

The Structure of the Guardian Council and the Validity of its Decisions with a Review of the Constitutional Justice in Egypt, Iraq, and Algeria

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Abstract

Monitoring the existing legal order is a juridical-political practice, its purpose is to evaluate the degree of coherence of the laws with the Constitution. Due to the importance of this issue, the legitimacy of mandatory supervision has been accepted in legal systems and it is one of the foundations of political systems. Basic judicial institutions in Iran, Egypt, Iraq, and Algeria, like many other countries, have been accepted by founding powers. The structure of this institution in the mentioned countries has differences and similarities that the survey of the basic judicial institution in the countries of Egypt, Iraq, and Algeria can help in better understanding and providing a suggested model in the topic of how to compose the Constitutional Council, especially since these countries are in the field of Islamic civilization and the majority are Muslims. Of course, this does not mean that these countries are the model of the authors in presenting the proposed model, but they are considered as a guide to better understand the structure of the Constitutional Council. On the other hand, the validity of the decisions of the Constitutional Council.

The first premise: The structure of the council and the way it is composed have noticeable differences from the theoretical and practical aspects of the composition of the basic judicial institution of the three countries under study to improve the functioning of the council, it is necessary to change the composition of the council.

The second premise: unlike all three countries, Egypt, Iraq, and Algeria, the decisions of the Council do not have certainty and finality. The research has been explored to review and analyze the issue, in two parts. In the first part; The structure of the basic judicial body (the share of the government forces in the composition of the basic judicial body, the conditions of the members, and the term of the members) with a comparative look at the countries under research and in the second part; The certainty or uncertainty of the Guardian Council's decisions regarding the basic judicial institutions in these countries is discussed. The research is based on the study of Internet and library



resources in a descriptive-analytical way to explain the structure and validity of the decisions of the mentioned institution.

According to the comparative study that was done regarding the Islamic countries of Egypt, Iraq, and Algeria and the examination of the weaknesses and strengths of the basic judicial institution in these countries It can be said that the composition of the Guardian Council is faced with shortcomings, which has caused the council to not be able to exercise its jurisdictions optimally. The way of composition of the council has caused the political dimension of the council to be strengthened and its judicial dimension to be greatly reduced. This is not the case in the countries under study and the basic founder in these countries has tried to strengthen the judicial dimension of the basic court with the judicial arrangement and the presence of judges. This issue has affected the attitude of the basic judge in these countries, especially Egypt.

The Guardian Council, as one of the most important influential institutions in Iran's legal system, needs a fundamental review regarding the validity of its decisions. Therefore, for the better performance and adherence of government institutions, especially the Guardian Council itself and private individuals to the decisions of the Council, it is suggested that the decisions of this institution have certainty and binding effect. On the other hand, according to the text of the council's internal regulations, the review and comments regarding the legality of the laws can be re-examined at any time independently by the members themselves, even after being approved by the council's jurists. The jurists of the council have this authority to invalidate Current law which has legal formality in the country's legal system and people act accordingly in fact, by the decision of four of the members, without sending a resolution from the parliament to the council. Here, the jurists of the council expand their negative legislation and amend the laws that went through all the stages and formalities according to the constitution. It is necessary that To amend such a process, before amending the constitution and granting authority to natural or legal persons or government institutions to declare the laws as non-fundamental, the council should refrain from independently examining the legitimacy of the laws and observe the principle of the absolute authority of the decisions of the council. Regarding how long the Council should respect its previous decisions It seems that a definite time cannot be considered But the passage of reasonable time and also the necessity of changing the point of view according to the conditions and changing circumstances must reach a level that is acceptable and justified for the majority of the members as well as the society.

Keywords: Constitutional Council Constitutional Court, Federal Supreme Court, validity, proposed model.



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