

## **Means of the constitutional judiciary in protecting peaceful coexistence in Iraq**

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### **Abstract**

Practical reality indicates the existence of an important guarantee for peaceful coexistence, represented by the constitutional judiciary's oversight of the constitutionality of laws and regulations, which is represented in Iraq by the Federal Supreme Court, and then the court did not hesitate to rule that laws that violated the principle of peaceful coexistence were unconstitutional.

Its role is also embodied in maintaining peaceful coexistence between the various sects and races of society, especially in times of crisis and adversity, through what It possesses the means, as the constitutional institution entrusted with the task of protecting the texts of the constitution and interpreting its provisions, and the effort of the constitutional judiciary is represented in the judicial decisions it issues, based on a request for its intervention, either to examine the constitutionality of a specific law or to interpret a text of the provisions contained in the constitution, with the aim of finding solutions And the legal means that enable it to reach a balanced policy that would reconcile the conflicting interests before it in order to achieve its ultimate goal of protecting constitutional texts, and interpreting its provisions in a way that makes it consistent with the developments and facts surrounding it.

### **Introduction**

ethnic, religious and sectarian terms is not sufficient to guarantee the rights of all the components in it, if there is no constitutional jurisdiction that is a watchdog over the legislative authority that translates constitutional texts into ordinary legislation in the light of those texts, so that these components enjoy exercising their prescribed rights and freedoms It has it in the constitution, and despite the importance of the constitutional consecration of coexistence and the absence of a constitutional text for the

term peaceful coexistence, however, the practical reality indicates the existence of an important guarantee for peaceful coexistence, represented by the supervision of the constitutional judiciary on the constitutionality of laws and regulations, which is represented in Iraq by the Federal Supreme Court, and then The court did not hesitate to rule that laws that violated the principle of peaceful coexistence were unconstitutional .

And that the Iraqi constitution of 2005 approved a number of political, administrative, religious and linguistic rights for the Iraqi

components, as well as the constitution stipulating the establishment of a federal supreme court whose jurisdiction would be to supervise the constitutionality of laws, and in the context of exercising this jurisdiction, the court was able to protect the rights stipulated in the constitution For all components of the Iraqi people .

The role of the constitutional judiciary is embodied b Preserving the balance of powers in the state and preserving the unity of the country, Especially in federal states, or countries with a diverse social composition, sectarian or ethnic, as is the case in Iraq, and its role is embodied in preserving peaceful coexistence between the various sects and races of society, especially in times of crisis and adversity, through what It possesses the means, as the constitutional institution entrusted with the task of protecting the texts of the constitution and interpreting its provisions, and the effort of the constitutional judiciary is represented in the judicial decisions it issues, based on a request for its intervention, either to examine the constitutionality of a specific law or to interpret a text of the provisions contained in the constitution, with the aim of finding solutions And the legal means that enable it to reach a balanced policy that would reconcile the conflicting interests before it in order to achieve its ultimate goal of protecting constitutional texts, and interpreting its provisions in a way that makes it consistent with the developments and facts surrounding it.

In the foregoing, we will divide this research into two requirements:

The first requirement: control over the constitutionality of laws.

The second requirement: the judicial interpretation of constitutional texts.

The first requirement

Constitutional oversight Laws

Monitoring the constitutionality of laws is one of the means of the constitutional judiciary to examine the constitutionality of a law and then rule to repeal it whenever it is found to be in violation of constitutional provisions. With the aim of examining this method and its impact on peaceful coexistence, we will divide this requirement into two branches. In the first section, we will discuss the concept of control over the constitutionality of laws, and in the second section, the impact of control over the constitutionality of laws in protecting peaceful coexistence, as follows:

First branch

The concept of control over the constitutionality of laws

For the purpose of preserving the supremacy of the constitutional text and its supremacy over other legislation, there must be deterrent means aimed at protecting the constitutional text and not affecting it, as it is not sufficient to stipulate the supremacy of the constitution without steps or methods to preserve it, and perhaps the most widespread and successful means is monitoring the constitutionality of laws In order to ensure the extent to which the law conforms to the rules of the constitution and not deviating from it in text and application.

The oversight of the constitutionality of laws means that the laws issued by the legislative authority do not violate the provisions of the constitution, and that the legislation does not violate the constitution must be in all respects, that is, from the objective and formal aspects,

and what is meant by the first is that the legislation does not deviate from the provisions of the constitution text and requirement and does not violate them, and otherwise it is considered The law is unconstitutional. As for the second, it means the commitment of the authority issuing the legislation to the procedures and conditions established in the constitution, including determining the quorum established in the texts of the constitution or specifying the competent authority to issue the legislation and other conditions..

It is worth noting that the oversight of the constitutionality of laws revolves between two forms, which are judicial oversight and political oversight, and judicial oversight is (taking over eliminate constitutional to examine the law outgoing on Parliament Shop appeal from side constitutional And the verdict invalid this the law or cancel it if what show that it oppose judgments the Constitution), In words other she giving Right to eliminate in order to takes over practical to examine constitutionality Laws And it comes true from match them or violating it rules The constitution, and is characterized as a subsequent oversight of the issuance of the law and entrusts the task of oversight to a specialized judicial authority, This method was followed by the Iraqi constitutional legislator in the Iraq Constitution of 2005.

As for political oversight, it entrusts the task of oversight to a political body, in addition to the oversight that follows and precedes the issuance of the law, which is what is in effect in the French constitution, which emphasized the formation of the French Constitutional Council, and then there is a discrepancy in the issue of organizing oversight and the authority concerned with it, and most countries tended To adopt the method of judicial oversight after

it became clear to them that political oversight is characterized by lack of impartiality and objectivity, and each of them differs in several aspects, including the specialization and technical preparation of the judiciary, as it makes them more entitled to control the constitutionality of laws, in addition to the distinction of judicial oversight with impartiality and independence due to the presence of a neutral party It is independent and applies the protection of the constitution effectively and is not subject to pressure based on the independence enjoyed by its members, and based on that, most constitutional systems have adopted judicial oversight over their constitutionality.

The types of judicial oversight over the constitutionality of laws differed in different state systems, as they did not specify a specific type to trigger censorship, but rather followed two types, the first type being abstention control and the second type in revocation control, and we will explain it briefly as follows:

First: Control by claiming unconstitutionality (censorship of abstention): This form of control is applied when there is an existing dispute before an ordinary or non-specialized court such as a criminal or civil court, and one of the parties to the case considers that the law to be applied is marred by suspicions of unconstitutionality, which leads to unconstitutionality. The law to be applied, and the court refrains from applying the law to be applied to the case in dispute. Control in this case is a defensive method aimed at avoiding the application of a law contrary to the constitution without prejudice to its repeal. It also includes getting rid of its application to a specific person in the existing case, as well as continuing to apply it. In other cases, the ruling issued for refraining from applying a

law is limited to the parties to the case without obligating other courts, and this is what is in effect in the systems of countries that adopt a system of decentralizing judicial control over the constitutionality of laws, which gives the task of monitoring all state courts in different types, for example, the United States of America. As for the countries that adopt a system of centralized oversight that determines one judicial authority according to the constitution, the right is not given to others to exercise the method of monitoring the constitutionality of laws, which is what is in effect in Iraq according to the Constitution of the Republic of Iraq for the year 2005.

Second: Oversight through the original lawsuit (the annulment lawsuit): This type of oversight requires the presence of a specialized constitutional judiciary who assumes the task of oversight through a special case before the court, and given the importance of this type of oversight, it is entrusted to the highest judicial authority in the state, as is the case in Iraq, as the Iraqi Constitution of 2005 in force provides for the establishment of the Federal Supreme Court, as well as what was stated in the Constitution of the Republic of Egypt for the year 2014, as it stipulated the establishment of the Supreme Constitutional Court. By repealing the law, without giving this jurisdiction to the lower courts.

And done moving Censorship judicial According to this type by direct suit and filed from before friends matter Whoever they are Individuals Mother bodies Before court Competent censored constitutional and its claim cancel the law offender to provisions the Constitution, And when it is confirmed that there is a violation of the constitution, the court issues it Hakam by not constitutionality the law Shop appeal, And it follows on this

verdict cancellation the law not constitutional, The judgment issued for cancellation is distinguished by argument divorced and in general, and binding to all courts and authorities the public in The State, without limiting itself to the court before which the unconstitutionality of the law is submitted, as that verdict cancel It is forbidden excitement matter constitutional Once other in themes that organize it the law Stabbed constitutionality.

And there from be seen that it He should limit specialization Censorship on constitutionality Laws with a picture In general, a specialized constitutional judiciary does this for several reasons : It adds an inventory Censorship on constitutionality Laws by court constitutionality especially Importance big And he gives it more from respect from side legislator ordinary, that What qualifications do judges have? with efficiency and experience in research issues constitutional qualify them To perform their business with a picture sound and effective, and thus reflect positively on the speed settle suits and version judgments in health Laws In order to achieve the aforementioned, there must be a specialized court to supervise constitutionality Laws to perform its function by canceling the law offender Constitution without giving the ordinary courts this jurisdiction.

## Section two

The impact of oversight on the constitutionality of laws in protecting peaceful coexistence

One of the objectives of monitoring the constitutionality of laws is to oblige the legislator to respect the rights and freedoms stated in the constitutional document that affirm peaceful coexistence and achieve harmony and agreement between the various components of Iraqi society despite their

national, religious and cultural differences. In order to achieve true integration between these components, the constitutional judiciary, in turn, the highest judicial body, guarantees the achievement of peaceful coexistence in its various forms, including those related to the rights and benefits of the societal components, and others related to the general rights and freedoms of these components, and we explain this as follows:

First: Emphasizing the representation of societal components in the Iraqi state: The constitutional judiciary contributed to protecting the rights of societal components in a manner that achieves the consolidation of the values and culture of peaceful coexistence, in 2009, \_ The Federal Supreme Court issued two decisions They spend by not constitutionality clause Fifth from Article (1) of the law No. (26) of 2009, to contradict them with Articles (14) and (20) of Constitution, which states that (be seats allocated from the quota for Christians within circle electoral one), except that this Text omit right the components other in the acting, Based on So Stab component Sabian by not constitutionality Item ( Fifth ) mentioned to contradict it with principle equality by component Christian as They demanded that be within circle electoral one, then Stab component Yazidi by not constitutionality Paragraph ( b ) of Article (1/ Third ) of the law No. (26) of 2009, on Basis That ( quota ) allocated for the component Yazidi And under the law mentioned less a lot on reality actual for their number And the adult five hundred one thousand breeze, and this is Means that component Yazidi He deserves five Seating Parliamentarian and not seats one.

As a result So issued court Federal Supreme her decision No. (11 / Federal / 2010) issued on the date 6/14/2010, And the judge by not

constitutionality Paragraph ( b ) of Article (1/ Third ) of the law No. (26) of 2009, And obligatory Grant component Yazidi number from seats Parliamentary Proportional to with number souls in elections council deputies Iraqi coming for the year (2014).

According to the aforementioned decision, the Federal Supreme Court played an effective role in ensuring the representation of other components in the law, such as the Sabian component, which demanded equality with the Christian component, as it ruled the unconstitutionality of the text that was limited to representing one component over the other and legislating new texts, which achieves peaceful coexistence and the preservation of cultural diversity. The latter can only be achieved by providing equal proportions to the national components in a way that makes the principle of peaceful coexistence effective and successful and opens the way for dialogue and a culture of understanding, and acceptance of the other side as an essential component within the components of Iraqi society.

This was confirmed by the Federal Supreme Court in another decision, as spent ((No constitutionality Paragraphs ( b - d - e ) of clause the second from Article ( 13 ) of Law The election No. ( 9 ) of 2020 and cancel it Considering from date Its release, related This is amazing paragraphs with seats Parliamentarian for the component Yezidi in governorate Nineveh and component https in governorate Nineveh, and component Kurds Failis in governorate Wasit, and kept court on Paragraphs ( a - c ) . Two grants component Christian (5) seats in Provinces Baghdad ( center ) and Nineveh and Kirkuk And Dohuk Erbil, and seat One for the component Sabian Mandaean in Baghdad, as spent court Federal Supreme Council notices Representatives ( Parliament ) to legislate texts alternative With

what guarantee investigation principle equality between the components mentioned Yazidis and grille And the chords Failis with two components Christian And the Sabian According to provisions clause the third from Subject (13) from the law same)).

Second: Emphasis on rights and the general freedoms of the components Societal: It is no secret that the Federal Supreme Court has a prominent role in confirming the general rights and freedoms of the societal components, through its effective oversight role in applying the provisions of the constitution and not violating them, including the court's emphasis on the exercise of political rights for all Iraqi citizens without discrimination on grounds of race and nationality. gender, etc., and based on that, the court was keen to exercise political rights, including the right to nominate the components, including a decision court Federal Supreme ( decide council deputies formation council UNHCR Supreme Independent for elections, And he got up Mr. ( Yonadam Yusef We were ) submitting appeal against this the decision Claiming that formation in this command came Violating to text in Paragraph tenth from Subject ninth From Commission Law No. (11) of 2007, for lack of condition balance between the components societal incoming in Law commissariat, on him I decided court Pan formation council UNHCR Supreme no investigate balance between all ingredients the people Iraqi, Among them ( the Chaldeans And the Assyrians ) because did not Involved None who are they in the Council despite that there more from candidate One, so exclude candidate the list Christianity despite that it within existing candidates for membership council commissariat, So van court Based on to provisions Article (93) of the Constitution which authorized it Power the chapter in

decisions and actions taken from before Authority Federal formed under Article (47) of the Constitution, See that formation council UNHCR Present despite what progress acquire Formalism provided on her in the law no Permissible Champions procedures elected just because the reason that veins claimant, that because acting ingredients the people Iraqi in council UNHCR Adult (9) members he Command in very Precision, And with what that the two texts Advanced mention them They spend considerate the acting, And he has sponsor in put it Privacy the society Iraqi being Multi races And religions and ethnicities and doctrines And purposefully from put it a guarantee rights all the components on according to what rose In which, Than must on council deputies considerate that in the future )).

and on though from non Champions procedures elections council delegates in UNHCR Supreme Independent for elections Because of me non acting Component ( Chald and Assyrian ), And that to acquire it Formalism provided on her in the law, unless that appeal presenter Confirms fact interest role minorities by acting in council commissioners, and this is what confirmed it court Federal Supreme so I commanded on council deputies considerate acting nationalities future in building Country and its institutions constitutional And share in managed according to Capabilities And competencies Scientific professional, and not mean component Without the other With what guarantee investigation coexistence And peace between nationalities, And therefore non breach their right by nomination in the Council, so that non acting This is amazing the components Prepare breach clear for a law UNHCR for lack of condition balance And the offense outspoken to the constitution .

And I'm gone court Federal Supreme in resolution post her ((that text Article (23) of Law election boards provinces and districts And aspects No. (36) for the year 2008 the judge Virgin responsibilities and jobs the public with ingredients Main in governorate Kirkuk oppose to text Article (14) of the Constitution that I decided equality Iraqis Before the law And on it He is Text sharing Authority With what In which Jobs the public with a picture equal oppose to text Article (16) of the Constitution where that this equality restrict parity opportunities to all Iraqis that She indicated to her Subject mentioned, And found court that What is d from Irregularities constitutionality in Paragraph ( first ) of Article ( 23) of the law mentioned Respond also on Paragraph ( second ) thereof where I overheard in Introduction on formation A committee made up from actors two from all component from ingredients governorate Kirkuk The three main ...) ) , as confined Subject mentioned mission with ingredients Main The three and this is It is a violation of the principle of equivalence opportunities that Article (16) of the Constitution to all Iraqis This reflects negatively on the peaceful coexistence of individuals and robs the right of qualified people to assume positions that they have the right to occupy, which generates a feeling of exclusion and inequality for them because of the sharing of power and government positions, and well the Federal Supreme Court did by issuing its decision by not constitutionality Paragraphs ( first ) and ( second ) of Article ( 23) Law election boards provinces and districts And aspects No. (36) for the year 2008 and their cancellation .

The court also ruled to affirm the principle of the Iraqi citizen's right to movement and travel, regardless of gender, nationality, religion, race, origin...etc., and ruled that "the text of Clause IV of Article 10 of Passports

Law No. 32 of 2015 is unconstitutional, which stipulates (no granted from released his right resolution to rule has become by conviction based on to provisions Item ( Second ) of This is amazing Subject passport travel new unless after passed three Months start from date Issuance verdict And for the minister or from authorizes him in cases that appreciates it Grant passport travel before an end duration mentioned), and this text contradicts the citizen's right to movement and travel in accordance with the Iraqi Constitution of 2005 in Article (44/First), which stipulates (the Iraqi freedom Mobility and travel and housing inside Iraq And outside it ) This is because Article 10/Second of the Passports Law prevents the issuance of a new passport for an Iraqi who has been sentenced in accordance with the provisions of the aforementioned article)).

That the ruling on the unconstitutionality of the previous text came as a guarantor of the right to movement and travel after the issuance of a judgment condemning all components of Iraqi society without discrimination between one component and another, as the respect Rights and freedoms to all children Motherland hate look on sex or Ethnicity or nationalism or the origin or the color or Debt or doctrine or belief or The opinion or the situation The economist or social zap all that from Text on That Rights in solid constitutions, The constitution he goodness guarantor for this Rights so Text on her in the Constitution guarantee non override on her from before the authorities, Federal She was or Regional, and then the incoming ruling achieves peaceful coexistence through good judicial dealing with diversity and intellectual pluralism and taking into account all components without discrimination, and then achieving a culture of coexistence based on respect for identities, and when the rights of

societal components and the fabric of coexistence and tolerance are violated, cultural diversity becomes a threat. Society is ungrateful.

the court went Federal Supreme to solidify principle ((right Iraqis in possession Without discrimination in all around Iraq, issued court Federal Supreme Judgment dismissing the appeal submitted constitutionality command Legislative No. (12) for the year 2004 estimated attached command cancel Resolution (117 ) of 2000 that that court Found that command Shop appeal may be released to remove Discrimination between Citizens to get on lands residential And that building on desire the government Iraqi in to provide to cut lands residential to all Slices the society, as that the decision Shop appeal came applied right for principle right Iraqis in possession Without discrimination in all around Iraq and in tune with principle equality between citizens, as well that it dedicate principle equivalent opportunities to all children the people no contravene no conflicts with any text Constitutional)) , as the decision came in line with achieving peaceful coexistence for all groups without discrimination or weighting between one group and another, with the aim of guaranteeing the rights of all components of Iraqi society.

And among the decisions of the Federal Supreme Court, in which it explicitly affirmed the necessity of consecrating peaceful coexistence, is its decision in which it stated (( And since the creation of the national joint and Iraqi patriotism is the basis for building the state and the relationship between its components away from the canal, regional, sectarian and ethnic interests, and rebuilding the state according to the contexts of unity Patriotism, civil and community peace, not

extremism or fragmentation, and full belief in the unity and supremacy of the state as the reference for the legislative, executive and judicial authorities, and that this requires recognition of the rights of all components, especially since Iraqi society, despite its national, religious, intellectual and political diversity, what unites it is much more than what separates it, and that A society like the Iraqi society needs a democratic governance framework that preserves all components of the people and allows them to be represented.

The Federal Supreme Court also contributed to confronting the erroneous practices of the transitional justice mechanisms related to Iraqi minorities, by affirming that “all components of the Iraqi people have a great role in building Iraq and preserving its unity, and the Faili Kurds were subjected to great injustice during the era of the previous regime, just as the Yazidi brothers were subjected And Shabak to campaigns of genocide, and heinous crimes were committed against them by the terrorist organization Daesh, and this requires activating their national role and that they have full representation in Parliament like the rest of the components of the Iraqi people and in a manner that guarantees their national rights ))).

It is clear from the above decision that the Federal Supreme Court has included all the political and social elements related to peaceful coexistence in its aforementioned decision, which is what can be said with which it can be said that the Federal Supreme Court tried to transfer the principle of peaceful coexistence from the theoretical framework stipulated in the preamble to the constitution to reality . enshrined in the legislation and laws issued by the House of Representatives, which was evident through its approval of

rights on an equal basis For the components of the Iraqi people from all minorities .

Third: Emphasis on protecting the unity of the state : With regard to the position of the Federal Supreme Court regarding the protection of the unit, and the right of the constituent units of the federation to secede, the Federal Supreme Court issued the state order , By Issue (94/Federal/2017 ) dated 9/17/2017, Which includes stopping the referendum of the Kurdistan region, and issuing state orders is one of the core jurisdictions of the court . supreme federal , It is represented in preserving the democratic system and the unity of the state, as the Constitution of the Republic of Iraq for the year 2005 explicitly referred to the unity and independence of the state and the inadmissibility of any of its components separating for any reason. The preamble to the constitution emphasized that . It came in (( That the Iraqi people, who promised themselves with all their components and spectra, to decide freely And his choice to unite himself, and to take lessons from his yesterday for tomorrow, and to enact from the system of values and ideals of the messages of heaven and from the developments of science and human civilization this permanent constitution, and that adherence to this constitution preserves for Iraq its free union of people, land and sovereignty)), and Article (1) of the constitution It has stipulated that ( (The Republic of Iraq is a single, independent, federal state with full sovereignty, its system of government is republican, representative, parliamentary, democratic, and this constitution is a guarantor of the unity of Iraq)), in addition to what was approved by paragraphs (b) and (c) of Article (2) of The constitution prohibits the enactment of a law that contradicts the principles of democracy or

conflicts with the freedoms and rights stipulated in this constitution .

Therefore, we think that the referendum contradicts the constitutional texts above, and this was confirmed by the Federal Supreme Court in its decision No. ( 93,92,91,89/ federal / 2017 ) on 11/20/2017, as spent court ((No constitutionality referendum current in province Kurdistan Iraq and regions other that included with it in day 9/25/2017 And the abolition of all the effects and consequences of it)) , and this is in accordance with the arguments that we mentioned previously, in addition to its violation of the interpretive decision issued by the Federal Court No. (122 / Federal / 2017 ) on 6/11/2017, which affirmed that the Constitution of the Republic Iraq for the year 2005 does not permit the separation of any of the components of its federal system mentioned in Article (116) of the Constitution .

As for the right of the constituent units of the federation to manage and exploit natural resources and wealth, the Federal Supreme Court ruled in a case numbered (39 / federal / 2012) and unified (110 / federal / 2019) on 2/15/2022, that the oil and gas law is unconstitutional In the Kurdistan Region of Iraq No. (22) of 2007, repealing it for violating the provisions of Articles (110, 111, 112, 115, 121 and 130) of the Constitution of the Republic of Iraq for the year 2005.

From the foregoing, it is clear that the Federal Supreme Court is one of the important guarantees, as it played a major and effective role In preserving the balance between the federal state and the regions, and preserving the continuity and survival of the union, when it addressed the referendum that took place in the Kurdistan Region and the rest of the regions outside the region, and the Court also

contributed to protecting the principle of legality when it ruled that the oil and gas law in the Kurdistan Region was unconstitutional Iraq No. (22) of 2007, as a law that contradicts the principle of legitimacy represented in the supremacy of constitutional texts over other legislation, as the region's authorities have violated this principle by issuing the above law.

### The second requirement

#### Judicial interpretation of constitutional texts

In addition to the means of monitoring the constitutionality of laws, the constitutional judiciary has another means through which it contributes to clarifying the meanings of the provisions of the constitution. This demand has two branches. In the first section, we clarify the concept of judicial interpretation of constitutional texts, and in the second section, the impact of judicial interpretation of constitutional texts in protecting peaceful coexistence, as follows:

#### First branch

##### Concept interpretation judicial for texts constitutional

The linguistic formulation of the constitutional terms has a great impact on realizing their purpose when applied, and sometimes these terms are unclear or ambiguous, which fails to clarify the meaning, and here the importance of interpretation appears to clarify the meaning and remove the ambiguity ( ), and interpretation in general is meant by ( defining meaning the rules legal And clarify it And a statement range, and is that by not stand up on the meaning Apparently And direct to text, but rather He is detects on the meaning Real to the base legal all the way to spirit Legislation), also known as ( Statement meanings profanity and words used in Text

and specify its content and show its contents And explain wisdom from behind her And the end Of which And the goal Please is meant In which And clarification the mysterious from her phrases remove confusion that may be involves on him text ).

According to the meaning that we have defined, it becomes clear that the constitutional interpretation aims to achieve two things: The first: that the aim of the interpretation is to reveal the real goals behind the constitutional text in order to fill the void that it created in the text, as the text cannot include all the rules and principles that govern the changes that occur. economic, social or political for any society, and here the role of the judicial interpretation of the constitutional texts is highlighted in clarifying the meaning of the texts . The interpretation in this regard does not mean establishing new constitutional rules, but deriving a specific ruling from a set of explicit texts to address the deficiency in some constitutional rules.

As for the second goal, it is to remove the ambiguity, ambiguity, or contradiction in the constitutional texts. If the basic principle in the constitutional texts is that they are clear and not vague, then it may happen that these texts are obscured by a kind of vagueness and lack of specificity. Which shows an urgent need to interpret it and to stand on the meaning intended by the constitutional legislator so that its application is then clear, and the interpretation may extend to include all constitutional texts, even the clear ones, without being limited to texts that are ambiguous, ambiguous, or contradictory, in order to reach their application, as they are not clear until after Interpretation, it is not possible to say whether or not the text is clear except after undergoing interpretation and then judging its clarity afterwards.

Also, constitutional texts often include general rules and principles that cannot be clarified in lengthy details, or decide a set of constitutional rights and freedoms without clarifying their limits or how to apply them, as it is generally accepted that constitutions come as a matter of brevity, and then the role of judicial interpretation becomes important. To clarify these texts and put them into practice, and transfer them from their (abstract scope to their realistic scope).

It is worth noting that the constitutional interpretation does not only affect the constitutional texts that suffer from deficiencies, ambiguities, or contradictions, and these characteristics are almost common in the interpretation. Rather, there is a need to interpret texts that suffer from disorder in drafting and texts that are shy in their formulation, and we will confine ourselves to clarifying these two justifications, as There is no room for mentioning other justifications for interpretation, and we explain this in two paragraphs, as follows:

First: The turmoil in the drafting of the constitutional text: The writer of the constitutional document is often affected by heritage, constitutional culture, political history, partisan pluralism, and intellectual freedom. Or the political dispute affects negatively and positively the accuracy of the drafting of the text, and then the text appears in two forms, either a specific text in its provisions and its arrangement of obligations, or a floating text that lacks judgment and commitment, and in both cases the role of the interpreter appears and the scope of interpretation is determined, so the role of the interpreter recedes in scope In the first picture, while it enlarges and expands in the second picture.

stipulates that (( UNHCR Supreme rights Human and UNHCR Supreme Independent for elections and body integrity, bodies independent submit censored council deputies And organize its business by law)) It is clear from the text that did not isher to link and supervision responsibility, Just select the supervisor. sure that for every different concept term.

As well as the text of Article (103) in which it says ((First: Each from the bank Central Iraqi And a diwan Censorship Finance and body media and communications And dawin endowments, bodies Finance independent financially And administratively and organizes the law a job all body. Second: it is the bank Central Iraqi responsible Before council deputies. Third: Connect Medicines Endowments by the council ministers)) , and this Text and on dispute Article ( 102) indicated for responsibility and engagement and not controlled and supervision.

And she overheard Article ( 107) on that ((Establish council he is called council the service the public Federal takes over to organize Affairs Function the public federal, With what In which appointment and upgrade and organizes configure it And his terms of reference by law)) , and this is Text to leave command afloat Without Signal to link and censorship and supervision and responsibility.

And she overheard Article ( 135/ First ) on that ((communication Commission national Supreme to de- resurrection its business as body independent in coordination with Authority judicial and hardware executive in framework Laws the organization for her work are connected by the council Representatives)) And she overheard Article (136/ First ) on that ((communication body suits Property its business as body independent, in coordination

with Authority judicial and hardware executive According to the law are connected by the council deputies)) This is it Text as Article (135/ First ) he indicated to link Without Supervision and censorship Responsibility, and other texts marred by confusion in the definition, however, the Federal Court has an important role in interpreting and clarifying the flawed texts in determining the association of independent bodies, as ((determined by the Council of Ministers as long as the constitution did not specify its association with the House of Representatives, due to the predominance of the executive capacity over its work and its activities) .

Second: The shy drafting of the text: The weak drafting of the constitutional text is due to several reasons and ambiguity in Constitutional texts, may He is relatively Either due to the circumstances that accompanied the drafting of the constitution, including political circumstances, or circumstances related to the ruling authority, or nature Relationship between authorities , and has The wording is lacking never output on weakness wording Legislative that bestowed has the characteristic of opacity, The legislator may be Uses expressions and terms not clear, He was be introduction Text not compatible with content or its end, or that Begins legislator Text with an idea clear And he seals it with ends Mysterious targeted to leave command position discussion, or met for interpretation interpretation, and be claim with this Adjective Whatever disagree the person existing Interpretation, the mystery Absolute always what He is to use phrases floppy or opaque or not specified, which Make from Text Legislative not a favour meaning, or not a favour from where Domain apply it.

The first axis in drafting the constitution is caring for the public interest away from partisan, national and sectarian interests or the political circumstances that accompany the drafting of the constitution, and this was observed in the Iraqi constitution of 2005. Secondly, the axis of attraction was political (political positions), economic (sharing of wealth ) and geographical (disputed areas) . the Constitution ((Ban resurrection clashing And deal with his symbols, First - it is prohibited all entity Especially resurrection clashing in Iraq and symbols .. )) and wording This is amazing Text My party, the Baath Party and the Saddamist Party, suggest in when that no Existence unless for a party One, And confirms this saying, that Article (135/ fifth ) of the Constitution states on ((that merely membership in party resurrection apiary no Prepare Essentially enough .

And enjoy member Equally Before the law and protection . .. )) in when that the system politician in Iraq get up on party the one, And stipulated Article (135/ Third ) ((from nominate to occupy Position president Republic or president and members council Ministers or president and members council deputies or president and members council the Union and sites palindrome in territory, unless He is included de- resurrection)), and this condition child meta so allowed for several from leaders party taboo Virgin positions mentioned or Some of them And without support constitutional, The ban incoming came to flirt affected from Policies banned party from Side, formulas in a manner floating so did not He specifies from They are leaders party the previous or his degree bans on him Fill positions received in Article (135/ Third ), this As well as on that editing Article (135/ fourth ) century between the job By condition incoming in Paragraph ( III ) and between continuation Commission exercise its business

((Continue the job By condition mentioned in clause Third from This is amazing Subject, what did not solved Commission provided on her in clause Firstly from This is amazing Article .. ))) , which Means according to editing Article ( 135 /Fourth ) that the condition incoming in Paragraph ( third ) is considered Finished judgment solve The Commission, and after the Commission was dissolved, it was replaced by ((the Commission accountability and justice)), noting that the constitution did not refer to the latter body and the exercise of the competencies entrusted to the National Commission for De-Baathification. this inconsistency by doing formulations wobbly, wavering that she is from on her spinning and courtesy political.

## Section two

The effect of judicial interpretation in protecting peaceful coexistence

usually what is assigned a task Explanation texts constitutional to judge specialized, when for interpretation from Importance manifested in clarification the law the above to the state, And what is characterized with it judge specialist from neutrality and not aligned when interpretation, So what finish mechanism the judge constitutional investigate Unit membership to provisions the Constitution, And a reply that that the judge constitutional target from during interpretation interest the public for the group in Shade considerate considerations political social cultural, As well as when Follow him the judge constitutional from Regulations and standards Almost be different on jealousy, No Bad that inspired thoughts It gives explanations Make from the Constitution a tool Flexible able on keeping up developments and changes that required reality politician

And social, otherwise the constitution is a deaf tool that does not keep pace with the conditions of the rulers and the goals and objectives of the political group.

It is practiced by the Federal Supreme Court its jurisdiction Interpretation of the constitutional texts under the provisions Article (93/ Second ) of the Constitution, And the reference to her in Law court Federal Supreme in Article (4/ Second ) issued under command Legislative No. (30) for the year 2005 and the amendment By law No. (25) for the year 2021, in addition to that, the Federal Supreme Court also has the power to interpret ordinary legislation, in accordance with its recent decision, which stated (( and based on when progress Decide Answer Circle legal in council deputies that to court Federal Supreme Power Explanation texts Laws in a light Terms of reference selected in the Constitution And a law court Federal Supreme No. (30) for the year 2005 as amended By law No. (25) of 2021 and in accordance with for controls that It was completed Signal to her, and incarnate With what The following : 1. That be Laws window. 2. that He is interpreted marking dispute visible Before This is amazing court to decide constitutionality the law Theme interpretation. 3. that He is interpretation marking inquiry Respond to her exclusively from one the authorities federal)).

Among the interpretative applications of the Federal Supreme Court that contributed to the protection of peaceful coexistence, and the establishment of constitutional rules that contribute to accepting diversity and acknowledging the existence of cases of national and sectarian difference, in a way that guarantees the existence of a relationship with the other and the recognition of its existence, and among the most important principles approved by the Federal Supreme Court:

The first principle: the prohibition of people owning real estate for the purposes of demographic change: at the request of the Iraqi Council of Representatives, according to His book / Diwan / Circle Parliamentary / Affairs Members / No. (1/9/4901) on 2/7/2013 to court Federal supreme, incl Explanation The text of Article (23/ Third / B ) of the Constitution Iraqi for the year 2005, Which stipulates that ((property is prohibited for the purposes of demographic change)), and the Federal Supreme Court interpreted this text, as it stated in its decision ((that the Constitution Iraqi ban ownership or own Persons individuals or groups for real estate With all its genders And its types And in any place from around Iraq whether He was that on level the village or side or eliminate or Governorate And bye Instrument from means ownership or possession And that if He was behind that ownership or possession Goal or very Change population And his privacy nationalism and ethnicity or religious or sectarianism, Since text Article (23/ Third / B ) of the Constitution rose never in wisdom And purposefully with texts constitutional other to preservation on ID population in its regions geo in Iraq nationalism Of which and ethnicity and religious sectarianism, and tied up to text Article (23 / Third / A ) of the Constitution that She passed for the Iraqi own real estate in any place in Iraq, because text Article (23/ Third / B ) of the Constitution rose after text Article (23 / Third / A ) of the Constitution from where arrangement blogger And because as progress Lost rose in format Absolute And the divorced Being on launch it)).

By extrapolating the aforementioned decision, it becomes clear that strengthening coexistence peaceful and security Human between Spectra the people Iraqi all He is By preservation on Privacy its components, and protection the legacy urban for them from

distortion Systematic deliberate And change intentional, a result practices and policies successive and follow Techniques and tools miscellaneous In what Regard operations Change demographic by the system what before 2003, which She was directed against ingredients the people all Iraqis, Seema children minorities And with pictures different, actual orbit the date conducted changes wide in border the cities and villages in regions several, And we remember from between That methods resolution transformation class many from lands from agricultural to residential, And we specify Of which on them on way example no inventory Resolutions (111) of 1995 and (117) of 2000, so It was completed distributed on beneficiaries from regions other And from not population the originals for those regions.

Since it is not permissible to discriminate between citizens in the distribution of residential land, either Whether the discrimination was qualitative, qualitative, or spatial, the above two decisions were revoked, according to the order No. (12) for the year 2004 on 11/11/2004, which includes removing discrimination between citizens to obtain residential lands, and the Federal Supreme Court went in one of its decisions, as a result of the request to remove the conflict contained in the above order, that ((Order No. (12) for the year 2004 It was issued to remove discrimination between citizens to obtain residential lands, based on the desire of the Iraqi government to provide residential plots of land for all segments of society and a correct application of the principle of the right of Iraqis to own property without discrimination in all parts of Iraq and in line with the principle of equality between citizens as it enshrines the principle of equal opportunity for all sons of the people and does

not contradict or conflict with any constitutional text )).

Based on the decision of the Federal Supreme Court, it is noted that he confirms the distance on any Procedure wants with it changing Demographic my population in pan Regions, especially That that enjoy subjectivity civilized and cultural And religious, the court's decision came with the aim of promoting peaceful coexistence and protecting minorities nationalism and religious And denominational for Christians and others until no Complete changing identification their regions and their land, And from then protection their existence historical in this country .

The second principle: the concept of population density: The Kirkuk Provincial Council submitted a letter with the number (639) on 6/3/2008 to the court. Federal Supreme Which includes clarification of the phrase population density contained in Article (4 / Fourth) of the Constitution of the Republic of Iraq for the year 2005, and that the request He was for purposes writing regulations circles in Governorate in both languages Turkmen Syriac, As well as on the language Arabic and language Kurdish, where that Article (4/ fourth ) of the Constitution I overheard on that ( ( Language Turkmen and language Syriac Two languages Two formalities others in units Admin that make up In which density population ) .

And it has been made clear court Federal The Supreme Court concept of (population density) in its decision, which stated ((that density population no Means the majority, indicated that this applies on component Turkmen And the Syriac Kirkuk Confirmed in Same the time that Concept density He goes away to groups Same weight and appear salient in Cities, and that the court get back to

provisions the Constitution and lexicons Linguistic where Found that expression ( density population ) provided on her in Article (4/ fourth ) of the Constitution He goes away to groups that form heavy And back prominently in the cities formed from several nationalities, and be for those groups its effects in march the society And share in His movement, and that the court Found that that applies on Turkmen and on native speakers in language Syriac in governorate Kirkuk where they are within Concept density population provided on her in Article (4/ fourth ) of Constitution, because density population no Means necessarily The majority of number population, Rather, it means the aforementioned, as the court finds Possibility To write Plates indication for circles in center Governorate And in eliminate And in side is also available Arabic or Kurdish or Turkmen or Syriac)).

It is clear from the above decision that the court, in its interpretation of the concept of population density, stressed the protection of the components because of their impact on the course of society without specifying the relationship of population density to the number, but rather defining it to the groups that constitute a weight and a prominent appearance in cities of multiple nationalities, which confirms the peaceful coexistence between Different nationalities, as it is not possible to feel belonging to a state unless recognition of its existence and the feeling that others belong to them is achieved, which is what achieves coexistence and social peace, and then generates among all components a sense of equality, belonging and citizenship, since the constitution has guaranteed the right of all components, even if they are a minority And protecting their interests in the areas in which they constitute a weight, regardless of their number.

The third principle: the concept of (one federal state) and (the constitution is a guarantor of the unity of Iraq): The request of the Secretary-General of the Council of Ministers in the letter of the General Secretariat of the Council of Ministers No. (S/2/2/68/035870) on 5/11/2017, from the Federal Supreme Court Interpretation of the phrases (one federal state) and the phrase (the constitution is a guarantor of the unity of Iraq), which are referred to by Article (1) of the Constitution of the Republic of Iraq for the year 2005, which stipulates that ((The Republic of Iraq is a single, independent federal state with full sovereignty, its system of government is republican Representative, parliamentary, democratic, and this constitution is a guarantor of the unity of Iraq)).

The Federal Supreme Court reached a conclusion regarding the interpretation of Article (1) of the Constitution, and issued its decision regarding the request for interpretation, in which it stated: "The majority of the Iraqi people, with all its components, came out and voted in approval of the Constitution of the Republic of Iraq and to abide by the provisions of the articles contained therein, including Article ( 1), the subject of the request. " Interpretation, and the Federal Supreme Court finds that this approval and commitment of the ruler and the ruled is that Iraq, with its internationally recognized geographical borders, and the components of its federal system stipulated in Article (116) of the Constitution, which is the capital, the decentralized regions and governorates, and local administrations, is a single, independent federal state with Complete sovereignty and the system of government is republican and representative, and that the articles of the constitution guarantee the unity of Iraq, and Article ( 109) of it went to obligate the federal authorities stipulated in Article (47) of the

constitution, namely: the legislative, executive and judicial authorities, to preserve the unity, safety, independence, sovereignty and order of Iraq Federal Democratic, and the Federal Supreme Court did not find by reviewing the provisions of the Constitution of the Republic of Iraq for the year 2005 And studying it, a text that permits the separation of any of the components of the federal system in the aforementioned Republic of Iraq, namely the capital, regions, decentralized governorates, and local administrations stipulated in Article (116) of the Constitution, from Iraq under its provisions in force, which are considered a guarantor of the unity of Iraq as stipulated in Article ( 1) of the Constitution)).

It is clear from the above decision that the Federal Supreme Court affirmed the establishment of the principle of peaceful coexistence and the achievement of parity and harmony among the various components of Iraqi society. He owns nothing of it

## Conclusion

### First- Results:

1- reality indicates the existence of an important guarantee for peaceful coexistence, represented by the constitutional judiciary's oversight of the constitutionality of laws and regulations, which is represented in Iraq by the Federal Supreme Court, and then the court did not hesitate to rule that laws that violated the principle of peaceful coexistence were unconstitutional.

2- His role is embodied Constitutional judiciary in Iraq B. Preserving peaceful coexistence among the diverse sects and races of society, especially in times of crisis and adversity, through what It possesses the means, as the constitutional institution entrusted with the task of protecting the texts

of the Constitution and interpreting its provisions.

3- The effort of the constitutional judiciary In Iraq, in terms of judicial decisions issued by it, based on a request for its intervention, either to examine the constitutionality of a particular law or to interpret a text of the provisions contained in the constitution, with the aim of finding solutions and legal means that enable it to reach a balanced policy that would reconcile the conflicting interests before it in order to achieve its ultimate goal. Represented by the protection of constitutional texts, and the interpretation of their provisions in a way that makes them consistent with the developments and facts surrounding them .

#### Second - Recommendations:

1- Reconsidering the texts contained in the Constitution of the Republic of Iraq related to peaceful coexistence in this country in a way that enhances and enshrines the effectiveness of constitutional means in preserving peaceful coexistence in Iraq.

2- amending the system of the Iraqi Federal Supreme Court, It includes a text that requires the aforementioned court to rule on the unconstitutionality of laws that violate the principle of peaceful coexistence.

3- Allocating large sums of money and projects annually in the general budget to devote and promote the idea of peaceful coexistence in Iraq.

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