



Article

The extent of constitutional oversight in protecting human rights in Jordan.

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Abstract: The topic of fundamental human rights and how to protect them is one of the most discussed subjects, both domestically and internationally. Most, if not all, constitutions around the world include provisions related to respecting fundamental human rights in various fields. This situation increased significantly after World War II following the establishment of the United Nations and the issuance of numerous international conventions in this regard. The international community found itself needing to establish clear foundations that explicitly define the fundamental rights and freedoms of individuals. Constitutional oversight was stipulated to protect human rights, and this oversight is achieved through the supremacy of the constitution, the principle of separation of powers, and oversight of administrative actions.

Keywords: Jordanian Constitution, Human Rights, Political Oversight, Judicial Oversight.

INTRODUCTION

The existence of human beings in society results in a constant equation: the relationships that bind them to one another. These relationships include familial, economic, and political ties. Undoubtedly, these relationships require a foundation, order, and stability through the establishment of controls and rules to regulate individual behavior and interactions. Hence, the need has existed since ancient times for legal frameworks to govern relationships within a single society, thereby providing a degree of balance in their bilateral interactions.

Human rights remain a central focus in both secular philosophies and divine legislation. The mission of prophets and messengers was solely to preserve and protect human dignity and elevate humanity to the level intended by God Almighty, who is the source of

all rights. However, these rights have been subject to the whims and ambitions inherent in human nature and the instinct for domination. Consequently, the strong prey upon the weak, exploiting the power they possess or seek to acquire at the expense of others.

Individual guarantees and public freedoms are subject to numerous violations due to the haste and speed with which these laws are issued, in addition to the abundance of subsidiary laws issued by the executive authority, and the state's intervention in many activities of individuals to meet their evolving needs and the expansion of the policy of legislative delegation. Therefore, it is necessary to find a way to ensure that the authority has respected its constitutionally defined limits, as this is one of the most important means by which the legislative authority can monitor the executive authority. The

supremacy of the constitution is a fundamental guarantee of democracy, protecting individual rights and freedoms, and ensuring the principle of legality. However, this principle itself requires a guarantee to ensure its respect and prevent its violation. This guarantee is the judicial review of the constitutionality of laws, which is the effective means of affirming this supremacy and preventing the enactment of any legislation that contradicts the constitution by invalidating any laws that conflict with its provisions. This, in turn, preserves the principle of legality. Otherwise, the principle of constitutional supremacy becomes an empty slogan, a mere phrase devoid of any substance.

The legal system in all countries of the world consists of three branches of government (legislative, executive, and judicial). At the apex of the legal hierarchy are the constitutional texts that establish the principles of public rights and freedoms, defining them in a way that guarantees individuals' enjoyment of them. Constitutions include a set of rights and freedoms that individuals enjoy within the state, ensuring their respect and guaranteeing their exercise. They also establish limitations that restrict public authorities from encroaching upon these rights and freedoms, provided that they remain within the bounds of not infringing upon the rights and freedoms of others, and not harming other interests of society. This is based on the principle of legality and the controls governing the state's subjection to the law.

The Problem of the Study

The problem of this study lies in examining the extent to which constitutional oversight is applied to protect human rights in Jordan. This is achieved by referring to constitutional texts and the degree of adherence to them as a guarantee for preserving human rights in Jordan. The study also examines violations and their annulment, and analyzes the legal procedures adopted by the authorities granted powers in the legal legislation.

The Importance of the Study

The importance of this study stems from the following

Theoretical Importance

The importance of this study arises from examining the extent to which constitutional oversight is applied. The legal provisions stipulated in Jordanian legislation and their compatibility with legal texts for the protection of human right.

The theoretical importance stems from the significance of the information added to the research, in addition to the importance of the concepts that will

be used in this study. This leads to increased researcher interest in the concept of commitment to applying constitutional and legal oversight to protect human rights in Jordan.

Practical Importance

The practical importance lies in its contribution to preparing plans and programs that should be implemented by specialists in the executive authority. This is achieved by focusing on Jordanian legislation that demonstrates commitment to applying constitutional and legal oversight to protect human rights in Jordan.

Study Objectives

This study aims to achieve the following:

- Identifying the constitutional texts that address the rights and freedoms of Jordanians
- Identifying the legal legislation that stipulates the protection of human rights
- Identifying the legal procedures for protecting human rights in Jordan
- Identifying the role of the three branches of government (executive, legislative, and judicial) in adhering to the application of constitutional and legal oversight to protect human rights.

Research Questions

- Can the constitutional texts pertaining to the rights and freedoms of Jordanians be studied?
- To what extent is there adherence to the application of legal legislation that defines the legal guarantees for the protection of human rights?
- Does adherence to the rules of constitutional law lead to the preservation of human rights in Jordan?
- What is the role of the three branches of government (executive, legislative, and judicial) in adhering to the application of legal guarantees that lead to the preservation of human rights?

Study Limitations

The study focuses on the extent of adherence to constitutional and legal oversight for the protection of human rights in Jordan by referring to constitutional texts and the extent of adherence to them as a guarantee for the preservation of human rights in Jordan.

RESEARCH METHODOLOGY

The descriptive approach was adopted, relying on numerous sources and information to address the theoretical framework of the study. The primary sources included relevant Arabic books and references, as well as articles, research papers, and previous studies that addressed the topic of the study.

RESULT

The constitution is the cornerstone of these legal rules. It defines the system of government in the state, regulates the rights and freedoms of individuals and their duties, and governs the relationships between the three branches of government.

The constitutional and legal guarantees for the preservation of human rights, as stipulated in the constitutions of all countries worldwide, demonstrate respect for the rights and freedoms of citizens. These rights are protected from the encroachment of laws by being enshrined in the constitution, which is the supreme and highest law.

The legislative authority is responsible for enacting laws. Legislation undergoes several stages before becoming effective, beginning with the proposal of draft laws, followed by ratification or objection, and finally, promulgation and publication.

The executive authority's role is to implement laws and administer public power. This enables the administration to achieve its administrative control objectives and ensures that individuals, groups, and the nation as a whole continue to enjoy their rights and freedoms without infringement. From the perspective of authority, and in order for the administration to maintain public order and safety, rights and freedoms are enshrined in constitutions to guarantee them against infringement by any authority.

The judiciary is independent of other authorities, exercised by courts of various types, which issue their rulings in accordance with applicable laws.

DISCUSSION

The Principle of Constitutional Supremacy

The principle of constitutional supremacy means that the constitution is the supreme law of the state, taking precedence over all other laws and acts. Pursuant to this constitutional supremacy (D. Abdel Hamid Metwally, *Constitutional Law*, p. 197), the legal system of the state is closely linked to constitutional rules in a way that prevents any public authority from exercising powers other than those specified in the Constitution. The Constitution creates the legal system of the state, and every law that is enacted must not contravene the provisions of the Constitution, since the Constitution is the source of those laws in terms of their existence and legitimacy.

The Constitution also defines the powers of each of the public authorities it establishes, so all these authorities are subject to the Constitution that created them, defined their powers, and specified how they are formed. This principle, i.e., the

supremacy of the constitution over other laws, prevails in democratic systems, whereby the rulers in these systems recognize constitutions and other laws, and all their actions are concerned with compliance with the constitution. The principle of the supremacy of the constitution is one of the characteristics of a legal state (Dr. Fahd Abu Al-Othman Al-Nusoor, *Constitutional Justice: Theory and Practice*, pp. 78-79).

It is one of the main foundations of the rule of law, as it is the means of ensuring that the state is subject to the law and that rulers are bound by higher rules that limit their power, unless the texts governing the powers of rulers are given a higher status. The principle of the supremacy of the constitution in the state leads us to accept another principle, known as the principle of the rule of law or the principle of legality (Ramadan Muhammad Batikh, *General Theory of Constitutional Law*, p. 327

The principle of supremacy is that rulers and ruled are subject to the rule of law, as no body, individual, or public or private authority may act in violation of the law. This principle requires everyone to respect the provisions of the law. In other words, the principle of the supremacy of the constitution is a manifestation of the supremacy or control of the provisions of the law, which is referred to as the principle of the rule of law. A democratic government becomes a tyrannical government if this principle is not observed. The essence of this principle is that everyone, whether rulers or ruled, is subject to the rule of law, and that no body or individual may impose or act in violation of the provisions of the law, and that the constitution or its provisions have complete control (Dr. Fahd Abu Al-Othman Al-Nusoor, *Constitutional Justice: Theory and Practice*, pp. 78-79) (Amayreh W. a., 2021).

The principle of the supremacy of the constitution is one of the most important legal principles, as the constitution occupies the highest position in the hierarchical structure of the legal system.

Section two: Constitutional Review of Laws (Constitutional Court)

With the establishment of the Constitutional Court and its role as mentioned above, Jordan has moved from abstentionary review to abrogative review, whereby subsequent judicial review is conducted by specialized courts (Dr. Ziad Al-Adwan, Dr. Laith Nasrawin, *The Role of the Constitutional Court in Overseeing the Constitutionality of Laws in Jordan* 2018) p. 215.) The idea of the hierarchy of legal rules and the supremacy of the constitution lies in (Inas Muhammad Wahbi Al-Tal, *Oversight of the Constitutionality of Jordanian Laws before the*

Constitutional Court, 2020, p. 23) There are two methods of overseeing the constitutionality of laws: political oversight (prior) and judicial oversight (subsequent). If the effective role of oversight has been proven theoretically and practically.

The establishment of a constitutional court to oversee the constitutionality of laws is, in principle, a commendable achievement, as the existence of such a court guarantees the public rights and freedoms enshrined in the constitution. The rulings issued by the court responsible for monitoring the constitutionality of laws require that the number of members comprising the court be consistent so that rulings on the constitutionality of laws are issued by a majority that is commensurate with the importance of the ruling on the unconstitutionality of laws (Dr. Khalaf Al-Azayda, *Oversight of the Constitutionality of Laws*, Karak: Mu'tah University, p. 3) (Amayreh, 2024).

Respect for constitutional provisions or oversight of the constitutionality of laws is closely linked to the rule of law, as it means that all authorities are subject to the law in general and to the constitution as the supreme law. If the constitution is superior to all public authorities in the state, its supremacy is meaningless if state bodies are able to violate it without guarantees ensuring that these public authorities respect the provisions of the constitution that define their powers and set the limits and principles of their exercise. Therefore, the executive authority must act in accordance with the provisions of the constitution, otherwise its actions are illegal and subject to annulment. This is guaranteed by the judiciary, which has the right to monitor the legality of the actions of the executive authority. At the same time, the legislative authority must respect the Constitution, as it may not issue legislation that contravenes the Constitution, either explicitly or implicitly, otherwise the legislative authority will be considered to have exceeded its powers and the legislation will be considered unlawful and must be ruled invalid. (Dr. Hussein Ali, *Oversight of the Constitutionality of Laws*, Cairo: Dar Al-Nahda Al-Arabiya, p. 193) (Amayreh, 2024).

The rulings issued by the Constitutional Court are binding on all state authorities and on everyone. At the same time, its decisions are final and cannot be appealed. The United States was the first country to adopt this approach, followed by Western countries, and then the rest of the world.

The issue of constitutional review of laws appears in rigid constitutions rather than flexible ones. This is due to the principle of the supremacy of constitutional rules in rigid constitutions, as amendments to rigid constitutions are made in

specific ways that differ from ordinary legislation. In contrast, flexible constitutions are amended in the same way as ordinary legislation, so that constitutional rules are equal to ordinary legislation and are therefore not subject to constitutional review.

The purpose of constitutional review of laws is to affirm the principle of the supremacy of the constitution, i.e., the obligation of state authorities and institutions to comply with what is stipulated in the constitution.

The texts, legislation, and principles within their respective jurisdictions, considering that the constitution is the highest legal rule in the state. Therefore, constitutional review of laws ends with the end of the principle of the supremacy of the constitution.

The stage of constitutional review in Jordan remained at the level of ideal judicial review of constitutionality until Jordan witnessed the establishment of a constitutional court to take charge of review, which came under the recent constitutional amendments of 2011, whereby oversight of the constitution shifted from decentralized oversight by courts of various types and levels to centralized oversight by the Constitutional Court.

The constitution occupies the top of the legal hierarchy of the state. It is the supreme and highest source of all legal activities and rules in the state by virtue of its hierarchy and the obligation it imposes on other rules to respect it.

The jurist Berdo believes that it seems logical that the best way to prevent the law from becoming a tool of abuse is to ensure constitutional oversight of laws, so that no law contravenes a ruling established in the constitution, on the basis that the constitution is the foundation of legitimacy in the state.

Constitutional systems are keen to monitor the actions of the legislative and executive branches to prevent the issuance of any legislation that violates the constitution. There has been controversy over which body or authority should be responsible for constitutional oversight, leading to a difference in the type of oversight. Two types of constitutional oversight have emerged: political oversight and judicial oversight.

The first requirement:

political oversight is preventive oversight that precedes the enactment of a law and then prevents its enactment if it violates a provision of the constitution. It is carried out by a political committee whose members are selected (Dr. Ramzi Al-Shaer, *General Theory of Constitutional Law*, p. 468) whose members are selected by the legislative authority or

in conjunction with the executive authority. Oversight is exercised over draft laws (Dr. Muhammad Rifaat Abdulwahab and Dr. Ibrahim Abdulaziz, *Political Systems and Constitutional Law*, 1998, p. 514).

Constitutions differ in the formation of this body, depending on how the constitution regulates it. This body may be formed by appointment by parliament or by the executive authority (Dr. Omar Abdullah, *Oversight of the constitutionality of laws*: , p. 7.) (Badr al-Din, Ghassan and Awada, Ali, *Political Institutions and Constitutional Law*, Beirut: Dar al-Haqq, p. 108.) Alternatively, it may be formed through election. The most prominent model of political oversight is the French model, as France has adopted political oversight in its constitutions, particularly the 1946 and 1958 constitutions. (Dr. Ziad Al-Adwan and Dr. Laith Nasrawin. *Previous source*, p. 216, *Constitutions of 1946 and 1958, France 1946 and 1958*. Other countries have adopted the idea of political oversight, including those that embraced socialism after World War II and before the collapse of the Soviet Union and the abandonment of socialism by a number of Eastern European countries in the 1990s (Dr. Abdulaziz Muhammad Suleiman, *Constitutional Oversight of Laws*, first edition, 1995, p. 69).

Western countries that followed the French model included the Maghreb countries. The 1996 Moroccan Constitution assigned the task of reviewing the constitutionality of laws to a constitutional council, and the 1996 Algerian Constitution also provided for the establishment of a constitutional council. and the 1995 Tunisian Constitution stipulated the establishment of a constitutional council to review draft laws submitted to the President of the Republic in terms of their conformity with the constitution.

The second requirement: judicial oversight

This refers to a body with judicial status and character, formed and operating with the task of overseeing the constitutionality of laws and the extent to which laws comply or do not comply with the provisions of the constitution, with complete impartiality, objectivity, independence, freedom of litigation, and the openness of its sessions, so that oversight provides a sure guarantee that the Constitution will be respected and not violated by public authorities. It is an alternative method that emerged in response to criticism of political oversight. (Inas Muhammad Wahbi al-Tal, *Oversight of the Constitutionality of Jordanian Laws before the Constitutional Court*, 2020, p. 13) The composition of the judicial oversight body varies from one country to another depending on the legal system in place in that country.

Oversight may be carried out by the ordinary judiciary alone, the administrative judiciary alone, or both together, or it may be carried out by a constitutional court established specifically for the purpose of oversight (D. Mohammed Kamel Obaid, *Systems of Government and the Constitution of the United Arab Emirates – Dubai Police Academy – 2002* p. 16) the constitutionality of laws and regulations (Dr. Mohamed Kamel Systems of Government and the Constitution of the United Arab Emirates – Dubai Police Academy – 2002 p. 16) The United States of America is considered the birthplace of judicial review of the constitutionality of laws in 1803, when the court recognized its right to review the constitutionality of laws and government actions in the absence of any provisions regulating constitutional review. (Dr. Muhammad Rifaat Abdulwahab and Dr. Ibrahim Abdulaziz Sheikh - *Political Systems and Constitutional Law 1998 – p. 522*).

Judicial review means (the judiciary examining the constitutionality of laws issued by parliament to verify their compliance with or violation of the rules of the constitution. Dr. Mohamed Refaat Abdel Wahab and Dr. Ibrahim Abdel Aziz Sheikh - *Political Systems and Constitutional Law 1998 – p. 522*).

The difference between political oversight and judicial oversight is that the former precedes the enactment of the law, while the latter presupposes the enactment of that unconstitutional law in order to be able to exercise its oversight role. Judicial oversight therefore gives the judge the right to verify the conformity of the law with the provisions of the constitution, in order to determine the extent of Parliament's commitment to its powers. Just as France is a prominent example of political oversight, the United States is considered the birthplace of the judicial system of oversight of the constitutionality of laws.

CONCLUSION

Human rights are the rights that all human beings are believed to possess. Regarding the history of the term "human rights," which is now commonly used to denote "fundamental rights" to a dignified life for men and women without discrimination, it emerged relatively recently in Europe after the French Revolution in the late 18th century. This occurred with the declaration of the Declaration of the Rights of Man and of the Citizen by the revolution's leaders, which abolished the feudal system that prevailed in Europe at the time, a system that enslaved all workers on the land for the benefit of landowners (Dr. Mansour Al-Awamleh, *General Human Rights and Duties*, p. 8).

After studying the constitutionality of laws in

constitutional oversight for the protection of human rights, it became clear that establishing a constitutional court is a genuine guarantee of the constitutionality of laws and their supremacy over all other legislation. There must be guarantees to ensure that authorities respect the jurisdictions entrusted to them according to the provisions of the constitution (Al-Aras, 2020) and do not exceed them. This is achieved through. The constitutionality of laws is determined by actions that violate the constitution, leading to their invalidation. This is what is conventionally termed constitutional review of laws.

It is a consequence of the principle of constitutional supremacy, given that the constitution is at the top of the hierarchy of legal rules (Al-Jabra, A. al-Afaishat, 2022). The principle of constitutional supremacy essentially means that laws issued in a state should not contain, in their substantive provisions (Dr. Faisal al-Shatnawi, Human Rights and International Humanitarian Law, p. 12), anything that contradicts the substantive provisions of the constitution or infringes upon them in a way that amends its provisions (Al-Kasasbeh, H. al-Kasasbeh, A. al-Suwailemeen, 2020, The Constitutional Foundations for the Transfer of Power through the Pledge of Allegiance: An Analytical Jurisprudential and Legal Study, Al-Zaytoonah Jordanian Journal of Legal

Studies, Volume 1, Issue 1). The same applies to procedural provisions. Educational institutions must develop knowledge regarding the constitutionality of laws in the Jordanian political system (Al-Momani, 2020). In keeping with developments in artificial intelligence applications (Al-Shafi'i, 2022), the following results and recommendations were reached 1.

RECOMMENDATIONS

Apply the principle of separation of powers without one authority encroaching upon another through the reciprocal relationship between the branches of government Adhere to constitutional provisions and repeal any law that contradicts a constitutional provision through the Constitutional Court's oversight of the constitutionality of laws.

Emphasize the independence of the judiciary as it is the true guarantor of the administration of justice and the achievement of equality Respect public opinion by activating legal provisions on freedom of opinion, expression, and thought to align with the rights and freedoms of citizens stipulated in the constitution. Achieve parliamentary and judicial oversight of administrative actions to deter infringements upon public freedoms.

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