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Judicial Mechanisms and Judicial Oversight for the Protection of Non-Derogable Rights: A Comparative Study of Iraq and Iran

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1. Round 1

1.1. Reviewer 1

Reviewer:

The Introduction states that “The objective of this article is to analyze judicial mechanisms and judicial oversight for the protection of non-derogable rights in Iraq and Iran,” but the comparative rationale for selecting these two jurisdictions should be developed more explicitly. The manuscript should explain why Iraq and Iran constitute a meaningful comparative pair beyond geographical proximity. The reviewer recommends identifying their relevant similarities and differences, such as written constitutions, distinct constitutional-review arrangements, different institutional roles of constitutional and administrative bodies, and comparable concerns regarding detention, prosecution, and security institutions. Without an articulated comparative logic, the study risks appearing as two parallel national descriptions rather than a genuinely comparative legal analysis.

The methodological paragraph in the Introduction describes the study as “descriptive, analytical, and comparative,” but this formulation is too general for an article of this scope. The author should specify the units of comparison, the types of legal materials examined, and the criteria by which judicial effectiveness is assessed. The manuscript already implicitly uses criteria such as access to review, independence, speed, evidence preservation, remedial effectiveness, enforceability, and institutional coordination. These should be explicitly identified as the comparative analytical framework. Doing so would significantly strengthen methodological transparency and allow the reader to understand why particular institutions and cases are included while other material from the underlying thesis has been excluded.

The manuscript’s discussion of Iraqi judicial inconsistency is important, particularly the statement that “Iraqi constitutional jurisprudence has not always demonstrated a fully consistent methodology,” but the criticism should be supported by a more explicit comparison between the relevant decisions. The author should identify precisely which legal principle changed, whether the inconsistency concerns jurisdiction, intensity of review, deference to military institutions, or the meaning of judicial independence, and why the later approach is doctrinally weaker. Merely identifying different outcomes does not necessarily

establish inconsistent jurisprudence because factual and statutory contexts may differ. The comparative reasoning between the decisions should therefore be made more explicit.

The paragraph beginning "Ordinary courts and public prosecution carry the main burden of responding to concrete violations" is central to the practical contribution of the article, but the manuscript should distinguish more clearly among the roles of investigative judges, public prosecutors, trial courts, and courts of cassation in Iraq. At present, "ordinary courts and public prosecution" are occasionally treated as a combined institutional category even though their functions differ substantially. A clearer functional differentiation would allow the article to identify exactly where procedural failure occurs: initial detection, authorization of detention, forensic documentation, prosecution, admissibility review, trial, or appellate correction.

The statement that "The judicial system should not allow the state to benefit from evidentiary deficiencies caused by its own failure to investigate promptly" raises an important evidentiary proposition that deserves deeper doctrinal treatment. The manuscript should explain what procedural consequence should follow from state-caused evidentiary failure. Possibilities include shifting evidentiary burdens, drawing adverse inferences, requiring corroboration of contested confessions, excluding evidence whose voluntariness cannot be established, or ordering renewed investigation. The current formulation identifies the problem persuasively but does not specify the judicial doctrine through which it should be resolved.

The Iraq section argues that "An effective court should therefore treat a substantiated or reasonably supported allegation of coercion as having two procedural consequences," namely evidentiary exclusion and independent investigation of responsible officials. This is one of the manuscript's most important normative claims and should be elevated into a clearly formulated doctrinal recommendation. The author should define what constitutes a "reasonably supported allegation," which judicial authority should initiate the referral, whether referral should be mandatory, and whether the investigation should be structurally separate from the prosecution of the original offense. These details would substantially improve the practical value of the article.

In the Iran section, the distinction between the Guardian Council and a conventional constitutional court is correctly implied, but it should be stated more sharply in the paragraph beginning "The Guardian Council performs a form of preventive constitutional oversight rather than conventional constitutional adjudication initiated through individual litigation." The manuscript should avoid terminology that could inadvertently suggest institutional equivalence between the Iraqi Federal Supreme Court and the Iranian Guardian Council. Their composition, timing of review, access mechanisms, procedural posture, and remedial effects are fundamentally different. The comparison should therefore proceed functionally rather than institutionally: both participate in controlling norms affecting rights, but they do so through distinct constitutional mechanisms.

Authors revised the manuscript and uploaded the document.

1.2. Reviewer 2

Reviewer:

In the section "Legal Foundations of Judicial Protection of Non-Derogable Rights," the sentence "The legal protection of non-derogable rights begins with a conceptual distinction between rights that may be restricted under defined conditions and rights whose essential protection survives even the most serious emergency" requires further doctrinal refinement. "Non-derogability" concerns suspension or derogation during emergencies, whereas "restriction" concerns ordinary limitations permitted within the substantive scope of certain rights. These are related but legally distinct concepts. The manuscript should explicitly separate derogation, limitation, and absolute prohibition. This distinction is especially necessary because the article later relies heavily on proportionality, which ordinarily concerns limitations rather than derogations.

The paragraph discussing torture contains the statement that "Torture, for example, cannot become lawful because officials claim that coercive interrogation was necessary to protect public safety." This proposition is central to the manuscript and should be developed beyond its current declaratory treatment. The author should explain the judicial consequence of this absoluteness more precisely: once conduct is legally characterized as torture, the court should not proceed to a proportionality or necessity test. This could be framed as a threshold methodology for adjudication. Such a doctrinal sequence would make the

article's argument more original and analytically useful, especially in its later criticism of judicial reasoning that employs balancing language in cases involving absolute prohibitions.

The discussion of the right to life would benefit from greater precision. The manuscript states that "Its non-derogable character does not mean that every state-caused death is automatically unlawful." This is correct as a conceptual distinction, but the article should develop a clearer analytical framework for judicial review of life-related claims. In particular, it should distinguish between intentional deprivation of life, potentially lawful use of force, deaths in custody, failures to protect persons facing known risks, and ineffective investigation of suspicious deaths. These scenarios engage different judicial obligations. Treating them within a single general discussion of arbitrariness risks obscuring the specific standards relevant to preventive and investigative duties.

The paragraph stating that "The judicial concept of proportionality has a legitimate but carefully confined role" is one of the manuscript's strongest analytical passages, but the article should define the proportionality test consistently. At different points, the manuscript refers to legality, legitimate objective, rational connection, necessity, less restrictive alternatives, proportionality, and protection of the essence of rights without clearly identifying whether these constitute a four-stage, five-stage, or hybrid test. The author should adopt one coherent structure and apply it consistently when evaluating Iraqi constitutional jurisprudence. Otherwise, proportionality risks functioning as a general rhetorical label rather than a reproducible method of judicial scrutiny.

The discussion of equality in the legal-foundations section appears somewhat detached from the article's central subject. The paragraph beginning "Equality jurisprudence similarly illustrates the evolution from formal to substantive review" should either be shortened substantially or connected more directly to non-derogable rights. At present, the equality discussion seems to demonstrate the broader development of substantive constitutional review rather than protection of non-derogable rights specifically. The author should clarify that equality jurisprudence is being used only as evidence of the Federal Supreme Court's increasing willingness to evaluate governmental justification and effects, rather than as an independent substantive component of the article.

In the Iraq section, the sentence "The Federal Supreme Court occupies the most visible position in constitutional protection" should be followed by a more systematic classification of the Court's relevant jurisprudence. The current discussion moves among executive detention authority, imprisonment beyond sentence, proportionality, equality, military procedure, and standing. These examples are useful but should be analytically grouped according to the type of judicial protection they illustrate, such as prevention of executive usurpation of judicial power, substantive protection against abusive detention, scrutiny of restrictions, and access to constitutional justice. This would transform the case discussion from a sequence of examples into a clearer jurisprudential analysis.

Authors revised the manuscript and uploaded the document.

2. Revised

Editor's decision: Accepted.
Editor in Chief's decision: Accepted.