

Constitutional and Human Rights Issues and Trends in The Republic of Iraq: Struggling on The Way

*Problemas y tendencias constitucionales y de derechos humanos en la
República de Irak: luchando en el camino*

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Abstract: The article comprises legal evaluation of Iraqi constitutionalism in its historical context – the study is devoted to understanding the constitutional dynamic happened over almost 20 years. Such dynamic is analyzed through human rights, rule of law, enforceability of legal guaranties, constitutional interpretation, role of Islam and Sharia. As the result, the author reveals two groups of constitutional trends explaining each role and influence. Moreover, the author provides the reader with the extensive view on the human rights problems and solutions already implemented in the Republic of Iraq.

Keywords: Iraq, constitutionalism, Islam, Sharia, 2005 Constitution of Iraq.

Resumen: El artículo comprende la evaluación legal del constitucionalismo iraquí en su contexto histórico: el estudio está dedicado a comprender la dinámica constitucional que ocurrió durante casi 20 años. Dicha dinámica se analiza a través de los derechos humanos, el estado de derecho, la aplicabilidad de las garantías legales, la interpretación constitucional, el papel del islam y la Sharía. Como resultado, el autor revela dos grupos de tendencias constitucionales que explican cada rol e influencia. Además, el autor proporciona al lector una visión amplia de los problemas y soluciones de derechos humanos ya implementados en la República de Irak.

Palabras claves: Irak, constitucionalismo, islam, Sharía, Constitución de Irak del 2005.

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1. Introduction

The Iraqi statehood and the constitutional law of Iraq is the unique historical and legal phenomenon to be deeply studied. This uniqueness comprises from at least three opposing models of the state composition which has been implemented in this territory within the foreseeable historical limits: the traditionalist, socialist and constitutional in its classical 'Western' appearance. Moreover, since the 7th century, each of them has been complicated to a certain extent by a religious (Islamic) element, which makes Iraqi constitutionalism even more unique. Such a conclusion can be reached even if it is limited to a relatively short period of time – the period of existence of an independent Iraq. Since the genesis of the system largely determines its functioning, this feature could not but affect the state of modern Iraqi constitutionalism.

The central issue of the study was the identification and structuring of trends in the development of Iraqi constitutionalism and in the constitutional guarantees of human rights, the system of state authorities and a clearer delineation between Sharia and constitutional law in the country due to the theological nature of the attitude towards empowered bodies not only in Iraq, but in the most Middle East countries. Hence, the research question of the study at hand is whether there are any trends in Iraqi constitutional development and, if so, could they be systematized. Jumping ahead, we suppose that despite the young age of Iraqi statehood such trends could be revealed and grouped by two vectors of development. Specifically, the two trends of the Iraqi constitutional development discovered are (1) trends in the development of the Constitution, which are conditioned by its literal content: the presence of unenforceable constitutional provisions that do not have a real mechanism of realization in the Republic; the constant search for ways of 'non-invasive' filling gaps on the existing constitutional text, and (2) trends related to the Constitutional interpretation: the evolution of the federalism understanding thoroughly in relation to the Iraqi national context; the evolution of the power-separation concept; the evolution of the role of Islam and Sharia in the modern Iraqi legal system.

The ultimate objective of this article is to make a prediction and advise further constitutional development vectors based on the revealed trends of the constitutional struggling of the Iraq Republic, to define whether the way chosen is right or wrong from constitutionalism paradigmatic standpoint.

2. Methodology

The study is based on the discursive analysis and interpretation of the legal text in the light

of socio-political and historical realities, the analysis of the interaction of theoretical provisions and their practical application on the territory of a particular state. Since the study is to be theoretical, no empirical basis would be used except for legal practice. The main methods would be textual analysis and synthesis, and comparative method in both retrospective and interstate aspects.

3. Results

According to the results of the analysis, two groups of trends in the development of Iraqi constitutionalism have been identified:

1. The first group includes such trends in the development of the Constitution, which are conditioned by its literal content: the presence of “dormant” constitutional provisions that do not have a real enforcement mechanism in the Republic; the constant search for ways for ways of ‘non-invasive’ filling gaps on the existing constitutional text.

2. The second group includes constitutional and legal trends related to the Constitutional interpretation: the evolution of the federalism understanding thoroughly in relation to the Iraqi national specifics; the evolution of the power-separation concept; the evolution of the role of Islam and Sharia in the modern Iraqi legal system.

As a result of the conducted research, the main problems related to human rights in Iraq have been identified. These include violations of women’s rights, problems with electoral justice, corruption, restrictions on freedom of the press, and violations of minority rights, ethnic and religious. The main reasons for the emergence of these problems include traditional views on the role of various social groups in social and political life, gaps in legislation, the radicalization of certain religious and political communities, and the conflict-ridden background development of Iraq during a significant period of its formation.

4. The Iraqi Constitutional Development Context

The State of Iraq has changed from a state dependent on Great Britain to a monarchy and evolved into a parliamentary Republic. During these periods, constitutional acts had different purposes, their own characteristics, and historical prerequisites. Thus, it can be argued that the Constitution of Iraq from 1925 deviated from the principles of the parliamentary system,

since the role of the Executive was dominant. It became the foundation to prepare the country for the transition from a military British government to an Iraqi constitutional monarchy.

As for the provisional constitutional acts, Iraq was one of the few countries with a republican form of government in which the functions of the head of State were carried out by a collegium until February 1963. In the address to the people of General A.K. Kasem dated July 14, 1958, i. e., on the day of the revolution, it was said: “[...] going to meet the wishes of the people, we temporarily appoint the State Council as the head of the Iraqi Republic, which will use power until the people elect a president”.

However, it is worth noting that, in general, the Constitution of Iraq of 1958 was not the Basic Law adopted for the Iraqi people to improve their lives, develop democracy and the rule of law. It also reflected the will of the political elites who seized power in Iraq by force which was adopted and worked in their interests. However, the provisions on human rights were more declarative in nature. Nevertheless, it has remained in history as the first Constitution of Iraq, legitimizing the change of the form of government from monarchical to republican, entrenched and remaining in the country forever.

The 1963 Constitution of Iraq was issued on behalf of the National Revolutionary Command Council and was called: ‘The Law of the National Revolutionary Command Council’. Therefore, it can be concluded that this constitution is not traditional because it was introduced by the current government, which came to power with the help of a coup d’état.

In 1964, the new Constitution of Iraq was adopted. It contained 106 articles, which is not typical for temporary Constitutions, which regulate the most general provisions of the state structure before the adoption of a permanent Constitution.

The peculiarity of the 1968 Iraqi Constitution, adopted by the National Revolutionary Command Council, was the fact that the principles of socialism and the suppression of the exploitation of labor and the class system came to the fore. Four amendments were made to this Constitution in a short period of time, which highlights its shortcomings. This constitution, despite the detail of the provisions and many paragraphs, did not correspond to the political reality. Considering this, the political power represented by the Revolutionary Command Council formed a committee to create a new provisional Constitution. As a result, the Provisional Constitution of the Republic of Iraq was adopted in 1970. However, even though the authors of the Constitution wanted to combine constitutional and political reality through it, this constitution has been amended several times. Nevertheless, the provisional Constitution of Iraq in 1970 was in force for more than 30 years.

After the overthrow of Saddam Hussein's regime on September 4th, 2003 and the dissolution of the military Transitional Government, all the provisions of the 1970 Constitution were expired and the State of Iraq found itself without the basic law of the country.

The task of the National Assembly in accordance with the Law 'On State Administration' was to develop a new Constitution of the country. In its development, a committee was created from members of the National Assembly and specialists from outside. The draft of the new Constitution was ready on August 8th, 2005 and was submitted to a national referendum on October 15th, 2005: Voter turnout was 64 per cent of the total (fifteen million five hundred thousand people). 79 per cent of those who voted in favor of the adoption of the Basic Law.

The Constitution of Iraq, which was adopted by referendum on October 15, 2005, is the first permanent Constitution of Iraq since the adoption of the Basic Law of Iraq in 1925. Before that, the Iraqi people lived in the light of several provisional Constitutions reflecting coups and revolutions.

The referendum method of adopting constitutions is certainly the most democratic. The fate of the draft constitution is decided directly by citizens who have the right to participate in the referendum. However, in no way, it can be elevated to the absolute or considered an exceptionally effective method. Nevertheless, at the referendum, citizens can only vote for or against the draft constitution, but they cannot influence its quality in any way.

The current Constitution of the Republic of Iraq of 2005 declares the country a federal State, a parliamentary Islamic republic, enshrines human rights, the system of authorities and their powers.

The system of State authorities of modern Iraq is outlined by section three of the Constitution of 2005. Its systematic interpretation leads to the conclusion that Iraq has implemented a classical system of separation of powers, which is provided by three branches of government: Legislative, Executive, and Judicial. In a broad definition, one department cannot pose a threat to the powers of another as it cannot act on other authority's field. However, such separation-of-powers principle does not doom governmental bodies to live in aloofness which means that all state authorities are closely interconnected and bound by each other's supervision and accountability powers. Iraqi Constitution of 2005 also represents a system of balanced and mutually supportive state bodies of legislative and executive powers.

5. The Iraqi Human Rights Context

As to the human rights in the Republic of Iraq, although the Iraqi Constitution establishes some rights and freedoms for citizens, in practice human rights in Iraq are often violated. The most common problems in implementing human rights in Iraq are related to violations of women's and minorities' rights, selective justice, corruption and restrictions on freedom of speech.

1. Violations of women's rights. In Iraq, women face discrimination and violations of their rights, including domestic violence, forced marriages, restricted access to education and healthcare. These violations are contributed by several factors.

Firstly, Islamic culture and traditions play an important role in shaping attitudes towards women in Iraq. Some aspects of Islamic culture and traditions, such as the primacy of male population, subordination of women, restrictions on freedom of movement and dress style; place women in an extremely vulnerable, dependent position on men.

Secondly, the long years of conflict and war in Iraq have led to the breakdown of social structures and the weakening of law and order, which also exacerbates the situation with women's rights, preventing timely response to violations committed against them.

Thirdly, the existing traditional view of women's role in society excludes the possibility for women to receive desired education and sometimes even medical assistance, which lowers their social status and forms a complex disrespectful attitude towards them.

However, improving the situation can only be achieved through a comprehensive organizational and legal approach that should not be blindly copied from Western or even neighboring countries. Considering Iraq's described Islamic cultural tradition, addressing the identified problems should be done without excessive radicalism, gradually implementing gender-based violence prevention programs that align with the values of the Iraqi people and supporting its victims. Among the first steps towards strengthening gender equality could be the development of organizations specifically aimed at protecting women's rights and promoting social awareness, propagating a culture of non-violence towards particularly vulnerable populations.

2. Selective justice, corruption, and restrictions on freedom of speech. Freedom of speech and press is guaranteed by the Constitution, but in practice, journalists and human rights activists are often subjected to prosecution, violence, and threats. The main reasons for violating media freedom and freedom of expression are as follows:

Firstly, Iraq is a country that has gone through a long period of political instability and conflicts, including war and counterterrorism. This historical background undoubtedly requires the government to take sometimes excessive security measures, inevitably associated with restrictions on, among other things, free news, and media broadcasting, to prevent a recurrence of social tension.

Secondly, the fact that most media outlets in Iraq are owned directly by the state or through affiliated individuals inevitably leads to the entire media agenda being controlled by the state's will.

Thirdly, the lack of legal guarantees and mechanisms to protect the freedom of journalism, speech, and the press leads to impunity for their persecution, self-regulation, and abuse of power in interaction with government agencies, including law enforcement.

To improve the situation some actions, need to be take, such as: legal development of constitutional provisions in Iraq's legislation and sub-legislative acts, the creation of a normative complex and specific mechanisms for protecting freedom of speech, implementation of criminal prohibitions for obstructing journalistic activity, and exceeding the powers of law by enforcement officials.

Despite the constitutional guarantee of the fair trial, many citizens of Iraq are deprived of it due to corruption and shortcomings in the legal system. We identify the following reasons for the emergence of these problems:

Firstly, the analysis of the existing legal system demonstrates the lack of real independence of the courts in Iraq, and the frequency of pressure from the executive branch and other influential groups on judges.

Secondly, the insufficient level of education of the population leads to problems of legal literacy which increases social stratification between residents of poor and remote areas and urban dwellers creating additional barriers and increasing legal nihilism among ordinary Iraqi citizens.

Thirdly, the inadequate judicial infrastructure imposes economic restrictions on access to justice – the location and small number of jurisdictional bodies negatively affects the likelihood of resolving inevitable conflicts through legal intermediation.

Fourthly, the authority of law enforcement agencies is also undermined by the gaps in Iraqi procedural legislation, its fictitiousness allowing impunity and arbitrary deviation from the letter of the law.

Fifthly, the shortage of qualified lawyers and advocates, especially in remote and poor areas of the country, is also a social-organizational filter for equal access to justice.

To improve citizens' access to fair justice, it is necessary to provide real mechanisms to strengthen the independence of the judiciary and protect human rights, as well as to increase legal literacy of citizens and facilitate access to legal services. In addition, it is necessary to conduct awareness-raising activities among the population, provide explanatory work on guaranteed rights and freedoms, and improve legal awareness in society.

3. Violations of minority rights. Minorities mostly Kurds, Shiites, Christians, and Yazidis face restrictions in accessing education and healthcare, as well as discrimination from the government. At the same time, religious minorities often face persecution and violence from other groups, along with restrictions from the government. Discrimination from the government and other groups can take the form of restrictions on access to education, healthcare, housing, and other resources, as well as violence and abuse from non-minority members of the government (law enforcement agencies). The reasons for discrimination can be broadly summarized as follows:

Firstly, Iraq's historical and cultural tradition as a Sunni Muslim-majority state has maintained for a long time the dominance of representatives of these social groups in the country's political and social life. In this regard, minorities are perceived as "inferior" and second-class from the perspective of the political sphere.

Secondly, decades-long conflicts and tensions between various ethnic and religious groups in Iraq, as they have developed, place any specific weaker or smaller group in a vulnerable position.

Thirdly, the presence of terrorist organizations such as ISIS (banned in Russia) increases intolerance towards those minorities who are considered 'unbelievers' and 'unpleasant' for these organizations. In this context, even segments of the population who do not belong to such organizations are wary of these population categories to avoid additional problems.

These violations indicate that the rights and freedoms of Iraqi citizens are under threat. It is necessary to continue working to strengthen the rights and freedoms of Iraqi citizens and

fight for their universal protection. Though, it might be considered as the excuse but the state structure of the historical predecessors of the Iraqi state was not always truly constitutional, that is to say, it was not based on some normative legal act of the highest legal force, and the first constitution of Iraq dates back only to 1925. However, such a limitation on the subject of the study will inevitably entail significant omissions in understanding the evolution of Iraqi constitutionalism, since in this case, several thousand years of the formation of the Iraqi legal culture will remain outside the limits of historical and legal analysis.

In addition, according to the available historical data, one or another form of statehood has always existed on Iraqi lands. In other words, each period of Iraq's history is characterized by the presence of (proto-) state authorities and a bureaucratic apparatus that exercise power in a certain territory and make their commands binding on the population living on it. Since the subject of constitutional law traditionally includes legal relations on the organization and exercise of this power, for the purposes of this study, it seems possible to make the assumption that certain elements of the "constitutionalizing" of the Iraqi state (states that are the historical predecessors of Iraq) can be observed long before the adoption of the first constitution of Iraq in the formal legal sense of the term (namely, since the appearance of the first state entities on the territory of modern Iraq and the territories adjacent to it). Such an assumption is methodologically productive, since there is no doubt that constitutionalism in its universal understanding, which arose at the turn of the XVIII – XIX centuries, did not arise based on *tabula rasa*, but it is a product of generalization of a long historical experience originating from ancient times.

6. The First Group of Iraqi Constitutional Trends: Filling the Gaps

A change in the content of constitutional texts can occur both through a literal change and its interpretation in different ways. For instance, the content of Islamic sacred documents is not defined by their letter, but by *Fiqh* as the results of its interpretation².

Bearing in mind that theoretically and legally interpretation can be carried out with respect to historical realities in which the interpreted norm exists and operates (historical interpretation), it is quite predictable that the legal meanings of the 2005 Constitution of Iraq could to a certain extent transform over a little less than two decades of existence³. Such a position, however, it may face reasonable objections. For example, in 2019, the point of view was expressed in science, according to which not enough time has passed since the Constitution of Iraq in 2005 entered into force, hence the socio-cultural context of its adoption has not

2 Hamoudi (2013), pp. 387-412.

3 Arato (2008), pp. 163-201.

changed significantly. On this basis, it is proposed to focus research efforts not only on the constitutional and legal dynamics of the modern Iraqi state, but also on the static – the provisions of the Constitution itself⁴. In addition, it should be noted that as of the date of this study, the 2005 Constitution of Iraq has not undergone literal changes as such, despite the work of the Constitutional Amendments Committee established in accordance with article 142, paragraph 1, of the Constitution, and the existence of many proposals for amendments to it.

Meanwhile, it seems that such considerations that determine the relevance of analyzing trends in the development of modern Constitution of Iraq in 2005 as the normative basis of Iraqi constitutionalism, are truly important. Indeed, the relatively short period of time that has elapsed since its entry into force significantly narrows the range of potentially detectable trends, but this does not at all negate the urgency of this task⁵.

Therefore, it is proposed to classify the trends revealed into two groups: the first one includes such trends in the development of the Constitution, which are conditioned by its literal content; the second one is proposed to include constitutional and legal trends related to the interpretation of the letter of the Constitution.

It is advisable to begin consideration of the first group of trends in the development of the modern Constitution of Iraq in 2005 with the thesis that the Constitution is replete with unrealized provisions, in the development of which the necessary legislative or administrative measures have not been taken, because they do not have the real regulatory effect that is expected from them⁶. In this sense, it seems possible to identify a trend in which several provisions of the 2005 Constitution of Iraq do not function and are in 'hibernation'. This trend affects not only purely technical provisions, the non-implementation of which does not have a negative effect that could not be ignored (among them are the provisions of article 92, according to which it is planned to adopt a new law on the Federal Supreme Court of Iraq with the adoption of the 2005 Constitution⁷; until recently, these provisions were not implemented, and the Court acted on the basis of the 2005 Law in an unchanged version, until the relevant amendments were made to it in 2021).

This trend also affects more fundamental constitutional norms, for example, regulating the formation of the Iraqi parliament. Since Iraq is a federal State today, article 48 of the Constitution provides for a bicameral structure of parliament: the lower house is the Council of Representatives, and the upper house is the Federation Council. Meanwhile, in fact, only

4 Pay (2019), pp. 123-141.

5 Deeks and Burton (2007), pp. 2-87.

6 Ala'Aldeen (2020), pp. 8-12.

7 Mofidi (2019), pp. 239-248.

the lower house, the Council of Representatives, currently operates in Iraq, since the law on the Federation Council in accordance with article 65 of the Constitution has not yet been adopted, because of which the constitutional and legal custom of functioning of a unicameral parliament has been established in Iraq⁸.

Another trend in the development and functioning of the modern Constitution of Iraq in 2005 follows from its gap. Accordingly, the current stage of the development of Iraqi constitutionalism is characterized by the search for mechanisms to fill significant gaps in the constitutional text without direct (invasive) interference in it, since any procedure for changing the Constitution of Iraq of 2005 in the current socio-cultural realities will be difficult due to the unattainability of public compromise on constitutional and legal issues.

It is appropriate to note that the stated gap in the Constitution of Iraq of 2005 does not affect those of its provisions that guarantee the rights and freedoms of man and citizen⁹. In this context, we can agree with N. Feldman, one of the Constitution's authors, who described it as an "exhaustive bill of human rights"¹⁰. However, this does not eliminate the claims of constitutional scholars about the insufficiency of regulation of key constitutional and legal institutions in the Constitution of 2005.

Among other things, it is noted that the Constitution does not contain sufficient provisions on the electoral process¹¹. Thus, the provision of Article 5, which establishes that the source of power and its legitimacy are people, is not supported by sufficient constitutional norms on active suffrage, except for its abstract guarantee (Article 20) and framework norms on elections to the Council of Representatives (Article 49). The current Constitution essentially says nothing about how elections should be organized, which in practice led to the fact that the Iraqi Parliament independently determined the rules of the electoral process¹².

As another example of the gap in the current Constitution of 2005, the literature cites its silence about any procedures and mechanisms that would allow the general public, that is to say citizens of Iraq as holders of State power, to participate successfully and with an effective control over the activities of public authorities, which in particular is expressed in the absence of references to the possibility of initiating citizens of the country of disqualification procedures or changes in legislative acts¹³, bearing in mind, the insufficient development of

8 McDonough (2020), pp. 121.

9 McGarry and O'Leary (2007), pp. 670-698.

10 Feldman (2004), pp. 34-40.

11 Jensen (2013), pp. 2-10.

12 Zaid and Yussef (2020), p. 76.

13 Pay (2019), p. 133.

the institution of constitutional control at the current stage of the constitutional and legal development of Iraq.

Within the framework of the analyzed trend, it should be noted that at present, the Iraqi jurisprudence has not completely fulfilled the task of finding mechanisms to shorten such gaps, including those mentioned above. Meanwhile, it is interesting to note that there is a mechanism at the disposal of the Federal Supreme Court of Iraq, within which it is authorized to give the Committee on Constitutional Amendments legally significant instructions on the development of a constitutional legal issue; the results of the execution of such a court order should be reflected in the updated constitutional text. It was in this way that the Federal Supreme Court of Iraq ordered the Committee on Constitutional Amendments to make up for the omission of the authors of the 2005 Constitution and, when drafting constitutional amendments, to provide for rules on the procedure for replacing an early vacant seat of a deputy of the Council of Representatives¹⁴.

7. The Second Group of Iraqi Constitutional Trends: Interpreting the Constitution

Turning to the second group of trends in the development of the modern Iraqi Constitution, it is proposed to focus research efforts on three main trends: the evolution of the understanding of federalism considering the Iraqi national specifics, the evolution of the concept of separation of legislative and executive branches of power and the evolution of the meaning of Islam and Sharia norms in the modern Iraqi legal system. It is worth noting that all these trends are combined into the second group for a reason, since the change in the meaning and content of these legal constructs took place with the static of the provisions of the 2005 Constitution that mention them; these changes took place only under the influence of legal practice in the relevant areas.

The issues of Iraqi federalism, despite the extremely late appearance of the phenomenon of federalism in the Iraqi constitutional and legal discourse as such (not earlier than 2004, the year of the adoption of the Transitional Administrative Law), are extremely important, since Iraq is a multinational State whose society is characterized by acute national and religious contradictions¹⁵. To resolve these contradictions, attempts were made to further decentralize the state, which resulted in the establishment of a federal form of government.

14 Alchalabi (2021), pp. 1-16.

15 Morrow (2006), pp. 3-5.

The basis for such decentralization is, among other things, Article 125 of the 2005 Constitution of Iraq, which guarantees political, cultural, and educational rights to all nationalities¹⁶. At the same time, as the historical and political practice of modern Iraq has shown, this situation can be used as a factor aggravating the fragmentation of Iraq and its people. Thus, it was under the influence of the provisions of Article 125 of the Constitution that the central government in Baghdad, the Kurdistan Regional Government, and the Assyrians, along with other national minorities, simultaneously announced their claims on the territory of the Nineveh plains¹⁷⁻¹⁸.

To an even greater extent, the problems of federalism exposed themselves during a new round of aggravation of the Kurdish issue following the results of the 2017 referendum on the independence of Kurdistan from the state of Iraq. In order to stop the intensified centrifugal processes, the intervention of the Federal Supreme Court of Iraq was required, which, by its decision of November 6, 2017, with the involvement of Articles 1, 47 and 116 of the 2005 Constitution of Iraq, unequivocally interpreted the constitutional principle of federalism as not allowing the separation of any territorial units of the state and assuming the primacy of security, independence, sovereignty and democracy of Iraq's federal system¹⁹. This predetermined the unconstitutionality of the results of the referendum, which decided on the independence and political independence of Kurdistan and marked the evolution of the concept of Iraqi federalism, which was introduced into the Iraqi legal system to decentralize the state and ensure the protection of the rights of all nationalities, and subsequently became an instrument of centralization of the state.

With the entry into force of the 2005 Constitution of Iraq, there has been a trend towards the evolution of the understanding of the separation of powers. As you know, one of the qualifying features of a particular form of government is the nature of the relationship between the legislative and executive authorities. In this sense, a truly unique situation has developed in Iraq. The fact is that the Federal Supreme Court of Iraq, exercising constitutional control, interpreted Article 60 of the 2005 Constitution of Iraq *contra legem*. The Court ruled that, within the meaning of the said norm, Parliament does not have the right to vote on any bill unless it has previously been approved by the Cabinet of Ministers; moreover, Parliament cannot make any significant changes to the bill after it has been approved by the Cabinet of Ministers. Constitutional scholars believe that such an interpretation has negated the importance of parliament as a legislative body and a discussion platform and has given the executive

16 Rashid (2013), pp. 647-663.

17 Hanoosh (2019), p. 179.

18 Sherwanila, Yassen and Kokha (2021), pp. 286-290.

19 Nader (2003), pp. 479-483.

power full control over the legislative process²⁰. Nevertheless, the Iraqi legislative practice has taken a different path, according to which the Council of Representatives, in the absence of an initiative from the Cabinet of Ministers, shows proper activism in matters that do not tolerate delay.

Finally, it is worth returning to the consideration of the dynamics of understanding the role of Islam in the modern constitutional law of Iraq. As you know, the 2005 Constitution of Iraq does not provide for the primacy of Sharia, which is so familiar to several other Arab countries. This is confirmed, again, by the grammatical interpretation of the English-language constitutional text. Thus, researchers believe that if the term 'source' is used with an indefinite article ('a source'), as in the current Iraqi constitution, then the provision on Islam as a source of legislation, or even law, is understood more broadly as allowing the adoption of laws and other regulations that are not directly based on Sharia law. If the specified term is used with a specific article ('the source'), then, on the contrary, the adoption of such acts is not allowed²¹.

Other researchers, if they agree with this approach to the interpretation of Article 2 of the Constitution, immediately draw attention to the internal inconsistency of constitutional norms. This contradiction arises insofar as the first section equates Islam with other sources of legislation, while the second section states that the provisions of Islam should not be violated when adopting laws and other regulations²².

From a practical point of view, this most likely means that Sharia norms can and should be applied in specific legal cases, however, bearing in mind the explicit constitutional restriction on the applicability of Islam, Sharia is subject to application in the absence of a rule of positive law to be applied. In other words, the norms of Sharia in Iraq can be applied by analogy with law, that is, as a fundamental principle that should be guided in case of a gap or qualified omission of the Constitution or legislation. Thus, the 1951 Civil Code of Iraq explicitly provides for such a provision, and the glossators add that if judges apply Islamic law, they must apply it without reference to any school of Islamic development²³.

Another point of application of practical efforts for the limited application of Islamic law is the practice of the Federal Supreme Court of Iraq, which knows cases of recognition of the law unconstitutional on the grounds of contradiction to its literal formulations of the Koran. Meanwhile, such precedents are exceptions rather than the rule, taking into account the pathological examination by the Court of the principle of judicial restraint due to the paucity of

20 Zaid and Yussef (2020), p. 85.

21 McDonough (2020), pp. 143-144.

22 Zaid and Yussef (2020), p. 39.

23 McDonough (2020), p. 151; Intisar (2008), pp. 527-579.

the legal basis of its activities. The above allows us to conclude that the modern constitutional and legal model of the Iraqi state adheres to a much more conservative approach to giving the norms of Islam legal force than the legal models that were implemented on Iraqi lands earlier, or, for example, modern Egypt and Iran^{24, 25}.

8. Conclusion

Despite the extremely contradictory assessments given to the current state of Iraqi constitutionalism and trends in its development, it is not difficult to notice that the 2005 Constitution of Iraq, both in its letter and based on the practice of its application, follows the same general trends in the constitutional and legal development of the Iraqi State that have arisen since ancient times and continue to flow at the present time, which is confirmed by the examples given in this paragraph. Minor turns in the development of these trends; for example, in terms of the change of decentralization by centralization within the framework of the federal state structure of modern Iraq, are not able to significantly change the course that the Iraqi civilization has long chosen and which continues to follow to this day.

Among the significant achievements, we consider the establishment of the National Institute for Human Rights. In 2017, the government of Iraq created the National Institute for Human Rights, which is aimed at protecting the rights and freedoms of citizens. This institute is an independent organization that monitors human rights violations and provides training while collaborating with other organizations that deal with human rights.

Moreover, the Iraqi government has developed laws and policies in the field of human rights, aimed at protecting the rights of citizens in recent years. For example, the Domestic Violence Law was passed to protect women and children from domestic violence. Also, a Human Rights Policy was adopted, which includes measures to strengthen human rights in Iraq. Additionally, measures have been taken to improve the situation of women and children, including the introduction of quotas for women in parliament and government positions and a ban on child marriage.

Furthermore, the Iraqi government has signed several international agreements aimed at protecting human rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights.

24 Hansen (2006), pp. 256-290.

25 Tushnet (2014), pp. 7-12.

However, the prospects for further development of human rights in Iraq remain ambiguous. On the one hand, the government of Iraq has already taken some steps to improve the situation in the field of human rights. However, as noted in our research, there are still problems related to human rights in Iraq, including violations of freedom of expression, restrictions on peaceful protests, violations of women's and children's rights, corruption, and others. To achieve higher human rights standards in Iraq, the government needs to continue its efforts in this area and consider new ways to solve these problems.

It should be noted that the implementation of these measures may require significant effort and time, as well as cooperation among the government, civil society organizations, and the public. Nevertheless, we believe that there are prospects for further development of human rights in Iraq and with the right approach and determination from the government and society significant progress can be achieved in this area.

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