

The Exeption Constitutional As A Way For The Consideration In Lawsuits In Jordan

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Abstract: The Exceptio Constitutional method appears as a form of connection of the Constitutional Court of the constitutional lawsuit, When there is a case pending in front the trial court and intended to be applied to the text of the law, and one of the dispute parties see is unconstitutional, then he Exceptio Constitutional to trial court, and he will appreciate the seriousness of this Exceptio, The Exceptio is an objective exception it can be raised at any stage of the proceedings to exceptio which related to public system as it the trial court can be exposed on its own. As result for this paper; prevent individuals to resort directly to the Constitutional Court to appeal the constitutionality of any law or regulation, and Jordanian legislator suspended referral exceptio Constitutional that raised front of the trial court to accept the Court of Cassation, which considered it by the law that it have the right to accept or reject the exceptio Constitutional. And here the researcher recommend to Amend the Article (9) of the Law of the Constitutional Court regarding with the aspects entitled to appeal directly to the Court on the constitutionality of laws and regulations by adding a paragraph authorizing individual personal interest directly appeal to the Constitutional Court. In other words to be appeal by the original case in addition to the other four methods, and issue text with a few guarantees to not abused this right by the plaintiffs and the exhaustion of the Constitutional Court. And don't leave the subject of referral the exceptio Constitutional under Cassation Court responsibility.

Index Terms: the **Exceptio Constitutional, The constitutional lawsuit, The Constitutional Court, the Cassation Court, Judicial Authority**

1. Introduction:

The Legislation Ranging in strength depending on the on the subjects that be dealt with by the Authority, and entails that necessarily respect from the lowest legislation to the top legislation; it do not comes dissenting its provisions. The constitutional legislation comes on the top of legislation, as the basic law; or the law of laws, and consequently the constitution sets the general rules and restrictions should be the legislative authority to take into account while in the process of the legislation the laws and these restrictions may be formal restrictions and restrictions objective. If that the legislative authority is not abide while the process of enacting legislation, or exited the limits of the terms of reference that drawn, or decomposed restrictions that set, or they have contravened the law issued by it, or decomposed regulations and instructions adopted, or a constitution text, it had thus exceeded its terms of reference and the limits of its authority, and what it embarked by it is defective and void for violating the Constitution, and verify the reason for the appeal of unconstitutionality, and left the same judgment on the doubtful actions by defect unconstitutionality that issued by the executive or the judiciary. The court that the monitoring and maintenance of this Constitution shall be in the highest ranks of the judicial stairs, and this court are called in Jordan as the Constitutional Court which practiced its terms of reference through constitutional lawsuit. Constitutional lawsuit is a means allow the judicial entities which consider the substantive dispute to the performance of its mission in the application of legal texts due according to the legislative ranked, if it finds that a violation of the State authorities, in particular the legislative and executive branches of the provisions of the Constitution. The Jordanian constitutional regulation for censorship on the constitutionality of laws custom many ways for raise the lawsuit to the Constitutional Court, among these methods the defense, and we will touch this subject in this study as follows:

2. The 1st Topic: the Meaning of Exceptio constitutional

Exceptio constitutional is the way permits for personnel indirectly kept vigil for the law that will be applied on the conflict and ascertain the extent of it agreement with the

Constitution provisions ⁽¹⁾. It will be realized in the case of a lawsuit pending before a court of law, should this Court to be exposed to a point of law that relating to the constitution, because its required to adjudicate on this case and one of the parties of this case believes that this text which be applied to the conflict in which is violation of a constitutional texts, then he will Exceptio constitutional this the text of law, or the entire system. The exceptio constitutional of one or many texts in the law or even the entire system falls within the general of sub defenses in Procedures Act are those defenses that aimed to postponing the litigation or discontinued pending the preliminary question, depending on a determination of the subject of conflict.⁽²⁾ The exceptio constitutional method is the most common way of constitutional trigger, especially in the systems that do not embraces the original constitutional lawsuit ⁽³⁾; it is a way defensive, not offensive like the original case. ⁽⁴⁾ The exceptio constitutional method is characterized by being specific and affiliated so it is specific to hang it conflict displayed in front of the trial court, and a subsidiary because it does not only arise depending on the substantive issue. ⁽⁵⁾ The Jordanian legislator, like the majority of legislation that recognizes the judicial control over the constitutionality of laws he select the method of exceptio constitutional to move the judicial control over the constitutionality of laws in front of the Constitutional Court and not by the original case ⁽⁶⁾. And therefore it is not permitted to file an original claim in front of the Constitutional Court in order to prove violates legislation the constitutional text, as this legislation has not yet found scope for the application. Where Under article "11" of the Law on the Constitutional Court for the year 2012: "For any of the parties of lawsuit that pending in front of the courts which different in kinds and grades the right of exceptio constitutional for any law or regulation applicable to the subject of the proceeding." As illustrated on the text above that if any one exceptio in front the trial judge by exceptio Constitutional the law or regulation it does not transmit the search subject in the Constitutional to the Court Constitutional automatically, but has the right to make sure that is efficiently or not. Cause that the legislator put restriction in paragraph "c" of Article "11" is that the exceptio Constitutional is a serious and it stipulates as follows": If the headmistress court finds the case that the law or system which

was raised the exceptio Constitutional, then its duty of application on the subject of the case and that the exceptio Constitutional is serious then it have to stop to consider the case ". The purpose here is to disposal the malicious arguments that only intended to delay the proceedings, an example for malicious arguments if the exceptio by text does not apply on event which under dispute.

3. The 2nd Topic : The Seriously of Exceptio Constitutional

The exceptio Constitutional will raises constitutional issue fundamental for the trial court cannot be separated unless resolved, namely the constitutionality or unconstitutionality the legal text that will be applied to the conflict, Raises exceptio fundamental constitutional issue of the trial court cannot be separated unless resolved, namely the constitutionality or unconstitutionality of the legal text to be applied to the conflict, which pay unconstitutionality. But before the trial court can decide to defer consideration of the case to separate in this topic it should check the seriously that was raised from liabilities. And refer to the law of the Constitutional Court, we find that the Jordanian legislator did not put a specific standard to the seriousness of exceptio but left specify that to the trial court which considering origin subject of the proceeding it decided by the seriousness of exceptio or not. In this regard, the Jordanian Cassation Court decided (rights) in case No. 856/2013 (a tripartite body) in 10/03/2013: "taken advantage of Article (11) of the Constitutional Court Law No. (15) For the year 2012: that should the appellant unconstitutional indicate in a clear and specific scope and supports his claim that the law impugned by the applicable to the case against violation of the Constitution and the Court headmistress of the suit, after being found that have serious exceptio constitutional have right to suspend consideration of the case and refer it to the Court of Cassation for the purposes of deciding in order to allocate it to the Constitutional Court but the Amman Appeal Court did not observe that. As it turns out, and by refer to the decision of the Amman Appeal Court and its mentioned earlier, it has devoid of causation and did not mention the supplies and the requirements of the article mentioned above, and devoid of supplies the position of seriousness and the court convinced that, And had to be so committed to and its decision causing a prelude to discontinue the consideration of case and refer the exceptio to the Court of Cassation. And where that the Court of Cassation have a right to refer the appeal to the Constitutional Court or refused to do so, the conditions to refer the appeal to be there is no still lawsuit and that the ripper was submit written note indicating the reasons for his appeal. in the exclusion the law impugned from the lawsuit and that the grounds of appeal seriousness which requires also search in the interests of ripper as an essential element in a serious appeal which requires also search in the interests of ripper as a key element in the seriousness of the appeal and the implication that those reasons suggest a suspicion constitutional required to show constitutional Court its opinion. And where the Court of Cassation does not see in the exceptio constitutional the election law that made by the Summoner as voters, by seriousness on the one hand and the absence of interest on the other hand, which requires rejection of the application and refer the papers to the Constitutional Court and back the papers to the source." Side of the jurisprudence believes that the Seriously of Exceptio is meant: that Exceptio, which is not aimed to prolonging the

proceedings the lawsuit objectivity and the Exceptio which targeting prolongation and procrastination is not serious^[7] and the Exceptio is not serious when it does not affect in the lawsuit separation.^[8] While others consider that the meant seriousness is to be a separation in the constitutional issue productive in the sense that the law is suspect in its constitutionality is connected to the subject of the dispute^[9], and that the separation in the constitutional issue raised by the Exceptio required to adjudicate the case submitted to trial court, or that there is the trial judge doubt on the constitutionality of texts which was Exceptio of it^[10] or the presence of suspicion out the law on the provisions of the Constitution.^[11] We can say now in order to achieve the seriousness must be the availability of two main conditions:

3.1. The first condition: The productivity [12]

This condition is meant to be a separation in the constitutional issue in is productive in the original the case that submitted to the trial judge, that is, law or regulation impugned in its constitutionality is connected to the subject of the dispute. The constitutional issue in the focus of the Exceptio must be related to text of the law or regulation that can be applied on the original case and that the judgment will be issued unconstitutionality, will benefit the owner of the foreseen matter in the case. If the trial judge found that the Exceptio is not related to the conflict displayed to him, he will decided to reject the Exceptio and continued substantive consideration of the case without paying attention to the issue of constitutional. In this regard, the Jordanian Citation court (rights) in case No. 4068/2012 (a tripartite body) Date 11/26/2012 ".... Whereas the Citation court that has right to refer the appeal to the Constitutional Court or rejected, we see that of the terms to refer the appeal to be appellant in an interest of the appeal.... ". Are required to accept the Exceptio is not been convicted by a judgment of the Constitutional Court on the subject of Exceptio, because the separate of this Court on the subject of Exceptio acceptance or rejection, it has authoritative absolute Authentic prevented from raising the issue again front of the trial court^[13]. The scope limited of application on this principle to the legislative texts that were the object of controversy in constitutional litigation and separated the Constitutional Court to decree conclusively does not extend to the other of the hypotheses that dealt with by the text and the court did not separate^[14]. And permissible for the trial court to accept the Exceptio constitutional from interfering in the proceedings of case, if had not been explicitly decided to accept the intervention, because the permission of the Court to called intervention establishing constitutional motion reveals It considered that the judiciary in the constitutional texts, is necessary to separate the issue of requests for intervention submitted to it, including longer with that declaration as a implicit acceptance of the intervention^[15].

3.2. The Second condition: The difference in viewpoints^[16]

This condition is meant there should be doubt to the trial judge on the Exceptio constitutional text^[17], this condition does not require from the trial judge's that been assertion unconstitutional law or regulation to refer it to the Constitutional Court, but enough be realized judge the original case that the issue of non-constitutionality of this law or regulation that submitted to him, finds it bond to stop separation in the proceedings and ask the opponents file a

claim front of constitutional Court ^[18]. In this regard, the Jordanian Cassation Court decided (rights) in case No. 3756/2012 (a tripartite body) Date 14/11/2012 "... As the Court of Cassation mandate to refer the appeal to the Constitutional Court or rejected, the Court of Cassation considers that the grounds of appeal serious, implication that those reasons suggest a suspicion of constitutional eliminate to demonstrate the Constitutional Court its opinion... “.

4. The 3rd Topic : The Restrictions of Exceptio Constitutional

Jordanian legislator informed the method of Exceptio with many restrictions so as not to use it carousing without justification; these arguments are as follows ^[19]:

- 4.1. One of the litigants has to clings to the sub- Exceptio in a lawsuit on in front of the trial judge.
- 4.2. There must be a suspicion in the legislative text in out the provisions of the Constitution, and this means that the trial judge validation of the seriousness of Exceptio.
- 4.3. Must be a separation in the case of constitutional imperative to settle the dispute front of the trial judge raised sub-Exceptio, Which requires that the constitutional issue related to the text of a legislative obligation of the application on the original case, and this means that if the trial judge turned out to him that the impugned legislation unconstitutionality is not about the origin of the conflict, He must not accept the Exceptio constitutional.
- 4.4. The trial judge has to realize the seriousness of Exceptio constitutional the related with impugned legislation it, if it is proved to him, he should defer consideration of the case and identifies date for the party that raised the Exceptio to direct constitutional motion, so that they do not keep legal centers unstable.
- 4.5. Exceptio constitutional must be submitted by the opponent as a clear and unambiguous, and select the text Legislative defendant violating the Constitution and the aspects of the offense and that in order to the trial judge's be able to study how serious the Exceptio or not, In this says Jordanian Court of Cassation (rights) in its resolution No. 856/2013 (a tripartite body) Date 3/10/2013 "... taken advantage of Article (11) of the Constitutional Court Law No. (15) for the year 2012: It should appeal of unconstitutionality that indicates a clear and specific scope of Exceptio and supports his allegation that the law impugned by the applicable to the case against violation of the Constitution and the Court headmistress of the suit after being shown its seriousness Exceptio to stop consideration of the case and refer the case to the Court of Cassation for the purposes of deciding in a matter referred to the constitutional Court, but the Amman Court of appeal did not observe it'.

5. The 4th Topic: The Parties that the Exceptio Constitutional raise on fronts it.

Article "11" paragraphs "c, d": "...":c: If the headmistress court finds of the suit that the law or system in which Exceptio Constitutional was raised duty application on the subject of the case and that the Exceptio Constitutional serious then it stopped to consider the case". "d: if the Exceptio Constitutional raising in fronts the Court of Cassation or the Supreme Court of Justice they will begin immediately to

decide on the assignment in accordance with the provisions of this article " Is clear from this text that may raise this Exceptio to all types of courts either in the ordinary courts in all departments of civil or criminal or legal or appellate or military courts or state security courts, and whether the courts of first degree or second degree and that application of the rule to "Judge the case is Exceptio judge". also this Exceptio may be made for the first time in front of the Court of Cassation or the Supreme Court of Justice because it is Exceptio related to the public system and has a legal nature and not from the formal or procedural defenses ^[20]. It may a raise the Exceptio to urgent justice when considering fissure urgent in the case of substance, because this urgent is a preliminary question depends upon separation in the proceedings and are specific to another court is the Constitutional Court, as the urgent judge matters such as any judge another a binding application of the law except if it is contrary with a higher base, If Exceptio in front it for the text to be applied to the dispute, it must stop the urgent proceedings for the completion of constitutional issue of the competent court its consideration of the Court of Cassation, up to decide on the order referred to the Constitutional Court emphasizing that the headmistress court's decision of the suit against referral viable to appeal pursuant to the tail of paragraph "c" of Article "11", which stipulates: "If the headmistress court finds of the suit that the law or the system that raised Exceptio applicable to the subject of the proceeding and that the Exceptio is serious it will be stopped to consider the case and refer the Exceptio to the Court of Cassation for the purposes of deciding in order transmission to the court, and the decision of the headmistress Court of the case are not assignment a subject to appeal with the merits of the case". In this regard, the Jordanian Cassation Court decided (rights) in case No. 3755/2012 (a tripartite body) Date 14/11/2012 "taken advantage of Article (11) of the Constitutional Court Law No. (15) (For the year 2012):" It should to the unconstitutionality appellant to shows a clear and specific scope of Exceptio and supports his claim that the law applicable to the case and the face of violating the Constitution and the headmistress Court of the suit after showing seriousness Exceptio have to stop consideration of the case and refer the Exceptio to the Court of Cassation for the purposes of deciding in order to transmission to the Constitutional Court. And refer to the decision of the Magistrate's Court, previously mentioned ... “

6. The 5th Topic: Time to the Exceptio Constitutional raising

The Exceptio Constitutional is one of objections which may be formulated in any stage of the proceedings, the text does not include specific degrees of the courts, which can decide to refer what arose in front of the arguments related with the constitutional to the Constitutional Court because the text that select the subject came generally and entertained. If the opponents made the Exceptio Constitutional and the Court held that Exceptio is serious they delay the proceedings and hitting date for opponents, This specified time is one of the dates of the fall as it following the expiry of the right of opponents to falls Exceptio and the Court continues to consider the merits of the Exceptio without taking notice of Exceptio, Although we would have preferred that the legislature has given the judge the right to refer the constitutional issue of his own to the Constitutional Court. The judge should be addressed by him to discuss of whether

constitutional or not because the Exceptio is of the public system and may be rising for the first time in front of any degree of litigation ^[21]. The Exceptio Constitutional is not considered a valuable if not raised by the case in front of the Constitutional Court within the time limit that settled by the trial court which according to the article "11.

- A. Any parties of a lawsuit perspective in front the courts of different kinds and degrees have a right to the Exceptio Constitutional for any law or regulation applicable to the merits of the case.
- B. The Exceptio Constitutional submitting to the headmistress court of the suit under the memorandum shows where the applicant name of the law or the system that Exceptio and the number and scope of payment in clear and specific and supported his claim that a law or regulation applicable to the merits of the case and the face of the violation of the constitution, and may be of any other party in the lawsuit submit his reply within the period specified by the court to not more than fifteen days from the date of submission the Exceptio memorandum .
- C.
 1. Subject to the provisions of paragraph (d) of this Article, if the headmistress court finds of the suit that the law or the system that raised Exceptio duty application on the merits of the case and that the Exceptio is serious, it will have stopped to consider the case and refer the Exceptio to the Court of Cassation for the purposes of deciding in a matter transmission to Court, and the headmistress Court decision of the suit not be subject to appeal referral with the subject of the case.
 2. For each party in the lawsuit to submit a memorandum to the Court of Cassation on referral within fifteen days from the date of issuance of the court's headmistress decision of the suit Exceptio to be reported to the Court of Cassation.
 3. For the purposes of deciding on referral subject, the Court of Cassation is being held by Authority of at least three members, and issues its decision within thirty days from the date of receipt of the case to it, and if it agrees to the referral, it will notify the parties to the lawsuit so.
- D. If Exceptio Constitutional is made in Front Of the Court of Cassation or the Supreme Court of Justice it will directly in charge to decide on the referral in accordance with the provisions of this Article. "

7. The 6th Topic: The Authority of the trial judge towards the Exceptio Constitutional

Under the law of the Constitutional Court if the Exceptio front of trial judge declared unconstitutional law or regulation it does not transmit the search ordered in this constitutional to the Constitutional Court directly, but he has the a right to make sure in the first that the Exceptio is serious, But if the judge determines that the Exceptio is not serious, it is right to reject it and separates the subject, is not entitled to those who Exceptio the resort to the Constitutional Court. And for granted by the applicant's right to appeal against the decision of the trial judge in accordance with the methods specified any appeal or cassation if the regular courts are having jurisdiction, The trial court - under the control of the Supreme Court in same Judicial stairs – it is the competent court by verify the seriousness of the Exceptio or non-seriousness, it does not

have controlled by the Constitutional Court in this regard. ^[22] Some argue that the role that given legislator to the trial judge aims to narrow control of the constitutionality of laws, in order not to flood the Constitutional Court in a stream of lawsuits that may be aimed just to disable separation in the original case, which recorded the principle of centralized control that the law of the Constitutional Court objective to take it ^[23]. That the Court of Cassation's decision to refuse refer the appeal of unconstitutionality to the Constitutional Court is a definitive decision cannot be appeal front of any higher judicial body, which can be considered as an additional constraint on the freedom of individuals to display their complaint of unconstitutionality of any law or regulation with the Constitutional Court. It have split among States about determining the impact of the ruling the unconstitutionality of law violator, for example: We find that the system applied in the United States of America takes a negative attitude of the law res judicative unconstitutionality where this provision Authentic relatively limited impact on the parties to the conflict and not others ^[24], if has been shown to the Constitutional Court unconstitutional law then it will refrain from the empirical it, note that this refrain does not restrict to other courts. While the view of the Italian Constitution issued on 1984 ^[25] to take a positive attitude for the law or the text res judicator unconstitutionality so be repealed law convict unconstitutionality of the day following the publication of the judgment in the official newspaper, where has the judgment of the Constitutional Court the absolute authentic, means that its impact extends to all individuals and institutions in the State, but to every dispute would be governed by the law or the legal text was violator the Constitution. Since some systems left to Parliament to estimate repeal the law convict unconstitutionality or reject the judgment of unconstitutionality and one of that States is Poland ^[26]. I also some systems went to take a negative attitude of the law convict unconstitutionality in terms of being refrain on the application this law by the parties to the exclusion of others, but it was decided that the decision res judicative unconstitutionality his absolutely authoritative and shall be binding for individuals and state authorities, not for being a logical consequence to refrain from law enforcement is constitutional, but for the receipt of constitutional provisions so decided ^[27]. The judgments in constitutional lawsuits are by nature proceedings kind directed litigation where to legislative texts that impugned defect unconstitutional, which means to be absolutely deposited so that is not limited impact on both sides of the lawsuit issued them, but going out effect to all and abide by all State authorities, whether the judgment of the unconstitutionality of legislative text or to its constitutionality and reported the case ^[28]. Accordingly, the judgment of the Constitutional Court the unconstitutionality of a legislative text has absolutely authoritative resolved whereby categorically litigation decisive objection to any appeal arises about it again, and be the rule of the court not to accept the case being ruled unconstitutionality before. This is supported by Article 15 / A of the Constitutional Court Law No. "15" for the year 2012, which stipulates: "the court issue a judgment in the appeal by the name of the king, and the judgment issued is final and binding on all authorities and universal" "And then if judge for example, not accept the case before the Constitutional Court the deductible doesn't have right to ask the court to reconsider where overlooked separation in the merits of the case, and does not have to ask them" confront "the lack of a

constitutional text, which was stabbed in it and judge the non-acceptance governance previous its issuance a this is consider a get away from the previous judgment which is in reality an appeal and it is not permissible". On the other hand a license of "confront" not be allowed because the license is used the occasion of the Court's exercise of jurisdiction in the original case, and like that the original case is unforeseen by the court, because it judge non-acceptance and do not have a license of "confront" Guide to justify its work ^[29]. Accordingly, the provisions of the Constitutional Court enjoys by absolute Authentic and abide by all State authorities, may not be raised conflict again about the constitutionality of the text of the Constitutional Court that had ruled by unconstitutionality it, whether it be from the same opponents in the constitutional case or others opponents^[30]. In this regard, the Supreme Constitutional Court decided that the impact of the provision of unconstitutionality is the "abolition of the force power of res judicative text unconstitutionality", the censorship on the constitutionality of laws that specialized out without other is a comprehensive control extends to the judgment of unconstitutionality text repealed and cancels the force power, to report unconstitutionality and therefore integrity of all defects and nullity aspects ^[31]. The researcher believes that the recent Constitutional Jurisdiction in Jordan and are not subjected court for this issue, what it issue by the Supreme Constitutional Court would apply to judgment the Constitutional judge declared unconstitutional a law or system binding by the trial court to refrain from the application without canceling it. And it remains standing theoretically even the legislator cancel the law, and the executive authority for the system, with emphasis on the constitutional text is loses its value in practice because all courts will refrain from applied pursuant to the principle of the absolute authentic judgment the unconstitutionality. We must in this regard to assure that if he spent the unconstitutionality of the articles of the law or regulation; this rule of correlation that entails judged unconstitutional the entire material in this law or regulation that are closely associated with, does not accept retail and to repeal its impact ^[32]. The right of individuals

8. The 7th Topic: The right of individuals in the resorting to the Constitutional Court

Question arises about the extent to individuals resort directly to the Constitutional Court to move the lawsuit to appeal of the constitutionality of a law or regulation in front by the original suit, It is intended the original case; carry one of the persons that affected by a particular law or regulation to appeal it directly and without the need to wait until the law is applied. The Jordanian Constitution and the law of the Constitutional Court didn't gives the right of the Court in the that exercise control over the constitutionality of the laws of its own as it considers a provision is unconstitutional, and it was relevant to the dispute arises it or to allow individuals to resort directly to the Constitutional Court to appeal unconstitutionality of the legal text claiming by the original case. The Jordanian legislator did not take that way like taken by some countries, such as Switzerland in its Constitution of May 29, 1874 which allowed interested party present or future to appeal to the Federal Supreme Court declared unconstitutional laws passed by the states, and the Constitution of Cuba in 1934 and the Constitution of Spain 1931 and the Libyan Constitutional issued in 1953 and the Constitution of the Sudan, issued in 1973. Perhaps the reason for not taking a way that the original

case lies in that litigation procedures generally do not exercised only upon request, and this request in often have a list of the lawsuit, which shows the owner of such requests complete and the judge constrained out, and shall not went beyond that or try judge more of them. This general principle applicable to constitutional lawsuit not exercised only if a court connection upon request and there are not control-automatic or spontaneous manner, if contacted the court without a suit or request in accordance with what has been previously mentioned this connection was null and void. And the side of jurisprudence sees that not taking this way has its causes and that is the accumulation of cases before the Constitutional Court, which impedes their work and limits their ability to carry out its tasks. whereas another aspect of jurisprudence sees ^[33] that has to be allow to individuals the right to appeal in front the Constitutional Court by the original case on condition some restrictions so as not to exhausts the Constitutional Court accumulation of issues in front it, such as requiring interest in the of raising the original case, or the imposition of a fine for each of losing the original case in the Constitutional Court, or the granting of some state bodies, which have moral personality such as universities, municipalities and unions, etc. right in the original suit with the Constitutional Court. ^[34]. Especially that the Jordanian Constitution and the law of the Constitutional Court may limit law suit constitutional origin in the hands of lawmakers, they are: the Prime Minister and the President of the Senate and the Parliament Speaker so likely if have taken Jordanian legislator by path of original case along with the other three methods, and the citizens don't aim to the misuse by use the origin right, like the right of litigation regarding the constitutionality or unconstitutionality of laws and deprived as an absolutely way of this right.

9. The 8th Topic: The International Treaties the Exceptio Constitutional

International treaties are meant consensus the will of two or more subjects of international law to make a raised certain legal according to the rules of international law, and it have not gaining a recipe cram only if only the intervention of the authority that gives the constitutional system of each of the States Parties to the authority of the treaties. ^[35]. On the subject of our study question arises among jurists about the subordination of international treaties to control the Substitutional Court? Beginning we answer of this question by saying: the side of jurisprudence see that international treaties do not live up to the rank of internal law except if the state took it upon themselves to take certain legal actions to be integrated into the national system. Whereas the other side of jurisprudence see if the state once ratification of the International Treaty and its entry into force, it becomes a source for national and international base. ^[36] At the domestic level the Jordanian Constitution was not subjected to the issue of the integration the treaties in the domestic legal system, but the Jordanian judiciary apply international treaties whether conflicted with domestic legislation and this is what taken by the Jordanian Court Cassation In a recent decision decided to: "utilized paragraph 43 of the Law Jordan's accession to the Convention WTO that Jordan committed in the event that the Jordanian laws or any other regulations contradict with the international treaties or conventions and the conditions for international treaties or conventions that will apply " ^[37]. Return on the above, we say: Despite the absence Jordanian Constitution for the year 1952 and the law of the

Constitutional Court of the statement of the right of the Constitutional Court in the control of international treaties in any way of the appeal and it treaty international as soon as meet the required of the constitutional procedures will occupy the same place legislative enjoyed by national law, which means being subject to the supervision of the Constitutional Court to make ensure the extent of compliance with the provisions of the Constitution. And confirms our position that is what gone by Jordanian Court of cassation in its decision No. 2353/2007 (public authority) date 8/4/2008 and that it decided: "the judiciary & Jurisprudence agree that international agreements concluded by the states is the highest rank of the domestic laws of these countries and that these agreements first application even conflicted texts to the domestic law, And the application of international conventions and the laws of the jurisdiction without leave the litigation Parties to choose the Convention or the law that they want because that belongings public system, provided that the international conventions and treaties have passed of constitutional stages in the country which is seen the conflict, And to show if whether the United Nations Convention on of Shipping joined by Jordan under the decision of the Council of Ministers published in the Official Gazette No. ((4484)) 16/4/2001 date and which allowed the agreement of the parties to refer any dispute relating to the transfer of goods to any place appointed for this purpose, has gone through stages of constitutional or not, and whether to force requires the approval of the Parliament and it's ratification. Taken advantage of Article (33) of the Jordanian Constitution as modified by an amendment Jordanian Constitution of 1958 and the Constitution No.((1)), for year 1958 and the decision of the Higher Council to explain the Constitution and decision No.((1)), for the year 62 that the agreements and treaties that require the Constitution to force approval parliament is:

- A. Agreements concluded by the Hashemite Kingdom of Jordan with other countries and that the consequent load the State Treasury a thing of the expenses ((such as loan agreements that the State bears any of these expenses such as interest or other financial burdens)).
- B. Agreements concluded by the Kingdom with other countries and that the consequent Breach the rights of Jordanians public or private. Since the purpose of prejudice these rights is a negative impact on the rights of Jordanians, public or private, whether those stipulated by the Constitution in the second chapter from articles ((5 - 23)) or other rights that are relevant and Breach them, that leads to detract from public or private rights of Jordanians. Whereas Article ((215 / b)) of the Trade Act Navy has stipulated that ((Notwithstanding the provisions of any other law shall be void each condition or agreement taken away jurisdiction of the Jordanian courts to consider the disputes arising from shipping documents or maritime transport).

10. The Conclusion

The Exceptio Constitutional method appears as a form of connection of the Constitutional Court of the constitutional lawsuit, When there is a case pending in front the trial court and intended to be applied to the text of the law, and one of the dispute parties see is unconstitutional, then he Exceptio Constitutional to trial court, and he will appreciates the seriousness of this Exceptio, The Exceptio is an objective

exception it can be raised at any stage of the proceedings to exceptio which related to public system as it the trial court can be exposed on its own. As result for this paper; prevent individuals to resort directly to the Constitutional Court to appeal the constitutionality of any law or regulation, and Jordanian legislator suspended referral exceptio Constitutional that raised front of the trial court to accept the Court of Cassation, which considered it by the law that it have the right to accept or reject the exceptio Constitutional. And here the researcher recommend to Amend the Article (9) of the Law of the Constitutional Court regarding with the aspects entitled to appeal directly to the Court on the constitutionality of laws and regulations by adding a paragraph authorizing individual personal interest directly appeal to the Constitutional Court. In other words to be appeal by the original case in addition to the other four methods, and issue text with a few guarantees to not abused this right by the plaintiffs and the exhaustion of the Constitutional Court. And don't leave the subject of referral the exceptio Constitutional under Cassation Court responsibility.

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