

A Legal Analysis of the Supervision of the Supreme Court on the President in Iranian Political System

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ABSTRACT: In dynamic system of checks and balances of various legal structures, three powers review each other aiming equilibrium. Although judiciary treats its influence on legislature and executive body through judgeship, its appraisal bears political counsel and discretion. In Islamic Republic of Iran legal system, with regard to Article 57 of the Constitution which is based on the theory of strict dominion of Supreme Leader, three main powers perform their legal obligations under his surveillance. Paragraph 10 of Article 110 of the Constitution has admitted one of his authorities which is the President dismissal, with due observation to the public interests, after Supreme Court holds him guilty of violation of his constitutional duties, or after an impeachment vote of the Islamic Consultative Assembly (Parliament) testifying to his incompetency on the basis of Article 89 of the Constitution. Iranian constitutional law lacks accurate regulations about examination procedure of Supreme Court review on president violations. This essay reflects nature of judicial review while surveys comparative studies. Political and religious legitimacy of Supreme Leader's political counsel, mentioned in Clause 10 of Article 110 of the Constitution, will be proven. In conclusion, legal answers for ample and exact implementation of this Article will be recommended.

Key words: Strict Dominion of Supreme Leader, Supreme Court of Cassation, Judicial Review, Political Review, President, Violation of Legal Duties, Judiciary, Constitution.

INTRODUCTION

Clause 10 of Article 110 of the Constitution has elaborated the relationship between president and Supreme Courts of Cassation, the procedure of which has not been identified and been referred to standard regulations.

Whereas "all concepts of constitutional law must be enlightened in the light of separation of powers"(Soltani,2009a,b) , the notion of review is justified by this principle. In the absence of separation of powers, there would be no constitution; it is a requirement of political freedoms` livelihood(Ibid).Therefore, review and all its forms turn out to be legitimate on the basis of separation of powers. In other words, while regnant powers are separated and reviewed by each other, the system of checks and balances would definitely succeed. The review is performed with the aim of balance between powers preventing one branch from becoming supreme.

Three goals of review are as follows: prevention of violations, cessation of violations, and the detection of violation and warning(Najafi Tavana ,2012 a,b).The review must be based on the principle of legality. All reviews must accord to legal frameworks. All subjects, organizations and persons under review must be in context of , authorized by law which establishes who shall review, which organizations must be reviewed and what subjects requires it (Tamimi ,2005a,b) .

The Constitution of IRI acknowledges separation of powers and counts several reviews seeking balance between powers, all are accomplished under control of the Supreme Leader regarding Article 57 of the Constitution declaring strict dominion of the Supreme Leader; such as parliamentary review or political check of parliament (Emamaian and Ostvar Sangari, 2010a,b) , administrative review of administrative hierarchy (Ibid) , public review of general press and people on government and judicial review of Supreme Court of Cassation and Tribunal of Administrative Justice (Tabatabaee , 2008a,b). Amongst, judicial review enjoys more influence; since the Judiciary issues binding judgments(Emamai and OstvarSangari, 2010a,b) .

More, we will interpret judicial-political review and consider function of Supreme Court of Cassation in judicial review realization through comparative studies. Then, we will reveal the necessity of Supreme Leader's accordance with president dismissal, criticizing oppositions of Supreme Leader's political counsel and agency discretion. Finally with reference to Article 110 of the Constitution, we prove absence of a legal procedure for Supreme Court of Cassation review and offer legal solutions for comprehensive implementation thereof.

Judicial Review: Definition, Basics and Purpose

Judicial review is referred to competency of the courts for examining the actions of the legislative, executive, and administrative arms of government and to determine whether such actions are consistent with the Constitution (britannica.com). Generally, judicial review could be defined as a review performed by Judiciary (Rasekh, 2010a,b). According to above definitions, it might be concluded that judicial review is done by courts; since judicial review is based on principles which courts judge their assessments on that ground (Khosravi, 2009a,b). In historical point of view, this review was first accomplished in France. Afterwards, countries obeying presidential and semi-presidential systems ratified the magnitude of Supreme Court judicial review. Judicial review is employed by highest judicial authority; however, in parliamentary systems, this mission has been assigned to parliament.

In Islamic Republic of Iran, Supreme Court of Cassation as highest judicial authority is in charge of this task (Madani, 2006a,b). Clause 10 of Article 110 of the Constitution deposes the president violation judgment to Supreme Court of Cassation. This Clause has permitted Supreme Court of Cassation to probate on executive actions particularly president per se; whereas judicial probation is not possible without review (Rasekh, 2009a,b), Clause 10 contains legislator's will which is judicial review. This sort of review exceptionally goes to the judiciary; given that the judiciary independency denotes fulfillment of judicial duties of probation, examination, settlement and judgment which are jurisdiction of judiciary (Hashemi, 2010a,b). A rights-based government requires an independent and impartial judicial authority (Doggy, 2009a,b).

Freedom of expression and information is another prerequisite of judicial review; courts become aware of violations not only by objections, but also by means of public, official review and press; consequently, judge as peace watches will fight corruptions in office. Freedom of information is a cause for outset of judicial review and its persistence. Hence, public information, especially governmental information, must be easily accessible for society and shall not be restrained, unless in exclusive cases (Ansari, 2008a,b). Head officials, who are exposed to governmental information, shall have freedom of speech in order to announce violations in interviews with press or judicial authorities. Article 29 of Criminal Procedure Act provides: "public figures and head officials are committed to inform the chief of judicial zone or his deputy when they are encountered with criminal action in their working zone." The public figures and officials involve the directors and staff of governmental bodies or public organizations (Khaleghi, 2011a,b). In legal system of IRI, with regard to strict dominion of Supreme Leader, Article 5, 57 and 110 of the Constitution, one of the fundamental approaches for announcement of the President violations to Supreme Court of Cassation is the Supreme Leader notification that can call for such an examination.

Checks and Balances: Definition, Basics and Purpose

Checks and balances, like judicial review which lives in democratic structures, is a constituent of good government and democratic structures (Rezadoost, 2009a,b), which guarantees basic freedoms in the constitution. The notion of checks and balances is different by country; as its achievement depends on the level of individual liberties, civil rights and freedom of governmental organizations which investigate other powers. The English equivalent of it is "Checks and Balances". The most inclusive explanation of which provides: "A system of distribution of power among the executive, legislative, and judicial branches of government, in relatively equal proportions, such that each branch has the ability to counter the actions of others, consequently prevent the entire government from being controlled by any single branch" (law.yourdictionary.com).

System of checks and balances is not limited to legislature; every power applies it on other. As we will meet in political domain of judicial review, judicial review is associated with political appearance. The process of review is founded on two sides; a party who reviews and a party who is reviewed. So it must be defined with due attention to nature of both sides and their connection. It means that that in separation of powers, all powers gain a political role and execute it while reviewing each other. Some scholars believe in sole right of parliament in checks and balances, while they define it as: "permanent review on political act and behavior of executive members" (Hashemi, 2010a,b). Yet it is not clear what they supposed by political act. A political act does not specifically belongs to executive, as parliament might expose political turn whilst ratifies ordinary laws and international treaties.

Distinction between Checks and Balances and Political Control

Most of the Iranian jurists have assumed same implication for Review and Control, while they differ in functions and basics in legal systems. If Term of "Review" is being used for political questions in the field of constitutional law, it will be an equivalent for the term "Check". Whereas the result of this review is balance between powers, the word "Balance" is always accompanied subsequently. Since this is applied by all powers, it is usually expressed in plural form: "Checks and Balances".

Some experts believe that the term "Control" is comparable with review, while control signifies governmental command and dominance. Political control holds an entirely distinguished concept from checks and balances. It is likely for Checks and balances to be considered as "review" in legal texts, but review is only used for judicial-administrative review. It implies analysis or discourse, while is used subsequent to political.

Political control signifies the governmental mechanisms to regulate on citizens and freedoms. Government might liquidate some individuals of society from politics or confer privileges to its preferred parties (businessdictionary.com). Political control is only applied by executive and legislature and there is no role for judiciary (Calvert and McCubbins & Weingast, 1989 a, b). The controlled side is not a powerful political body, i.e. people or a civil group of people; but in checks and balances, the checked side is definitely a dominant body. In contrast, in political control controlling party has political power, but controlled party might have power (like three main powers) or not (like non-governmental press). Political control takes aim of sustaining governing board while checks and balances is taking aim of reformation or removal of governing board. The consequence of political control is elimination of public foundations and consequence of checks and balances is investigation of violations and their elimination.

The Procedure of Judicial Review on President

Three types of presidential violations are presumable. The first one is the perpetration of crimes which are illuminated in criminal law. According to Article 140 of the Constitution and the equality principle, criminal courts would observe them. The second is infringement of statutory duties in office investigation of which is inherent jurisdiction of Supreme Court of Cassation and the court primarily proceeds with the nature of claim (Hashemi ,2010a,b). Finally, there exists incompetency in charging presidential position; the president exposes his political undertaking against public interest and does not behave rationally; in this situation parliament checks him through question and interpellation testifying to his incompetency.

According to Clause 10 of Article 110 of the Constitution, judicial review and checks and balances are in the same level and horizontally applied. Article 19 of Determination of IRI President Duties, Authorities and Responsibilities Act, provides examination of allegations against president, whether criminal charges or violations of statutory duties do not necessitate inquisition or pre-examination and courts directly examine it. In the first place, courts of Tehran province are competent to examine the case and they must also simultaneously inform Islamic Consultative Assembly. In the second, Supreme Court of Cassation accomplishes the investigation. If the president does not perform his duties, for instance when he refuses to sign the legislations or rejects to introduce his ministers to Islamic Consultative Assembly in due dates, it might be judged before Supreme Court of Cassation (Khosravi ,2010a,b) .

Supreme Court of Cassation is responsible for judicial review; it is understood from clause 10 of Article 110 and Article 19 of the said Act because it assesses official acts of government agents and evaluates conformity with regulations or violation of fundamental rules of justice (wikipedia.org). The foremost difficulty resides in examination procedure of president violations. This issue has been severally noted by jurists; however has not been determined in current legislations or legal doctrine. Since "judicial review depends on reports and considerations of the respected case"(Rasekh ,2009 a,b), it is not obvious on what basis and who must refer the case to the court; whether general board of Supreme Court, a specific member of it or in another arrangement like a particular board of judges of Supreme Court(Madani , 2009a,b). On the other, Article 261 to Article 271 of Criminal Procedure Act stipulates mode of examination in Supreme Court and does not convey any clarification on president violations.

There is not enough precedent in this regard. The Supreme Court of Cassation made a violation verdict against president Bani Sadr after Islamic Consultative Assembly voted for his incompetency. Dr. Beheshti, chief of Supreme Court at that time, read this judgment at open session of Assembly, while judicial review and checks and balances stated in Article 110 of the Constitution were recognized as independent observations. Therefore, Supreme Court must have judged him separately, not after Assembly vote of incompetency.

Status of judicial review in Iranian constitutional law is not precisely established. Comparative studies reveal that judicial review has been accurately determined in constitutional law of federations and unions.

According to Article 110 of the Constitution, the Supreme Court of Cassation is responsible for judicial review and judgment, whilst chief of Supreme Court issues such a verdict, as it was happened in Bani Sadr case.

The main reason is Article 37 of Formation of Criminal Courts 1 & 2 and Supreme Court Branches Act passed in 1989, where it provides: "Presidency of management, judicial and administrative affairs is responsibility of Chief of Supreme Court." Thus, the legislator's purpose in Clause 10 of Article 110 has been the head of Supreme Court.

Another question might arise: Why does not the legislator confer the authority of president dismissal to the Head of Judiciary but for the Supreme Court? Although the Head of Judiciary is in top of administrative, executive and judicial proceeding of this power, he plays no role in examinations. Only in a few exceptional cases, which legislator has expressly determined, such as Article 18 of Formation of General and Revolutionary Courts Act, he could decide on examinations. In other words, "the last judicial authority that must comment on judicial hierarchy is the Head of Supreme Court of Cassation and no cases will be referred to the head of judiciary"(Zanjani , 2008a,b)." According to Article 157 of the Constitution, the head of judiciary is the highest judicial office but the Supreme Court of Cassation is the highest judicial authority(Madani ,2006a,b). "The highest judicial authority is not raised by judicial hierarchy; rather it is originated from a denomination which solely belongs to the Head of Supreme Court of Cassation in proceedings. The highest judicial office is a symbol of administrative hierarchy, which is relevant to a position that appoints judges, and sits at the peak point of judiciary pyramid that is stood by the head of judiciary(Zanjani , 2008 a,b)."

So, the head of judiciary is the highest judicial office and the Head of Supreme Court of Cassation is the highest judicial authority. Whereas judicial review must be applied through a high court of justice the Head of Supreme Court of Cassation is responsible for this. According to Article 86 of Japan`s Constitution, the Supreme Court is known as the highest judicial authority(Mehrpour ,2001 a,b). Clause 1 of Article 123 of Spain`s Constitution enumerates alike.

In most countries, Supreme Court of Cassation is the highest judicial authority and in sometimes a part of its authorizations have been conveyed to Constitutional Court (Germany and Spain), Administrative Justice Tribunal and Guard Council (Iran) or Council of State or High Court of Justice (France).

Comparative Survey on Supreme Court Position

This part illuminates judicial power of this court in various political structures such as federation, league and semi-centralized countries. Since "comparative studies and surveys might put forward various and more appropriate solutions for jurists" (Shiravi ,2011a,b).

In a federation, a political entity characterized by a union of partially self-governing states with numerous constitutions, Supreme Court of Federation owns several authorities such as interpretation of the Constitution, examination of federal government violations, settlement of disputes between provincial states, annulment of conflicting regulations and claims managing associated with foreign policy. For instance, U.S. Supreme Court owns a wide and comprehensive judicial power which Tocqueville marked in his book, *Democracy in America*: "no nation has ever established a stronger judiciary than American judiciary. This strength is utilized by smart judges who are assigned in Supreme Court "(Tocqueville , 2003 a,b). Origin of this strength is political prestige of judges, he believes. Leone Doggie also purports similarly and believes "the finest and simplest schemed mechanism to guarantee principle of the Constitution, is U.S. judiciary system besides some other`s" (Doggy , 2009a,b).

Definitely, not every federation Supreme Court has got such powers. For example, in Germany Federal Republic, according to Article 93 of the Constitution, Federal Constitutional Court is responsible for settlement of disputes about jurisdiction of federal and provincial constitutions and interpretation besides the principal purpose of keeping form of federal constitution unified, based on Article 95. "Authorities of Federal Constitutional Court are more than review on compatibility of laws with the Constitution(Harisinejhad , 2008a,b)." Whenever the president becomes accused of violation by parliament and provincial councils, examination and sentencing is authority of Federal Constitutional Court.

The U.S. Supreme Court is responsible for constitutional court's actions(Eftekhar Jahromi , 2001 a,b). In other words, distinct courts observe head officials` violation of constitution and they are also reviewed by Supreme Court. So, unlike French and Germany Constitutional Courts, they are not independent institutions. Further, "Supreme Court of U.S. is the highest court in the United States. It has ultimate (and largely discretionary) appellate jurisdiction over federal courts and suits involving issues of federal law, besides original jurisdiction over bylaws and regulations approved by executive(Malekmohamamdi ,2005a,b)." "A big part of SCUS activities has been allocated to compatibility of executive and legislature activities with U.S. Constitution(Shiravi ,2001a,b)." Judicial review in American constitutional law is more used in comparison to other countries, but SCUS often avoids giving remarks on foreign relations and politics; leaving this to Congress and the president per se. The only object which might endanger neutrality of judiciary is appointment of all 9 members of SCUS by president. Although they must be accredited by Senate and appointed for lifetime, their fairness is not absolutely assured.

Supreme Court of India also owns further influence in comparison with U.S., because a united and coherent judicial organization has been established countrywide, at highest level of which Supreme Court stands (Madani, 2009a,b). In Pakistan, which has also provincial structure, Supreme Court examines constitutional law suits and annuls all laws contrary to the Constitution and functions as constitutional court in this context (Zanjani, 2005a,b).

In union structures, i.e., the United Arab Emirates, Union Supreme Court is the most powerful court between all courts of seven emirates (Karam, 2008 a,b). "The Federal Supreme Court looks into disputes erupting between Emirates members in the UAE, or between one or more Emirates and the Federal Government, the constitutionality of federal and other laws and legislations, conflicts of jurisdiction between the federal and local judicial authorities in the country, conflict of jurisdiction between the judicial authority in one Emirate and another and crimes directly affecting the interests of the Union. It is also in charge of interpretation of the constitution and questioning ministers and senior federal officials appointed by a decree for official misconduct (Ibid)." In this country, Federal Supreme Court takes responsibility of some authorities which were stated for SCUS.

Judicial scope of French Court of Cassation is more limited than what is in federal states and unions. In this country "High Court of Justice is in charge of examination of president and minister violations (Madani, 2009a,b)." Compatibility of Executive bylaws and regulations and examination of administrative infringements is performed by Council of State. Constitutional Court interprets the Constitution and examines officials' violations of the Constitution. Anyway, High Courts of Justice, Council of State and Constitutional Court are parts of judiciary. Then, if we want to compare power of French judiciary with other countries such as the U.S., India, Germany and Pakistan, it preserves excessive power for judicial review.

In Iran, the scope of judicial power of Supreme Court of Cassation in comparison to other countries is limited and vague. Practically this power is solely limited to precedent and does not work with full strength, since at the moment some of court rooms are closed.

This ambiguity is not only witnessed in current legal system, before the revolution it was not clear how Supreme Court must have supervised on prime minister violations. According to Article 75 of supplement of the Constitution, Supreme Court of Cassation was only competent to examine claims related to on duty ministers (Booshehri, 1975a ,b).

The role of Supreme Leader in Supreme Court Judicial Review

In system of checks and balances, the judiciary review on executive and legislature is a political process. "Courts play a political role while they judge (Carter, 1983 a,b)." It means that "the judiciary holds political power whilst examines violations of executive and legislature (Ibid)." The reason behind political power of judiciary is that "in this system courts are equal to other powers (Ibid)."

Therefore, if the executive owns political power, judiciary also enjoys from such a power on equality basis. In Iranian legal system, the concept of political dimension does not solely imply political nature of judicial review on executive actions; the purpose of which implies this review holds political aspect in addition to its judicial nature. In other words, Supreme Court judges examine president violations, hence presidency is a political office and its violations were happened when he operated political authority, they perform political judgment. "Practically, the necessity of a special judicial system, with political character, for particular crimes and criminals has been proved. This judicial system is called political judgment. Some of the criminal activities have peculiar nature, which must not been settled through ordinary procedures, as the committed person sits in a highly ranked office and the probability of commitment has risen in an unique political and social situation which must be considered in judgment. In Parliamentary Monarchies, for example England, parliament performs this task. Hence, if prime minister and ministers commit any violation, parliament will sue and judge them according to particular procedure. In Iranian and French legal systems, parliament interference is limited to prosecution, but Supreme Court of Cassation of Iran, and High Court of Justice in France are responsible for judgment (Ghazi, 2011a,b).

In common law, judgment is accompanied with punishment power. Then, when the head of Judiciary is authorized for political judgment, he must have punishment power. Stephen Carter, the American jurist who lectures at university of Pennsylvania, believes that president punishment is of judiciary duties and in its Article, "The political Aspects of judiciary Power" he says: "Who has the authority to punish the president when he violates his oath? Punishment of the president is in essence a political act."

Apart from political dimension of judgment in system of checks and balances, it bears a broader domain in Iran in comparison with the U.S., because of two main reasons: first, president removal has been predicted in Clause 10 of Article 110 based on agency discretion and since agency discretion is a political act, president removal gets a remarkable political aspect even after Supreme Court judgment. Second, according to the theory of strict dominion of Supreme Leader, his personality holds three dimensions of judicial, executive and legislative. If

we conclude that Supreme Leader only supervises on three main powers, this would be incompatible to theory of strict dominion which has been the primary presumption of legislator. Supreme Leader, according to this theory, judges president removal after Supreme Court submits its judgment to him. According to Imami Jurisprudence, the least certitude of Supreme Leader's dominion is act of judgment. Sheikh Ansari in his book, Makaseb, where he discusses on Supreme Leader authorities says: "Then, Supreme Leader is entitled to judge, this post is firm without any contrary text or comment(Alansari , 2007a,b)." He apparently believes in right of judgment for Supreme Leader which there is no opponent judicial decree against.

Supreme Leader is the highest political office in Iranian legal system. He views the case of removal or retention from the highest political position. Consequently, this trial ends in a judicial authority which has the most political power and his judgment will be a political judgment. Clearly, Supreme Leader is a political judge. In process of Supreme Court trial, it is only the judged person who holds political power and this fact is enough to change the type of judgment to political judgment, whilst in Supreme Leader judgment, both parts have political power. Therefore, the trail is more featured by politics.

Those who oppose with agency discretion and Supreme Leader judgment, have not truly realized the concept of judicial review neither in common law nor in IRI's constitutional legal system; because judicial review is accompanied with political aspect. In the U.S., this political dimension is an effect of checks and balances and in our legal system in addition to relative checks and balances is an outcome of political judgment of Supreme Leader. Some scholars of public law believe that agency discretion and judgment of Supreme Leader is contrary to the principle of validity of judgment which is characteristic of highest judicial authority. They also comment that "the Supreme Court judgment is covered by validity of judgment; any comment by Supreme Leader is nonsense and jeopardizes the judgment of a high judicial body (Tamimi ,2005a,b)."Whereas the appointment of president must be executed by enforcement decree of Supreme Leader, his removal must also be together with his decree. So, this is incompatible with basics of Iranian constitutional law. As a general rule of law, if an administrative authority, such as minister of state, establishes another administrative deputy and appoints a deputy as his assistance; no other authority could possibly remove that deputy but minister of state himself. This is an accepted rule of administrative and constitutional law. Whereas Supreme Leader validates presidential appointment decree, he per se could remove president from presidential position.

Some other public law scholars also treat agency discretion and Supreme Leader judgment as a question of law and Supreme Court judgment as a matter of fact; and rationalize conflict between Supreme Leader judgment and Supreme Court judgment. "About Supreme Court judgment it must be noted that the principle of validity of judgment is accepted in all political systems. In this case, if we treat Supreme Court judgment as a decisive conviction of president, Supreme Leader judgment might be conflicting. When we distinct between fact and law and recognize Supreme Court judgment as denotation of fact, then Supreme Leader issues the removal or maintenance decree after complying the fact with law (Hashemi , 2010a,b) .

This misgiven issue might be justified with another answer. Supreme Court judgment can be recognized as a declarative decree based on denotation of president violations and Supreme Leader judgment as a substantive decree which provides president removal or maintenance that is not contrary to the principle of validity of judgment; since these two judgments have completely distinct nature. Moreover, the precision of the Constitution, as superlative Act of every country, will leave no doubt on necessity of final decision to be taken by Supreme Leader. According to Clause 10 of Article 110 of the Constitution, one of the Supreme Leader authorities is president removal with due care about national interests, after Supreme Court judgment on president violations. The term "with due care about national interests" besides cohesive expression of all Clauses of Article 110 and jurisprudence basics of the Constitution such as principle of strict dominion, clearly upholds the substance of final approval by Supreme Leader.

Final Considerations on Clause 10 of Article 110, Interpretation of Negotiations

The aim of this survey is to highlight the historical background of this principle and to make clear the purpose of legislator on judicial review. The following opinions have been obtained from negotiations which will be discussed next.

Crimes in this clause are political crimes and president violations of legal duties.

Supreme Court of Cassation can determine and distinguish political crimes.

Supreme Court of Cassation can judge the highest executive authority.

Judgment of president violations is binding for Supreme Leader or this judgment removes president from office without any advice from Supreme Leader.

Reports of president violations will be submitted to parliament then will be delivered to Supreme Court for judgment. (Detailed of Negotiations in Islamic Consultative Assembly about Final Draft of the Constitution , 1985a,b)

First quotation clarifies purpose of legislator of committed crimes by president. This is a logical and compatible with legal rules that violations of legal duties must only be examined at highest judicial Authority and other crime must be heard according to equality principle of against law at criminal courts. Second quotation hints political dimension of judicial review which was proved in previous section and third accords with the principle of separation of powers because the requirement is the ability to remove president after his violation was been affirmed.

About Hojati Kermani and Golzadeh Ghafouri`s point of views, it must be noted that: although Supreme Court of State is the highest judicial authority and its judgment must be binding and non-revisable as he is appointed by supreme leader validation decree, it is not possible to remove him without Supreme Leader`s decree. On the other, Article 100 has counted Supreme Leader`s authorities and Supreme Court judgment is not binding for him. Essentially “the quality of president removal based on theory of strict dominion and the manner of to get effected the executive duties of Supreme Leader by president, must be determined by him(Khosravi ,2010a,b).”

Fatehi`s view is infirm. He believes that judicial review is subordinated by political review, while this is contrary to equality of judicial review and political review in system of checks and balances. Moreover, parliamentary review may occur when there is not even one violation. This case, whereas duty of Supreme Court is to examine president violation of legal duties, must not been referred to Supreme Court by parliament. The parliament approves the president incompetency then submits it to Supreme Leader for necessary actions.

CONCLUSION AND LEGAL SOLUTIONS

After surveying quality of Supreme Court review on president, it was found that it is of judicial nature, accompanied with political aspect since ends with Supreme Leader judgment. The procedure and its limitations are not precisely determined but it might be concluded that Supreme Court review is general and its domain is beyond revisions and appeals.

As mentioned before, Iran legal system suffers lacks of proper laws and there are not enough procedural regulations around quality of Supreme Court review on president violations. Therefore, to remove doubts for true implementation of clause 10 of Article 110 of constitution, the following guides might be suggested:

Constitution amendment

Whereas this procedure takes a long time and requires specific processes, this solution will be applied in urgent cases, where there is no alternative. Moreover, amendment of constitution is an illogical step where only one Article is subject to of amendment. The Constitution does not generally cover details and procedures; consequently Supreme Court review on president requires approval of more detailed regulations. Although judicial review is originated from the Constitution, it cannot solely rely on it.

Legislating by Expediency Discernment Council

This solution conflicts with nature, jurisdiction and duties of the Council. Its legislation competency was originally set up to resolve conflicts between the Assembly and the Council of Guardians.

Approval of Executive Regulation by the Head of Judiciary

As he determined and notified the procedure of Supreme Court review on judicial courts through an executive regulation on 2005/12/18, he could either determine and notify the procedure of Supreme Court review on president and legalize the issue. Whereas, executive regulations have less executive power than parliament statues, this solution is not suggested too. The significance of judicial review necessitates parliament to perform its best endeavor. Executive regulation of head of Judiciary cannot per se satisfy regulatory dimension of judicial review. Furthermore, Supreme Court judicial review on president is an element of system of checks and balance and Judiciary cannot solely play this role.

Legislation by Islamic Consultative Assembly

This type of legislation owns stronger basics than previous solutions. In hierarchy of laws, legislation of Islamic Consultative Assembly is the most important after the Constitution. Experts` comments are used during legislation, consequently give credit to the respected law. Furthermore, as the Guardian Council confirms the legislation of Assembly, its role as constitution guard has not been ignored. The Assembly could proceed to legislate in two ways. First, presentation of a plan by deputies of Assembly; second, presentation of a bill prepared by Judiciary; the second way looks rational; because Judiciary is responsible for judicial review on president. In addition, in system of checks and balances, all three powers must supervise on each other. Therefore, the first way

cannot truly assure process of judiciary review on Executive. Legislator must act without any political discrimination. The worthy point is consultation with Supreme Leader; the plan or bill which is presented to Assembly must be drafted under Supreme Leader's supervision and consultation; because Supreme Leader, as final decision making authority on president removal based on article 57 and clause 10 of article 110 of Constitution, plays a direct role and effect.

As mentioned above, Judiciary with Supreme Leader's consultation initiates to draft a bill to clarify Supreme Court review and examination on president violation of legal duties. The bill will clarify the procedure of Supreme Court review in a true legal framework and there must be predicted appropriate mechanisms to prevent political variations of different political parties. The bill must also expressly emphasis on the agency discretion and final decision of Supreme Leader regarding president removal based on the Constitution then the respected bill will be sent to Assembly for final considerations and approval.

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