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## Oversight on the constitutionality of laws in Jordan

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**Abstract**--Constitutional law is the supreme law in the state, and it is on the top of the pyramid of laws. It is defined as: a set of rules that determine the shape of the state, the system of government and its three authorities, and it regulates the rights and liberties of the individuals. The constitution is an important matter that must be present in every state regardless of its political system .It can be said that the presence of a body that controls the constitutionality of laws represents an important guarantee of the rights established in the core of the constitutional document or in its preamble. The purpose of this oversight is to prevent the law from contravening the constitution, or deviation in the use of the legislative power. The countries of the world differ in their constitutional oversight, but they generally agree that no legal rule concerning the constitution should be violated .This study dealt with “Constitutional oversight of the constitutionality of laws in Jordan,” which came in three topics. The first topic discussed “Methods of constitutional oversight on the constitutionality of legislation in Jordan.” It also explained the “Constitutional oversight on the constitutionality of legislation before the establishment of the Constitutional Court in 2011,” which was practiced by the High Council for the Interpretation of the Constitution and the various judicial courts. Furthermore, this topic tackled “the establishment of the Constitutional Court, its jurisdiction and the res judicata of its rulings ”.The second section of the study investigated the aspects of the unconstitutionality of legislation in terms of form and jurisdiction. It examined “the unconstitutionality of legislation in terms of form and procedures” as well as “the unconstitutionality of legislation in terms of jurisdiction ”.Finally, the third topic presented the aspects of the unconstitutionality of the legislation in terms of the subject and the reason", each presented in a separate section. Through the study, we found a number of results and recommendations, which were included in the conclusion of this study. The most prominent of these results were that: The guarantee of the principle of the constitution’s supremacy is manifested in its most accurate form by the judicial oversight exercised by the Constitutional Court over legislation. This

oversight reinforced the principle of the supremacy of law and the incorporated graded the legal rules .Among the most prominent recommendations are: The scope of the oversight work of the Constitutional Court is expanded to include previous preventive oversight in addition to the current post oversight.

**Keywords**---oversight constitutionality, laws, Jordan.

## **Introduction**

The sound legal system is the pillar of the modern constitutional state. The constitution comes at the top of the state's legal system with what it possesses of supremacy, where there is a need for a legal system that guarantees the supremacy of the constitution. As a result, it establishes a constitutional court or a constitutional council, and gives this body a set of powers, ensuring respect for the Constitution and the establishment of the constitutional principles of the state<sup>(1)</sup>. Hence, the present research sheds light on the supervisory jurisdiction of the Jordanian Constitutional Court, especially with regard to the consideration of appeals of formal and substantive unconstitutionality in Jordanian legislation – an issue of great importance.

Research problem: it revolves around determining the jurisdiction of the Constitutional Court in considering constitutional appeals to laws and regulations, especially since the two terms were mentioned in the text of Article (59) of the Constitution on their launch.

1. Does the Constitutional Court have jurisdiction to consider constitutional appeals related to subsidiary legislations and instructions in case they are in violation of the Constitution?
2. Does the court consider the constitutionality of the causes and motives of the legislation in the event that the legislator uses his discretionary power, or deviates in the use of his power? And other questions that the researcher tried to answer by focusing exclusively on the pioneering Jordanian experience.

Research Objectives: The objectives of the research are centered on:

1. Clarifying some legal points that may be of interest to researchers in the field of monitoring the constitutionality of legislation.
2. Shedding light on the most important provisions of the Jordanian legal and judicial jurisprudence.

Research Methodology: The researcher followed the analytical approach, which is based on extrapolating the constitutional and legal provisions governing the appeal of unconstitutionality to answer the research questions and to determine the grounds for the appealable aspects of unconstitutionality.

Research plan: To achieve the objectives of the study, the research was divided into three topics and six themes, as follows:

First topic: Methods of constitutional oversight on the constitutionality of legislation in Jordan.

First theme: Constitutional oversight on constitutionality of legislation before the establishment of the Constitutional Court in 2011.

Second theme: The establishment of the Constitutional Court, its jurisdiction and the authority of its rulings.

Second topic: Aspects of the unconstitutionality of legislation in terms of form and jurisdiction.

First theme: Unconstitutionality of the legislation in terms of form and procedures

Second theme: Unconstitutionality of the legislation in terms of jurisdiction

Third topic: Aspects of the unconstitutionality of legislation in terms of subject and reason

First theme: Unconstitutionality of the legislation in terms of the subject

Second theme: Unconstitutionality of the legislation in terms of reason

### **First topic**

#### **Methods of constitutional oversight on the constitutionality of legislation in Jordan**

The constitution sets general rules and restrictions that the legislature should take into account while enacting laws. These restrictions may be formal related to the formal conditions and procedures that must be taken into account when enacting and promulgating laws or they are objective rules and restrictions related to the subject and content of the law. The objective rules express the prevailing political, social and economic values at the time of constitutionalization, as well as the nature of the system of government and the method of transferring power <sup>(2)</sup>. The issue of constitutional oversight on legislation is one of the most important legal guarantees that ensure the protection of the constitution and secure its application and the protection of the rights and freedom<sup>(3)</sup>.

### **First theme**

#### **Oversight on the constitutionality of legislation prior to the establishment of the Constitutional Court**

It is necessary to grant the executive authority the power to issue temporary laws in the absence of The Parliament, in order to take necessary measures characterized by necessity and urgency. Furthermore, the exercise of the executive authority of this legislative power does not mean releasing this authority without adhering to the limits and oversight stipulated in the constitution . Undoubtedly, the oversight of the Parliament and the judiciary over what is issued by the executive authority in terms of temporary laws in the absence of Parliament is a necessity <sup>(4)</sup>. This oversight took two forms:

- a. Parliamentary oversight: It means the oversight of the Parliament in its two Houses of Representatives and Senate over the constitutionality of laws issued by the government. The Jordanian constitution allowed the Council of Ministers to issue temporary laws with the approval of the King, not violating the specific cases in Article (94) <sup>(5)</sup>, including the state of public

disasters, war and emergencies, and the urgent need of the state for the necessary and urgent expenses.

- b. Judicial oversight: It is entrusted with two bodies: the High Council for the Interpretation of the Constitution and the Judiciary, as follows:

First: Higher Council for Interpretation of Constitution: It was composed of nine members, four of whom were from the Senate, including the President. This formation is considered political, in addition to five judges of cassation according to seniority. And in cases of necessity, it may be resorted to completing the number from the chief judges of the courts according to the seniority as well. This is the legal formation. It follows from the method of forming the Higher Council that its members have a political and legal capacity. This council is entrusted with two competencies. The first is the trial of ministers for the crimes resulting from the performance of their duties. The second is the interpretation of the provisions of the constitution at the request of the Council of Ministers or one of the two parliaments by an absolute majority only. The explanatory decision is effective after its publication in the Official Gazette.

Second: Oversight on the constitutionality by means of advocating before the judiciary: The civil courts of first instance and appeal did not consider advocating the constitutionality of laws, as they did not consider this as one of their powers granted to them in the constitution. However, later on, the previous viewpoint was changed when the Amman Court of First Instance decided in Case No. (974) 230 that the civil courts are competent under the constitution to consider all the disputes between individuals”<sup>(6)</sup>. Then, in Case No. (11/77) the previous court decided that Article 10 of the Juvenile Law No. 23 of 1968 was unconstitutional. As for the Court of Cassation, it granted the civil courts the power of oversight on the constitutionality of laws. Alternately, the Supreme Court of Justice, which was established under Law No. (12) of 1992<sup>(7)</sup>, had the power to overturn any decision or administrative procedure issued under a system that violates the Constitution or the law<sup>(8)</sup>.

From the foregoing, we note that the jurisdiction of the Supreme Court of Justice regarding decisions of unconstitutionality issued by it was limited to refraining from implementing the regulations and suspending their work, not canceling them<sup>(9)</sup>. Based on the foregoing, it is noted that in the stage that preceded the establishment of the Constitutional Court the judiciary (magistrate courts, first instance courts, cassation courts and supreme justice courts) exercised oversight on abstention. That is if a lower law contradicts a higher law, priority is given to the higher law (and not to revoke it), considering its consequences including that this law remains in effect, and any other court, as well as can apply it. Furthermore, the same court can apply it to another case<sup>(10)</sup>. That is why it was necessary to amend the Constitution to allow the birth of (revocation oversight), i.e. oversight by an original case, which was done by the amendment of the Constitution in 2012 to allow the establishment of the Constitutional Court to assume the role of revocation oversight<sup>(11)</sup>.

## **Second theme**

### **Establishment of the Constitutional Court and its Jurisdictions**

First: Establishment of the Constitutional Court: One of the most important constitutional reforms that Jordan witnessed was the establishment of the Constitutional Court, in accordance with the constitutional amendment of 2011, which decided to control the constitutionality of laws and regulations, and organize them. This was briefly stated in Article (58) of the Jordanian Constitution of 1952<sup>(12)</sup>. This called on the ordinary legislator to issue a law that establishes a constitutional court with jurisdiction of this oversight. To this end, and based on Article 31 of the Constitution, the Constitutional Court Law No. 15 of 2012<sup>(13)</sup> was promulgated (). The fifth chapter of the Constitution, after the amendment, was devoted to the Constitutional Court, with four articles (58-61).

Article 58 of the Constitution, with its two paragraphs, regulates the establishment of the Constitutional Court, which is established by law, and whose headquarters will be in the capital, Amman. It is an independent judicial body in its own right, consisting of at least nine members, including the president, appointed by the King. The term of membership in the Constitutional Court is for six non-renewable years. The Constitutional Court law also specified the term of membership to six years in Article (5/1).

The conditions that must be met by the members of the Constitutional Court are stated in Article (61) of the Constitution. Moreover, the Constitutional Court Law also specified the method of expiration of the term of membership in Article (21) of the Constitutional Court Law. It should be noted that the amendment that affected the Constitution in 2016 included the amended Article (40/2), which stipulates that "the King exercises his powers by royal will without the signature of the Prime Minister or the competent ministers, and appoints the president of the Constitutional Court and its members and accepting their resignations"<sup>(14)</sup>. Furthermore, Article (23) of the Constitutional Court Law No. (15) of 2012 also established guarantees for the members of the General Assembly of the Constitutional Court that prevent them from being prosecuted except under precise conditions<sup>(15)</sup>. In terms of the independence of the court, Article (3/b) of the same law stipulates the financial independence of the Court financially and administratively<sup>(16)</sup>.

Second: The jurisdiction of the Constitutional Court: The competences of the Constitutional Court were mentioned exclusively. They are:

- a. Oversight on the constitutionality of laws and regulations in force: It is noted that the legislator intended by the word "laws" the formal technical term, that is, what is issued by the legislative authority in accordance with special procedures stipulated in the Constitution. As for the types of systems that are subject to the oversight of the Constitutional Court, we note that the text of Article (59/A) is an absolute and comprehensive systems, whether they are executive systems, independent systems, systems related to the functioning of public utilities, or administrative oversight systems .It is noted here that oversight includes temporary laws in accordance with Article (5/A/6) of the Administrative Judiciary Law<sup>(17)</sup>.

- b. Interpreting the texts of the constitution: The interpretation of the constitution means to explain the text and reveal the backgrounds and the goals behind it by removing ambiguity and confusion, clarifying its purpose, and extracting the criterion it contains. Moreover, the interpretation of the constitutional provisions leads to the identification of the constitutional standards involved regardless of the connection of these standards in specific condition<sup>(18)</sup>. Since the interpretation of the Constitution is a non-oversight jurisdiction of the court and thus deviates from the framework of the research, the researcher is satisfied with publishing a summary of the latest explanatory decision issued by the Constitutional Court No. (1) of 2020. It is as follows: “Based on the decision of the Council of Ministers related to the request for interpretation of Article 33 of the Constitution...

Where the court said in its decision: And since the response of the Council of Ministers to the request for interpretation requires its segmentation for the purposes of clarity of interpretation regarding each part, as follows: First, it is not permissible to issue a law that completely contradicts the obligations established by the parties of a treaty that the Kingdom has ratified by virtue of a law. Second, it is not permissible to issue a law that includes an amendment or abolition of the provisions of that treaty. Third, the international treaties have a binding force on their parties, and the states must respect them, as long as these treaties remain in place and in force, and have been concluded and ratified, and the procedures established for their enforcement have been fulfilled<sup>(19)</sup>.

Third: Res judicata of judgments issued by the Constitutional Court<sup>(20)</sup>: Res judicata of the judgment issued regarding its constitutionality must be general and absolute. It applies to all individuals, opponents and authorities, given that the constitutional litigation is directed to the object of the contested text, without the need for an explicit text on this matter, but in view of the subject of the constitutional case itself as an abstract general text<sup>(21)</sup>.

## **Second topic**

### **Aspects of the unconstitutionality of legislation in terms of form and jurisdiction**

Constitutional rules and texts occupy the top of the pyramid in any legal system, and transcend all subsequent legislation, whether laws issued by the legislative authority, or regulations or instructions issued by the executive authority.

In the event of a violation, we are faced with the two most important aspects of unconstitutionality. They are unconstitutionality from a formal point of view and unconstitutionality from a substantive point of view, which will be addressed in the following two themes:

#### **First theme**

##### **Unconstitutionality of the legislation in terms of form and procedure**

The constitution subjects laws and regulations to specific restrictions and controls in terms of form, jurisdiction and location. It determines the competent authorities to issue them, and it sets objective controls that the legislation may not exceed. When we speak of form, we also include procedures that are part of

the formality of legislation. Exceeding the rules of form and the procedures required by the constitution in order for the law or regulation to be characterized by the integrity and validity of the legislation constitutes a formal violation of the constitution under which it was issued. This formality must be discussed in the legislative and regulatory texts before discussing the objective defects.

The body entrusted with the oversight of its constitutionality must examine these formalities in advance on its own to see if they are in violation of the constitution or not, and impose on it the penalty in terms of cancellation if there is a constitutional court. In the event of abstaining from implementation, the supervisory body will carry out the supervision of the abstention, as was the case in Jordan before the establishment of the Constitutional Court <sup>(22)</sup>. It is noted here that the formal oversight focuses on the procedures set by the constitution to issue the law, such as voting on the law or combining it with decrees to become effective<sup>(23)</sup>.

Examples of the formal procedures required by comparative constitutions in general are achieving a quorum for convening the House of Representatives, whether by an absolute majority or a simple majority, the point of submitting or proposing bills, and the necessity of including the bill on the agenda before being discussed<sup>(24)</sup>. Formality in law has several meanings, and within the scope of legal drafting, formality is defined as the external image in which the content of the law appears. In this way the content of the law may take the form of a legal rule, a legal standard or a legal principle <sup>(25)</sup>.

It may include the formal conditions and restrictions imposed by the constitution on legislation in terms of the way legislation is proposed, enacted, issued and published. That is, this can be done through a set of procedures, binding steps, or temporal or spatial circumstances that the constitution obligatorily requires for the enactment of legislation, and the legislative or executive authority must abide by them as stated. In the event that the legislation exceeds the formal conditions imposed and drawn up by the constitution, then it has violated it. The violations resulting from this transgression are considered an aspect of unconstitutionality, which will inevitably lead to the abolition of the formally defective legislation.

An important question arises here: What are the limits of formality required by the legislation in order to be free from constitutional violation? There is no consistent standard for determining what is or is not material from a form. The jurisprudence in this area has gone in two directions. The first trend went to the fact that the formal defect can be achieved when the legislation violates the formal rules, whether they are mentioned in the constitution or in the internal regulations of the Parliament. The other trend saw that the unconstitutional defect of violating the form is achieved only if the violated formality has been stipulated in the Constitution itself. What is relied upon in constitutional oversight is the formalities and procedures stated in the Constitution. However, violating the formal rules contained in other lesser legal texts does not lead to its unconstitutionality <sup>(26)</sup>.

The Constitutional Court proceeded to oversee the constitutionality of the legislation in terms of form and procedures (according to the second trend). This

was stated in the explanatory decision No. 5 of 2017, issued by it in a referral to the challenge of the unconstitutionality received from the Customs Court of First Instance on the unconstitutionality of the amended special tax system No. (97) of 2016. It stated that <sup>(27)</sup> "...after scrutiny, deliberation, and extrapolation of the constitutional and legal texts, and the pronouncement of the first article of the system whose unconstitutionality is challenged, it becomes clear....

1. The unconstitutionality of the phrase at the end of Article (1) of the amended Special Tax Law No. (97) of 2016 and its text. (It shall come into force as of 06/21/2016).
2. Refusal of the appeal for more than that .The decision of the Constitutional Court above was established on the grounds that the condition of publication in the Official Gazette and the retroactive application of the legislation are among the formal conditions that must be observed when enacting legislation, so that the legislation is compatible with the Constitution.

The researcher points out here that the scope of the non-constitutional formal defect of the legislation affects only the legislation lower than the constitution, taking into account the hierarchy. As for the formal procedures for constitutional amendments, it is not envisaged that they will be the subject of constitutional oversight. Concerning the realization of the formal defect, it is achieved by the legislation's violation of the formal procedures contained only in the constitution, not the rules contained in other lower-ranked legal tools <sup>(28)</sup>.

It should be noted here that the interpretative or procedural regulations issued by the legislative authority to implement the law of the House of Representatives, for example, are not the basis for challenging the unconstitutionality in the event of its violation. The order to amend or cancel them is entrusted to the authority that issued it. This leads to the understanding of the scope of the formal constitutional violations, which the constitution limited to laws and regulations .In the opinion of Jordanian jurisprudence, the types of systems that are subject to the oversight of the Constitutional Court is due to the generality of the text of Article (1/59) of the Jordanian Constitution, which was absolute<sup>(29)</sup>.

## **Second theme**

### **Unconstitutionality of legislation in terms of jurisdiction**

Lack of jurisdiction is defined as the lack of legal authority to perform a particular act. The philosophy of challenging unconstitutionality in this regard is based on a fundamental principle – separation of powers <sup>(30)</sup>. The powers and competencies should be distributed among the three state authorities (legislative, executive and judicial) in a manner that ensures defining the responsibilities and not overlapping among these powers .This defect is based on the violation by the competent authority of legislation of the rules of its competence that are determined by the Constitution. It may be organic, objective, temporal or spatial <sup>(31)</sup>, as follows:

First: Organic or personal competence: It means that the competence must be exercised exclusively by the member, person or authority designated by the

constitution to carry out this competence. This requires the three authorities in Jordan to abide by the provisions of the Jordanian constitution regarding their respective competencies in the following articles:

- Article (25) Legislative power is entrusted in the National Assembly and the King. The National Assembly is composed of the Senate and the House of Representatives.
- Article (26) The executive authority is entrusted to the King who exercises it through his ministers in accordance with the provisions of this Constitution.
- Article (27) The judicial authority is entrusted to the courts of all kinds and degrees, and the judgments are issued in accordance with the law in the name of the King.

Hence, the researcher believes that the legislative authority has the original jurisdiction in legislation, and it is not permissible to deviate from this (by authorizing others, for example), except with an explicit provision in the Constitution. In pursuance of the foregoing, the legislative authority may not delegate the executive or judicial authority to carry out the work of legislation in whole or in part, unless the constitution includes a text that grants it this right. This jurisdiction is known as the principle of singularity of legislation. The same applies to the executive power's membership in the executive power, as the executive power exercises its competencies in accordance with the constitution and the law.

If the constitution specifies a specific jurisdiction and entrusts it to a body of the executive authority or to one of its persons, he alone and not others can exercise that jurisdiction<sup>(32)</sup>. The closest example of the element of the organic competence to the executive authority is to authorize the Council of Ministers to issue temporary laws in specific cases as stated in Article 94 of the Jordanian Constitution<sup>(33)</sup>. What applies to the two authorities mentioned above applies to the judicial authority, which is entrusted with the settlement of all disputes.

Second: Substantive jurisdiction: The substantive jurisdiction relates to the subject matter and content of the legislation. The legislative authority has exercised its legislative jurisdiction in the subject matter entrusted to it by the constitution, otherwise the legislation would be in violation of the constitution due to the fact that the subject matter was left behind in jurisdiction<sup>(34)</sup>. In the concept of violation, the defect of violating the subject matter jurisdiction is manifested by the issuance of an action by a certain authority that is within the jurisdiction of another authority.

Third: Temporal and Spatial Jurisdiction: Temporal jurisdiction relates to the constitution setting a time limitation for the exercise of legislative competence by the legislative or executive authority. Temporal jurisdiction is related to the constitution setting a time limitation for the exercise of the legislative authority by the legislative authority or the executive authority. If the legislative authority does not observe this restriction and issues the legislation at a time when it does not have the right to exercise this jurisdiction, the legislation is in violation of the constitution. Similarly, in case of specifying a specific place for the exercise of

jurisdiction by the authority, if it is outside its constitutionally defined spatial scope, the legislation issued in this case is unconstitutional<sup>(35)</sup>.

Attentive reading of the Jordanian constitution reveals that its texts are devoid of specifying any spatial restriction for legislation, except for sovereign matters or organizational purposes, such as the capital Amman in Article (3) of 1952 Constitution, stipulating that “the city of Amman is the capital of the Kingdom and it may be transferred to another place by a special law,” and specifying the seat of the Constitutional Court in the capital, as stated in Article (58/1) of the Constitution.

### **Third topic**

#### **Aspects of the unconstitutionality of legislation in terms of subject and reason**

The Constitutional Court carries out the subsequent judicial oversight of the constitutionality of legislative texts, and this is what we will address in the following two themes.

#### **Firs theme**

##### **Unconstitutionality of legislation in terms of subject**

The constitutional case considered by the Constitutional Court is an action in rem in which a text of law is contested. The court’s main work is focused on this legal text, and therefore the principle is that its rulings are directed to the legal text. It is also assumed that the effects of the ruling relate to the legal text in the first place <sup>(36)</sup>.

In the constitutional texts, the legislator places a number of objective restrictions on the legislative authority’s use of its jurisdiction and its right to legislation, so that laws must not infringe on the principles that the constitution provides for their protection. Examples of such principles are the principle of the accused is innocent until proven guilty, the right to litigation is safeguarded and guaranteed to all people, the prohibition of a provision in the laws to immunize any administrative action or decision from judicial oversight, and the principle of equality before the law and other general controls and principles. The violation of theses principles would consider the legislation unconstitutional <sup>(37)</sup>.

Hence, substantive violations or defects are represented in the violation of the content of the legislative rule to the content of a rule contained in a text of the Constitution. There are many forms of this, including what may be a legal defect related to the subject of legislation. For example, the legislator does not distinguish between his discretionary power granted to him, which is restricted and bound by the constitution. In addition, this defect may be due to the legislation’s violation of the spirit of the constitution, which is known in legal jurisprudence as the defect of deviation from the legislative power, as we will see later.

If, for example, the law grants the employees of a certain administrative authority privileges and rights more than what is granted to other employees of other

administrations in the state, without a realistic or legal justification for discrimination, then the legislator has thus violated an important constitutional principle which is the principle of equality of citizens before the law. This is the defect that affects the subject matter or substance of the legislation <sup>(38)</sup>.

In the explanatory decision No. 7 of 2018 of the Jordanian Constitutional Court, the constitutional case against Article (72) of Income Tax Law No. (34) of 2014 was accepted. The decision reads: "The director, authorized employee, or auditor, as the case may be, at any time, may correct on its own or at the request of the taxpayer the written and arithmetic errors that occur in decisions, notices and memoranda through accidental omissions, and the correction procedures are not subject to appeal"<sup>(39)</sup>.

The court has won the application of the constitutional principle of equality in the face of the tax law Article (72). Its explanatory decision stated: "The legislator, when confronting laws and regulations, the legislations must comply on the one hand with the goals and objectives of the Constitution... <sup>(40)</sup>.

## **Second theme**

### **Unconstitutionality of the legislation in terms of reason (the defect of deviation from the legislative power)**

The defect of legislative deviation is mainly related to the purpose of the legislation, which is always the public interest. It is not possible to realize this defect except when the constitution grants discretionary power to the legislator in a specific field of legislation, because the discretionary power is what allows the legislator to choose between several solutions and means. In this case of the discretionary power, the legislator should target the public interest only. If he deviates from this and targets other interests, such as achieving an individual or party interest, the legislator has deviated from his legislative authority <sup>(41)</sup>.

The problem lies in the difficulty of proving the legislator's motives when enacting legislation. Although it is difficult to prove in the administrative judiciary, its difficulty is more severe in the constitutional judiciary. Since it is considered as a precautionary defect in the constitutional and administrative judiciary, the constitutional judiciary does not resort to it if it finds other legislative defects <sup>(42)</sup>. This defect of deviation has nothing to do with and never related to the motives that push the legislator to enact a law at a specific time or not to enact it, because it is one of the conveniences left to the legislator and is not subject to constitutional or judicial oversight. This is the opposite of the goals of legislation that are subject to the oversight of the constitutional judiciary, if they deviate from the goal of the public interest of the community to other goals contrary to that interest<sup>(43)</sup>.

In order to confirm the foregoing about the lack of jurisdiction of the Constitutional Court to consider the defect of the reason behind the legislation, the researcher presents Resolution No. 4 of 2014 of the Constitutional Court. It stated "... and the oversight of the constitutionality of laws and regulations is a control over the legality of these legislations and their non-contravention of the Constitution. It is not permissible for the Constitutional Court to examine the

suitability of the legislation contested as unconstitutional or to delve into the nature of the motives that led to its enactment or its necessity. All these issues fall within the legislative competence of the House of Representatives or the legislative body to which the Constitution has conferred this competence, and the court may not substitute itself for them<sup>(44)</sup>.

In sum, the Jordanian Constitutional Court is called to adjudicate on the extent to which the law and regulations are in conformity with the Constitution, and accordingly its oversight in this regard is legitimacy oversight and appropriateness oversight<sup>(45)</sup>.

### **Conclusion**

The guarantee of the principle of constitutional supremacy is reflected in its most accurate form through the judicial oversight exercised by the Constitutional Court over legislation. This oversight reinforced the principle of the rule of law and graded legal rules. The constitution is the one that establishes the legislative competence entrusted to the legislative and executive authorities, regulates their work, and sets general rules and restrictions that should be taken into account by the two authorities when issuing laws and regulations. It is the constitution that established the Constitutional Court in 2011 to control and interpret legislation.

This research focused on the unconstitutional aspects of legislation, and the court's post-oversight powers. The ruling of unconstitutionality reveals the invalidity that has affected the legislation since its unconstitutionality. Thus, it lost its components, which necessitates the waste of its effects, taking into account the reasons for the stability of rights and legal positions. There are many formal, procedural and substantive restrictions that must be taken into account when enacting laws, each according to its competence. If the legislative or executive authority deviates from these restrictions and rules, then they have exceeded their competence and the limits of their authority to the point of contravention and unconstitutionality. As a result, the decision of the Constitutional Court comes to reject the appeal or accept it by canceling and nullifying the contradicting texts that are the basis of constitutional litigation, and support the supreme constitution. The court does not monitor the defect of the reason, as its jurisdiction is the spirit of the texts, not the discretionary power of the legislator and his motives. But there is the administrative judiciary, which can be appealed before for the defect of the reason.

### **Recommendations**

The researcher recommends expanding the scope of the oversight work of the Constitutional Court to include previous preventive oversight in addition to the current oversight. This can be done by requesting the legislative and executive authorities to share the proposed finalized legislation with a technical office affiliated to the Constitutional Court. It may also be recommended that the role of the Legislation and Opinion Bureau be activated to investigate the constitutionality of laws as part of its competence at the legislative drafting stage.

before issuing a draft law or order. This will enrich the pre-constitutional oversight and lead to legislative stability in the state.

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## Endnote

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- (3) Shneikat, Khaled Hamed, 2017, Oversight of the constitutionality of laws in Jordan: Before and after the establishment of the Constitutional Court, Policy Paper 4, The Arab Organization for Constitutional Law, p. 7. Published on <https://dustour.org/>
- (4) Shatnawi, Faisal, 2007, Monitoring the Legitimacy of Temporary Laws in Jordan, *Al-Manara Magazine*, Vol. 18, No. 8. Summary page.
- (5) Article (94) of the Jordanian Constitution of 1952: 1- When the House of Representatives is dissolved, the Council of Ministers, with the approval of the King, has the right to make temporary laws to deal with the following matters: A- Public disasters. B- A state of war and emergency. C- The need for necessary urgent expenses that do not tolerate delay. Temporary laws that must not contradict the provisions of the Constitution have the force of law provided that they are presented to the National Assembly in its first meeting. The Assembly must decide on them during two consecutive regular sessions from the date of their referral. It may approve, amend or reject these laws. If it rejects them, or the period stipulated in this paragraph has expired and has not been decided upon, the Council of Ministers, with the approval of the King, must declare their immediate invalidity. From the date of that announcement, their force of law shall cease to exist, provided that this does not affect the contracts and acquired rights. 2. Temporary laws shall take effect in the manner in which laws shall have effect in accordance with the provision of Article (93) of this Constitution.
- (6) Al-Zoubi, Khaled, Oversight of the constitutionality of laws in the laws of the Supreme Court of Justice and the civil courts in Jordan, p. 9, Jordan Legal Network. [www.lawjo.net/vb/attachment.php?attachmentid=1662&d=1296305382](http://www.lawjo.net/vb/attachment.php?attachmentid=1662&d=1296305382)
- (7) The constitutional amendments of 2011 included the provision in Article (100) for the establishment of an administrative judiciary at two levels instead of what was previously applied through the Supreme Court of Justice as one level. In implementation of this and in accordance with the provisions of Article (3) of the Administrative Judiciary Law No. 27 of 2014, the Administrative Judiciary has been established. It consists of the Administrative Court as a Court of First Instance, and the Supreme Administrative Court.
- (8) Article 9, Paragraph A/6 - Appeals submitted by any aggrieved party requesting the cancellation of any decision or procedure under any law that contradicts the Constitution or any system that contradicts the Constitution or the law. A/7 - Appeals submitted by any aggrieved party requesting the suspension of the

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- (10) Al-Khatib, Numan Ahmed, 2017, *Al-Basit fi Al-Dustouriyah*, House of Culture for Publishing and Distribution, Amman / Jordan, pp. 294-295.
- (11) Shatnawy, Faisal and Tamleh, Saleem, 2013, *Judicial Oversight of the Constitutionality of Laws and Regulations before the Constitutional Court in Jordan*, *Studies of Sharia and Law Sciences*, Vol. 40, No. 2, p. 617.
- (12) Pursuant to the amendment published in Issue 5117 dated 10/1/2011 of the Official Gazette
- (13) Shatnawi, Faisal and Hatamleh, Salim, previous reference, p. 617.
- (14) The constitution was amended on 5/5/2016 and was published in the Official Gazette No. 5396.
- (15) Article 23 of Constitutional Court Law No. (15) of 2012 stipulates:
- A. A member shall not be prosecuted for any criminal complaint during his term of membership in the court or for any criminal complaint related to the tasks and works entrusted to him according to the provisions of the Constitution, this law or resulting from it except with the permission of the General Assembly.
  - B. The General Assembly, after hearing the statements of the complainant and the complaining member, and reviewing any evidence may decide to archive the complaint or authorize the prosecution of the member in accordance with the provisions of the legislation in force.
  - C. In the case of flagrante delicto, the member may be arrested or detained provided that the chairman is immediately informed of that. The General Assembly shall issue its decision in accordance with the provisions of paragraph (b) of this Article within a period not exceeding twenty-four hours from the date of the member's arrest or detention.
  - D. If the general body decides to archive the complaint, the member may not be prosecuted for that complaint after the termination of his membership in the court.
- (16) Article (3/b) of the Constitutional Court Law stipulates:
- B- The court enjoys legal personality and financial and administrative independence. In this capacity it has the right to own movables, and immovable and to carry out all the legal actions necessary to perform its tasks, and to act on its behalf in judicial procedures the Civil Attorney General.
- (17) Al-Adwan, Ziyad and Nasraween, Laith, 2018, *The Role of the Constitutional Court in Oversight of the Constitutionality of Laws*, *Studies, Sharia and Law Sciences*, Volume 45, Number 4, Supplement 4, p. 222..
- (18) Shatnawi, Faisal and Hatamleh, Salim, previous reference, p. 620.
- (19) Explanatory Decision No. (1) of 2020, published in the Official Gazette No. 2154, on 3/5/2020. <http://alsaa.net/>
- (20) Article 59 of the Jordanian Constitution of 1952 and its amendments 2011: The Constitutional Court is responsible for the oversight of the constitutionality of laws and regulations in force, and it issues its rulings in the name of the King. Its judgments shall be final and binding on all authorities. Its judgments shall be effective with immediate effect unless the judgment specifies another date for its enforcement. The judgments of the Constitutional Court shall be published in the Official Gazette within fifteen days from the date of their issuance.
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- (25) Al-Kilani, Zaid Ahmed, previous reference, p. 78.
- (26) Abdul Karim, Faris Hamid, previous reference
- (27) Explanatory Decision No. 5 of 2017, published in the Official Gazette No. 5479 p. 5487 dated August 21, 2017, Qst.
- (28) Al-Kilani, Zaid Ahmed, previous reference, p. 81.
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- (31) The poet, Ramzi Taha, 2003, *The Constitutional Judiciary in the Kingdom of Bahrain*, Dar Al-Nahda Al-Arabiya, Cairo, pp. 462-464.
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- (33) When the House of Representatives is dissolved, the Council of Ministers, with the approval of the King, has the right to make temporary laws to deal with the following matters: A- Public disasters. B- A state of war and emergency. C- The need for necessary urgent expenses that do not tolerate delay. Temporary laws that must not contradict the provisions of the Constitution have the force of law provided that they are presented to the National Assembly in its first meeting. The Assembly must decide on them during two consecutive regular sessions from the date of their referral. It may approve, amend or reject these laws. If it rejects them, or the period stipulated in this paragraph has expired and has not been decided upon, the Council of Ministers, with the approval of the King, must declare their immediate invalidity. From the date of that announcement, their force of law shall cease to exist, provided that this does not affect the contracts and acquired rights. 2. Temporary laws shall take effect in the manner in which laws shall have effect in accordance with the provision of Article (93) of this Constitution.
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- (37) Wafi, Samira Ali Gomaa, 2019, *Competences of the Constitutional Court in the Libyan Draft Constitution 2017 (a comparative study)*, Master's thesis, Middle East University, Faculty of Law, Public Law, pg. 60.
- (38) Abdel Karim, Fares Hamid, previous reference, a website without the number of pages.
- (39) Interpretative Decision, Appeals, No. 7 of 2018, the Constitutional Court, issued in the Official Gazette No. 5549, p. 7523, 12-3-2018, Qastat
- (40) :6/1) Jordanians are equal before the law. There is no discrimination between them in rights and duties, even if they differ in race, language or religion.  
 101 /1: 1- Courts are open to all and protected from interference in their affairs  
 128/ 1: 1- The laws issued under this Constitution to regulate rights and liberties may not affect the essence of these rights or affect their fundamentals.
- (41) Abdel Karim, Faris Hamed, previous reference, electronic magazine.
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- (43) Shawabkeh, Muhammad Abdullah, previous reference, p. 79.
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