

THE ROLE OF THE CONSTITUTIONAL JUDICIARY IN PROTECTION OF PERSONS WITH DISABILITIES - JORDANIAN CASE -

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ABSTRACT

Some people who belong to certain categories, in all societies, suffer from some obstacles that prevent them from leading a normal life, unlike normal people. Such people are called “Persons with Disabilities”, according to what the majority of comparative laws have settled on, including the current Jordanian law on the Rights of Persons with Disabilities No. 20 of 2017 and the Convention on the Rights of Persons with Disabilities of 2006.

The majority of countries across the world have exerted a great deal of efforts in attempting to remove such obstacles represented in several legislations and decisions, without reaching the required goal, due to the lack of appreciation by the legislator and governments of the concept of the rights of this group. The thing that makes the role of the constitutional judiciary the most important and supreme because of its role in interpreting constitutional provisions and control over legislation. Which, in return, has called upon us to discuss and present this issue, through clarifying the role of the constitutional judiciary in protecting people with disabilities, specifically in the Hashemite Kingdom of Jordan as a special case. For what applies to the role of the Constitutional Court in Jordan in this field, applies as well to the role of the comparative constitutional judiciary in various aspects. Yet, without denying the role of the ordinary judiciary, in the judgments and regulations it has taken that have contributed to the protection of this category of society, whether at the level of the regular judiciary, or the religious or special judiciary.

Keywords: Constitution, Constitutional Judiciary, Constitutionality, Persons with Disabilities, Constitutional Court, Protection

INTRODUCTION

Constitutional Judiciary is a name given to the entity that monitors the constitutionality of legislation, with its various names and ranks, to protect the constitution and respect its supremacy.

The forms and names of this entity varied, and its functions differed widely and narrowly, depending on each of the international constitutions that sought this protection. Some of those constitutions have attached them to entities closer in their nature and composition to the political apparatus and granted them the power of prior (preventive) oversight of the constitutionality of laws and regulations, and sometimes of a subsequent oversight within narrow limits. As is the case in the Tunisian constitution, the Lebanese constitution, the Algerian constitution, and the Mauritanian constitution, calling it the Constitutional Council (Mohamad, 2011).

Others have granted such competence to the Federal Supreme Court, such as the constitution of the United Arab Emirates and the Iraqi constitution. However, the most prominent and important than granting such competence to dedicated judicial bodies is granting them the power of subsequent judicial oversight of the constitutionality of laws and regulations, such as the constitutions of the Federal Republic of Germany, Italy, Spain, Romania and other Arab

constitutions in Egypt, Bahrain, Jordan, Palestine, Kuwait, Sudan, and recently in Morocco and Tunisia. As these constitutions established a special court to perform this task and named it the Constitutional Court¹.

The importance of this study comes through focusing on the main protection aspect of the provisions of the constitution, particularly the rights and freedoms of individuals, especially the category of Persons with Disabilities, which continues to suffer greatly for what legislation, regulations, and regular court judgments, cannot provide to enable them to lead a normal and dignified life. This protection, that requires consideration, is undertaken by higher judicial bodies capable of obligating all authorities to issue legislations and take decisions that determine and guarantee the protection of the rights of Persons with Disabilities. Perhaps The Constitutional Court of Jordan, which represents one of the forms of the comparative constitutional judiciary, with the powers it possesses and the strength of its rulings, capable of carrying this role, that represents an effective paradigm shift in the protection of these rights.

Despite the achievements made by the Jordanian Constitutional Court in protecting the rights and freedoms of people, its short life, which did not exceed ten years, and the difficulty of reaching it, still stands in the way of the aspirations of advocates of rights and freedoms. They demand the court to have a distinguished role that elevates it to the level of similar Arab and European constitutional courts².

Choosing the title of the research to be "The Constitutional Judiciary's Role in the Protection of Persons with Disabilities" came as the reason for our feeling and the feelings of others, of course, that the optimum protection for these groups has not been achieved, for many reasons. The thing that prompted us to search for the strongest and highest legal mechanisms that oblige everyone to work in their respective fields, especially the legislative authority to issue comprehensive and effective legislation to place the main train locomotive on the correct railway. Therefore, choice had been made on the constitutional judiciary for its important and effective role in reforming what societies had neglected over the past decades and even centuries (Leon, 1979).

It may seem that the short age of the Jordanian Constitutional Court and its limited experience does not enable researchers to achieve their goals of study, and this is a reality. However, the universal constitutional principles and the role of the comparative constitutional judiciary have enabled us to make important conclusions that were reflected on this topic of our research. Along with the recent international and Jordanian constitutional developments, that enabled us to achieve our goals and provide our recommendations that can assist the decision-maker in achieving tangible progress in the protection of Persons with Disabilities (Borden, 2001).

- 1) On the first of October 2011, broad constitutional amendments were introduced to the Jordanian Constitution 1952, including the addition of Paragraph 5 of Article 6 which states that "The Law shall protect motherhood, childhood, and the old-aged; and shall avail care for the youngsters and those with disabilities, and protects them from abuse and exploitation."

The inclusion of the protection of people with disabilities in the core body of the constitution and in the second chapter of it, under the title "Jordanians' rights and duties", is an important constitutional message, and a binding speech to the three authorities on the necessity to issue the necessary legislations, decisions and provisions that are compatible (in its legality and suitability) with this speech. Especially since it came while we were about to celebrate the 100th anniversary of the establishment of the Jordanian state, with the accompanying development in humanitarian concepts, and the role of the state and the political system in protecting the foundations of the legal state (George, 1984).

We chose to title this research "the Constitutional Judiciary and its Role in Protecting Persons with Disabilities," in recognition and appreciation of the importance of the constitutional

amendments introduced to the 1952 Constitution of the Hashemite Kingdom of Jordan, and the highness and elevation of the texts and provisions of this constitution, placing it at the top of the legal system. As well as the means of protecting and activating this highness, and its impact on the rights of Persons with Disabilities (Crown et al., 1967).

Disability in its general and comprehensive sense has become a prominent social issue in contemporary societies due to its multiple social, economic and educational dimensions, and its negative effects on the individual, the family and society in its humanitarian and social concept, the state in its political and legal concept, and the whole world in its humanitarian Concept. Controversy and multiple definitions regarding Disability still exist, for it is a term that carries many and multiple meanings in different societies, times and goals (Elizabeth, 2012).

The term Handicap may be used to refer to the mental or physical features according to the visions and standards of the medical institution, a condition that must be treated (the medical model). It may refer to the restrictions and constraints of the society in which we live, represented by discrimination against Persons with Disabilities (the social model). The term may, as well, used to refer to the identity of Persons with Disabilities (the social model), and what must be provided to them in order to reach an equal status with their ordinary peers in society (the educational model), and how to ensure equality with other individuals (the legal model), which is what we are interested in addressing in this study³.

The international community has many important initiatives in the field of the determination of the rights of Persons with Disabilities, the most important of which is the Convention on the Rights of Persons with Disabilities for the year 2006, which represented the first important international act and a fundamental reference in the international legitimacy of these rights. However, it has not yet been able to provide full protection for this category of society (Elkatib et al., 2013).

The way of the emergence of the Jordanian state had a great impact on the extent of its commitment to international conventions and treaties and its respect for them even after gaining independence in 1946 and the promulgation of the 1946 constitution. As for the 1952 constitution, although it assigned special provisions to treaties and conventions, it did not specify the rank of treaties and conventions from national legislation. The thing that prompted the ordinary judiciary to diligently assert that international treaties and conventions ratified and issued in accordance with constitutional principles are of a higher rank than the law. Thus, strengthening the value of human rights stated in international charters and treaties, and their impact on the Jordanian legal system and its protection of the rights of Persons with Disabilities (Numan, 2017).

While most of the comparative studies in this field (as few as they are) have dealt with the legal protection of the rights of persons with disabilities in its multiple national and international forms. In line with the recent constitutional developments in the Hashemite Kingdom of Jordan on one side⁴, and the desire to research thoroughly on the other, while taking into account the number of pages that are permitted for publication in scientific journals on a third side, we limit our research to the constitutional aspect of protection. Therefore, the titles of our research is: "Constitutional Judiciary and its role in protecting the rights of Persons with Disabilities."

Because in our view, constitutional protection is the most effective for this category (Preventive, Rehabilitation, Equalization of Opportunities) (Haurioum, 1986).

Defining Disability

Disability still constitutes an evolving and different concept and framework in the understanding of societies and their legislation, due to the different environments and attitudes towards those affected by it, which prevent their full and normal participation on an equal footing between them and others.⁵ This concept continues to evolve and expand until it included any person

whose access to a suitable job has decreased to a wide extent, in a way that hinders keeping it because of physical or mental failure to include the disabled, the seated, the abnormal and those with special needs, and those with multiple mental, hearing, visual and physical disabilities⁶.

Special education scholars were the most interacting and expanding in the definition of handicap through their definition of individuals with special needs, describing them as “individuals in need of special education services, rehabilitation and support services, in order for them to achieve the maximum of their human capabilities.” Then, they move to the main categories, of those who need special education services and their support services, who suffer from one or more of the following disabilities: mental, physical, hearing or visual impairment, and those who face learning difficulties or have behavior or communication disorders, and a group of talents and excellence⁷.

Some did not provide an inclusive definition of handicap or persons with disabilities, but instead focused in their studies on the main types of disability, and presented their study under the title “Physical and Health Disabilities and other sub-forms stemming from that”⁸.

This school believes that another school focused in its studies on the severity and strength of the disability and its repercussions on other disabilities. Therefore, it addressed severe disabilities, and showed that it is a condition in which the progress of developmental abilities negatively affects most behaviors. This group often faces a clear negative attitude on ability in education and social skills, and even on physical and sensory development. They give examples of mental disability and autism, which results in unfamiliar behavior. This school also talked about multiple disabilities, and this condition appears when two or more disabilities are attached to the individual, which negatively affects their experiences, daily life abilities, and the function such as deafness, blindness, autism, cerebral palsy, neurological deficits, and some mental disabilities⁹.

In general, we appreciate each school's trend in defining Disability, Persons with Disabilities, Persons with Special Needs, Disabled, Impairment, Disability, or Handicap. For whatever the name is, it is a special social phenomenon requires study, treatment, rehabilitation and care. To raise their material and moral status, in order to identify with their normal peers, regardless of the disability that afflicts them in a legal educational framework that accommodates all procedures, decisions and legislation that provide them with effective protection. To enable them to fully-integrate into their societies in a way that preserves their humanity, as well as enable them to fulfill their societies' entitlements and enjoy their rights over these societies (Haward, 2004).

With the multiplicity of definitions of the term disability across different angles and perspectives through which this social, humanistic, medical and educational phenomenon is viewed. The purpose of this research urges us, after having presented multiple definitions of disability and showed its most important forms, to present its concept and types within a legal framework that enables us to reach our goal, that is, the statement of the constitutional protection of persons with disabilities (Merick, 2007).

There are many legal frameworks and their components in defining the handicapped or persons with disabilities, including national and international ones. The 1952 Jordanian Constitution, with its 2011 amendment, added a new clause to Article (6) No. (5), stating: “The Law shall protect motherhood, childhood, and the old-aged; and shall avail care for the youngsters and those with disabilities, and protects them from abuse and exploitation in any form.” The legislator stressed the necessity to make the adequate and suitable legislations that shall guarantee their rights (Michel et al., 2012).

In response to this binding constitutional call, and considering that the constitution is the highest legal rule that the legislator must respect, implement and not violate, the Rights of Persons with Disabilities Law No. (20) of 2017 was issued to replace the Law of Persons with Disabilities No. (31) of 2007 and responds to the rule of the Constitution. The first response was by defining a person with a disability as stated in Clause (a) of Article (3) thereof, where it stated: “For the

purposes of implementing the provisions of this law, a person with a disability is defined as a person who has a long-term physical, sensory, intellectual, mental, psychological or neurological impairment, which, as a result of interaction with other physical and behavioral barriers, may hinder the exercise by such person of any right or basic freedom independently¹⁰.”

This law has clarified what is meant by the long-term mentioned in Clause (a) of Article (3), which is “the impairment that is not expected to disappear in at least (24) months from the date of commencement of treatment or of rehabilitation.”

The law also defined physical and behavioral barriers as " lack or absence of reasonable accommodation or accessible formats or accessibility, and also include individual behaviors and discriminative institutional practices on the basis of disability (Smadi et al., 2014)."

As for the major life activities mentioned in Clause (a) of this Article include the following:

- 1) Eating, drinking, administering, self- care, reading and writing.
- 2) Movement and mobility.
- 3) Interaction and concentration, expression and verbal, visual and written communication.
- 4) Learning, rehabilitation and training.
- 5) Work.

It seems that the comparative legislations used the same criteria and standards in describing the handicapped, with emphasis on the medical model and the social model in most cases¹¹.

Law No. (29) for the year 2006 for people with special needs and treating them reciprocally in the United Arab Emirates defines a person of determination as “every person suffering from a temporary or permanent, full or partial deficiency or infirmity in his physical, sensory, mental, communicational, educational or psychological abilities to an extent that limits his possibility of performing the ordinary requirements¹².”

As for the Egyptian Law on the Rights of Persons with Disabilities issued by virtue of Law No. (10) of 2018, it defines a person with a disability as “any person who has a full or partial disorder or impairment, for a long-term be it physical, mental, intellectual or sensory; if this disorder or impairment is stable; and which in interaction with various barriers, may hinder their full and effective participating in society on an equal basis with others.”¹³

Law No. (8) of 2010 regarding the rights of persons with disabilities in the State of Kuwait is close in defining a person with a disability to the previous definitions. The person with disability is defined in Article (1) as “One who suffers from Permanent, total, or partial disorders leading to deficiencies in his/her physical, mental, or sensory abilities that may prevent him/her from securing the requirements of life to work or participate fully and effectively in society on an equal basis with others.” As for the global sphere and the international community, some declarations, conventions, international covenants and their programs offered multiple definitions of people with disabilities based on the perspective and goal pursued by the United Nations General Assembly in issuing it, socio-medical, economic, moral, and educational. Yet, the outline of these definitions appeared in the Convention of the Rights of Persons with Disabilities for the year 2006. Which one hand, affirmed the name of this category as Persons with Disabilities, and on the other, defined them. Article (1) of the Convention of the Rights of Persons with Disabilities stipulates: “Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”¹⁴

The Rights of Persons with Disabilities in Jordanian law

We have previously elaborated that the Jordanian constitution did not address the rights of persons with disabilities in detail and did not specify them, leaving the Jordanian legislator to clarify and organize them, apart from stating in Clause (5) of Article (6) that “The Law shall protect motherhood, childhood, and the old-aged; and shall avail care for the youngsters and those with disabilities, and protects them from abuse and exploitation (Taylor et al., 2005).”

The Rights of Persons with Disabilities Law No. (20) of 2017 is directed by the constitution and is directed to the protection and care of people with disabilities. Article 4 states that:

Article (4)

The following principles shall be taken into consideration in implementing this Law:

- a) The respect for the inherent rights and dignity, individual autonomy and freedom of choice of persons with disabilities.
- b) The participation of persons with disabilities and their organizations in policymaking, drawing up plans, programs, and decision-making operations related to them.
- c) Not to discriminate against persons with disabilities on the basis of, or because of, disability.
- d) The acceptance of persons with disabilities as part of human diversity and difference.
- e) The inclusion of the rights and issues of persons with disabilities into national policies, strategies, plans, and programs as well as the state budget.
- f) Equality between men and women with disabilities in terms of rights and duties.
- g) Equal opportunities for persons with disabilities.
- h) To ensure the rights of children with disabilities, develop their abilities and skills, and enhance their inclusion and participation in the community.
- i) To ensure that reasonable accommodation and accessible formats, accessibility and universal design are provided to persons with disabilities on the grounds that these constitute the requisite requirements needed for exercising their fundamental freedoms and rights.
- j) The removal of physical and behavioral barriers for persons with disabilities, that include a lack or absence of reasonable accommodation or accessible formats or accessibility as well as individual and institutional behaviors and discriminatory practices on the basis of disability.

It is noticeable that the Rights of Persons with Disabilities Law itself emphasized respect for the rights of this group without indicating that it would define them, making this law applies to any rights that were not stated therein. Besides, it referred to a specific group of people with disabilities, namely children, and gave them special attention. All of this came here under the heading "Principles and Rights".

Although the rights of persons with disabilities have not been defined in this law to accommodate any updates or developments for the benefit of people with disabilities nationally and internationally, the Jordanian legislator has defined a general framework that draws general plans for these rights. Indicating that the content and purpose of this law is to reduce physical and behavioral barriers for persons with disabilities. These expressions open the field for diligence to remove any physical or moral obstacles or barriers that prevent or reduce the possibilities of people with disabilities from obtaining their needs easily or deprive them of their rights and freedoms¹⁶.

The Rights of Persons with Disabilities Law No. (20) of 2017 addressed all ministries and institutions, and indeed all the authorities, on the necessity to take all decisions, procedures and arrangements necessary for its implementation. Including the legislative authority itself, to follow up and enact legislation supporting the recognition and protection of these rights on the one hand. And respecting the observance of the relevant international conventions, on the other hand, which are duly concluded by the Hashemite Kingdom of Jordan in accordance with the constitutional principles and procedures, as well as the executive authority, which is obligated by virtue of the constitution and the law, to issue the executive regulations necessary for the implementation of this law.

The Rights of People with Disabilities in International Declarations and Charters

The international community has shown a special interest in persons with disabilities, and has issued to them many declarations, charters and agreements that we have referred to previously. The most prominent of which is the Declaration on the Rights of the Disabled Persons, adopted by the United Nations General Assembly in Resolution No. 3447 of December 9, 1975. In which, the member states of the United Nations are reminded of the right they took upon themselves in the United Nations Charter to work collectively and individually and with the cooperation of the organization to encourage raising living standards, achieving equal and full employment and creating conditions to allow progress and development in the economic and social field.¹⁷ In it, the meaning of the disabled is also defined as every person incapable of fully or partially secure for himself the necessities of his normal individual or social life due to a congenital or non-congenital deficiency in his physical, mental or psychological abilities.

The Declaration on the Rights of the Disabled Persons has set out a set of rights such as the right to equality and to live in human dignity. Along with all the civil and political rights enjoyed by ordinary peers; such as the right to work, education and health, including medical, psychological and occupational treatment, and to seek the necessary legal aid, including full knowledge of the rights set forth in this declaration among others¹⁸.

It is worth noting from this point that the Constitutional Court in Jordan has issued a discriminatory resolution for Article (33) of the Constitution in which it decided that no law may be issued that includes an amendment or abolition of the provisions of a treaty that the court had ratified by law. (Resolution No. (1) of 2020 issued on May 3, 2020).

The Convention on the Rights of Persons with Disabilities (CRPD), adopted on 2006, by the United Nations General Assembly remains the most important for people with disabilities for the following reasons:

- 1) CRPD is devoted to the rights of people with disabilities, including the titles, contents, obligations, and means to protect these rights. These agreements came with the advent of the twenty-first century, after a wide experience of the international community, and its efforts, through several agreements, charters, covenants and organizations, to protect people with disabilities.
- 2) These agreements came with the advent of the twenty-first century, after a wide experience of the international community, and its efforts, through several agreements, charters, covenants and organizations, to protect people with disabilities.
- 3) CRPD clarifies the principles on which it was based in defining persons with disabilities, its purpose, the obligations of states parties to it, the multiple groups and categories of people with disabilities, and the most effective ways to protect them in all respects.
- 4) CRPD is considered one of the most duly acceded and ratified by countries, including Jordan, which adopted it under the name "The Law of Ratification of the Convention on the Rights of Persons with Disabilities No. 7 of 2008 and published in the Official Gazette No. 4895 dated March 25, 2008." CRPD is one of the few conventions that have completed all the procedures for constitutional ratification and issuance in accordance with the provisions of Clause (2) of Article (33) of the Constitution, and the consequent legal results. The most important of which is what is stated in CRPD with all its definitions, principles, aspects of the rights mentioned therein and the measures required for its implementation. It has become an integral part of Jordanian law. Rather, above the law, as established by the rules of the Jordanian judiciary.
- 5) One of the most important features of CRPD, and without the need to attempt to enumerate the rights of persons with disabilities, is that it is based mainly on "general principles" stated in Article (3), followed by general obligations on the States parties to it, to take all "legislative measures" necessary to implement the rights recognized in CRPD. Such measures include working to amend and abolish existing laws, regulations, rules, customs and practices that constitute discrimination against persons with disabilities.
- 6) CRPD referred to the United Nations Charter, the Universal Declaration of Human Rights, the two international covenants on human rights, the World Program of Action concerning persons of disabilities, and the universal features of human rights and the disabled and their indivisibility, which gives these declarations and covenants a complementary feature with the same strength and commitment.

- 7) The reference to some declarations, covenants, conventions, programs, and the rights of persons with disabilities in this agreement does not mean that it is exhaustive. Rather, there is a more comprehensive framework for the aspects and types of disabilities and for persons with disabilities, which is not fixed and unstable to the extent that it expands and develops with the highness and development of the principles and goals that International society seeks to achieve.

The Role of the Constitutional Court

Individuals, including persons with disabilities, enjoy rights and freedoms based on the will of the constitutional legislator, who clarifies these rights and freedoms with a clear title in the constitutional document, such as the Jordanian constitutional legislator has stipulated these rights and freedoms under the heading of "the rights and duties of Jordanians."¹⁹

The Jordanian constitution, in the field of the rights of persons with disabilities, has explicitly expressed their right to equality, devoting Article (6) in all its clauses to the protection of the individual, family, motherhood, childhood and old-aged. Clause (5) of the same article, includes a special provision on those with disabilities, including a directive binding the Jordanian legislator to issue the necessary legislation to protect them against abuse and exploitation. Along with what such call requires in terms of complements and basic constitutional procedures for this protection by establishing the Constitutional Court, supporting the administrative judiciary and expanding its powers.

Like the rest of the countries, Jordan has been continuously striving, since the establishment of the Jordanian state, to be an active member of the international community and respectful of its will, principles and orientations, committed to its decisions, declarations, charters and agreements. Thus, prompting it to be a party to the international legal system, and consequently have the legal obligations to adopt the provisions of these declarations, charters, and international agreements within the limits permitted by the national legal system, with the positive implications of this commitment on the methodology of legislation, judiciary rulings, and effective protection for persons with disabilities.²⁰

The status of a person with a disability in the legal state is determined in light of the constitutional legitimacy that is established, clarified in its contents and the limits by the constitution, supplemented by the legislative authority, implemented by the executive authority and guaranteed by the judicial authority. All with the support of the political system, led by the head of state.²¹

His Majesty King Abdullah II Ibn Al Hussein, in the first five discussion papers, addressed many ideas and visions on the path of the political and democratic reform process and positive participation that contribute to building a promising future. However, the stronger and more powerful royal discussion paper issued under the title "The rule of law is the basis of the civil state." In which, His Majesty states that the most important characteristic of a successful developed country is serving its citizens and protecting their rights, and that the real basis upon which democracies are built and the main guarantor in protecting the rights of the individual and society is the rule of law. And that the State, with its sovereignty and capabilities, is responsible for implementing and enforcing the rule of law with equality, fairness and integrity.

In light of this balanced legal equation, under the royal parliamentary representative system, and in light of the most important amendment to the Jordanian Constitution of 1952 and the relevant laws, we, hereby, affirm that the rights of persons with disabilities and the recent constitutional amendments of 2011 have achieved effective constitutional protection by establishing the Constitutional Court. Along with what such amendments introduced of a special provision for people with disabilities mentioned in Clause (5) of Article (6) of the Constitution, which states:

“The Law shall protect motherhood, childhood, and the old-aged; and shall avail care for the youngsters and those with disabilities, and protects them from abuse and exploitation.”¹⁵

The supremacy of the Constitution is a recognized principle in legal states, be it a monarchical or republican system of government, whether or not stipulated in the constitution. It is the strong foundation of democracy, justice and equality. Therefore, it was said that in order for establishing a democratic constitutional system, there must be supreme rules that the governing body shall respect in all its actions, out of respect and appreciation for the principle of legitimacy and hierarchy of the legal rules.

The legislative authority is no longer absolute in its work and without restrictions because that will lead to tyranny and deviation, which makes the tyranny of the group more dangerous than the tyranny of chirp, which is more cruel and unjust. Hence, the political systems have realized the importance of having a monitoring apparatus over the constitutionality of legislation, especially laws issued by the legislative authority. Some of them entrusted this oversight to a special body that would take over it before issuing it, as did France, Algeria and Mauritania, which established a constitutional council that examines the constitutionality of laws before their issuance. Others have entrusted judiciary with the post-law oversight, such as Germany, Italy, Spain, Egypt, Jordan, Kuwait, Palestine, Bahrain, the Emirates, Iraq and (Morocco and Tunisia) recently. Even those who adopted the subsequent judicial oversight of the constitutionality of laws, some of them have entrusted it to the ordinary judiciary represented by the Supreme Federal Court such as the United Arab Emirates, Iraq and Yemen. While others entrusted it to an independent judicial body called the Constitutional Court, such as Jordan, Bahrain, Kuwait, Morocco and Tunisia, or the Supreme Constitutional Court like Egypt and Palestine.

Jordan, however, did not adopt the subsequent central judicial oversight until 2011, when broad constitutional amendments were introduced to the 1952 constitution. The most important of which was the constitutional amendment that added a special chapter to the constitution entitled "The Constitutional Court". Which was considered a constitutional basis for the establishment of an independent court that shall have the competence of oversight on the constitutionality of the applicable laws and regulations, and shall have the right to interpret the provisions of the Constitution. As stated in Article (58) of the Constitution the following:

- 1) A Constitutional Court shall be established - by a law - the headquarters of which shall be in the Capital; shall be considered as an independent and separate judicial body; and shall be composed of nine members at least inclusive of the President, to be appointed by the King.
- 2) The term of membership in the Constitutional Court shall be six years non-renewable.

Article (59) of the constitution defines the jurisdiction of the Constitutional Court as follows:

- 1) The competence of oversight on the constitutionality of the applicable laws and regulations.
- 2) The right to interpret the provisions of the Constitution.

The Constitutional Court controls over the constitutionality of laws and regulations through one of two methods: Direct Challenge and Indirect Challenge.

Direct Challenge

The Jordanian Constitution and Constitutional Court Law No. (15) of 2012 restrict the right to directly challenge at the Constitutional Court the constitutionality of the applicable laws and regulations to only three entities, namely:

The Senate, the House of Representatives, and the Council of Ministers.

A direct challenge of unconstitutionality may deal with the law or the system in its entirety (this has not happened yet) or a provision or more. No condition is required for it except that the request is submitted, by one of these entities, upon a decision taken by the majority in it. The request shall bear the signature of the head of the challenging entity, indicating the name of the law

or the challenged system, its number, the scope of the challenge in a clear and specific manner, as well as specifying the reason of the unconstitutionality.

Whereas the direct challenge does not exceed, in its form, the framework of the request from an official entity, the interest condition is not proven in it, because it is supposedly included in the decision taken by one of the councils of the three entities specified by the constitution and the Constitutional Court law.

It is noticeable that the direct challenge to the constitutionality of laws and regulations as adopted by the Jordanian constitution and the Constitutional Court Law, is an Institutional Access and Official challenge, that is granted to ordinary individuals, whatever their qualities and interests, nor private institutions, whatever their nature or objectives. Therefore, it differs from the Direct Individual Access that was adopted by some international constitutional regulations such as Germany, Italy, Spain and Arab countries such as Kuwait, Sudan and Palestine.

Those regulations that gave the individual the right to direct recourse to the Constitutional Court to challenge the unconstitutionality that meet certain conditions, where it is also called the original lawsuit.

Indirect Appeal (Plea of Unconstitutionality)

The Jordanian constitution and the Constitutional Court Law No. (15) of 2012 allow any party to a case pending before any court to raise the claim of unconstitutionality. The court, if it finds that the defense is serious, shall refer it to the Court of Cassation for the purposes of deciding on the matter of referring it to the Constitutional Court.

The holder of the right to argue that a law or regulation or any provision thereof is unconstitutional is one of the parties to a case pending before a court. The party may be a plaintiff or a defendant, and it may be a normal person or a legal person, and it may be a private person and it may be a public person, and it may be original or interfering, but he must be relevant. The court here means any statutory, religious or special court.

The court before which the unconstitutionality is argued, if it finds that the plea is serious, must refer it to the Court of Cassation (the checking stage) that decides whether to refer it to the Constitutional Court. Whatever, this contested law or regulation shall be enforceable, and the conditions and formalities required for accepting the unconstitutionality pleashall be completed in form before all courts that hear it, starting from the Subject Court to the Court of Cassation, and all the way up to the Constitutional Court.

The Ruling of the Constitutional Court

The Judgment of the Constitutional Court on a challenge put to it (the constitutional case) shall be final and binding on all authorities and the people, and shall be enforceable with immediate effect (that is, from the date of issuance of the judgment) unless the judgment specifies another date for its enforceability.

If the Constitutional Court rules that a law or regulation or a provision in any of them is unconstitutional, the contested provision shall be deemed void from the date the judgment is issued. Yet, if the judgment sets another date for its enforceability, what was ruled unconstitutional shall be deemed void from the date specified in the judgment.²²

If the court rules that a provision that imposes a penalty is unconstitutional, judgments that have ruled for convictions on the basis of such provision shall be suspended and their penal effects shall cease.²³

It is noted that the Constitutional Court's ruling on the unconstitutionality of a law or regulation does not abrogate the text in that law or system, but rather decides its nullity and the

expiration of its legal force. Hence, the legislator must initiate its abolition by the constitutional method and procedures established to abolish the legislation itself.²⁴

Since its establishment and until now, The Constitutional Court has not considered a challenge or defense against the unconstitutionality of a provision in the Law on the Rights of Persons with Disabilities No. (31) of 2007, that law which was replaced by the Law on the Rights of Persons with Disabilities No. (20) of 2017 and the regulations issued pursuant to it, despite the amendments introduced to The Jordanian constitution, the most important of which are those annexed to Article (6) thereof, especially those related to the principle of equality and the protection of people with disabilities.

Amended Article (6) stating that:

- 1) Jordanians shall be equal before the law, with no discrimination between them in rights and duties even if they differ in race, language, or religion.
- 2) The law shall protect motherhood, childhood and the old-aged; and shall avail care or the youngsters and those with disabilities and protects them against abuse and exploitation.

The only ruling that was issued in the framework of the rights of persons with disabilities was not directly related to these rights, as much as it was about the means of protecting them and ensuring their enjoyment of these rights within the Jordanian legal system.

Despite the issuance of the ruling rejecting the appeal put to it that Article (12) of the System of Centers for Persons with Disabilities No. (20) of 2014 is unconstitutional, yet it was a victory for the people involved and a recognition of the constitutionality of Article (12). For it gives the Minister of Social Development (at the time) the right to issue decisions to impose administrative penalties and precautionary measures on any center that does not work seriously to care for people with disabilities, taking into account the obligations and prohibitions contained in the system of centers for persons with disabilities No. (40) of 2014 issued based on the Ministry of Social Affairs and Labor Law No. (14) of 1956.

In this regard, the Constitutional Court says, "... and based on the foregoing, our court considers that the reasons for the appeal do not affect the relevant Persons Centers Regulation No. (40) of 2014 and Article (12) thereof, and are worthy of a dismissal, so the appeal is dismissed."²⁵

The principle of equality is one of the most frequent constitutional principles in the provisions of the comparative constitutional judiciary and the Jordanian Constitutional Court. It is based on safeguarding rights and freedoms in the face of forms of discrimination, and ensuring equal opportunities for identical (Equal) in legal positions in the enjoyment of the rights and freedoms stipulated and guaranteed by the Constitution and the law. Consequently, it does not mean that groups of citizens are treated equitably for their differences in their capabilities and legal positions.

The principle of equality is not based on opposing all forms of discrimination, as some of them are based on objective foundations.²⁶

Due to the fact that the principle of equality is not a static indoctrination principle that contradicts practical necessity, nor is it a deaf rule that rejects all forms of discrimination, nor is it sufficient for the arithmetic process required by the scales of absolute justice, the legislator had to combine the principle of equality with the principle of equal opportunities to be a lever for a class of society not protected by Abstract constitutional provisions and to provide them with the capabilities that others enjoy and the category of persons with disabilities does not enjoy. "For the omission of the constitutional text of some rights does not mean their denial based on the fact that constitutional provisions may not be understood separately, or in light of a fact of time. But rather their texture shall be fully developed and in line with the reality and the supposed tone of time."²⁷ In this regard, the Constitutional Court states: "... and the principle of equality has become evident in its advanced construction to determine appropriate and equal legal protection, whose scope of application is not limited to the rights and freedoms stipulated in the Constitution, but extends the scope of Its actions

refer to those rights and procedures that are adopted by the legislator and stipulated in the law within the limits of his discretionary authority and the necessity of what he deems to achieve the public interest.²⁸

Legislative Omission

In light of these constitutional provisions, the role of the Jordanian legislator is not limited to enacting laws that are in conformity with the constitutional provisions in the field of public rights and freedoms to say that all legislative actions and laws are constitutional and not in violation of the constitution. Rather, the Jordanian legislator must activate the constitutional text and its spirit and turn them into creative rules to affirm such rights and what they generate from legislative results that will bring them, mechanisms and means of protecting them to the ground, in an integrated and clear national legal system. If the legislator omits or fell short of this legislative role, his position is marred by the so-called Legislative Omission or Legislative Deficiency.

Despite the newness of the research into the issue of legislative omission in comparative legal studies and its rareness - indeed lack of it - in Jordan, and because of the importance of its link with the Jordanian legislator's obligation to enact legislation in response to the constitutional provisions contained in Chapter Two of the Constitution, under the title "Jordanians' Rights and Duties" in general Clause (5) of Article (6) in particular. It has to be addressed here in order to clarify the meaning of legislative omission as a case of violation of the legislation to the constitution that leads to unconstitutionality and legislative omission in the jurisprudence of the Constitutional Court.

Legislative omission is a negative behavior of the legislator, which is the failure to exercise his competence in legislating on a specific subject that is obligated to legislate in whole or in part, contrary to the provisions of the constitution or the general constitutional principles.²⁹

Legislative omission may be attributed to the original legislative authority represented in the National Assembly and the King. And may be attributed to the executive authority when it undertakes legislation in cases of specific topics defined by the constitution, represented by special and independent regulations as stated in Articles (120,114,45), temporary laws and Article (94) of The Constitution and Defense Systems, Article (124) of the Constitution.

The regulation of any subject or any right and the extent of the need to pass legislation in it is the prerogative of the legislative authority in accordance with the subject and time appropriateness it deems and in which the discretionary power is expanded and the implementation of the theory of legislative omission is less. As for the executive authority, and in the field of exercising its powers in the legislation, it is in most cases restricted, and hence the possibility of implementing the theory of legislative omission is more and wider.

Legislative omission occurs with the failure to develop executive regulations issued based on a specific law or pursuant to Article 31 of the Constitution, and in special independent regimes based on Articles (45, 114,125) of the Constitution. Hence, the possibility of achieving it in its two forms; total omission and partial omission (deficiency) is more than laws for a simple reason is that the executive authority is restricted by subject, time, and sometimes place in its legislation, where it is called directive legislative monopoly. While the original legislative authority, (Parliament and the King), has a wide discretionary power, as the controls and restrictions are less because its exclusive legislation here is normal (La resever Or clanaire).

Whereas the legislative omission is one of the modern terminologies in the constitutional judiciary, its definition, scope and image have not been fully determined, despite the emergence of some studies that have been presented in this regard, along with the provisions of the comparative constitutional judiciary, especially the Supreme Constitutional Court in Egypt.³⁰

The Constitutional Court's oversight of the laws and regulations in force seems easy when a text in a law or regulation is challenged due to a defect in it, but it gets difficult when the appeal is related to a text that does not exist, for what the legislator neglected to stipulate. That is what some tend to call Legislative Deficiency, because it is attached to a text an existing text, but it was deficient. And that is why it was also called partial legislative omission, which is the most general and common, which is referred to in the constitutional judiciary, as the nullification of what is not included in the text.³¹

We believe that the constitutional basis for the unconstitutionality of the subject of legislative omission despite the fact that the Jordanian constitution has not stipulated it, as well as the Constitutional Court Law No. (15) of 2012 is due to mental and judicial jurisprudence at the same time, since he who owns more has less. If the Constitutional Court has the jurisdiction to execute an unconstitutional text, then it has the jurisdiction to suspend its constitutionality on a condition that guarantees its lack of the constitutional defect. Whenever it is permissible to correct the text (in its entirety), there is no need to execute and nullify it in its entirety. Hence, as it is said, "Correcting the constitutional defect is better than wasting the text".

While some use the phrase Legislative Omission in the sense of Legislative Deficiency, we view from the entirety of the Supreme Constitutional Court in Egypt's judgments, issued in this regard, that they are confined to the meaning of Partial Legislative Deficiency in the text without neglect or complete legislative omission. In fact, sometimes the judgment states the deficiency of the provision that has been ruled unconstitutional, as indicated by the Supreme Constitutional Court in Egypt when it ruled that the provision of Clause (2) of Article (6) of Law No. (26) for the year 1975 concerning Egyptian nationality is unconstitutional, due to restricting the right to acquire the Egyptian nationality in the case of the minor children, in the event that the foreign father acquires this nationality, not in case of the foreign mother."³²

The total legislative omission with its multiple legal aspects that are interlinked with the two elements of discretionary power and the suitability of the legislative authority does not make it easy to include it in the oversight of the constitutional judiciary at least at this stage in the development of the constitutional judiciary. On this regard, the Supreme Constitutional Court in Egypt says, "... The judicial oversight that the Constitutional Court undertakes to confirm the constitutional legitimacy is entrusted to those legal provisions, that have been approved by the legislative authority or those issued by the executive authority within the limits of its powers that the constitution has set forth. Thus, it deviates from its scope of binding these two powers by passing a law or issuing a decree by law on a specific topic, since that is within the discretion of those authorities in accordance with the provisions of the constitution. And therefore it is not permissible to get to intervene by issuing a legislation at a specific time or in a specific manner".³³ Total Legislative Omission (negligence) may find its applications in the subsidiary legislations issued by the executive authority, such as the executive systems and special independent systems, and administrative organizational systems, and the reason is that the executive authority when it is given the power of legislation, it is given with constitutional restrictions. This leads to the possibility of non-compliance with these restrictions, by not initiating legislation in a specific area with the consequent constitutional violations.

With the absence of specific cases in which the Constitutional Court has addressed the legislative omission or the legislative deficiency in a clear way, we hereby say, as a prelude to its jurisprudence and directions in the future, that the legislative organization of rights and freedoms must be integrated and inclusive of all its aspects and parts that preserve its legal theoretical and practical value.

Consequently, the jurisdiction of the Constitutional Court to decide on the constitutionality of laws and regulations is not limited to the legislative provisions created by the legislator in the

area of their regulation, but rather to the provisions that they did not create, neglected, and fell short of stipulating them as well.³⁴

Whereas the Constitutional Court has not yet disclosed in its rulings that it has identified the legislative omission or the legislative deficiency. It adheres to the fact that the assessment of the subject, time and place is the prerogative of the legislative authority and its discretionary power in which the element of appropriateness plays a major role in it. In the future, this will push it to adopt this approach, especially on catchy issues of global and national public opinion concern, such as the rights of persons with disabilities, and specifically since the ratification of the Convention on the Rights of Persons with Disabilities by Law No. (7) of 2008 and the international conventions and covenants that we referred to previously, and so on. In addition to what these agreements and treaties result in national legislative obligations that are incompatible with these international conventions and covenants.³⁵

By mentioning the legislative commitment, we mean what the legislator must initiate (originally and subsidiary) to adopt it and decide upon it, if there is no (omission), or to complete the text with what it did not include in terms of provisions if it exists but is incomplete (legislative deficiency). In addition to what the constitutional court can be tasked with of a subsequent judicial oversight, in the event of a legislative deficiency (incomplete text), at least at this stage.

In this context, it is worth saying that the Constitutional Court, even if it did not express its opinion categorically on the status of international treaties, regardless of their names (treaty, agreement, charter, covenant) in the Jordanian legal system, just as the regular judiciary did in many of its rulings when it acknowledged the supremacy of the treaties over the national legislation... However, the Constitutional Court has expressed, in a very recent decision, its opinion regarding the relationship of law with the treaty in the process of interpreting Article (33) at the request of the Cabinet, where it said: "... Whereas the Cabinet's response to the request for interpretation requires it to be divided for the purposes of clarity of interpretation regarding each part, as follows:

First: It is not permissible to issue a law that completely contradicts the obligations established by the parties to a treaty that the Hashimate Kingdom of Jordan had ratified by virtue of a law.

Second: It is not permissible to issue a law that includes an amendment or abolition of the provisions of that treaty.

Third: International treaties have binding power to their parties, and the States must respect them as long as they remain effective and enforceable, as long as these treaties have been concluded and ratified, and the procedures established for their enforceability are fulfilled.³⁶

CONCLUSION AND RECOMMENDATIONS

The Jordanian constitution, according to the constitutional amendment mentioned in Clause 5 of Article 6 of the Constitution obligated the legislator to seek to protect people with disabilities from abuse and exploitation, and to initiate the enactment of necessary and appropriate legislation to achieve the will of the constitutional legislator. Among the achievements of the regular legislator was the Rights of Persons with Disabilities Law No. 20 of 2017, which replaced the Persons with Disabilities Law No. 3 of 2007. This achievement was in response to the Constitution, on the one hand, and in line with the 2006 Convention on the Rights of Persons with Disabilities, which Jordan had adopted and ratified by Law No. (7) of 2008, which was published in the Official Gazette in issue No. (4815) dated 3/25/2008, thus, gaining the agreement a distinct legal value in the Jordanian legal system, on the other hand.

The will of the constitutional legislator to protect persons with disabilities was strengthened by the establishment of the Constitutional Court, which has the power to oversee the

constitutionality of laws, the regulations, as well as the interpretation of the constitution's provisions.

The establishment of the Constitutional Court was a major development in the constitutional and legal life of Jordan, given the privileged position and independence of this court and the competence to oversight the constitutionality of laws and regulations in force and issue absolute and binding judgments for all authorities and all people.

Ever since its establishment, the Constitutional Court has issued dozens of judgments, some of which confirm the constitutionality of the law or the contested provision, while others deem the law and regulation void, in upholding the rule of the constitution. Most of these provisions revolve around the protection of the rights and freedoms contained in the Jordanian constitution. However, none of them (so far) has not been the subject of a challenge to the Rights of Persons with Disabilities Law, although the field, and with increasing legal awareness among individuals and institutions, will lead in the future to some defenses and appeals in some of the legislations related to the rights of persons with disabilities. Specially, if the Constitutional Court held the legislator accountable for the so-called legislative omission.

In light of the above, we, hereby, present the following recommendations:

- 1) Supporting joint academic, educational and legal work to serve people with disabilities, and providing suitable legislation and arrangements for them.
- 2) Developing flexible work legislation that enables many categories of members of society to obtain suitable opportunities for work and legitimate earning.
- 3) Supporting center of care, rehabilitation and training for people with disabilities and providing the suitable environment to compensate them for their lost capabilities.
- 4) Reviewing the Rights of Persons with Disabilities Law No. (20) of 2017 and controlling all the legislative loopholes in it that appeared during its implementation, seeking the help of experts working in this field, and working on issuing the necessary executive regulations for it.
- 5) Working to include in the Law on the Rights of Persons with Disabilities No. (20) of 2017 the most important principles and provisions established to protect the rights contained in the Convention on the Rights of Persons with Disabilities for the year 2006, ratified by the Constitution.
- 6) Expanding the means of plea of unconstitutionality and granting the subject judge (the court) the right to confront the law and ender suspected regulation unconstitutional even without the request any of the parties.
- 7) Shortening the procedures for the plea of unconstitutionality to one set within a single referral conducted by the subject judge, without passing it through the Court of Cassation. Thus, dispensing with the currently applicable Double Referral system.
- 8) Increasing legal awareness of the concept of Legislative Omission and Legislative Deficiency, hoping that the Constitutional Court will adopt it.

ENDNOTES

1. Biagi, Francesco: Three Generations Of European Constitutional Courts in Transition to Democracy. *DirittoBubblicoComparto to Ed Europeo*. 2014 p 998. Rosenfeld, Michel and Sajó, Andras: *Comparative Constitutional law*, Oxford University press . 2012 p 817
2. The Kuwaiti Constitutional Court is the first Arab constitutional court to be formed under Law No. (14) of 1973, noting that the Supreme Court in Egypt has been exercising the role of constitutional oversight since 1969.
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For more see: Whyte, Gerry: *Constitutional Litigation and Disability Rights*.Iresh jurist.Volume 48 P.4.
5. For more see: Dr. Jamal Al-Khatib and Dr. Mona Al-Hadidi: *Introduction to Special Education*.Fourth edition.Dar Al-Fikr Publishing House.Amman 2013 p. 13
Broder, DanchSpoonedr, F. and Meir, I: *Teaching students with moderate and severe disabilities*.New York.2001 P.2
6. *OxfordDictionary: Definition of handicap British and World English*. 2013 P.49

7. Dr. Jamal Al-Khatib and Dr. Mona Al-Hadidi: Introduction to Special Education. (previous reference) p. 13
8. Dr. Abdul Aziz Al-Sartawi and Dr. Jamil Al-Smadi: Physical and Health Disabilities. First edition. Dar Al-Fikr Publishing Housing, Amman.
9. Dr. Aber HaemZureikat: 'Severe and Multiple' Disabilities. Dar Al-Masira Publishing House 'First Edition. Amman 2016, pp. 23-25. For more, see: Merick, A: Supporting Children with Multiple Disabilities. New York 2007. p28
10. Law of the Rights of Persons with Disabilities No. (20) of 2017.
11. For more definitions and their effect on the medical and social model, see:
Raub, A. Latz, I. Sprague, A. Ashley. S. and Heymanjody: Constitutional Rights of Persons with Disabilities. Analysis of 193 Nations Constitutions. Harvard Human Rights. Vol. 29
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13. Law on the Rights of Persons with Disabilities promulgated by Law No. (10) of 2018. Article '(2) Arab Republic of Egypt.
14. Ducey, Elizabeth: Disasters and Disabilities. Encyclopedia of special education. Hoboken. John Wiley and sons. N.J 2012
15. Constitutional amendment by addition on 01/10/2011
16. Taylor, R. Richards, S. and Bradley, M: Mental Retardation. Historical Perspectives. Boston. Allyn and Bacon 2005. P. 18
17. Among them are the Universal Declaration of Human Rights 1948, the International Covenant on Political and Civil Rights 1966 and the International Covenant on Cultural, Social and Economic Rights 1966, which have been ratified in Jordan in 1974, and published in the Official Gazette in 2006. As well as the World Program of Action for Persons with Disabilities for the year 1982, and the Standard Rules' on Equalization of Opportunities for Persons with Disabilities for 1994.
18. Raub, Amy and Lats, Isable. And Spargue, Aleta Stein Michael and Heyman, Judy: Constitutional Rights of Persons with Disabilities. An Analysis of 193 National Constitutions. Harvard Human Rights journal. Vo.29 2011 p.20
19. Comparative constitutions list these rights and freedoms under multiple but similar headings, in addition to the basic principles. The 1949 German Basic Law, Chapter 1: Fundamental Rights. The 1952 Jordanian Constitution, Chapter Two: The Rights and Duties of Jordanians. The 1962 Kuwaiti Constitution, Chapter Three: Public Rights and Duties. The 1963-2016 Algerian Constitution, Chapter Four: Public Rights and Freedoms. The Tunisian Constitution, Chapter Two: Public Rights and Freedoms. The United Arab Emirates' Constitution of 1971, Chapter Three: Public Rights, Freedoms and Duties. The 2014 Egyptian Constitution, Chapter Three: Public Rights, Freedoms and Duties.
20. Jordan has acceded to dozens of normative international agreements and concluded hundreds of bilateral agreements, but only a few have completed ratification procedures for constitutional treaties and agreements (and here we mean the approval of the National Assembly). Among the most important treaties ratified by the National Assembly and promulgated by law, the Convention on the Elimination of All Forms of Discrimination against Women of 2007, the Convention on the Rights of the Child 2006, and the International Convention for Persons with Disabilities 2006-2008. As for the majority of international agreements and treaties that have been published in the Official Gazette, they have not been presented before the Parliament to complete the procedures of constitutional ratification. The most important of which is the International Covenant on Fundamental and Civil Rights and the International Covenant on Social, Economic and Cultural Rights, which were published in the Official Gazette in 2006.
21. Burdeau, George: Manual of Constitutional Law and Political Institutions. L.G.D.j 1984 P74
22. Clause (B) of Article (15) of the Constitutional Court Law. Most of the laws of comparative constitutional courts are enforced upon publication in the 'Official Gazette'.
23. Clause (c) of Article (15) of the Constitutional Court Law No. (15) of 2012
24. Similarly, the Constitutional Court ruled that the last section of Paragraph (c) of Article 15 of the Judicial Independence Law No. (29) of 2014 unconstitutional. For the Jordanian legislator took the initiative to revoke it in response to the court's ruling, in spite of its nullity has been decided since the issuance of the judgement of The Constitutional Court on 16/4/2018. As for the legislative amendment, it took place on 19/9/2019, which is a welcome response. See the 'Official Gazette' No. 5296 dated 19/9/2019, and for comparison see:
Biagi, Francesco: Three Generations Of European Constitutional Courts in Transition to Democracy (op.cip) p. 995
25. Constitutional Court. Judgment No. (3) for the year 2019. Published in the 'Official Gazette' Issue No. 5606 on November 17, 2019.

26. The Supreme Constitutional Court (Egypt). Session of December 2, 2000. Rule (97). Part Nine 1988 - 2000 p. 808. And part thirteen, p. 366.
27. See the ruling of the Supreme Constitutional Court. Part VI, p. 574, Rule '(38) in Case 23 of Judicial Year 16. It expressed this on the subject of the Ninth Amendment, the Constitution of the United States of America, as it states:
"The enumeration in the constitution of certain rights shall not be construed to deny or disparage others retained by people."
28. The Constitutional Court. Judgment No. (4) of 2017 issued on July 26, 2017. Published in the Official Gazette No. 5474 dated August 15, 2017
29. For more, see Dr. Yousry Al-Assar: Positive Discrimination and its conformity with the Constitution. The Supreme Constitutional Court's (Constitutional) Magazine. Fifth issue, second year 2004, p. 27. We note in this regard that the illegitimacy of the negative behavior of power had appeared at the hands of Laferriere, Edward and in the light of which the French Council of State issued several 'rulings. For more see: Burdeau, George (ouv. Cit) P112
30. Among such studies, Dr. Abdul Hafeez Al-Shimi: Legislative omission oversight in the judiciary of the Supreme Constitutional Court: A comparative study, Dar Al-Nahda Al-Arabiya 2003 p.74 Counselor Dr. Muhammad Emad Al-Najjar: Police unconstitutionality judiciary. The Supreme Constitutional Court's (Constitutional) Magazine. Issue (17) year (8) April 2011. Counselor Dr. Abdulaziz Salman: Judicial oversight of deficiencies in legislative regulation. A paper presented to the participants in the '50 years' celebration of the Syrian Constitutional Judiciary. October 20, 2019.
31. The previously referred to, Dr. Mohammed Adel Al-Najjar. Conditional unconstitutionality. P. 26.
32. The Supreme Constitutional Court. Rule (131) for the Judicial Constitutional year 39 session 6/4/2019. See, for example, Case No. 162 for the constitutional year 19, rejection of the judgment issued in the session of March 7, 1998: "... unconstitutional unless it is included in the text of Article (26) of the law organizing The State Litigations Authority No. (75) for the year 1963", and "... the unconstitutionality of the text of Article (3) of the Customs Law of 1963 ... over not including the necessity of causing the decision of the Customs Authority." For more, see Dr. Muhammad Imad Al-Najjar: (The previous research referred to in the Constitutional) p. 31.
33. The Supreme Constitutional Court, Judgment No. (409) in Case No. 299 of the 24th Judicial Constitutional Year of May 7, 2006 Part XI, Volume Two, Provisions 2003-2006. P. 2562.
34. The Constitutions that included the statement of the Constitutional Court's jurisdiction in overseeing the constitutionality of legislation did not include the term "enforceable" to these legislations, but rather it was satisfied with the conditions laid down by the law and the judiciary, *i.e.*, the seriousness and interest. The Egyptian Constitution 2014 stipulated in Article (192) that "the Supreme Constitutional Court is, uniquely, tasked with judicial oversight over the constitutionality of laws and regulations..." As well as the amended 2002 constitution of the Bahrain Court, among other constitutions, as it states in Article (106) that a constitutional court be established.... and shall become competent to oversee the constitutionality of laws and regulations". Hence, the development of the comparative constitutional judiciary and the extension of its control over legislative omission requires the Syrian-Jordanian legislator to dispense with the word "enforceable" mentioned in clause (1) of the article (59) of the constitution, so that its oversight does not stop at the existing texts but rather includes what these texts should be in the first place.
35. The Jordanian judiciary had expressed its position on the level of international treaties and conventions, considering them to be superior to ordinary laws, if the procedures for their ratification were duly fulfilled. Including the statement of the Court of Cassation: "The jurisprudence and judiciary in all countries of the world, including Jordan, are unanimously agreed on the supremacy of international agreements and treaties over internal laws. It is not permissible to apply the provisions of any internal law that contradicts these international conventions and treaties ... "Court of Cassation Decision No. 365 of 2003 dated 29/2/2004, and its decision No. 818 of 2006. For more, see Dr. Numan Al-Khatib: The simple constitutional order. House of Culture for Publishing and Distribution 2017 p.171.
36. Constitutional Court. Resolution No. (1) of 2020 issued on May 3, 2020.

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