Views

The judicial control over the constitutionality of laws
In light of the principle of separation of powers

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From the requirements of the principle of separation of powers as one of the pillars of governance in the modern democratic state that divided power between the three bodies, will undertake one of the legislative authority, the authority shall be vested with the other implementation, and the third Vtser to adjudicate disputes

These three powers, as originated by the Constitution, it also determines their respective terms of reference and shows the general framework of the mandate of each

If the principle of legality imposed on the three authorities to work each of them always in the framework of its commitment to the provisions of the Constitution, that principle remains the principle of theoretical abstraction, it is not combined sanction effectively and the organization to ensure the commitment of these authorities to content and restricts Bhdodh, aiming at rhythm authority of an independent private practice what has been termed the ((judicial control over the constitutionality of laws))

Has raised the question of the jurisdiction of the judiciary in Egypt to monitor the constitutionality of laws has long been perhaps the beginning due to the year 1924, since the payment for the first time non-constitutional, to the Alexandria Criminal Court, then it was in 1929 and a payment to the court read out the partial with the same payment issued a ruling famous prescribed explicitly ((the right of the judiciary in control of the constitutionality of laws)), and continued to march on the Elimination of such a way that the Court of Egypt eligibility explicitly and clearly this right and that its rule promulgated in May, 1941, and the establishment of the State Council in 1946 Egypt entered a new phase in this area, as Administrative Judiciary Court issued a ruling in 1948 is a milestone in the recognition to eliminate the right to control the constitutionality of laws

Has exercised the ordinary judiciary and administrative branches of the right in the path of constitutional control laws to refrain from the application of the legislative text that are contrary to the Constitution, does not mean this in any way that there is a constitutional specialist known to spend the country, to refrain Frkabp issue can not give birth to the principles of judicial constitutional stable, the refrain Court here does not refrain the other there, which rolled, as he is doing, calls to extradite to the authority of an independent special task of verification of respect for public authorities in the country to the principle of legitimacy its various components, At the summit, respecting the constitutional texts, which represent the highest runways legal rules, which is investigating the a later stage in the evolution of the Egyptian judicial organization

By 1969, Law No. {81} of 1969 the establishment of ((Supreme Court)) in response to the statement by March 30 1968 to confirm the first safeguards the principle of rule of law ((the establishment of a constitutional court assume the function of the maintenance of the Constitution and the Charter)), has been entrusted with this law to the Supreme Court, without the other, the control of the constitutionality of laws and interpretation of legal texts explanation of binding

In a later development was the Constitution of the Arab Republic of Egypt {September 11, 1971}, capping of constitutional legality, including Antzmth texts of the articles of chapter V, entitled ((Supreme Constitutional Court)) {Articles 174, 175, 176 177 178} of the establishment of the Supreme Constitutional Court, and conferred with exclusive jurisdiction over the constitutionality of laws and regulations, and the organization formed, and conditions of membership, rights and immunity of its members, and the text is not liable for dismissal, and the necessity of the provisions of the Court issued in constitutional cases in the Official Gazette, with the mandate of organizing the consequences of the ruling unconstitutional a legislative text the effects of
The Supreme Court continued to exercise its oversight jurisdiction over the constitutionality of laws and regulations for a period of ten years that was issued to the Supreme Constitutional Court Act No. 48 of 1979, began her career on the road to uphold the constitutional legitimacy of the exercise of such control Binattha

First: the approach the judiciary's constitutional judicial control over the constitutionality of laws and regulations:
Exercised the Supreme Court and later the Supreme Constitutional Court, its role in the control issuing many of the provisions continued by the competence to carry out these controls, indicating the boundaries and scope, purpose, scope and-focused and its authority and its impact on the trial court, also included these provisions control the former and control of omission, which is what we offer him in the brief in This short intervention.

{A} In terms of jurisdiction of the court oversight jurisdiction over the constitutionality of laws and regulations:
Court ruled that ((its competence in this area is limited in the legislative texts of any subject matter or scope of application or the party that approved or issued by, it flattens its mandate in the matter of judicial control only to the law sense substantive as no interest to the legal texts that are generated by the centers of general, abstract, whether they received these texts of legislation the original approved by the legislature, or included in the subsidiary legislation issued by the executive authority within the limits of its mandate you have given to the Constitution, and that to contract for others)) and: ((said to subject the constitution to such control are overstepping the limits of the mandate of the Supreme Constitutional Court, which must be eliminated no jurisdiction over this request))
{Issue No. 156 for the year 18 BC the constitutionality of a hearing on 1.6.1998, Case No. 188 for the year 27 BC the constitutionality of a hearing on 15.01.2006 }

{B} and the limits of this control: the Court ruled that ((assigned in determining the constitutionality of legislation or unconstitutional when the realization of judicial control is the extent to which the legislation or otherwise contrary to the provisions of the supreme law of the Constitution, the State Supreme Court does not extend to discuss the appropriateness of legislation or the motives which Uploaded the legislature passed, because all of that which enters in the fundamental competence of the legislature and its sole discretion)) and that ((not her only to respond to legislative provisions challenged by

the provisions of the Constitution, the formal and substantive, not locked in their motivation or discuss motives))
{Issue No. 5 of 5 BC hearing on the constitutionality of 03/07/1976, Case No. 14 for the year 17 BC the constitutionality of a hearing on 02.09.1995 }

{C} As for the extent of this control: the court ruled that ((judgments in constitutional cases, which are inherently adversarial proceedings in-kind guide to the legislative provisions challenged by a constitutional defect, the authoritative absolute so that not only impact on the litigants in cases issued them, but leave this impact omnes, and adhere to all state authorities, whether these provisions over the unconstitutionality of the text being appealed or to the unconstitutional and to dismiss the case on this basis, and that the general meaning of the texts, and because of judicial control exerted by the court without the other is the control comprehensive extends to the provision abolishing the unconstitutional power of the text into force, or to the report of its constitutionality, and therefore the integrity of all the imperfections and invalidity in order to prevent consideration of any appeal which arises from new))

{Issue No. 10 of 8 s hearing on the constitutionality of 05/10/1991 }

{D} and about the purpose of these controls: the Court ruled that ((if the Constitution has empowered the legislature originally the jurisdiction of the age of legal texts, as this was within the scope of natural constituency for its activity, but it does not Iasmha of submission to judicial scrutiny, carried out by the Supreme Constitutional Court in The constitutionality, which is controlled undo what purpose it may have against the constitution, even if from a rights perspective missed by implication, whether their violation by intentionally starting or had an accident))

{Issue No. 31 of the year 17 BC the constitutionality of a hearing on 02.01.1999 }

{E} As for the scope of control: the court ruled that ((the origin in the control exerted by this Court on the constitutionality of legislative texts as comprehensive control address all the slanders against addressed to them, whatever their nature, and it is therefore not limited to defects objective, which is based on the violation legislative text of the content of the substantive rule set forth in the Constitution, but extends this control as a central control restricted to the Constitution and the legislature both to this Court to the slanders against formalism, which both are based on violation of a legislative text of the conditions of Procedure, which requested the Constitution, whether that was connected to the proposed text legislative approval or released if the legislative authority, or those that are relate to the conditions imposed by the Constitution to direct jurisdiction issued in the absence of legislative authority or mandate them, and because the limit on the slanders against the substantive to the legislative texts, but out flaws formalities for the mandate of this court and return control of the control to refrain from acts of the legislative texts that are contrary to the Constitution))

{Issue No. 31 for the year 10 BC the constitutionality of a hearing on 07.12.1991 }

{And} and the focus of control over the constitutionality of laws and regulations: the Court ruled that ((judicial control exerted by this court in The constitutionality of legal texts, what was it spent,-focused violation of those provisions to the rule contained in the Constitution, nor is it the incompatibility between two versions of legal bring them a single law or dispersed between the two different laws, unless this conflict to involve the constitutional violation itself)) and ((the focus of control that the legal texts adopted by the legislature or issued by the executive authority within the limits of their powers which, including the Constitution, nor is it abandonment by one of its duties, and responsibilities in Btafritha, but due to her authority granted by the confidence which the electorate))

{Issue No. 24 for the year 21 BC the constitutionality of a hearing on 2.6.2001, Case No. 34 of the year 17 BC the constitutionality of a hearing on 04.01.1997 }

{G} As for the reference of this control: the court ruled that ((the parent that the protection of the Supreme Court of the Constitution of the GOES to the existing constitution, but that, as this constitution is not a retroactive effect, amended the text of Article I of the Act No. 119 of 1964 { text contested} under Law No. 59 of 1968 as of November 7, 1968 before the entry into force of the Constitution of 1971, several years, and then it can not invoke its provisions in relation to the appeal of unconstitutionality, but must resort to the Constitution of 1958 that law was passed the impugned in shadow, and to the Constitution of 1964 which came into operation with effect from the day following the date of entry into force of Law No. 119 of 1964 remained in effect for the duration of the first article of the aforementioned Law {text contested} to be amended on 7 November 1968 under Law No. 59 for the year 1968))

{Issue No. 5 of 7 BC constitutional session 48/1978 }

{H} and the impact of control on the trial court: the Supreme Constitutional Court ruled that ((jurisdictional control of the constitutionality of laws and regulations up to the Supreme Constitutional Court alone is not contested by the other courts, which must have had suspicions clash legal text necessary to settle the The lawsuit with the provisions of the Constitution that the matter before the Supreme Constitutional Court to say where her, and then it was incumbent on the trial court, after assessment by serious challenges to the constitutional and stated by the constitutional motion, that lie in wait for the Eradication Supreme Constitutional Court in The Text challenged to break his rule on the dispute of substantive , not to proceed with the consideration of the dispute and makes a ruling, otherwise it Tzlita to eliminate the lowest point of the highest judicial body))

{Issue No. 95 for the year 20 BC a hearing on the constitutionality of 11, 5 / 2003}

{I} and on the control prior to the draft law and its relationship to control subsequent to the contents of this project from the text after it has become law: the court ruled that the ((direct courts of different types of jurisdiction of the contract it does not correct the objection below and direct all other terms of reference, it should be considered to all

disciplines as an integrated no dissonance or conflict between them, because it was the text of Article {76} of the Constitution as amended has been assigned the competence of the control prior to the draft law regulating presidential elections of the Supreme Constitutional Court, in addition to competence unique and inherent control of the constitutionality of laws and regulations set forth article in the {175} of the Constitution, and then embrace the constitutional control prior to the draft law, the above statement and to express an opinion on it does not prevent her from exercising its jurisdiction to control the subsequent provisions of that Act))

{Issue No. 188 for the year 27 BC the constitutionality of a hearing on 01.05.2006}

II: control of omission and the development approach of judicial control over the constitutionality of laws and regulations:
{A} define the concept of legislative omission replace control:
Achieved the legislative omission can be the subject of control of the Constitutional Court if the legislator addressed a topic that is unique to the organization, but that this regulation comes either intentionally or negligently incomplete, which comes on a minor note in all its aspects and leading to a breach of security is the constitutional organization of the topic in question

For example, as stipulated in the Constitution to guarantee freedom of expression was not supposed to be hindered and the means to embrace and multiple methods of expression, and that the prospects are her window, and not be territorial borders a barrier to below, and combined with the right to communicate views on the differences, and the right to criticize those who work, even if bitter, and the right to get information from all their tributaries, and in the interview of views to each other, and not to confiscate the letter expressive view of the content in the light of the status of Evsahon for or receive or Erjrnha, and not to be media based on trust, but should to be its market open to anyone who wants to gets to
If you set aside the law of this different dimensions of freedom of expression, or put together, or thwarted their impact, or neglected to report some aspects; This law was null and void and contrary to the Constitution as it detracted from its safeguards or omitted from his report to the extent required to activate

{B} the limits of censorship omission as a form of constitutional judicial control:
Legislative omission is located in one of two forms:
The first picture: silence on the organization or the so-called macro} {omission.
The second picture: shortcomings in the organization or the so-called partial} {omission.
Having taken the Supreme Constitutional Court the picture the second {omission partial}, so that silence on the organization of the issue of organized legislative not be regarded as acts of omission legislature, the report of the need for legislation and then intervene to regulate the subject matter of this legislation, or is not needed and then the silence on this organization; is the most important characteristics of the discretion of the legislator unless requested to the Constitution of this intervention, there is no link between the need for legislation and its constitutionality, Viaqrar law or a decision by law

in a particular subject and to the ruling by the Supreme Constitutional Court is thus independent of legislative and executive branches in discretion in accordance with the provisions of the Constitution, and may not therefore get it to intervene in a certain time or in some way, as well as the its failure on the adoption of the organization of legislative in this range, is not a legal obstacle standing without the enforcement of judgments in constitutional matters and the imposed on her opponents to ensure that down the {Case No. (7) for the year 14 BC the implementation of dispute} {session} 6/19/1993

{C} the constitutional basis for judicial control on the partial omission:
The basis of the coverage deficiencies in the organization or {omission partial} oversight Constitutional guaranteed by the Constitution of each right or freedom set out in protection aspects of the process is not givens theory, namely the protection of the guarantee guaranteed by the Constitution to the rights and freedoms of citizens, which are a condition for use in is envisioned by the Constitution have an effective range, and condition, of course, be organized as sponsoring breathing in vital fields and to take all the parts that are significant in ensuring the practical value, any violation of the Constitution, whether the legislature deliberately or unintentionally slipped to be suppressed

{D} Egyptian constitutional judicial control on the legislative omission:
We have it by 1969 Act No. (81) of 1969 established the Supreme Court, which has been exercised without judicial control of the constitutionality of laws and regulations for almost ten years that the Law No. (48) for the year 1979 the establishment of the Supreme Constitutional Court teenager this jurisdiction
It should be noted that the judgments of the Supreme Court did not confirm or reflect the initiation of the discharge of its oversight of the legislative omission, whether to accept this kind of censorship or denial of Mbacherth
The Supreme Constitutional Court has begun this type of censorship since the beginning of the exercise of its jurisdiction, has started her on this path reluctant to consider omission Legislative defect can be branded with the legislation before it to the constitutionality, arguing that omissions or inadequacies in the legal regulation of such accommodations by riding legislator Ptkadirha, as the Court held that ((as determined by the Prosecutor on the omission of text contested regulation through the disclosure of prescription tenant of agricultural land until it is clear from the deal with its commitment to the notification of his religion is not merely a controversy about the appropriateness of legislation and any consequent prejudice to the rights a range of creditors, what Inaah Prosecutor in this regard is not a constitutional flaw stigmatized by the contested text and extend to the control of the constitutionality of laws))

{Issue No. 13 of Year 1, judicial hearing on February 16 198}

In a related development close later amended the Supreme Constitutional Court from this trend, and began to provisions of accumulating uncertain conducted for the entire control of the omission of legislation, as the organization of the minor in itself constitutes a violation of the Constitution, both represent the organization of the minor as not included in the text Tain of the rule, or as guaranteed by the rule of Minor

Perhaps the beginning of this new direction was as decided by the Supreme Constitutional Court from ((the unconstitutionality of Law No. 104 of 1964, devolution of ownership of agricultural land which was seized in accordance with the provisions of Legislative Decree No. 178 of 1952 on agricultural reform, and the decision-Law No. 127 of 1961 amended it; to the State without charge to the support of that decision res judicata law to be unconstitutional may report omitted the right owners in compensation for land seized))

{Issue No. 3 of 1 year, judicial hearing on 25.06.1983 }

With regard to the supervision of the Court to disregard the legislative goal of the absence in the text Tain of the rule had to be contained in the Constitutional Court ruled supreme: ((not to constitutional text of the third paragraph of Article (29) of Law No. (49) for the year 1977 regarding the leasing and sale of premises and planning the relationship between landlord and tenant matters not contained in the text on the end of the lease which Lessor shall have the right to edit for those who served in the eye by the end of the last of the establishment of either death or Turk))

{Issue No. 7 of 18 BC the constitutionality of a hearing on 03.11.2002 }

As for the control of the court to disregard the legislative objective in the text includes Tain for the rule of a minor court ((not to constitutional text of Article (17) of Act No. 136 of 1981 regarding some special provisions for rental and sale of premises and regulate the relationship between landlord and tenant with contents from the palace of the continuing contract rent to the wife of Egypt and her children from her husband, a tenant is not Egyptian at the end of his stay in the country already or provision without the husband-Masri and his children from his wife rented non-Egyptian)) for violating the text Tain minor principle of equality and colliding with the provision of Article (40) of the Constitution

Conclusion

Such was purely a simplified study on the evolution of the role of the Constitutional Court of Egypt in the control of the constitutionality of laws and regulations, ranging from pre-judiciary constitutional specialist, where the courts extend its mandate is being conducted so-called supervision to abstain, and that failure to apply the text, which seems to them that guarded Bawar constitutional , a control lacking controls for consistency and standards of harmony, including sit out for a building organic unity with the provisions of the Constitution so as to ensure complementarity and cohesion, which necessitated the establishment of a judicial constitutional independent specialist to achieve centralized control over the constitutional legitimacy, whether in the form of the Supreme Court Kirhasp for this type from the judiciary, or the Supreme Constitutional Court, which ensures the protection of this legitimacy for more than three decades, was full of provisions with the principles under which the Court has assumed its place among those of the towering constitutional courts at the international level

Notes

(A) of the speech of Mr. President of the Adviser Galilee Egyptian Supreme Constitutional Court at the opening of Lent gala for the establishment of Constitutional Court published in the Journal of the Constitutional number (15) 1 year (7) April 2009, p. 3

() Chancellor Dr. / Abd al-Aziz Salman President of the College of Commissioners of the Supreme Constitutional Court of the Egyptian Research entitled historical perspective of the principle of constitutional control laws in Egypt Journal of the Constitutional number (1) 1 year (1)

(A) of the speech of Mr. Chancellor Galilee President of the Constitutional Court Supreme previous source, p. 7

4) the jurisdiction of the Supreme Court limited to the chapter on the constitutionality of laws passed by the legislative authority, but its ruling on July 3, 1971 in case No. (4) for the year (1) high judicial "unconstitutional" to extend its control over the legal rules all, including those issued by the executive authority (regulations

() Due to all the provisions referred to the set of principles established by the Supreme Court and the Supreme Constitutional Court in the forty in 1969, 2009, prepared by the Egyptian Supreme Constitutional Court on the occasion of celebration of Lent for the establishment of constitutional justice

() Chancellor Dr. Abdel-Aziz Salman President of the College of Commissioners of the Supreme Constitutional Court of the Egyptian Research entitled omission control to eliminate the constitutional Journal of Constitutional Issue (15) 1 year (7), p. 58

() Counsel Galilee late Dr. / Awad Murr: Oversight of the constitutionality of laws in the main features leaf-shaped Dubawi Jean-Rene Center for Law and Development, p. 14 20

() Counsel Galilee late Dr. / Awad bitter op with Page

() Chancellor Dr. / Abd al-Aziz Salman ibid., p. 59, p. 60

() Counsel Galilee late Dr. / Awad Al-Murr Ibid, p. 14 16

() Refer to the near Chancellor, Dr. / Abd al-Aziz Salman ibid. p. 63 et seq