

**THE LEGAL SYSTEM TO DEFEND THE  
UNCONSTITUTIONALITY OF LAWS AND  
REGULATIONS IN FRONT OF THE  
JORDANIAN ADMINISTRATIVE COURTS**

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**Abstract**

The research deals with the legal system for defending the unconstitutionality of laws as for the Jordanian administrative courts, the method of defending unconstitutionality, the legal nature of the defense, the conditions for causing unconstitutionality as for the administrative court, the time in which the appeal is submitted, the mechanism for dealing with payment, and the judgment issued by the court. This is because the Jordanian constitution allows individuals to challenge the constitutionality of laws and regulations indirectly by submitting an appeal against their unconstitutionality in front of administrative courts, provided that they are parties to cases considered by the court. This court is the one that decides to refer the appeal to the Constitutional Court.

The research covered conclusions and recommendations.

**Keywords:** administrative silence, appeal, constitutionalism, unconstitutionality of duplication, and direct lawsuit.

## **Introduction:**

The constitution constitutes the supreme law in the state that guarantees the rights and freedoms of citizens, and it is considered binding on all state authorities and individuals, and one of the inevitable results of the principle of constitutional supremacy is the subordination of the legal rule of the lowest degree to the highest legal rule in form and substance, and therefore there must be a mechanism to preserve the continuity of the principle of constitutional supremacy, It is to monitor the constitutionality of the law, which is one of the most prominent elements of the rule of law<sup>1</sup>

And overseeing the constitutionality of laws means making sure the extent to which laws with their various sources (legislation or regulation) conform to the constitution as the primary law and the first reference for all laws in the state, and in case the law violates the constitution, some measures must be taken to correct the situation, which ranges from refraining from applying the law Unconstitutional, leading to the abolition and final execution of the law. <sup>2</sup>

Control of the constitutionality of laws is generally practiced in two ways: political oversight or what is known as previous control, and judicial oversight or what is known as subsequent supervision<sup>3</sup>, and legal approaches differ from one country to another in choosing the form and method of oversight that it follows in its legal system.

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<sup>1</sup> Tharwat Badawi, Constitutional Law and the Development of Constitutional Systems in Egypt, Cairo University 1969 p. 99

<sup>2</sup> Shukr, Zuhair, the mediator in constitutional law, part 1, 3<sup>rd</sup> edition, p. 167, University Foundation, Beirut.

<sup>3</sup> Abu Hujaila, Ali Rashid, Control of the Constitutionality of Laws in Jordan, 1st Edition, Al-Dustour Commercial Printing Press, Amman, 2004, p. 8.

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The approaches of states differed in determining who is allowed to move judicial control over the constitutionality of laws, some of which limit this right to public authorities only, Including those who allow individuals directly to move this censorship with a direct original claim, and some of them give the right to control individuals indirectly or by sub-payment<sup>1</sup>.

As for the Jordanian legislator, it has taken two methods to move the appeal against the unconstitutionality of laws and regulations, namely: the original lawsuit and sub-payment<sup>2</sup>, but our study will be limited only to one of these types of oversight, which is the sub-payment of the unconstitutionality of laws and regulations before the courts of the administrative judiciary in Jordan in both degrees (Administrative Court, And the Supreme Administrative Court).

### **Research problem**

The extent of individuals 'ability to provoke the unconstitutionality of laws and regulations before the Administrative Court and the Supreme Administrative Court through indirect appeals, as the Jordanian legislator did not give individuals the right to appeal directly to the Constitutional Court, especially if they felt that the legal texts had violated their rights safeguarded by the constitution, and that There is a clear clash between what the constitution stipulated and what the law stipulated.

### **the importance of study:**

The importance of the study is due to highlighting the importance and role of judicial oversight by advancing the unconstitutionality of laws and regulations, and how they are applied in the Jordanian Administrative Judicial Law.

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<sup>1</sup> Ali Al-Baz / Monitoring the constitutionality of laws in Egypt and Arab and foreign constitutional systems - a comparative study, 1<sup>st</sup> edition, 2001, Cairo, p. 46

<sup>2</sup> (Article / 9) of the Constitutional Court Law specifies the exclusive bodies that are entitled to appeal directly to the Constitutional Court, namely: the House of Senate, the House of Representatives, the Council of Ministers

**Study plan:**

**This topic will be studied through four topics, as follows:**

**The first topic: the payment of unconstitutionality and its legal nature.**

**The second topic: Conditions for provoking unconstitutionality before the administrative court and its time.**

**The third topic: The mechanism of dealing with administrative and constitutional courts with payment.**

**The fourth topic: The effects of the ruling issued by the Constitutional Court on the progress of the case and the parties.**

## **THE FIRST TOPIC ADVOCATING THE UNCONSTITUTIONALITY AND LEGAL NATURE**

**Judicial control is exercised on the constitutionality of laws in more than one way, but the Jordanian legislator has taken two methods to move the appeal against the unconstitutionality of laws and regulations, namely: (the original lawsuit, sub-payment)<sup>1</sup>**

### **THE FIRST REQUIREMENT**

#### **: THE CONCEPT OF ADVANCING UNCONSTITUTIONALITY:**

**The constitution is the supreme law that defines the basic rules for the form of the state (simple or complex) and the system of government (royal or republican) and the form of government (presidential or parliamentary) and regulates public authorities in terms of composition, competence and relations between the authorities and the limits of each authority and the basic duties and rights of**

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<sup>1</sup> (Article / 9) of the Constitutional Court Law specifies the exclusive bodies that are entitled to appeal directly to the Constitutional Court, namely: the House of Senate, the House of Representatives, the Council of Ministers

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individuals and groups The guarantees it has towards the authority<sup>1</sup>, and the constitution includes a set of fundamental principles that constitute the legal basis for any system of government, institution, or any other type of entity<sup>2</sup>, written down in one comprehensive document that defines the features of the legal, political, economic and social system of the state. ()

The constitution constitutes the supreme law in the state that guarantees the rights and freedoms of citizens, and it is considered binding on all state authorities and individuals, and one of the inevitable results of the principle of constitutional supremacy is the subordination of the lowest legal rule to the highest legal form in terms and form, and therefore there must be a mechanism to maintain the continuity of the principle of constitutional supremacy, It is to monitor the constitutionality of the law, which is one of the most prominent elements of the rule of law<sup>3</sup>.

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<sup>1</sup> Sarkar, Siuli (2009). Public Administration in India. PHI Learning Pvt. Ltd. p. 363.

<sup>2</sup> The New Oxford American Dictionary, Second Edn., Erin McKean (editor), , Oxford University Press, p. 2015.

<sup>3</sup> Sarkar, Siuli (2009). Public Administration in India. PHI Learning Pvt. Ltd. p. 363

<sup>4</sup> Tharwat Badawi, Constitutional Law and the Development of Constitutional Systems in Egypt, Cairo University 1969 p. 99

Jurisprudence and the judiciary distinguish between the constitutional laws that conform to the constitution and that everyone is obligated to implement, and unconstitutional laws that violate the constitution and which may be challenged by the high courts, ordinary courts, or a special body, according to the laws of states<sup>1</sup>. And overseeing the constitutionality of laws means making sure the extent to which laws with their various sources (legislation or regulation) conform to the constitution as the primary law and the first reference for all laws in the state. To permanently abolish and execute this law<sup>2</sup>.

Control of the constitutionality of laws is generally practiced in two ways: political control, or what is known as previous control, and judicial control, or what is known as subsequent control<sup>3</sup>.

Judicial oversight is based on the formation of an independent judiciary body that examines laws issued by the legislature and their conformity with the constitution, or allows ordinary courts not to apply the law that violates the constitution<sup>4</sup>.

With the development of human rights principles and work to ensure the basic political, social and economic standards that the nation-state or the intergovernmental body is obligated to provide to its citizens, perhaps the most important example is the Universal Declaration of Human Rights, which

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<sup>1</sup> Wilson, Christopher (2003). Understanding A/S Level Government Politics. Manchester: Manchester University Press. p. 177.

<sup>2</sup> Shukr, Zuhair, the mediator in constitutional law, part 1, 3<sup>rd</sup> edition, p. 167, University Foundation, Beirut.

<sup>3</sup> Abu Hujaila, Ali Rashid, Control of the Constitutionality of Laws in Jordan, 1st Edition, Al-Dustour Commercial Printing Press, Amman, 2004, p. 8.

<sup>4</sup> Rakash, Saikrishna B.; Yoo, John C. (2003). "The Origins of Judicial Review". The University of Chicago Law Review. 70 (3): 887–982.

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guaranteed these rights and obligated countries not to issue laws that violate the constitution<sup>1</sup>.

The curricula of the countries differed in determining who is allowed to move the judicial control over the constitutionality of the laws. Some countries limit this right to public authorities only, and among them are those who allow individuals directly to move this control with a direct original claim, and some of them give the right to control to individuals indirectly or pay Sub<sup>2</sup>.

The laws enacted by the legislature are based on the presumption of constitutionality, which is the legal principle that the judiciary must assume that the laws enacted by the legislature are constitutional, unless it is proven otherwise that the law is clearly unconstitutional<sup>3</sup>.

Although judicial oversight of the constitutionality of laws is practiced in more than one way, the Jordanian legislator has taken two methods to move the appeal against the unconstitutionality of laws and regulations, namely: (the original lawsuit, sub-payment<sup>4</sup>)

Advocating the unconstitutionality of laws and regulations is considered a form of judicial oversight that is entrusted to a judicial body for the guarantees it provides: impartiality, objectivity, independence, freedom of litigation, open hearings, and

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<sup>1</sup> Garner, Bryan A. (2001). A Dictionary of Modern Legal Usage (2nd, revised ed.). New York: Oxford University Press. p. 177

<sup>2</sup> Ali Al-Baz / Monitoring the constitutionality of laws in Egypt and Arab and foreign constitutional systems - a comparative study, 1<sup>st</sup> edition, 2001, Cairo, p. 46

<sup>3</sup> Gillian E. Metzger & Trevor W. Morrison, "The Presumption of Constitutionality and the Individual Mandate" in The Health Care Case: The Supreme Court's Decision and Its Implications (eds. Nathaniel Persily, Gillian E. Metzger & Trevor W. Morrison: Oxford University Press, 2013), p.3

<sup>4</sup> (Article / 9) of the Constitutional Court Law specifies the exclusive bodies that are entitled to appeal directly to the Constitutional Court, namely: the House of Senate, the House of Representatives, the Council of Ministers

the cause of judgments, which makes this oversight a sure guarantee of respect for the constitution<sup>1</sup>.

This oversight comes after the issuance of the law or the system and is practiced by paying not the lawsuit, a procedure that allows in the event of a dispute before the administrative judiciary, for one of the parties to the trial to adhere to the unconstitutionality of the law to be applied to the conflict, as it violates the rights and freedoms guaranteed by the constitution<sup>2</sup>.

The sub-payment process aims to achieve a number of objectives, the most prominent of which are: maintaining the standing of the constitution at the top of the legal system, clearing this system of laws and regulations that violate the constitution, granting a new right to litigants, overcoming the narrow framework and the negatives of political oversight over the constitutionality of laws.

For his part, the sub-payment process has many advantages, the most prominent of which are: it is more flexible than the original lawsuit, and less exciting to the sensitivity of the legislator, since the person concerned does not request the annulment of the law, but rather demands that it not be applied to it<sup>3</sup>.

On the other hand, some criticisms are directed at the sub-payment method, including:

- Resorting to this method may lead to spreading anxiety and instability in transactions and legal centres, through conflicting administrative court rulings in the constitutionality or unconstitutionality of a specific law, as it can be imagined

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<sup>1</sup> Badawi, pp. 107+, Saad Asfour - Basic Principles in Constitutional Law and Political Systems - Al-Maaref Institution, Alexandria, p. 58

<sup>2</sup> Abdel Wahab, Mohamed Refaat, and Sheikh, Ibrahim Abdel Aziz / Political Systems and Constitutional Law, 1998, p. 522.

<sup>3</sup> Judicial control of the constitutionality of laws / Nabila Abdel Halim Kamel, Arab Renaissance House, Cairo, 1993, p. 60.



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that some courts will recognize a law in its constitutional form while other courts refrain from applying the same law with a claim Unconstitutionality<sup>1</sup>.

- Some believe that the task of the judiciary in general, including the administrative judiciary, is to apply the law and rule accordingly, and not to judge and discuss its constitutionality, based on the principle of separation of powers, and therefore the judiciary is not permitted to install himself as a watchdog on the legislature in observing the constitution<sup>2</sup>. This is considered an attack On the work of the legislative authority and a violation of the principle of separation of powers, however, some believe that the right of the judiciary to examine the constitutionality of laws does not contradict the principle of separation of powers, as this principle is not absolute but rather flexible and has been characterized by cooperation and mutual control between all authorities<sup>3</sup>.

- Judicial men are described as being conservative in their nature, way of thinking and career affiliation, which causes them to adhere to the application of legal rules without regard to the scientific and political considerations that surrounded their issuance<sup>4</sup>.

#### **THE SECOND REQUIREMENT: THE LEGAL NATURE OF THE PAYMENT OF UNCONSTITUTIONALITY:**

The sub-payment before the administrative court and the rest of the other Jordanian courts is based on (Article 60/2) of the Jordanian constitution, which states that “in the case before the courts, any party to the case may raise the claim

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<sup>1</sup> Judicial control of the constitutionality of laws / Nabila Abdel Halim Kamel, previous reference, P. 60

<sup>2</sup> Judicial oversight of the constitutionality of laws / Nabila Abdel Halim Kamel, Arab Renaissance House, Cairo, 1993, p. 63

<sup>3</sup> Judicial oversight of the constitutionality of laws / Nabila Abdel Halim Kamel, previous reference, p. 64, Abu Hujaila, Ali Rashid, control over the constitutionality of laws in Jordan, previous reference, p. 27

<sup>4</sup> Gamal El-Din, Sami / Constitutional Law and Constitutional Legitimacy, 2nd edition, Menchaat Al-Maaref, Alexandria, 2005, p. 149.

of unconstitutionality, and the court, if any, finds that payment is serious to refer it To the court specified by law for the purpose of deciding to refer it to the Constitutional Court.

This is what was confirmed by (Article 11 / a) of the Constitutional Court Law, which stipulates that "for any party of a lawsuit before the courts of all types and degrees, it must be declared unconstitutional for any law or system applicable to the merits of the case."

Thus, the Supreme Administrative Court ruled in a decision dated (26/5/2015), that the Administrative Court is competent to hear the appeal lodged against the Council of Ministers, for having issued a system to replace customs services on imported exempted goods, as it is against the law, and the Supreme Administrative Court approved the court's decision The administration believes that the issuance of the customs services allowance by the Council of Ministers is not considered contrary to the law or the constitution<sup>1</sup>.

Thus (Article 60/2) of the constitution granted individuals the right to raise indirect appeals provided that they are parties to the lawsuit and from the stakeholders pending before the administrative court, as well as the same article granted authority to the administrative court, like other statutory courts, to assess the seriousness of the claim of unconstitutionality, i.e. Of laws and regulations in an original case pending before it, and if it is convinced of this payment, it refers it to the Court of Cassation for the purpose of deciding on an order to refer it to the Constitutional Court.

Here the constitutionality of the law arises on the occasion of a case before the Administrative Court, and this method is the only way for individuals to address the Constitutional Court.

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<sup>1</sup> Supreme Administrative Court, Decision No. 92 of 3015, dated 26/5/2015.

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The above article has given the administrative court or other courts before it raised the argument of unconstitutionality, discretion in responding to payment or not after it has appreciated the extent of its seriousness, as the court has given this authority, and it is a restriction mandated by the legislator to reduce the cases referred to the Constitutional Court.

In our assessment that this restriction has given the administrative court some powers to consider the constitutionality of the law or order in question, and thus the court has exercised the role of constitutional oversight, which is originally within the jurisdiction of the Constitutional Court, and accordingly we see that the administrative court here is not allowed to decide on the seriousness of Or not, but it must stop directly from looking into the case and refer it to the Constitutional Court to consider its seriousness and pass judgment by it.

It is noted that some of the jurisprudence criticized the restriction above regarding the discretionary authority of the administrative court's response to payment after it assessed the extent of its seriousness, for several reasons, including<sup>1</sup>:

- The legislator did not set a critical criterion for knowing when to pay seriously or not, leaving the matter to the discretion of the court and its jurisprudence, which means that the administrative judge (judge of the matter) can to a large extent limit the scope of oversight exercised by the Constitutional Court.
- Departing from the fundamental importance of achieving a centralized system of monitoring the constitutionality of laws that the legislator wanted.

The judge of the matter does not expand the assessment of the seriousness of the payment. Rather, he must observe some rules when examining the seriousness, including:

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<sup>1</sup> Kamel, Nabila / Judicial Oversight of the Constitutionality of Laws, previous reference, p. 172.

- 1- Verify that the purpose of the payment is not just a way to harm the opponent and disrupt the dismissal of the case.
- 2- Verify the law contested as unconstitutional and how it relates to the subject of the dispute.
- 3- The presence of the serious and direct interest of the appellant<sup>1</sup>.
- 4- Payment of the case fee: the seriousness of the payment is considered unconstitutional as well, in cases pending before the courts on the basis of verifying that the fee has been paid.

According to Article 4 of the Jordanian Constitutional Court Law, which stipulates that the court is concerned with constitutional oversight and interpretation of the provisions of the constitution<sup>2</sup>. According to the apparent text of this text, the jurisdiction of the Jordanian Constitutional Court is oversight over the constitutionality of laws and regulations in force, and it is a specialized task to monitor laws. And I limited the right to request an appeal exclusively to the Senate, the House of Representatives, and the Council of Ministers, and this means that an appeal against the unconstitutionality of laws in Jordan is subject to two directions (the legislature and the executive branch) exclusively, and this means the following:

- 1- The Constitutional Court does not have the right to monitor the constitutionality of laws, and it does not have the right to examine laws issued by the legislature. The right to control is vested in the Senate, the House of Representatives, and the Council of Ministers, that is, only the legislative and executive authority.

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<sup>1</sup> Kamel, Nabila / Judicial Oversight of the Constitutionality of Laws, previous reference, p. 173.

<sup>2</sup> Article 4 of the Jordanian Constitutional Court Law stipulates the following: "The court shall have the following competencies: A- Oversight of the constitutionality of laws and regulations in force. B- Interpretation of the provisions of the constitution."

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2 - The role of the court is not oversight, but verification of whether the issued law is in breach of the constitution, or is not in breach. This is not censorship but rather it is the decision to verify that the law does not violate the constitution.

It is also noted that Article (11) of the Constitutional Court Law permitted the parties to the lawsuit to challenge the unconstitutionality of the law before the courts dealing with the case in various degrees, according to a memorandum in which the appellant clarifies the name of the law, or the system that raised the argument of its unconstitutionality in a clear and specific manner, and permitted the other party to clarify the constitutionality of the law and that it is not in violation of the constitution, and that the court does not decide that the law is unconstitutional, but rather that it must refer the appeal to the Court of Cassation. The decision of the appearing court on non-referral is subject to appeal, and therefore the Court of Cassation is the competent authority to consider the appeal, and according to Article (15) of the Constitutional Court Law, the decision of the Court of Cassation is a final and binding decision for all. In the sense that the law, or the text that violates the constitution, is considered null and void, and we notice the jurisdiction of the Court of Cassation to consider the constitutionality of laws the following observations:

A- The Court of Cassation, or the Supreme Administrative Court, has no right to control laws issued by the legislature except at the request of the parties to the relationship.

B - The trial court has no right to challenge the unconstitutionality of the law in the case before it, except at the request of the concerned parties. If she finds that the law to be applied in front of her is in violation of the constitution, she cannot provoke an appeal against the constitutionality of laws on its own initiative. This means that oversight of the constitutionality of the law is one of the most extreme cases, and that the role of the court is to refer only to the Court of Cassation.

**C- The Court of Cassation, or the Supreme Administrative Court, does not have the right to directly control the constitutionality of laws, but must be referred by the trial court; and we consider it necessary that the Court of Cassation or the Supreme Administrative Court grant the right to challenge the constitutionality of laws as long as the case is up to the court Discrimination, or the Supreme Administrative Court.**

**W- The duplication in considering the constitutionality of laws confuses legal and judicial work. We see reliance on one party that is granted the right to consider the constitutionality of laws, the Constitutional Court, and when he challenges before the trial court the unconstitutionality of the law, then the court must refer the request to the Constitutional Court.**

**It is reported that the constitutional lawsuit is distinguished from other cases by two characteristics:**

**It is a case in kind in nature: that is, the litigation in it is directed to the legislative texts contested by a constitutional defect, and therefore these texts are the subject of the dispute and its place<sup>1</sup>, Thus, the judgments in it are absolutely authentic and their impact is not limited to the litigants, but rather is applied to all Whether or not all provisions of the state are bound by it, whether the text is constitutional or unconstitutional<sup>2</sup>.**

**It is a case independent of the case suit, as it deals with a subject that differs from the subject matter of the original case, which the defect has been contacted with, but there is a link between them in terms**

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<sup>1</sup> Al-Shawarby, Abdel-Hamid / The constitutional lawsuit, Monshaat Al-Maaref, Alexandria, 2002, p

<sup>2</sup> Al-Manji, Muhammad / The Constitutional Case - The Legal and Procedural Organization of the Unconstitution Lawsuit, Monshaat Al-Maaref, Alexandria, 2002, p. 100.

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The adjudication of the merits case is dependent on the separation of the constitutional case, and the interest in the constitutional case is related to the interest in the merits<sup>1</sup>

### **THE SECOND TOPIC**

#### **CONDITIONS FOR PROVOKING UNCONSTITUTIONALITY IN FRONT OF THE ADMINISTRATIVE COURT AND ITS TIME**

Since the supervision of the constitutionality of laws relates to the organization of legality at the highest level and its highest meanings, it was necessary for the legislator to surround it with a set of conditions, restrictions, conditions and procedures that are consistent with its nature, and differs from the usual conditions from the regular filing of cases<sup>2</sup>, and therefore requires acceptance of the constitutional lawsuit (bonus On the availability of the condition of interest, the capacity, and eligibility, the availability of which is required in all other judicial cases) A set of additional procedural conditions and conditions, which result in not meeting them, or neglecting any of them, not accepting the lawsuit, and to discuss these conditions this requirement has been divided into two requirements In the first we consider the objective conditions, and the second the formal conditions.

#### **THE FIRST REQUIREMENT OBJECTIVE CONDITIONS:**

Articles (11 and 12) of the Constitutional Court Law specify the conditions and procedures that must be met by an indirect appeal, according to which payment is raised by any of the parties to the cases before the courts of various kinds,

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<sup>1</sup> Hassanein, Ibrahim Muhammad / Censorship on the constitutionality of laws in jurisprudence and the judiciary, Dar Al-Kutub Al-Qanuni, Cairo, 2003, p. 151. Al-Munji / The Constitutional Case - The Legal and Procedural Organization of the Unconstitution Lawsuit, Previous Reference, P.102

<sup>2</sup> Abdel-Majid, Munir / Principles of Judicial Oversight of the Constitutionality of Laws and Regulations, Establishment of Knowledge, Alexandria, 2001, p. 7.

including the administrative court, since these appeals are not treated as direct appeals. Submitted to the Constitutional Court, and therefore the indirect appeal must be subject to special objective conditions and requirements, represented by the following:

The appeal must be in accordance with a lawsuit pending before the Administrative Court and on the same subject matter, and not be submitted separately from the pending disputes.

The merits of the merits of the case with the contested law, and that the law affects the outcome of the lawsuit and must be applied to it.

Payment is raised by the claimants or a party to it with an interest.

It is not permissible for the court to provoke it on its own accord, nor can non-litigants have the right to provoke it.

The second requirement: formal conditions:

The plea of unconstitutionality can be raised at any stage of the lawsuit, within the following formalities:

- Submitting the payment to the administrative court by a written memorandum, separately and reasoned, by the lawyer of a professor who practiced law for a period of five years, or worked in a judicial position for a similar period before practicing law.

- The memo must include the following data: the name of the appellant, the name of the law, or the system that provoked the payment of its unconstitutionality and its number, and the scope of the payment in a clear and specific manner, and what supports the claim that that law, or the system, is applicable to the merits of the lawsuit, and to explain the reasons for its violation of the constitution.

Any other party to the lawsuit has the right to submit its response to the court within a period not exceeding fifteen days from the date of submitting the unconstitutional payment memo.



**THE THIRD TOPIC**

**THE MECHANISM OF DEALING WITH PAYMENT AND THE RULING**

In light of the parties submitting the lawsuit by submitting the unconstitutionality of any of the laws and regulations to the Administrative Court or the Supreme Administrative Court, then these two courts must deal with this payment, regardless of its acceptance of its response, and to explain the mechanism of this dealing with the raised payment, this topic has been divided To two requirements: The first dealt with the mechanism of dealing with the administrative judiciary with payment, while the second dealt with the mechanism of dealing with the Constitutional Court.

**THE FIRST REQUIREMENT**

**THE MECHANISM FOR THE ADMINISTRATIVE JUDICIARY TO DEAL WITH PAYMENT:**

After the parties to the lawsuit submit an unconstitutionality of any laws and regulations to the administrative court or the Supreme Administrative Court, there are a range of possibilities before these two courts deal with this payment, which can be highlighted as follows:

**1- The Administrative Court:**

The possibilities for the administrative court to deal with payment are as follows:

**FIRST: REFUND AND NON-ACCEPTANCE OF PAYMENT:**

If the administrative court finds that the payment raised unconstitutional is related to a law or regulation that does not apply to the merits of the case, or that the payment is not serious, and aims to waste time, influence the course of the lawsuit, harm the other parties, or it does not meet any of the legal conditions, then it Decides not to refer him to the Court of Cassation, and its decision not to refer is subject to appeal with the subject of the case before the Supreme Administrative Court.

Thus, the Supreme Administrative Court ruled in a decision dated (26/5/2015) that the Administrative Court is competent to hear the appeal lodged against the Council of Ministers for its issuance of a system for customs services allowance on imported goods that are exempted as illegal and must be referred to the Constitutional Court, where the Administrative Court approved. The Supreme Court decided the administrative court that the Council of Ministers issuing a system for customs services allowance was not considered to be in violation of the law or the constitution, and the appeal was rejected<sup>1</sup>.

**SECOND: ACCEPTING THE PAYMENT AND REFERRING IT TO THE COURT OF CASSATION:**

If the administrative court finds that the law or system that raised the argument of its unconstitutionality is obligatory to apply to the merits of the case, and that the unconstitutionality is serious, the case will be considered, and the payment will be referred to the Court of Cassation for the purpose of deciding on its referral to the Constitutional Court, according to Article 11 / C / 1) of the Constitutional Court Law, which states, "If the court hearing the case finds that the law or system that raised the argument of its unconstitutionality is enforceable on the merits of the lawsuit, and that pushing for unconstitutionality is serious, the case is reviewed and the payment is referred to the Court of Cassation for the purpose of deciding In the order to refer it to the arbitrator And be headmistress court's decision not to suit the referral may be challenged with the merits of the case. "

The parties to the lawsuit are entitled to present a memorandum to the Court of Cassation regarding the referral order to the court within fifteen days, from the date of the issuance of the Administrative Court's decision to refer the payment to the Court of Cassation.

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<sup>1</sup> Supreme Administrative Court, Decision No. 92 of 3015, dated 26/5/2015.

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### **2- Court of Cassation:**

As for the Court of Cassation, it also has discretionary powers to decide whether to refer the payment to the Constitutional Court, or not, and therefore there are a set of supposed possibilities for the court to deal with this payment, which are as follows:

#### **First: Refund to the Administrative Court:**

In the event that the Court of Cassation refuses to submit the unconstitutionality to the Administrative Court, then the payment is not referred to the Constitutional Court, and the Administrative Court must return to the case from the point it has reached.

#### **Second: Accepting the payment and referring it to the Constitutional Court:**

If the Court of Cassation decides to accept the payment, it must refer it to the Constitutional Court, and inform the parties to the case accordingly.

### **3- The Supreme Administrative Court:**

If the payment is raised before the Supreme Administrative Court, it directly takes the decision to refer the referral to the Constitutional Court, according to the text of Article (11 / d) of the Constitutional Court Law.

## **THE SECOND REQUIREMENT**

### **THE CONSTITUTIONAL COURT DEALS WITH PAYMENT:**

#### **First: court procedures:**

After referring the payment to the Constitutional Court, and the parties to the case have been notified by the Court of Cassation according to Article (11 / C / 3) of the Constitutional Court Law, the following procedures shall be followed:

- In this case, the parties to the lawsuit have the right to submit a memorandum to the Constitutional Court, which includes a clear and specific presentation of the law, or the system that raised the unconstitutionality, the scope of payment, and the determination of articles or paragraphs that violate the constitution, within

fifteen days from the date of the referral decision to the Constitutional Court issued For the Court of Cassation or the Supreme Administrative Court<sup>1</sup>.

- Each party has the right to submit a response to the notes presented by its opponents within thirty days at most, from the date on which it was notified of the referral decision<sup>2</sup>.

Memoranda of the parties mentioned in the above clause may only be submitted by a lawyer who has practiced the profession for a period of five years or worked in a judicial position for a similar period before practicing law<sup>3</sup>.

- The Constitutional Court has the right to content itself with the submissions made by the parties during the first fifteen days, without waiting for the opponents' response<sup>4</sup>.

- The Constitutional Court may request from any authority any data or information it deems necessary to adjudicate the appeal, and as it deems appropriate<sup>5</sup>.

- The Constitutional Court must send a copy of the referral decision that was received from the Court of Cassation or the Supreme Administrative Court to both: The Presidents of the Senate and the House of Representatives, provided that they have the right to respond to the appeal to the court within a period of ten days from the date they receive the copy, and the Prime Minister who has Submit the response to the appeal within ten days from the date it was received<sup>6</sup>.

**Second: The ruling:**

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<sup>1</sup> (article / 12 / A / 1) of the Constitutional Court Law.

<sup>2</sup> (article / 12 / A / 2) of the Constitutional Court Law.

<sup>3</sup> (article / 12 / A / 3) of the Constitutional Court Law.

<sup>4</sup> (article / 12 / A / 2) of the Constitutional Court Law.

<sup>5</sup> (article / 13) of the Constitutional Court Law.

<sup>6</sup> (article / 12 / B) of the Constitutional Court Law.

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- The Constitutional Court convenes when considering the appeal as a body of at least nine members, and in the event of one or more members being absent with a legitimate excuse or one of the cases of stepping down is achieved in the presence of seven of its members provided that among them is the president or his representative, and its rulings and decisions are issued by a majority of five members When the votes are equal, the side the president voted for, or whoever acts on his behalf, shall prevail<sup>1</sup>.
- The Constitutional Court must decide on the appeal referred to it within a period not exceeding one hundred and twenty days from the date of the decision to refer it<sup>2</sup>.
- The deliberations of the Constitutional Court are confidential (M / 18), and its rulings are issued in an open session (M / 14), and its ruling is final and binding for all (M / 15 / A), and it is executed with direct effect unless another date for its implementation (M / 15 /) is determined. B), and if the court ruled that a text imposes a penalty, then the provisions of the convictions will be discontinued according to that text and its penal effects will expire (M / 15 / c).
- The court rulings are published in the Official Gazette within fifteen days from the date of their issuance (M / 16 / B), and copies of them are issued upon their issuance to: the President of the Judicial Council, the Prime Minister, the Speaker of the Senate, and the Speaker of the Parliament (article / 16) / a)

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<sup>1</sup> (article / 19) of the Constitutional Court Law.

<sup>2</sup> (article / 12 / C) of the Constitutional Court Law.

**EFFECTS OF THE RULING OF THE CONSTITUTIONAL COURT**

**On the progress of the lawsuit and the parties**

Intellectual attitudes differed in the implications of cancelling a legal text when challenging its unconstitutionality, the following is a statement of the effects of the ruling on the unconstitutionality of laws or regulations in accordance with Jordanian legislation:

- To stop consideration of the case and refer it to the Court of Cassation: Article (11 / c / 1) of the Constitutional Court Law specifies that, in the event of acceptance of unconstitutionality by the administrative court, it must stop examining the case, and refer the payment to the Court of Cassation for the purpose of deciding An order to refer it to the Constitutional Court, and consideration of the case remains pending until a decision is issued by the Court of Cassation regarding acceptance or restitution of payment, or until a decision is issued by the Constitutional Court. Acceptance of the claim of unconstitutionality does not result in stopping the conduct of the investigation and does not affect the continuity of the case.
- The ruling issued by the Constitutional Court is final and binding on all authorities and all.
- The effects of the declaration of unconstitutionality go beyond the individual character of the case referred to the Constitutional Court, as the annulled text is affected by all those who would apply to them the required legislative challenge in the future.
- The ruling that the text imposes an unconstitutionality imposes a penalty, as it stops the implementation of judgments that have been condemned based on that text and its penal effects end.

**CONCLUSIONS AND RECOMMENDATIONS:**

**First: The results:**

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- Jordanian legislation allows individuals to challenge the constitutionality of laws and regulations, indirectly, by submitting unconstitutionality before administrative courts, provided that they are parties to cases pending before the administrative court.

- Jordanian legislation grants administrative courts of both levels discretionary powers in the preliminary decision on the seriousness of the payment raised as unconstitutional, to decide whether to refer it to the Constitutional Court, and this has some kind of duplication in deciding the constitutionality of laws and regulations, and the matter is not related to the decision of the Constitutional Court, even if the formalities It gives the constitutional court the right to rule on the decision.

- The direct lawsuit before the Constitutional Court is better than the lawsuit indirectly, because of its speed in deciding whether or not to constitutionalism, in addition to unifying the matter in the hands of the Constitutional Court, and preventing interference between the administrative judiciary and the constitutional judiciary, especially since Jordanian legislation did not specify how to confirm Administrative judiciary is one of the seriousness of submitting unconstitutionality, and thus left the door open for administrative judiciary in the matter of referral to the constitutional judiciary or not.

The administrative court's referral of the payment to the Court of Cassation to determine its unconstitutionality according to the law of the Constitutional Court, which has a kind of non-observance of the sequence and dependency of the Administrative Court, as it was first for the Administrative Court to refer the payment to the Supreme Administrative Court and not to the Court of Cassation for the matter of deciding the unconstitutionality of the text to Constitutional Court .

Second: Recommendations:

We hope that the legislator will grant individuals and legal persons the right to appeal directly before the Constitutional Court, and that the right to indirect payment will not be limited to only the parties to the lawsuit.

- We hope that the legislator stipulates that violating the constitution is a public order, and that it gives the administrative court the right to raise the claim of unconstitutionality on its own if the law to be applied or the system or any article in it suspects the unconstitutionality.

- The administrative court and the higher administrative court did not elaborate on the seriousness of the indirect payment and that the law defines the procedures required by the two courts to ensure the seriousness of the payment clearly and that this issue is not left to the estimates of the administrative court or the higher administrative court, and to stop the case after checking these procedures , And refer it directly to the Constitutional Court for a decision on the constitutionality or unconstitutionality of the law or system subject to the lawsuit before it, in order to prevent overlapping between the administrative judiciary and the constitutional judiciary.

- Reducing the maximum period granted to the Constitutional Court to rule on the indirect lawsuit from (120-60) days, in order to link this case with a case pending before the administrative court, with the aim of expediting the settlement of the pending case.

- The Constitutional Court law included that the administrative court refer the payment to the Supreme Administrative Court and not to the Court of Cassation for the order to decide whether the text was unconstitutional to the Constitutional Court.

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