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Guarantees of Arab Constitutions in Protecting the Rights of Minorities

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ABSTRACT

The issue of protecting the rights of minorities and providing them with real guarantees was and still is one of the most important issues worthy of research and study, as the issue of minorities constitutes a global phenomenon in addition to the richness of the Arab countries and Iraq in diversity Cultural and multi-minority, respecting civilizational and cultural diversity, emphasizing equality and non-discrimination between members of the majority and minority, and granting individuals Minority rights lead to preserving the existence of minorities, preserving national unity and achieving justice and stability within the state. The nature of the study necessitated dividing the topic (guarantees of Arab constitutions in protecting the rights of minorities) into three sections. The first section includes the principle of legality in protecting the rights of minorities, while the second section includes the principle of separation of powers in protecting the rights of minorities. We devoted the third section to studying the principle of independence. Authority in protecting the rights of minorities. Then we end our research with a conclusion, which is the most prominent results and proposals that we reached through our study of this modest research.

Keywords: *Arab constitutions; rights of minorities; multi-minority*

INTRODUCTION

First: the subject of the research

The topic of (guarantees in Arab constitutions to protect the rights of minorities) emerges from the meaning of the rights established for minorities in general. They do not have any meaning or value without providing actual guarantees to protect them. These rights must be emphasized in the constitutional texts and clearly demonstrated in order to be implemented K through Creating protection mechanisms and guarantees that help activate these rights and embody them in a real and effective way so that individuals, especially minorities, can enjoy these rights granted to them. Government authorities must also be obligated to work to respect, protect and not infringe upon the rights granted to members of minorities, because there is no benefit in listing rights unless there are guarantees on a permanent and ongoing basis, and the guarantees of those rights are within Texts of the Constitution, called (constitutional guarantees)

Second: The importance of research

The Constitution constitutes the basis for the establishment of the rule of law on the one hand, and the protection of human rights and the rights of minorities is one of the basic components of the people on the other hand. This is because the Constitution outlines the system of government in the state and the formation of public authorities The distribution of powers between them, and how to exercise them, as well as the rights of individuals and means. necessary for its maintenance; Because rights and freedoms are considered the most precious values associated with the human person and the basis upon which all other values are advanced, it is natural and logical for their place to be at the heart of constitutions, and this is what the various constitutional systems have followed.

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The constitutional guarantees are represented by three guarantees that are indispensable for protecting the rights and freedoms of individuals, which are the principle of legality, separation of powers, and independence of the judiciary.

Third: Objectives of the study

This study aims to determine the guarantees of the Arab constitutions in protecting the rights of minorities, and to find out the extent of those guarantees, and whether they rise to the required level to be sufficient to protect their rights, and to study the constitutional texts that are sufficient to protect those rights.

Fourth: The research problem

The research problem, "Guarantees of the Arab Constitutions in Protecting the Rights of Minorities," revolves around a main question as follows: What are the constitutional guarantees to protect the rights of minorities? What is the role of Arab constitutions in protecting these rights? In order to answer the problem of the study, the related sub-questions must be answered as follows: What is the role of the principle of legality, what is the role of the principle of separation of powers, and what is the role of the principle of independence of authority in protecting those rights? We will try to answer them in light of this legal study.

Fifth: Research methodology

For the purpose of covering the aspects of our research topic, we adopted the descriptive and analytical approach based on collecting and analyzing legal information from various relevant studies, books and research, and comparing the constitutional legislation of some Arab countries.

Sixth: Research plan

The study of the research topic, "Guarantees of the Arab Constitutions in Protecting the Rights of Minorities," requires dividing it into three sections. The first section includes the principle of legality in protecting the rights of minorities, while the second section includes the principle of separation of powers in protecting the rights of minorities, and we devoted the third section to studying the principle of independence of authority. In protecting the rights of minorities, we then end our research with a conclusion that includes the essence of our findings and recommendations.

THE FIRST TOPIC: THE PRINCIPLE OF LEGITIMACY IN PROTECTING THE RIGHTS OF MINORITIES

The principle of legality is one of the basic principles that govern the modern state in its actions to protect human rights and freedoms. It is also one of the important constitutional guarantees, as the guarantee forms the basis that protects human rights and freedoms Public authorities and individuals are subject to the law and work in accordance with its provisions. It does not only mean The existence of the law also means that the law must respect rights.

Therefore, we divide this study into three requirements. In the first requirement, we explain the concept of the principle of legality. As for the second requirement, we address the results resulting from adopting the principle of legality, while we devote the third requirement to the position of Arab constitutions on the principle legitimacy, as follows:

The first requirement: the concept of the principle of legality.

There are many jurisprudential trends in explaining the principle of legality, including:

- What is meant by the principle of legality in its broad scope is the rule of law, meaning the subjection of all persons, including the public authority and all its bodies and agencies, to the legal rules in effect in the state, and this subjection guarantees individuals in general and minorities in particular Their rights and freedoms in confronting the various state authorities because they are then governed by the law alone. And far from the whims and pressures of authority, which is an important guarantee for the protection of rights and freedoms.

- As the explanation given by (Dacey) in his book The Constitutional Law promulgated in 1885, was the most famous and influential, and we find Dicey defining three concepts for the term rule of law (the principle of the rule of law), the first: sovereignty of Parliament, which is applied by (ordinary courts); Second: Equality Before the law, and this means the submission of all classes to the ordinary law of the country, which is applied by ordinary courts, and it is based on the fact that there is no human being above the law, and it applies to the general public as it applies to

employees, so submission to the law is a duty Everyone, and from Dacey's point of view as well Administrative control is not a law, as freedom requires a legal system that protects basic freedoms. The third concept is that the written or unwritten constitution is not the source of individuals' rights, but rather the result of these rights ().

The second requirement: the consequences of adopting the principle of legality.

The principle of legality is one of the important principles for protecting rights. Most political systems have relied on it since the beginning of the nineteenth century, and this principle represents the basic rule in forming state authorities and extending its control over all With the population of the state, without this principle, the rulers cannot manage the affairs of the state ().

Adopting the principle of legality (the rule of law) results in consequences that the state must adhere to in order to guarantee rights, including the following:

1- The state authorities are subject to the principle of legality, which includes that the legislative authority must adhere to the provisions of the Constitution, which is above all laws, in enacting legislation, and be aware that it is not free in making laws, otherwise the legislation will be considered invalid (). The executive authority's submission to this principle does not mean that it protects the rights and freedoms of individuals and makes them solely subject to the law. Rather, it is its duty to also submit itself to the law, because its function is closely linked to human rights and freedoms (). Likewise, the judiciary's commitment to the principle of legality is evident in the rulings it issues that conform to the law. This principle does not mean the existence of the law alone without the legal content guaranteeing the rights and freedoms of individuals. Therefore, this principle grows as it grows The more the law expresses the will of all the people and the more it represents their interests.).

2- No authority may assume any jurisdiction except in accordance with the law, because the law transcends all state authorities and individuals, so public authorities, whether (executive, legislative, or judicial) must abide by the law Anon, nor is it permissible for any authority or body A state body may not issue any individual decision except in the form of a general rule, whether a law or a regulation. This is because every general rule must be respected and adhered to, even by the party that issued it ().

3- Submission to the rule of law means preventing the decisions issued by the state authorities and its various agencies that conflict with the rights and freedoms granted by the legislator to individuals, because these rights have gained legal protection by the legislator's approval of them This is considered a ruling, and therefore no state authority can It contradicts a legal provision. Accordingly, the state cannot corrupt human rights and freedoms by virtue of individual decisions, nor confiscate an inalienable right of an individual or group except to achieve the general interest of society, and this is determined by a legislative body It is capable of diligence and education, and its members possess the qualities of knowledge and wisdom.

The third requirement: The position of Arab constitutions on the principle of legality.

Given the importance and importance of the principle of legality in protecting rights, it has been stipulated in many Arab constitutions. As for Iraq, we note that previous Iraqi constitutions stipulated this principle. The Iraqi Basic Law of 1 925 He referred to this principle implicitly by emphasizing the principle of equality, as well The Interim Constitution, the April 1964 Constitution, referred to the principle of legitimacy indirectly when it stipulated in Article 19: "Iraqis are equal in public rights and duties without discrimination based on gender, origin, language, religion, or religion." For any other reason, this constitution recognizes the national rights of the Kurds within The Iraqi people are in fraternal national unity.

The Interim Constitution of 1968 also included this right indirectly by indicating that (the people are the source of authorities) (). In the same manner, the Interim Constitution of 1970 stipulated that (the people are the source of authority and its legitimacy) and in another article it stated that (citizens are equal before the law..)().

As for the Iraqi State Administration Law for the Transitional Period of 2004, it stipulated in Chapter Two of Fundamental Rights: (As an expression of the sovereignty of the Iraqi people and their free will, their representatives shall form the governmental structures of the State of Iraq. The Iraqi Transitional Government and the governments of the regions, governorates, municipalities and local administrations must respect the rights of the Iraqi people. Including the rights mentioned in this section)().

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We also note that the Iraqi Constitution in force of 2005 adopted the principle of legality (sovereignty of law), by stipulating in Article (5) that: "Sovereignty of the law and the people is the source of powers and their legitimacy, and is exercised by direct and public secret ballot its constitutional institutions).

Likewise, the Lebanese Constitution of 1926 adopted the principle of legality (sovereignty of the law), and it stated in the introduction to the Constitution that: "The land of Lebanon is one land for all Lebanese, and every Lebanese has the right to reside on every part of it and enjoy it under the sovereignty of the country." Anon, there is no sorting out the people based on any affiliation There is no partition, division, or settlement.

As for the Egyptian Constitution of 2012 and amended in 2014, it stated that the rule of law is the basis of governance in the state, and the state is subject to the law, and the independence, immunity, and impartiality of the judiciary are basic guarantees for the protection of rights and freedoms ().

The Kuwaiti Constitution of 1962 included several articles that affirm the principle of legality (sovereignty of law), as the Kuwaiti Constitution states: "The system of government in Kuwait is democratic, in which sovereignty is vested in the nation, the source of all powers, and the exercise of sovereignty is in the face of it." set forth in this Constitution)( ), but despite these articles confirming the principle Legality (rule of law), and some see the difficulty of applying the principle

The supremacy of the law in the Kuwaiti Constitution (). As for the Jordanian Constitution of 1952, it did not explicitly stipulate the principle of legality, but this did not prevent its implicit approval in its articles (5-23), which are considered an embodiment of it.

The constitutions affirm that legitimacy is the basis of governance in the state and that there is an obligation for the state to be subject to the law. However, some believe that there is no need to stipulate this principle in the body of the document.

Constitutionalism because Islam decided on this principle and worked to guarantee it, but the constitutional legislator has every excuse for stating it in the body of the constitutional document due to its absence in previous periods, as we see that approving this principle in the body of the constitutional document is a very important issue in view of the means available to the ruling bodies and the enormous power they possess and which can To oppress people if they want to deviate from the law by exercising power. If the principle of legality is established under the constitutions, then it is decided to protect the rights and freedoms of individuals, especially the rights of minorities, and a serious guarantee in the face of public authorities, as they are supposed to be safe from being encroached upon by them Governing bodies Contrary to what the law has established, which is an axiom, it is not enough to protect the rights of individuals that the principle of legality be confirmed in their relationship with each other. Rather, protection must be confirmed in that the law prevails in their relationship with the governing bodies of the state ().

THE SECOND TOPIC: THE PRINCIPLE OF SEPARATION OF POWERS IN PROTECTING THE RIGHTS OF MINORITIES

The principle of separation of powers is one of the important and effective constitutional guarantees to guarantee human rights, including the rights of minorities, as they are one of the basic components of society. Therefore, we highlight this topic and divide it into three demands. The first demand in which we explain the concept of the principle of separation of powers, and in the second demand we mention Ps Oh, and the flaws of the principle In the third section, we discuss the position of Arab constitutions on the principle of separation of powers.

The first requirement: the concept of the principle of separation of powers.

There are several definitions that explain the concept of separation of powers, including:

- What is meant by it is (attributing the characteristics of sovereignty to a group of individuals or one of the three state bodies, which are independent from each other) ().

The principle of separation of powers has two meanings. The first is a political meaning, which means not collecting existing powers and not concentrating them in the hands of one person or one body, in order to guarantee the rights and freedoms of individuals, and to prevent abuse of power ().

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The second meaning is a (legal) meaning and is intended to explain the nature of the relationship between the various state authorities.

It is noted from these advanced definitions that the principle of separation of powers is one of the important and basic guarantees for the protection of rights, whether these rights belong to members of society or minorities, since they are part of the components of the society in which they live, and the credit goes to F This principle was attributed to the French jurist (Montesquieu) in his famous book (The Spirit of Laws) issued in 1748, but although the jurist Montesquieu was famous for this principle, he was not the only one who adopted this principle, as some philosophers and thinkers preceded him, especially the English philosopher (John Locke) and the philosopher (Plato). Wen and Aristotle.

It is worth noting that the jurist (Montesquieu) did not mean by this principle the absolute separation of powers, because the absolute separation of powers is difficult and even impossible to achieve in practice, because the three powers exist If it separates from the state, it will find itself forced to cooperate in Between them in order to perform their functions to the fullest extent ().

Therefore, the jurist (Montesquieu) believed that the separation of the three powers of the state (legislative, executive, and judicial) from each other will lead to a halt to the movement of the state and its stagnation, while the state must continuously move and work diligently Communicate, and therefore the nature of matters requires these three authorities Work and move in a harmonious manner in order not to concentrate the three powers in the hands of one party or person, on the basis that concentration must lead to the tyranny of that hand and its threat to rights, especially the rights of minorities, as expressed by (Monteski). f) He said that the only way to guarantee rights is Freedoms are the separation of powers on the basis of (power limits power) ().

Rather, it must be distributed among multiple bodies so that each body can monitor the other and prevent it from abusing power ().

The essence of the principle of separation of powers is the separation of the functions of the state, organically or formally, meaning that each independent member is assigned to each function of the state, so that there is a special body for legislation, a special body for implementation, and a special body for implementation There will be a third judiciary, and when this is achieved, each member will have a specific jurisdiction. It is not possible to deviate from it without violating the jurisdiction of other members.

This means that it is not permissible for the executive authority to exercise the task of legislation, and vice versa, it is not permissible for the legislative authority to undertake the implementation of the laws that it legislates ().

It should be noted here that the principle of separation of powers is centered on two principles:

- The first: functional specialization.

- Second: Organic independence.

1- Functional specialization: This means that each state authority is specialized in a specific function. The legislative authority represented by Parliament is specialized in the function of enacting the legal rules necessary for the work of the various state institutions, and the executive authority is specialized in the function of setting legal rules Anoniya (issued by the legislative authority) Mo Implementation is in place, while the judicial authority undertakes the task of adjudicating disputes between individuals ().

2- Organic independence: meaning that each of the three authorities in the state has its own autonomy vis-à-vis the other two authorities, and thus the relationship between the authorities is built on the basis of non-interference or taking any action by any of them that leads to it To subjugate or diminish the independence of others.

The second requirement: Advantages and disadvantages of the principle of separation of powers.

Adopting the principle of flexible separation of powers is an important guarantee of the protection of the rights granted to members of society, especially members of minorities, and it achieves several advantages, including:

1- The principle of separation of powers leads to preventing tyranny and preserving freedoms, because concentrating powers and gathering them in one hand leads to tyranny and attacks on the rights of individuals, as described by one

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of the prominent English politicians and thinkers, Lord Acton His saying (power corrupts and absolute power corrupts absolutely) (). Applying the principle of separation of powers requires dividing the state's functions into multiple authorities. Each authority is required to work clearly in front of the other authorities, which may monitor or stop it if it exceeds the jurisdiction of the other authorities Or if it violates rights, we create an effective means to prevent tyranny and protect rights, especially the rights of Minorities from the abuse of one of the authorities.

2- The principle of separation of powers helps to achieve the principle of legality (rule of law), which means that the ruler and the ruled are subject to the law, and this law is what regulates business and gives each body its specific jurisdiction, and every action that violates it The legal rules are considered invalid.

3- The principle of separation of powers achieves the advantages resulting from the principle of division of labor, that is, dividing the various functions of the state into different bodies, and this in turn leads to these bodies devoting themselves to their work, and this is consistent with the principle of separation Description of the work that achieves excellence and mastery ().

Despite the advantages achieved by the principle of separation of powers, as it is one of the important guarantees for the protection of rights, this principle is hardly devoid of defects and criticisms that have been directed by some jurists, including:

1- The purpose of this principle was to fight the absolute power of kings in the eighteenth century and eliminate tyrannical monarchies. The principle achieved its main goal, and these authoritarian regimes ended and the era of absolute authorities disappeared For the rulers, and there is no longer a need to adopt the principle at the present time ().

2- It is impossible in reality to apply the principle, as it is not possible to exercise the properties of sovereignty through bodies that are independent of each other, because these properties are like the organs of the human body, connected to each other naturally, or as they are "Just like a machine," he said. Just as the operation of a machine requires a motor and communication between the different parts of the machine, the functions of the state require one central leadership, and they cannot be separated and distributed among multiple independent bodies ().

The third requirement: The position of Arab constitutions regarding the principle of separation of powers.

Some Arab countries have adopted the principle of separation of powers in their constitutions as an important guarantee to protect the rights and freedoms of minorities. As for Iraq, we find that the Iraqi constitutions were not at the same level in terms of adopting this principle, as the Iraqi basic law is not In 1925, it stipulated the principle of separation of powers indirectly. Through the distribution of powers, this is also the case with the 1964 Constitution, the 1968 Constitution, and the 1970 Constitution. While the Iraqi State Administration Law for the Transitional Period of 2004 explicitly stipulated that (..the federal system is based on..and the separation of powers..) ().

As for the current Iraqi constitution of 2005, it adopted the principle of separation of powers in an explicit and clear manner, according to the text of Article 47 (The federal authorities consist of the legislative, executive, and judicial authorities and exercise their jurisdiction and duties On the basis of the principle of separation of powers) from this it becomes clear to us that the current Iraqi constitution has allocated Each authority has a specific jurisdiction in order to prevent any body from attacking other bodies.

The Egyptian Constitution of 2012, amended in 2014, stipulates: "The political system is based on political and party pluralism, the peaceful transfer of power, and the separation of powers and the balance between them...)().

Likewise, the Lebanese Constitution of 1926 also adopted the principle of separation of powers explicitly through its introduction, which stipulated that (the system is based on the principle of separation of powers, their balance, and cooperation)().

As for the Kuwaiti Constitution of 1962, it also adopted the principle of separation of powers. It permitted cooperation between state authorities in order to protect the rights and freedoms of individuals, especially minorities, and this is confirmed by Article 50 (the system of government is based on the separation of powers authorities with their cooperation in accordance with the provisions of the Constitution, and no authority may Including relinquishing all or some of its jurisdiction stipulated in this Constitution. The other articles specify the entities exercising the three powers. Article (51) (legislative authority is exercised by the Emir and the National Assembly in accordance with the

Constitution), Article 52 (executive authority). It is handled by the Emir, the Council of Ministers, and the Ministers As set forth in the Constitution), Article 53 (judicial authority is exercised by the courts in the name of the Emir within the limits of the Constitution).

It is also noted that the Constitution of the Kingdom of Bahrain of 2002 adopted the principle of separation of powers, whereby this is achieved through comprehensive oversight.

An exchange between the two authorities (legislative and executive), and thus seeks to provide protection for the rights of individuals, especially minorities, considering them an essential part and component of the people. Article 32, paragraph (a), stipulates: "The system of government is based on... Connect the legislative, executive and judicial authorities with their cooperation In accordance with the provisions of this Constitution, none of the three authorities may cede to others all or some of their jurisdiction stipulated in this Constitution. Rather, legislative delegation is permitted for a specific period and specific subject or subjects and is exercised in accordance with the delegation law and conditions E)( ).

THE THIRD TOPIC: THE PRINCIPLE OF INDEPENDENCE OF THE JUDICIARY IN PROTECTING THE RIGHTS OF MINORITIES

The principle of independence of the judiciary constitutes one of the most important basic pillars for the establishment of the state of law. There is no value for the Constitution, the principle of legality, nor the principle of separation of powers, and there is no meaning for the texts regulating the rights of members of society, especially the rights of minorities, after whom they are one of the components society, unless there is an independent judiciary that ensures the implementation of the provisions of the Constitution and imposes punishment on Whoever violates his rulings ().

Therefore, we shed light on it in this section and divide it into two demands. The first demand explains the concept of the principle of judicial independence, while the second demands deals with the position of Arab constitutions regarding the principle of judicial independence.

The first requirement: the concept of the principle of independence of the judiciary.

The meaning of the independence of the judiciary is that the judiciary is free from any interference on the part of the two authorities and that the judges are not subject to anything other than the law. This cannot be achieved unless the functional independence of the judiciary and the personal independence of the judges are guaranteed ().

Legal thinkers distinguish between the independence of the judiciary and the independence of the judge. The independence of the judiciary means its freedom from the tyranny of the executive or legislative authorities, while the independence of the judge means his freedom from influences, whatever their source It also means the impartiality and integrity of the judge and his lack of submission to any influence other than the justice derived from the texts of the law and his conscience.)).

Through this, there is a strong call for the application of the principle of independence by legal specialists, because the principle of separation of powers did not prevent other authorities from interfering in the work of the judiciary in various forms, which makes... The focus is on consecrating the principle of independence of the judiciary for reasons, the most important of which are:

1- The nature of the judicial function is based on achieving justice, protecting the rights of members of society, including the rights of minorities who are an essential part of society, and respecting the law. It is necessary not to interfere in the work of the judiciary in order for it to achieve justice If he fails, the judiciary will not be able to carry out its duties, which will lead to... Unrest occurs in society and undermines individuals' confidence in the law.

2- The law represents a binding force for lofty, objective, and neutral ideas that do not tend toward any class, clan, partisan, or personal tendency. However, these binding ideas cannot apply themselves, which requires the presence of a judicial body that has the same specifications This is what the law enjoys in terms of sublimity, objectivity and impartiality. It requires focusing on and calling for the independence of the judiciary.

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The second requirement: The position of Arab constitutions on the principle of judicial independence.

Constitutional protection of the independence of the judiciary means formulating the principle of judicial independence in constitutional texts that raise it to the level of legal obligation and protect it from attack and denial. Constitutions have taken to devoting a number of their provisions to the independence of the judiciary and establishing guarantees that guarantee its preservation, respect, and non-violation by any authority or party.

The Iraqi constitutions explicitly stipulated the principle of the independence of the judiciary, and it was stated in the Iraqi Basic Law of 1925 in Article (71) (Courts are protected from interference in their affairs) ().

As for the First Constitution of the Republic of 1958, it stipulated in (Article 23) the independence of judges and the judiciary alike, as it stated: "Judges are independent and have no authority over them except the law, and no authority or individual may interfere in the matter." Reducing the judiciary or in matters Justice..).

We note that the Interim Constitution of 1963 did not neglect this matter regarding the independence of the judiciary, affirming in (Article 85) that (the rulers and judges are independent and have no authority over them in their judgments other than the law, and no authority may interfere in the independence of the judiciary or in the affairs of justice and the organization of the authority Judicial law).

The Constitution also entrusted the law with setting the conditions for appointing, transferring, and disciplining rulers and judges, and left it to organize the public prosecution function, its deputies, and its powers. It also stipulated that the State Council be formed by law and be responsible for administrative justice, drafting laws and regulations, and auditing Ha and its interpretation ().

Likewise, the Constitution of April 29, 1964, explicitly stated the independence of the judiciary, stating that "the rulers and judges are independent and have no authority over them in their judgments other than the law, and no authority may interfere in the independence of the judiciary or in the affairs of justice...)().

He referred to the law the organization of the function of the Public Prosecution, its deputies, and its powers, and the appointment, discipline, and dismissal of the Chief Public Prosecutor and his deputies shall be in accordance with the law ().

As for the Interim Constitution of 1968, it stipulated the independence of the judiciary and stated that rulers and judges are independent and have no authority over them in their judgments other than the law, and no authority may interfere in the independence of the judiciary or in the affairs of justice... ().

The same applies to the 1970 Interim Constitution, which affirmed the independence of the judiciary, the method of forming courts and their grades, and the conditions for appointing and transferring referees and judges. It stipulated that "the judiciary is independent and has no authority other than the law," and guaranteed the right to litigation Iraqis stipulate that the right to litigation is guaranteed to all Iraqis, and the law determines the method of forming courts and their levels. Its powers and conditions for appointing, transferring, promoting and retiring rulers and judges (). We see, despite the texts mentioned above, that the judiciary was not truly independent, as it was in the hands of those holding the ruling, in addition to being subordinate to the executive authority, specifically to the Ministry of Justice, and therefore it is considered an attachment and not an independent authority.

Few in and of themselves.

The law of administration of the Iraqi state for the transitional period in 2004 affirmed the independence of the judiciary and the principle of separation of powers and stipulated that (the judiciary is independent and is not managed in any way by the executive authority, including the Ministry of Justice.) Judges have full and exclusive authority to decide the innocence of the accused or convict him in accordance with The law without the interference of the legislative or executive authorities ().

Likewise, the Iraqi Constitution of 2005 directly and explicitly stipulated the independence of the judiciary, adopting the principle of separation of powers and not dismissing judges except within the limits of the law that regulates their disciplinary accountability, and stipulated that "the judiciary is independent and has no legal authority He sees the law ().

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He emphasized the independence of the judiciary and stipulated that "the judiciary is independent and is exercised by courts of all types and degrees, and their rulings are issued in accordance with the law" ().

As for judges, it stipulates that (judges are independent and have no authority over them in their rulings other than the law, and no authority is permitted to interfere in the judiciary or in the affairs of justice) ().

We find that this is an important step taken by the constitutional legislator based on the principle of independence of the judiciary, which considers the judiciary an authority and not an entity. It also kept judges away from isolation and interference in their affairs from any authority or party, whether political, party, or social authority (and). Leave that interference to the law only Holding them accountable and removing them, as stipulated (Judges are not subject to removal except in cases specified by the law. The law also determines the rulings pertaining to them and regulates their disciplinary accountability) ().

As for the judicial authority, the federal judicial authority consists of the Supreme Judicial Council, the Supreme Federal Court, the Federal Court of Cassation, the Public Prosecution Service, the Judicial Supervision Authority, and other federal courts that are organized in accordance with the law.).

However, we find the constitutional legislator in another place restricting this independence in Article (61/Fifth/A), as the President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the Head of the Judicial Oversight Authority are appointed by an absolute majority To members of the House of Representatives based on a proposal from the Judicial Council The highest, and we find that this method of appointment will be subject to political loyalties in the House of Representatives, especially if we know that political quotas play a role under the dome of Parliament, and therefore we see if the judiciary is to be independent and free from the circle of conflicts Politically, it is necessary to abolish this clause and not involve the judiciary in politics.

Despite the constitutional provisions mentioned above regarding the independence of judges, we find that there are types of courts that are affiliated with the executive authority. The administrative courts are affiliated with the Ministry of Justice, the military courts are affiliated with the Ministry of Defense, and the Internal Security Forces courts are affiliated with the Ministry of Interior. Therefore, we believe that all courts must follow the judicial authority in order to preserve the independence of the judiciary. So that the administration is not the opponent and the arbiter at the same time to guarantee human rights, especially the rights of minorities.

And we find that there are some Arab countries stipulated in a preacher and frank form on the independence of the judiciary in their texts, including the Syrian Disour for the year 1973, as it stipulated that (the judges are detainees who are not pronounced in their judgment of the law) (). In the same manner came the Syrian Constitution of 2012 ().

As for the Kuwaiti Constitution of 1961, it stipulates that (no authority has authority over the judge in his judgment, and it is not permissible under any circumstances to interfere in the course of justice. The law guarantees the independence of the judiciary and specifies the guarantees for judges, their rulings, and the conditions of their suitability) ().

This is also the case with the Jordanian Constitution of 1952, as it also stipulates that "Judges are independent and have no authority over them in their rulings other than the law" ().

While we find that the Egyptian Constitution of 1971 stipulated the independence of the judiciary and non-interference in its affairs, as it stated: "Judges are independent and have no authority over them in their judgments other than the law, and no authority may interfere in the judiciary and the affairs of justice." As for the Egyptian Constitution of 2012, which was amended one year 2014 followed the same approach and indicated that (judges are independent and cannot be removed, and there is no authority over them in their work other than the law..)().

As for the Interim Libyan Constitutional Declaration of 2011, it stipulates that (the judiciary is independent, and is assumed by courts of all types and degrees, and their rulings are issued in accordance with the law, and judges are independent and have no authority over them in their judgments other than the law and conscience..)().

It is noted that the Sudanese Constitution of 1998 explicitly stipulates the independence of the judiciary and stipulates that (the jurisdiction of the judiciary in the Republic of Sudan rests with an independent body called the Judicial Authority, which assumes judicial authority to adjudicate disputes and adjudicate thereon in accordance with the Constitution and the law)(). With the same content came the Transitional Constitution of the Republic of Sudan for

the year 2005 By stipulating that (..the judicial authority shall be independent of the legislative body and the executive authority and shall have the necessary financial and administrative independence..)().

The Moroccan Constitution of 2011 also stipulates that (the judicial authority is independent of the legislative authority and of the executive authority)(). The same is true of the Tunisian Constitution of 2014, which states that (the judiciary is an independent authority that guarantees the administration of justice, the supremacy of the constitution, the rule of law, and the protection of rights and freedoms. The judge is independent and has no authority other than the law in his rulings.

As for the UAE Constitution of 1971, it stated: "Justice is the foundation of the kingdom, and judges are independent and have no authority over them in performing their duty except the law and their consciences.")

From the above, we conclude that the Arab constitutions affirmed that the judiciary is an independent authority from the legislative and executive authorities, with the exception of the Emirati constitution, which seems to us to have dealt with the judiciary as a facility and not as an independent authority because it is subordinate to the executive authority represented by the Ministry of Justice (). Therefore, we believe that there must be a council specialized in the affairs of The judiciary is born from the womb of the judiciary that exercises the task of supervising the work of the courts. One of the basic components of the independence of the judiciary is that the executive and legislative authority must be respected and committed to the rulings of the courts. It is not permissible under any circumstances to amend or disrupt the implementation of these rulings. Therefore, the Arab constitutions should have explicitly stipulated these components. To achieve true independence of the judiciary.

CONCLUSION

After we finished, praise be to God, presenting this modest research on the topic (Guarantees of Arab Constitutions in Protecting the Rights of Minorities), and through the study we reached the following conclusions and proposals:

First: Conclusions:

1- The principle of legality as a constitutional guarantee, which is meant in its broad scope is the rule of law, that is, the submission of all persons, including the public authority and all its bodies and agencies, to the legal rules and not violating them, and this is the principle that distinguishes between the legal government and the law The police pile, and although most Arab constitutions emphasized this principle However, the actual reality confirms that there are many violations of the principle of legality by governments.

2- The principle of separation of powers as a constitutional guarantee. Jurists have paid attention to and emphasized this principle. It means distributing powers in the state among several bodies, and not collecting them or confining them to one body or person in order to prevent abuse and tyranny of power, and we support the opinion Which takes the principle of flexible separation of powers Because it achieves cooperation and mutual oversight between state agencies, ensuring no abuse of power and keeping government agencies under supervision, which in turn ensures the protection of rights.

3- The principle of the independence of the judiciary as a constitutional guarantee is one of the most important foundations for the establishment of the state of law. There is no value for the Constitution, nor the principle of legality, nor the principle of separation of powers, and there is no meaning for the texts regulating rights, unless there is an independent judiciary that oversees its rule It enforces the provisions of the Constitution and imposes a penalty on anyone who violates its provisions. Despite Although most Arab constitutions affirmed that the judiciary is an independent authority, we note the lack of actual implementation of the constitutional provisions regarding the independence of the judiciary and its basic components in not allowing room for the executive authority in managing the affairs of the courts, as the affairs of all courts must be managed exclusively by the "judicial authority." By enacting legislation in implementation of the constitutional texts, in order to guarantee the true independence of the judiciary, and thus guarantee the rights of minorities.

Second: future work:

1- That Arab countries commit to taking measures and legislation and allocating sums of money in their budgets to enable members of these minorities to enjoy their rights in order to preserve their existence, and this is represented by helping members of minorities to maintain their "private cultural life" and practice their rituals religion and the use of

their own language," through the commitment of these countries to Establishing private schools to educate minority children, supporting their theaters and heritage museums, and establishing places of worship to practice religious rituals for minorities, in addition to having publishing houses and issuing language newspapers for minorities.

2- Arab countries must not be satisfied with recognizing minorities' basic rights and freedoms, but rather they must provide the necessary constitutional and regulatory guarantees for members of minorities to enjoy these rights and freedoms in a real and not a formal way Respect the provisions of international law pertaining to the rights of minorities by concluding treaties and accessions. To and ratify it by making its provisions compatible with the provisions of international law, especially those related to human rights in general and the rights of minorities in particular.

3- The Arab countries should ensure the practical application of the constitutional texts regarding the independence of the judiciary and its basic components in not giving way to the executive authority in managing the affairs of the courts, whether ordinary courts, administrative courts, or military courts. Therefore, we believe that the affairs of all courts must be managed exclusively by the "judicial authority", through the legislative authority enacting laws consistent with the constitutional texts, in order to guarantee the true independence of the judiciary and judges, and thus ensuring the rights of minorities is achieved.

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