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# THE ROLE OF THE CONSTITUTIONAL COURT IN GUIDING THE STATE'S CRIMINAL POLICY: AN APPLIED STUDY

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## ABSTRACT

*In the modern era, the constitution has become the supreme reference from which the legitimacy of various laws and legislative enactments is derived. It constitutes the fundamental framework that ensures the balance among state powers and protects the fundamental rights and freedoms of individuals. Within this context, the constitutional court has emerged as a supreme judicial body, entrusted by the constitutional legislator with the task of preserving the supremacy of the constitution, by subjecting laws and regulations to constitutional review and addressing any legislative provision that may threaten constitutional principles or undermine the guarantees of rights and freedoms. Criminal policy is considered one of the most sensitive and critical areas of legislation, given its direct impact on Individual freedom and fundamental rights, as it embodies the state's authority to criminalize conduct and impose punishment. Criminal policy Is based on a set of legislative choices that reflect the state's philosophy in combating crime, achieving deterrence, and protecting public order. However, these choices may sometimes involve an unjustified expansion of criminalization or excessive severity in penalties, which may conflict with constitutional guarantees, such as the principle of legality. In criminal matters, the principle of proportionality, the presumption of innocence, and fair trial guarantees. Within this framework, the vital role of the constitutional court in guiding the state's criminal policy becomes evident, not only through the annulment of unconstitutional criminal provisions but also through interpreting them in a manner consistent with constitutional norms. This renders the jurisprudence of the constitutional court an effective tool for restoring the balance between the requirements of public security and the protection of individual rights and freedoms. Consequently, constitutional review is transformed from a merely passive legal control into a positive mechanism that actively influences the choices of the criminal legislator. The importance of this study is manifested in several aspects, most notably its contribution to enriching constitutional and criminal legal thought by highlighting the relationship between constitutional adjudication and criminal policy and clarifying the limits of the constitutional court's Intervention in the field of criminal legislation. The study aims to clarify the concept of criminal policy and its relationship with constitutional review and to explain the role of the constitutional court In guiding the state's criminal policy. The study is based on a main research question: To what extent does the constitutional court contribute to guiding the*

*state's criminal policy, and what are the limits of its intervention in the field of criminal legislation? The study reached several findings, most importantly that the constitutional court contributes effectively to regulating criminal policy by reviewing criminal provisions and ensuring their conformity with constitutional principles, and that its rulings have a direct impact on the criminal legislator, whether through amending existing laws or enacting new provisions that are more consistent with the constitution. This study relies on the analytical method, through the analysis of constitutional texts and relevant criminal laws, as well as the examination of rulings issued by the constitutional court, and the comparative method where appropriate, by referring to selected comparative experiences to highlight similarities and differences. In the role of constitutional adjudication in guiding criminal policy.*

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**KEYWORDS:** Constitution, Constitutional Court, Criminal Policy, Fundamental Rights and Freedoms, Constitutional Review.

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## 1. INTRODUCTION

In the modern era, the constitution has become the supreme reference from which the legitimacy of various laws and legislative enactments is derived. It constitutes the fundamental framework that ensures the balance among the powers of the state and safeguards the fundamental rights and freedoms of individuals. Within this context, the constitutional court has emerged as a supreme judicial body entrusted by the constitutional legislator with the mission of preserving the supremacy of the constitution, through subjecting laws and regulations to constitutional review and confronting any legislative provision that may threaten constitutional principles or undermine the guarantees of rights and freedoms.

Criminal policy is considered one of the most sensitive and critical areas of legislation, given its direct impact on individual freedom and fundamental rights, as it embodies the state's authority to criminalize conduct and impose punishment. Criminal policy is based on a set of legislative choices that reflect the state's philosophy in combating crime, achieving deterrence, and protecting public order. However, these choices may sometimes witness an unjustified expansion of criminalization or an excessive tightening of penalties, which may conflict with constitutional guarantees such as the principle of legality. In criminal matters, the principle of proportionality, the presumption of innocence, and the guarantees of a fair trial.

Within this framework, the vital role of the constitutional court in guiding the state's criminal policy becomes evident, not only through the annulment of unconstitutional criminal provisions, but also through interpreting them in a manner consistent with constitutional norms. This renders the jurisprudence of the constitutional court an effective tool for restoring the balance between the requirements of public security and the protection of individual rights and freedoms. Consequently, constitutional review is transformed from a merely passive legal control into a positive mechanism that actively influences the direction of the criminal legislator's choices.

Moreover, the judgments issued by the constitutional court contribute to shaping the contours of criminal policy by entrenching constitutional principles of a criminal nature, such as the prohibition of cruel or inhuman punishments, the principle of the personal nature of penalties, the non-retroactivity of more severe criminal laws, as well as reducing legislative ambiguity in criminal

provisions. In many instances, this has led to the reconsideration of existing legislation or prompted the legislator to enact new laws that are more consistent with constitutional values.

The importance of studying this subject is further heightened in light of the rapid legislative transformations witnessed by contemporary states, particularly with the emergence of new criminal phenomena and the expansion of criminalization under the pretext of combating terrorism, organized crime, or cybercrime. This necessitates the existence of effective constitutional oversight to prevent unjustified infringements upon rights and freedoms. In this regard, the constitutional court represents a constitutional safety valve that limits the arbitrariness of the legislative authority in the criminal field and steers criminal policy toward respect for the rule of law.

Based on the foregoing, this applied study aims to shed light on the actual role of the constitutional court in guiding the state's criminal policy by analyzing its judicial jurisprudence and its practical effects on criminal legislation, and by examining the extent of its ability to achieve a delicate balance between protecting society from crime and safeguarding the constitutional rights and freedoms of individuals.

### 1.1. Importance of the Study:

The importance of this study is manifested in several aspects, most notably:

This study contributes to enriching constitutional and criminal legal thought by highlighting the relationship between constitutional adjudication and criminal policy, and by clarifying the limits of the constitutional court's intervention in the field of criminal legislation. It also elucidates the practical impact of constitutional court rulings on applicable criminal provisions and the resulting consequences in terms of amendment, repeal, or reformulation of criminal legislation. Furthermore, the study underscores the role of the constitutional court in protecting fundamental rights and freedoms against unjustified expansion in criminalization or excessive severity in punishment.

### 1.2. Objectives of the Study:

This study aims to achieve a set of objectives, the most important of which are:

To clarify the concept of criminal policy and its relationship with constitutional review.

To explain the role of the constitutional court in guiding the state's criminal policy.

To analyze the judicial applications of the

constitutional court In the criminal field.

To assess the extent to whichh constitutional court rulings influence the criminal legislator.

To highlight the balance that the constitutional court seeks to achieve between protecting society and safeguarding rights and freedoms.

### **1.3. Research Problem:**

This study is based on a main research question formulated as follows:

To what extent does the constitutional court contribute to guiding the state's criminal policy, and what are the limits of its intervention In the field of criminal legislation?

From this main question arise several subsidiary questions, Including:

How do constitutional court rulings affect the philosophy of criminalization and punishment?

Does the intervention of the constitutional court constitute a constraint on the discretionary power of the criminal legislator?

To what extent is constitutional review effective in protecting rights and

Freedoms in the criminal field?

### **1.4. Methodology of the Study:**

This study adopts a set of scientific research methods, most notably:

The Analytical Method: through the analysis of constitutional texts and relevant criminal laws, as well as the examination of rulings issued by the constitutional court.

The Comparative Method (where appropriate): by referring to selected comparative experiences in order to highlight similarities and differences in the role of constitutional adjudication in guiding criminal policy.

### **1.5. Chapter One**

#### **1.5.1. Depart The Conceptual and Theoretical Framework of the Role of the Constitutional Court in Criminal Policy**

The Supreme Constitutional Court constitutes a cornerstone in ensuring the supremacy of the Constitution and the protection of citizens' fundamental rights and freedoms. Its role Is particularly significant and vital in the field of criminal cases, where stringent punitive procedures intersect with constitutional guarantees that ensure a fair trial. In this context, the Court's mission is not confined to the mere interpretation of legal texts; rather, it extends to offering constitutional solutions to the practical challenges associated with the

application of criminal law, thereby achieving a balance between the State's right to punish and the individual's right to liberty and legal protection.

This study examines the mechanisms through which the Constitutional Court operates and the solutions it provides to ensure the proper administration of criminal justice in accordance with constitutional principles. The intervention of the Supreme Constitutional Court in criminal cases is based on the principle of constitutional legality, which requires that all laws—including substantive and procedural criminal laws—be consistent with the provisions of the Constitution. When a suspicion arises regarding the unconstitutionality of a criminal provision, the Court becomes the final refuge for determining the fate of that provision and, consequently, the fate of the procedures and judgments founded upon it. Such intervention aims to purify the legal system of any legislation that violates the fundamental guarantees afforded to the accused.

### **1.6. First Requirement**

#### **1.6.1. The Concept and Scope of Criminal Policy**

To begin with, the criminal policy of each country constitutes part of the state's overall policy in combating crime and protecting society from its effects. This policy is shaped by the prevailing political, social, and cultural concepts and visions within that country, in addition to the social interest that reflects all these perspectives collectively. Just as the state adopts economic, financial, commercial, and social policies, it also adopts a criminal policy that forms an integral part of Its legislative policy and represents a manifestation of its sovereignty in the legal sphere. This is achieved through the legislative means embodied in laws concerned with combating behaviors harmful to society and to individual interests, by criminalizing such conduct and imposing penalties on those who commit it.

The concept of criminal policy has evolved in line with the development of criminology and its schools and theories. When criminological theories came to be grounded in contemporary social theories, criminal policy came to be understood as the rational organization of society's response to crime within a specific community and at a particular point In time. Accordingly, criminal policy identifies the social interests worthy of protection and determines the penalties that are most appropriate and effective in achieving their intended purpose. It therefore involves the study and analysis of the extent to which criminalization and punishment within an existing legal system are appropriate and effective.

Based on the foregoing, criminal policy refers to the plan adopted by the state to protect its interests and society from deviant criminal phenomena, whether through substantive criminal rules (criminalization and punishment) or through formal procedural criminal rules. This policy varies from one state to another and from one period to another, depending on the priorities and interests it seeks to safeguard and the means required to preserve them.

## **1.7. Section One**

### **1.7.1. Definition of Criminal Policy and its Characteristics**

The term "policy" is among the most frequently used terms, given the breadth of its application across political, economic, and social fields, as well as within the realm of scientific research and its various branches, such as fiscal policy, economic policy, and criminal policy in both its criminalizing and punitive dimensions, along with other types of policies. In order to shed light on this term, its definition will first be presented, followed by an explanation of the concept of criminal policy. Policy is understood as: the set of philosophical orientations and starting points with defined purposes and objectives, implemented within a specified period of time, and manifested through decision-making that involves weighing available alternatives in light of the priorities and interests of society. The term "criminal policy" is considered one of the most significant terms within the criminal legal system. The first to use this term at the beginning of the nineteenth century was the German jurist Feuerbach, who defined it as "the set of measures that may be adopted at a given time in a given country in order to combat crime." Criminal policy has also been defined as the science that studies the activity which the state must undertake to prevent crime and impose punishment; or as that which sets out the principles that must be followed in determining what constitutes a crime, and in adopting preventive measures and the penalties prescribed for it.

According to this definition, criminal policy encompasses the criminalization of acts and the imposition of penalties, as well as means of crime prevention outside criminal procedures. At the same time, the role of criminal policy must be clearly evident in examining the extent to which criminalization and punishment are compatible with societal values and needs, and what this requires in terms of individualizing and diversifying penalties from the legislator's perspective, in addition to adopting the best procedural systems in a manner consistent with the objectives pursued by this policy.

Consideration must also be given to the necessity for criminal law to keep pace with social necessities, taking into account the tangible reality of society and its actual level of development.

From the foregoing, it is clear that the role of criminal policy is not limited to studying which acts should be criminalized and what penalties should be prescribed for their perpetrators, or to examining the measures required to prevent the occurrence of crime. Rather, it also extends to encompass the necessary criminal procedures for dealing with criminal conduct. Moreover, this policy must remain in a constant state of vigilance in order to contribute to the development of criminal law rules in a manner consistent with social developments and evolving changes; otherwise, a breach of justice becomes inevitable. Accordingly, at the international level, the United Nations has called for the reform of criminal justice systems—particularly in the areas of criminalization and punishment—in states suffering from internal conflicts, with the aim of achieving a balance between combating crime and protecting human rights, as well as ensuring that legal procedures keep pace with the requirements of justice in light of judicial practice. Criminal policy is characterized by several features derived from the objectives it seeks to achieve and from the extent to which it is influenced by the political system of the state, in addition to its inherent nature, which requires keeping pace with developments in social life. These characteristics are as follows:

#### **1.7.2. First: Purpose-Oriented**

Criminal policy aims at a specific objective, namely directing criminal law in the areas of criminalization, punishment, prevention, and criminal treatment, so as to keep pace with societal developments at both the stages of enactment and application. At the legislative stage, the legislator must pursue the objectives of this policy; at the application stage, the judge must be aware of the latest developments in criminal policy and draw upon their outcomes when interpreting criminal law provisions.

#### **1.7.3. Second: Relativity**

Crime, as a social phenomenon, is influenced by varying social circumstances. The determination by criminal policy of what constitutes a crime and how it should be combated or prevented is likewise affected by these circumstances. Given that such conditions change over time, criminal policy is characterized by relativity rather than absoluteness. Moreover, these circumstances differ from one state

to another. Since policy represents a set of measures proposed by the state to combat crime, such measures may be effective in one country but ineffective in another due to differences in social conditions.

#### **1.7.4. Third: Political Nature**

There is no doubt that the instruments of criminal policy are influenced by the political system of the state. Law is inevitably linked to how the prevailing political system understands criminal policy, and it cannot be separated from the ideology adopted by the ruling class. States that adopt a democratic system differ from those that adopt a dictatorial system in determining the type of criminal policy they pursue in combating crime.

#### **1.7.5. Fourth: Dynamic and Evolving**

Criminal policy is characterized by dynamism, as it is influenced by criminology, penology, and other related sciences, in addition to being affected by the prevailing political system of the state. Since it represents the legislator's viewpoint and is shaped by prevailing ideas and values, it is a renewable policy that must adapt to developments in those ideas and values without departing from the state's general policy, given that criminal policy forms an integral part thereof.

#### **1.7.6. Fifth: Based on a Scientific Methodology**

That is, it relies on the empirical scientific method grounded in observation. It draws upon a set of scientific laws that determine causal relationships between the proposed measures and the objectives sought, such as legal sociology, which examines the extent to which legal rules correspond to social reality. For example, the criminal legislator enacted the Anti-Terrorism Law of 2005 after observing developments in criminal methods, the inadequacy of existing criminal provisions to encompass such methods, and the insufficiency of prescribed penalties to address the expansion and diversification of crime. Consequently, this law was promulgated, clearly reflecting the scientific methodology underlying the criminal policy adopted by the legislator.

## **2. SECTION TWO**

### **2.1. Departments of Criminal Policy**

#### **2.1.1. The Division of Criminal Policy into Two Branches**

##### **First: Penal Policy**

Penal policy is a branch of criminal policy

concerned with determining which acts constitute crimes under the law and prescribing appropriate penalties commensurate with the seriousness of those crimes. The importance of penal policy lies in defining the form of punishment in a manner proportionate to the type of crime committed, with the aim of achieving criminal justice and protecting society. Penal policy primarily focuses on how crimes are addressed after they occur, including the procedures that follow. It also deals with deterring individuals from committing crimes in the future. Penal sanctions include both traditional punishments, such as imprisonment, and alternative sanctions, which may include community service or psychological treatment, depending on the nature of the crime committed and the offender's capacity for rehabilitation.

The objective of this policy is not only to punish crime, but also to strike a balance between protecting society from offenders on the one hand and safeguarding individual rights on the other. This necessitates the existence of precise legal rules and well-defined standards. Penal policy seeks to achieve several fundamental objectives that form the basis for the implementation of criminal sanctions.

##### **Achieving Justice:**

The primary objective of penal policy is to punish the offender in accordance with the gravity of the crime committed. This means that the punishment must be proportionate to the seriousness of the offense, so that the offender is neither punished more nor less than deserved. This entails prescribing different penalties for different types of crimes (such as murder, theft, assault, etc.) in accordance with legal standards aimed at achieving justice within society. Criminal justice must be transparent and non-discriminatory, ensuring that every individual is punished based on their actions rather than their social or economic background.

##### **General and Specific Deterrence:**

Deterrence is a fundamental objective of any penal system. It aims to prevent individuals from committing crimes through the imposition of deterrent sanctions. There are two types of deterrence:

General deterrence, which seeks to influence society as a whole by demonstrating that criminal behavior results in punishment, thereby discouraging others from engaging in such acts.

Specific deterrence, which aims to prevent the convicted offender from reoffending. Accordingly, penalties are intended to have a psychological impact on the offender, making the repetition of criminal behavior undesirable.

### **Rehabilitation of the Offender:**

The third objective of penal policy is the reform and rehabilitation of the offender so that they may return to society as a productive member. Penal policy is not limited to punishment alone; it also includes programs aimed at correcting offenders' behavior within correctional institutions. These programs may include psychological treatment, education, vocational training, and religious or moral guidance. The goal is to enable offenders to acquire new skills that facilitate their effective reintegration into society upon release from prison, thereby reducing the likelihood of recidivism.

### **Second: Preventive Policy**

Preventive policy is a vital component of criminal policy and aims to prevent crime before it occurs, with a focus on addressing the root causes that may lead to criminal behavior. This type of policy differs from penal policy, which concentrates on punishing crime after its commission. Preventive policy seeks to reduce the conditions that may lead to criminal activity. Preventive approaches range from social prevention, which addresses living conditions, to legal prevention, which involves legislation designed to deter criminal acts before they take place. In Iraq, preventive policy is considered part of the state's efforts to protect society and individuals from crime and to achieve social security.

Although Iraq, like many other countries, faces significant challenges in implementing this policy due to the current social and economic conditions, there are numerous legal and social initiatives aimed at reducing the spread of crime. Preventive policy in Iraq is based on principles that include social justice, the protection of human rights, and the promotion of community security through crime prevention. The primary objective of preventive policy is to prevent crime before it occurs, a goal that constitutes one of the fundamental pillars of any advanced justice system.

To achieve this objective, preventive policy relies on a set of measures that include improving social, economic, and educational conditions in Iraq. The state works to address fundamental problems such as poverty, unemployment, illiteracy, and social discrimination, which are considered major factors contributing to crime. For example, poverty-reduction programs and the provision of employment opportunities for youth in disadvantaged areas can help reduce the motivations for criminal behavior.

Another objective is to reduce the social causes leading to crime. In Iraq, unemployment is considered one of the main factors contributing to

increased crime rates, including theft and violent crimes. Therefore, the implementation of vocational rehabilitation programs and the provision of economic support to impoverished areas aim to significantly reduce crime. In addition, there is a need to improve the educational situation in Iraq, as illiteracy represents a key factor in the rise of crime. Education opens opportunities for individuals to achieve a better quality of life.

Achieving social stability constitutes an important part of preventive policy in Iraq. Given the existence of social conflicts and sectarian tensions, creating a stable social environment is a fundamental factor in reducing crime. When individuals feel social security and justice, they are less likely to resort to criminal behavior. Accordingly, the state seeks to strengthen social cohesion through awareness-raising and cultural initiatives.

Although penal policy and preventive policy represent two different aspects of criminal policy, they are complementary and seek to achieve shared objectives from different perspectives. While penal policy focuses on punishing criminal acts after their occurrence, preventive policy works to eliminate the causes that may lead to the commission of crimes. Combining these policies within a unified framework is considered the most effective approach to combating crime in Iraq. Penal policy based on deterrent sanctions may be effective in discouraging criminal acts; however, without addressing the underlying social and economic causes of crime, its impact on reducing crime rates will remain limited. Therefore, integrating preventive measures with punitive measures is one of the most effective methods for ensuring social stability and reducing crime rates.

## **2.2. The second requirement**

### **2.2.1. The role of the Constitutional Court in the legal system**

There is no unanimous agreement on a comprehensive definition of constitutional adjudication. It has been defined as a constitutional authority or body established by the popular will—like other state authorities—whose jurisdiction is determined on an exclusive basis, primarily in order to ensure respect for the rules governing the distribution of powers and to prevent any authority from encroaching upon the competences allocated to others by the Constitution.

The foundations upon which constitutional adjudication has been established vary. The constitutional basis for judicial review of the constitutionality of laws lies in the principle of the

supremacy (or primacy) of the Constitution. As the supreme law, the Constitution imposes two obligations:

The first obligation is directed at the legislative authority, which must refrain from enacting laws that contravene the provisions or principles of the Constitution.

The second obligation is directed at the executive authority, which must refrain from issuing regulations that violate the Constitution or its principles.

The Constitution of the Republic of Iraq of 2005 affirmed this principle by stating:

“First: This Constitution shall be the supreme and highest law in Iraq and shall be binding throughout its entirety without exception.

Second: No law may be enacted that contradicts this Constitution, and any provision contained in regional constitutions or any legal text that contradicts it shall be deemed null and void.”

Accordingly, the primary role of constitutional adjudication is to strengthen constitutional guarantees and safeguard the sovereignty of the people. This is manifested in the fact that when the Constitutional Court invalidates a particular law, it restores respect for the Constitution and reaffirms the sovereignty of the people.

### 2.3. Section One

#### 2.3.1. The Concept of the Constitutional Court and its Primary Function

Constitutional adjudication raises questions regarding the true nature of its meaning. This invites the view that, depending on the perspective from which it is examined, the term may be divided into two distinct meanings:

**First:** the institutional (organic) meaning, which defines constitutional adjudication as a body or a material entity.

**Second:** the substantive (objective) meaning, which considers constitutional adjudication as an act or activity.

Accordingly, and as a result of the multiplicity of terminological meanings attributed by constitutional law scholars to the concept of constitutional adjudication.

##### **First:** The Institutional (Organic) Approach

According to this approach, the term constitutional adjudication refers to the existence of a court or specialized judicial bodies entrusted with safeguarding the supremacy of the Constitution.

It is also defined as the judicial authority to which the Constitution entrusts the task of overseeing constitutional legality when such review is

centralized (specialized constitutional adjudication). It may also refer to a special judicial body established by the Constitution, which defines its powers, guarantees its continuity and the independence of its members. Furthermore, it is defined as a constitutional authority created by the popular will through the Constitution—like other state authorities—whose powers are exhaustively determined in order primarily to ensure respect for the rules governing the distribution of powers among authorities and to prevent any authority from encroaching upon the constitutional powers of others.

Dean Léon Duguit considers constitutional adjudication to mean the establishment of a supreme court endowed with all possible guarantees of competence, integrity, and independence, before which issues of unconstitutionality are raised by concerned parties. In short, this supreme court has the authority to determine the constitutionality or unconstitutionality of laws and decrees.

#### 2.4. This Conceptualization Reflects Two Determining Elements of Meaning:

First, constitutional adjudication is confined exclusively to bodies that qualify as courts, to the exclusion of all others. Accordingly, any body that is not considered a court or a judicial authority cannot be regarded as exercising constitutional adjudication, even if it is vested with the power to review the constitutionality of laws. Consequently, while the Constitutional Court in Egypt and its counterparts in Italy and Germany are considered constitutional adjudicative bodies in the strict sense—being courts—the French Constitutional Council is not regarded as exercising constitutional adjudication, since it is not a court and does not constitute a purely judicial formation. This has led to characterizing its review of constitutionality as political rather than judicial.

Second, not every court qualifies as a constitutional adjudicative body; rather, it must be exclusively competent to review the constitutionality of laws. If this competence is combined with jurisdiction over non-constitutional disputes—such as civil, criminal, or administrative disputes—the characterization of constitutional adjudication diminishes. Accordingly, the Supreme Court of the United States is not considered a purely constitutional adjudicative body under this concept, since its jurisdiction is not limited to constitutional review but also extends to adjudicating other non-constitutional disputes.

This definition of constitutional adjudication

represents a narrow and traditional approach, as it requires excluding all judicial functions other than constitutional review of legislation, whether exercised by a specialized constitutional court or by the highest court within the judicial system. Consequently, the description of constitutional adjudication does not apply to the U.S. Supreme Court, as previously explained, since it possesses appellate jurisdiction over decisions of federal courts as a court of last resort. Likewise, it does not apply to specialized European constitutional courts, despite their specialization, because they exercise other competencies in addition to constitutional review. These include adjudicating disputes between central and regional governments, trying certain members of government through impeachment procedures, and exercising other powers that fall within the political domain. This approach also excludes constitutional courts that exercise review of the legality of governmental regulations in addition to reviewing the constitutionality of legislative enactments (legality review and constitutional review).

**Second:** The Substantive (Objective) Approach

This approach focuses on the function of constitutional adjudication. Eisenmann defines it as a type of judicial jurisdiction concerned with constitutional norms, thereby ensuring the distribution of powers between ordinary legislation and constitutional legislation, and guaranteeing respect for such distribution by the highest state authorities. Constitutional adjudication is also defined as the set of legal rules derived from judicial decisions in constitutional matters, or as the totality of courts—regardless of their types and levels—when they examine issues of constitutionality in systems of decentralized review (non-specialized constitutional adjudication).

From a substantive perspective, constitutional adjudication essentially means the adjudication of constitutional disputes. It is a concept that relates to jurisdiction rather than to the body exercising it. In other words, it is limited to resolving constitutional disputes regardless of the nature of the authority involved, whether it is a court in the strict sense or a non-judicial body. Accordingly, the description of constitutional adjudication applies equally to constitutional courts, such as the Egyptian Supreme Constitutional Court, and to constitutional councils, such as the French Constitutional Council. Both fall within this concept not because of their institutional nature, but because of their competence in adjudicating constitutional matters. Likewise, constitutional adjudication applies both to specialized bodies exclusively entrusted with such

matters and to courts that exercise constitutional jurisdiction alongside their competence over non-constitutional disputes. Thus, it also applies to the Supreme Court of the United States.

## 2.5. Section Two

### 2.5.1. *The Constitutional Principle That Governs The Role of The Constitutional Court in the State.*

The legal structure of the state consists of a hierarchy of legal rules, with the constitution at its apex, while other legal rules form the base of the state's legal pyramid. This hierarchy can be either formal or substantive. The status of fundamental laws and regulations within the legal system of a state depends on the type of constitution, as the rank of fundamental laws varies from one country to another. For instance, the status of fundamental laws in countries with flexible constitutions differs from that in countries with rigid constitutions.

Law is the tool through which the state regulates relations among its citizens, who have agreed to live under a legal system that embodies justice and rights. The authority responsible for enacting legal rules is the legislative power, which cannot supervise itself effectively. Even when it attempts oversight, it is often inefficient. Therefore, the legislator established a system to monitor the extent to which the actions of various state authorities conform to the constitution. This task is assigned to a supreme constitutional body, either the Constitutional Council or the Constitutional Court, depending on the political and legal system of each state.

The institution of constitutional judiciary, primarily tasked with overseeing the constitutionality of laws, ensures the supremacy of constitutional provisions. It exercises authority in the legislative and legal production fields, supervises the legitimacy of the election of legislative members, and monitors the legality of the formation of representative institutions and the activities carried out within these constitutionally mandated legislative bodies.

The proper functioning of constitutional institutions is essential for their continuity and for achieving the purposes for which they were established. This proper functioning entails that each institution performs its designated tasks within the framework of its relationship with other constitutional institutions, a relationship defined by the constitution. This ensures the integration of the work of constitutional institutions and prevents the dominance of one institution over another, which

could lead to an authoritarian system, particularly if power is concentrated in the hands of a single person or a small group.

The fundamental principle contributing to the orderly functioning of constitutional institutions is the separation of powers, balanced and cooperative. The legislative authority enacts laws; the executive authority implements laws and issues regulations, directives, and decisions facilitating their implementation while managing public affairs within the legal framework. The judiciary resolves disputes among individuals and between individuals and state institutions according to these laws. All these authorities are independent, yet constitutionally interconnected within a framework of harmony, coordination, and separation of powers.

The principle of separation of powers is influenced by the distribution of political forces in the Council of Representatives and the government. This influence varies according to the parliamentary system prevailing in the state. For example, in parliamentary systems based on a two-party or bipolar structure, the majority party or parliamentary coalition controls decision-making in both the Council of Representatives and the government, as the government is formed by the majority party or coalition. In such systems, the principle of separation between legislative and executive powers becomes largely theoretical and loses practical significance. The parliamentary majority may dominate authority, potentially enacting laws that conflict with the constitution and constitutional guarantees of rights and freedoms. This disturbs the balance of justice because even an independent and impartial judiciary may be unable to achieve justice if its rulings are based on unjust laws.

Under the dominance of the parliamentary majority over legislative and executive decision-making, institutional mechanisms may be disrupted, as the Council of Representatives may fail to supervise the government effectively and pressure it to perform efficiently.

In this context, the role of the constitutional judiciary becomes crucial for ensuring the proper functioning of constitutional institutions. Through oversight of the constitutionality of laws, it prevents the parliamentary majority from exceeding constitutional limits, including the principle of separation of powers and the prohibition of overstepping the jurisdiction of other authorities. Experience has shown, however, that the principle of separation of powers alone is insufficient, necessitating a compensatory authority—the constitutional judiciary. It contributes to regulating

the performance of legislative and executive powers and, consequently, their relationship. The constitutional judiciary's role extends beyond monitoring the constitutionality of laws; it also oversees election laws, party regulations, and, in certain cases, party activities, taking measures to dissolve parties when their proposals or practices violate constitutional principles and laws guaranteeing their operation.

### 3. CHAPTER TWO

#### 3.1. *Depart Mechanisms for the Constitutional Court's Intervention in Guiding Criminal Policy*

The French jurist, Dean Duguit, believes that there are no guarantees more effective in ensuring respect for the principle of the rule of law than the existence of a judicial body endowed with all the guarantees of independence, integrity, and competence. Its task would be to annul administrative decisions that violate the law, and anyone who suffers material or moral damage as a result should have the right to file a lawsuit to demand its annulment and to obtain compensation from the state for the harm incurred.

In connection with this oversight, the judicial body—whether ordinary or constitutional—should have the right to examine whether a law contradicts the constitution. It should have the authority to rule on its unconstitutionality, prevent its application in the pending case, and annul the law. In order to consolidate the legal protection afforded by the supreme constitutional principles of personal liberty, represented in the rule of law and the subjection of public authorities to its provisions, as well as the principle of separation of powers, there must be supervisory mechanisms and limitations that define the extent to which laws—especially criminal laws—comply with these principles. This ensures that the scope and content of criminal law, represented in the principle of legality, align with those principles, so as not to contravene the constitutional guarantees protecting personal freedom from infringement.

#### 3.2. *First Requirement*

Oversight of the constitutionality of criminal laws

Criminal texts are grounded in their legal basis and derive their strength from constitutional legitimacy and the principles enshrined at the apex of the legal system.

The principle of the rule of law and the separation of powers is considered one of the most important legal and constitutional foundations that safeguard rights and freedoms. These principles cast their

influence over all activities carried out by public authorities in the state, whether legislative, executive, or judicial, which must adhere to these constitutional principles in their operations.

This is also reflected in the authority conferred by these principles, given their constitutional value from a substantive perspective on the legitimacy of criminal texts, which are regarded as a cornerstone upon which they rely. Formally, the legitimacy of a criminal text is hierarchically linked to constitutional legitimacy, which serves as an evaluative tool. This ensures that criminal legislation does not deviate from the supreme constitutional rules, as substantive and procedural criminal laws always seek alignment with constitutional legitimacy according to the mechanism of judicial review of the constitutionality of criminal laws.

The legitimacy of criminal texts is founded on an important constitutional principle, considered one of the greatest pillars safeguarding human rights and fundamental freedoms, embodied in the principle of the state's subordination to the law or the principle of constitutional legality. This is also referred to as the principle of legality and the supremacy of law. The subordination of the state to the law means that all state authorities—legislative, judicial, or executive—must comply with the law. All their procedures, actions, and final decisions, at any hierarchical level, are not valid or legally effective unless they conform to the law, or to the rule of law administered by legal authority. Accordingly, the executive authority is subject to the penal and other legislations enacted by the legislative authority.

### 3.3. Section One

#### 3.3.1. *The Role of Judicial Oversight in Addressing Deviations in Criminal Legislation*

Criminal legislative deviation consists in any act undertaken by the legislative authority whereby it departs from the realization of the public interest, whether such acts take the form of debating and enacting a law, or approving a decree-law issued by the executive authority pursuant to a delegation granted to it by the original authority competent for legislation in the event of its absence. Such deviation results in the invalidity of the legislation tainted by an abuse of legislative power.

The issue of judicial review of the constitutionality of laws acquires particular importance within the scope of criminalization rules, given that these rules entail restrictions that threaten public rights and freedoms. This justifies subjecting them to a special regime distinct from the general rules governing constitutional review of non-

criminal legislation. Since criminalization, as previously noted, falls within the exclusive competence of the legislative authority, and since the criminal legislator enjoys discretionary power aimed at achieving the public interest—one of the fundamental bases for preserving the structure of society and achieving its objectives—the purpose of legislation as a whole must be devoted to achieving that end. Accordingly, the legislative body entrusted with the task of lawmaking must adhere to the realization of this purpose, exercising a degree of discretion that transcends mere mechanical constraint in performance.

In this context, the overwhelming majority of modern and contemporary democracies have moved toward establishing constitutional judicial review over the constitutionality of criminal laws, adopting diverse forms and models depending on the prevailing philosophy of each state. Such review prevents deviation by the legislative authority by extending judicial oversight over the legislator's power in the fields of criminalization and punishment. Legal systems thus take precautions against deviation by those exercising public authority—especially the legislative authority—when performing the competencies vested in them.

Procedural rules are therefore established to prevent parliament from abusing its legislative power. This objective cannot be achieved unless there is a sanction imposed on rules that violate the Constitution in general, and the general principles embodied in criminal laws in particular, which must be applied in all their provisions. Compliance with these rules is required of all authorities in general, and of the legislative authority in particular—especially the criminal legislator—since criminal law is among the bodies of law that most seriously affect individual rights and freedoms. Accordingly, such laws must be consistent with constitutional constraints and must not deviate from them.

To achieve this conformity, judicial review plays a vital role in addressing deviations in criminal legislation. By virtue of the nature of its function in applying the law, the judiciary is better positioned to determine whether the legislator has exceeded the constitutional limits prescribed for it. Thanks to constitutional guarantees that ensure its independence vis-à-vis other state authorities, the judiciary is less susceptible to political and partisan influences and closer to impartiality and correctness. Since criminalization, as previously noted, falls within the competence of the legislative authority, and since the criminal legislator possesses discretionary power aimed at achieving the public

interest—one of the essential foundations for preserving the integrity of society and realizing its objectives—

It follows that the purpose of legislation as a whole must be devoted to achieving that interest. Hence, the legislative authority entrusted with lawmaking must adhere to the realization of this purpose, exercising discretion that goes beyond rigid constraint in performance. Given that the discretionary power of the legislator represents the general rule in the authority of the criminal legislator, this has given rise to a doctrinal debate regarding the extent to which the constitutional judge may extend judicial review to the discretionary power of the legislator.

If the principle of constitutional review of laws in general is of great importance in affirming the concept of criminal legality and consolidating the foundations of the rule-of-law state, it undoubtedly constitutes a safeguard for rights and freedoms within the realm of criminal law. This is because the application of criminal law is directly connected to personal liberty, which may not be sacrificed except where necessity dictated by a socially significant interest so requires.

At the outset, however, it is necessary to define constitutional review of laws and then to explain its importance from both a practical and theoretical perspective. This will be examined successively through the following points. With regard to the definition of constitutional review of laws, opinions have varied, although they all revolve around a single core idea: ensuring that lower-ranking legal rules do not conflict with higher-ranking legal rules embodied in the Constitution. Some jurists have defined it as “the process through which legal provisions are brought into conformity with the provisions of the Constitution.”

Other jurists have defined it as “verifying whether laws violate the Constitution, as a prelude to refraining from their issuance if they have not yet been enacted, or to annulling them or refraining from their application if they have already been enacted.” Others have defined it as determining whether a law is consistent with the Constitution or not. In this context, review is directed not at the acts of the executive authority (the government), but at the acts of the legislative authority (parliament).

Dr. Nawaf Kanaan has defined it as: “Ensuring the conformity of laws issued by the legislative authority and regulations issued by the executive authority with constitutional rules, examining the extent of their agreement or disagreement with those rules, and ruling on their unconstitutionality where

they fail to conform or agree with them, or affirming their constitutionality where they do not depart from them.”

### 3.4. Section Two

#### 3.4.1. The Nature of Judicial Review of the Constitutionality of Criminal Laws

Judicial review of the constitutionality of laws is considered one of the constitutional means that guarantee the protection, effectiveness, and respect of constitutional rules. It is among the constitutional mechanisms upon which most democratic constitutions have settled. Accordingly, judicial review of the constitutionality of laws is of significance from both theoretical and practical perspectives.

From a theoretical perspective, constitutional adjudication constitutes the true guarantee for the application of constitutional rules, through monitoring the compliance of laws with the provisions contained in the constitutional document and preventing deviation from them. Constitutional judiciary is the faithful guardian of legality in a state governed by the rule of law. The quality of judicial service stems from the fundamental and urgent human need for justice and for an impartial and independent judiciary under which individuals feel secure regarding their rights and reassured that such rights cannot be infringed in the presence of this judiciary.

Achieving quality in the judiciary also contributes to reforming the national economy, in addition to playing an effective role in its prosperity and growth, and in encouraging and attracting foreign investment. Moreover, judicial review of the constitutionality of laws represents the greatest and most effective guarantee of constitutional legality and the supremacy of the Constitution, as it is the guarantor of rights and freedoms, the pillar of constitutional life, and the foundation of its system. Therefore, constitutional rules occupy the apex of the legal hierarchy of the state, followed by the highest mandatory legal rules that the state must observe in its legislation, judiciary, and the exercise of its executive powers.

Since conformity of legal rules with the provisions and texts of the Constitution constitutes the supreme guarantee for protecting the principle of constitutional supremacy—which represents the effective safeguard for the rights and freedoms of individuals—and for preventing abuse of power, and for affirming the principle of the rule of law as the foundation of governance in the state, which requires that legislation must not deviate from

constitutional provisions so as to ensure that the authority competent to legislate adheres to constitutional rules, it has become necessary to establish a form of review tasked with examining laws and producing legal effects where they violate the Constitution. This is particularly important where the prevailing principle in the state is adherence to a written constitution.

The principle of the hierarchy of legal norms, which is a consequence of the principle of legality, means that a lower-ranking rule must conform to a higher-ranking rule. This conformity must exist both formally and substantively: formally, in that the lower rule must be issued by the authority designated by the higher rule and in accordance with the procedures it prescribes; and substantively, in that the content of the lower rule must be consistent with the higher rule.

Accordingly, constitutional judicial review is one of the requirements of the principle of legality and one of the most important means capable of deterring the legislative authority and compelling it to act within constitutional limits. If the legislature fails to adhere to constitutional rules when enacting criminal legislation tainted by deviation, constitutional judicial review intervenes to protect the rights and freedoms of individuals from such legislation. Through the review exercised by the constitutional judiciary, violations of the Constitution by legislation—or the absence thereof—are revealed. Thus, constitutional review is of great importance in establishing the legal order and affirming the principle of the hierarchy of legal norms, as this principle would otherwise become devoid of value and substance.

Unless a sanction is prescribed for criminal legislative deviation, the principle of legality cannot produce its effects or achieve its effectiveness except through the existence of a constitutional judiciary that guarantees the protection of legal rules. In this manner, these rules become real constraints on public authorities; and where such rules are violated, the judiciary is able to restore matters to their proper course. Constitutional judicial review stands as a vigilant guardian over the legislator, monitoring and confining it within its prescribed limits. It constitutes an important guarantee for preventing deviation and for addressing it should it occur.

In light of all the foregoing, the protection of the principle of legality and its ensuing consequences—which, as previously noted, constitutes one of the guarantees against deviation in criminal legislation—requires that the constitutional judiciary, as the most effective and impactful body,

be vested with the power of review to address criminal legislation tainted by deviation. In addition to its practical importance, there exists a significant pragmatic justification for such review: namely, that the legislative authority may in reality be composed of individuals who have reached parliament not due to their competence or legislative skill, but rather for political, social, or economic considerations.

This necessitates constitutional judicial review of the legislative process, as it is a fundamental competence, particularly since the quality of laws, their precision, and the clarity of their terminology facilitate understanding their content. Moreover, the technical complexity of certain laws requires qualified and experienced expertise that some parliaments lack. In addition, legislation is an art that can only be practiced by those trained in it and who have studied its principles and rules, and few legislators possess such competence.

Here, the importance of judicial review emerges, as it ensures that the authority competent to legislate adheres to the requirements of sound legislative drafting when enacting laws. The Constitution has entrusted the constitutional judge—rather than any other authority—with exercising this form of review, which is considered among the most effective, profound, and far-reaching methods of oversight in achieving effective protection of the Constitution itself. Such protection cannot be realized unless a sanction is imposed on legal rules that violate the Constitution, whose provisions must be observed by all state authorities in general and by the legislative authority in particular.

### **3.5. The Second Requirement**

#### **3.5.1. Constitutional Standards in The Field of Criminalization and Punishment**

In view of the severity of the restrictions imposed by criminal laws on personal liberty, constitutions have been keen to accord special attention to criminal prosecution by surrounding it with a set of constitutional safeguards, so as to prevent the misuse of punishment in a manner that distorts its objectives and disrupts the balance between the individual's right to liberty, on the one hand, and the community's right to defend its fundamental interests, on the other. Accordingly, it has been necessary that a penal provision not be burdened with more than one meaning, nor encumbered by the shackles of multiple interpretations, nor rendered excessively flexible or expansive by virtue of the wording in which it is framed.

It has therefore become imperative that penal texts be drafted in a manner that precludes their

fluidity or the divergence of opinions regarding their purposes, and that avoids establishing criminal liability beyond its proper scope, so as not to infringe upon the rights and freedoms guaranteed by the Constitution. For this reason, comparative constitutional jurisprudence has derived a set of standards in the fields of criminalization and punishment, ruling unconstitutional any criminal provision that fails to incorporate or observe these constitutional standards.

#### 4. Section One

##### 4.1. The Presumption of Innocence Until Proven Otherwise

The presumption of Innocence is a fundamental principle dictated by human nature, required by the inherent realities of things, and imposed by the principles of Islamic Sharia. It was affirmed by the Noble Prophet Muhammad (peace be upon him) in his saying: "Avert prescribed punishments from Muslims as much as you can; If you find a way out for a Muslim, then release him, for it is better for the ruler to err in pardon than to err in punishment." This principle has also been affirmed by comparative constitutions, including the Iraqi Constitution of 2005, Article (19/Fifth), which provides that: "The accused is innocent until proven guilty in a fair legal trial."

The presumption of Innocence is founded upon the innate disposition with which human beings are created. A person is born free and absolved of sin or wrongdoing; consequently, throughout all stages of life, the presumption of innocence is deemed to remain inherent within the individual, accompanying all of his or her actions, until the trial court overturns this presumption by a final and irrevocable judgment, based on the evidence presented by the investigative authorities. Absent such proof, the presumption of innocence remains intact, as it constitutes one of the cornerstones of the concept of a fair trial guaranteed by the Constitution.

The presumption of Innocence extends to every individual, whether a suspect or an accused person (the personal scope of the presumption of innocence), as it is one of the fundamental rules of the accusatorial system recognized by all legal systems – not for the purpose of protecting the guilty, but rather to avert punishment from an individual where the charge brought against him may be surrounded by doubt, thereby preventing certainty as to the accused's commission of the alleged act. Criminal accusation, therefore, does not displace the presumption of innocence, which constantly accompanies the individual, whether at the pre-trial

stage, during the trial, throughout all its phases, and regardless of the duration of its procedures (the procedural scope of the presumption of innocence).

The Supreme Constitutional Court has emphasized the importance and status of the presumption of innocence and the necessity of adhering to it throughout all stages of criminal proceedings. It has further held that criminal provisions may not be interpreted in a manner that contradicts the presumption of innocence, nor may the legislator introduce legal presumptions that relieve the prosecution of its duty to prove all elements of the crime, both material and moral. In this regard, the Court stated:

"The presumption of the accused's innocence represents a firmly established principle relating to the criminal charge at all its stages and throughout its procedures. It may not be overturned except by conclusive evidence upon which the court forms its conviction. The presumption of innocence may not be rebutted except by evidence whose persuasive force reaches the level of certainty upon which the court relies."

Similarly, the Federal Supreme Court has adopted this standard and emphasized its importance, stating:

"The principle is that the accused is innocent until proven guilty in a fair legal trial, in accordance with Article (19/Fifth) of the Constitution. Human freedom is inviolable pursuant to Article (37/First/A) of the Constitution, and any restriction of this freedom must be regulated by law, leaving it to the judiciary to assess the legal position regarding the detention of the accused or his release on bail, in light of the gravity of the offense, the status of the accused, and his circumstances. This is in application of Articles (19/First), (88), and (47) of the Constitution, which establish the independence of the judiciary in issuing its judgments and decisions, subject to no authority other than the law. Whereas the Code of Criminal Procedure No. 23 of 1971, as amended, upon its issuance regulated this matter in Articles (109) and (110), specifying the crimes in which the accused may not be released on bail and permitting release in other crimes, leaving such determination to the discretion of the trial judge at the investigation and trial stages. Absolute restriction of the judge, as provided in Article (1) of the dissolved Revolutionary Command Council Resolution No. 157 of 1996, constitutes a violation of the aforementioned constitutional provisions. Accordingly, the Court ruled the unconstitutionality of Article (1) of Revolutionary Command Council Resolution No. 157 of 1996."

## 4.2. Section Two

### 4.2.1. No Crime Without A Law, And the Principle of Personal and Non-Retroactivity of Punishment.

What is meant by "law" In this context is legislation, the authority for which is vested in the parliamentary council In accordance with the Constitution, as stipulated, for example, In Article (61) of the Constitution of the Republic of Iraq of 2005. The basic principle is that legislation, as an expression of the will of the people, is the sole source of criminalization and punishment. Pursuant to the constitutional text, the Council of Representatives (Parliament), as the legislative authority of the state, Is entrusted with enacting all provisions defining crimes and penalties. Accordingly, no crime may be established and no punishment imposed except by virtue of legislation enacted by this elected authority. Consequently, a judge may not convict an accused person of a crime or impose a penalty upon him unless a specific legislative text defining the crime and prescribing the punishment has been enacted.

In the United States of America, Congress enacted what is known as the Detainee Treatment Act of 2005, which granted the President broad powers in matters of criminalization and punishment and authorized the establishment of special courts to try persons accused of terrorism against the United States following the events of September 11, 2001. The Act also vested exclusive jurisdiction In the District of Columbia Court to hear appeals against final judgments. In this regard, the U.S. Supreme Court, in its 2006 judgment in *Hamdan v. Rumsfeld*, held – while considering a petition challenging the order of detention and trial under the Detainee Treatment Act of 2005, which had been established by presidential decision – that penal provisions do not apply prior to the enactment of the law. Consequently, the Court affirmed Its jurisdiction to examine such petitions. The Court further emphasized that the U.S. Constitution grants every person or detainee the right to challenge the legality of his detention, to be informed of the charges brought against him, and to examine their constitutionality.

The Supreme Constitutional Court has ruled that although the principle of the legality of crimes and punishments Is founded upon and affirmed by the guarantee of personal liberty, that liberty itself Is subject to regulation. Thus, the enforcement of this principle Is required only to the extent and within the limits that ensure the protection of personal freedom. However, the constitutional legislator, In Article (95) of the Egyptian Constitution of 2014, authorized the

executive authority to issue regulations concerning criminalization and punishment, permitting crimes and penalties to be established "by virtue of a law." This grants the legislator the power to delegate to the executive authority, through regulations, the determination of certain aspects of criminalization and punishment. The Supreme Constitutional Court expressed this by stating:

"Which means that Article (66) of the Constitution permits the law to entrust the executive authority with Issuing regulatory decisions that define certain aspects of criminalization and punishment, for considerations assessed by the legislative authority and within the limits specified by the law It enacts. "

Comparative constitutional jurisprudence has also affirmed the principle of the personal nature of criminal responsibility. In this regard, It has been held that the basic rule is that a criminal penalty is borne only by the person convicted as responsible for the offense. Punishment, by its nature, must be proportionate in severity to the nature and subject matter of the crime. This means that no person bears the burden of another's wrongdoing, that the consequences of a crime fall solely upon its perpetrator, and that punishment Is imposed only on the person who committed it. The principles of the personal nature of punishment and its proportionality to the crime are thus linked to the Individual who is legally deemed responsible for Its commission. Accordingly, the personal nature of punishment, as guaranteed by comparative constitutions, presupposes that no person may be held criminally liable or subjected to punishment unless he Is considered a principal perpetrator or an accomplice.

Comparative constitutional jurisprudence has further emphasized that the subjection of the state to the rule of law, as defined by a democratic concept, requires that Its legislation not infringe upon rights whose recognition Is regarded in democratic states as a primary assumption for the existence of a state governed by law and as a fundamental guarantee for the protection of human rights, dignity, and the integrity of personality. Inconsistent with this concept of the rule-of-law state is the Imposition of criminal penalties with retroactive effect, by applying them to acts that did not constitute punishable offenses at the time they were committed. Constitutional courts have thus affirmed that the principle of non-retroactivity of criminal laws restricts the legislative authority In implementation of the principle of legality of crimes and punishments and in protection of personal liberty, thereby repelling any infringement upon it.

## 5. CONCLUSION

This study demonstrates that the constitutional court plays a pivotal role in guiding the state's criminal policy through its oversight of criminal provisions and their interpretation in accordance with constitutional principles. It has been established that the intervention of the constitutional court is not limited to formal legal review, but extends to being an instrument for maintaining the balance between protecting society from crime and safeguarding the fundamental rights and freedoms of individuals. The study also showed that the jurisprudence of the constitutional court serves as an important reference for the criminal legislator, contributing to the improvement of legislation and directing it towards compliance with the rule of law and the principles of criminal justice.

### 5.1. Study Findings

- The constitutional court contributes effectively to regulating criminal policy by reviewing criminal provisions and ensuring their conformity with constitutional principles.
- Constitutional court rulings have a direct impact on the criminal legislator, whether through amending existing laws or enacting new provisions that are more consistent with the constitution.
- The intervention of the constitutional court achieves a balance between protecting society from crime and safeguarding individual rights and freedoms, thereby strengthening the rule of law.

- The jurisprudence of the constitutional court reduces unjustified expansion in criminalization, excessive penalties, and legislative ambiguity in criminal provisions.
- Constitutional review functions as a preventive mechanism that protects rights and freedoms, especially in the face of emerging criminal phenomena and emergency legislation.

### 5.2. Study Recommendations

- Strengthen the role of the constitutional court in reviewing criminal legislation prior to its enactment to ensure its conformity with constitutional principles.
- Develop training and capacity-building programs for judges and public prosecutors regarding the jurisprudence of the constitutional court in the criminal field.
- Encourage the legislator to take constitutional court rulings into account when drafting criminal laws to reduce constitutional conflicts.
- Disseminate and standardize the jurisprudence of the constitutional court as a legal reference for judges and legal practitioners in applying criminal policy.
  - Conduct periodic comparative studies with international experiences to enhance the effectiveness of constitutional oversight in guiding criminal policy and addressing emerging challenges.

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