Federal Supreme Court Judgements Supplementing The Constitution

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Abstract

The Federal Supreme Court stands at the head of the hierarchy of the judicial organization in Iraq, as it is the highest court in terms of status and the heaviest in terms of tasks and specializations. It is unavoidable for any party to abide by its provisions, or else it will be considered as violating the constitution. Although the court is, in the end, an authority established under the constitution, a study of the decisions it issued proves that it has sometimes stripped itself of the mantle of the original founding authority that lays down the constitution and imposes its provisions. From a deficiency or similar to a defect, and those decisions would have added to the aforementioned texts provisions that the Constitution had not previously mentioned, and some of their decisions would paralyze provisions in the constitution and hold them out of force, while others would have added to the court a margin of jurisdiction that it does not have according to the explicit provisions of the constitution. The research is an attempt to shed light on these decisions and to reveal what has been secretly leaked from provisions complementary to the constitution, among their multiplication and vocabulary.

Introduction

Perhaps it is a given among legal scholars that the legislation that a person enacts suffers from shortcomings and shortcomings, and behind this are subjective reasons related to the legislators and their being a group of people who are forced to fall short and who are prohibited from perfection. The texts are limited in the ability to treat according to the limitations of the diagnosis, and the diagnosis may be integrated and proportional to the necessities of knowledge of the subject matter of the legislation, but the texts regulating the subject fall short of achieving the purpose of the legislation, as both the diagnosis and the quotation may be deficient and incomplete, even if the two things are complementary and the legislation comes as The one who deals with the subject with skill and perfection, soon, objective and not subjective reasons arose this time to make the legislation unable to keep pace with the organization of the subject that was enacted to treat and organize it, as legislators do not have the keys to the unseen to seek through them the faults and shortcomings that will afflict their legislation when it sees the light and faces the changing circumstances and developments that Life never stops.

Regardless of the reasons behind the lack of legislation, the result is the same, which is a defect in the OT Hakiq very or more of the purposes of the legislation, perhaps the problem is magnified if the shortage has gripped the provisions of the Constitution, owing the seriousness and importance of what is organized by the Constitution and contained topics and addressed from problems, also due this is due to the difficulty of amending the Constitution and the length of the procedures required by the amendment, especially in countries where the Constitution is where static is not affixed to the hands of the amendment , but the procedures and formalities Baah J of, and that is also due return to the Constitution does not normally provide for the explicit recognition of the possibility of There is a

deficiency among the multiples of its texts, and it follows that he does not put in place effective solutions stipulated in it to remedy the deficiency.

Hence the rise of constitutional judiciary - as custom - burden to fill the void that haunt the provisions of the Constitution and complements the deficiencies which undergo if the Constitution had not acknowledged the possibility of shortage in it and the designation of one hand to fill the gap as we made, and what is prescribed to eliminate this task even raises Fiqh several questions about the text The jurisdiction of the constitutional judiciary to complete the deficiency in the provisions of the constitution or not, the limits of the judiciary's authority in this, its mechanisms, the value of the decision that comes with a judgment complementing the constitution, and the way to distinguish it from the constitutional text in terms of strength.

The Importance of The Topic

The importance of the research topic stems from the fact that it intends to show the role of judicial decisions in completing the deficiency in the texts of the constitution and distinguishing this type of judicial decisions from other decisions issued by the constitutional judiciary, content with interpreting the texts of the constitution as they are or resolving an existing dispute based on them. Whereas, it raises fundamental issues regarding the role of the judiciary in completing the constitution, and will the judiciary, with this reward, wear the mantle of the founding or derivative power that is concerned with amending the constitution, or does it remain an established authority? What is the evidence for the two possibilities in the midst of the judiciary carrying out a task that should be carried out by a constituent authority? What is the evidence to the contrary, despite the fact that the decision issued by the judiciary will be binding on the authorities and people in the state, and that it will come up with a new ruling that has not been explicitly included in the constitution?

One of the evidences of the importance of the topic of the research is that it deals with the partial distinction between amending the constitution through the competent authority and the amendment performed by the issuance of a judicial decision that has a complementary effect to the text. Is it possible to say that resorting to the constitutional judiciary is a way to circumvent the complex procedures stipulated in it? The constitution to amend it as long as the decision will include a new provision that complements an apparent constitutional deficiency? The research also deals with the impact of whether or not the state adopts the principle of judicial precedent in its prevailing legal doctrine, so the complementary decision in the case of adopting the principle is stable, such as the stability of constitutional texts or unstable when the aforementioned principle is not followed, where the judiciary can come a new ruling every time, which exposes Saying that the judiciary has a role in completing the constitution leads to justified shock and skepticism.

Research Methodology

Adopted research analytical approach in the study of judicial decisions in general and the complement of the Constitution , especially then in the study replace the description of a complement to the decisions issued by the Federal Supreme Court , based on which the constitutional terms of reference and in the selection of models of those decisions where capacity highlights the integral of the Constitution and the evaluation and critique .

Search Plan

Requires search judicial decisions of the complement of the Constitution stand starting on the nature of judicial decisions of the complement of the Constitution, a topic the first title, and falls below the demand of the first on what decisions the ordinary judicial and constitutional generally and then stand on what decisions the complement of the Constitution, in particular in a second demand. In a second topic, we stand on the status of decisions that complement the constitution in the substantive competencies of the Federal Supreme Court in four demands, and in a third topic we stand on its position in the procedural competencies of the court, detailed in three demands. In a fourth topic , we select six models of judicial decisions that complement the constitution, and we distribute them into six points.

The first study

What are the judicial decisions that complement the constitution?

Under this heading, we discuss the first requirement of what regular and constitutional judicial decisions are in general, and then in a second demand we define what are judicial decisions that are complementary to the constitution in particular.

The First Requirement

What are ordinary and constitutional judicial decisions in general?

Raises Fiqh diverse definitions of judicial decisions and the provisions of the judiciary at the appointed time, confused some of them between the two concepts and distinguish each other between them on the basis of objective considerable, Fmma confused concepts of both the definition shows that the judicial ruling is (the decision of the Court within the limits of its jurisdiction in opponents of the form in which determined by the provisions of the law , whether issued a at the end of the litigation or in the course of its progress and whether it issued a on the subject of litigation or touching a a procedural) ([1]) , and the evidence of confusion is that the decision issued by the judge during the course of the case is not a judgment, as the judgment is what the judge issues at the conclusion of the pleadings and decides the case , and the decision is what the judge issues before deciding on the dispute before him .[2]) .

Nevertheless, jurisprudence shows the comprehensiveness of the decision that is not available in the ruling. The decision is more comprehensive than the ruling, but the ruling is nothing more than a decision, and that every ruling is a decision and not every decision is a ruling .[3]) , and based on this that the term decision in the framework of the issued by the court dimension objective is to what is expressed in the judge 's will during the consideration of the case , Vikhz a set of procedures required for access to the conviction led to the judgment in the case and the separation of the dispute such as the decision to call Witnesses, the decision to request expertise, the decision to include a third party in the case, the decision to postpone the pleading, the decision to prevent the defendant from traveling, and the like. As for the ruling, it is the final decision issued by a competent court in a matter before it in a manner that resolves the dispute and ends the litigation.

Whatever the case, the aforementioned definitions do not comprehend the various decisions issued by the constitutional judiciary that do not stop at the limits of settling disputes before it only, as the court issues other decisions that are not related to the concept of dispute settlement. It also issues interpretative decisions as it is competent to interpret the constitution and that what issued in this regard is not right to know that the decision t break up a dispute by the fact that the request interpretation is not a judicial his opponents ([4]) , and it issues a decision approving the final results of the general elections taking place in the country, and there is no doubt that this decision is far from the concept of conflict resolution .

Accordingly, we see that the decision issued by a particular constitutional court should be defined on the basis of the document on which the court relies. It may be a decision that settles a dispute if the subject of the decision is related to a case in which two or more parties dispute a subject that the court is competent to consider, and it may be an explanatory decision that becomes clear. In it the court contains the hidden texts of the constitution and details the most beautiful of those texts in a way that allows those with interest and interest to implement the constitutional text in a correct manner, and it may be a decision to support the constitutionality of a legislative text that has an interest in unconstitutionality, and it may be a procedural decision such as ratification On the results of the elections, and this makes us suggest defining the judicial decision issued by the Constitutional Court away from the definition of the judicial decision issued by courts of other degrees and types due to the difference of the Constitutional Court shown from other courts in terms of the competencies entrusted to it, even if it is similar to courts lower than it in the rules of pleading And the formality of its issuance of decisions to resolve the dispute and settle the dispute.

Whatever the case is, the scholars have come down wa eliminate the status of the source of the informal or non - legislative law, and that the provisions of the judiciary in this Mathaba does not have the only value Astinasah judge , willing to take what Hawwah the decision of the judicial of the merits and provisions if he wishes omitted ([5]) , but wrong with him some of Fiqh it with a look tight , but not surround including around does not extend beyond that and some of the slow pace of development is consistent with the trend of the reservation ([6]) , and sees Fiqh that the minimum status occupied by eliminating the sources of legislation but are in the countries affected by the Latin system where the value of case law and darkening authentic principle of the relative is res judicata and because the principle of separation of powers prevents the courts to have activity , but law enforcement While the legislature enacts the law ([7]) , and jurisprudence ignores that creative role of the judiciary when applying an incomplete or ambiguous and dysfunctional law and how the judicial ruling can bridge the gaps of the law and fill the defect in it, since the judge is commanded to settle the dispute, otherwise it is considered a denial of justice as it is not hidden , and perhaps jurisprudence intended the ordinary judiciary When he was brought down that low status, there is no doubt that the constitutional judiciary does not approve of the description of the abstract explanatory source of the texts of the constitution and the party that applies the texts of the constitution without creativity or innovation, because the constitutional judiciary is almost the guardian of the constitution and the trustee of the enforcement of its provisions and the source of its understanding and action. it does not make those decisions Banawanh literally apply what is contained in the provisions of the Constitution, but would have to deal with the ordinances attached to those texts from flawed interpretation or when an existing dispute resolution on the work of the work of the federal authorities, he mourned with the interest of violating the Constitution ((8)) .

The second requirement

What are the decisions that complement the constitution in particular?

The Constitution does not stipulate, within the competencies of the Federal Supreme Court, what can be called (a decision complementing the Constitution), because the completion of the Constitution or the completion of a ruling in it represents an attribute attached to the decision issued by the Court based on one of its competencies stipulated in the Constitution. With this status, the decision of the Federal Court, which decides on it based on the provisions of Article (93/First) of the Constitution regarding the constitutionality of a text in a law or system in force, can be a decision that complements the Constitution if it includes a provision, principle, or phrase that can be considered as a completion of a deficiency in a text. From the provisions of the Constitution or one of its provisions, and say the same on the decision issued by the court, in which it relies on the other competencies stipulated in the Constitution. However, saying this does not mean that the possibility that the judicial decision issued by the Federal Supreme Court contains a ruling complementing the constitution is one possibility in all the decisions it issues, but that the matter varies according to the nature of the decisions it issues or the type of jurisdiction on which it is based when issuing the decision, and we see The possibility of the judicial decision containing a provision complementing the constitution increases whenever the decision issued by the Federal Supreme Court is based on a jurisdiction in which its freedom increases to probe the provisions of the constitution and to depart from them with flexible objective provisions, while that possibility decreases if the jurisdiction exercised by the court when issuing it has jurisdiction. A dry formality that allows only limited interaction with the vocabulary of the constitutional text.

Judicial decision of a complement to the Constitution if is issued by the court 's decision to the Supreme , citing one of its terms of reference stipulated in the Constitution and guaranteed by a provision complement of for the Constitution was not the Constitution had been overwhelmed , that Mathaba the field of judicial decisions of the complement of the Constitution is the constitutional provisions and the texts that undergo the lack of substantive or formal drafting or procedural and marred by a lack of ability to organize a constitutional order thorny and Antabha inability to keep pace with the evolution of the political and constitutional life so paralyzing her constitution failed to push the wheel of life and political and constitutional and face things worse in the field of the work of constitutional institutions,

and then the court step up the Federal Supreme's issued Its decisions that include a provision that complements the shortcomings in the constitution and addresses the imbalance in its texts .

A legitimate question arises about the basis on which the court relies when it includes a decision to the effect that it completes a deficiency in a constitutional text, so we show that the constitutional legislator does not even acknowledge the possibility that what he wrote of constitutional texts may be lacking , so how do we imagine that he grants a body in the state can complete a deficiency that does not recognize the possibility of its occurrence ? We believe that the justification for this is legitimate, for acknowledging the possibility of a deficiency in the constitution and leaving the matter of its completion to a party means that this party will have the ability to add a constitutional provision that the constitution has not previously included, and in the language of legitimacy we say that a party that does not represent the people has become able to make a provision In the constitution, only the people can place it among the consolidation of the constitution, assuming that the people are the ones to whom the matter of drafting the constitution is returned, and in the language of the philosophy of law we say that the authority of an institution created by the constitution has become one of the institutions of the original institutional authority competent to create the constitution ([9]) It is the addition of a provision to it, and therefore it is not conceivable that the constitutional legislator would recognize any party with the right to complete the constitution.

However, this does not mean that the completion of a deficiency in the constitution through a complementary judicial ruling is the root of the link to legitimacy, as it is known that the legal base has unofficial sources represented by jurisprudence and the judiciary ((10)) And that they have a role alongside official sources in completing the legal structure for the general legislation in the country, especially the legal judicial rulings that include principles not stipulated in the law or that resolve a dispute in it or complete a deficiency ([11]) , and there is great difference between the practice of complementary and judicial decision of complementary , representing habits The former process of humble public authorities to follow up steadily taking root in the conscience and sense authorities binding as a ([12]) without having a specify written and without Agatha Constitution text recognized by a or giving it a power or an obligation, while the judicial decision - constitutional the complementary derives its existence and power and imposed by all , the text written in the Constitution , but the Constitution This kind of decisions is not recognized for existence or belongs to organization and quotation, i.e. the constitution does not explicitly acknowledge that there is a deficiency and that the Constitutional Court can supplement it with the decisions it issues, but the character of completing the texts and provisions of the constitution is hidden among the multiplication of constitutional judicial decisions and silently lays down binding constitutional rules and principles that do not Rad her , and her Highness and gaining Alzamatha Bchweap judicial decision which constitutional constitutions often provide it binding for all decisions ((13)) .

On the other hand , in the Constitution has entrusted the arbitrator to the Federal Supreme of the functions of heavies in the forefront of the interpretation of the Constitution, and perhaps this way has been at the forefront of what I begged the court by means of complete lack of the Constitution. Perhaps the most prominent thing that we see as a support for the court is that its decisions have the ability to complete the constitution. They are final and binding decisions for all authorities, as stated in Article (94) of the constitution. The text did not exclude any kind of these decisions . Rather , the constitution did not make it a commentator on the court regarding the decisions it takes. Except for what is related to respecting the constitution as it is imposed on all authorities, including the Federal Court itself, but being an interpreter of the constitution leads to this restriction and makes the matter of estimating what is in agreement with the constitution and what is not in the hands of the court.

The provision contained in Article (94) of the Constitution is unique and unparalleled in all other provisions of the Constitution. The actions of any of the public authorities in the state do not enjoy the strength, immunity and obligation of the decisions of the Federal Supreme Court. The text has elevated the court’s decisions to the point where it is not inferior to the status of the constitutional texts themselves. Both are supreme and binding and cannot be violated. In fact, when the legislator established immunity for the constitution, he did not come up with other than the vocabulary with which

he protected and fortified the decisions of the Federal Court. Article (13/first) states Provided that (this constitution is the supreme and supreme law in Iraq, and is binding in all parts of Iraq without exception), and perhaps this matter is what guarantees court decisions that touch on the constitutional texts, explain their ambiguity, detail their entirety, and supplement their deficiency.

In the midst of discussing what federal decisions are complementary to the constitution, the question may also arise about ways to identify those decisions and the criterion for distinguishing them from decisions that may be similar or mixed with them from court decisions, specifically the decisions that explain the texts of the constitution, and we see that the mayor of what distinguishes the decision that complements the constitution and what is known It is a decision that adds a new provision that has not been previously stipulated in the constitution, and the ruling in this regard is something that the court invents and updates to the text with its jurisprudence and fatwa. This is precisely what distinguishes the complementary decision from other decisions, including the decision that explains the constitution. The interpretation is a statement and detail ([14]) Likewise , everything that has been translated about the state of something is its interpretation . [15]) , and explained the thing clarified and interpretation of the explanation and the statement ([16]) , and this vocabulary only includes an explanation of the ambiguous terms and what needs to be explained and detailed. The explanatory decision should not go beyond the limits of explanation and detail and what is useful for removing ambiguity from ambiguous texts and detailing their entirety. As for the complementary decision, its content exceeds those boundaries. , where the court invents through it the provisions that the constitution has not previously stipulated and the regulation of specific issues that was not mentioned by the constitution, even though the non- complementary provision may come, rather it is likely to come , in the context of an interpreted decision as the research will prove .

Judicial decision of complementary Inmaz if the characteristics of the phenomenon, and perhaps at the beginning of his qualities not t shoulder the court as soon as the interpretation of a constitutional text by removing ambiguity and the statement of its meaning, but must t happened through a center novel to develop a new legal or t place Â certain Maly Innovated to enforce the affair of the Constitution Affairs or t fill it void a legislative constitutional standing , and this Mathaba is not a decision to complement a decision that the meaning of the phrase explains contained in the Constitution or occasions implementation of the text shows on specific facts or determines the existing provisions already in the Constitution and only made a statement ways to implement them, and as long as the These are the characteristics of the complementary decision . There is no doubt that it will fill the existing deficiency in the texts and provisions of the constitution, which will enhance the integration and consistency of the constitutional texts and remove the gaps caused by defects and deficiencies in some of them . With the complementary decision , the process of governance and administration is regulated, constitutional and political institutions are stabilized and their institutional activity is maintained in a way that prevents disruption of life constitutional and political , especially in the state with a rigid constitution, as is why appoint Fiqh decisions of the complement of the interpretation of the constitutional interpretation of the phenomena that upset because of the shortage , which may haunt the provisions of the Constitution .

Perhaps raised here wonder about the value of the judicial decisions of the complement of the Constitution in the states that do not follow the principle of case law which respects the previous decision of the Court ([17]) , if it was said that the court that we are going to discuss its decisions are court supreme among the courts of the State which is the ultimate in terms of the court topics considered in the terms of reference granted to it by the Constitution, Naguib that this also does not intercede in countries that do not take the principle of case law on Obligation and consideration, as the court itself may violate its decisions, and the court itself may differ in its status and its judges after they are referred to retirement or their relationship with it is cut off for any reason and that the subsequent Federal Court is not bound by the decisions of the previous Federal Court, and another problem arises in this regard is With the instability of the provisions of the Constitution, whose basis are complementary decisions, if the court is in a state of dissolution of its decisions, or the court that is formed after it, we say that the purpose of non-acceptance of the principle of judicial precedent is that judicial decisions change later due to the different convictions of the court or the circumstances of its making previous decisions. , and

this is without prejudice to any way to the extent of the fact that those decisions are binding and conclusive and must be followed by the authorities . all this is enough to be because those decisions are intended to regulate the affairs that are the subject of a Walt The provisions of the Constitution fail to organize them due to the deficiency and defect that necessitate the completion of the texts, and until the complementary decision is changed by the same court or the court that replaces it, it remains in force regulating the affairs that were issued to organize it, then it replaces it in that decision other than it and acquires the power of the decision Majavy itself and the degree of prestige Btadth and its impact not to be a failure to follow the principle of case law from the impact of adult ([18]) .

Among the applications of this is that the Federal Supreme Court had previously issued a decision in which it indicated that (absolute majority) if it is not followed by what indicates whether it is meant by the absolute majority of the number of members of the House of Representatives or the absolute majority of the number of attendees in the session as is the case in the two articles (61/eighth/a) and (76/fourth), which means that what is meant by it is (the absolute majority of the number of attendees in the session) with the presumption that if the drafter of the constitution wanted it (the absolute majority of the number of members of the House of Representatives), he would have declared that as he did in the articles (55), (59/first), (61/sixth/a), (61/sixth/b), (61/eighth/b/3), and (64/first) of the constitution)[19]) , and perhaps this interpretation includes a provision that complements the constitution and bridges a deficiency in some constitutional articles despite all the criticisms leveled against it .[20]) , has lasted this provision since the date of 21/10/2007 until amended the Supreme Federal Court New Bceccheltha for e and b ruled that the concept of absolute majority wherever contained in the Constitution , the intent of it is more than half of the actual number of members of the House of Representatives , the intended By a simple majority, it is more than half of the number of members of the House of Representatives present after achieving a quorum ([21]) , this represents a radical change in the description of the majority absolute , a decision that is complementary to a new text of incomplete itself and will replace the consideration by all the authorities so that the future is changed without have the effect on the stability of the provisions of the Constitution, what ever has been in accordance with the decision of complementary Previous and what will come will have another consideration.

The Second Topic

Making center of the complement of the Constitution in the substantive terms of reference of the Federal Court

By objective decisions of the Federal Supreme Court, we mean decisions that are issued based on competencies that allow the Federal Supreme Court, when relying on it, wide freedom to extrapolate the texts of the constitution and to inspire effective solutions to the problems that arise in the constitutional and political life in the state and move with it the jurisdiction of the court . The competencies of the Federal Supreme Court are some of them objective that allow It has the authority to research, detail and delve far into the texts of the constitution with the help of internal means close to the constitutional text, such as inferring the meanings of vocabulary and terms and the connotations of the texts and their expressions and linguistic and idiomatic structures ([22]) Or extracting the meaning from the spirit of the text by bringing the constitutional texts together that are linked by the unity of the subject)[23]) or uses external means such as reviewing the preparations , relying on social factors and considerations, or historical sources)(24)) for interpretation, and the situation may reach the use of the foreign constitutional judiciary to inspire from it beneficial solutions to help it rise to the burden of the judiciary entrusted to it ([25]) I pray the judge then to other substantive decisions are available on the decoding t, analysis and conclusions and judgment and decision may be complementary to a, and the researcher believes that the substantive terms of reference of the Federal Court is the following terms of reference:

The first requirement

Decisions related to oversight of the constitutionality of laws and regulations in force

Article (93/first) of the Constitution of the Republic of Iraq for the year 2005 entrusted the jurisdiction of oversight over the constitutionality of laws and regulations in force to the Federal Supreme Court , and since the constitution contains a large number of texts that deal with organizing issues of great importance as they relate to the shape of the state, the type of its political system, and the establishment of public authorities And the competencies of each of them and their relations with each other in addition to the constitution's text on public rights and freedoms of all kinds and other texts. It was necessary for the constitutional legislator to surround the provisions of the constitution with real protection so that no authority established from these texts does not undermine the supremacy and supremacy of the constitution ([26]) The judicial oversight over the constitutionality of the laws and regulations in force ([27]) .

But taken control of the court on the constitutionality of laws , it is not controlled automatically exercised as soon as the legislation text is contrary to the Constitution, but represent a jurisdiction subject to other requirements do , do, as it should with the interest starting to lodge an appeal claiming the unconstitutionality of the text of a law or regulation in force to take over the court to proceed procedures for the consideration of the appeal and issue its decision some d to be heard with the relationship , and this seems to be of what makes an order to respect the constitution and ensure Alloath in the weakest conditions of , as it is necessary to wait for an appeal from a specific interest is not someone who is not interested, otherwise remained the offending text It is safe from being compromised, and the value of saying that oversight over the constitutionality of laws is a guarantee of respect for the constitution and the protection of its supremacy has been lost.

In any case, the decisions issued by the court based on this jurisdiction are substantive and flexible provisions that allow the court to extrapolate the texts of the constitution and take wisdom from its legislation and reach through this and other unspecified tools to a decision that is likely to include a judgment that complements a constitutional text that is deficient in form or substance.

The second requirement

Decisions to interpret the texts of the Constitution

Article (93 / II) of the Constitution on the specialized Iss Federal Court Supreme in the interpretation of the provisions of the Constitution , and perhaps in the legislature 's recognition of constitutional by the jurisdiction of the Court Acknowledging that the Constitution embraces ambiguity and a whole and perhaps overlapped and troubled hard with the enforcement of some of its provisions without that holds the Federal Supreme Court Clarifying what is obscure and detailing what is more beautiful and removing the intersection or confusion in the texts. It should be noted that the court's jurisdiction in interpreting the constitution's provisions was stipulated in the constitution without the Federal Supreme Court Law No. 30 of 2005 or its bylaw No. (1) for the year 2005, as the last two legislations did not provide for the ability of the court to interpret the constitution, which sparked controversy among the writers About the court that should be competent to interpret the constitution, whether it is the same court established by the Law of Administration for the State of Iraq for the Transitional Period of 2004 and Law No. (30) mentioned above, or the Federal Supreme Court that the constitution stipulates to be established in accordance with Article (92/second) of the Constitution , and that what constituted after ([28]) , and any case has the Federal Supreme Court , which was formed by Law No. (30) of 2005 has exercised the jurisdiction of the interpretation of the provisions of the Constitution and restored it this way to recognize and played coy by all public authorities in the state.

Although the Iraqi constitution of 2005 entrusted the interpretation of its texts to the Federal Supreme Court, it did not name the authority that has the right to request interpretation of those texts , but the court has issued Resolution No. (26/Federal/2008) on 23/6/2008 and shortened By the authorities that have the right to request the interpretation of a constitutional text in (the Presidency Council) [29]) Or the House of Representatives or the Council of Ministers or Ministers ( )[30]) The court's judgment settled on this in several other decisions ([31]) , and perhaps this decision is one of the decisions that complement the constitution that will be the subject of study and detail in a later part of the research.

Goes some Hadith in his statement of the effect exercised by the judge p n d interpretation of the legal text or constitutional to it determines willingly loaded or the true content of the text of the interpreter, and thus his will have replaced the text and that his will that crystallize a realistic form of judicial rulings include a new constitutional rules resolved In place of the old interpreted texts, and with the continual interpretation of constitutional texts, judicial constitutional texts are generated to replace the interpreted constitution ([32]) , however, we see that this is an exaggeration of the role that the judge actually plays when interpreting constitutional texts, leading to a surprising result, which is that the written constitution will gradually wither away and turn into a set of interpreted judicial rulings, especially since the aforementioned statement did not limit the discussion of texts. Which needs interpretation, but I launched the saying that the interpreted texts will replace the interpreted constitution! The practical reality and constitutional experiences have proven that the judge is allowed to play a role in the narrowest of limits when exercising his interpretive role in the face of a written text. He is shackled by constitutional texts that are peremptory and indicative, in front of which he has nothing but adherence and consideration, even if he finds a void in the text or ambiguity in a phrase or an outline that calls for detail. He intervenes to the extent of that emptiness, ambiguity or generality, and even in this place he is obliged to follow the known rules in interpreting texts, he hardly deviates from them until his decision is faced with denial and skepticism by jurisprudence and authorities alike.

As far as the subject of the research is concerned , the jurisdiction of the court in interpreting the provisions of the constitution is the most jurisdiction in which the Federal Supreme Court is allowed to be free from any restriction when issuing its decisions based on it compared to all other jurisdictions, because the court is not bound in advance by certain texts, rules or mechanisms when Interpretation and its authority in this regard is limited only by the general texts of the constitution itself, which is the key to it, and therefore the competence to interpret the texts of the constitution is the most fertile competencies for the decisions that complement the constitution, and the research will show that the overwhelming majority of what we see complementing the constitution of decisions has been issued based on it and on it .

The Third requirement

Decisions to settle issues arising from the application of legislation and procedures of the Federal Authority

Article (93 / III) of the Constitution on the jurisdiction of the Federal Supreme Court in this regard , it seems clear that this text has been entrusted to the Court of jurisdiction over a broad and very rarely in the bifurcation that bolstered the constitutions usually constitutional courts as shall include the following:

First: Chapter on issues arising from the application of federal laws : go out the term (law enforcement) on what the courts adapt the facts presented to it on a legal text or more to reach through it to sound judgment unsealed by a dispute exists, and its a is We exclude that the constitutional legislator intended, and perhaps he wanted to (adjudicate issues that arise from the implementation of federal laws) not (the application of federal laws) because the first possibility is the field of judicial decisions that the Federal Supreme Court has distanced itself from delving into and evaluating them, especially with the presence of higher bodies in the judiciary It deals with the file of evaluating the courts' applications of the law , and if the legislator intended (the decision on cases that arise from the implementation of federal laws), he may have theoretically flooded the court with countless facts, conditions and cases, and we do not know how the constitution opened to the court this uncontrolled chapter of cases that do not It should in any case be subject to the jurisdiction of the court .

Nevertheless, our criticism of this jurisdiction should not be to neglect its detail and framing, on the grounds that the constitutional legislator was unsuccessful in assigning it to the court .[33]) , where the court itself refined this jurisdiction and outlined its limits, and decided by its decision No. (12/Federal/2009) dated 1/3/2009 what its conclusion is (that exercising its jurisdiction stipulated in Article (93/third) should be be one of two ways: the way the first through the suit meets the conditions

set forth in the system functioning of the Supreme Court of the Federal No. (1) for the year 2005 if the matter involves the prosecution rightly denied its existence quarrelsome it from denying this pressing s , and the way the second through the suit challenged the decision taken by the evil right and if the resolution without the use of the right claimed , and Astdlt court must sue m n by the interested party to the realization of the jurisdiction in question through the word (chapter) contained in the published article (93 / III) of the Constitution as proof of the existence of a dispute Which requires the fulfillment of the conditions stipulated in the internal system of the court and in the Civil Procedure Code to file that case in preparation for its consideration and resolution through the court ([34]) . The researcher believes that this decision is based upon the court did not t deal with the jurisdiction provided for in Article (93 / III) of the Constitution , a special discourse independent from other jurisdictions, but made him ultimately depend on their actions in other jurisdictions, the Court also decided in the court 's decision No. (35 / Federal / 2009 (dated 12/22/2009 what is learned from it is that its competence in hearing cases arising from the application of the provisions of the law requires stipulating it in the law itself and clarifying the topics that are suitable for the court to exercise its aforementioned jurisdiction)[35]) , and this is another limitation of that seemingly absolute jurisdiction, which has become a definite regulator with the aforementioned court decisions.

Perhaps in this jurisdiction there is room for establishing provisions complementary to the constitution, as the field of dispute resolution and lawsuit resolution provides an opportunity to research texts and inspire judgments, and perhaps the court, when deciding on lawsuits that are based on the requirements it specified for this jurisdiction, falls before its eyes a text that is deficient, so it completes it with a decision Complementary , and although the scope of complementary decisions is narrow in this jurisdiction if compared to its competence in interpreting the provisions of the constitution because the court will be restricted by the demands of the plaintiff, but this does not negate that it will be able to come up with a complementary ruling whenever it encounters a deficiency obstructing the enforcement of the provisions and provisions of the constitution.

Second: Deciding on issues that arise from the application of decisions, regulations, instructions, and procedures issued by the federal authority : The constitutional legislator, in this text, has chosen once again to involve the Federal Supreme Court in a field that should not concern it, and to impose on it individual administrative and organizational decisions that have no other to judge the extent of its legality and constitutionality Rather, it was entrusted with the matter of evaluating previous and even subsequent procedures on the administrative decisions taken by the federal authority, and there is no doubt that occupying the court with this without an officer will mean flooding it with countless cases, grievances, lawsuits and appeals, and this is not correct and should not be attributed to the federal judiciary . And do not think that the legislator has intended to do as what the law did not specify for him of a reference for consideration of cases and appeals, because the text was absolutely not excluded.

As evidence of this lack of integrity of the matter has issued the court many of the decisions in which the decisions of its consideration of the jurisdiction of the ousted, it issued dozens of decisions for lack of jurisdiction to consider appeals to decisions within the jurisdiction of the view of the Court of Administrative Justice ([36]) And sometimes under the heading of not having jurisdiction to hear appeals against (decisions) if the law sets a way to appeal them)[37]) , it also decided to refrain from hearing appeals related to decisions of penalties imposed on employees)[38]) , then shortened the official authorities only the request of the Federal Supreme Court to consider the legality of the provision in the law or a legislative decision or order or instructions or order for when a dispute ([39]) , and decided that it is not concerned with considering the legality of (individual decision), which is not characterized by a general nature and does not concern an entity of the components of the Iraqi people)[40]) and then declined to consider the extent of the legality of (the resolution) , even if characterized as a general without rise to the level of the legislative instructions set out in paragraph (iii) of Article 93 of the Constitution ([41]) , and decided that it did not have jurisdiction to consider (procedures) for the sale of real estate conducted by official departments ((42)) , nor by (procedures) by the courts when hearing cases ([43]) , nor with (decisions) of the Cassation Panel of the Cassation Panel in the Real Estate Property Disputes Panel)[44]) , but decided not to consider the appeal of unconstitutionality if it was alleged to be unconstitutional (decision of a) administrative a ([45]) , and

decided not to the extent of its jurisdiction to consider the legality of (decisions) the Council of State ([46]) and (decisions) Iraqi courts and the courts of the Kurdistan Region even if the point of the lawsuit to challenge the constitutionality ([47]) and (decisions) the Council of Ministers ([48]) and (orders) Ministerial ([49]) and (decisions) Parliamentary House of Representatives ([50]) .

Accordingly, it appears that the Federal Supreme Court has trimmed the jurisdiction stipulated in Article (93/Third) in its second part and decided not to consider many of the decisions, procedures and orders we mentioned, even those that were general and even those whose constitutionality was challenged even though the constitutional text was Explicitly in its launch, the jurisdiction of a court in this and other issues. As such, the court's jurisdiction may narrow the possibility of issuing decisions complementing the constitution, but it remains an objective jurisdiction that has flexibility that the court can use to issue such kind of decisions.

Fourth Requirement

Decisions to resolve disputes between regional and internal public law persons

Article (93) in its clauses (Fourth) and (Fifth) stipulates the jurisdiction of the Federal Supreme Court to adjudicate disputes that occur between the federal government and the governments of the regions, governorates, municipalities and local administrations on the one hand, and between the governments of the regions and governorates on the other hand, which is a matter predominantly that provided for by the constitutions of the federal states ([51]) , including Iraq to the fact that the intersection between the federal government and the regions and the provinces among them is improbable, especially in the context of political decentralization and even in the framework of administrative decentralization wide , which offer conflict persons general legal regional terms of reference and influence and wealth management , while highlighting the intersections in the evacuated forms between the government Federalism, which aims to give precedence to the tendency of integration in its relationship with the regions and to try to give preference to the language of the central administration as long as it is able to do so, while the regions aim to the opposite of that through the prevalence of independence and the weak decentralized administration that has been made available to it .

Whatever the case, the constitution has settled the matter of the party that settles disputes between regional public persons represented by the federal government, regions, governorates and even municipalities and local administrations, as it was assigned to the Federal Supreme Court on the many complex details that this includes , and this is in harmony with the philosophy of the Iraqi constitution in expanding the functions and terms of reference of the Court not mentioned to the fullest extent that the Ka n some of what conferred the legislator it should not be from among its terms of reference , such as the separation of the disputes between the federal government and between the provinces and municipalities and local administrations on the other hand , the fact that the last represents the administrative units local exercise its powers in accordance with the principle of administrative decentralization of the y j stipulated by Article 122 of the Constitution and necessitated that regulate these powers by law , what it should elevate the conflicts that lies between them and the federal government to be disputes federal consider the chapter in which the Federal Supreme Court, And say the same about the disputes that occur between the governments of the regions and governorates, for they are the other ones whose disputes had to fall within the jurisdiction of the ordinary judiciary, not the federal ((52)) .

The Constitution has been decisive in making all disputes between people of regional internal public law within the jurisdiction of the Supreme Federal Court, and it is no secret that in the Constitution there are many provisions that serve as a reason for conflict in jurisdiction and intersection of powers between the federal government and the regions, governorates and local administrations The lowest, because the Constitution has exclusively mentioned the powers of the federal authorities in Article (110) of it, and it lists exclusively the common competencies between the federal authorities and the authorities of the regions in Article (114) thereof, then it includes a provision that all other than the aforementioned exclusive competencies are From the authority of the regions and governorates that are

not organized into a region, and priority is given to the law of the regions and governorates not organized in a region in case of disagreement with federal laws regarding joint powers in Article (115) of the Constitution, and it is known that this opens an unclosed door of intersectionality and justifications for disagreement between the government Federal, regions, and governorates that are not organized in a region, which is what has already happened since the entry into force of the constitution until now, especially between the federal government and the Kurdistan Region.

Although this type of dispute was hardly ever presented to the Federal Supreme Court, despite what was raised about a conflict of jurisdiction between the federal government and the Kurdistan Region, for example, especially regarding borders, customs, oil extraction and export and other issues of dispute between the two parties , it is clear that the court's jurisdiction This also represents a fertile ground for decisions that complement the provisions of the constitution, as the division of competencies, powers and issues related to them are the subject of conflict and attraction between those public persons.

The Third Topic

Center for decisions complementing the Constitution in the procedural competencies of the Federal Court

Means the researcher powers of procedural Federal Supreme Court competences with the subject of data the specific of which does not allow the Court an opportunity to establish the principles of a constitutional authentic guaranteed decisions issued by on the basis of these terms of reference do not enjoy the Court in the exercise of freedom of scrutiny of texts and comparing them and reveal what to undergo a shortage or malfunction as This is the case in what we mentioned of objective competencies in order to derive rulings through which the court may supplement the deficiencies in the provisions of the constitution. The description of the procedural jurisdiction of the Federal Court is valid in us over the jurisdiction to adjudicate charges against the President of the Republic, the Prime Minister and the ministers, and the decision to ratify the final results. For parliamentary elections, and decisions to resolve conflicts of jurisdiction between the federal judiciary and the judicial bodies in the regions and governorates that are not organized in a region, each of them singles out a request.

The First Requirement

Decisions to settle accusations against members of the executive branch

By members of the executive authority in this regard, we mean the President of the Republic, the Prime Minister and the ministers, and Article (93/Sixth) made it one of the functions of the Federal Supreme Court to decide on accusations against each of them , but the article was sealed with the phrase (...and this is regulated by law) And this is a mandate from the constitution for the legislative authority to undertake the regulation of what is related to the subject of item (sixth) with legal texts showing, for example, the direction of accusations against members of the executive authority and the nature and degree of the accusations that are the subject of consideration by the Federal Supreme Court so that each accusation is not a reason to be brought before the court but it is limited to the charges exclusively, also shows the concerned authorities procedures that should be taken to refer the charges to the court of the Federal and the mechanism of the Court in its consideration of the effect created by a decision issued by her to confirm the charges or acquitted the defendants.

The Federal Supreme Court has relied on the appendix of Clause (Sixth) of Article (93) of the Constitution - that is, on the necessity of regulating the whole matter by law - to refrain from considering cases filed in this regard. The Court considered an indictment of the President of the Republic in which a plaintiff claimed that he (did not By performing his legal duties and responsibilities with dedication and sincerity, as he was obliged by the oath that he took in accordance with Article (50) of the Constitution, and that he did not take care of the people's interests in terms of economic, security, scientific, cultural and social aspects, nor did he seek to advance Iraq in proportion to the size of its wealth that was plundered with his knowledge and under his watch under (constitutional legitimacy) and that it did not preserve the federal democratic system of government), and the court decided what

it stated (and the Federal Supreme Court finds that Article (93/Sixth) of the Constitution and its text (the adjudication of accusations against the President of the Republic, the Prime Minister and the ministers, and this is regulated by law) requires that it be held Jurisdiction to the Federal Supreme Court to adjudicate accusations against the President of the Republic in the matters mentioned in Article (61/sixth/b) That a law be issued by the House of Representatives regulating how to decide on accusations against the To the President of the Republic in light of the provisions of Article (61/sixth/b), and as long as this law was not issued for the purpose of filing this case, the consideration is outside the jurisdiction of the Federal Supreme Court, which does not take place except with the issuance of the mentioned law and accordingly the ruling decided to dismiss the case ([53]) , and this is exactly what the court decided in a later decision ([54]) .

We have an opinion on the decision of the Federal Supreme Court. It has ruled that its jurisdiction does not meet to decide on accusations against the President of the Republic except by the issuance of a law regulating how to decide on those accusations, and that this law has not been issued so far leads to the failure of its jurisdiction to decide on accusations, and this It is wrong, as the jurisdiction of the Federal Supreme Court to adjudicate accusations against the President of the Republic is held and existing in accordance with the first part of Article (93/Sixth) of the Constitution, and it is not lacking in any other document to hold it. As for the issuance of a law regulating the adjudication of accusations, it is an independent matter. The aforementioned jurisdiction of the court and the basis for its connection, and the difference between convening jurisdiction with a definitive text and realizing jurisdiction by issuing a law regulating jurisdiction . It seems clear that this is a purely procedural jurisdiction through which the court decides on specific charges directed at the aforementioned addresses. Therefore, we do not see a wide space for the court to issue judicial decisions complementary to the constitution in this procedural setting, as it is most likely that it will be limited to examining the accusations, correcting them, and making decisions. The occasion regarding it without it being depicted that it would be an opportunity to complete the constitution.

The second requirement

The decision to ratify the final results of the parliamentary elections

Article (93/Seventh) of the Constitution entrusted the matter of ratifying the final results of the general elections for the membership of the House of Representatives to the Federal Supreme Court, and it is known that exercising this jurisdiction is the conclusion of all the procedures taken by the Independent High Electoral Commission to complete the electoral process in accordance with the provisions of the law and the electoral instructions that It is issued and after settling all the objections submitted to the decisions of the Council of Commissioners, whether before the Council itself or before the Judicial Commission for Elections , and the electoral process culminates in referring the final results of the elections for the election of members of the House of Representatives exclusively to the Federal Court for approval.

The writers differed in evaluating this jurisdiction entrusted to the court between two groups, one group considering it a mere formality and weak structure on the grounds that the court's practice of it is after exhausting all previous procedures and that it is limited to ratifying the elections of the House of Representatives only from other elections and because the jurisdiction is limited to Certification of the said election results without announcing the election results .[55]) , and a team that prepares it as a real guarantee that the political entities participating in the parliamentary elections will not tamper with the election results on the basis that the Federal Supreme Court monitors all electoral procedures that the Independent High Commission took during its management of the electoral process)[56]) .

But the owners of opinion the latter did not come to support for saying that the court shall monitor the actions taken by the Commission Alantkhaba that T. and scrutinized to ensure that they are proper approval of the Law Commission before the authentication of the results of the parliamentary elections, and did not come to mention the court tools in that scrutiny and its mechanisms and Mdyate time and procedures And the implications it has and witnessed in the court's previous ratifications on the final

results of the many general elections that took place in the country , as all of this and other matters must be regulated according to definitive constitutional or legal texts in their evidence of that expanded scrutiny and evaluation jurisdiction claimed by the court , and perhaps a review The constitution and the law of the Federal Supreme Court itself, the law of the Independent High Electoral Commission No. (11) of 2007 repealed, Commission Law No. (31) of 2019 , all House of Representatives election laws, and the ratifications prior to the parliamentary elections prove that what was said about the court's competence to review, scrutinize and evaluate the procedures of the Electoral Commission Ensuring the legitimacy of the elections and ensuring that they are free from the interference of political entities is not based on evidence and is not supported by a text , but rather The review of the decisions of the Federal Court regarding requests related to the results of the elections will show the extent of the court's strict commitment to the procedures taken in the Commission and its recommendation to the stakeholders to appeal the validity of the membership of the representatives who are the subject of the complaint before the House of Representatives in preparation for the appeal before the court later in accordance with its jurisdiction under Article (52 / II) of the Constitution and not under its jurisdiction in accordance with Article (93 / VII) in question ([57]) , the court did not even consider a request not to ratify the results of the 2018 general elections on the grounds that it had been marred by 80% fraud and did not investigate the matter ([58]) Rather, it indicated that looking into this is within the competence of the Independent High Electoral Commission, and we do not know after that on what did those with the opinion based on the court's monitoring of the Commission's procedures when approving the results?

Based on that , the jurisdiction of the Court of the Federal Supreme is limited to (authentication) only on the results described as (final) for the parliamentary elections , and it has only that of jurisdiction over elections , but do not imagine that rejects the court approval of the election results evidence that the Constitution did not put in into account the organization of this possibility and arrange the results of it, and did not put the legislator normal this possibility in mind when initiated the laws of the House of Representatives elections and Â Ka law No. (9) for the year 2020 , and perhaps this competence is beyond the terms of reference likely to be subject to the decisions of a complement of the Constitution for being Just a purely procedural jurisdiction in which the court does not exceed the ratification of results that are originally final for the general elections. Rather, we do not see that the court has a choice but to ratify them with evidence that the constitution did not regulate the case of refusing to ratify the election results and the resulting results or effects.

The third requirement

Decisions to settle disputes of jurisdiction

Article (93 / VIII) of the constitution stipulates the competence of the Supreme Federal Court to decide on jurisdiction disputes between the federal judiciary and the judicial bodies of the regions and governorates that are not organized in a region on the one hand, and its competence to settle jurisdiction disputes between judicial bodies of the regions or governorates that are not organized in a region and a summary resolution of the conflict in this regard that the court decides any of the disputing courts are competent consideration of the case place of contention whether the Federal Court or located in the region or in one of the provinces.

Accordingly, a conflict of jurisdiction can be defined as a conflict of two judicial bodies, whether they are of the same type, such as a conflict of two civil, commercial or administrative courts, or whether they are of two different types, such as a conflict of an administrative court with a commercial court ([59]) , no doubt that the likelihood of conflicts between the courts is growing in states federal compared to simple states, where the courts attract each other in the region and in the center 's jurisdiction to consider the particular as well as conflicts between the provincial courts and courts of regions with each other claims , so it was incumbent on the constitutional legislator To take into account the designation of a supreme judicial body that transcends all judicial bodies in the state to resolve the dispute between them and entrust the matter of settling cases to any of them .

And conflicts of jurisdiction may be negative and may be positive, and be negative if refrained from considering the case Tribunals under the pretext of lack of competence in its consideration, and be a positive conflict if Tjazpt Tribunals lawsuit and invite Z each of them to consider within the jurisdiction of his ([60]) , and the Supreme Court shall settle the first and second disputes by assigning the decision of the case to one of the two courts without the other, because the two courts' continuation to abstain from considering the case is a denial of justice, and the two courts' continuation to consider the case in the positive dispute is a waste of effort and time and that it will lead to two judgments that may They are contradictory, even though truth and justice have one face, not two.

This jurisdiction, too, is purely procedural, in which the Federal Supreme Court is satisfied with determining the competent court to consider the case, whether it is abstaining from its consideration or contesting its consideration with others, which entails that the jurisdiction is not likely to be the subject of the court's issuance of decisions complementing the constitution in this regard. The distress is that the constitutional text that organized it does not appear to be deficient.

The fourth topic

Examples of judicial decisions complementary to the constitution

We have selected a set of decisions issued by the Federal Supreme Court, which we see as having a complementary effect to the constitution, with an analysis of each of those decisions and a statement of the aspect of completion in each of them according to the following demands:

The first decision: restricting the bodies that submit a request for interpretation of the texts of the constitution

Although Article (93/Second) of the Constitution has stipulated that one of the functions of the Federal Court is (interpreting the provisions of the Constitution) and that the text was general and absolute, and although the absolute is to be released unless there is evidence of its restriction, the Federal Supreme Court has decided The only authorities authorized to request interpretation of the constitution are (the Presidency Council (that is, the President of the Republic at present), the House of Representatives, the Council of Ministers and Ministers), and political blocs, parties, or civil society organizations were prohibited from submitting a request to interpret the provisions of the constitution ([61]) , but the court restricted the hand to apply the interpretation of a constitutional text of the (House of Representatives) the President of the Council or one of his deputies, not members of the council or chairman of a parliamentary committees which issued in this regard more than a decision , was based on the court's decision data here to Article (5) of the system of workflow in the Federal Supreme Court No. (1) of 2005 , but by reference to the aforementioned article, it appears that it relates to the submission of the request by the minister or the head of an entity not affiliated with a ministry in the event of an existing dispute between two parties and that the dispute is a decision the legitimacy of the text in the law or a legislative decision or order or instructions or order ([62]) , while the subject of the MP's request was to interpret a constitutional text, Article 55 of the Constitution in one of the decisions ([63]) And the interpretation of Articles (17) and (38) in another decision)(64)) And the interpretation of Article (58 / First) in a third decision) (65)) Not t Be suitable for those applications for dispute on the interpretation of the text in the law or decision of a legislative or system or instructions or ordered the court as assumed , but were their events interpretation of the provisions of the Constitution , based on the provisions of Article (93 / II) Advanced mentioned , however, the court responded to the request The reporter submitted it to the House of Representatives, despite its previous assurances that it does not receive requests from anyone other than the Speaker or one of his deputies .[66]) . In any case, it is clear that the court has come up with a new ruling restricting an absolute constitutional text without basing its decision on a text of the constitution and has limited the submission of a request for interpretation of the provisions of the constitution to what we have mentioned from the sides, as if the constitution does not address all and does not obligate all its provisions as indicated by the text Article (13 / I) of the Constitution , no doubt that the address omnes , the texts of the constitution must entail access is requested interpretation of the Constitution for all unless it deems the Court in its decisions mentioned

this represents a decision to complement a constitutional text constrained by what expressed for the launch , so the text of the article (93/Second) of the Constitution The court has completed its ruling with its complementary decisions mentioned so that it becomes the mouthpiece of the text (interpreting the texts of the constitution at the exclusive request of the Speaker of Parliament, one of his deputies, the Prime Minister or the ministers).

The second decision : Restriction of the parties submitting requests to decide on the legitimacy of a law, decision, regulation, instruction or order

Article (93/Third) of the Constitution stipulates that one of the functions of the Federal Supreme Court is (to decide on cases that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority, and the law guarantees the right of each of the Council of Ministers, concerned individuals and others, the right of direct appeal At the court), and this text is categorical in its connotation that direct recourse to the court is available to concerned individuals and others, and perhaps among the meanings of (others) is that non-stakeholders are included in the right to resort to the court to adjudicate issues that arise from the application of laws, decisions, regulations and instructions, but The court decided that only official bodies have the right to adjudicate in the aforementioned cases. This came in the context of its response to the request of a citizen who challenged measures taken by an official body in matters related to the law of governorates not organized in a region No. (21) of 2008 as amended ([67]) , knowing that the court has ruled that the consideration of the request is within the competence of the State Consultative Council, and it specified what it decided in dozens of similar decisions on similar issues, but it was returned and suspended on the basis of submitting a request for adjudication in cases arising from the application of laws, regulations, and instructions And the procedures of the federal authorities and that it is limited to the official authorities are limited to them, and perhaps this decision is not considered a continuation of a constitutional text insofar as it is a path of drawing up the constitution completely otherwise, the decision deprived an important individual from resorting to the Federal Supreme Court to challenge the procedures taken by an official body in implementation of a federal law, and this It clearly falls within the rights of individuals to resort to the aforementioned court to adjudicate the measures taken by the official authority and to evaluate the extent of their constitutionality, not that the fate of the individual's request be rejected and the fate of the dismissal request be limited to the official authorities only .[68]) .

The Third Decision: Granting The Court A Jurisdiction In Addition To Its Own

A member of the House of Representatives had previously challenged the constitutionality of Article (1/Third) of the House of Representatives' internal system for the year 2007. The Court considered the appeal based on its competence to monitor the constitutionality of laws and regulations in force under Article (93/First) of the Constitution, which the Court should decide on the basis of It is the authority to rule on the constitutionality or unconstitutionality of the text under appeal, as is the case in all similar appeals, but the Federal Supreme Court decided what it stipulated (... and accordingly, paragraph (third) of Article 12 of the internal system of the House of Representatives … does not agree And the task drawn up for the internal system stipulated in Article (51) of the constitution, which is (organizing the progress of work in it), and accordingly it was decided to recommend to the Constitution Amendment Committee in the House of Representatives to take the necessary measures to put in the body of the constitution a text that addresses how to elect a speaker for the House of Representatives or one of his deputies in If the position of any of them becomes vacant during the electoral cycle...) ([69]) , and it seems clear that the court has avoided declaring that the paragraph under challenge is in violation of the constitution, but at the same time it decided to (command) the Constitutional Amendment Committee in the House of Representatives to take into account the regulation of the issue of electing a speaker of the House of Representatives or one of his deputies when a vacancy occurs. The position of any of them, and there is no doubt that the court does not have the competence to recommend to any official body to do something, as Article (93) of the constitution is devoid of the court's jurisdiction of this kind, and since the decisions of the Federal Supreme Court are considered, final and binding, and its decision is male It was not based on any of the court's competencies in the constitution or even in the court's law. The only interpretation of its decision is that it is a decision that complements its competencies and

that it adds to it the possibility of recommending to official bodies that it deems to do something in implementation of the provisions of the constitution or down to the requirements of its enforcement.

Fourth Decision : Preferring a specific understanding of the texts of the Constitution, even if it is possible for another understanding

The Federal Supreme Court had previously decided in a famous ruling that the phrase (the largest number of parliamentary bloc) contained in Article (76 / First) of the Constitution, from which the President of the Republic should nominate whoever forms the Council of Ministers, that it goes to (the bloc that won the most number) of the seats and formed after the elections from a list of electoral one , or a block of more than a list of election by the number of seats in any of them in the first session of the House of Representatives , whichever is more numerous) ([70]) , and it is known that the court did not refer in its decision to its support in giving preference to this understanding of the most numerous parliamentary bloc over other understandings of this bloc, such as the fact that it is the bloc that wins the most votes in the parliamentary elections, considering it the most representative bloc of the people, or other interpretations. The court thus transferred the legitimacy of the people's representation from the constituency of the bloc that won the most votes to the bloc that has the most parliamentary seats in the first session without showing its support from the constitution in requesting this understanding, which makes its decision complementary to the text of Article (76/first) Undoubtedly from the constitution, despite all the criticism leveled against it .(71)) , since (the jurisdiction of interpretation) as we have known it previously that the court's jurisdiction in the statement and clarification is not a tool for weighting the understanding and the possibilities, which means that the jurisdiction of interpretation was not the way the court made its aforementioned decision. Rather, the court relied on the ambiguity of the text to penetrate through it into a field. Completing the text by giving preference to a specific understanding of it and not others.

Fifth Resolution: Excluding certain groups from being subject to procedures stipulated by the Constitution

Although Article (61 / Fifth / B) of the Constitution has been explicit in the text on the competence of the House of Representatives to appoint (special grades), and despite the fact that the text was absolutely unrestricted and general and not specific, making everyone who occupies a special degree in the staffing of employees included. In his ruling, however, the Federal Supreme Court has distinguished between two categories of people with special degrees, a category that is appointed to this degree for the first time, and the category of assistant advisors in the State Council who are promoted to the rank of advisor, and the court decided that only the first category is subject to the approval of the House of Representatives on Appointing them and filling them with special ranks. As for the second category, although they are included in the special ranks, their appointment does not apply to the provision of the constitutional article, and their appointment to the special ranks does not require the approval of the House of Representatives on the basis that their appointment in these degrees is an (scientific promotion) and that their job For special degrees, it shall be in accordance with the mechanism stipulated in Article (23) of the amended State Consultative Council Law No. (65) of 1979 .[72]) , and it is certain that the constitutional text did not distinguish between the two mentioned categories and did not make what the court called (scientific promotion) any effect in subjecting the appointment of people with special degrees to their grades and restricting the competence of the House of Representatives to appoint others without them, which means that the decision of This Federal Supreme Court is a decision that complements the text of Article (61/fifth/b) of the Constitution.

Sixth Resolution : Introducing additional mechanisms to the provisions of the Constitution

Article (60) of the constitution stipulates the two ways, one of which should be taken in order to present draft laws or proposals to the House of Representatives. The first way is to submit draft laws from the President of the Republic and the Council of Ministers, and the second way is to submit law proposals from ten members of the House of Representatives or one of the its committees, but the Federal Supreme Court has decided in several decisions ([73]) is that the proposals of laws but are ideas and not laws

and projects should the House of Representatives to refer those ideas to the Council of Ministers formulated last in the form of bills and re - sent to the House of Representatives to take up legislation, this mixing clear two paths mentioned and ignore what the will of the legislator of the constitutional distinction between evidence that he singled out each special item by , and in any case, the decisions of the Court of such decisions represented a complement of the text of Article 60 of the Constitution as we mentioned.

And on the occasion of its interpretation of Articles (137) and (65) of the Constitution at the request of the House of Representatives, which are related to the Federation Council and the legislation of its law, the Court has devised a new way to legislate the law of that House, and it has decided the text (...Therefore, the House of Representatives must issue a decision (... A statement) indicating that the preparation for the preparation of the (Council of the Union) was authorized... by a two-thirds majority... and the House of Representatives, by its decision, calls on the executive and judicial authorities, organizations and those concerned with preparing ideas and perceptions that pertain to the Union Council with all its dimensions and goals, in light of what is stated in the basic principles of the constitution and the experiences of countries. in this area. then combine ideas, perceptions and formulations to be formulated in accordance with the provisions of the law of legislative contexts of the State Council and the project is due to discuss the House of Representatives ...) ([74]) , and with reproach that all that was mentioned in the court's decision It does not in any way represent an interpretation of the texts of the two aforementioned articles, but rather the decision included updated details that do not represent mere additions to the two constitutional texts, but rather represent a violation of previous court decisions that charted the way to legislate proposals for laws and invent a new way regarding a particular law.

Then the court returned to reduce the high level of its decisions, which were a reason to challenge the majority of the laws enacted by the House of Representatives, and at the basis of which were proposals for laws submitted to the House of Representatives based on the provisions of Article (60/second) of the Constitution, where the Court decided that the House of Representatives has the right to legislate Of the laws that were based on proposals of laws that do not have additional financial effects on the executive authority and do not constitute a conflict with the general policy of the state and do not affect the functions of the judiciary or its independence .[75]) , and this new approach of the court also represents a decision that complements the text of the aforementioned constitutional article, as it has added to the details that it gave to the constitutional text, and it is no secret that the court did not base its first decisions nor its decision in its new position on a direct commanding text from the constitution. Also, what was included in those decisions was not an interpretation of the texts by stating their meaning and clarification, but rather they included objective provisions that represented a right complementing what was not stipulated in the constitution.

Conclusion

Perhaps the research has shed light on the dangerous role played by the Federal Supreme Court when dealing with the texts of the constitution, and perhaps it summarized its wide powers that allow it wide freedom to interpret the constitution in a way it deems correct and a broader freedom to judge the actions of all authorities that it is in accordance with the constitution, so it is considered Or a violation of it, and it will be buried, not to mention what the research indicated of a unique ability that allows it to complete what is lacking in provisions in the constitution, so at that time it wears the mantle of the original founding authority and establishes complementary and binding provisions as well, even if they are hidden behind the title of interpretation of the constitution , and on this guidance the public authorities in the state will follow. Forced, not chosen , given what the constitution bestows on court decisions as being final and binding, meaning that they are the title of the truth that has no word except what that important court utters, and this leads the researcher to envision a set of recommendations in this regard that give these matters what is weighted You deserve to be vaccinated:

The Federal Supreme Court is invited to take into consideration the need to permanently develop the capabilities of its advisory and judicial apparatus to provide a suitable ground for the emergence of

judicial decisions that are disciplined within the limits of the Constitution and that come down to the explicitness of its provisions and are prepared to fill the void that surrounds some of its texts and remove the ambiguity that characterizes others, and past experience has proven that the Court was forced In terms of its competence or not, it should issue decisions complementary to the constitution and bring provisions to what its texts stated, which entails the need not to be satisfied with the long legal knowledge of the judges of the court in the areas of the judiciary that they have fought, and perhaps some of them were knowledge far from the areas of the constitutional judiciary and its affairs. It makes it necessary to take into account the maximization of that knowledge, but in the affairs of the constitution and the constitutional judiciary, it draws upon the long experiences in this field of the corresponding courts.

Provisions of the Constitution are not available nor the law of the Supreme Federal No. (30) for the year 2005 and item (e) of Article (forty - fourth) , which kept its entry into force of Article (3) of the Court Act nor the system of internal of the Federal Supreme Court (1) For the year 2005 on detailed subjective or objective conditions in a way that ensures that whoever is a judge of the court has extensive knowledge of constitutional affairs and is able with significant evidence and presumptions to undertake the task of interpreting the constitution and completing its deficiency and ruling on the constitutionality or unconstitutionality of the actions of all authorities and other important competencies , But Article (3 / First) of the Law of the First Amendment to the Federal Supreme Court Law (Ordinance No. 30 of 2005) was satisfied with the requirement that the candidate be from among the judges of the first class continuing with service, whose actual service in the judiciary is no less than fifteen years, although these three conditions are It is not without importance, except that the legislator is called to tighten these conditions, especially the subjective ones, and make them detailed and specific, to be a safe path from which only those with a great deal of knowledge in constitutional affairs and the various sciences of law can enter, including the interpretation of texts and addressing their imbalances and deficiencies.

Although the decisions of the Federal Supreme Court are binding on all authorities as stipulated in Article (94) of the Constitution, these decisions do not always find their way to the knowledge of all. It has been proven to us that many of the decisions of the Federal Supreme Court are not included in the decision folders issued by the Court nor the website. her, especially interpretive decisions , even though it does not mean the applicant interpretation alone, but Ta nee all the authorities being bound by them , something should be remedied.

Although Article (17) of the internal system of the Federal Supreme Court No. (1) for the year 2005 has stipulated (the judgments and decisions issued by the court are absolutely not accepted by any method of appeal , and are published in the Official Gazette if the judgment or decision includes the cancellation or amendment of a text legislative) ([76]) , although the court has issued many decisions that included repealing or amending legislative texts ([77]) , however, the Official Gazette has been devoid of any court decision that included ruling the unconstitutionality of texts or laws issued by the House of Representatives, and the court is called to implement this matter given that its decisions should be subject to the knowledge of all authorities, and that the safest and most reliable way to do so is By publishing it in the Official Gazette, it is also called upon to amend this text and make it an absolute and comprehensive for all the decisions it publishes, since all of its decisions are obligatory for all authorities under Article (94) of the Constitution, in addition to the need for researchers, specialists, jurists and judges to be aware of everything The court issues decisions through an official channel, such as the official newspaper, in order to be a subject for discussion, study and research .

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[63] ( ) See Court Decision No. (3/Federal/2009) dated 4/2/2009 in: - Judgments and decisions of the Federal Supreme Court for the years (2008-2009), previous source, p. 17.

[64] ( ) See Court Decision No. (29/Federal/2012) dated 2/5/2012 in: Judgments and Decisions of the Federal Supreme Court for the year (2012), previous source, p. 16.

[65] ( ) See Court Decision No. (141/Federal/Media/2017) dated 7/12/2017 in: - Federal Supreme Court decisions for the two years (2016 and 2017), previous source, p. 322.

[66] ( ) See Court Decision No. (113/Federal/Media/2017) dated 7/29/207: - Federal Supreme Court decisions for the two years (2016 and 2017), previous source, p. 172.

[67] ( ) See Court Decision No. (30/Federal/2009) dated 4/5/2009 in: - Judgments and decisions of the Federal Supreme Court for the years (2008-2009) , previous source, pg. 98.

[68] ( ) Consider discussing a similar decision: - Dr. Adnan Uril Obaid, a previous source, pp. 154-157.

[69] ( ) See Court Decision No. (10/Federal/2009) dated May 26, 2009 in: - Judgments and decisions of the Federal Supreme Court for the years (2008-2009) , previous source, pg. 67.

[70] ( ) seen the court 's decision No.

- (25/Federal/2010) dated 25/3/2010 in: - Judgments and decisions of the Federal Supreme Court for the year (2010), p. 16.

- (70/Federal/2019) on 28/7/2019 at the link: https://cutt.ly/VnyZ9lO

[71] ( ) Consider: Dr. Adnan Uril Obaid, a previous source, pp. 33-37.

[72] ( ) See court decision No. (6/Federal/2012) dated 5/3/2012 in: - Judgments and decisions of the Federal Supreme Court for the year (2012), previous source, p. 9.

[73] ( ) seen, for example , the Court 's decision No. (43 / Federal / 2010) on 12/7/2010 in: - the provisions and decisions of the Federal Supreme Court for the year (2010), op . Cit . , P 70.

[74] ( ) See Court Decision No. (72/Federal/2012) dated 10/1/2012 in: - Judgments and decisions of the Federal Supreme Court for the year (2012), p. 26.

[75] ( ) See Court Decision No. (21 and its Unit 15/Federal/Media/2015) at the link: https://cutt.ly/8nyZ5Fe

[76] ( ) The underlined phrase has been added to the aforementioned Article (17) by virtue of a (correction statement) published in the Official Gazette, No. (3999) on 16/6/2005.

[77] ( ) It should be noted that the Supreme Federal Court is not concerned with governance to cancel or modify legislative texts, but not to rule them constitutional, the Court has received numerous requests for prosecutors to amend the provisions of the laws in the contested Bdsturitha for being competent.

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