication of the constitutional courts with lawsuits and exposure to the constitutionality of the laws that apply to the dispute filed. The scope of the resort to the concept of addressing varies according to the different judicial systems followed in States, as the scope of the response expands in the constitutional judiciary and then the administrative judiciary, while we find it practiced on a limited scale in the ordinary judiciary, and the reason for the different scope of judicial practice to address a number of philosophical and legal foundations that confer legitimacy on the departure of the judiciary from the general rule and exceed the scope of the judicial case filed before it<sup>30</sup>.

The response is: the extension of the constitutional judge's control over the constitutionality of texts that were not subject to challenge their constitutionality in the petition of direct action or in the referral judicial issued by the ordinary judiciary with or without payment, that is, the constitutional judge will decide the constitutionality of a text that was not originally challenged by the plaintiff or in the judicial decision to refer the ordinary judge.

Also, addressing is a procedure or mechanism to exercise the jurisdiction of oversight of the constitutionality, it does not need an explicit text as long as it leads to the exercise of jurisdiction expressly stipulated, in the sense that it falls within the complementary mandate of the constitutional judge as a necessary measure for the mandate of the constitutional judge to protect the constitution, but freedom from the restrictions of the rules of civil procedure and the expansion of the requests of litigants is a privacy required by the special substantive nature of the constitutional lawsuit<sup>31</sup>.

The basis of addressing the constitutional judiciary

Despite the different systems of the constitutional judiciary in the world and the different methods of exercising control over the constitutionality of laws accordingly, addressing as an exception to the general rule governing the work of the judiciary is a unified method exercised by all constitutional courts alike in order to achieve constitutional legitimacy.<sup>32</sup> To illustrate this, we will address the philosophical and legal basis for addressing through the following two items:

Philosophical basis for the response:

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<sup>30</sup> Batoul Majeed / Addressing the Constitutional Judiciary / Research published in the Law Journal for Legal Studies and Research / issued by the Faculty of Law / University of Thi-Qar / Issue Seventeenth / 2019 / pp. 263-264.

<sup>31</sup> Ali Hadi Attia Al-Hilali / Al-Wajeez in the Constitutional Judiciary and its Applications in the Judicial decisions of the Federal Supreme Court and the Supreme Constitutional Court, Dar Al-Masalah, Baghdad / First Edition / 2023 / pp. 108/109.

<sup>32</sup> Dr. Batoul Majeed, op. cit., p. 268.

Addressing as one of the methods of exercising control over the constitutionality of laws is based on a number of philosophical foundations represented in the following :

1- Protection of the principle of the supremacy of the Constitution This principle is one of the legal principles that mean the subordination of the state with all its powers to the law and the commitment of its limits in all its actions and behaviors, in order to achieve a balance between power and freedom, which in turn contributes effectively to achieving order in society, as this principle is not an end in itself, as much as it is a means essential and definite to preserve the rights and freedoms of individuals<sup>33</sup>.

We also find that the work of the principle of the supremacy of the constitution is in all contemporary legal systems of different forms and regardless of the social philosophy of the political organization in each country, as every legal act or action, whether public or private, must be based on an abstract legal rule and prior to that behavior or action, as it is not enough, of course, that all individuals in their legal relations are subject to the rule of law, but the state must be subject to all its powers to it, This is in order to realize the fundamental idea of the principle of guaranteeing and protecting individuals from the tyranny and arbitrariness of the authorities<sup>34</sup>.

Through the above, we find that the role of this principle in achieving a balanced system in society and the requirements of its protection does not produce its impact except through the establishment of another principle complemented by the principle of control over the constitutionality of laws exercised by the constitutional courts with all their methods and means to maintain the legal system consistent and integrated in the state, and these methods cannot be limited to what those courts practice during the judicial on the cases filed before them only, but also go beyond that During the exercise (addressing any constitutional violation) the laws to be applied by the courts may be affected, and any violation of this principle in terms of application or implementation is in itself a violation (the principle of legality).

2 - Guaranteeing rights and freedoms: - One of the highest goals of any constitution or legislation is to guarantee human rights and freedoms, and this is done through the achievement of the principle of the supremacy and protection of the constitution, which is closely related to guaranteeing those rights and freedoms through its statement of the boundaries separating the rulers and the governed within the framework of respect for legitimacy, as the protection of rights and freedoms does not become real and realistic except through respect for the principle of the sovereignty of the constitution and there is no way to do this except through the presence of an independent supreme authority that undertakes oversight The preservation and maintenance of these rights and freedoms, which is represented by the Supreme Constitutional Courts .

Therefore, judicial control over the constitutionality of laws and their practice by the constitutional courts (and their own response to unconstitutionality) in cases where this is required, is an effective means of protecting those rights and freedoms, as individuals resort to

See<sup>33</sup> Ahmed Tamimi, The Role of the Supreme Constitutional Court in the Protection of Human Rights / p. 3 / research published on the website: threads / 54g14agst/2015www.dorar. alirag.net. As reported by / Dr. Batoul Majeed / previous source / p. 269.

<sup>34</sup> See Dr. Fayed Muhammad Hussein, Philosophy and the Rule of Law in the Modern State, Al-Tafah Magazine, No. XXXIX, 2003, p. 5 / research published on the website: www.tafahom.com/index.php/4302.

As reported by Dr. Batoul Majeed / ibid. / p 269

an independent and impartial body in order to cancel, amend or compensate for the actions taken by the public authorities that may violate the established legal rules and regulations.

3- Achieving legal stability: - Legal stability is an important condition for the success of society, and this is represented through the issuance of legislation and laws appropriate to all the social and economic needs of individuals and making those legislations naturally meet the developments in society.

Legal stability means the issuance of a consistent and integrated legal system, as well as the continuous compatibility between the provisions of laws and their conformity with the general constitutional principles, as legal stability does not mean the protection of existing legal centers only, but is a guarantee of those rights and freedoms in the future, and legal stability represents the end of the goals that the judicial system aims to achieve through the need to reconcile conflicting interests by applying laws to the dispute before it, as the legal system may adopt systems And legal rules that contradict the logic of justice and here comes the role of the judiciary, especially (constitutional courts) in achieving justice by revealing the shortcomings, conflicts and non-conformity of the Constitution by exercising its competencies in the field of constitutional justice, and through the above we find that the foundations on which the exercise of the Supreme Constitutional Courts to control the constitutionality of laws and the practice of addressing them as one of the methods taken by the constitutional courts to indicate the legitimacy of laws, are the same foundations that govern the social and legal system In the state, on which judicial control is based, the constitutional courts are the supreme authority constitutionally mandated to protect and maintain the principles of constitutional legality and maintain the legal system in the state.

Legal basis for the response:

The exercise of the competences of the constitutional courts, whether in the field of monitoring the constitutionality of laws or other competencies, is based mainly on constitutional and legal rules that authorize them to do so, in order to legitimize their work, as of course no state institution can practice any work except on the basis of a legitimate legal base.

We find that most constitutions have granted constitutional courts the competence to monitor the constitutionality of laws and have focused in exercising this jurisdiction on those courts and no other courts, and that some laws on constitutional courts have developed many substantive and procedural rules as well as regulations and instructions for executive procedures on which constitutional courts can rely when exercising control over the constitutionality of laws, and this naturally varies according to the judicial organization followed in the State<sup>35</sup>.

The law of the Supreme Constitutional Court in Egypt has referred to the possibility of the Court addressing on its own initiative the constitutionality of laws, and in all cases, it may rule unconstitutional a provision in the law or a regulation submitted to it on the occasion of the exercise of all its powers and related to the dispute before it, after following the procedures established for the preparation of constitutional claims<sup>36</sup>.

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Dr<sup>35</sup>, Batoul Majeed, *op. cit.*, p. 271.

<sup>36</sup> Article 27 of the Supreme Constitutional Court Law in Egypt No. 48 of 1979, as amended.

We also find that the aforementioned article allowed the Supreme Constitutional Court to exercise effective control over the constitutionality of laws not only in the field of its exercise of oversight over the constitutionality of laws, but also beyond the scope of that to the possibility of (the exercise of tackle) in the cases filed before it during the exercise of other competencies such as lawsuits of conflict of jurisdiction and lawsuits of implementation disputes and adjudication of the validity of membership of members of parliament and others.

If the Supreme Constitutional Court, in exercising any of the powers entrusted to it, deems that among the texts related to the dispute submitted to it, which contradict the provisions of the Constitution, it will take the path of remedy, and that it may rule its unconstitutionality without the need to raise a plea of unconstitutionality before it, and after this method as one of the methods of initiating oversight before the Supreme Constitutional Court, which is an original method, allows it to address on its own initiative to examine the constitutionality of any provision in a law or regulation submitted to it on the occasion of Individuals may alert it to the suspected unconstitutionality of the texts before it in the exercise of its competences.<sup>37</sup>

The general jurisdiction of the Constitutional Court in the area of constitutional oversight of laws and regulations as the sole competent authority in this area is also one of the things introduced by the Law of the Supreme Constitutional Court to strengthen oversight of the constitutionality of laws under the Supreme Court, and some describe it as being successful in drafting and adding a transient and limited route.<sup>38</sup>

In application of the foregoing, the Supreme Constitutional Court can deal on its own motion to examine the constitutionality of a law or regulation submitted to it in connection with the exercise of its jurisdiction and relating to the dispute before it, even if it is not requested to do so by a court or not challenged by anyone, in which case the case shall be prepared in accordance with the procedures established for the preparation of constitutional claims<sup>39</sup>.

The Supreme Constitutional Court has been allowed to operate the challenge license provided for in Article 27 of the Supreme Constitutional Court Law, since a member of the State Council has filed a lawsuit before it for unconstitutionality Article 104 of the State Council Law (No. 47 of 1972), which stipulates that "one of the circuits of the Supreme Administrative Court shall have exclusive jurisdiction to adjudicate requests submitted by members of the State Council to annul final judicial related to any of their affairs, except for transfer and delegation whenever it is The basis of the application is a defect in form, violation of laws and regulations, error in their application or interpretation, or abuse of authority) based on the fact that the judicial of transfer and delegation is considered an administrative judicial immune from cancellation in violation of Articles (40) and (68) of the Constitution.

The Supreme Constitutional Court considered that this article is completely similar to Article (82) of the Judicial Authority Law No. (46) of (1972) as amended by Law No. (49) of (1973), which stipulates that "the Civil and Commercial Departments of the Court of Cassation shall

d<sup>37</sup>. Najm Abboud Faisal Al-Janabi / The role of the Federal Supreme Court in monitoring the constitutionality of laws / a comparative study / National Center for Legal Public / Cairo / 1st Edition / 2024 / p 224.

d<sup>38</sup>. Abdul Azim Abdul Salam Abdul Hamid, Control over the constitutionality of laws (a comparative study), loyalty to printing and publishing, Shebin Al-Kom / 1991 / p. 2 reported by Dr. Najm Abboud Faisal Al-Janabi / previous source / p 224.

<sup>39</sup>Dr. Yahya Al-Jamal, Constitutional Law, Dar Al-Nahda Al-Arabiya, 1980, p. 320.

have exclusive jurisdiction to adjudicate requests submitted by magistrates and the Public Prosecution to cancel the final administrative judicial related to any of their affairs, except for transfer and delegation when the building of the application is defective in form, violation of laws and regulations, or error in Application, interpretation or abuse of authority In view of this complete similarity between the article contested as unconstitutional, namely Article 104 of the State Council Law, and Article 83 of the Judicial Authority Law, this similarity between the two texts called on the Supreme Constitutional Court to enforce the license to address it in accordance with Article 27 of its Law with regard to this last article as it relates to the dispute before it, ruling that Article 104 of the State Council Law (submitted to it) is unconstitutional and that Article 83 is unconstitutional. of the Judicial Authority Act (not submitted to it), which dealt with the ruling of its unconstitutionality<sup>40</sup>.

While the Federal Supreme Court in Iraq has chosen for itself to take the path of confrontation through the text of Article (46) of the internal system of the aforementioned court No. (1) of (2022), which stipulated (the court, when considering the challenge to the unconstitutionality of a legislative text, may address the unconstitutionality of any other legislative text related to the contested text) with the presentation that the Federal Supreme Court followed the path of the response mechanism at the stage before the adoption of its internal system, and we will explain this later When mentioning some judicial of the Federal Court in this regard.

However, the Internal Regulations No. 1 of 2022 did not require linking the text addressed to the resolution of the pending lawsuit, but rather linking it to its attachment to the contested text and the suspension means that the challenged text is linked to the text addressed by the unity of the legal idea or the two texts are inseparable, either because the text addressed is a condition or purpose for the challenged text, or that the cancellation of the contested text cancels the wisdom of the existence of the text addressed to it, or because the survival of the unchallenged text threatens to renew the challenge to the constitutionality based on The same grounds on which the appealed text was challenged and annulled<sup>41</sup>.

The U.S. Supreme Court has begun to oversee the constitutionality of laws despite the lack of explicit provision in the U.S. Constitution, in its famous ruling in the *Bury (Marv. Madison)* in 1803, as the plaintiff at that time did not submit a request aimed at deciding on the constitutionality of a particular law, but his request was limited to the issuance of a judicial order by the court that includes issuing the order to the executive authorities to deliver the appointment order, but the court has (addressed on its own) the constitutionality of Article (13) of the US Judicial Organization Act of (1789), which referred to the right of the Supreme Court to issue judicial orders in an original (first instance) capacity, and ruled unconstitutional This is because it contradicts the text of Article (3) of the US Constitution, which defines the jurisdiction of the court exclusively, not including the issuance of judicial orders, and this is of course one of the broadest forms of confrontation practiced by the US constitutional judiciary.

We find the direct legal basis on which the US Supreme Court relied in (addressing the constitutionality of laws) is based on Article (6 / P / 2) of the US Constitution, which indicated

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Dr<sup>40</sup>, Najm Abboud Faisal Al-Janabi / previous source / pp. 227-228.

<sup>41</sup> Dr. Ali Hadi Attia Al-Hilali / Al-Wajeez in the Constitutional Judiciary / previous source, p. 115.

that the federal constitution after the supreme law in the country, which may not issue any law or regulation that conflicts with the provisions of the constitution, in addition to that, the Supreme Court relied on resorting to addressing the legitimacy of laws to Article (3 / second item ) of the Constitution, which stipulated (include The judiciary all cases brought before the court ) This phrase was interpreted by the Supreme Court to mean that the Court has the right to rule on all cases by resorting to the interpretation of laws and ensuring their legality, and this interpretation has become a general principle pursued by all courts in the United States, including the Supreme Court.

Accordingly, constitutional principles are the basic rules that transcend ordinary laws, and as a result of this gradation between legislative rules and the distinction between them, censorship had to appear and occupy its place in the American legal system, and that the exercise of the American Supreme Court of oversight and its response to the constitutionality of laws is in fact only a logical consequence of this distinction and the need to ascertain the conformity of laws with the federal constitution<sup>42</sup>

#### The role of addressing in protecting the rights of future generations

To address the great importance in ensuring the protection of the rights of future generations, no less important than the rest of the means used by the constitutional judiciary in consolidating this protection, and we mean (constitutional oversight, interpretation) because the response is closely related to the supremacy and supremacy of the constitution to strengthen and expand the principle of legitimacy.

The constitutional rule is the backbone of any legal activity and the main source of legitimacy for the work of all authorities in the state, through which the legal framework of the state is drawn and that the principle of legitimacy necessarily requires respect for legislation by the rulers first and the governed second, as every deviation from the course of those legislations means a departure from the principle of legality, and that the supremacy of the constitutional rule requires its progress over other legal rules so that the principle of legitimacy expands to include the lofty constitutional rules and the need not to Derogation from them under legislation that is subject to change to enable governing bodies to keep pace with developments<sup>43</sup>.

The researcher believes that the responsibility of the constitutional judge in addressing any constitutional violation arises, whether the constitution explicitly stipulates it or not, because this is linked to the leading role of the constitutional judge in protecting and defending the constitutional document by all means that enable him to do so, including that he addresses everything that contradicts this document organized by the constitutional legislator based on and embodying the struggle and struggle of the people and the great sacrifices they made and the bright future that they seek, especially everything that affects and relates to rights And public freedoms are those rights that do not change and do not differ from generation to generation, they represent an integrated system that contributes to providing a prosperous living, tranquility and peace for all generations, including (future generations) and this is the logic and goal of the

<sup>42</sup> Dr. Batoul Majeed, op. cit., p. 273.

<sup>(43)</sup> See the principles contained in the Federal Supreme Kingdom's judicial decision No. (156 and unified 160 / federal / 2022) dated 26/9/2022 published in the analytical and book for the year 2023 issued by the Federal Supreme Court / the matches contained in the judicial decisions of the Federal Court for the year 2022.

constitutional judge, which is a reflection of the vision and will of the constitutional legislator in guaranteeing and protecting these rights combined and defending them, for this we see the importance of addressing and its role in this area, and we will address this topic as far as the Federal Supreme Court is concerned, through some judicial issued Through our comment on the court's judicial related to the challenge, it will become clear to us the extent of the relationship between these judicial and the rights of future generations.

Federal Supreme Court Judicial No. (43/Federal/2021) dated 22/2/2022

According to this judicial the Federal Supreme Court decided to rule that item s (b, d, and e) of item (second) of Article (13) of the Elections Law No. (9) of 2020 are unconstitutional and canceled as of the date of issuance of this judicial.

Comment on the judicial

The researcher believes that this judicial came to confirm the Federal Supreme Court's response on its own initiative in the stage preceding the adoption of its internal system to determine the unconstitutionality of texts not mentioned by the plaintiff in his constitutional lawsuit before it, and this is clearly evident from the merits of the aforementioned judicial , which stated ((Since item (b) of item (second) of article (13) stipulated (the Yazidi component (1) is one complex in the province of Nineveh), this contradicts the provisions of articles (14/16/20) of The constitution as the aforementioned component must be treated with the rest of the components of the Iraqi people, which requires ruling that they are unconstitutional, and that this requires addressing the provisions of item (d) of item (second) of article (13) of the same law, which stipulated (the network component (1) one seat in the province of Nineveh (and confronting) not the rulers of period (e) of item II of article (13) of the same law, which stipulated (the component of the Faili Kurds (1) is one complex in the province of Wasit and the Yazidi components and the Mandaean must be treated. And the network component and the Faili Kurds by treating all components of the Iraqi people, and since the mentioned texts do not give the mentioned components equal opportunities, this violates the principle of equality).

The researcher believes that the Constitution of the Republic of Iraq for the year (2005) has ensured in the preamble the method of peaceful rotation of power and articles (5/6) of this constitution came to confirm this method <sup>(1)</sup>, because the <sup>44</sup> people is the source of the authorities and their legitimacy and that which represents the will of the people is the House of Representatives, which is one of the constitutional institutions elected by the people in all its spectrums and components, it is a first and foremost to consider the constitutionality of the legislative texts that regulate the process of elections to the House of Representatives in order to achieve justice and parity. Opportunities and equality for all Iraqis, so the Federal Supreme Court rolled up its sleeve to defend and defend the rights of other components of minorities who must be treated equally with the rest of the components of the Iraqi people by addressing item s in item (second) of Article (13) of the aforementioned electoral law, although these item s were not mentioned in the plaintiff's constitutional lawsuit.

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<sup>44</sup> Article 5 of the Constitution of the Republic of Iraq of 2005 stipulates that "the rule of law and the people are the source and legitimacy of the authorities, exercised by direct universal secret ballot and through its constitutional institutions."

Article 6 of the aforementioned constitution also stipulates that "power shall be transferred peacefully, through the democratic means stipulated in this constitution."

The researcher also believes that this court judicial judicial has a great impact in protecting the rights of future generations because it resolved the issue of fair representation of the Iraqi people that guarantees equality and achieves the interest of the people, and therefore the full representation of the Iraqi people in the House of Representatives will ensure that the process of legislating federal laws and monitoring the performance of the executive authority is sound and not tainted by any defect in terms of taking into account the rights and freedoms and the interest of the Iraqi people (present and future), including the protection of the rights of future generations in Every measure taken by the Council of Representatives is an embodiment of the will and purpose of the constitutional legislator, which emanated from the will of the people and the interest of the Iraqi people in their past, present and future.

### Third Requirement: Justice:

The importance of the constitutional judiciary is rooted in the fact that it plays a pivotal role in building the state of law and preserving the principles of democracy through the protection of public and private rights and freedoms, in addition to the constant pursuit of achieving a balance between the powers that make up the political system in the state, so the independence of the constitutional judiciary is a necessity for respecting the constitution and applying the law.

The constitutional judicial ruling is issued by a court whose members are judges who have the qualities of human beings of error and shortcomings, and then the constitutional judicial ruling may be marred by some shortcomings to keep pace with the development in society in political, economic and social aspects, which may push the constitutional judge in different cases, circumstances and times to reverse his previous ruling to correct some of what is contained in these provisions and develop what needs to be developed in light of the different constitutional interest that requires reversal under the conditions and controls required by that interest The constitutional judicial provision in certain cases may not be applied again under different times and different circumstances because what is fair in a certain circumstance and time may not be so in other circumstances and different times, hence the importance of reversal in the provisions of the constitutional judiciary.

Reversal is defined idiomatically as the constitutional judge voluntarily modifying a previous provision or interpretation of a constitutional text if he finds that the previous provision or interpretation has been based on wrong grounds or is inappropriate to the political, social and economic conditions and variables of society, whether the reversal is positive or negative<sup>45</sup>.

Similarly, reversal in the field of justice means the interpretation of the Court's view on a particular issue, i.e. the abandonment of a particular orientation described by the Court in a judicial and the adoption of a new approach to the same issue.<sup>46</sup>

In other words, reversal means the court's abandonment of its old ruling, which it was taking as a method to proceed to a new ruling, so some defined reversal as "the cancellation of the court

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Saif <sup>45</sup>Karim Jassim / Judicial trends in reversing the rulings of the Federal Supreme Court (a comparative study) Master's thesis submitted to the Council of the College of L University of Baghdad / 2022 / p. 10.

<sup>46</sup>(G.CORNU, Vocabulaires juridique, Association, Capitant, PUF, 8e'me ed, 2008, p 215

for a precedent it had set, either by stipulating in the merits of its new judgment that annulment or by stipulating that the circumstances in which the previous one was placed have changed".<sup>47</sup>

Reversal is classified into multiple types of two aspects (objective and formal) objectively divided reversal on negative reversal and positive reversal, in terms of the effects left by if those effects are in the interest of rights and freedoms and expand them, it is considered a positive enemy, and otherwise is a negative enemy if it includes a decline in the protection of rights and freedoms and is also divided objectively into a realistic reversal and legal reversal, according to the reason that led to it if The reason for reversal is a change in fact, it is a realistic reversal and if the reason for reversal is a change or amendment to the legal rules, it is a legal reversal.

As for the formal aspect, the reversal is divided into a sudden reversal and a gradual reversal, according to the time period between the previous judgment and the new judgment, which included the aversion, and is also divided into explicit reversal and implicit reversal, according to the announcement of the court's direction in the judgment that included reversal, if the court announced its orientation in reversing the previous ruling, this is considered an explicit reversal and if the court amended without reference to the judgment that included the reversal, it is considered implicit reversal and the reversal is also divided into reversal If the court determines the issue covered by its new direction, this is considered a specific amendment while it is considered an indefinite amendment if the court does not indicate those issues<sup>48</sup>.

Reversal of the rulings of the constitutional judiciary:

Reversal in the provisions of the constitutional judiciary is the replacement of a new provision in place of a previous provision due to the change of circumstances or the fact that the previous provision was contrary to justice, and to reach the desired result of the reversal should be for certain reasons, such as being due to the political, economic or social changes that occurred in society, and it is also required that the reversal is issued according to certain methods according to the point of view of the judge who changed the previous ruling.

This may lead us to a very important question, when the Constitutional Court reverses a previous judicial, is this reversal of the Court a repudiation of its previous rulings or not? Especially since the constitutions of some States expressly stipulate that the rulings of the Constitutional Court shall be final and binding, as stipulated in the Constitution of the Republic of Iraq (2005<sup>49</sup>).

If we consider the text of (M5/II) of the Federal Supreme Court Law of (2005) as amended by Law No. (25) of (2021) and the text of (M36) of the Rules of Procedure of the aforementioned Court No. (1) of (2022), we find that they confer on the court's judicial, either the description of the obligation or the description of the bits, so the legislator of the Constitution of the Republic of Iraq for the year (2005) only had to combine the two qualities when it stipulated (the judicial and their binding for all authorities) and thus the judicial of the Federal Supreme Court are

Dr<sup>47</sup>. Hussein Jabr Hussein Al-Shuwailli / presumption of the constitutionality of legislation / Al-Halabi Human Rights Publications / Beirut / 1st Edition / 2018 / p 213.  
Hanan <sup>48</sup>Sabri Nahi Al-Jubouri / Factors affecting the reversal of the constitutional judiciary from its precedents (a comparative study) Master's thesis submitted to the Council of the College of Law and Political Science / Iraqi University / Baghdad / 2022 / pp. 34 and 35.

<sup>49</sup>The Constitution of the Republic of Iraq of 2005/article 94 (judicial decisions of the Federal Supreme Court are final and binding on all authorities).

The amended Federal Supreme Court Law of 2005 stipulates that the judicial decisions and rulings are final Article (5/Second) thereof, as stipulated in the Internal Regulation of the Federal Supreme Court No. (1) of 2022, Article (36) thereof:

(The judicial decisions of the court are final and binding on all authorities and persons and do not accept appeal by any means of appeal ... etc).

characterized by the advantages of bits, binding and absolute authority on All authorities<sup>50</sup>, the bits mean the finality of the judicial of the Federal Supreme Court, i.e. do not accept any means or way to challenge them.

As for the mandatory status in the judicial of the Federal Supreme Court, it means the application of the judicial or submission to it or invoking its judgmental items and demanding its application, and the aim of the mandatory judicial of the Federal Supreme Court is to unify the application of constitutional provisions in order to achieve equality between individuals enjoying the same legal status.

If we want to search for the legal basis for reversal and for the purpose of not prolonging in this place and to stand on what is useful to the detailed of this study, we will summarize the legal basis for reversal as far as the matter is related to the Iraqi constitutional judiciary, as this is clearly reflected through the internal regulations of the Federal Supreme Court in Iraq No. (1) of (2022), Article (45) thereof, which states (the court, when necessary and whenever the constitutional and public interest requires, amend a previous principle approved in one of its judicial , provided that This does not affect the stability of acquired legal and human rights positions).

Through the analysis of the aforementioned text, it was stipulated that conditions were met in order for the constitutional judge to resort to reversal, including achieving (constitutional interest) (and not prejudice legal centers) and the question that arises here is what is the constitutional interest that has been referred to in the above article?

We may find a concept of constitutional interest in the preamble of the Constitution of the Republic of Iraq for the year (2005), where there are phrases such as (achieving justice and equality, paying attention to women and their rights, children and his affairs, the Sheikh and his concerns, and spreading a culture of diversity, also the phrase to enact from the system of values and ideals the messages of heaven, and from the developments of human science and civilization this permanent constitution ... etc.).

If we check these phrases, we will find that each of them represents (constitutional interests) that the constitution aims through the constitutional judge to protect and stabilize whenever the need arises, in addition to that, we find that most of the articles of the aforementioned constitution include in their content very important constitutional interests that the constitutional legislator seeks to protect at all times.

We note that the Federal Supreme Court in Iraq has taken the reversal while examining the constitutional texts in the cases before it, this is evident through some judicial issued by the Federal Court in previous years, which were explicitly reversed by new judicial of the Federal Supreme Court, where the motive for this was the constitutional judge's endeavor to achieve the renewed constitutional interest that keeps pace with the variables of time and the different conditions of society, and this interest lies in the real goal desired by the constitutional legislator when he developed the text It is certainly in the public interest of the continuation and

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Dr<sup>50</sup>. Ali Attia Al-Hilali / The General Theory of Interpretation of the Constitution and the Trends of the Federal Supreme Court in Interpreting the Iraqi Constitution / Zain H Rights Publications / Lebanon 2011, p. 242.

permanence of life in society and the guarantee of the protection of fundamental rights and freedoms therein<sup>51</sup>.

The Federal Supreme Court also crystallized in its judicial No. (158/Federal/2022) dated (16/8/2022) the subjective controls for the reversal of the Federal Supreme Court from a previous principle, and these controls are represented in (that the reversal of a previous judicial principle to a new judicial principle in the same subject and the court did not indicate that the new principle contradicts or contradicts the first principle, and that the judicial are not of a personal nature and that the reversal is in response to political, economic and social conditions and variables, and that the goal of Achieving the supreme interests of the country, supporting public rights and freedoms, protecting security, improving and evaluating the work of the federal authorities and ensuring the proper functioning of the State's public utilities<sup>52</sup>.

From that, we conclude that the reversal of the Constitutional Court from a judicial issued by it previously leads to the development of the constitutional text or to the constitution's living with the emerging reality because the constitutional texts may become obsolete, and in return there is a continuous development of life in all its aspects, which makes the constitutional judge resort to making the constitutional text in force keep pace with development and change the conditions of society during successive periods of time, through reversal, especially since the procedures for amending the constitution are often difficult and rigid, and also so that the constitutional judge can reach To the idea of a living constitution.

Therefore, it can be said that reversal is an important means that gives way to the constitutional judge for diligence and examination of the constitutional text to reach the goal desired by the constitutional legislator whenever necessary according to the variables and developments of life conditions and the reality of societies renewed day after day, which requires keeping pace with the constitutional text of these developments for an important reason, which is that the basis for the development of the constitutional text is to serve members of society and protect public rights and freedoms, and here comes the role of the constitutional judge in research and deduction to reach the constitutional interest that The legislator wanted it in light of the development and the changes of the renewed reality, and thus the reversal of the constitutional judicial provision is a development of a previous principle approved by the Court in response to the conditions and circumstances driving the Court in its reversal of a previous ruling, and this is subject to the discretionary authority of the constitutional judge, who is governed by a set of restrictions and controls in this regard<sup>53</sup>.

The role of justice in protecting the rights of future generations:

Reversal is one of the important mechanisms that the constitutional judge resorts to in protecting the rights and freedoms guaranteed by the constitution, as it constitutes, along with the rest of

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<sup>(51)</sup> The judicial decision of the Federal Supreme Court in the case numbered (90/Federal/2019) dated 28/4/2019 published on the Court's website <https://www.iraqfsc.iq/index-ar.php> the date of visit 1/7/2024.

The judicial decision of the Federal Supreme Court in the case numbered (43/Federal/2021) dated 22/2/2022 published on the website of the Federal Court <https://www.iraqfsc.iq/index-ar.php> the date of visit 1/7/2024.

<sup>(52)</sup> Ahmed Talal Abdul Hamid Al-Badri / Federal Supreme Court and the controls of self-reversal of Judicial rulings / Comment on its judicial decision No. (158/Federal/ (16/8/2022) Article published on the website of the Federal Supreme Court <https://www.iraqfsc.iq/index-ar.php> the date of visit 1/7/2024.

Saif <sup>(53)</sup>Karim Jassim / previous source / p. 11.

the mechanisms (constitutional oversight, interpretation, response) an impregnable fortress to protect the constitution, preserve the supremacy and supremacy of constitutional texts, and stand against any constitutional violation of these texts.

No two disagree that the judicial of the constitutional courts of most countries of the world are mandatory and stable, due to the importance of the legal effects and their prejudice to legal centers and the rights and obligations of public and private persons, and this is the original, but there is an exception to this asset when an amendment occurs to the constitutional text, which has already been issued by the Constitutional Court ruling on it or when circumstances change as a result of developments in society and include economic, social and political aspects here resort to the constitutional judge to deviate from the original And work with the exception, i.e. relying on reversal to protect the constitutional document and confirm the will and purpose of the constitutional legislator.

The constitutional judicial applications in most Arab and European countries of the world, and even in the United States of America, have approved the principle of reversing the established principles under previous final and binding judicial, in response to the circumstances and changes that require the adoption of a new vision in order to achieve the supreme interest of the country.

Where a ruling was issued by the US Federal Supreme Court on (24/6/2022) in the case of (Dobbs) against the (Jackson Women's Health Organization), a historic judicial of the US Supreme Court issued by a vote of six to three, in which the aforementioned court ruled that the Constitution of the United States of America does not grant any right to abortion and therefore canceled both the case of (Rowe) v. (Wade) of (1973) and the case of family planning against (Casey) of (1992).

The Dobbs case challenges the constitutionality of Mississippi's gestational age law, which generally prohibits abortion once the gestational age exceeds 15 weeks.<sup>54</sup>

Judge Elitoro was described as a blatant mistake from the outset because the Constitution does not refer to abortion and the right to perform it is "implicitly not protected" by any constitutional provision, while the court previously ruled in the Rukisi case that the right to privacy derived from the concept of the Fourteenth Amendment to the Personal Freedom Act under the due process clause was broad enough to include the right to abortion, but the Dobbs court described these previous judicial as remarkably broad in their handling of the constitutional text, igniting controversy and deepening division.

The Court further considered whether the doctrine of precedent generally directing courts to abide by precedent should be directed in support of Rookese and in recognition that doctrine promotes fair judicial -making and protects those who have relied on previous judicial, but the majority of the members of the Supreme Court nevertheless noted that in appropriate circumstances they (must) be prepared to review and, if necessary, overturn constitutional judicial.

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See the <sup>54</sup>judicial decision of the US Supreme Court on 24/6/2022 / published on the official website of the rulings of the US Supreme Court <http://supreme.justia.com/cases/federal/us> the date of the visit 12/7/2024 at 6 pm.

It is noticeable here that the US Supreme Court in this case, when it overturned its previous judicial , referred to the term (appropriate circumstances) and we believe that it is consistent with the term constitutional interest that was relied upon by the constitutional judge in the Federal Supreme Court in Iraq because the adoption of the principle of reversal must be for an interest that reflects positively on public rights and freedoms or on the security of the country or on the evaluation and improvement of the work of the federal authorities and the proper functioning of public utilities in the state<sup>55</sup>.

The researcher sees how it would be the case if it comes to rights in general and the rights of future generations in particular, which represent an extension of the rights of present generations, this is not a reason for the constitutional judge to reverse the previous judicial principles, especially in light of the rapid developments experienced by the whole world, including technological development that may negatively affect the rights of future generations, where here the constitutional judge's reversal is legitimate and reflects the view of the constitutional legislator renewed to keep pace with the aforementioned developments, and this gives The permanent life of the constitutional text to face any developments related to the public interest.

The development of judges of the Constitution is a necessity even in countries that adopt the system of judicial precedents, if it is true to say that these precedents hinder the development of the provisions of the Constitution and their survival after the emergence of the element of error in them is a deepening of the damage and adherence to the concepts of others who formulated their templates, the reversal of alternatives chosen today may be more logical and guarantee the rights that regulate them, the longer the time with judicial precedents, necessitated the correction of what they express from a narrow view after the collapse of their pillars, and in the end it is necessary to reverse them <sup>1</sup>

We will highlight some of the judicial of the Federal Supreme Court, according to which its previous judicial were reversed for justifications, the most important of which is the protection of the constitution and its principles and ensuring the protection of the rights and freedoms contained in the constitutional document to keep pace with developments and developments related to the political, economic and social conditions, and we will try our best to clarify the role of the constitutional judge when reversing the aforementioned judicial in protecting the rights of future generations, with the presentation that the reversal in these judicial was before the issuance of the internal regulations of the Federal Supreme Court No. 1 of the year (2022) published in the Official Gazette of the Iraqi Gazette No. 4679 on (13 June 2022), where article 45 of it stipulates the amendment, and this is a clear indication of the keenness and commitment of the constitutional judge in defending the constitution and protecting it from any constitutional violation even if he does not help him in that explicit constitutional text that authorizes him to do so because the constitutional judge is the protector and defender of the constitution and he may not in any way and under any justifications disavow this role Under the pretext that there is no constitutional text that authorizes him to do so, otherwise what is the difference between him and the ordinary judge, hence his responsibility to maintain the constitutional document and protect all its texts.

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<sup>55</sup> For more details, see Federal Supreme Court Judicial decision No. 158/Federal/2022 dated 16/8/2022 published on the website of the Federal Supreme Court <https://www.iraqfsc.iq/index-ar.php> visit date 15/7/2024.

Federal Supreme Court judicial No. (90/Federal/2019) dated 28/4/2021.

According to this judicial , the Federal Supreme Court reversed its previous judicial No. (23/Federal/2007) dated (21/10/2007) regarding the interpretation of what is meant by absolute majority, as the constitutional legislator meant by absolute majority more than half of the total number of members of the House of Representatives, wherever the phrase absolute majority appeared, whether it was mentioned with the phrase number of its members or came abstract, while what is meant by simple majority means more than half of the actual number of members of the House of Representatives present after achieving the quorum of the sessions of the Council In the presence of the absolute majority of its members and considering this a new principle and a change from the previous principle related to the interpretation of the concept of majority.

Comment on the judicial:

The researcher believes that the new principle adopted by the Federal Supreme Court in interpreting the concept of the majority will have a great impact at the present time and in the future because it has determined the correct and proper path for the voting process within the House of Representatives, whose members represent the people of all spectrums and work to achieve the interest of this people in every legislation or judicial decision issued by the House of Representatives because the basis of their election, which was made by the people, is to achieve the goal related to the interest of the country and the safety of its security and stability, that the representation of the people in The House of Representatives by members is not limited to achieving the immediate interest of the people because the integrated fabric of the people is an overlap between the past, present and future, where the people of one people look forward to protecting and preserving their rights and freedoms for current generations and in continuation for future generations, based on the principle of justice and equality and here lies the importance of the aforementioned Federal Supreme Court judicial , where Dabur cut all diligence or interpretation in the way of calculating the absolute majority and the simple majority when voting within the House of Representatives, including the subject of This study means when voting on draft laws, judicial and agreements have a direct impact on the rights and freedoms of current and future generations guaranteed by the Constitution, where the Federal Supreme Court corrected by this judicial its previous course in interpreting the concept of the majority in order to confirm the goal of the constitutional legislator and what he means for the concept of majority.

Federal Court Judicial No. (67/Federal/2021) dated 29/9/2021.

According to this judicial , the Federal Supreme Court reversed what was stated in its previous judicial No. (56/Federal/2016) dated (23/6/2016), which included (the absence of a conflict between the text of Article (165) of the Labor Law No. (37) of (2015) and the constitutional principles) and the ruling that item s (second and third) of Article (165) of the Labor Law No. (37) of 2015 are unconstitutional.

Comment on the judicial:

The researcher believes that the aforementioned judicial of the Federal Supreme Court came to preserve the principles and provisions included in the Constitution of the Republic of Iraq for the year (2005) that concern judicial institutions and a statement of the mechanism for forming

their bodies, as these principles and provisions focused on the need for the judiciary and its employees to enjoy a great deal of independence, Article (19/I) of the Constitution stipulated (the judiciary is independent and has no authority other than the law) and to achieve this principle, and based on the provisions of Articles (87 and 88) of the Constitution <sup>(56)</sup> It is not permissible for non-judges to assume the judiciary, and that this principle is the main pillar of the independence of the judiciary and the independence of judges, and based on this principle, the formation of courts is the competence of the Supreme Judicial Council alone, so a judicial as issued to rule the unconstitutionality of Article (165 / second and third) of the Labor Law No. (37) of (2015), which stipulates (one or more labor courts shall be formed in each governorate of the following : -

First: A judge nominated by the President of the Supreme Judicial Council based on a proposal from the President of the Court of Appeal.

Second: A representative of the General Union that most represents workers.

Third: A representative of the most representative employers' union.

Whereas the formation of a court with the participation of non-judges in it is contrary to the provisions of articles (19/first, 87, 88, 89, 90, and 91) of the constitution, and this is what necessitated the ruling that item s (second and third) of article 165 of the aforementioned labor law are unconstitutional.

The researcher also believes that the principle of the independence of the judiciary is a foregone conclusion to ensure the achievement of justice, protect rights, preserve freedoms and protect all citizens from any violation or infringement on their rights and freedoms, and this is almost what is unanimous in the laws prevailing in our world today, where the judicial authority is not subject in the performance of its tasks and duties to other than the law, and this is what constitutes the real and basic guarantee for the protection of rights and freedoms, which is therefore what makes us supportive of the judicial of the aforementioned court in achieving reassurance to protect the rights of generations. Current and future generations alike because the judiciary with all its means and tools is the one that is keener than others to achieve this end and not to jump others on the laws and protect all citizens.

## 2. Conclusion:

In this research, we dealt with the important role of the constitutional judiciary in protecting the rights and public freedoms guaranteed by the constitution to all people, and how the constitutional judge can secure the same protection with regard to the rights of future generations, especially in constitutions whose texts are devoid of protecting the rights of future generations, including the Constitution of the Republic of Iraq for the year (2005), hence the importance of

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<sup>56</sup>Article 87 and 88 of the Constitution of the Republic of Iraq of 2005 stipulate: "The Judicial authority is independent, and it is exercised by courts of all kinds and degree their rulings are issued in accordance with the law."

Article 88 of the same constitution also stipulates (judges are independent, they have no authority over them in their judiciary other than the law, and no authority may interfere the judiciary or in the affairs of justice).

this research in how the constitutional judge employs the means available to him in ensuring the necessary protection for the rights of future generations, Based on the deduction of provisions and reasons from other relevant constitutional texts and from the preamble of the constitution to the end that justifies the issuance of provisions that guarantee the protection of the rights of future generations, that goal that is always identical and consistent with the goal and will of the constitutional legislator.

The practical applications related to this research has focused on the judicial of the Federal Supreme Court in Iraq, where the researcher worked to analyze these judicial and comment on them, whether in the field of oversight of the constitutionality of laws or in the field of interpretation, confrontation and reversal, which are the means used by the constitutional judge in the issuance of the judicial of the aforementioned Court.

Where the researcher was able to emphasize a very important aspect, which is that the entire provisions of the constitution constitute one unit, each part completes the other part, in addition to the preamble, which is an important element in this integrated unit, and we mean (the constitution).

The researcher also found to There is no pretext or justification for the constitutional judge to prevent him from protecting the rights of future generations under the pretext that there is no explicit constitutional text to do so, because his duty requires him to research, analyze and delve into the depths of all constitutional texts to this end, which is to protect the rights of future generations.

#### First: Results:

The researcher reached a set of results after the presentation and analysis that accompanied the merits of this research, including:

- One of the important facts that characterize the constitutional judiciary is its exercise of a very important judicial function that lies in the subordination of all individuals and authorities to the principle of the rule of law and all work under this sovereignty in a way that ensures respect and sobriety of constitutional texts, especially when activating the most important means possessed by the constitutional judge, which is constitutional control in addition to other means, and this means stands out significantly under rigid constitutions, including the Constitution of the Republic of Iraq of 2005.
- Most of the world's constitutions are not devoid of clear and explicit constitutional provisions that guarantee the rights and public freedoms of the people, and that the role of the constitutional judge requires working to achieve the principle of justice and equality in the enjoyment of these rights and freedoms alike for current and future generations.
- Public rights and freedoms are one of the basic topics stipulated in the constitution of any country, but have become one of the main postulates on which the constitutions of the countries of the world are built, in line with what is stipulated in international conventions and treaties related to these rights and freedoms, and from here arises a very important issue, which is the supremacy and elevation of the constitutional document due to the sensitivity of the topics addressed by the constitution, which is the supreme law in the state, no matter how many

legislations and laws in light of the changing and multiple times, from here The task of the constitutional judge is how to maintain the supremacy and supremacy of the constitution, verify it and work to cancel any constitutional violation because it contradicts the provisions and provisions of the constitution, including what is related to the subject of this research on providing the necessary protection to ensure the rights of future generations.

#### Second: Recommendations:

- There is a set of recommendations that the researcher believes that if activated, it will have a great impact on providing protection for the rights of future generations, especially at the national level, including:
- First of all, we must always work to take into account the interest and aspirations of the people in all its spectrum, present and future, and that this is the goal of both the constitutional legislator and the constitutional judge.
- The constitutional judge must have a degree of professionalism and competence that enables him to derive provisions from the scattered provisions of the constitution through research and analysis to reach the goal of the constitutional legislator represented in guaranteeing the public rights and freedoms of all people (the current generation and the next generation), especially in constitutions under which the rights of future generations have not been explicitly stipulated, including the Constitution of the Republic of Iraq for the year (2005).
- Emphasizing the role of the constitutional judge related to addressing any legal text or legislation that contradicts the provisions of the constitution, even if this is not mentioned in the constitutional lawsuit before him, while linking this role to his basic role of being the protector and defender of the constitution, and this is what distinguishes him from the ordinary judge.
- Work to spread the legal culture among all spectrums of society with regard to the rights of future generations and consider them complementary and extension of the current generations, in cooperation and coordination with specialized universities, centers of legal studies and research accredited in this regard and non-governmental civil society organizations, because of the importance of this issue in increasing the awareness of current generations and working to hold accountable and hold accountable any party that causes or causes harm to the rights of future generations.

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