

The Importance of The Decisions and Judgments of The Bahraini Constitutional Court

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Abstract

Constitutional rules occupy the top of the legal hierarchy in a state, as they serve as the foundation for all other legal rules. They establish the three branches of government - the legislative, executive, and judicial powers - and define the powers and competencies of each branch. Additionally, constitutional rules outline the rights and freedoms of individuals, thereby imposing restrictions on the actions of public authorities and preventing them from acting outside the bounds of the constitution. Given the absolute and supreme nature of the constitution, there must be a mechanism to ensure that all laws enacted by the ordinary legislature and regulations issued by the executive branch comply with its provisions. This is where the idea of judicial review of the constitutionality of laws comes into play. Without effective judicial review, the constitution becomes a mere formalistic rule with no practical or legal value. By examining the legislative texts, we find that the Bahraini legislator has adopted judicial review of the constitutionality of laws, as opposed to countries that have opted for political review. The Bahraini approach includes both prior and subsequent forms of review. In order to respect constitutional rules, there must be a court that verifies the conformity of laws with the constitution, granting the decisions of that court legal validity, whether it is relative or absolute. Moreover, these decisions have legal implications. Considering the significance of having a constitutional court that oversees the constitutionality of laws, it is necessary to assess the achievements of the constitutional court in terms of legal and constitutional compliance. It is also important to emphasize the supremacy of the constitution over other laws and to determine the importance and validity of the court's decisions as crucial judgments pertaining to matters of utmost importance to the state and individuals.

Keywords: Constitution, Constitutional Review, Validity of Decisions, Constitutional Court.

INTRODUCTION

Importance of the Research

The scrutiny of the constitutionality of laws is a guarantee among the assurances stipulated by the Bahraini legislator in order to protect the principle of the supremacy of the constitution. The importance of the research is evident through the significance of the subject itself, as it focuses on studying the nature of the scrutiny of the constitutionality of laws and the judgments issued by the Constitutional Court, as well as the resulting effects.

Research Objectives

The scrutiny of the constitutionality of laws is one of the most important issues that has sparked jurisprudential debates due to the problems arising from the practical application of these judgments. These judgments may affect rights, freedoms, and legal positions. Therefore, our first objective is to highlight the extent of the importance of scrutinizing the constitutionality of laws and the temporal scope for implementing a judgment declaring a certain law unconstitutional. Our second objective is to demonstrate the validity of the judgments issued by the Constitutional Court.

Research Problem

The subject of this research involves several problematic issues, including the following: Does the Constitutional Court adhere to specific deadlines in order to decide on the constitutionality of draft laws and express its decision on whether they comply with the constitution or not? What is the level of validity of the report issued by the Constitutional Court declaring the unconstitutionality of draft laws? Does this report enjoy

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the same validity as the judgments issued by the Constitutional Court regarding its subsequent scrutiny? Is the judgment issued by the Constitutional Court declaring the unconstitutionality of laws inherently revealing or constructive in nature?

RESEARCH METHODOLOGY

The research relied on the analytical approach by analyzing legal and constitutional texts to understand the approach and orientation of the Bahraini legislator regarding the scrutiny of the constitutionality of laws.

The First Topic

The Validity Of The Decisions And Rulings Of The Constitutional Court And Their Time Frame

If the principle is that the court exhausts its jurisdiction in the case as soon as the ruling is issued, and that judicial rulings are subject to appeal by the concerned parties in accordance with the methods of appeal established in the procedural law, however, this matter differs with regard to the rulings of the Constitutional Court, as the legislator stipulated that they are final rulings and not subject to appeal. Therein, what is related to the validity of the ruling issued by the Constitutional Court is the time frame of the ruling issued as unconstitutional, and accordingly we will discuss this as follows:

The first requirement: the validity of the decisions and rulings issued by the Constitutional Court

The second requirement: the time frame for the rulings issued as unconstitutional

The First Requirement

The Validity Of Decisions And Rulings Issued By The Constitutional Court

With regard to monitoring the constitutionality of laws, the Bahraini legislator has adopted prior judicial oversight in addition to subsequent judicial oversight. This is evident from what was stipulated in both the Constitution of the Kingdom of Bahrain and the Constitutional Court Law. The effect of the report issued by the Constitutional Court in the case of prior oversight differs from the effect of the ruling issued by The Constitutional Court in the event of subsequent oversight, and accordingly we will discuss this as follows:

Section One: The validity of decisions issued by the Constitutional Court in the event of previous censorship.

Section Two: The validity of rulings issued by the Constitutional Court in the event of subsequent censorship.

First Branch

The Validity Of Decisions Issued By The Constitutional Court In The Event Of Previous Oversight

Both the Constitution of the Kingdom of Bahrain and the Constitutional Court Law stipulate that the King has the right to refer draft laws before issuing them to the Constitutional Court to decide whether the draft laws comply with the provisions of the Constitution or not, and therefore this oversight is limited to laws without regulations (Al-Shaer, Ramzi, 2003, Zaki, Mahmoud Ahmed, 2005).

Accordingly, after presenting the draft laws to the Constitutional Court to undertake the task of examining those drafts and verifying their compliance with the provisions of the Constitution or not, it will either rule on the constitutionality of the draft laws. In this case, individuals are prohibited from resorting to subsequent oversight again to question that oversight, as that is considered authoritative. Decisions issued regarding the constitutionality of draft laws are absolute by all public authorities in the state and all (Fleifel, Yousef Rashid Issa, 2010), (Al-Danasouri, Ezz Al-Din and Al-Shawarbi, Abdul Hamid, 2002)

If the Constitutional Court decides, after examining the draft laws, that they are constitutional, the King has the right to ratify and issue them. This does not negate the King's right to return the draft laws to the National Council, represented by the Shura Council and the House of Representatives, so that it can be reconsidered for other reasons that he determines and whose subject matter is not related to their compliance with the

Constitution. Or not, and this is confirmed by the explanatory memorandum of the constitution (Article (106) of the 2002 Constitution).

However, if the Constitutional Court decides that the draft laws referred to it by the King are unconstitutional, then we are faced with two cases: either the unconstitutionality is due to all the provisions of the law violating the Constitution, or the unconstitutionality is due to the law violating some provisions of the Constitution, as follows:

First: In the event that all provisions of the law violate the provisions of the Constitution

We are faced with this situation when the Constitutional Court decides that the law presented before it is unconstitutional in its entirety, and also when the court decides that some provisions of the law are unconstitutional with the impossibility of separating them, and therefore this report results in the impossibility of issuing a law that violates the provisions of the Constitution in its entirety, and the law has authorized the King in this matter. The situation is that he returns the draft law to the National Council, represented by the Shura Council and the Representatives, so that they can adopt a new law, taking into account the observations contained in the report of the Constitutional Court. After the National Council makes amendments in accordance with the observations contained in the report by the Constitutional Court, the King has the right to refer a draft law. The law will be referred to the Constitutional Court again to ensure that the new draft law takes into account the observations contained in the report. (Al-Shaer, Ramzi,2003), (Amer, Hamdi Attia Mustafa, 2021), (Zaki, Mahmoud Ahmed, 2005), (Al-Danasouri, Ezzedine, and Al-Shawarbi, Abdel Hamid, 2002)

Second: In the event that some provisions of the law violate the provisions of the Constitution

This situation appears when the Constitutional Court, after referring the draft law to it by the King, decides that one of the texts is unconstitutional, since the text is in violation of the Constitution and the law can be established without it. In this case, the choice is up to the King, either to issue the law without the text that violates the Constitution, or to issue it. The King requested that the National Council discuss it again based on the observations contained in the report by the Constitutional Court so that he could approve another new draft that would avoid the unconstitutionality of some of its provisions (Al-Shaer, Ramzi, 2003), (Abdel Ahmed, Issam Saeed, 2013),(Al-Danasouri, Ezzedine, and Al-Shawarbi, Abdel Hamid ,2002)

In the event that the King issues the draft law without the text that violates the Constitution, in this case it does not prevent the issuance of new legislation that adopts the texts that violate the Constitution and which the Constitutional Court decided were unconstitutional, provided that the challenges that would make it contrary to the Constitution are avoided in implementation of what was stated in the court's report. (Al-Shaer, Ramzi,2003).

Second Section

The Validity Of Rulings Issued By The Constitutional Court In The Event Of Subsequent Censorship

It is recognized that the principle of rulings is that they have relative authority, meaning their effect is limited to the parties to the conflict and does not extend to others. As for the rulings issued by the Constitutional Court, the matter is different, as those rulings have absolute authority vis-à-vis all public authorities in the state and by everyone (Zaki, Mahmoud Ahmed,2005), (Fleifel, Yusef Rashid Issa,2010)

Therefore, the question arises: Does this have absolute authority over all rulings issued by the Constitutional Court? In answering this question, we must differentiate between the authority of the ruling issued by the Constitutional Court before deciding the case, as well as the authority of the ruling issued on the merits of the case, and accordingly we will discuss this in detail. As follows:

First: The validity of the ruling issued by the Constitutional Court before deciding on the merits of the case

There is no doubt that the Constitutional Court, before examining the extent to which the legislative texts violate the provisions of the Constitution, considers the extent to which this constitutional lawsuit filed before the Court is consistent with the procedures established by the law (Sayadi, Salman Issa Salman, 2011). Therefore, we will address in this issue the validity of the ruling issued by the Constitutional Court in the event of Lack of jurisdiction and in the event of non-acceptance, as follows:

The Validity Of The Ruling Issued By The Constitutional Court Of Lack Of Jurisdiction

The Constitution of the Kingdom of Bahrain stipulates the jurisdiction of the Constitutional Court to monitor, as the constitutional legislator limited this oversight to the constitutionality of laws and regulations only. Article (16) of the law establishing the Constitutional Court stipulates the content of what was decided by the Constitution of the Kingdom of Bahrain, as the aim of monitoring the constitutionality of laws is not to prejudice The legislative texts that follow the Constitution rank with the provisions of the Constitution, and accordingly, when the issue presented before the Constitutional Court relates to the acts of sovereignty or the acts of Parliament, it is outside its jurisdiction, as the judiciary decided to exclude it from the scope of the Constitutional Court's oversight jurisdiction (Sayadi, Salman Issa Salman, 2011), (Amer, Hamdi Attia Mustafa, 2021)

The Validity Of The Ruling Issued By The Constitutional Court Not To Accept The Case

The rulings issued by the Constitutional Court not to accept the lawsuit have relative validity, so that their effect is limited to the parties to the dispute and not others. Therefore, if the formal conditions required by the law are met, whether the condition of interest or submitting the appeal within the legally specified time limit, this does not prevent the re-challenge of unconstitutionality before the court. Again by the same people and in the same legal texts. The court does not prevent the court from accepting the constitutional lawsuit in this case, and if the Constitutional Court decides to accept the new lawsuit filed before it, the previous ruling not to accept the lawsuit does not restrict or prevent it from examining again the legislative texts until It decides whether or not it conforms to the provisions of the Constitution (Zaki, Mahmoud Ahmed ,2005),(Fleifel, Yousef Rashid Issa,2010)

Second: The validity of the ruling issued by the Constitutional Court on the merits of the case

It is recognized that when the Constitutional Court undertakes the task of monitoring the constitutionality of laws and regulations, it will either rule that the law or regulation is unconstitutional, or it will rule that the law or regulation is constitutional and reject the case. Accordingly, we will discuss the previous two hypotheses as follows:

The Validity Of The Rulings Issued As Unconstitutional

We have previously shown that the general rule for judicial rulings is that they enjoy relative authority, such that their effect is limited to the parties to the conflict and not others. As for judicial rulings issued by the Constitutional Court, they are considered an exception to the principle, as they enjoy absolute authority by all public and all authorities (Al-Kuwari, Salem Mohammed Salem,2004), and accordingly, The courts must refrain from implementing laws that violate the provisions of the Constitution, and executive authorities must also refrain from implementing this law or regulation that violates the Constitution.

The Validity Of The Rulings Issued Rejecting The Case

The rulings issued by the Constitutional Court ruling to reject the lawsuit are considered to have the same authority as those rulings ruling unconstitutional, as they both enjoy the same absolute authority. Accordingly, the rulings issued to reject the lawsuit are considered binding on all state authorities and for everyone (The first paragraph of Article (31) of Decree Law No. (27) of 2002), and this is due to the fact that if the court rules By rejecting the case on the merits, this means that the contested legal texts are free from violating the provisions of the Constitution, which results in when the dispute is presented again, the court rules to reject the case because it has already been decided (Abdel Ahmed, Issam Saeed,2013), (Fleifel, Youssef Rashid Issa, 2010) , (Al-Kasasbeh, Abdel Raouf Ahmed and Al-Adayleh, Salem Hammoud, 2021)

The Second Requirement

The Time Frame for Unconstitutional Rulings

What is meant by the time frame for the rulings issued by the Constitutional Court in the cases brought before it is to determine the date on which the ruling takes effect, meaning whether these rulings have a direct effect, that is, from the date of their issuance, the conditions and relations arise, or does their effect extend to the date of issuance of the law or regulation that the court decided not to Their constitutionality, that is, with retroactive effect. Therefore, in view of the seriousness and importance of this issue, the position of the Bahraini constitutional legislator and the position of both the Constitutional Court and the Court of Cassation in the Kingdom of Bahrain must be stated on this issue as follows:

The first section: The position of the Bahraini legislator on the time frame for the ruling of unconstitutionality

Section Two: The position of the Court of Cassation and the Constitutional Court on the time frame for the ruling of unconstitutionality

First Branch

The Position of The Bahraini Legislator on The Time Frame for Ruling Unconstitutional

It becomes clear to us through extrapolation of legal texts that the ruling issued as unconstitutional of a text, whether in the law or regulation, will have a direct impact unless the Constitutional Court sets a later date in its regard. However, if the ruling of unconstitutionality is linked to a text of the criminal texts, then the conviction rulings are issued based on This text was considered as if it did not exist (Article (106) of the Constitution of the Kingdom of Bahrain stipulates), and accordingly we will discuss the effect of the ruling issued on the unconstitutionality of a criminal text, as well as the effect of the ruling issued on the unconstitutionality of a non-criminal text, as follows:

The Effect of The Ruling Issued on The Unconstitutionality of A Criminal Provision

Judicial rulings have established that if a ruling is issued that a criminal text is unconstitutional, its effect extends to the date of issuance of the ruling ruling that the law or regulation is unconstitutional, in other words, it extends with retroactive effect. Article (31) of the law establishing the Constitutional Court stipulates a certain content. Decided by Article (106) of the Constitution of the Kingdom of Bahrain, and by referring to the two aforementioned articles, it becomes clear to us that the Constitution and the law used the term criminal text, and therefore the criminal text is broader in meaning as it includes both punitive texts and criminal procedures in addition to implementation texts ((Al-Kasasbeh, Abdel Raouf Ahmed and Al-Adayleh, Salem Hammoud, 2021)).

The Effect of The Ruling of The Unconstitutionality of A Non-Criminal Provision

The Bahraini constitutional legislator has specified the time frame for rulings issued regarding the unconstitutionality of non-criminal texts in order to leave no room for change or limitation of this impact in relation to this serious issue, as it stipulated that ruling on the unconstitutionality of a text in a law or regulation has a direct effect, that is, a direct effect. From the date of issuance of this ruling (Zaki, Mahmoud Ahmed, 2005),(Fleifel, Youssef Rashid Issa, 2010), and despite the stipulation of this direct effect in both the Constitution and the law, the legislator has stipulated two restrictions regarding this effect, as follows:

The first restriction: If the general principle is that the ruling issued as unconstitutional has a direct effect, however, there is an exception in terms of the principle, as the legislator granted the Constitutional Court to set another date later than the date of issuance of the ruling ruling as unconstitutional, so that it takes effect on the date specified by the court. (Sayadi, Salman Issa Salman,2011).

The second restriction: This restriction is that the general principle benefits from the retroactive effect of the plaintiff in a constitutional lawsuit in which the ruling concludes that the law or regulation is unconstitutional by force of law, except that the legislator has imposed a restriction on this such that he does not benefit from the retroactive effect with respect to whoever files the lawsuit. Constitutionality after issuing the ruling of

unconstitutionality and publishing it in the Official Gazette (Al-Shaer, Ramzi,2003), (Al-Shawabkeh, Muhammad Abdullah, 2012)

Second Section

The Position of The Court Of Cassation And The Constitutional Court On The Time Frame For The Ruling Of Unconstitutionality

We have previously stated that the effect resulting from the unconstitutionality of a law or regulation is considered a direct effect and its effectiveness is limited to the date of its issuance unless the Constitutional Court determines a later date after that, so that its period of effectiveness begins from this date specified by it, based on

As stated in the explanatory memorandum of the text of Article (106) of the Bahraini Constitution that its ruling should be considered constitutive and not revealing in the case of a ruling of unconstitutionality, however, the Court of Cassation went further than that as it stipulated that the ruling is revealing and not revealing, and accordingly we will explain that as follows:

The Position Of The Court Of Cassation Regarding The Time Frame For The Ruling Issued As Unconstitutional

After the Constitutional Court issued its ruling on 03/26/2007 AD in Case No. D/2/05 of the third judicial year, the Court of Cassation issued its ruling on 04/16/2007 AD in Appeal No. (361) of (2006), including the invalidation of some decisions related to land acquisition that had been expropriated. Its ownership based on Decree Law No. (8) of 1970 regarding the acquisition of lands for public benefit and considering these decisions as if they did not occur. The reasoning for the court's ruling stated that the ruling issued on the unconstitutionality of the land acquisition law is considered to have a direct impact, and since these provisions are binding on all... Public authorities and all, the court must refrain from applying it with respect to all legal centers and facts, even if they precede the issuance of the ruling declaring unconstitutionality, as it is part of the public order and the Constitutional Court must act on it on its own, and therefore it is clear from this that the Court of Cassation considers its ruling A revealer, not a creator () Sayadi, Salman Issa Salman, 2011). (Zaki, Mahmoud Ahmed, 2005),(Al-Danasouri, Ezzedine and Al-Shawarbi, Abdel Hamid, 2002)

The Position Of The Constitutional Court Regarding The Time Frame For The Ruling Issued As Unconstitutional

The Constitutional Court indicated on 11/05/2007 in Case No. D/3/05, the third judicial year in its ruling that "...the ruling issued by the Constitutional Court that a law or regulation is unconstitutional is considered, as a general rule, to establish a state of unconstitutionality and not reveal it." About her...", and accordingly, based on that, it becomes clear to us that the Constitutional Court took into account in its ruling both the Constitution and the Constitutional Court Law, considering that the effect resulting from the unconstitutionality of a text in a law or regulation is considered to have a direct effect and not a constructive one, and this is contrary to what the Court of Cassation decided in that regard. Considering that the ruling of unconstitutionality is revealing and reveals the defect that befell the text and did not create it (the ruling of the Court of Cassation in Appeal No. (361) of (2006), session 04/16/2007 AD. Also, in this sense, Al-Shaer, Ramzi. 2003). Here we see that what the Court of Cassation said regarding the effect resulting from the unconstitutionality of a law or regulation is closer to the truth, given that the effect resulting from it reveals the defects that have afflicted the text since its inception. Accordingly, we see that the Constitutional Court reversed its ruling regarding the effect as it arises from the day following its publication (the ruling of the Constitutional Court in Case No. D/3/5, third judicial year, session 05/11/2007),(Al-Danasouri, Ezzedine and Al-Shawarbi, Abdel Hamid, 2002). The ruling is unconstitutional, especially since this ruling ruling that it is unconstitutional has created rights for others, which leads to the necessity of preserving these acquired rights.

Conclusion

The establishment of a Constitutional Court in the Kingdom of Bahrain and the imposition of a means of oversight that ensures that laws and regulations respect the provisions of the Constitution are among the important guarantees that guarantee respect for the Constitution and an affirmation of the principle of both the supremacy and supremacy of the Constitution and the principle of legality.

Regarding monitoring the constitutionality of laws and regulations to ensure their compliance with the provisions of the Constitution or not, the Bahraini legislator has adopted judicial oversight, unlike what some other countries have adopted by adopting political oversight. In addition to that, the legislator has also adopted two methods of prior and subsequent judicial oversight due to the advantages it achieves.

The Bahraini legislator also adopted the rule of absolute authenticity for decisions and rulings issued by the Constitutional Court, so that they are final and not subject to appeal. This results in giving them a mandatory status for all public authorities in the state and all, in addition to the impermissibility of submitting the dispute again before the constitutional courts that have already been decided upon.

As for the time frame regarding rulings issued by the Constitutional Court, the constitutional legislator stipulated this in the Constitutional Document that the general rule of effect for rulings issued as unconstitutional is that they have a direct effect such that their effect is limited to the future only, and in this case he gave the right to the Constitutional Court to set a later date if it so desires. Despite this, the Bahraini legislator has excluded from the general rule the rulings issued by the court regarding the unconstitutionality of one of the criminal texts, so that their effect is considered retroactive, dating back to the date of issuance of the law or regulation that ruled them unconstitutional, which makes them as if they did not exist.

After we reviewed the research topics in detail, we arrived at a set of results in addition to the recommendations that we recommend that the Bahraini legislator consider, and therefore we summarize them as follows:

CONCLUSIONS

The reports issued by the Constitutional Court after referring draft laws to it by the King have absolute authority, such that these reports are binding on all public authorities in the state and all individuals.

The Bahraini legislator did not stipulate specific dates that the Constitutional Court must adhere to if the King refers draft laws to it so that it can express its decision on whether or not they violate the provisions of the Constitution.

The rulings issued by the Constitutional Court are considered final and not subject to appeal, unlike the general rule for judicial rulings that enjoy relative authority, which results in the Constitutional Court being unable to return to it again after issuing its ruling, and the parties to the case are prohibited from re-presenting their dispute again. Others before the Constitutional Court.

With regard to the time frame of the unconstitutional rulings issued by the court, it is clear to us that the Bahraini legislator stipulated the general rule for the effect of the ruling of unconstitutionality as having a direct effect and that the exception to the general rule is the retroactive effect.

Determining the time frame for unconstitutional rulings issued by the court is one of the most important topics in view of the rights and legal positions that result from that. Accordingly, both the Bahraini Court of Cassation and the Bahraini Constitutional Court disagreed in this regard, and the Court of Cassation considered that the effect resulting from the ruling of unconstitutionality is revealing and not originating, while the Constitutional Court considered that its effect is originating and not revealing.

Recommendations

In view of the importance of previous oversight of the constitutionality of laws in the Kingdom of Bahrain, and to avoid the disagreement raised by some opinions regarding the period for issuing draft laws in the event that they are referred by the King to the Constitutional Court in order for it to express its decision on whether they are in accordance with the provisions of the Constitution or not, and therefore the researcher believes that

the legislator should be amended. The constitutional provisions for paragraph (b) of Article (35) of the Constitution of the Kingdom of Bahrain, as the article stipulates that unless the King, in the matter of draft laws, refers them to the Constitutional Court for consideration, so that if the King decides to refer draft laws to the Constitutional Court, in this case, the suspension of Issuing these laws until the court expresses its decision in this regard.

The researcher believes that the Bahraini Constitutional Court should reverse what it ruled, and we support what the Bahraini Court of Cassation ruled regarding the ruling issued by the court as unconstitutional revealing a defect in the text and not the ruling, and that adhering to what was stated in the explanatory memorandum has no basis or validity, especially The explanatory memorandum is not considered a constitution, but rather exists to help the judge with regard to understanding and interpreting the provisions of the constitution. Therefore, when the Constitutional Court rules that a particular law is unconstitutional, it does not create such invalidity by its own will, but rather decides that by virtue of the constitution.

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