

The Guiding Role of The Constitutional Judiciary to Address Legislative Omissions

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Abstract

The topic of this research revolves around the Role guideline to Constitutional Court Represented by the Federal Supreme Courting Addressing cases of legislative omissions Through this study, the researcher aimed to identify the reality of this role of the constitutional judiciary, despite its enjoyment of specializations, powers, and privacy that no authority of the authorities has. Constitutional As the main protector of rights and freedoms, but what caught my attention was the evasion of a wide range of actions of the authorities Legislative From his oversight, and limiting his role and limiting it to the mere detection of it, without going beyond that to interference By addressing, by directing and instructing to take the necessary measures, assume the general duties of the federal authorities, and put constitutional texts into practice, in order to avoid cases of legislative void or lack of organization., In the framework of this, the researcher took the analytical approach to the position of Iraqi legislation and the application of the rulings issued in Iraq ,The researcher concluded from the study to a number of results that come first in terms of the importance of the need to develop advanced judicial curricula and remedial control methods that the constitutional judge will arm himself with, enabling him to evaluate cases of constitutional indiscipline of the authorities Legislative and protect it, And through it, he confirms the treatment of unconstitutional failures, ending all legal and political conflicts, and setting the pace of constitutional life .A guide and guide to her. This research has been divided in to two demands And a conclusion, and the researcher is presented in the first research Methods of constitutional judicial treatments for cases of legislative omission in Iraq, And the came Second titled The position of Iraqi legislation and the Federal Court on guidance as a judicial therapeutic method Then we conclude the research with a conclusion that includes the most important results and suggestions.

keywords The Constitution, the legislature, the Federal Supreme Court, the constitutional judiciary, directive provisions, the constitutional judicial policy, the legislative omission.

Introduction

get up The slit upon constitution albad And the A great deal to achieve constitutional over sight effective ,As a result of his constant endeavor to achieve this protection To subject the negative behavior of the legislator to his constitutional over sight ,It was one of its vocabulary Drurguide at here m his attempts l trial some process or s Judicial For legislative authorities when they refrain from taking legislative measures that they should have taken under the provisions of the Constitution ,And to secure it The constitutional judiciary must intervene to address cases of legislative omission by all means of treatment He began to reveal it and ended with self-treatments directly from the constitutional judge, and this development led to

interrogation Establishing constitutional and legal principles to you weren't T and Dry, They here is the way to texts.

Research Importance

That the role of the constitutional judiciary no longer stops at the limit of the apparent or explicit application of the text, and then this role has gone beyond the limits of censorship in its traditional sense, and includes a specification of many contents and frameworks for many rights, freedoms and public duties and obligations Constitutionalism, which resulted in a fundamental and pivotal role for the constitutional judiciary, with its active contribution to transforming the texts of the constitution into a living, tangible reality, through which it can achieve a kind of balance between the constitutional text and the conditions of reality applied in it and those addressed by it. Perhaps this role has passed the judiciary of the Federal Supreme Court. When exposed to control and interpretation. Constitutional oversight works to achieve its goals of protecting legal legitimacy by applying the provisions of the constitution, after the Iraqi constitution was issued and that it must be issued according to it. A number of important legislations, which have not been issued so far, despite the start of the legislative term for the fifth session of the Iraqi Council of Representatives, without issuing a large number of legislations, especially those complementary to the constitution, and despite the lapse of seventeen years from the issuance of the constitution ,q still Legislative author it is In denial of its constitutional duties, in addition to that, there are many legislations that were issued under constitutions prior to the 2005 constitution, still in force that need to be reviewed .Relevance and amending its texts to be compatible with the principles and guarantees contained in the 2005 constitution, as well as the existence of laws and decisions issued in the shadow of the previous regime before 2003, in addition to the lack and contradiction in the legislative formulations of some laws, and the large number of legislations and the multiplicity of amendments, caused a legislative vacuum and chaos in implementation ,q The constitutional judiciary always aims, as a final outcome, to reach to control the pace of the legislative performance of the authorities ,Establishing the boundaries separating them, and maximizing their public duties from any aggression or aggression, as it is the responsibility of the constitutional judiciary to direct the legislative policy. In its proper direction and drawing a road map for the constitutional authorities in all their forms, types and degrees.

Research problem

The main problem of research is does he have eliminated the constitutional mechanisms and means that enable him to intervene under the direction of the authority's Legislative authority A certain line that she must follow regarding the application of the law in a way that makes it conform to the provisions of the Constitution? When it fails to perform its constitutional function?? And the Can it be imagined that the constitutional judiciary would interfere with the work and direction of the legislative authorities? Or was he satisfied with revealing the defect without presenting any method of judicial treatment, invoking his exclusive jurisdiction, and without being too daring to enable him to play the role of supervisor and strong guide, and not to tolerate authorities that do not comply with constitutional contexts ,Here, several questions arise, including: That the constitutional or legal legislation in force is not sufficient to give the constitutional judiciary the authority to direct and instruct the authorities to carry out their constitutional obligation to legislate and to avoid cases of failure in the organization? Thus, there will be an urgent need and a refuge, and a constitutional regulatory vacuum that requires a special bill to expand and subject the negative and positive behavior to the work of the authorities and cover all the flaws that it encounters to be the fortress and the impenetrable dam? aM Just amending the texts and provisions of the Federal Supreme Court law, to expand its functions and jurisdictions, by adding some legal articles to be an

integrated one that covers various aspects? Are the solutions and treatments in this regard sufficient at the national and internal levels? Or it will need to take advantage of Experiments Comparative constitutional cases, and in order to shed light on this study It requires us to follow the analytical and applied approach at the same time, and the analytical one that is based on the investigation that stems from the interrogation of the constitutional and legal texts related to the subject - at its various levels - in the legal system and then analyzing, discussing and commenting on them. Relevant to the subject of the research, through which it is possible to determine the integrity of the legislative texts and the extent of the need to amend them or create new texts to be added to the existing ones with an indication of their sufficiency We will study this study in the following two demands (Jain, Jaggi, & Verma, 2020):

The first requirement: the methods of constitutional judicial treatments for cases of legislative omission in Iraq.

The first section: the method of detecting the violation without interfering with the treatment.

The second section: the dual processing method.

The second requirement: the position and trends of Iraqi legislation and the Federal Supreme Court regarding guidance.

Section one: The court's reluctance to impose its control over the legislative omission.

The second branch: its control moves with guidance when the legislation is deficiencies.

Section Three: The Court reverses its previous position.

The guiding role of the constitutional judiciary to address legislative omissions

By omission is meant the failure of the legislator to enact specific legislation that he should have undertaken in the organization, in accordance with the provisions of the Constitution or its regulation in a derogatory manner, and that such omission or omission would result in a waste of rights and freedoms, and that the idea of legislative omission existed in the administrative field before it existed in the field of The constitutional judiciary, and in Iraq, some legislation included the development of an organization to address cases of silence in some laws And the administrative judiciary has long ago committed itself to addressing cases of silence about the procedure or regulation through judicial rulings that cancel the negative decision and the administrative authority's abstention from taking any action that the law requires to take. The Iraqi constitutional judiciary dealt with the concept of omission and defined it as "legislative deficiency, and that legislative omission Linked Directly with the legislative authority, because the violation of the constitution by the legislative authority can occur through the enactment of laws violating the provisions of the constitution or through the legislator's abstention from exercising this jurisdiction. Text is minora About meeting the developments of life, And the legislative omission that is subject to the supervision of the Federal Supreme Court is what results in prejudice to a right or guarantee established by the Constitution such as the individual's right to life, security, freedom, the right to litigation, ensuring equality and equal opportunities and other rights and freedoms stipulated and guaranteed by the Constitution. and freedoms in an integrated mannerly It guarantees its guarantee and guarantee of its exercise and not to be diminished or diminished this " (Refer to Federal Supreme Court, n.d.; Federal Supreme Court, 2022). (Decision Federal, 2021on 2022)and for a purpose Knowing the most important judicial treatments provided from before The Federal Supreme Court regarding the exercise of some of its powers represented by the Iraqi constitutional judiciary The possibility of this guiding role It is necessary to say the judicial methods used in this regard, This is what we will look into as follows:

The first requirement: the methods of constitutional judicial treatments for cases of legislative omission in Iraq

We will study this requirement through the following two sections:

Section one: The method of detecting the violation without interfering with the treatment:

The constitutional judge's control over disclosure cases (the constitutional judge was revealing) receded without presenting any method of judicial treatment, whether by direction or warning, and the court's judiciary was satisfied with comeback M exposure To control legislative omissions ,Rather, its judiciary is directly and firmly established as soon as cases of omissions or legislative abstentions are revealed in most of its rulings and decisions, and it is sufficient to diagnose omissions without interfering with its treatment. Although there is a constitutional mandate to legislate without including its decision binding directive to the legislature benactment of repressive laws, Or condemn the legislator's failure to legislate it This understanding and orientation is enhanced by the judiciary of the Federal Court, we find it I made many decisions In the cases that were presented to it, it was determined that it "does not interfere with the choices of the legislative authorities and has nothing to do with that." This trend appeared consistent in its rulings, and it considered this behavior or approach as a general and important rule in its oversight field, and the names of this trend in its judiciary were various with different titles and excuses, including "a choice." legislatively" or that the case was instituted before the legislation required to be legislated, or on the pretext of the absence of laws regulating the appeal law, a And the said law has not yet been enacted, The appeal would have been filed before its due date, or It was not suit Foundation on law, as such a I told decisions several from her point of view, and provision s and a Procedures and orders, even those that were general and even those whose constitutionality is challenged \ (officialglimpseKFederal Supreme CourtIn Iraq).This is defined by the scope of its constitutional reference Therefore, we find that the court did not address the authorities directly To do or refrain from doing something that the constitution imposes on her, and she specifically avoided directing the leg is la or or alert or directing to him censure or plea Or even reprimand, for violating the constitutional requirements to enact laws, nor did it issue a directive to special Authorities ,to fill the short fall aleg is lature to implement the provisions issued by it, or to fill Void What happened in the legislation during a certain period, The legislator was left free to estimate the processing time, It did not interfere with the discretion of the legislator. Its role during this period was limited to just revealing about the offense ,Without a We do not go beyond that to the intervention by taking Processing procedures by Guidance and instructing to the relevant authorities, schedule led so general rule and judge its judicial trends in the exercise of its powers, That is, it derives its jurisdiction directly from the constitution and its reference to its provisions, which is the supreme law in the matter of the judiciary in the constitutional issues that are brought before it. perform its legislative function, Among the practical applications in the same direction for the judiciary of the Federal Supreme Court, for example, but not limited to (Josaiman, Faisal, & Talib, 2021):

- 1) In 2021, it decided upon its consideration of the appeals received against Legislative Order No. (19) of 2003 (Iraqi Gazette, 2003), and about freedom of assembly Reply to the appeal The legislator did not initiate the legislation of a law regulating the exercise of freedom of demonstration and assembly in accordance with the requirements of Article (38 / III) of the Constitution, despite its second reading in 2012, but the House of Representatives has not yet voted on it.
- 2) In another judicial application Regarding the legislator's omission "Legislation of a law for the management of endow mints" As the Federal Supreme Court rejected the aforementioned appeal due to the lack of legislation regulating endowments

and the affairs of its religious institutions based on Article (43/first/b) of the 2005 Constitution, which included a binding constitutional mandate for the Iraqi parliament to enact this law, , has commented how to manage endowments and their affairs and religious institutions on the legislation of a law that takes into account the views of all Islamic schools in the affairs of endowments, and that the mentioned law has not been legislated yet, so the case for appeal was filed prematurely and was not based on a law(The decision of the Federal Supreme Cour, 2012)

- 3) The Federal Supreme Court decided to reject the appeal contained in the unconstitutionality of Article (34/Second) of the amended Personal Status Law No. (188) of 1959, which stipulated that “a proxy shall not be counted in procedure T Social Research, Arbitration and the Rhythm of Divorce)Considering that some Islamic schools allow divorce by proxy, so this part that prevents divorce by proxy violates the provision of Article 41 of the applicable constitution, which states (a .Iraqis are free to abide by their personal status according to their religions, sects, beliefs or choices, and this is regulated by law" (To view the Federal Supreme Court Decision No. 59, 2011) Although the Federal Court decided to dismiss the case, However, the court revealed that the Iraqi parliament neglected to enact legislation to regulate the personal status of Iraqis according to their religion, sect or beliefs, based on Article (41) of the 2005 constitution, which time Parliament has a constitutional obligation to regulate the a Personal status for Iraqis.
- 4) and in directional and fundamental, The Federal Supreme Court rejected the challenge to the unconstitutionality of Articles (40 .)/43 of the amended Personal Status Law No. (88) of 1959, which deals with the issue of judicial differentiation after the text of the two articles contradicts the constitutional text (41) which enshrines the freedom of Iraqis to abide by their personal status according to their religion, sects, beliefs and choices, as well as because it contradicts Article 2 / first / a) of the constitution that prohibited the enactment of a law that contradicts the principles of Islam, It is noted that the Federal Supreme Court, despite the dismissal of the case for other reasons related to the fact that these two articles were originally derived. From Islamic Sharia and stipulated in the Personal Status Law is for organizational purposes and does not conflict with the provisions of the Constitution, However, the court made among the reasons for rejecting the case the absence of a law regulating personal status and just a. The requirements of Article (41) of the Constitution which I required Its application is breasts Law Thus, the law was not passed topic for the time being the present, So you will be invited The plaintiff lost her bond legitimate, which necessitates its response" (LookThe decision of the Federal Supreme Court in Case No. 52, 2016)This ruling declares frankly omission The M He initiated the issuance of a law regulating the personal status of Iraqis in accordance with. for the article (41) of the constitution, and that this law was not issued by the Iraqi parliament despite the existence of a mandate A law to be promulgated with the lapse of a reasonable period for its enactment since the issuance of the 2005 Constitution, but the Court I had enough By revealing the case of omission without taking a measure that constitutes a reservation against the legislator, such as directing, instructing or alerting the legislator, and the judgment did not include anything indicating the court’s condemnation of Parliament for its failure to issue this law throughout this period..
- 5) And in another case Likewise, the court ruled, “The Placing a text that does not conflict with the constants provision The c hello text app Article (2/ first/ a) From the Constitution of the Republic of Iraq for the year 2005,And that this lawsuit was

instituted before the legislation of the law required by its legislation, In this regard, where it is necessary to be in accordance with the aforementioned mechanism, and for the two reasons mentioned, the ruling decided to dismiss the plaintiff's lawsuit." (See Federal Supreme Court Decision No. 84, 2016). can forget tint C from the aforementioned ruling that the Federal Court, despite the dismissal of the case for not directing the litigation, it clearly indicated in the text of its decision that this case was instituted before the legislation of the Legislation required according to. Provisions of Article (41) of the Constitution, However, the Iraqi parliament is unwilling from this The constitutional mandate and the issuance of the ruling of the Federal Court and the lapse of a period of more than (17)year Issuance of the constitution of 2005, did not He takes the initiative to remedy this omission, and this confirms the ineffective eness judgment style Revealing in avoiding cases of omissions because the matter remains in the end in the hands of the legislator.

From this point of view, there must be safeguards to ensure that the effective content of rights and freedoms is given. The most effective means for this constitutional protection and guarantee is the constitutional review in general, and the power of the Constitutional Court to extend its control over the legislator, as a directive in particular. Through advanced judicial processing methods of guidance and counsel in grand draw landmarks Clear what constitutes a restriction or violation. Or cancel. Or Obstruction of rights and freedoms basic and the public.

The second section: the dual processing method

Very recently, the Iraqi constitutional judiciary highlighted the importance of constitutional judicial treatment and identified it implicitly in its decision.as signal The Federal Supreme Court in a decision It was released in 2022.franklyFor the first time in its judiciary, guidance is a method of judicial treatment of cases Absence of legislation, or Parliament not issuing this legislation, or shortcomings in organizing or drafting some articles that make them contrary to the Constitution This is evident in what I went to. The legislative omission that is subject to the supervision of the Federal Supreme Court is what results in prejudice to a right or guarantee established by the Constitution such as the individual's right to life, security, freedom, the right to litigation, ensuring equality and equal opportunities and other rights and freedoms stipulated and guaranteed by the Constitution. and freedoms in an integrated manner in order to ensure that they are guaranteed and that they are exercised and that they are not diminished or diminish hedy this In contrast, the importance of constitutional judicial treatment emerges, given that the constitutional judiciary is responsible for obligating the authorities to respect the rights of the people cam This can be done either by referring to the omissions or shortcomings in the legislation subject to challenge and notifying the legislative authority of that in order to address it as it has the original jurisdiction in the legislation. A And the Sending a binding recommendation to the legislator to avoid that omission" (The Federal Supreme Court Decision No. 161 , 2-22) Through the foregoing, we find that the Iraqi constitutional judge has approved through him the foundations and methods of judicial treatment of utmost importance, worthy of highlighting them, as far as they relate to the subject of our research. The most important treatments brought by this ruling are summarized in the following points:

- 1) Pointing out omissions or shortcomings in the rebuttal legislation.
- 2) Notify the competent authority of the legislation in order to address it.
- 3) Directing a binding recommendation to the legislative authority to avoid this omission.

It should be noted that according to these binary treatments included in the cited ruling, we arrive at several results, the most important of which is that the method bilateral, the most prominent of which is the court's judiciary, although it explicitly referred to the provisions of

the directive as a method of dealing with cases of “legislative omission” and as a means of confronting the legislative shortcomings and shortcomings. They are useless or ineffective means of putting pressure on the abstaining authorities, and by analyzing the recent trend of the Federal Supreme Court, we find that it did not rely on the method of self-treatment on the part of the constitutional judge. Without waiting Response the authorities To avoid the case of a Legislative negligence, the means of confrontation have developed for several reasons, the most important of which is the lack of response on the part of Legislative authorities to avoid no Anonymous, the length of the response period, and this means that a text or legislation contrary to the constitution will remain for a long period without a Cancel or disable I tend persistence violation of the rules of the constitution, style binary means for treatment directed It does not mean that the legislative authority responds in all cases to avoid a situation "Degraded Organization "The initiative remains by treatment The legislative power is in the hands of the legislature, and the text or legislation remains until it is amended or repealed in violation of the constitution (Kharvi & Pakkala, 2020).

And by addressing the rulings of the Federal Supreme Court, we find that the assumptions that the court is directly and explicitly exposed to in cases of omissions, it cannot be said with him that it has embraced the provisions of the directive as a means of real, continuous and realistic treatment in its judiciary except rarely, and it is not in line with the general trend of advanced and effective means of omissions The legislative judiciary adopted by the comparative constitutional judiciary, and similar to what was done by the constitutional judiciary in Germany, Italy, France and Hungary, which adopted the provisions of the directive as a basic means for its rulings, and reinforced it with the idea of (reasonable period)Which is based on a The constitutional violation resulting from the legislative omission still exists until the time of the decision of the Constitutional Court, and the Constitutional Court in Germany and Italy counted a period of(Four years) a reasonable period to avoid legislative omission or omission. In this case, the legislator must intervene in the time necessary to address the problem a Legislative omission And to avoid what might happen, the future (Al-Shimy, p. 148) As for mere directives, advice, or instructions to the legislative authority without the constitutional judge having a means to self-address this omission, the treatment of omissionLegislativeremain hostage to the will of the legislator,

Conclusion: The Iraqi constitutional judge has used various methods in his judicial dealings, which have varied In terms of severity and impact And the From Reciprocal bilateral means between the constitutional judiciary and the legislative authorities, And I followed the method of revealing rulings and moving.to the explanatory provisions established And the passing baby provisions Guidance that came free of reasonable duration to respond The legislator has it, even though the legislator in most cases responds to the decisions of the Federal Supreme Court whether By issuing new legislation to replace the legislation declared unconstitutional or by amending it in accordance with the Constitution, and note wiggle Attitude The Federal Supreme Court and its reluctance to use directive provisions, and the extent to which it is used and presented as an effective constitutional judicial remedy, The court has Directly reject this method Under the pretext that not from its specialty, and accepted with other times presented as a therapeutic method, It did not adopt a fixed approach in a stable manner, and this variation in trends reflects in fact the policy followed by the Court, and the guiding role that its activity shows.

The second requirement: The position of Iraqi legislation and the constitutional judiciary of guidance.

that Iraqi constitution, came my maternal uncle a from any reference to the idea of

directive control, as a A means that allows the constitutional judiciary to intervene to treat and correcting the behavior of the legislative authorities, whether positive. By enacting legislation, or negatively by her inaction ⁽¹⁾. Hence the texts Iraq constitution 2005, And the rules contained in the Federal Supreme Court Law No. 30 of 2005, and its internal law No. 1 of 2005, devoid of reference Frankly, this kind of control as a therapeutic method for cleanup y M cases breach the authorities Legislature with its constitutional duties, can be explained that In practical terms, That the constitutional legislator wanted to establish a philosophy that would establish a role. Larger For the legislator towards the constitutional rules, so It is his responsibility to develop and grow we These texts, and the extent of his compliance To the directives stipulated by the constitution as the body that can understand and translate them into legal rules that are embodied in the form of laws, as well as the IUK position cupied by The Federal Supreme Court among the federal authorities, by expanding its functions and jurisdictions In terms of the diversity and flexibility of substantive and procedural decisions that allow them the opportunity to establish principles and rules contained in the decisions. issued on the basis of That Specialties through which you can from which judgments can be drawn an include directions and a Guidelines for what you complement the shortcomings and short comings Legislative. And because the constitution does not expressly provide for the granting of the judiciary, especially that the “constitutional judiciary” does not adopt The tendency to complete the texts or fill the void that results from the authorities’ refrainment or the legislator’s silence from disrupting the constitutional texts as the constitutions of the comparative countries did, this led to the disparity and divergence of the positions of the Federal Supreme Court and the extent to which it used the means of guidance and presented it as a treatment for cases of censorship of omissions or legislative abstention. The constitutional judiciary is responsible for obligating the authorities to respect cam the Constitution Its rulings were based on fixed rules, including, for example: “For a It is permissible for him to intervene to compel these two authorities to issue a law or to issue a law decision on a specific subject, since that is from the discretion of those two authorities in accordance with the provisions of the Constitution, and then it is not permissible to force them to intervene to issue legislation at a certain time or in some way, and then the jurisdiction of appeal is removed in such cases. Status of the constitutional judiciary oversight (See Federal Supreme Court Decision No. 30 , 2021) The Federal Supreme Court also settled on “The a Obligation of the legislature and the Executive by issuing instructions to avoid extremes R Legislative in a specific law that is not within its competences Federal Supreme Court (See Federal Supreme Court Decision No. 4, 2021), as "The Request from the Federal Supreme Court a The House of Representatives is obligated to amend any legal text that is outside the jurisdiction of the Court, as it is considered an interference in the work of the legislative authority and is inconsistent with the principle of separation of powers. (Look Federal Supreme Court Decision No 26, 2021). The fact that it is independent of the discretion of those two authorities in accordance with the provisions of the Constitution, and therefore it is not permissible to force them to intervene to issue legislation at a certain time or in some way, and then the jurisdiction of appeal in such a case is outside the control of the constitutional judiciary, And since the enactment of laws is considered one of the exclusive competences of the legislative authority in accordance with the provisions of Article (61 /First) from the do stwr 2005 (See Federal Supreme Court Decision No. 5, 2021) And the court's judgment was based on that Because the constitution did not expressly provide for the granting of the judiciary, especially if the constitutional judiciary does not a dopty The tendency to complete the texts or fill the void that results from the lack of legislative regulation to control the authorities’ abstention or the legislator’s silence from disrupting the constitutional texts as the constitutions of the comparative countries did. Obligating the

(1) Looking at: Dr. Hisham Mohamed Fawzy, Oversight of the constitutionality of laws A comparative study between America and Egypt with an analysis of the constitutional provisions in the two countries, Dar Al-Nahda Al-Arabiya 2006 2007, pg. 640.

legislative authorities to intervene in the legislation, and in the end, the decision to legislate is in the hands of the legislative authorities, and it is understood from this that the means of constitutional judicial confrontation that the Federal Supreme Court can provide is limited to the role of the judiciary on merely revealing the existence of cases of legislative omissions in the legislation under challenge. Without y Take action to treat it either By positive or negative directives To the legislative authority to remedy the shortcoming or shortcoming that taints the appealing text, and this type of judicial treatment is practically ineffective., Because the role of the constitutional judge is limited and is limited to merely revealing a case of omission or abstain, without going beyond that To send directives, and what confirms and reinforces the direction and behavior of our court's abandonment of confronting the legislative authorities and its abandonment of negative behavior or legislative silence and its restriction to apparent texts, is its practical follow-up of this approach, and in application of that In this area, that constitution The influential Iraqi threw on me legislator Iraq I commissioned constitutionally by law Laws, examples, but not limited to:

Miss Machine Adjudication of accusations The head and members of the executive branch and despite the passage of more than (17A year after the promulgation of the constitution, However, the Iraqi legislator did not take measures The necessary legislation for its issuance, and this is a legislative abstention Hence, the failure to promulgate this law despite the passage of a sufficient and reasonable period and despite its importance makes Parliament under the threat of violating the constitution by refraining from exercising its legislative competence nory Counting the reluctance of the Iraqi legislator in this case to be a legislative silence Such incidents are outside the scope of constitutional control, so It was home work The Federal Supreme Court must subject the negative behavior of the Iraqi legislator to its oversight and condemn his refusal to legislate during this period? as such That the Federal Court reasoned its decision (The decision of the Federal Supreme Court in the case numbered 41, 2017) The dismissal of the case for the lack of jurisdiction of the Federal Supreme Court in the absence of the legislation required to hold its jurisdiction, and this is its meaning Confirmation of the Federal Supreme Court B The lack of legislation issued by the competent authority contrary to. of the Constitution, was The Federal Supreme Court should not sufficiency detect this silence, but Her ruling should have included a directive to the Iraqi parliament to intervene to address the legislative void caused by the lack of T The law of this law and the constitutional crisis caused by the absence of this law in light of the political developments that Iraq has witnessed, and despite repeated instances of challenge to missions The President of the Republic (in addition to his position), accusing him of perjury and disavowing him of his duties In another similar case she looked, but she insisted on her position and continued to adopt her point of view contained in the aforementioned decision, reasoning for her decision. That any accusation is attributed to him, the decision on it, even if it is one of the functions of the Federal Supreme Court, according to the provisions of Article (93 / sixth)a) from the constitution R, However, the exercise of this jurisdiction is subject to the manner of adjudication in such cases, in light of the provisions of Article (61/ VI).b) From the constitution, and without the issuance of this law, the jurisdiction of the Federal Supreme Court in accountability will remain suspended (The decision of the Federal Supreme Court in Case No. 65, 2017) 'Its decision also contained no guidance or an appeal to the legislature to promulgate this law notwithstanding the consequences of its failure to promulgate it disable Jurisdiction of the Federal Court for high And it relied on this to the appendix of item (sixth of Article 93) of the Constitution, meaning that the whole matter must be regulated by law, in order to establish its jurisdiction to adjudicate the lawsuit filed in this regard, which is one of the matters mentioned in Article (61/sixth/b) of the Constitution. That a law be issued by the House of Representatives regulating how to settle accusations against the President of the Republic, and as long as this

law was not issued for the purpose of filing this case, the consideration is outside the jurisdiction of the Federal Supreme Court, which does not take place without the issuance of the mentioned law.

- 1) And the From the texts In the Constitution of the Republic of Iraq for the year (2005) the text of Article (65) of it, which stipulates that a legislative council shall be established to all ovy board The federation includes representatives of the regions and governorates that are not organized in a region, and it regulates its composition, terms of membership, its competence, and everything related to it by a law enacted by a two-thirds majority of the members of the Council of new Father, We find that this text is obligatory to legislator The enactment of this law, and the legislator is fully aware that it is obligatory by issuing Legislation to form the Federation Council and determine its competencies and conditions for membership in it. It also specified the majority necessary for its enactment, and a sufficient period has passed since the issuance of the constitution that allows the legislator ton H, but to date the legislator has not issued a law to establish a council the Uni on Despite this commanding text and this make up Also unconstitutional (Court Decision No. 72, 2012).
- 2) Among the other basic organizational laws, what Article (92) of the effective Iraqi constitution referred to, referred to the issue of defining members The Court, the method of their selection, and the work of the Court into a law enacted by a two-thirds majority of the members of the Council, It is also noted on this constitutional text Rey free From specifying a period of time that obligates the legislator h perfect to intervene for God's sake Contrary to some dashes Tyr And the Iraqi legislator is still silent about regulating this law This requires the intervention of the constitutional judge in the event of Omissions or silence Total on the part of the legislator Guy R Coupled with a time period by predicting The legislative authority is required to exercise its jurisdiction. Here it may arise the question is how long does it take to intervention? It has been more than one year since the Iraqi constitution was promulgated in 2005Seventen yearsa Is this period not sufficient to review laws that violate objective rules contained in the Constitution?! and make her dieplanmp constitutional texts? The answer to that, we find that this period is sufficient to review the laws, And it is time for the legislator to intervene to address this issue Organizational failures violating these objective rules contained in the Constitution, and that the issue is not limited to the intervention of the Federal Supreme Court Rather, it needs Parliament's intervention, because the legislator's commitment here is a political one, not just a legal one (It is worth noting that Federal Supreme Court Law No. (30), 2005).

It may be questioned here about the possibility or how to conduct Influencing the legislature for the purpose of interfering with bra leg is lation, In the event that the constitution is devoid of a text binding on the legislator, he is obliged to intervene to regulate a specific issue as long as the exercise of his jurisdiction is licen sedsets The right time to intervene or not to intervene and especially If the emitter of silence The legislator is a politician? and find That the oversight of the constitutional judge for cases(Legislative omission) has become very necessary and important, the job of the constitutional judge The main is Implementation of the provisions of the Constitution, it shall be without MA to cancel every legislation that contradicts the Constitution, the same is that the violation is positive by virtue of an apparent legislation that is in clear violation of the provisions of the Constitution, or the violation was negative, hidden, or concealed by the lack of organization and its basis is a derogatory

regulation of the ruling rule. its absence Oversight is a waste of rights, freedoms and public duties, or unreasonably prejudice to legal position by Or in what he demands of the necessity for the constitutional judge to impose the supervision of the legislative abstention, given that the silence of the legislator regarding the regulation of the law to be referred to him a It is constitutionally regulated. and then y p D is a violation of the constitution, and the intervention of the constitutional judge is justified to verify the violation of the legislator to to constitution, a N censorship of the nation Legislative me s Over sight of for ces p D does not exist, because its presence is at the heart of the constitutional document when it pronounces the rights of A fricansa Dra And their freedoms or something from the general duties, so everyone should benefit from these texts that are not mentioned, because it is an obligation Imagine The silence of the legislator about a settlement Machine set to an eqap This is negative, and its continuation constitutes a violation of the constitution, and a constitutional judge may not an standing silent a In front of a rule that violates the constitution, and the basis of its violation is its non-existence, given that its absence constitutes a legal rules Because it is against the constitution, it is u an impose a constitutional judge to t mete on business or refraining from disorganization is Send necessary directions or orders The legislator must intervene and organize this silence according to the data of his discretion granted him, noy The constitutional judge only intervened by obligating the legislator to address the deficiencies in regulation, by finding a firm rule and that Interfering with legislation, And the what It is compatible with the economic, social and political conditions. From this standpoint, the judiciary Comparative Constitutional He set his eyes on how the legislator can violate the constitution by his silence, which he does not have through his actions, meaning if the legislator is obligated by not violating the constitution in its legislative work, how? Shrugs The judiciary expresses its silence if it constitutes a violation of the constitution! (Al-Shimy A. , 2022, p. 6), And if censored Under-organizing with previous pictures, Dispute in jurisprudence And the constitutional judiciary, but it is an aspect of jurisprudence that sees deficient regulation by the legislative authorities, which is Shop to The oversight of the Constitutional Court if the legislator addresses to organize topic, but this topic is incomplete, either on purpose or negligence on the part of the legislator so that it is a minor.in all aspects Which leads to a breach of the security of the constitutional regulation of the subject matter (See: InesPerfection ful, 2016, p. 216) And the It's settled on watch This phenomenon in Most constitutional systems, especially those that expressly provide for this type of control in their constitutions (The Portuguese Constitution issued in 1976, pp. 265-264), sober seen aspect of jurisprudence, Ban Ire frail About constitutional organization Can can be a way effective in the hands of the courts Constitution alto protect The rights and freedoms enshrined in the constitution through the development of texts Constitutional Regulating them into practice and ensuring the continuity of their guarantee in the legal system, as these texts are based on the authorities commitment double. A Positive and negative at the same time, parliament must The Intervention through the legislation issued by him to set principles Constitutional the organization These rights are put into practice, and this is guaranteed his commitment The answer, And the a the intervention has already been organized to set up. alyat specific to follow and thus He will lose his freedom completely about it will not be able to to issue What legislation affects them? A It prevents people from enjoying it, but it can a We do not interfere legislatively to increase the guarantees of its practice, and this is the content of the negative obligation, and from here in an protect Rights and ensuring that individuals enjoy them pass through inevitable through nickel legislative abstinence.

We find it better that The Federal Supreme Court takes rulers routing being a Instrument effective treatment To counter the legislator's refusal to issue legislation that the constitution required to promulgate, because such provisions represent guidance and guidance to the

legislator on the importance and necessity of a certain legislation, in addition to what these provisions represent as a means of pressure on the legislator to exercise his legislative competence, especially after informing public opinion of these provisions and narrowing the scope of the freedom of action left to the authority Legislative discretion The political, economic and social conditions suitable for starting the job legislative, We will present some hypotheses in this regard, from the reality of the judicial applications of the judiciary of the Federal Supreme Court, in the three branches as follows:

First branch: The court's reluctance to impose its censorship on legislative omissions

In the case of The unconstitutionality of the procedures was challenge deprives Election of Vice Presidents foray didn't come" one basket "Any time, the Speaker of the House of Representatives did not allow the election process to be done individually ,And that this procedure is contrary to the Vice-President of the Republic Law No1for the year 2010,And in violation of the articles of the constitution (1, 55, 70, 76), and despite the fact that the court is only federal I The Supreme Court dismissed the appeal based on its decision (See the decision of the Federal Supreme Court in the case numbered 42, 2011), which perished That the Constitution and the Vice-President's Law did not specify the method of electing the Vice-Presidents of the Republic, nor the election mechanism, and a The election of the House of Representatives, the three Vice-Presidents of the Republic nominated by the President of the Republic once (one basket) was based on the consensus of the components and political forces represented in the House of Representatives, and that their election once does not violate the Constitution as MDo not violate the law of representatives president The aforementioned republic, therefore, the plaintiff's lawsuit is not based on a legal basis", and find The court has fallen into a severe contradiction in the content of its ruling. On the one hand, it revealed the shortcomings and shortcomings in the Constitution and the Law on the Election of Vice Presidents No. 1 of 2010.,For not specifying the method of electing the Vice-Presidents of the Republic, nor the election mechanism, On the other hand, it was decided that the procedures for electing the three Vice-Presidents of the Republic at once"1 basket "It does not violate the constitution And the Vice-President Election Law No. (1) of 2010. We also find that the court has avoided declaring the law to elect Vice-Presidents of the Republic unconstitutional despite the similar shortcomings and shortcomings in organization to avoid affecting the political process, and the court decided to dismiss the case without directing instruct To the legislature to avoid the omission of the young The way to elect the three vice-presidents of the republic, to avoid A constitutional problem in the future, And this position According to the Federal Supreme Court.

Second branch: moving Then eckse by direction at the failure in legislation.

look up BT The Federal Supreme Court that there is a vacuum or lack of legislation as a condition for moving its oversight With guidance, that's on the occasion received an order no Limit of members of Parliament for champions And the abolition of Paragraph (Third) of Article (12) of the bylaws of the House of Representatives due to its unconstitutionality and its text, "If the position of the Chairman of the Council or any of the members becomes v a can this deputy For what reason was the council elected? by the majority Absolute successor to him in a And every session he holds to fill the vacancy according to the controls of political balances between the blocs', the court has consider stabbing based to its competence to monitor the constitutionality of laws and no window system, and who should an acknowledge R touchstone based on a Why rule constitutionally? A And the The unconstitutionality of the text under appeal, as is the case in all similar appeals. However, the judiciary of the Constitutional Court went further than this through what it decided." And from reading the text of Article (51) of the Constitution, The House of Representatives establishes a system a internal To organize

its workflow, And the a This refers to setting organizational rules for the conduct and convening of sessions, attendance and absence, and other formal matters that ensure the proper functioning of the council. And the no Objective rules may be set in the internal rules regarding how to select a Speaker of the House of Representatives And any of his deputies The vacant position of any of them for any Cause was, because an this task don't blamer In the matter of regulating the workflow of the Council stipulated in Article (51) of the Constitutional The appointment of a new chairman of the board and seta The limit of his two deputies when the position of any of them becomes vacant, must be stipulated in the core of the constitution and not in the internal system, And that's what follow him The drafter of the constitution in Article 55 of it, where it outlined how the House of Representatives elects a president and two vice presidents at the start of the electoral cycle. The constitutional context must be the election of a new speaker And the a Limit his two deputies during the electoral cycle by a provision in the constitution and not by a provision in the bylaws, And the a Putting such a text in the bylaw deviates from the duties of the bylaw stipulated in Article (51) of the Constitution. Accordingly, paragraph Third Article (12) of the internal system of the House of Representatives published in issue (4032) of the Iraqi Gazette, The subject of the request for cancellation in the pending case don't stops And the mission set for the internal system stipulated in Article (51) of the Constitution, which is (regulating the workflow in it..)Accordingly, it was decided to direct the Constitutional Amendment Committee in the House of Representatives to take the necessary measures to put a text in the heart of the constitution that addresses how to elect a speaker of the House of Representatives or one of his deputies in the event that the position of any of them becomes vacant during the electoral cycle (See the decision of the Federal Supreme Court in its session on 10, 2019).,Accordingly, the Federal Supreme Court has firmly and unequivocally established a guiding policy as a guiding and binding remedy, in order to serve the stability of the legal and constitutional system. Through it, the constitutional judge played a pivotal role, taking the new and unconventional concept of constitutional oversight, a concept that made its function beyond oversight over the constitutionality of ordinary laws to extend as well as oversight over the constitutionality of constitutional laws, in addition to that deduced philosophical principles, the most important of which is that the constitutional judge Concluded to send binding directives to the legislative authority, which played a positive and important role in assisting the work of the legislative authority on the one hand, and on the other hand, the Federal Court approved two important principles, which were not addressed in the constitutional document, their effect a The court was exposed to the cases of omission of the writer of the constitution to address some issues, and in this way it has added competence to its competencies in controlling the constitutionality of laws and regulations in force under Article 93 / first of the constitution, on which the court should decide on the constitutionality or unconstitutionality of the contested text, but the judiciary The court went further, and the court recognized its right to assume the legislative power in the organization A judicial remedy was provided through her ruling who included ay wanta To the Constitutional Amendments Committee to remedy a ruling that the clerk of the constitution omitted Determining how to elect the Speaker of the House of Representatives or one of his deputies in the event of a problem for the position Although it was not stipulated in the constitutional document, on the other hand, the court avoided declaring the penalty for the contested paragraph, avoiding the ruling of its unconstitutionality and its abolition from the legal system. On the other hand, the researcher supports the above B Some public law jurists have argued that not declaring unconstitutionality and merely sending directives, without interfering with setting rules or basic principles by the Constitutional Court, is described as a positive guiding policy. It also decided to impose its censorship by directing and instructing again, on the occasion of examining the constitutionality of a law regulating a quota for minorities, and its ruling included a directive to the House of Representatives. To issue legislation regulating a quota for minorities from

among the components of the population Iraq, the beneficiary of this the decision, It included a directive for the legislator to avoid palaces And the void resulting from not enacting a law regulating a quota for minorities from the components of the Iraqi people (Lookresolution Federal Supreme Court No. (6, 2010).

Third branch: The court reversed its position despite the lack of a and a void in legislation.

In the same direction and in a similar case, the Federal Supreme Court responded Limit Suits that demanded the allocation of a minority quota of minorities The Iraqi people for lack of jurisdiction (decision of the Federal Supreme Court in the case No. (20), 2014) And the Its facts are: And in 2014The unconstitutionality of Article (11) of Law No. (45) of 2013, the Iraqi Parliament Elections Law, had previously been challenged, requesting to amend the aforementioned article by adding the phrase (Faili Kurds) to this article so that they would have a quota similar to what the Iraqi legislator did when he allocated them four seats in the parliament. The provincial councils, considering - that is, the appellants - that the legislator's omission to mention (the quota) in this law is in violation of the principle of equality and equal opportunities stipulated in Articles (14/16) of the Constitution, calling on the court to stop the application of the said article and to issue legislation that includes the quota for the Fayli Kurds (Al-Musuy, p. 2).,except if Federal Supreme Court, She contradicted herself in a ruling issued in the year 2010In its decision dated 7/13/2014, the court held that the quota for Faili Kurds was not mentioned in the aforementioned law, It does not make this article unconstitutional, being an option Legislative Return to the legislator alone, If a request to amend the aforementioned article by adding Faili Kurds to it so that they have a special quota in the House of Representatives is not within the jurisdiction of the Federal Supreme Court, just as it is not within its competence to oblige the defendant, the Speaker of the House of Representatives, to allocate a certain quota for the Kurds Faili received blood howl for not Jurisdiction.

We find through the foregoing, that the judicial method of the Federal Supreme Court does not have a specific mechanism or adoption of a unified approach, or a fixed course, as its methods varied in providing remedies and intervention to find solutions in its judicial policy towards the federal authorities., by narrowing and expanding its provisions, and we also find that the change that occurred in its judicial policy, can make its true value in determining the scope of oversight contingent on the constitutional judiciary's assessment of it, and the extent of its desire to abide by it, or its use in extending the scope of its control or control according to the circumstances and the circumstances governing the relationship between it and the federal authorities, However, the question that can be raised is: Does the Federal Supreme Court have the power or authority to direct any of the federal authorities to do something or refrain from doing something? Especially after her judiciary was characterized by flexibility at many times, and extensively? If the answer is yes, then what is the legal basis for the authority of the Federal Supreme Court to direct?? And the answer to that is We find it by contrast in Attitudes and directions of the judiciary of the Federal Supreme Court regarding its possibility of directing the federal authorities in accordance with constitutional requirements, Sometimes it is enough to reveal Under-organization cases ,Without a directive or an appeal to the authorities sat Legislative It is the dominant feature, and other times it watching limited monitoring no Reach B these necks Bits extent to what a More than just please a And the The invitee to me Fill Void legislature, and sometimes reveal a case Silence or abstinence Legislative with a binding directive to the legislature to issue new legislation to replace the repealed legislation, and this is, rare to spend, and little what resort in many of its decisions no Complete imperfection, shortcoming, or absence of a legal basis ,while we find that The Federal Supreme Court, in some of its rulings, has considered the deficiencies or shortcomings in the texts of some legislation that pointed to it The appellant violates the principle of equality

and equal opportunities. It is just a legislative option that does not contradict or violate the provisions of the Constitution. or Not Shop to for neck second stitutionale.

Therefore, we can say that the Federal Supreme Court even if it has extended its oversight Guidance as a method judicial processing, However, her treatments were very limited It varies from case to case With him, the views of jurisprudence differed regarding the possibility of the Federal Court to exercise a real guiding role for the federal authorities (Al-Moussawi).,Others see, It is not possible to conclude that an hermetic It has begun its control under the direction of and That was an acceptance of this kind of neck a and refused. To direct it, is based This view on verdicts is sued About the Federal Court In regard to directing Competent authorities by taking the necessary legislative measures and measures Not helpful in reaching A specific answer in this regard, to a It did not resolve the dispute section about for this touch in most cases, the judiciary is satisfied with the response to lack of jurisdiction. and sometimes It suffices with deciding the unconstitutionality of a legislation or a text due to the legislator's negligence or inadvertence. Contrary to formal or substantive transcendence without Guidance the authorities competent to avoid the effects of this un constitution alitys or legislation, and sometimes. Others have exercised their interpretative jurisdiction to avoid excluding legislation from the scope of unconstitutionality.

Conclusion

We presented the topic of the guiding role of the constitutional judiciary to address legislative omissions, and we derive from our study some important results that should be recorded in this conclusion and some suggestions:

results and suggestions

Will n Presentation of the most important results and Proposals which of u a Taking into account the development of constitutional oversight, and activating it in a positive way, which brings benefit and good the society has rulers and ruled, individuals and institutions.

First: the most important results extracted from this study:

- 1) That The constitutional judge exercising his guiding role, she part or branch One of the branches of oversight of the constitutionality of laws, It is based on the same philosophical basis, which is respect for the constitution and the supremacy of its rules, and it shares its justifications with it Constitutional The process and theory to some extent, but they differ in terms of controls, curriculum, monitoring and treatment mechanisms, And the General controls in oversight of the constitutionality of laws In addition to these controls, there is a unique over sight routing With special controls, most notably the extension of necks get distracted To the state (legislative silence or silence) as who Conveniences Which is the most specific manifestation of discretion, as silence in such a case is considered a license by the legislator, but if this silence is accompanied by a constitutional obligation or mandate, then this license is considered a will, and it is a refusal the authorities subject to oversight by the constitutional judge, especially if it is legislate or Constitutional may Locatetimepre -of the legislature to accomplish This is a constitutional obligation, as well of its controls. private, is to extend the scope of its control on me The to fail In the organization and this adjuster is very consistent with stylcens or ship Right on the constitutionality of laws, as oversight is focused On an apparent text or legislation - that is, issued by the legislative authority, and the effects of a dispute over its constitutionality when implemented, As the

constitutional courts try as much as possible to avoid oversight of the legislative abstention from directly affecting the legislative authority, unless the constitutions or legislation regulating the work of these courts provide for the initiation of oversight over the legislator's abstention from taking measures. Legislative protection of public rights and freedoms.

- 2) Through this study, it became clear to us that there are quite a few important legislations, which should have been issued according to the issuance of the Iraqi Federal Constitution of 2005, but so far these legislations, especially those complementary to the constitution, have not been issued, despite the start of the fifth session of the Iraqi Council of Representatives. Despite the passage of seventeen years since the issuance of the Iraqi constitution.
- 3) We surveyed the frequency and variation of the use of constitutional judicial treatment methods in the judicial policy of the Iraqi constitutional judiciary in terms of diagnosis, severity and impact, starting from its revealing rulings and moving to explanatory rulings and passing through directive provisions or abstract indictment rulings, which came devoid of a reasonable period for the competent authorities to respond to them, as noted. The Federal Supreme Court fluctuated and varied in many situations in adopting the provisions of the directive. At one time, it refused to exercise this jurisdiction, citing the exclusive jurisdiction of the court, and at other times, it accepted prudently with its license to use the authority to direct the federal authorities, whether it was on the occasion of dismissing the unconstitutionality of the legislation or supporting it for him.

Second: the most important Suggestions:

- 1) The necessity of working to amend the jurisdiction of the court. The Federal Supreme Court in Article (93) of the Constitution, and its inclusion in a paragraph allowing the Federal Supreme Court to conclude cases of denial or a The legislatures perform their constitutional duties in a way that leads to a violation of the constitution, at the request of any person or on their own initiative, the duty to We call upon the legislative authorities responsible for this refrain. The need to intervene to fulfill its duties, with a specific date set to do so, similar to the Hungarian system.
- 2) A legislative amendment is being made, by adding an article to the law of the Federal Supreme Court, allowing the judge Constitutional, m n Choosing the constitutional judicial remedy, including binding directive provisions coupled with a reasonable period, in the event that the legislative authorities fail to take legislative or administrative measures and measures within a period determined by the court.
- 3) The necessity of making a legislative amendment to the law of the Federal Supreme Court to allow the use of the police judiciary method, ba We don't give reluctance powers. And the delay in term or period of time, the need to intervene in a manner that achieves fulfillment with its obligations. Constitutionalism and Legislative Reformed effective van The will of the constitution is manifested in implementing the largest possible amount of legislation, as is the case comparative constitutional systems.
- 4) The necessity of making a legislative amendment to the law of the Federal Supreme Court to allow it to review and monitor cases of legislative emptiness and deficiencies created by the application of laws after their approval that was caused by the omission, negligence or omission of the competent authority by legislation, Whether or not there is a constitutional obligation for the authorities to intervene

in legislation if the subject of regulation detracts from the guarantees of rights and freedoms and exposes them to danger through the mechanism of directing to a Mighty authorities to do with its obligations Constitutional legislation and avoiding cases Legislative omission.

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