

مركز البيدر للدراسات والتخطيط

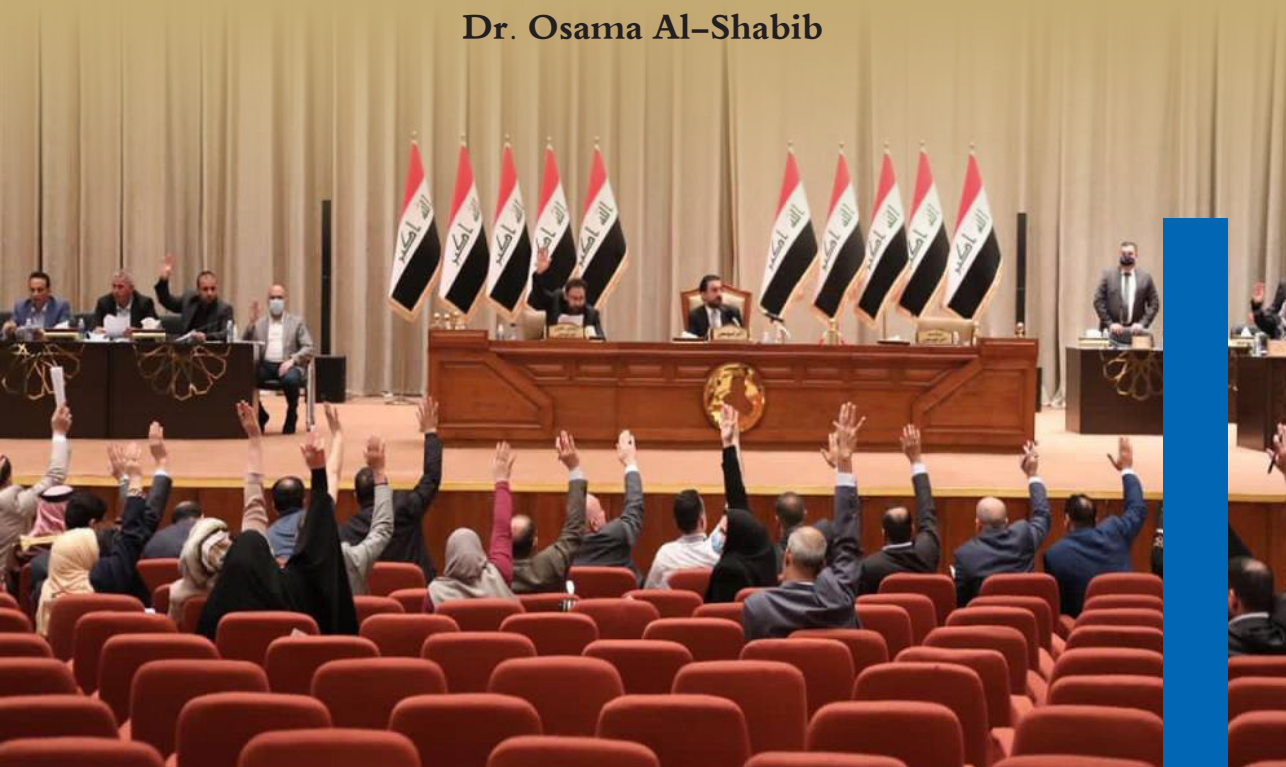
Al-Baidar Center For Studies And Planning



Research Paper

What Are the Penalties for Violating the Constitutional Document?

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The question of the penalties resulting from violating the constitutional document and breaching its provisions and rules is frequently raised. This question is discussed at every stage where there is a clear violation or breach of the constitution's provisions, especially in social, media, and political circles, as well as in legal forums, since it pertains to the field of constitutional law.

First, it must be said that the constitution is a set of rules that determine the form of the governing system in the state, organize the work of institutions, define their constitutional competencies and jurisdictions, and guarantee constitutional rights and freedoms in a way that balances the exercise of authority and the protection of rights and freedoms. Any act that results in infringing the provisions and rules of the constitution and exceeding its formal and substantive limits is considered a constitutional violation and breach.

The issue of penalties for breaching constitutional provisions and rules has been extensively discussed in constitutional jurisprudence. Several specialists have addressed it in their writings and books, reviewing the opinions of jurists. Some jurists believe that constitutional rules are moral and political rules because penalties are absent in constitutional rules, as there is no explicit text imposing material penalties on those who violate constitutional provisions, unlike the penalties for violating criminal or civil law rules.

However, the prevailing opinion in constitutional jurisprudence is that the constitutional rule is a legal rule that regulates human behavior, characterized by generality, abstraction, obligation, and is associated with penalties ¹. This opinion is supported by logical and rational arguments that distinguish the legal rule

1. Dr. Adnan Ajil, Constitutional Law: General Theory and the Constitutional System in Iraq, Al-Nibras Foundation, Iraq – Najaf Al-Ashraf, 3rd edition, 2013, p. 76.

from other rules, as constitutional rules confer legal legitimacy on other rules. Thus, they must themselves possess a legal nature. Penalties in legal rules, as most jurisprudence stipulates, are an essential component.

Types of Penalties in Constitutional Law ²

1. Organized Penalty

This type is represented by a set of foundations based on the constitutional principle of the separation of powers, such as:

- Mutual oversight between the legislative authority (which has the power to hold the government accountable and withdraw confidence from it) and the executive authority (which has the power to withdraw confidence from the legislative authority, i.e., the Council of Representatives).
- The existence of constitutional judiciary, which is considered the most important pillar for protecting and preserving constitutional principles and rules from violation and deviation through the powers assigned to it, most importantly constitutional oversight.

2. Unorganized Penalty

This type is represented by public opinion, popular oversight, and social pressure through rejection tools such as protests, strikes, and others. Since the people are the source of authorities and the basis of their constitutional legitimacy, this type is not organized by specific and direct texts, but it is essential and fundamental in protecting the constitutional document.

2. Dr. Ihsan Al-Mufriji et al., General Theory in Constitutional Law and the Constitutional System in Iraq, 1st edition, Al-Sanhouri Library, 2012.

Application in the Iraqi Constitution

If we review the Iraqi Constitution of 2005, we find organized penalties, foremost among them the existence of the constitutional judiciary represented by the Supreme Federal Court and its role in constitutional oversight (Articles 92, 93, 94 of the constitution). Through the constitutional status of the President of the Republic, who is tasked with protecting constitutional rules (Article 67) ³, the legislative and executive authorities are also granted oversight powers (Article 61) ⁴, including the right to withdraw confidence from the government. The dissolution of the Council of Representatives requires a joint request from the Prime Minister and the President of the Republic and a vote by the Council itself, a provision that does not align with the nature of the parliamentary system and its general principles. The Council of Representatives thus holds the power to withdraw confidence from the government, but the government does not have an equivalent power over the Council.

Article 50 regulates the constitutional duties performed by constitutional authorities, stipulating a commitment to protecting constitutional rules and not violating them. As for the unorganized penalties that contribute to protecting constitutional provisions from violation and breach, they are represented by public opinion, media, and conscious popular movements, which work to alert and hold accountable the authorities and entities that violate the constitutional document.

3. Article (67): The President of the Republic is the Head of State and the symbol of the unity of the homeland. He represents the sovereignty of the country and is responsible for ensuring adherence to the Constitution, preserving the independence of Iraq, its sovereignty, unity, and the integrity of its territory, by the provisions of the Constitution.

4. Article (61) – Eighth: The Council of Representatives, upon the request of one-fifth (1/5) of its members, may withdraw confidence from the Prime Minister. This request may not be submitted except after an inter-rogation directed at the Prime Minister and after at least seven days from the date of submitting therequest. The Council of Ministers is considered resigned if confidence is withdrawn from the Prime Minister.

The Iraqi Experience

The constitutional and political experience in Iraq after 2003 was marked by social, political, and security difficulties, with internal and external factors intertwined, making it full of complexities and problems. This was reflected mainly in the constitutional document and the nature of its drafting, as well as the political handling of its provisions and general rules. The Supreme Federal Court has confronted some of these practices, including explicit and clear political constitutional violations, the latest of which is the current constitutional violation represented by the failure to elect the President of the Republic within thirty (30) days after the first session of the Council of Representatives as stipulated in Article 72 – Second ⁵.

Despite criticisms of some constitutional texts and their flaws, and perhaps some political crises and problems being the result of constitutional problems, there are many constitutional violations caused by the political situation and its complexities, and the interferences between the active forces in the political arena. These forces often deny this and blame all problems on the constitution and its rules, which is incorrect. Accordingly, the guarantees for protecting the constitutional document and its provisions lie in amending some texts that have become unsuitable or were originally flawed due to imprecise drafting. At the same time, building the state and constitutional institutions depends on sound political behavior and the keenness of political forces, despite their differences, to respect the constitutional document that represents the will of the people.

5. Article (72 – Second, b): The President of the Republic shall continue to perform his duties until after the completion of the elections of the new Council of Representatives and its convening, provided that a new President of the Republic is elected within thirty days from the date of its first session.

The Essential Guarantee

It is necessary to emphasize a related issue:

Article 72-b: The President of the Republic continues to perform his duties after the end of the new Council of Representatives elections and its meeting, provided that a new President of the Republic is elected within thirty days from the date of its first meeting.

The Role of Society and Public Opinion

The basis for protecting the constitutional document from violations and transgressions by authorities lies in the role of the people and public opinion, their awareness of their constitutional rights, knowledge of the duties of public authorities in the legislative, executive, and judicial branches, and the protection of constitutional state institutions. This matter certainly varies socially from one society to another due to the political maturity of public opinion and the general public, the role of media, organizations, and social activities, and the accumulation of experience at the level of governance, institutions, parties, and political forces. Experiences have proven that respecting the application of constitutional rules and provisions does not depend on the extent of guarantees and penalties they contain, but rather on the accuracy of constitutional treatment and the extent of belief of constitutional institutions in adhering to those rules and their keenness to protect and defend them ⁶.

6. Dr. Rafiq Khidr Shabar, Violation of the Constitution, Al-Sanhouri House, 1st edition, 2016, p. 21.

Research Identity

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Note: The opinions expressed in this research do not necessarily reflect the views of the center, but only the opinions of its author.

About center

Al-Baydar Center for Studies and Planning is a non-governmental and non-profit organization established in 2015 and registered with the NGO directorate in the general secretariat of the council of ministers in Baghdad.

The center seeks to contribute to developing the state and its institutions, by proposing ideas and practical solutions to the main problems and challenges facing the state, including improving public sector management, policies, and strategic planning, using reliable data and best practices. The center engages the relevant authorities in the state with regular meetings to support this objective and utilizes the support of international organizations dedicated to assisting Iraq's development. The center also seeks to support economic reforms, and sustainable development and provide technical assistance to the public and private sectors. The center also seeks to support the development of the private sector to provide job opportunities for citizens through training and upskilling, in a way that reduces dependence on government institutions and contributes to supporting and diversifying the country's economy.

The center aims to utilize the vast amount of potential in Iraq's human resources by organizing programs to prepare and develop promising young people, including leaders capable of proposing, adopting and implementing visions and future plans that advance society and preserve its value-system based on the commitment to a high moral standard and rejection of all types of corruption.

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