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The Constitutional Judiciary in Yemen: A Comparative Critical Assessment of the 1991 Constitution and the 2015 Draft Constitution

Policy Paper

Tarek Badreddine

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This year's edition also featured case studies and meetings with a number of high-level guest speakers and experts, including: Dr. Dieter Grimm, former member of the German Federal Constitutional Court, Dr. David Bilchitz, Professor of Fundamental Rights and Constitutional Law in the Faculty of Law at the University of Johannesburg and Acting Justice of the Constitutional Court of South Africa, Ms. Mireille Najm-Checrallah, member at the Lebanese Constitutional Council, Dr. Ignacio Borrajo, lawyer at the Spanish Constitutional Court, Dr. Sami Saeed, Director of the International Institute for Democracy and Elections in Sudan, Mr. Omar Atout, Jordanian lawyer and constitutional expert, and Dr. Hassan Al-Budairi, Head of the Legislative Drafting Department in the Iraqi Parliament and a constitutional expert.

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Executive Summary

This policy paper sheds light on the state of the constitutional judiciary in Yemen – represented by the Supreme Court's Constitutional Chamber– and the extent of its independence. To this end, the paper analyzes the rules governing the formation of the Supreme Court's Constitutional Chamber as per Yemen's 1991 Constitution and its amendments, as well as the 1991 Law on the Judicial Authority and its amendments regulating the chamber, and compares them to the formation of the Constitutional Court proposed in the draft constitution of 2015.

The paper reveals that the constitutional judiciary in Yemen between 1991 and 2014 failed to meet the requirements of independence on the one hand, and did not observe the standards of independence and impartiality on the other hand. And while the 2015 draft constitution remains unratified amid the prevailing situation in Yemen, the analysis of that draft and its comparison to the international experiences of constitutional courts enables the formulation of a number of recommendations to address the shortcomings in a bid to strengthen the constitutional guarantees in favor of the independence of the judiciary. These recommendations include restructuring the court, determining a fair selection mechanism for appointing its members, and setting the conditions and duration of their membership and their number. This would cap the interference of the executive authority, expand the court's jurisdiction, and allow multiple methods of judicial review over the constitutionality of laws, thus enhancing the independence of the judiciary.

Introduction

The constitutional judiciary, whether represented by constitutional courts or councils, according to the denominations used by different countries, is one of the cornerstones of the judicial system, given the importance of the powers entrusted thereto. These prerogatives include, most notably, judicial review over the constitutionality of laws and regulations, which renders the constitutional judiciary a faithful guardian of the principle of the supremacy of the constitution, a fundamental constitutional principle.[1]

The constitution is the supreme law of the state. It establishes the rules and principles underpinning the system of government, defines public authorities, determines their functions, sets the limits and restrictions governing their activity, establishes public rights and freedoms and formulates the basic guarantees for their protection. Therefore, the constitution is endowed with a special nature that bestows sovereignty and supremacy upon it. These characteristics require that the laws and regulations issued by state authorities abide by the constitution. Accordingly, constitutional norms must prevail over any other legal norm. This determines the role of judicial review in relation to the constitutionality of laws. It is the effective, practical expression of the principle of constitutional sovereignty and the supremacy of constitutional provisions. Several trends emerged in various states regarding the type of review over the constitutionality of laws. Some opted for preventive political review, which precedes the promulgation of laws and is exercised by a constitutional council. Such council is an appointed or elected entity that examines laws before their promulgation, and it may decide to withhold their promulgation by the legislative authority if it finds that they violate the constitution. Others apply judicial review over the constitutionality of laws after their promulgation. This review is exercised by competent higher judicial bodies, represented by either specialized supreme constitutional courts or competent constitutional chambers within a single supreme court. This is the trends followed by the constitutional judiciary in Yemen, where the Constitutional Chamber exercises judicial review over the constitutionality of laws by adjudicating lawsuits and deciding on claims of unconstitutionality of laws, regulations, and decisions in accordance with the provisions of the constitution and the Law on the Judicial Authority No. 1 of 1991.

The establishment of the first Supreme Court in Yemen with civil and criminal jurisdiction dates back to the promulgation of the Constitution in 1936 in Aden Colony, which, following its separation from British India, was ruled directly by the King as a British Crown colony. In 1959, the amended Constitution of the Federation of South Arabia included provisions on the establishment of a Federal Supreme Court with the jurisdiction to hear requests for the interpretation of the Federal Constitution on specific matters.[2]

After the revolution in 1962, the 1963 and 1964 Constitutions did not provide for the establishment of a court with constitutional review powers.

They also failed to include techniques similar to those enshrined in contemporary constitutions, mostly in developing countries, and which are usually applied to determine the entity in charge of exercising review over the constitutionality of laws and deciding on the validity of parliamentary and presidential elections and referendums.[3] The first constitutional text to establish the Supreme Court in the (former) Yemen Arab Republic was the Constitution of 1965. It provided in Article 42 for the formation of a Supreme Court by a decision by Parliament based on nominations by the Council of Ministers. This court was competent to prosecute those threatening public order, funds and resources, including officials and others, as well as those accused of political crimes. It was also given the power to establish and supervise administrative courts in the districts (governorates). However, the constitution did not grant it constitutional jurisdiction. [4]

The 1970 Constitution bestowed greater independence to the judiciary and judges through the establishment of the first court with jurisdiction to oversee the constitutionality of laws. Article 155 of the constitution provided for the formation of a Supreme Constitutional Court composed of a number of highly qualified Shari'ah scholars, elected by the Majlis al-Shura and nominated by its Head. The court was vested with the powers of issuing final decisions on the constitutionality of constitutional amendments, laws, and resolutions enjoying the force of law, as well as prosecuting the Head and members of the Majlis al-Shura, and the Prime Minister and Ministers, in addition to resolving electoral disputes concerning members of the Majlis al-Shura. The provision stipulated that “the decisions of the Supreme Constitutional Court shall be published in the Official Gazette. They are not subject to any kind of appeal. They are binding upon public authorities and all administrative and judicial authorities.” [5]

In the former People's Democratic Republic of Yemen, the 1970 Constitution provided for the formation of a Supreme Court of the Republic composed of judges appointed and dismissed by the Presidium of the People's Supreme Council in accordance with Article 92. For its part, the 1978 Constitution stipulated in Article 82 that the People's Supreme Council shall elect a President, one or more Deputy Presidents and a number of judges to the Supreme Court.[6] The law issued in 1980 defined the jurisdiction of the Supreme Court, without referring to its review role. It simply referred to its constitutional jurisdiction,[7] allowing it to propose and submit draft laws to the People's Supreme Council. [8]

The Supreme Court is the highest judicial body in Yemen in accordance with Article 153 of the Constitution of the Republic of Yemen. The Law on the Judicial Authority determines its formation and sets out its powers and the procedures to be followed before it. Article 11 of the law stipulates that it shall be formed by virtue of a decision of the President of the Republic, consisting of a President, one or more Deputy Presidents, and a sufficient number of judges to be determined upon formation and, when necessary, by the Minister of Justice in consultation with the Supreme Court's President following the Supreme Judicial Council’s approval.

These shall be selected from among a list of names drawn up by the Judicial Inspection Board, to which shall be attached all data and reports on the competencies of those included in it. The provisions relating to the formation of the Supreme Court also stipulate that its members shall be appointed by selection from among those holding the rank of Supreme Court judge, the rank of President of the Court of Appeal and their equivalent ranks in the Public Prosecution, or from among faculty members in the faculties of Shari'ah or law in Yemeni universities, or lawyers pleading before the Supreme Court. They shall be appointed by virtue of a decision of the President of the Republic upon the nomination of the President of the Supreme Court, following the Supreme Judicial Council's approval.[9]

The Supreme Court is composed of seven chambers: the Civil Chamber, the Commercial Chamber, the Criminal Chamber, the Personal Status Chamber, the Administrative Chamber, the Military Chamber and the Appeals Examination Chamber, each consisting of five judges, and each operating within its respective jurisdiction.[10] This is in addition to an eighth chamber, which is the Constitutional Chamber, composed of seven judges, namely the Supreme Court President and their deputies, and the heads of the Civil, Administrative, Military and Appeals Examination Chambers. The President of the Supreme Court presides over this Chamber, and the Deputy Presidents may assume such presidency when needed and commissioned by the President. Members of the Constitutional Chamber must be judges of the Supreme Court or Presidents of the Court of Appeal or hold an equivalent rank with the Public Prosecution, or be university professors or lawyers.[11]

The Supreme Court shall also form an expanded judicial body, called the General Assembly, consisting of the President and Deputy Presidents and the judges serving at the Supreme Court. The General Assembly reviews cases brought to it by any of the Supreme Court's chambers, if such chamber was of the opinion to depart from a judicial interpretation previously established by the Supreme Court. In addition, the assembly assumes the function of organizing the workflow at the various chambers, in addition to other matters specified by the law.[12]

The Constitutional Chamber affirmed a set of principles related to the constitutional judiciary, whether in the field of constitutional review over laws, electoral appeals, or regarding the entity entitled to file a lawsuit or the procedures followed before the court.

Article 153 of the constitution provides that the Republic's Supreme Court is the highest judicial body in the land. The law regulates the composition of the court and defines its functions and procedures.

The Supreme Court shall carry out the following tasks:
a) Rule on lawsuits and claims relating to the unconstitutionality of laws, regulations, statutes and decisions.
b) Rule on electoral challenges brought before the Constitutional Chamber by voters or candidates to parliament councils, whether in relation to the election of candidates to parliament or the local councils by way of judgments or judicial decisions issued by First Instance Courts.
c) Examine and deliver an opinion on challenges submitted by parliament concerning the legality of the membership of any of its members.
d) Prosecute high office holders, such as the President of the Republic, the Vice President, the Prime Minister, their deputies, and the ministers.[13]

As per the Yemeni Constitution, the Supreme Court undertakes judicial review over the constitutionality of laws in two ways. The first is direct and is known as "annulment review". The second is indirect and is referred to as "abstention review".

The power of the Constitutional Chamber of the Supreme Court to rule on unconstitutionality depends on the established legal regime. It may repeal an unconstitutional law, or its power may be limited to ruling on the constitutionality or unconstitutionality of the challenged law. The rulings issued by the Constitutional Chamber of the Supreme Court regarding the constitutionality of laws, regulations, resolutions or decisions are binding upon everyone and all state authorities, have force of res judicata, and shall be published in the Official Gazette.[14]

Based on the foregoing, one may note that the provisions of previous constitutions, despite the differences they featured in relation to the composition and powers of the Supreme Court, were aimed at establishing a court with the power to exercise judicial review over the constitutionality of laws. Article 153 of the Constitution of 1991 provided for the establishment of a Constitutional Chamber within the Supreme Court as the only body tasked with exercising judicial review over the constitutionality of laws. Although the Constitutional Chamber has exercised its review role since its establishment and through the transitional period as of 2011 and gained some independence as a result of the political balance at that stage, it was marred by a number of controversies that cost it its independence in both formal and substantive terms compared to international standards for the independence of the judiciary. Despite the fact the constitution proclaims the independence of the constitutional judiciary, guarantees for the effective independence of its members remain absent amid the continuous interference of the executive authority.

Therefore, this paper focuses on the following key issue: How can a constitutional judiciary that is effectively independent of the influence of the executive authority be established?

The paper assumes that the challenges to the effective functioning of the Constitutional Chamber of the Supreme Court in Yemen are largely owed to its lack of independence and abuse of power by the authorities.

The paper targets decision-makers and stakeholders and includes the President and members of the Presidential Leadership Council (the Executive Authority), the judges of the Supreme Court and the Constitutional Chamber (the judiciary), and members of parliament (legislature), along with political parties leaders. The secondary targeted entities are lawyers, academics, university professors, constitutional law experts and civil society organizations interested in constitutional law.

It espouses a comparative analytical approach to the situation of the constitutional judiciary in Yemen represented by the Constitutional Chamber of the Supreme Court, and the extent of its independence. It does so by analyzing constitutional and legal texts on the formation of the Constitutional Court, including the constitution and the draft constitution of 2015.

Three elements are considered to measure the independence of the Constitutional Court: the method used to select and appoint members, determining the number of judges, and defining their term. These represent the basic elements of the formation of the Constitutional Court, as independence is established through formation more so than through the determination of prerogatives and methods of judicial review previously determined by law.

The paper is divided into two sections. The first assesses the current state of Yemen's constitutional judiciary, while the second explores its future.

I. The State of Yemen's Constitutional Judiciary

This section is divided into two sub-sections: The first addresses the state of the constitutional judiciary in Yemen between 1990 and 2011, while the second covers the transitional period (2011-2014).

A. The State of Yemen's Constitutional Judiciary between 1990 and 2011

The judiciary in the Republic of Yemen is one of the three branches of government and is entrusted with adjudicating disputes. According to the provisions of the constitution, the judiciary is independent of the legislative and executive authorities in accordance with the principle of separation of powers, and no one may interfere in the functions of the judiciary and justice affairs.[15]

The courts are the judicial bodies competent to decide on all disputes, including the courts of first instance, the courts of appeal, and the Supreme Court, which represents the highest judicial body in the country.

Under the current constitution and the laws in force, Yemen became one of the first Arab countries to apply the principle of judicial review over the constitutionality of laws. The constitutional judiciary in Yemen is entrusted to a judicial body represented by the Constitutional Chamber of the Supreme Court.[16]

Accordingly, the state of Yemen's constitutional judiciary between 1991 and 2011 may be studied by: tracing the emergence and composition of the Constitutional Chamber of the Supreme Court and its jurisdiction; addressing the methods of judicial review; and determining the extent of enforceability of the rulings issued by the Constitutional Chamber of the Supreme Court.

1. Establishment of the Constitutional Chamber

States establish different authorities to adjudicate constitutional disputes. Some entrust this task to all courts, which results in decentralized constitutional review. Others confer exclusive jurisdiction to settle these disputes to a single body, in an approach known as centralized constitutional review. Some countries confer this power to a specialized chamber within an existing judicial structure, such as the Supreme Court, while other countries confer it to an independent constitutional court.[17]

In establishing the Constitutional Chamber of the Supreme Court (1991-2014), Yemen opted for centralized review over the constitutionality of laws. Although the chamber is a judicial body exclusively competent to adjudicate the constitutionality of laws and regulations, it is not independent – administratively – since it was established as part of the ordinary judiciary (the Supreme Court). This contradicts the standards of independence stemming from the international experiences of constitutional courts.

▪ Formation of the Constitutional Chamber

The composition of the Constitutional Court is determined by a number of elements, including the mechanism of selecting and appointing judges and the determination of their number and their membership conditions and term.

▪ Mechanism for the selection and appointment of judges

Laws determining who has jurisdiction to choose the members of the Constitutional Court differ from one state to the other according to their political system and the extent of its democratic nature. Some confer this power to the president, other to parliament or to an entity included in a list submitted by the Judicial Council. Others grant it to multiple entities. Constitutions differ with regard to the role they give the head of state or president in selecting and appointing court judges. Some give the president sole jurisdiction, others link this jurisdiction to the approval of another body, such as parliament or one of its chambers.

Other constitutions restrict this choice to a list submitted to the head of state or president by the Judicial Council, subject to consultation with specific entities.[18]

The mechanism for selecting and appointing judges of the Constitutional Chamber of the Supreme Court in Yemen by the President of the Republic was confined to a list of candidates submitted by the President of the Supreme Court, following the approval of the Supreme Judicial Council. This gave the executive authority a predominant role in the appointment of judges. It would have been preferable to diversify the appointment and selection entities to include the three executive, legislative and judicial authorities; a third of the judges being appointed by the President of the Republic, a second third elected by Parliament and a third chosen and nominated by the judiciary. Restricting the power of appointment of the judges of the Court to the President of the Republic, the holder of executive authority, undermines the independence of the judiciary.

- **Membership conditions**

The Law on the Judicial Authority provided that judges of the Supreme Court shall be appointed by selection from among those holding the rank of Supreme Court judge, the rank of President of the Court of Appeal and their equivalent rank in the Public Prosecution, or from among faculty members in the faculties of Shari'ah or law in Yemeni universities, or lawyers pleading before the Supreme Court.

The law did not require that the appointees be experienced and competent in law, or enjoy integrity and impartiality, which enhances the independence of judges.

- **Term of membership**

The constitution and the Law on the Judicial Authority failed to determine the term of membership for members of the Supreme Court's Constitutional Chamber. Article 151 of the constitution stipulates that members of the judiciary and public prosecution office shall only be dismissed under the conditions stipulated by the law. Members of the Constitutional Chamber are subject to the same conditions imposed on judges of ordinary and administrative courts.

The failure to determine a term of membership constitutes a loophole, which if not properly addressed, may hinder the independence of the constitutional judiciary. For example, enabling the competent authority to select members to reconstitute the court before the expiry of their term of membership could be used as a trump card to recruit judges or interfere in their rulings. The possibility of renewing membership and re-selecting those whose membership has expired is another tool that can be used to interfere in the work of the court by rewarding judges who conform to the inclinations of the ruling authority.

- **Number of members**

The Law on the Judicial Authority limits the number of members of the Constitutional Chamber to seven (7), without giving details regarding the possibility of increasing or decreasing this number.

Although the number of members is not commensurate with the extent of the competencies and tasks, the determination of the number itself is a positive indicator that reinforces the principle of independence. Moreover, the increase or decrease of this number should not be left to the political whims of the appointing entity.

2. Competences of the Constitutional Chamber of the Supreme Court

The constitution and the Law on the Judicial Authority did not confer to the Constitutional Chamber of the Supreme Court the power to settle disputes between the various levels of government (across the three state authorities). They only provided that the Constitutional Chamber's competences include the adjudication of disputes between judicial bodies.

The law also did not provide for the competence to interpret the constitution, laws, regulations and decisions, and to review the constitutionality of the procedures for amending the constitution. However, these are among the main competencies conferred to constitutional courts in most international experiences.

On the other hand, the law stipulated that one of the competencies of the Constitutional Chamber is to adjudicate on appeals and final judgments in civil, commercial, criminal, personal status, administrative disputes and disciplinary cases. It would have been preferable to include these prerogatives within the tasks and competencies of other ordinary courts.

3. Methods of judicial review

The Law on the Judicial Authority indicated that the Constitutional Chamber of the Supreme Court shall exercise its judicial review over the constitutionality of laws by instigating a main lawsuit and submitting a defense. The law omitted to refer to the methods of challenges and referral. It is worth noting that the multiplicity of judicial review methods applied by the Constitutional Court contributes to the efficiency and independence of the judiciary.

B. The Constitutional Judiciary during the Transitional Period (2011-2014)

The constitutional judiciary in Yemen played an important role in promoting democracy and human rights and consolidating the principle of separation of powers during the transitional period (2011-2014).[19] The Constitutional Chamber was able at this stage to acquire some measure of independence, due to the balance of political forces and power-sharing between the two parties to the conflict (the General People's Congress - President Salih's party, and the Joint Meeting Bloc - opposition parties), in light of the inability of either of these parties to unilaterally take hold of power and encroach on the independence of the judiciary, as was the case before 2011.

This is evidenced by the ruling issued by the Constitutional Chamber of the Supreme Court in its hearing held on 26 May 2013 in Case No. 23/20 of 1434 AH, declaring 43 articles of the Law on the Judicial Authority unconstitutional[20] for interference by the executive authority in the work of the judiciary and the violation of the principle of separation of powers. This ruling, deemed one of the most important rulings delivered by the Constitutional Chamber, had a wide resonance and tangible impact. It argued in its merits that these articles are deemed an interference by the executive authority in the work of the judiciary and a violation of the principle of separation of powers. It identified the most important ways in which the independence of the judiciary is undermined as follows:

1. Control by the executive authority of the budget of the judiciary

Article 109 of the Law on the Judicial Authority No. 1 of 1991 was inconsistent with the constitutional powers of the Supreme Judicial Council stipulated in Article 152 of the constitution, which provided that the Supreme Judicial Council shall study and approve the judicial budget in preparation for inserting it as one item within the overall budget of the state. This article also contradicted Article 149 of the constitution that provides that the judicial authority is an autonomous authority in its judicial, financial and administrative aspects. The powers of the Supreme Judicial Council were limited to a mere expression of an opinion on the draft budget of the judiciary, which theoretically and practically means that the government set the budget of the judiciary, thus stripping the Supreme Judicial Council of its powers and limiting them to a mere expression of an opinion. This also granted other authorities the reins of financial control over the judiciary in violation of the principle of its independence.

2. Control by the executive authority of the budget of the judiciary

Article 67 of the Law on the Judicial Authority stipulates that the salaries and allowances of the members of the judiciary shall be determined in accordance with the schedule annexed to the law.

The article allowed, by means of a decision of the Prime Minister, based on the proposal of the Minister of Justice, to grant the members of the judiciary allowances other than those stipulated in the law. It also permitted, by a decision of the Council of Ministers, to amend the schedule as necessary to improve the livelihood of public employees. This authorized the government and its president to decide additional allowances and amend the judicial salary scale, according to Prime Minister's Decree No. 162 of 2000 dated 21/5/2000. This is contrary to the constitution and violates the principle of the independence of the judiciary: functionally, financially and administratively.

3. Prohibition of appeal against decisions of transfer and delegation

Article 101 stipulates that "the Administrative Chamber of the Supreme Court shall have exclusive jurisdiction to adjudicate appeals submitted by judges to annul final administrative decisions relating to any of their affairs in cases of transfers and delegations when such appeals are based on a pro forma flaw, violation or misapplication of laws and regulations, or abuse of power." It is worth noting that the right of recourse to the judiciary is embedded in the constitution. Law-makers have the right to regulate such recourse, provided such regulation does not amount to confiscating, derogating from or narrowing the scope of such right in such a way as to devoid it of its meaning, in which case the regulation would become unconstitutional.

4. Texts relating to the status and position of the Minister of Justice

The Minister of Justice enjoys powers spanning across all matters related to justice, judges and the Public Prosecution. There are no judicial affairs, no matter how minor, that the Minister of Justice cannot interfere in, since management of any work implies interference in its various affairs.

All these manifestations of the independence of the judiciary throughout the transitional period and the popular movement behind it, resulted in a national dialogue conference that culminated in an attempt to build a new constitutional legitimacy commensurate with the requirements of that stage.

II. The Future of Yemen's Constitutional Judiciary

Despite the young age of the constitutional judiciary in Yemen, which began with the establishment of the Constitutional Chamber of the Supreme Court in 1991, it acquired experience that could be further developed by activating the role and competencies of the Constitutional Court to ensure its independence in line with international standards regarding constitutional courts. The Outcomes Document of the Comprehensive National Dialogue Conference in Yemen during the transitional period included a complete vision of the Yemeni state. It also approved the formation of a constitutional drafting committee to convert the outputs into a new constitution for Yemen in 2015.

Therefore, this section will address the initial concept of the constitutional judiciary within the framework of the draft 2015 constitution first, and then move to examine the guarantees of the efficiency of the independent constitutional judiciary in Yemen.

A. The Constitutional Judiciary in the 2015 Draft Constitution

Yemen's new draft constitution was issued on January 17, 2015, in 446 articles spanning over 10 titles and 13 chapters. It was drafted by the 17-member constitutional drafting committee formed by a presidential decree on March 8, 2014, and featuring among its members legal and political key figures. The decree states that the committee would draft a new constitution for Yemen as a federal state composed of six regions. It also mandated that the draft reflect the recommendations of the Comprehensive National Dialogue Outcomes Document.[21]

The 2015 draft constitution devoted Title IV to the Constitutional Court and included a set of constitutional provisions on its competencies and methods of judicial review. The allocation of a separate title in the 2015 draft constitution to the Constitutional Court echoes its importance and reflects the trend towards strengthening its powers so as to enhance its independence. To assess the status of the Constitutional Court in the draft constitution of 2015, we need to address its formation, competencies and methods of judicial review.

1. Formation of the Constitutional Court in the 2015 draft constitution

Before looking at the formation of the court as per the 2015 draft constitution, it is important to note that the draft constitution stipulates the establishment of a constitutional court as an independent judicial body instead of a constitutional chamber affiliated to the Supreme Court. The establishment of an independent Constitutional Court that is not subordinated to the ordinary judiciary enhances the independence of the judiciary.

- **Selection and appointment of judges and membership conditions**

Article 329 of the draft constitution of 2015 stipulates that the President of the Republic shall nominate half of the members of the court and the Supreme Judicial Council and the Bar Association shall nominate the remaining half. The law shall determine the selection mechanism for the list of nominees for each category. The President of the Republic shall issue a decree appointing judges to the court following confirmation of the Federal Council by three-fifths of the members.[22]

Article 11 of the Law on Judicial Authority stipulates that the court's judges shall be appointed by virtue of a decision of the President of the Republic, consisting of a President, one or more Deputy Presidents,

and a sufficient number of judges whose number shall be determined upon formation and when necessary by the Minister of Justice in consultation with the Supreme Court President following the Supreme Judicial Council's approval and selected from among a list of names drawn up by the Judicial Inspection Board. All data and reports on the competencies of those mentioned in the list shall be attached thereto.

Unlike the current constitution, the 2015 draft constitution provides for multiple entities for selecting and appointing judges. Under the draft, half of the judges shall be nominated by the President of the Republic and the other half by the Supreme Judicial Council. This method enhances independence. The constitution, for its part, has empowered only one entity to appoint judges, namely the President of the Republic based on nominations by the Supreme Judicial Council.

- **Membership Conditions**

The 2015 draft specified that the Constitutional Court would be composed of fourteen members, including senior judges, lawyers, and university law professors, from among those enjoying competence, integrity, and practical experience, taking into account the representation of the different regions and of women.

Meanwhile, the constitution's provisions on the formation of the Supreme Court stipulate that judges of the Supreme Court shall be appointed by selection from among those who hold the rank of Supreme Court judge, or the rank of President of the Court of Appeal and their equivalent rank in the Public Prosecution, or from among faculty members in faculties of Shari'ah or law in Yemeni universities, or lawyers pleading before the Supreme Court.[23]

It is worth mentioning that the draft constitution introduced new guarantees and conditions for membership to the Constitutional Court, reinforcing the independence and impartiality of its members. These conditions stress in particular the requirement of competence, integrity, experience and geographical diversity in the composition of the court. Meanwhile the current constitution did not require the fulfillment of the standards of expertise, competence, integrity and geographical representation, which prejudices the independence of judges. The conditions of specialization, experience, and geographic diversity in the court's membership enhances its independence.

- **Number of judges**

Article 329 of the 2015 draft constitution stipulates that "1-The Constitutional Court shall be composed of fourteen members, consisting of senior judges, lawyers and law professors in universities, who are highly qualified and persons with integrity and experience representing the various regions and taking into account the representation of women."

Both the draft constitution and the current constitution determine the number of court members, even though the number differs. The draft provided for fourteen (14) members, which is double the number set by the current constitution. In general, the number of members in the draft aligns with the scale-up of the functions and powers of an independent Constitutional Court and enhances the independence of its judges.

Moreover, determining a specific number of judges prevents the authority from increasing this number in an attempt to change the ideological composition of judges. The legislation in force guarantees the financial safety of judges during service and after retirement.[24]

- **Term of membership of the members of the court**

Articles 330 and 331 of the draft constitution of 2015 provided for a non-renewable ten-year term. Half of the members are to be replaced mid-term and be succeeded by new members for a ten-year term and according to the same appointment modality.

Article 151 of the constitution stipulates: “Members of the judiciary and public prosecution office shall not be dismissed except under the conditions stipulated by the law. They may not be transferred to non-judicial posts except with their own consent, the approval of the relevant judicial council, unless that was taken as a disciplinary measure. The law shall regulate the disciplinary trial of the judiciary and it organizes the legal profession.”

We note that the draft constitution determined a non-renewable ten-year term. For its part, the 1991 Constitution did not set a term for membership or allow its renewal. It provided that judges cannot be suspended in the sense that the member shall not be replaced and is only removed from office in specific cases stipulated by law, such as retirement.

Most constitutions determine the term of the members of the Constitutional Court at a nine-year non-renewable period, to protect them from any pressure or bargaining that may affect the course of their work.

If not properly addressed, the duration of the term may constitute a loophole that could affect the independence of the constitutional judiciary. The entity competent to select members may interfere in the rulings. For example, the possibility of renewing the term of membership and re-selecting members with expired terms may be used as a tool to interfere in the work of the court by rewarding judges who conform to the inclinations of the ruling authority.

2. Powers of the Constitutional Court in the 2015 draft constitution

The 2015 draft constitution stipulates that the Federal Constitutional Court is a financially and administratively independent judicial body, and that it shall assume the following competences:

- Monitoring the constitutionality of laws, regulations and resolutions
- Adjudication of conflicts of jurisdiction between judicial bodies
- Adjudication of cases of conflict arising from the issuance of two final contradictory judgments by two judiciary entities
- Interpretation of the constitution, laws and regulations
- Adjudication of conflicts over jurisdiction between the various levels of government
- Examining the constitutionality of draft laws relevant to elections and the fundamental rights and freedoms of citizens before and after enactment
- Presentation of draft laws relevant to the affairs of the Constitutional Court to the legislature
- Monitoring the constitutionality of procedures followed in amending the constitution. Ensuring the consistency of regional constitutions with the Federal Constitution.
- Any other competence under the provisions of this constitution or a federal law.

We note that the draft expanded the jurisdiction of the court and added a number of competencies that enhance the independence of the judiciary. These include:

- The interpretation of the constitution, laws, regulations and decisions
- Adjudication on conflicts over jurisdiction between the various levels of government (adjudication on disputes that may occur between the higher authorities of the state).
- Monitoring the constitutionality of procedures followed in amending the constitution
- Adjudication of cases of conflict arising from the issuance of two final contradictory judgments by the two judiciary entities

3. Methods of judicial oversight

Article 328 of the draft constitution of 2015 indicates that the law –which will be enacted subsequently– shall define the procedures and conditions for raising direct claims (lawsuits) by individuals and bodies, defenses, referral, challenges and procedures to be followed before the court.

We note that the draft added two methods to the previous methods of judicial review over the constitutionality of laws, namely review by challenge by the Supreme Constitutional Court itself and review by referral by the trial judge upon a suspicion of unconstitutionality, even if this is not raised by the parties to the litigation. The multiplicity of methods and mechanisms of judicial review enables the protection of the constitution and ensures its respect and non-violation, which enhances and enables the independence of the judiciary in general.

As for the financial and administrative independence of the court, the 2015 draft constitution stipulates that the Constitutional Court is a financially and administratively independent judicial body. The constitution and Article 36 of the Law on Judicial Authority of 1991 provide that the Supreme Court shall have an independent budget and a Department of Financial and Administrative Affairs shall assume its administrative and financial functions under the supervision of its President, in accordance with the provisions of the Financial Law and the Rules for the Execution of the Budget.

We note that the draft constitution provides for financial and administrative independence, and this enhances the independence of the court. Meanwhile, the Law on Judicial Authority – according to the current constitution – stipulates that the budget of the Supreme Court is independent but under the supervision of the President of the Court.

Regarding the enforceability of the rulings of the Constitutional Court, Article 332 of the draft stipulates "that rulings and decisions of the Constitutional Court are binding for everyone and on all State authorities, have force of res judicata and shall be published in the Official Gazette." The law regulates the consequent implications of the judgments regarding the unconstitutionality of any piece of legislation.

Article 234 of the Code of Procedure No. 40 of 2002 stipulates that the rulings of the Supreme Court – the Constitutional Chamber – are binding upon everyone and all state authorities, they have absolute and not relative enforceability, and must be published in the Official Gazette. This text indicates that a judgment issued in a constitutional lawsuit determining unconstitutionality or rejection of the lawsuit enjoys absolute general enforceability.[25] We note that the draft is in line with the current constitution regarding the binding and mandatory nature of the court rulings, which enhances independence.

Table of comparison of the Constitutional Court under the 1991 Constitution and the draft constitution of 2015

No.	Aspects / Items	Yemen's Constitutional Court		Proposed Policy
		Draft Constitution of 2015	The Constitution and the Law on Judicial Authority	
1	Nomenclature	A constitutional (federal) court under a federal state Decentralized constitutional review	The Constitutional Chamber of the Supreme Court under a unitary state Centralized constitutional review	Establishment of a Federal Constitutional Court to replace the Constitutional Chamber of the Supreme Court
2	Formation of the Constitutional Court - Membership Conditions	The Constitutional Court would be composed of senior judges, lawyers, and university law professors, from among those enjoying competence, integrity, and practical experience, taking into account the representation of the different regions and of women.	The Supreme Court judges shall be appointed by selection from among those who hold the rank of Supreme Court judge, or the rank of President of the Court of Appeal and their equivalent rank in the Public Prosecution, or from among faculty members in faculties of Shari'ah or law in Yemeni universities, or lawyers pleading before the Supreme Court.	In addition to the need to fulfil the requirement of judicial and legal jurisdiction, the appointees or selected candidates must be competent and have practical experience in law. Geographical diversity in the composition of the membership of the Court shall be also met.
3	Method of appointment of members	The President of the Republic shall nominate half of the members and the Supreme Judicial Council and the Bar Association shall nominate the remaining half. The law shall determine the selection mechanism for the list of nominees for each group. The President of the Republic shall issue a decree appointing judges to the Court following confirmation of the Federal Council by three-fifths of the members.	Their appointment shall be issued by a decision of the President of the Republic based on the nomination of the President of the Supreme Court and following the approval of the Supreme Judicial Council.	No single entity such as the President of the Republic (the Executive Authority) shall unilaterally select and appoint judges. A number of entities (executive, legislative and judicial) must be involved in the appointment, selection, election and nomination of judges of the Constitutional Court in order to achieve a balance between independence and accountability. One third of the judges shall be appointed by the President of the Republic, a second third elected by Parliament and a third chosen and nominated by the judiciary.
	Number of members	14 members	7 members	The number of court members must be determined, and its increase or decrease shall be prohibited by virtue of clear texts. The increase or decrease of this number shall not be left to the entity that undertakes the appointment process, to decide at its political whim.

4	Term of Membership	Membership shall be for a ten-year non-renewable term. Half of the members shall be replaced mid-term and shall be succeeded by new members for a ten-year term and according to the same previous appointment modality.	Article 151 of the Constitution stipulates that members of the judiciary and public prosecution office shall only be dismissed under the conditions stipulated by the law.	The study recommends that the term of membership of the Constitutional Court be determined at a nine-year non-renewable period, so as to keep the judge of the Constitutional Court away from any pressure or bargaining that may affect the course of their work and in order to achieve functional stability in general.
5	Jurisdiction of the Constitutional Court	- Review the constitutionality of laws, regulations and decisions - Adjudicate conflicts of jurisdiction between judicial bodies - Adjudicate cases of conflict arising from the issuance of two final contradictory judgments by two judiciary entities. - Interpret the constitution, laws and regulations - Adjudicate conflicts over jurisdiction between the various levels of government - Examine the constitutionality of draft laws relevant to elections and the fundamental rights and freedoms of citizens before and after enactment. - Submit draft laws relevant to the affairs of the Constitutional Court to the legislature. - Monitor the constitutionality of procedures followed in amending the Constitution - Ensure the consistency of regional constitutions with the Federal Constitution Any other competence under the provisions of this constitution or a federal law	-Adjudicate claims and defenses related to the unconstitutionality of laws, regulations and regulations -Adjudicate conflict of jurisdiction between judicial authorities, and investigate and give opinions regarding appeals referred by parliament which relate to its membership -Rule on appeals of final judgments in civilian, commercial, criminal, personal and administrative disputes and disciplinary cases according to the law Prosecute the President of the Republic, the Vice President, the Prime Minister, his deputies, the ministers and their deputies (holders of high-level offices) according to the constitution	The paper recommends expanding the jurisdiction of the court in a way that enhances independence. In addition to the main jurisdiction that is to exercise judicial review over the constitutionality of laws, a number of competencies must be added, including: -Interpretation of the constitution, laws, regulations and decisions -Adjudication of conflicts of jurisdiction between the different levels of government (the three authorities) -Monitoring the constitutionality of procedures followed in amending the Constitution -Adjudication of cases of conflict arising from the issuance of two final contradictory final judgments by two different judicial entities -Prosecution of holders of high-level offices The other jurisdictions shall be left to other competent courts, such as the Supreme Court, the Administrative Courts and the Criminal Courts. Judicial review over the constitutionality of laws shall be combined with interpretative review.
6	Methods of judicial review	Article 328 of the draft constitution reads as follows: "The law shall define the procedures and conditions for raising direct claims (lawsuits) by individuals and bodies, defences, referral, challenges and procedures to be followed before the court."	The Yemeni legislator allowed both the direct claim (the lawsuit) and the defences. The method to be retained depends on the capacity of the appellant.	The study recommends applying multiple methods of judicial review over the constitutionality of laws. These methods are the original lawsuit, defences, challenge and referral. This achieves the protection of the constitution, ensures its respect and non-violation, and enhances the efficiency and independence of the judiciary.

7	Enforceability of court decisions	Rulings and decisions of the Constitutional Court are binding for everyone and for all State authorities, have force of res judicata and shall be published in the Official Gazette. The law shall regulate the consequences of a ruling ordering the unconstitutionality of a legislative text.	The rulings issued by the Constitutional Chamber - are binding for everyone and on all State authorities, they have absolute and not proportional enforceability.	The rulings of the Constitutional Court enjoy absolute enforceability for everyone. This means they are binding to all individuals, private and public bodies and institutions, as well as the authorities of the State, including the judiciary itself.
8	Financial and administrative independence of the Court	The Constitutional Court is a financially and administratively independent judicial body.	The Supreme Court shall have an independent budget and a Department of Financial and Administrative Affairs shall assume its administrative and financial functions under the supervision of its President, in accordance with the provisions of the Financial Law and the Rules for the Execution of the Budget.	Providing for financial and administrative independence enhances the independence of the judiciary in general.

Source: Researcher's work

B. Guarantees for an Independent Constitutional Judiciary in Yemen

There are multiple guarantees that can enhance the independence of the constitutional judiciary, including in relation to its jurisdiction and methods of judicial review. What most interests us are the guarantees related to the court formation.

- **Mechanism for the selection and appointment of court members**

The mechanism for selecting and appointing members of the Constitutional Court is a crucial factor for strengthening the independence of the judiciary. This independence could be undermined if the mechanism departs from objectivity or if a particular authority unilaterally assumes the selection process.

The process of appointing judges is a basic measure for the establishment or reform of the Constitutional Court. It determines who will interpret the constitution. Therefore, the key players granted the power to appoint judges to the Constitutional Court exercise significant influence on the court. The appointment process, which fosters good political investment in the Constitutional Court by involving a wide range of political players in the process, has a greater chance of achieving the relative independence of the judiciary, represented in a balance between independence and accountability.[26]

By observing international practices in relation to constitutional courts, we note that several countries resorted to multiple patterns and different options. In some countries, such as Switzerland, Belgium and Germany, judges are elected by parliament.

In Italy, out of fifteen members of the Constitutional Court, five judges are elected by members drawn from the three superior tribunals, five judges are elected by parliament, and five are chosen by the President of the Republic.

In France, the Constitutional Council comprises nine members. Three of them are appointed by the President of the Republic, three by the President of the National Assembly, and three by the President of the Senate. Additionally, former Presidents of the Republic automatically become members of the Constitutional Council.[27]

Membership conditions

The conditions that must be met by the members of the Constitutional Court can be a loophole that may allow for the violation of the principle of the independence of the constitutional judiciary. They may allow persons whose loyalty was bought off or who sold their integrity in favor of the (ruling) authority to become members of the court. They may also deny membership to those who are eligible for it and known for their integrity and impartiality. [28]

The United Nations Basic Principles on the Independence of the Judiciary affirm that persons selected for judicial office shall be individuals of integrity and ability with appropriate training or qualifications in law. Any method of judicial selection shall safeguard against judicial appointments for improper motives. In the selection of judges, there shall be no discrimination against a person on the grounds of race, colour, sex, religion, political or other opinion, national or social origin, property, birth or status, except that a requirement, that a candidate for judicial office must be a national of the country concerned, shall not be considered discriminatory. [29]

Number of court members

The majority of constitutions and laws regulating constitutional courts across the world stipulate a specific number and prohibit its increase or decrease under clear provisions. The absence of clear provisions and strict criteria that accurately determine the number of court members will open the possibility for the executive authority, or the body in charge of the appointment process, to increase or decrease the number of judges of the court, either to ensure a certain majority, or to include new elements known to be biased, or with the aim of getting rid of some personalities whose membership is undesirable. This undermines the independence and impartiality of the court, deprives it of its credibility, and aborts the purpose of its establishment. [30]

Membership term and the possibility of renewal and suspension

In determining the term of membership, constitutions generally follow one of two trends.

The first trend consists in not setting a determined term for membership and applying to it the general rules governing the overall judiciary. Thus, the membership term of the members of the Constitutional Court only ends for the same reasons ending the membership of ordinary judges.
The second trend, which represents the course followed by most constitutions, consists in setting an explicitly stipulated specific duration for the term of membership.

Some systems end the term of all members of the Constitutional Court at the same time, and replace them all by new members. Other legislations prefer the partial termination of membership, whereby every three years only one third of the members are replaced by new members, and the other two thirds continue to serve alongside the new members who joined the court. After the lapse of three years, the third of the court's members with the longest term are replaced by new members. As such, each third would have a beginning and end of term different from the other third.[31]

The majority of constitutions and constitutional court laws grant the members of the Constitutional Court one long and non-renewable term. This is applied in Germany for example where the term of the Federal Constitutional Court judge is of 12 non-renewable years. In Italy it is of nine non-renewable years, and in Turkey it is of 12 non-renewable years. In Morocco, Tunisia, France, Portugal and Poland, the term is of nine non-renewable years. This can be explained by the fact that these specified durations represent a sufficiently long period of time for the court to be able to undertake long-term work that clearly highlights the major trends of its jurisprudence. The principle of non-renewal aims to strengthen the independence of judges vis-à-vis those who selected them in order to avoid any attempt at inducement or pressure.[32]

Constitutions differ with respect to whether terms are renewable or not. Three main trends emerge in this respect:

In the first trend, espoused by most constitutions, the renewal of the members' term is absolutely forbidden. The second trend allows the reappointment or reelection of members of the Constitutional Court, but not immediately or directly after the end of their term. The third trend allows the members of the Constitutional Court to be reappointed or reelected directly.

With regard to the suspension or removal of the court members, the United Nations Basic Principles on the Independence of the Judiciary affirm that "judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties."

The international standards also clarify that "a charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure. The judge shall have the right to a fair hearing. [...] All disciplinary, suspension or removal proceedings shall be determined in accordance with established standards of judicial conduct." [33]

Recommendations

Drawing on the situation of the Constitutional Chamber of the Supreme Court and the vision of the draft constitution of 2015, a number of recommendations may be formulated to reform the establishment, composition, competences, and methods of judicial review of Yemen's future Constitutional Court, so as to enhance the independence of the judiciary.

1. **Establishment:** A competent and independent Federal Constitutional Court – not affiliated with the ordinary judiciary – must be established in line with the proposed form of state.

2. **The formation of the court, starting with the mechanism for selecting and appointing its members:** the entities entrusted with the appointment, selection and nomination of members to the Constitutional Court must represent the state's executive, legislative and judicial authorities. One third of the members shall be appointed by the President of the Republic, another third elected by Parliament, and the last third selected and nominated by the judiciary. This achieves a balance between independence and accountability. The unilateral selection and appointment of the court's judges by the executive authority, represented by the President of the Republic, undermines the judiciary's independence, and throws it under the heel of the will of the executive authority. Moreover, the conditions of competence and practical experience in law must be added to the preceding conditions of membership. This is in addition to the need to reflect geographical diversity in the membership composition of the judges of the Court.

3. **The number of court members:** The paper recommends specifying the number of court members, and prohibiting its increase or decrease by virtue of explicit provisions. The increase or decrease of this number shall not be left to the entity that undertakes the appointment process, to decide at its political whim.

4. **The membership term the possibility of renewal, suspension and removal:** The paper recommends that the term of membership of the Constitutional Court be limited to a non-renewable relatively long period of time, set at nine years, to keep judges of the Constitutional Court away from any pressures or bargains that could affect the course of their work.

5. **The powers of the Constitutional Court: The paper recommends expanding the scope of jurisdiction of the court in a way that enhances independence. In addition to judicial review over the constitutionality of laws, a number of prerogatives must be added. These include:**

exercising interpretative review, including the interpretation of the constitution, laws, regulations and decisions, adjudicating conflicts of jurisdiction between the different levels of government (across the three authorities), monitoring the constitutionality of procedures followed in amending the constitution, adjudicating cases of conflict arising from the issuance of two final contradictory judgments by two different judicial entities, and prosecuting holders of high-level offices. The rest of the competences shall be left to other competent courts, such as the Supreme Court, the Administrative Courts and the Criminal Courts.

6. **The methods of judicial review:** The paper recommends combining the four methods of judicial review over constitutionality, i.e. the lawsuit, the defenses, the referral and the challenge. The study further recommends resorting to multiple methods of judicial review over the constitutionality of laws to ensure the protection of the constitution, its respect and non-violation, and to enhance the efficiency and independence of the judiciary.

Endnotes

(1) Walid Mohammad Reda Al-Shennawi, “The Role of Constitutional Courts as a Positive Legislator (A Comparative Analytical Study),” Journal of Legal and Economic Research, Issue 62, April 2017, p. 312. The independence of the judiciary has been drawing great attention at the international level. The Office of the United Nations High Commissioner for Human Rights (OHCHR) issued the Basic Principles on the Independence of the Judiciary, which state that "The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary." Basic Principles on the Independence of the Judiciary, OHCHR.

(2) Yahya Qasim Suhail, “The Yemeni Constitutional Experience, Obstacles and Future Prospects,” Arab Journal for Scientific Publishing, University of Aden, Issue 40, 2022, p. 433.

(3) Abdul Malik Saeid Abdo, “An Analytical Approach to the Development of General Constitutional Trends in Yemen (1962-2004),” Sana'a, Al-Thawabet Magazine, Issue (48), April-June 2007, p. 99.

(4) Article 42 of the Constitution of the former Yemen Arab Republic in 1965.

(5) Articles 155-157 of the Constitution of the former Yemen Arab Republic of 1970.

(6) Article 82 of the Constitution of the People's Democratic Republic of Yemen (formerly) 1978.

(7) Article 13 of Law No. 7 of 1980 of the Constitution of the People's Democratic Republic of Yemen (formerly).

(8) Muhammad Rashid Abdul Mawla, The Development of Legislation and the Judiciary in the Republic of Yemen, Khalid bin Al-Walid Library, Sana'a, 1995, p. 139.

(9) Articles 59 and 11 of the Law on the Judicial Authority No. 1 of 1991. Article 11 reads as follows: "The Supreme Court shall be composed of a president, one or more president deputies and a sufficient number of judges, whose number shall be determined upon formation and, if necessary, by a decision of the Minister of Justice in consultation with the President of the Court following the approval of the Supreme Judicial Council".

(10) Article 16, paragraph (a), of the Law on the Judicial Authority, 1991.

(11) Article 15 of the Law on the Judicial Authority, 1991

(12) Articles 27-29 of the Law on the Judicial Authority, 1991.

(13) Article 19 of the Law on the Judicial Authority of 1991

(14) Article 234 of the Code of Procedure No. 40 of 2002.

(15) Article 1 of the Law on the Judicial Authority of 1991 stipulates: "The judiciary is an independent authority in the performance of its duties. Judges are independent and their rulings are only subject to the rule of law. No one may interfere in any way in lawsuits or in the affairs of justice. Such interference shall be deemed a crime punishable by law and not subject to the status of limitation."

(16) The previous Yemeni constitutions and the Constitution of the Republic of Yemen of 1991 stipulated that review over the constitutionality of laws was entrusted to the judiciary as an independent power that is solely subject to the rule of law. The Constitution of the Republic of Yemen since the nineties entrusted the task of review over constitutionality of laws to a judicial court, that is the Supreme Court (Constitutional Chamber), which is deemed the highest judicial body in Yemen.

(17) Nuno Garoupa and Tom Ginsburg, "Building Reputation in Constitutional Courts: Political and Judicial Audiences," 2011, 28 Arizona Journal of International and Comparative Law, p. 539.

(18) Mohamed Kamel Ebeid, The Independence of the Judiciary (A Comparative Study), Judges' Association, Cairo, 1991, p. 105.

(19) Constitutional courts are often called upon to decide on a country's most pressing political issues, including questions about electoral laws and results, regulating the activities of political parties, enforcing the separation of powers among the branches of government, reforming the legal system after a period of authoritarian rule and overseeing constitutional amendment procedures. The litigants in these disputes are often political parties. Even if the cases do not frame the issues in this way, constitutional interpretation is a site of partisan political conflict among political parties, which constitutional courts are called upon to resolve. For further information see : Constitutional Courts after the Arab Spring, "Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Judicial Independence", Center for Constitutional Transition Processes, New York University School of Law, International IDEA, 2014.p. 9.

(20) The Constitutional Chamber of the Supreme Court ruled as follows: 1- Accepting the lawsuit of the plaintiffs Issa Qaid Al-Thurayb, Nabil Muhammad Ali Al-Junaid, Ahmed Abdullah Muqbil Al-Dhabhani and Adel Abdo Muhammad Al-Azzani in the form. 2- Ordering the unconstitutionality of paragraph (f) of Article 109 of the Law on the Judicial Authority No. 1 of 1991. 3-Ordering the unconstitutionality of Article 67 of the Law on the Judicial Authority No. 1 of 1991 on the determination of additional allowances and the amendment of the judicial salary scale and its consequences in accordance with the recitals of this judgment. 4- Ordering the unconstitutionality of Article (101) of the Law on the Judicial Authority No. 1 of 1991 on restricting and limiting the grievances accepted against the affairs of judges to specific cases in accordance with the recitals of this judgment. 5. Ordering the unconstitutionality of Articles 11, 16/b, 34, 39, 45, 54, 59, 65/b-c-f, 66, 67, 68, 69, 70, 72, 73, 85/b, 89, 90, 91, 92, 93, 94/3, 95, 97, 98, 99, 111/2, 104, 106, 115/2, 118/1 with respect to the powers assigned to the Minister of Justice, as set out in the reasoning for this judgment. 6- Ordering the lack of the Constitutional Chamber of the Supreme Court's jurisdiction to hear the appeal against Article 143)of the Law on the Judicial Authority No. 1 of 1991. 7. This judgment shall produce a direct effect and shall have no effect on judicial rulings, acquired rights, stable legal positions and conditions prior to its publication in the Official Gazette. 8. No order was issued on judicial expenses. 9. This judgment shall be published in the Official Gazette.

(21) Draft Constitution of Yemen 2015, General Secretariat for National Dialogue 2015.

(22) Article 329 of Yemen's new draft constitution of 2015.

(23) Articles 59 and 11 of the Law on Judicial Authority No. 1 of 1991.

(24) Mahmoud Hamad, "Judicial Independence in the Arab World: Judicial Review Institutions and High Juridical Councils," Hikama Journal, Issue 6, Volume III, Arab Center for Research and Policy Studies, 2023, p. 27.

(25) Article 234 of the Code of Procedure No. 40 of 2002 (enforceability of judgments is limited to the parties, their subject matter and ground, with the exception of the following rulings which enjoy absolute enforceability, including: rulings on the unconstitutionality of laws).

(26) "Constitutional Courts after the Arab Spring: Appointment Mechanisms and Relative Judicial Independence," International IDEA, 2014, p. 36.

(27) Ibrahim Daraji, "The Syrian Constitutional Court," Working Papers series, Legitimacy and Citizenship Program in the Arab World, 2020, p. 9.

(28) Hassan Al-Sayed, "The Impact of the Formation of the Constitutional Court on the Independence of the Constitutional Judiciary (A Study in Comparative Law and Qatari Law)", Journal of Law, Academic Publication Council, Vol. 41, Release Issue 2, Kuwait University, 2017, p. 63.

(29) Basic Principles on the Independence of the Judiciary, UN OHCHR.

(30) "Judicial Oversight over the Constitutionality of Laws in New Democracies," Guidance Paper issued on September 2013 by the Center for Constitutional Transitions at New York University School of Law, p. 4.

(31) Hassan al-Sayed, op. cit., p. 100.

(32) Ibrahim Draghi, "Syrian Constitutional Court," op. cit., p. 12.

(33) Basic Principles on the Independence of the Judiciary, UN OHCHR.

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The Arab Association of Constitutional Law

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