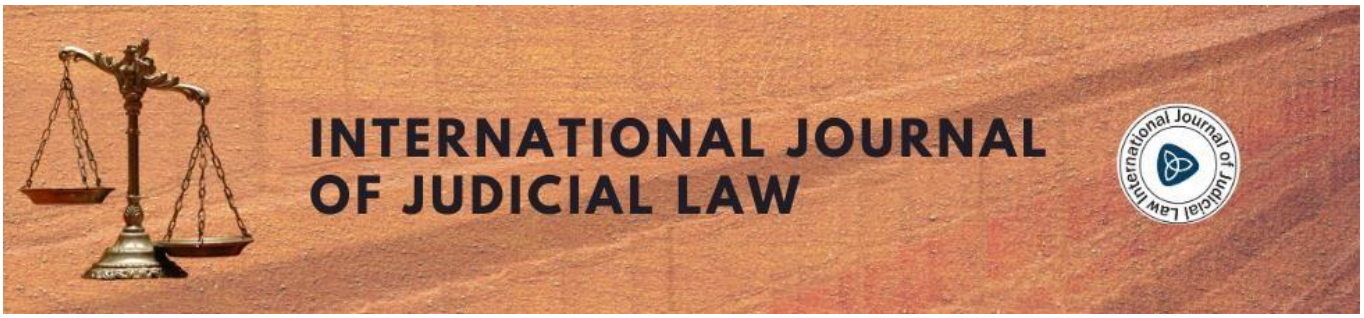




The Authority of the Iraqi Federal Supreme Court in issuing a judicial order

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Abstract

The research examines the authority of the Federal Supreme Court to issue legal order of jurisdiction. This can be done by identifying the nature of the Federal Supreme Court, by establishing the court in accordance with its internal law and the applicable constitution. It also addresses the jurisdiction of the Federal Supreme Court in accordance with its internal law and the applicable constitution. The research also addressed the jurisdiction of the Federal Supreme Court over writs of jurisdiction, by examining the scope of the Federal Supreme Court's jurisdiction over writs of jurisdiction in terms of oversight and regulatory nature. Finally, it explores the legal regulation of issuing writs of jurisdiction, by examining the conditions and procedures necessary for issuing writs of jurisdiction, and the extent of the validity of writs issued by the court.

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Introduction

Thus, the Federal Supreme Court has become a constitutional institution and a fundamental pillar of the rule of law in Iraq. Its powers constitute a platform for establishing constitutional legitimacy and guaranteeing individual rights and freedoms. It places laws under strict judicial oversight, which scrutinizes and examines them. Most jurists agree that judicial oversight of the constitutionality of laws is one of the most important, effective, and profound means of constitutional oversight. The principle of legality, in its broadest sense—which implies the submission of rulers and the ruled to the provisions of the law—is the vital and fundamental guarantee of individual rights and freedoms vis-à-vis public authority. No one may transgress it with impunity. However, the principle of legality remains vulnerable to violation unless a prestigious judicial body in the country defends and protects it from all infringement. The court's jurisdiction to interpret constitutional provisions is a new original jurisdiction stipulated in Article 93/Second of the 2005 Constitution, granting it exclusive authority to interpret constitutional provisions and formally state its objectives. The court's other powers are no less important than these two main ones.

Accordingly, the establishment of the Federal Supreme Court in Iraq constitutes a cornerstone of the constitutional structure. It has a fundamental task: protecting the constitution from violations, interpreting its provisions to achieve this goal, and resolutely confronting any transgressions by state authorities. This preserves the rights and freedoms of individuals and serves the public interest. The Federal Supreme Court exercises jurisdiction to preserve rights and legal positions and avert danger when the urgency requires the exercise of such jurisdiction arises. This jurisdiction does not prejudice the fundamental right at the heart of the constitutional dispute, ensuring that such right is not affected by the issuance of the jurisdictional order until the court issues its final ruling on the dispute.

Research Importance

The Federal Supreme Court's authority to issue mandates is of paramount importance, given the violent shocks the political system is experiencing as a result of political tensions, international interventions, and terrorist attacks. The Federal Court has played a significant and pivotal role in resolving matters in the most difficult circumstances and times.

The more independent and effective the judiciary is, the stronger the foundations of democracy, the more positively impacts the performance of the judiciary, and vice versa. Any weakness or defect in the work of the judiciary will inevitably have a negative impact on the course of democracy and its development.

Research Problem

The problem of this research revolves around the extent of the authority of the Federal Supreme Court in Iraq to issue jurisdictional orders, the limits of this authority, and its legal basis in Iraq. It answers several questions to decipher the implications of this topic, the most important of which are: What is the Federal Court and its constitutional jurisdiction?

Research Methodology

The analytical approach will be followed by describing the structure of the Federal Court and defining its jurisdictions, as defined by the Constitution and the law, as well as its authority to issue judicial orders.

Research Plan:

Section One: Introduction to the Federal Supreme Court.

First Subsection: The Formation of the court based on what is stipulated in its law .

Section One: The Formation of the Court in Accordance with its Internal Law.

Second Subsection: The Formation of the Court in Accordance with the Provisions of the Constitution in Force.

Section Two: The Federal Supreme Court's Authority to Issue Jurisdiction Orders.

Subsection one: The Extent of the Federal Supreme Court's Authority to Issue Jurisdiction Orders.

Subsection One: Scope of Authority in Terms of Supervision

Subsection Two: Scope of Authority in Terms of Regulatory Nature

First Section: The Extent of the Federal Supreme Court's Jurisdiction over Jurisdictional Orders.

Section One: The Scope of Jurisdiction in Terms of Oversight

Section Two: The Scope of Jurisdiction in Terms of Regulatory Nature

Second section: The Legal Regulation for Issuing Jurisdiction Orders

Section One: The Conditions and Procedures Required for Issuing Jurisdiction Orders

Section Two: The Extent of the Validity of Jurisdiction Orders Issued by the Court.

Section One

Definition of the Federal Supreme Court

The Federal Supreme Court in Iraq is considered the highest constitutional judicial body in the country. It is entrusted with the fundamental tasks of interpreting the provisions of the constitution, overseeing the constitutionality of applicable laws and regulations, and adjudicating disputes that may arise between the federal authority and regions, governorates, or other administrative bodies. Given the importance of these tasks, this section of the study will address the nature of the court through the following topics:

Section One: The Composition of the Court

Section Two: The Powers of the Federal Supreme Court.

Section One

Formation of the Court According to its stipulated Law:

In this section, we discuss the formation of the single-member Supreme Court through the following two sections: Subsection One: Formation of the Court in accordance with its internal law

Subsection Two: Formation of the Court in accordance with the applicable constitution

Section One:

Formation of the Court in Accordance with its Internal Law Article 1 of this Federal Supreme Court Law No. 30 of 2005 stipulates that a court called the Federal Supreme Court shall be established, with its seat in Baghdad, to exercise its functions ^[1].

After the formation of the Federal Supreme Court, it is worth noting the following observations: The Iraqi legislator succeeded in determining the number of members of the court pursuant to Article (44) of the State Administration Law, which prevented the legislative authority, for any reason whatsoever, from manipulating the number of members, whether by increasing or decreasing it, by amending the court law ^[2].

One of the observations on the law is that it limited the formation of the court to judges only, and does not include those with legal experience, such as legal scholars, professors at law schools, and others, in order to complete the legal structure, because the constitutional judiciary has a special nature that differs from the ordinary judiciary.

Section Two

Formation of the Court in Accordance with the Current Constitution:

After the issuance of the Iraqi Constitution of 2005, it affirmed the establishment of the Federal Supreme Court. Chapter Three of Part Three addresses the federal judicial authority and devoted Section Two to it, entitled (The Federal Supreme Court) ^[3], pursuant to Article 89 of the Constitution. The current Constitution stipulated the formation of the Federal Supreme Court in Article 92 (Second), and pursuant to the text of this article, "The Federal Supreme Court shall consist of a number of judges, experts in Islamic jurisprudence, and legal scholars. Their number, the method of their selection, and the work of the court shall be regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives."

It should be noted that the Constitution added new categories to its composition, in addition to the category of judges: Islamic jurisprudence experts and legal scholars. Among the observations recorded regarding this new composition of the Federal Supreme Court, which must be formed in accordance with the provisions of the 2005 Constitution, are the following:

First: Regarding judges.

This is the first of the three categories of the Federal Court. Here, we find that Article 92(2) of the 2005 Constitution has been criticized for not specifying the number of judges for this court, leaving the determination of their number to the Federal Supreme Court Law, which must be enacted by a

two-thirds majority of the members of the House of Representatives. This is one of the loopholes through which the legislative authority can increase the number of members of the court whenever it deems it to be in its interest, and it also affects the independence of the court ^[4].

Second: Regarding the category of experts and legal scholars

Article 92 (Second) of the 2005 Constitution introduces a new principle for the composition of the Federal Supreme Court. It added additional categories to its composition, namely experts in Islamic jurisprudence and legal scholars. Accordingly, the Federal Supreme Court must consist of these two categories in addition to judges, in accordance with the provisions of the Constitution. This composition, stipulated by the 2005 Constitution for the composition of the Federal Supreme Court, sparked widespread controversy in Iraqi jurisprudential circles. One party argued that the composition of the court from judicial, legal, and Islamic elements is not something to be commended by the Iraqi legislator, because if the composition of the court includes both judicial and legal elements, then it is not to be blamed. Article 2, Paragraph (First) of the Constitution stipulates that "No law may be enacted that contradicts the established provisions of Islam." Clause (B) of the same article of the Constitution stipulates that "No law may be enacted that contradicts the principles of democracy ^[5].

The Second Requirement

The Jurisdiction of the Federal Supreme Court

The 2005 Constitution was issued with the aim of specifying, in Article 93 and Articles (52, Clause Two) and (61, Clause Six, Paragraph B), the exclusive jurisdiction of the Federal Court. It is natural for the Constitution to move in this direction, given that this court is a constitutional institution whose jurisdiction and duties must be clearly defined. This Constitution adds new jurisdictions to the Federal Supreme Court that were not included in its duties, as in the Law of Administration for the State of Iraq in the Transitional Period of 2004 or the Law of this Court No. 30 of 2005, such as its jurisdiction to interpret the provisions of the Federal Constitution ^[6]. Based on the above, we address the jurisdiction of the court as follows:

Section One: The Court's Jurisdiction According to Its Internal Law

Section Two: The Court's Jurisdiction According to the Constitution in Force

Section One:

The Court's Jurisdiction According to Its Internal Law

Article 4 of Law No. 30 of 2005 of the Federal Supreme Court, in force, stipulates several jurisdictions. It is clear from this that there are some observations, the most important of which is that the second paragraph includes laws, decisions, regulations ^[7], instructions, and orders. Does the legislator use the term "administrative decisions" instead of regulations, instructions, or orders? This will be more appropriate, as regulations, instructions, and orders are merely regulatory administrative decisions. As for the third paragraph, this jurisdiction is foreign and not appropriate for the Supreme Court to exercise, as it falls within the jurisdiction of first-instance courts in the ordinary administrative judiciary. It is important to note that judicial

oversight of the constitutionality of laws is of two types according to the means of its exercise. It is exercised through two means: through the original lawsuit, in which case the oversight is called (oversight of annulment), and through the plea of unconstitutionality, in which case it is called (oversight of abstention), based on the text of Article 43 of the Court's Internal Regulations No. 1 of 2005. It should be noted that the constitutional oversight exercised by the Supreme Court is limited to oversight of annulment, and ordinary courts do not exercise oversight of abstention, as they refrain from implementing a text, decision, or regulation that conflicts with the Constitution.

Instead of the above mentioned, they request the Federal Supreme Court, at its own request or that of a party, to rule on the constitutionality issue. In such cases, the decision on the constitutionality of a law is postponed until the Supreme Court issues a ruling. After the court issues a ruling declaring a provision unconstitutional, it does not abstain from applying the law of its own accord, but rather applies the Federal Court's ruling.

Section Two:

The Court's Jurisdiction According to the in Force Constitution

The current Iraqi Constitution explicitly enshrines the jurisdiction of the Federal Supreme Court, particularly in Article (52, Clause Two) and Article (93). This is a natural and justified approach, given that the Federal Court is a supreme constitutional institution whose composition, jurisdiction, and duties are clearly and precisely defined by the provisions of the Constitution. The Constitution has expanded the jurisdiction of this court, adding tasks not previously included in Federal Supreme Court Law No. (30) of 2005. Among the most prominent of these tasks is the interpretation of constitutional provisions. (8)

Referring to Article (52) of this Constitution, we find that it assigns this to the parliament the task of deciding on the validity of its members' membership. However, the authorities of the Federal Supreme Court, as stated in the Constitution, remain multiple and diverse, and can even be described as excessive, potentially burdening the court and distracting it from performing its core functions, particularly constitutional oversight of laws, which represents the central and most critical function of the Court. This could lead to its institutional status being relegated to the level of first-instance courts and undermine litigants' confidence in its performance.

The Federal Supreme Court's oversight addresses all challenges to legislative texts, regardless of their nature, whether formal or substantive ^[9].

The court's jurisdiction to oversight the constitutionality of all applicable laws and regulations is explicitly and clearly stated in the legal text. As for laws, the text is explicitly stated in them, meaning that the court's oversight includes all ordinary laws and original legislation issued by the legislative authority, in its capacity as the body constitutionally entrusted with carrying out this task at all times and under all circumstances ^[10].

Section Two:

The Jurisdiction of the Federal Supreme Court over Jurisdictional Orders

The Federal Supreme Court in Iraq does not have general jurisdiction to issue injunctions, although it is the highest

judicial authority in the country. Its primary jurisdiction is to adjudicate constitutional disputes, and its decisions are final and binding on all authorities. However, injunctions fall within the jurisdiction of the ordinary judiciary, specifically the courts hearing the original case. These orders aim to take temporary measures to protect rights, but the court may issue some of these decisions to regulate work and ensure oversight. We will address the court's jurisdiction as follows: Section One: The Scope of the Jurisdiction of the Federal Supreme Court Over Jurisdictional Orders

Section Two: The Legal Regulations for Issuing Jurisdictional Orders.

First Requirement:

The Scope of Jurisdiction of the Federal Supreme Court over Jurisdiction Orders

The Federal Supreme Court in Iraq is not specialized to issue jurisdiction orders in general. Rather, its jurisdiction is limited to constitutional issues and matters stipulated by the Constitution and applicable laws. Therefore, we will address this scope of the court as follows:

Section One: Scope of Jurisdiction in terms of Oversight

Section Two: Scope of Jurisdiction in terms of Regulatory Nature

The scope of in terms of supervision

Supervision of the constitutionality of laws in comparative systems may be either political or judicial, with the latter occurring either before or after the enactment of legislation. Oversight of the constitutionality of laws is an integral part of the judge's work and does not detract from the scope granted to the legislator. Therefore, it does not conflict with the principle of separation of powers. The most important feature of the oversight exercised by the Federal Supreme Court in Iraq is that it is centralized oversight^[11] as it undertakes the task of verifying the law's conformity with the constitution. The constitutional provision establishing it precludes all other forms of oversight after its establishment. The Federal Supreme Court's oversight addresses all challenges to legislative texts, regardless of their nature, whether formal or substantive^[12]. The Federal Supreme Court's review of the constitutionality of all applicable laws includes those issued before or after the entry into force of the Constitution of the Republic of Iraq of 2005, as it is an absolute text and not specific or restrictive^[13]. The practical application of the Federal Supreme Court's rulings has supported this graduation, as it has limited its jurisdiction to monitoring the constitutionality of applicable laws and regulations, not those whose ruling has expired or are not in force^[15]. It also has no jurisdiction to vote on draft laws in the House of Representatives or amend laws.

Section Two

Scope of Jurisdiction

In terms of regulatory nature

Under the 2005 Constitution of the Republic of Iraq, the Federal Supreme Court exercises a range of regulatory and judicial powers, most notably: ratifying the final results of the general elections for the Council of Representatives and adjudicating appeals filed regarding the validity of its members' membership. These powers are particularly important given their direct impact on the formation of the legislative authority and the legitimacy of the people's

representation in state institutions. Due to these tasks directly affect the legal and legitimate basis for the representation of elected representatives, the court also exercises exceptional, temporary judicial powers, including issuing judicial orders to suspend or suspend the certification of election results in cases where their legitimacy is challenged, pending a decision on the substantive case before it regarding the validity of those results. The court also has the power to temporarily suspend the parliamentary membership of the member whose membership is challenged, pending a final ruling on the validity of their election. This comes to avoid any legal or constitutional consequences that may result from the participation of a representative who does not meet the membership requirements in the work of the House of Representatives, and then a subsequent decision is issued declaring his election invalid or his membership invalid, which may lead to serious constitutional and practical problems that affect the legitimacy of the legislation or procedures in which that representative participated during the appeal period.

Accordingly, these temporary judicial powers exercised by the Federal Supreme Court constitute a fundamental constitutional guarantee to protect the principle of electoral integrity, maintain the legitimacy of representative institutions, and prevent the recurrence of constitutional crises resulting from illegitimate or disputed representation.⁽¹⁵⁾

Accordingly, the court does not have jurisdiction to consider objections to the Board of Commissioners' decisions. Rather, the Judicial Election Commission has jurisdiction to consider appeals related thereto. It would have been more appropriate for the Iraqi legislator to grant jurisdiction to consider appeals related to the board of Commissioners' decisions to the Federal Supreme Court, so that its role would not be limited to ratifying those results without knowing the circumstances and details of their finality.

As for the mechanism for approving the final election results, the Federal Supreme Court's Internal Regulations No. (1) of 2022 stipulate that the court approves the final election results after receiving them in an official letter signed by the Chairman of the Board of Commissioners, and issues its ratification decision within three days from the date of receipt^[16]. Hence, the importance of the injunction as a temporary procedure to preserve rights and legal positions without prejudice to their essence or affecting their substance^[17]. The court ratifies the final results of the House of Representatives elections based on its judicial authority granted to it under the Constitution, the Court's Law, and its internal regulations. However, issuing injunctions to ratify those results is based on its jurisdictional authority^[18].

We believe that the court's refusal to issue an injunction to suspend the ratification of the election results, on the pretext of dismissing the constitutional lawsuit filed before it demanding the annulment of the election results, and issuing its decision to dismiss the lawsuit on the same day it issued its decision to reject the request to issue the injunction^[19]. The Federal Supreme Court should have rejected the request for an injunction, either because it lacked jurisdiction to issue one, because substantive conditions such as urgency were not met, or because the right itself was not affected as long as the formal conditions were met when the request was submitted and the constitutional lawsuit filed in this regard was not dismissed.

Subsection tow :**Legal Regulation for Issuing a Jurisdictional Order**

A Jurisdictional order must not affect the original subject matter of the lawsuit, and its issuance does not require the other party to be notified or confronted with the dispute. This type of order aims to achieve balance between the parties to the dispute by protecting public rights and freedoms and ensuring that the integrity of the lawsuit is not compromised until the case is adjudicated. The issuance of Jurisdictional orders is a fundamental principle of litigation, guaranteed by applicable constitutions and laws, including Article 19/Third of the Iraqi Constitution of 2005, as well as the reasons for the issuance of the Civil Procedure Code No. (83) of 1969 and its amendments. Based on the above, we address the following legal regulation of jurisdictional orders according to Iraqi law:

Section One: Conditions and procedures necessary for issuing a jurisdictional order.

Section Two: The extent of the validity of a jurisdictional order issued by the court.

Section One**Conditions and Procedures necessary for Issuing a Jurisdictional Order**

A judicial order is a temporary measure adopted by the court to grant temporary judicial protection to rights and legal positions. Any interested party may request the judiciary to grant them the required protection, enabling people to obtain this protection and preventing them from overusing or misusing this constitutionally guaranteed right. The law has restricted the use of this right to the availability of certain formal and substantive conditions, so as not to burden the judiciary with an overwhelming number of requests for judicial orders. The nature of these conditions is determined according to the following:

First: Formal Conditions for Issuing a Jurisdictional Order by the Federal Supreme Court

The law requires the availability of certain conditions in requesting the issuance of a judicial order, which are commonly referred to as the conditions related to the applicant, or the formal conditions, which are as follows:

First - Eligibility^[20].

Second - Capacity

A request for a writ of injunction shall not be accepted from anyone who is not directly connected to the right in question^[21]. The applicant must have capacity, whether the original right holder or their legal representative, such as an agent or legal representative. Accordingly, the submission of the request must be made by the person with the real interest or their legal representative. The Federal Supreme Court's Internal Regulations No. (1) of 2022 specify the entities authorized to request the issuance of a writ of injunction to temporarily suspend the implementation of existing laws or regulations pending a decision on their constitutionality. These entities include: the three federal authorities (legislative, executive, and judicial), ministries, independent bodies, entities not affiliated with a ministry, the regional prime minister's office, and governors, provided that the contested text relates to the duties of those entities^[22]. This also includes natural and legal persons from the private sector and legally recognized civil society organizations^[23].

Third: Interest

Article 20 (First) of the Federal Supreme Court's internal regulations stipulates that challenges to the constitutionality of applicable laws and regulations by natural and legal persons and civil society organizations, they must be based on an existing, direct interest that has a significant impact on the plaintiff's legal, financial, or social status, provided that it exists from the filing of the lawsuit until the issuance of the judgment. Therefore, it is found that the court's internal regulations, in addition to the conditions of interest stipulated in the Civil Procedure Law, stipulate that the interest in the lawsuit or request for a substantive order must continue from the filing of the lawsuit or request until the issuance of a final decision or judgment. In light of the above, we find that the interest in requesting a substantive order must be legal, i.e., legally permissible, known, existing, and possible. Furthermore, a potential interest is sufficient to request a substantive order, in addition to the requirement that the interest exist from the filing of the request for a substantive order until the court issues it. Even if the legally specified period for issuing the order is very short, this condition must be met to avoid the possibility of a decline in interest during that period.

Second: Subjective Conditions for Issuing a Jurisdictional Order by the Federal Supreme Court

In addition to the formal conditions that must be met by the applicant for a Jurisdictional Order, the law requires substantive conditions related to the subject matter of the request for a Jurisdictional Order. These conditions, referred to as the Jurisdictional Order's subject matter, or the substantive conditions, are as follows:

First: Urgency

Urgency is a legal situation that requires urgent judicial intervention to address a real and imminent threat to the right sought to be protected, such that ordinary litigation procedures, even if expeditious, are insufficient to avert this threat^[24]. It expresses an urgent legal necessity that necessitates immediate judicial protection, given the existence of circumstances involving a serious infringement of the right or potential harm that cannot be remedied or repaired later if ordinary judicial procedures are followed.

Second: The seriousness of the reasons:

Article (151) of the Code of Civil Procedure states: (. . . This petition shall be submitted in two copies, including the facts of the request and its grounds, and shall be accompanied by supporting documents). In fact, the grounds for the request to issue a jurisdictional order and the supporting documents are the real reasons that support the court's opinion in granting the request to issue a jurisdictional order or not. This condition is self-evident, as it is in fact the subject of the request to issue the order, which the court examines to demonstrate the right of the applicant to the urgent protection he requests. The condition of seriousness of reasons is an axiomatic condition for issuing the jurisdictional order if it is met and is not a condition for the jurisdiction to issue it. If it is not met and the court rules to reject the request to issue it, its jurisdiction to issue it is not void^[26]. The Federal Supreme Court ruled that the suspension of the work of the Presidency of the House of Representatives elected in the first session of the House of Representatives held on 1/9/2022 is a temporary

suspension^[27], the court issued a jurisdictional order to suspend the work of the Presidency of the House of Representatives based on the serious reasons included in the suspension request, which are represented by the violation of the Constitution and the internal regulations of the Federal Supreme Court, which marred that session. If the court did not find that the reasons stated in the suspension request were worthy of issuing that order, it would not have issued a jurisdictional order to suspend it. In a subsequent decision of the court, it ruled that (the procedures for electing the candidate for the position of President of the Republic are temporarily suspended until the case is resolved (Federal 17 of 2022)^[28]. It is found that the court issued a judicial order to stop the nomination of the above-mentioned person based on the serious reasons included in the request to issue the suspension order, which are represented by the explicit violation of the conditions of good reputation and integrity stipulated in Article (68, Clause Three) of the Constitution of the Republic of Iraq for the year 2005, due to the existence of case related to it before the Integrity Investigation Court. Accordingly, the serious reasons that support the request to issue the suspension order or not constitute an essential condition that the court verifies before issuing the order so that it can issue it.

Since the judicial order is a temporary and precautionary procedure, it does not affect the essence of the right, because not affecting the essence of the right is an inevitable effect of the temporary nature of the judicial order. The basis of the court's jurisdiction to issue judicial orders is the existence of a state of urgency and that the required procedure does not separate the essence of the right. If the dispute results in a dispute over the essence of the right intended to be protected by the required judicial procedure (the judicial order), then the court has the right to assess the seriousness of the dispute. If it becomes clear to it that the essence of the right is no longer clear and requires the necessary protection through the judicial order, it rules that it does not have jurisdiction to issue it^[30].

Section Two:

The Extent of the Validity of a Judicial Order Issued by a Court

The validity of a judicial order is a conclusive legal presumption that cannot be disproved. This is because, once a judicial decision has settled a dispute, it must be adhered to in order to prevent the renewal of that dispute. It is not permissible to present the request again to the court, even if the law permits it. This is because allowing each party to renew the request again leads to the perpetuation of disputes, and this is not in the interest of individuals⁽³¹⁾. Furthermore, renewing the request enables the litigants to obtain a decision that conflicts with the decision obtained by the other party. Thus, the court's decisions are contradictory on the same subject, and this conflict makes it impossible to implement judicial decisions⁽³²⁾.

In light of the above, it can be said that the necessary force of a judicial order lies in its consideration as a source of truth and an argument for the ruling. Therefore, the applicant, whether his request is accepted or rejected, may not request the court to issue a new judicial order. If he does so, the court will reject his request based on its previous ruling, as the judicial order issued by it constitutes an indisputable legal presumption. The binding force of judicial orders is divided into two types: relative and absolute, as follows:

1. The relative validity of a judicial order

The relative validity of a judicial order means that its effect is limited to the parties to the request for which it was issued. The preparation for the issuance of a final judgment in the case, and to the same dispute that was decided in substance and cause, provided that the parties, subject matter, and cause are united for this validity to be complete.⁽³³⁾ when a judicial order is issued, it only has the relative force of *res judicata*. All public and private law persons must tolerate by this force, provided it is raised as a request or defense by the parties. This force has a relative effect limited to the parties themselves in the request for which the judicial order was issued, as it is not related to public order. Furthermore, the court may not raise it automatically unless it was raised in a specific case previously decided by a judicial order.

2. The absolute validity of a judicial order

The absolute validity of a judicial order means that its effect extends to everyone, i.e., to the parties and non-parties to the subject matter, in addition to all parties. Sometimes the terms "absolute validity" and "universal validity" are used interchangeably. Thus, a judicial order produces its effect and is relied upon in any request, even if its cause differs from the request for a judicial order for which an order with absolute validity was issued. A judicial order with absolute validity does not require the same cause.⁽³⁴⁾ Accordingly, it is found that the absolute authority of the judicial order is with respect to all persons and authorities, and its effect is not limited to the person requesting the issuance of the judicial order. The person against whom the judicial order is requested to be issued, because there is not a requirement for the presence of a single reason in each request for the issuance of a judicial order. In order for it to be invoked, because the primary purpose of that argument is to oblige the constitutional judiciary not to issue conflicting and contradictory judicial orders.

Conclusion

After we have completed our discussion of the Federal Supreme Court's authority to issue a jurisdictional order, we have reached some of the following conclusions and recommendations:

First: Results:

1. The research concludes that a jurisdictional order within the scope of constitutional jurisdiction is defined as "a temporary decision issued by the Federal Supreme Court, exercising its judicial authority, without justification, in the circumstances stipulated by law, at the request of one party and in the absence of the other party. It has a temporary effect that ends with the lapse of the right to file a constitutional lawsuit."
2. The legal basis for the Federal Supreme Court's jurisdiction to exercise jurisdictional jurisdiction is based on Article (39) of the Federal Supreme Court's Internal Regulations No. (1) of 2022. It grants the court the authority to apply the provisions of the Civil Procedure Code insofar as they do not conflict with the nature of its constitutional jurisdiction, after applying the relevant rules of the General Procedure Code. However, the Federal Supreme Court Law and its Internal Regulations still suffer from clear legislative shortcomings in regulating this aspect, particularly with regard to the detailed and systematic controls and conditions for

exercising jurisdictional jurisdiction.

3. Judicial orders issued by the Federal Supreme Court are not purely administrative in nature. They cannot be considered merely regulatory procedures or internal activities aimed at facilitating the court's work as a public utility. These orders are not issued by the court on its own initiative, but rather are issued upon a request submitted by one of the parties with the aim of protecting a specific legal right or position. At the same time, these orders are not purely judicial, as confirmed by the Federal Supreme Court itself. This demonstrates their dual legal nature, combining jurisdictional and procedural aspects, depending on their purpose and the context in which they were issued.

4. Second: Recommendations:

1. We agree with those who precede us in calling on the Iraqi legislator to establish a special law for the constitutional procedures followed before the Federal Supreme Court, so that it becomes the general law for regulating and hearing constitutional disputes. We also emphasize the need to abandon reliance on the Civil Procedure Code No. (83) of 1969, as amended, whose provisions are largely inconsistent with the nature of the constitutional lawsuit, and whose procedural rules are inconsistent with the nature of the procedures in this lawsuit.
2. While we support the Iraqi Constitutional Judiciary's tendency to accept requests to issue judicial orders within the limits of its jurisdiction, we urge it not to hesitate to exercise this role, given the clarity of the legal basis that authorizes it to do so, represented by Federal Supreme Court Law No. (1) of 2022.
3. We demand that the Iraqi legislator include in the Federal Supreme Court Law the legal texts that specify the procedures followed before the court in the field of exercising its judicial jurisdiction and not to rely on the general texts contained in the Civil Procedure Code. they conflict with the nature of the constitutional lawsuit and its specificity, and it should be as follows (the Federal Supreme Court may decide to temporarily suspend consideration of a specific issue or subject by a judicial order issued upon the request of one of the parties without prejudice to the right itself when a state of urgency arises)

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