

Abstract

In the name of God

The legislation is ranging in its strength according to the topics which they deal and the authority that issue them.

The necessity that follows that is the minor legislation must respect the top legislation, and does not oppose its rules. The constitution is considered the supreme law in the state, it is about a document between those who are responsible for the public authority and people, and this to ensure that the legislative, executive and judicial authorities will not deviate from the principles, values and rules that people consider them the legislation which they believe in a particular time and place.

The constitution is not considered the supreme law if there is no mean that force the state authority respect it and reimbursed the state authority if it exceeded its borders.

The control over the laws constitutionality is considered one of the most important means to insure the compliance of the constitution provisions. The scholars differed in choosing the best way of control the law constitutionality, is it previous control or post control over the law constitutionality? The legal system varied in taking a certain manner, some legal system chose only the previous control system such as Arab Maghreb countries, other legal system chose only the post control and other legal system combined between the two ways such as France and Bahrain.

The Egyptian legal system chose the post legal control over the law constitutionality and regulation. The Egyptian legal system is about centralized judicial control specified only to the supreme constitutional court

.the jurisdiction of the constitutional court begin after the promulgation of the law and its applying on a particular dispute.

The examiner of the Egyptian legal system can note the existence of multiple applications of the previous control over the law constitutionality, it takes many forms, and it is not necessarily practiced through the mechanisms known in the constitutional control .that means it is not practiced under the name of the constitutional control and the state courts do not practice it. These different forms are represented in the parliamentary committees role in controlling the law constitutionality issuing and the right of the president to veto laws before its enact and the censorship which is practiced by the legislation department in the Egyptian state council according to law No 47 for the year 1972. The different forms of the previous control over the constitutionality in Egypt is an attempt to prevent the legal system from the defective laws.

This logic is the one who called the Egyptian constitution project to upgrade the previous control over the law constitutionality. Upgrading the constitution that was done in 2005 by giving the constitutional court the previous control over the constitutionality of the president election law.

The constitutional declaration issued in 2012 by the supreme council of the armed forces which is known by the constitutional declaration CMOS added anew task to the supreme constitutional court which is the previous control over the preparation of the constitution draft. The reason for enacting the constitutional declaration CMO Sis

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Lack of confidence the Muslim Brotherhood and fear of violation a constitution which contravenes the law general principles and do not achieve the revolution objectives.

The constitutional draft has been a little expanded in the previous control system over the legislation constitutionally according to the constitution issued in 2012 adding anew jurisdiction to the supreme court which is the previous control over the law constitutionality related to the political rights and the legislative and local elections, with the existence of control forms included in the constitution of 1991 as it is.

Although the post control over the legislation constitutionality that have been practiced by the constitutional court in Egypt achieved success in protecting the principle of legality and the rule of law, there are alt of reasons that require the expansion in using the previous control over the legislation constitutionality, as this way achieves a great protection of the principle of legality and the rule of law and because of shortcomings of using the post control.

From one hand, the practical fact in Egypt witnesses a lot of circumstances that led to the weakness of the parliament efficiency in making the legislation. The parliament always express one party's point of view, so the parliament do not express the public interest, and almost of the legislations that it makes express the ruling class' point of view.

From another hand, the nature of legislation may impose a particular manner of the constitutional control manners that suit it. Using only the post control manner over the legislation constitutionality leads to the exclusion of

specific legislation from the scope of the constitutional control, as it must be applied in a litigation dispute. The constitutionally control does not include the financial legislation which is featured with the administrative nature which address the public authority and the judiciary do not apply it. Also, the international treaties that the judge found it is critical because of its non constitutionality. After its joining in the application and the state's 'commitment of its rules, although they may violate the constitution of the state.

There are other legislations that their nature opposes the post control manner, through the results of judge that includes its non constitutionality and validity of retrospective judgment goes its date to the text issue. The result of this rule is almost difficulties in applying that is because of the result of the non constitutional text during the previous period on the rule which is not constitutional .theses difficulties appear widely to the tax legislation. The legislation of non constitutionality requires backing the collected money upon theses rules, theses lead to the public treasury bear burdens that may fail it .so, the applying of the previous control is more compatible for these legislation.

The justification of using the previous control manner over the law constitutional in Egypt does not mean they will be uncontrolled .There must be control over this system to keep the balance between the public authorities, the confidence must be found in the constitutional court work. The matter may need enacting new rules that insure the judge's independence and keep the project's discretion.

In fact, this aim will be achieved by granting the constitutional court a lot of guarantees to face the legislative authority and protecting the legislative authority from none valuing its authority that make the court recommend the legislation.

We conclude from this research some recommendations which are:

- 1- Combining between the previous and post control over the law constitutionality in Egypt, to make a good use of the two manners advantages and avoid the insufficiency aspects that result from applying one of them.
- 2_The text in the constitution considers the international treaties in a higher rank than the usual law –with the condition of reciprocity after its presentation to the supreme constitutional court for its examination and making sure of its constitutionality.
- 3_Applying the previous control over the tax legislation as it achieves the principle of legality and puts a fair solution to the problem of the judiciary of the tax legislation unconstitutional.
- 4-Appling the previous control over the main law constitutional and parliamentary regulation in order to cut off the road before the parliament to not take these legislation a mean for tempering the constitution provisions.
- 5-Giving the president the right of showing the law draft before the supreme constitutional court for the approval of the constitution or not after the people's assembly agreement and before its enacting. This enables the president to protect the constitution and keep the powers of separation between authorities.

6_Enable number of the parliament members to suspect the law draft constitutionality before the enacting ,that help protect the legal system from issuing the no constitutional rules which are issued for the interest of a particular or a particular category of the people .These laws are featured as being the most serious constitutional violation which is the legislative deviation.