



THE IMPACT OF CONSTITUTIONAL LEGISLATION IN SUPPORTING THE IDEA OF CITIZENSHIP IN THE IRAQI CONSTITUTION

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Article history:	Abstract:
<p>Received: October 11th 2022 Accepted: November 11th 2022 Published: December 28th 2022</p>	<p>Citizenship requires a sense of responsibility in performing duties and claiming rights. This feature is equal between the individual and the state if all the appropriate conditions of freedom, democracy, security, stability, respect for human rights and all the basic criteria that citizenship aims at, and embodying it in all its dimensions on the ground, means building an upscale state with a good society. He lives in security and stability, and therefore the problem of the study revolves around the answer to the main question, which is what is the impact of constitutional legislation in supporting the idea of citizenship in each of the Iraqi constitution? Through the descriptive and analytical research approach, the study came out with a set of results and recommendations, including that the Iraqi constitution emphasizes the need to ensure the right to participation and equality, in a way that supports the idea of citizenship. The guarantor of the right to participation and equality in a way that supports the idea of citizenship in Iraq is the constitution and judicial oversight, so we recommend the need to put in place legal and oversight mechanisms to activate the principle of the supremacy of the constitution as a basic guarantee for democracy and support for the idea of citizenship, and to protect the rights and freedoms of individuals, and to guarantee the principle of legitimacy with its provisions, and then preserve the principle of legitimacy. It is sponsored by the constitutional courts and councils. Otherwise, the principle of the supremacy of the constitution becomes a slogan without content and a word without content.</p>

Keywords: Legislation, constitution, citizenship, participation, rights and freedoms

INTRODUCTION

Although one of the most important issues related to supporting the idea of citizenship relates to its constitutional protection, unfortunately this issue is not well explained in Iraqi law. While this topic is one of the most popular scientific topics among researchers and lawyers. There are many research institutions related to this issue in the world and it is one of the most important scientific topics.

The impact of citizenship indicates the nature of the organic relationship that binds the individual to the country in which he acquires his nationality, and the rights and duties imposed by this relationship or nationality that are stipulated by laws and customs, and by which the purposes of a common life are achieved, the benefits of which are shared by all.

Although citizenship extends to the extent of the state, the state, as a geographically and politically recognized entity, may include citizens with other nationalities who do not have the same obligations as citizens. Likewise,

they do not benefit from the same privileges that citizens benefit from. In all cases, citizenship is linked to the existing state that has powers. It is administrative, has working systems, and has a constitution and laws. Citizenship is no longer confined to tribal, tribal, sectarian, ethnic, or class loyalties.

And in light of the good concept of globalization and the political, economic, cultural, scientific and technical transformations it brought, the world has become our largest homeland, or as it is said, our planetary village in which we live, and then what is known as great citizenship or global citizenship and citizenship in its national sense appeared. Its value and its global concept has its own values. Citizenship in its national concept has its values such as loyalty, patriotism, sincere service to the country, cooperation and participation in public matters among citizens.

Recent studies have returned to interest in the concept of citizenship as a social concept that has educational,



political, economic, cultural and philosophical dimensions and values.

The impact of citizenship throughout history has been linked to the establishment of equality for the majority of citizens, and the expression of the endorsement of the principle of citizenship was to accept the right of free participation of equal individuals.

The effects of citizenship require a sense of responsibility in performing duties and claiming rights. This feature is equal between the individual and the state if all the appropriate conditions of freedom, democracy, security, stability, respect for human rights and all the basic criteria that the word citizenship aims at in all cases are available. The embodiment of this word in all its dimensions that we have mentioned. On the ground, it means building a sophisticated state with a good society that lives in security and stability.

THE IMPORTANCE AND NECESSITY OF RESEARCH

The importance of the principle of gradation of laws appears through various legislative tools, and the constitution is often the highest peak in the legal hierarchy in the state because of the provisions it contains and which are enacted by the people. This is a tradition that can be seen in ancient laws along with the way the constitution was drafted. Another justification is the importance of the constitution, guaranteeing individual rights and freedoms and organizing people within the government. The need to support this constitutional document by researching its contents in order to find laws that contradict the provisions of the constitution in all its forms are clearly defined, and therefore the issue of the constitution is one of the important issues in legal studies because of its relationship to it that is considered new. According to this article, it must be recognized that the constitution exists in different forms, the most important of which are political legislation and judicial legislation, which is considered one of the most important successful mechanisms according to many jurists of constitutional law, given the connection of legislation to the actions of the legislative authority as a legal process, and therefore the judges or the judicial authority must side Political bodies, and also given the association of the judiciary with integrity, independence and impartiality, which can be an additional guarantee for the effectiveness of constitutional legislation.

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The concept of impact in language and terminology
The article of the word (a w t) was mentioned in the Holy Qur'an twenty -one times (), including the Almighty saying: {So I arrested the arrest of the influence of the Messenger, so I rejected it, and so, I was asked to my soul (), and the Almighty said: To blot out the dead, and He has power over all things (), and the Almighty said: Bring me a book before this or traces of knowledge if you are truthful ().

The substance of the word was mentioned in the sources of the Arabic language in the sense of keeping the thing, so it is said: He made an impact on the thing, leaving a mark on it.

And in terminology, the jurists' use of the term (athar) does not deviate from the linguistic meanings, and most of what jurists use to denote the rest of the thing, or what follows from the thing (such as their saying in the ruling on the rest of the thing after *istijmaar*: (And the effect of *istijmar* is excused in its place). The blood after washing it: the effect of blood does not matter after its demise, and they apply it to what results from the thing, and they use the word effect added, as they say: the effect of the sale contract, the effect of annulment, and the effect of marriage ().

The concept of constitutional legislation linguistically and idiomatically.

Legislation in the Arabic language is the plural of legislation, and the term "legislation" in the language has several meanings, the most prominent of which are ():



Fatwa and Legislation Department: An independent body that has the right to issue laws and monitor the legislation issued by the state.

Enacting laws in a specific field. Labor legislation: Legislation aimed at protecting workers and raising their standards.

The process of supplying ships and boats with sails. legitimate source.

The term "legislation" is also applied to an opening in the tent, and it is said: a ford, a crossing, a legislator: a crossroads, and a legislator: a jurist, the author of legal rights ().

Legislation is generally defined as social customs that regulate certain customs established by law. One of the first to take up this concept is Jeremy Bentham, whose ideas were popularized by his student John Austin. According to him, law is the rule of sovereignty based on the threat of sanctions, but the concepts of positivist legislation have evolved to transcend this view.

Likewise, in the twentieth century, positivist thinkers appeared who had their mark on the philosophy of legislation as a whole, such as the thinker Hans Kelsen, who put forward the idea of "basic custom", which says that there is supposed to be a basis for legal custom, that is, it is necessary to find the origin from which the law emerges. . The ideas of the thinker Hans Kelsen are still of some importance. It is also worth mentioning the writer and thinker Herbert Lionel Adolphus Hart, who argued that law should be studied as a system of social customs and rulings ().

The concept of the idea of citizenship language and idiomatically

The idea (plural: ideas) is all that comes to mind in terms of opinions by contemplation and contemplation, and what occurs in the human mind, such as things, solutions, innovative suggestions, or analyzes of facts and events. A person's ability to generate ideas is associated with his ability to conclude and express oneself, and ideas are what generate terms, which form the basis of any kind of knowledge, whether it is a kind of science or philosophy. The term idea can be developed in different contexts. Deductive idea It consists in eliciting ideas, i.e. deciphering or multiplying some obvious information that does not appear in the text. The deductive idea is obtained from reading the whole text through the relationship of symmetry, details, properties, and properties of other ideas.

The one who looks at the history of political philosophical thought realizes the extent of the development that followed the concept of the idea of citizenship, as the concept that began during the Greek era before Christ is not the same as that which existed in the Middle Ages, and also differs from that which

Europe knew after the French Revolution, which in turn is different from Contemporary concept of the idea of citizenship. The idea of citizenship - in every historical period - was expressing the cultural and moral composition of that era, and then the idea of citizenship was the indicator of the extent to which moral and political ideals were achieved in its time. One of the sons of the nation that makes up the state...etc. The idea of citizenship in the past did not refer all the time to general moral and political principles and values, but rather it expressed a special situation that some possess, and others are deprived of it, that is: the idea of citizenship was a state of inequality, matched by the desire and struggle of for equality on the part of those who were deprived of it, hence the history of the principle of the idea of citizenship is the history of man's quest for fairness, justice, and equality.

Distinguish between citizenship and others

Distinguish between citizenship and fraternity

Citizenship as a designation did not exist in the previous time, but this term was introduced by the West, but as a concept, may God bless him and his family in Islam, it existed fourteen centuries ago, which is the time of the Prophet's mission when he migrated to Medina, and brotherly among the immigrants and the Ansar after If the emigrants left their homes and their money for the sake of God Almighty and His religion, then God compensated them with a company better than theirs in Mecca, and a brotherhood greater than the brotherhood of the clan. The document, which was called the newspaper, or the newspaper of the city, and it is the one whose content has become one community, and one hand in preserving the city and repelling any aggression against it from outside, while stopping the evil of the Jews and the polytheists ().

Without neglecting the foundation of faith and the protector of the nation's personality and its basic elements, this newspaper established the rules of a unified society and established the concept of good citizenship, thus being the first political official. The contract that established the foundations of the state in its pillars, rules and methodology, and the first affirmation of the principle of common citizenship in the Islamic state, the principle of social solidarity, the principle of preserving the security of the state and society, and the principle of equality and the welfare of society. ().

Distinguish between citizenship and settlement
Citizenship differs from settlement. Settlement is exploitative colonialism in deducting the surplus value by merging the cheap labor force of the indigenous population with the resources available to the colony. Woolf expressed this by saying that settler colonialism



is based on the logic of removal, that is, the removal of the indigenous population ().

In this context, a comparison between the colonization of Australia and India, to name a few, becomes possible. The target of the colonialists in India was the Indian population with cheap labor

In contrast to Australia, where the land is the subject of exploitation, and where the colonialists worked to empty it of its original inhabitants. In the same context, and with caution, it is possible to compare colonialism British and Zionist settler colonialism of the land of Palestine.

The difference between citizenship and settlement Settlement prevailed with the flourishing of the colonial phenomenon in its second wave during the 19th and 20th centuries, whose main motive was - in addition to strategic hegemony - the search for markets and raw materials, as well as the spread of Western culture and the Christian religion at times.

During the colonial era, settlement was promoted within the colonial system based on the claim of enlightenment and the dissemination of civilization and lofty human values. From foundations in which the religious overlaps with the mythical, with an eradicated racist tendency aimed at purifying Palestine from the Arabs, obliterating its identity and its Arab-Islamic past, and establishing a state exclusively for the Jews. The settlement arose as a tributary of the colonial campaigns since the first colonial discoveries made by the Spaniards, the Portuguese and the Dutch, and thus dealt with by international law within this system. International law has defined colonialism as: an expansionist policy practiced by some countries against less developed peoples, who will have to accept a kind of dependency ties towards these countries.

In fact, this definition and acknowledgment is based on a contradiction similar to that on which the colonial ideology is based, as it considers the annexation of land or the occupation of a state a legitimate expansion, and it also legitimizes domination and economic exploitation for the benefit of the colonial powers without any right except for what was under the title of "the land that has no master." Or the "vacant land", a lame justification for the fact that almost all the occupied lands are inhabited. But citizenship means the individual who enjoys membership in a country, and thus deserves the privileges that membership entails. In its political sense, citizenship refers to the rights guaranteed by the state to those who hold its nationality, and the obligations it imposes on them. Or it may mean the individual's participation in the affairs of his country, and what he feels of belonging to. From a social economic perspective, citizenship means satisfying the basic

needs of individuals, so that they are not distracted by self-concerns about matters of the common good, as well as rallying people around common interests and goals, which establishes cooperation, integration and joint collective action.

The impact of participation and equality in supporting the idea of citizenship in the Iraqi constitution.

At the outset, we must say that with regard to the position of equality, justice, and judicial justice, it can be said that there must be a situation in the judicial community in which each beneficiary obtains his right. Those who go to the judicial system to assert their rights should be able to obtain their rights. The situation of the judicial system should not be such that many people never file a lawsuit because they think they may not be able to get their rights in the judicial system. Perhaps those wishing to pay a large amount outside the judicial system and spend their money so that they do not have to bear the pain and hardship of defending the case in court, so the concept of first judicial justice means that every interested person can refer to the court and he should not have any problems in terms of financial ability and other issues. matters, and secondly, that he has the desire to file a lawsuit and go to court. And the third thing is that when a person goes to court, judicial bodies, judges and all human and non-human powers provide the possibility for the person to obtain his right. Justice is a concept imposed by the mind and nature of each person, but we need a law to prevent chaos with individual recognition of justice.

The impact of participation and equality in supporting the idea of citizenship in the Iraqi constitution is based on the effectiveness of judicial and human rights roles, which we address through the following:

The role of the constitutional judiciary in supporting the idea of citizenship through participation and equality. Participation and equality in supporting the idea of citizenship is an integral part of the societal and public good as a whole, but it is a fact that is the most important of them because it is what bestows social and economic goodness on Iraqi society by controlling the availability and protection of public rights and freedoms, and economic laws in the country, and as it has The greatest role in achieving sustainable development (), and the constitutional oversight of participation and equality in support of the idea of citizenship has become looking at elections and popular sovereignty as well as democratic systems, the new political life and the country's conditions and political reality as a fundamental pillar for some of its provisions to preserve the sustainability of the country and the institutions of the modern state, and lead them to safety.



Some constitutions have decided that the task of making the final decision is the prerogative of the People's Assembly, and a prominent example of countries that have adopted political control is France, according to its effective constitution, the Constitution of the Fifth Republic of 1958, in which, it passed the control of participation and equality and granted this control to the Constitutional Council, which exercises the previous control. In 2008, it adopted more censorship, limiting it to laws related to rights and freedoms. It also allowed people to challenge laws for the first time, but this challenge does not take place in the Constitutional Council, but in the Court of Appeal. Laws and the State Council for Administrative Law, as well as the legal elements of the state in the presence of control over participation and equality issued by Parliament to monitor the extent of its conformity with the provisions of the constitution by granting individuals or some bodies the right to challenge before them any law that is believed to be contrary to the constitution, and the permanent constitution of Iraq in 2005 is one of the constitutions Modern, which gave a wide range of attention to rights and public freedoms, came up with explicit and detailed texts that guarantee those rights and public freedoms.

The impact of freedom and equal opportunities in supporting the idea of citizenship in the Iraqi constitution

The individual and public freedoms of citizens are safe from infringement. No citizen may be deprived of these freedoms. These freedoms are restricted only to the extent necessary and in accordance with the law.

Every citizen has the right to personal, financial, dignity, legal, judicial, professional, social and similar security. No official may attack and threaten the legitimate rights and freedoms and dignity of citizens in the name of providing security. Illegal actions in the name of ensuring public security, especially violating people's privacy, are prohibited.

Citizens have the right to reach the authorities and officers who provide public security in the shortest possible time and with the greatest ease in the event of an unlawful attack on their liberty and security. The aforementioned authorities and officials must provide their services without interruption and discrimination, in accordance with the assault or threat directed against citizens and in line with the laws.

It can be said that freedom and equal opportunity carries a political character, and therefore the constitutional and judicial political oversight is the protector and preserver of it, and here its task is to examine the laws related to freedom and equal opportunity before their drafting is complete, i. They are

politicians and judges, even if some jurists entered into its formation, and that the selection of its members is carried out by the political authorities of the state, it may be by the legislative authority, the executive authority, or both authorities together.

Freedom and equal opportunities also support the idea of citizenship within the civil rights that determine the individual as a human being, and these rights according to the Universal Declaration issued in 1948 are (the right to life, the right to individual safety, the right to protect privacy, the right to freedom of movement, intellectual rights The right to equality before the law, the right to abolish slavery and servitude, the right to nationality, the right to self-determination.

As for the fact that freedom and equal opportunities in supporting the idea of citizenship are among the political rights also in Iraq because they are related to the right of the individual to exercise the affairs of governance, and these rights are (the right to vote and referendum, the right to nomination, the right to assume public office) ().

Constitutions often stipulate these rights, but these texts do not guarantee the provision of real protection for these rights. Therefore, there are several guarantees that guarantee the enjoyment of these rights. A lesson by stipulating a principle in the constitution that guarantees the protection of human rights without ensuring the commitment of state authorities to apply it ().

Accordingly, the constitutional oversight of freedom and equal opportunities in support of the idea of citizenship is what stands up to these authorities in case they violate this principle, and they are legally punished for that.

It is important to point out that the type of control that the court achieves is the control of annulment, but it cannot conduct it on its own, but rather based on a request submitted by other courts, an approved official body, or a plaintiff with interest, and this will negatively affect its role in protecting human rights to freedom. And equal opportunities, so the constitutional judge has to raise a defense in the sense of violating laws or instructions to the constitution and does not wait for that defense to be presented by a specific party, and for this there are many constitutional texts that affirm the right to freedom and equal opportunities in support of an idea, including Article / 14 of the constitution, since (Ethnic people are equal before the law without discrimination because of gender, race, origin, color, religion, belief, opinion, economic or social status).

Likewise, the right to individual safety, established in the constitution under Article / 19 / Twelfth, as it states (detainment is prohibited), and Article / 37 / First / b,



as it states (no one may be arrested or interrogated except by virtue of a judicial order).

The impact of freedom and equal opportunities appears in supporting the idea of citizenship in the Iraqi constitution through the determination of economic, social and cultural rights, as they are the rights and freedoms that are decided for the individual and take on an economic, social and cultural character: (the right to own property, the right to work and achieve professions, the right to social security and health care, and the right to education (), the right to form a family, the right of the child to his parents and the community, and the right to live in a clean environment free from disease) ().

The human right to acquire and own movable and real estate funds is one of the most prominent economic rights that support the idea of citizenship through the principle of economic freedom. The Iraqi constitution has guaranteed this right in the text of Article 23, which stipulates the following: benefiting from it, exploiting it, and disposing of it, within the limits of the law), and the Federal Supreme Court ensured the effective protection of this right through many of its decisions, including its decision issued on 2/7/2007 in which it may have come (...and since private property is safeguarded under Provisions of Article (16) of the Constitution of the Republic of Iraq promulgated on 16 July 1970 (repealed),

And in light of Article (23) of the Iraqi Constitution of 2005 in force, therefore, no legislation may violate this constitutional provision and expropriate property without reason from the law. Therefore, the decision of the canceled Revolutionary Command Council), No. (139), issued on 00/15/1982, was issued in violation of the constitution, which requires its cancellation) ().

As well as by its decision issued on 14/9/2009, in which it ruled (... the friend of the discerning judgment decided within the re-registration of the property numbered (354/11) in the name of the plaintiff over whom the discriminatory appeal was submitted, and the discriminatory appeal submitted by the discriminator, the Minister of Finance, was rejected for being irrelevant after the verdict was ratified This discriminator is on the one hand, and on the other hand, the discriminator, the Minister of Finance, was not a party to the lawsuit according to what he brought with the statements of his attorney... Also, his attorney presented his discriminatory list after the passage of the legal period stipulated in Article (1/216) of the Civil Procedure Code . . .)(), and it is important to point out that private property is safeguarded and is not expropriated except to achieve the public interest and in exchange for fair compensation. It is noted that the court exercised its

real role in protecting the right to fair compensation with its decision issued on 5/26/2009 that the decision of the dissolved Revolutionary Command Council was unconstitutional. No. (800) for the year 1989 because of its application contradicts the concept of fair compensation stipulated in Article / 23 / second of the Constitution of the Republic of Iraq for the year 2005, as it stipulated that (property may not be expropriated except for purposes of public interest in return for fair compensation, and this is regulated by law) and that the concept of fair compensation It was stated in Article (13 / IV) of the Expropriation Law No. 12 of 1981, which reads: (The Authority is guided by the foundations, rules and rules contained in this law, in order to reach a fair compensation on the date of disclosure and assessment, and the Authority may seek the assistance of experts if the need arises, and in the case of re-discovery and assessment, the date of the first disclosure shall be taken as the basis for the assessment And since the dissolved Revolutionary Command Council Resolution No. 800 of 1989 made the assessment of compensation at the date of seizure or request for expropriation, whichever comes first, the estimate accordingly contradicts the concept of fair compensation stipulated in the expropriation law.)(). In the event of violation of the rights of freedom and equal opportunities in support of the idea of citizenship, judicial oversight takes place by refuting unconstitutionality, in several ways, the most important of which is granting individuals the right to challenge legislation that is contrary to the constitution. It is also a flexible and simple oversight that can be brought before courts of different degrees, in addition to that, it is consistent with the principle of separation. Between the authorities, as it does not interfere with the work of the legislator by abolishing laws that prevent some rights of freedom and equal opportunities in supporting the idea of citizenship in the Iraqi constitution issued by it, but rather its work focuses on refraining from applying it without prejudice to it. ()

However, this method has been criticized on the grounds that it replaces the judges with the legislator in estimating the extent of conformity with the provisions of the constitution.)

The effect of oversight by constitutional courts and councils to support the idea of citizenship in the Iraqi constitution

The principle of the supremacy of the constitution is a basic guarantee for democracy, supporting the idea of citizenship, protecting the rights and freedoms of individuals, guaranteeing the principle of legitimacy with its provisions, and then preserving the principle of legitimacy, which is guaranteed by constitutional courts



and councils. Otherwise, the principle of the supremacy of the constitution becomes a slogan without content and a word without content, and therefore we will address the impact of oversight by constitutional courts and councils to support the idea of citizenship in the Iraqi constitution, as follows:

The impact of the supervision of the Iraqi Federal Court The foundations of a legal state are the presence of oversight on supporting the idea of citizenship in the constitution issued by Parliament to monitor its conformity with the provisions of the constitution by granting individuals or some parties the right to challenge before them any law that is believed to affect the idea of citizenship and is contrary to the constitution. The permanent constitution of Iraq for the year 2005 is one of the modern constitutions that It paid wide attention to the general rights and freedoms that support the idea of citizenship, so it was presented with explicit and detailed texts that guarantee these rights. The inclusion of these rights and freedoms in the constitution brings holiness and respect to all rulers.

After Iraq moved under the 2005 constitution from a simple state to a federal state, the system of government moved from the presidential system to the parliamentary system, and the principle of separation of powers was adopted. And emphasizing respect for basic rights and freedoms in order to support citizenship, whether in the document of the Iraqi State Administration Law for the transitional period or in the current constitution document. As well as stipulating the principle of the independence of the judiciary and the guarantees enjoyed by judges through the re-formation of the Supreme Judicial Council and making it independent of the Ministry of Justice and the non-interference of the legislative and executive authorities in the independence of the judiciary. In order to maintain the preservation of the constitutional document, it was necessary to establish a supreme court to preserve the rule of law and achieve justice. The constitutional legislator wanted to clarify the features of the new legal state by providing for the establishment of a supreme federal court to supervise support for the idea of citizenship in the constitution, along with other important terms of reference, and for the purpose of identifying Monitoring support for the idea of citizenship in the constitution In Iraq's permanent constitution of 2005, we present the following:

Composition of the Federal Supreme Court and methods of exercising constitutional oversight

Accordingly, the jurisdiction of the Federal Supreme Court can be determined in accordance with Article (93) of the Constitution as follows ():

Interpretation of the provisions of the Constitution.

Control over support for the idea of citizenship in the constitution and the regulations in force.

Deciding on cases that arise from the application of federal laws, decisions, instructions and procedures issued by the federal authority.

Settling disputes that arise between the federal government and the governments of the regions, governorates, municipalities and local administrations. Settling disputes that occur between the governments of the regions or governorates.

The constitution also stipulates that the decisions of the Federal Supreme Court are final and binding on all authorities. According to these terms of reference that this court enjoys, it has great obligations and has a fundamental role in preserving political balance and preserving human rights if it is spared from interference. Therefore, the members of this court must be holders of higher degrees and have high qualifications, and its judges must be civil law experts. On the other hand, the constitution assigns the parliament to organize the work of the Federal Court and the method of selecting its members may affect the work of the court and its ability to achieve the political balance required of it. Rather, it was important for the constitution to specify the method of selecting its members so that the federal units contribute effectively to its organization. And how it works, and this is usually done through the Council of Regions, as is the case in the United States of America with regard to the Senate, and the Bundesrat Council in Germany, or through consensus between the main components in it. It should also be noted that the Iraqi constitution did not indicate how the union participates ().

The Federal Supreme Court consists of a president and eight members who are appointed by the Presidency Council based on a nomination submitted by the Supreme Judicial Council in consultation with the judicial councils of the regions in accordance with what is stipulated in paragraph (e) of Article / 44 of the Iraqi International Administration Law for the transitional period, and that According to Article / 3 of Order No. 30 of 2005 ()

It is noted on the aforementioned text that it did not indicate the term of holding the position in the Federal Court, meaning the term will be absolute and the president and members of the court will remain in service for life unless they announce their desire to leave the service of their own free will or without it in cases of dismissal and resignation when they are convicted of crimes against honor or crimes of corruption.), and this contradicts what was adopted by the laws of some countries in determining the term (),



and what Iraq adopted in advance when it stipulated the formation of a Supreme Constitutional Court in the 1968 constitution, as it specified the term of membership in this court to three years ().

It is important to note that there are those who wish to limit the term of membership of this court to five years, similar to what some countries do (), and there are those who wish to limit it to nine years, non-renewable, so that the members of the court are free from the influence and pressure of the parties that choose them (), We are with the limitation of the term of membership to allow other qualified judges to participate in this court and provide their expertise, which will greatly benefit the court, because the reality of the situation always confirms that a person's competence and ability to give decreases with age, in addition to the perpetuation of membership of the court for life in which there is a defect And a problem, which is what is the solution if the member suffers from old age or old age or any disease that affects his work greatly and he did not announce his desire to leave the service, especially since there is no law or authority obligating him to retire.

It is also noted on the text of Article / 3 of the Court Law that it did not indicate the conditions that must be met by the candidates, and releasing the text in this way will open the door for the entry of people who do not, in reality, meet the conditions and competencies of judges, as the matter of nomination is left to the discretion of the Supreme Judicial Council and the Presidency Council, in addition to determining the number of The members of the tribunal and its president, with nine members, are not consistent with the reality of the future federal Iraq? Because Iraq, based on the constitution, is on the verge of establishing regions (), and with the emergence of regions, the number of lawsuits filed before this court will inevitably increase, and then the number of the (9) court members is not sufficient to consider all these lawsuits.

In addition, the previous text contains another defective point, which is giving it the power to appoint members of the court to the Presidency Council () and the defect appears by demolishing the complete independence of the court, and then demolishing the principle of the independence of the judiciary, and therefore we find those urging the legislator () to give the power to appoint members of the court to the House of Representatives Based on the proposal of the Supreme Judicial Council, as is the case in appointing the president and members of the Federal Court of Cassation and its members ().

And there are those who propose to distribute the appointment of members of the Court between the

President of the Republic, the Speaker of the House of Representatives and the supreme judicial authorities in the international community, provided that the President of the Republic and the Speaker of the House of Representatives adhere to their appointments with the list prepared by the Supreme Judicial Council, meaning that their choices will be limited to that list.). Methods of Federal Court exercise oversight

The Federal Court exercises the preservation of administrative civil rights and citizenship that decides for an individual as a human being working within a public or private organization, and these rights according to the Universal Declaration issued in 1948, are (the right to life, the right to personal safety, the right to protect privacy, the right to freedom of movement, Intellectual rights, the right to equality before the law, the right to abolish slavery and servitude, the right to nationality, the right to self-determination) ().

As for the political rights of citizenship, they are the rights that relate to the right of the individual to contribute to the affairs of government, and these rights are (the right to vote and referendum, the right to nomination, the right to assume public office) ().

As for the type of oversight that the court exercises, it is oversight, but it cannot exercise it on its own, but rather based on a request submitted by other courts, an official body, or a concerned public prosecutor, and this will negatively affect its role in protecting human rights to support citizenship, because the constitutional judge has to raise any payments related to the violation of laws, regulations and instructions of the Constitution, and this payment is not expected to be made by a specific party ().

As for the role of the court in protecting economic, social and cultural rights that support citizenship, which are the specific rights and freedoms of the individual that have an economic, social and cultural nature, they are represented in (the right to own property, the right to work and practice professions, the right to social security and health care, and the right to education, (), the right In forming a family, the right of the child to his parents and society, and the right to live in a clean environment free of disease.) ().

The legal roles of the Federal Court in supporting the idea of citizenship

A person was born and his general rights were born with him, then his administrative rights after joining the administrative work, which are basically centered around human dignity. They move and develop, not fixed rights, and at the same time diversity is determined among them and this diversity is a source of wealth for them. (), and due to their large number,



many criteria have been developed in order to classify them as legal types, including:

In terms of importance, they are divided into:

basic rights

non-fundamental rights.

As for the people who benefit from it, it is divided into:

individual rights

collective rights.

As for its subject matter, it is divided into: civil and political rights on the one hand, and economic, social and cultural rights on the other hand.

a) Fundamental and non-fundamental rights:

The basic rights necessary for human life and the inalienable rights of every person once they exist are human rights, liberty and security of person.

If we look at the non-basic rights, the rest of the rights are related to achieving human life, happiness and prosperity, which can bring him enough dignity and a comfortable life, including political rights. Related to his participation in public life, such as the right to freedom of thought, conscience and religion, freedom of speech and opinion, and freedom of opinion. Formation of meetings and associations ().

b) Individual Rights and Collective Rights:

Individual rights are the rights of the individual, and these rights are against the government, that is, against the arbitrary and illegal interference of the government, and they are the rights that the person himself enjoys.

As for the collective rights: they are those rights that prove to the group of individuals the right to dispose of them, as they are not a personal right of a specific individual ().

The impact of political and popular oversight to support the idea of citizenship in Iraq

Through the effectiveness of political and popular oversight to support the idea of citizenship in each of Iraq, there are a set of effects that resulted from it. These effects are not only political, but extended to the social aspect, which we will address in this topic as follows:

political impact

The political impact of political and popular oversight to support the idea of citizenship in Iraq is represented in several matters:

Addressing legislative shortcomings

Addressing the legislative shortcoming in supporting citizenship rights can be available through specialized agencies, institutions and committees at two levels. The first is national, i.e. the state, and the second is international, i.e. through agreements and pledges issued by all states. There are several solutions to the problem of not supporting the idea of citizenship in the

constitution, which causes Lack of care for public rights and freedoms, including:

First: The guarantee in the constitution and laws

The concept of guaranteeing the protection of rights and freedoms is embodied in supporting the idea of citizenship through the existence of a written constitution that contains a set of constitutional principles in the form of texts contained in one document or several documents issued by the constitutional legislator. Man and his freedoms, by including clear provisions on those rights, whether that is in the forefront of constitutions or by allocating a separate chapter of its own, and so the existence of a written constitution means the existence of citizenship rights codified in it, and the movement of codifying constitutions began in the last quarter of the eighteenth century as a result of the people's demand By issuing constitutional documents in which their rights are preserved and the powers of their rulers are restricted, and the starting point of this trend was what was stipulated in Article (16) of the French Declaration of Human and Citizen Rights (every society in which rights are not safeguarded and the separation of public powers from one another is not secured is considered a society without a constitution.) ()

The principle of the rule of law is considered one of the continuous principles in the contemporary legal state, and it means the obligation of all members of the people, whether rulers or the ruled and state authorities alike, to respect the law on the basis of the legality of the actions it performs, however, the rule of law does not mean only mere commitment to the content or essence of the law, This is because the law must guarantee the rights and freedoms of all individuals, and this is the essence of the rule of law, but if the opposite happens and the law does not care about the rights and freedoms of individuals, then guaranteeing these rights and mechanisms turns into mere trivial consolation for the victims of the law. ()

In Iraq, there are several provisions in the constitution related to this issue, and if we go back to its introduction, we will find that it states: "Takfir and terrorism did not prevent us from moving towards building a state of law." (Sovereignty is the law and the people are the source of authority) and Article (6) on (peaceful and democratic transfer of power).

Second: Monitoring the support for the idea of citizenship in the constitution and the work of the administration

The principle of the supremacy of the constitution or its highness in terms of the legal rank that comes in the first degree gives the constitutional rule binding legal force, not only for individuals but also for all authorities,



including the legislative authority that approves laws, as it must not violate the constitution when it approves any law regulating rights and freedoms, and therefore the competent authority may not issue a law that contradicts the constitution under penalty of its invalidity. The attitudes of the Arab countries have varied in determining the oversight of supporting the idea of citizenship in the constitution, guaranteeing respect for the provisions of the constitutions, and determining the penalty for violating them, including:

Political oversight to support the idea of citizenship in the constitution: This type of oversight is exercised by the Constitutional Council before the law is issued and considered effective, and often the right to present draft laws to this Council to discuss their constitutionality.

Judicial oversight: This type of oversight is carried out by the competent court to consider cases supporting the idea of citizenship in the constitution in accordance with the provisions that the constitution or the law that is in charge of its implementation subjected to it. It is a post-issuance oversight of the law or its implementation. ()

Oversight of the work of the executive authority

The political impact of political and popular oversight to support the idea of citizenship in Iraq is related to the oversight of the administration's actions in Iraq. Almost completely on the part of the judiciary, in line with the principle of the rule of law, as all administration actions must be within the limits of the law, and what is meant by law here is the comprehensive law of all binding rules in the state, whether they are codified, uncodified, or customary, and whatever their source, taking into account the gradation in their strength.

The role granted to the President of the Republic in the balance of powers needs to be reconsidered, because it does not even amount to the status of the head of state in the traditional parliamentary system.

The Iraqi constitution has dealt with the issue of cases in which the authority of the Council of Ministers is transformed into the management of daily affairs in a way that supports citizenship rights, limiting it to two cases:

1- The case of a vote of no confidence in the entire Council of Ministers, whereby the Prime Minister and the Ministers themselves continue in their positions to run daily affairs for a period not exceeding thirty days until the formation of the new Council of Ministers in accordance with the provisions of Article 73 of the Constitution.

2- The case of the dissolution of the House of Representatives, in which case the Council of Ministers is considered to have resigned, and continues to conduct daily business until the election of a new parliament and the formation of a new government ()

As this oversight of the legislative authority in support of citizenship rights is the basic condition for the practice of democracy. And if the constitution regulates the relationship of state authorities among themselves, then it guarantees respect for the rights and freedoms of individuals in the face of the state. rule of law ().

Therefore, Law No. 68 of 2004 (Coalition Order) published in the Iraqi Gazette 3983 was issued in June 2004 to coordinate between the various ministries responsible for preserving and promoting Iraqi national security interests, especially in the field of investigation. Threat of terrorism Based on this law, the National Security Ministers Committee was established consisting of the Ministries of Defense, Interior, Finance and Justice, and the position of National Security Adviser was created to manage the work of the National Security Agency. ()

The national security agencies, including the army, the police and other agencies, are working in accordance with the constitution, and the constitution in its philosophy is based on the fact that all state agencies must work in accordance with the principle of the rule of law and enable the Iraqi citizen to exercise rights and freedoms. ()

social impact

The social impact of political and popular oversight to support the idea of citizenship in Iraq is based on several issues:

a) Ensure freedom of public opinion, freedom of the press and civil society organizations

The oversight by the people is one of the basic guarantees of the law to protect the rights of citizens, which is guaranteed by many countries such as Iraq. This incorporation of popular opinion makes the observation of the law fair. Every country wants to be committed to implementing the provisions of the constitution that guarantee the rights and freedoms of citizens, and there is no doubt that this is also acceptable to public opinion, especially given the progress of media and communication in the current era.

As for civil society organizations, they include all non-governmental organizations that carry out their activities to achieve goals that serve society. An important role that focuses mainly on promoting and strengthening respect for human rights at the global and national levels through the defense of human rights. These organizations also work to influence national legislation to put measures in place to protect human rights and make them applied and respected in all cases, and they also cooperate with international organizations And regional organizations in advancing the march of human rights forward and working to



respect those rights, because respecting human rights and observing them and not subjecting them to persons or being violated is considered the most important guarantee of their guarantee. () Opinion polls represent the real measure of the general popular mood, as samples are polled from people representing all groups and segments, especially the elite with regard to public affairs, including public freedoms and the guarantee of their respect. ()

The full application of rights and freedoms in each of Iraq is something that cannot be accomplished by simply enacting laws and enacting legislation. Rather, institutions must play a role in developing the values and behaviors that determine human rights and freedoms, and since the practical duty to protect human rights and freedoms is a national duty in the first place The first, therefore, must be the responsibility of doing it on each country, through its internal legislation, but the existence of the law alone is not sufficient if it does not stipulate the identification of authorities and institutions that watch over the care of those rights and freedoms and the enjoyment of human rights and freedoms, so it became necessary to establish a national political structure It receives and verifies complaints and is independent from governments, parties and all other authorities with legal, financial and executive independence in order to perform its role to the fullest without authority over it. ()

b) Ensuring the right to citizenship in the Code of Criminal Procedure

The Code of Criminal Procedure is considered one of the most sensitive areas for the issue of rights and freedoms of citizenship, as the violation of those rights and freedoms through criminalization and punishment does not appear in actual terms except through criminal procedures, because by their nature they may affect these rights and freedoms, so it is necessary to search for ways to ensure Protecting it within the framework of the balance between it and the common good that supports the rights of public citizenship. Through the foregoing, we can say that the Code of Criminal Procedure plays its role in protecting the rights and freedoms of citizenship, and it is the exact picture of freedoms in a country. However, this role may weaken or strengthen depending on the balance between the interest of the state and the interests of individuals. The principle (the accused is innocent until proven guilty) is stipulated in the Iraqi constitution, and most Arab constitutions stipulate this principle as well, and we will try to determine the guarantee of the accused in the investigation and trial phases according to the following:

First - the guarantee is in the investigation stage

The accused is subjected to several procedures before the investigation stage that may be misused, which greatly affects his freedom or leads to the loss of his dignity as a human being. The use of this procedure dangerous to human freedom, and perhaps the most important of this guarantee (that no person may be arrested or detained except by virtue of an order issued by a judge or court or in cases where the law permits it) and other procedures include the search of persons, which may only be taken by The competent authority to investigate or at its command (Article 72 of the Code of Criminal Procedure). ()

Second: the guarantee at the trial stage

The legislator surrounded the trial stage with several guarantees, which are as follows:

The principle of openness of trial sessions: This principle is considered one of the basic principles of criminal procedures, and it is a necessary guarantee to satisfy the group's sense of fairness of the trial, as the 2005 Constitution indicated Article (20), Paragraph (C), (Court sessions are public unless the court decides to make them secret.) ()

Preventing the accused from being shackled or shackled: The court may take the necessary measures to maintain security in the courtroom (Article 156). The stipulation of this aims to provide the necessary degree of freedom and psychological reassurance to the accused, in order to enable him to defend himself.

Every person accused of a felony or misdemeanor must have a lawyer: This is what is stipulated in Article (19) Clause (11) of the 2005 Constitution (the court appoints a lawyer to defend the accused of a felony or misdemeanor for those who do not have a lawyer to defend themselves and at the expense of the state). ()

Deciding the case within a reasonable time: Deciding the case within a reasonable time is considered a general guarantee that must be observed according to the requirements of the public and private interest of the accused. Putting an end to the suffering of the accused, which he is exposed to because of his position as the subject of the accusation, which affects his honor and esteem, especially in light of the publicity of the trial procedures.

Causing judgments: Causing judgments is an indispensable guarantee for the proper conduct of justice, as it gives the person concerned direct control that the court has sufficient knowledge of his point of view in the case that enabled it to decide on it.

RESULTS AND CALCULATIONS

1. The constitution put in place mechanisms to preserve participation and equality that would support the idea



of citizenship, the most prominent of which is the formation of the Guardian Council as a basis for oversight of laws and how to do so.

2. On the impact of the constitutional foundations on which the idea of citizenship is based, it can be said that the impact of freedom and equal opportunities appears in supporting the idea of citizenship in the Iraqi constitution through the determination of economic, social and cultural rights, as they are the rights and freedoms that are decided for the individual and take on an economic, social and cultural character.

3. Participation and equality in supporting the idea of citizenship is an integral part of the societal and public good as a whole, but it is a fact that is the most important of them because it is what bestows social and economic goodness on Iraqi society by controlling the availability and protection of public rights and freedoms, and economic laws in the country, It also has the greatest role in achieving sustainable development.

4. The fact that the Iraqi constitution contains these rights and freedoms is preceded by sanctity and respect by all, rulers and ruled alike, given that its rules are superior to all applicable laws in the state after Iraq moved under the 2005 constitution from a simple state to a federal state and moved The system of government changed from the presidential system to the parliamentary system, and the principle of separation of powers was adopted.

5. Article 14 of the Iraqi constitution emphasized the right to equality among all Iraqi citizens, just as we find Article 15 affirmed all these rights and freedoms and grouped them under the rule: the right to life, security and freedom. This is the basic rule from which the rest of human rights and freedoms derive, including the right to equality. What is stated in Article 14 is that through the fact that equality falls under the title of the right to life, and then the Iraqi constitution deals with these rights and freedoms in detail.

6. The legal components of the state are represented in the existence of oversight over legislation in the Iraqi constitution to support the idea of citizenship, which is issued by the legislator to monitor the extent of its compliance with the provisions of the constitution by granting individuals or some entities the right to challenge any law that is believed to be contrary to the idea of citizenship. The permanent constitution of Iraq of 2005 is one of Modern constitutions that gave a wide range of attention to public rights and freedoms that support the idea of citizenship and came with clear and detailed texts.

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