

The jurisdiction of the Federal Supreme Court to interpret the provisions of the law (comparative study)

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Abstract

The interpretation of legal texts is one of the renewable topics on the theoretical and practical levels, as it is one of the necessities necessary for the implementation of legislation, as it links the theoretical framework of legal texts with practical reality, and transforms them from theoretical principles into applicable provisions. The text (legislative drafting) and the stage of applying the legislation in the disputes brought before the judiciary, as the interpretation links the legal ruling with the endless cases that must be applied to the specific legal imposition, as it looks at the organizational rule that reconciles the presented case with the law.

Keywords: Interpretation, Iraq, law, constitutional judiciary, federal court

Introduction

Despite the importance of interpretation, whether it is on the occasion of interpreting the text of the constitution or the text of the law, and the diversity of jurisprudence studies related to it, it is noted that it does not focus on the judicial trends followed by the comparative constitutional judiciary in this regard, especially in the case of the silence of the constitution on the inclusion of an explicit text that grants The Constitutional Court has the jurisdiction to interpret the provisions of the law without the provisions of the constitution, and vice versa, as is the case in the Constitution of the Republic of Iraq for the year 2005, which specialized the Federal Supreme Court to interpret the provisions of the constitution without addressing its jurisdiction to interpret the provisions of the law, and the same is the case in the Egyptian constitution for the year 2014 that concerned the Constitutional Court The Supreme Court interprets the provisions of the law without the provisions of the constitution, which led to a conflict in the exercise of the interpretive jurisdiction of the texts of the law, especially in Iraq, which was evident after the Federal Supreme Court issued Interpretative Decision No. (48) of 2021, which granted the court this jurisdiction along with the Council The state.

Based on the foregoing, our study sheds light on the constitutional and legal texts that regulate the interpretive jurisdiction of the texts of the law in Iraq, without forgetting to make a comparison with the Egyptian and Jordanian legislation, and to indicate the trends followed by the constitutional and administrative judiciary regarding defining the procedural and substantive rules for the interpretation of legal texts.

The problem of the study is to stand on the extent of the effectiveness of the constitutional and legal regulation of the interpretive jurisdiction of the texts of the law in Iraq

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and the comparative countries, and to review the constitutionality of the jurisdiction of the constitutional courts to interpret the texts of the law in the event that the legislator is silent about granting them this jurisdiction, as well as indicating the extent to which the theoretical texts are compatible with the practical reality of interpreting the law In light of the decisions of the Federal Supreme Court and the decisions of the State Council.

This problem stems from many sub-problems, which are as follows:

- What is the constitutional and legal basis for exercising the interpretive jurisdiction of the texts of the law by the constitutional or administrative judiciary, and what are its controls and conditions?

- What are the mechanisms for resolving the dispute over the Iraqi constitutional judiciary's recognition of its competence to interpret the provisions of the law at a time when the State Council law recognizes the council's competence to do so?

- What is the constitutional and legal value of the decisions of interpreting the law issued by the Federal Supreme Court in the face of the State Council, in light of the enjoyment of court decisions with absolute authority and binding on all authorities in accordance with Article (94) of the Constitution?

In order for the study to reach the desired results, we have chosen to use the analytical and comparative approach, and to achieve this purpose, we will divide the study into the following topics:

The first topic: the concept of interpreting the texts of the law and their rooting.

The second topic: the procedural and substantive rules in interpreting the texts of the law in Iraq and the comparative countries.

The third topic: assessing the role of the constitutional judiciary in interpreting the provisions of the law.

2. Methodology

The first topic

The concept of interpretation of the texts of the law and its rooting

Determining the concept of interpretation requires addressing the definition of interpretation of law, as well as defining the characteristics that distinguish it from constitutional interpretation, as well as addressing its constitutional and legal basis, which we will address in the following demands:

The first requirement: defining the interpretation and subjectivity of the law

In order to define the meaning of the interpretation of the law, and to explain its characteristics, we will discuss this in the following two sections:

The first section: the linguistic and terminological definition of the interpretation of the law

The linguistic meaning of interpretation devolves into statement, revealing, and clarification, so it is said to explain the thing, i.e.: make it clear (Abdul-Baqi Al-Bakri, 2015).

As for the jurisprudential definition of the interpretation of the law, the first thing to notice is the diversity of definitions according to the multiplicity of jurists who dealt with this subject with treatment and rooting. However, the definitions can be limited to the following directions:

The first trend: the narrow definition: the proponents of this opinion go to limit the interpretation to the ambiguous legal text, in addition to limiting it to the texts of the law issued by the legislative authority, without including the rest of the other legislation such as regulations (regulations) and others, and defines the interpretation according to the above as “removing ambiguity.” text and clarify its vagueness to eliminate the difference in defining its meaning.

The second trend: the broad definition: On the other hand, those with the second opinion embrace the broad concept of interpreting the constitution, by including all legislative defects, such as ambiguity, contradiction, and incompleteness. For this reason, interpretation is defined as “clarifying what is obscure in terms, correcting its defects, completing what is lacking in its provisions, and reconciling its conflicting parts.” Also adapting it in a way that matches the requirements of society and the spirit of the times.

As for the position of the judiciary regarding the definition of interpretation of the law, it notes the scarcity of judicial applications, and for this reason we were unable to provide a judicial definition of interpretation.

Section Two: Characteristics of Law Interpretation and Its Subjectivity:

The interpretation of the texts of the law is characterized by many characteristics that make it a distinct system from other similar terms such as the interpretation of the texts of the constitution, and although there are many similarities between them, they differ in many aspects that we summarize as follows:

First: Similarities between the interpretation of the law and the interpretation of the constitution:

The interpretation of the constitution and the law are similar in that it is entrusted to public bodies, whether they are judicial, legislative, or independent bodies, and they are considered among the necessities necessary to apply the text in disputes brought before the body of interpretation, and it is not possible to apply the legal text without its interpretation. terms and conditions governing each.

Second: the differences between the interpretation of the law and the interpretation of the constitution

Interpretation of the law differs from interpretation of the constitution in the following aspects:

- 1- In terms of the authority concerned with interpretation: the position of comparative constitutions and laws was divided regarding defining the authority competent to interpret the constitution and the law, as the Egyptian legislator embraced the unity of the authority that undertakes this represented by the Supreme Constitutional Court, while this competence was entrusted to the State Council in Iraq, and the Special Court in Jordan.
- 2- In terms of the legal basis for interpretation: The legal basis for the competence of the Federal Supreme Court to interpret the provisions of the constitution is as stipulated in Article (93/Second) thereof, in contrast to the interpretation of the provisions of the law, which is represented by the State Council Law and the decision of the Federal Supreme Court No. (48) of 2021.
- 3- In terms of the impact of violating the rules of interpretation: failure to follow the conditions and procedures for interpreting the provisions of the Constitution stipulated in the Constitution or in court decisions results in the invalidity of the issued decision in the sense of Article (13 / second) of the Constitution, and no exception is made from that except in the case of the court's reversal of its decisions. However, in the event of a violation of the rules for interpreting the law by the Federal Supreme Court or the Council of State, it does not entail the invalidity of the interpretive decision.
- 4- In terms of the nature or legal qualification of the interpretive jurisdiction: the jurisdiction of the constitutional judiciary differs regarding interpretation, as the interpretive jurisdiction of the provisions of the constitution is one of the original powers of the court, in contrast to the interpretive jurisdiction of the texts of the law, which is characterized by a dual nature (original and exceptional), as the request for interpretation may be submitted by an original request, or in an accessory or subsidiary manner during the examination of the unconstitutionality case, and it is considered an exceptional jurisdiction that may not be expanded upon (Consider the decision of the Federal Supreme Court No. (48) on 6/6/2021).
- 5- In terms of the different conditions for interpreting the law: Federal Court Decision No. (48) of 2021 specified the controls and conditions for interpreting the law by the court so that the law is enforceable, and on the occasion of a pending dispute regarding the constitutionality of the law subject of interpretation, or on the occasion of an inquiry received from the court from one of the federal authorities, while The conditions for interpreting the law from the State Council are represented by submitting a request from one of the ministries or entities not associated with a ministry, and that it is not related to matters that the law has specified as a reference for appeal (See Articles (6/Fifth) and (8) of the State Council Law.).
- 6- In terms of the difference in the legal validity of the interpretation decision: in it the decisions of the Federal Supreme Court are considered final and binding in accordance with Article (94) of the Constitution (The binding authority of the decisions of the Federal Supreme Court applies to the court itself, as it cannot interpret its explanatory decision, which was confirmed by many decisions, including Resolution No. (170) on 12/22/2019, as well as Resolution No. (78) on 7/28/2019 In addition to depriving the

court of interpretation of decisions and rulings issued by it according to Resolution No. (23) on 2/2/2014, Decision No. (4) on 4/5/2014, and Decision No. (62) on 2/6/2014), including the decision to interpret the texts of the law, and no authority can refrain from applying it, contrary to the decision to interpret the texts of the law issued by the Council The state, as it enjoys the relative authority of the parties to the interpretation of judicial decisions, and the practical reality indicates that the majority of ministries do not adhere to the interpretive decision, which means that it enjoys non-binding advisory power, and it is possible not to apply it, without entailing any legal sanction. The second requirement

Legislative rooting for the interpretation of the texts of law in Iraq and comparative countries

The approach of constitutions differs in determining the authority competent to interpret the law between several directions, as the first direction goes to adopting the position of absolute silence, and its example is the Iraqi constitution of 2005, as Article (93 / second) of it limited itself to defining the competence of the Federal Supreme Court to interpret the provisions of the constitution, without specifying the authority specialized in interpreting the provisions of the law.

While the second trend of constitutions goes to the inclusion of explicit constitutional texts dealing with the jurisdiction of the Constitutional Court to interpret the texts of laws For example, the amended Constitution of the Republic of Egypt for the year 2014, as Article (192) of it specifies the jurisdiction of the Supreme Constitutional Court to interpret legislative texts without the provisions of the constitution.

It is also noted that the conduct of comparative laws differs regarding the authority that interprets the texts of the law as well, as some of them entrust this to the constitutional judiciary, as is the case in the Egyptian Supreme Constitutional Court Law No. (48) of 1979, while other laws tend to grant the authority to interpret laws to the judiciary. Administrative, as is the case in the Iraqi State Council Law No. (71) for the year 2017 (), as for the third trend, the task of interpreting the law is entrusted to the private office, and its example is the Jordanian constitution of 1952.

In addition, we find an emerging judicial trend represented by the constitutional judiciary approving for itself the authority to interpret the provisions of the law, while reserving the State Council the right to exercise this original jurisdiction as well, that is: it approves competitive jurisdiction (The State Council Law was published in Iraqi Gazette, No. 4456 on 7/8/2017.) in interpreting the provisions of the law, which is what the Iraqi Federal Supreme Court has followed. In its decision No. (48) of 2021.

In order to understand these provisions, we will discuss them in the following sections:

The first section: the constitutional and legal basis for interpreting the texts of law in Iraq

For the purpose of standing on the legislative basis for interpreting the texts of the law, as well as determining the nature of this explanatory or advisory jurisdiction, so we will deal with that successively as follows:

First: Legislative rooting for the interpretation of the texts of law in Iraq:

The Iraqi constitutions previous to the Constitution of the Republic of Iraq for the year 2005 did not follow a unified path regarding defining the authority competent to interpret legislative texts, due to the difference in philosophy and the prevailing legal idea that the legislator embraces in each constitution (Competitive jurisdiction relies on proving the competence to interpret the provisions of the law to two or more parties at the same time, and either of them can exercise this jurisdiction according to the criterion of precedence.).

Referring to the Constitution of the Republic of Iraq for the year 2005, we find that Article (93/Second) of it specialized in the Federal Supreme Court to interpret the provisions of the Constitution, without mentioning an explicit or implicit text specifying the competent authority to interpret the law.

The same provision applies to Federal Supreme Court Law No. (30) of 2005, amended by Law No. (25) of 2021.

If we contemplate the State Council Law, we find that Articles (4) and (6) of it dealt with the fatwa and the advisory opinion, as Article (4) of it states: "The Council is concerned with the functions of administrative judiciary, issuing fatwas, drafting, preparing, studying and auditing draft laws, and expressing an opinion on legal matters for state departments and the public sector. "

While Article (6) of the law states, "The Council exercises its powers in the field of opinion and legal advice as follows: First: Providing legal advice on matters submitted to it by the higher authorities. Second: Providing legal advice in international agreements and treaties before concluding or joining them. Third: Fourth: Expressing an opinion on issues in dispute between ministries or between them and bodies not associated with a ministry, if the parties to the case appeal to the Council, and the opinion of the Council is binding on them. The legal department in it, specifying the points on which an opinion is required to be expressed, and the reasons for presenting it to the council, and its opinion is binding on the ministry or the authority requesting the opinion. The competent minister or the supreme head of an entity not affiliated with a ministry presents cases to the council.

Despite the explicitness of the above articles, it is noted that opinions are divided in this regard, at a time when some go to deny the authority of the State Council to interpret the texts of the law, based on many foundations: the most important of which: the absence of explicit phrases and texts in the State Council law stipulating Its competence is to interpret the texts of the law, on the other hand, we find that the second opinion embraces giving the council this authority, based on the phrases (expressing legal opinion and advice) mentioned in the text of the law, which necessarily deviate from the competence of the council to interpret the texts of the law, as the Iraqi legislator replaced the mention of the phrase (interpretation of the texts of

the law) The essence of the interpretation is to clarify the legal provisions (Maryam Muhammad, Sonbol Abdul-Jabbar Ahmed, Interpretation of Legislative Texts between the Federal Supreme Court and the State Council, Kufa Journal, Issue 40, 2019, p. 276, Ahmed Talal Al-Badri, Federal Supreme Court and Interpretation of Legislations, a study published in Al-Zaman newspaper on the following electronic link: <https://www.azzaman.com>).

From our side, we see that the Iraqi legislator has directed his express will to grant the State Council the competence to interpret laws and give opinion and legal advice regarding them, and from the concept of violation, according to the above article, it is not permissible for any party other than the Council to give interpretation of the texts of the law, whether it is original or subsidiary legislation, and otherwise. The decision is non-binding, as it violates the jurisdiction rules specified in the State Council Law. However, Federal Supreme Court Decision No. (48) of 2021 has created a conflict in the court's exercise of the interpretive jurisdiction of the provisions of the law, which we will explain later.

Second: Jurisprudential rooting for the interpretation of the provisions of the law and the mechanisms for removing the conflict between the jurisdiction of the Federal Supreme Court and the State Council:

Iraqi jurisprudential opinions regarding the competence of the Federal Supreme Court to interpret the texts of the law were divided between several directions, which we summarize as follows:

- 1- The first opinion: Those with the first opinion go to the convening of the competence to interpret the law of the Federal Supreme Court in an occasional manner (by indirect request) during the exercise of the powers specified in the constitution and complementary laws, including oversight of the constitutionality of laws, as the issuance of a decision in the case before the court necessarily requires an understanding of the text of the law and the analysis and interpretation of its content, as long as this is on the occasion of the court exercising its jurisdiction (Haider Adham Abdel-Hadi,, 2007).
- 2- The second opinion: Those with a second opinion believe that the competence of the Federal Supreme Court to interpret the provisions of the law is considered one of the established competences granted to it even in the event that this is not expressly stipulated in the constitution, and they rely on the rule (that whoever owns the whole owns the part), so as long as the court. The legislator has granted it the competence to interpret the constitution, so it is a fortiori that proves to it the competence to interpret the law, and the adoption of this opinion guarantees the unity of interpretations issued in the state in a way that prevents conflicts in the multiple interpretations of the texts of the law (Student of Sharia, 2010.), and therefore the judicial interpretation is permissible for the legal text, as long as it was in the context of searching for its meaning in the case before the court (It should be noted that the Federal Supreme Court had previously applied this rule, in its decision No. (42) dated 7/27/2017).
- 3- The third opinion: The third opinion argues that the Federal Supreme Court does not have jurisdiction over the interpretation of the provisions of the law, whether in an original

or accidental manner, as it is required to prove this jurisdiction that there is an explicit constitutional or legal basis for granting it to the court, and otherwise, that is: in the case of silence or legislative omission, so the court cannot exercise this jurisdiction, in application of the general rule (no one who is silent shall be attributed) (Mossadeq Adel Taleb, 2018,), just as Article (93/Second) of the Constitution granted the court exclusive jurisdiction to interpret the provisions of the Constitution, as it adopted the narrow concept (formal criterion) in Determining the provisions of the constitution, and from the concept of violation, the court may not interpret other legal texts such as the texts of the law, regulations, or instructions (Some say, "The court cannot decide for itself an original jurisdiction to interpret legislation based on requests received by the court, even if the court sets criteria for accepting the original request to interpret legislation." Ahmed Talal Al-Badri, previous source.), which was confirmed by the numerous decisions issued by the court. Likewise, the law of the State Council has granted the jurisdiction of interpreting the texts of the law and subsidiary legislation to the State Council, which is Which requires the application of the rule (no diligence in the text resource) .

Despite the foregoing, however, we support the introduction of competitive jurisdiction to interpret the provisions of the law, as a close consideration of Federal Supreme Court Decision No. (48) of 2021 allows each of the State Council or the court to undertake the jurisdiction of interpreting the provisions of the law at the same time.

In order to get rid of the problem of conflict and the apparent jurisdictional conflict between them when exercising the interpretive jurisdiction of the texts of the law, we see the need to adopt the theory of complementary jurisdiction , and then a distinction must be made between the interpretation of each of the texts of ordinary laws on the one hand and the texts of laws complementing the constitution on the other hand, at the time that The Federal Supreme Court has the authority to interpret the texts of laws complementing the constitution, such as the election law, the internal system of the House of Representatives, or the law of the House of Representatives and its formations, in application of the rule that whoever owns the whole (interpretation of the texts of the Constitution) owns the part (interpretation of the texts of the law). Ordinary and administrative laws related to public office and others.

With this opinion, we guarantee that there will be no conflict and contradiction in decisions related to the interpretation of the provisions of the law, in addition to respecting the absolute and irrevocable authority of the decisions of the Federal Supreme Court in accordance with Article (94) of the Constitution, and it is possible to continue applying this opinion until the House of Representatives amends the State Council law and stipulates it explicitly To profess the above opinion.

Third: Judicial rooting of the competence of the Federal Supreme Court to interpret the provisions of the law:

Despite the jurisdiction granted to the State Council in interpreting the provisions of the law, the jurisprudence of the Federal Supreme Court has followed otherwise, at a time when it is noted that the court has refrained for a long time from expressing an opinion on the *Res Militaris*, vol.12, n°3, November issue 2022

interpretation of the laws and internal regulations presented before it in many of the decisions it issued.), justifying this by its inherent and exclusive competence to interpret the provisions of the constitution only. On the other hand, we find that the court dealt with the interpretation of the provisions of the law in some of its decisions, including Resolution No. (67) of 2006 related to the interpretation of Article (1 / Sixth) of the Unified Retirement Law No. (27) of 2006 , which was not widely welcomed among the jurisprudential circles (), and the same is the case in Resolution No. (9) of 2009 related to the interpretation of Article (12 / Third) of the internal system of the House of Representatives.

Perhaps one of the most important decisions issued by the Federal Supreme Court is Decision No. (48) issued on 6/6/2021, in which it was stated, “and that this sometimes requires interpretation of the provisions of the law on the occasion of an incident or a dispute that was brought before this court to decide on it, and since it was Everyone owns the part, and since the interpretation of the provisions of the Constitution is within the jurisdiction of this court, which means that its jurisdiction is convened in the interpretation of the provisions of the law, as this jurisdiction is considered branching out of its competence in interpreting the provisions of the Constitution, based on the aforementioned rule, and in implementation of the principle of judicial interpretation of the provisions of the law that is done according to certain controls...” (The decision of the Federal Supreme Court No. (48) is being considered on 6/6/2022, which was published on the official website of the Federal Supreme Court, as follows: https://www.iraqfsc.iq/krarid/48_fed_2021.pdf).

Thus, it is clear that the court’s decision has embraced the competitive jurisdiction between the State Council on the one hand and the Federal Supreme Court on the other hand. While it maintained the State Council’s general jurisdiction in interpreting the texts of laws, regulations, and instructions without other authorities, we find, on the other hand, that the above decision Granting the court an exception from the general principle, as it allowed it to interpret the provisions of the law in an original or dependent manner, as long as it fulfilled the controls set by the decision, as we will explain later.

Fourth: The nature of the interpretative jurisdiction of the texts of law in Iraq:

The question arises about the nature of the competence of the Federal Supreme Court and the State Council to interpret the provisions of the law?

The provisions of the constitution and the amended Federal Supreme Court Law No. (30) of 2005 do not help us answer this question.

For the purpose of determining the legal adaptation of the interpretation issued by the Federal Supreme Court or the Council of State, it is necessary to address the nature of the formation of these authorities.

Referring to the provisions of the Constitution of the Republic of Iraq for the year 2005, we find that it embraced the principle of separation of powers, and therefore the Federal Supreme Court is one of the components of the judicial authorities, as it is an independent judicial body financially and administratively.

In addition to the foregoing, the State Council is an independent body from the three public authorities, and therefore it is subject only to the law when exercising its competences in fatwas and administrative judiciary .

From a close examination of the merits of Federal Supreme Court Decision No. (48) of 2021, we find that the jurisdiction of the court to interpret the provisions of the law is one of the original powers granted to the court on an equal footing with the State Council, and that this jurisdiction is one of the powers of an exceptional nature granted to the court in the framework of its practice The competencies stipulated in the constitution, whether this relates to oversight of the constitutionality of laws or the interpretation of the provisions of the constitution.

As for the jurisdiction of the State Council in interpreting the texts of the law, it is considered one of the original powers granted to it according to the law, and therefore the Council cannot waive this jurisdiction or delegate it to other authorities, as it is one of the initial powers granted exclusively to the State Council.

It can be said that the interpretation made by the Federal Supreme Court is considered a judicial interpretation, based on the formal criterion in determining the nature of the work, as the interpretation issued by the Federal Supreme Court applies to the description of the judicial and official interpretation at the same time, whether that is an interpretation of the provisions of the Constitution or the texts of Law.

The same provision applies to the State Council, as the interpretation issued by it can be adapted as an official interpretation of a judicial nature according to the nature of the formation of the State Council, which is closer to independent bodies than to the judicial authority, although the judicial formation of the Council mediates between them ().

In order to end this apparent contradiction, we call on the House of Representatives to amend the power to interpret the provisions of the law and grant it to the Federal Supreme Court and other authorities in accordance with the discretionary power granted to the legislator in light of the constitutional silence or omission in addressing this jurisdiction.

The second section: the constitutional and legal basis for the interpretation of the texts of the law in the comparative countries

The path of the Egyptian legislator differs from the path of the Jordanian legislator in interpreting the provisions of the law, which we will discuss successively as follows:

First: The position of the Egyptian legislator on defining the authority competent to interpret the provisions of the law and determine its nature:

Article (192) of the Constitution of the Republic of Egypt for the year 2014 stipulates that “the Supreme Constitutional Court alone shall undertake oversight over the constitutionality of laws and regulations, and the interpretation of legislative texts.”

It is clear that the constitutional legislator guarantees the exclusive determination of the constitutional court's exercise of its jurisdiction to interpret the texts of legislation without the participation of other authorities, and for this reason this jurisdiction is described as one of the exclusive powers of the court that prevents other authorities from participating in the exercise of this jurisdiction, and then violating it entails the nullity of the interpretative decision.

Likewise, the Egyptian Supreme Constitutional Court Law No. (48) of 1979 regulated the provisions related to the interpretation of the texts of the law in the same way as the constitutional legislator has followed. The President of the Republic in accordance with the provisions of the Constitution, if it raises a dispute in application and is of such importance that requires unification its interpretation.”

Thus, it becomes clear that the Supreme Constitutional Court in Egypt is not limited to interpreting the provisions of the law in its narrow sense only (original legislation only), but also expands to include the interpretation of the provisions of the constitution, regulations, and decrees by laws issued by the President of the Republic as well, in accordance with Article (3) of the Court Law.

It should be noted in this regard that the competence to interpret the law is one of the original powers granted to the court, and therefore it cannot delegate other authorities to exercise this power, just as the court cannot refrain from interpreting the provisions of the law, as it constitutes a crime of refraining from achieving justice.

Second: The position of the Jordanian legislator on defining the authority competent to interpret the provisions of the law and determine its nature:

The amended Constitution of Jordan for the year 1952 regulated the authority concerned with interpreting the law, as Article (123) thereof states:

- 1- The Special Court has the right to interpret the text of any law that the courts have not interpreted if requested by the Prime Minister.
- 2- The Special Court shall be composed of the President of the highest regular court as a President and the membership of two of its judges and one of the senior administration employees appointed by the Council of Ministers, in addition to them a member of the Ministry's senior employees related to the required interpretation to be delegated by the Minister.
- 3- The Special Court issues its decisions by majority.
- 4- The decisions issued by the Special Court and published in the Official Gazette shall have the effect of law.
- 5- All other issues related to the interpretation of laws are decided by the courts when they occur in the usual manner.

Thus, it is clear that the Jordanian legislator has assigned two bodies to interpret the texts of the law, which are the ordinary courts in the case of cases brought before them, and the High Council in the event that this text is not interpreted by the ordinary courts.

Despite what appears to us at first sight that the Jordanian legislator has embraced the competitive jurisdiction in interpreting the texts of the law, this saying is not true, as the legislator embraced the temporal criterion represented by the criterion of precedence, and this means that in the case of ordinary courts interpreting the texts of the law, this issue may not be presented again to the courts. The attention of the private office, for the previous decision on the matter.

In other words, the Court's jurisdiction is limited to interpreting legal texts that have not been interpreted by ordinary courts.

As for the nature of the jurisdiction of the Court for interpretation, it is noted that the Jordanian legislator used the language of choice and permissibility in the exercise of the Court's duties, by using the phrase (for the Court), but he intended to make interpretation optional. Therefore, the competence granted to the Court in the interpretation of legal texts is described as one of the original powers that It cannot be delegated to other authorities, and therefore in the case of refraining from interpreting the law, it is considered a denial of justice that requires accountability in accordance with the general rules stipulated in the Penal Code.

The same provision applies to the ordinary courts, as they must, according to Article (123/5) of the Constitution, decide on all other issues related to the interpretation of the law when they occur in the ordinary way, that is, during the examination of the case before it (Muhammad al-Saeed Abd al-Mawla, Jurisdiction of the Court of Interpretation of Laws, article published on the following electronic link: <https://jordan-lawyer.com/2021/10/23/jurisdiction-of-the-law-interpretation-committee/>).

Based on the foregoing, it can be said that despite the nature of the original jurisdiction granted to the Special Court in interpreting the texts of the law, this does not preclude considering this jurisdiction as one of the reserve powers of a constitutional nature. The matter was previously decided by the ordinary courts on the one hand, in addition to the approval of the constitutional legislator in paragraph (5) of Article (123) of the constitution the general jurisdiction of the ordinary courts in interpretation in all other cases that have not been decided by the Special Court.

The second topic

Procedural and substantive rules in interpreting the texts of the law

The legislator surrounds the process of interpreting the texts of the law with many procedural and substantive rules, so the matter does not stop at defining the procedures and conditions for interpretation only, but rather goes beyond it to clarifying the restrictions contained on the competence of interpreting the law, which resulted in the difference of these conditions from one country to another according to the prevailing legal idea .

In order to stand on these provisions, we will therefore address them in the following demands:

The first requirement

Procedural rules for interpreting the texts of law in Iraq and comparative countries

Procedural rules mean that they are the provisions set by the legislator or the competent authority for interpretation that must be available in the request for interpretation, whether in terms of indicating the authority that has the right to submit a request or the procedures that must be followed.

In view of the difference between these rules applied in Iraq from the comparative countries, we will discuss them in the following sections:

The first subsection: the competent authority to submit a request for interpretation of the law in Iraq and its procedures

A distinction must be made between two cases of interpretation of the provisions of the law, as the first is the original interpretation by the Council of State, while the second is the consequential interpretation by the Federal Supreme Court while monitoring the constitutionality of laws and regulations.

With regard to the first case, State Consultative Council Law No. (65) of 1979 amended by State Council Law No. (71) of 2017 has specified the entities that are entitled to request advice or interpretation of the provisions of the law, which are as follows:

- 1- The higher authorities.
- 2- Ministries or agencies not associated with a ministry.

The first thing to notice in this regard is that the phrase (higher authorities) was vague, and the legislator did not specify what is meant by it. Despite that, we see that it refers to the President of the Republic, the Prime Minister, the Speaker of the House of Representatives, and the President of the Supreme Judicial Council.

Based on the foregoing, the competent minister or the supreme head of the entity that is not associated with a ministry has the exclusive competence to present requests for interpretation of the provisions of the law to the attention of the State Council, and from the concept of violation in the event that another employee replaces the aforementioned authorities as the undersecretary of the ministry or the general manager, the request for interpretation is not considered complete. formal and procedural aspects, and must be responded.

As for the entities that are entitled to request interpretation of the provisions of the law from the Federal Supreme Court, the Federal Supreme Court has specified them in several numbers From the following parties:

- 1- One of the federal authorities in the country (the legislative authority represented by the House of Representatives and the Federation Council, the executive authority represented by the President of the Republic and the Council of Ministers, the judicial authority represented by the Supreme Judicial Council).
- 2- The Prime Minister of the Kurdistan Regional Government - Iraq.

Thus, it can be said that the concept of violation of the parties specified in the court's decision is applied above. It is not possible for the federal ministries or the ministries in the Kurdistan region of Iraq represented by the minister to submit an original request for the interpretation of a legal text to the Federal Supreme Court. The same applies to both the President of the Kurdistan Region - Iraq and the Speaker of Parliament. Kurdistan Iraq.

The same provision applies to entities not associated with a ministry, including independent bodies represented by the head of the body or the head of the executive body of the independent body.

The same applies to individuals or citizens, as they cannot - according to the operative part of the court's decision - submit a request for interpretation of the legal text, by relying on general rules and in a single case represented in the case presented to the judge who is examining the case, as he has the right to interpret the legal text for the purpose of applying it. on the dispute brought before him.

The authority concerned with performing the advisory function and expressing opinion in the State Council in the event that the request is sent by ministries or entities not associated with a ministry - other than the entities specified by the decision of the Federal Supreme Court - is represented by many bodies, including the general body, the expanded body, the specialized body and the presidency body.

As for the procedures for submitting a request to interpret the law from the aforementioned authorities, the Federal Supreme Court determined that the inquiry should be received by a letter signed by the head of the authority or the prime minister in the region exclusively, and then this condition is considered one of the important procedural restrictions that we will discuss in detail later.

Section Two: The competent authority to submit a request for interpretation of the law in Egypt and Jordan and its procedures

The authority to submit a request for interpretation of the law in the Egyptian legislation differs from that of the Jordanian one, due to the difference in the philosophy that the legislator follows, which is what resulted in their difference in the procedures that must be followed, which we will discuss successively as follows:

First: The entity submitting the application and its procedures in Egypt:

The Egyptian legislator dealt with the bodies that have the right to submit a request for interpretation of the law, as the Minister of Justice is competent to submit a request for interpretation, whether the initiative was submitted to him by the Prime Minister, the Speaker of the House of Representatives, or the Supreme Council of Judicial Bodies (See Article (33) of the Supreme Constitutional Court Law.).

Thus, it is clear that the Supreme Constitutional Court law has exclusively assigned the Minister of Justice to assess whether or not there is a need to interpret the law. However, some

jurisprudents have criticized this for turning the Minister of Justice into a mere role of mediator, as it is limited to referring the request for interpretation from the specified authorities, and he does not have the right to violate it. .

We do not support the aforementioned opinion on its release, as the practical reality and judicial precedents indicate non-compliance with the specified method for communicating the interpretation of the texts of the law with the Supreme Constitutional Court, as in the case of the Prime Minister or the Speaker of the House of Representatives referring the request directly to the court without going through the Minister of Justice, and this is considered one of the reasons for the court's rejection of the application (The ruling of the Supreme Constitutional Court is considering the request for interpretation issued on 7/3/1987.).

As for the procedures to be followed regarding submitting a request for interpretation of the law from the Minister of Justice, the Supreme Constitutional Court law was silent on explaining this in detail, but it is implicitly understood from Article (33) of the law that the request for interpretation must be sent by letter accompanied by the signature of the Minister of Justice exclusively.

Second: The place where the application is submitted and its procedures in Jordan:

Article (123) of the Jordanian Constitution specifies the bodies that are entitled to submit a request for interpretation of the law, which is represented by the Prime Minister exclusively.

As for the procedures, the constitution has ensured that the procedures for the formation of the Special Court are specified by the president of the highest regular court, the membership of two of its judges, and a senior administration employee appointed by the Council of Ministers, in addition to a member from the senior ministry employees related to the required interpretation to be delegated by the minister.

The request for interpretation must be sent in writing by the Prime Minister to the Special Court for consideration.

The second requirement

Objective rules in the interpretation of the provisions of the law

The conditions for interpreting the legal text in Iraq differ from those in the comparative countries in Egypt and Jordan, which we will discuss in the following sections:

The first section: the conditions for interpreting legal texts in Iraq

The course of the Iraqi administrative judiciary represented by the State Council differs from the course of the constitutional judiciary represented by the Federal Supreme Court in determining the conditions that must be met in requesting the interpretation of the law, which we will address as follows:

First: Conditions for interpreting legal texts in the Iraqi administrative judiciary:

Referring to the State Council Law, we find that it specified many conditions that must be followed in the field of expressing opinion and legal advice, which are as follows:

- 1- Submitting a written request requesting interpretation of the text or expressing legal advice, signed by the competent minister or the head of the entity not affiliated with a ministry.
- 2- Failure to express an opinion and legal advice in cases brought before the judiciary, or in cases that have a legal reference for appeal (See Articles (6) and (8) of the State Council Law, Maha Bahgat, Jihad Ali, the advisory competence of the Iraqi State Council and its role in protecting public rights and freedoms, *Journal of Legal Sciences*, University of Baghdad, fourth special issue, 2018, p. 122.).

Second: Conditions for interpreting legal texts in the Iraqi constitutional judiciary:

At a time when the constitution and the law of the Federal Supreme Court were silent on specifying the conditions that must be met in the request for interpretation of the law submitted to the court, we find, on the other hand, that the court has defined these conditions and controls in accordance with its decision No. (48) of 2021, which is as follows:

- 1- That the law to be interpreted is effective (not repealed).
- 2- That the interpretation of the law is on the occasion of a pending dispute before the court to decide on the constitutionality of the law that is the subject of the interpretation.
- 3- The interpretation should be on the occasion of an inquiry addressed to the court exclusively by one of the federal authorities.

It is clear that the Court has embraced the complementary and broad interpretation of the provisions of the Constitution. As the court used the means of coordination and integration between the constitutional and legal texts, in addition to embracing the means of broad interpretation of the phrase (interpretation of the texts of the constitution) to make it comprehensive for the interpretation of the texts of the law as well.

Section Two: Conditions for Interpretation of Legal Texts in Comparative Countries:

The conditions and controls for interpreting the provisions of the law in the Egyptian legislation differ from the Jordanian legislation, which we will deal with successively as follows:

First: The objective conditions for submitting a request to interpret the law in Egypt:

Referring to Article (33) of the Egyptian Supreme Constitutional Court Law, we find that it specified the conditions for requesting interpretation of the law as follows:

- 1- Statement of the legislative text to be interpreted.
- 2- Statement of the dispute arising as a result of the application of the legal text.
- 3- Statement of the importance of the text to be interpreted within the framework of standardization of interpretation (Fathi Fikri, 1998).

The aforementioned statements are among the conditions that must be met in the

application for interpretation submitted by the Minister of Justice to the Supreme Constitutional Court, and in the event that one of them is absent, the application must be rejected.

Second: Objective conditions for submitting a request to interpret the law in Jordan:

If we reflect on Article (123) of the Jordanian Constitution, we find that it specified the conditions for requesting interpretation of the law as follows:

- 1- The failure of any court to interpret the legal text required to be interpreted.
- 2- The association of the decision of the private court with the absolute majority of its members.

Thus, it is clear that it is forbidden for the Special Court to consider the interpretation of the texts of the law that have already been interpreted by ordinary courts during the examination of the case brought before it, as the previous decision on the request for interpretation is one of the restrictions on the authority of the Private Court, which is evident from the provisions of Paragraph (1). From Article (123) of the Constitution (Muhammed Al-Saeed Abd, The Specialization of the Court for the Interpretation of Laws, previous source.).

By conducting a comparison between the behavior of the Egyptian and Jordanian legislators, it becomes clear that the first is superior, as it has determined all the data that must be provided in the request for interpretation, in contrast to the Jordanian legislator. Thus, it becomes clear that the Egyptian legislator is effective in regulating these conditions.

The third topic

Evaluating the role of the constitutional judiciary in interpreting the law

After we have clarified the objective controls for interpreting the texts of the law in Iraq and the comparative countries, we must evaluate the role of the constitutional judiciary in this regard.

In order to stand on these provisions, we will address it in the following demands:

The first requirement

Evaluation of the role of the Iraqi Federal Supreme Court in interpreting the law

The Iraqi Federal Supreme Court did not take a unified position regarding the interpretation of the provisions of the law, whether in the period preceding or after the issuance of the First Amendment Law of Court Law No. (25) of 2021. Therefore, a distinction must be made between these two stages of its judiciary for the purpose of evaluating its role, which we will discuss in the branches. following:

The first subsection: the role of the Federal Supreme Court in interpreting the provisions of the law in the period preceding the enactment of Law No. (25) of 2021

If we reflect on the decisions issued by the Federal Supreme Court in the period preceding the enactment of the First Amendment Law of Court Law No. (25) of 2021, we will find that its position was not consistent and frequent in the matter of interpreting the provisions of the law before it, as follows:

First: The first judicial direction of the court (refraining from interpreting the texts of the laws):

From the extrapolation of the decisions issued by the Federal Supreme Court, we find that it repeatedly refrained from interpreting the legal texts, but it came in a multiple form, as we find at times that the court contented itself with refraining from interpreting the text of the law before it without acknowledging the jurisdiction of the State Council to do so, as is the case In Court Decision No. (18) issued on 9/11/2007, which stated, "Therefore, the request of the House of Representatives to interpret Article (22) of the rules of procedure of the Interim National Council is outside the jurisdiction of the Federal Supreme Court."

At other times, we find that the behavior of the Federal Supreme Court has evolved in other decisions to be more daring in determining the authority entrusted with interpretation, as the court adopted a more positive path than the first direction. The State Council interprets the law (Fawzi Salman, previous source, margin, p. 284), as is the case in Court Decision No. (15) issued on 7/16/2007 in which it was stated that "Article (93) of the Constitution and Article (4) of the Federal Supreme Court Law No. (30) of 2005 They have defined the competences of the Federal Supreme Court, and among these jurisdictions is not the interpretation of the articles of the internal system of the Council of Representatives, as this falls within the competence of the State Consultative Council under Article (6) of the Shura Council Law The court also distinguished between two types of interpretation of the provisions of the law, the first of which is the original interpretation, while the second is the subsidiary or consequential interpretation during the exercise of other jurisdictions.

In its decision to interpret the laws, the court relied on many of the following bases and arguments:

- 1- Relying on the jurisdiction and competence of the court to interpret the provisions of the constitution, which includes the interpretation of the provisions of the law, in application of the rule (whoever owns the whole owns the part).
- 2- Relying on the principle of supremacy of the constitution and the inclusion of legal rules in accordance with Article (13) of the constitution (Article (13) of the Constitution of Iraq states, "First: This constitution is the supreme and supreme law in Iraq, and it is binding in all parts of it, without exception."), as the hierarchy of legal rules requires that the constitution be at a higher rank than the laws issued by the House of Representatives.
- 3- Relying on the principle of judicial interpretation of the texts of the constitution, which is followed by many comparative constitutions, provided that it is with certain controls, and thus the court's progress is clear in the jurisprudential directions that require that the process of subordinating every lower legal rule to the higher rule is part of the process of judicial application in its general sense (Awad Al-Murr, 2003) .
- 4- The competence of the court to interpret the provisions of the law is based on the scientific requirements for exercising control over the constitutionality of laws in the fullest way, which is evident through the need for the court to investigate and search for and protect the supreme interests of the state in a way that secures the protection of the interests of society and individuals together, which is what requires the court to grant This authority

is as long as its purpose is to stand on the intent and objectives of the legislator when enacting the law .

- 5- Relying on the principle of comprehensive and general jurisdiction of the judiciary, and Articles (4) and (6) of the State Shura Council Law No. (65) of 1979 amended by Council of States Law No. (71) of 2017 from referring to any explicit phrases or texts that indicate the competence of the Council State or its competence to interpret the provisions of the law.
- 6- The court relied on the establishment of controls and restrictions regulating the nature of the court's jurisdiction to interpret the provisions of the law as an exceptional jurisdiction that may not be expanded upon, due to its contradiction with the competences of the State Council to provide legal advice, which is what can be said with which it can be said that the court has adopted the method of constructive and expanded interpretation in acknowledging itself with this jurisdiction explanatory.

Some Iraqi jurisprudence has defended the jurisdiction of the court to interpret the provisions of the law based on the duty imposed on the court to apply Article (30) of the Civil Procedure Law No. (83) of 1969 as amended, as it is obligated to clarify the meanings of legal texts while exercising its jurisdiction as set forth in the constitution or the law. Whether it is in an accessory or subsidiary manner during its examination of cases and defenses related to the control of the constitutionality of laws and regulations within the framework of its access to the extent to which the constitutional text and the law are identical or not, or other specializations related to the application of federal laws and adjudication of conflict problems, as the analysis of constitutional and legal texts It is necessary in the stages of resolving these cases, and in contrast to it, the court issues its rulings without relying on the alphabet of the practical approach in the integrated analysis of the constitutional and legal texts in the cases before it , which weakens the legitimacy of accepting its rulings.

While others criticized the above-mentioned court's conduct, as the fact that the Constitution and the Federal Supreme Court's law and internal system do not include a text regulating the jurisdiction of the court by accepting the original request to interpret legislation and not specifying its terms and conditions, it is necessary not to grant the court this jurisdiction, especially if we know that the court has approved Explicitly, the State Council has the competence to clarify legal provisions, which constitutes the essence of the interpretation, as the legislator of the State Council law replaced the mention of the phrase (interpretation of legislation or texts) with mentioning the definition of interpretation, and this decision came at the request of a direct interpretation on the part of (the deputy) which the law did not grant him the authority to request interpretation from the Federal Supreme Court , which was confirmed by the court in many of its decisions (Muhammed Al-Saeed Abd, The Court's Specialization in the Interpretation of Law, previous source).

We do not support the aforementioned opinion on its own, as the rules of interpretation necessitate the use of terms in their usual reformist meaning, and we see that the Federal Supreme Court, in its aforementioned decision, has applied the means of linguistic interpretation of the provisions of the constitution, as long as the constitutional legislator specialized the court in interpreting the provisions of the constitution, and it was not mentioned

in the law of the Council The state expressly expresses the interpretation of the texts or provisions of the law, so it cannot be said that this term is synonymous with the phrases (expressing an opinion on legal matters) and (clarifying legal provisions), and therefore the Federal Supreme Court has the jurisdiction to interpret the texts of the law based on the general comprehensive jurisdiction of the judiciary. Its above decision is a proper application of the meaning of the texts and their idiomatic meaning.

In addition, the recognition of the competitive jurisdiction of the Federal Supreme Court in interpreting the provisions of the law is one of the powers complementary to the competence of the Federal Supreme Court to supervise the constitutionality of laws and regulations in force. Therefore, sound legal reasoning requires recognition of this power by the court, especially with regard to laws complementing the constitution, as long as it is covered by many Among the formal and substantive conditions and controls that ensure that there is no conflict of jurisdiction with the State Council, in light of the fact that the decision of the Federal Supreme Court enjoys absolute and binding authority in accordance with Article (94) of the Constitution.

It should be noted in this regard that the court's explanatory decision can be considered among the major establishing interpretations in the Iraqi constitutional judiciary, as it is characterized by a dual nature. As he added the necessary part to the text of Article (93/Second) of the Constitution so that the court's behavior in interpreting the provisions of the law becomes constitutional and consistent with the above article.

On the one hand, and on the other hand, the above court decision can be considered a substitute constitutional decision (), as it withdraws and extracts the legal rule that contradicts the constitution (Article 93 / first and second) from the text contained in Articles (4) and (6) of the State Consultative Council Law No. (65) of 1979 amended by State Council Law No. (71) of 2017 and introduced another rule that makes the aforementioned law conform to the constitution, by granting it the Federal Supreme Court the power to interpret the provisions of the law, whether it is on the occasion of exercising its jurisdiction to interpret the provisions of the constitution or oversight on The constitutionality of the laws and regulations in force.

The second requirement

Evaluating the role of the authorities concerned with interpreting the law in the comparative countries

Jurisprudential opinions were divided between supporters and opponents of the role of the Egyptian Supreme Constitutional Court in interpreting the texts of laws, and the same ruling applies to the private court in Jordan.

In order to identify and evaluate this role, we will discuss this in the following sections:

The first section: the role of the Supreme Constitutional Court in interpreting the provisions of the law in Egypt

If we reflect on the decisions issued by the Egyptian Supreme Constitutional Court, we find that it has made significant strides in exercising the task of interpreting legal texts, as it has acknowledged that the jurisdiction of the court in interpreting legislative texts may not

exceed this task to decide on their constitutionality , and that the jurisdiction of the court in interpretation is limited to Determining the content of the legal text for the purpose of clarifying the ambiguous words, and reconciling its contradictory parts, by clarifying the will and intent of the legislator, and the purpose he aims for, and therefore it is not permissible to interpret the clear texts .

The Court has recognized its jurisdiction by limiting it to laws issued by the legislative authority and decrees by laws issued by the President of the Republic.

In this regard, it is noted that the explanatory decision issued by the court is obligatory in accordance with Article (26) of the law of the court. It is not permissible for any party other than the court to give this text other than the meaning that was previously given by the court. Therefore, the court's decisions are integrated into these interpreted texts, as they reveal the meaning. intended.

The Supreme Constitutional Court also enshrined the necessary conditions for the interpretation of texts that must raise a dispute in application, and it was of great importance to unify its interpretation, in addition to defining the jurisdiction of the court by limiting it to defining the content of the legal text to be interpreted in the light of the will of the legislator.

In addition, the decision issued by the court to interpret a text must be decisive in defining its legal meaning, so that the dispute that arose in application is resolved and the legal centers are determined by it.

We conclude from the foregoing that the competence of the Supreme Constitutional Court to interpret legislative texts does not preclude the right of other judicial bodies to interpret laws and to apply their interpretation to the incident presented to it.

The second section: the role of the private office in interpreting the provisions of the law in Jordan

Despite the explicitness of the Jordanian constitutional legislator's approach in granting the Special Court the authority to interpret legal texts, he notes that jurisprudence is divided on it.

The owners of this opinion rely on many foundations, including: that the interpretation of the legal text is a legal act that requires a purely legal body to undertake this, in contrast to what is the case with the Diwan, which is composed of two legal members (judges) and non-legal members, in addition to granting a president The ministers' authority to submit a request for interpretation makes the private office a tool in the hands of the head of the executive authority regarding the issued explanatory decision, just as the law is an act of parliament, which must be dealt with by interpretation as an integral part of it.

On the other hand, those with the second opinion go to the opposite of the aforementioned opinion, and support granting the private office the authority to interpret the law, for many reasons, as the first of them is that it represents a constitutional option, so as long as the will of the constitutional legislator went to granting the office this authority, it must be adhered to, while the second is represented by this The reasons why the role of the Diwan is

exceptional, as it does not rise except in the absence of an explanation issued by one of the ordinary courts in this regard, in addition to that, the requirement of the majority necessary for issuing the decision, which is (3) members out of five, it makes the effects resulting from the involvement of the members inconsequential. Legalists are of little importance when compared to this majority.

For our part, we support the second opinion, as granting the Special Court complementary authority with the courts in interpreting unexplained texts of the law would preserve the principle of separation of powers, and enhance the independence of the judiciary in terms of respecting the authoritativeness of the ruling issued, not to mention that it prevents the courts from being occupied with matters. It does not amount to a dispute that requires filing a lawsuit before it, without losing sight of what this matter achieves for Parliament if we know that the explanatory decision issued by the Special Court is part of the law.

The practical precedents presented before the Special Court refer to the literal commitment to the provisions of the Constitution and the laws in force, as well as the use of the scientific method in the interpretation of legal texts. An example of this is the commitment of the Private Court not to have the right to interpret the legal text required to be interpreted as long as it was previously interpreted by the courts.

The same provision applies to the ordinary courts, which approved the absolute and binding authority of interpretation decisions issued by the Private Court. In this direction, the Jordanian Court of Cassation went in many of its decisions to add the interpretation decision to the text of the article required to be interpreted in accordance with the provisions of Paragraph (4) of Article (123). From the Constitution, and then the court did not hesitate to abide by the interpreted decisions issued by the Special Court, due to its enjoyment of the force of law, in addition to having previously been published in the Official Gazette,

3. Conclusion

After completing our study, we came to many conclusions and recommendations, which we summarize as follows:

First: Conclusions:

- 1- At a time when some constitutions granted the Supreme Constitutional Court the authority to interpret the provisions of the law, as is the case in Egypt, and others tended to entrust this jurisdiction to the special bureau of interpretation, as is the case in Jordan, we find, on the other hand, the silence of the Constitution of the Republic of Iraq for the year 2005 on addressing this Governance, which shows the superiority of the approach of comparative constitutions over the course of the constitutional legislator with regard to the constitutional consecration of the authority competent to interpret the provisions of the law.
- 2- The behavior of the Iraqi legislature was characterized by shortcomings and constitutional emptiness regarding the interpretation of the provisions of the law in Iraq. The 2005 constitution, the law of the Federal Supreme Court, or its internal system did not include any provisions that would allow the Federal Supreme Court to interpret the provisions of the law in an original way. However, the Federal Supreme Court is in the process of

carrying out its mission. In monitoring the constitutionality of laws, the authority to interpret the texts of the contested law recognized its unconstitutionality as a prelude to reaching the final decision in this regard. Judicial applications followed this approach in Iraq and in the comparative countries.

- 3- The Iraqi State Council Law dealt with the council's competence to express an opinion on legal matters and clarify the legal provisions in Articles (4) and (6) thereof, but that does not necessarily mean that the council has the exclusive power to interpret the provisions of the law, which is what the Federal Court concluded. The Supreme Court in Resolution No. (48) of 2021, approving the competitive and complementary jurisdiction of the court and the State Council in interpreting the provisions of the law in accordance with the controls and conditions stipulated in the law and the court's decision.
- 4- At a time when the court determined the competent authorities to submit a request for interpretation of the provisions of the law, and limited them to the three authorities (legislative, executive and judicial), which are represented by the Speaker of the House of Representatives, the President of the Federation Council, the President of the Republic, the Prime Minister and the President of the Judicial Council, however, he notes the inaccuracy Judicial determination of these bodies. On the one hand, ministers and heads of independent bodies were not granted to submit a request to the Federal Supreme Court to interpret a legal text, in addition to the inequality between the authorities in the Kurdistan region, although they are considered ruling authorities in accordance with the requirements of the federal system and in accordance with the provisions of Article (121) of the Constitution. As the court contented itself with granting the prime minister of the region the authority to submit a request to interpret the law, without granting it to the president of the region or the speaker of the parliament of Kurdistan-Iraq.
- 5- The State Council Law specified the conditions and controls necessary for ministries and entities not associated with a ministry to submit a request for advice and express a legal opinion from the State Council, which is to send a reasoned letter signed by the minister or the head of the entity that includes the legal issues in dispute, and the inadmissibility of presenting the matter to the judiciary or the presence of a second reference For appeal or interpretation, and it is consistent with the nature of the interpretive decision, which is characterized by relative authority for the consulting parties only.
- 6- The Federal Supreme Court, in its decision No. (48) of 2021, determined the objective controls and conditions for submitting a request for interpretation of the law to the court, that the laws are enforceable, and on the occasion of a pending dispute before this court to decide on the constitutionality of the law in question, or on the occasion of an inquiry received exclusively from one of the authorities. Federal.
- 7- It became clear to us that there was an apparent conflict in the exercise of the jurisdiction to interpret the law by the Federal Supreme Court and the State Council in accordance with the State Council Law and Federal Supreme Court Resolution No. (48) of 2022, at a time when the court decided that it did not have jurisdiction to consider requests for interpretation of the texts of the law submitted Of the ministers and heads of agencies not associated with a ministry, we find, on the other hand, that its decision

included specifying the bodies that have a request to interpret the texts of the law represented by one of the heads of the three federal authorities, and to them was added the Prime Minister of the Kurdistan region.

- 8- It became clear to us that the Federal Supreme Court had an implicit constitutional reversal of its decision related to the interpretation of the provisions of the law, as the previous trends and jurisprudence did not give a member of the House of Representatives the authority to submit a request for interpretation of the constitutional or legal text, contrary to its decision No. (48) of 2021.
- 9- It became clear to us that there is a difference in the legal value of the explanatory decision related to the interpretation of the provisions of the law, as the interpretive decision issued by the State Council enjoys relative authority, and is only binding on the parties to advice, and its binding effect does not exceed other ministries, in contrast to the explanatory decision issued by the Federal Court The Supreme Court, which is absolutely and binding on all authorities and individuals, including the State Council, in accordance with Article (94) of the Constitution.

Second: Recommendations:

- 1- We call for expediting the completion of constitutional amendments, including Article (93) of the Constitution, by granting it the competence to interpret the law to the Federal Supreme Court, following the example of the Egyptian constitution.
- 2- We call on the House of Representatives to expedite the legislation of the Federal Supreme Court Law in accordance with Article (92/Second) of the Constitution and explicitly stipulate the jurisdiction of the Court to interpret the provisions of the law.
- 3- We call on the Federal Supreme Court to devote the jurisprudence in Resolution No. (48) of 2021 and not to reverse it in subsequent decisions.
- 4- We call on the Federal Supreme Court to amend the court's internal system No. (1) for the year 2022 and stipulate the introduction of a text that deals with the controls for interpreting the provisions of the law enshrined in the court's decisions.
- 5- We call for the enactment of a new law for the Council that replaces the Law of the State Council and amending the phrases contained therein related to expressing the legal opinion and limiting it to ministries and entities not associated with a ministry and heads of parliamentary committees only without granting it to the rest of the three presidencies that have the authority to request interpretation from the Federal Supreme Court.

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