

## THE IMPACT OF THE PHILOSOPHY OF THE CONSTITUTION ON THE SOURCES OF LEGISLATION WITHIN THE FRAMEWORK OF ACHIEVING LEGISLATIVE QUALITY

**Student: Ruqayah Ali Shaboot Alzubaidi**

**Prof.Dr. : Samer Muayad Abdulateef Alyaseen**

### ▪The Introduction;

The philosophy adopted by the constitution represents the framework that determines the direction in which the state proceeds with all its institutions.

As it is the philosophy of the constitution that determines the constitutional values and principles, the authorities within the state and the relationship between those authorities, therefore, this constitutionally adopted philosophy is of great importance in general and for achieving quality in legislation in particular.

And since the objective sources of legislation are the basis from which the legislator derives the subject of his legislation ;Therefore, the use of those sources affects negatively and positively in achieving the quality of legislation, and the extent to which one source is selected depends solely on the philosophy adopted by the constitution; Therefore, the extent to which the philosophy of the constitution influences the sources of legislation is examined in order to achieve quality in it.

### ■ Research Importance:

This research derives its importance from the importance of its constituent elements represented in the importance of the philosophy of the constitution and the extent to which it achieves quality in legislation through its impact on the objective sources of legislation ;And because the objective source is the basis that the legislator resorts to in order to extract the legislation material from it ,so the importance of this research is highlighted in that it focuses on the starting point from which the achievement of the quality of legislation in general begins.

### ■ Research Problem:

The problem that this research focuses on is the crystallization of the relationship between the philosophy of the constitution and the objective sources of legislation, and the mechanism by which the philosophy of the constitution is influenced by the sources of legislation in order to achieve legislative quality.

### ■ Search Goal:

This research aims to build bridges between the philosophy of the constitution and the sources of legislation in order to identify the function that this philosophy performs in the objective sources of legislation in order to achieve legislative quality.

### ■ **Research Methodology:**

In his research, the researcher used this descriptive analytical approach by describing the phenomena in question and analyzing them to find the relationships between them.

### ■ **Search Plan:**

This research is divided into two requirements, in the first of which we address: the impact of the constitution's philosophy on the recorded sources, while the second requirement is concerned with examining the impact of the constitution's philosophy on uncodified sources.

### ■ **Conclusion**

The philosophy of the constitution affects all the activities of the state and its institutions, and the legislation enacted by the legislator does not deviate from that rule.

As it is influenced by that constitutionally adopted philosophy.

Since the legislator hopes through his legislation to achieve legislative quality, this quality is affected by the philosophy of the constitution from the first moment in which that legislation is drawn up, i.e. it affects its objective sources from which it derives its basic material, whether those sources are codified or not.

Thus, it is necessary to find the relationship between the philosophy of the constitution and the objective sources of legislation and to identify the extent to which legislative quality is achieved.

The most important conclusion of this research is that every constitutional position and philosophy towards religion has an impact on the quality of legislation.

Hence, we have presented several proposals, the most prominent of which was the amendment of some articles of the Constitution of the Republic of Iraq in force for the year 2005 to contribute positively to achieving legislative quality.

### ◆ **key Words :**

- ◆ The philosophy of the constitution ◆ The objective sources ◆ The sources of legislation
- ◆ The quality of the legislation ◆ The impact of the constitution

### **The First Requirement**

#### **The impact of the philosophy**

## of the constitution on the written sources of legislation

Written sources mean : “those written sources from which legislation derives its content and content to represent the subject matter and article of legislation ” (i).

There is no doubt that placing these sources within legislative texts gives them binding force and gives them an official character<sup>(ii)</sup>, and since these sources do not have the material binding force that legislative rules enjoy; When the legislation derives its subject matter from it, it contributes to raising the extent of adherence to it and following it (iii).

The importance of written sources is highlighted by the fact that they are usually very specific, clear and unambiguous, and ensure the constancy and stability of legal provisions<sup>(iv)</sup>; The clarity that the written sources enjoy makes it easier for the legislator to refer to their provisions and make use of their material.

Likewise, the written sources are characterized by practical importance stemming from their suitability to the social conditions and needs and the needs of the community.

Also, these sources are easy to know, view, and refer to.

Because they are written in documents, books, documents, etc (v) .Thus, the legislator, as we have said, facilitates the process of referring to those sources, knowing them, and taking advantage of them.

Also, the judge, when applying a piece of legislation, can easily and quickly refer to the source of that legislation, while if it were written;

To know more accurately the spirit of the legislation and the meaning behind its texts; to provide an adequate interpretation of the legislation in question ;Which achieves quality in legislation, as these sources provide an element of clarity to achieve legislative quality, by means of the possibility of easy reference to them in order to put appropriate interpretations when the need arises, so we will intend to clarify the sources written in several paragraphs.

### ◆ First :Religion

Religion is defined as: “everything that is reached from the revelation of an invisible moral force” (vi) and it is noted in the aforementioned definition that religion is not limited to divine religions, but rather includes all religions, whether divine or non-heaven, such as Buddhism and Hinduism.

We find that the philosophy of constitutions may come to clarify the main religion of the state, as is the case in the majority of Arab constitutions that define Islam as the main religion of their countries: such as Article (2) of our effective constitution for the year (2005), which stipulates: “Islam is the official religion of the state and it is a basic source of legislation” (vii) .

And Article (2) of the Constitution of the Arab Republic of Egypt for the year 2014, as amended, and Article 2 of the Constitution of Algeria for the year 1996, as amended<sup>(viii)</sup> .

Among the non-Arab constitutions that stipulate the Islamic religion is the constitution of the Islamic Republic of Pakistan of 1973 AD, amended in Article (2) thereof<sup>(ix)</sup>, as well as the amended constitution of the Islamic Republic of Iran of 1979.

We find that some constitutions stipulated the Christian religion, as in the (Denmark) constitution of (1953) in Article (4), which stipulate: "The Evangelical Lutheran Church shall be the official church in Denmark, and as such, it shall be supported by the state".

As far as the matter is concerned in examining the extent to which the philosophy of the constitution influences the sources of legislation, we find different constitutional positions towards the constitutionally approved religion.

While the constitution of the Islamic Republic of Iran stands on the opposite side of the aforementioned position, we find that the religious tendency dominates all of its texts, and other constitutions choose for themselves a middle position between extremism and weakness in religion.

The aforementioned positions affect the quality of legislation. Religious teachings, regardless of whether they are Islamic, Christian, or Jewish, etc., represent guidance on moral principles that enhance the fairness and fairness contained in legislation.

Thus, they achieve the most important criterion for the quality of legislation in the necessity for legislation to be just and equitable, and contribute to creating legislation that is acceptable and socially followed <sup>(x)</sup>, which means increasing the effectiveness and comprehensiveness of legislation ;As it stems from the spirit of the society in which it is applied; Therefore, individuals do not find it difficult to implement this, in addition to the contribution of religious sources to achieving the common identity of citizens. Therefore, constitutions whose texts are dominated by religious tendencies, such as the amended Constitution of the Islamic Republic of Iran of 1979, achieve the aforementioned advantages for their legislation, unlike constitutions whose religious texts are weak.

Despite the aforementioned advantages, some potential disadvantages can be raised to the use of religious sources for legislation.

One of the main disadvantages is that legislation based on religious sources may be viewed as less comprehensive by those<sup>(xi)</sup> who do not follow the same religion.

Alienation and exclusion by minority groups, especially in countries characterized by the presence of religious pluralism; Therefore, we find that the position of the Constitution of the Arab Republic of Egypt for the year (2014) amended in Article (3) of it contributed to avoiding this defect when it stipulated“ :The principles of the laws of Egyptians, Christians and Jews, are the

main source of legislation regulating their personal status, their religious affairs, and the selection of their spiritual leaders” .

Thus, the aforementioned constitutional position avoided the aforementioned defect, and ensured the existence of legislation suitable for all segments of society<sup>(xii)</sup> .

While some constitutions suffice with defining the rights of minorities by stating the principle of equality among all citizens, equal opportunities and justice in duties and rights. because of gender, race, nationality, origin, color, religion, sect, belief, opinion, or economic or social status.

” Legislative inflation as a result of the large number of legislations governing the same subject for each minority group, which on the other hand leads to achieving quality in legislation ; Because the legislative and minority rules are more acceptable and consistent with the hopes and aspirations of that minority.

In addition, it may be more difficult to change laws based on religious sources or to adapt to changing social, economic and political conditions, as they are often seen as fixed and immutable, in order to give them religious legitimacy that prevents deviating from them or demanding their abolition or amendment, which It means the possibility that it is not suitable for the conditions prevailing in society <sup>(xiii)</sup>, and this legislative defect appears more in countries with a religiously strict constitutional philosophy, such as the amended constitution (the Islamic Republic of Iran) of (1979), while the constitutions of countries such as the (Algeria) constitution of (1996) amended The Constitution of (Denmark) of (1953), and other constitutions that suffice with a simple reference to religion without stipulating that it is a main source of legislation increases the discretionary power granted to the legislator when enacting legislative rules, which means the diversity of the sources of legislation in the state, and the lack of a religious character and legitimacy It becomes possible to change and cancel it when it becomes unsuitable for society.

While we find that some countries have their constitutions moving in a direction away from religion, so they follow the path of atheism<sup>(xiv)</sup>, so the constitution of those countries avoids mentioning religion in any form, and their constitutions may go further than that, and we find that they include among their articles provisions that require the abandonment of religion, and among the ideal examples of constitutions the ultra-secular constitutions of communist-oriented countries;

These ideas link religion to backwardness and reactionaryness<sup>(xv)</sup> (for example, the amended Constitution of the People’s Democratic Republic of North Korea) of 1948, which stipulated in Article 20, the second paragraph of it , “It does not recognize a religion for the state, and it separates the state from the church.” This constitutional position leaves its mark. The sources of legislation that are not expected to be derived from religious sources and what those sources can provide in terms of justice and moral values, and the creation of a common identity for the citizens of the state, which is one of the elements of the quality of legislation. Right-wing

or left-wing, or it derives from the ideology of the leader who holds power in totalitarian regimes... and so on.

In addition, we find that some countries have decided their religious position, by adopting their secular, neutral constitutions in not giving any advantage to any religion over another, and secular-oriented constitutions often present secularism as one of the constitutional principles that have a great impact in shaping the state's ideology <sup>(xvi)</sup>, just as In the amended (Turkey) Constitution of 1982, Article (3) of which states: The Turkish Republic is a secular, social democratic republic, based on the rule of law; Within the limits of the concepts of peace, science, national solidarity, and justice, with respect for human rights, and loyalty to Atatürk's nationalism, and based on the basic principles contained in the preamble“ .

When comparing the impact of secularism with non-religious constitutions, we find that secularism's moderate position towards all religions contributes to the expansion of the discretionary power of the legislator, Which means that it can quote legislation from religious and non-religious sources, and thus choose the best among the sources of legislation, in contrast to the philosophy of non-religious constitutions, which completely excludes religious texts from the sources of legislation.

#### ◆ Secondly : Jurisprudence

Jurisprudence represents the second source of codified sources of legislation and is meant by it: “the sum of the opinions of jurists among jurists and the theories they put forth. The legislator is guided in most cases by the general legal opinions and theories developed by jurists and tries to adopt them” <sup>(xvii)</sup>, and jurisprudence works as a source of legislation through the influence of jurists and experts legal professionals on the legislative process, as they can provide valuable insights and recommendations to legislators and policy makers; Which helps to develop new legislation and policies.

In addition, jurists and legal experts play a role in shaping public opinion and directing the media on legal issues that may affect the legislature when developing legislation. Of course, states with totalitarian authoritarian regimes that do not care about civil society and public opinion, in light of which power is concentrated in the hands of the only political center in the state, which directs the distribution of resources and powers among its own agencies, under which the ability to express opinions freely and transparently is denied, so everything that contradicts The opinion of the authority and its direction in the state is subject to attack on various charges. The most correct opinion under authoritarian regimes is the opinion of the leader of the state and all opinions must agree with him, which negatively affects jurisprudence within countries that adopt such systems. Since opinions and theories, especially those that directly affect politics and law, take one course, which is supportive of power, it is not expected that in this case there will be divergent jurisprudential opinions that are critical of the thought and opinions of those who hold power. All of this leads to a decline in the role of jurisprudence as a source of legislation.

### ◆ **Third :The Judiciary**

Judicial jurisprudence means : “the principles issued by the courts when applying the law”<sup>(xviii)</sup>, and the rulings issued by the judiciary may contribute to the formation of the topic of legislation, so the legislator draws from it in this case the content and article of the legislation, and one of the main ways in which judicial rulings operate as a source of legislation<sup>(xix)</sup> is the development of principles and legal beliefs. These principles and doctrines are inspired by the logic and analysis used by the courts in their decisions, and they often serve as a basis for new laws or an interpretation of existing laws and thus contribute to achieving the quality of legislation. Thus, he issues his rulings and the legal principles that guide the legislator when drafting the legislation, so they are the substance and essence of that legislation<sup>(xx)</sup>; This only happens in the light of a constitutional philosophy that guarantees the independence of the judiciary and provides actual guarantees for that independence. Whenever the judge is independent, he can be creative in his work, in contrast to authoritarian regimes in which the judge finds himself constrained when performing his work, and therefore he cannot be creative in issuing legal rulings, which affects This negatively affects the quality of legislation, and negates the possibility of the judge creating new legal principles.

### **The Second Requirement**

#### **The impact of the philosophy of the constitution on uncodified sources of legislation**

Customs and general principles represent uncodified sources of legislation. The legislator, when enacting a piece of legislation, is committed to respecting legal norms and general principles and not violating them<sup>(xxi)</sup>. Uncodified sources are not included in a specific document; it is of a moral existence; That is, it is rooted in the conscience of the group, and despite the fact that these sources enjoy a reward that obliges individuals to follow them, yet that reward derives its existence from the existence of those sources, so it shares with it the moral nature.

Unwritten sources are generally of great importance.

It is considered a credibility for what individuals in society accept in their dealings and an expression of their desires and needs, and these sources also enjoy the advantage of individuals submitting to them on their own without the need for a material penalty imposed on them, or the feeling that they are subject to a body higher than them<sup>(xxii)</sup> .

Thus, the legislator often resorts to quotation from unauthorized sources; Because it is a true expression of society's conditions and needs, and ignoring it would lead to ineffective legislation.

Because individuals do not respond to these legislations. We discuss these sources in two paragraphs:

### ◆ **First :Custom:**

Custom represents the most important non-codified sources, and it means : “Those rules that people used to use in their dealings and activities, and which they adhere to, and their violation entails a moral penalty. In other words, it is a habit that individuals feel obligated to follow ” (xxiii).

From the aforementioned definition, it becomes clear that custom has two elements. The first is the material element, which represents the habit that people are accustomed to follow (xxiv).

That is, the behavior of individuals that they used to follow in their dealings (xxv) . While the moral element represents the feeling of individuals that the custom they are accustomed to following is binding on them and that those who violate it will have a moral penalty.

No matter how frequently individuals follow a certain behavior, that behavior does not become customary unless it is accompanied by their feeling that it is obligatory, and they feel that their violation of that behavior entails a moral penalty on them.

Custom as a source of legislation refers to the idea that some legal rules can be derived from the usual behavior and practices of individuals in a particular society, and thus the prevailing social norms represent a guide for the legislator to guide when developing legislative texts. so that these texts are compatible with the conditions of social reality;

Thus, it fulfills the criterion of realism, and the importance of custom as a source of legislation increases in countries whose constitutions tend to be socialist;

As those countries seek to interfere in all areas of social life and reduce the existence of individual freedoms, so that custom is an essential source of legislation of a social nature, while this importance decreases in countries that are governed by individualistic constitutions. As a result of the state's non-interference in the relations of individuals.

Whereas we find that the legislator, under Islamic-oriented constitutions, often relies on the correct custom as a source of legislation in matters for which there is no textual evidence or consensus ;The Holy Lawgiver has taken into account the prevailing social norms, as in the condition of competence in marriage, and in this regard it is said: the custom is a courtly law (xxvi) We find that the correct custom that does not contradict the purposes of Islamic law, from which the legislator derives the material of his legislation in the light of Islamic-oriented constitutions ; As custom occupies an important place in Islamic legislation.

This affects the quality of man-made legislation derived from custom in two respects: the first is positive, represented in achieving the criterion of realism and social acceptance, which are among the criteria for achieving quality in legislation, and that relying heavily on custom, whether under socialist or Islamic constitutions, may lead to The lack of development of legislative rules, and the prevention of individuals from finding modern ways in their dealings on the other hand; Because the custom takes a long time to emerge and then be adhered to; That is, completing its material and moral pillars, which negatively affects achieving quality in legislation, that legislation that must contribute to achieving social progress.



## ◆ Second : General Principles:

General principles are considered as one of the uncodified sources of legislation, and general principles: “They are those unwritten legal and social rules that are revealed and extracted by reference to the existing social and political conditions in a particular society and the principles of justice and equity”<sup>(xxvii)</sup> .

To those principles and deducing them from the spirit of society or from rulings issued by the judiciary, and these principles in turn act as a guide for the legislator and assist him in deriving the legislative rules appropriate to the society in which the legislation is enacted. And the influence of the philosophy of the constitution on the general principles of law as a source of legislation is highlighted. Individualist constitutions that adopt the principle of non-interference of the state in the activities of individuals, and its tight hand on individual freedoms, we find the decline of general principles as a source of legislation<sup>(xxviii)</sup> and this is reflected in the extent to which quality is achieved in legislation; Good legislation is the one that organizes society, and seeks to prevent the members of the social body from exploiting one another; Thus, individual-oriented constitutions do not achieve quality in their legislation in terms of drawing inspiration from the living reality experienced by the state.

However ,the emergence of these shortcomings of the individual movement, and the principle of non-interference of the state in the activities of individuals, by the exploitation of some individuals by others, and the spread of poverty with the affliction of a wide segment of people with poverty and the deterioration of their economic situation, it became necessary for the state to intervene through legislation to protect individuals in society by confronting them with those with economic power capital; So socialist ideas emerged seeking to rein in the individual current<sup>(xxix)</sup>, restore balance between the members of the social body, maintain its peace, and prevent what might arise from the individual system of man’s exploitation of his fellow man and the resulting chaos and conflicts in society.

The socialist approach often goes back to the general principles to draw from them as a source of legislation, when setting up the state’s legislation. For legislation, and based on the foregoing, it is said that the legislator’s frequent abuse of general principles under socialist constitutions leads to achieving quality in legislation, so that the legislation and this situation are derived from the same society in which it is applied, which means its realism and increasing its effectiveness and social acceptance.

## ● Conclusion:

It is befitting for us, after this research process, to crystallize the most important conclusions we have reached regarding the impact left by the philosophy of the constitution to achieve quality in legislation, and then present a set of proposals that were crystallized by the researcher during his research, as follows:

### ◆ **First :Conclusions:**

After completing the research, the researcher reached a set of conclusions, which are as follows:

1. The influence that the philosophy of the constitution plays on the quality of legislation includes all aspects of that legislation, starting with its material source from which the legislator derives the basic legislative material, ending with implementing the legislation, applying it, and achieving the desired goals.
2. The philosophy of the constitution, which has a strict religious tendency, affects the quality of legislation through its objective sources, both positively and negatively.
3. One of the most important problems facing legislation in light of the religiously strict philosophy of the constitution with regard to the sources of that legislation is the failure to provide a criterion for comprehensiveness in the quality of legislation and the inability to change these legislations over time.
4. The best constitutional trends affecting the sources of legislation in order to achieve quality in it is the secular, neutral approach that takes an equal position on all religions, neither denying all of them nor giving preference to one over the other, which allows the legislator to choose the most appropriate for his legislation from among the sources of legislation.

### ◆ **Secondly : Suggestions**

After the conclusions reached by the researcher, the researcher presents a set of suggestions that would raise the legislative quality in our country, which are as follows:

1. To unify the philosophy of our constitution in force for the year 2005, we propose amending its preamble to read as follows: “We, the people of Iraq, from the land of peace, aspire to peace, deeply aware of the values and ideals that prevail the global human conscience, desiring to assume an honorable position in the international community befitting the history and civilization of our state extending for thousands of years, believing in the right of all peoples of the world to live in peace without fear, racism, or the sovereignty of one nation over another, declaring our commitment to the Charter of Human Rights issued by the United Nations for the year (1948), with its adaptation in line with the principles of the Islamic religion.
2. We propose to unify the philosophy of our constitution in force for the year (2005) and to remove all that may be inconsistent with it by amending Article (1) of it as follows: (The Republic of Iraq is a single, independent federal state with full sovereignty, its system of government is republican, representative (parliamentary), democratic, laying the foundations of Islam The basis of the orientations of the state, and this constitution is a guarantor of the unity of Iraq, the state and the people).

3. To unify the sources of legislation in the state, we suggest amending Article (2) of our effective constitution for the year (2005) by deleting the provisions of the first paragraph and adding in its place: (It is not permissible to enact legislation contrary to the principles and spirit of Islam and the rights and freedoms contained in it. rights and what has been approved by international laws in accordance with the principles of democracy).

4. Adding a paragraph to Article (2) of our constitution in force for the year (2005) stating that (in case of conflict, Islamic principles prevail over others).

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#### ■ . Footnotes. ■

(i) Dr. Ahmed Shawky Mohamed Abdel Rahman, Introduction to Legal Sciences,

The General Theory of Law, Manshaat al-Maarif, Alexandria, 2009, page 69; Dr. Hisham Al-Qasim, Introduction to the Science of Law, 5th edition, 1997, page 110.

(ii) A part of the jurisprudence goes to linking the idea of punishment with authority and not with the law. The penalty in this doctrine is not part of defining and defining the legal rules. In this case, it determines the extent of the effectiveness of the authority that determines the means that are resorted to to compel individuals to obey it. See: Dr. Munther Al-Shawi, Philosophy of Law, Publications of the Iraqi Scientific Academy, Baghdad, 1994, page 190.

(iii) Dr. Nabil Ibrahim Saad, Dr. Muhammad Hussein Mansour, Principles of Law, Introduction to Law, Theory of Obligations, Dar Al-Nahda Al-Arabiya for Printing and Publishing, Beirut, 1995, p. 34.

(iv) Dr. Ahmed Shawqi Muhammad Abdel Rahman, previous source, page 78.

(v) Dr. Hisham Al-Qasim, previous source, page 119.

(vi) Dr. Hisham Al-Qasim, previous source, page 228.

(vii) See: Constitution (Arab Republic of Egypt) for the year (2014), amended.

(viii) See: Article (2) of the (Algeria) Constitution of (1996), amended.

(ix) Article (2) of the amended Constitution of the Islamic Republic of Pakistan of 1973 stipulates: "Islam is the religion of the state in Pakistan".

(x) Abdulaziz Sachdina, The Islamic Roots of Democratic Pluralism, Center for Strategy

(xi) International Studies, Oxford 2001, pg. 4. Wael B.Hallaq, An Introduction to Islamic Law, Cambridge University Press, New York, 2009, page 140.

(xii) Dr. Ali Naguib Hamza, Research in Public Law, Dar Al-Sanhouri, Beirut, 2018, page 107.

(xiii) Dr. Riaz Ahmad, Islam and the challenges of modernity, center of excellence, Islamabad 2004 Page 14.

(xiv) Atheistic thought: It is the thought that believes that the universe has arisen randomly without the existence of any maker. In all their different ideas, they go to the absence of the need for the existence of a god. See: Dr. Amr Sharif, Atheism is a psychological problem, edition 1, Newbook For publication and distribution, Cairo, 2016, page 36.

(xv) Mohamed Abdel-Aal, The Constitutional Relationship between Religion and the State, a Comparative Study on the Religiosity of National Constitutions, Journal of the Faculty of Law for Legal and Economic Research, Faculty of Law, Alexandria University, No. 2, 2016, p. 281.10

(xvi) Muhammad Abdel-Al, previous source, page 284.

(xvii) Hisham Al-Qasim, previous source, page 240.

(xviii) Dr. Ahmad Shawqi Muhammad Abd al-Rahman, previous source, pages 70-71.

(xix) Countries with Latin legal systems do not take the judiciary as a basic source of law in general, but the judiciary enjoys its place under those systems within the interpretive sources, in contrast to the Anglo-Saxon legal systems that adopt the case law system, in which the judiciary is a major source of law. See: Dr. Essam Anwar Selim, The Constitutional Judiciary Website from Sources of Law, Manshaat al-Ma'arif, Alexandria, 2000, page 7.

(xx) Edgar Bodenheimer, Jurisprudence the philosophy and method of the law, edition 1 page 7.

(<sup>xxi</sup>)Harvard University Press Cambridge, London 1981, page 367) Dr. Wisam Sabbar Alani.

(<sup>xxii</sup>)Dr. Hisham Al-Qasim, previous source, page 216.

(<sup>xxiii</sup>)Dr. El-Sayed Mohamed El-Sayed Omran, previous source, page 63.

(<sup>xxiv</sup>)Dr. Ashraf al-Lamsawy, Constitutional Sharia in various legislations and the role of the constitutional judiciary in oversight of legality, 1st edition, The National Center for Legal Publications, Cairo, 2006, p. 35.

(<sup>xxv</sup>)Dr. Ashraf Al-Lamsawy, previous source, page 64.

(<sup>xxvi</sup>)Dr. Osama Al-Hamwi, Principles of Islamic Sharia, Damascus University Publications, 2009, page 64.

(<sup>xxvii</sup>)Dr. Mazen Lilo Radi, Administrative Judiciary, A Study of the Foundations and Principles of Administrative Judiciary in Iraq, page 13.

(<sup>xxviii</sup>)Najeeb Abdullah Najeeb Al-Jibsheh, The Concept of the Idea of Public Order and its Applications in Palestinian Legislation, Master Thesis, College of Graduate Studies, An-Najah National University, Nablus, 2017, page 10.

(<sup>xxix</sup>)The same source, page 11. Sources

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