

# Public Prosecution role before the Supreme Federal Tribunal of Iraq: A Comparative Study

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## Abstract

The Iraqi legislature regulated the provisions of the Public Prosecution Service by a special law. Among the tasks entrusted to it is to challenge after the constitutionality of the laws and regulations in force before the Federal Supreme Court, article 5 (11) thereof. In view of the important and effective role played by the Public Prosecution Service in preserving the Constitution and protecting the fundamental rights and freedoms of individuals, it requires categorical provisions in its evidence of the role of the Public Prosecution Service in challenging unconstitutionality, as the above text did not indicate the mechanism by which the Public Prosecution Service submits its appeals. Moreover, the Iraqi Federal Supreme Court Law No. 30 of 2005, as amended, and subsequently the rules of procedure of the Court No. 1 of 2005, did not include an explicit reference to the role of the Public Prosecution Service in challenging unconstitutionality, in the sense that there is a legislative shortcoming to indicate the status of the Public Prosecution Service before the Federal Supreme Court. The researcher proposes to address this problem and respond to the questions raised by specifying the constitutional and legal scope of the role of the Public Prosecution Service in initiating constitutional proceedings in Iraq and the comparative countries, and clarifying this by referring to the relevant Federal Supreme Court jurisprudence.

**Keywords :** Public Prosecution, Constitutional Case, Federal Supreme Court.

## Introduction

In view of the important role assigned to the Public Prosecution Service in Iraq under its Law No. 49 of 2017 in protecting the state system and its security, safeguarding the supreme interests of the people, preserving the state and public sector funds, supporting the federal democratic system and protecting its foundations and concepts within the framework of respecting legality and the rule of law, and this is what was expressed in Article (2) of the Public Prosecution Law, in addition to what was decided in his jurisdiction to challenge the unconstitutionality of laws and regulations before the Federal

Supreme Court, which was expressed in Article(5), paragraph (11) of it, and therefore requires us to put the two aforementioned texts under study to examine the purpose of their legislation and determine the reasons for the intervention of the Public Prosecution and the intervention mechanisms to assess the experience as a whole as a guarantee of Iraqi human rights.

## Research Problem

The topic raises more than one problem that can be identified as follows:

- 1- The legislative deficit that was required by the Federal Supreme

Court Law No. (30) of 2005 amended if it did not refer to the status of the Public Prosecution and its duties and rights before the Federal Supreme Court, despite the important impact in strengthening the provisions of the constitutional judiciary in protecting the supreme interests of the state and the rights and freedoms of individuals.

- 2- The legislative deficiency included in the statutes of the Federal Supreme Court No. (1) of 2005, if it indicates in Article (15) that the court may charge the public prosecution to express its opinion in writing within the period specified by the court, and that text contains several observations. 3 - The Public Prosecution Service in Iraq is competent to monitor the legal rules issued by the parliament or the government if they violate the constitution and turn to the democratic principle, and this function was authorized by the Iraqi legislator in Article(5/11) of the current Public Prosecution Law, but the most important question is how does this control move? What is the scope of this control? In other words, is the Public Prosecutor satisfied with the violations of the laws and regulations of the Constitution that he discovers during the performance of his job? Or can he hear complaints from citizens directly against legal texts?

## METHODOLOGY

The research will rely on a number of research methods to integrate them for the purpose of reaching its goal, we will rely on the inductive analytical approach by analyzing the texts of the Public Prosecution Law No. 49 of 2017 to determine its role and characteristics within the limits of the research, and we use the

deductive analytical approach to analyze some decisions of the Federal Supreme Court to determine the role of the Public Prosecution in moving the constitutional case or not with regard to our research, and we adopted the approach of comparing a number of constitutional documents and complementary laws, including the Constitution of the Republic of Iraq of 2005, the Constitution of Spain of 1978 amended, and the Constitution of the United Arab Emirates of 1971 amended.

## Research Plan

With the aim of fully covering the subject and distributing ideas, we thought to divide this research into two topics. In the first topic, we deal with the definition of the public prosecution service, the constitutional case, and we divided this topic into two requirements. In the first, we explained the concept of the public prosecution, and the second topic, the constitutional case and the role of the public prosecution in it. As for the second topic, we dealt with the status of the public prosecution in moving the constitutional case, and we divided this topic into two demands as well. In the first, we dealt with the methods of moving the constitutional case. As for the second, we dealt with the conditions for accepting the constitutional case, and then we finished the research with a conclusion that summarizes our conclusions, and we proposed some recommendations .

## Section I:

### The concept of public prosecution and constitutional action

Legislation differed in regulating the functions of the public prosecution service, some of which were limited to the criminal and civil lawsuit, while others went to more than that and gave the public prosecution the right to challenge the unconstitutionality of the laws and regulations in force, and this is what Iraq took into account in the Public Prosecution Law No. (49) of 2017 in view

of the importance of this agency and considering it part of the system of achieving justice and the guarantor of the supremacy of the constitution and the preservation of rights and freedoms. We will divide this section into two requirements: the first is the definition of the public prosecution and the second is the constitutional case and the role of the public prosecution in it.

### **The first requirement**

#### **Definition of the Public Prosecution**

In order to study and organize any organ by law, it is necessary to define this organ and the basic principles on which it is based, and the definitions of this organ have varied due to the different nature of the tasks in which its members are assigned in comparative legislation, so we will address the linguistic and terminological definition of the public prosecution in two branches as follows:

#### **Section One**

##### **Language Definition**

The prosecution is a composite of two words: one of which is described, and that is the prosecution. The other is an adjective, which is the general. Knowing what this composite word is depends on knowing what each part is, as follows:

The **claim**: On the weight of (fabrication), which is a source (claim, claim, claim), and the claim is a saying intended to affirm the human right against others, and the name of it is (a lawsuit) on the weight of (an act), and I claimed the thing I claimed for me rightly or falsely, and I claimed the thing I wished for, and I claimed it for myself, and the Arabs say (claim to me what you want), and it is said in this matter a lawsuit and suits, and I claimed against someone like that, and the name of the lawsuit, which is a saying

by which man asks to prove a right against others.

**Public**: The name of an actor who is an uncle, uncle, general, it is public, and public: against the private, and uncle of the thing: made public, and the most general: a lot of people, the uncle of the thing in general included the group, it is public, and we circulated our command to you, we imitated you. The year put one situation for many, unconfined, and took all that was right for him. is generalized, i.e. blackened, and he is the master who is imitated by the people and resorted to by the public.

## **Part 2**

### **Glossary Definition**

The provisions of the Iraqi Public Prosecution Law and comparative legislation did not include a definition of the Public Prosecution, and it was limited to regulating its functions, competencies and formations, organizing the affairs of its members, determining its legal status, and gave way to jurisprudence that differed in its definition, due to the difference in nomenclature in legal systems and comparative laws, so some of them focused on several members, while several other department is an organ or body, and we will address some of those definitions for the Public Prosecution as follows:

Part of the jurisprudence defines the public prosecution as "an organ of the judiciary whose task is to apply the law well and monitor decisions and judgments in line with the protection of the public right as a representative of the social body", and it is also defined as "a judicial body that deputizes for the community in cases of public right, starting from its activation until the implementation of

penalties on the perpetrators of crimes and contribute to their rehabilitation, and the protection of criminal legitimacy by exercising the supervisory role of monitoring the integrity of procedures, decisions and judicial decisions and their compliance with the provisions of the law", and it is also defined as "a large-scale legal building that represents and defends society in the event of assault in any form of assault in accordance with the laws specified by the legislator".

From the above, we can define the Public Prosecution Service in Iraq as "an organ of the judiciary that represents society in filing a lawsuit against the public right of action and the protection of public order and the interests of society, attends civil cases to which the State is a party, and intervenes in personal status cases to protect the family and children in accordance with the law, and to preserve public rights and freedoms by challenging the unconstitutionality of laws and regulations."

### **Sub-section II**

#### **Constitutional action and the role of the prosecution in it**

Since the constitutional rules determine the system of government, establish the three powers, determine their competencies, indicate the way in which they exercise these competencies, and set the intellectual or philosophical basis on which the system of government in the state is based, it has resulted in their highness and superiority over other legal rules from the substantive point of view <sup>(1)</sup>, in addition to the fact that the procedures for amending the constitution are more severe than the procedures for developing and amending ordinary laws, for static constitutions, and this is what makes the constitutional rules of formal supremacy.

In order to take note of the situation, we will address this requirement in two sections as follows: -

### **Section 1**

#### **Concept of constitutional action**

The constitutional and legal legislation in Iraq and the comparative countries did not give a definition of the constitutional case, and the reason for this is that it is not the task of the legislator to develop a definition of the terms and indicate what they are, but the matter is left to jurisprudence, which in turn directed the constitutional case to several definitions.

Some jurisprudence has defined a constitutional case as " a lawsuit filed before a competent court formed under the constitution, which is competent to verify the conformity of legislation, whether it is laws in the strict sense issued by the legislative authority or regulations issued by the executive authority, and whether it is ordinary or has the force of law with the provisions of the constitution", and it is also defined as " every lawsuit related to a matter of the constitution, which is filed before the competent constitutional court in the state".

The constitutional lawsuit was defined as " a constitutional means of the jurisdiction of the constitutional courts with the aim of protecting fundamental rights and freedoms". It is noted in this definition that it does not mention the body that has the right to file the constitutional case, in addition to being limited to the protection of fundamental rights and freedoms without the rest of the objectives of the constitutional case.

After reviewing the doctrinal definitions of the constitutional claim and in view of the difference between them, we can define the constitutional claim as" a case

in rem filed by the right holders before the competent Constitutional Court directly or by way of subsidiary defense, to demand the cancellation of the legislation contested by its constitutionality, whether they are private or public stakeholders".

By extrapolating the previous definitions of the constitutional case, we find that it has several characteristics that distinguish it from the rest of the lawsuits. It is a case in kind filed against texts that violate the provisions of the Constitution, and its direct objective is not to meet the demands of individuals because the legitimate justification for the existence of this control is mainly to ensure the improvement of the performance of institutions in the state, and to uphold and protect rights and freedoms, as well as it is an independent lawsuit, which is filed before the competent Constitutional Court once the contested law comes into force, it is not an incidental or subsidiary lawsuit, but an independent lawsuit.

## Part 2

### The role of the Public Prosecution in the constitutional process

The role of the Public Prosecution in Iraq is to monitor the legitimacy and proper application of the law and through it the supreme interests of the people are protected as a representative of society, in addition to "supporting the federal democratic system and protecting its foundations and concepts within the framework of respect for legality and respect for the application of the law, and contributing to the protection of the family and childhood", especially after the Iraqi legislator added a new task for the Public Prosecution, which is to challenge the constitutionality of laws and regulations before the Federal Supreme Court to enable it to play a greater role in protecting the constitution and the

democratic system and preserving fundamental rights and freedoms.

Clearly, the Federal Supreme Court Law No. (30) of 2005 as amended, as well as its bylaws No. (1) of 2005, did not refer to the role of the public prosecution to challenge the constitutionality of the laws and regulations in force explicitly, but the Public Prosecution Law No. (49) of 2017 explicitly referred to it in Article(5/11) thereof.

A question may come to our minds: How does constitutional control by the prosecution move? In other words, is the prosecution entitled to challenge unconstitutionality by way of the original constitutional motion or by way of a subsidiary motion or both?

To answer this question, we say: The opinions of jurists and researchers differed about the mechanism of moving constitutional control by the public prosecution, some of them considered it limited to the original "direct" lawsuit based on the text of Article(5/11) of the Public Prosecution Law in force, because the legislator adopted the method of statement, not hint when he clarified that the performance of the constitutional control task before the Federal Supreme Court, and accordingly the will of the legislator goes towards exercising this jurisdiction before the court directly without going through the trial <sup>court (2)</sup>.

On the contrary, some others believe that the competence of the Public Prosecution to appeal against the texts contained in the laws and regulations in force, which violate the provisions of the Constitution, has not been objectively determined by a type of text alone. The legal rule received by it is that "the divorced person is absolute unless there is evidence of his restriction", and as long as the text of Article(5/11) of the Public

Prosecution Law in force is absolute for all texts that are subject to application in one of the cases before the ordinary judiciary during a dispute, and therefore the Public Prosecution has the right to appeal before the Federal Supreme Court in both forms of judicial control.

The researcher supports this view because the public prosecution is one of the parties to the court's justice, and that the word "court", which appears in the rules of procedure of the Federal Supreme Court, includes the representative of the public prosecution in addition to the judge of the trial court. This is what the legislator implicitly pointed out and therefore authorized by the current Public Prosecution Law to grant him the right to challenge the constitutionality of the laws and regulations in force.

In a decision of the court on the request of the Basra Integrity Court to the Federal Supreme Court under its letter number... Deciding on the appeal filed by the Deputy Prosecutor General before the Integrity Investigation Court in Basra ... This is due to the unconstitutionality of the text of Article (176/First) of the Customs Law No. (23) of 1984 as amended.

It is clear to us from the above court's decision that the appeal against the unconstitutionality of Article (176/First) of the Customs Law No. (23) of 1984, as amended, which was submitted by the Public Prosecution, was raised during a dispute before the trial court, and therefore it was referred by the trial court to the Federal Supreme Court, without commenting on the reasons for the decision about the trial court's consideration of the seriousness of the appeal or not, and this confirms that the public prosecution has the right to file an appeal against the unconstitutionality through the trial court without the need

for the trial court to be convinced of the seriousness of the appeal.

The court ruled in another decision on the request of the Deputy Prosecutor General before the Court of Misdemeanors of Al-Bay 'aa from the Federal Supreme Court to rule that the last part of paragraph (2/c) of Clause Five of the dissolved Revolution Command Council Resolution No. (154) of 2001 is unconstitutional by the Presidency of the Federal Court of Appeal of Baghdad/ Karkh.

As for the Spanish legislator, the Public Prosecution has been granted the right to appeal to the Constitutional Court in the event that the rights and freedoms of individuals are violated under Article (162/1/b) of the Constitution, while the Emirati legislator did not refer to that.

### **The second topic**

#### **Public Prosecution Center A During the constitutional proceedings**

The constitutional judiciary is one of the constitutional institutions aimed at ensuring the good legislative policy, which is the reference that has become relied on in the modern state to defend the constitution, and safeguard the fundamental rights and freedoms of citizens by reflecting the unconstitutionality of laws and regulations, in accordance with the frameworks approved by the laws regulating the work of the competent constitutional courts, and respecting the necessary procedures, and this would strengthen the constitutional state and protect legitimacy.

Therefore, we will divide this section into two requirements that we address in the first requirement: ways to move the constitutional case, and allocate the second requirement: to

clarify the conditions for accepting the constitutional case.

### **The first requirement instituting constitutional proceedings methods**

Judicial control is more effective than others because the natural function of the judiciary is to protect rights and freedoms and guard legality in the state, as it is considered a safety valve for the non-diversion of any of the state authorities from the limits of their competencies according to the constitution, in addition to the non-diversion of those authorities from the constitutional obligation to ensure rights and freedoms, and we will show this in two sections as follows:

#### **Section 1**

##### **The original constitutional case " direct"**

This mechanism is defined as " a lawsuit filed by the injured individuals and bodies to contest a law in which the appellant believes that it violates the constitution, regardless of the existence of a lawsuit pending before the judiciary or a first instance case, and the effects of the judgment issued in it go to all individuals and authorities".

In the sense that it is a direct lawsuit before the Federal Supreme Court separate from any substantive dispute pending before a court, it does not require to be filed by the trial court on its own initiative, and no subsidiary payment from one of the litigants during the dispute before the trial court, and we will explain this in two paragraphs as follows:

First: Appeal of unconstitutionality from the official authorities

The Rules of Procedure of the Federal Supreme Court No. (1) of 2005 referred in Article 5 to " If one of the official bodies requests, on the occasion of a dispute

between it and another party, to decide on the legality of...".

Based on the above, certain conditions must be met in the constitutional case, namely: -

1- The existence of an ongoing dispute between the official body and another official or unofficial body, because the text is absolute <sup>(3)</sup>, in addition to having an interest in filing the lawsuit in accordance with the conditions - we will list them later - stipulated in the Iraqi Civil Procedure Law No. (83) of 1969 amended.

2- To send the request in a substantiated lawsuit, in the sense that the constitutional text contested by its constitutionality, and the constitutional text alleged to be violated, and to send the lawsuit by a letter signed by the competent minister or the head of the entity not associated with a ministry

3- The lawsuit must meet the conditions stipulated in the aforementioned Civil Procedure Law, except for the payment of the fee for it, and the lawsuit must be filed by a lawyer under an agency and with absolute power, or the legal representative of the official body, provided that his job grade is not less than a director.

##### **Second: Appeal of unconstitutionality by individuals**

Article 6 of the Rules of Procedure of the Federal Supreme Court No. 1 of 2005 stipulates that: " If a plaintiff requests a ruling on the legality of a provision of a law, a legislative decision, a system, instructions or an order, the request shall be made by invitation...".

It is noted from the above text that the case is initiated by the "individual" natural person or by a legal person, and that the case meets the conditions stipulated in the Civil Procedure Law.

## Part 2

### Communication with the constitutional case through the trial court

The constitutional case is contacted before the Federal Supreme Court in two ways, either by direct referral from the trial court, or by way of subsidiary payment from one of the litigants during the dispute before the trial court, and we will address this in two paragraphs as follows:

#### First: Referral from the trial court

A referral of unconstitutionality shall be made by the trial court based on the text of Article 3 of the rules of procedure of the Federal Supreme Court No. (1) of 2005, which stipulated that " if one of the courts requests on its own initiative during the hearing of the lawsuit to decide on the legitimacy of a text in...".

It is clear from the above text that in order to exercise this copy of the constitutional case, it is required that there be a lawsuit filed before any court, regardless of its degree, and as a result of the doubts raised before the trial judge about the unconstitutionality of the text to be applied, and therefore he is entitled to send the request with reasons to the Federal Supreme Court, and then the original case is extracted until the Federal Supreme Court issues its final decision on that appeal <sup>(4)</sup>, and the request for referral to unconstitutionality cannot be accepted by the trial court if there is no case pending before it.

However, there are those who believe that the word " courts", which is mentioned in the rules of procedure of the court, is not only the judge of the court - as we mentioned earlier -but the court panel, which consists of the judge or judges of the court in addition to the public prosecution representative, because his

presence is a prerequisite for the validity of the court sessions.

#### Second: Subsidiary payment before the trial court

Article 4 of the Rules of Procedure of the Federal Supreme Court No. (1) of 2005 stipulates that " If a court requests a decision on the legality of a text in a law, legislative decision, system, instructions or order based on a plea of illegality from one of the litigants, the litigant shall be charged with submitting this plea in a lawsuit...".

It is clear that the above article addressed the method of subsidiary defense of unconstitutionality by the litigants as one of the means of moving the constitutional lawsuit during a lawsuit before the trial court and as a result of doubts raised by one of the parties of the lawsuit of unconstitutionality of the text to be applied to the dispute, then it is presented to the judge of the trial court and in the event that he is convinced of the seriousness of the payment, the litigant is charged with submitting this defense in the form of a lawsuit that meets the legal requirements and then the trial court sends it to the Federal Supreme Court, and the original case is rented until adjudication by the Federal Supreme Court.

According to the researcher, the Public Prosecution exercises its right to challenge unconstitutionality through the trial court after submitting requests that are referred by the trial court to the Federal Supreme Court, and not through the subsidiary defense submitted by the litigants in the case.

## Part 2

### Conditions for the admissibility of a constitutional motion

The constitutional case differs from other cases in the conditions that must be



met to accept the case before the competent constitutional court, given the different nature of the constitutional case itself and the nature of the right it protects.

First: The condition of interest in the constitutional case

According to the general rule that there is no lawsuit without interest and that the interest is the subject of the lawsuit, which is a fundamental rule that applies to all forms of lawsuits, and therefore the acceptance of the constitutional claim requires the existence of the interest required by the legislator, and otherwise the right to move it before the competent Constitutional Court.

Based on that, the interest must be personal and direct, it is not enough to achieve it that the challenged legislative text is contrary to the constitution, but it must directly harm the plaintiff, and the examination of the interest requirement from the jurisdiction of the competent constitutional court, whether in the original case or the subsidiary defense, the constitutional case decides on the conflict between the challenged legislative text in its constitutionality and a rule in the constitution, while the substantive case in its most common forms raises the alleged rights in a dispute about its proof or denial.

We conclude from the above that the Iraqi legislator has stipulated that the direct personal interest is required to accept the constitutional case, as well as the Spanish legislator stipulated the direct interest to trigger the appeal of constitutional protection, and in contrast, the Emirati legislator did not state that the direct interest must be available in the appeals submitted by the official authorities, and limited in the case of subsidiary payment from individuals.

It is not enough to meet the conditions of the interest in the constitutional lawsuit to be only direct and legal, but the interest must be present, and the existing interest is intended to be an attack on one of the rights guaranteed by the Constitution, and if this is not achieved for the plaintiff, his claim will not be accepted, in the sense that there must be actual damage to the right or legal status to be protected, whether this damage is imminent, or has actually occurred on the plaintiff.

Accordingly, and based on the above, we say that the Public Prosecution represents the entire society, and since the court confirmed that the direct personal interest is not the only one to file the lawsuit before it if the public interest is achieved, and accordingly, the Public Prosecution applies the descriptions of the interest because it is a representative of the entire society and seeks to achieve the public interests and preserve the rights and freedoms of those who appointed it on their behalf, which are members of the social body.

### **Second: Capacity in the Constitutional Case**

Since the interest is a condition for the acceptance of the constitutional claim, the status is also a condition for the acceptance of the constitutional claim, because the plaintiff may be a stakeholder that allows him to file the constitutional claim, but he may not initiate it because the condition of status is not fulfilled.

In the constitutional case, the status of the person affected by the legislation that violates the provisions of the Constitution is proven. Any person who has an interest and has real or potential damage from the legislative text that violates the provisions of the Constitution when it is applied leads to direct damage to the stakeholder or potential damage. The status is also established for the lawyer on behalf of his

client and for the legal representative of the official body in the initiation of the constitutional case.

The capacity of the litigants during the dispute before the trial court is also proven on the basis of a subsidiary plea submitted by one of the litigants to challenge the constitutionality of the text to be applied to him in the dispute before the trial court, and the courts may initiate the constitutional case on their own initiative as a result of the doubts raised by the unconstitutionality of the legislative text to be applied to the dispute before them and thus prove its status.

We conclude from the foregoing that the public prosecution is one of the individuals with standing in the constitutional case, because an appeal is based on a collective interest, and that the constitutional case is no longer limited to the availability of direct personal interest, but in addition to the public interest.

Based on the above, the Public Prosecution, as a representative of society, proves its status in challenging unconstitutionality before the Federal Supreme Court to ensure the supremacy of the Constitution and the preservation of the rights and freedoms of individuals in the event of violation by a state authority.

The same applies to the Spanish legislature, which has granted the Public Prosecutor's Office the right to appeal to the Constitutional Court by way of an appeal to the Constitutional Court against amparo in the event of a violation of rights and freedoms.

As for the Emirati legislator who allowed the federal authorities and the member Emirates of the Union the right to appeal directly to the Federal Supreme Court - as we have previously indicated - and to limit the right of individuals to appeal by way of subsidiary payment, the capacity

is established for both the federal and local authorities in the member Emirates through the legal representative for them, and for individuals, the petitions must be submitted by one of the lawyers accepted on their behalf.

### **Conclusion:**

After we completed our research on the role of the Public Prosecution before the Supreme Federal Tribunal in Iraq, we reached some conclusions and recommendations that we will mention as follows:

#### **First: Conclusions**

1- The Public Prosecution is one of the components of the judiciary, and it enjoys independence from the courts of the Supreme Judicial Council and has gradual subordination according to a hierarchy, and it enjoys unity and indivisibility and does not ask its members about the opinions and requests that appear during the performance of their tasks.

2. The researcher concluded that the public prosecution has the right to challenge the unconstitutionality before the Federal Supreme Court of Iraq through the implicit reference in the constitution and the rules of procedure of the court, and the explicit reference in the Public Prosecution Act No. (49) of 2017.

3. The Federal Supreme Court Act No. 30 of 2005, as amended, did not refer to the status of the Public Prosecution before the Court during the constitutional proceedings. In Spain, the Office of the Public Prosecutor has the right to challenge unconstitutionality before the Constitutional Court in the event of violation of the rights and freedoms of individuals. In the United Arab Emirates, Federal Supreme Court Act No. 10 of 1973 states that the Office of the Public Prosecutor must intervene in all

proceedings before the Federal Supreme Court of the United Arab Emirates.

4- The researcher concluded that the original "direct" constitutional lawsuit can be filed by individuals in Iraq, but in Spain individuals have the right to appeal against unconstitutionality in the event that their rights are violated by the state authorities, but the Emirati legislator did not grant individuals the right to appeal directly to the UAE Federal Supreme Court.

5- The conditions for the acceptance of the constitutional lawsuit are the interest in the plaintiff and the capacity of the plaintiff and the defendant, and these conditions apply to the public prosecution because the interest condition is no longer limited to the direct personal interest but also the public interest, as confirmed by the constitutional judiciary in Iraq, Spain and the UAE.

## **Second: Recommendations**

1. The researcher recommends amending the text of Article (93/III) of the Iraqi Constitution and explicitly referring to the role of the Public Prosecution by challenging the unconstitutionality.

2- The researcher recommends that the mechanism through which the public prosecution can file an appeal before the Federal Supreme Court should be indicated in the draft law of the court to be enacted soon.

3. The researcher recommends that the Emirati legislator should be granted the right of individuals to directly challenge unconstitutionality in order not to deprive individuals in the event that their rights are violated from direct challenge, because the subsidiary payment is not a guarantee sufficient to preserve the rights and freedoms of individuals from violation by the authorities, as the Spanish

legislator did by granting individuals to file a claim of "Amparo" rights guarantee.

4. The researcher recommends that the Public Prosecution should be granted an important status before the Federal Supreme Court, like the legislator, Spain and the UAE. The role of the Public Prosecution is no longer limited to representing society in public cases or the state in civil cases, but has a role in protecting the Constitution and preserving the rights of individuals from violation.

5- The researcher recommends amending the text of Article(5/11) of the Public Prosecution ActNo. (49) of 2017, as the above article did not indicate the method of appeal before the court if it is in the form of an original lawsuit or by way of subsidiary payment or both.

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- [25] The decision of the Federal Supreme Court No. 32/Federal/2016 dated 7/6/2016 published on the website of the Federal Supreme Court, referred to previously.
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