

# THE INTERPRETATIVE COMPETENCE IN ACCORDANCE WITH THE JORDANIAN CONSTITUTIONAL COURT JUDICIARY

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## ABSTRACT

*Aim: This study aims to shed light on the interpretative competence of the Constitutional Court in Jordan through the Constitutional Court experience, in an attempt to indicate the nature and scope of interpreting the Jordanian Constitution provisions, and the authorities entitled to request interpretation, with an indication of the role of the Constitutional Court and its effect in interpreting the Constitution provisions through the Constitutional Court's original competence in interpreting the Constitution provisions and its competence to interpret during the adjudication of a Constitutional action, with a view to develop this experience and overcome obstacles it faces for the sake of its advancement so as to ensure the public interest and preserve the constitutional legality.*

*Research Methodology: The study is based on describing the case by using the descriptive and analytical method, with analysis of the results obtained through analyzing the text of Article 59/2, in light of the Constitutional Court decisions in the interpretation of Constitution provisions.*

*Results: The study concludes that the Jordanian Constitutional Court competence is only focused on the Constitution provisions, meaning that it is confined to the exclusively interpretation of the Constitution provisions, by excluding any provision not mentioned in the Constitution, regardless of its nature and force.*

*The Constitutional Court shall deal with the interpretation of the Constitution provisions, if so requested, by a decision issued by the Council of Ministers or both the House of Representatives or the Parliament. Any of these authorities shall contact the Court and provide it with a notice of these decisions in a letter signed and submitted by the president of the council requesting the interpretation.*

*Despite the absence of an explicit provision of the power and authority of the Constitutional Court decisions in interpreting the Constitution provisions, it is obvious that its decisions to interpret the Constitution provisions enjoy the same authority and power as its rulings in Constitutional appeals; they are final and binding for all authorities and for everyone.*

*Recommendations: The study recommends the Constitutional judge not to oversight the Constitution objectives and general principles in the interpretation that would lead to the Constitutional Court departure from its competence in the Constitutional interpretation and lead it to amend the Constitution provision by a different interpretation for its goals and objectives.*

*The study recommends the Constitutional judge to determine the Constitutional provision purpose in order to know what the Constitutional legislator aims at from the provision to be interpreted, for the sake of achieving the objectives of the provision to be interpreted.*

*Conclusion: The study concludes that the Jordanian Constitutional Court competence is only focused on the Constitution provisions, meaning that it is confined to the exclusively interpretation of the Constitution provisions, by excluding any provision not mentioned in the Constitution, regardless of its nature and force.*

**Keywords:** Constitution, Constitutional Interpretation, Constitutional Court.

## INTRODUCTION

The topic of the Constitution interpretation has extreme significance, as the Constitutional interpretation process does not only involve clarifying the ambiguity surrounding the Constitution, but also helping establish a Constitutional rule that goes beyond the limits of the provision literal implementation, clarifying the Constitutional legislator intention towards the provision, and the obligation of the Constitutional court adherence to the rules and mechanisms to consider interpretation request; the most significant matter is for the interpretative competence not to lead to amend the Constitution provision.

Thereby, the Constitutional Court shall interpret according to a request submitted to it in accordance with the formal and substantive procedures and terms, and the conditions stipulated in the Constitutional Court Law. As the Constitutional jurisprudence and judiciary argue, the reason for resorting to the interpretation request is that a dispute arises about a Constitutional provision, so the intervention of the Constitutional Court by interpretation is necessary to avoid the conflict in the provision understanding and to define its legal meaning. In case a dispute is not raised in this regard, then there is no place to resort to the interpretation request, and it shall be deprived of the acceptance features.

### Study Problem

The study problem is summarized in shedding light on the fact of the interpretative competence of the Jordanian Constitutional Court in light of the text of the Jordanian Constitution of 1952 and its amendments, and the Constitutional Court Law as an authentic and pivotal competence.

This main problem of the study has subsidiarity the following sub-questions:

1. What is the concept of the nature and scope of the Jordanian Constitutional Court's competence to interpret the Constitution provisions?
2. Is the executive and legislative power the authorities that are exclusively entitled to request the Constitution interpretation, or are there other authorities entitled to request interpretation?
3. What are the role of the Constitutional Court and its impact in the Constitution provisions?

### Significance of the Study

The significance of this study is determined in indicating the experience of the Jordanian Constitutional Court in its competence to interpret the Constitution provisions, and identifying the concept of the nature and scope of the Jordanian Constitutional Court's competence to

interpret the Constitution provisions, the authorities entitled to request the interpretation, and the impact of the interpretation in the Constitution provisions.

### **Section One-The Concept of Constitutional Interpretation**

The significance of interpretation appears in the legal provisions that have a defect that makes it difficult to understand its meaning and what is intended and to apply it to facts accordingly. The provision may be ambiguous in some words, or include a factual or legal error. Moreover, the provision may contradict another one, thus the interpretation comes in this case to resolve ambiguity and conflict (Jimly, 2005).

One aspect of jurisprudence believes that interpretation is necessary even in the sound and clear provision, considering that the judgment over the provision in terms of its clarity or lack thereof can be reached only after this provision has undergone the process of interpretation and then judged on it and on its clarity. Moreover, judging the clarity of the provision is a relative matter that varies from one interpreter to another. Besides, it is not necessary for the apparent meaning of the provision's words to be the correct or intended meaning of this provision, which leads to a wrong understanding depending on the provision clarity by virtue of the apparent (Ni'matul, 2017).

On the contrary, in other words, it can be argued that there is no need for interpretation as there is no reason for that. This is the basic approach in the field of interpretation, that is to say, the clear rule, which has a precise concept, does not require an interpretation or explanation, as it is self-sufficient (Abdul, 2006).

Accordingly, this section will be tackled within three topics. In the first, the nature of interpretation will be addressed; in the second, the scope of Constitutional interpretation will be tackled; finally, the third topic is about the nature of Constitutional interpretation.

#### **First Topic-The Nature of Constitutional Interpretation**

Interpretation is an urgent need for every legislation, no matter how perfect it is, as it shall have some deficiency and ambiguity due to the inability of the Constitution provisions to accommodate all the evolving circumstances to suit the changing reality since the legislator cannot anticipate all the emerging issues and changes in society after issuing the legislation by the authority competent to issue (Rabei, 2002).

Whereas the Constitution amendment was developing through the amendment of its provisions, as well as work, documents of the declaration of rights, and what citizens decide in their Constitutional conventions; it is the control over Constitutional legitimacy that mainly changes by its provisions and the features of the Constitution. It does not qualify in its interpretation of Constitution provisions. Rather, it reconstructs it according to the necessity it faces, in a way that preserves the state's unity and its territory integration (Jimly, 2004).

The basic rule in Constitutional interpretation lies in the necessity of interpreting the Constitutional provisions far from their literal meanings. In other words, interpretation should be considered as a legal term whereby the interpreter shall interpret the Constitutional provision in an interpretation far from literalism and not be restricted to it; in such a case, the interpreter becomes a translator of the Constitutional provision not an interpreter. The factual interpretation

that most of the Constitutional jurisprudence affirms is the disclosure of the real intention of the Constitutional legislator from the determination of the Constitutional provision without being restricted by its literalism. Constitution provisions shall be interpreted as one unit complementary to each other; that is to say, any provision cannot be interpreted in isolation from the other provisions, but they shall be interpreted in an integrated and reinforced way; their meaning shall be understood in a way that makes a balance among them and isolates them from conflict. We shall understand statements indicated in the Constitution provisions as a whole, not to understand some of them and ignore the others. According to violation notion, a Constitution provision may not be interpreted in separation from the others, while they have to be interpreted in an integrated way as an integrated set that complement each other in order to preserve the organic unity of the Constitution, in addition to the harmonization among its provisions.

In other words, the Constitutional Court, which is in the area of practicing its competence with regard to the Constitution interpretation, has a role determined in describing the content of the Constitution provision under interpretation; extracting its significance; clarifying its meanings; recognizing its objectives under guiding values, governing principles, and fundamentals included in the Constitution in light of the coherent and integrated organization that its provisions formulated in text and spirit in order to reveal the truth of its concept or its significance through various interpretation methods; and by extrapolating its requirements and underlying objectives and the meanings of the Linguistic utterances (Hamdan, 2007).

#### Second Topic-The Scope of Constitutional Interpretation

Exercising the right to interpret the Constitution provisions mentioned in Article 4/b of the Jordanian Constitutional Court Law does not subject to the subjective assessment of the Constitutional Court and is not an absolute right for it, since it is not entitled to respond on its own to interpret the Constitution provisions, because this right depends on an interpretation request, either issued by the Council of Ministers or a decision taken by one of the National Assemblies by an absolute majority. On this way, the Court is restricted to what is required to it to interpret the Constitution provisions in the text of the decision issued by the Council of Ministers or one of the National Assemblies; it is not entitled to respond on its own to interpret without an interpretation request.

Accordingly, the competence of the Constitutional Court to interpret the Constitution provisions is a limited competence and a ceiling not exceeding the limits of what indicated in the interpretation request issued by the Council of Ministers or a decision taken by one of the National Assemblies. Here, it is possible to request the interpretation under a decision issued by the House of Representatives separately or the Parliament individually (Fakhurohman & Dan-Sirajudin, 2004).

It should be noted that the competence of the Constitutional Court is limited to the interpretation of the Constitution provisions and does not extend to the interpretation of laws and regulations that the Constitutional Court does not face except by investigating their constitutionality in conformity with the conditions set in the Constitution (Kanaan, 2019).

Thus, we find that the power of the Court in interpretation is only focused on the constitution provisions. This means excluding any provision not included in the Constitution, regardless of its nature and force, from this power, and its inclusion of any provision mentioned in the Constitution, even if, by its nature, it does not amount to the constitutional meaning. The

difference between (interpretations of the Constitution provisions) and (interpretation of the Constitutional provisions) the provision the legislator used in the Constitution and the Constitutional Court Law does only include the Constitution provisions, i.e. provisions indicated in the Constitution Act. As for provisions other than the Constitution, the Constitutional Court is not entitled to interpret them, even if they are constitutional in nature, such as those mentioned in the Election Law. This means that the Constitution adopted the formal criterion in determining interpretable provisions before the Constitutional Court (Al-Khatib, 2017).

### **Third Topic-The Nature of Constitutional Interpretation**

The nature of the interpretative work for the Constitution provision which the Constitutional Court carries out is that it follows the methods and takes the tools in its interpretation of the Constitution provisions, and it does not have a constitutional or legislative obligation to adopt this way or another when interpreting, even if it is one of the releases and assessments of this court with its freedom of research and investigation, whether in the provision terms or phrases, or the legislator objectives, or referring to the explanatory means such as submissions and minutes of provision discussion sessions (Mahkamah, 2010).

In order to clarify this, the interpreter shall follow the fundamentalist methods of interpretation, including that the later law supersedes the earlier law, and what shall prevail in interpretation is the amending constitutional provision rather than the amended Constitutional provision. In addition, the apparent meaning in the provision statements shall prevail, so that this is only in the clearly meaningful provision, which indicates its intended purpose in its indicated wording without relying on an external provision. Constitution provisions shall be unified and integrated as one unit complementary to each other; that is to say, any provision cannot be interpreted in isolation from the other provisions. In addition, the special ruling shall prevail over the general ruling, so that if a general wording is mentioned in the provision, this indicates that the stipulated ruling is proven for each of the cases approved, unless there is evidence that the ruling shall be specialized for some of them. If there is no evidence for the specialization, then the word must be recognized in general and the ruling shall be proven in all of the cases approved.

Accordingly, we find that, first of all, the interpreter of the Constitution provisions shall take into account the political and social conditions and the prevailing philosophy in the state in order to clarify the rules of interpretation, because of its clear influence on the Constitutional interpreter in establishing the Constitutional rule, thus it does not lead to developing a new Constitutional rule or amendment to the current Constitutional provisions.

### **Fourth Topic-The Authorities Entitled to Request the Interpretation**

According to Article (59/2) of the Jordanian Constitution of 1952 and its amendments and the Jordanian Constitutional Court Law No. 15 for 2012 in Article (17), it refers to the authorities entitled to request interpretation of the Constitution provisions in an explicit and clear way, saying,

*“The Constitutional Court shall have the right to interpret the provisions of the Constitution if such is requested therefrom by a decision issued by the Council of Ministers or by a decision taken by*

*either House of the Parliament by majority”.*

In this way, the Jordanian Constitution and the law of the court have settled any dispute that might arise in the future with respect to the authority that has the right to request interpretation.

This is what the Jordanian Constitutional Court decided in the Interpreting Decision No. (1) of 2014-for the interpretation of Articles (89,92) of the Constitution. The Decision Summary concludes: By majority;

1. The right of the National Assembly (Parliament and House of Representatives) in the joint meeting to discuss matters in dispute mentioned in Article (92) of the Constitution is not restricted on voting on the decision of House of Representatives or the decision of the Parliament concerning those matters. Rather, it may discuss those matters in dispute and adopt new proposals for them within their limits and within the scope of their purposes and objectives, in line with the agreed matters and within their context.
2. The majority required approving the matters in dispute in the joint meeting of the National Assembly according to Article (92) of the Constitution is the (absolute) majority or the majority of two thirds members present, given that the joint meeting of the National Assembly is held in the presence of the absolute majority of the members of both the Parliament and House of Representatives.

But, the question is: When does the interpretation seeker resort to the Court to interpret the Constitutional provision? To answer this question, it is found that the interpretation seeker resort to interpret one Constitution provision or more in case the views differ within any of these Assemblies about the intended meaning of this or that provision, or among one of the Assemblies and another authority, the matter that requires a settlement by a decision of the Constitutional Court. In most cases, an interpretation is requested when the government or any of the Assemblies is about to submit a bill related to the provision to be interpreted to avoid any legislative violation, Or when the bill has been approved by both Assemblies and submitted to the King for ratification and promulgation in accordance with the provisions of Article (93) of the Constitution. If a constitutional suspicion is raised about any of its provisions, the king, before promulgating it, may request, through the government, an interpretation of the Constitutional provision related to the bill to be ratified (Al-Khatib, 2017).

## **Section Two-The Role of the Constitutional Court and Its Impact in the Constitution Provisions**

The decision of the Constitutional Court to interpret a Constitution provision expresses the final Constitutional ruling for that provision and becomes an integral part of it. Otherwise, describing the role of the Constitutional Court as being creative does not mean developing a new ruling in the Constitution, but rather an expression of the opinion of the current generation about what was written by the past generation. In all other respects, the Constitutional Court, while interpreting the Constitutional provisions, shall not give it false intentions and not interpret its vocabulary and expressions in a way that takes them out of their meaning, or in a way that leads to moving them away from their context or distorting them whether by separating them from their subject, time and setting or exceeding the intended objectives. While representing a creative idea in constructive interpretation of the Constitutional provisions for the public interest, the court decisions regarding interpretation reveal the truth of the content of these provisions which

are not enacted out of the blue, but the public interest was their object and purpose (Al-Khatib, 2017). In view of the role of the Constitutional Court in interpreting the Constitution provisions and the consequences and implications of that, we tackle them through the following topics:

### **First Topic-The Constitutional Court's Original Competence in Interpreting the Constitution Provisions**

The judge work is to apply the legal provision to the disputes submitted to him, given that this process is not a purely tangible process, but rather a technical process subject to the judge assessments and interpretations, whether in understanding the facts or in accommodating the legal provision to these facts. No matter how accurate the legislator is in wording the legislative or Constitutional provision, he cannot confront the assumptions that may occur in fact. The role of the judiciary as an interpretative source for the Constitution provisions will increase in case the legislator regulates oversight over the constitutionality of laws. The Constitutional Judiciary application of the Constitution provisions is a correct context for understanding these provisions.

Regarding this context, the Jordanian Constitutional Judiciary has contributed to interpreting the Jordanian Constitution provisions, when stating, the Court, when considering a challenge or request for interpretation put to it, shall convene with a panel of at least nine members. If one or more members are absent with a legitimate excuse or in one of the instances of recusal, it shall convene in the presence of seven of its members, provided the President or his deputy is among them and it shall issue its judgments and decisions by a majority of five members. In the event of a tie, the President or his deputy shall have the casting vote. The Interpreting Decision shall be deemed valid after its publication in the Official Gazette, according to the provision of Article (19) of the Court Law. In referring to the Constitutional Court's original competence in interpreting the Constitution provisions and to what was stated in the provision of Article 19 of the Court Law regarding the validity of the interpretation decision, it came in the Interpreting Decision No. (3) of 2019 published in the Official Gazette: 5605 in 31/10/2019 consisting: Indicating the application date the ruling issued by the Constitutional Court No. (5) of 2017, whether it is from the publication date of the Special Tax Regulation No. (97) of 2016 or from the issuance date of the Constitutional Court Ruling on 21/8/2017. The Decision Summary: The application date of the Constitutional Court Ruling No. (5) of 2017 is at the issuance date in 21/8/2017. This implies that the effect of the Ruling is only determined from its issuance date, and the promulgation in this case is only for general information, while promulgation is a necessary fact for the enforcement of the Interpreting Decision.

In contrast, it is found that the Constitution provision, regardless of their level of sublimit and supremacy, may raise a kind of controversy about their content because of the ambiguity or confusion thus necessitating the existence of a competent authority capable of carrying out this formidable mission in case a conflict arose between a specific area and another, or a certain authority and another, over the concept of these provisions. The ambiguity of the Constitutional provision means the inapplicability to the submitted case because the explicit will does not adapt with the fact or because of the application; thus it is a must to look into the provision, whether through its words or its spirit, to identify the will of the Constitutional legislator (Hasan, 1985).

Regarding that, the Jordanian Constitutional Court has stated in its Interpreting Decision No. (1) of 2019, published in the Official Gazette No. 5591, dated 1/8/2019, that

*“The interpretation of indicating whether the phrase (to take part in any commercial or financial transaction), mentioned in Article (44) of the Constitution, prohibits the Minister while holding his Ministerial office to become a member of the board of directors of any company or take part in any commercial or financial transaction; and indicating whether the phrase (contracting with) mentioned in paragraph (2) of Article (75) of the Constitution includes indirect contracting through an agency contract, that is, being an agent for a party contracting with the government or any of the authorities mentioned in that paragraph”*

In its decision, the Court concluded that:

1. The Minister may not, during his ministerial office, engage in commercial activity or take part in any commercial or financial business or through companies by purchasing shares or contributing by subscription upon incorporation or purchasing shares at a later time.
2. The member of the National Assembly shall refrain from being an agent for an entity contracting with the government or any public official corporation.

Although the Constitution and the Constitutional Court Law have restricted the right of interpretation to the Constitutional Court, this does not prevent the Trial Courts from doing so during their consideration of cases that require interpretation of the Constitutional provisions not interpreted by the Constitutional Court; since without interpretation, the case facts are not ready or adapted to adjudicate. Furthermore, it is unreasonable that the merits of the case are not decided for an indefinite period or until the Constitutional Court adjudicates the case, considering that the Interpreting Decision issued by the Trial Court after its becoming final and being concluded does not have the same force as the Interpreting Decision issued by the Constitutional Court, in terms of being binding for all authorities and for everyone. The Trial Court Decision has a relative argument restricted to the parties to the case, its causes and facts. The power of the Constitutional Court in interpretation is only focused on the Constitution provisions, which means excluding any provision not included in the Constitution, regardless of its nature and force.

## **Second Topic-The Constitutional Court’s Competence to Interpret During the Adjudication of a Constitutional Action**

In its interpretation of the Constitution provision to be interpreted, the Constitutional Court has a decision in this regard restricting all authorities and all people, in order to oblige them to apply the legal rule in the way that the Constitutional Court has interpreted it, so that it does not include new factors that change its content, or bring it back to other than the area operating in its scope. Moreover, the Constitutional Court Decision regarding the provisions that it interpreted defines its significance in a firm and irrevocable way, so that this decision is merged into those provisions as being an integral part and being applicable since its enforcement. Hence, the interpreted provision is deemed to have been issued starting with the meaning specified by the Interpreting Decision. The Constitutional Court does nothing more than defining the content of a provision around which there has been a deep controversy; whether this provision is ambiguous, concealing its significance, or its apparent meaning contradicts the legislator’s intension. In both cases, it returns to this provision the true image not realized by the practitioners of its application.



Accordingly, it can be said that, upon the request of the Council of Ministers on April 29, the provision of Article 33 of the Constitution is interpreted to indicate whether

*“It is permissible to issue a law conflicting with the obligations of the parties to a treaty that Jordan has ratified according to a law, or including an amendment or abolition of that treaty provisions”.*

The Constitutional Court stated, in interpreting the provision of Article (33) of the Constitution, published in the Official Gazette No. (5640) dated 11/5/2020, whereas, the Council of Ministers' response to the request for interpretation requires its division for the purposes of interpretation clarity regarding each part as follows:

1. It is not permissible to promulgate a law that completely contradicts the obligations established by the parties to a treaty ratified by Jordan according to the law.
2. It is not permissible to promulgate a law that includes an amendment or abolition of that treaty provisions.
3. International treaties have binding power to their parties; states shall respect them as long as they remain persisted and enforceable, insofar these treaties have been concluded and ratified, and the procedures established for their enforcement are fulfilled.

## CONCLUSION

What is stipulated in Article (59) paragraph (2) of the Constitution is what is called *“binding, independent or direct interpretation”*, of which request is submitted to the Constitutional Court in accordance with the procedures and conditions stipulated in the Constitutional Court Law. in accordance to the Constitution provision and the Constitutional Court Law, what is promulgated by the Constitutional Court when it interprets the texts of the Constitution is a binding decision/s and not expressing an opinion or giving advice or issuing a legal advice/s, therefore the request for interpretation has rules that shall be adhered to.

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