

THE EXTENT OF THE PERMISSIBILITY OF ABANDONING THE AUTHORITATIVE PROVISIONS AND DECISIONS OF THE CONSTITUTIONAL JUDICIARY

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Abstract:

The constitution must be a living work capable of evolving with the development of society, and the legislator has the right to take new legislative measures that were considered contrary to the constitution years ago. In this research, we will show the position of jurisprudence and the Jordanian and comparative constitutional judiciary regarding the permissibility of abandoning the provisions of the constitution.

The constitutional lawsuit is a concrete lawsuit that focuses on specific legal provisions, and that the opponent in the constitutional lawsuit is not one of the parties to the lawsuit, but is the legal text as long as it is applicable in any part of the constitutional lawsuit, even if it relates to a procedural aspect of the lawsuit.

Non-compliance of the Constitutional Court with the decisions and rulings issued by them in the constitutional cases before it, which means the possibility of reconsidering those cases that have already been adjudicated, and the consequent possibility of reversing the previous rulings and contradictions in the rulings, which weakens confidence in the fairness of the constitutional judiciary , which is inconsistent with the authoritative nature of the rulings issued in the constitutional case, as they are final rulings that cannot be appealed in any way.

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Introduction:

The successive social development forces the legal base to arm itself with the weapon of modernization, development and change. To fit with these rapid social developments, and here we will be facing a state of contradiction between the necessity of stability in laws and thus the permanence of individuals' confidence in them, and the urgent need to keep pace with societal developments.

The ruling of unconstitutionality has an objective effect by refraining from applying the law or canceling that law. And since the constitutional lawsuit is one of the real lawsuits in which the litigation is directed to the legal texts that were challenged for violating the constitution, it has absolute authority that binds everyone and all other state authorities. Whatever the nature of the constitutional lawsuit and its independence from the lawsuit filed before the judicial judge, the constitutional lawsuit has been considered by the court In its ruling No. (3) of 2013 that it is a real suit that focuses on specific legal texts, and that the opponent in the constitutional lawsuit is not one of the parties to the lawsuit, but rather it is the legal text as long as it is applicable in any part of the constitutional lawsuit even if it relates to a procedural aspect of the lawsuit as In this case".

And because the constitution must be a living work capable of evolving with the development of society, and the legislator has the right to take new legislative measures that were considered contrary to the constitution years ago, the courts can change their jurisprudence. Accordingly, in this research, we will show the position of jurisprudence and the Jordanian and comparative constitutional judiciary regarding the permissibility of abandoning the provisions of the constitution.

1. Research problem:

The problem of the authoritativeness of the unconstitutional ruling, its legal effect, the time frame for its validity, and how it is implemented by public authorities and all, is one of the most important and controversial issues in jurisprudence, due to the practical problems resulting from the issuance of such rulings, the differences in constitutional systems regarding their organization, and the fact that they are practical. Legislative modernization is continuous and linked to the development of the social, political and economic conditions in the country, and accordingly the research problem lies in answering the question represented in what is the extent of the permissibility of abandoning the authoritative constitutional provisions?

2. Research importance:

The legislator's saying that the decisions of the constitutional judiciary enjoy the power of the court case a priori means that these decisions are like the final decisions that decide the origin of the dispute on the one hand, and are final in relation to what was decided on the other hand, and therefore the importance of the research lies in studying the position of jurisprudence and constitutional judiciary The extent of the permissibility of abandoning the final constitutional provisions that enjoy absolute authority, and the extent of its impact on acquired rights and stable legal positions.

3. Research Methodology:

We will take the method of comparative jurisprudence and jurisprudence, as it presents the opinions of jurists on the issues under discussion by analyzing and weighing them in case they conflict, as well as presenting what the rulings of the constitutional judiciary have taken place in the various elements of this issue, and a comparison between each of the American, Egyptian and Jordanian systems, and perhaps the reason for this Regimes have long-standing experiences in the field of monitoring the constitutionality of laws, and thus we try to take note of these experiences and evaluate them to see the extent to which each of them succeeds in achieving the desired goals, which are the protection of constitutional legitimacy and the guarantee of public rights and freedoms.

The first topic: the extent to which it is permissible to abandon the authenticity of the provisions of the constitutional judiciary

In this section, we will discuss the extent to which the constitutional judiciary is committed to its decisions, and the exceptions to that, and it will be according to the following division:

The first requirement: the obligation to abide by (respect) the constitutional judiciary for its decisions

All constitutional courts consider, explicitly or implicitly, that their decisions are not binding on them, and therefore they may abandon the reasoning, explanations, and solutions that they had previously adopted. The French Constitutional Council declared in 1978 that it did not have the authority to supervise the constitutionality of a constitutional law, but it returned in 1985 to confirm that the regularity of an issued law can be invoked on the occasion of a study New legislative provisions amending, supplementing, or affecting its scope, and if this is not the case, that is, if the courts are unable to provide new arguments and new answers to constitutional questions that they have already answered, then both the constitution and jurisprudence fall into stagnation, while the constitution must To be a living work that can evolve with the development of society, and the legislator has the



right to take new legislative measures that were considered contrary to the Constitution years ago, so the courts can change their jurisprudence¹.

And that the meaning derived from the Jordanian constitution is Article (59/1), which states that: "The Constitutional Court is concerned with monitoring the constitutionality of laws and regulations in force and issues its rulings in the name of the king, and its rulings are final and binding on all authorities and all, and its rulings are enforceable with direct effect unless the ruling specifies a date Another for its enforcement...." And Article (15/a) of the Jordanian Constitutional Court Law of 2012 stipulates that: "The court issues its ruling on the appeal submitted to it in the name of the king, and the ruling issued by it is final and binding on all authorities and all." that court decisions the constitutionality is absolute and binding on all authorities, which makes its authority deduced by the means of analogy a fortiori. Rather, it is this authority that makes these decisions distinct from other judicial decisions, and makes them characterized by generality and abstraction. Accordingly, the ruling issued in the constitutional case enjoys authority against both the Constitutional Council itself and the Constitutional Court itself, and it does not imply that these parties are the ones that issued that ruling, as the general formula that came in the constitutional and legal texts, which includes giving the character of absolute and final authority For the decision and judgment issued by the Council Constitutional courts and constitutional courts ², require that these bodies be subject to that ruling, just as other courts are subject to the ruling issued in the constitutional case. With regard to saying that it is permissible for the Constitutional Council or the Constitutional Court not to abide by the decisions and rulings issued by them in the constitutional cases before it, this means the possibility of reconsidering those cases that have already been decided, and the consequent possibility of reversing previous rulings and a contradiction in the rulings. This weakens confidence in the fairness of the constitutional judiciary, which is inconsistent with the authoritative nature of the rulings issued in the constitutional lawsuit, as they are final rulings that cannot be appealed in any way ³ Therefore, the Constitutional Council and the Constitutional Court must abide by the decisions and rulings issued by them in constitutional cases, and rule that the new case is not accepted because it has already been decided. The second requirement: exceptions to the commitment of the constitutional judiciary to its decisions One of the consequences of the authoritativeness of rulings issued by the constitutional judiciary, as we mentioned above, is giving absolute authoritativeness to its rulings, and considering them binding on all state authorities and all; Also, the inadmissibility of the absolute authoritativeness of the rulings of unconstitutionality, but there are cases in which it is permissible to abandon the absolute authoritativeness, as the requirement of the absolute authoritativeness that is permissible for the ruling of unconstitutionality is not to raise the constitutional issue included in this ruling again before the constitutional court, and with that some tended The constitutional courts in Europe⁴ to abandon their previous legal principles that they adopted on the occasion of adjudicating the issue of constitutional lawsuits, whether constitutional or by dismissing the lawsuit, which means nullifying the absolute authority Judgment in the constitutional issue, and this is something that does not happen

¹ Shukr, Zuhair, *The Mediator in Lebanese Constitutional Law, The Emergence and Path of the Constitutional Political System, Theory, Part One*, Al-Halabi Publications, Beirut, 2006, p. 336.

² See the text of Article (1/59) of the Jordanian Constitution, the text of Article (15/a) of the Jordanian Constitutional Court Law of 2012, the text of Article (195) of the Egyptian Constitution of 2014, and Article (48) and (49) of the Constitutional Court Law Egyptian Supreme Court for the year 1979.

³ Eid, Sayed Refaat, *Al-Wajeez in the Constitutional Case*, 1st Edition, Dar Al-Nahda Al-Arabiya, Egypt, 2004, p. 497.

⁴ The German Constitutional Court approached this - with great caution - if circumstances arose that required a new assessment by the Constitutional Court. In the same direction, the Austrian Constitutional Court proceeded, explaining its direction in giving a different answer to the issue that contradicts what it considered before, based on the fact that it is in its authority to embrace new ideas and new values of society implicitly expressed by the constitution, and before that the condition of equality and what can reflect its interpretation of different interpretations. In light of the development of circumstances, as the Italian Constitutional Court ruled that it could change its direction in the constitutional issue in the light of subsequent developments in the basic principles of the legal system because these developments could lead to different solutions. For more, see: Sorour, Ahmed Fathi, *Constitutional Protection of Rights And Al-Hurriyat*, Cairo, Dar Al-Sharq, 2000, pg. 315.

except for long periods in which the legislator neglects to update the law ⁵. This approach was not accepted by the majority of jurisprudence, and in this regard it distinguishes between two hypotheses or two theories, which are the theory of living law, and the change of circumstances. Therefore, we will study this requirement in two branches in which we explain these theories, according to the following:

4. Section I: Living Law

It is for the Constitutional Court to change its ruling on the unconstitutionality of a particular law, so it treats it as unconstitutional after ruling on its constitutionality. Professor Dr. Zuhair Shukr believes that there is no difference between the theory of living law and the principle of changing circumstances, except with regard to the judge's personal position on the law, which is something that does not lead to Reconsidering the rulings of the constitutional judiciary, and this abandonment of authenticity coincides with its place in the United States of America, where abstention control is taken, so the law that was ruled unconstitutional at the level of the courts of appeal remains in place, because the ruling of the Supreme Court is tantamount to annulment of the law, condemning the list, and allowing Congress to formulate it Again, in the light of the Supreme Court's observations⁶. This abolition

does not coincide with its place in the countries that take the control of repeal, where the penalty resulting from the constitutionality is the abolition of the law that is contrary to the constitution, so this law becomes worthless since the ruling of its non-issuance, or since the issuance of the ruling of its unconstitutionality, and then there is no way to re-enforce the provisions that law except through the enactment of a new law to replace it by the legislative authority⁷ ;That is, the ruling on the unconstitutionality of a legislative text or its constitutionality is equal to the authenticity, and it is an absolute authority towards everyone, including the Constitutional Court, which may based on and pursuant to the theory of living law and the principle of changing circumstances restriction in its jurisprudence, and this is what actually happened in the United States of America, And some European countries, including: Germany, Spain, Italy and France⁸.

5. The second section: the principle of changing circumstances

This means that the Constitutional Court amends its ruling on the constitutionality of a particular law and then rules that it is unconstitutional. This can happen when the members of the court are replaced by new members, and the consequent possibility of differing opinions of those former judges about the constitutionality or unconstitutionality of a law, or that circumstances have evolved and changed. In a way that causes the court to abandon the authoritative rulings⁹. Such an issue is then governed by the principle of balancing the damages resulting from this renunciation with the damages resulting from the continued application of the law, then testing the least harmful of them, bearing in mind the possibility of getting rid of that in another easier and calmer way than through renunciation, through new legislation that addresses the legal problem¹⁰. we believe in the preponderance of what was held by the majority of jurisprudence that the court's steadfastness in its previous ruling on the constitutionality of the law is more appropriate than reversing it by a ruling that determines its unconstitutionality, and nullifies its argument that is an important element of the elements of the continuity and stability of the law and derives its value from the psychological need to be reassured about the future. Because there is no doubt that this reversal will cause a serious shock that threatens

⁵ Al-Salhi, Maha Bahjat, Judging the Unconstitutionality of a Legislative Text and Its Role in Strengthening the State of Law: A Comparative Study, Baghdad, Iraq, World of Wisdom Series, 2019, pp. 23-33.

⁶ Eid, Syed Refaat, previous reference, p. 433.

⁷ Shukr, Zuhair, previous reference, p. 334.

⁸ Sheikh, Esmat Abdullah, The extent of the independence of the judiciary in the matter of monitoring the constitutionality of legislation, Dar Al-Nahda Al-Arabiya, Egypt, 2013, p. 132.

⁹ Shukr, Zuhair, previous reference, p. 334.

¹⁰ Eid, Syed Refaat, previous reference, p. 433

stability in transactions, and make the concerned parties confused about the reality of their legal positions, and the court's prestige and respect for the public will fall, when it is known that something of what it said yesterday does not obligate it today, and in addition to that In all, reversing the previous ruling on the constitutionality of the law, despite the seriousness of its consequences, is not the only way to deal with this issue, as there is another available and easy way It does not entail the serious consequences of reversal, except for the legislative authority to enact new legislation that properly addresses the legal problem.

6. The second topic

The position of the comparative constitutional judiciary regarding the permissibility of abandoning the authoritative constitutional provisions

To find out the position of the comparative constitutional judiciary on the issue of revoking the authoritativeness of the rulings issued by it, you will first deal with: the US Federal Supreme Court and the extent of the permissibility of revoking the authoritativeness of its rulings, and in the second: the Supreme Constitutional Court in Egypt, and the extent of the permissibility of revoking the authoritativeness of its rulings its provisions. Finally, we discuss the position of the Jordanian Constitutional Court regarding the permissibility of abandoning the authoritativeness of its rulings, according to the details, as follows:

The first requirement: the position of the comparative constitutional judiciary

Through this demand, we will review the position of the American and Egyptian constitutional judiciary, because, as we indicated, due to their great expertise and experience in this field, as follows:

The first subsection: the extent to which the US Federal Supreme Court may deviate from the authoritativeness of its rulings

The Federal Supreme Court operates under the Principle of Stare Decisi, according to which, when a dispute is brought before the judiciary, the court searches for previous rulings to see if the same problem has been presented to it before, and then, it follows the same principle, and confirms the same rule that it decided. The old rule, and whenever the court rulings follow in the same direction, the established principle acquires great authority and value in what is presented to the courts in its matter¹¹.but despite the importance of this principle, the Federal Supreme Court did not abide by it in the constitutional field in particular, and expressed early on the relative value of this principle, in the year 1849 in the case known as (The Passenger Cases), stating that: The court is that its opinions on the interpretation of the constitution always remain open for discussion to be reconsidered if it is found that they were established on a wrong basis and the authority of these opinions should not depend only on the strength of the logic and evidence on which it is based. In 1944¹², the court returned and confirmed the same rule with more Clarity in the case of (Smith All right) and in this ruling the court overturned its previous ruling in the case of (GoreyV.Townsend) and with the many occasions in which the Supreme Court reversed its previous rulings¹³.However, the American commentators differed in their opinions in assessing this phenomenon. Some of them ¹⁴ saw the court's explicit abandonment of some precedents as a matter that inspires confidence in it, and reveals the extent of its eagerness to correct its mistakes by itself. As for the second team¹⁵,*He saw that this phenomenon is very dangerous, threatening stability in transactions, and making the concerned parties confused about the reality of their legal positions.*

¹¹ Abul-Majd, Ahmed Kamal.. The Warren Court and Public Liberties: An Analysis of the Judiciary of the US Supreme Court from 1953 to 1968. Journal of Law and Economics, Vol. 41, p. 1, 2, (1971), pp. 1-71.

¹² Al-Sharif, Aziza, previous reference, p. 144.

¹³ Karp, Robert A., Judicial procedures in America, translated by: Alaa Abu Zaid, Cairo, The Egyptian Association for the Spread of Knowledge and Culture, 2009, p. 335.

¹⁴Eid, Syed Refaat, previous reference, p. 433.

¹⁵ Shiha, Ibrahim Abdel Aziz, Al-Wajeez in Political Systems and Constitutional Law, an analytical study, The New University House for Printing and Publishing, Beirut, 1983, p. 321.



The second section: the extent to which the Supreme Constitutional Court in Egypt may withdraw from the authoritativeness of its rulings

Egyptian jurisprudence almost unanimously agrees that the absolute authority that the ruling possesses, whether it is unconstitutionality or the dismissal of the case, the constitutional issue included in this ruling is not raised again before the Supreme Constitutional Court, but there is one case in which this issue is re-presented to the court that then takes over Adjudicating it, without this deviating from the absolute authenticity of the ruling that was previously issued in this regard; This situation is achieved when a new constitution is issued, or the existing one is amended, and the legislative text that the court previously decided is constitutional is inconsistent with the new constitution or the amendments that have been introduced ¹⁶. Prof. Dr. Ahmed Kamal Abul-Magd has considered that the Supreme Constitutional Court can reverse some of its old rulings that have become inconsistent with the developments of society. Two things encourage this opinion: The first matter: Egypt is not one of the countries whose legal system establishes the principle of authoritative precedents established and known in The Anglo-Saxon system, which finds justification for this principle in the necessity of maintaining the stability of transactions; Hence, it is unimaginable to refuse to review some of the principles established by the court's previous rulings, which clearly need to be reviewed in light of what happened after. *Its issuance is due to political, social and economic developments that require such review. As for the second matter: that the issue has a distinct specificity when it relates to the constitutional judiciary and when it relates in particular to the principles decided by the previous rulings in order to protect freedoms and implement the rights and guarantees decided by the texts of the constitution, and because the real value of those principles is not represented in protecting the rights and freedoms of those who resort to the court in an effort to protect these principles, Rather, those principles constitute a secure sanctuary around rights* Therefore, many people avoid encouraging the court to abandon its old rulings, believing that it is more likely that this abandonment will be a retreat from some of the principles established by the old rulings and a derogation from the rights and freedoms that the rulings settled on refraining from infringing upon ¹⁷. An extrapolation of the rulings of the Supreme Court and then the Supreme Constitutional Court in Egypt indicates that, although the two courts did not directly discuss the court's right to retract some of its old rulings, there are quite a few rulings in which the court reversed principles it decided in previous rulings without It expressly declares this reversal, meaning that it followed the technical means, for example, that the Constitutional Court had rejected a famous ruling issued in Case No. (20) of the year The first judicial (constitutional) challenge is the unconstitutionality of what is decided by Article (266) of the Civil Law regarding the interest paid by the debtor with a known amount of money in return for the delay in payment, which is interest amounting to (4%) in civil matters and (5%) in commercial matters, and it was One of the reasons for this appeal is the violation of this ruling to the provisions and principles of Islamic law, which has become, since 1980, the main source of legislation in accordance with the amendment decided in that year to Article 2 of the Constitution ¹⁸. In rejecting this appeal, the court relied on the fact that Article (226), which was challenged, was issued in 1948, i.e. before the entry into force of Article Two of the Constitution even before the amendment of its original text in the Constitution of 1971, and that the restriction imposed by the constitutional legislator on the ordinary legislator under Article Two of the Constitution does not It is applied only to legislation issued after the entry into force of Article 2 of the Constitution. The Supreme Constitutional Court followed this path of the Supreme Court in a series of rulings in which it ruled that a number of legislative texts issued before the date of entry into force of the 1971 Constitution were unconstitutional due to their violation of the provisions of Article (34) of this Constitution¹⁹. However, this continuum of rulings of the Supreme Court, and then the Supreme Constitutional Court, did not prevent the latter from violating all of these rulings and its refusal to judge the unconstitutionality of Article (226) of the Civil Code on the grounds that that article preceded the date of entry into force of Article 2 of the 1971 Constitution, which It was amended in

¹⁶ Al-Sharif, Aziza, The Egyptian Constitutional Judiciary, Dar Al-Nahda Al-Arabiya, Cairo, 1990, p. 139.

¹⁷ Abul-Majd, Ahmed Kamal, The Role of the Supreme Constitutional Court in the Political and Legal Systems in Egypt, Part Two, The Constitutional Journal, Issue Two, First Year, 2003, p. 232.

¹⁸ Al-Sharif, Aziza, The Egyptian Constitutional Judiciary, previous reference, p. 199.

¹⁹ Abu Al-Majd, Ahmed Kamal, The Role of the Supreme Constitutional Court, previous reference, p. 334.

1980. We conclude from this: The Constitutional Court, The Supreme Court did not hesitate to deviate from some of its old rulings, without explicitly deciding that it would deviate from them, contenting itself with defining a principle contrary to what its old judiciary was evaluated upon²⁰. Despite the validity of the justifications given by the previous opinion, it cannot be taken into account for several reasons, which are ²¹:

1. This opinion contradicts the provisions of the absolute authority enjoyed by rulings issued on unconstitutionality, or the rejection of the appeal, as the court's reversal of its judgment, even if it is due to changes that occurred in society, will prejudice the authority that the Supreme Constitutional Court settled in many of its rulings because they are related to public order. It also contravenes the text of Article (49) of the Supreme Constitutional Court Law, which stipulates that its rulings are binding on all authorities and everyone, so its authority is general and absolute, and it cannot be retracted.

2. *The implementation of this opinion leads to the Supreme Constitutional Court violating the law, as it affects the stability of transactions and legal positions, as how do individuals arrange their rights on the basis of the constitutionality of a text, then these conditions collapse with the issuance of a ruling that that text is unconstitutional?*

3. *It can be said that the course of the Constitutional Court in this regard does not represent a departure from its old rulings, which is considered a kind of convenience, or the court's judicial policy, and the court's concern not to collapse the various systems on which society is based.*

The second requirement: the position of the Jordanian constitutional judiciary

The Jordanian constitutional judiciary passed through historical stages through which the Jordanian national experience was accumulated in Balwa and the trend towards establishing a specialized constitutional judiciary was formed ²², Before the establishment of the Constitutional Court according to the amendments to the Jordanian Constitution of 2011, there was no judicial body of a specialized and centralized institutional nature within a legal framework that would have full jurisdiction to adjudicate appeals of the unconstitutionality of laws and regulations, as well as the interpretation of the provisions of the Constitution²³. Accordingly, the Constitutional Court in Jordan has jurisdiction over the constitutionality of laws in accordance with what is stated in the Jordanian constitution. It has oversight jurisdiction and also has the power to interpret the provisions of the constitution. It is thus obligated, in accordance with its law, to adjudicate appeals referred to it from the bodies specified by the Jordanian constitution ²⁴which Confirmed by the Constitutional Court Law No. (15) of 2012²⁵, The constitutional rulings, whether those issued for unconstitutionality or the constitutionality of the legal text, are binding on all state authorities and all without exception, and thus they are not

²⁰ Shiha, Ibrahim Abdel Aziz, Al-Wajeez, previous reference

²¹ Shukr, Zuhair, previous reference, p. 336.

²² Abu Azzam, Saddam, and Al-Momani, Moaz Muhammad, The Constitutional Judiciary in Jordan: An Analytical View, Amman, Friedrich Ebert-Stiftung, 2020, p. 6.

²³ This is what was stipulated in Article (59) of the Jordanian Constitution and its amendments, which states: "1- The Constitutional Court is concerned with monitoring the constitutionality of laws and regulations in force and issues its rulings in the name of the King, and its rulings are final and binding on all authorities and all, and its rulings are enforceable with direct effect unless specified The judgment has another date for its enforcement, and it is published

The rulings of the Constitutional Court are published in the Official Gazette within fifteen days from the date of their issuance. See: Al-Assaf, Ali Muhammad Abd Rabbo, and Shatnawi, Faisal Aqla Khattar, The Authenticity of the Judgment Issued in the Constitutional Case and the Time Range for Its Implementation: A Comparative Study (Unpublished PhD Thesis), International Islamic Sciences University, Amman, 2018, p. 70 and beyond.

²⁴ This is what was stipulated in Article (60) of the current amended Jordanian constitution for the year 2020, which states:

1- The right to directly challenge the constitutionality of laws and regulations in force at the Constitutional Court is limited to:

A- The Senate or the House of Representatives, provided that the decision is issued with the approval of no less than a quarter of the members of the concerned chamber. B- The Council of Ministers. Refer it to the Constitutional Court in accordance with the provisions of the law.

²⁵ These bodies are defined by Article (9/a) of the Jordanian Constitutional Court Law, which states: "The following bodies, for example, have the right to appeal directly to the court regarding the constitutionality of laws and regulations in force: 1- The Senate. 2- The House of Representatives. 3- The Council of Ministers. . "



limited to the parties to the case in which the constitutional ruling was issued, and this is what is called the absolute authoritativeness of constitutional rulings²⁶.

This absolute authoritativeness of the constitutional provisions imposes on all authorities the implementation of the content of the constitutional ruling, each authority according to its competence. In addition, this obligation applies to the executive authority, being the competent authority to implement laws and regulations, as it is obligated not to implement texts that the court has ruled to be unconstitutional, as well as obligated to cancel any text of a system based on a legal text that has been ruled unconstitutional, and the same is true with regard to the judicial authority, it is obligated to refrain from applying the legal provision contrary to the constitution approved by the Constitutional Court in all cases brought before it, present or future²⁷. Therefore, the issue of the extent to which the Constitutional Court may deviate from the authoritativeness of its unconstitutional rulings or its interpretative decisions was not raised in Jordan or addressed except after the stability of the Jordanian experience in constitutional judiciary by establishing the Jordanian Constitutional Court and issuing a law of its own to organize its work and jurisdiction. This court witnessed the implementation of its mandated tasks. It sparked a jurisprudential debate at the time, revolving around the question of whether the Constitutional Court in its current form is considered bound by the previous constitutional judicial decisions in Jordan issued by the ordinary judiciary and the High Council for the Interpretation of the Constitution, and whether it is possible to offer it a decision on an issue that it has previously adjudicated. With a similar case? Concerning this, the jurisprudence in Jordan at the time was divided, regarding its answer to this question, into two directions, the first direction²⁸: This approach held that the Constitutional Court in Jordan may not reconsider an issue that it has previously decided on, and it must adhere to the judicial and interpretive precedents of the constitution, in compliance with the provisions of the constitution that made its rulings final, and it cannot be challenged in any of the ordinary methods of appeal. Because the opposition in it is unimaginable, and there is no higher body to which to appeal its decisions. As for the request to reconsider the ruling, it is not assumed, but rather it must be stipulated explicitly, and there is no reference to it in the texts, so it is inevitable to say that it is not permissible, and it is also not correct to ask the Constitutional Court to discuss the constitutionality of a text that was previously presented to it, because this is a request for reconsideration and it is not permissible, in addition to its rulings that are binding on all courts and government departments, and it (i.e. the Constitutional Court) is among these courts, so it must abide by what has been previously decided. The second trend: This trend believes that there is some confusion between the request for reconsideration and adherence to judicial precedents. We agree with the first approach that the decision of the constitutional judiciary in the specific case is final, and it is not permissible to request a reconsideration of it, and that the request for a reconsideration of the ruling is not presumed, but rather it must be stipulated explicitly, but this approach believes that the Constitutional Court can deviate from its decisions precedent in other similar cases, or in other words, you can change the principle you have decided in a previous case, when deciding another, subsequent case, if new reasons for that arise, whatever they may be. This matter was confirmed by the Jordanian Constitutional Court in a ruling that: "...the court considers that the findings of the High Council for the Interpretation of the Constitution in the aforementioned decision were issued when the aforementioned High Council had entrusted it, according to the Jordanian constitution, with the task of constitutional interpretation and oversight, before the amendments. Constitutional Court, which became effective in 2012, when these tasks became one of the powers of the Constitutional Court, which makes it impossible for the Court to return to address it by requesting the presented interpretation, because that would be a

²⁶ Al-Assaf, Ali Muhammad Abd Rabbo, *The Authenticity of the Judgment Issued in the Constitutional Case and the Time Range for Its Implementation: A Comparative Study*, PhD Thesis, University of Islamic Sciences, Amman, Jordan, 2018, p. 43 and beyond., p. 454.

²⁷ Al-Hatamleh, Salim, and Al-Shatnawi, Faisal, *Judicial control over the constitutionality of laws and regulations before the Constitutional Court in Jordan*, *Journal of Sharia and Law Studies*, University of Jordan, Issue 40, Volume 2, 2013, p. 628 and beyond.

²⁸ Al-Khatib, Noman, *Al-Wafi in the Constitutional System*, House of Culture for Distribution and Publishing, Amman, 2022.

waste of the principle of the authoritativeness of the thing ruled as a necessary necessity for the legalization of legality and constitutional oversight in particular²⁹.

7. Conclusion

Based on the foregoing, we find that the Constitutional Court in comparative countries and Jordan issues different rulings that deal with many types of issues, including those related to the right to equality in its various fields, and some related to clarifying the nature of the rights and freedoms stipulated in the constitution and their limits, and some of them fall into very precise areas. It is one of the areas of social and economic life, but the change in political, social and economic conditions and their development may not be commensurate with what the Constitutional Court ruled from the previous rulings of yesterday and today. that existed in society, and we showed the American and European countries experience in that, As well as the Egyptian and Jordanian experience, and based on the foregoing, we reached many conclusions and recommendations, the most important of which can be summarized as follows:

First: the results

1. It is not possible to infer the content of the American experience, as the censorship practiced by the Federal Court in the United States of America is censorship of abstention and not censorship of cancellation, as is the case with the Jordanian Constitutional Court.
2. The Egyptian constitutional judiciary (the former Supreme Court and the current Supreme Constitutional Court) did not directly discuss the court's right to revoke some of its old rulings. However, there are quite a few rulings in which the court reversed principles it decided in previous rulings without explicitly declaring With this reluctance, that is, she followed the artistic method.
3. The Jordanian legislator adopted the rule of immediate and direct effect as a general principle - with some exceptions - for the validity of the ruling of unconstitutionality, and differs from the position of the Egyptian legislator who adopted the retroactive effect - as a general principle - for the application of the ruling of unconstitutionality.
4. It is not possible to acknowledge the derogation from the authoritativeness of post-constitutional rulings or explanatory decisions with regard to the Constitutional Court in Jordan, especially since the ruling of the Constitutional Court on the unconstitutionality of a specific text or law requires the abolition of this law because the part of it is contrary to the provisions of the Constitution as of the date of issuance of the court ruling or from the date of Another is appointed by the court, so there is no law until the Supreme Court can consider it anew.

Second: Recommendations

1. The constitutional legislator should explicitly state the direct impact of the ruling on the unconstitutionality of tax texts, due to the seriousness of their effects on the financial stability of the state.
2. The Jordanian constitutional legislator must amend the text of Article (59/2) to oblige the Constitutional Court to publish its explanatory decision within a month from the date of its issuance, in order to prevent laxity in publishing the explanatory decision and thus delaying its effect.
3. We see that there is no objection to the Constitutional Court referring to the previous interpretive rulings issued by the Higher Council for the Interpretation of the Constitution and those before it, because in our opinion the interpretation of constitutional texts can vary according to time, place and the need for it, especially in light of economic and investment openness and open and unlimited relations between states.

List of references used:

²⁹ Interpretation Decision No. (8) of 2013 issued by the Constitutional Court, regarding the amendment of the Oil Shale Agreement, Article (117) of the Constitution, Official Gazette Issue 5264, Published Dat

First: the laws

1. The Jordanian Constitution.
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