

## **Judicial guarantees of the exercise of freedom of opinion and expression.**

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### **Abstract:**

Judicial protection is one of the most important guarantees and safeguards for protecting public freedoms in general, and freedom of opinion and expression in particular. An individual's right to express their opinion cannot be exercised properly unless there are fundamental guarantees to ensure it. Among the most critical of these guarantees is judicial protection for freedom of opinion and expression, as judicial oversight over how this freedom is exercised serves as a key factor in its protection.

In addition to this crucial guarantee for safeguarding freedom of opinion and expression, there are several other guarantees that enable individuals to exercise their right to express opinions appropriately. These include the principle of legality, which provides special protection for freedom of opinion and expression, and public opinion, which reacts to any violations of this freedom. Furthermore, the principle of separation of powers plays a vital role in preventing any authority from encroaching on the jurisdiction of another. Despite the significance of these guarantees, judicial oversight remains one of the most important mechanisms for ensuring the proper exercise of freedom of opinion and expression.

### ملخص البحث باللغة العربية:

تعد الحماية القضائية من أهم الضمانات والضوابط لحماية الحريات العامة بصفة عامة وحرية الرأي والتعبير بصفة خاصة فحق الإنسان في التعبير عن رأيه لا يمكن للفرد أن يمارسه بصورة صحيحة إلا إذا كانت هناك ضمانات أساسية تكفل ذلك ومن أهم هذه الضمانات الحماية القضائية لحرية الرأي والتعبير حيث يمثل ممارسة القضاء الرقابة على كيفية ممارسة هذه الحرية العامل الأساسي في حمايتها.

وإلى جانب هذه الضمانة الهامة لحماية حرية الرأي والتعبير فإن هناك العديد من الضمانات الأخرى لممارسة الفرد لحرية التعبير عن رأيه بصورة سليمة ومن هذه الضمانات مبدأ المشروعة وما يقرره من حماية خاصة لحرية الرأي والتعبير والرأي العام وما يثيره في حالة الاعتداء على ممارسة هذه الحرية ومبدأ الفصل بين السلطات وما يمثله من منع الاعتداء من سلطة على اختصاص غيرها من السلطات وعلى الرغم من أهمية هذه الضمانات إلا أن الرقابة القضائية تعتبر من أهم الضمانات لمفالة ممارسة حرية الرأي والتعبير بصورة سليمة.

### **Introduction:**

Guaranteeing public rights and freedoms is one of the most important objectives of laws, both at the international and local levels, and ideas have prevailed throughout the ages calling for the protection and guarantee of public rights and freedoms vis-à-vis the State - as the holder of power - so that the primary task of the State and the authorities in it becomes the protection of the rights and public freedoms of individuals and the guarantee of the mechanisms required for their exercise.

The judiciary – in all its different types of courts – has been, and still , the impregnable fortress and the last resort for the protection of public rights and freedoms when any attack is occurred, as the judiciary is the natural guardian of public rights and freedoms. Any protection of rights and freedoms is worthless without the existence of judicial protection, and without the existence of an independent judiciary that defends public rights and freedoms, prevents the authorities from unjustifying them, undermining their content and canceling everything that is harmful to them.

Independent judiciary is the safety valve for society, and the protection of individuals rights and public freedoms is one of the most important features and objectives of civilized States that enjoy an effective legal system, and the control of the judiciary over the actions of the administration is one of the most important means of protecting public freedoms at the internal level of the State.

Therefore, there was a need for judicial protection, because the mere provision of public rights and freedoms at the heart of the constitutions could keep them away from their application in practice, so it was necessary to have control over the proper application of these texts.

If the existence of legal norms in society is an important social necessity - in order to achieve a quiet life for individuals - then the implementation of these rules is also a social necessity no less important than their existence, for there is no good in a law that is

not implemented, and its rules are not respected, nor good in a society that does not implement and does not respect the rules and provisions of its law.

**Research problem:**

While legal rules have the binding character of the ideas and provisions they contain, and the impartiality of the law necessary for its application, these rules cannot apply themselves, which requires the existence of the judiciary and its enjoyment of the same specification as the legal rules of objectivity, impartiality and transcendence, so that these legal rules can exist in our practical reality. The legal rules have no value, and the rights and freedoms they establish for individuals, unless there is a judiciary that defends individuals; A sanctuary and fortress for them<sup>(1)</sup>.

Therefore, judicial security is one of the most important guarantees to ensure and protect the rights and freedoms of individuals in general, and freedom of opinion and expression in particular, because judicial control is the real guarantee of public freedoms.

Therefore, we will clarify the role of the judiciary in protecting the rights and freedoms of individuals through the role and importance of the principle of independence of the judiciary in the protection and preservation of rights and freedoms as well as the role of the judiciary in defending rights and freedoms in general; and thus freedom of opinion and expression; as follows:

The first topic: the principle of the independence of the judiciary and the protection of freedom of opinion and expression.

The second topic: judicial protection of freedom of opinion and expression.

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(<sup>1</sup>) D. Ahmed Fathi Sorour: Constitutional Guarantees of Personal Freedom in Criminal Litigation, Contemporary Egypt Magazine, sixty-third year, No. 348, April 1972, p. 365, and beyond

**The principle of judicial independence and its impact on the protection of freedom of opinion and expression**

Judicial oversight of public authorities actions has become a major role in protecting public freedoms - in general - and freedom of expression - especially - because any legislation that includes the reduction of such censorship wastes freedoms, because it is one of the foundations and democratic principles not to prejudice the protective judiciary, as the real guarantee of the exercise of rights and freedoms; if things go the contrary it is a waste of the principles of true democracy, but a denial of the real function of the law itself<sup>(2)</sup>.

The role of judicial oversight in the protection of public freedoms is evident in the event that the judiciary is independent of the public authorities of the State, which is known as the principle of the independence of the judiciary, which is due to the fact that the independence of the judiciary makes all individuals subject to the provisions of the law, whether they are rulers or convicts<sup>(3)</sup>.

Influencing the judiciary – as the true guarantor of public freedoms – is a grave violation of constitutional legitimacy, and the authorities in the state do not acquire legal legitimacy unless all their actions are subject to the rulings of the judiciary<sup>(4)</sup>...

A State in which there is an independent judiciary does not take it to blame; it rules the right, administers justice and respects its rulings by all, rulers and convicts, described as a legal State, whose people feel safe and stable and enjoy a great deal of freedoms. On the contrary; If there is no independence for the judiciary, its provisions will not be respected by individuals; This State can be

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<sup>(2)</sup> D.Mohamed Asfour: Freedoms between Democratic and Socialist Thought, First Edition, World Press, Cairo, 1961, p. 343.

<sup>(3)</sup> D. Throat Bedoui: Political Systems, op. cit., p. 180-181.

<sup>(4)</sup> D. Ibrahim Abdulaziz Sheha: Analysis of the Egyptian Constitutional Order, Al-Ma'raf House, Alexandria, 2003, p. 315.

described as the police State, on whose territory freedoms are guaranteed<sup>(5)</sup>.

The importance of the principle of the independence of the judiciary is due to the fact that the judiciary stands in the face of two authorities; namely, the legislative branch, which issues legislation binding on the judiciary and other authorities, and the executive branch, which exercises its powers through the enactment of regulatory decisions, as well as works to implement laws; therefore, we find the competence of the legislative and executive branches positive, while we find the competence of the judiciary - in general - negative; it is limited to the application of the law if requested to do so by one of the disputants - that is, on the occasion of the filing of proceedings before him - Therefore, if she is left without independence in her work from the rest of the authorities, her weakness will be found<sup>(6)</sup>...

Considering that the judiciary is the most important and available means for individuals to resort to it in presenting their claims and grievances, because the judiciary represents the neutral aspect - in the eyes of individuals - therefore, the insistence on calling for the independence of the judiciary enhances the confidence of individuals in the law and the state, and generates a sense of security, tranquility and optimism about the existence of an independent authority, capable of protecting their rights and freedoms from the arbitrariness and intransigence of other authorities<sup>(7)</sup>.

For all these reasons, which show the importance of the principle of the independence of the judiciary in protecting individuals, their rights and freedoms from attack, the principle of the independence of the judiciary has received great importance by

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<sup>(5)</sup>D.Abdullah Hussein: Personal Freedom in Egypt, previous reference, p. 612-620.

<sup>(6)</sup> D.Muhammad Younis Yahya Al-Sayej, D0 Wassam Nimat Ibrahim: Public Freedoms and Guarantees of their Protection, op. cit., p. 200

<sup>(7)</sup> D.Muhammad Yunus Yahya Al-Sayej, D0 Nimat Ibrahim: Public Freedoms and Guarantees of their Protection, op. cit., p. 201.

most constitutions of States, as well as by many international conventions and treaties.

The current Constitution of Egypt in 2014 stipulates in Article (184) the principle of the independence of the judiciary, where the article stipulates that: "The judiciary is independent; it is assumed by the courts of all types and degrees and issues their rulings in accordance with the law, and the law specifies its powers and interference in the affairs of justice or cases is a crime that does not fall within the statute of limitations."<sup>(8)</sup>

The Supreme Constitutional Court has affirmed certain principles of independence and the preservation of judicial power in one of its rulings; It stated: "The effective organization and administration of justice is a matter of close relevance to freedom and the safeguarding of different rights. The Constitution guarantees the independence of the judiciary and makes such independence the capital of interference, influence, distortion or infringement of its functions; Since the final decision on the rights and freedoms of the adversaries is due to them, the aggression is restored, and the judicial satisfaction guaranteed by the Constitution, the law or both is given to those who are responsible for them is discouraged"<sup>(9)</sup>.

The International Convention on Civil and Political Rights adopted by the United Nations General Assembly in 1966 affirmed the principle of independence, where Article (14) of the first paragraph 1, stipulates that: "All persons are equal before the

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<sup>(8)</sup> Egypt's abrogated 1971 Constitution contained many texts that instigated the principle of the independence of judicial power; From these texts, article 165 stipulates that: "Judicial power shall be independent, shall be exercised by the courts of all kinds and degrees, and shall be judged in accordance with the law." Article 166 of the Code of Criminal Procedure stipulates that: "Judges shall be independent, subject to no authority other than the law, and no authority may intervene in cases or in matters of justice."

<sup>(9)</sup> See: Supreme Constitutional Court Ruling in Case No. 14 of 17 Constitutional Court, Session of 2 September 1995, published on the official website of the Supreme Constitutional Court.

courts. Everyone has the right, when considering any criminal charge against him or his rights and obligations in any civil action, to be dealt with fairly and publicly by a competent, independent and impartial tribunal established by law."...

It also affirmed in the Universal Declaration of Human Rights in Islam, issued by the Islamic Council held in Paris in 1981, which stated: "The right of the individual to resort to a legitimate authority that protects him, does justice to him and pays for the harm or injustice he has suffered, and the Muslim ruler must establish this authority and provide it with guarantees to ensure its impartiality and independence."

It can be said that this great international interest in the principle of the independence of the judiciary, which has been affirmed in more than one place, confirms to us that the demand for the application of the principle of independence of the judiciary is not limited to a State, or to the number of specific States, the demand for the application of the principle of the independence of the judiciary is a universal demand, as it is linked to the protection of human rights and freedoms and is linked to the most important legal principles, namely the principle of the rule of law and the stability of conditions in society.

We are of the view that if justice is the basis of the king, then the independence of the judiciary is the basis of justice; and unjustly the state is disturbed; since the modern state is based on a balance between the different powers in it, this balance requires that each authority be independent of the other, and that each authority limits the unbridled of other authorities, and in modern democracies that believe in the principle of legality, and the principle of the rule of law stipulates in their constitutions that the judiciary should be an independent authority – as the current Egyptian constitution has done – ; The judiciary performs a mission that is inherently independent of the legislative and executive branches.

Therefore, we find that the independence of the judiciary has become a constitutional necessity as a basis for the legitimacy of



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governance, as well as a societal necessity, to achieve justice in society, to consolidate its concepts and control its course, and to effectively ensure respect for the principle of legality, the upgrading of its status, the achievement of the rule of law and the supremacy of its word, and respect human rights and freedoms.

**Judicial protection of freedom of opinion and expression.**

Having reviewed the principle of the independence of the judiciary, its effective and real role in the protection of public rights and freedoms – in general – and freedom of opinion and expression – in particular, we can say that the judiciary has an important role in the protection of freedom of opinion and expression; by preventing excesses issued by the legislature, which may be contrary to the provisions of the Constitution; by issuing a law that restricts or wastes the right of individuals to express their opinions, and in this shows the role of the judiciary by overseeing the constitutionality of laws, as well as may contravene them.

The executive branch has granted individuals the right to resort to the judiciary, requesting the repeal of these decisions contrary to the provisions of the law, through the administrative judiciary, and the protection that cannot be overlooked in the protection of freedom of opinion and expression is the criminal protection established by the legislator against crimes committed against the right of man to express his opinion, as well as the criminal controls on freedom of expression.

Therefore, our study in this research, which concerns the judicial protection of freedom of expression of opinion, will be limited to constitutional protection; which is represented in the control of the actions of the legislature in the need for its laws regulating freedom to comply with the constitutional provisions related to that freedom, and on the other hand our study will focus on

administrative protection<sup>(10)</sup>; which is also represented in the control of the decisions of the administrative bodies that Affects freedom, as follows:

**\*Constitutional judicial oversight as a guarantee of the exercise of freedom of opinion and expression.**

**\* The role of the administrative judiciary in protecting freedom of opinion and expression.**

**Constitutional judicial oversight as a guarantee of the exercise of freedom of opinion and expression.**

The Constitutional Judiciary plays an important role in supporting democratic reform efforts and protecting human rights and freedoms by imposing the necessary protection not only for human rights and freedoms, but also through the development of the Constitution so that its texts keep pace with the transformations taking place in society, and try to bring them closer to the realities of the times in which they coexist, as well as the development of the Constitution in an area without its organization; This is when the Constitution regulates and stipulates the origins of the issues without their branches, sufficing only to indicate the origin of the rule, and here comes the role of the judiciary in restoring these branches to their origin, so that they enjoy the same protection as the Constitution for their origin; for example, the right of citizens to obtain the elements that help them to live with them, which is a branch of the human right to life<sup>(11)</sup>.

The Supreme Constitutional Court affirmed that freedom of opinion is the freedom to express opinions, and to enable them to

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<sup>(10)</sup> D. Muhammad Abd al-Wahab Khafaji: judicial protection of human rights; Human rights is a university requirement, Faculty of Law, University of Alexandria, 2005, p. 252.

<sup>(11)</sup> See: Supreme Constitutional Court Judgement in Case No. 40 of 16 Judicial "Constitutional", Hearing 2 September 1995, Supreme Constitutional Court Judgement Series, previous part, p. 194.

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be presented and disseminated by word or by printing and codifying them, is the norm in every democratic organization that carries them out only by them; They may not be bound by shackles that impede their practice, either in terms of prior restrictions on their dissemination or in terms of the subsequent punishment that is intended to suppress them<sup>(12)</sup>.

It can also be said that the Constitution is superior to public rights and freedoms, and allows citizens the right to exercise these rights and freedoms, including the right to express opinion, provided that this right is exercised within the framework of the provisions of the laws that regulate it; aiming to enable citizens to exercise their public rights without prohibiting or derogating from them; considering that this right, whether original or subordinate, represents a window for citizens to express their opinion in which to put forward their hopes; expressing in some form of reflection Social about their positions and their political, social and cultural orientations<sup>(13)</sup>.

The Supreme Constitutional Court stressed the importance of freedom of opinion and expression by stating: "Freedom of expression is a component of one of the elements of personal freedom that may not be restricted without following the substantive and procedural means required by the Constitution, or guaranteed by law as required, even if it is not provided for in the Constitution"<sup>(14)</sup>.

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<sup>(12)</sup> See: Supreme Constitutional Court's Ruling in Case No. 25 of 22 BC Constitutional, Session 5/5/2001.

<sup>(13)</sup> See: Decision of the Court of Administrative Justice in case No. 7741 of 57 RS: Hearing held on 4 February 2003, as well as decision of the Court of Administrative Justice in case No. 10266 of 55 RS; At the 11.06.2002 meeting, selected one of the most important judgements of the Administrative Court of Justice, First Chamber (Public Rights and Freedoms), p. 211, 220.

<sup>(14)</sup> See: Supreme Constitutional Court judgement in case No. 42 of 16, Constitutional Court of 20/5/1995.

The same court also stated that: "The Constitution guarantees the freedom of expression of opinions and enables them to be presented and disseminated, whether by word, photograph or codification, and other means of expression may be determined as the original freedom within the scope of which open dialogue takes place only within its scope"<sup>(15)</sup>.

The Constitution affirms the right of the individual to express his or her opinion as a subjective right, fearing that the executive or legislative branch may infringe on this right or deviate in the performance of its work; the Court states that: "The Constitution has ensured that it imposes on the executive and legislative branches such restrictions as it deems sufficient to safeguard public rights and freedoms, so that neither of them enters or interferes with the area protected by freedom or the right in a manner that prevents its effective exercise"<sup>(16)</sup>.

Despite the protection afforded by our Egyptian Constitution on human rights and freedoms, in accordance with what is known and universally decided, and its determination of many of the necessary guarantees to ensure public rights and freedoms - as mentioned earlier - and protect them from aggression or harm to their content, the Egyptian legislator has not adhered in many of the legislation he issues on the occasion of regulating the rights and freedoms of individuals to the controls and limits enacted by the Constitution to safeguard these rights and freedoms; there was a lot of legislation that would waste the rights of individuals. The human being and his freedoms, and the imposition of many restrictions and their storming, which resulted in the emptying of public freedoms of their content.

It was necessary to have a body that would monitor the legislation issued by the Egyptian legislator on the occasion of his regulation of public rights and freedoms, and here seems the

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<sup>(15)</sup>See: Decision of the Supreme Constitutional Court in case No. 153 of 21, Constitutional Court, 3/6/2000.

<sup>(16)</sup> See: Supreme Constitutional Court Decision in Case No. 35 of 21 Constitutional Court Session 1/1/2000.

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importance of the role played by the Supreme Constitutional Court as an independent judicial body that is solely responsible for overseeing the constitutionality of laws and ensuring the extent to which the Egyptian legislator during the issuance of legislation regulating rights and freedoms complies with the controls and limits guaranteed by the Constitution for public rights and freedoms, especially since these rights and freedoms are a fundamental pillar for the promotion of political reform. Progress in the process of political reform can be conceivable in light of the ineffectiveness of the mechanisms entrusted with verifying respect for the legal norms and national legislation for rights and freedoms guaranteed by the Constitution and the competent international and regional conventions, as well as the low interest in public rights and freedoms and the absence of the necessary guarantees for their protection.

The content of the rulings issued by the Supreme Constitutional Court since its establishment in 1979, and the principles established by these rulings, reveal to us that the role of the Supreme Constitutional Court in overseeing the constitutionality of laws was not only a neutral and objective legal act in examining legislative texts to determine whether they were compatible with the Constitution or not, but that its role was influenced by and interacted with political and social reality, as the Court began to lay the foundations and guarantees for the rights and freedoms of individuals, through what It issues judgments that transcend its value to the extreme, and this has become stable in the conscience of its judges.

Where the control of the constitutionality of laws has become in constant interaction with the social, economic and cultural conditions of society, and the Court has a structural role in the field of public rights and freedoms, and not just the affirmation of respect for the guarantees guaranteed to it by the Constitution, but this did not mean that the Court deviated from the legal rules established for the exercise of the Court's competences, but rather meant in the first place that the Court should exercise its role in

overseeing the constitutionality of laws in application of the principles of legality and the rule of law and addressing legislation that Deviating from the provisions and controls of the Constitution, which means emphasizing the principle of the supremacy of constitutional rules and respecting the principle of the hierarchy of legal norms.

In this study, it is necessary to clarify the approach of the Supreme Constitutional Court in its exposure to and elevation of freedom of opinion and expression and to control its boundaries in a manner that is consistent with the public interest, and we do not find the truest expression in eloquence and legal sobriety than that of our professor Dr. Awad Al-Murr<sup>(17)</sup>; Considering that the Constitution's guarantee that the legislative or executive branch shall not interfere with measures that impede or limit its exercise, otherwise its action would be contrary to the Constitution, the preservation of this freedom, which would prejudice it, seems necessary to ensure the security of indisputable higher values, although there is disagreement about the content and objectives of these values<sup>(18)</sup>.

Freedom of opinion and expression is seen by some as necessary to affirm the democratic and representative nature of government, and others deal with it, based on the fact that it consists of the presentation of many opinions that differ among themselves, in an open market for interaction and exchange; and the truth through meeting and evaluating each other, and a third category sees it as a tool through which the individual expresses himself and must be guaranteed regardless of the social and political implications of it.

In this study, therefore, we will address the role of the constitutional judiciary in protecting freedom of opinion and expression -- and indeed the protection of public freedoms as a whole --; By demonstrating the effectiveness of control over the constitutionality of laws; As a guarantee of freedom of expression

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<sup>(17)</sup> Former President of the Supreme Constitutional Court.

<sup>(18)</sup> D. Abdulaziz Mohamed Salman: Constitutional Protection of Freedom of Opinion in Jurisprudence and Constitutional Justice, op. cit., p. 65-69.

and the Supreme Constitutional Court's role in protecting freedom of expression through its judgements;

This is as follows:

**First, the effectiveness of Oversight of the constitutionality of laws as a guarantee of freedom of opinion and expression:**

Constitutions are to determine the right to exercise public rights and freedoms of individuals of all kinds except those rights and freedoms which are inherent in human life; such as the right to life; Such rights have been established under natural laws, and thus constitutions have, over the course of time, been a popular requirement. Peoples have always been careful to demand the establishment of constitutions governing their lives, rights and freedoms, defining their powers of government and limiting the authority's control over rights and freedoms<sup>(19)</sup>. The Constitutions provided for many individual rights and freedoms; These include individuals' right to express their views.

It is therefore clear to us - as we mentioned earlier - that the Constitution is the primary source of public freedoms; These include freedom of opinion and expression, the fact that the State with a written Constitution obliges the public authorities to abide by its provisions in its legislation and provisions, as well as in its administrative powers, and this Constitution must be - The provisions and legal principles contained therein - the Supreme Law, which defines all applicable legal norms of the State, thereby binding the State on the principle and origin of democratic governance; It is the principle of submission to the rule of the Constitution<sup>(20)</sup>.

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<sup>(19)</sup> D. Afkar Abdel Razek Abd al-Sameeh: Freedom of Assembly "Comparative Study", Arab Renaissance House, Cairo, 2002, p. 431

<sup>(20)</sup> D.Afkar Abdel Razek Abd al-Sameya: Freedom of Assembly ", op. cit., p. 432 ff.

But if it is the function of constitutions to regulate the powers of the State, and to guarantee the rights and freedoms of individuals; The political realities of most political systems often reveal - for the constitutional organization of public authorities - a degree of deviation of varying degrees between systems, and that work in many States has led to some kind of unification of power; through control by the executive branch; Whether through its President or Prime Minister - in different manifestations of life, it has forced others to come down and submit to its orders, this imbalance between the powers in the State - in the executive's favour - has led much to view the Constitution, not only as a means of regulating the public authorities of the State; rather, to protect and safeguard human rights and freedoms; Thus, judicial control of the constitutionality of laws does not restrict itself to the rights and freedoms enshrined in the Constitution; Rather, it has expanded its role further and has become instrumental in expanding and promoting the development of human rights and freedoms; in order to determine their content and the rules for their exercise only in accordance with the standards adhered to by democratic States, and to adopt them as a way of life; Human rights and freedoms do not have narrow standards that undermine their content and substance, but extend according to society's degree of democratic development<sup>(21)</sup>.

Hence, the existence of an independent body, within its competence, is obliged to control legislation issued by the different authorities granted this right by the Constitution; Whether legislative or executive, and to ascertain the extent to which the legislation enacted conforms to the provisions of the Constitution, which has the highest legal rank; Pursuant to the principle of the Constitution and the principle of incorporation of legal rules.

Control over the constitutionality of laws means the right to monitor the compatibility of laws enacted by the legislature with the Constitution; respecting the principle of legality; This judicial

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(<sup>21</sup>) Donald E. Crane, Judicial Review and the consent of the government , Newaw , 2004 , p 56 .



oversight is the best guarantee of achieving this principle<sup>(22)</sup>, and others know constitutional censorship as: "ordinary law control; in order to ensure that it respects the rules and provisions of the Constitutional Document and does not contravene them"<sup>(23)</sup>.

Control over the constitutionality of laws is an important safeguard of the rights and freedoms of individuals and the establishment of a sound democratic system; in particular with regard to the extent to which legislation passed by the legislature reflects the will of the people, or regulations issued by the executive branch, and does not derogate from constitutional norms; in order to ensure the State's legal foundations and protect the rights and freedoms of individuals; as fundamental pillars of a sound democratic system, the achievement of which requires the imposition of a sanction on the legislature and the executive if it derogates from the Constitution's provisions that are superior to other legal norms, or would infringe upon the human rights and freedoms guaranteed by the Constitution. This penalty is the annulment or repeal of legislation passed in violation of the Constitution's provisions<sup>(24)</sup>.

Supervision of the constitutionality of laws requires a political or judicial body whose task is to repeal the law or regulation contrary to the Constitution; Under such control, if a law or regulation is promulgated that includes the abolition or prohibition of the exercise of a right and freedoms provided for in the Constitution; ITS fate will be gone<sup>(25)</sup>.

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<sup>(22)</sup> D. Mohammed Anas Jafar: Mediator in Public Law, Part III Administrative Judiciary, Arab Renaissance House, Cairo, 2020, p. 34.

<sup>(23)</sup> D. Ramzi al-Sha 'ar: Constitutional Justice in the Kingdom of Bahrain, "Comparative Study", Library of Arab Books, Cairo, 2003, p. 9.

<sup>(24)</sup> Henry Abraham , the least Dangerous Branch , New York , Oxford University , p 34 – 37.

<sup>(25)</sup> D. Mohammed Anas Jafar: Principles of the systems of government in Islam and the extent to which the Egyptian Constitution is influenced by them, Al-Isra Printing House, 5th edition, 2020, p. 270.

Egypt has taken judicial control over the constitutionality of laws; The competent court was initially the Supreme Court, which was established in 1969; Act No. 81 of 1969 establishes the Supreme Court, which has exclusive jurisdiction over the constitutionality of laws; This is if it is invoked as unconstitutional before the courts. When the previous Constitution was promulgated, 1971, it assigned, for the first time in Egypt, a special chapter to the Supreme Constitutional Court - after changing its name from the Supreme Court to the Supreme Constitutional Court -; Pursuant to the 1971 Constitution, the current Supreme Constitutional Court Act No. 48 of 1977 was promulgated<sup>(26)</sup>.

The Supreme Constitutional Court is also provided for in the current Constitution of Egypt, 2014, in chapter IV of Title V; Article 192 specifies the Court's jurisdiction; As follows: "The Constitutional Court shall, without others, have judicial control over the constitutionality of laws and regulations,... The law shall determine the other jurisdiction of the Court and shall govern the proceedings before it. "

Article 27 of the Constitutional Court Act also grants the Supreme Court the same right to adjudicate against the constitutional determination of a provision of a law, or a regulation submitted to it in the exercise of all its jurisdiction; The article states: "In all cases, the Court may rule on the unconstitutionality of any provision of a law or regulation submitted to it on the occasion of its competence and in connection with the dispute before it; following the established procedures for the preparation of constitutional proceedings ".

According to previous texts, Egypt's law does not permit an original claim to be brought before the Supreme Constitutional Court; The content of the application is that a law or regulation is unconstitutional, but that the application is unconstitutional either by way of a court's handling in the exercise of its jurisdiction, its hearing of proceedings, by a litigant's argument of

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<sup>(26)</sup> D. Mohammed Anas Jafar: Mediator in Public Law, Part III, Administrative Justice, op. cit., p. 34, 35

unconstitutionality provided for in a law or regulation necessary for the adjudication of the case, or by the Constitutional Court itself in the exercise of its jurisdiction.

in France, after the establishment of the Constitutional Council under the Constitution of the Fifth Republic; issued under General Charles de Gaulle, who carried out his work of political control over the constitutionality of laws, which is characterized as preventive control; because it precedes the promulgation of laws; It applies and regulates all the provisions relating thereto in Part VII of articles (56 - 63)<sup>(27)</sup>.

The Constitutional Council has played an essential role in protecting public rights and freedoms; By censoring the constitutionality of laws, setting limits on the extremism of the parliamentary majority, and accordingly, the Constitutional Council has not long enjoyed citizens' trust, and the parliamentary minority trust, which is not reluctant to resort to the Constitutional Council, to submit to it draft laws that call into question its Constitution<sup>(28)</sup>.

The Constitutional Council contributes to the defence of public rights and freedoms; From defender of the public authority to protector and defender of public rights and freedoms; This is reflected in its 1971 resolution, which established the principle that the introduction of the French Constitution concerning rights and freedoms has constitutional value<sup>(29)</sup>.

One of the Constitutional Council's decisions stated: "Freedom of expression loses its value if the legislator denies the right of

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<sup>(27)</sup> D. Hussein Ibrahim Khalil: Hussein Mohamed Moslah: Judicial Control of Rights, Demonstrations, Strikes and Proportionality, Nas Printing House, Cairo, 2015, p. 16.

<sup>(28)</sup> D. Saad al-Sharqawi, Abdullah Nasif: Foundations of Constitutional Law and Explanation of the Egyptian Political System, Arab Renaissance House, Cairo, 1984, pp. 175-176.

<sup>(29)</sup> D. Karim Yusuf Kashaksh: Public Freedoms in Contemporary Political Systems, op. cit., p. 445.

those who profess it at the organized meeting and thereby obscures the exchange of views in the presentation chamber; preventing interaction, correcting each other, disrupting the flow of facts related to decision-making and impeding the flow of tributaries that shape a human personality that cannot be properly developed; Except through some form of meeting.

Control over the constitutionality of laws is a process of a certain legal nature; If such censorship and its effects have significant political implications; This does not safeguard the legal nature of the control process over the constitutionality of laws, which is because the problem posed by such control is to investigate whether or not the law enacted by the legislature conforms to the provisions of the Constitution; That is, it is a problem primarily related to resolving the conflict between two legal rules; One occupies the highest position in the hierarchy of legal rules<sup>(30)</sup>.

To ensure effective control over the constitutionality of laws, a democratic system is required, guaranteeing constitutional judges independence and freedom to exercise their functions and competences; without fear or oppression of anyone; Such oversight is an effective tool in strengthening democracy, the principle of the rule of law and the safeguarding of rights and freedoms; Judicial control over the constitutionality of laws is the means for peoples to renounce their will to confront the representatives of that will, who claim to be their original owners; They present a different model of democracy, different from representative democracy; If popular sovereignty cannot be expressed directly; Such oversight takes into account the fact that those who claim to represent the people may be mistaken and misrepresented; They therefore hold their legislation accountable; Their subordination to the Constitution and their obligation to respect it; as an expression of

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<sup>(30)</sup> D.Jaber Jad Nassar, D0 Nabila Abd al-Halim Kamel: Brief in Constitutional Law, Arab Renaissance House, Cairo, 2006, p.139, 140.

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popular sovereignty; Representative will have its legitimacy, only to the extent compatible with popular sovereignty<sup>(31)</sup>.

We can say that the constitutional judiciary here plays two important roles in protecting public freedoms and guarantees in general, and freedom of opinion and expression in particular; The first role is in the preventive role of censorship, in the existence of judicial oversight of legislative power in its laws appropriate to its regulation of public rights and freedoms, and the legislature should therefore respect the provisions of the Constitution in its laws; This is because these laws can be challenged one day, brought before the courts to determine whether they are in conformity with the provisions of the Constitution, and the second role of oversight of the laws' constitutionality is therapeutic; Judicial control over the constitutionality of laws; As a successful means of eliminating legislative overreach on the Constitution; Under such control, different courts could exclude from their application any law contrary to the constitutional provision establishing public freedoms; by abolishing or refraining from applying it<sup>(32)</sup>.

The Supreme Constitutional Court has jurisdiction over the constitutionality of laws; It may repeal the law or regulation if it finds them to be contrary to the provisions of the Constitution and the Court's ruling here is final and uncontested<sup>(33)</sup>, and its provisions are published in the Official Gazette within a maximum of 15 days from the date of their issuance<sup>(34)</sup>.

<sup>(31)</sup> (David stone , Discovering the constitution , Minneapolis , University 1997, p23-37.

<sup>(32)</sup> D. Hadi Hamidi: The Role of the Judiciary in Protecting Freedom of Peaceful Demonstration "A Comparative Study", paper published in the Journal of Investigator Hali for Legal and Political Sciences, Iraq, Issue 1, seventh year, 2015, p. 24

<sup>(33)</sup> D.Mohammed Anas Jaafar: Principles of Islam's Systems of Government and the Extent to Which the Egyptian Constitution Is Influenced, op. cit., p.271

<sup>(34)</sup> Egyptian Constitution Article 195 of the current , 2014.

### **Second: The role of the Supreme Constitutional Court in protecting freedom of opinion and expression:**

In addition to the role played by the Supreme Constitutional Court, which oversees the constitutionality of laws -- as mentioned earlier -- in protecting and safeguarding public rights and freedoms in general, and the freedom to express one's opinion in particular -- the Court itself affirms in many of its judgments on the exercise of its other competence to protect public freedoms -- in general, and to reverse its abuse.

The Supreme Constitutional Court had many of its rulings affirming freedom of opinion and expression, establishing many general rules and principles that would apply to freedom of expression; Whatever means are used to express an opinion; including internet and electronic journalism. These rules represent the Court's approach to the protection of freedom of opinion and expression. The Supreme Constitutional Court expressed this approach by stating: "If the right to exercise the freedom of expression of opinions to be declared is a negative right; That the Constitution guarantees that legislative and executive powers do not interfere with them under measures that impede or limit their proper exercise; Otherwise, their work would be contrary to the provisions of the Constitution.

The Supreme Constitutional Court considered freedom of opinion and expression to be one of the fundamental pillars of free democratic systems, as well as the true input for the exercise of many intellectual and cultural rights and freedoms; For example, the right to criticism, freedom of the press, artistic and cultural creativity and freedom of scientific research; The Court held: "Freedom of opinion and expression is one of the fundamental freedoms which is guaranteed by the legal nature of democratic systems, and is also a fundamental foundation of every sound democratic provision; This system is essentially based on the fact that the principle of sovereignty of the people has unified and is

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also the source of authority <sup>(35)</sup>. According to her judgement: "It must be said that freedom of expression, guaranteed by the Constitution, is the rule of every democratic organization; He's only doing it, and he's only getting up on it<sup>(36)</sup>.

The Court itself also held that: "Freedom of opinion and expression is the original freedom from which many public intellectual, cultural and other rights and freedoms are subdivided. to include opinion in various political, economic and social areas; Nevertheless, it has given and devoted greater care to political freedom of opinion; Because of its close association with political life and with the democratic system on its right path<sup>(37)</sup>.

The Constitutional Court had ruled that freedom of expression and dissemination of opinions by all means represented the general framework for the freedom of creativity that the Constitution itself had developed; preventing them from being obstructed and even providing the means of encouraging them to enforce their content; to ensure that it is an obligation of the State in all its organs<sup>(38)</sup>.

Freedom of opinion is a value in itself, and democracy is inseparable from it; In the light of which the State establishes its society; safeguard its citizens' interaction with them, ensuring the development of its structure, and aiming at freedom of expression to build a circle of public dialogue whose horizons and tools are not confined<sup>(39)</sup>..

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<sup>(35)</sup> Judgement of the Supreme Constitutional Court in case No. 44 of 7, "Constitutional", session of 21 July 1985, published on the official website of the Supreme Constitutional Court.

<sup>(36)</sup> Supreme Constitutional Court Ruling in Case No. 13 of 29 Constitutional Court, Session 3, January 2017.

<sup>(37)</sup> Supreme Constitutional Court judgement in case No. 44 of 7, "Constitutional", hearing 21 July 1985, published on the official website of the Supreme Constitutional Court.

<sup>(38)</sup> Supreme Constitutional Court Ruling in Case No. 81 of 26 Constitutional Court, 3 January 2017

<sup>(39)</sup> Supreme Constitutional Court Ruling in Case No. 153 of 21

In the process of guaranteeing freedom of opinion; The Supreme Constitutional Court decided that this freedom could not be restricted; This impedes its exercise, and that enabling the right to present and deliberate opinions to prevent them from being obstructed, or imposing restrictions on their dissemination, is required by the democratic system. The Court affirmed this through its judgment that: "Freedom of expression shall not be restricted by prejudices that impede the exercise of opinion. Whether for the purpose of imposing restrictions on its deployment, or through the punishment envisaged for its suppression; on the grounds that the Constitution guarantees a right; Limitations on this right may only undermine its content to the extent that, within the limits provided for in the Constitution<sup>(40)</sup>.

The purpose of protecting and recognizing freedom of expression is to demonstrate the truth; in order to make sound decisions to ensure a democratic system; The Court decided that: "What is envisaged in the Constitution to guarantee the freedom of expression of opinion is that the solicitation, receipt and transmission of opinions and ideas from others shall be unrestricted by their own sources that limit their channels; Rather, it was intended to stretch its horizons, to multiply its tools and resources, to open its tracks, to overflow its sources, not preventing a windy constraint on it, to inject its methods; Freedom of expression has its aims - to show the truth manifestly - not to neutralize it, not to be perceived as harnessing it, and only to be perceived through communication, interaction and interaction; standing on what is false or right; implies a clear or realized risk in the interest of the desirer; The Constitution does not seek to guarantee freedom of

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And see :The Supreme Constitutional Court's Vision of Freedom of Opinion and Expression, article published in the Centre for Democracy and Human Rights, published on the website <https://elhak.org/2018/10/04/elhak-645/>.Constitutional Court, 3 June 2000

<sup>(40)</sup> Judgement of the Supreme Constitutional Court in Case No. 2 of 16, Constitutional Court, 3 February 1996, Supreme Constitutional Court Judgement Series, Rule No. 27, p. 470. See also: Supreme Constitutional Court Ruling in Case No. 25 of 22 Constitutional Court, 5 May 2001.



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expression of opinion as an input to general consensus; Rather, it is desirable to safeguard the plurality of opinions, and to establish them at the base of impartiality of information; The light of fact will be a beacon of every business, and a determinant of every direction<sup>(41)</sup> "

Through previous judgments and the principles established by the Supreme Constitutional Court, it is clear to us that this Court has reflected the freedom of expression of opinion from the fundamental freedoms required by democratic systems to establish a democratic system in its right way, as well as an indispensable necessity for the exercise of other political and cultural freedoms,

### **The role of the administrative judiciary in protecting freedom of opinion and expression**

If constitutional protection plays an important role in guaranteeing and safeguarding public rights and freedoms; Administrative judicial protection is one of the most important, controlled, extensive and influential types of judicial protection of human rights throughout the State.

The great importance of administrative judicial protection of public freedoms is due to two main reasons; The first is the nature of the reserved state administrative court's jurisdiction; It is directly connected to oversight of the Department's work; As far as public rights and freedoms were concerned, of course, expression of opinion was free. The second reason is the structural nature of the administrative judiciary, which is due to the lack of legal certainty in administrative law, which implies that the administrative judiciary discloses the applicable legal rule; This provides a great opportunity to protect public rights and freedoms; In addition, the administrative judiciary is not limited by a particular text; It may

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<sup>(41)</sup> Supreme Constitutional Court Judgement No. 17 of 14 Judicial Year: 14 January 1994. See also: Supreme Constitutional Court's ruling in Case No. 25 of 22 Constitutional Court, 5 May 2001.

derive its provisions from any texts it deems applicable to the dispute before it, as well as from the general principles of law; All of this makes the role of the administrative judiciary in protecting public freedoms; Freedom of opinion and expression has a large role to play<sup>(42)</sup>.

We also believe that the utmost importance of administrative justice in the protection of public freedoms is due to the fact that the executive is one of the State ' Hence freedom of opinion and expression, which is because of the nature of its function, and its considerable potential can affect individuals in the exercise of their various freedoms; Including freedom of expression.

, The issuance of administrative decisions by the Department is another privilege - besides its discretion, direct execution, as well as its dispossession of the public benefit - and therefore these decisions must be made in the form prescribed by law; in order to achieve their objectives and acquire such legitimate decisions; That is, they must be in accordance with the principle of legality and the principle of the rule of law; If such decisions are made in contravention of the provisions of the law; both formally and objectively; They are illegitimate and worthy of cancellation<sup>(43)</sup> "

Also, if such an attack has caused damage, even if the Department's decision, or its wrongful act, which is the result of an attack on liberty, has been annulled, the author has the right to claim compensation for such decisions and unlawful acts.

Administrative control powers in the field of public rights and freedoms must therefore be constantly restricted<sup>(44)</sup>; The administrative judiciary has control over its decisions; to determine the appropriateness of the control action taken in the face of

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<sup>(42)</sup> D. Mohammed Abdulwahab Khafaji: Judicial Protection of Human Rights, p. 266, 267

<sup>(43)</sup> D. Ahmed Mohamed Mari Abdulalim: the role of the administrative judge in protecting fundamental freedoms; According to the new French Administrative Procedure Law, New University House of Alexandria, 2019, 74-75.

<sup>(44)</sup> D. Suleiman al-Tamawi: General Theory of Administrative Decisions, p.76.

freedom and its proportionality to the significance of the facts that occurred, as well as the verification of the physical existence of these facts, which were reminded of the appropriateness of taking control action and to examine the integrity of the legal adjustment described by the Department of Facts and the proportionality of the threat to public order and actions taken by administrative control authorities to confront freedom for restriction.

within the scope of limiting public rights and freedoms; The Court of Administrative Justice affirmed that: "Constitutional texts containing the rights and freedoms of individuals constitute a restriction on the legislative power itself, when regulating public rights and freedoms within the limits established by the Constitution; The Administrative Court states: "The Constitution has assigned the rights and duties of Egyptians to a special door; It is one of the most important provisions of the Constitution Committee, and it was intended that, as the report of the Constitution Committee states, it should be a legal situation that has the rule of the Constitution, above and above ordinary laws, and a restriction on the Egyptian legislature that it may not exceed in its provisions<sup>(45)</sup>.

The Court of Administrative Justice has affirmed that: "The restrictions on freedom of opinion and expression must be expressly stipulated in the law, without prejudice to the freedom of expression of opinion from the original freedoms guaranteed by the Constitution and affirmed by international instruments; Its central importance in the modern State; The restrictions imposed on it must therefore be subject to the procedures required by law; The safeguards that surround them and their scrutiny and judgement; Let's go out at the end, expressing the will of the legislator, who makes a mistake or an impulse<sup>(46)</sup>.

<sup>(45)</sup> (32) Judgement of the Court of Administrative Justice in Appeal No. 587 of 5 p. Hearing 26 June 1951, First Circuit, Technical Office Group, Fifth Year, Principle 357, p. 1099.

<sup>(46)</sup> Judgement of the Court of Administrative Justice in Case No. 24105 of 73 RS, Session of 3 February 2019, 2nd District - Council of State of Cairo.

The Supreme Administrative Court also ruled that: "Constitutional documents are unanimous that freedom of expression is a fundamental right of a citizen; The right of a citizen to a public origin is his or her humanity, and being part of the nation's community does not limit his or her fundamental rights to which he or she should enjoy, but rather his or her enjoyment of these rights strengthens his or her faith in the homeland, becoming more connected and more deeply affiliated<sup>(47)</sup>. "

Finally, judicial protection reflects its role in realizing and operationalizing freedom of opinion and expression, making it genuine freedom - enjoyed by individuals and society - rather than formal, limited to legal texts, without actually resonating with it<sup>(48)</sup>

### **Conclusion:**

We found through the previous presentation of the guarantees of the judiciary in the protection of the rights and freedoms of individuals - in general - and freedom of opinion and expression in particular - that the judiciary plays a role in protecting the rights and freedoms of individuals, whether its rulings are represented in the rulings issued by the administrative judiciary or the constitutional judiciary, if it were not for the existence of the judiciary with its strict rulings, which worked to stand against any attacks in the face of the rights and freedoms of individuals, the individual would not enjoy his rights and freedoms - of all kinds - judicial rulings - in addition to many guarantees The decision on the rights and freedoms of individuals - including freedom of opinion and expression - worked to find the best ways and means to put the individual his rights and freedoms in front of him without there being a shortage of them, as well as worked to try to balance between the individual's exercise of his rights and freedoms and preserving the rights and freedoms of others by

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<sup>(47)</sup> Supreme Administrative Court judgement No. 25478 and 26851 of 59 CE, 17 November 2013.

<sup>(48)</sup> D. Hisham Farouk Mahmoud: Freedom to Express Opinion in the Light of Human Rights in International Law, op. cit., p. 187

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making the rights and freedoms of others the restriction at which a person's exercise of his rights and freedoms stands, so that the individual's exercise of his rights and freedoms is not a means of attacking the rights and freedoms of others.

So it was necessary for us to list the most important principles and provisions The judicial reached in this topic – Judicial Protection of Freedom of Opinion and Expression - showing us the most recent of these principles and fatwas, as well as the most important rights and freedoms that an individual can exercise in order to lead a healthy social and cultural life.

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