

OVERSIGHT OF THE LAWS' CONSTITUTIONALITY IN THE JORDANIAN POLITICAL SYSTEM

JEHAN K ALZUBI

Department of Public Law, Faculty of Law, Al- Balqa' Applied University, AL salt Jordan
Email: Jehan.alzubi@ba.edu.jou

ABSTRACT

The constitutional oversight radically aims to embed the law's principles by monitoring the laws' implementation, protecting the freedoms of the individuals, and reinforcing the constitution respect. The Jordanian judiciary practiced its right to monitor the constitutionality of laws by refraining from applying the legislative text that contradicts the constitution. This situation continued until there were calls to hand over the constitutional oversight to an independent body whose attention is focused on verifying that the public authorities in the state respect the constitution's supremacy. Accordingly, the constitutional court was established based on the promulgation of Constitutional Court Law No. 15 of 2012. The constitutional court was established basically to oversight the constitutional legislations. The present study discussed the constitutional oversight through five main dimensions; Framework and organization of the Constitutional oversight in Jordan, the jurisdictions of the Constitutional Court, the nature of the Constitutional Court and its judicial policy, the right to litigation and ways to initiate the constitutional lawsuit, and the validity of the Constitutional Court judgments and their related legal effects. According to the study methodology, a set of recommendations was provided.

Keywords: *Judicial oversight, judgements, the unconstitutionality of laws and regulations, the Constitutional Court.*

Table of Contents

INTRODUCTION

1. PRELIMINARY TOPIC
2. CONCLUSION AND RECOMMENDATIONS
3. ACKNOWLEDGMENT
4. FUNDING
5. DECLARATION
6. CONSTITUTIONAL LAWS AND ARTICLES

INTRODUCTION

The escalation of demands for constitutional and political reforms made the Jordanian state work hard to create a new political container that accommodates economic and social transformations, especially since the political parties have become demanding constitutional legitimacy. Among the most important constitutional reforms that took place during this period was the establishment of the Constitutional Court ¹. The establishment of the Constitutional Court was in accordance with the constitutional amendment in 2011, which decided to monitor the constitutionality of laws and regulations, and organize them briefly in Article 52 of the Jordanian Constitution in 1952 ². This prompted the legislator to issue a law that would establish a constitutional court with jurisdiction in

¹ Toubat, H. S., Mahafzah, E., & Balas, H. A. (2019). Oversight on the Constitutionality of Laws: A Case Study of the Jordanian Constitutional Court. *JL Pol'y & Globalization*, 82, 17-24.

² Shatnawy, F., & Hatamleh, S. (2013). Judicial oversight on the constitutionality of laws and regulations before the Constitutional Court in Jordan. *Studies, Sharia and Law Sciences*, 40(2), 617-634.

oversight. To this end, and based on Article 31 of the Constitution, Constitutional Court Law No. 15 was issued in 2012³.

The Constitutional Court is described as a specialized body in monitoring the extent to which the rules of legitimacy are respected so that all laws are issued in conformity with the Constitution⁴. This led to the creation of a mechanism to enhance this status. This mechanism is the constitutional judiciary.

According to this right hypothesis, that is the constitution is the origin of every activity practiced by the state authorities, then its supremacy may become a mere hollow term with no content if the constitutional institutions of the state can violate it without entailing a penalty⁵. On this basis, the importance of oversight over the constitutionality of laws manifests, as it plays a significant role in ensuring and protecting the constitution, and embodying its supremacy, by protecting it from all transgressions and violations⁶. Such violations do not only include ordinary law, but also all legal texts, and even international regulations and treaties.

The importance of establishing the Constitutional Court is embedded in the oversight practiced by this body in monitoring laws, protecting the rights and freedoms of individuals, and ensuring the supremacy and respect of the constitution, to confirm the existence of a democratic system within the state⁷.

The problem, then, is what is Jordan's position within the framework of this political movement in creating a constitutional judiciary? And what kind of jurisdictions are assigned to this system?

Based on the foregoing, we will process this research according to the following dimensions:

- Preliminary topic: Framework and organization of the Constitutional oversight in Jordan.
- The first topic: The jurisdictions of the Constitutional Court.
- The second topic: The nature of the Constitutional Court and its judicial policy.
- The third topic: The right to litigation and ways to initiate the constitutional lawsuit.
- The fourth topic: The validity of the Constitutional Court judgments and their related legal effects.

1. PRELIMINARY TOPIC

FRAMEWORK AND ORGANIZATION OF THE CONSTITUTIONAL OVERSIGHT IN JORDAN.

The nature of the Constitutional Court powers and the importance of its decision require that the organization of the court and its procedures provide all guarantees of its independence, impartiality, and objectivity far from all subjective considerations and political whims⁸. We will address this topic in three requirements as follows:

The First Requirement: The Framework of Constitutional Oversight

Protecting the principle of the constitution's supremacy presupposes the creation of clear and explicit constitutional mechanisms that guarantee its application and the protection of its texts. Therefore, national constitutions, including the Jordanian constitution, have sought to find various legal means aimed at ensuring respect of higher constitutional base by the minimum legal base in law, order, and instructions.

Among the most important of these constitutional mechanisms is the idea of constitutional oversight. The constitutional oversight is practiced either by judicial authorities or political councils and systems, with the aim of determining the extent to which the minimum legal base respects the provisions of the

³Official Gazette No. 5161 dated 7/6/2012, p. 2519

⁴ Bani Salameh, M. T., & Ali Ananzah, A. (2015). Constitutional reforms in Jordan: A critical analysis. *Digest of Middle East Studies*, 24(2), 139-160.

⁵ Shatnawy, F., & Hatamleh, S. (2013), previous reference, p. 621.

⁶ Toubat et al. previous reference, p. 12.

⁷ Abdallah, O. (2001). Oversight of the constitutionality of laws (comparative analysis). *Damascus University Journal*, 17(2), 1-35.

⁸ Al-Khatib, P., Nasrawin, P., & Laith, K. (2022). Oversight over the Constitutionality of the Legislative Acts of the Executive Authority: A Comparative Study. *Journal Sharia and Law*, 98, 3.

constitution⁹. If it is proven to the system entrusted with the power of constitutional oversight that a legal text in the lower legislation contradicts the principles and provisions of the national constitution, it will not hesitate to address this constitutional violation by declaring its unconstitutionality.

The most prominent question is about the framework of constitutional oversight, and what are legal rules are subject to the oversight of the courts and constitutional systems. Generally, the laws issued by the legislative authority are the main axis of constitutional oversight, while the constitutional rules differ with regard to the factors issued by the executive authority, which are represented in regulations and instructions, in addition to what is issued by this authority in some exceptional circumstances¹⁰.

In this context, we find that constitutional oversight in Jordan is limited only to the current laws and regulations- as it is clearly declared in explicit provisions in both the Jordanian Constitution and the Constitutional Court Law¹¹. This means that each of the legal instructions and rules issued in exceptional circumstances is not subject to the oversight of the Jordanian Constitutional Court. However, the executive authority responsibility is related to legal rules issued by the Council of Ministers; they include general and abstract rules that establish new legal centers. Such rules are applied to everyone fairly, and their violation leads to the imposition of the penal sanctions.

The Second Requirement: The Organization Of The Constitutional Court

Constitutional systems in countries adopting judicial control over the constitutionality of laws have delegated this authority to a specialized central court - or council, through two methods: First; it gives this jurisdiction to the Supreme Court in the ordinary judicial system, or it gives jurisdiction to a specialized constitutional court¹². Among the countries that have assigned the task of judicial oversight to a specialized court called the "Constitutional Court" is the Egyptian Constitution in 1971, and the Syrian Constitution in 1973¹³.

The First Section: Composition Of The Constitutional Court

The Constitutional Court is composed of nine members (Article 58 of the Jordanian Constitution of 1952). (The determination of the court's members is also based on the Constitutional Court Law of 2012) (Article 5). The Jordanian constitutional legislator was successful in determining the number of court members by a constitutional text, as did the Italian constitution, which limited the number of members as 15¹⁴ and the French constitution which limited the number of members as 6 members¹⁵.

The Second Section: Selection Of The Constitutional Court Members

The goal of judicial oversight is basically to prevent the legislative authority from issuing legislation that may violate the constitution under political pressure. However, then, such constitutional courts or councils may be formed by-election which makes them fall under political pressure or they may be formed by appointment through an authority which makes them exposed to the pressure of that authority loyalty¹⁶. In both situations, thus constitutional courts are then described as fragile juridical systems.

The jurists differed about the best method for selecting the members of the Constitutional Court. Some believe that the selection of the Constitutional Court by the executive authority alone does not

⁹ Al-Khatib, et al., previous reference, p.3,4.

¹⁰ Al Mahasneh, M. J., & Basel Abuanzeh, M. B. (2020). Judicial oversight and the impact of laws to prevent liability. *Technium Soc. Sci. J.*, 9, 259.-270.

¹¹ Alnaimata, O. A., & Al-Droub, K. K. (2020). Control over the Constitutionality of International Treaties (A comparative study). *International Journal of Innovation, Creativity, and Change*, 13 (12), 424-470.


¹² Shatnawy, F., & Hatamleh, S. (2013), previous reference, p. 619.

¹³ Feuille, J. (2011). Reforming Egypt's constitution: Hope for Egyptian democracy. *Tex. Int'l LJ*, 47, 237.

¹⁴ Article 135 of the Italian Constitution of 1947.

¹⁵ Article 56 of the 1958 French constitution: The way in which the Constitutional Council is formed. the article decided Constitutional Council is composed of former presidents of the republic, and from nine other members.

¹⁶ Shatnawy, & Hatamleh, previous reference, p. 623.


 affect the independence of this court, because the lesson is in the independence of the judges but not in the method they are selected ¹⁷. Another group of jurists believes that the executive authority should not be alone in this choice, so that the court is not subject to the influence of the executive authority, and thus not be vulnerable to impartiality and independence ¹⁸. The other group of the jurists recognizes that the independence of the Constitutional Court is achieved only if the members' selection is far from the hands of the executive and legislative authorities so that it is within the competence of the Supreme Council of Judicial systems alone without the involvement of any party ¹⁹.

According to Article 52 of the Jordanian Constitution Law, we find that the appointment of the Constitutional Court members is made by the executive authority represented by the king.

The appointment of members of the French Constitutional Council has adopted the principle of balanced cooperation between the executive and legislative authorities; it is composed of statutory (by law) members and appointed members. The statutory members are the former presidents of the republic and their membership is for life, whereas the appointed members (nine members) are appointed by three presidents: the President of the Republic, the President of the National Assembly, and the President of the Senate, where each president has to assign three members.

From our perspective, we believe that the participation of the executive and legislative authorities in appointing members of the Constitutional Court provides legitimacy to the Constitutional Court and makes both authorities accept being subject to its oversight.

The period of membership in the Constitutional Court is considered an important element in the independence of the member. The Jordanian constitution regulated the period of membership in the Constitutional Court "by making it six years, non-renewable" ²⁰.

It is noted that the period of the mandate and the non-renewal of the membership of the Constitutional Court members for another period is consistent with the independence of the Court ²¹. Concerning the president of the court, he/she is appointed by the king for a term of 6 years, non-renewable, indicating that he/she is not elected by the members of the court as well not re-appointed at each partial renewal of the court. This situation is similar to that of the French Constitution of 1958, as the President of the Constitutional Council is appointed by the President of the Republic ²².

The Second Requirement: The Legal System of the Members Of The Constitutional Court

To ensure the complete independence and dignity of the constitutional judge's tasks, the Constitutional Court established basic rules for their members. The Constitutional Court Law of 2012 clarified the rules of the court's members:

The First Section: Avoidance Of Combining The Membership Of The Constitutional Court With Other Jobs

To avoid conflict and guarantee membership of the Court, the court's authorities must be separated from other jobs. Article 8 of the Court Law states that "the member should devote himself/herself fully to the work of the court, therefore he/she should not be an employee in the public or private sector, practitioner of any commercial activities, member or chairman of a company board directors, the chief trustee of any public or private institution, or affiliated to a party." Thus, members of the Constitutional Court should devote themselves entirely to their mission and are to be freed from all pressures, whether emerging from parliamentary blocs or partisan obligations, which of course guarantees their protection and the independence of the court.

¹⁷ Abdallah, O. (2001). Previous reference, p. 8.

¹⁸ Stilt, K. A. (2005). Constitutional Authority and Subversion: Egypt's New Presidential Election System. *Ind. Int'l & Comp. L. Rev.*, 16, 335.

¹⁹ Al-Khatib et al. , previous reference, p. 146.

²⁰ The second paragraph of Article 58 of the Constitution.

²¹ Article 5 of the Constitutional Court Act of 2012.

²² Rousseau, D., & Vedel, G. (2006). *Constitutional Litigation Law*. Paris: Montchrestien.

The Second Section: Secrecy Of Deliberations

Article 18 of the Court's Second Law states that “the court's deliberations should be secret”. This guarantees the independence of the court and is not succumbed to pressure. The secrecy of the deliberations is closely related to the duty of reservation so that the members of the court can adhere to the obligation to refrain from taking any public position on issues related to the court's deliberations²³. This principle protects the autonomy and independence of members from being exposed to partisan influence and also avoids the Constitutional Court from being a subject of controversy and political debate.

The Third Section: The Penal Guarantees For Crimes Committed By Members Of The Constitutional Court

It is assumed that the judiciary staff while practicing their functional duties, are working to perform their tasks optimally. Nevertheless, like other public officials, judges may fall into mistakes during their work practice, which may put them exposed to the mistakes' consequences²⁴. This requires finding legal safeguards to protect them from the consequences of this responsibility. This issue is very critical as it provides a guarantee of the Constitutional court members' independence.

During the term of membership in the Constitutional Court (6 years), the court member cannot be dismissed by the party that appointed him/her unless the member lacks, at least, one of the membership conditions stipulated in the Constitutional Court Law, which leads to the termination of the member functional service²⁵.

Or, in the case of flagrant guilt, the member may be arrested or detained. In this manner, the president of the constitutional court has to be immediately informed of this judgment. Also, the general authority issues its decision in accordance with the provisions of paragraph (b) of Article 23 within a period not exceeding 24 hours from the date of the member's arrest.

The First Topic: The Jurisdictions of The Constitutional Court

As a protector of the constitution, by ensuring that the supreme text should be respected in the state, the constitutional court has been assigned to monitor the constitutionality of laws and regulations. According to paragraph (1) of Article (59) of the amended 1952 Constitution, the Jordanian Constitution states that “The Constitutional Court has jurisdiction over by monitoring the constitutionality of the laws and regulations ...”, and paragraph 2 of the same article states that “The Constitutional Court has the right to interpret the provisions of the Constitution if it is requested to do so by a decision issued by the Council of Ministers or by parliament in the majority. In this manner, the court's decision is considered enforceable after its publication in the Official Gazette.” We will address this section in two requirements as follows:

The First Requirement: Oversight of The Constitutionality Of Laws And Regulations

Oversight of the law's constitutionality and regulations is an inherent right of the Constitutional Court, and its scope varies according to its nature. Under the existing systems, the court's intervention is either Compulsory or optional. Since the legislative authority derives its authority from the constitution, it does not have the power to enact laws except within the limits determined by the constitution, and a fortiori, this authority cannot violate the constitution²⁶. In application of the supremacy principle of the constitution, which stipulates that the constitution is the origin of the authorities and regulates their power, therefore when the authorities violate it, they will have

²³ Nasrawin, L. K. (2016). Protecting Human Rights through Constitutional Adjudication-Jordan as a Case Study. *Digest of Middle East Studies*, 25(2), 264-284.

²⁴ Bani Salameh & Ali Ananzah, previous reference, p. 142.

²⁵ Article 21 of the Constitutional Court Law.

²⁶ Dawood, Y. (2007). The antidomination model and the judicial oversight of democracy. *Geo. LJ*, 96, 1411.

abandoned their legal basis. As a result, the law does not become an expression of the general will unless it conforms with the constitution²⁷.

The Second Requirement: The Interpretation Of The Constitution's Provisions

the constitution sometimes includes vague provisions giving the interpreter a large margin of interpretation. Therefore, it is better not to introduce too much generality and ambiguity in the texts of the constitution²⁸. This is in order not to give the interpreter excessive authority. To maintain respect for the constitution, the Jordanian legislator granted the task of interpreting the constitution to the Constitutional Court as an independent constitutional reference²⁹.

the process of interpreting the constitution and establishing human rights rules puts the Constitutional Court's authority in a position where it appears to be imposing itself on Parliament³⁰. However, the Constitutional Court can only practice this responsibility at the request from the parliamentarians or from the authorities that have the right to review the judiciary Constitutional law, which creates a balance between the court and Parliament³¹.

The parliament and the constitutional systems concerned with the constitution amendment can amend the constitutional text, when necessary, in light of the interpretation provided by the Constitutional Court³². The parliament plays its role in this case as a constitutive authority. The constitutional amendment does not necessarily come as a reaction to the interpretation brought by the Constitutional Court, rather it may aim to develop the text and make it more capable of meeting the requirements of political and social reality³³.

The Second Topic: The Nature of The Constitutional Court And Its Judicial Policy.

Despite the lack of provision for the Constitutional court in the chapter devoted to the judiciary, the Jordanian constitutional legislator described the nature of the Constitutional Court as a judicial body³⁴. We, in turn, can say that the Constitutional Court is not a political body, as its composition includes judges, and judges abide by political impartiality. The members of the court also abide by the secrecy of deliberations, and this aspect is of a judicial nature³⁵.

Based on the foregoing, it is clear that the Constitutional Court is focused on subsequent oversight, as it practices oversight based on the request from the Senate of ministers or parliament^{36, 37}. The Court also belongs to the central systems because the constitutional legislator assigned the Constitutional Court to oversight, as is the case in Italy³⁸.

Accordingly, we will deal with this topic in two requirements, as follows:

The First Requirement: The Independence of the Court

The independence of the constitutional courts stems from the independence of the judiciary³⁹. This means that the courts carry out their work independent of other government parties. The settlement

²⁷ Elkhatib, N. A., & Domour, N. M. (2021). The constitutional court of Jordan and its relation to ordinary courts. *The Lawyer Quarterly*, 11(4).

²⁸ Nasrawin, previous reference, p. 271.

²⁹ Article 59/2 of the Jordanian Constitution of 1952.

³⁰ Bani Salameh & Ali Ananzah, previous reference, p. 149.

³¹ Abdallah, previous reference, p. 19.

³² Toubat, H. S., Mahafzah, E., & Balas, H. A. previous reference, p. 18.

³³ Elkhatib & Domour, previous reference, p. 28.

³⁴ Article 58 of the Jordanian Constitution law of 1952.

³⁵ El-Refaie, A. M. (2018). A Study about the Law of Jordanian Constitutional Court. *JL Pol'y & Globalization*, 76, 1.

³⁶ Article 60 of the constitution.

³⁷ Article 9 of the Constitutional Court Law of 2012.

³⁸ Shatnawy, F., & Hatamleh, previous reference, p. 621.

³⁹ Al Mahasneh & Basel Abuaneh, previous reference, p. 262.

of disputes is just related to the judicial authority; No authority has the right to dictate to the court, to amend the judgment issued by the judiciary, or to stop its judgment implementation.

Looking at how the constitutional court is organized, we find that its independence is guaranteed by the provisions of the constitution through the system for appointing the court's members, the only non-renewable mandate, and the incompatibility between the member's Jobs and disciplinary system ⁴⁰.

In addition to this, we note that the Constitutional Court derives its basic law from the Constitution. For instance, the Constitutional Court defines the principles of its formation (Article 58/1), its jurisdictions, (Article 59/1), the number and method of appointing or electing its members (Article 58/1), the term of mandate (Article 58/2), and the consequences of its decisions (Article 59). This supports its independence from the rest of the authorities more than any other judicial body.

Therefore, the Constitutional Court is legally protected against violation of its basic law in terms of its formation or functions, with evidence that these matters are stipulated in the Constitution ⁴¹. This makes Constitutional Court immune to the influence of the public authorities placed under its control ⁴². In this manner, neither Parliament nor the executive authority can prejudice the Constitutional Court's existence and its powers.

The Second Requirement: The Judicial Direction Of The Constitutional Court

The judicial nature of constitutional oversight is demonstrated by the direction of the Constitutional Court. It is noted that the Constitutional Court follows the judicial method in issuing judgments and decisions (section one), and it explicitly declares that it monitors legitimacy only and does not extend its activity to monitoring appropriateness (section two).

Section One: Judicial Method Of Judgments

When examining the decisions and judgments of the Constitutional Court, it becomes clear that it follows the judicial approach ⁴³. The facts of the lawsuit include: mentioning the litigants' names, titles, attributes, domicile, their presence or absence, the names of their agents, a summary of their requests and documents, and the applicable legal texts ⁴⁴. The reasons on which the judges base their judgment must also be mentioned, and their source must emerge from the legal rules and the previous results of investigation and evidence procedures ⁴⁵. However, Failure to causation should lead to cancellation of the judgment.

Section Two: The Constitutional Court Oversight Legitimacy, But Does Not Oversight Propriety

The Constitutional Court is called to adjudicate on the extent to which the law and regulations are consistent with the Constitution ⁴⁶. Thus, its oversight in this regard is a review of legitimacy but not a review of propriety. This is because the goal behind The Constitutional Court is to prevent the issuance of any text distorted by unconstitutionality.

If it is the jurisdiction of the legislator to propose the law and vote on it with all sovereignty in accordance with Article 95 of the Constitution, then it is the Constitutional Court's responsibility, in accordance with its constitutional jurisdictions, to ensure that the legislator respects the constitutional provisions when practicing his/her legislative authority ⁴⁷.

⁴⁰ Articles 5 and Articles 7 of the Constitutional Court Law.

⁴¹ Toubat et al., previous reference, p. 19.

⁴² Al-Khatib, P., Nasrawin, P., & Laith, K. (2022). Oversight over The Constitutionality of the Legislative Acts of the Executive Authority: A Comparative Study. *Journal Sharia and Law*, 98(3).

⁴³ Al-Khataibeh, O. (2013). The Impact of Explanatory Decision of the Constitutional Court in Jordan. *JL Pol'y & Globalization*, 16, 9.

⁴⁴ Shatnawy, F., & Hatamleh, previous reference, p. 623.

⁴⁵ Bani Salameh & Ali Ananzah, previous reference, p. 144.

⁴⁶ Abu-Karaki, M., Faqir, R. S., & Marashdah, M. A. K. (2011). Democracy & Judicial Controlling in Jordan: A Constitutional Study. *J. Pol. & L.*, 4(2), 180-195.

⁴⁷ Alomran, N. M. S. (2019). Constitutional and legislative guarantees of foreign investment in light of Jordanian legislation. *Journal of Legal, Ethical and Regulatory Issues*, 22(4), 1-16.

It is clear from the foregoing that the Constitutional Court differentiates between the field of legitimacy oversight, which is within its jurisdiction, and the field of conformity that is exclusively reserved for the legislator. Accordingly, the mission of the Constitutional Court does not interfere in the latter, given that it is not within its jurisdiction.

The Third Topic: The Right To Litigation And Ways To Initiate The Constitutional Lawsuit.

In general, countries' approaches differ in determining who is allowed to trigger oversight on the constitutionality of laws. Some countries limit this right to public authorities only, some others allow individuals directly to trigger oversight for individuals on a direct original claim, and some others give the right to oversight to individuals indirectly.

In terms of the methods of appeal and those who have the right to raise it at the Constitutional Court, the Jordanian constitutional legislator restricted the original constitutional lawsuit to the lawmakers⁴⁸. Also, it gave the right of oversight to individuals indirectly⁴⁹; The constitutional legislator did not allow the individuals to resort directly to the constitutional courts to challenge the laws and regulations, but just through the ordinary courts. Thereby, the constitutional legislator deprived individuals of access to the system of the Constitutional Court directly.

Some jurisprudence⁵⁰ considers that to avoid criticism directed at the method of individual's resorting to the Constitutional Court, the right of the original lawsuit may be given to the existing parties in the state, which have an independent public legal personality such as municipal councils, unions; in particular the Bar Association⁵¹.

What is learned from the text of Article 60 of the Constitution is that the method adopted by the Jordanian constitutional legislator in moving oversight over the constitutionality of legislation is divided into two methods: 1) a method that gives this right to the public authorities, and 2) the method that gives individuals the right to indirectly argue that the legislation is unconstitutional. Both methods are explained in the following requirements:

The First Requirement: The Method That Gives This Right To The Public Authorities

Some state constitutions restrict the right to move oversight on the constitutionality of legislation to the head of state, the government, or parliament⁵². The Jordanian constitution is among the constitutions that gave the right to move oversight to the public authorities.

Limiting the right of appeal directly to the legislative and executive authorities have a profound impact on the rights and freedoms of citizens, respect for the constitution, and the balance between powers⁵³. However, the right to appeal in the Jordanian constitution was not expanded to include the judiciary, as well as the Constitutional Court itself.

We had hoped that the constitutional legislator would provide any court the right to refer any text it deems unconstitutional to the Constitutional Court directly. This naturally expands how the Constitutional Court communicates with the lawsuit as did the Egyptian legislator⁵⁴.

In accordance with the text of the article 9/b, and according to the Jordanian constitution, the appeal to the constitutionality of a law or regulation is submitted by the parliament, or the Council of Ministers to the Constitutional Court, at a request signed by the head of the appellant side. The appeal

⁴⁸ Article 60/1 of the Jordanian constitution for the year 1952.

⁴⁹ Article 60/2 of the Jordanian constitution for the year 1952.

⁵⁰ AL-Shaer, R. (2020). *The General Theory of Constitutional Law*. 1ST Edition, Cairo: Arab Renaissance House, p. 578.

⁵¹ Madi, R. (2015). Case Comment: The Unconstitutionality of Article 51 of the Jordanian Arbitration Law No. 31 of 2001. *Arab Law Quarterly*, 29(2), 190-197.

⁵² Khatib et al., previous reference, p. 151.

⁵³ Brown, N. J. (2014). Egypt: A constitutional court in an unconstitutional setting. In *Political and Constitutional Transitions in North Africa* (pp. 45-61). Routledge.

⁵⁴ Article 29/1 of the Supreme Constitutional Court.

request should include the name, number, and scope of the challenged law or order, and the violation of the law or the constitution.

Subsequently, The President of the Constitutional Court must send a copy of the appeal submitted to him/her to the president of each of the other two parties (legislative and executive authorities)⁵⁵. The date on which the appeal is submitted by the public authorities (parliament, the senate, the Council of Ministers) is very critical, because the Constitutional Court is restricted by the time limit for responding; it must take decision relating to the appeal within a period not exceeding one hundred and twenty days from the date on which the appeal was received⁵⁶.

The Second Requirement: The Method That Gives The Right To Oversight Indirectly To Individuals

This method allows individuals to move constitutional oversight indirectly through a public authority that is the judicial authority. This can be achieved by raising an original lawsuit in courts of different types and degrees. Among the constitutions that have implemented this method is the Italian Constitution issued in 1947 and the Turkish constitution issued in 1961⁵⁷.

The Jordanian constitutional legislator has adopted this system in accordance with the Jordanian constitution issued in 1952. The lawsuit of unconstitutionality must be submitted to the court to examine the appeal's validity. In this manner, the appellant must clearly and specifically mention the name of the law or system whose unconstitutionality was raised, its number, its scope, and what supports his/her claim that that law or system characterized by unconstitutionality is contrary to the constitution⁵⁸.

Article 11/c/1 of the Constitutional Court Law states that "if the court examining the lawsuit finds that the law or system whose unconstitutionality was raised applies to the subject matter of the lawsuit and its unconstitutionality is serious, it must stop the lawsuit and refer the argument to the Court of Cassation that must refer it to the Constitutional Court".

THE FOURTH TOPIC: THE VALIDITY OF THE JUDGMENTS OF THE CONSTITUTIONAL COURT AND THE LEGAL EFFECT OF THE JUDGMENT OF UNCONSTITUTIONALITY.

In this topic, we will discuss the validity of the Constitutional Court judgments, the legal effect of the judgment of unconstitutionality, and the timeframe for its implementation.

The First Requirement: The Validity Of The Judgments Issued By The Constitutional Court And Its Susceptibility To Appeal

Judgments issued in constitutional lawsuits- that are in-kind by their nature, in which the dispute is directed to the contested legislative texts with a constitutional defect- have absolute validity so that their effect is not limited to the litigants in the lawsuits in which the texts were issued⁵⁹. Rather, it goes beyond to include all litigants with the contested text. In this manner, all judicial parties and state authorities should commit to that constitutional Judgment.

if there is a relationship between the provisions of the law or system and the judgment of the legal text that has been ruled unconstitutional, the legislative authority has to abrogate that legal text and amend its current related law or systems in the light of this judiciary⁶⁰. The executive authority should also take into account the future regulations relating to the judgment that it issued as unconstitutional.

⁵⁵ Shatnawy, F., & Hatamleh, previous reference, p. 622.

⁵⁶ Article 10/b of the Constitutional Court Law of 2012.

⁵⁷ Afifi, M. (1993). *Constitutional Control in Egypt*. 1st Edition, Cairo: Saeed Raafat Library, P. 292.

⁵⁸ Article 11/b of the Constitutional Court Law for the year 2012.

⁵⁹ El-Refaie, A. M. (2018). A Study about the Law of Jordanian Constitutional Court. *JL Pol'y & Globalization*, 76, 1.

⁶⁰ Abdul Latif, M. (1989). *Procedures of the Constitutional Judiciary*. Cairo: Dar Al-Nahda Al-Arabiya, p. 261.

Since the implementation of laws is the responsibility of the executive authority, it should abide by the non-implementation of the provisions of the texts that the court has judged unconstitutional⁶¹. Concerning the judiciary, it is obligated to refrain from applying the text that the court has judged unconstitutional in all cases on which the text is intended to be applied, as well as on all cases that may be brought to the ordinary court in the future. Therefore, the judgment issued by the Constitutional Court in this regard is not an argument against the state authorities only, rather, it is against all individuals and institutions⁶².

In this context, Article 15/a of the Constitutional Court Law states that court judgments are conclusive. Also, the text of Article 15/b of the Constitutional Court Law states that "the court's judgments are binding on all state authorities and on everyone," which affirms that the authority of the judgment issued by the Constitutional Court is absolute and not relative.

The judgments' validity of the Constitutional Court is not limited to judgments of unconstitutionality, but it also extended to comprise rejection of the lawsuit, and acknowledgment of the conformity of the law or the system to the provisions of the Constitution⁶³. This is because the judge's goal is to clarify the extent to which the text is compatible or not with the provisions of the Constitution.

Litigation at the Constitutional Court is at one degree. This means that its judgments are conclusive; they cannot be challenged by any method of appeal, whether ordinary or extraordinary⁶⁴. The Constitutional Court does not have the right to reverse, amend, or add to its previous judgment. It should be confirmed that once the Constitutional Court has finished pronouncing its judgment, it exhausts its original mandate as well as subordination regarding what it has ruled, that the constitutional court has been keen to emphasize in many positions⁶⁵.

Concerning the scope of the validity of the Constitutional Court judgments, it is decided that the absolute validity of the judgments issued in constitutional lawsuits is limited to the legislative texts that were the subject of a dispute related to their constitutionality. However, the absolute authority of the judgment in the constitutional case does not extend to the texts that were not submitted to the court and were not decided upon. Accordingly, it can be deduced that:

1. The post-constitutional appeal may cover the law or the system as a whole, and it may be limited to one or several articles in law or system. Hence, the judgment of the Constitutional Court should be limited to the text or texts that were subject to appeal. Accordingly, the person concerned may file a claim for the unconstitutionality of any other legislative text of the same law or system that was not covered by the first judgment of unconstitutionality.
2. If the Constitutional Court determines a specific meaning for the content of a legislative text against which the constitutional appeals have been rejected, then this meaning extends to the absolute validity of the judgment, and it is not permissible to any party, even judicial, to give a different meaning after that.
3. The adjudication of unconstitutionality is limited to the nullification of the effect of the text that was declared as unconstitutional, and the other texts of the law or the system are excluded.

The Second Requirement: The Legal Effect Of The Adjudication Of Unconstitutionality And The Timeframe For Its Implementation

The issue of determining the timeframe for implementing an adjudication of law unconstitutionality is one of the important issues raised by judicial oversight on the laws' constitutionality.

⁶¹ Alomran, N. M. S. (2019), previous reference, p. 9.

⁶² Hantosh, L. (2018), previous reference, p. 532.

⁶³ Madi, previous reference, p. 194.

⁶⁴ Al-Kasasba, H. H. (2021). Protecting The Rights, Freedoms And Principles That Guarantee Them In The Jordanian Constitution And Its Amendments. *Multicultural Education*, 7(5).

⁶⁵ Bani Salameh & Ali Ananzah, previous reference, p. 152.

This refers to which date the effect of unconstitutionality adjudication extends. In this context, three probable choices (effects) can be introduced^{66 67}; first, unconstitutionality adjudication may apply with a retroactive effect to include the relations and conditions before the issuance of the adjudication, and thus such relations are considered void based on the unconstitutional text. Second, the unconstitutionality adjudication of the law may apply in its direct effect- from the date of issuance of the adjudication, on the relations and situations that arise from that date only, and thus the relations and situations that took place in the past in accordance with the text declared as unconstitutional remain valid.

Third, the matter is controversially recognized among countries; some countries have adopted the adjudication in its retroactive effect, some others have taken the adjudication in its direct effect, while the others have embraced a method that combined the rule in its both methods.

In Jordan, the constitutional legislator combined the adjudication of direct effect with that of retroactive effect, where it arranged for the adjudication to be effective with direct effect unless the adjudication specified date for its execution⁶⁸. On the other side, if the legal text that was judged unconstitutional imposed a penalty, the execution of the provisions that ruled the conviction based on that text would be suspended as well its punitive consequences⁶⁹. Additionally, if the court ruled that more than one legal text in the law or the system is unconstitutional, the court would differentiate between one text and another according to what it deems appropriate⁷⁰.

Accordingly, constitutional adjudication may have been considered a revealer of a constitutional flaw related to a text since its issuance (retroactive) and not from the date of the adjudication itself. Thereby, this asserts the invalidity of the relations and conditions that took place in the past based on the text ruled unconstitutionality. oppositely, the adjudication of unconstitutionality may be direct, which, therefore, has a direct and immediate effect from the date of the adjudication and its effect will be restricted to the future relations and situations disregarding those preceding the issuance of adjudication.

About the Jordanian legislator's attitude, based on the text of Article 15 of the aforementioned court law, the rule is that the Constitutional Court adopts the direct effect, in which the law declared unconstitutional should proceed until the adjudication is published in the Official Gazette. In this context, the court may set another date for the adjudication of unconstitutionality. In this case, the law determined to be unconstitutional must proceed on, except for the case that led to the issuance of the adjudication. Therefore, the rule is that the direct effect must be followed, unless the court commands the judgment is to be executed with a retroactive effect.

The Jordanian constitutional court selected a suitable method by combining direct and indirect adjudication of unconstitutionality. Paragraph (b) of Article 15 is explicit by arguing that unconstitutionality adjudication considers the law or system unconstitutional from the date of the adjudication issuance. This is supported by Paragraph (C) of the same article which explains that retrogression has to be followed only in situations of convictions related to penal sanctions. Also, the determination of the direct effect of the unconstitutionality adjudication does not contradict the provisions of the Constitution. Furthermore, the retroactive application of the unconstitutionality adjudication may threaten the legal stability and storm the legal centers that have been stable for a long time.

For the retroactive effect of unconstitutionality adjudication, the adjudication is considered a revealer of a state of unconstitutionality rather than an originator of it. Generally, the principle in judicial adjudications is that they are revealing and not creating for unconstitutionality. This indicates that the constitutional adjudication, like the other adjudications, reveals the constitutional flaw that has befallen the text since its issuance.

⁶⁶ Abdallah, previous reference, p. 29.

⁶⁷ Bani Salameh, M. T., & Ali Ananzah, previous reference, p. 149.

⁶⁸ Article 59/1 of the Jordanian Constitution of 1952, Article 15/b of the Constitutional Court Law.

⁶⁹ Article 15/c of the Constitutional Court Law.

⁷⁰ Article 15/d of the Constitutional Court Law.



2. CONCLUSION AND RECOMMENDATIONS

After the establishment of the Constitutional Court by Law No. 15 of 2012, we can say that Jordan entered the constitutional judiciary club, laying a basic block in building the desired democracy wall and respecting principles of human rights. Jordan in this step follows the advanced democracies in which the constitutional judiciary is one of its most important features.

In this study, we dealt with judicial oversight at the Constitutional Court, and we presented that in four main topics, but before that, we paved the way with an introductory topic that we considered necessary, through which we presented a statement of the formation of the Court, the constitutional necessity and conditions of its membership, and the rights and duties of its members.

We have concluded that the mechanism of membership through appointment instead of election and specialization, is a guarantee of competence by adhering to the conditions stipulated in the Constitution and the Constitutional Court Law.

The first topic of this study was devoted to the jurisdictions of the Constitutional Court, which aim to achieve a balance between powers by subjecting the texts issued by the legislative and executive authorities to constitutional oversight. This is represented in the oversight of the constitutionality of legislation including ordinary laws issued by the legislative authority or regulations issued by the executive authority.

These jurisdictions also aim to protect the rights and freedoms of citizens from any infringement by public authorities. It has become clear to us through this topic the importance of the court's jurisdictions in interpreting the provisions of the Constitution. Accordingly, the jurisdictions exercised by the Constitutional Court do not stem from the strength of the executive authority or the priority of the legislative authority, but from the intent of ensuring respect for the constitution.

For the second topic, we dealt with the nature of the Constitutional Court, and we concluded that the Constitutional Court has a judicial system, as it examines the constitutionality of laws and regulations, implements laws, and its decisions have the power of strength and accuracy. Therefore, it is not permissible to challenge the Constitutional Court by any party, and all state authorities have to respect its decisions as well.

The third topic of this study was devoted to talking about the right to litigation and ways to initiate the constitutional lawsuit. We have seen that if the establishment of the Constitutional Court is a dedication of the law state, then it is useful to open the way for the Constitutional Court to practice its jurisdiction in the field of constitutional oversight. This can only be achieved by expanding the mechanism of appeal bodies to other parties and granting individuals to appeal through the direct original lawsuit, as well as civil society institutions, such as parties and trade unions

In the fourth and final topic, we discussed the validity of the Constitutional Court adjudication, the legal effect of the unconstitutionality adjudication, the time frame specified for the execution of the unconstitutionality adjudication, the way to implement unconstitutionality adjudication. Accordingly, we have concluded that adjudications issued in constitutional matters - Whether they have been ruled unconstitutional or constitutional by rejecting the appeal, are regarded as final adjudications and not be subject to doubt and appeal by any authority.

Therefore, the adjudications is characterized by having validity that should be respected by all the state authorities, which leads to the settlement of the dispute raised once, so that the same dispute that has already been decided upon may not be raised again in the future.

We also indicated that the legal effect of the unconstitutionality adjudication leads to refraining to apply the text judged unconstitutional. Also, we clarified what is meant by the idea of a timeframe, which is determining the date to which the effect of the unconstitutionality adjudication extends, and then determining whether these adjudications are implemented concerning the future only, or implemented retroactively extending to the date of the issuance of the legislative text declared unconstitutional.

We have seen that the unconstitutionality adjudication is only implemented with direct effect without having a retroactive effect, except for unconstitutionality adjudications in criminal articles, which are implemented retroactively to the date of the issuance of the legislative text, as they are related to the rights and freedoms guaranteed by the provisions of the Constitution.

Accordingly, the researcher depended on the fact that oversight of the constitutionality of laws is not a mere legal issue that takes into account considerations of justice only, but it also extends to take into account the political, economic, and social considerations that society is going through.

We explained that as soon as the Constitutional Court has issued the judgment, the dispute has come out of its sovereignty. In this manner, on the other side, as soon as the legislative text or the entire legislation has been decided by the constitutional court as unconstitutional, the legislative authority must commit, respect, and hasten to repeal that unconstitutional text. After, the legislative authority must hasten to take the initiative to issue a new legislative text - regulating the same field that was regulated by the previous legislation. Furthermore, the legislative authority has to take into its consideration while doing so the provisions of the Constitution and its rules so that its work will not be subject to invalidity another once.

This commitment is required by the judiciary, through abstaining from implementing the provisions of the legislation declared unconstitutional. For all authorities, the commitment should take place immediately after the judgment is published in the Official Gazette.

To increase the effectiveness and role of the Constitutional Court in upholding constitutional legitimacy, ensuring the rule of law, and limiting penetrations of the citizens' rights and freedoms, we would like to put forward some recommendations that can be taken into consideration:

The necessity of giving the right to uphold the original constitutional lawsuit to various state parties, such as unions, political parties, and municipal councils.

1. The constitutional court law must stipulate that the legislator has to commit to repealing the law or system that is judged unconstitutional in a certain period starting from the date of the issuance of the unconstitutionality giving the constitutional court the absolute validity in facing the public authorities.
2. The constitutional court should allow individuals to challenge the unconstitutionality, taking into account the necessity to establish instructions and regulations to ensure that lawsuits do not accumulate at the court.
3. Subjecting the constitutional amendments to the oversight of the Constitutional Court to avoid their related consequences. This is because such constitutional amendments may contradict the spirit of the constitution or some of its articles.
4. The necessity of presenting all bills referred to Parliament to the Constitutional Court, including those referred to the government. In our perspective, by revealing the procedures followed in issuing legislation, we found that the bills submitted to the government or the Parliament did not receive enough examination for their constitutionality and conformity to the constitution.
5. Obligating the legislator to amend the text ruled unconstitutional. In this context, we prefer that the legislator has not to stipulate the text's abolition so as not to fall into a legislative space in the period after the judgment of unconstitutionality and the date of issuing a new judgment.
6. It is not necessary to specify a period as a higher ceiling for the court to rule on unconstitutionality, even if the justification for the existence of such a text stems from the care that the substantive issue has not to remain suspended indefinitely. Specifying a specific period for the constitutional judges prevents them from taking sufficient care to investigate the unconstitutionality. This may reflect negatively on the judgment's accuracy. However, the constitutional judge has to be given the authority to extend the period as he/she deems that as necessary.
7. There should be a provision that the constitutional lawsuit should not be waived. This may restrict any pressure exerted against the plaintiff
8. by the various state authorities to compel him/her to waive the lawsuit.



3. ACKNOWLEDGMENT

The author presents this study to all who are interested in developing the Jordanian constitution and are keen to establish the principles of fairness, equality, and freedom in Jordan.

4. FUNDING

The current study did not receive funding from any organization.

5. DECLARATION

The author warrants that this article is her original work, and it has not been submitted to be published to other journal.

6. CONSTITUTIONAL LAWS AND ARTICLES

Article 5 of the Constitutional Court law of 2012.

Articles 7 of the Constitutional Court Law of 2012.

Article 9 of the Constitutional Court Law of 2012.

Article 10/b of the Constitutional Court Law of 2012.

Article 11/b of the Constitutional Court Law of 2012.

Article 15/b of the Constitutional Court Law of 2012.

Article 15/c of the Constitutional Court Law of 2012.

Article 15/d of the Constitutional Court Law of 2012.

Article 21 of the Constitutional Court Law of 2012.

Article 23 of the Constitutional Court Law of 2012.

Article 26 of the Jordanian Constitution of 1952.

Article 29/1 of the Supreme Constitutional Court.

Article 56 of the French constitution of 1958.

Article 58 of the Jordanian Constitution law of 1952.

Article 59/1 of the Jordanian Constitution law of 1952,

Article 59/2 of the Jordanian Constitution law of 1952.

Article 60 of the Jordanian constitutional law of 2012.

Article 60/1 of the Jordanian constitution law of 1952

Article 60/2 of the Jordanian constitution law of 1952.


Article 62 of the Jordanian Constitution law of 1952.

Article 135 of the Italian Constitution of 1947

Official Gazette No. 5161 dated 7/6/2012, p. 2519.

References

- [1] Abdallah, O. (2001). Oversight of the constitutionality of laws (Comparative analysis). *Damascus University Journal*, 17(2), 1-35.
- [2] Abdu Latif, M. (1989). *Procedures of the Constitutional Judiciary*. Cairo: Dar Al-Nahda Al-Arabiya, p. 261.
- [3] Abu-Karaki, M., Faqir, R. S., & Marshadah, M. A. (2011). Democracy & Judicial Controlling in Jordan: A Constitutional Study. *J. Pol. & L.*, 4(2), 180-195.
- [4] Afifi, M. (1993). *Constitutional Control in Egypt*. 1st Edition, Cairo: Saeed Raafat Library, P. 292.

- 
- [5] Al-Helou, M. R. (2008). *Constitutional Law "General principles - constitutional history - political parties - parliamentary representation - electoral system - executive authority - legislative authority - judicial authority - public liberties*. 1st Edition, Cairo: University Press, p. 312.
- [6] Al-Kasasba, H. H. (2021). Protecting the rights, freedoms, and principles that guarantee them in the Jordanian Constitution and its Amendments. *Multicultural Education*, 7(5).
- [7] Al-Khataibeh, O. (2013). The Impact of explanatory decision of the Constitutional Court in Jordan. *JL Pol'y & Globalization*, 16, 9.
- [8] Al-Khatib, P., Nasrawin, P., & Laith, K. (2022). Oversight over the Constitutionality of the Legislative Acts of the Executive Authority: A Comparative Study. *Journal Sharia and Law*, 98(3), 132-183.
- [9] Al Mahasneh, M. J., & Basel Abuanzeh, M. B. (2020). Judicial oversight and the impact of laws to prevent liability. *Technium Soc. Sci. J.*, 9, 259.
- [10] Alomran, N. M. (2019). Constitutional and legislative guarantees of foreign investment in light of Jordanian legislation. *Journal of Legal, Ethical and Regulatory Issues*, 22(4), 1-16.
- [11] Asper, A. (1979). *The Evolution of Political and Constitutional Systems in Syria 1946 - 1973*. 1st Edition, Cairo: Dar Alnahar.
- [12] Bani Salameh, M. T., & Ali Ananzah, A. (2015). Constitutional reforms in Jordan: A critical analysis. *Digest of Middle East Studies*, 24(2), 139-160.
- [13] Burezq, H. . (2021). Biochar In Cattle Farming: An Innovative Solution For Soil Fertility And Cattle Productivity. *Journal Of Advanced Zoology*, 42(01), 61-96. <https://doi.org/10.17762/Jaz.V42i01.6>
- [14] Brown, N. J. (2014). Egypt: A constitutional court in an unconstitutional setting. In *Political and Constitutional Transitions in North Africa* (pp. 45-61). Routledge.
- [15] Elkhatib, N. A., & Domour, N. M. (2021). The constitutional court of Jordan and its relation to ordinary courts. *The Lawyer Quarterly*, 11(4).
- [16] El-Refaie, A. M. (2018). A Study about the Law of Jordanian Constitutional Court. *JL Pol'y & Globalization*, 76, 1.
- [17] Feuille, J. (2011). Reforming Egypt's constitution: Hope for Egyptian democracy. *Tex. Int'l LJ*, 47, 237.
- [18] Hantosh, L. (2018). Oversight of the constitutional judiciary on the amendment of the constitution. *Journal of the University of Babylon for Humanities*, 26(8), 527-542.
- [19] Lal Choudhary, N. ., & Chishty, N. . (2021). Copulation Behaviors Of Indian Vulture (Gyps Indicus) In Udaipur District, Rajasthan, India. *Journal Of Advanced Zoology*, 42(01), 07-19. <https://doi.org/10.17762/Jaz.V42i01.3>
- [20] Madi, R. (2015). Case Comment: The Unconstitutionality of Article 51 of the Jordanian Arbitration Law No. 31 of 2001. *Arab Law Quarterly*, 29(2), 190-197.
- [21] Nasrawin, L. K. (2016). Protecting Human Rights through Constitutional Adjudication-Jordan as a Case Study. *Digest of Middle East Studies*, 25(2), 264-284.
- [22] Rousseau, D., & Vedel, G. (2006). *Constitutional Litigation Law*. Paris: Montchrestien.
- [23] Shatnawy, F., & Hatamleh, S. (2013). Judicial oversight on the constitutionality of laws and regulations before the Constitutional Court in Jordan. *Studies, Sharia and Law Sciences*, 40(2), 617-634.
- [24] Singh, N. ., & Gautam, P. . (2021). Comparative Analysis Of Hypochlorite Method On Transgenic Strain By250. *Journal Of Advanced Zoology*, 42(01), 01-06. <https://doi.org/10.17762/Jaz.V42i01.1>
- [25] Toubat, H. S., Mahafzah, E., & Balas, H. A. (2019). Oversight on the Constitutionality of Laws: A Case Study of the Jordanian Constitutional Court. *JL Pol'y & Globalization*, 82(17), 17-24.