



Constitutional Guarantees of Rights and Freedoms in the 2005 Iraqi Constitution: A Review

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Abstract: The current research aims to expound the constitutional guarantees of rights and freedoms that are inherent in the Constitution of the Republic of Iraq of 2005, which can be considered to be one of the pillars that were used to support the constitutional system of a modern state. It explores the concept of knowledge about the public rights and freedoms and their importance in promoting the human dignity and preserving the legal status. Besides, it explains what the idea of constitutional guarantees is and how the mechanisms that protect the rights against the illegal violation or restriction take place. The study also questions the key guarantees offered by the Iraqi Constitution to safeguard the rights and freedoms with a special attention to the legislative and judicial ones, and the contribution that the Higher Federal Court makes to the assessment of the constitutionality of the statutes and promulgation of the principle of constitutional supremacy. The research uses analytic-descriptive methodology in questioning constitutional texts that are relevant. The results prove that the Constitution of 2005 has substantive guarantees aimed at guaranteeing the rights and freedoms; however, the effectiveness of the guarantees depends on their practical application and the empowerment of constitutional institutions that have to take care of its protection.

Keywords: Rights and freedoms, constitutional guarantees, 2005 Iraqi Constitution, Higher Federal Court, supremacy of the constitution, constitutional review.



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Introduction

One of the most important themes in modern constitutional studies is public rights and freedoms because they are inherently related to human existence, dignity and standing in the society and the state. The role of the constitution has changed to the one of simply structuring the authorities of the people and defining their roles to the role of the ultimate legal tool that protects the people against the abuse of authority and ensures that they enjoy the fundamental rights and freedoms under the rule of law. As a result, the degree to which a state realizes the rights and freedoms of the people is the main determinant of the evaluation of the level of development of the constitutional system and adherence to the democratic legal principles.

In this context, the Constitution of the Republic of Iraq of 2005 has a lot of provisions that have been intended to entrench rights and freedoms of the people. It gave these rights separate chapter thus setting standards and assurances aimed at protecting them against infringement or erosion.

The constitution acknowledges civil and political rights, but it extends to the sphere of economic, social and cultural rights, which is an overarching tendency in terms of providing a universal protection to an individual in all spheres of life. However, the very fact that the rights and freedoms are mentioned in the constitutional text does not guarantee the substantive protection without the supplement of the constitutional and legal guarantees that allow respecting the rights and preventing the violations or arbitrary restrictions.

What is important about this study is that it focuses on the core of the constitutional system, that is; constitutional guarantees of rights and freedoms are indispensable tools that help to change the theoretical provisions into binding rules applicable in practice. Moreover, the research is especially relevant within the constitutional period after 2005 because Iraq is trying to institutionalise a state based on the law, strengthen the respect of the rights and freedoms of the citizens, and strengthen constitutional governance. Determining whether the guarantees captured in the Iraqi Constitution are sufficient is thus an academic interest as well as a practical one in that it goes beyond the theoretical examination of whether the guarantees have the capacity in practice to offer constitutional protection.

The research problem is stated as follows: How far the Constitution of the Republic of Iraq of 2005 has sufficient and efficient constitutional guarantees of the protection of the public rights and freedoms. Some of the sub questions that arise in response to this question include: What is a constitutional guarantee of rights and freedoms? Which are the most prominent types of such guarantees in the Iraqi Constitution? Have such assurances helped to provide physical security against infringements or limitations of the rights and liberties of people? Or are the effectiveness of these guarantees weakened in practice by any legal, institutional, or practical impediments?

This study will explain the term constitutional guarantees in relation to public rights and freedoms, expound the significance of the guarantees in the constitutional system, draw on the most significant examples of the guarantees in the 2005 Constitution, scrutinize the relevant constitutional texts, consider the sufficiency of the guarantees given to the protection of the public rights and freedoms and evaluate their practical effectiveness, which will conclude with some key findings and recommendations that could help to enhance the constitutional protection.

The paper takes an analytic-descriptive approach, questioning the pertinent constitutional documents and assessing their legal and constitutional aspects, relying on the known legal terms used to explain the underlying concepts in terms of rights and freedoms and constitutional guarantees. The approach is especially suitable in the current study because it will allow conducting a thorough analysis of the constitutional construct, breaking down legal subtleties, and evaluating the effectiveness of protection of rights and freedoms in reality.

The paper is divided into two main parts: the first part outlines the idea of rights, freedoms and constitutional guarantees; the second section examines the constitutional guarantees of rights and freedoms in the 2005 Constitution of the Republic of Iraq and the paper ends by providing conclusions and recommendations.

Section One

Conceptual Framework of Rights, Freedoms and Constitutional Guarantees.

One of the fundamental pillars of the constitutional system in a modern state is the public rights and freedoms which is used to measure the respect of the state towards the dignity of the human and the protection of the basic liberties. It is not sufficient to enshrine these rights and freedoms in the constitution; they should be supported by constitutional guarantees that are used to make sure that they are adhered to and they are not compromised by the state authorities. On this basis, to study the constitutional guarantees, it is essential to first define the notion of the public rights and freedoms, as well as to explain what constitutional guarantees mean in order to protect them successfully. This part is further broken down into two subsections with the first one defining the

concept of public rights and freedoms and the second one defining the concept and importance of constitutional guarantees.

Subsection One

The Idea of Public Rights and Freedoms.

The concepts of public rights and freedoms are essential in the constitutional law due to the direct connection that they have with the position of the individual in the state and the limit of public authority over them. Public rights are perceived as inherent gains or interests that the constitution or the law grants to people to enjoy as a vital tool to maintaining human dignity and guarantee their legal and social personhood, including the right to life, equality, access to justice, education, and jobs.

Public freedoms are those areas where the people are given freedom to practice activities without interference by the state illegitimacy, e.g. freedom of expression, freedom of movements, freedom of beliefs, and freedom of assembly. Rights have a tendency to put positive obligations on the state to protect or facilitate, whereas freedoms are usually a non-intervention zone, only characterized by legal restrictions.

The importance of the rights and freedoms of the people is in the fact that it is the keystone of the democratic constitutional system. A state which is regulated by the law does not simply structure the public authorities; it provides them with the basic rights and protects them against any abuse or breach. As a result, present-day constitutions provide specific consideration to the explicit inclusion of these rights in distinct chapters, thus, making them a foundation of legitimacy of authority. In this connection, the 2005 Constitution of the Republic of Iraq dedicated a separate chapter to rights and freedoms, structuring a wide variety of civil and political rights and economic, social and cultural rights, thus highlighting the constitutional relevance of this subject matter in the Iraqi legal system. [3].

The fact that a right and freedom are different does not mean that there is an absolute contradiction between them, and the fact that both will protect the individual and guarantees his or her legal status in relation to the public authority. A right can include a freedom, and freedom can be based upon a constitutional right to protect it; therefore, rights and freedoms become part of an inseparable whole in the context of constitutional protection. Based on this, the analysis of constitutional guarantees cannot do without preliminarily determining the meaning of the public rights and freedoms since they are the subject of protection and its primary goal.

References:

1. Constitution of the Republic of Iraq, 2005, Chapter Two: Rights and Freedoms, Articles (14–46), available via Comparative Constitutions Project and ACE Electoral Knowledge Network.
2. Official publication of the 2005 Iraqi Constitution in Iraqi Gazette, No. 4012, 28 December 2005, confirming its official effect.
3. The Iraqi Constitution does not only list civil and political rights but also includes economic, social, and cultural rights within Chapter Two, reflecting the broad scope of constitutional protection.

Subsection Two

The Idea and importance of Constitutional guarantees.

Constitutional guarantees are the processes and tools that are laid down in a constitution which protect the rights and freedoms of people against infringement by the state structures. It is not enough to simply list rights and freedoms in a constitutional document and protect them substantively without a detailed set of guarantees to delineate that these rights are respected and do not arbitrarily limit or violate them. As a result, constitutional protections present the legal

framework upon which the citizens can exercise their rights and freedoms in the country of law. [1]

Guarantees of the constitution are in many ways. The legislative guarantees, say, are those that bind the legislative branch to make statutes that put the rights and freedoms in order with the liberals of their fundamental nature. These rights and freedoms are safeguarded by the judiciary using judicial guarantees through the legality of the actions of government. Also, political and institutional guarantees (the principle of separation of powers and the presence of independent constitutional institutions) assist in protecting these rights and freedoms. [2]

The importance of these guarantees is that they serve as practical tools that enforce compliance to rights and freedoms and prevent the abuse of authority. Where rights are only established by constitutional words without proper guarantees, they run in danger of being just nice theories without an actual practically constructive nature. Based on this, the modern constitutions are trying to wrap rights and freedoms in a range of constitutional guarantees that safeguard these rights and bring a balance between individual interests and system necessities. [3]

References:

1. Abdul Ghani Basyuni Abdullah, Constitutional Law and Political Systems, Al-Maaref publishing, Alexandria, p.312.
2. Suleiman Muhammad Al -Tamawi, The Three Authorities in the Constitutions of the Modern Arabic States, Dar Al-Fikr Al-Arabi, Cairo, p. 78.
3. Majid Raghib Al -Hilu, Constitutional Law, Dar Al -Jami-Jadidah, Alexandria, p. 233.

Section Two

The 2005 Constitution of the Republic of Iraq guarantees rights and freedoms provided by the constitution.

Constitutional guarantees are one of the most important tools of securing the protection of the public rights and freedoms since mere textual recognition by a constitution does not serve a purpose of its own but needs to be supported by legal and institutional means that enshrine such respect and inhibit violations. Due to this reason, the modern constitutions have focused on creating a series of the guarantees that are intended to protect the rights and freedoms and ensure its exercise in the framework of the rule of law.

In this regard, the 2005 Constitution of the Republic of Iraq was full of provisions affirming the protection of public rights and freedoms. It devoted to them another chapter, Chapter Two and provided them with a series of guarantees in order to protect them against any infringement or overreach. Such guarantees can be in many ways: legislative guarantees, which impose on the legislative authority the duty to organize rights and freedoms in line with the constitutional norms; judicial guarantees, exercised by the judiciary in the protection of rights and freedoms; and institutional guarantees, which, once again, enhance respect towards rights and freedoms.

In this regard, this section will be included in two subsections, the first one will focus on legislative guarantees of rights and freedoms in the 2005 Iraqi Constitution and the second one will discuss judicial and institutional guarantees to offer protection to rights and freedoms.

Subsection One

In the 2005 constitution of Republic of Iraq, legislative guarantees of rights and freedoms are provided in the constitution.

Legislative guarantees are some of the pioneer mechanisms that the constitution uses to safeguard the public rights and freedoms. It is pertinent that the legislative authority plays a central position in the process of organizing these rights by making laws that help to exercise them and define their boundaries without interfering with their substantive nature. According to the provisions of

the constitution, the legislative authority has a duty to adhere to the rights and freedoms as stipulated in the constitution and it should not issue legislation that contradicts or undermines these rights. [1]

In this context, the Constitution of the Republic of Iraq of 2005 can be characterized as a set of principles that form legislative guarantees of the rights and freedoms protection and are presented in the form of a sequence. An outstanding case is the rule of the supremacy of the constitution that requires all authorities including the legislature to follow the provisions of the constitution and do not go against them. Another aspect highlighted in the constitution is the fact that the legislation should not be fragile to the scrutiny provided in the constitution, thus making it inadmissible to make a law that contradicts the rights and freedoms that are provided therein. [2]

Also, the Iraqi Constitution establishes a very important rule regarding of the rights and freedoms regulation; any limitation of these rights must be based on the law, and it must not affect the essence of the right or freedom. It is a fundamental legislative guarantee, as it prevents the imposition of the restriction of rights and freedoms through administrative decisions or arbitrary measures; and thus the regulation of rights and freedoms is limited to the legislative authority, within constitutional boundaries. [3]

The constitution also highlights a list of fundamental rights that lawmakers should follow in the formulation of laws, including the equality before the law rule and the right to receive justice, freedom of speech, and the right to assemble and associate. The inclusion of these rights in the fundamental constitutional document is a major guarantee that safeguards them against usury or reduction by ordinary legislation. [4]

References:

1. Majid Raghib Al Hilu, Constitutional Law, Dar Al Jami Jahadidah, Alexandria, p. 245.
2. In the Constitution of the Republic of Iraq, 2005, Article 13, which defines the principle of the primacy of the constitution and the necessity to adhere to its provisions, the need to follow the provisions of the constitution is established.
3. Article 46 of the constitution of the Republic of Iraq, 2005, which provides that no limitation to the exercise of any right and freedoms in the constitution shall be made except by law or on the basis of it and without interfering with the nature of the right or freedom.
4. Democratic Iraq, 2005, Chapter Two, Rights and liberties, Articles 14-46.

Subsection Two

The 2005 Constitution of the Republic of Iraq guaranteed rights and freedoms by the judiciary.

The judicial guarantees represent one of the most important mechanisms of protecting the public rights and freedoms due to the independence and the impartiality of the judicial system, which allows it to oppose any violation of the rights. The judiciary serves the ultimate refuge for people in case of the abuse of public authority and has a major role in the maintenance of the respect of the provisions of the constitution and the laws regarding rights and freedoms. [1]

In that regard, the 2005 Constitution of the Republic of Iraq increased the principle of judicial independence. It provides that judicial system is independent and only accountable to the law, and thus it forms a major guarantee to the protecting of rights and freedoms. Judicial independence allows judges to determine cases that are brought before them without interference of any outside force hence enhancing the security of the population in seeking justice and protection of rights. [2]. The judiciary is assigned an important role in the constitutional protection of the right and freedoms since it grants any individual the right to seek courts to defend his rights, and this is a principle that is reflected in the right to litigation that is considered one of the fundamental guarantees of the legal system. The power to question such a decision or action in the face of a

person that has the authority to make or decide on the matter and won't be disobeyed as long as the actions of the person or authority do not infringe on the rights of the individual will be a good way of stopping the abuse of power. [3]

On the other hand, the constitution bestows to the Higher Federal Court the mission of reviewing the constitutionality of the laws and regulations in force, making it one of the greatest judicial guarantees to defend the rights and freedoms. This evaluation procedure allows annulment or invalidation of any act of legislation that violates the constitutional clauses including texts that can invade the rights and freedoms ensured in therein. This makes the principle of constitutional supremacy sound and makes sure that all authorities respect it. [4]

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2. Article 19/First and Article 87 of the Constitution of the Republic of Iraq 2005 that declares the independence of the judiciary.
3. Article 19/Third of the Constitution of the Republic of Iraq, 2005, that provides the right to litigations to all.
4. Article 93 of the Constitution of the Republic of Iraq, 2005, on the powers of the Higher Federal Court.

Conclusion

The analysis of the constitutional guarantees of rights and freedoms in the Constitution of the Republic of Iraq of 2005 shows that the drafting of the constitutional legislator paid special care in protecting these rights. They were accorded separate chapter in the constitution and a set of principles and guarantees was developed to safeguard them, and enhance respect to them under the rule of law system. Other legal and institutional agendas that were established by the constitution help in protecting rights and freedoms and prevent abuse of authority.

I. Findings

1. Constitution of the Republic of Iraq, 2005 is a document that outlines the significance of public rights and freedoms as it devotes one of its chapters to these issues.
2. The Constitution includes a set of legislative guarantees that provide that the legislative authority should not issue law infringing the fundamental character of rights and freedoms.
3. The judiciary, especially the Higher Federal Court, form a major guarantees for protecting rights and freedoms in its regard on the constitutionality of laws.
4. The constitutional supremacy and separation powers strengthen the rights and freedoms and acts as a deterrent to prevent the public authorities to cross the limits of such rights.

II. Recommendations

1. Strengthen the role of the judiciary in defending rights and freedoms and ensure the complete independence from other authorities.
2. Develop laws that are in harmony with the provisions in the constitution with regard to rights and freedoms.
3. Increase the legal knowledge of the people about the rights related to the constitution and the mechanisms to protect their rights.
4. Support constitutional institutions that must protect the rights and freedoms to make sure that the constitutional provisions become effective in practice.

Sources

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