



# The Influence of Constitutional Texts on the Conviction of the Criminal Judge

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Criminal law is based on a number of important principles. These principles together constitute a safety valve for all individuals addressed to the provisions of the rules of this important law. This law is entrusted with the task of ensuring the protection of the rights of individuals. It also provides stability to their legal positions. Legislators gave this law a great deal of interest in the various constitutional systems as constitutions are the center of balance between both power and freedom. Therefore, they include a number of important principles and other rules that together constitute important guarantees for individuals against criminalization and punishment. They represent the aspect of constitutional legitimacy of the rules of criminal law Which, in turn, has the greatest effect on influencing the criminal judge because of the superiority of those rules over other legal rules in the state.

**Keywords:** *Constitutional texts, criminal judge, oversight.*

## Introduction

Legal rules making up the legal system in the state are sequentially linked with each other. They are not all located in the same rank in terms of strength and legal value that they have. Some of them are superior to others.

The constitution is also superior over the three established authorities; legislative, executive, and judicial. The present study is concerned with the work of the judicial authority, specifically the criminal judiciary, which should be governed by the constitutional texts and the general



framework in which it is determined and not through judicial decisions Because all the actions of the constitutive authorities should not violate the constitution as it guarantees rights.

### **The significance of study**

Perhaps, the present study is significant due to the fact that it deals with a vital topic related to the right of the human being to have his/her case examined through a trial by a judicial authority working to implement the law that should be within the determined limits. This is embodied in the constitutionality of the criminal law as the basis upon which the criminal law is based.

### **The problem of study**

The study problem revolves around answering the following questions:

How sufficient are the criminal laws in terms of not exceeding the limits set by the constitutional texts?

Has the criminal judiciary taken a fixed or changing position in terms of adhering to the constitutional provisions aimed at protecting human rights, through which the rules of the criminal law were constitutionally legalized?

### **The aims of study**

The present study aims at showing the impact of constitutional texts on the criminal judge. It also aims at highlighting the ways in which constitutional text can be applied instead of the legal text.

### **The plan of study**

The present study includes two sections. Section one tackles the concept of constitutional texts related to criminal law. Section two examines the means of implementing constitutional texts by the criminal judge.

### **The concept of constitutional texts related to the criminal law**

This section is divided into two subsections. Consideration of criminal constitutional texts related to human rights is presented in subsection one. Subsection two tackles criminal constitutional texts related to the work of the authorities.

### **First; Penal constitutional texts related to human rights**

It is known that the protection of rights is among the actions of the ordinary legislator who develops the penal law. But, the legislator should be subject to the provisions of the constitution. Unlike the penal protection that is primarily entrusted to the ordinary legislator, the constitutional protection of these rights is guaranteed by The constitution in two ways. The first way is what is directly stipulated in the constitution as is the case with the provision of Article (One/ A/ 37) of the Iraqi constitution for 2005 which states that human freedom and dignity are protected. The second way is an indirect path stipulating rights. It is a related to the opinions of jurisprudence



(Sorour,1999: 341- 342). It confirms the principles of democracy, the rule of law, and the system of government, including what is stipulated in Article (5) of the Constitution of Iraq for 2005 which states that sovereignty is due to law. The people are the source of powers and ...".

There are many texts that constitute principles of criminal justice. They are closely related to human rights. They govern the judicial work. It is possible to show the most important forms in two ways as follows:

### 1. The legitimacy of crimes and penalties

The principle of "no crime and no punishment except by a text" is considered one of the most important basic principles that prevail in various contemporary criminal legislations. It is also called the principle of the legitimacy of the criminal rule. This principle requires that the sources of the criminal rule be limited to written texts alone, which requires identifying the sources of this rule and the rules for its interpretation. This principle is one of the important pillars of criminal legislations as it is based on the premise that only legislators have the power to criminalize and punish. The judge does not have the ability to criminalize an act that is not criminalized by law nor has he the right to criminalize what is not stipulated in the law (Abu Khatwa, 2007: 55). This principle means that the legislator must determine in advance what are considered to be actions committed by a person as a crime. He defines the legal model of each crime. He determines the punishment whether in terms of quality or quantity (Al-Saifi, 1985: 10). Affirming the principle and its endorsement in the Penal Code in the form of "No crime and no punishment except by a text" belongs to the German jurist "Ismael Febbach" (Behnam, 1997: 178).

The ideas of the liberating philosophers, "Jean-Jacques Rousseau", Montesco and Impulsion, "Jeremy Pintam", and the Italian young man "Bakaria" contributed to the elaboration of the idea of justice as a basis for punitive treatment in the minds. But, the punitive regime differed radically after the French Revolution in 1789 (Abdullateef, 2012: 28). Article (8) of the declaration of rights and citizenship confirmed this important principle by stating that anyone is not punished except by virtue of a law issued before the commission of the crime...

A part of Arab jurisprudence considers that the principle of the legitimacy of crimes and penalties is mainly based on two pillars; the protection of personal freedom and the protection of public interest. The principle of protecting personal freedom sets clear boundaries that criminalize acts before they are committed. It clarifies what can be done as it is legal or what cannot be done as it is illegal. In addition, it provides security and reassurance in their lives. The principle of protecting public interest is embodied by achieving attribution of criminalization, punishment, and penal procedures to be only for the legislator and no one else. This is an application of the principle of the legislator's uniqueness with jurisdiction in the field of rights (Sorour, 2015: 80- 81).



Most punitive legislations have adopted this principle, including the Iraqi Penal Code No. (111) for 1969 in Article (1) thereof, which stipulates that there is no punishment for an act or omission except on the basis of a law that provides for criminalization at the time of its commission. The Iraqi constitution (2005) Article (19/ Second) stipulates that there is no crime and no punishment except by a text... This is what the Egyptian Constitution of 2014 adopted in Article (59).

All contemporary laws adopted this principle, including the new French Penal Code of 1992, which stipulates in Article (111/2) that law defines crimes and misdemeanors. Law determines the penalties applicable to their perpetrators. Regulations specify the violations and decide within the limits according to the discrimination determined by the penal law Applied to violators (Al-Maraghi, 2018: 47).

It is worth noting that the principle of the legality of crimes and penalties is governed by two types of constitutional principles as one of the rules of the Penal Code; The first is general. Its provisions extend to all branches of the law. The second is special principles governing the penal law alone. These two constitutional principles constitute what is called the constitutional circle in the penal law. There are other principles that the legislator's status is undertaken through discretionary authority and the legislative circle in the penal code within the scope of the constitutional frameworks (Sorour, 2002: 26).

Therefore, the two researchers believe that the principle of the legitimacy of crimes and penalties is one of the important constitutional principles that imposes a set of obligations on the criminal judge in the process of forming the doctrine of the issuance of penal provisions, including the obligation to adhere to the penalties established by the text of the legislation for crimes according to the nature and degree of punishment. The judge should refrain from adding any penalties not included in the text. He should also refrain from applying any penalty of a different amount or type. This does not prejudice the judicial discretionary power granted by the legislator. When setting two minimum and maximum limits for the penalty as well as what the legislator does when he chooses between a number of penalties of a different nature and amount, this does not violate the principle of legality as the delegation is delegated by the legislator to the judge in this regard (Abu Khatwa, previous reference: 39).

## **2. Criminalizing acts related to certain types of criminal behavior**

It is well known that after the occupation of Iraq by the United States and its allies, many acts appeared in the Iraqi arena under the name of the phenomenon of terrorism, which began to expand and spread in an unprecedented manner, which led the authors of the constitution of Iraq for 2005 to adopt many texts that criminalize those actions which establish a criminal policy The country is taking in the future.

The criminal policy of the leading German philosopher Feuerbach means: "The set of precautionary measures taken by the state to confront crimes. This means that the means can be



taken in a country at a certain time to combat crime (Kamal, 2000: 1). Arab jurisprudence defines it as the set of means used to prevent crime and punish it. It is the science that studies the activity that the state must practice to prevent crime. It prepares the guide for the legislator in combating crime (Sorour, 1969: 4).

In light of what happened after 2003; the dissolution of all the military and national security institutions, in order to avoid the confusion that occurred in concepts and perceptions, to possess a national strategy for Iraq in order to combat patterns of criminal behavior to be a supreme reference to the legality of criminalization, punishment, and determinants of the work of all authorities in order to protect human rights, which is an integral part of the strategy to combat terrorism, and to imparting judicial protection, the following texts were stipulated:

Penance and terrorism have not discouraged us from moving forward to build a state of law. Sectarianism and racism have not stopped us from ... (the preamble of the 2005 Iraqi constitution).

1. Every entity or approach that adopts racism, terrorism, atonement, or sectarian cleansing, or incites, paves, glorifies, promotes or justifies it is prohibited...
2. The state is obligated to fight terrorism in all its forms ... (Article 7 of the Iraqi Constitution 2005).
3. No political asylum shall be granted to a person accused of committing international or terrorist crimes, or whoever harms Iraq (Article 21 / III) of the 2005 Iraqi constitution.
4. The President of the Republic assumes the following powers: Issuing a special pardon upon the recommendation of the Prime Minister except for what is related to the special right and those convicted of committing international crimes and terrorism (Article 73/ 1/ of the Iraqi Constitution 2005).

In addition to the constitutional texts, there is the legislation that plays an important role in the field of crime prevention as it balances between both protecting society and protecting the rights of individuals. The legislator must guarantee individuals their rights, which stems from ensuring real response to society and not violating orders and prohibitions that the legislation brought. The legislation is an effective tool in preventing crime by issuing many legislations that directly contribute to the prevention of crime (Al Saadi, 1983: 224).

Combating terrorism and criminalizing other acts involved within the concept of terrorism derives its legitimacy from the constitutional texts brought by the Constitution of Iraq in 2005 and then commitment to what is issued through the international system in this regard in which Iraq is an active member. The general assembly issued many of its decisions related to combating terrorism. Perhaps, the most prominent of which is the decision No. 41/68 at 68th session on 12/5/2013 to prevent terrorists from acquiring weapons of mass destruction, Resolution No.119/68 68th session on 12/16/2013 to eliminate international terrorism, resolution



169/68 Special in combating intolerance, negative stereotypes, support, discrimination, incitement to violence and its practice against people because of their religion or belief, and Resolution No. 68/268/68 session on 13 June 2014, on reviewing the United Nations Global Counter-Terrorism Strategy.

Terrorist crimes have a special dimension that distinguishes them from other crimes because of their gravity, which in turn, gives the legislator an incentive to criminalize behavior that involves a certain risk even if it does not lead to actual harm such as organizing or chairing an armed terrorist group or financing terrorism and other behavior that helps to The occurrence of terrorist crimes (Muhammad, 2013: 312).

### **Second; Penal constitutional texts related to the work of the authorities**

There are many constitutional rules that constitute principles of criminal justice related to the work of state authorities. The most important forms of which can be shown as follows:

#### **1. Judicial Punishment**

Since the legitimacy of the punishment is intended to leave the matter of determining the punishment for the legislator in terms of quantity and quality only within the constitutional frameworks, the principle of judicial punishment leaves the matter to the judge alone. The two researchers believe that this guarantee is an application of the principle of separation of powers within the scope of Criminal Law (Maraghi, previous source: 49).

This principle is considered one of the fundamental characteristics that the punishment is distinguished from other similar sanctions in some characteristics, the effect of which is not enough for the legislator to stipulate a specific crime by itself, and for a person to commit this crime until punishment is imposed on, it must be applied Through the competent judiciary, so the administration cannot apply the punishment and impose it on the perpetrators of the crime (Faraj, previous source: 58).

In modern societies, the judge is seen as the only person trusted on the part of individuals in the field of caution, defending freedom, and embracing justice.

The judge should be distant from political considerations and administrative control. This trust in the judiciary is explained and related by looking at three things: knowledge of the law, experience of Judicial work, and independence to which integrity is linked. This necessitates the exclusion of every direction that leads to the application of the penalty by the administration, technicians, or jurors because each of these entities lacks the constituents and reasons for being trusted. Some believe that if the application of the punishment requires familiarity with some sciences and arts, especially criminology and punishment, this is not an excuse to entrust it to anyone other than the judge. Others believe that the judge must seek assistance of experts in his field to work under his supervision as the supreme expert in the case (Ibrahim, 2007: 26).



This principle is one of the most important guarantees of justice. Guaranteeing the rights of the accused is consistent with the purpose of the punishment in restoring the social balance that was disturbed by the crime. All trial procedures are intended to establish the truth regarding whether the accused is innocent or convicted. The various legislations included several rules that enable the accused to express his/her defense of him/herself to the side in which the judicial authorities are able to discover the truth and ensure that the rights of the accused are not violated except to the extent necessary by law and enables the judiciary to perform actions as being the natural guardian of freedom (Al-Husseini, 2005: 569). So, this principle is considered one of the guarantees approved by and confirmed by most constitutional systems, including the 2005 Iraqi constitution through Article (19 / 5) which states that the accused is innocent until proven guilty in a fair legal trial.

## 2. Texts related to the protection of personal freedom

Personal freedom can be defined in two ways:

The formal aspect; It is defined as a set of rights related to the nature of the person, his/her life, and what is subdivided from them. These rights are: the right of physical integrity, the right of personal security, the right of privacy, and the right of private life.

The objective aspect; It defines personal freedom as a legal position for the individual that gives him/her the ability to prevent being exposed to some aspects of his/her basic activities that his/her daily life hinges on securing it. In other words, it is an obligation that responds to the public authority by using its power to expose the individual in some aspects of his/her material or moral activities (Al-Hussaini, 2012: 33).

At the national level, texts of the constitutional law have focused on the foundations of personal freedom as all countries are used to taking care and highlighting the concept of personal freedom by surrounding it with the necessary protection and guarantees in a way that guarantees their existence and integration (Al-Husseini, 2012: 38).

The Iraqi constitution in force for 2005 confirmed the report of the principle of protecting this freedom. Article (15), stipulates that everyone has the right of life, security and freedom. It is not permissible to deny or restrict these rights .... It is also stated in Article (17) that everyone has the right of privacy ...

These texts reflect the level of criminal laws, especially the objective part of them that is related to the penal law, which included the text and the confirmation of those texts. The Iraqi Penal Code in force No. 111 of 1969 in many of its articles guaranteed the right of life in articles 405 to 416. The right of inviolability of the home is stipulated in Article (428) and the right of private life is stipulated in Article (438), along with other provisions included in the aforementioned law related to the transgression of members of public authorities, including Articles (322 and 333).



These constitutional texts and the legal texts issued on their guidance represent the constitutional and legal legitimacy of criminalization and punishment, which the judge should not exceed while he is in the process of deciding the cases presented to him. They represent the basic and fundamental principles and defenses of the rights and freedom of individuals.

## **Section two**

### **Means of applying constitutional texts by the criminal judge**

This section is divided into two subsections. Subsection one deals with the indirect method. Subsection two addresses the direct method.

#### **First; The direct method**

Constitutional jurisprudence unanimously states that only stipulating the supremacy of constitutions in the folds of the constitutional document is of no value in terms of reality unless it is subjected to strengthening guarantees and prevents any possible violation of its provisions and nullifies and removes its effects.

In this context, George Beardo says that it is just a hollow word that has no value as long as the violation of state bodies and their protection of public rights and freedom is escaped from the penalty. Therefore, the need emerged for judicial oversight of the constitutionality of laws in order to verify the violation of laws to the constitution in preparation for not being issued if it had not yet been issued, for its abolition, or its abstention if it had been issued. The abstention control practiced by the criminal judge is a direct means of giving priority to constitutional texts over the texts of ordinary laws and legislations.

The method of censorship assumes that there is a lawsuit before the court, regardless of whether this case is of a criminal or non-criminal nature. During the consideration of this case and as a means of defense, the law to be applied to it is unconstitutional law. The jurisdiction of the court is considered the constitutionality of laws as it is branched from the original lawsuit, which is considered before it. It is noted that the opponent who has an interest in advancing the unconstitutionality can do so during the stages during which the lawsuit passes on the condition that he/she has not issued a ruling in which he/she acquired the final degree. The judge applies the law without ruling that the law be repealed or annulled (Al-Mafraji, 2008: 182- 183).

All federal and non-federal courts in the United States of America practice constitutional oversight as part of the normal judicial function, which requires that if a ruling is issued in the litigation to apply the law that must be applied by examining the alleged conflict between the various laws, including the constitution, to reach to wasting every law that violates it, achieving the supremacy of constitutional texts by describing the constitution as the supreme law in the state (Abdulrahman, 2011: 28).



In France, despite the constitutional nature of the principle of criminal legitimacy, the prevailing jurisprudence is that the judge's authority is limited to wasting the law or text that appears to contradict or clash with the principle of legality or refrain from its application. It is not permissible for the French judge to practice control over the constitutionality Laws because this is explicitly confirmed by the Constitution of the Fifth Republic of 1958. In reality, this does not change the value of the principle of criminal legitimacy as it determines a rule that the authority must adhere to if it wants to continue it so that it has the confidence of citizens and does not create the reasons for its collapse. The state cannot ask individuals to respect the law when the legislator does not adhere to the higher principles that are a real restriction on the state; The constitutional texts (Al-Gharib, 2016: 148).

The French legislators ended the dispute through the text of Article (111-5) of the new French Penal Code which stipulated that the criminal courts are competent to interpret administrative, organizational, or individual actions in order to assess their legitimacy whenever it is necessary to adjudicate the criminal case brought before it. The French legislator, pursuant to Article (111-5), has expanded the powers of the criminal judge through the mechanism ability of interpretation of administrative actions as well as oversight of its legitimacy and settles the matter whether it is a list or an individual, regardless of whether the sanction prescribed is Criminal or not. The legislator has stipulated that assessing the legitimacy of these actions is one of the requirements for deciding the criminal case presented to the judge. It is worth noting that the criminal court is competent, in addition to examining the legality of the regulation (or administrative decision), that is, the extent of the compatibility of the regulation with the law to monitor its constitutionality. In other words, examining the extent to which these regulations are compatible with the constitution. Oversight of the constitutionality of laws is not specific to criminal courts, but rather falls within the jurisdiction of the Constitutional Council (Al-Gharib, previous reference: 149).

In Egypt, before the establishment of the Supreme Court in 1960, in which Egyptian jurisprudence received two directions, one of which was supportive and the other opposed to constitutional control, the majority of jurisprudence went with the approval of constitutional supervision. There was a difference between the rulings of the ordinary courts which hesitated about their right to practice constitutional control over laws in a manner of refraining from applying the law that violates the constitution. The matter was resolved and hesitation ended in favor of the Egyptian judiciary's right in practicing this supervision. Thus, the judiciary settled after cases of hesitation to hold an opinion The majority of Egyptian jurisprudence supporting the right of the judiciary to practice control (Abdulwahab, 2011: 109).

Before the occupation in 2003, as a result of the stalemate that characterized the 1970 constitution superiority over other ordinary laws and decisions in Iraq, there is nothing in accordance with this constitution that prevents the judiciary from monitoring the constitutionality



of laws. The law of the Constitutional Court was suspended in light of it. In accordance with the general principles that after the judge makes sure of the validity of the claim of unconstitutionality submitted to him by the litigants during a lawsuit before him, he refrains from applying the unconstitutional law on the basis of respecting the principle of the supremacy of the constitution, which is considered one of the core duties of the judge in interpreting and applying the law to resolve the disputes that are brought before him. If two laws are opposed before him, one is the lowest; the ordinary law and the other is higher; the constitution, he must neglect the application of the minimum law and apply the higher law. The principle of judicial oversight of the constitutionality of laws was applied during the consideration of a case related to the removal of communism. The decision of the Court of First Instance (80 / B / 1990) was issued on 5/5/1991 (Abd Ahmad, 2007: 52).

The two researchers did not find any decision that applied the principle of abstinence control in relation to criminal courts due to the lack of democratic rule and the existence of authoritarian one-party rule that ruled Iraq for more than (35) years.

There is no contradiction between the jurisdiction of the criminal judiciary to observe by refraining from the principle of separation of powers; The fact that the judge does not require the abolition of the law during the original case, in which he violates the jurisdiction of the legislative authority. He does not order the suspension of the implementation of the law. It is decreed for it to put the law aside, neglect it, override the constitutional text, and implement it according to the law to be followed (Swilam, 2013: 464).

## 2. The indirect means

As a result of the criticisms leveled at the abstinence control, perhaps the most important one is that it gives jurisdiction to all courts at all levels of competence with this type of oversight without entrusting this task to a court that arises for the purpose of considering the issue of constitutionality of laws, there is a state of inconsistency in the provisions as some laws may be not Constitutional, according to the viewpoint of a court and constitutional from the point of view of a second court. A court may recognize that the law is unconstitutional from its application. The two researchers believe that the courts that have approved the constitutionality of the law apply it to what is presented to it. The matter requires that the consideration of the constitutionality of laws be entrusted to another side; the constitutional judiciary, which is entrusted with the task of monitoring the constitutionality of laws.

In Egypt, this problem was finally solved upon the promulgation of Law No. 81 of 1969 the law establishing the Supreme Court, which ruled that this court should have jurisdiction exclusively in deciding the constitutionality of laws. The 1971 constitution came to the conclusion that the Supreme Constitutional Court should take over judicial control over the constitutionality of laws and regulations. It also undertakes the interpretation of legislative texts, which was confirmed in



the 2014 constitution through the text of Article (194). Law No. 48 of 1979 was issued. Article (25) of the Supreme Constitutional Court Law stipulated that the Supreme Constitutional Court is concerned with judicial oversight and the constitutionality of laws and regulations (al-Gharib, previous source: 150).

The Supreme Constitutional Court law has defined the ways in which oversight of the constitutionality of laws is achieved. Hence, the Egyptian legislator did not define the direct constitutional lawsuit (Swelem, previous source: 471) .

A part of the jurisprudence sees that the constitutional texts related to the legality of criminalization and punishment determined the constitutional framework for a balance between rights and public interest. In order to enforce the provisions of this legitimacy by the criminal judiciary, there is a need to have a constitutional judiciary that preserves it and determines its significance. In Egypt, the Supreme Constitutional Court undertook this task by eliminating A developed constitution, through which it was able to clarify many of the principles and values that underlie constitutional legitimacy. The Supreme Constitutional Court has fulfilled its mission in this regard by looking at the provisions of the constitution - as mentioned in the constitutional document - characterized by generalization, which needs to reveal the basic principles involved and ensure that these principles are adapted to other constitutional values protected by the constitution (Sorour, 2002: 18).

Article (26) of the Egyptian Constitutional Court Law No. 48 of 1979 stipulated that the Constitutional Court should interpret the texts of laws issued by the legislative authority. This interpretation is intended according to what one side of jurisprudence considers to be an explanation that reveals the true intentions that the legislator had envisioned upon approval. The law also expresses the true will of the legislator. The constitutional judge does not establish a new ruling. The decision of the interpretation issued by the court is merged in the text, part of it is indivisible and consequently applicable for implementation. This decision is not a source of the rules of the Code of Criminal Procedure subject to interpretation. It is rather a declaration of the will of the legislator who has imposed these rules on it since its issuance (Sorour, 1999: 398).

A part of the jurisprudence sees that the constitution is not the fertile field for detailing the provisions of criminalization and punishment. Nevertheless, the constitution includes a number of texts that are not related to criminalization and punishment. Some of which are of a negative and restricted nature. Others are of a positive nature. These texts in their entirety are replaced by close acts of rights and freedom. The Supreme Constitutional Court ruled that it is not sufficient for the constitution to describe some of the acts as crimes in order to be truly so as its description also requires that the text specify the punishment for each of them. Its elements should be clearly defined sufficiently because criminalization - according to what the Egyptian Supreme Constitutional Court says - "imposes on Personal freedom is the most dangerous restriction and



its impact, so the actions prohibited must be at the highest level of clarity and clarification "(Awad, 2015: pp. 20- 21).

Therefore, the Egyptian Supreme Constitutional Court ruled in one of its decisions after the constitutionality of Article (47) of the Egyptian Criminal Procedure Law No. 150 of 1950, which authorized the judicial arrest warrant in the event of a felony or misdemeanor to conduct a search of the suspect's residence. This is in contradiction to the text of Article 44 of the Egyptian constitution, which guaranteed the inviolability of the home and stipulated the requirement of two guarantees for the validity of the first inspection, the issuance of a judicial order, and the second to be causative. It did not refer to the case of flagrante (Abdulwahab, previous source: pp. 312- 313).

In Iraq, the constitution of 2005 organized the judiciary in its third chapter and made it independent of the legislative and executive powers according to Article (87) thereof. This constitution affirmed the principle of separation of powers according to Article (47), and affirmed the independence of the judiciary in Article (85) which states that Judges are independent and there is no authority over them in their rulings other than the law. No authority may interfere in the judiciary or affairs of justice. Article 95 of the constitution prohibited the establishment of special or exceptional courts. This constitution decided the judicial supervision of the constitutionality of laws and entrusted that task For the Federal Supreme Court. Article (92) of the Constitution stipulates that "the Federal Supreme Court is a financially and administratively independent judicial body.

The control practiced by the Federal Court in Iraq is represented by the method of merging between refraining and the original case in accordance with Article (3) of the internal system of the court (Al-Jubouri, 2010: 192).

The other method adopted by the Federal Supreme Court in Iraq to control the constitutionality of laws is through the original or direct lawsuit. The court relies in this jurisdiction on the text of Article (4 / Second) of the Court Law No. 30 of 2005 which stipulates that the settlement of disputes related to legality Laws, decisions, regulations, instructions, and orders issued by any authority that has the right to issue and cancel them, which are inconsistent with the provisions of the Transitional Administration Law of the Iraqi State is at the request of a court or an official authority or whoever claims an interest.



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## **Conclusions**

Having clearly defined the concept of the role of constitutional texts in establishing principles of criminal justice governing the judicial work, the means by which the judge can implement the constitutional texts; direct means represented in observing the constitutionality of laws and other indirect means embodied by the Constitutional judiciary, and the principle of supremacy of constitutional texts which is achieved by observing the constitutionality of laws, the two researchers concluded a number of findings and recommendations that can be elaborated as follows;

### **The results**

- 1.** The principle of the legality of crimes and penalties is governed by two types of constitutional principles as one of the rules of the Penal Code; The first is general that its provisions extend to all branches of the law. The second is specific governing the penal law alone. These two constitutional principles constitute what is called the constitutional circle in the penal law.
- 2.** The principle of the legality of crimes and penalties as one of the important constitutional principles imposes a set of obligations on the criminal judge in forming his doctrine when issuing criminal provisions, including the obligation to adhere to the penalties defined by the text of the legislation for crimes according to the nature and degree of the punishment.
- 3.** There are many constitutional rules that constitute principles of criminal justice related to the work of the state's authorities. Its most important forms are judicial jurisdiction and provisions relating to the protection of personal freedom.
- 4.** Constitutional control is one of the direct means in applying constitutional provisions by the criminal judge.

### **The recommendations**

- 1.** The judiciary should not cross constitutional and legal texts that represent the constitutional and legal legitimacy of criminalization and punishment in this regard. The basic laws that should be followed by special procedures when considering their constitutionality in order to preserve rights.
- 2.** The Iraqi legislator should expedite the legislation of the Federal Court Law, especially after the promulgation of the 2005 constitution as the Court Law No. 30 of 2005 and its bylaw No. 1 of 2005 were issued under the State Administration for the Transitional Phase of 2004



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### **Laws**

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- The Iraqi Penal Code No. 111 of 1969.
- The Egyptian Constitutional Court Law No. 48 of 1979.
- The Iraqi Federal Court Law No. 30 of 2005.