

Conditions For the Acceptance of The Constitutional Claim in Iraq and Comparative Legislation: An Extracted Search

By

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Abstract

A constitutional lawsuit is one of the rights of a person who is free to use this right, and the use of this right is legitimate when this lawsuit is legitimate in the eyes of the law, and in order for it to be legitimate, it must meet three conditions: the condition of interest in the suitor, the condition of capacity for the one who files the lawsuit, and the time limit. If one of these conditions fails, the court before which the case is filed does not accept the case and rejects it due to a defect in the form, which is the failure of one of the conditions of this case.

Keywords Lawsuit, constitutionality, an interest, characteristic, Appointment

Introduction

Every lawsuit has conditions that must be met in order for the case to be accepted before the court, if the conditions are not met, the court rules that the case is inadmissible without entering into its merits, as well as in the constitutional lawsuit, there must be conditions for the admission of the case before the Constitutional Court, if one or all of these conditions are left behind, the court cannot consider the case and issues a ruling not to hear the case or not to admit it without the need to examine its content, these conditions must first be met so that the court can accept them and proceed In the proceedings of this lawsuit.

The Importance of Research

The importance of the research on the statement of the formal conditions for the admission of the constitutional lawsuit before the Federal Supreme Court and the Egyptian Supreme Constitutional Court lies in the fact that this lawsuit is a lawsuit of a specific nature filed against a legislative text contrary to the provisions of the Constitution.

Research Methodology

In this research, we relied on the comparative analytical approach, by stating the conditions for the admission of the constitutional case before the Egyptian constitutional judiciary and the conditions for the admission of the constitutional case before the Iraqi constitutional judiciary with the analysis of the texts that talked about the conditions of the lawsuit.

Research Structure

We will divide this research into three demands in which we talk about the ROUT that must be met to accept the claim, as we have devoted the first requirement to the condition of

interest, the second requirement to the condition of status, and the third requirement to the condition of the specific date for filing the lawsuit.

The First Requirement

The Existence of The Interest of The Plaintiff

The interest in ordinary proceedings is aimed at protecting the subjective right of the plaintiff before the constitutional lawsuit, which is inherently a suit in kind, which does not require the appellant to rely on a personal right that has been infringed upon, but rather the protection of legal status, where the appellant claims that there are legislative provisions contrary to the provisions of the Constitution (1).

The assessment of the condition of interest and its availability is for the court competent to hear the constitutional case and not for any other judicial body to determine the concept of interest or impose it, because the procedural organization of the constitutional claim has to do with the conditions for its admissibility and among the conditions is the condition of interest, and therefore it is the competent court that determines the availability of the interest for the admission of the claim through the documents and papers of the case contained in its file, This requirement is fundamental and it is therefore the court that ascertains the existence of the interest clause, even if it is not paid before it, and does so on its own(2) .

Therefore, conditions must be met in the interest (3), including: The interest must be lawful, i.e., the claim must be based on a right or legal status so that its purpose is to protect that right.

The interest must be known, i.e., it is not anonymous, and this shall be determined when the subject of the lawsuit is known and specified in a definition that negates ignorance so that the petitioner of the constitutional lawsuit can determine its description, content and date of issuance.

1. The interest must be personal and direct, that is, the plaintiff is the owner of the right or legal status to be protected or his representative such as the guardian or trustee of the minor and the detainee, and thus the lawsuit is accepted only by the right holder or his deputy.
2. The interest must be a status and a list, i.e., the plaintiff must have a known interest in a status list, i.e., the right of the plaintiff has already been infringed.

Therefore, in the first section we will indicate the interest before the Egyptian Supreme Constitutional Court and in the second section the interest stipulated by the Iraqi legislator before the Federal Supreme Court.

Section I

Interest Before the Egyptian Supreme Constitutional Court

The condition of interest is one of the important conditions for the admission of a constitutional claim before the Constitutional Court, since the in-kind nature of the constitutional claim does not indicate the necessity of liberation from the condition of interest, as this condition highlights its own characteristics and is what determines the idea of litigation in the constitutional lawsuit (4).

The Egyptian Federal Court Law No. 48 of 1979 did not contain a provision requiring interest, but in its second chapter on procedures it raised "except as provided for in this chapter, the provisions established in the Code of Civil and Commercial Procedure shall apply to referral decisions, lawsuits and applications submitted to the Court in a manner that does not conflict with the nature of the jurisdiction of the Court and the conditions established before it (5) ".

From this article, it is clear that the law empowers the court, by reference to the Code of Civil Procedure, to establish the rules to be followed by the litigation by not contradicting the court system(6).

Article (3) of the Egyptian Civil and Commercial Procedure Law No. (13) of 1968 stipulates that "no claim shall be admissible, nor shall any request or payment be accepted based on the provisions of this Law or any other law whose owner does not have any personal, direct and existing interest approved by law. Any case in which the claim of inadmissibility is made in the event that the conditions stipulated in the preceding two paragraphs are not met, and the court may, when ruling that the case is inadmissible for the absence of the condition of interest, sentence the plaintiff to a procedural fine not exceeding five hundred pounds if it is found that the plaintiff has abused his right to litigation."

The rulings of the Egyptian Constitutional Court settled on the need to meet the condition of interest as a condition for the acceptance of the constitutional lawsuit as the condition of interest is an order condition and necessary for the delivery of the case to the court, in one of the rulings of the court, which stated that "it is planned to require direct personal interest in the constitutional appeal and the mandate of this interest is to link the interest in the substantive case on the occasion of which the constitutional appeal was raised and in which the judgment of any constitutional appeal affects the judgment in the substantive lawsuit, if the objective of the appellant is achieved from his requests in the substantive case, then His interest in adjudicating a constitutional case shall be negated"(7) .

The interest in the case must continue until its adjudication, and the court's decision in this regard stated that "the direct personal interest, which is a condition for the acceptance of the constitutional lawsuit and its authority over what is stated by the judiciary of this court, is linked to the existing interest in the substantive lawsuit so that the decision on the constitutional question affects the related applications submitted to the trial court, and that it is not enough to have this interest when filing the constitutional lawsuit, but it needs to be continued until its adjudication, otherwise the constitutional case is dissolved into a lawsuit. An original self-contained separate from the dispute in the substantive case and whose purpose was limited to determining the provision of the Constitution, stripped of papers, that the trial court, in its session held on December 23, 1991, had ruled the substantive case newspaper invalid, and the plaintiffs had not challenged this ruling, which would be considered final, since their interest in the present constitutional case would have ceased to be deemed inadmissible (8) .

The requirement of interest in the constitutional lawsuit varies according to the methods used to institute the lawsuit, i.e. to contact the constitutional lawsuit with the court, as it is in the case of initiating the constitutional suit through referral and sub-payment The interest here is linked to the interest of the appellant in the substantive lawsuit where the decision on the constitutional issue is necessary to adjudicate on the requests made in the substantive lawsuit and this is what was approved by the Egyptian Constitutional Court where it held that "it is a condition for the acceptance of the constitutional claim on the outcome of the judiciary of this court. The existence of interest in it and its mandate that the decision on the constitutional

question is necessary for the adjudication of the related applications submitted to the Court, and in this way the case must have contacted the Court through assignment or sub-payment (9)

As for the response, the point of interest here is that the determination of the constitutionality of the text in question is necessary to adjudicate the original substantive dispute that raised the constitutional issue at the outset, and this is what was explicitly decided by the Egyptian Supreme Constitutional Court, which required the interest when exercising the authorization to address and that the decision affect the constitutionality of the text it is dealing with in the final outcome of the original case before the Constitutional Court (10) .

Section II

Availability Of Interest Before the Federal Supreme Court

The Federal Supreme Court Law of 2005 did not specify the type or nature of the interest due until the constitutional case was accepted and that the rules of procedure of the Court were left to the Court, as Article (6/I) of the Rules of Procedure of the Federal Court stipulates that "the plaintiff in the subject matter of the case shall have a current, direct and influential interest in his legal, financial or social status."

It is also from that text, it is clear that the rules of procedure specified the interest to be a case or damage to the legal status or right subject to legal protection at the time of the filing of the constitutional lawsuit and that such damage is not likely or expected to occur. If the plaintiff was not of interest at present because the land belonging to him was seized before the promulgation of the current permanent constitution and in accordance with the Agrarian Reform Act, which was in force, and its provisions do not conflict with the Constitution under which it was implemented, then the claim is of no interest."(11).

not sufficient for the interest to be a case, but for the interest to be personal and direct, i.e., to be raised by the right holder, i.e., for the appellant to have a special interest and to have a special legal status distinct from the rest of the individuals so that this interest does not mix with the public interest (12).

However, when referring to the decisions of the Federal Supreme Court, it is clear that the Court has departed from this path and accepted the constitutional claim from the plaintiff since he did not meet the requirement of personal interest, and thus the Federal(13) Supreme Court accepted the case from a member of Parliament representing dozens of citizens, as expressly provided for in the Constitution, he does not have a personal interest but is closer to having the capacity to communicate the votes of his constituents or their representative by political rather than legal agency (14) .

Also, the interest must be effective, that is, there must be harm to the interest, i.e. affecting the legal status, and this effect exists when the lawsuit is instituted, otherwise the case is dismissed for not fulfilling the condition of interest, and this is what the Federal Court went to in one of its decisions, where it ruled that "the condition of interest that must be met in the plaintiff when he institutes the lawsuit before this court under Article (6/I) of the Rules of Procedure of the Federal Court No. 1 of 2005 is not realized because the advisory opinion It was made at the request of the plaintiff and not in the case of the plaintiff and for the reasons given the plaintiff's claim is governed by restitution (15) ."

Second Requirement

The Existence of The Capacity Of The Plaintiff

The condition of interest is not the only condition for the admissibility of a constitutional claim, but another condition for the admissibility of the claim must be met is the condition of capacity because the person may have an interest in bringing the lawsuit, but may not initiate it because the condition of status is not met.

The capacity of a person to appear in the suit as a plaintiff or a defendant means his ability to bring the litigation to justice, and the plaintiff must be the holder of the right or legal status of the aggressor (16).

If the condition of status must be met in the ordinary lawsuit, it must also be met in the constitutional lawsuit and is a condition for its acceptance, and the comparative systems have varied in determining the holders of the capacity in submitting the dispute to the constitutional judiciary, and for example we deal with the holders of the capacity in filing the constitutional case before the Egyptian Constitutional Court and the holders of the capacity before the Federal Supreme Court as follows:

Section I

Holders Of the Capacity to File the Constitutional Lawsuit Before The Egyptian Constitutional Court

The status requirement is an important condition for the admission of the case before the Egyptian Constitutional Court, where the Egyptian legislator restricted the concept of adjective and specified the owners of the capacity to resort to the Constitutional Court, as it is not permissible

Others may exercise this right, even if they have an interest (17).

The capacity is established in the filing of the dispute before the Constitutional Court in the sub-plea by one of the litigants and in the referral from one of the courts or bodies with jurisdiction and also from the response by the Constitutional Court itself, so the capacity will be for the litigants, the capacity for the courts or bodies and the capacity for the Supreme Constitutional Court, and this is what we will show as follows:

First: The Character for Liabilities

The initiation of a constitutional action by the method of payment proves the status of the litigants and the substantive lawsuit, whether in that or the defendant, and this is stipulated in Article (29/b) of the Constitutional Court Law, "The right of individuals who plead before the trial court or one of the bodies with jurisdiction the unconstitutionality of a provision in a law or regulation to file a constitutional lawsuit if the court or body with jurisdiction so authorizes them after it has ascertained the seriousness of the payment."

This means that the capacity is established for the litigant in the substantive proceeding, whether a plaintiff or a defendant, and constitutional action may not be brought against a person who has not been involved in the substantive proceedings (18).

Second: Status for Courts or Bodies with Jurisdiction

It is established through the text of Article (29/A) that it proves the capacity in filing a constitutional case before the Constitutional Court of the courts, as well as of the bodies with

jurisdiction, where the article stipulates that "if one of the courts or bodies with jurisdiction during the consideration of one of the cases deems unconstitutional the text of a law or regulation necessary for dismissal, the case shall be suspended and the papers shall be referred without fees to the Supreme Constitutional Court for adjudication of the constitutional matter."

According to that provision, the capacity in a constitutional case shall be established for the courts of all kinds and degrees, whatever their side, whether they are the Court of Cassation or the Supreme Administrative Court, as well as to the bodies with jurisdiction, which is each body empowered by the legislator to adjudicate a dispute by a judgment issued after following the judicial procedures (19) .

Third: Status for The Constitutional Court

Article (27) of the Law of the Constitutional Court stipulates that "the Court may in all cases rule that any provision in a law or regulation submitted thereto on the occasion of the exercise of its powers and related to the dispute before it is unconstitutional, after following the prescribed procedures for the preparation of the case."

From this it is clear that the capacity is established by the Supreme Constitutional Court itself when exercising its work and powers if the law gives it the right to challenge any provision that it suspects to be unconstitutional, and after following the procedures for the preparation of the case, if the case is brought by those who are not authorized by law to do so, the case is inadmissible (20).

Section II

Holders Of the Capacity to File a Constitutional Lawsuit Before The Federal Supreme Court

The law of the Federal Court has determined the cases in which the case is initiated, and these cases are through the litigants, courts, official bodies and the aggrieved person, i.e., the direct lawsuit (21).

First: The Character for Liabilities

As stipulated in the Rules of Procedure of the Federal Court No. 1 of 2005, the status of the litigants in the constitutional case is established through the substantive lawsuit, which reads: "If a court requests to rule on the legality of a provision in a law, legislative decision, system, instructions or order based on a plea from one of the litigants of illegality, the opponent shall be charged with submitting such a plea in a suit. After the fee for it has been satisfied, it proves the admissibility of the case, and if it accepts it, it sends it together with the documents to the Federal Supreme Court to decide on the argument of illegality and takes a decision to take the original claim for the result either the rejection of the plea and its decision is subject to appeal to the Federal Supreme Court."(22) This means that the status is established for the litigants in the constitutional proceeding, whether plaintiff or defendant(23) .

Second: Status for The Courts

The Iraqi legislator has given status to all courts of all kinds and degrees of all kinds, and this is stated by stipulating that "if a court requests on its own motion during its consideration of a lawsuit to decide on the legality of a provision in a law, legislative decision, regulation or instructions relating to that suit, it shall send the application reasoned to the Federal Supreme Court for decision, and this request shall not be subject to a fee (24) ".

Third: Status for Official Bodies

The status of the official bodies in initiating the constitutional case is established, as it is stipulated in the rules of procedure of the Federal Supreme Court that "if one of the official bodies requests on the occasion of a dispute between them and another party to decide on the legality of a provision in a law, legislative decision, system, instructions or order, the request shall be sent by suit to the Federal Supreme Court on the basis of a reasoning with its supports, This shall be done by a letter signed by the competent minister or the head of the entity not affiliated with a ministry(25) ."

Fourth: Character for The Affected Person

The Iraqi legislator has given the right to initiate a constitutional case through direct action and has promised it as one of the means of initiating the constitutional case and its communication with the court, where the rules of procedure of the court stipulate that "if the plaintiff requests to decide on the legality of a provision in a law or legislative decision in a system, instructions or order, the application shall be submitted in a suit that meets the conditions stipulated in articles (44 and 45), 46 and 47) of the Code of Civil Procedure and the case must be brought by the same aggrieved person or by his agent as a lawyerwith absolute authority."(26) .

The capacity is established in the direct constitutional action of a person affected by legislation contrary to the Constitution, since any person who has an interest and is affected by a legislative provision contrary to the Constitution shall have the capacity to initiate the constitutional proceedings (27)."

Third Requirement

The Date Specified by The Plaintiff

Each case has procedures for its establishment that are fixed by a specific date, and the date is a period between two moments, a moment of commencement and a moment of end, and the dates in litigation or judicial disputes have two functions, the first is to push the litigants to carry out procedural action so that the litigation does not remain for life and the second function is to grant a sufficient period of time to carry out a procedural act by which the case is moved." (28) .

On this basis, the constitutional lawsuit must be filed within the period specified for it, and if it is not filed within that period, the right to file it and its inadmissibility before the constitutional supervisory authority shall be extinguished, so we will indicate in the first section the date of filing the constitutional lawsuit before the Egyptian Supreme Constitutional Court and in the second section the date of filing the constitutional lawsuit before the Federal Supreme Court.

Section I

Date Of Filing the Constitutional Case Before the Egyptian Supreme Constitutional Court

The time limit in a constitutional proceeding shall not be raised in the case of a sub-defence by a litigant before the trial court, and if the court considers any serious ^{defence}, it shall suspend the conduct of the substantive proceedings and set a date for the person who raised the defence to file the constitutional action for adjudication (29)."'

The Egyptian legislator specified in Article (29/b) of the Constitutional Court Law a date for filing a constitutional lawsuit, as this article stipulates that "... If, during the hearing of a case before a court or body with jurisdiction, a litigant argues that a provision of the law or regulation is unconstitutional and the court considers that the plea is serious, it postpones the hearing of the case and sets a date not exceeding three months for the person who raised the plea to file the case before the Supreme Constitutional Court.

From this text it is clear that the date of initiation of the constitutional case is a date determined by the trial court for those who raised the argument of unconstitutionality provided that it does not exceed three months, and if the constitutional case is filed before the Constitutional Court after this period, the defense of unconstitutionality is considered as if it was not and the Constitutional Court in this regard says one of its rulings:

"On the basis of the Court's jurisprudence, the legislator has drawn up a way to file a constitutional lawsuit that allowed the litigants to institute it and linked it to the date fixed for its filing, thus demonstrating that he considered these two orders to be the preludes to the constitutional lawsuit, which shall be filed only after the formulation of a plea of unconstitutionality which the trial court appreciates its seriousness and shall not be accepted if it is filed within the time limit set by the legislator in the trial court and set by him so that it does not exceed three months, These procedural situations, whether related to the method of filing a constitutional case or the date of its filing, relate to public order as one of the fundamental forms of litigation by which the legislator sought a public interest so that the collapse in constitutional matters would be regulated by the procedures established by the law on the date set by him. It is inevitable that the litigants must abide by it to bring constitutional action before its expiry or else it will be inadmissible (30)."

It follows that, in the event that the trial court violates that period and sets a date exceeding three months in accordance with the law of the Constitutional Court, the excess period provided for by ^{the legislator shall} be disembarked, as affirmed (31) by the Constitutional Court in one of its decisions, which stated, "If the case is not filed on time, the payment shall be considered as if it had not been, and the three-month period provided for in this clause is intended to go down with every date exceeding it to what does not exceed it as a time limit. Finally it is decided by a peremptory norm and the trial court may not exceed it, if it did so, the opponent would not have instituted his constitutional claim after it had been missed (32) .

As an exception to the general rule on the date of filing a lawsuit, it shall not be bound by the deadline specified in the following three cases:

The first case is the case of raising unconstitutionality by the trial court through referral, the second case is the instigation of unconstitutionality to know the Constitutional Court by addressing and the third case is the joinder intervention in the claim of unconstitutionality brought before the Constitutional Court if the intervener has already intervened in the substantive action brought by the plaintiffs and thus proves to him the status of an adversary by the non-acceptance by the trial court of his intervention which it considered to be relevant in the constitutional suit who have an interest in supporting it or Rebuttal thereof, the date shall be calculated from the day following the day (33) on which the trial court has authorized(34) the filing of the constitutional action and shall expire at the end of the last day thereof (35) .

Section II

Date Of Filing a Constitutional Case Before the Federal Supreme Court

The Federal Supreme Court Law was devoid of setting a date for filing a constitutional case before the Federal Court, unlike the Egyptian legislator, who set a period for filing a lawsuit as we mentioned, and if the rules of procedure of the Federal Supreme Court stipulate that "If a court requests to decide on the legality of a provision in a law, legislative decision, system, instructions or order based on the payment of illegality by one of the litigants, the opponent shall be charged with submitting this plea with a lawsuit and after the fee has been met, it shall decide on the acceptance of the law. If the case is accepted, it shall be sent together with the documents to the court using the original claim of the result, but if it rejects the plea, its decision to reject shall be subject to appeal to the Federal Supreme Court (36)." .

In this case, the adversary submits a plea of unconstitutionality of the provision to which it is to be applied, and his plea for a new claim submits this suit independent of the original suit and this suit is submitted exclusively before the court hearing the original suit (37) .

The legislator has not specified a period for the filing of the second lawsuit and the payment of the opponent is not accepted and is not considered by the trial court if he does not submit the payment by means of a lawsuit, the applicant is obliged to submit his payment in a lawsuit, otherwise he does not accept his payment, and this will expedite the filing of the lawsuit.

The legislator also did not specify the period for which he would submit a plea to appeal the decision of the trial court to the Federal Court in the event ^{that his case} was rejected, but the rules of procedure of the Court allowed for the application of the provisions of the Law of the Court and its Rules of Procedure, where the provisions of the Rules of Procedure of the Federal Court No. (38) 1 of 2005 stated that "the provisions of the Code of Civil Procedure No. 83 of 1969 and the Law of Evidence No. 107 of 1979 shall be applied, while no special provision is made in the Law of the Federal Supreme Court and in this system"(39) .

Referring to the provisions of the Code of Civil Procedure No. 83 of 1969, we find that the person affected by the judicial decision submits an appeal against the judicial decision within thirty days from the date of notification of the judgement or several amounts (40)." .

Conclusion

After completing this research, we have reached several results and proposals, which we will show as follows:

First: Results

1. The mechanisms and procedures established by law are not sufficient alone to file a lawsuit, but conditions must be met for the admissibility of the lawsuit and without these conditions, the claim is not accepted and is presented in formal terms
2. The plaintiff must have an interest in filing this interest affecting his legal, financial or social status.
3. The person who files the lawsuit must respect the deadline set for filing the lawsuit, in order to determine a period of time by the legislator, if the lawsuit is filed during which the right to file it is lost, and it cannot be accepted before the constitutional supervisory authority.

Second: Proposals

The Iraqi legislator must set a specific date for filing a constitutional lawsuit through it because the Federal Court Law was devoid of specifying a date for filing a lawsuit, unlike the Egyptian legislator, who set a period for filing a lawsuit.

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