

Constitutional Foundations and Legal Restrictions on Mass Media Freedom in the Republic of Iraq

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Abstract: This article is based on a research work done on Constitutional foundations and legal restrictions on freedom Mass media in the Republic of Iraq. Freedom of the media is a fundamental issue of democracy, because without freedom of the media there is no civil society or rule of law. Awareness of society is a necessary condition for its economic, political and cultural progress. The crucial role of the media and the danger of abuse of freedom of the press force democratic states to determine the legal status of the media and to regulate their activities. In the domestic scientific literature, the concepts of "freedom of information" and "freedom of mass media" are used in meanings that practically coincide with the meanings in which these concepts are used in the legislation of the Republic of Iraq. Only a general reference is made to the legislation of the Republic of Iraq on the media by which such restrictions are established. That is, the wording of Art. 73 reflect a clear imbalance between constitutionally substantiated rights and obligations of individuals related to the exercise of freedom of the media.

Keywords: Iraqi constitution, Constitutional foundations, Constitutional basis, legal norms, freedom of expression, International Covenant.

INTRODUCTION

International literature agrees that the right to expression is not absolute, and most constitutions emphasize the need to draw borders that these limits remain within strict criteria to ensure that freedoms are not violated. According to the text of Article 38 of the Iraqi constitution and its signature on the International Compact, Iraq commits itself to apply international treaties, but we find that all the aforementioned covenants contrast sharply with the package of laws still in force in Iraq. Despite the decline in violence by armed groups against journalists, the media community is increasing facing obstacles of a new type that prevent the proper exercise of his professional duty, most notably: arrests and attacks carried out by the regular forces (Faith, 2011).

The absence of legal legislation guaranteeing freedom of the press, and the survival of old laws is a real obstacle to the development of the Iraqi press. Lawmakers seldom express a rush to scrap penalties for publishing crimes. Thus, the following essential signs of freedom of the media have been identified to establish guarantees for its implementation, consistent with its social nature and purpose: - a guarantee of free, i.e. without interference from any persons (including citizens, private organizations and state

bodies), the exercise of the rights to receive, transmit, produce and disseminate information; - the limits of freedom of the media - i.e. restrictions established by law and necessary to protect the rights and legitimate interests of citizens, and interests of society and the state.

These two features make up an inextricable dialectical unity and reflect the focus of legal regulation on ensuring a balance of interests of the individual, society and the state in the field of mass media. The importance of concretization in the legislation of guarantees of freedom of mass media, understood as necessary conditions for the balanced realization of this freedom, is dictated by the need to prevent the inevitable, as practice shows, negative consequences of the implementation of a unilateral approach, in which the prevailing legislative support is either almost unlimited freedom or the installation of excessive regulation realization of the right to free distribution of mass media. Over the past ten years, there has been a significant number of ongoing abuses of freedom of the media. This is evidenced by numerous articles, books, speeches of deputies and documents. Inadequate legal restrictions on freedom of the media to protect the foundations of the constitutional system, morality, rights and legitimate interests of citizens, security of the state makes it very difficult to ensure the necessary balance of interests of the individual, society and the state in the information sphere. The Doctrine of Information Security of the Republic of Iraq improves legislation on

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constitutional restrictions on the rights and freedoms of man and citizen, introduces a ban on the use of electronic media to disseminate programs promoting violence and cruelty, antisocial behavior. Without effective constitutionally substantiated legal restrictions on media freedom aimed at preventing abuse of this freedom, media activities tend to have a destructive effect on individuals, society and the state, posing a threat to the country's democratic development.

MATERIAL AND METHODS

The methodological basis of the research is constituted by the general scientific dialectic methods of cognition, scientific methods of analysis and scientific forecasting synthesis and deduction, systemic methods, as well as special methods of studying legal phenomena - historical-legal, comparative-legal, structural-functional, etc.

RESULTS AND DISCUSSION

The term "freedom" is used in constitutional law in two inextricably linked meanings. In a general sense, it denotes the state of the people and of a single person, which is characterized by the ability to act at its discretion. As Ali Kadim notes, this term in the Constitution of the Republic of Iraq fulfills the role of a fundamental philosophical principle, which is implemented through the whole complex of constitutional and legal norms¹.

The second meaning of this term views freedom as a subjective opportunity to perform or not to perform any action. In this sense, the term "freedom" is essentially identical to the term "subjective law", and the difference is explained only by the fact that such legal vocabulary has developed historically (Fadil, 2010).

Freedom of the press, one of the oldest constitutional personal human rights and political rights of citizens, which is an integral part of a more general law - freedom of thought and speech. Freedom of the press implies the right to freely establish print media, to freely publish and distribute any printed matter, as well as the prohibition of censorship. In the latest constitutions, the concept of "freedom of the press" is absorbed, as a rule, by the concept of "freedom of information. It is such a legal approach, used in Art. 15

of the Constitution of the Republic of Iraq. Muhammad Ali defines the ratio of these concepts as follows. "Freedom of speech includes several structural elements that are closely interconnected and exist in an inextricable unity.

Firstly, it is the freedom of each person to publicly express their thoughts, ideas and opinions and to disseminate them by any legal means.

Secondly, this is freedom of the press and other mass media as freedom from censorship and the right to create and use media outlets that allow materializing freedom of expression.

Thirdly, it is the right to receive information on public interest or affecting the rights of citizens, i.e. freedom of access to information sources (Ali, 2007).

In the above statements of scientists, in our opinion, a common opinion is expressed that the concept of "freedom of information" is a general one and includes: the right to receive information, freedom of speech and freedom of the media, including freedom of the press.

Freedom of the media. In Iraqi legislation, the concept of freedom of the media is most meaningfully disclosed in article 1, "Freedom of expression and assembly and peaceful demonstrations.

First: Freedom of expression of opinion: The freedom of the citizen to express his thoughts and opinions by saying, writing, photographing or any other appropriate means in a manner that does not violate public order or public morals.

Second: The right to know: The citizen's right to obtain the information he wants from official authorities following the law, especially information related to its work and the content of any decision or policy about the public.

Third: The private meeting: The meeting attended by the invitees in a personal capacity, even if it was held in a public place.

Fourth: The general meeting: The meeting that is held in a public or private place and attendance is available to all.

Fifth: Peaceful Demonstration: An unlimited number of citizens gathered to express their views or claim their rights, which are guaranteed by law, which are organized and run in roads and public squares.

¹Article 15 of the Constitution of the Republic of Iraq 2005.

Sixth: The electoral meeting: The meeting whose purpose is to introduce the candidate for electoral advertising purposes and takes place during the period specified by the law.

The constitution gives the right to expression, but does not work to protect this right, and therefore this right has no strong or legal basis to exercise its protection function, and it should have been pointed out that the constitution's provisions guaranteeing freedom of expression are consistent or dependent on international laws and not laws. Iraqi, as international law provides adequate protection for the concepts of freedom of expression.

The Regulation on Freedom of the Media, enshrined in Article 15, Freedom of expression and assembly and peaceful demonstrations, in our logical structure and content, in our opinion, is a list of the main (but not all) components of this freedom of rights, and contains some (not all) significant signs of freedom of the media and establishes some necessary conditions (guarantees) for its implementation. The disadvantage of this provision on media freedom of the said Law is the omission of the grounds for permissible restrictions on freedom of the media².

In order for any society to be considered a real democracy, it must believe in a high degree of protection for the freedom of expression criteria: giving full freedom to expression and insert exerting from exercising this freedom, on the other hand. To address this issue, it is necessary to amend the constitution on freedom of expression to give the true democratic character and concepts of expressing this right, whether by obtaining information and excluding prior censorship if we know that multiple laws place restrictions on freedom of expression, including the Penal Code No. (111) for the year 1969, which lists than (30) articles that restrict freedom of expression as well as Publication Law No. (78) 1977 and the Naqa Law Journalists No. (178) for the year 1969, and the Ministry of Culture Law No. (94) for the year 1981, and many laws do not have the scope to mention them... etc. Also, the movement's determination of the media throughout the country for media coverage and equal media coverage gave it Freedom of access to information, or that a law is issued as a treatment for this restriction defines the restrictions imposed following with international law and international

standards in this regard so that the restriction on freedom of opinion and expression includes being for a legitimate goal and required by the necessity to achieve these personal goals and that it is commensurate with the goal and the necessity required (Ismail, 2011).

We believe that the constitutional facts as contained in the text of Article (40) which for freedom of communication and correspondence electronic and other are guaranteed, and it is not permissible to monitor and eavesdrop on them or reveal them, except for legal and security necessities and by a judicial decision, and that Article (42) for each freedom of thought, conscience and belief, then this freedom is guaranteed by this constitution on the one hand and the other hand, Article (19/2) of the International Covenant on Civil and Political Rights, which Iraq is one of the ratified parties and has set international controls, conditions and standards when dealing with freedom of thought and necessity Not to impose censorship on publications and others above These standards, especially in countries that pursue democracy in word and deed, and away from political changes

According to Abas Kadim, freedom of expression, freedom to receive and disseminate information are described, first of all, by the concept of status negatives, since these are freedoms from state and private interference, and as political freedoms, they are described by the concept of status actives, because they are used as a means for human participation in the process of active realization of their rights in various areas of public relations, including with participation in the formation and exercise of state power. Council of France, F. Luscher,³ "Freedom follows to understand how the right to do everything that is not prohibited by law, the provisions of which, in particular, are consistent with the Constitution (Abdulrida, 2008).

To develop the definition of the concept of "freedom of the media" it is important to find out the legal limits for the exercise of this freedom. These limits are mainly due to the need to prevent abuse of freedom of the media, some forms of which are enshrined in the law. Article 7 of the Media Law prohibits the abuse of

²The Iraqi State Administration Law in the Transitional Period issued in 2004.

³Mendel, T. Freedom of information. Comparative legal research. Paris, UNESCO, 2008. S. 99 // UNESCO: official site. [Electronic resource]. URL: This is <http://unesdoc.unesco.org/images/0015/001584/158450r.pdf> (accessed 09.09.2012).

freedom The constitution gave the right to expression, but it did not work to protect this right, and therefore this right does not have a strong or legal basis to exercise its protection function, and it should have been pointed out that the constitution's provisions guaranteeing freedom of expression are consistent or dependent on international laws and not laws. Iraqi, as international law provides adequate protection for the concepts of freedom of expression.

One of the restrictions that we mentioned earlier that restricts the constitutional text obliging freedom of expression to respect public order, which opens the door to government jurisprudence and its executive body to put any opinion in the field of breaching public order.

Despite the approval of the constitution, and as a result of the delay in approving laws and legislations, many of the laws that were enacted in previous decades remain effect, which means that there is a stark contrast between the Iraqi constitution and the laws in force.

The application of clauses from the criminal law to restrict freedom of the press constitutes a real threat to the freedom of the media, because protecting the rights of others from defamation, insult or slander; in no case should it cross the criminal law or the penal code, but rather it must go through the law Civil and legislation on freedom of the press and covenants of honor that were issued in Iraq until 2007 dozens of which did not comply with one of them. One of the most important applications that limit the freedom of the media that we talked about in the relationship of the constitution to the law and instructions is clear in the decision of the Iraqi Ministry of the Interior on August 24, 2006 to prevent the Iraqi media from covering security incidents, and the ministry also worked to prevent the media from accessing The location of the event, or its filming under the fear of safety for journalists. In November of 2006, the media was prevented from attending the sessions of the House of Representatives and obstructing journalists 'access to the House of Representatives on the pretext that this coverage and the transmission of divergent views contributed to the aggravation of the political reality, and the media was prevented from reporting and recording press meetings from inside the Conference Palace (Jaafar, 2008).

And journalists in Iraq were exposed to hundreds of recorded incidents that replace: create barriers to suppress and violate press freedoms through

pressures and threats by junior officials and government officials and members of parties who intend to exert pressure and aggression and prevent journalists from accessing information sources and cases of striking, harassing, prosecuting, and imprisoning journalists.

On November 19, 2007, the Kurdistan Region authorities prevented journalists from going to the border areas to cover events and developments, and the aforementioned region witnessed cases of repression, imprisonment, and suspension of journalists from working.

In 2006, Iraq recorded several violations against journalists, including (60) violations committed against journalists and media organizations, and (42) journalists in that year were subjected to beatings, arrests, and harassment.

(18) Journalists were brought before the Iraqi courts and were treated harshly due to lawsuits filed against them by local officials.

Iraq recorded about (13) violations committed by the American forces, in addition to killing more than one journalist since 2003.

From 2003 to 2006, more than 215 Iraqi and foreign journalists and media assistants were killed, of whom (112) were killed due to their journalistic work, as well as (41) technicians and media assistants, and 60 journalists and assistants were kidnapped, most of whom were killed, and 14 of them are still missing replace with while (28) of them were on trial. In addition to not taking serious measures against journalists 'killers, or legislating laws that help stop the bleeding, Iraq has not even complied with the international instruments it has committed to. In December 2006 the Security Council passed a resolution calling on all member states to guarantee protection to journalists in situations of armed conflict. The decision included the following clear obligations:

1. The state guarantees that journalists working in dangerous professional missions are considered civilians and that they are respected and protected accordingly.
2. The state replace with ensures that the media equipment and facilities are considered civilian objects and that they are not the target of attacks or reprisals.

3. The state guarantees an end to impunity and the prosecution of those responsible for serious violations of international humanitarian law.
4. The state guarantees respect for professional independence and the rights of journalists, media workers and individuals associated with the media field.

International legislation guaranteeing freedom of expression has accumulated, and although many of these legislations do not have the legal binding capacity, they have, by time and by adopting many countries, adopted them into an effective force that approaches the force of binding law.

It has several disadvantages. Firstly, the narrowing of the concept of "freedom of the media" to the right to only disseminate some information through the media (excluding the right to produce, receive, transmit mass information from the scope of this concept) does not correspond to the meaning of this term, Kamil, Y. (2013). used in Iraqi law, practice and legal science. Secondly, the indication in the definition of freedom of the media of such an indispensable and inherently controversial mandatory attribute as a form of disseminated information adapted to perception raises questions: what are the criteria for adaptability of information disseminated through the media (?); what is the point of indicating this symptom? Thirdly, an indication in the determination that information, the possibility of dissemination of which characterizes the freedom of the mass media, should and. reflect real events, not only unreasonably introduces a sign, the meaning of which is not defined in any way, but also excludes from the total amount of information disseminated through the media a significant amount of information, the content of which cannot be correlated with real events (for example, entertainment programs, etc.)

Freedom of the media is a set of rights that includes the right to freely seek, receive, transmit, produce and disseminate mass information in any legal way, the implementation of which is connected with the restrictions established in accordance with the Constitution of the Republic of Iraq to the extent that it is necessary for the protection of the rights and legitimate interests of others, as well as for other constitutionally justified purposes of restrictions (Kader, 2013). Pay attention that in this definition proposed by us, there is a need for legal restrictions on freedom of the media (the word "connected"). This imperative

need to establish the legal boundaries of freedom of the media is logically substantiated by the constitutional principle of the highest value of a person, his rights and freedoms, which cannot be.

SUMMARY

In our opinion, the term "fundamental principles of freedom of the mass media" should be understood as the norms of the Constitution of the Republic of Iraq governing the circulation of mass media, including establishing guarantees for the exercise of this freedom, as well as other requirements that are mandatory for compliance with the dissemination of information to an unlimited number of people through the media. When considering the constitutional foundations of freedom of the media, it is necessary to take into account the systematic nature of the categories of constitutional law property of categories of constitutional law, according to which they are in a systemic relationship that forms certain integrity, which has its properties that are not reducible to the sum of the properties of system elements (its separately considered categories). of great importance for understanding the system of constitutional foundations of freedom of the media: By virtue of the systemic principle of multiple descriptions of systems for the system of constitutional foundations of freedom of the media, it is possible to build an infinite set of descriptions (models), each of which reflects one or more of its aspects. This multiplicity of descriptions is also because categories such as democracy and freedom, which are fundamental to the concept of "freedom of the media," have many different doctrinal interpretations, reflected in numerous theories, concepts, and models of democracy. As a result, it seems scientifically unreasonable to uphold the truth and "workability" for any conditions of only one, the only description (model) of the system of constitutional foundations freedom of the media.

CONCLUSION

This article has attempted to examine whether the legal framework for restrictions on freedom of information and opinion in the Republic of Iraq is appropriate for democracy and development in society. The following has been observed:

1. The definition of the concept of freedom of the mass media, as enshrined in the Law on Freedom of Expression of Opinion "On the Media", is one-sided and does not adequately

reflect the constitutionally substantiated need to balance the interests of the individual, society and the state. In this regard, a definition is proposed: freedom of the mass media is a set of rights that includes the rights to freely seek, receive, transmit, produce and disseminate mass information in any legal way, the implementation of which is connected with the restrictions established by the Constitution of the Republic of Iraq to the extent that it is necessary to protect the rights and legitimate interests of other persons, as well as for other constitutionally justified purposes of restrictions⁴.

2. The regulation of the exercise of freedom of the media (its legal foundations) in the 2005 Constitution of the Republic of Iraq is insufficient, because in it, in particular, not the right of citizens to timely receive reliable information about the activities of state bodies and public associations through the media, which is fundamental to the democratic development of Iraqi society and the state, is secured. The lack of enshrining this right in the Constitution was one of the reasons for the establishment in federal laws ineffective mechanisms for its provision.
3. The model of separate consolidation used in the Constitution of the Republic of Iraq in 2005, in various articles, for freedom of the mass media (Article 38, 15) and the grounds for its possible restrictions (Part 3 of Article 73 and others) is not optimal and has several disadvantages. This

model contributes to the interpretation of freedom of the media as a justification for reducing the legal restrictions of this freedom to only the smallest possible, insufficient restrictions, without taking into account the need to balance the interests of citizens, society, and the state on the one hand, and the interests of media owners and employees, on the other.

ACKNOWLEDGEMENTS

The work is performed according to the Russian Government Program of Competitive Growth of Kazan Federal University.

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⁴Абас, М. (2006). Mass media freedom on the Internet. Legal conditions for implementation. Baghdad. University, s.237.