

The Role of the Constitutional Judiciary's Interpretative Jurisdiction in Protecting the Economic Identity of the State

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Abstract

The 2005 Constitution of the Republic of Iraq defines the structure of the state and its system of governance. Although it incorporates the foundations of a democratic political system, including the peaceful transfer of power through elections, guarantees of fundamental rights and freedoms, and the principle of separation of powers, among others, it also contains several contradictions and deficiencies within its political and economic provisions.

Keywords: *Constitutional Judiciary, Economic Identity, Jurisdiction.*

Introduction

The interpretation of constitutional provisions is an attempt to determine the content and meaning of constitutional rules by uncovering the true intent behind economic constitutional norms. The economic analysis of constitutional texts is based on specific principles and rules embedded within the constitutional document, which reflect economic considerations that have shaped the concept of economic analysis of constitutional provisions and their interpretation.

Second: Significance of the Study

Given the significant impact of understanding economic constitutional provisions particularly in shaping the concepts and dimensions of the state's economic identity it is essential that an institution with judicial and legal authority undertakes this responsibility. The constitutional judiciary serves as the body responsible for exercising this interpretative jurisdiction.

Third: Research Problem

Article 25 of the Constitution states: "The state shall guarantee the reform of the Iraqi economy in accordance with modern economic principles, ensuring the full utilization of its resources, diversifying its revenues, and encouraging and developing the private sector." The wording of this article seemingly indicates the state's intention to transition from a centrally planned economy where economic activities are predominantly controlled by the state (the public sector) to a market economy.

Fourth: Study Structure

This study is divided into two sections. The first section will focus on the interpretative jurisdiction of the constitutional judiciary concerning economic provisions, while the second section will examine the jurisdiction of economic analysis in interpreting constitutional provisions with economic dimensions.

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*First Section**The Role of Constitutional Judiciary in the Economic Interpretation of Constitutional Provisions*

The drafting of constitutions and the formulation of their provisions possess a distinctive nature that sets them apart from other legal texts. Constitutional drafting serves as a prelude to interpretation, necessitates it, limits its scope and framework, and governs the interpretative method employed. Interpretation, in turn, is a rational and scientific process aimed at logically uncovering the interest protected by the legislative will and determining its applicability to real-life cases. It also involves clarifying ambiguous legislative terms, supplementing deficient provisions, addressing incomplete rulings, and reconciling conflicting components. Accordingly, constitutional interpretation can either contribute to the development of the constitutional system or lead to its regression, depending on the interpretative methods and principles employed in the process.

If constitutional interpretation is intended to determine the meaning and content of constitutional provisions by uncovering their true significance not merely by adhering to the textual wording but by reaching the intent of the constitutional legislator and the spirit of the text to ascertain its original objective then the fundamental question that arises is: Which authority is competent to interpret the constitution?.

The judiciary, as a general rule, is responsible for interpreting legal provisions, particularly higher courts. In any judicial authority structure, the supreme court is entrusted with this function to ensure the application of legal provisions. The same approach applies to constitutional provisions, where constitutional judiciary bodies such as the supreme court or constitutional court, regardless of their designation undertake the interpretative process.

Judicial interpretation of the constitution refers to the process by which judges interpret constitutional provisions and rules to apply them to disputes before issuing a ruling. This form of interpretation is an inherent function of the judiciary across its various levels and types. It is a natural judicial prerogative that does not require specific legal provisions to affirm its authority, nor can it be dispensed with or denied, as judicial adjudication of disputes necessitates interpreting legal provisions to assess their applicability to the cases presented. Consequently, judicial interpretation is characterized by a scientific approach, as courts engage in interpretation only when adjudicating a case before them. The judiciary does not engage in theoretical interpretation of legal texts; rather, courts often adhere to specific interpretations of legal provisions, even if such interpretations are among the least probable or furthest from the legislator's intent or the text's original purpose. Conversely, courts frequently reject interpretations proposed by legal scholars, despite their alignment with legislative intent, if they do not conform to practical realities or deviate from the principles of justice.

Legal scholars and judicial authorities generally agree that constitutional judiciary bodies exercise indirect or incidental interpretative authority. This refers to the constitutional interpretation of legislative or constitutional provisions in a subsidiary or incidental manner while performing constitutional oversight functions or exercising other judicial competencies.

Countries vary significantly in granting constitutional judiciary bodies the authority for direct interpretative or legislative jurisdiction, depending on their political circumstances, legal culture, and historical context. Some countries have granted their constitutional judiciary the original authority for direct interpretation of both legislative and constitutional provisions, empowering their supreme courts with the ability to issue advisory opinions to governmental authorities. In contrast, other countries have denied their constitutional judiciary the power of direct interpretation for both constitutional and legislative provisions. Some nations have granted their constitutional judiciary direct interpretative authority solely over constitutional provisions, while certain constitutional systems prohibit their constitutional judiciary from directly interpreting constitutional texts but allow them to interpret legislative provisions directly.

Among the countries that have granted their judiciary the original authority for direct interpretation of both legislative and constitutional provisions is the United States, where supreme courts hold the power to

provide advisory opinions on legislative or constitutional interpretation for public authorities within the state. On the other hand, some constitutional systems, such as the Constitutional Court in Bahrain and the United States Supreme Court, have withheld from their constitutional judiciary the power of direct interpretation of both constitutional and legislative provisions. An example of a system that has granted its constitutional judiciary direct interpretative authority solely over constitutional provisions is the Russian Constitutional Court, which is empowered to interpret the Constitution of the Russian Federation upon the request of the head of state, the Federation Council, one of the legislative bodies representing the peoples of the Federation, the governments of member states within the Federation, or the State Duma representing the peoples of the Federation.

Additionally, in the United Arab Emirates, the constitutional judiciary and the Federal Supreme Court are granted the authority to interpret the constitutional document, with such interpretations being binding on all parties.

In Iraq, the constitutional legislator granted the Federal Supreme Court the authority to interpret constitutional provisions only, without the power to interpret legislative texts. This was affirmed by the Federal Supreme Court in multiple rulings, where it dismissed requests on procedural grounds due to lack of jurisdiction. The court ruled that such matters fall outside its exclusive competencies, which do not include the interpretation of legislative provisions except in cases related to constitutional challenges.

On the other hand, some legal scholars continue to raise serious questions regarding the authority of the constitutional judiciary in interpretation. These concerns stem from the inherent sensitivity between the legislative institution and constitutional oversight, a relationship that remains delicate and prone to tension. Parliamentary sensitivity toward constitutional judiciary bodies emerged as the latter began solidifying their role within democratic governance. This sensitivity intensified with the shift in legal concepts favoring an independent constitutional authority separate from parliament, emphasizing that a law only reflects the general will if it aligns with the constitution. This transformation gave rise to the issue of legitimacy, raising questions about how an unelected body could exercise oversight over a body directly elected by the people. Another issue concerns the scope of authority, as legislators often regard constitutional judicial interpretation with skepticism or distrust, arguing that the entity responsible for drafting a legal provision is best suited to interpret it.

If the authority to interpret constitutional provisions falls within the jurisdiction of the constitutional judiciary, then the interpretation of provisions related to defining the state's economic identity, determining the nature of its economic system and its manifestations, and interpreting economic rights carries a particular specificity. The key question here, given the various methods adopted in constitutional interpretation, is how the constitutional judiciary can select the appropriate mechanism for interpreting constitutional provisions of an economic nature. Some legal scholars argue that answering this question requires addressing another fundamental issue related to the purpose of such interpretation. When the constitutional judiciary understands the objective behind the drafting of a constitutional provision, it can then select an interpretation mechanism that aligns with this objective and ensures the provision's effectiveness in fulfilling its social and economic function.

The specificity of interpreting economic provisions in constitutions is reflected in two aspects:

First: the rare use of the mechanism of "deducing the intent of the original legislator" in interpreting constitutional provisions with economic dimensions. It is observed that this method is seldom applied in the interpretation of economic provisions. Constitutional courts in Arab countries often interpret these provisions in light of the societal developments that have accompanied economic progress. This approach aims to grant these provisions absolute effectiveness and new meanings that the original constitutional drafters might not have envisioned or intended at the time of drafting.

Second: The frequent use of comparative law as a mechanism in interpreting provisions related to economic concepts and principles (economic transformation and democratic transformation). Comparative law is considered a tool for the constitutional judiciary in interpreting economic provisions and economic

rights. This mechanism has been adopted in countries that are still in the process of economic and democratic transformation. Constitutional courts in these countries have often turned to the precedents of Western constitutional courts, which have a rich and stable history in democratic practice, in order to fortify the legitimacy of their decisions on the national level. Some countries, such as South Africa, have explicitly included in their constitution the interpretation of constitutional provisions concerning economic rights in light of international law and have allowed the use of comparative law and legal scholarship. Similarly, the Hungarian constitution relied on the rulings of the German Federal Constitutional Court after the dissolution of the Soviet Union and the democratic and economic transformation in Hungary.

The constitutional judiciary has played a significant role in interpreting constitutional provisions with economic dimensions, which have directly or indirectly influenced the determination of the state's economic identity. This has been achieved through the interpretation of constitutional texts, even by providing a guiding reference to the principles that protect economic practices within the framework of economic activities. This includes safeguarding the constitutional foundation of independent institutions responsible for protecting economic activities and preventing monopolies. The French Constitutional Council, for example, has upheld the legitimacy of regulatory bodies in fulfilling their roles to protect competition and prevent economic monopolies. The Council has described transparency and competition as objectives pursued by the legislature and has confirmed that in order to achieve these goals, the legislature may prohibit contracts granting public services indefinitely or require that contract durations consider the nature and value of investments. The Constitutional Council has also conferred constitutional value on business freedom in several rulings, such as the decision on January 16, 1982, regarding the nationalization law, where it granted business freedom constitutional significance akin to property rights, citing Article 4 of the 1789 Declaration of the Rights of Man and Citizen.

In the ruling of January 20, 1992, regarding the law on the prevention of bribery and the achievement of transparency in economic life and public activities, the Council clearly decided that the freedom of enterprise enjoys constitutional value. Thus, the Constitutional Council relied on Article 4 of the Declaration of the Rights of Man and Citizen, finding constitutional support for economic enterprise freedoms.

The U.S. Constitutional Court, represented by the Supreme Court, has played a pivotal role in defining the economic identity of the state, regulating trade between states, guiding the national economy, and supporting national plans for reconstruction after the War of Independence and the Civil War. In this context, the Supreme Court interpreted the second clause of Article I of the Federal Constitution, which states that Congress shall have the power to regulate trade with foreign nations, among the several states, and with Indian tribes, as well as to enact all laws necessary and proper to execute this power. The phrase "necessary and proper" sparked extensive legal debate over the extent and nature of the implied powers granted to the federal government. Some advocated for a narrow interpretation, while others supported a broad one. This is the same debate surrounding the interpretation of the phrase "to regulate trade between the states."

In the landmark case *Maryland v. McCulloch* (1819), the Court affirmed the federal government's right to establish a national bank and create branches of this bank within any state without the need for state permission or the right of states to object or impose local taxes on the bank's activities. This was considered an essential power for the federal government to carry out its constitutional duties, a principle reaffirmed in the Court's 1824 ruling in *Osborn v. United States*, and again in *Gibbons v. Ogden* in the same year. The Court based its rulings on confirming Congress's power to regulate interstate commerce, describing it as an inherent power of Congress, which includes the enactment of rules governing trade. Trade is defined broadly as all commercial exchange, covering all types of transactions across various stages.

The Court further solidified its position in the 1839 ruling in *Bank of Augusta v. Earle*, which granted corporations, as legal persons, full authority to conduct business outside state borders. In another ruling in 1886, *Santa Clara County v. Southern Pacific Railroad*, the Court asserted that the public interest and community rights take precedence over property rights and the private interests derived from them. Therefore, private property should be used and regulated in a manner that aligns with the public interest

and benefits the people, relying on a broad interpretation of the state's power to protect both public and private property.

The Constitutional Court in Egypt has also played a prominent role in defining the economic identity of the state by adopting an evolving interpretation of constitutional provisions with economic dimensions. The Supreme Constitutional Court, in its commitment to the theory of self-restrictions and in support of the economic reform and revival plan, and recognizing the extensive destruction of the Egyptian economy under the rigid implementation of extreme socialist policies, decided to adopt an evolving interpretation of constitutional texts. The Court ruled that the economic reform plan adopted by the state was constitutional.

In its interpretation and ruling, the Court relied on several constitutional grounds and legal principles. Among these, it emphasized that constitutional provisions should not be interpreted as permanent and final solutions to outdated economic conditions. They should not be rigidly adhered to, but rather understood in the light of higher values aimed at politically and economically liberating the nation and its citizens. Economic development and its various fields are achieved through investment in both physical and human capital, which manifests in various forms, whether public or private. These investments are complementary to one another, whether they are funded by the state or the private sector.

The Court emphasized that achieving development and enriching its outcomes, in accordance with relevant constitutional provisions, is fundamentally linked to fostering public investment, which paves the way for private investment. Both public and private investments in development are seen as complementary partners that do not contradict each other, even though public investment serves as a key driver for progress. It is not necessary for this investment to take the form of a state-created or expanded economic unit.

In Iraq, the constitutional judiciary, represented by the Federal Supreme Court, has played a role in interpreting provisions with economic dimensions. For instance, in an interpretive decision, the Court referred to the right to impose taxes, collect them, and eliminate fees and implicit fines as financial matters mentioned in Article (122/Second) of the Constitution. According to this provision, the Provincial Councils that are not part of the Kurdistan Region have the authority to enact laws related to imposing, collecting, and spending taxes and implicit fines, enabling them to manage their affairs in accordance with the principle of administrative decentralization, which Article (115) of the Constitution grants them priority in application, except for what is stated in Article (61/First), which specifies the exclusive and shared powers of the federal legislature in enacting federal laws.

The Federal Supreme Court also provided another interpretation concerning economic provisions related to the regulation of economic rights, especially the right to ownership and property for Palestinians or foreigners in Iraq. In its interpretation of Article (23) of the Constitution, the Court referred to a decision by the dissolved Revolutionary Command Council, No. 123 of 1993, which allowed a Palestinian residing permanently in Iraq to own property. The Court interpreted the constitutional provision and stated that its jurisdiction in interpreting constitutional texts is based on Article (93/Second) of the Constitution. The Court clarified that Article (23) allows Iraqis to own property anywhere in Iraq, but Palestinians are prohibited from owning immovable property in Iraq. The Court concluded that this prohibition on non-Iraqis owning immovable property could only be lifted as an exception through a law issued by the legislative authority.

It is worth noting that granting foreigners the right to own property in investment-related matters is a significant tool for attracting foreign capital, encouraging investment, and impacting economic development.

It is evident from the above that constitutional judiciary plays a central role in determining the economic identity of the state through exercising its powers to interpret constitutional provisions or complementary laws. The extent of these powers varies across different countries, ranging from limiting the interpretation to constitutional provisions only to extending it to the interpretation of legal texts that complement the constitution or even ordinary legislative texts. It is noteworthy that constitutional judiciary in both the

United States and Egypt has clearly intervened in interpreting constitutional provisions with economic dimensions, contributing to shaping the economic system and supporting government policies in adopting appropriate economic systems based on an expanded interpretation of constitutional provisions that protect the economic rights of citizens and the state. These decisions are justified by economic reasons and principles framed within a legal context.

In contrast, it is observed that the Lebanese Constitutional Council has relied on comparative law, benefiting from the experiences of other countries in interpreting economic constitutional texts. At the same time, although the experience of the Iraqi Federal Supreme Court in interpreting economically related provisions is still in its early stages, its role and impact are clear. This is evident through its exercise of powers to interpret constitutional provisions related to economic activity, particularly in the context of investments made by the private sector. This partnership between the private and public sectors contributes to the transition to a market economy, which is one of the defining features of a market economy. As previously mentioned, such a system requires achieving partnership and integration with the public sector to establish an economic identity that reflects the prevailing economic philosophy of the state.

Therefore, it is clear that the exception outlined in the Constitution should be related to amending legal provisions with economic dimensions, such as the Investment Encouragement Law and the Industrial Development Law. By amending these laws, economic development will be contributed to within the framework of the constitutional principles enshrined in the 2005 Constitution. This would involve adopting modern economic principles that ensure the investment of state resources, diversify sources, and encourage the private sector's growth, all of which would support the reform of the Iraqi economy.

Second Requirement

The Role of Constitutional Judiciary in Economic Analysis of Constitutional Texts

The analysis of constitutional texts refers to the general principles of economic aspects that govern constitutional affairs or are included within the constitutional document. Since the idea of economic analysis of constitutional texts is not a product of a constitutional or legal approach adopted by comparative systems, it originated from philosophical ideas stemming from comparative legal theory and judicial thought, which reveal the inevitability of the relationship between the rules and principles of the constitution and the theories and intellectual methods of economics. Legal scholars have indirectly and gradually addressed the idea of economic analysis of constitutional texts, starting from various philosophical ideas that ultimately led to the formation of the idea of economic analysis of constitutional texts and defining its intellectual features. The main aspects of this idea began with the study of constitutional economics.

Reaching the idea of constitutional economic analysis was not agreed upon by comparative legal scholars, as opinions were divided between those rejecting and those supporting it. At the same time, even those who supported it were not in agreement on the specific framework to define the features of this idea. Nevertheless, scholars have found that constitutional texts, with their principles and rules, are rooted in purely economic and financial considerations, which led the framers of the constitution to include constitutional provisions for specific competencies. In this regard, constitutional historical development indicates that financial and economic events experienced by most comparative systems were the main factors behind the adoption of constitutional texts containing economic principles and rules. The impact of these economic events, along with the inclusion of economic principles and rules in constitutions, led constitutional courts to adopt the historical interpretation of economic texts and to deduce the goals behind their adoption and formulation as provisions or principles in the core of the constitutional document.

Frequently, the facts of time and societal developments in economic areas create a significant gap between reality and what should be according to the constitutional texts. Therefore, constitutional judiciary seeks to adopt the evolving or contemporary analysis of constitutional texts, emphasizing that the constitution is a progressive document that can, despite its rigidity, keep pace with societal developments. Constitutional courts have argued that constitutional texts should not be interpreted and analyzed as a permanent and final solution to economic situations whose realities have surpassed the time. Rather, they must be understood

in a way that serves the economic needs of the citizen. The constitution, as a progressive document, does not oppose developments and cannot be framed except in harmony with the spirit of the age. The economic development required by the constitution aims to change forms of life through an economic and social system that promotes investment in capital, both material and human, to generate increased income that is directed by the collective capability of society at a specific time to overcome challenges and allocate its resources for progress. Furthermore, its savings should advance scientifically through investments whose growth rate is linked to their increase, sustainability, and growing output.

Thus, the state's role revolves around the public powers in the state, which are represented by the legislative, executive, and judicial branches, derived from the rules and principles of the constitution. Every state has specific functions that expand or contract based on the state's philosophy and orientations, which are grounded in the constitution. This document specifies what the state should undertake and indicates economic analysis, whether in determining the functions that the state exercises toward its citizens or the impact of these functions on economic affairs, which differ according to theories concerning the functions of the state. These include socialist, social, and individualist doctrines, each with a distinct perspective on the state's role in economic matters.

The economic analysis of constitutional texts by the judiciary holds significant importance from both academic and practical perspectives. The economic analysis of constitutional texts serves as a means to explore the impact of economic considerations in the field of law, giving rise to a new branch that encompasses both legal and economic aspects. It helps to identify the economic factors that contributed to the creation and development of legal texts, pinpointing their strengths and weaknesses and suggesting solutions to address them based on the findings from the analysis of constitutional texts. In addition to this, the practical importance of economic analysis by the constitutional judiciary lies in demonstrating the intended economic impact of constitutional provisions. Moreover, economic analysis by the constitutional judiciary can reveal the true nature of the constitutional text and resolve disputes based on justice, contributing to the development of constitutional principles and rules and aligning with the developments and events in society.

The judiciary has played a pivotal role in shaping and advancing the idea of economic analysis of constitutional texts due to its authority in addressing disputes related to various matters or interpretations of constitutional texts. It resolves these disputes in accordance with prevailing constitutional ideas and the considerations that dominate the state. Thus, it has become a given that the judiciary is one of the most important sources for creating and developing the idea of economic analysis of the constitution, as well as an indicator of its effectiveness through three main mechanisms: First, referring disputes arising from economic activities to amicable solutions that ensure the fulfillment of contractual, commercial, and investment obligations, thus safeguarding economic activity and reducing financial costs for the parties involved, while encouraging them to resolve disputes through negotiation and resume contract implementation. Second, the contribution of the constitutional judiciary through its supervisory role over the legislative and executive branches, ensuring economic rights and contributing to economic development. Third, the role of the constitutional judiciary in devising legal solutions based on the principles of justice and equality in cases of disputes between the government and citizens, without protecting the state's legality principles.

The constitutional judiciary has played a creative role in shaping the detailed public outlines of the idea of economic analysis of constitutional texts, similar to the guidance provided by jurisprudence and academic studies, and even in its application and deduction during the adjudication of disputes or through judicial interpretation of constitutional texts. Although the judiciary has played this distinguished role, the idea of judicial analysis of the economic aspects of the constitution is not absolute; it is rather defined by specific jurisprudential constraints, which the judiciary has contributed to identifying. This requires clarifying the meaning of judicial limitations on the economic analysis of the constitution and then outlining the applications of these limitations. Furthermore, the creative role of the constitutional judiciary in shaping and developing the idea of constitutional economics has not been uniform in its scope and influence. Instead, it varies depending on the prevailing philosophy and ideas regarding the role of the constitutional judiciary in resolving disputes brought before it and in interpreting constitutional and legal texts.

The constitutional judiciary exercises its role in the economic analysis of constitutional texts through its review of the constitutionality of laws from two aspects:

The first aspect is the practice of economic analysis in the review of the constitutionality of laws, by examining the objectives and goals of this review and enabling an understanding of the economic analysis involved in the review of constitutionality. This is done by clarifying the goal of the review, which aims to ensure the protection of the constitution's principles and rules from any violations, explicit or implicit, that might arise from the legislative and executive branches, in respect of the principle of the supremacy of the constitution. From here, the economic impact of the review of constitutionality is evident: economic considerations have necessitated their presence in the drafting of constitutional texts and their legal framework, giving them their final form, which reflects their meaning and the intended objectives, stemming from historical and political considerations that led to their specific formulation. The story of the birth of constitutional texts, influenced by economic factors, is narrated in this context.

The second aspect is the practice of economic analysis in the review of constitutionality of laws through the analysis and interpretation of constitutional texts. The review of constitutionality is, in essence, an economic analysis of constitutional texts. The constitutional judiciary seeks to study the legal texts challenged for unconstitutionality, analyzing their phrases and identifying the intended goals and the protected interests they encompass. It then compares these with the higher constitutional texts to determine the extent of their alignment or contradiction with them, favoring the higher constitutional texts over the lower legal ones. Thus, the constitutional judiciary diligently works, in the course of exercising its review, to uncover the economic impact from the outset and defends its preference for constitutional rules against conflicting legal principles, given that the mentioned impact is closely tied to constitutional rules and principles.

It is worth noting that the solutions provided by the constitutional judiciary represent an organizational struggle, usually supported by economic considerations, in order to control the rules of conduct, regardless of whether they are economic, political, or social. Any economic analysis of texts can provide some degree of discretion for the applying authority, which involves a certain degree of delegation to the applying bodies. The constitutional judiciary in the United States, represented by the Supreme Court, has played this role in achieving financial and economic balance and stability. In the 1994 case *Cambridge State Bank v. James*, the Supreme Court of Minnesota examined the tax plan that exempted income from banks arising from local obligations from tax, while imposing it on income from federal obligations. The court found that the tax did not align with the constitutionally established principle of equality and did not consider the concept of immediate impact. The court ruled that the previous procedure before deprivation was insufficient, as payment was required first, followed by recourse to a tax court which did not have a clear jurisdiction over unconstitutionality. In other words, as long as there was no prior procedure to the deprivation, it had no meaning when the banks paid the unconstitutional tax.

The court also ruled in the *McKesson* case that the state is free to impose various procedural requirements on subsequent claims after payment, and these are acceptable considering what is derived in subsequent cases. For example, the state may decide that a refund will only be possible for those who paid with protest or those who filed a complaint within a specific period, refunding the unconstitutional tax in reasonable installments and applying a relatively short statute of limitations on recovery claims, as well as refraining from collecting the tax after the court's ruling on the legality of the collection. This procedural method referenced by the court adequately protects the state, maintains its financial stability, and allows it to fulfill its obligation to refund the unconstitutional tax.

Similarly, the Australian High Court has issued several rulings regarding the review of restrictions on economic freedoms, including the *Helen Many Beckinsale and Marmiteazw Pty Ltd v. Walter Merdoch French* case, which involved the requirement to register the transfer of a mortgage. The court ruled that this does not necessarily restrict an individual's freedom to enter into a loan agreement, as it is separate from the procedures related to its formation and documentation. Therefore, the High Court is the most capable body to analyze the constitutional framework; if the external interpretation of the constitution does not align with reality, the form is dead and lacks spirit.

It is clear from this that in constitutional jurisprudence, the diligent efforts in analyzing constitutional texts with economic dimensions have contributed to bridging the relationship between constitutional theories and economic theories. Few countries have succeeded in reconciling these two fields after making significant progress in the development of philosophical thought. For example, it was not easy for the U.S. Supreme Court to reconcile its commitments related to personal liberty with economic freedom throughout the court's history. This depended on the court's growing sense of independence and professionalism in performing its duties, or, in other words, the extent to which the judiciary felt free to use economic analysis tools as a guide to interpret the constitution, attempting to affirm the relationship between economics and constitutional interpretation.

Similarly, the constitutional judiciary in Egypt has analyzed constitutional and legal texts of an economic nature by examining how these texts align with the economic and social principles outlined in the constitution. The Supreme Constitutional Court ruled on April 7, 2013, that it was unconstitutional to impose taxes retroactively in the absence of a significant social interest. The court declared that the first paragraph of Article 1 of Law No. 2 of 1997, which amended certain provisions of the General Sales Tax Law issued by Law No. 11 of 1991, was unconstitutional, particularly the provision that applied from May 4, 1991. The court based this decision on its analysis and interpretation of the constitution, stating that the general principle in imposing taxes should be direct, and retroactive taxation should only occur if it is justified by a substantial social interest. This was due to the serious consequences that retroactive taxation can have on legal relationships, particularly its disruptive effects on stability and the erosion of legitimate trust. The court ruled that retroactive taxation, from a constitutional perspective, suggests the state relied on an illegitimate interest, and that the legislative provisions used to support this retroactivity have no logical connection, resulting in a contradiction between imposing taxes in these circumstances and the concept of social justice that the tax system is meant to uphold.

The constitutional judiciary in Iraq, represented by the Federal Supreme Court, has used analysis as one of the means to reach the true meaning of the constitutional text and the objectives intended by the legislator when enacting texts with economic dimensions, and to assess the extent to which these texts align with the economic principles and standards outlined in the constitution. The court analyzed the legal conditions required for conducting commercial activities.

In a constitutional case concerning the constitutionality of the first amendment to the Internal Regulations of the Iraqi Federation of Chambers of Commerce in 1989, the court nullified Article 32 of the regulations, which stipulated that candidates for the membership of the Chamber of Commerce's Board of Directors must have been members of the first-class or superior category for at least three years before running for office. The court found that classifying commercial chambers based on capital and economic capacity distinguished members within the same organization—the Chamber of Commerce—on an economic basis. The principle of equality means that all individuals in similar legal positions should receive equal legal treatment without discrimination based on economic status, and this also implies that there should be no discrimination between members of the same organization engaged in commercial activities.

Thus, the court rejected the case and used constitutional and legal text analysis in its ruling. It adopted the constitutionality of the amendment, supporting its decision by stating that one of the conditions for membership in the Chamber of Commerce's Board of Directors was that the candidate should belong to the superior or first class, as these categories were distinguished by high capability and extensive commercial experience, due to the scale of trade and economic and commercial relationships both locally and internationally. In contrast, other categories did not possess these advantages. Based on this reasoning, the Federal Supreme Court ruled the first amendment to the Internal Regulations of the Iraqi Federation of Chambers of Commerce to be constitutional.

It is noted that the Federal Supreme Court used analytical reasoning in justifying the dismissal of the case, relying on the financial capacity of companies classified as first-class or superior, as well as their experience through economic relationships at the national and international levels. According to the court's reasoning, adopting these conditions would contribute to enhancing the efficiency of companies and, in turn, activating the role of the Federation of Chambers of Commerce in promoting economic development. The

court emphasized the principle that candidates for membership in the Board of the Federation of Chambers of Commerce should hold at least a bachelor's degree. The court justified its decision by the natural and logical analysis of a merchant seeking to assume a position in the federation's board, stating that the candidate should possess the academic qualifications necessary to perform the role competently and correctly. Therefore, these regulatory conditions were established to elevate the work of these chambers and federations without violating the principle of equality in rights, including economic rights.

Conclusion

It is clear that constitutional courts in comparative countries have exercised their role and jurisdiction in overseeing constitutional provisions that define the economic identity of the state by interpreting constitutional texts with economic dimensions that shape the economic system of the country. Although the powers of constitutional courts in interpreting the targeted legal texts vary, some constitutional systems have limited the jurisdiction of constitutional courts to interpreting constitutional provisions, while other systems have granted the interpretation of texts to both regular and constitutional courts, empowering them to interpret texts that define the economic characteristics of the state's constitutional identity. Furthermore, constitutional courts have introduced the method of analyzing constitutional texts through the use of economic analysis of the constitution. The U.S. Supreme Court is considered a pioneer in this field.

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