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# The Power Of The Federal Supreme Court To Stop The Implementation Of The Law

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## Abstract:

The constitutional judiciary is one of the most important institutions that aim to establish the rule of law in every country, and to confirm the supremacy of the constitution over other written legal rules, as well as to establish the features of the principle of separation of powers in a way that prevents an authority from attacking another authority. However, the practical application has led to the constitutional judiciary has created powers that are not stipulated in the constitution or its laws, and perhaps among the most important of these powers is the constitutional courts' granting themselves the power to stop the implementation of the unconstitutionality challenged law before them until a final and decisive decision is issued on the merits of the case.

Thus, the importance of this study stems from many theoretical and practical aspects. From the theoretical aspects, we find the scarcity of specialized jurisprudence and judicial studies that deal with the authority of the constitutional court to stop the implementation of the law. This system is also one of the most important basic guarantees for protecting the rights of individuals, in addition to the existence of many issues that understanding and dealing with it requires a review of the constitutional and philosophical foundations on which the court relies when it performs this task.

**Keywords:** Constitution - Endowment - Federal Court - Iraq - Law.

## Introduction:

As for the practical importance of this study, it is represented in analyzing the trends of the constitutional judiciary in general and the Iraqi Federal Supreme Court in particular, by reviewing the judicial applications, analyzing and evaluating them in order to develop a general theory in this regard.

As for the problem of the study, it is to determine the extent to which the Federal Supreme Court may suspend the implementation of the law during the consideration of the case or the defense of unconstitutionality despite the absence of an explicit constitutional text that allows it to do so?

Several sub-questions arise from this problem, which are as follows:

- To what extent does the court's authority to suspend the implementation of the law contradict the provisions of the constitution in general, and the presumption of constitutionality and the principle of separation of powers in particular?
- What is the maximum period for the court to resolve the challenge of unconstitutionality and suspend the implementation of the law before it?

Is the court's authority to stop the implementation of the law absolute, or is it restricted by some constitutional, legal and judicial restrictions established by the court?

Does the multiple judicial applications of exercising this authority make this authority a judicial precedent that the court must follow in all subsequent decisions issued by it?

The comparative analytical method has been used in order to reach the goals that the study seeks to achieve, without neglecting the historical method in the places that require it.

In order to identify the provisions of this study, it will be divided into the following two sections:

The first topic: Defining the suspension of the implementation of the law and the powers of the Federal Supreme Court.

The second topic: applications of stopping the implementation of the law in the decisions of the Federal Supreme Court.

### **The first topic**

Introducing the stay of law enforcement and the powers of the Federal Supreme Court

The names given to the constitutional judiciary's authority to stop the implementation of the law vary, as some call it (suspending the implementation of the law) (1), while it is sometimes called (the suspension on the fate of the original case), and whatever the name used, this authority is one of the exceptional powers that was established. The constitutional judiciary grants it to itself - in most cases - without the existence of explicit constitutional or legal texts that allow it to do so.

In order to clarify these provisions, we will divide this study into the following two requirements:

The first requirement: the definition of stopping the implementation of the law and the position of comparative constitutions on it.

The second requirement: the constitutional and legal organization of the powers of the Federal Supreme Court.

### **The first requirement**

Defining the suspension of the implementation of the law and determining its nature

Before addressing the power of the constitutional judiciary to suspend the implementation of the law, the situation requires us to define the meaning of the suspension, and then we address the position of comparative constitutions regarding it, which we will address in the following two sections:

#### **First branch**

Definition of stopping the implementation of the law and its characteristics

First: Definition of stopping the implementation of the law:

Referring to the comparative constitutions, the laws of the constitutional courts and the laws of civil proceedings, we find that they did not know the suspension of implementation, which is understood to refer this task to jurisprudence and the judiciary to undertake it, and then it becomes clear that the general principle established is the absence of the legislative definition of the principle of stopping the implementation of the law.

Referring to the jurisprudential opinions, we find that at the time when it was known to stop the implementation of the ruling (2), it did not address the definition of stopping or stopping the implementation of the law.

In this regard, the suspension of the implementation of the law can be defined as (a temporary judicial decision issued by the Constitutional Court based on an urgent request submitted by the challenger when the legal conditions for this are met, which are the conditions of urgency and the emergence of serious reasons about the unconstitutionality of the law).

Second: Characteristics of stopping the implementation of the law:

The system of suspending the implementation of the law is characterized by many of its distinctive characteristics. The endowment system often represents a form of judicial control over the constitutionality of laws, and takes the form of an accessory lawsuit filed by the appellant, in which he asks the competent court to suspend its enforcement until the case is resolved or the sub-position of not the constitutionality of the challenged law before the same court. In addition, it is considered one of the dangerous and necessary systems to preserve the rights of the citizen and the limits of the separation of powers. Its characteristics can be summarized as follows:

1- This system is considered one of the exceptional systems: the reason for this is that the general rule established in the law of the majority of the Constitutional Court is the immediate and direct effect of the provisions of the law after it has been enacted by Parliament in accordance with the principle of constitutional presumption (3), and then the law may have direct executive force as soon as it is issued, therefore, this system allows the Constitutional Court to issue a summary ruling suspending the implementation of the law until the court issues its final decision regarding the unconstitutionality of the law being challenged before it.

2- The request to stop the implementation of the law is characterized by an auxiliary character: the principle is that the Constitutional Court cannot, on its own, rule to suspend the implementation of the contested law of unconstitutionality except on the basis of a request submitted to it by the interested appellant during the consideration of the constitutional case or the sub-argument of unconstitutionality, and therefore it cannot be envisaged that this request should be submitted independently and separate from the original appeal petition of unconstitutionality, and it could not be submitted alone in the form of an original lawsuit, and for this reason this system is described as subordination as it revolves around presence and absence with the original appeal, and it is not possible to imagine submitting a request to stop the implementation of the law independently of The original appeal, or the request for suspension precedes the submission of the original petition.

3- Suspension of the implementation of the law is of an urgent nature: in the request to stop the implementation of the law, several conditions are required together, as the first is the availability of serious reasons with which a ruling of unconstitutionality is likely, and the Constitutional Court has wide discretionary authority in this regard, while the second condition is On the condition of urgency represented in paying the damage resulting from the execution of the judgment, which cannot be remedied in the event of a ruling that the provisions of the law or part of it are unconstitutional

4- Suspending the implementation of the law is limited to the provisions of the laws in force: the reason for this is that the authority of the endowment revolves around the presence and absence with the jurisdiction of the Federal Supreme Court to monitor the constitutionality of laws and regulations in force in accordance with Article (93 / first) of the Constitution of Iraq for the year 2005, and from the concept of violation, it is not The court can suspend the implementation of the provisions of the law that is not in force (repealed), or a temporary law that has expired, because they are outside its jurisdiction.

5- Suspending the implementation of the law only responds to the law that is enforceable in practice: the mere vote on the law by the House of Representatives is not enough to be the subject of appeal to the stay of implementation, as it is required that this law be enforceable by fulfilling all the constitutional and legal procedures necessary for the legislation, including approval of the President of the State and publication in the Official Gazette.

6- The future effect of the ruling to suspend the implementation of the law: The general rule is to limit the immediate, binding and definitive effect of the Constitutional Court's decision to suspend the implementation of the law to the future effects, without affecting what was implemented before the court's decision, and therefore there is no effect of the ruling to stop the implementation of the law on the foregoing implemented in the past.

7- Although the constitution and the laws in force do not stipulate a specific period for submitting the appeal to suspend the implementation of the law, we believe that the appeal must be submitted before the court is prepared to decide on the challenge to unconstitutionality submitted before it, since the request to stop the law cannot be submitted after the court understands the conclusion of the pleading In accordance with the general rules in civil pleadings, taking into account that a request for suspension should not be submitted within the prescribed period for the appeal dates, due to the conclusive and binding validity of the decisions of the Constitutional Court, as is the case in Iraq (4).

8- Suspending the implementation of the law is characterized by a special judicial nature, because it is limited to the parties to the case only, the plaintiff or the defendant is equal in that, even if it is mostly submitted by the defendant, in addition to the presence of its submission to the same court that is competent to consider the case or the sub-claim of unconstitutionality ).

## **second branch**

The nature of the suspension of law enforcement

The system of suspension of execution is one of the urgent legal systems that are received as an exception to the general rule that most constitutions and laws in force follow, which is the

immediate, immediate and direct effect of the provisions of the law in accordance with the principle of the presumption of constitutionality.

This system is also described as one of the systems established for the protection of litigants, especially in cases that result in consequences that cannot be remedied if the law is repealed or a ruling of its unconstitutionality by the competent constitutional court in charge of monitoring the constitutionality of laws.

Despite what it appears to us at first sight that the Constitutional Court's refusal to implement the law based on the immediate and direct effect of implementing the law, and therefore constitutes a crime of willful abstention from implementing the law(5), this statement is not true on its release, as this system is considered a release of the discretionary authority granted to the court during its consideration of the dispute before it, and its support is found in Articles (151) and (208) of the Civil Procedures Law No. (83) of 1969.

Based on the foregoing, the motives for suspending the implementation of the law are to avoid the harm resulting from the direct implementation of the law, and the establishment of strong suspicions of repealing the law for its unconstitutionality, as the appeal to suspend implementation is similar to the nature of the suspension of implementation of the judicial ruling in that it is not based on the separation between two similar interests, but rather It is based on the separation between interest and legitimacy, weighing the balance of legitimacy (6) considering the court in general and the Constitutional Court in particular is the court competent to monitor the constitutionality of laws, and then falls within its jurisdiction to issue a ruling related to stopping the implementation of the law or not.

The reason for this lies in many jurisprudential foundations, the first of which is represented in the rule (that whoever owns the whole owns the part), as long as the court has the authority derived from the provisions of the constitution to rule the unconstitutionality of the legal text, so it has the lowest authority, which is to suspend the implementation of the law until the final decision In the constitutional dispute before it.

This is on the one hand, and on the other hand, the Federal Supreme Court is the authority entrusted with protecting the legitimacy and supremacy of the constitution (7), which can only be achieved by granting the court the power to stop the implementation of the law.

It should be noted in this regard that it is necessary to emphasize the urgent nature of suspending the implementation of the law by the Constitutional Court, as the urgency is determined by two elements. The first element is the harm that may occur to the applicant for the suspension of the law, while the second element is represented by the time element embodied in the need for the court to intervene quickly and urgently. To avoid the

irreversible effects that may result from the implementation of the law in the event of the implementation of the law, and then it can be said that the request to stop the law is one of the urgent requests in nature, due to the presence of the immediate danger in implementing the law as soon as it is issued to enjoy executive power (8).

### **The second requirement**

Constitutional and legal regulation of the powers of the Federal Supreme Court to suspend the implementation of the law

After we explained the characteristics of stopping the implementation of the law, it became necessary for us to address the procedural and substantive rules related to it, with an explanation of the constitutional and legal basis on which the Constitutional Court relies.

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

Section one: The constitutional and legal basis for the authority of the Federal Supreme Court to suspend the implementation of the law.

Section Two: Formal and substantive provisions to stop the implementation of the law

#### **First branch**

Constitutional and legal basis for the authority of the Federal Supreme Court

In suspending the implementation of the law

In view of the difference in the constitutional basis for the authority of the Constitutional Court to suspend the implementation of the law from the legal basis, we will address that successively as follows:

First: The constitutional basis for the power of the Constitutional Court to suspend the implementation of the law:

If we look at the texts of the comparative constitutions, we find that they have refrained from mentioning an explicit text that allows the Constitutional Court to suspend the implementation of the law, especially in light of the fact that most constitutions embrace the principle of separation of powers. Constitutionalism is the power to stop the law, in clear contradiction with the presumption of constitutionality of the law (9).

Despite the foregoing, it is noted that these constitutions are sometimes satisfied with stipulating that the general rules related to civil pleadings before the Constitutional Court must be applied. This explicitly stipulates that in the Court's law or referring this to the

system or the internal regulation regulating the work of the Court, for example the Egyptian legislator The one who decided that the lifting of the dispute would not affect the stay of execution unless the court orders that until the dispute is settled (10).

As for Iraq, by referring to the texts of the Constitution of the Republic of Iraq for the year 2005, we find that it did not refer from near or far to the authority of the Federal Supreme Court to stop the implementation of the law issued by the House of Representatives, in order to embrace the principle of separation of public powers (11), and despite the above, however, Article (93/first) of the constitution has the jurisdiction of the Federal Supreme Court to monitor the constitutionality of laws and regulations in force.

Thus, it can be said that the above article constitutes the indirect constitutional basis for the Federal Supreme Court to exercise the authority to suspend the implementation of the contested law of unconstitutionality, without interpreting this as a violation of the principle of separation of powers, based on the jurisprudential rule (that whoever owns the whole owns the part), In addition, the jurisdiction of the court to consider the request to stop the implementation of the law is described as an accessory jurisdiction exercised by the court when considering the unconstitutionality of the law.

**Second:** The legal basis for the constitutional court's authority to suspend the implementation of the law:

Referring to the Federal Supreme Court Law No. (30) of 2005 amended 2021, we find that Article (4) of it indirectly touched on the legal basis for the court's authority to suspend the implementation of the law, as it states that (the Federal Supreme Court has jurisdiction over the following: First: Oversight of the constitutionality of the laws and regulations in force(), and then it is clear that the Iraqi legislator repeated the constitutional basis for monitoring the constitutionality of the laws in force, which includes the court's authority to stop the implementation of the law while considering this appeal, which is what can be said with the indirect legal dedication of this authority .

In addition, Article (19) of the internal system constitutes the second legal basis for the authority of the Federal Court to suspend the implementation of the law, as it states that (the provisions of the Civil Procedures Law No. (83) of 1969 and the Evidence Law No. 107 of 1979 shall be applied in what is not mentioned It has a special provision in the Federal Supreme Court Law and in this system.

Based on this referral, Articles (151-153) of the Civil Procedures Law No. (83) of 1969 dealt with the state order, as Article (151) of it states that (Whoever has the right to obtain an order from the court to perform a specific act under the law: The competent court is



requested to issue this order in case of urgency by submitting a petition to the competent judge.

Article (152) of the law stipulates that (the ruler issues his order in writing to accept or reject one of the two copies of the petition on the day following its submission, at most, and the requester is given an official copy of the order at the foot of the second copy of the petition, and the original is kept in the court clerk's registry. against him with a picture of it).

Whereas Article (153) of the law stipulates that (1) The person against whom the order is issued, and the applicant, upon rejection of his request, may appeal to the court that issued it within three days from the date of issuing the order or from the date of his notification, by instructing the litigant to appear before the court by way of urgency. Filing the grievance according to the original lawsuit in any state of the lawsuit, even during the pleading in the session. 3- The court shall decide on the grievance as a matter of urgency by confirming, canceling or amending the order, and its decision is subject to cassation).

We conclude from the foregoing that the authority of the Federal Supreme Court to suspend the implementation of the law challenged by its unconstitutionality was based on indirect legal texts. The Federal Supreme Court law or the internal system of the court did not provide for this authority, but its provisions were dealt with by the Civil Procedures Law, and as long as the Federal Court is considered One of the formations of the judiciary, so it has the authority to stop the implementation of the law based on the above-mentioned texts.

## **second branch**

Formal and substantive provisions of the constitutional court's authority to suspend the implementation of the law

The formal and substantive rules related to the constitutional court's authority to suspend the implementation of the law vary, the same in terms of the statement of the competent authority to submit the application and its procedures, or with regard to the conditions that must be met in the application for the suspension and the law whose unconstitutionality is challenged and whose implementation is required to be suspended, which we will address in turn as follows:

First: The authority concerned with the request to submit a stay of implementation of the law and its procedures:

Despite the legislator's silence about determining the authority or court that has jurisdiction to decide on the request to stay the implementation of the law, it is necessary to refer to the general rules stipulated in the Civil Procedure Code.

As long as the decision to stop the implementation of the law is a temporary loyalty decision issued by the judge in the cases stipulated in the law that are characterized by urgency and which is submitted to the court at the request of one of the litigants, so it requires the application of the provisions stipulated in the Civil Procedures Law No. (83) of 1969.

Referring to the provisions of Article (151) of this law, we find that the competent court has the authority to consider the original case with the authority to issue the wilaya order, including granting this court the power to consequently suspend the implementation of the law.

By applying the foregoing to the law of the Federal Supreme Court, we find that it is exclusively competent to issue a state decision to stop the implementation of the law, and therefore other courts may not exercise this authority based on their specific jurisdiction according to Article (93 / first) of the Constitution to monitor the constitutionality of the laws in force.

As for the party that submits a request to stop the implementation of the law, Article (151) of the Civil Procedure Code is clear and explicit, as it states that (whoever has the right to obtain an order from the court to carry out a specific act under the law may request the competent court to issue this order in (in case of urgency by submitting a petition to the competent court), the ministry or the concerned authority may request to enter into the case in a joint manner, and request a stay of implementation of the law

And from the extrapolation of the judicial applications of the Federal Supreme Court, we find that the third person in the case can request a stay of implementation of the law, and then the court did not hesitate to answer his request in the event that the legal conditions necessary for the suspension are met.

Not only at this point, but both the plaintiff and the defendant may also request the Federal Supreme Court to suspend the implementation of the law challenged as being unconstitutional, and then the court enjoys a wide discretionary authority to answer the request or not, in light of the availability of the necessary legal conditions for that.

The procedures for issuing the state order to stop the implementation of the law are represented in the necessity of submitting the application or the petition in two identical copies, including the facts and evidence of the request, with the need to attach the supporting data and documents after paying the fee for it.

The procedures for issuing a decision to stop the implementation of the law are that the Federal Supreme Court must issue its order on a petition or request for a stay on the day

following its submission, at most, and deliver the applicant one copy, and the court clerk keeps the original copy in accordance with Article (152) of the Civil Procedures Law.

In spite of what appears to us at first sight about the possibility of appealing the decision issued by the Federal Supreme Court to stop the implementation of the law in accordance with Article (153) of the Civil Procedures Law, which states: (1) For those against whom the order is issued, and the applicant, when his request is rejected, may file a grievance with the court that issued it within three days. days from the date of issuing the order or from the date of its notification by instructing the litigant to appear before the court by way of urgency. Or amend it, and its decision is recognizable.

However, the aforementioned ruling contradicts Article (94) of the Constitution of the Republic of Iraq for the year 2005, which made the decision of the Federal Supreme Court final and final for all authorities, and since the Federal Supreme Court is considered one of the public authorities, so its state decision to stop the implementation of the law is also binding on it, As the absolute and unequivocal authenticity of the decision applies to the Federal Supreme Court, and therefore it can be said that Article (153) of the Civil Procedure Code is implicitly invalidated by the provisions of Article (94) of the Constitution, and it is not possible to challenge the court's decision to stand or file a grievance before the Federal Supreme Court.

Second: Conditions for suspending the implementation of the law:

The conditions for suspending the implementation of the law by the Constitutional Court vary, the same applies to the law or the litigation.

As for the law, it is required that it be issued by the competent authority to issue it in accordance with the legal conditions and procedures established in the Constitution, the law of the House of Representatives and its formations and the internal system of the Council ().

Thus, it can be said that the conditions for suspending the implementation of the law are the promulgation of the law by the House of Representatives in compliance with the formal and substantive aspects, the approval of the Head of State and its publication in the Official Gazette.

As for the conditions related to stopping the implementation of the law in accordance with the general rules stipulated in Article (169) of the Civil Procedure Code, a request to stop the implementation of the law must be submitted, equally if it is submitted in a consequential form within the petition of the case or the appeal against unconstitutionality, or submitted in the form of a request Independent of the lawsuit while the court is holding its sessions.

In addition, two conditions must be met in order for the Federal Supreme Court to accept the appeal to suspend the implementation of the law, and they are the condition of interest and capacity.

Based on the foregoing and by combining the above-mentioned conditions with the conditions stipulated in the Federal Supreme Court Law and its internal system, the conditions to be met in a request to stop the implementation of the law are as follows:

1- The applicant has an interest in suspending the implementation of the law at the time of filing the case until a decision is made (12):

2- That the person enjoys the legal capacity that qualifies him to litigate and plead before the Federal Supreme Court.

3- Continuing the litigation: as the legal logic requires that the litigation of the first request, which is (the challenge to the unconstitutionality of the law) should continue until the decision on the second request (the suspension of implementation of the law), and then in the event of an accident that leads to the expiry or demise of the original litigation before the decision on the request Suspension of implementation, so the latter expires and becomes without a subject and the litigation ends by dependence in application of the general rules, as is the case in the Parliament legislating a new law to replace the previous law whose implementation is required to be suspended.

4- The connection of the appeal with stopping the implementation of the law with the original lawsuit filed before the court for the unconstitutionality of the law: it means that the request to stop the implementation of the law coincides with the lawsuit or sub-claim of unconstitutionality, and this condition is one of the essential conditions for stopping the implementation of the law, and its support is found in Article (141/ 2) From the Civil Procedures Law, which specializes in the subject matter to consider these issues if it is submitted to it by dependence in the subject matter lawsuit, and by (linking) is meant not just the union of the two petitions (the lawsuit to suspend the implementation of the law and the lawsuit for the ruling of unconstitutionality), but rather the union of the two lawsuits in their parties and the final result that the court's decision of unconstitutionality will reach it, through the presence of suspicions and almost certain evidence of the possibility of a ruling of unconstitutionality, which makes the field wide open for the Federal Supreme Court to issue its decision to stop the implementation of the law under the discretionary authority granted to it.

5- Availability of the urgency condition: Urgency means that the implementation of the law or the continuation of its implementation will result in consequences and damages that

cannot be remedied and removed, meaning the fear of certain harm from the implementation of the law, or the inability to remedy and remove this damage in the event of continued implementation (13).

It should be noted in this regard that despite the fact that the legislator did not stipulate a time of urgency, we support what some have argued that the state of urgency should continue until the request to stop the implementation of the law is decided by the Federal Supreme Court, that is: the requirement of urgency must be fulfilled for the last stages of the urgent judiciary and the issuance of a decision Suspension of the implementation of the law (14).

6- Seriousness condition: This condition is one of the basic objective conditions for issuing a decision to stop the implementation of the law, as it means that there are serious reasons that the court clearly seeks during the decision on the request to stop the implementation of the law, which is achieved through several presumptions, including serious damages and consequences for the implementation of the law. The law cannot be remedied later or difficult to treat in the future.

Although the Civil Procedures Law(15) and the Federal Supreme Court Law do not explicitly require this condition, the practical reality indicates that it cannot be overlooked or overlooked by the court considering the request to stop the implementation of the law, as the seriousness condition is one of the conditions required by the general rules In temporary protection, as well as the possibility of repealing the contested law of unconstitutionality. Therefore, every request to stop the implementation of the law must include the serious reasons with which the ruling is likely to be unconstitutional.

Not only was the foregoing sufficient, but some jurists have cited several criteria with which to derive the seriousness of the reasons. The constitutionality of the original contested text, while the second criteria is represented by memorizing and appreciating and drawing seriousness through the apparent examination of the appeal papers submitted before the court (16).

In conclusion, it should be noted that the Iraqi legislator did not stipulate any conditions related to the duration of the request to suspend the implementation of the law whose unconstitutionality must be submitted. While the court is holding its sessions, it is possible to say that no specific period is required for appealing unconstitutionality or suspending the implementation of the law.

## **The second topic**

Applications to stop the implementation of the law in decisions of the Federal Supreme Court

There were many judicial applications of the Federal Supreme Court regarding stopping the implementation of the law challenged by its unconstitutionality, and embodied in (3) decisions it issued, namely Resolution No. (43) of 2010, Resolution No. (44) of 2010, and Resolution No. (140) of 2018. Among the In order to find out and analyze these decisions to show how consistent they are with the procedural and substantive rules necessary to stop the implementation of the law, we will address that in the following two demands:

The first requirement: an evaluation reading in the decisions of the Federal Supreme Court No. (43) and (44) of 2010

The second requirement: an evaluation reading in the Federal Supreme Court Decision No. (140) for the year 2018.

### **The first requirement**

An evaluation reading in Federal Supreme Court Decisions No. (43) and (44) of 2010

In order to determine the merits of Federal Supreme Court decisions No. (43) and (44) of 2010, and to indicate their compatibility with the formal and objective rules to stop the implementation of the law, we will divide this requirement into the following sections:

#### **First branch**

The extent to which the Federal Supreme Court Decision No. (43) of 2010 is consistent with the requirements of stopping the implementation of the law.

The Deputy Prime Minister of the Prosecutor, in addition to his job, had previously challenged the unconstitutionality of the Law of Disengaging Departments of the Ministry of Municipalities and Public Works No. (20) of 2010, based on many constitutional and legal foundations (), and the ruling demanded the unconstitutionality of the aforementioned law, in addition to the request As a precautionary measure, a decision is issued to stop the procedures for implementing the aforementioned law until a final judicial decision is issued in the matter for the serious damages that result from its implementation.

After the court held its sessions, it ended with a ruling that the Law of Disengaging Departments of the Ministry of Municipalities and Public Works No. (20) of 2010 was unconstitutional and that the consequences of it were cancelled, in addition to the ruling to stop the implementation of the law as it was stated (and on 06/14/2010 the court decided, by consensus, to stop the implementation of the law Law No. (20) of 2010 on the outcome of the judgment that will be issued in the case for reasons related to the public interest and its protection, and based on Article (151) of the Civil Procedures Law No. (83) of 1969, as amended.

In order to find out and evaluate the merits of the court's decision, we will deal with that successively as follows:

First: The foundations and rationale for Court Decision No. (43) of 2010:

Referring to the decision of the Federal Supreme Court mentioned above, we find that the court based the suspension of the implementation of the law on Article (151) of the Civil Procedure Law No. (83) of 1969 () after accepting the entry of the third person (Minister of Municipalities and Public Works) as a third party affiliated with the plaintiff According to Article (69/1) of the Civil Procedure Code.

The Federal Supreme Court based its decision to suspend the implementation of the law on one reason, which is (attachment to the public interest and its protection), without explaining to us what is meant by this interest or the criteria for its realization, although the practical reality indicates that the criterion of public interest is one of the broad criteria that is difficult to limit and limit. .

Second: Evaluating the efficacy of the court's decision to suspend the implementation of the law:

With reference to the decision of the Federal Supreme Court, it is noted that he used the term (suspending the implementation of the law) and not (suspending the implementation of the law), despite the presence of many legal and linguistic differences between them, as well as the court's ignoring of the term used by the Iraqi legislator in the Civil Procedure Code, which is (endowment). ), not (suspension), and thus the unconstitutionality and legality of the term used in the court's decision becomes clear.

As for the constitutional aspect, by referring to the Constitution of the Republic of Iraq for the year 2005, we find that it is devoid of an explicit or implicit text that grants the Federal Supreme Court the power to stop or stop the implementation of the law issued by the House of Representatives. The same provision applies to Federal Supreme Court Law No. (30) of 2005, as well as the internal regulations of the Federal Supreme Court.

Thus, it can be said that the court's decision to suspend the implementation of the law was devoid of the precise legal reasoning that must be adhered to by the court in application of the general rules in issuing judgments and decisions stipulated in the Civil Procedures Law and the Federal Supreme Court Law.

Despite what it appears to us at first sight that the suspension decision is nothing more than a preparatory decision that does not break the issue of the challenge to unconstitutionality, we believe that the Iraqi legislator did not differentiate between the preparatory and the

final decisions in the case regarding the necessity of causation, and therefore the court's decision was characterized by the absence of causation. His constitutional and legal proper.

It is also noted that the court based a request in accordance with the law on the implicit request submitted in the original lawsuit petition, and the plaintiff was not required to submit a petition independent of the original lawsuit as required by Article (151) of the Civil Procedures Law.

Based on the foregoing, the Federal Supreme Court has committed many constitutional violations, which can be summarized as follows:

1- The Constitution of the Republic of Iraq for the year 2005 has embraced the principle of separation of powers, and therefore the general rule is that the Federal Supreme Court may not interfere in the work of the legislative authority represented by the House of Representatives except in the case of an explicit provision for that, so it can be said that the Court has It violated the principle of separation of powers, as there is no explicit constitutional document that allows it to stop the law issued by the representatives of the Iraqi people.

2- The general rule on which the Constitution of the Republic of Iraq of 2005 goes in Article 129 of it is the necessity to publish laws in the Official Gazette and to implement them from the date of their publication, unless otherwise stipulated. Therefore, the Federal Supreme Court suspending the implementation of the law constitutes an explicit violation of the provisions of the law. Publication and enforcement of the laws stipulated in the Constitution and the Publication Law in the Official Gazette No. (78) of 1977.

3- The implicit basis for the authority of the Federal Supreme Court is to stop the implementation of the law in Article (93/First) of the Constitution, which has jurisdiction over the constitutionality of the laws in force, as the oversight extends to include granting the court all the powers necessary to adjudicate the case or plead unconstitutionality.

We do not support the aforementioned ruling on its release, as the court's authority to monitor the constitutionality of laws is described as an exceptional authority, and what came by analogy is not to be measured against, and this imposition cannot be invoked by the principle that (whoever owns the whole owns the part), and therefore it must be There shall be an express legal provision that gives the court the power to suspend enforcement of the law.

4- The authority to stop the implementation of the law from the Federal Supreme Court is similar to the authority granted to the Federal Court of Cassation in accordance with paragraph (1) of Article (208) of the Civil Procedure Code, which states that (the Court of



Cassation may issue a decision to stay the execution until a decision is made on the outcome of the appeal) If this authority is proven to the Court of Cassation during its consideration of the civil case, it is a fortiori proven to the Federal Supreme Court in the event of the appeal against constitutionality being considered.

Despite the weight of this legal basis and the possibility of reliance on it, it is not possible to measure in procedural matters, as the general rule on which the Federal Court of Cassation operates is that the principle in substantive laws is permissibility as long as there is no text prohibiting, unlike what is the case with the Procedural laws, as the basis for them is prevention (), which is a matter that must include an explicit text in the Federal Supreme Court law that allows the court the power to stop the implementation of the law.

7- The other legal basis for the Federal Supreme Court to stop the implementation of the law is represented in Article (83) of the Civil Procedures Law, which states that (1) - If the court considers that the judgment depends on a decision on another issue, it decides to stop the pleading and consider the case as a pending case until the decision is made. that subject), and despite the differences in the provisions of the case's istikhaar from the provisions of stopping the implementation of the law, they agree in the purpose and result, which is the issuance of the judgment that conforms to the truth

Despite the constitutional and legal violations mentioned above, however, it can be said that while acknowledging the apparent violation of the principle of separation of powers by the Federal Supreme Court with regard to granting it the authority to suspend the implementation of the law, the court's authority to suspend finds its support in the jurisprudence rule that ( Whoever owns the whole owns the part), as the Federal Supreme Court has control over the constitutionality of the laws in force, and then the court's authority expands to include the power to stop the implementation of the law in the event of strong suspicions of the unconstitutionality of the unconstitutionality before it.

This was confirmed by the court in its final decision issued on 12/7/2010, in which it ended in ruling the unconstitutionality of the Law of Disengaging Departments of the Ministry of Municipalities and Public Works No. (20) for the year 2010, which stated (the Federal Supreme Court decided the ruling to cancel it and cancel its consequences) (17).

## **second branch**

The extent to which the Federal Supreme Court Decision No. (44) of 2010 is consistent with the requirements to stop the implementation of the law

The Deputy Prosecutor, the Prime Minister, in addition to his job, had previously challenged the unconstitutionality of the Law of Disengaging Social Affairs Departments in the Ministry

of Labor and Social Affairs No. (18) of 2010, and it was based on many constitutional and legal foundations (), and the ruling called for the unconstitutionality of the aforementioned law, In addition to the request, as a precautionary measure, to issue the decision to stop the procedures for implementing the aforementioned law until a final judicial decision is issued in the matter for the serious damages that result from its implementation.

After the court held its sessions, it concluded that the Law of Disengagement of Social Affairs Departments in the Ministry of Labor and Social Affairs No. (18) of 2010 was unconstitutional and that the consequences of it were cancelled, in addition to the ruling to stop the implementation of the law, as it was stated in it (the court examined the request submitted by the plaintiff to suspend Implementation of the law and the subject of the case to the outcome of the judgment that will be issued in the case, and it was found that the request is based on reasons related to the public interest and protection for it.

In order to find out and evaluate the merits of the court's decision, we will deal with that successively as follows:

First: The foundations and rationale for Court Decision No. (44) for the year 2010:

Referring to Federal Supreme Court Decision No. (44) for the year 2010, we find that the court did not mention the legal basis on which it relied in stopping the implementation of the law, despite its reliance in its previous decision No. (43) issued on 12/7/2010 on Article (151) of the Pleadings Law Civil No. (83) of 1969 (18).

In addition, it is noted that the Federal Supreme Court, in the rationale for its decision to stop the implementation of the law, has been reduced to one reason, which is (reasons related to the public interest and its protection), without explaining to us what is meant by this interest or the criteria for its realization, although the practical reality indicates that the public interest criterion from Broad criteria that are difficult to limit and specify, so it reiterated the principle it followed in its previous decision No. (43) of 2010.

Second: Evaluating the efficacy of the court's decision to suspend the implementation of the law:

The first thing to notice on the decision of the Federal Supreme Court is that it used the correct legal term, which is (the suspension of implementation of the law), which is the term used by the Iraqi legislator in Article (151) of the Civil Procedure Code, and in this way the court corrected the inaccurate term used by the court in its previous decision No. (43) of 2010.

It also notes that the Constitution of the Republic of Iraq for the year 2005 and the Law of the Federal Supreme Court do not contain explicit texts that allow the Federal Supreme Court the authority to suspend the implementation of the law contested before it of unconstitutionality, as well as our recognition of the apparent violation of the principle of separation of powers by the Federal Supreme Court with regard to granting itself the power to stop the implementation of The law, due to the difference in the legal regulation of the state order stipulated in the Civil Procedures Law from the state order before the Federal Supreme Court, in particular with regard to the inadmissibility of grievance against the decision issued by the Federal Court based on the absolute and unequivocal authority of its decisions in accordance with Article (94) of the Constitution.

Despite the foregoing, however, the court's authority to endowment finds its support in the jurisprudential rule which states that (whoever owns the whole owns the part), as the Federal Supreme Court has control over the constitutionality of the laws in force, and then the court's authority expands to include the power to stop the implementation of the law in the event There are strong suspicions about the unconstitutionality of the law challenged by it, which was confirmed by the court in its final decision issued on 12/7/2010, in which it ended in ruling the unconstitutionality of the Law of Disengaging Departments of the Ministry of Labor and Social Affairs No. (18) of 2010, which came (The Federal Supreme Court decided the ruling to cancel it and cancel the consequences thereof).

It can be said that the Federal Supreme Court with its aforementioned decision has adhered to the absolute and absolute authenticity of its previous decisions, and then applied Article (94) of the Constitution in a sound application.

The second requirement

Federal Court Decision No. (140) of 2018 suspending the implementation of Parliament Law and its formations No. (13) of 2018

The House of Representatives had previously legislated Law of the House of Representatives and its formations No. (13) of 2018 based on Articles (47) and (61/first) of the Constitution of the Republic of Iraq for the year 2005, and as a result of the allegations that there are many aspects of unconstitutionality in the texts of this law, it took the initiative the legal representative of the Prime Minister / in addition to his job to challenge it before the Federal Supreme Court, the plaintiff requested / in addition to his job to stop the implementation of the contested articles until the case is resolved as unconstitutional

In order to find out the reasons for the court's decision to suspend the implementation of the law, and evaluate it, we will address that in the following sections:

## First branch

### Principles and rationale for suspending the implementation of the law

When the subject of the request to stop the implementation of the law was brought to the attention of the Federal Supreme Court, the court issued its decision No. (140) issued on 23/7/2018 in which it was stated (and upon examination and deliberation from the Federal Supreme Court, it was found that the request to stop the implementation of the provisions of the aforementioned articles had fulfilled the formal aspects required in the law and based on legal reasons, and as the constitutional judiciary represented by the Federal Supreme Court has a general jurisdiction to consider such a request, and based on the provisions of Article (51) of the Civil Procedures Law No. (83) of 1969 in reference to Article (93) of the Constitution and Article ( 152) of the Civil Procedures Law, the Federal Supreme Court decided to suspend the implementation of the provisions of the aforementioned articles of the House of Representatives Law and its formations until the case is resolved on the subject of the challenge to its unconstitutionality numbered (140/Federal/2018) in accordance with the provisions of the constitution).

Thus, it is clear from the above decision that the court relied on several legal bases only, which it specified in Articles (51) and (152) of the Civil Procedure Code, without referring to the realistic reasons that led to the issuance of this decision.

That is: the court has neglected the reference to (reasons of public interest) that it referred to in the previous decision issued by it, and it is a good gesture recorded by the court.

## Second branch

### Evaluating the effectiveness of the court's decision and considering it a judicial precedent

If we look at the decision of the Federal Supreme Court No. (140) for the year 2010, we find that the court used the term (suspension of execution), which is what can be said that the court used the correct legal term stipulated in the Civil Procedure Code.

This is on the one hand, and on the other hand, while it is noted that the Federal Supreme Court based its decision on Article (152) of the Civil Procedure Code, in contrast to what it said in its previous decisions in which it was based on Article (151) of the same law, it on the other hand, the court did not deviate from the absolute and unequivocal authenticity of its decisions in accordance with Article (94) of the Constitution, and therefore it adhered to the previous principle that it followed in its previous decisions regarding the obligation of the court itself to the judicial principle of stopping the implementation of the law despite the

absence of an explicit legal basis in the law of the court The Federal Supreme Court allows the court to exercise such important powers.

Iraqi jurisprudence criticizes granting the Federal Supreme Court the authority to suspend the implementation of the law, due to the apparent contradiction with the presumption of the constitutional, as when the court decides on the constitutionality of laws, it either confirms their validity, or decides their invalidity, and then does not fall between their validity and invalidity, a middle stage between existence and non-existence. during which he was arrested (19).

On our part, we see that given the issuance of the law to amend the Law of the First Amendment to the Law of the Federal Supreme Court of 2021 and the lack of the internal system to explicitly address the court's authority to suspend the implementation of the law or determine the duration of the suspension, so we demand the House of Representatives to individualize and allocate a text that addresses this in the draft Federal Court law the Supreme Court to be issued in implementation of Article (92/Second) of the Constitution, in addition to the need for the Federal Supreme Court to amend its internal system in a manner that includes an explicit treatment of the court's authority to suspend the implementation of the law whose unconstitutionality is challenged until the case is resolved or the original plea of unconstitutionality.

## **Conclusion**

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

### **First, the results:**

1- The decision to stop the implementation of the law is considered one of the temporary state decisions, as it is described as one of the dangerous and necessary powers that the Federal Supreme Court has addressed despite the fact that the Constitution of the Republic of Iraq for the year 2005 embraced the principle of separation of powers in accordance with Article 47 of it, and despite the absence of a law Federal Supreme Court No. (30) of 2005, amended in 2021, from explicit provision of the court's authority to suspend the implementation of the law.

2- The legal basis for the authority of the Federal Supreme Court to stop the implementation of the law is represented in two sources. The first is an indirect (implicit) basis, which is what is stipulated in Article (19) of the Federal Supreme Court's internal system No. (1) of 2005, as well as Article (152) of Civil Procedures Law No. (83) of 1969.

3- It became clear to us that there is no specific period for stopping the implementation of the contested law of unconstitutionality before the Federal Supreme Court, and then this period extends until the court issues the final decision on unconstitutionality, and with the issuance of the decision, the implementation of the provisions of the law that the court did not rule as unconstitutional.

4- The system of suspending the implementation of the law has several conditions, the most important of which is the condition of interest, urgency and seriousness, and the Federal Supreme Court enjoys wide discretionary authority in this regard.

5- Although the general rules of the state order to suspend the implementation of the law allow a grievance against it before the court from which it was issued, the absolute, conclusive and binding authority of the decisions of the Federal Supreme Court in accordance with Article (94) of the Constitution of the Republic of Iraq for the year 2005 provides for suspending the grievance stipulated in the law Civil pleadings, and therefore the court's decision to suspend the implementation of the law is final and not subject to appeal, which means implicit disruption of the text of Article (153) of the Civil Procedure Code related to grievance and appeal before the same court from which the state decision was issued.

6- It became clear to us that the Federal Supreme Court has repeatedly decided to proceed with the approval of the court's authority to suspend the implementation of the law during the challenge of unconstitutionality, but it requires the fulfillment of many conditions, the most important of which is that the request for the suspension be submitted in a consequential manner to the challenge of unconstitutionality, in addition to the existence of serious evidence and presumptions on unconstitutionality, and the court has broad discretion in this regard.

## **Second: Recommendations**

1- We call on the Federal Supreme Court not to exercise its authority to suspend the implementation of the law except in specific cases, which are accompanied by clear evidence of the ruling of unconstitutionality, as the law is the sound expression of the will of the people's representatives, and as long as this authority came in an exceptional manner, it must be limited to narrow the limits.

2- We call on the House of Representatives to expedite the enactment of a new law for the Federal Supreme Court that is consistent with Article (92) of the Constitution, and includes a precise and clear treatment of the Court's powers, including stopping the implementation of the law, and determining the duration of the suspension.

3- We call on the Federal Supreme Court to amend Article (19) of the Federal Supreme Court's internal system No. 1 of 2005 in a manner that includes a legal organization of the court's authority to suspend the implementation of the law in terms of stating the terms of the suspension, court procedures and the duration of the suspension.

4- We call on the Federal Supreme Court to standardize the legal terms used in its decisions, including stopping the implementation of the law.

## **Sources**

### **First, the books:**

1. Dr. Ali Mohsen Taweeb, The Authority of the Supreme Administrative Court to Suspend the Execution of a Judgment (A Comparative Study), Comparative Law Library, 2020
2. Dr. Abdel Aziz Abdel Moneim Khalifa, Judiciary of Urgent Administrative Matters, Faculty of Knowledge, Alexandria, 2008.
3. Dr. Ramzi Taha Al-Shaer, Controlling the Constitutional Laws (Comparative Study), Al-Tayseer Press, Cairo, 2004
4. Dr. Hussein Jabr Al-Shuwaili, Presumption of the constitutionality of legislation (a comparative study), Al-Halabi Human Rights Publications, Beirut, 2018.
5. Dr. Abdel Aziz Abdel Moneim Khalifa, Judiciary of Urgent Administrative Matters, Faculty of Knowledge, Alexandria, 2008.
6. Judge Hadi Aziz, Urgent Judgment, Al-Sabah Library, Baghdad, first edition, 2008.

### **Second: Letters, Research and Articles:**

1. Dr. Nasser Abdel Halim, Enforcement of Administrative Decision in Jordanian Administrative Law, Comparative Study, PhD thesis, Ain Shams University, 2009.
2. Dr. Fathi Fekry, A view of the disputes regarding the implementation of constitutional provisions (analytical study) research published in the Journal of the State Affairs Authority, No. 3, September 2018.
3. Dr. Muhammad Youssef Al-Saadi, The extent to which the suspension of the implementation of the law contradicts the constitutional presumption, a study published on 4/5/2021 at the link [www.albayyna-new.net/content.php?id=15044](http://www.albayyna-new.net/content.php?id=15044)

Third: Legislations:

1. The Constitution of the Republic of Iraq for the year 2005.
2. Penal Code No. (111) of 1969.
3. Law of the Egyptian Supreme Constitutional Court No. (48) of 1979.
4. The Federal Supreme Court Law issued by Prime Minister's Order No. (30) of 2005, amended 2021.
5. Civil Procedures Law No. (83) of 1969.
6. Judicial Fees Law No. (114) of 1981.
7. Law of the Egyptian Supreme Constitutional Court No. (48) of 1979.

Fourth: Judicial decisions:

1. Federal Supreme Court Decision No. 43/Federal/2010 issued on 12/7/2010.
2. Decision of the Supreme Administrative Court of Egypt No. 5421 of Judicial Year 42 issued on February 11, 2003.
3. Federal Supreme Court Decision No. 140/Federal/2018 issued on 7/23/2018.
4. Federal Supreme Court Decision No. 44/Federal/2010 issued on 12/7/2010.
5. Decision of the Supreme Administrative Court of Egypt No. 5421 of Judicial Year 42 issued on February 11, 2003
6. Federal Court of Cassation General Authority Decision 4/5/General Assembly/2020 issued on 3/16/2020 (unpublished decision).

**Margins:**

1. See Federal Supreme Court Decision No. 43 / Federal / 2010 issued on 12/7/2010.
2. Definitions of stay of execution of the judgment vary, as the first opinion goes to define it as (an exceptional procedure that gives the judge discretionary authority to issue a temporary judgment to stay the execution of the judgment upon appeal if the stakeholder so requests in the case file, when the necessary conditions for stay of execution are met), while the second opinion of jurisprudence defines it as (an urgent request submitted by the appellant to the ruling, in order to prevent the effects of implementing this ruling, which cannot be remedied in the event that the appeal case is accepted). Dr. Nasser Abdel Halim, The Enforcement of the Administrative Decision in the Jordanian Administrative Law, A Comparative Study, PhD thesis, Ain Shams



University, 2009, pg. 494, Dr. Abdel Aziz Abdel Moneim Khalifa, Judiciary of Urgent Administrative Matters, Manshat Al Maaref, Alexandria, 2008, p. 113.

3. The presumption of constitutionality means that the laws are in conformity with the constitution, and it is one of the main restrictions imposed on the Constitutional Court, with which it must assume the existence of the necessary facts for the compatibility and consistency of the contested legislation with the constitutional text allegedly violating it. For more details, see: d. Ramzi Taha Al-Shaer, Constitutional Control of Laws (Comparative Study) Al-Tayseer Press, Cairo, 2004, p. 720, d. Hussain Jabr Al-Shuwaili, Presumption of the Constitutionality of Legislation (a comparative study), Al-Halabi Human Rights Publications, Beirut, 2018, p. 14 and beyond.
4. Article (94) of the Constitution of the Republic of Iraq for the year 2005 states that (the decisions of the Federal Supreme Court are final and binding on all authorities).
5. Despite the foregoing, however, some Iraqi jurisprudence calls for the necessity of placing the stay of execution within an independent judicial application and considering it an urgent, self-contained judiciary to enable individuals to better resort to it, without affecting the exceptional nature of the stay of execution.
6. Dr.. Ali Mohsen Taweeb, The Authority of the Supreme Administrative Court to Suspend the Execution of a Judgment (A Comparative Study), Comparative Law Library, 2020, p.
7. Article (329) of Penal Code No. (111) of 1969 states that (1) Any employee or person charged with serving a nation who exploits his position to stop or impede the implementation of orders issued by the government or the provisions of laws and regulations or Any judgment or order issued by a court or any competent public authority or in delaying the collection of money or fees and the like that are legally prescribed).
8. Dr. Ali Mohsen Taweeb, previous source, pp. 23-24.
9. Article (13) of the Constitution of the Republic of Iraq for the year 2005 states that (First: This constitution is the supreme and supreme law in Iraq, and it is binding in all parts of it, without exception. Second: It is not permissible to enact a law that contradicts this constitution, and it is considered null and void a text contained in the constitutions of the regions, or any other legal text that contradicts it).
10. The Supreme Administrative Court of Egypt, in its decision No. 5421 of Judicial Year 42 issued on 11/2/2003, was able to recognize (the relationship between the measures of stay of execution and the idea of urgency is a logical issue, due to the relationship between irreparable or difficult to repair damage, and urgency In both of them, they express the truth about the existence of a temporary center that requires intervention with a quick procedure, and therefore the urgency is expressed in the procedures for suspending execution in the presence of serious harm as a result

of implementation or damage that is impossible or impossible to repair) referred to by Dr. Ali Mohsen Taweab, previous source, pp. 33-34.

11. In this direction, some go to say that “the basic principle in legal texts that are alleged to be in violation of the Constitution is that they are based on their authenticity, so the challenge against them does not impair the force of their enforcement, and therefore it is not permissible to stop their implementation, but the force of their enforcement remains inherent to them whenever the issue of their constitutional legality is raised. The Constitutional Court must in accordance with its law, which is the jurisdiction in which no other party competes with it, and the court may then either decide that the contested texts have a basis from the Constitution, so that their force of enforcement does not retract from them, or it ends with their conflict with the Constitution, banishing them and ending their existence. The court may not suspend the implementation of the legislative texts challenged before it, as this does not fall within the scope of its jurisdiction that the legislator specified exclusively in its law.” Dr. Muhammad Youssef Al-Saadi, The extent to which the suspension of the implementation of the law contradicts the presumption of constitutionality, a study published on 04/05/2021 at the following link: <https://www.albayyna-new.net/content.php?id=15044>.
12. Article (50) of the Egyptian Supreme Constitutional Court Law No. (48) for the year 1979 states that “the court shall decide exclusively in all disputes related to the implementation of the judgments and decisions issued by it, and the provisions stipulated in the Civil and Commercial Procedures Law shall apply to these disputes as long as no It contradicts the nature of the court’s jurisdiction and the conditions established before it. The filing of a dispute does not result in a stay of execution unless the court orders that until the dispute is resolved.” For more details see: Dr. Fathi Fekry, View of Disputes regarding the Implementation of Constitutional Provisions (Analytical Study) Research published in the Journal of the State Litigation Authority, No. 3, September 2018, p. 64 and beyond.
13. Article (47) of the Iraqi constitution states that (the federal authorities consist of the legislative, executive and judicial authorities, exercising their powers and duties on the basis of the principle of separation of powers).
14. Article (4/Second) of the Federal Supreme Court Law issued by Prime Minister’s Order No. (30) of 2005 before its amendment published in the Iraqi Gazette No. 3996 on 03/17/2005 states that (The Federal Supreme Court shall undertake the following tasks: Disputes related to the legality of laws, decisions, regulations, instructions, and orders issued by any party that has the right to issue them and to cancel them that conflict with the provisions of the Law of administration for the State of Iraq for the

Transitional Period, and this is at the request of a court, an official body, or an interested plaintiff).

15. Article (9) of the Federal Supreme Court Law states (The Federal Supreme Court shall issue an internal system in which the procedures regulating the workflow in the court, how applications are accepted, pleading procedures, and what facilitates the implementation of the provisions of this law shall be determined, and this system shall be published in the Official Gazette).
16. See Article (151) of Civil Procedures Law No. (83) of 1969 and Article (16) of Judicial Fees Law No. (114) of 1981.
17. As Article (216) of the Civil Procedures Law stipulates: (1) It is permissible to appeal, by way of cassation, the decisions issued by the summary judiciary, the decisions issued in grievances, the orders on the petitions, and the decisions issued to nullify the lawsuit petition or stop the progress of the lawsuit and consider it delayed until a decision is made on another issue. Also the decisions issued rejecting the unification of two related cases, or rejecting the referral for lack of value or location jurisdiction, or the decision to correct the material error in the judgment, and the period for appealing these decisions is seven days. Follow-up. 3- It is not acceptable to distinguish orders over petitions except after grievance has been filed against the person who issued them in accordance with what is stated in Article (153) of this law.
18. Article (61/First) of the Constitution of the Republic of Iraq for the year 2005 states that (the House of Representatives is competent with the following: First: Legislating federal laws).
19. Article (6) of the Civil Procedures Law states that (it is required in the case that the defendant must have a known, conditional, feasible and verified interest. However, the potential interest is sufficient if there is reason to fear harm to the concerned parties).
20. Dr. Ali Mohsen Taweab, previous source, p. 133 and beyond.
21. Judge Hadi Aziz, Urgent Judgment, Al-Sabah Library, Baghdad, first edition, 2008, p. 23.
22. It should be noted that there are some implicit references in the Civil Procedure Code, including the phrase (serious reasons) in article (142) of it, as well as (reasonable reasons) in Article (147/1) of it.
23. Close to that see: Dr. Ali Mohsen Taweab, previous source, p. 164 and beyond.
24. There are many aspects of the claim that the law is unconstitutional, as the first is the principle of separation of powers, and the exclusive limitation of the competence of the House of Representatives to legislate federal laws based on draft laws submitted by the Council of Ministers exclusively, while the second is the distinction between the draft law and the proposed law in accordance with article (60) ) of the

constitution, and the third appeal is based on the possibility of the World Bank to cancel the financial grant project amounting to (110) million dollars, as well as canceling the soft loan project amounting to (106) million dollars, while the fourth challenge represented in arranging obligations on the next House of Representatives the abolition of the Ministry of Municipalities and Works upon the formation of the new government, and the fifth of the appeals is that the law contains a legislative defect in approving the association of the General Directorate of Municipal Affairs with the governorate, while the sixth of the appeals is the constitutional violation and the explicit violation of the common powers stipulated in Article (114/third and fourth) of the constitution. As for the seventh of the appeals, it is represented in overriding the executive role granted to the Council of Ministers in drawing up public policy in accordance with Article (80/first) of the Constitution.

25. Article (151) of the Civil Procedures Law states that (whoever has the right to obtain an order from the court to carry out a specific act according to the law, he may request the competent court to issue this order in case of urgency by submitting a petition to the competent judge. on the facts of the application and its evidence, accompanied by supporting documents).
26. See the decision of the General Authority of the Federal Court of Cassation 4/5/General Assembly/2020 issued on 3/16/2020 (unpublished decision).
27. The Federal Supreme Court based its decision on unconstitutionality on many grounds, the first of which is a violation of the principle of separation of powers in accordance with Article (47) of the Constitution, and the competence of the executive authority to submit draft laws in case they relate to financial and political obligations in accordance with Article (80) of As for the third basis, it is represented in the court's distinction between the draft law and the proposed law according to Article (60) of the Constitution, and the competence of the Council of Ministers and the President of the Republic to submit draft laws exclusively. As for the fourth basis, it is represented in the presentation of the proposal of this law by the Labor and Services Committee in the House of Representatives without the executive authority expressing its opinion on it within its internal and international obligations, while the fifth basis is based on Article (78) of the Constitution, which considered the Prime Minister the direct executive responsible for the general policy of the state and then acknowledged his right to challenge the unconstitutionality of laws.
28. There are many aspects of the claim that the law is unconstitutional, as the first is the principle of separation of powers, and the exclusive limitation of the competence of the House of Representatives to legislate federal laws based on draft laws submitted by the Council of Ministers exclusively, while the second is the distinction between the draft law and the proposed law in accordance with article ( 60) of the Constitution

and the Council of Ministers' rejection of the proposed law under Resolution No. (344) of 2009. As for the third appeal, it is based on the negative impact on Iraq's international obligations towards international institutions and organizations, especially the World Bank, while the fourth challenge represents the impact on the Ministry's obligations and the obligation Amending the Ministry's Law No. (8) for the year 2006. As for the fifth of the appeals, it is represented in the administrative confusion that it causes due to the failure to prepare a specialized cadre in the governorates, especially the Juvenile Welfare Department, while the sixth of the appeals is represented in bypassing the executive role granted to the Council of Ministers in drawing up public policy according to Article (80). First) of the constitution.

29. Article (151) of the Civil Procedures Law states that (whoever has the right to obtain an order from the court to carry out a specific act according to the law, he may request the competent court to issue this order in case of urgency by submitting a petition to the competent judge. on the facts of the application and its evidence, accompanied by supporting documents).
30. See articles (5/first), (6/second), (11/fourth), (13), (15), (17/seventh), (19), (30/second) and (33/second) ) and (35/fourth), (44) and (48), (50/first/third), (51/first/second/third), (52/first/second), (53) and (54) and (56), (57), (5), (59), (64), (66), (67), and (73) of the House of Representatives Law and its formations No. (13) of 2018.
31. Dr. Muhammad Youssef Al-Saadi, a previous source, p. 2.