

The Experience of the High Constitutional Court in Palestine: Towards the Establishment of Constitutional Justice in the Occupied Territories?

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Abstract:

In order to examine the legal foundation upon which laws are built, this research study began by examining the historical context that followed the evolution of the Palestinian judicial system in general and the problem of monitoring the constitutionality of legislation in particular. Up to the provisions governing the court's operations, it has judicial oversight over the constitutionality of laws in Palestine, which serves as a legal pillar upon which the Supreme Constitutional Court of Palestine bases its work. It focuses on the nature of the court's rulings and decisions to confirm how much they adhere to the standards of constitutional justice.

In order to achieve the objectives of the study, we must follow the descriptive analytical approach, which will enable an accurate description of how the Supreme Constitutional Court in Palestine dealt with the issue of oversight of the constitutionality of laws and the legal basis on which judicial oversight of the constitutionality of laws in Palestine is based, and then work To analyze and synthesize it in a way that reveals to us a cognitive interpretation that leads us to draw research results that will enable us to evaluate the established supervisory model and judge its ability to establish standards of constitutional justice.

Keywords: *constitutionality of laws; constitutional court; Palestine.*

Introduction:

Although the Zionist occupation had a negative impact on the state of Palestine, the Palestinian Authority has brought up the issue of creating a Supreme Constitutional Court to oversee the constitutionality

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of laws since the Basic Law of 2003. This is a logical outcome of the principle of supremacy of the constitution, which states that the constitution should be at the top of the state's legal system. Constitutional judiciary is one of the most important legal means that guarantee respect for the constitution and ensure its proper application.

The development of a statute on the court, which permits the activation of the aforementioned constitutional language and what follows from it from the start of the court's operation, was not finished until three years later, despite the legal advancements in the Palestinian judicial system. It took until 2006 for the Supreme Constitutional Court to issue a statute. The statute was updated in 2017 and 2019, but it wasn't until 2016 that it became operative, even though the court could see the legal text.

Since it started, the court has made significant progress in the area of constitutional justice by issuing several opinions and conclusions as a result of its review of appeals filed before the Supreme Constitutional Court was established.

Given everything said above and the unique circumstances in Palestine, we made the decision to tackle this matter by focusing on one main issue:

Problematic:

How well has Palestine's Supreme Constitutional Court been able to achieve the intended constitutional justice despite its recent experience?

Methodology used:

To accomplish the study's goals, we must employ a descriptive analytical approach that will allow us to accurately describe how the Supreme Constitutional Court of Palestine (the study's subject) addressed the problem of judicial oversight of the constitutionality of laws and the legal foundation upon which such oversight is based. We will then analyze and synthesize the data in a way that gives us a cognitive interpretation that will allow us to draw conclusions that will allow us to assess the established supervisory model and determine whether it can establish standards of constitutional justice.

However, by adopting this technique, we were still able to examine the numerous intricacies of this study utilizing alternative approaches.

Comparable to how we employ the historical method to uncover the historical context and events that accompanied the evolution of the Palestinian legal system in general and the problem of ensuring that laws are constitutional in particular.

Research plan:

The following components make up the systematic structure that this paper is structured according to:

- The first axis: the emergence of monitoring the constitutionality of laws in Palestine and their legal basis.
First: The emergence of monitoring the constitutionality of laws in Palestine.
Second: The legal basis for constitutional justice in Palestine.
- The second axis: the provisions of the law regulating the work of the Supreme Constitutional Court in Palestine.
First: Formation of the court.
Second: The jurisdiction of the court and its procedures.
Third: The rulings and decisions of the Supreme Constitutional Court.

1: The genesis of Oversight of the constitutionality of laws In Palestine and its legal basis.

The oversight of the constitutionality of laws as a judicial control is meant that the judiciary could examine the constitutionality of laws or regulations issued by parliament or the president of the state, to determine whether they are in conformity with the constitution or violate it, and in this way, this control is distinguished from its political counterpart in that those assumed by the judiciary rather than politicians, as it is assigned to courts, not for political bodies¹.

Constitutional review in Palestine has evolved through overlapping historical stages, leaving behind a legal system that combines the (Ottoman, British, Jordanian/Egyptian) heritage with the Basic Law of 2003, leading to the establishment of the Supreme Constitutional Court in 2006. The most prominent legal effects include establishing the principle of the supremacy of the Basic Law, adopting comprehensive judicial

¹ - Ahmed MA hamad, and al, the judicial control over the constitutionality of laws in the state of Palestine, legality journal ilmiah hukum, 28 (2) sept-2020, p. 160.

review with absolute authority, and enshrining four methods of appeal (lawsuit, defense, referral...).

1-1: The genesis of Oversight of the constitutionality of laws In Palestine (The Pre-Palestinian Authority Era):

Judicial review of laws emerged in Palestine after a series of historical phases:

1-1-1: The ottoman rule era:

The establishment of control over the constitutionality of laws in Palestine began prior to Palestine's submission to British occupation, specifically during Ottoman rule, which enforced the Ottoman legal system on Palestinian lands until 1917. The Ottoman rule period was split into two periods, the first of which ran from the Ottoman Empire's founding until the organizations' era. In other words, the legal system was founded on Islamic law, Islamic jurisprudence, conventions, and the Sultan's rulings in 1839.

The second period spanned from the start of the organizational era to the Ottoman Empire's collapse in 1917. By codifying religious¹, customary, and royal rulings, a reform effort at the level of legal regulations marked the second period. This resulted in the creation of significant legislation that continues to influence society today².

¹- It should be noted in this regard that judicial oversight in Islamic thought was not absent. As long as oversight is carried out within the framework of enjoining good and forbidding evil, it is an obligation related to the fundamentals of religion, and the nation has no right to abandon it or be negligent in it, which means that positive legislation derived from the provisions Islamic Sharia is subject to it, and the status of lower legislation is reduced to higher legislation with all the consequences that result from that, which means that it does not prevent anyone from exercising his right to oversight by filing a direct or subsidiary lawsuit for the unconstitutionality of any legislation that contradicts the Qur'an, Sunnah, or consensus, and that is for the courts to do so. Special courts can also be established. See: Qazoo Muhammad Akli: "Lessons in Constitutional Jurisprudence and Political Systems (Comparative Study)", Dar Al-Khaldouniya, (2006), Algeria, p. 178.

²- Raed Saleh Ahmed Qandil: "Oversight of the Constitutionality of Laws (A Comparative Study)", Dar Al-Nahda Al-Arabiya, Cairo, (2010). pp. 50, 52.

1-1-2: The British mandate era:

In 1917, the League of Nations passed a judgment that established the British mandate over Palestine. British military law was used at the start of this phase, completely excluding the application of the legal system. A modified form of Ottoman legislation was maintained to fit the Anglo-Saxon system rather than the Latin one, and this resulted in a surge in legislative activity during the era when British law was administered. Here, the double-hearing principle and the multi-tiered court system emerged as the earliest indications of the modern Palestinian legal system.

Despite this, the British Mandate was a time of unrest and conflict with the occupation, with no authority over whether legislation were constitutional. The fact that the 1922 decree pertaining to the constitution of Palestine was silent on the subject of controlling the constitutionality of laws and made no reference to it¹ is evidence that the colonizer would not likely accept the application of the legality principle and the gradation of laws in the occupied lands.

1-1-3: The Israeli occupation era:

The Israeli occupation started establishing the State of Israel on Palestinian lands at the end of the British Mandate in 1948. The Gaza Strip continued to be governed by Egypt until 1967, at which point Egyptian laws were applied there, and the British Mandate-era judicial system persisted. The Legislative Council for the Gaza Strip was founded in 1957, and the first Palestinian president was appointed to it in 1962. The Legislative Council granted the Basic Law of 1955 and the 1962 Gaza Strip Constitutional Order the status of a constitution².

The flaw in these constitutional laws is that they failed to address the problem of judicial or political oversight regarding the constitutionality of laws in the Gaza Strip. For example, no court was given the authority to conduct such oversight, and nobody was established to do so. This could be because of the current situation that

¹- *ibid*, pp. 56, 57.

²- Raed Saleh Ahmed Qandil, *op. Cit.* p. 61.

hindered the creation of the constitution, which contains a legal clause that oversees the constitutionality of laws.

Jordan controlled the west bank and annexed it to create the Hashemite Kingdom of Jordan, which included the east bank.

The west bank was subject to the Jordanian judicial system after the country's constitution was enacted in 1952, when the banks of the river were annexed and the legal system was consolidated. This prohibition was not specifically stated, and neither the courts nor anybody else had the authority to decide whether laws were constitutional.

The occupying power restructured and regulated the judiciary to deny Palestinians the ability to appeal to the court of cassation as a supreme administrative court of justice and to direct their appeals to the court of appeal, which was moved from Jerusalem to Ramallah, after the occupation authorities occupied the West Bank and the Gaza Strip in 1967 and then took control of the legislative, executive, and judicial powers in the occupied territories. Because of the nature of the time, which was marked by the logic of the revolution, the attempt to overthrow the occupation, and the establishment of the state's pillars, it would have been irrational to find a legal system that oversaw the constitutionality of laws and the achievement of constitutional justice.

After the Oslo Agreement was signed and the Palestinian national authority established a portion of the Palestinian territory, a solution to this problem was found in 1994. The Palestinian authority, through its legislative council, started to enact laws and regulate the judiciary, but the application of oversight of the constitutionality of laws was initially excluded until the enactment of a new law on the formation of statutory courts in 2001, which provided for the establishment of a supreme court to be temporarily entrusted with the functions of the supreme constitutional court until its establishment.

These phases were characterized by the absence of central and direct constitutional review. The Palestinian territories were subject to various legal systems (Ottoman, Jordanian in the West Bank, and Egyptian in Gaza) and Israeli administration, resulting in "legal legacy" laws that

remained in effect even after the establishment of the Palestinian Authority¹.

During this time, the Supreme Court exercised its jurisdiction and considered and addressed a number of appeals in this regard. Furthermore, the Palestinian government passed the Judicial Act in 2002, integrating the Supreme Constitutional Court with Palestinian courts for the first time².

1-2: The legal basis and its implications for constitutional justice in Palestine:

With reference to the historical circumstances that the State of Palestine underwent, we find that it took judicial control over the constitutionality of laws, as the adoption of this approach was embodied in practical reality. The state of law is founded on fundamental principles, the most significant of which is the principle of supremacy of the constitution, which imposes oversight over the constitutionality of legislation, laws, and regulations in effect in the state. After activating them, the Palestinian Authority attempted to achieve true constitutional justice through the approval of laws.

1-2-1: The Founding Era (Basic Law 2003):

The amended Palestinian Basic Law of 2003 established a fundamental constitutional principle: "legislation must conform to the Basic Law." This granted the Supreme Court (in its constitutional capacity) the authority to review constitutional matters before the establishment of a special court.

The Judicial Authority Law No. 1 of 2002, which established the Supreme Constitutional Court within the Palestinian courts through Article VI, appeared to be the first step toward implementing judicial

¹- Qusay Ahmad Muhammad Al-Rifai, *Initiating Constitutional Lawsuits: A Comparative Study*, Master's Thesis, Al-Quds University, Jerusalem, Palestine, 2016, p: 18.

²- See: Judicial Authority Law No. 1 issued in Ramallah on May 14, 2002 AD, corresponding to Rabi' al-Awwal 2, 1423 AH. Yasser Arafat: Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority.

oversight over the constitutionality of laws in Palestine. According to this text, the court appears to exercise its jurisdiction over both regular courts and the Supreme Constitution. and non-regular courts since the regular courts had heard about them.

The Palestinian Basic Law¹ was then introduced through Article 103 of the Supreme Constitutional Court's general powers. This was done by briefly discussing some of the court's powers and referring the matter of regulating its formation, membership requirements, oversight procedures, and other relevant details to a special law that governs it. Therefore, all of the aforementioned matters are governed by Supreme Constitutional Court Law No. 03 of 2006, which was issued on March 25, 2006. Decree Law No. 19 of 2017 and Decree Law No. 7 of 2019² were further revisions to this law enacted by the President of the Palestinian Authority.

1-2-2: The Supreme Constitutional Court Era (Law No. 3 of 2006):

It should be mentioned that after establishing a Supreme Constitutional Court through the Palestinian Basic Law, the Palestinian Authority waited three years before enacting a law for the court. After that, they stopped and did not take any further action, so the law remained a dead letter and was not put into effect until 2016³.

¹- The Palestinian Basic Law is the first founding document drawn up after the birth of the Palestinian Authority on the land of Palestine. It is a law that defines the form of the state and its system of government, stipulates the authorities, their powers, their relationship with each other, and their relationship with individuals. It also stipulates rights and freedoms

²- Decisions of the Palestinian Constitutional Judiciary, Part Two (2018-2019), prepared by: Nawar Badir, Birzeit Working Papers Series for Legal Studies (1/2020), Reference Texts Category, Birzeit University, Constitutional Law Unit, Faculty of Law and Public Administration, January 2020, p. 01 .

³-The President of the Supreme Constitutional Court in Palestine, Counselor Muhammad Haj Qassem, commented on the day the court began its work as follows: "With the advent of the second quarter of 2016, specifically on the first of April 2016, a dear hope and ambition and a dream that was difficult and delayed for many years were fulfilled, which was the issuance of the decision to form the Constitutional Court." Supreme Court in Palestine," see the court's website: tscc.pna.ps, accessed November 8, 2023.

The following is stated in Article 103¹ of the Palestinian Constitution, which calls for the creation of a Supreme Constitutional Court:

1. The measure will create a High Constitutional Court to examine:
 - A. Whether laws, rules, and other legislated restrictions are constitutional.
 - b. How laws and Basic Law are interpreted.
 - c. Resolving potential jurisdictional conflicts between administrative organizations with judicial jurisdiction and judicial institutions.
2. The legislation will outline the High Constitutional Court's composition and structure, its operational protocols, and the consequences of its decisions.

According to the article's text, the Supreme Constitutional Court, which the Palestinian constitution refers to, is a court with the authority to decide whether laws, rules, and systems are constitutional, to interpret Basic Law provisions, and to resolve disputes between judicial and administrative authorities that have judicial jurisdiction. It is the only court with the authority to decide these disputes. It is regarded as a specialized court with an independent body governed by a unique legislation that establishes its structure, authority, the process for pleading before it, and how its decisions are carried out.

This stage established the supreme constitutional authority, granting the Supreme Constitutional Court general and final jurisdiction over constitutional review. Its rulings are also characterized by their comprehensive effect; they are binding on all parties and all state authorities and extend to the annulment of unconstitutional provisions. It

¹-The Palestinian Basic Law was issued in Ramallah on: March 18, 2003 AD, corresponding to Muharram 15, 1424 AH. Yasser Arafat: Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Independent National Authority, amended in Gaza City on: August 13, 2005 AD, corresponding to Rajab 8, 1426 AH. Mahmoud Abbas: Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Independent National Authority.

also established several methods of oversight such as the original claim, the subsidiary defense, the referral¹...

These stages led to the establishment of a "centralized" judicial oversight system (the Constitutional Court) that balances legal heritage with the protection of public rights and freedoms under the Basic Law, despite ongoing political and legal challenges.

2: Provisions of the law regulating the High Constitutional Court in Palestine:

Six chapters made up the High Constitutional Court of Palestine's structure. The court's formation was the first chapter, which started with general provisions. These were followed by provisions pertaining to the court's general assembly and, finally, the rights and responsibilities of its members. A chapter pertaining to judgments and decisions followed the second chapter, which dealt with terms of reference and procedures. In order to wrap up the text with final clauses, the legal language addressed fees and expenses in Chapter Four and financial and administrative matters in Chapter Five. Here is a specific example of that:

2-1: Formation of the court:

Chapter One of the law governing the court's operations is titled "The Formation of the Court." As mentioned at the beginning of the chapter, the law stipulates that a Supreme Constitutional Court, an independent, self-contained judicial body in Palestine, shall be established in accordance with it. Its headquarters will be in Jerusalem, but it may also temporarily have offices in Ramallah and Gaza City as needed².

Given that the Court is made up of a President, a Vice-President, and at least seven judges, Article Two mandates that the President and the members be appointed for a non-renewable six-year term. Three members are appointed to the Court every two years, beginning on January 6, 2017, and if he is not present, If the President is unable to

¹- Qusay Ahmad Muhammad Al-Rifai, *Initiating Constitutional Lawsuits: A Comparative Study*, Master's Thesis, Al-Quds University, Jerusalem, Palestine, 2016, p: 25.

²- See Article 1 of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

represent himself, the Vice-President will do so. If they are not present, the senior member of the court will act on their behalf; if seniority is equal, the oldest member will act on their behalf. Additionally, a member cannot be seconded or assigned to work for any party during the duration of his court membership. This article's conclusion stipulated that the court must consist of a minimum of six judges and a president, and that a majority vote must be used to make decisions¹.

According to Article Four of the Supreme Constitutional Court of Palestine's Law, the only requirements for membership are the age requirement, which is approaching forty years old, and the competency requirement, which restricts membership to groups closely related to judicial work, such as current or former Supreme Court members, current appellate judges, and former or current law professors, attorneys, and prosecutors².

By highlighting the fact that judges make up the majority of the court's members³—a guarantee deemed adequate to attain the intended constitutional justice—the Palestinian constitutional legislator seems to have been successful in embracing the model of judicial oversight, according to the text of the aforementioned article. However, since he departed, he did not outline democratic procedures for selecting court members. Only the President of the State of Palestine, acting in cooperation with the Supreme Judicial Council and the Minister of Justice, has the right to appoint people, which could have an impact on the court's independence and operations.

¹- It should be noted that the text of Article Two was amended pursuant to Decree Law No. 7 of 2019 amending Supreme Constitutional Court Law No. 3 of 2006 and its amendments.

²- Saad Jamal Khairi Abu Zant, *The Problem of Constitutional Oversight in Palestine: A Comparative Study*, Master's Thesis, An-Najah National University, Nablus, Palestine, 2019, p: 69.

³- Assigning the task of verifying the extent of conformity of laws that violate the Constitution to the judiciary achieves many advantages that would not be available if a political body assumed this task, as judiciary personnel have guarantees of impartiality, objectivity, and independence in carrying out their duties on the one hand, and they are also qualified by virtue of their formation to undertake the task of examining laws to identify To the extent that it conforms to the provisions of the Constitution, judicial oversight also guarantees individuals freedom of litigation, the right to defense, and publicity of hearings, which makes it effective and real oversight. See: Mouloud Dedan: "Studies on Constitutional Law and Political Systems," Dar Belqis, (2009 edition), Algeria, p. 100.

The right of the President of the State of Palestine to directly appoint judges of the Supreme Constitutional Court, according to the 2006 law, strengthens the dominance of the executive branch and weakens the court's independence in political matters, turning it into a tool for interpreting the constitution in favor of the ruling party. This appointment has led to legal disputes, as in the precedent set in 2016¹.

Granting the president the right to select judges reduces the impartiality of the court and makes it susceptible to the political leanings of the executive branch. This appointment process has also led to constitutional rulings that contradict those of regular courts (such as the Supreme Court), thus undermining the principle of separation of powers. Furthermore, appointments are sometimes contingent on "security clearance" and political loyalty, which affects the independence of judicial decisions in politically sensitive cases².

The Supreme Constitutional Court Law's Chapter One also called for the creation of the General Assembly, whose duties included creating an internal framework for the Court that outlines how to handle matters pertaining to its system, standards of competence, the experience required of its judges, internal affairs, and the division of labor among its members and all of their affairs. Before sending proposed court-related laws to the Legislative Council, it is also approached to provide its view³.

According to Article 12 of the Supreme Court Law, it was determined to make reference to the Judicial Authority Law's detailed provisions regarding the dismissal of judges, their inability to be removed, their duties, resignations, leave, and secondment in order to discuss the rights and responsibilities of court members.

Regarding costs and fees, the Supreme Constitutional Court of Palestine's legislation established that lawsuits filed with the court must be paid a set fee of 100 Jordanian dinars or the equivalent in lawfully issued currency. This cost covers all court proceedings associated with the case, including the publication of documents and decisions. In the

¹- Dana Farraj, Dismantling Abbas's rule over the Palestinian judiciary, The Palestinian Policy Network "Al-Shabaka", <https://al-shabaka.org/briefs/dismantling-abbass-rule-over-the-palestinian-judiciary/> Apr 19, 2023.

²-Dana Farraj, Dismantling Abbas's rule over the Palestinian judiciary, op. Cit.

³- See Article Eight of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

event that the action is denied or not accepted¹, the plaintiff is required to deposit a guarantee of the same amount, which the court will seize. This most recent action seems to have ended baseless constitutional appeals.

The topic of financial and administrative concerns is covered in the final chapter of the court statute. Determining the provisions of the court's general budget was one of the goals. Examining those clauses makes it seem obvious that the court is financially liable on its own. The president of the court creates an independent budget for the court each year. He is also in charge of monitoring its execution. Conversely, the court's administrative management techniques are established by designating a registrar, secretary-general, and other staff members and administrators who report directly to the court president and are overseen by the Minister of Justice².

2-2: The jurisdiction of the court and its procedures

One of the most significant issues that could influence the court's operations, and, in turn, constitutional justice is the question of powers and processes. Article 24 of the court statute, which outlines the Supreme Constitutional Court of Palestine's authority, reads as follows: The court has exclusive jurisdiction to conduct the following:

1. Monitoring whether laws and regulations are constitutional.
2. In the case that there is a disagreement on the rights, responsibilities, and authority of the three authorities, interpreting the Basic Law and other laws.
3. Resolving jurisdictional problems between administrative and judicial bodies.
4. Resolving the conflict that emerges over the application of two conflicting final decisions, one from a body having judicial authority and the other from another entity.
5. Make a decision about the appeal against the National Authority President's loss of legal capacity in line with Clause (1/C) of Article (37) of the 2003 AD Amended Basic Law. Its decision takes effect on the day

¹- See Article 45 et seq. of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

²- See Article 48 et seq. of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

that a two-thirds majority of its members approve it in the Legislative Council.

In addition to giving the court the authority to decide whether laws are constitutional, this article also made the court a court of conflict of jurisdiction between the various judicial bodies and authorities, thereby broadening the court's jurisdiction¹. Additionally, it granted it the authority to rule on an appeal against the loss of the legal competence of the National Authority's President. The court's original authority, which is to determine whether laws are in accordance with the state constitution, may be adversely affected by this extra burden on its members.

According to the following article, a court's decision that a law, decree, regulation, or system is unconstitutional requires the legislative authority or competent authority to amend it in accordance with the Basic Law's provisions. The text that the court found unconstitutional is deemed prohibited from application, which means it cannot be used until it is replaced by a suitable ruling².

Regarding the procedures that are now in place before the Supreme Constitutional Court, its legislation states that referral decisions, litigation, and requests made to the court are subject to the requirements outlined in the Palestinian Civil and Commercial Procedure Code. When it comes to the court's oversight of constitutionality³, it can be done in one of three ways: either the aggrieved party files a direct lawsuit before the court, one of the courts considers a case and declares a legal text

¹ -Saad Jamal Khairi Abu Zant, *The Problem of Constitutional Oversight in Palestine: A Comparative Study*, Master's Thesis, An-Najah National University, Nablus, Palestine, 2019, p: 96.

²- See Article 25 of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

³- Many countries have adopted the method of judicial oversight of the constitutionality of laws, but they have not agreed on a single method in this regard. Some of them make oversight by means of the original lawsuit (control by cancellation), which occurs when the concerned party harmed by a particular law challenges it. Directly before the competent Supreme Court, requesting its cancellation for violating the Constitution without waiting for the law to apply to it in any of the lawsuits. Some of them allow this censorship by means of a secondary plea of unconstitutionality. This happens when there is a lawsuit filed before the judiciary in which a specific law is requested to be applied, and one of the parties to the lawsuit defends it. Not to apply this law in the case because it is unconstitutional. See: Mouloud Dedan, op. cit, pp. 101, 103.

unconstitutional, one of the opponents of the case submits a claim to the court that a legal text pertaining to the dispute is unconstitutional, or the Constitutional Court itself takes the initiative. if it learns that a legal document that is unconstitutional is connected to the dispute while it is being considered¹.

A thorough examination of the earlier texts makes it abundantly evident that the Palestinian constitutional legislator has supported judicial oversight of the constitutionality of laws and has flatly rejected political oversight, which is actually the approach that many nations around the world favor because it is consistent with the idea of the state of law and the rule of law².

Furthermore, the Palestinian lawmaker combined oversight through a subsidiary claim with oversight through the original lawsuit, which means he borrowed the American model's subsidiary claim procedure and the European model's original lawsuit procedure³.

2-3: A perusal of the rulings and decisions of the Supreme Constitutional Court in Palestine:

The Supreme Constitutional Court of Palestine issues its rulings in the name of the Palestinian Arab people, reserves the case for judgment following the closing of pleadings, and makes its own decisions on all subsidiary matters, according to the section on rulings and decisions. Regarding the court's decisions and rulings, they are final and cannot be challenged. All state authorities and individuals are bound by its interpretations and conclusions in constitutional disputes.

The Supreme Constitutional Court, established in April 2016, was given numerous powers by the constitutional and legal structure of Palestine's constitutional judiciary. The most significant of these powers include Supervising the constitutionality of legislation and its

¹- See Article 27 of the Supreme Constitutional Court Law No. 3 of 2006 and its amendments. Chairman of the Executive Committee of the Palestine Liberation Organization, President of the State of Palestine.

²- Raed Saleh Ahmed Qandil, op. cit, p. 02.

³- Constitutional jurisprudence has agreed that there have historically been two styles, European and American. As for the American style, it recognized that all regular judicial bodies are authorized to consider the conformity of the law with the constitution and that censorship is a means of defense resorted to by a party to the dispute. As for the European style, it assigned this task exclusively to a constitutional court. Anyone who deems a legal text unconstitutional has the right to appeal. See: Mouloud Mansour: "Researches in Constitutional Law", Moufim Publishing, Algeria, (2010), p. 117.

interpretation, and deciding between rulings in compliance with particular controls and mechanisms. In light of this, since the start of 2018, the Supreme Constitutional Court has rendered a number of constitutional rulings¹.

With numerous constitutional interpretations, most of the cases that were brought before the court were constitutional appeals. Rarely, we see that the lawsuit's focus was on constitutional requests. The court's initial ruling was released on January 16, 2018, and subsequent rulings followed. Regarding constitutional appeals, the initial lawsuit, subsidiary defense, or referral were the three methods used to relate to the case. One of the litigants or other individuals requested that the Minister of Justice submit a request, which served as the mechanism for relating to the lawsuit in terms of constitutional interpretation.

The nature of the lawsuit was in the form of a constitutional appeal, and the mechanism for communicating the lawsuit was in the form of an original lawsuit directly from the appellant party: Noura Masri, according to a ruling issued by the Supreme Constitutional Court of Palestine, for instance, on February 25, 2018. However, the party being appealed against was represented by the Prime Minister, the Attorney General, the President of the Legislative Council, the Chairman of the Palestine Liberation Organization's Executive Committee, and the President of the Palestinian National Authority.

Article 56, Paragraph 3 of the Pharmacists Syndicate Law No. 10 of 1957, which immunizes the decisions of the Supreme Disciplinary Council for Pharmacists, and Article 1 of Presidential Decree No. 1 of 1994, issued by the President of the Authority, were challenged as unconstitutional because they violated Article 30, Paragraph 2 of the Amended Basic Law of 2003, which prohibits administrative decisions from being immune from judicial oversight. The ruling was not because the appellant violated the formal processes for filing the lawsuit, the appeal was granted. Because, except for subsidiary defenses or referrals made in compliance with Article 27 of the Supreme Constitutional Court Law, the Constitutional Court does not entertain direct appeals in cases

¹ -Decisions of the Palestinian Constitutional Judiciary, Part Tow (2018-2019), op. cit, p. 01.

tried before the trial court¹.

The Minister of Justice made many demands to the court in the exercise of its interpretive authority, which were based on petitions made to him by different parties. For instance, on March 5, 2018, the Minister of Justice issued a decision in the form of a constitutional interpretation in response to a request made by the petitioner, Youssef Rizk, through his representative (the lawyer). The request concerned an interpretation of Article 30, Paragraph 1 of the Regular Courts Formation Law No. 5 of 2001, which deals with the Court of Cassation's authority to consider appeal cases from religious courts for non-Muslims; Because the required interpretations of the texts are unclear, they violate his constitutional rights. The request did not include significant reasons and disagreements in the application, nor did it explain the circles between which the difference in interpretation appeared, so it was decided not to be accepted because it did not meet all the formal requirements for requesting an interpretation in accordance with Article 30 of the Supreme Constitutional Court's rulings².

The May 8, 2018, ruling in the case brought by Madar Communications Company on behalf of its representatives, Amer Ayoub and Hossam Dofsh, against the President of the State of Palestine, the Council of Ministers, its president, and the Minister of Finance, serves as an illustration of a constitutional appeal in the form of a subsidiary claim. The case concerned the defense of the unconstitutionality of Articles 159, 177, and 174 as well as Articles 172, 170, and 169 of the Customs and Excise Law No. 1 of 1962 concerning the establishment of customs courts because of the procedures they contain that are in conflict with the Palestinian Basic Law and the Palestinian Code of Criminal Procedure, as the decision stipulated the unconstitutionality of Article 167 and Article 170 of the aforementioned law and prohibited their application from the date the decision was issued and not implemented Retroactively³.

The Palestinian Supreme Constitutional Court has established important constitutional principles through its rulings on the annulment or unconstitutionality of several laws and decrees. These principles are

¹- Decisions of the Palestinian Constitutional Judiciary, Part Two (2018-2019), op. cit, p. 75.

²- Decisions of the Palestinian Constitutional Judiciary, Part Two (2018-2019), op. cit, p. 81.

³- Ibid, p. 149.

intended to strengthen the rule of law and limit legislative overreach, especially in the context of judicial reforms¹:

Protecting the Independence of the Judiciary: The Court ruled that provisions in amended laws concerning the judiciary (such as Decree-Law No. 40 of 2020) were unconstitutional because they conflicted with the guarantees of judicial independence stipulated in the Basic Law.

Invalidity of Contradictory Decrees-Law: The Court affirmed the unconstitutionality of decrees-laws issued outside of cases of extreme necessity or that violate the Basic Law, rendering them subject to annulment.

Absolute Authority of Constitutional Rulings: The rulings of the Constitutional Court are final and binding on all state authorities and individuals. A provision ruled unconstitutional is prohibited from being applied.

Principle of Legislative Hierarchy: A Cabinet decision or decree-law may not contradict higher legislation. Ministerial decisions (such as the Financing and Lending Regulations) were annulled because they conflicted with higher laws.

Retroactive Effect of Annulment: A law ruled unconstitutional is considered unconstitutional from the date of its issuance, meaning its application is suspended retroactively.

Conclusion:

It was a challenging task to oversee the constitutionality of laws in Palestine. The Palestinian lawmaker made the decision to operate in the style of judicial scrutiny from the start because it was a strictly legal matter. However, because of the challenging conditions that the Zionist organization placed on judicial activity in Palestine, the path was lengthy and difficult. Relatively speaking, however, the Palestinian experience has surmounted all these challenges and attained constitutional justice. Given the challenges, barriers, and uniqueness of the experience, this one is deemed successful.

The following are some of the **results** that emerged from our study:

Since judicial cases necessitate taking steps that provide certain

¹-See Encyclopedia of Palestinian Laws and Court Rulings, makam, <https://maqam.najah.edu/blog/articles/43>.

guarantees of the proper functioning of the judiciary and its effective oversight of the work of other authorities, we find that the Palestinian legislator has succeeded in adopting the approach to judicial oversight based on the requirements of the rule of law and the state of law.

The Palestinian constitutional supreme court has the authority for reviewing the constitutional legislatures according to the Palestinian modified basic law (2003) statement (103) which has been organized according to law 3, 2006 in order to guarantee the stability of juridical system in Palestine in addition the guarantee and respect of the Palestinian basic law to achieve social, political and juridical purposes.

The Palestinian government made a wise decision in 2016 to permit the court to start operations and forward all constitutional issues submitted to the Supreme Court to the Supreme Constitutional Court, notwithstanding the recent experience. Nonetheless, the court's operations still require improvement. We think it won't be long, since the number of problems is growing, which will cause the experience to mature.

The oversight of the Palestinian Supreme Constitutional Court is a comprehensive, subsequent, central judicial oversight of all legislation and legal rules, regardless of their hierarchy in the Palestinian legislative and temporal system, such that it affects all legislation in force in Palestine.

The Supreme Constitutional Court of Palestine's decisions have marked a significant turning point in the field of defending the rule of law and the legality principle. These decisions and rulings are unquestionably regarded as fundamental guidelines that can be relied upon in the field of legal research and studies.

The Palestinian Supreme Constitutional Court has established important constitutional principles through its rulings on the annulment or unconstitutionality of several laws and decrees. These rulings have focused primarily on protecting the independence of the judiciary, upholding the hierarchy of legislation, and safeguarding rights and freedoms, while affirming the supremacy of the Basic Law.