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## **Retrial of the Rulings of the Federal Supreme Court**

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### **Abstract**

If the rulings issued by the constitutional courts that supervise the constitutionality of laws are final and have acquired a final degree and may not be appealed in any of the methods of appeal known in procedural laws, and this principle has justifications, the most important of which is the stability of the political, economic, social and legal situation of the state, where the rulings of the constitutional courts have their effect in various fields, and since the Constitutional Court has become involved in fields and is a court of subject matter and issues its decisions according to the evidence presented before it, and since this evidence may be tainted with fraud, deception and forgery, here the question arises: Can a retrial be held if it is proven that the evidence is illegal? This is what will be discussed in this research.



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## **Introduction:**

It is established in the judiciary and constitutional jurisprudence that the decisions issued by the Supreme Constitutional Courts are final and may not be appealed by any means of appeal, i.e. these rulings are not subject to appeal and must be implemented from the date of issuance and are therefore enforceable and all authorities are obligated to observe this, and this principle has its justification and is an action that the constitutional legislator has settled on as well as the judiciary and constitutional jurisprudence. But the question arises whether it is possible to appeal the rulings of the constitutional courts by way of retrial, because this method in terms of how to use it and the cases in which it is required differs from the usual methods of appeal, and this is what will be addressed in this research, which will be divided into two sections. In the first section, we will address the method of appealing by retrial, and in the second section, we will address the retrial before the Constitutional Court.

## **The First Topic**

### **Retrial:**

Retrial is considered one of the unusual methods of appeal created by the legislator to remove the factual error that affected the final judgments issued with conviction, where the case in which the judgment was issued is viewed again and a new judgment is issued in it. This is a type of appeal that is consistent with cassation and correction of the cassation decision in that it is one of the exceptional methods of appeal and that it is submitted to the Court of Cassation. This type of appeal cannot be used except in specific cases, but this type of appeal differs from it .



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Therefore, this section will discuss the concept of retrial in the first requirement, then we will discuss in the second requirement how to use retrial.

## **The First Requirement**

The concept of retrial:

For the purpose of explaining the concept of retrial, it is necessary to address the definition of retrial and distinguish it from other methods of appeal, and this is what will be addressed In this requirement:

### **Section One:**

Definition of retrial:

First: Linguistic definition:

1\_ Repetition: Performing the same action as the first one at its time in a perfect manner. (Jurisprudence)

Return: (noun)

Return: Source of returned

Return: (noun)

Source of returned

It is necessary to restore the system to its natural course: establish it, return it to its original state

He does not proceed with anything except after reconsidering it: reviewing it, examining it carefully

A second showing of a recorded television program

Repossession: (law) Returning ownership to a previous owner

Re-litigation order: (law) The court's order, when necessary, to exchange memoranda again to clarify points of disagreement between the opponents 1



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Awd: (noun)

Awd: Source of returned

Awd: (Noun)

Awd: plural of return

Awwada: (verb)

Awwada, ya'wid, ta'wīdan, fawwa mu'awwid, and the passive participle is mawwad

Awwada a man or an animal to something: made him get used to it until it became a habit for him

Awwada the man: became old, became old

Awwada the camel: became a 'awd

'awda: (Noun)

Plural: 'iwdah

He returned 'awdan 'ala badīn, and his 'awdhu 'ala badīh returned: he did not stop his going until he reached it with his return

You have the 'awd: you can return to the matter .

Al-Awd: The old camel and winter and it has a remainder

Al-Awd: The old regular road

Al-Awd got tired: The old camel

He returned a return to the beginning: that is, he did not stop his going until he reached it with his return

Al-Awd Ahmad: that is, your return to something does not happen except after experience 3

Source of Aada



Al-Awd Ahmad: More praiseworthy,

Al-Awd ala Bad': Starting again after finishing, returning to the beginning,

Awwad: (noun)

Awwad: Plural of A'idah

Awwad: (noun)

Uwwad: plural of Aaidha

Ud: (noun)

Plural: Awad and Aidan

Ud: any wood, whether thin or thick, wet or dry<sup>4</sup>

Rakaba Allahu Ud: sedition raged

Ud: a type of perfume that is used for incense

Ud: a stringed musical instrument that is played with a feather like it and the plural is: Awad and Aidan al-Ud

Ishtada Udhu: it became strong, it became dear and impregnable,

Sulub al-Ud: strong, intense<sup>5</sup>

Han al-Ud: it made a sound when tapped

Dafna Ud al-Ghar: a short evergreen tree with small yellow-green flowers

Ud al-Uttas: a compound plant with fragrant, serrated leaves and buds with white heads

Hataba Al-Oud: any piece of wood, whether fine or coarse, wet or dry

A'dah: (verb)

A'dah returns, return, return, so he is returning, plural: 'Uwwad, 'Uwwad, and they are 'Uwwad, and 'Awaid, and the object is 'Uwwad <sup>6</sup>

Trial: (noun)



Trial: source of hakam (judge)

Trial: (noun)

Source of hakim (judge)

Trial of the criminal: interrogating him about the criminal acts he committed <sup>7</sup>

Retrial: (law) Hearing the case again or anew before the same court

Trial: (Terms) The course of the case before the court. (Legal)

Ruler: (noun)

Plural: Rulers

Ruler: One of the names of Allah the Almighty

Ruler: The ruler

Ruler: Judge

Ruler: (noun)

Ruler: Plural of wisdom

Ruler: (verb)

Ruled / He ruled by / He ruled on / He ruled to the rules, a ruling, a government, so he is a ruler, and the object is ruled - for the transitive <sup>8</sup>

Allah ruled: legislated

The court ruled against him: It convicted him, issued a ruling against him with imprisonment or a fine

The court ruled him innocent: He cleared his court

He rules the country: He takes charge of running and administering its affairs

He ruled for him: He issued a ruling in his favor

He ruled the horse: He put a bridle on its bridle, which is an iron piece that is placed in its mouth to prevent it from running



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He ruled someone: He prevented him from what he wanted and turned him back 9

Second: The technical definition:

A retrial is considered an extraordinary way to challenge judicial rulings that have acquired the force of res judicata, as the legislator created this method to remove the factual error that affects rulings that have acquired the degree of finality and cannot be challenged in the normal way or that have exhausted the normal methods of appeal 10

Article 688 of the Lebanese Civil Procedure Code No. 90 of 1983 stipulates that “A request for a retrial is an appeal that aims to reverse a final judgment as defined in Article 553 in order to consider the dispute again in fact and law 11

As for the Criminal Procedure Code No. (23) of 1971, it did not give a definition for a retrial, but rather Article 271 stipulated that: A request for a retrial shall be submitted to the Public Prosecution by the convicted person or his legal representative. If the convicted person is deceased, the request shall be submitted by his wife or one of his relatives, provided that the subject matter and reasons on which it is based are stated in the request, and that the documents supporting the issued judgment are attached to it by punishment or measure.

Through these articles, it can be said that a retrial is an extraordinary way of appealing a ruling to the court that issued it if there is a reason from the reasons specified in the law exclusively, with the aim of reconsidering it even if the ruling has become final. Some jurists call this a type of appeal by petition or reconsideration, which was prevalent in the French Civil Procedure Code, and then this term was changed to reconsideration . 12. . A request for a retrial is an appeal that aims to reverse a ruling that has a final character in order to reconsider the





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dispute in fact and law. It can also be said that a retrial is an extraordinary appeal that goes back to the same court that issued the judicial ruling, and the aim is to reverse the decision of the contested ruling when the reasons stated by the law are available exclusively. It can also be said that an appeal against a final ruling is filed by the convicted person to reconsider the circumstances stipulated in the law 13 . It was also defined as an extraordinary appeal against the rulings issued by the primary courts or the Sharia Court of Appeal in which an objection is not accepted if there is one of the reasons stipulated in the Trials Law exclusively 14. The Egyptian legislator calls the retrial a petition and defines the petition for reconsideration as an exceptional way to appeal final civil and commercial rulings, where the person filing the lawsuit submits a request to the court that issued this final ruling to cancel it in whole or in part, then re-examines the lawsuit as if this ruling had not been issued, and issues a new ruling on the subject 15. This method of appeal is distinguished from other methods of appeal, such as discrimination and correction of the cassation decision, in that it depends on an error in assessing the facts, while discrimination and correction are based on an error in applying or interpreting the law. Therefore, some jurists believe that the method of retrial is not considered a method of appeal. Now, an appeal by means of retrial is not made except after the ruling has acquired the force of *res judicata*, and that retrial is nothing but a request to reconsider the case due to the occurrence of a new fact that occurred after the ruling was issued. Accordingly, it can be said that retrial is an acknowledgment of the justice of the ruling, but the occurrence of new facts after the ruling was issued. The applicant for retrial requests that the case be examined





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again according to the new facts that, if they had existed at the time of the trial, would have had an impact on the ruling.

## **Section Two:**

Procedures for submitting a request for a retrial and distinguishing it from other methods of appeal

The procedures for submitting a request for a retrial in civil and commercial cases differ from the procedures followed in criminal cases:

First: Procedures for submitting a request for a retrial

1\_ Who has the right to submit a request for a retrial?

A\_ If the convicted person is alive, the convicted person or his legal representative has the right to request a retrial

B\_ If the convicted person is deceased; it is his wife or one of his relatives.

2- What does the request include, to which party is the request submitted, what are the procedures, and which party is reviewing the request? Article 271 of the current Code of Criminal Procedure stipulates the parties entitled to submit a request for a retrial and the party to which the request is submitted. The request is submitted to the Public Prosecution, which must request the case file and investigate the validity of the reasons on which the request is based, and examine the case papers. After completing the necessary investigations, it must submit a review with the papers to the Court of Cassation 17.

The submission of a request for a retrial does not stop the execution, only the death sentence, and the request for a retrial includes the subject of that request and the reasons that support what he claims. This is what was stipulated in Article 270 of the current Code of Criminal Procedure, which states:



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1 - If the accused is convicted of a murder crime and then the person alleged to have been killed is found alive, this case meets two conditions:

A - A judgment is issued against a person accused of a murder crime. The prevailing opinion is that it is permissible to request a retrial as soon as evidence is established that the person alleged to have been killed was found alive after the judgment was issued, and it is not required that he remain alive until the request is submitted.

B - That after the judgment has become final, evidence appears confirming that the person alleged to have been killed is alive, and in this case the person convicted is innocent.

2 - If a final judgment is issued against a person for committing a felony or misdemeanor only, and then a final judgment is also issued against another person for committing the same crime, this It means the innocence of one of the two convicts. For example, if a person is convicted as a thief, then another person is convicted as an accomplice in the same crime, there is no contradiction between the two rulings. The contradiction would exist if a person was convicted of killing (S) in his home at a certain time, then another person was convicted of killing the same person from the same place and at the same time.

3 - If a ruling is issued against a person based on the testimony of a witness, the opinion of an expert, or a document, then a final ruling is issued against the witness or expert with the punishment of false testimony for this testimony Or opinion or a final judgment was issued that the document was forged

4- If facts appear after the judgment or documents are presented that were unknown at the time of the trial and were likely to prove the innocence of the



convicted person. For example, if it is proven that the convicted person was imprisoned at the time of committing the crime 5- If the judgment was based on a cassation judgment or was subsequently cancelled by the legally prescribed methods

6- If the court had issued a judgment of conviction or acquittal or a final decision to release or what is similar to it for the same act, whether the act was an independent crime or a circumstance thereof. It may happen that a judgment is issued convicting a person of a specific incident or acquitting him of it or that a decision to release is issued and becomes final. At a later time, the same person who was convicted or finally released is brought before a court to be tried for the same previous incident and is sentenced for it without the court noticing the previous decision issued with conviction, acquittal or final release, so the convicted person has been tried twice for one incident, which is not permissible by law.

7 - If the crime or punishment has been dropped from the accused for any legal reason

Here we can say, are these cases mentioned in Article (270) of the Code of Criminal Procedure exhaustive or can they be used as an analogy and expanded upon? The cases stipulated in Article (270) of the Iraqi Code of Criminal Procedure in force came on Exhaustive, it is not permissible to expand on it or make analogies to it. These cases are limited by legislation to three to five cases, with the exception of the Iraqi legislator, who expanded them and made them seven cases<sup>18</sup>

Q: Who is the competent authority to consider the request? And what is its decision? The competent authority to consider the request for a retrial, which has



the right to decide to accept or reject it, is the Federal Court of Cassation, where the Public Prosecution refers the request to it with what the latter has reached in terms of scrutiny. The Court of Cassation can, after requesting the case file from the subject court, re-scrutinize the case file and can return what it deems appropriate and necessary in Investigations: The statements of the parties to the case are heard, and after they are finished, they must issue their decision, either to accept or reject (reject the request). If their decision is to reject the request because it does not meet the required legal conditions, they decide to reject the request (i.e. reject it). However, if the request meets the required legal conditions, their decision is to accept the request and refer it with the papers to the court that issued the judgment for which a retrial is requested, or to the court that replaced it, and the decision of the Iraqi Federal Court of Cassation including a retrial is attached to the request. It is clear from this that the Court of Cassation is obligated to issue a decision on the request to retry the case, which is to reject it or accept it. In the event that the decision is to accept the request, it does not rule on the case. Rather, the task of deciding the case is by the court that issued the contested ruling or the court that replaced it. We support what both Professor (Abdul Amir Al-Akili and Dr. Saeed Hasb Allah) went to, that it is better to give the Federal Court of Cassation the authority to rule on the case when it accepts the request to retry the case. This is in the case of apparent innocence, and if the appealed judgment is ruled to be cancelled and the convicted person is acquitted. So that the procedures for retrial in apparent matters do not take long, and also to shorten the effort and time 19. Also, the judges of the Court of Cassation are more experienced and



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knowledgeable and have the ability that qualifies them to resolve such appeals as quickly as possible.

Second: Distinguishing retrial from other appeal methods

1\_ Distinguishing retrial from cassation and correction of the decision

The distinction between appealing to retrial and cassation and correction of the decision is made through the following

1- That there is an error in assessing the facts, while cassation and correction of the decision are based on an error in applying and interpreting the law.

2- The appeal to retrial is permissible at any time after the judgment becomes final, while the other two methods are within a specific period.

3- The appeal for a retrial can only be taken in final judgments, while the cassation and request to correct the cassation decision can only be taken in judgments that do not have the degree of finality. 4- The request for a retrial is only permissible in judgments issued with conviction, while the cassation and request to correct the cassation decision allow the appeal of judgments issued with conviction and acquittal.

2\_ Distinguishing the retrial of a civil case from the retrial of a criminal case

As stated in the Civil Procedure Law on

Article 196

It is permissible to appeal by way of retrial against the rulings issued by the courts of appeal or the courts of first instance or the courts of first instance at a later degree or the personal status courts if one of the following reasons is found, even if the ruling appealed against has reached the final degree.



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- 1- If the other party committed fraud in the case that would have affected the ruling.
- 2- If, after the ruling, a written admission was made that the papers on which it was based were forged or that they were ruled to be forged.
- 3- If the ruling was based on the testimony of a witness and he was convicted of false testimony.
- 4- If, after the ruling, the applicant for retrial obtained papers produced in the case that his opponent had prevented from being submitted.

## **Article 197**

The appeal by way of retrial shall not be accepted against the judgments issued by the courts of first instance in the first instance as long as the appeal thereof by way of appeal is permissible.

## **Article 198**

The period for requesting a retrial shall be fifteen days starting from the day following the appearance of fraud or the admission of forgery by its perpetrator or the ruling proving it or the ruling against the false witness or the appearance of the document that was prevented from being submitted.

## **Article 199**

The appeal by way of retrial shall be by a petition submitted to the court that issued the contested judgment or the court that replaced it, including the name of each of the parties, his surname, his place of residence, the place he chooses for the purpose of notification, a summary of the judgment, its date, the court that issued it, the date of its notification to the convicted person, and the reason that permits a retrial. A session shall be set for its consideration soon after the petition has been





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registered, the fees have been paid, and a deposit of five thousand dinars has been paid into the court's fund to guarantee payment of the fine or damage incurred by the opponent, without prejudice to the opponent's right to claim greater compensation if the damage warrants it. The applicant shall sign the petition, notifying him of the day of the hearing, and the opponent shall be notified of a copy thereof and of the day of the hearing. Article 200

If it appears to the court, after the two parties have been brought together, that the request to return the court was not based on one of the reasons stated in Article (196), it shall decide to reject it and rule on the applicant for return with a fine of not less than (550) dinars and not more than one thousand dinars. Article 201

1 - If the request for a retrial is based on one of the legal reasons stated in Article (196), the court shall decide to accept it and suspend the execution of the judgment for which a retrial is requested until the outcome of the existing lawsuit, provided that the suspension of execution does not include anything of the aforementioned judgment that is not related to a retrial.

2 - The court shall consider the request for a retrial by amending the previous judgment from the aspect that necessitated a retrial and shall issue a new judgment in accordance with the law.

## Article 202

1 - Consideration of the retrial lawsuit shall be limited to the reason stated in the petition and may not be exceeded to another reason of custom that is not mentioned therein.

2 - The appeal by way of retrial is not accepted in the judgment issued in the appeal to retrial. The method of retrial in a criminal case differs from the method





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of retrial in a civil case in terms of the party to which the request for retrial is submitted, as in a criminal case the request is submitted to the Public Prosecution Authority, while in a civil case the request is submitted to the same court that issued the judgment. There is also a difference in terms of the reasons for submitting a request for retrial, as the reasons for submitting a request for retrial are stated in the law exclusively, unlike a civil case, as well as the period for submitting the request, as the request must be submitted in the civil case within 15 days of the applicant learning of the reasons for submitting the request, unlike a criminal case, in which the law does not stipulate a specific period. Also, the appeal to retrial in a civil case is limited to examining the reasons stated in the petition for the request, while in a criminal case it does not depend on that, although the judge must adhere to the reasons stated in Article 270 of the Code of Civil Procedure, and it is not permissible to expand or make an analogy with them.

## **The Second Topic**

Retrial of the rulings and decisions of the Federal Supreme Court

For the purpose of researching this topic, it is necessary to address the types of decisions and rulings issued by the Federal Supreme Court, stating the reasons for the inadmissibility of appealing the rulings of the Constitutional Court and whether it is permissible to appeal by way of retrial. This is what will be researched through two requirements.

## **The First Requirement**

Types of rulings issued by the Federal Court

When examining the texts of the Iraqi Constitution of 2005, we find that Article (47) thereof stipulated that (the federal authorities consist of the legislative,



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executive and judicial authorities), and Article (89) of the Constitution specified that the federal judicial authority consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Service, the Judicial Supervision Authority, and other federal courts organized in accordance with the law.

And that the Federal Supreme Court is a constitutional institution that was formed pursuant to Article 93 of the Iraqi Constitution of 2005, and the Council of Ministers - at that time - decided to form it, and that its headquarters are in Baghdad and it operates independently and is subject to no authority other than the law, and it is financially and administratively independent.

The court consists of a president, a vice president and 7 original members who are chosen from among the first-class judges who are still in service and whose actual service in the judiciary is not less than 15 years. The court has 4 part-time reserve members who are selected from among the first-class judges who are still in service and whose actual service in the judiciary is not less than 15 years.

The President of the Supreme Judicial Council, the President of the Federal Supreme Court, the President of the Public Prosecution Service, and the President of the Judicial Supervision Service nominate the President of the Court and his deputy, and the members from among the nominated judges with representation of the regions in the composition of the court, and their names are submitted to the Iraqi Council of Representatives for the purpose of voting on them, then the Republican Decree is issued appointing them within a maximum period of 15 days from the date of their selection.<sup>20</sup>



The President of the Federal Supreme Court and its members receive the salary and allowances of a minister, and the President, his deputy, and the members of the court from among the judges are referred to retirement by Republican Decree after completing 72 years of age, as an exception to the provisions of the Unified Retirement Law No. (9) of 2014 as amended and the provisions of the Judicial Organization Law No. (160) of 1979 as amended or any law replacing them.

The Federal Court is responsible for monitoring the constitutionality of laws and regulations in force, interpreting the provisions of the Constitution, and adjudicating cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority. The law guarantees the Council of Ministers, interested individuals and others, the right to appeal directly to the Court, and adjudicating disputes that arise between the federal government and the governments of regions, governorates, municipalities and local administrations.<sup>21</sup>

The Court's powers include adjudicating disputes that arise between the governments of regions or governorates, adjudicating accusations against the President of the Republic, the Prime Minister and ministers, ratifying the final results of general elections for membership in the House of Representatives, adjudicating conflicts of jurisdiction between the federal judiciary and the judicial bodies of regions and governorates not organized into a region, and adjudicating conflicts of jurisdiction between the judicial bodies of regions or governorates not organized into a region.<sup>22</sup> The Federal Court issues various rulings and decisions, which are:

First: State decisions



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Second: Decisions interpreting texts

Third: Rulings in a case brought before it

The most prominent decisions and interpretations

The ambiguity of some articles of the Iraqi constitution and its being open to interpretation has put the Federal Court in embarrassing situations several times. Perhaps the most prominent decisions and interpretations issued by the court were those that came shortly after the fourth round elections held last October, especially those related to problematic issues between political reality and the constitutional text, in light of the problems and appeals submitted.

In the Federal Court's interpretations of the appeals or procedures following the fourth round elections of parliament, the court ruled to reject the appeals submitted by the Shiite Coordination Framework forces regarding the rejection of the election results.

Also, after the first session of the current House of Representatives was held, there was a disturbance within the council, which prompted the transfer of the oldest speaker, Mahmoud Al-Mashhadani, to the hospital. After the opinion of the parliamentary legal body was stated, the first reserve for the oldest speaker completed the session, and the speaker of the House of Representatives and his two deputies were elected, which prompted many parties close to the Coordination Framework, including Al-Mashhadani himself, to file a lawsuit with the Federal Court rejecting the election of the speaker and his two deputies after the absence of the oldest speaker for health reasons, according to the lawsuit.



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The Federal Court issued its decision on January 25, 2022, to suspend all measures taken and being taken by the Council of Representatives, the Speaker of the Council and his two deputies.

As well as the ruling issued by the Federal Court on February 15, 2022, declaring the oil and gas law issued by the Kurdistan Regional Government unconstitutional, and obligating the regional government to hand over oil to the federal government. However, the most prominent decision of the court, which was the first step to invalidate the tripartite alliance project between Muqtada al-Sadr, Mohammed al-Halbousi and Masoud Barzani, was the temporary suspension of the nomination of the Kurdistan Democratic Party candidate Hoshyar Zebari by the Federal Court following a complaint filed by representatives from the Patriotic Union of Kurdistan before the court against Zebari's nomination. On February 13, 2022, the court ruled to reject Zebari's nomination for the position of President of the Republic due to his involvement in corruption when he was a minister. Among the most important decisions of the Federal Court that increased the political scene in the country and angered Muqtada al-Sadr alike was its interpretation of the quorum for electing the President of the Republic, which stipulates that the House of Representatives must meet with two-thirds of the members of the House of Representatives, which prompted al-Sadr's supporters to stage a sit-in in front of the Supreme Judicial Council before withdrawing hours later.

Was it a political tool?

The Federal Court has not become a political tool in the hands of one party against another, although the nature and composition of the court are distributed among several forces, because the political blocs are the ones who nominate its members.



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The agreement of some political blocs on any matter may mean that the majority in the Federal Court will go in a specific direction to make a decision,

And that the Federal Court has issued decisions that were sometimes in the interest of a party, and at other times against the interest of the same party, citing the Sadrist movement and how it welcomed several decisions of the court, especially in the period following the last elections, but the movement has recently begun to criticize some of the court's decisions. Each party looks at the decisions of the Federal Court from its own perspective and the extent to which it benefits from them to support its policy. However, the court is generally composed of nominations from political blocs, and therefore, on the ground, it represents the opinions of various political forces. However, the court cannot issue a decision outside the constitution or the laws prevailing in Iraq, because it is ultimately bound by the constitution and laws. This misconception comes from the lack of knowledge of the political classes about the methods of appeal and the work of the Federal Court, as the court rules on the case brought before it and does not intervene on its own. Therefore, when there is an agreement between the political blocs on a specific issue and this agreement contains constitutional violations, the Federal Court has no right to intervene in this issue on its own unless an appeal is filed before it on the unconstitutionality of these actions. Then, the Federal Supreme Court considers the issue and issues its decision in accordance with the constitution and the law that governs it.

## **Justifications for the rulings of the Constitutional Court**





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And the reasons that call for making the rulings of the Constitutional Court or the Federal Court final and not subject to appeal are that the Supreme Courts are responsible for achieving judicial security and the stability of the principles issued by them to achieve confidence in these judicial institutions according to the principle of legitimate expectation, and that the Federal Court seeks to achieve the supreme interest of the country and support public rights and freedoms and protect security and improve the work of the federal authorities and correct them and ensure the smooth running of the state's public facilities, and that the Federal Supreme Court is a constitutional court and that the constitutional legislator gave the description of the finality of the rulings and their finality with the aim of closing the door to interference in its work and ensuring the stability of the rulings issued by it due to the seriousness and specificity of its work, in addition to its rulings not being subject to the jurisdiction or review of another court. Constitutional lawsuits are, by their nature, substantive lawsuits in which the dispute is directed to the texts challenged for a constitutional defect, and the decisions issued in this regard have absolute authority such that their effect is not limited to the opponents in the lawsuit in which they were issued, but rather this effect extends to all and all parties are bound by them, whether these rulings have concluded that the challenged legislative text is unconstitutional or constitutional.

## **The second requirement**

### **Retrial of Federal Court rulings**

After we have explained the types of decisions and rulings issued by the Federal Court, the answer to the question becomes clear to us: Is it permissible to appeal the retrial of the decisions and rulings of the Federal Court, especially since the





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internal system of the Federal Supreme Court stipulates in Article 17: The rulings and decisions issued by the court are final and not subject to any form of appeal. Is it permissible to appeal by way of retrial if the reasons required by the general rules in the Civil Procedure Law and the Criminal Procedure Law are available? The decisions issued by the Federal Court in the field of interpretation and state decisions cannot be appealed by any means of appeal, including the appeal by retrial. Accordingly, the decisions issued by the Federal Court cannot be appealed if its interpretative opinion is requested in a text of the law, as its decision is final and has acquired the force of *res judicata* and it is not permissible to appeal it by cassation or correction of the decision or by retrial because the reasons for retrial stipulated in the general rules of the Civil Procedure Code and the Criminal Procedure Code are not available in the case of interpretative decisions. The same is the case with state decisions and rulings issued by the Federal Supreme Court, as they cannot be appealed by any means of ordinary or exceptional appeal. These decisions and rulings are final and have acquired a final degree and are binding on all parties as soon as they are issued. This is what was stated in the decision of the Federal Supreme Court No. (6/Federal/2023 (The Federal Supreme Court finds that the ruling issued in the constitutional suit, whether on the constitutionality of the contested text or its unconstitutionality, prevents the court from considering the appeal in The constitutionality of the text again because the ruling issued by the court is absolutely binding and applies to all, whether individuals or state authorities, based on the provisions of Article (94) of the Constitution of the Republic of Iraq for the year 2005 .<sup>23</sup> It is worth noting that the jurisdiction of the Federal Supreme Court in the subject of interpreting laws was not stipulated, but



rather its jurisdiction is in interpreting the texts of the constitution, and this is what is stated in Article (93) of the constitution. Accordingly, the court considers the subject of interpretation when considering the subject of challenging the constitutionality of laws, and this is what is stated in the decision of the Federal Court No. (40/Federal 2024) that the request must be rejected for lack of jurisdiction, as the jurisdiction and powers of this court are stipulated exclusively in Articles (52 and 93) of the Constitution of the Republic of Iraq for the year 2005, and Article (4) of the Federal Supreme Court Law No. (30) of 2005 amended by Law No. (25) of 2021 and some other special laws, and none of those jurisdictions and powers grant the court jurisdiction To interpret the texts of the laws except on the occasion of challenging their unconstitutionality, and it also does not have the jurisdiction or authority to answer an inquiry submitted to it by one of the official bodies or one of the authorities in the state or unions or federations).<sup>24</sup>

As for urgent state decisions, the general rules in the Civil Procedure Law must be referred to, and this is what was stated in Court Decision No. (27/Federal/State Order/2024. Based on the above, the issuance of an urgent state order by the Federal Supreme Court is governed only by the controls and conditions that must be met for its issuance referred to in the Civil Procedure Law for the finality of the decisions issued by this court and their non-subjection to appeal methods).<sup>25</sup>

As well as its decision No. (18/Federal/State Order/2023, the request of the applicant to issue the state order has the character of urgency and the state of extreme necessity that requires its issuance due to the effects resulting from the enforcement of the court order requested to be suspended that would affect the



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legal position that she currently occupies as Director General in the Supreme Judicial Council, which leads to Obstructing the work of the public facility that it manages and affecting the decisions that were previously taken by it, in addition to the financial consequences that result from its enforcement, which are difficult to address. Also, responding to the request does not include entering into the original right or giving a prior opinion on the lawsuit numbered (18/Federal/2023) in which it is claimed that the royal order that is the subject of the request for the state order is invalid, so the request is worthy of a response.<sup>26</sup>

As for the other decisions issued by the Federal Court on the occasion of the lawsuit before it, it is not permissible to appeal or complain about them by way of ordinary appeal, but these decisions and rulings, considering that they were issued in a lawsuit, can be appealed by way of extraordinary appeal by way of retrial in the event that the reasons stated in the general rules in the Civil Procedure Law and the Criminal Procedure Law are available. This is what the rules of justice and the rule that what is built on falsehood is false require. If the decision of the Federal Court was based on an order or document that is actually invalid, this ruling is void and it is permissible to appeal it by way of retrial, and the appeal is submitted before the same Federal Court with Statement of the reasons relied upon in the appeal. Accordingly, it can be said that the decisions and rulings issued by the Federal Supreme Court, as a court of substance, when it adjudicates a case brought before it and discusses the material matters in a case from documents and expert reports and hears the testimony of witnesses and all evidence of the case and bases its ruling on this evidence presented before it, this ruling can be appealed by way of retrial in the event that the reasons stated in the general rules (Civil Procedures



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Law and Criminal Procedures Law) are available. Among the decisions of the Federal Supreme Court in accepting the appeal by way of retrial is its decision No. (47/Federal/2012) and since the reason on which the appellant relies in the request for a retrial is not considered one of the exclusive reasons mentioned in Article (196) of the amended Civil Procedures Law.<sup>27</sup> · If the decision of the Federal Court was based on the testimony of a witness or an expert report or an official document and it was This evidence on which the ruling was based was tainted with invalidity, and therefore the court's decision was based on invalid evidence, and whatever is built on invalidity is invalid.

## **Conclusion**

It is established in the judiciary and constitutional jurisprudence that the decisions and rulings of the constitutional courts are final and cannot be appealed. This trend has justifications that lend to practical reality and has political, economic and social effects, as this matter generates stability in political life in any country, which is positively reflected in other aspects.

However, the desired justice must be achieved and the rulings must be based on not being unjust and not exceeding the rules of justice. Therefore, it can be said that the permissibility of appealing the rulings of the constitutional courts must be justified through the rules of justice and the existence of rulings based on not being unjust and being in accordance with the spirit of the law. Accordingly, any decision based on violating those rules may be appealed by requesting reconsideration before the body that issued this ruling, since that body is the protector of the desired justice and the one seeking to achieve it. If its work is marred by any error as a result of its reliance on evidence tainted by fraud,



deception and forgery, its rulings may be appealed in order to achieve the desired justice that the Constitutional Court seeks to achieve. Now, what is built on falsehood is false.

And what some Iraqi researchers go to is that the permissibility of appeal The Federal Court's rulings are based on the Iraqi Constitution, which does not grant any immunity to decisions. By examining this text, it becomes clear that this text addresses administrative decisions issued by the legislative and executive authorities. These decisions and laws do not enjoy immunity, but rather they may be appealed and challenged. As for the rulings issued by the judicial authorities, the law has established methods of appeal for them in accordance with the recognized legal principles. As for challenging the rulings of the Federal Supreme Court, it is done in accordance with the rules of justice and the spirit of justice and the law that the court seeks to achieve. Saying this opinion does not contradict or differ with the prevailing opinion and approach in constitutional jurisprudence that the decisions of the Constitutional Court must be final and may not be appealed. Now this court and what it represents in that it has no authority over it except the law and that it is the actual protector of the constitution, which is the supreme rule in the legal structure, which all authorities must not violate, cannot be from a logical and just standpoint if it issues a ruling that was based on illegal evidence and is tainted with fraud and misleading, it cannot return to these decisions and rulings.

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