

The Role of The Legislature In Protecting The Constitution Case Study of The Bahraini Constitution

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Abstract

This study focuses on the role of the Bahraini constitutional institutions that make up the legislative authority in protecting the constitution by explaining the role of the king in protecting the constitution and highlighting the relationship between the legislative authority and the Bahraini constitutional judiciary and the extent to which both Shura Council and Representatives Council can benefit from this relationship by activating an authentic role in starting the Oversight of the constitutionality process, this role functionally integrated with the Constitutional Court so that the Parliament two councils open a new dimension in the relationship with this court, This study include the emphasizing that the right of the Shura and Representatives Councils to request the Constitutional Court to examine the constitutionality of the legislation includes both the existence of

a text that contradicts the Constitution and the absence of a text that the Constitution requires (legislative omission). Several recommendations have been mentioned include: The necessity of amending Decree-Law No. (55) of 2002 regarding the internal regulations of the Shura Council and its amendments, and Decree-Law No. (54) of 2002 regarding the internal regulations of the House of Representatives and its amendments by including a new section within Chapter One entitled "Section Five: Request to Examine the Constitutionality of Legislations Or "Section Five: Recourse to the Constitutional Court.". Also, The inclusion of a text that give the right of a number of members of either chambers (ten members, for example, to ensure seriousness) to resort to the Constitutional Court to request an examination of the constitutionality of legislation, taking into account the proportionality between the legitimacy of the majority's decision and the seriousness of the issue of raising suspicion of unconstitutionality.

Keywords: legislative omission, constitutionality of treaties, oversight of the constitutionality by the legislation, the Bahraini constitution

دور السلطة التشريعية في حماية الدستور

دراسة حالة للدستور البحريني

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ملخص

تركز هذه الدراسة على بيان دور المؤسسات الدستورية البحرينية التي تتألف منها السلطة التشريعية في حماية الدستور من خلال بيان دور الملك في حماية الدستور وإبراز العلاقة بين السلطة التشريعية والقضاء الدستوري البحريني والمدى الذي يمكن لمجلسي الشورى ومجلس النواب من خلاله الاستفادة من هذه العلاقة لغايات تفعيل دور أصيل في إطلاق الرقابة على دستورية التشريعات بحيث يتكامل هذا الدور وظيفيا مع المحكمة الدستورية، ليفتح مجلسا البرلمان بعدا جديدا في العلاقة مع هذه المحكمة، وتتضمن هذه الدراسة التأكيد على أن حق مجلسي الشورى والنواب في مطالبة المحكمة الدستورية بنظر دستورية التشريعات يشمل مسألتين: وجود نص مخالف للدستور وعدم وجود نص يتطلبه الدستور (الإغفال التشريعي). ومن التوصيات التي اشارت لها هذه الدراسة: ضرورة تعديل المرسوم بقانون رقم (٥٥) لسنة ٢٠٠٢ بشأن النظام الداخلي لمجلس الشورى وتعديلاته، والرسوم بقانون رقم (٥٤) لسنة ٢٠٠٢ بشأن النظام الداخلي لمجلس النواب وتعديلاته من خلال إضافة قسم جديد ضمن الفصل الأول بعنوان: "القسم الخامس: طلب النظر في دستورية التشريعات أو القسم الخامس: اللجوء إلى المحكمة الدستورية". بالإضافة إلى أدرج نص يمنح الحق لعدد من أعضاء أي من المجلسين (عشرة أعضاء مثلا لضمان الجدية) في اللجوء إلى المحكمة الدستورية لطلب فحص دستورية التشريعات، مع مراعاة التناسب بين شرعية قرار الأغلبية وخطورة مسألة إثارة شبهة عدم الدستورية.

الكلمات المفتاحية: الاغفال التشريعي، دستورية المعاهدات، الرقابة على دستورية التشريعات، الدستور البحريني.

I- Preamble:

The role of the legislative authority in accomplishing its functions stems from the existence of constitutional institutions and the control it exercises over these institutions. Although, at first glance, Studying this role doesn't depend only on the constitutional court by reference to article (106) of the Bahraini constitution but it should be extended to the role of the legislator prior and posterior to the control of constitutionality.

II- The subject of the study:

This study focuses on the role of the Bahraini constitutional institutions that make up the legislative authority in protecting the constitution by explaining the role of the king in protecting the constitution and highlighting the relationship between the legislative authority and the Bahraini constitutional judiciary and the extent to which both Shura Council and Representatives Council can benefit from this relationship by activating an authentic role in starting the Oversight of the constitutionality process, this role functionally integrated with the Constitutional Court so that the Parliament two councils open a new dimension in the relationship with this court, which requires clarifying this role legislatively on the one hand and activating it practically on the other hand.

V- Study elements:

This study includes the following:

- A. Addressing the role of the King in protecting the constitution through his contribution to the exercise of the legislative function.
- B. Highlighting the role of the Shura and Representatives Councils in examining the constitutionality of bills, proposals, treaties and decrees when studying them, and adapting this role, i.e., the extent to which it is considered an exercise of control over the constitutionality of bills (previous oversight), and the extent to which it can be converted into a mechanism through which the oversight of the Constitutional Court is triggered.

- C. Clarifying the role of the Shura Council and the Representatives Council under triggering the oversight over the constitutionality of laws, regulations, treaties and decrees, not just draft laws and law proposals.
- D. Clarifying the scope of the legislation covered by oversight and the extent to which it can extend to include the constitutionality of international treaties and some parliamentary acts and distinguishing them from the acts of sovereignty.
- E. shedding light on the possibility of individual members of Parliament resorting to the judiciary to trigger their role in practicing the oversight of the constitutionality of legislation.

1. The role of the king in safeguarding the constitution

The legislative authority's obligation to respect the constitution finds its basis in Article (32) of the Bahraini Constitution, where paragraph (a) states that the system of government is based "on the separation of legislative, executive and judicial powers with their cooperation in accordance with the provisions of the constitution," and paragraph (b) that states that: "The legislative power is vested in the King and the National Assembly(Parliament) in accordance with the Constitution...."

The King is considered the partner of parliament in the legislative process and exercises an active role in the Prior and Posterior Control of Constitutionality. The Shura and Representatives Councils play an active role in protecting the constitution, and this role is not limited to simply respecting the provisions of the constitution when exercising the legislative function but extends to include initiating oversight over the constitutionality of legislation and activating inter-oversight among the components of the legislative authority.

first is devoted to address the role of the king in protecting the constitution, and the second deals with the role of the Shura and Representatives Councils in protecting the constitution.

The King is considered the partner of the legislative authority in the exercise of its function, as Article (32/b) of the Bahraini Constitution stipulates that: "The legislative authority is vested in the King and the National Assembly in accordance

with the Constitution...” and the King exercises this role through Article (35) of the Constitution, which authorizes him the right to propose amending the constitution, proposing, ratifying and promulgating laws, and Article (70), which states: “A law shall not be issued unless it is approved by the Sura Council and the Representatives council or the National Assembly, as the case may be, and the King has ratified it”.

The King has the power to initiate the proceedings before the constitutional courts under Article (106) of the Constitution, which states: “A constitutional court shall be established... and it shall be competent to monitor the constitutionality of laws and regulations”, The constitutional court law sets out the rules to ensure that members of the court are not subject to dismissal... and guarantees the right of the government, the Shura Council, the House of Representatives, the concerned individuals and others to challenge the constitutionality of laws and regulations before the court, The king may refer to the court draft laws before they are issued to determine their compliance with the constitution, and the court decision (called the report) is considered binding on all state authorities and everyone⁽¹⁾.

The Bahraini Constitutional Court exercises Centralized Prior and Posterior Reviews on the constitutionality of laws. It includes oversight by using the original case (abstract control) or oversight by using a constitutional question (preliminary request) on the occasion of the existence of a case under consideration by the judiciary (Concrete Review), and its jurisdiction is limited to: Addressing the issue of the constitutionality of the legislation without deciding the original substantive issue in which the argument was raised, which is what it expresses(to consider the concrete case in an abstract way)⁽²⁾.

Article (17) of Decree-Law No. (27) of 2002 establishing the Constitutional Court and its amendments stipulated the authority of the King to refer any draft law before its issuance to the Constitutional Court to determine its compliance with the Constitution⁽³⁾. Also, as long as Article (106) of the constitution grants the King the authority to initiate the proceedings before Issuance of the law, this jurisdiction includes (the case of mandatory issuance of the law mentioned in Article (35/b) of the Constitution), that is, even if the six-month period mentioned in that paragraph

has elapsed, during which the King must ratify the law and issue it or return it to the two councils for reconsideration. Since the law has not been promulgated, the king may refer it to the Constitutional Court according to Article (106).

Noting that if the King refers the draft law to the Constitutional Court, the delay in issuing the court's ruling after the end of the six-month period mentioned in Article (35/b) would suspend the continuity of the six-month period mentioned in Article (35/B) i.e. the period that extends between the date of referring of the request to the court until the issuance of the judgement will not be counted), although the Constitution did not explicitly provide for this, reconciling texts (106 and 35) of the Constitution requires this solution.

The question here is how the King refers the draft law to the Constitutional Court? The referral performed through the issuance of a royal order of referral in which the Minister of the Royal Court is assigned to implement it by sending a letter to the Constitutional Court with that content for the purposes of determining the extent to which the draft law is in conformity with the Constitution. e.g., the royal order that included the reference of the draft law establishing the Bahrain Chamber for the Settlement of Economic, Financial and Investment Disputes to the Constitutional Court⁽⁴⁾. On April 30, 2009, the Minister of the Royal Court, in implementation of that order, addressed the Constitutional Court for the purposes of determining the extent to which the aforementioned draft law conforms to the Constitution⁽⁵⁾.

After referring the draft law to the Constitutional Court and its finding that it is not in conformity with the Constitution, is it possible in this case to apply Article (35/b) of the Constitution? i.e., is it permissible for the king to remain silent on the draft law submitted to him for a period of six months, so that the draft law is considered implicitly ratified and must be promulgated because of the expiration of that period despite the issuance of the Constitutional Court's decision?

The answer here is negative. Since the oversight of the constitutionality of the laws is the right of the king which is guaranteed by the constitution in Article (106), and it is at the same time a restriction on the effect of Article (35/b) of the Constitution, this means if the King exercises his constitutional right under Article (106) In referring any draft law to the Constitutional Court, this would

stop the period (6 months) referred to in Article (35) until the issuance of the Constitutional Court ruling determining the extent to which the draft law is in conformity with the Constitution. At that moment, the king undertakes the procedures for implementing the judgement of the Constitutional Court.

Then, the question that arises will be: How does the King implement the ruling of the Constitutional Court if it concludes that the draft law violates the Constitution? As long as the draft law is approved by the Shura and Representatives Councils, which is the body that drafts it in a way to ensure the removal of the constitutional violations it contained?

The answer to this question can only be achieved by addressing the following two assumptions:

The first assumption: the ruling of the Constitutional Court was limited to refer to the unconstitutionality of a text or a number of texts without requiring any modification in the wording or content of other articles, in this case, the constitutional procedures are completed through ratification, issuance and publication in the Official Gazette.

we could find the application of this result in the Bahraini Constitutional Court Judicial precedents, When the court ruled the question of constitutionality of Article (20) of the draft traffic law, which stated: “Without prejudice to the conditions that must be met in the previous article, it is not permissible for foreigners residing in the Kingdom of Bahrain, who are not citizens of the Gulf Cooperation Council countries, Obtaining a driver’s license or driving a motor vehicle unless the nature of his work requires it, and the executive regulations specify the nature of other works under which driving licenses are granted to foreigners or they are allowed to drive a motor vehicle in the Kingdom of Bahrain.”, the court decision provides that this article of articles (19/a eighteen and 31) of the constitution.

Traffic Law No. 23 of 2014 was issued in the form of an ordinary law and not a decree of law, given that all other texts included in the draft law were approved by the Shura Council and the Representatives, and the implementation of the Constitutional Court ruling is limited to the abolition of Article (20) only,

without any need to redraft other texts. Therefore, the preamble to the law includes direct reference to the court's ruling, and it was sufficient to mention the article number in the body of the law, with the word "cancelled" in front of it and a reference in the margin of the page where that article was mentioned to the phrase "cancelled in the implementation of the decision of the Constitutional Court issued on July 2, 2014, published in the Official Gazette".

The second assumption: If the Constitutional Court ruling includes the issue of the unconstitutionality of an article or a number of articles in a way that requires redrafting or is linked to other articles in the draft law. Here, the King has three options:

A- **The first option:** To perform the necessary amendments and issue the draft law in the form of a decree-law if this is between the sessions of the Shura Council and the Representatives Council or during the period of dissolution of the Representatives Council, taking into account the fulfilment of other constitutional conditions⁽⁶⁾.

On June 25, 2009, The Constitutional Court declared the unconstitutionality Articles(1, 10, 23, 24 and 26) of the draft law establishing the Bahrain Chamber for Settlement of Economic, Financial and Investment Disputes⁽⁷⁾, This decision of the Constitutional Court was implemented by virtue of Decree-Law No. (30) of 2009 regarding the Bahraini Chamber for Settlement of Economic, financial and investment disputes⁽⁸⁾.

B- **The second option:** To refrain from issuing the law for violating the constitution without returning it to the two chambers or the National Assembly, and there is no room here to apply Article (35/b, c) of the constitution, since article (35/b) deals with the case of not returning the draft law to the two chambers Or the National Assembly and the elapse of the six-month period (i.e. the state of silence), but if the King expressly rejects the issuance of the draft law for violating the Constitution in implementation of the ruling of the Constitutional Court pursuant to Article (106) of the Constitution, and based on the explanatory memorandum of the Constitution, which explicitly states that "If the court finds that the law is not in conformity with the constitution, the king refrains from promulgating it"⁹⁾, then the objection is absolute.

despite the fact that jurisprudence tends to call the power of the head of state to object a law (suspensive veto), whose effect is limited to delaying the issuance of the law and can be overridden if Parliament re-votes the bill by a special majority (a majority of two-thirds of the members in the Bahraini constitution) to distinguish it from The power of the head of state to object to the amendment of the constitution, which is called (absolute veto - as the amendment to the constitution is never issued if the head of state objects to it, which is what the Bahraini constitution adopted in Article 120/b as the authority of the king to ratify the amendment to the constitution is absolute authority, Failure to ratify leads to the end of any draft amendment to the Constitution.

Here it is possible to update what the jurisprudence has always stated that objecting to law is classified under the so-called (suspensive veto), except if the objection to the law was made by the head of state in the implementation of a ruling issued by the constitutional judiciary. the phrase “if the court finds that the law is not in conformity with the constitution, the king refrained from promulgating it,” contained in the explanatory memorandum to the Bahraini constitution supports this exception, meaning that we are facing an exceptional case in which the objection(veto) is absolute and not suspensive.

C- The third option: Returning the draft law to the two chambers for reconsideration (by a royal decree issued for this purpose) in which reference is made to the constitutional violation and the ruling of the Constitutional Court¹⁰. Here it is unavoidable to adhere to the strict conditions mentioned in Article (35) of the Constitution for the purposes of complying with the ruling of the Constitutional Court, as the court’s report Constitutional, have an obligatory effect on all state authorities, including both chambers.

The question that may arise here: Is it permissible for the two councils, in the implementation of the ruling of the Constitutional Court, to withdraw the previous decision to refer the bill to the Prime Minister in accordance with Article (86) of the Constitution⁹

To begin with, it cannot be said here that the Shura and Representatives Councils can proceed with the procedures for withdrawing the decision to refer

the bill for the purposes of implementing the ruling of the Constitutional Court since the bill is the result of the work of the two councils together. Each of them has fully exercised their substantive and temporal competence by simply referring the approved bill to the Prime Minister to submit it to the King. The referral decision is not an administrative decision that can be withdrawn during the appeal period. Rather, it is considered an integral part of the legislative process, which is considered a joint legal process. Also, the bill at that stage entered the authority of another body (The King), which is concerned with the procedures of ratification and issuance.

Furthermore, does the return of the bill to the two chambers for the purposes of implementing the ruling of the Constitutional Court constitute a dispute over the ratification of the bill that requires submission to the provision of paragraph (d) of Article (35), that is, does the implementation of the ruling require a two-thirds majority of the members?

The return of the bill from the king to the two chambers in accordance with Article (35) embodies a form of disagreement in normal circumstances, but if the reason is to implement the ruling of the Constitutional Court and in view of the absolute authority enjoyed by the court's ruling, it makes the issue of returning the bill to the two councils for reconsideration a constitutional duty (Unless the head of state decides neither to ratify the bill nor to return it due to its unconstitutionality (in implementation of the court ruling).

If the bill is sent back for reconsideration, the necessity to approve it after removing all the constitutional violations it contains becomes a constitutional duty, i.e., the approval of the bill by a special majority (a two-thirds majority of the members) becomes a constitutional obligation on the Shura and Representatives Councils or the National Assembly, as the case may be.

However, the issue that the King must ratify and issue the bill within a month of its second approval, referred to in Article (35/D), does not limit the King's right in Article (106) to refer the bill for the second time to the Constitutional Court.

But if the King decides to raise the issue of the unconstitutionality of a law or regulation after its issuance, it will be through the Prime Minister in accordance with Article (18/a) of the Constitutional Court Law, since the King was not mentioned as

an authority that has the right to directly challenge the unconstitutionality of laws and regulations after their issuance. the text of Article (106) of the Constitution contains the following phrase “the law regulating the Constitutional Court will... guarantee the right of the government, the Shura Council, the House of Representatives, and relevant individuals and others to challenge the constitutionality of laws and regulations before the court”. according to this provision the term (others) might implicitly contains the right of the king to directly challenge the unconstitutionality of laws and regulations, and that the appeal is made by issuing a royal order in which the Minister of the Royal Court is assigned to implement it by sending a letter to the Constitutional Court for the purposes of determining the extent to which the law in conformity with the constitution or not.

Unfortunately, Article (18) of the Constitutional Court Law, which includes an application of Article 106 of the Constitution, doesn't include the king as appellant party, the judicial proceeding of the unconstitutionality of laws and regulations is depending on (the request of the Prime Minister, Speaker of Parliament, or Speaker of the Shura Council, or based on a referral from a court on the occasion of a dispute Existing before it, or based on a sub-position of unconstitutionality by one of the litigants during the consideration of a case before one of the courts so that consideration of the case is postponed if this court ascertains that the constitutional challenge is serious, and the one who raised the constitutional challenge is granted a period not exceeding one month to file a case before the Constitutional Court)¹¹. That is, the term (others) mentioned in article (106) “persons and others concerned in challenging the constitutionality of laws and regulations before the court” includes courts and legal persons, since the word individuals mentioned in the text is limited to (natural persons only).

2. The role of the Shura and Representatives Councils in safeguarding the Constitution

The National Council, including both the Shura and the Representative Councils, plays an active role in protecting the constitution. This role is not limited to respecting the provisions of the constitution when exercising the legislative process,

but extends to include activating the oversight over the constitutionality of legislation, and activating inter-oversight for the components of the legislative authority, this will be clarified this successively:

2.1. Safeguarding the Constitution during practicing legislative and oversight jurisdiction

The inherent obligation rooted in the rule of law is for all authorities to respect the “constitutional bloc”, that is, constitutional texts and fundamental principles of a constitutional value. The legislative authority bears a great burden in this area, not only because of its role in setting legal rules, but also because of its role in monitoring the executive authority commitment to the constitutional texts in its regulations and the implementation.

The legislative authority plays an important role in ensuring adherence for the constitutional texts, whether through its power when it exercises its legislative competence or through an oversight role. If it comes to the protection of the constitution, we find that the Shura Council also enjoys the same oversight role over the extent to which the legislation in force respects the provisions of the constitution through its authority to request the Constitutional Court to consider the constitutionality of the texts of legislation or by proposing laws amending legislation that involves alleged violation of the constitution.

2.1.1. The legislative basis for the competence of the two chambers in Safeguarding the Constitution

The Decree-Law No. (55) of 2002 regarding the internal regulations of the Shura Council and its amendments, and Decree-Law No. (54) of 2002 regarding the internal regulations of the Council of Representatives and its amendments in Articles (1 and 2) stipulate on respecting and adhering to the provisions of the Constitution. consequently, a reference was made explicitly in Article (21) of both decree-laws to the committees that study the issue within the jurisdiction of the Council, in particular (the Committee for Legislative and Legal Affairs), which is concerned with studying bills and their compliance with the provisions of the Constitution and also covers The Decree-Laws and law proposals as well although no reference explicitly mentioned in Article (21/First), however, the

jurisdiction of the Legislative and Legal Affairs Committee in examining proposed laws, Decree-Laws, laws, treaties is derived from several explicit provisions including:

- A. Article (28) in both decree- law states: “Committees are in charge of examining what is referred to them including bills, proposed laws, or topics that fall within the activities of the ministries...”
- B. Article (29) in both decree- law states: “The Legislative and Legal Affairs Committee shall be notified of all draft laws submitted by the government or proposed laws submitted by members”...
- C. Article (88) of both decree-laws states: the proposal to amend the constitution is referred to the Legislative and Legal Affairs Committee to prepare a report about it within fifteen days of its referral, as well as Article.(٩٠)
- D. The reference to decree-laws in Article (121) of the Decree-Law No. (55) of 2002 regarding the Shura Council and Article (122) regarding the Council of Representatives, the reference to international treaties and agreements in Article (125) in both decree- laws.

We should note here if either of the two councils finds that the bill violates the constitution, they cannot refer the situation to the Constitutional Court for a previous oversight of the constitutionality of the bill, since this right is entrusted exclusively to the king.

3. The Scope of oversight of the constitutionality of legislation

The authority of the two chambers to request the Constitutional Court to examine the constitutionality of the legislation in force, and this includes the presence of a provision that violates the constitution which have been detailed explanation in part.(3.2 and 4.2) or the lack of provision in a subject although required by the constitution(normative obligation), could be under the general meaning of “legal gap” but the precise concept is “legislative omission”. The later will be our starting point in explaining this subject Since legislative omission is newly introduced specially be Arabian jurisprudence and some Arabian constitutional courts then the scope of explicate contradiction of the constitution.

3.1. Legislative omission

The legislative omission can be defined as the implicit violation of the constitution represented in the legislator's complete or partial silence in the regulation of an issue that the constitution has obligated to regulate, the constitutional judiciary monitors the positive behaviour of the legislator and monitors the legislative omission or the incomplete legislative behaviour if it includes a violation of the constitution⁽¹²⁾.

The legislative omission relates to the issue of complete positive application of constitutional requirements and obligations, and this covers the non-application or incomplete application of the constitutional norms, and therefore related to the oversight of the application of the constitution and includes the following: determining the constitutional rules to be followed and their legal consequences, determining the degree and scope of the implementation obligations and comparing it with the scope of the legislation to which omission it related⁽¹³⁾.

The legislative omission (implicit violation of the constitution) includes the following: the legislator's complete or partial silence in regulating an issue that the constitution requires to be regulated by law. This includes two cases: the first case is the tendency of the legislator to be over-general so that the legislation practically becomes inadequate and can only be applied through the intervention of the executive authority. The second case is the excessive reference to regulations and administrative decisions⁽¹⁴⁾.

As an example of the constitutional judiciary's position on the issue of legislative omission in the form of legislator tendency towards ambiguity and excessive generality, is the ruling of the Indian Supreme Court in the case of (Shreya Singhal v. Union of India), where the court indicated that Article (66A) of the Information Technology Act of 2000 regulates the criminal acts through texts that are too general and ambiguous, making them in violation of Paragraph 1/A of Article nineteen of the Constitution, which guarantees all citizens the right to freedom of expression and opinion, and Paragraph (2) of the same article⁽¹⁵⁾, Which authorised the imposition of reasonable restrictions "relate to the interests of the state's sovereignty, safety, security, friendly relations with other states, public order, morals, or with regard to contempt of court, defamation, or criminal incitement⁽¹⁶⁾.

The Bahraini Constitutional Court addressed the issue of the unconstitutionality of the legislative omission when examining the constitutionality of Paragraph (a) of Article Two, and Article Four of Decree-Law No. (8) of 1980 regarding the expropriation of land for the public interest. the legislator only refers to the public interest as a target without specifying the cases in which expropriation occurs for the public benefit. Article (9) of the Bahraini Constitution stipulates that expropriation is only for the public benefit and according to the cases specified in the law, and in the manner stipulated therein, but the legislator in the law did not specify the conditions and cases that could be considered for public benefit.

The Constitutional Court ruled that the text necessitated the statement of cases of public interest in the law in a clear and unambiguous expression and must not be covered by ambiguity or conflict between it and any other text of the Constitution. It was intended in the context of the text that the law must indicate the conditions in which the executive authority may expropriate real estate for the public benefit and the way this is done... And since the decree of the law in its entirety does not have identifying cases of public interest, as a result, violating the constitution for not specifying these cases, and this consideration is not affected by what is included in the text of the article (one) of the contested decree that the purpose of “the expropriation of land is for the benefit of the expropriation authority with the intention of securing the requirements of projects of public interest”⁽¹⁷⁾.

The Bahraini Constitutional Court did not take the legislative gap that may occur because of exercising its authority to rule on the unconstitutionality of the legislation as an excuse or justification to influence its role in oversight, as it affirmed that Gap does not in itself prevent the court from considering the unconstitutionality of legislation, then the application of the text ruled unconstitutional is prohibited⁽¹⁸⁾.

3.2. the legislation covered by constitutional review:

The legislation that can be challenged for constitutionality covers the following: laws and regulations since The court has exclusive jurisdiction to settle disputes related to the constitutionality of them according Article (16) of the constitutional court law and article (106) of the constitution¹⁹⁾. the legislation

covered include: law, decree- law, regulations and treaties. This doesn't include legislation amending the constitution.

3.2.1. laws and regulations:

Each of the two chambers has the power to request the Constitutional Court to examine the constitutionality of the laws and regulations in force if they contain a suspicion of violating the constitution, whether they were issued before or after the issuance of the current constitution and the meeting of the National Assembly. i.e., although Article (121) explicitly mentioned that all laws, decree-laws, decrees, regulations, orders, decisions, and declarations in force prior to the first meeting held by the National Assembly shall remain valid and enforceable unless they are amended or repealed. But doesn't mean to grant this legislation any constitutional immunity. The Constitutional Court has confirmed that its oversight includes laws and regulations, and that regulations are in accordance with Article (106) of the Constitution and Article (16) of the Law Establishing the Court (organizational administrative decisions) to distinguish them from individual administrative decisions that are not characterized by generality and abstraction⁽²⁰⁾.

Although the authority of the two chambers when decree-law presented to them is to accept or reject without amendment so that It's title and number remains the same after its approval⁽²¹⁾. Unlike the situation in other countries whose constitution grants parliament the full authority to approve, amend, or reject the decree-law so that the name of the legislation become (law) after the approval and it certainly gets a new number.

For example, Article (94) of the Jordanian Constitution of 1952 and its amendments, which deals with the subject of (temporary laws, which is the name that corresponds to decree-law in the Bahraini constitution), the temporary law must not contradict with the constitution, It has the force of law but must be presented to the parliament in its first meeting, and the parliament shall decide on them during two consecutive regular sessions from the date of their referral, and it may approve, amend or reject these laws⁽²²⁾. However, this does not affect the authority of either chambers to request that the constitutionality of these decree-laws be examined by the Constitutional Court.

Hence, if any of the two chambers during the exercise of its legislative function or on the occasion of it, has any doubts arise about the constitutionality of some provisions in a current law or a decree-law, whether it was issued in accordance with (Article (38) or Article (87) of the Constitution or as a treaty having the force of law in accordance with Article (37) or other legislation, in this case it may ask the Constitutional Court to examine the constitutionality of those provisions, especially since one of the explicit essential conditions that must be observed in decree-law is "that they must not violate the provisions of the Constitution".

This condition is an assumed condition in all acts of the three authorities, the exercise of any authority of its powers must be in accordance with the provisions of the Constitution, and then awaits the report of the Constitutional Court on the extent to which the provisions of the Constitution are in compliance.

The Constitutional Court does not have any authority to oversight over the availability of a state of urgency in legislation, the Constitutional Court has ruled that its oversight of the constitutionality does not include oversight of the legislative policy of the legislator, nor the suitability or necessity of the legislation, or research into the merits behind the law. Why is it issued or assess the effects and consequences of its application?⁽²³⁾

Although Decree-Law No. (55) of 2002 regarding the internal regulations of the Shura Council and its amendments, and Decree-Law No. (54) of 2002 regarding the internal regulations of the Council of Representatives and its amendments, did not address the issue of the right of either of the two chambers to consult the Constitutional Court and the details and procedures for exercising that power compared to chamber other powers which were explained in detail, as a result, this necessitates amending the two decrees- laws in a way that indicates that jurisdiction, its scope and how to exercise it. Article (18) of the Constitutional Court Law has dealt with this issue, as it stipulates the right of the Shura Council Speaker and the Speaker of the House of Representatives to request a constitutional examination of legislation⁽²⁴⁾.

The only practical application of exercising this right until the date of writing this article is the Shura Council's request to the Constitutional Court to consider the

constitutionality of some provisions of Law No. 32 of 2010 regarding disclosure of financial Status. Which was supported by (22) members of the Shura Council based on Article (106) of the Constitution and Articles (18, 19) of Decree-Law No. (27) of 2002 establishing the Constitutional Court, The Legislative and Legal Affairs Committee of the Shura Council, when examining the proposal, was keen to examine it from a procedural viewpoint of view only, without addressing the subject as it is within the competence of the Constitutional Court. The committee recommended the council to approve it⁽²⁵⁾. The Council approved the proposal by a majority in the twenty-first session⁽²⁶⁾.

3.2.2. International treaties and conventions:

The issue of the oversight over the constitutionality of treaties may be opposed on the grounds that: treaties represent the sovereignty of their parties as they are not an act of the unilateral will of the national constitutional institutions only. That is, it represents the sovereignty of more than one state, and it may also be said that treaties fall within the theory of sovereignty and are outside the control of the ordinary judiciary and the constitutional judiciary.

The arguments that support the lack of judicial oversight of treaties can be contradicted by emphasizing that the constitutional control we are talking about is not a control over the sovereignty of the state nor the sovereignty of other states in concluding a treaty, but rather a control over internal legislation issued in accordance with the constitution, so it should not violate its provisions. Since the treaty has the force of ordinary law after fulfilment The conditions mentioned in Article (37) of the Bahraini Constitution is treated as internal legislation, subsequently subject to the oversight of the constitutional judiciary⁽²⁷⁾.

But this does not affect the continuation of the international obligation arising from the treaty, despite its unconstitutionality⁽²⁸⁾. Hence, if the judiciary finds that a treaty is unconstitutional, the competent authorities must initiate procedures for its termination or withdrawal in accordance with the rules of international law, or formulate a reservation on issues that contradict its constitution. If the nature of the treaty allows reservations of this nature.

This is supported by the Egyptian Constitutional Court decision in the case

called “conflict of judicial rulings related to the maritime boundary delimitation agreement between the Arab Republic of Egypt and the Kingdom of Saudi Arabia”⁽²⁹⁾, where it indicated that If the treaty is published in accordance with the conditions established in the constitution, and it has the force of law, it is permissible to review it judicially from two aspects: 1- the supervision of the formal conditions fulfilment stipulated in the constitution, 2- the substantive supervision over the treaty, a supervision that finds its roots in the last paragraph of Article (151) of the constitution, which prohibited the violation of all provisions of the constitution. The two types of judicial oversight over the treaties are constitutional supervision. Thus, exclusively entrusted to the Supreme Constitutional Court⁽³⁰⁾.

Consequently, does this conclusion (the subjection of treaties to the review of the constitutional judiciary) affected by the fact that the constitutional judiciary still adopts "acts of sovereignty" theory? Specially, by taking in consideration that the Bahraini legislator’s explicitly adopted “ acts of sovereignty” as an exception to judicial review in the Judicial Authority Law⁽³¹⁾.

The answer is “acts of sovereignty” does not affect the subjection of treaties to the oversight of the constitutional judiciary because the oversight that we are talking about here is a supervision that includes the extent to which the valid treaty fulfills the formal conditions established in the constitution, and it also includes the substantive control over the treaty conformity with the national constitution, meaning that oversight does not extend to the field of the acts of sovereignty theory.

The supporting evidence of the previous conclusion could be found in the same ruling of the Egyptian Constitutional Court (mentioned above). The court differentiates between what falls within the acts of sovereignty and what falls outside those acts and hence subject to judicial oversight, by emphasizing criteria for determining whether the signature of the representative of the Egyptian government on the maritime boundary delimitation is a matter of politics, or a mere act of the administration in order to determine the judicial authority competent to consider it, the court concluded that the answer depends on the nature of the act itself. If the action is related to political relations between the state and other

persons of public international law or falls within the scope of cooperation and mutual constitutional oversight between the executive and legislative authorities, it is considered a political act.

The Court considered signing and concluding the treaties as acts of sovereignty for two reasons: first, because they are related to the state's relationship with other legal persons of public international law, these cover procedures of negotiation, signing and implementation. Second, because they fall within the field of joint jurisdiction and mutual oversight between the executive and legislative authorities, the House of Representatives monitors the executive authority in the treaties it concludes, and it may approve or reject what falls within its competence, and it may also refrain from agreeing to cede any part of state national territory or any other subject contradict with the constitution. The authority of Parliament in this regard is an exclusive authority that cannot be shared by any other authority. If the House of Representatives has exhausted its powers, then the reference of this matter is to the head of state alone, with his political oversight authority in ratifying treaties according to his political considerations in a way that preserves the supreme interests of the state⁽³²⁾.

The judicial authority may not interfere in any of these matters up to its completion, if the treaty is published in accordance with the conditions established in the Constitution, and became the law of the state, it may be judicially monitored in terms of fulfilling the formal requirements stipulated in the Constitution, and objectively In terms of the treaty not violating the provisions of the constitution. This legitimate constitutional control is entrusted exclusively to the Supreme Constitutional Court, with no other judicial authority participating in it. The conclusion here is that the constitutional judiciary monitors the constitutionality of treaties after they become part of national legislation, but all acts before the publication of treaties are considered in accordance with the constitutional conditions as acts of sovereignty.

Conversely, what is the role of legislative councils in international treaties? The role of legislative councils is a great constitutional role, as they exercise control over the stage before the entry into force of the treaty. Considering that the stages and procedures related to treaties before their entry into force are acts

of sovereignty that removes them from judicial oversight to enter the oversight of Parliament (the Shura and Representatives Councils). this means that oversight over them will be political oversight of both Parliament wings (the Shura and Representatives Councils) exclusively and not to the judiciary, the issue here is a matter of jurisdiction. If we look at Article (7) of the Bahraini Judicial Authority Law, we find that it excluded acts of sovereignty from the jurisdiction of the judiciary, meaning that acts of sovereignty are not acts immune from any oversight, but rather acts subject to oversight consistent with their nature, as long as they fall within the political function of the executive authority, the most capable overseeing authority is Parliament (the Shura and Representatives Councils), this is why the legislative authority is granted either approval or disapproval of treaties, in all cases, monitoring of the constitutionality of treaties covers their internal enforcement.

In the same direction, the Bahraini Constitutional Court emphasized that the nature of the acts of sovereignty as a term is left to be determined by the judiciary alone, so these acts are legally adapted according to an objective criterion stemming from the nature of the acts themselves. The judiciary has excluded political actions from its jurisdiction according to the principle of separation of powers because these actions are within the discretionary authority of the authority that issues them according to the limits of its competence assigned to it by the Constitution and in accordance with the principle of separation of powers stipulated therein, the constitutional judiciary may not involve itself in monitoring the political actions entrusted by the constitution to one of the two authorities and commenting on their discretionary power in the decisions and actions they take when They adhered to the limits of their jurisdiction and did not infringe with the constitution. The theory of political actions as a restriction on the authority of the constitutional judiciary finds most of its applications in the field of international relations and agreements than in the internal field, given that this field is linked to political considerations, state sovereignty and its supreme interests⁽³³⁾.

4. The right of Parliament and its members to resort to the judiciary to protect the Constitution.

This topic will focus on the right of Parliament and its members to resort to the judiciary to challenge the decisions and recommendations of the government related to it, such as: the adjournment of Parliament, sessions, and meetings. It is true that these decisions fall within the acts of the sovereignty concept and, as a result, are outside the control of the ordinary judiciary and the constitutional judiciary. Whereas it is subject to a control consistent with its nature and practised by other political bodies within the framework of supervision and cooperation between the authorities in the state, while respecting the principle of separation between them.

Hence, the theory of political actions, or what is known as the theory of acts of sovereignty, aims to protect: the constitution, the entity of the state, its existence, cooperation between its organs, and the functional specialization of its powers. This falls within The Justiciability Doctrine which comprises that acts of a purely political nature are not subject to judicial oversight⁽³⁴⁾.

4.1. Justiciability Doctrine and the right of Parliament and its members to protect the Constitution

Justiciability refers to the types of issues and cases that a court can adjudicate. If an issue is "nonjusticiable," then the court cannot hear it. The origins of this doctrine can be originated back to Chief Justice Marshall in (Marbury vs. Madison) who explained that the Constitution grants a range of discretion in some areas to the executive branch alone. Henceforth, to conclude whether or not the legality of the act is testable in a court of justice shall always depend upon that act itself.³⁵⁰

In the USA, The Justiciability Doctrine (The Political Questions Doctrine) is narrowed. In order for the court to hold that any case includes this doctrine one of six criteria has to be found:

- 1) A textually provable constitutional obligation of the matter to a coordinated political administration.
- 2) or lack of judicially detectable and controllable standards for resolution.
- 3) or The unfeasibility of deciding on a primary policy settlement of an obvious type of nonjudicial discretion;

- 4) or the impossibility of a court to undertake independent resolution without expressing lack of the respect due coordinate branches of government; the failure of a court to make an independent decision without dishonor the coordinated branches of government.
- 5) or the unusual need to unequivocally adhere to a political decision that has already been made.
- 6) or the possibility of embarrassment from multiple proclamations by several departments on one topic⁽³⁶⁾.

The best application to this is what happened in Britain in terms of an appeal against the decision to dissolve Parliament, knowing that this was not a judicial appeal against the decision of the Crown (the Queen) as a prerogative of the Crown, but rather focused on the legality of the decision of the Prime Minister, which included a recommendation to the British Crown (the Queen) to adjourn the session of Parliament, as the session begins with the invitation to it and delivering the opening speech (the State Opening) and ends with the Prorogation of the session. Since the beginning of the twentieth century, the House of Commons has held an average of (150) days annually. Except for the term (2017-2019), which is considered the longest session in the history of the House, as it is close to three years, with an average of 298 days. The reason for this long session (2017-2019) is to ensure that the necessary measures are taken to facilitate legislation related to the exit from the European Union (Brexit-related legislation)⁽³⁷⁾.

Neither the British judiciary nor the appellants have challenge the rights of the Crown because of the immunity it enjoys, but they challenge unconstitutional of the Prime Minister's decision, therefore, the British Supreme Court confirmed at the beginning of the text of its ruling that the issue presented is the extent of the legality of the Prime Minister's decision, which included a recommendation to the Queen to adjourn Parliament during the period between the ninth and twelfth of September until the fourteenth of October⁽³⁸⁾. The case was that lawyers representing seventy-five members of the British Parliament⁽³⁹⁾ who oppose leaving the European Union (75 Anti-Brexit Mps) resort to the courts to challenge the Prime Minister's decision that included a recommendation to adjourn the British Parliament⁽⁴⁰⁾.

Judicial rulings have conflicted about the legality of the decision to adjourn the meeting, and if it just a (sovereign) political act? Or a decision with legal aspects aimed at disrupting Parliament's oversight of the government? On (September 11, 2019) the High Court of England and Wales ruled that the legal issue of the adjournment decision was not subject to judicial oversight. On the same day, The Court of Cassation In Scotland found the opposite by ruling that the decision is subject to judicial oversight (Justiciable), and that the motive for issuing it was inappropriate, which makes the decision contrary to the law, void and without effect, and this contradiction between judicial rulings led as a result to submitting the matter to the British Supreme Court⁽⁴¹⁾.

The court confirmed that the responsibility of the Prime Minister before Parliament does not alone justify excluding judicial oversight for two reasons: First, the effect of the session adjournment entails impeding the ministerial responsibility before Parliament during the period in which Parliament is not in session, and if the adjournment was with immediate effect, that means there will be no room for the Parliament to question the Prime Minister until the beginning of the new session, at that point the government's goal of adjourning Parliament will have already been achieved, at that situation the maximum action the Parliament can do in confronting the government will be similar to the tantamount to close the stable door after the horse's escape (postiriori review). Second, the judiciary has a duty to enforce the law regardless of the prime minister's responsibility before the Parliament, and the fact that the prime minister is politically accountable to the Parliament does not mean that he is immune from legal responsibility before the judiciary⁽⁴²⁾.

The court indicated that oversight over the extent to which the decision to dissolve the session is subject to judicial oversight does not affect the principle of separation of powers, but rather is a true embodiment of the role of the judiciary in accordance with the constitution, by ensuring that the government did not use its powers illegally to impede the parliament's performance of its functions, and this in turn is considered an application of the separation of powers principle⁽⁴³⁾, The Court considered that the issue necessarily relates to two important constitutional principles, namely:

- A. The Principle of Parliamentary Sovereignty, which requires that laws enacted by the Crown in Parliament are the highest levels of law in the British legal system so that everyone, including the government, must obey. The sovereignty of Parliament as a constitutional principle undermines if the government could During the exploitation of the privileges of the Crown (Prerogative Power of the Crown) be able to prevent Parliament from exercising its legislative powers for the period it wants, and this is what will happen if there are no legal restrictions on the power of adjournment since the absolute power to adjourn a session is not commensurate with the sovereignty of Parliament as a constitutional principle⁽⁴⁴⁾.
- B. The principle of Parliamentary Accountability: This principle is no less important than the previous constitutional principle. The responsibility of the government represented by the Prime Minister and ministers before Parliament is the center (the heart) of British democracy, through several means, including the duty of ministers to respond to parliamentary questions, appearing before parliamentary committees, and parliamentary oversight on delegated legislation issued by ministers, and through these means, the policies of the executive authority have been taken into consideration by the representatives of the electorate, thus the executive authority is obligated to notify, clarify and defend its actions This entails protecting citizens from the arbitrary practices of the executive authority⁽⁴⁵⁾.

All the previous arguments and justifications were presented by the court to confirm that the consideration of the case does not fall within the principle of sovereignty, but rather a legal issue that falls within the jurisdiction of the court. Based on that, the court moved to assess the constitutionality of the Prime Minister's decision, which included the recommendation to adjourn the session:

For the purposes of evaluating the constitutionality of the Prime Minister's decision, which included the recommendation to adjourn the session. the Court emphasized on the foundations of the British Constitution, including representative democracy; since the House of Commons depends on its existence in the People's will through the election of its members, while the government is not directly

elected by the people (unlike the situation in some other democracies), but depends on the trust of the House of Commons in it and has no democratic legitimacy otherwise. eventually, this entails its responsibility for its actions before the House of Commons and also before the House of Lords, since the actual task in performing the governmental function It rests with the executive authority, not Parliament or the judiciary. Two questions must be answered: A- The first question: Does what the Prime Minister have done leads to impeding or disrupting the constitutional role of Parliament in ministerial responsibility, and this question was answered by the court in the affirmative, as it did not consider it an ordinary session because it Parliament will be suspended from exercising its constitutional role for five weeks out of a possible eight weeks between the end of the session and the date set for leaving the European Union (October 31, 2019), and this exceptional situation makes the United Kingdom itself as well as its members believe in the great importance of parliamentary oversight of government activities during the period leading up to exit from the European Union.

This entails its responsibility for its actions before the House of Commons and also before the House of Lords, and if we realize that the actual task in the exercise of the governmental function lies with the executive authority and not Parliament or the judiciary, then two questions must be answered: A- The first question: Does what the Prime Minister have done leads to impeding or disrupting the constitutional role of Parliament in ministerial responsibility, this question was answered affirmatively by the court, as it did not consider adjournment related to an ordinary session because it would disrupt Parliament from exercising its constitutional role for a period of five weeks out of eight possible weeks between the end of the session and the date specified for leaving the European Union (October 31, 2019), and this exceptional situation makes the United Kingdom itself, as well as its citizens, believe in the great importance of parliamentary oversight of government activities during the period leading up to exit from the European Union⁽⁴⁶⁾.

As for the second question about the extent to which there is any rational justification for doing this work, which has grave implications for the foundations of our democracy? The court replied that there was no evidence to say that there

was any justification for the Prime Minister's recommendation to the Queen to adjourn the session for a period of five weeks, and the court concluded that the Prime Minister's decision, which included the recommendation to adjourn the session, was unconstitutional.⁽⁴⁷⁾

The term (Unlawful), which the court used, meant unconstitutionality and not just a violation of ordinary law. All the merits of the court's ruling confirm the decision's violation of the foundations and principles of the British Constitutional. In contrast, The right to request the constitutional court to examine the constitutionality of legislation is constitutional right of the Shura and Representatives Councils and cannot directly be practiced individually by any member⁽⁴⁸⁾.

4.2. Protecting the Constitution using Parliamentary Tools:

Each member of the Shura and Representatives Councils has the right to propose laws, so that the proposal is referred to the competent committee in the Council in which the proposal was submitted for opinion. If the Council decides to accept the proposal, it shall refer it to the government to put it in the form of a draft law and submit it to the Council of Representatives within six months at most from the date of its submission⁽⁴⁹⁾.

By the supervisory function, we mean here the function exercised by the legislative authority in monitoring the extent to which the executive authority adheres to the provisions of the constitution. The members of the two councils play a great role in protecting the constitution, commensurate with the tasks entrusted to them, and this is commensurate with the fact that the member of each of the two councils represents the entire people and takes care of the public interest⁽⁵⁰⁾. before the member starts his duties under an oath to respect the constitution⁽⁵¹⁾.

The role may be positive by taking the initiative to protect the constitution through the exercise of positive powers, which including a request to be brought before the Constitutional Court or a proposal to amend a law that involves a resemblance to the constitution. Either of the two councils may resort to practicing indirect means to deal with the issue of quasi-contravention of the constitution, each within the limits of its competence. This may be done through the question as a common right of the two councils, interrogation, the questioning of confidence,

and expressing the written wishes to the government in public matters. Asking confidence and expressing written wishes are confined to one of the two chambers without the other. These powers vary in the practice of the two councils, as most of these oversight powers, such as interrogation, the questioning of confidence and expressing written desires, are confined to one of the two chambers without the other⁽⁵²⁾.

Conclusion:

The role of the legislative authority in protecting the constitution, the means of oversight it exercises and the constitutional tools it possesses requires a continuous improvement and modernisation, since this authority is the authentic practitioner of the legislative function and the true representative of the will of the nation. the exercising of its role in activating the oversight regarding the constitutionality of legislation is a kind of conscious internal control. By improving the work issued by the legislative authority.

Delving into this topic yielded a set of results and recommendations, which are in the following order:

The Results:

1. Article (106) of the constitution grants the King the power to refer the draft law to the Constitutional Court before its issuance, and this includes (the case of mandatory promulgation mentioned in Article (35/b) of the Constitution), that is, even if the six-month period mentioned in that paragraph has elapsed.
2. Even If the court's ruling is delayed after the six-month period mentioned in Article (35/B), the referral effect on the validity of the six-month period mentioned in Article (35/B) can be considered a suspensive effect, even though the Constitution did not expressly stipulate that except Reconciling texts (106 and 35) of the constitution requires saying this solution.
3. Restricting the jurisprudence general rule regarding that objecting to bills is always classified as (suspended objection), by confirming the existence of an exception in which the objection is considered an absolute objection when the

objection to the bill made by the head of the state in implementation of a ruling issued by the constitutional judiciary.

4. The role of the King in implementing the judgement of the Constitutional Court, if it finds that the draft law violates the Constitution, depends on the nature and scope of the Constitutional Court ruling.
5. The researcher does not support the idea of completing the constitutional procedures through ratification, issuance and publication in the Official Gazette without returning the draft law to the Shura and Representatives Councils when the effect of the Constitutional Court ruling is limited to refer to the unconstitutionality of a text or a number of texts without requiring any amendment in the wording or content of other articles. Despite the existence of a single practical application for the issuance of a law, although the court ruled that one of its texts was unconstitutional, without returning it to the Shura and Representatives Councils, which is Traffic Law No. 23 of 2014.
6. The king may refrain from issuing the law explicitly and definitively for violating the constitution without returning it to the two councils or the National Assembly if the effect of the ruling of the Constitutional Court is limited to referring to unconstitutionality without requiring any amendment in the wording or content of other articles, and there is no room here for the application of Article (35/b, c) of the Constitution.
7. Neither the Shura Council nor the House of Representatives may proceed with the procedures of withdrawing the “decision to refer an approved bill to the Prime Minister for submission to the King” for the purposes of implementing the ruling of the Constitutional Court.
8. Returning the draft law from the King to the two Houses in accordance with Article (35) embodies a form of disagreement in normal circumstances, but if it is in implementation of the ruling of the Constitutional Court and in view of the absolute authority enjoyed by the court’s ruling, it makes the issue of returning the draft law to the two Houses for reconsideration a constitutional duty (unless the head of state decides not to ratify the law and not to return it due to its unconstitutionality in implementation of the court’s ruling), and in

the event of its return, the necessity of approving the bill with the removal of all the constitutional violations it contains is a constitutional duty.

9. The President of the State was not mentioned as a body that has the right to directly challenge the unconstitutionality of laws and regulations after their issuance.
10. The right of the Shura and Representatives Councils to request the Constitutional Court to examine the constitutionality of the legislation in force includes both the existence of a text that contradicts the Constitution and the absence of a text that the Constitution requires (legislative omission).
11. The constitutional judiciary has control over the constitutionality of treaties after they become part of national legislation. any prior action is related to the sovereignty act theory.

Recommendations:

- 1- The necessity of amending the two decree-laws related to the two councils' by-laws to regulate the issue of the council's authority to refer to the Constitutional Court, its scope and how to exercise, details and procedures for exercising this authority.
- 2- The authority of the Constitutional Court to cancel the text of the article that contradicts the Constitution in light of Article (106) of the Constitution and Article (31) of Decree-Law No. 27 of 2002 regarding the establishment of the Constitutional Court and its amendments, whether contained in a law, decree-law or regulation, requires emphasizing the right of Both the Shura Council and the House of Representatives to amend the texts of the decree-law in preparation for its approval, instead of putting them in either a binary option, either accepting or rejecting, especially since whoever has the refusal a fortiori owns the amendment.
- 3- Since neither the constitution itself nor the Constitution Explanatory note forbids the parliament from amending the decree-laws mentioned in article (38) its recommended either to abandon the narrow De facto legislative interpretation of Article (38) of the Constitution, which restricted the role of

the Shura Council and Representatives to voting on decree-laws with approval or rejection (as provided by Article (123) of Decree-Law No. 55 of 2002 regarding the internal regulations of the Shura Council and its amendments, and Article (124) of Decree-Law No. (54) of 2002 regarding the internal regulations of the House of Representatives and its amendments through cancelling these two articles (123 and 124) depending on the fact that the one who enjoy the absolute authority of rejection is authorized implicitly to partly rejection through modification of Legislation articles, or to amend article (38) of the constitution to clarify that the parliament has the choice to approve, modify or reject the decree-laws

- 4- The necessity of amending Decree-Law No. (55) of 2002 regarding the internal regulations of the Shura Council and its amendments, and Decree-Law No. (54) of 2002 regarding the internal regulations of the House of Representatives and its amendments by including a new section within Chapter One entitled “Section Five: Request to Examine the Constitutionality of Legislations Or “Section Five: Recourse to the Constitutional Court.”
- 5- In addition to the previous recommendation, the researcher also recommends the inclusion of a text that includes giving the right of a number of members of either chambers (ten members, for example, to ensure seriousness) to resort to the Constitutional Court to request an examination of the constitutionality of legislation, taking into account the proportionality between the legitimacy of the majority’s decision and the seriousness of the issue of raising suspicion of unconstitutionality. Rooting for this can be made by expanding the interpretation of the phrase “concerned individuals and others” contained in Article (106) of the Constitution, and this requires amending Article (18) of Decree-Law No. 27 of 2002 regarding the establishment of the Constitutional Court and its amendments by adding a new paragraph to it.

Footnotes:

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- (1) Article (106) of the **Constitution**.

- (2) for details see: Wojciech Sadurski, **Rights Before Courts: (A Study of Constitutional Courts in Post communist States of Central and Eastern Europe)**, CHAPTER 3, Springer, The Netherlands, 2008, pp(65,66).
- (3) Article (17) of Decree-Law No. (27) of 2002 establishing the Constitutional Court, as amended by Decree-Law No. (38) of 2012.
- (4) Royal Decree No. (24) of 2009 referring a draft law establishing the Bahrain Chamber for Settlement of Economic, Financial and Investment Disputes to the Constitutional Court, Official Gazette, p. (2894), dated May 7, 2009, p. (5).
- (5) The decision of the Bahraini Constitutional Court in its session held on June 25, 2009. the Official Gazette, p. (2901), Thursday, June 25, 2009, pp. (85-97).
- (6) Article (38), the Constitution of the Kingdom of Bahrain of 1973 and its amendments.
- (7) Referred to the Constitutional Court based on Royal Order No. (24) of 2009 referring a draft law establishing the Bahrain Chamber for Settlement of Economic, Financial and Investment Disputes to the Constitutional Court, Official Gazette, No. (2894), May 7, 2009, p. (5).
- (8) Official Gazette, No. (2902), July 2, 2009, pp. (30-43).
- (9) Interpretation of Article (106), Explanatory Note to the Amended Constitution of 2002, Legislative Reference(book), edited by the Shura Council, 2019, p. (117).
- (10) Article (35), the Constitution as amended.
- (11) Article (18) of Decree-Law No. (27) of 2002 establishes the Constitutional Court, as amended by Decree-Law No. (38) of 2012.
- (12) Mahfouz, Abdelkader and Souqi, Houria, Challenges to Unconstitutionality in the Algerian Constitutional Judiciary, Al-Nadwa Journal for Legal Studies, No. (2), 2014, Algeria, pp. (116-117).
- (13) Marian Grzybowski. Report titled “Legislative Omission in Practical Jurisprudence of the Polish Constitutional Tribunal”, to the XIVth Congress of the Conference of European Constitutional Courts. held on 2-7 June, 2008, Vilnius. p. (2).
- (14) Mahfouz Abdelkader and Souqi Houria, Challenges to Unconstitutionality in the Algerian Constitutional Judiciary, Al-Nadwa Journal for Legal Studies, No. (2), 2014, Algeria, p. (119).
- (15) Para.98, (**Shreya Singhal v. Union of India**), **The Supreme Court Of India**, Petition (Criminal) NO.167 OF 2012, p.(101), retrieve from the following:
http://www.thehinducentre.com/multimedia/archive/02351/2015-03-24_1427183_2351486a.pdf (access date: october 28, 2019).
- (16) Article 19, **The Constitution Of India of 1949**, retrieve from the following:
<https://indiankanoon.org/doc/1218090/> (access date: October 28, 2019).

- (17) The judgement of the Constitutional Court, Case (D/2/05), March 26, 2007, Official Gazette, No. (2786), April 12, 2007, pp. 14-24.
- (18) The judgement of the Constitutional Court, Case (D/2/05), March 26, 2007, Official Gazette, No. (2786), April 12, 2007, p. (24).
- (19) Article (16) of Decree-Law No. (27) of 2002 establishes the Constitutional Court, as amended by Decree-Law No. (38) of 2012.
- (20) The judgement of the Bahraini Constitutional Court, session held on Monday, June 13, 2005, Case No. (D/3/3), Judicial Year (1), Official Gazette, No. (2692), dated June 22, 2005, pp. (13-24).
- (21) According to Article (38) of the Constitution, Article (123) of the Shura Council's decree-law, and Article (124) of the House of Representatives' decree-law.
- (22) Article (94) of the Jordanian Constitution of 1952 and its amendments.
- (23) The judgement of the Bahraini Constitutional Court relating to several provisions of Law No. (32) of 2010 regarding disclosure of financial status, session of January 27, 2016, Official Gazette, No. (3248), February 11, 2016, pp. (47-59).
- (24) Article (18) of Decree-Law No. (27) of 2002 establishing the Constitutional Court, as amended by Decree-Law No. (38) of 2012, states the following: "Disputes related to the oversight of the constitutionality of laws and regulations shall be raised as follows: A - At the request of the Prime Minister Or the Speaker of the Shura Council, or the Speaker of Parliament...".
- (25) The Tenth Report of the Legislative and Legal Affairs Committee regarding the proposal to challenge the unconstitutionality of some provisions of Law No. (33) of 2002 regarding disclosure of financial status, May 12, 2015, the first ordinary session, the fourth legislative term, 2015, pp. (524-533)
- (26) Decisions and results of the twenty-first session, the Shura Council, Sunday 24/ 5/ 2015, the first ordinary session, the fourth legislative term, 2015, p. (3).
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- (27) For more details see:
- Awad Abdel-Jalil Al-Tersawy. Judicial control over the legality of international treaties, Dar Al-Nahda Al-Arabiya, Cairo, 2008, p. 197.
 - Muhammad Fawzi Nuwayji. The idea of hierarchy of constitutional rules, first edition, Dar Al-Nahda Al-Arabiya, Cairo, 2007, p. 214
- (28) Bin Daoud Brahim, "Control of the constitutionality of international treaties and agreements," Journal of Law and Human Sciences, No. (17), Algeria, p. (16).

- (29) It was widely known in the media under title “the Tiran and Sanafir Agreement”, which was concluded on the ninth of April 2016.
- (30) The Egyptian Supreme Constitutional Court decision, Saturday, March 3, 2018, Case (12), year (39) judicial (dispute), Egyptian Official Gazette, Issue (9 bis), March 7, 2018, pp. (21-51).
- (31) Article (7) of the Judicial Authority Law (Decree-Law No. (42) of 2002 as amended) states: “With the exception of acts of sovereignty, the High Civil Court ... has jurisdiction to adjudicate administrative disputes that arise between individuals and between the government, bodies or Public institutions, except in cases where the law provides otherwise.
- (32) The Egyptian Supreme Constitutional Court decision, Case (12), year (39) judicial (dispute), op.cit., pp. (21-51).
- (33) The judgement of the Bahraini Constitutional Court, lawsuits (d/3/4) and (d/4/4) dated June 26, 2006, Official Gazette, Issue (2746), July 5, 2006, pp. (25-38).
see also: Alshair, Ramzi Taha. The constitutional system of kingdom of Bahrain. 1st ed. 2020. p.751.
- (34) In the USA, several cases adopt (the justiciability doctrine) such as supreme court judgments: *Oetjen v. Central Leather Co.* (1918) in which the Court found that the conduct of foreign relations is the sole responsibility of the Executive Branch., *Baker v Carr* (1962) in which the Court found that federal courts should not hear cases that deal directly with issues that the Constitution makes the sole responsibility of the Executive Branch and/or the Legislative Branch. *Nixon v. United States* (1993), derived from: Legal information institution (LII), Political Question Doctrine, https://www.law.cornell.edu/wex/political_question_doctrine (access date: 17 October 2019).
- (35) Jared P. Cole. **The Political Question Doctrine: Justiciability and the Separation of Powers**, Congressional Research Service report. December 23, 2014. P.(3).
- (36) *BAKER v. CARR*, 369 U.S. 186 (1962), Decided March 26, 1962. Derived for: <https://supreme.justia.com/cases/federal/us/369/186/> (accessed date august 2021)
- (37) Sitting days, **House Of Commons Library**, (access date: 17 October 2019), derive from the following:
<https://commonslibrary.parliament.uk/parliament-and-elections/parliament/is-this-the-longest-parliamentary-session-ever/>
- (38) [2019] UKSC forty-one, Case ID: UKSC 2019/0193, 24 Sep 2019 retrieve from the following: <https://www.supremecourt.uk/cases/docs/uksc-2019-0192-judgement.pdf>
- (39) This number is petite compared to the total number of members, which is 650 of them

(currently 288 for the Conservatives and 245 for the Labor Party), i.e. 11% of the total members:

- <https://www.parliament.uk/mps-lords-and-offices/mps/current-state-of-the-parties/> (access date: October 17,2019).
- (40) retrieve from the following:
<https://www.theguardian.com/politics/2019/aug/30/boris-johnson-prorogue-parliament-scottish-judge> (access date: October 17,2019).
- (41) Fergal Davis, Decision of the Supreme Court on the Prorogation of Parliament, September 24, 2019, retrieve from the following:
<https://commonslibrary.parliament.uk/parliament-and-elections/parliament/decision-of-the-supreme-court-on-the-prorogation-of-parliament/>
- (42) para 33, [2019] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., pp.12,13.
- (43) para 3٢٠١٩] ،٤] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., p.13.
- (44) para.(41,42), [2019] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., p.16.
- (45) para.(46), [2019] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., p.17.
 - the court states that “By these means, the policies of the executive are subjected to the consideration by the representatives of the electorate, the executive is required to report, explain and defend its actions, and citizens are protected from the arbitrary exercise of executive power.”
- (46) para.(55,56), [2019] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., p.20.
- (47) para.(58 and 61), [2019] UKSC forty-one, Case ID: UKSC 2019/0193, op.cit., pp.21,22.
 - “It is impossible for us to conclude, on the evidence put before us, that there was any reason - let alone a good reason - to advise Her Majesty to prorogue Parliament for five weeks, from 9th or 12th September until 14th October. We cannot speculate, in the absence of further evidence, about what such reasons might have been. It follows that this decision was unlawful”.
- (48) for Same direction see:
 - Alshair,RamziTaha. The constitutional system of kingdom of Bahrain.op.cit.pp.762-764.
- (49) Article (92), The Constitution of the Kingdom of Bahrain.
- (50) Article (89/A), Constitution of the Kingdom of Bahrain.
 - .for more details:
 - El-Hiyari,Adel. Constitutional law and the constitutional system.1st edition.1972. pp. 809-815.
 - Alshair,RamziTaha. The constitutional system of kingdom of Bahrain.op.cit. pp.622-695.

(51) Article (78), Constitution of the Kingdom of Bahrain.

(52) Articles (65-69), the Constitution of the Kingdom of Bahrain ((the powers mentioned in these articles are invested in the House of Representatives not the Shura Council).

- for more details about these tools see:
- Al-Tamawy, Suleiman. Political Systems and Constitutional Law, Dar Al-Fikr Al-Arabi, 1988, pp. 587-604.
- Alshair, Ramzi Taha. The constitutional system of kingdom of Bahrain.op.cit. pp.622-695.