UNIVERSITY OF BAHRAIN

College Of Law

Public Law Department

Constitutional Monitoring
Of Legislative Omission
"Comparative Analytical Study"

A Thesis Submitted in Partial Fulfillment of the Requirements for the
Master's Degree in the Public law (constitutional law)

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Thesis Summary

This study is about "Constitutional Monitoring of Legislative Omission" which is a "comparative analytical study", in the light of the Bahraini constitution, with a deliberate comparison with the French and Egyptian constitution. And we reviewed the jurisprudence’s opinions with an accurate analysis of the judgments issued by the constitutional judiciary in France, Egypt and Bahrain.

In addition, we focused on investigating the aforementioned topic, through explaining the concept "legislative omission" which is considered to be one of the modern terminologies within the scope of constitutional studies. We concluded that legislative omission occurs when the legislator regulates the required topic or topics in the constitution in an imperfect and incomplete. That is, when the complete aspects of the topic are not taken into consideration, and when one or some of the constitutional provisions are violated. Then, we distinguished this terminology from other similar terminologies such as absolute omission and legislator’s negative incompetency, followed by an explanation of the nature of the legal rule created by the legislative omission that violates the constitution.

Furthermore, we pointed out the Jurisprudence’s attitude towards monitoring legislative omission that ranges between a complete denial and recognition of this monitoring. Moreover, we focused on the arguments that support each of these two opinions. Then, we pointed out the bases on which such monitoring is established, which could be referred to one of these bases or both of them; the principle of the supremeness of the constitution, and the principle of protecting the individuals’ rights and freedoms.

Then, we reviewed the attitudes of the constitutional judiciary in the legal provisions in France, Egypt and Bahrain towards monitoring legislative omission as it monitors legislative omission despite the absence of constitutional or legislative articles stating that. We concluded that the legal systems have not pursued one policy to monitor legislative omission. In addition, these legal systems developed a set of monitoring controls that have to be taking into account by the constitutional judge when monitoring legislative omission.