

Abstract

This thesis is based on an hypothesis says that the hierarchy is within the norms that have the same nature(the rules of the constitutional nature).

First, we should explain the concept of the constitutional norms and the concept of the principle of hierarchy. For the constitutional rules, the jurisconsults did not adopt the same definition . Some of them adopted the formal criteria, others adopted the objective criteria. In this regard, the researcher have an opinion in the definition of the constitutional rules, whether based on the formal or objective criteria, or creating another one that differs from these two criteria.

The historical origin of the concept of hierarchy is due to the Austrian jurist ,Hans Kelsen, who put his ideas in a study entitled: "The Pure Theory of Law", which deals with the idea of the juridical norm. As for the juridical term of the hierarchy , it refers to the hierarchy which is determined through the proper relationship of the hierarchical norms. And then, if there was a hierarchy between two norms, it means that the first norm derives its validity from the supreme norm. The hierarchy in the juridical system has two aspects: the first is an objective hierarchy in which the criteria of differentiation of the juridical norms is derived from the nature of the norms themselves and from the obliged power they have. The second aspect is a formal hierarchy in which the criteria of differentiation of the juridical norms is based on the rank of the authority which have issued the juridical norm and on the procedures followed in this matter.

The hierarchy we mean in our study is the hierarchy among the constitutional norms .It can be raised in its formal aspect, which means the hierarchy among the components of the constitutional bloc ,so that these norms can be organized according to their sources in case of multiplying sources within the single system. This hierarchy is associated with historical considerations , dating back to the time of issuance of the constitutional document. This hierarchy can be also raised among the constitutional norms in its objective aspect , which means it is not a hierarchy among the different texts of the constitutional bloc , but it is among the various dispositions of these texts, en considering of their content. Or, it can be raised according to the

formal and objective criteria in the same time, which means the hierarchy among the entire constitutional norms.

The hierarchy of the constitutional rules is a very important issue in countries whose constitutional bloc contains a number of components that no one can deny their constitutional value which guarantee the protection of the rights and freedoms of the individuals, ensure the public interest and expand to include, to the texts of the Constitution, a group of constitutional principles and norms that serve as a reference to the constitutional judge. This matter made the jurisprudence search for the solution in case of a contradiction among the different norms that have a constitutional value whose sources are multiplied and vary according to the period of time that they arose during. And, in case of contradiction, do some of these norms have advantage over others? This study raises many questions, perhaps the most important is that if the constitutional bloc is formed of many texts; potentially, the problem of hierarchy of these texts appears clearly. This requires to know if the texts that form the constitutional block holds the same value, despite the fact that all the texts have a constitutional source on which they based?

All these and other questions raised by this study, necessitated to make a study about this issue. Through searching in this subject, it appears that a number of the jurists have answered in a positive way to these questions; they see that there is a hierarchy among the entire norms which have sources in the constitutional texts, so they take a higher rank over other norms in the Constitution. While others answered in a negative way. And, between the positive and negative answers, a doctrinal debate has been raised. We will try, through this study, to demonstrate this debate and the possibility of the existence of the hierarchy among the constitutional rules.