

The Effects of Supreme Constitutional Court Decision of Unconstitutionality Legislative Omission: A Comparative Study

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Abstract

This study aims to present the effects of ruling the unconstitutionality of legislative omission and the consequences that result from it. The methods of implementing this type of constitutional ruling by reviewing the role of the executive and judicial authorities in implementing the ruling of unconstitutionality of legislative omission and the role of the Supreme Constitutional Court in setting controls in its ruling that are considered Complementary to the text ruled unconstitutional due to legislative oversight. The study also aims to clarify the extent of the validity of the ruling unconstitutional of the legal text affected by the omission, the role of the legislative authority in activating the legal texts ruled unconstitutional due to legislative oversight, especially if the Supreme Constitutional Court does not establish controls, conditions, or standards that complement This text, and therefore

the failure of the legislative authority to intervene will lead to disruption of the implementation of the text. The study relied on two approaches to answer the main question of this study as well as its sub-questions: the comparative approach to compare Egypt, Italy, and Belgium in how to deal with the effects of the ruling of unconstitutionality due to legislative negligence and the content analysis approach to analyze the practices of the Supreme Constitutional Court in setting standards, controls, or conditions that it adds to the article that was ruled unconstitutional, as well as the practices of the trial court if the constitutional judge specified these conditions, or if he did not set it.

KEYWORDS *Constitutional Review, Unconstitutionality, Legislative Omission, Res Judicata.*

Introduction

The legislation of countries in the contemporary world has varied in its treatment of the judiciary's impact on the unconstitutionality of the contested legislative texts and whether this judiciary has relative authority concerning its parties or has absolute authority vis-à-vis everyone.¹ However, it can be said that the majority of contemporary legislation - especially in countries that have adopted the European model of constitutional control - has adopted the absolute validity of the ruling of unconstitutionality vis-à-vis all and all state authorities, and its effect extends to the date of entry into force of the contested legislative text, based on its concrete nature, for the constitutional lawsuit.²

Accordingly, ruling that a text in a law or regulation is unconstitutional entails that it cannot be applied from the day following

¹ See Zahra, Kilali. (2013). Legislative Omission and Constitutional Oversight on It, Master Thesis, Abi Bakr Belkaid University, Algeria; Shaban, Ramadan Desoky. (2021). The Judicial Review on the Legislative Omission: A Comparative Study, Doctoral thesis, Faculty of Law, Helwan University, Egypt.

² For more details, see Sólyom, László. (2003). The Role of Constitutional Courts in the Transition to Democracy: With Special Reference to Hungary, International Sociology, Volume 18, Issue 1; Shahat, Hossam Farhat. (2004). The Constitutional Protection for the Right of Equality: A Comparative Study, Doctoral thesis, Faculty of Law, Cairo University, Egypt; Shandy, Sawsan. (2017). The Administrative Judge's Authorities in Confronting and Filling the Legislative Deficiency in Administrative Law, a working paper submitted to the second scientific forum of the Arab Union for Administrative Judiciary under the title "The Administrative Judge's Authorities in Directing the Administration and Filling the Shortage of Legislative," Cairo, 8-9 October 2017, Working papers of the conference issued by the Arab Federation of Administrative Judiciary.

the date of publication of the ruling or decision in the Official Gazette or from the date determined by the court for its effects to take effect.³ The ruling issued by the constitutional judiciary regarding the constitutionality of this text will have general authority as absolute as the generality of the contested text itself, and it will be binding on all those addressed by this text, including all state authorities.⁴ This is given that the subject of the constitutional lawsuit relates to a general and abstract legislative text, whether contained in a law. This decision has the force of law, regulation, or a general regulatory decision.⁵

Therefore, the effect of the ruling issued by the Supreme Constitutional Court that a text in a law or regulation is unconstitutional is that this text cannot be applied from the day following the date of publication of the ruling in the Official Gazette unless the ruling specifies another date for its effectiveness.⁶ However, the constitutional judiciary has adopted methods of judicial oversight of the constitutionality of legislative omissions that would declare the omission unconstitutional without ruling to cancel or invalidate the contested legislative text.⁷ This

³ See Salman, Samir Daoud. (2019). Legislative omission and the possibility of imposing judicial review on it in Iraq, *Journal of the Faculty of Law, Al-Nahrain University*, Volume 21, Issue 4; Qasim, Mohamed Abdulhaleem. (2019). "The Monitoring of Legislative Omission by the Constitutional Judiciary, A Comparative Study," Doctor's thesis, School of Law, University of Reading, UK.

⁴ Salman, Abd Al-Aziz Mohamed. (2021). *Judicial Review of the Deficiencies of Legislative Regulation: A Jurisprudential Study Supported by All the Rulings Issued by the Supreme Constitutional Court*, Cairo, The National Center for Legal Publications, First Edition; Nassar, Gaber Gad. (2011). *Legislative performance of the People's Assembly and judicial review of the constitutionality of laws in Egypt*, Cairo, Dar Al-Nahda Al-Arabia.; Portuguese Report (2008) for the XIVth Congress of the Conference of European Constitutional Courts on "Problems of Legislative Omission in Constitutional Jurisprudence", Vilnius.

⁵ Melchior, Michel. & Courtoy, Claude. (2007) *L'omission législative dans la jurisprudence constitutionnelle*, Rapport établi pour la Cour constitutionnelle de Belgique, 4 décembre; Idris, Abd Al-Monsef. (2011) *Suitability Review in the Constitutional Judiciary: A Comparative Study*, Cairo, Dar Al-Nahda Al-Arabiya, First Edition.

⁶ For more details, see Hasan, Haider Mohamed. (2015). Processing Parliament's refusal to practice its legislative jurisdiction in positive law, *Journal of Al-Mohaqiq El-Haly for Legal and Political Sciences*, Baghdad, University of Babylon, Vol. 7, Issue 4; El-Gamal, Yahya. (2000). *The Constitutional Judiciary in Egypt*, Cairo, Dar Al-Nahda Al-Arabiya; Hasan, Haider Mohamed. (2015).

⁷ Halmai, Gábor. (2019). Dismantling Constitutional Review in Hungary, *Rivista Di Diritti Comparati*, No. 1; Melchior, Michel. & Courtoy, Claude. (2007); El-Sawy, Ali. (2003). *Legislative Formulation for Good Governance? A proposed framework for Arab countries*, A Research Paper Presented at a Workshop on

is done by limiting the ruling or decision of the Constitutional Oversight Authority to declaring the legislation unconstitutional in the parts that did not include the legislative organization required by the provisions of the Constitution, without declaring it completely invalid.⁸

Accordingly, the ruling or decision regarding the unconstitutionality of the legislative omission does not entail the removal of the legislative text tainted by the omission from the legal system, as is the case with the ruling issued as unconstitutional in general.⁹ Instead, it is considered a conditional ruling that entails adhering to the legislative text ruling the omission related to the legal system unconstitutional, provided that it is implemented in conjunction with the conditions, conditions, or controls that guarantee its constitutionality.¹⁰

Therefore, the effect resulting from the ruling issued by the constitutional oversight body that the text tainted by the defect of legislative omission is unconstitutional is not the same in all cases but rather depends on whether the legal rule or the cases mentioned by the constitutional oversight body in its ruling or decision were to bridge the gap of legislative omission. It has become more apparent in a way that

Developing a Model for Legislative Drafting for Arab Parliaments, Beirut, p. 3-6 February 2003; El-Din, Samy Gamal. (1986). *Necessity regulations and guarantees of judicial Review*, Alexandria, Munsha'at Almaearif.

⁸ Abdelkarim, Serry Harith. & El-Emara, Haidr Taleb. (2019). *The Social Influences of Legislative Omission*, Journal of Legal Sciences, Faculty of Law, Baghdad, University of Baghdad, Vol. 34, Issue 2; Aboelazm, Karem Sayed. (2021). *The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries*. International Journal of Public Law and Policy. 7(3), 187–203; AbdelRahman, Gawaher Adel. (2016). *The Judicial Review on the Legislative Omission: An Analytical Comparative Study*, Cairo, Dar Al-Nahda Al-Arabia.

⁹ Abboud, Sufian Ali. (2019). *Refusal of the Legislative Authority to Do Its Job*, Master Thesis, Faculty of Law, Alexandria University, Egypt; Aboelazm, Karem Sayed. (2024)a. *Supreme Constitutional Court Review of the Legislative Omission in Egypt in Light of International Experiences*, Heliyon.p.7; Al-Dughili, Salwa Fawzi. (2018). *Legislative Omission in the Constitutional Judiciary*, Mauritanian Journal of Law and Economics, Issue 25; Ali, Said El-Sayed. (1999). *The Fact of The Separation of Powers in the Political and Constitutional System in The United States of America*, Doctoral thesis, Faculty of Law, Ain Shams University, Egypt.

¹⁰ Aboelazm, Karem (2024)b *The Role of Judicial Review on the Settlement of State Contracts Disputes*, Corporate Law & Governance, 6(3) 122-134; Al-Murr, Awad. (2003). *Judicial Review of the Constitutionality of Laws and Regulations in Their Main Features*, Rene Jean Debuy Center for Law and Development; Belgilaly, Khaled. (2016-2017). *The discretionary power of the legislator: A Comparative Study*, Doctoral thesis, Faculty of Law and Political Science, Abi Bakr Belkaid University, Tlemcen, Algeria.

allows it to be enforced by itself or not.¹¹

Ruling as unconstitutional the provisions that the legislative text overlooked may result in implementing the legislative text tainted by the omission, coupled with the conditions, controls, or cases that the constitutional oversight body mentioned in its ruling or decision to avoid the defect of legislative omission.¹² This ruling may result in suspending the implementation of the contested legislative text, in whole or in part, until the legislator intervenes to remove the state of unconstitutionality that the Constitutional Oversight Authority has declared exists.¹³

Also, if the implementation of the contested text - after the issuance of the ruling that the legislative omission is unconstitutional - is possible, the ruling or decision of the constitutional oversight body may result in narrowing the scope of application of the contested text or expanding the scope of its application, according to the conditions or cases included in the ruling or decision—constitutional judge to purify the censored text from the defect of unconstitutionality.¹⁴

¹¹ Blondio-Mondoloni, Virginie. (2014) *Finances Publiques et Droits Fondamentaux, Essai sur les relations entre les finances publiques et les droits fondamentaux*, Thèse de doctorat, Université d'Aix-Marseille; Azawi, Abd Al-Rahman. (2011). *Criteria for the distribution of competence between the legislative and executive authorities (A comparative study in defining the scope of each of the laws and regulations in the Algerian political system) - Part One*, Algeria, Dar Al-Gharb for Publishing and Distribution.

¹² Al-Shimi, Abd Al-Hafiz. (2003) *The Review of Legislative Omission from the Supreme Constitutional Court - A Comparative Study*, Cairo, Dar Al-Nahda Al-Arabiya, Third Edition, 2003; Brewer-Carías, Allan R. (2011). *Constitutional Courts as Positive Legislators in Comparative Law*, In *Constitutional Courts as Positive Legislators: A Comparative Law Study*, Cambridge: Cambridge University Press; Csink, Lorant. & Pasczolay, Peter. (2008). *Hungarian National Report for the 14th Conference of Constitutional Courts on "Problems of Legislative Omission in Constitutional Jurisprudence"*, Vilnius.

¹³ Belgilaly, Khaled. (2017). *The negative jurisdiction of the legislator and constitutional review on it: A Comparative Study*, Journal of Al-Ostaz Al-Baheth for Legal and Political Sciences, Faculty of Law and Political Science, Mohamed Boudiaf University Bialmusalia, Algeria, Vol. 6; Arlittaz, Jordan. (2015) *L'incompétence négative à l'étranger*, Les nouveaux Cahiers du Conseil Constitutionnel, nr. 46; Al-Ghafloul, Eid Ahmad. (2003). *The Idea of Lack of Negative Jurisdiction for the Legislator (Comparative Study)*, Cairo, Dar Al-Nahda Al-Arabiya, Second Edition; Aboelazm, Kareem (2025) *The Judicial Constitutional Review for the Legislative Omission: A Comparative Study*, the Krytyka Prawa. Niezalezne Studia nad Prawem, 17(1), 316-336.

¹⁴ For more details, see Abdelkarim, Serry Harith. & El-Emara, Haidr Taleb. (2019); Abdel-Badi', Shadi Muhammad Salah. (2019) *The Limits of the Constitutional Judge's Review of the Legislator's Discretionary Power (Comparative Study)*, Cairo, Dar Al-Nahda Al-Arabiya.

Suppose the ruling regarding the unconstitutionality of the legislative text or one of its contents enjoys absolute authority vis-à-vis all state authorities. In that case, the question represents the main question of this study:

To what extent does the ruling issue regarding the unconstitutionality of legislative omission have the authority enjoyed by constitutional provisions in their general framework, and with the resulting necessity of adhering to the conditions, controls, or circumstances it stipulates, by all and all state authorities?

In addition to the main question of this study, there are two sub-questions, which are as follows:

- a. What problems hinder the implementation of rulings issued as unconstitutional by legislative omission by the executive and judicial authorities?
- b. How can the executive and judicial authorities address the problems that hinder the implementation of rulings issued as unconstitutional by legislative omission?
- c. What are the most critical repercussions of constitutional oversight of legislative oversight on the constitutional judiciary?

Methodology

This study relied on several approaches, such as the comparative approach, which compares the courts' practices in monitoring the constitutionality of laws in several countries, such as Italy, Belgium, and Egypt. It also relied on the embedded analysis approach to analyze the rulings issued by the various constitutional courts. To determine its treatment of the effects of implementing the ruling of unconstitutionality of the legislative omission by extracting the rules contained in its provisions, which are considered an integral part of the operative part of the ruling of unconstitutionality. On the contrary, it is considered complementary to the legal ruling that is ruled unconstitutional due to legislative omission. The exact last approach was also used to analyze the judicial trends of the trial court in cases of applying the text ruled unconstitutional due to legislative oversight and to determine the authority of the trial judge in his implementation of the ruling of the Supreme Constitutional Court and the rules and conditions it established that are considered complementary to the text ruled unconstitutional, in addition to confronting it and setting rules if the constitutional provision does not include these conditions or controls.

The system of constitutional oversight stipulated in the Constitution

of the Republic of Portugal is characterized by a high degree of complexity¹⁵ due to the different types of oversight it includes. There is what is known as prior or preventive supervision and other abstract or subsequent supervision. Finally, there is an oversight of the constitutionality of the legislative omission.¹⁶

Results and Discussion

The Effect of the Ruling of the Unconstitutionality of the Legislative Omission about the Legislative Text Affected by the Omission

There is no doubt that it is not possible to enforce the effect of the ruling issued on the unconstitutionality of the legislative omission and to implement the requirements of the text in question unless the restriction or condition upon which the constitutionality of the legislative text is attached is sufficiently explicit, such that it allows the state authorities to implement the text directly about the conditions or conditions specified by the authority.¹⁷ Constitutional oversight. However, suppose these conditions or restrictions are not clear and specific. In that case, the enforcement of the contested legislative text after the issuance of the court's ruling will depend on a suspensive condition, which is the legislator's intervention by amending the text to complete the constitutional requirements stated in the ruling.¹⁸

¹⁵ See Al-Janabi, Munaf Fadel. (2022). The Constitutional Judge's Review of Legislative Abstinence, Cairo, Dar Al-Nahda Al-Arabiya.; See Al-Turkmani, Omar Hamza. (2022). The Oversight Jurisdiction of the Palestinian Constitutional Court on Legislative Abstinence, "A Comparative Analytical Study," Journal of Sharia and Law, United Arab Emirates University, Year 36, Issue 91.

¹⁶ See Qasim, Mohamed Abdulhaleem. (2019).

¹⁷ See Abdullah, Fahd Youssef. (2023). The Situation of the Constitutional Court in Kuwait Regarding the Oversight of the Constitutionality of Legislative Omission, "A Rooting Analytical Comparative Study," Journal of Law for Legal and Economic Research, Faculty of Law, University of Alexandria, Volume 1, 2023, Issue 1; Al-Janabi, Munaf Fadel. (2022). The Constitutional Judge's Review of Legislative Abstinence, Cairo, Dar Al-Nahda Al-Arabiya.

¹⁸ Ali, Said El-Sayed. (1999); Al-Najjar, Muhammad Emad. (2010). In Judging the Unconstitutionality of Legislative Omission (Judicial Unconstitutionality Conditional), Egypt, Al-Dusturiyyah Magazine, No. 17, Year 8; Al-Sanhouri, Abd Al-Raziq. (1992) Violation of the Legislation to the Constitution and Deviation in the Use of the Legislative Authority, Journal of Law and Economics (Special Issue: Articles and Researches of Prof. Dr. Abd Al-Raziq Al-Sanhouri), Faculty of

Accordingly, the effect of the ruling issuing the unconstitutionality of the legislative omission on the contested legislative text is limited to two matters: either stopping the application of the text entirely until the legislator intervenes by establishing the system or introducing the cases or conditions that were omitted by the contested text, or implementing the contested legislative text coupled with the conditions.¹⁹ Alternatively, the constitutional oversight body mentions the cases in the ruling or its decision regarding this text. This will be discussed in the following two points.²⁰

A. Suspending the Application of the Text of the Legislative Article Tainted by the Defect of Omission

The constitutional oversight body may suffice by specifying the essential conditions that the contested text overlooked in a general, qualitative manner without limiting their details to avoid entering the scope of the legislator's discretionary authority, as this authority requires choosing between different alternatives, which fall outside the judge's constitutional powers.²¹ Hence, the constitutional judge intends to include the origin of the restriction, which is unknown. He leaves the details of its provisions to the legislative authority entrusted with legislation, meaning that the constitutional judge decides to declare the text subject to censorship unconstitutional and does not refer to the rule or standard that is derogated or missing, on which the constitutionality of the text depends, but instead refers to the general principle that must be restored.²² This text was drafted according to his guidance without

Law, Cairo University, Part One.

¹⁹ Azawi, Abd Al-Rahman. (2011); Idris, Abd Al-Monsef. (2011); Portuguese Report (2008).

²⁰ Qasim, Mohamed Abdulhaleem. (2019); Al-Dulaimi, Ahmed Oudah. (2018). "From Negative to Positive Legislator? Response to Unconstitutional Legislative Omission as a Case Study in the Changing Roles of Constitutional Courts", Thesis of Doctor, School of Government & International Relations, Griffith University, Australia, Queensland.

²¹ Aboelazm, Karem Sayed. (2021). The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries. *International Journal of Public Law and Policy*. 7(3), 187–203; Al-Sayed, Abeer Hussein. (2009). *The Role of the Constitutional Judge in Supervising the Discretionary Power of the Legislator - A Comparative Study*, Cairo, Dar Al-Nahda Al-Arabiya, 2009.

²² Blondio-Mondoloni, Virginie. (2014); Bustamante, Thomas. & Bustamante, Evanila de Godoi. (2011) *Constitutional Courts as Negative/Positive Legislators:*

specifying detailed rules or provisions.²³

Consequently, some of the rulings regarding the unconstitutionality of legislative omissions cannot be enforced unless the court reveals that the legislator had neglected them, except after the legislator intervenes by amending the text.²⁴ This is when the court has identified the areas of omission but has not addressed or thoroughly clarified the overlooked legal rule.²⁵ It allows itself to be enforced and instructs the legislator to address it. In this regard, the court did not acquit the contested text of the defect of violating the Constitution so that it continues to be enforced, and it did not label it as unconstitutional and loses its binding force. Instead, the text is in a state between this and that, and its enforcement after the issuance of the constitutionality ruling is contingent on a suspensive condition, which is the legislator's intervention by amending the text.²⁶ The text is to complete the constitutional requirements outlined in the ruling, which is what is known as the provisions that host the principles.²⁷

In other words, in the ruling issued regarding legislative omission, the constitutional judge may not state the rule or standard that guarantees the constitutionality of the contested legislative text but somewhat clarifies the principle that this text should revolve around, leaving the legislator the freedom to choose the appropriate alternative to regulate this issue, provided that this organization is respected, according to the principle indicated by the constitutional judge.²⁸

An example of this is the ruling of the Italian Constitutional Court in Case No. 560 of 1987 that the first paragraph of Article 21 of Law No. 990 issued on December 24, 1969, regarding compulsory insurance for liability for damages resulting from automobile and boat accidents, as amended by Law No. 39 issued on February 26, 1977, is unconstitutional.

The Brazilian Case, in BREWER-CARÍAS, Allan (ed.), *Constitutional Courts as Negative Legislators*. Cambridge: Cambridge University Press; Csink, Lorant. & Pasczoly, Peter. (2008).

²³ Arlittaz, Jordan. (2015).

²⁴ Al-Murr, Awad. (2003); Al-Aboudi, Mohsen. (2010). *Security Measures and Their Repercussions on the Personal Freedoms of Individuals*, Security Information Center, Police College, Egypt, 2010; Al-Dughili, Salwa Fawzi. (2018). *Legislative Omission in the Constitutional Judiciary*, Mauritanian Journal of Law and Economics, Issue 25; For more details, see Abdelkarim, Serry Harith. & El-Emara, Haidr Taleb. (2019).

²⁵ See Zahra, Kilali. (2013).

²⁶ Shahat, Hossam Farhat. (2004).

²⁷ Melchior, Michel. & Courtoy, Claude. (2007).

²⁸ Idris, Abd Al-Monsef. (2011); Hasan, Haider Mohamed. (2015).

This is due to what it included in specifying the scope of responsibility of the Road Accident Victims Guarantee Fund to a maximum of 15 million liras for each injured person and 25 million liras for each accident, without specifying a mechanism for amending these financial limits. In Case No. 270 of 1990, the court also held that clause (3) of the first paragraph of Article 4 of the Working Mothers Protection Law No. 1204 issued on December 30, 1971, was unconstitutional in that it did not include specifying compulsory maternity leave in the event of premature birth.²⁹

Likewise, the Arbitration Court in Belgium held that the legislator must determine the form, circumstances, and procedures under which parental authority may be extended for the child's benefit to include other persons unrelated to the child by lineage. This is based on the fact that, according to the text of Article 365 bis of the Civil Code, parental authority cannot be granted to persons who are not related to the child by lineage, and that this would lead to the possibility of the child losing his right to obtain the necessary care from the person who raised him, including the right to alimony and protection.³⁰ This is if the spouses separate, as well as in the case of the death of the child's parents, and the court concludes that this category of children is treated differently without acceptable justification. The legislator must determine the form, circumstances, and procedures under which parental authority may be granted to persons unrelated to the child by lineage.³¹

This also includes the ruling of the Egyptian Supreme Constitutional Court in one of its rulings "that the text of Clause (3) of (Second) of Article (75) of Law No. 90 of 1944 regarding judicial fees and documentation fees in civil matters is unconstitutional, as it did not include setting controls." Furthermore, objective foundations for the system of investigating the actual value of lands intended for construction located on the outskirts of cities and collecting a fee for the increase that appears in this value...".³²

In this case, the Supreme Constitutional Court did not specify in its ruling the foundations and controls that make the investigative system a

²⁹ Italian Report (2008) for the 14th Congress of the Conference of European Constitutional Courts on "Problems of Legislative Omission in Constitutional Jurisprudence", Vilnius.

³⁰ Al-Dulaimi, Ahmed Oudah. (2018); Qasim, Mohamed Abdulhaleem. (2019); Aboelazm, Kareem Sayed. (2021). The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries. *International Journal of Public Law and Policy*. 7(3), 187–203.

³¹ Portuguese Report (2008).

³² Judgment of the Supreme Constitutional Court in Case No. 109 of the 33rd Constitutional Judicial Year, May 6, 2017.

constitutional system, and therefore, the text ruled unconstitutional remains suspended and ineffective, as the state authorities cannot implement the omitted text until the legislator intervenes by issuing a new legislative text that includes A set of controls and objective foundations that ensure the compatibility of the investigative system with the provisions of the Constitution.³³

The constitutional judge's ruling that the legislative omission is unconstitutional may not result in halting the application of the contested legislative text completely but halting only some of the provisions in this text. An example of this is the ruling of the Egyptian Supreme Constitutional Court: "First: the unconstitutionality of the second paragraph of Article 103 of the Income Tax Law promulgated by Law No. 157 of 1981 amended by Law No. 187 of 1993, in what it included authorizing the Tax Authority not to take into account the declaration and determining revenues and profits by estimation. Without setting controls or criteria for this assessment..."³⁴

Some jurisprudence has held that the legislative text in the cases referred to becomes suspended under the ruling of the constitutional judge for not specifying the nature of the substantive conditions imposed and their details until the legislator intervenes to clarify the details of the restrictions imposed. If he refrains from interfering, the text becomes suspended and may not be implemented.³⁵

The ruling of the Supreme Constitutional Court in the first case referred to requires that the constitutionality of determining the value of agricultural lands and the supplementary fees due on them remain dependent on the legislator's legislative intervention to establish the foundations and controls of the system for investigating the value of

³³ Eldeen Sayed MN, Aboelazm K, Al Shraideh S and Dganni KM, 'Forced Sexual Sterilisation of Persons with Disabilities: Between International Obligations and National Implementation: A Comparative Study' (2025) 8(4) Access to Justice in Eastern Europe 275-300. <https://doi.org/10.33327/AJEE-18-8.4-a000138>; Abdullah, Fahd Youssef. (2023); Abu Halima, Emad Muhammad. (2015). Judicial Review over the discretionary power of the legislator: A Comparative Study, Cairo, Dar Al-Nahda Al-Arabiya.

³⁴ Judgment of the Supreme Constitutional Court in Case No. 229 of the Constitutional Judicial Year 29, May 12, 2013.

³⁵ Khater, M., Aboelazm, K.S., Imad, D., Chami, Y., and Aly, H., 'The Role of Assistive Technology in Reinforcing the Rights of Persons with Disabilities to Employment from a Legal Perspective', International Journal of Law and Management, (2025). <http://dx.doi.org/10.1108%2FIJLMA-04-2025-0151>; Al-Aboudi, Mohsen. (2010); Sólyom, László. (2003); Shaban, Ramadan Desoky. (2021).

those lands.³⁶ If the legislator does not establish those controls and foundations, assessing the value of agricultural land through the investigation mentioned in the text mentioned above is invalid.³⁷

Also, in the second case, even if the court's ruling does not result in completely stopping what is included in the text but rather stopping the application of one of the legislative provisions contained in this text only, the case of unconstitutionality arising from legislative negligence relates, which is the ruling of not taking into account the taxpayer's tax return and determining revenues and profits. Own by estimating appreciation; However, it remains unconstitutional for the IRS to waste the tax return submitted by the taxpayer and calculate the tax with its knowledge. This is until the legislator intervenes to put the ruling of unconstitutionality into effect by stating the foundations and controls that the authority must adhere to when the taxpayer's approval is wasted. The taxpayer's revenues and profits are re-estimated.³⁸

Therefore, the ruling issued by the Supreme Constitutional Court declaring the existence of an unconstitutional legislative omission allows the concerned parties to argue before the judge of the matter for the invalidity of the assessment of taxes or supplementary fees due to their being based on the arbitrary assessment system or the investigation system, or for the waste of the declaration submitted by the taxpayer without the existence of objective controls for that, which was decided. All of them are unconstitutional if the legislator does not intervene by clarifying the controls and foundations on which the constitutional judge suspended the constitutionality of legislative provisions.³⁹

However, given that the constitutional provisions do not only address the legislative authority but also address the ordinary courts entrusted with implementing the law, as well as the authorities charged with implementing its provisions, and that the provisions hosting the principles include directives or general principles that are also sent to ordinary judges to be guided by them during the application of the law with the aim

³⁶ Aboelazm, Karem Sayed. (2024)b.; Arlrtaz, Jordan. (2015); Nassar, Gaber Gad. (2011).

³⁷ Shaban, Ramadan Desoky. (2021); Qasim, Mohamed Abdulhaleem. (2019); Abdullah, Fahd Youssef. (2023).

³⁸ For more details, see Abdelkarim, Serry Harith. & El-Emara, Haidr Taleb. (2019).

³⁹ Al-Turkmani, Omar Hamza. (2022). The Oversight Jurisdiction of the Palestinian Constitutional Court on Legislative Abstinence, "A Comparative Analytical Study," Journal of Sharia and Law, United Arab Emirates University, Year 36, Issue 91; Al-Sanhouri, Abd Al-Raziq. (1992); Al-Najjar, Muhammad Emad. (2010).

of... To fill the gap resulting from the ruling that the text is unconstitutional, it is permissible for the bodies charged with implementing or applying legislative texts that are tainted by omissions to use these texts on the condition that they find objective controls that enable them to estimate the tax or fee objectively or allow them to waste the declaration submitted by the taxpayer based on accurate controls, by following all means available to them to reach The actual value of the tax or fee base, in a way that fulfills the constitutional requirements for the right contained in the omitted text, making its estimate an objective estimate by the provisions of the Constitution, based on the absolute authority enjoyed by the rulings issued as unconstitutional.⁴⁰

The implementation of the texts mentioned above shall be under the supervision of the trial judge, who must apply the general principles referred to by the constitutional judge to the individual cases presented to him to determine the extent to which the authorities charged with implementing the law adhere to those principles.⁴¹ All of this is until the legislative authority intervenes to amend these texts, establishing the controls and foundations that the Supreme Constitutional Court revealed are necessary to guarantee the constitutionality of the text ruled unconstitutional due to its omissions.⁴²

The judge of the matter does not have the luxury of refraining from applying the provisions of legislative texts tainted by omissions on the pretext that the legislator did not intervene to enforce the effects of the ruling issued as unconstitutional of the legislative omissions. Instead, he must search for the general principles of the law and the rules of justice to enable him to implement this text by considering the foundations, rules, and controls. Referred to by the constitutional oversight body; otherwise, he will be deemed to have committed the crime of denying justice.⁴³

B. Implementing the Omitted Text in Conjunction with the Conditions or Conditions Specified by the Constitutional

⁴⁰ Al-Shimi, Abd Al-Hafiz. (2003); Nassar, Gaber Gad. (2011).

⁴¹ Hasan, Haider Mohamed. (2015); El-Gamal, Yahya. (2000); Halmai, Gábor. (2019).

⁴² Shahat, Hossam Farhat. (2004); Azawi, Abd Al-Rahman. (2011); Al-Ghafloul, Eid Ahmad. (2003).

⁴³ Al-Aboudi, Mohsen. (2010); Al-Dughili, Salwa Fawzi. (2018). Legislative Omission in the Constitutional Judiciary, Mauritanian Journal of Law and Economics, Issue 25.

Judge

Constitutional oversight of legislative omissions has a varying effect regarding the restriction that the ruling of the constitutional judge introduces into the legislative text, whether narrow or broad. When the constitutional oversight body rules that what is not included in the text of guarantees required by the provisions of the Constitution is unconstitutional, it has narrowed the scope of implementing the authority that the legislator included in the legislative text. However, if the constitutional defect lies in distinguishing a case from similar cases related to it, the legislator assigned it a specific right, neglecting the rights of its counterparts. The oversight authority ruled that this text was unconstitutional because it omitted similar cases related to the text decided upon, and the effect of this ruling is to expand the scope of the application. The contested text: If the text of the law specifies men, not women, with an equal right, then ruling that it is unconstitutional to omit women from the provision to enjoy the right that was established for men leads to expanding the scope of that text to apply to both sexes.⁴⁴

Therefore, the provisions that the constitutional judge resorts to address legislative omissions may work to narrow the scope of the provision contained in the censored text or expand the scope until it meets its constitutional requirements. In both cases, a ruling is issued regarding the constitutionality of the edited text. Although these two cases are united in that the basis of unconstitutionality is the omission, they differ in location and impact on the scope of the contested text. In the first case, the omission was related to restricting a mechanism that the legislator stipulated in absolute terms, so the ruling introduced an objective restriction into the content of this meaning. It is represented in the guarantees that the Constitution surrounds those addressed with these provisions, which leads to narrowing the implementation of this text. As for the second case, the ruling introduced another case that was not present in the text, and the implementation of the provisions of the Constitution required keeping both cases together or negating them. If the oversight authority ruled to include the omitted case in the text, this would extend the provisions to cases that the legislator had not regulated in response to the provisions—the Constitution entails expanding the scope of application of the legislative text.⁴⁵

If it becomes clear to the constitutional oversight body that there is

⁴⁴ AbdelRahman, Gawaher Adel. (2016); Ali, Said El-Sayed. (1999); Brewer-Carías, Allan R. (2011).

⁴⁵ Idris, Abd Al-Monsef. (2011); Halmai, Gábor. (2019); See Zahra, Kilali. (2013).

an unconstitutional legislative omission related to the contested text. Then, it decides to address this omission and sets forth specific and self-applicable conditions to consolidate the constitutionality of the legislative text under review; then, all state authorities will be faced with a new legal situation.⁴⁶ The merging of the conditions stated by the court in the legislative text and their union together to form one new text, and the legislator, in this case, remains not required to correct the *res judicata* texts or to introduce the subject of omission into the legislative text. Suppose he wants to eliminate these restrictions or conditions that have been merged in the *res judicata* text. In that case, he has no choice but to intervene by cancelling this text, so the conditions set by the court will be invalidated.⁴⁷

Accordingly, some of the rulings issued regarding the unconstitutionality of legislative omissions cause a shift in the meaning of the legal text whose constitutionality is being challenged without affecting the wording of this text by partially determining the text of the law to be unconstitutional, either by restricting the basic scope of the legislative text or by expanding this scope.⁴⁸ This is in cases where the basic scope of the legislative text is broader or narrower than it should have been according to the provisions of the Constitution. In other words, some of the rulings regarding the unconstitutionality of omission restrict the basic scope of the law, while others expand this scope.⁴⁹

Some of the rulings regarding the unconstitutionality of legislative omission narrow the scope of application of the contested legal text.⁵⁰ Its application is limited to specific cases or conditions the constitutional oversight body determines in its decision or ruling. Others may expand the scope of application of the legal text to include cases that were not explicitly stated in the wording of the text but rather are implicitly understood through the text in the implementation of the rules of the Constitution, as follows:

B.1. Expanding the Scope of Application of

⁴⁶ Haji, Gaber Mohamed. (2012) *The Judicial Policy for the Constitutional Supreme Court: A Comparative Study*, Cairo, Dar Al-Nahda Al-Arabia, First Edition; Melchior, Michel. & Courtoy, Claude. (2007).

⁴⁷ Salman, Abd Al-Aziz Mohamed. (2021).

⁴⁸ Salman, Abd Al-Aziz Mohamed. (2021); Qasim, Mohamed Abdulhaleem. (2019).

⁴⁹ Portuguese Report (2008); Arlittaz, Jordan. (2015).

⁵⁰ Al-Ghafloul, Eid Ahmad. (2003); Sólyom, László. (2003); Abboud, Sufian Ali. (2019). *Refusal of the Legislative Authority to Do Its Job*, Master Thesis, Faculty of Law, Alexandria University, Egypt.

the Omitted Legislative Text

Ruling that the omissions included in the legislative text are unconstitutional may result in extending the scope of application of the legislative text to cases not provided for by the legislator, which were mentioned in the constitutional judge's ruling that the omissions were unconstitutional. That is, expanding the scope of applying the contested legislative text to cases similar to the one stipulated. The legislator distinguished between similar cases related to each other, defining some of them and neglecting others, so the constitutional judge ruled this text unconstitutional in what he overlooked of similar cases related to the decided text. Then, this judiciary has to extend the provisions of the legislative text to similar cases that were not regulated. The legislator, if the implementation of the provisions of the Constitution, requires keeping both cases together or denying them both and, in other words, extending the scope of application of the legislative text to cases not stipulated in it in addition to the cases specified in it.⁵¹

This is what the Supreme Constitutional Court explained by saying, "... ruling that the Article mentioned above 71 is unconstitutional in terms of restricting the addition of the additions and additional periods stipulated in Articles (8) and (9) of this law to civil servants in the state and the public sector exclusively, It leads automatically and without the need for legislative intervention to the equality of the plaintiffs addressed by its provisions in the field of their use of the rights guaranteed to them, and if the Constitution originally authorized the legislative authority to enact legal texts, considering that this is within the scope of the natural circle of its activity, it does not protect it from being subject to judicial oversight. The Supreme Constitutional Court exercises its constitutionality, and it is a supervision whose goal is to nullify what violates the Constitution, even if it is in terms of the rights that it implicitly squandered, whether its violation of them was intentional in the first place or occurred by accident...".⁵²

An example of this is also the ruling of the Supreme Constitutional Court: "First: that the text of Clause 2 of Article 106 of the Social Insurance Law No. 79 of 1975 is unconstitutional. Second, the text of Clause 4 of Article 112 of the law, as mentioned earlier, is unconstitutional in what it did not include regarding the husband's right to combine his pension." On behalf of his wife and his pension as a

⁵¹ Abu Halima, Emad Muhammad. (2015).

⁵² The ruling of the Supreme Constitutional Court in Case No. 31 of the Constitutional Judicial Year 17, January 2, 1999.

beneficiary of the provisions of this law, as well as combining his retirement on behalf of his wife with his income from work or profession, without limits”.⁵³

Implementing the effect of this ruling requires expanding the scope of the contested legislative text to include the husband’s right to combine his pension from his deceased wife and his own retirement in his capacity as a beneficiary of the provisions of Social Security issued by Law No. 79 of 1975, as well as his right to combine his pension from his wife with his income from work or profession without A maximum limit, in comparison with what the legislator decided of the wife’s right to combine her pension from her deceased husband with her own retirement, in a capacity excluding the provisions of the aforementioned law, and between her retirement from her dead husband and her income from her work without a maximum limit, after the legislator had deprived the widowed husband of This right, which results in adding cases to the legislative text that the legislator had not included in it, which leads to expanding the scope of application of the legislative text to apply to cases that the legislator did not fit in it, as a direct effect of the aforementioned Constitutional Court ruling.⁵⁴

Therefore, the Administrative Court concluded that “... and in light of what the Supreme Constitutional Court concluded in its ruling issued in Case No. 83 of the Constitutional mentioned above Judicial Year 22, the husband has the right to combine his pension, income, or profession with his wife’s pension, without any limits.” Of the two pensions, and therefore, in accordance with this, the plaintiff has the right to combine his retirement with his wife’s pension without restriction or condition, and hence what the defendant body did in accordance with its letter No. 504260 dated 09/23/1997, which included that the plaintiff was not entitled to his wife’s pension based on Article 106 of The Social Insurance Law referred to, which is ruled unconstitutional, as previously listed by the ruling of the Constitutional Court in Case No. 83 of the Constitutional Judicial Year 22, and therefore its basis is a text whose enforcement force has been revoked, obliging the court to refrain from applying it in implementation of the absolute validity of the ruling of the Constitutional Court mentioned above, which must be With it is a ruling that the plaintiff has the right to combine his pension with the pension of his deceased

⁵³ The ruling of the Supreme Constitutional Court in Case No. 83 of the Constitutional Judicial Year 22, December 14, 2003.

⁵⁴ Al-Janabi, Munaf Fadel. (2022); Al-Sayed, Abeer Hussein. (2009).

wife, with the consequences that arise from that”.⁵⁵

This also includes the ruling of the Supreme Constitutional Court “that the third paragraph of Article 11 of Law No. 48 of 1946 regarding the endowment provisions is unconstitutional in terms of the limited prohibition of revocation or change in the endowment of the mosque in the beginning or in what it was endowment on in the beginning, excluding the church...”.⁵⁶ based on the fact that “Endowment Law No. 48 of 1946 has prohibited, according to the contested text, the return or change of the endowment of the mosque in the beginning or of what it was initially endowed with without the church adding to this ruling despite It is equal to the mosque in that each of them is a house of worship designated for the practice of religious rituals, and therefore unjustified discrimination has been established in this area, violating the principle of equality stipulated in Article 40 of the Constitution”.⁵⁷

Implementing the effect of the court mentioned above ruling requires that the verdict decided by the legislator in the Endowment Provisions Law No. 48 of 1946 prohibiting revocation or change in the endowment of the mosque in the beginning or in what it was endowment upon in the beginning should be extended to the church as well, which results in the impermissibility of reverting the endowment of the church in the beginning, which is Which leads to expanding the scope of the contested legislative text to include a situation not stipulated in it, which is the case of reverting the endowment of the church to its equality with the mosque in that each of them is a house of worship designated for the practice of religious rituals. Thus, the court has extended the scope of application of the legislative text to a situation that did not explicitly exist in this text, which results in expanding the scope of this text when applied by the judicial authority or implemented by the executive authority.⁵⁸

The Supreme Constitutional Court also ruled that “the text of Clause 2 of the third paragraph of Article 11 of Law No. 107 of 1987 amended by Article 7 of Law No. 30 of 1992 is unconstitutional in what it did not include regarding the exception of pensions due in accordance with Article 31 of the Social Insurance Law promulgated by Law No. 79 of

⁵⁵ The ruling of the Administrative Judicial Court in Case No. 1379 of Judicial Year 53, October 29, 2007.

⁵⁶ The ruling of the Supreme Constitutional Court in Case No. 162 of the Constitutional Judicial Year 21, March 18, 2004.

⁵⁷ The ruling of the Supreme Constitutional Court in Case No. 162 of the 21st Judicial Year Constitutional, March 18, 2004.

⁵⁸ Qasim, Mohamed Abdulhaleem. (2019); Melchior, Michel. & Courtoy, Claude. (2007); Bustamante, Thomas. & Bustamante, Evanila de Godoi. (2011).

1975, on the condition that the total pension does not exceed the maximum limit of the total pension of the basic and variable employees..."⁵⁹; This is based on the fact that "...the discretionary authority possessed by the legislator in the field of regulating rights may in no way lead to discrimination between similar legal positions that are determined according to objective conditions through which citizens are equal before the law, and the legislator had issued Law No. 107 of the year 1987 amending some provisions of the Social Insurance Law, stipulating in Article 11 the increase in pensions that are due as of 07/01/1987 in the cases referred to therein, specifying the provisions that apply to them, as it was stipulated in Clause 2 of those provisions that this increase is due in addition to The maximum limits for pensions are such that the total pension does not exceed the maximum limit for the total pension of basic and variable employees, excluding from this provision the pensions due in accordance with Article 31 of the Social Insurance Law. However, the legislator, when he issued Law No. 30 of 1992 to increase pensions, changed his previous approach and was not exempt from The rule for the maximum sum of the basic and variable pensions of pensioners settled by Article 31 of the Social Insurance Law, despite the similarity of the legal positions for both groups, considering that they all had their pensions settled based on their holding the position of minister or deputy minister. Stipulating that whoever was referred to retirement as of 07/01/1992 to benefit from the provisions of Article 7 thereof, by increasing his pension in the proportion specified by it, the pension should not exceed the maximum limit of the sum of the basic and variable pensions of the two employees, thereby demonstrating an arbitrary distinction between two categories in violation of the text of Article 40 of the Constitution, as One of these categories had its members retired before 07/01/1992. The last two had their members reach retirement age after that date without any distinction between these categories being based on objective grounds. The first category was allocated insurance rights represented in increasing their pension without a maximum limit and withholding this increase from the second category, as long as the members of these two categories had their pensions settled by the provisions of Article 31 of the Social Insurance Law promulgated by Law No. 79 of 1975, and this should have been guaranteed to ensure parity in rights between them. They are regulated by unified rules that do not discriminate between those addressed in their

⁵⁹ The ruling of the Supreme Constitutional Court in Case No. 146 of the Constitutional Judicial Year 26, March 11, 2007.

field of application”.⁶⁰

Therefore, implementing the effect of this judiciary is to expand the scope of application of the text of Clause 2 of the third paragraph of Article 11 of Law No. 107 of 1987, amended by Article 7 of Law No. 30 of 1992 to include all pensioners that were settled by Article 31 of the Social Insurance Law, whether they were referred To retirement before or after 07/01/1992, and therefore pensioners who were referred for retirement after 07/01/1992 benefit from the ruling to increase the pension without a maximum limit, in implementation of the effect of the Constitutional mentioned above Court ruling.⁶¹

B.2. Narrowing the Scope of Application of the Legislative Text that is Tainted by Omission

The ruling of the unconstitutionality of the omission may lead to narrowing the scope of application of the contested legislative text by limiting it to cases and by the conditions stated in the ruling of unconstitutionality.⁶² The legislator may stipulate the right of the administration to investigate its employees in certain circumstances and neglect to specify a guarantee. Essential requirements required by the provisions of the Constitution guarantee the integrity of this investigation and the attainment of its purpose and objectives.⁶³ When the court rules that this text is unconstitutional, given that it does not contain the guarantees required by the provisions of the Constitution for the validity of this investigation, it will have narrowed the scope of implementation of the investigative authority granted to the administration by the legislator, and thus the narrowing From the scope of application of the text by adding restrictions on the authority of investigation.⁶⁴

An example of this is the ruling of the Supreme Constitutional Court: “First, that the text of Article 25 of the Law Organizing the State Litigation Authority No. 75 of 1963 is unconstitutional, and second: that the text of the third paragraph of Article 26 of the law mentioned above is unconstitutional, in what it did not include regarding the obligation to hear

⁶⁰ The ruling of the Supreme Constitutional Court in Case No. 146 of the Constitutional Judicial Year 26, March 11, 2007.

⁶¹ Shaban, Ramadan Desoky. (2021).

⁶² Abdullah, Fahd Youssef. (2023); Al-Sanhouri, Abd Al-Raziq. (1992); Haji, Gaber Mohamed. (2012).

⁶³ Italian Report (2008); Portuguese Report (2008).

⁶⁴ Salman, Abd Al-Aziz Mohamed. (2021); Blondio-Mondoloni, Virginie. (2014).

the member's statements at the stage of Investigation..."⁶⁵; The court relied on the fact that "...the Constitution's guarantee of the right to defense, has been established as one of the fundamental pillars of the rule of law, guaranteeing the justice of the judicial dispute, and in a way that preserves its value, and it falls under it that the decision in it should not be far from its evidence, or denying the right to abort it by confronting it." By destroying the documents and statements of witnesses, the structure of the dispute is an assault on the rights of one of the opponents, but rather an equal opportunity between them in proving or denying it to highlight its facts and connect with all its elements. Whenever this is the case and the text of the third paragraph of Article 26 of the Commission's law is Except for what makes it necessary to hear the statements of the member referred to the investigation, its content is in a vacuum, and an accusation may not be based on it".⁶⁶

The result of this judiciary is to limit the scope of the administration's authority to investigate a member of the State Cases Authority so that every investigation in which the statements of the member referred to investigation are not heard is invalid.⁶⁷ It may not be relied upon to prove the accusation against the member referred to the investigation. Thus, the ruling of the Constitutional Court is The Supreme mentioned above court has narrowed the scope of application of the text of the third paragraph of Article 26 of the Law Organizing the State Litigation Authority promulgated by Law No. 75 of 1963 so that the validity of the investigations conducted by the provisions of this text depends on hearing the statements of the member of the authority referred for investigation.⁶⁸

In this regard, the Supreme Constitutional Court also ruled "the unconstitutionality of the text of Article 23 of the Customs Law issued by Presidential Decree No. 66 of 1963, in what it did not contain regarding the necessity of giving reasons for the Customs Authority's decision to introduce data related to the value of imported goods recorded in documents, contracts, correspondence and invoices submitted by the owner." The goods..."⁶⁹.

⁶⁵ Judgment of the Supreme Constitutional Court in Case No. 162 of the 19th Constitutional Judicial Year, March 7, 1998.

⁶⁶ The ruling of the Supreme Constitutional Court in Case No. 162 of the 19th Constitutional Judicial Year, March 7, 1998.

⁶⁷ Al-Najjar, Muhammad Emad. (2010).

⁶⁸ Al-Ghafloul, Eid Ahmad. (2003).

⁶⁹ Judgment of the Supreme Constitutional Court in Case No. 159 of the Constitutional Judicial Year 20, October 13, 2002.

The effect of this ruling is that the Customs Authority may not present the data and documents submitted by the owner of the goods to indicate their value subject to customs tax without explaining the reasons on which they based their submission, which leads to narrowing the scope of the authority that the legislator decided for the Customs Authority in the text referred to in Re-estimating the value of the goods subject to tax, and thus the aforementioned judiciary limits the circumstances of applying the contested legislative text⁷⁰, so that the right of the Customs Authority to present the documents submitted by the owner of the goods is coupled with the necessity of explaining the reasons for submitting these documents; If the Authority presents the data and documents submitted to it without explaining the reasons that prompted it to raise them, and the concerned party resorts to the competent judge to challenge the Customs Authority's estimate, which wasted the documents submitted by him, the judge is obligated to cancel the Customs Authority's estimates in accordance with the aforementioned ruling of the Supreme Constitutional Court.⁷¹

The Validity of the Ruling Issued Regarding the Unconstitutionality of the Legislative Omission and the Problems of its Implementation

The question arises about the binding force of the ruling issued regarding the unconstitutionality of the legislative omission vis-à-vis the public authorities, especially the legislative basket, in light of the absence of a legal mechanism to force them to abide by the ruling issued regarding the legislative omission, and in particular if the constitutional judge does not intend to address this omission itself.⁷² This is if the judge merely reveals the legislative omission and leaves it to the legislative authority to address it. Can the legislative authority re-address the legislative issue again, ignoring the ruling or decision of the constitutional judge regarding the legislative omission?

The question also arises about the extent to which the ruling on the unconstitutionality of the legislative omission is binding for the executive and judicial authorities when implementing or applying the legislative text

⁷⁰ Al-Shennawy, Walid Muhammad. (2017). The Role of Constitutional Courts as Positive Legislators (A Comparative Analytical Originality Study), Journal of Legal and Economic Research, Faculty of Law, Mansoura University, Issue 62.

⁷¹ For more details, see Abdelkarim, Serry Harith. & El-Emara, Haidr Taleb. (2019).

⁷² Al-Aboudi, Mohsen. (2010); Al-Shimi, Abd Al-Hafiz. (2003).

that included the unconstitutional legislative omission, especially if the legislative authority does not intervene to address the omission that the constitutional judge revealed and does not intervene to address it.⁷³ Can the executive and judicial authorities implement the effects of the unconstitutional ruling without waiting for Parliament to intervene? This will be discussed in the following two points:

A. The Authority of the Ruling Issued Regarding the Unconstitutionality of the Legislative Omission

A ruling of unconstitutionality entails the necessity of the state authorities committing to implement it. The legislative authority is obligated to repeal the text ruled unconstitutional and must replace it with a new text consistent with the provisions of the Constitution if it deems there is a reason for the existence of this text. Suppose the ruling of unconstitutionality includes the entire text of the law. In that case, it must approve a new law to replace it and work to prevent exposure to the dangers of the legislative vacuum that may result from that.⁷⁴

The legislative authority is one of the state's authorities, which is responsible for enacting legislation under the umbrella and within the framework of the provisions of the Constitution. Therefore, it is responsible for abolishing and replacing unconstitutional legislative texts with other texts. The role of the legislative authority in implementing rulings issued by the constitutional judiciary is essential, especially in implementing rulings issued regarding the unconstitutionality of some legislative texts. It must approve new legislative texts by the provisions of the Constitution instead of texts ruled unconstitutional, especially if the ruling of unconstitutionality leads to the creation of a legislative vacuum, as Parliament has an obligation to fill this vacuum to avoid the legal problems it raises.⁷⁵

The ruling on a legislative text's unconstitutionality regarding what it omitted or did not contain obligatory legal provisions depends on conditions set by the constitutional judge, which include overcoming areas of constitutional flaw. Therefore, it may be necessary to approve legislative texts with legal rules that correct the constitutional flaw in the legislative text. This aims to avoid the legislative vacuum resulting from

⁷³ Al-Murr, Awad. (2003); Shandy, Sawsan. (2017).

⁷⁴ Idris, Abd Al-Monsef. (2011).

⁷⁵ Sólyom, László. (2003).

the ruling issued as unconstitutional.⁷⁶

However, the intervention of the legislative authority in implementing rulings issued by the constitutional judiciary is not specific, especially in implementing rulings issued regarding legislative omissions.⁷⁷ This is given that the constitutional judge does not amend the text before him and enforce the effect of its unconstitutionality but instead seeks to implement this text accompanied by the requirements of its conformity with the provisions of the Constitution. Therefore, the impact of the ruling that the legislative omission is unconstitutional is to exclude the implementation of the part of the legislative text ruled unconstitutional, regardless of the conditions that guarantee its compatibility with the provisions of the Constitution. This ruling has its effect and is effective against the legislative authority, even if it does not intervene with legislative approval to implement the effects of the unconstitutional ruling.⁷⁸ Constitutionality, given that this ruling has the same validity and enforceability as other constitutional provisions and has the same effects as rulings issued as unconstitutional.⁷⁹

Accordingly, if the constitutional judge sets specific conditions that are applicable on their own without legislative intervention, then all state authorities will be faced with a new legal situation as a result of the merging of the conditions upon which the rescinded text of its constitutionality attaches to the positive text and their union together.⁸⁰ This is a direct result of the absolute validity of the rulings issued as unconstitutional, including the rulings issued as the unconstitutionality of legislative omission, and all state authorities must commit to implementing the legislative text coupled with the conditions included in the ruling of the constitutional judge; The normative ruling or decision issued by the constitutional oversight body has absolute authority and sets a rule that must be followed in general until a legislative act is issued that regulates the issue in question.⁸¹ In essence, these provisions lift a restriction decided by the legislator or give effect to a text that chooses to restrict freedom or right to one group and no other groups, violating the constitutionally established principle of equality.⁸²

⁷⁶ See Zahra, Kilali. (2013).

⁷⁷ Al-Dughili, Salwa Fawzi. (2018). Legislative Omission in the Constitutional Judiciary, Mauritanian Journal of Law and Economics, Issue 25.

⁷⁸ Aboelazm, Karem Sayed. (2024)b.

⁷⁹ Al-Turkmani, Omar Hamza. (2022).

⁸⁰ Al-Dulaimi, Ahmed Oudah. (2018).

⁸¹ Belgilaly, Khaled. (2017).

⁸² Halmai, Gábor. (2019).

For example, the ruling of the Supreme Constitutional Court in Egypt considers “the unconstitutionality of the first paragraph of Article 71 of the State Civil Workers Law promulgated by Law No. 47 of 1978, and Clause No. 1 of this paragraph in that they limit the scope of application of their provisions to performing the Hajj without visiting a home.” What is sacred to the Christian worker is the religion”⁸³; A judiciary that is self-executing and does not require legislative intervention. Given that the authorities competent to implement the text mentioned above are informed of the validity of this ruling, they must, therefore, grant the Christian worker leave to visit Jerusalem with the same controls by which they give Hajj leave to the Muslim worker, in terms of duration, nature of the leave, and its effects.⁸⁴

This is what the Supreme Constitutional Court ruled on within the scope of controlling legislative negligence by stating that “... ruling the unconstitutionality of Article 71 referred to in what it contained regarding the limitation of adding additions and the additional periods stipulated in Articles (8) and (9).” This law applies exclusively to civil servants in the state and the public sector, which leads automatically and without the need for legislative intervention to the equality of the plaintiffs who are addressed by its provisions in the field of their use of the rights guaranteed to them, and if the Constitution initially granted the legislative authority the jurisdiction to enact legal texts, considering that this is within the scope of The natural circle of its activity, however, does not protect it from being subject to judicial oversight carried out by the Supreme Constitutional Court regarding its constitutionality. This oversight aims to nullify what violates the Constitution, even if it is in terms of the rights it implicitly squandered, whether its violation was intentional to begin with or occurred by accident. ...”⁸⁵

The Supreme Constitutional Court reaffirmed this approach with its ruling issued in 2016, “..., and since the argument made by the State Litigation Authority that the Supreme Constitutional Court does not have jurisdiction to hear the present case, it is rejected, firstly: that the plaintiff has revealed that he does not seek, with his claim, anything other than simply ruling that the article is unconstitutional.”, which was not included in the regulation of special leave, so its revocation would necessarily and without the need for legislative intervention lead to equality with civil

⁸³ The ruling of the Supreme Constitutional Court in Case No. 153 of the Constitutional Judicial Year 32, February 4, 2014.

⁸⁴ Hasan, Haider Mohamed. (2015).

⁸⁵ The ruling of the Supreme Constitutional Court in Case No. 31 of the Constitutional Judicial Year 17, January 2, 1999.

servants in the state who are granted special leave without restriction. Secondly, it is rejected that the Constitution, even if it initially gave the legislative authority the jurisdiction to approve legal texts, considers this within the natural scope of its activity. Still, agreeing to these texts does not protect them from being subject to judicial oversight carried out by the Supreme Constitutional Court regarding their constitutionality. This oversight aims to invalidate what violates the Constitution, especially those related to the rights that it implicitly neglected. Whether its violation was intentional, to begin with, or occurred accidentally...".⁸⁶

Nevertheless, what if the Supreme Constitutional Court did not specify the conditions or controls necessary to guarantee the constitutionality of the omission-tainted text and merely set them in a general, qualitative manner without limiting their details, and then the legislative authority refrained from approving the legal texts that include the controls, foundations, or standards necessary to guarantee the constitutionality of the omitted legislative text?

An example of this is the Supreme Constitutional Court's ruling in one of its rulings "that the text of Clause (3) of (Second) of Article (75) of Law No. 90 of 1944 regarding judicial fees and documentation fees in civil matters is unconstitutional, as it did not include setting controls and objective foundations." For the system of investigating the actual value of lands intended for construction located on the outskirts of cities and collecting a fee for the increase that appears in this value...".⁸⁷

Some jurists have argued that if the legislator does not intervene to avoid the unconstitutionality revealed by the Supreme Constitutional Court in the omission-tainted legislative text or if he intervenes by deciding a new legislative text that carries the same principles included in the text ruled unconstitutional, then the concerned parties have the right to resort to the court.⁸⁸ The Supreme Constitutional Court shall immediately decide on the constitutionality of this new legislation, as it is one of the obstacles to implementing the ruling of unconstitutionality.⁸⁹

Others also held that if the executive authority refrains from adhering to the ruling issued by the Supreme Constitutional Court and the controls contained therein, then the concerned parties may file an enforcement dispute lawsuit directly before the court to waste the tax or fee estimate

⁸⁶ The ruling of the Supreme Constitutional Court in Case No. 47 of the 31st Constitutional Judicial Year, March 14, 2016.

⁸⁷ Judgment of the Supreme Constitutional Court in Case No. 109 of the 33rd Constitutional Judicial Year, May 6, 2017.

⁸⁸ Azawi, Abd Al-Rahman. (2011); Aboelazm, Karem Sayed. (2024)a.

⁸⁹ See Salman, Samir Daoud. (2019).

that the administration concluded based on the omission-tainted text.⁹⁰ This is based on the validity of the Supreme Constitutional Court ruling.⁹¹

Given the previous two opinions, it can be said that the unfavourable position of the legislative authority not to intervene legislatively, or its legislative intervention with new rules that include the same conditions that existed, or the refusal of the executive authority to implement the text coupled with the objective foundations and controls necessary for the legitimacy of its estimates of the tax or supplementary fee, does not constitute an obstacle.⁹² Among the implementation challenges that require invoking the jurisdiction of the Supreme Constitutional Court related to implementation disputes, given that the ruling issued as unconstitutional remains effective against all state authorities. The authorities charged with implementing it can create controls, foundations, or standards that guarantee the constitutionality of the legislative text once they exercise their authority established in this text.⁹³

Also, the person responsible for implementing the effect of the ruling of unconstitutionality is the judge of the matter - not the Supreme Constitutional Court - who must verify the availability of the foundations, controls, or objective standards referred to by the Supreme Constitutional Court to guarantee the constitutionality of the legislative text affected by the omission. If they are not available, he must... It shall invalidate the administrative action based on the legislative text to which the related legislative omission was ruled unconstitutional. If he does not do so, the concerned party may appeal this ruling before the Constitutional Court under the pretext of an implementation dispute, considering that the ruling of the trial judge is the one that represents an obstacle to implementing the ruling of the Supreme Constitutional Court.⁹⁴

The subject courts - which are entrusted with applying the rulings of the Supreme Constitutional Court in the disputes before them - can also rely on the court's ruling in the judiciary to invalidate the decisions issued in the implementation of the legal provisions contained in the omitted legislative text, and compensate for these decisions, which the legislator left without amendment that includes their compliance with the provisions of the Constitution as follows, which was announced by the court.⁹⁵

⁹⁰ Ibid.

⁹¹ See AbdelRahman, Gawaher Adel. (2016).

⁹² Belgilaly, Khaled. (2016-2017); Arlrtaz, Jordan. (2015).

⁹³ Csink, Lorant. & Pasczolay, Peter. (2008).

⁹⁴ Brewer-Carías, Allan R. (2011).

⁹⁵ See El-Din, Samy Gamal. (1986).

Therefore, the legislative authority's failure to intervene by issuing legislation to implement its constitutional obligation or its refusal to address the legislative omission that the Constitutional Court revealed violated the provisions of the Constitution justifies individuals' resorting to the competent judiciary to compensate them for the damages they suffered as a result of the legislative authority's negative behavior. The subject courts can also impose the jurisdiction of the Constitutional Court on the disputes brought before it.⁹⁶

Applying this, the Supreme Administrative Court ruled it had no qualitative jurisdiction to consider the appeal. It referred it to the First Circuit of the Administrative Judicial Court for jurisdiction, based on the fact that "...the Supreme Constitutional Court ruled at the 03/11/2018 session in Case No. 125 of the 35th Constitutional Judicial Year that the text of the article was unconstitutional." 104 of State Council Law No. 47 of 1972, which was replaced by Law No. 50 of 1973, regarding the limitation of jurisdiction to consider requests and disputes related to members of the State Council to one level. This ruling was published in the Official Gazette on 11/13/2018. In implementing this judiciary, The Special Council for Administrative Affairs of the State Council unanimously agreed at its session held on Monday, 01/28/2019, with its authority under the Council mentioned above law. First, implementing the provisions of this ruling does not require legislative intervention. Second: The jurisdiction of the Administrative Judiciary Court - Circuit. The first - is to consider lawsuits for member affairs that are brought in its inception, taking into account that this court has general jurisdiction over all administrative disputes and that the first circuit is the one that has jurisdiction to hear disputes that do not fall within the jurisdiction of other circuits. Third: the jurisdiction of the first circuit in the Supreme Administrative Court to hear appeals against rulings. Which are issued in the cases referred to in Clause Second, and that this department is the one that has jurisdiction to hear disputes that do not fall within the jurisdiction of other court departments".⁹⁷

Thus, the Supreme Administrative Court has implemented the ruling of the Supreme Constitutional Court issued in the session of 03/11/2018 in Case No. 125 of the 35th Constitutional Judicial Year, stating that the text of Article 104 of the State Council Law No. 47 of 1972, which was replaced by Law No. 50 of 1973, was unconstitutional in terms of the

⁹⁶ Abdel-Badi', Shadi Muhammad Salah. (2019).

⁹⁷ The ruling of the Supreme Administrative Court in Case No. 74677 of the 64th Supreme Judicial Year, July 31, 2019.

limitation of jurisdiction it included. To consider requests and disputes related to members of the State Council on a single level over the disputes submitted to it, without waiting for the legislator to intervene to give effect to the ruling of the Supreme Constitutional Court mentioned above.⁹⁸

In this regard, the Supreme Constitutional Court decided that "...here it is clear that there is no need to say that the implementation of rulings issued in constitutional matters will not be possible without legislative intervention as previously explained, because in addition to refraining from implementing judicial rulings by officials Failure to implement its provisions is considered a crime punishable by law, according to Article 72 of the Egyptian Constitution. Ignoring rulings issued in constitutional matters or failing to implement them is reduced to denying their absolute validity and constitutes the element of error in the responsibility for which the right to compensation is based on the availability of its elements, without prejudice. The right to require the implementation of this court's ruling in particular whenever possible. Both matters - compensation and restitution - are entrusted to the trial court alone, and every interested party, even if he is not a party to the constitutional lawsuit, may resort to it to satisfy the rights that have been suspended or restricted by the legislative text ruled unconstitutional, and That he submits his request for its case before the subject court, which itself undertakes to impose the ruling of the Supreme Constitutional Court on it to repel the consequences of aggression against it. This is because the ruling of the Supreme Constitutional Court regarding whether the contested legislative texts agree with the Constitution's provisions or contradict them reveals their validity since its issuance or is decided. It is invalidated, and its effectiveness is nullified as of its entry into force. Thus, it is considered to definitively specify the legal rules necessary to decide the substantive dispute, which the trial court must apply to the factual elements it has obtained, provided that this application is without modification of the content, as this is considered an implementation of the ruling of the Supreme Constitutional Court and a commitment to its dimensions, and to the implementation of Its impact on all people without discrimination, and by subjecting the state to its content without restriction".⁹⁹

Accordingly, if the constitutional courts do not have a legal tool to force Parliament to intervene to address the legislative omission ruled

⁹⁸ El-Sawy, Ali. (2003); Aboelazm, Karem Sayed. (2024)b.

⁹⁹ The ruling of the Supreme Constitutional Court in Case No. 7 of 14, implementation dispute, June 19, 1993.

unconstitutional, Parliament's failure to intervene legislatively to avoid the omission represents a waste of the ruling issued as unconstitutional. It is dissolved in a denial of its absolute validity, which constitutes the element of error in the responsibility that the right to compensation is based on the availability of its components. It is permissible for the concerned party - even if he is not a party to the constitutional lawsuit - to resort to the judge of the matter to satisfy the rights that were suspended by the legislative text that was ruled unconstitutional due to the legislative omission related to it, and who himself undertakes to bring the Constitutional Court's ruling on these rights to restore them. The aggression against him.¹⁰⁰

B. Problems in Implementing the Ruling that the Legislative Omission was Unconstitutional

The ruling issued by the Supreme Constitutional Court - that the contested legislative text is unconstitutional, or that the case is rejected declaring the constitutionality of the text and purifying it of the suspicion of unconstitutionality attached to it - has absolute authority against all and binds all state authorities¹⁰¹, so the courts may not then refer to the constitutional issue. To the court again and not to accept a plea of unconstitutionality due to the same defect the court had previously ruled on.¹⁰²

Given that the executive authority is responsible for implementing judicial rulings in general, whenever they are enforceable, it is the authority entrusted with enforcing the rulings issued by the constitutional judiciary. The verdict issued as unconstitutional creates an obligation against the executive authority to implement its provisions by not relying on the text ruling that it is unconstitutional if it was one of the texts of one of the regulations, and a new text consistent with the provisions of the Constitution was replaced instead.¹⁰³

However, if the text is ruled unconstitutional, it is one of the texts of the legislation. It is obligated to refrain from implementing it, and it can

¹⁰⁰ The ruling of the Supreme Constitutional Court in Case No. 7 of the year 14, implementation dispute, June 19, 1993.

¹⁰¹ El-Gamal, Yahya. (2000).

¹⁰² Aboelazm, Karem Sayed. (2021). The Constitutional Framework for Public Policy in the Middle East and North Africa (MENA) Countries. *International Journal of Public Law and Policy*. 7(3), 187–203.

¹⁰³ Ali, Said El-Sayed. (1999).

prepare a draft law that avoids the constitutional defect and submit it to Parliament for approval. The courts and bodies with judicial jurisdiction are obligated to implement this ruling by not relying on the legislative text stipulating its unconstitutionality. They may not apply it to any lawsuits presented to them from the day following the publication of the ruling in the Official Gazette or from the day determined by the Constitutional Court for its entry into force excitement.¹⁰⁴

On the other hand, the implementation of the effects of the rulings issued by the Supreme Constitutional Court on constitutional matters falls within the jurisdiction of the subject courts, based on the fact that the subject court is the one that decides on the facts before it. The Supreme Constitutional Court's ruling is the primary premise for determining the substantive dispute. Hence, it is entrusted with implementing the provisions of the law in light of the rulings of the Supreme Constitutional Court, which requires, as a general principle, resorting to those courts to properly implement the effects of the rulings issued in constitutional matters.¹⁰⁵

Suppose the Constitutional Court decides to intervene to address the unconstitutional omission of the contested legislative text and determines the conditions that guarantee this text's constitutionality.¹⁰⁶ In that case, the executive and judicial authorities are confronted with a new legal situation resulting from the merger of the conditions or conditions stated by the constitutional oversight body in the contested legislative text. These two authorities may not implement or apply this legislative text after issuing the constitutional judge's ruling except after considering these conditions or those conditions in implementing the absolute authority enjoyed by the rulings issued as unconstitutional.¹⁰⁷

Therefore, these two authorities must implement the effects of the ruling issued not to implement the text tainted by the omission, even if the legislative authority does not intervene to enforce the effects of the verdict by addressing the case of the unconstitutional omission. Subject courts must also refrain from applying the omission-tainted text apart from the conditions or cases stated by the constitutional oversight body. Given that the rulings issued on constitutional issues are not merely opinions whose purpose is to enrich legal thought but instead are given to implement their effects, which is what the trial court undertakes when it

¹⁰⁴ Nassar, Gaber Gad. (2011).

¹⁰⁵ Shahat, Hossam Farhat. (2004); Sólyom, László. (2003).

¹⁰⁶ Qasim, Mohamed Abdulhaleem. (2019); Shaban, Ramadan Desoky. (2021).

¹⁰⁷ Shaban, Ramadan Desoky. (2021); Al-Dulaimi, Ahmed Oudah. (2018).

decides the dispute before it in light of what the constitutional oversight body ruled.¹⁰⁸

Accordingly, the ruling issued as unconstitutional regarding omitted provisions included in the legislative texts enjoys the same validity as the unconstitutional ruling vis-à-vis all state authorities. By this ruling, they are obligated not to apply this unconstitutional part unless they verify that the conditions that guarantee the elimination of the causes are met. Unconstitutionality, and therefore the effect of the judiciary, is unconstitutional unless the text suspends its constitutionality on fulfilling the requirements of adjudicated unconstitutionality.¹⁰⁹

Therefore, the failure of one of the state authorities to enforce the conditions on which the constitutionality of the legislative text is suspended results in the same legal effects that result from refraining from implementing the rulings of the Supreme Constitutional Court, including the criminal effects resulting from the public employee's refusal to implement the court's ruling. This also allows the court to consider the failure of any of these authorities to enforce the provisions of this ruling, considering it a dome that fulfills its mandate related to implementing its rulings.¹¹⁰

Recognizing that the rulings issued regarding the unconstitutionality of legislative omissions have the same validity as the rulings issued regarding unconstitutionality in general and that they are binding on all and all state authorities, the Egyptian Court of Cassation concluded that "...the field of oversight of constitutional legitimacy is not limited to the rights that the legislator has directly violated." guaranteed by the Constitution, but it also addresses what the legislator has neglected or neglected of these rights. Whenever the legislator's regulation of one of these rights is deficient in a way that makes it not in the complete form that guarantees the effectiveness of exercising this right, this deficiency violates constitutional protection, which is called judicial oversight of deficiencies. Legislative text or omission control, meaning the legislator neglected to state some rules in the legislative text in a manner that violates the controls and restrictions provided by the Constitution, making this omission a violation of the Constitution...".¹¹¹

¹⁰⁸ Al-Dulaimi, Ahmed Oudah. (2018); Qasim, Mohamed Abdulhaleem. (2019).

¹⁰⁹ Qasim, Mohamed Abdulhaleem. (2019); Al-Dulaimi, Ahmed Oudah. (2018); Shaban, Ramadan Desoky. (2021).

¹¹⁰ Al-Shimi, Abd Al-Hafiz. (2003); Al-Turkmani, Omar Hamza. (2022); Arlirtaz, Jordan. (2015); Belgilaly, Khaled. (2017); See Zahra, Kilali. (2013).

¹¹¹ Court of Cassation ruling in Case No. 44 of Judicial Year 73, September 29, 2004.

Conclusion

The fears surrounding constitutional oversight of legislative oversight cannot be denied if the constitutional judge exceeds the scope of this oversight and intrudes into legislation within the legislative authority alone, creating many defects in the relationship between the constitutional judiciary and the legislative authority. Whereas the constitutional ruling enjoys absolute authority against all state authorities, the effect of ruling the unconstitutionality of legislative omission is considered one of the forms of constitutional oversight. The ruling of the unconstitutionality of a legislative omission may result in the suspension of the legislative text tainted by the defect of omission. It may result in the implementation of this text but in conjunction with the conditions and cases determined by the constitutional judge to guarantee its constitutionality and the resulting expansion or narrowing of the scope of application of this text. On the other hand, the validity of the ruling that the legislative omission is unconstitutional extends to the public authorities in the state, including the executive, legislative, and judicial authorities, but some problems may hinder its implementation. Despite these problems, it is implemented in the face of all authorities, even if the legislative authority does not intervene to put into effect the effects of the ruling that the legislative omission is unconstitutional.

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Acknowledgment

No financial support or many other parties have been involved in the research.

Funding Information

None

Conflicting Interest Statement

The authors state that there is no conflict of interest in the publication of this article.

History of Article

Submitted : July 4, 2024

Revised : July 8, 2025

Accepted : July 17, 2025

Published : November 17, 2025