

A Critical Examination of Trials and Legal Protections in the Criminal Procedure Systems of Jordan and Iraq

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ARTICLE INFO

Article history

Received Jan 25, 2024

Revised Jan 27, 2024

Accepted Feb 18, 2024

Keywords

Criminal Procedure;

Legal Guarantees;

Criminal Justice;

Trials And the Judicial System

ABSTRACT

Given the difficulties facing the justice systems in Iraq and Jordan, which have different legal systems and judicial practices, this research is important because it highlights the critical role that the criminal procedure system plays in upholding justice and safeguarding the fundamental rights of those involved in the criminal process. With an emphasis on the laws governing procedures, established legal guarantees, and the fundamental principles guiding criminal trials in both Iraq and Jordan, the research attempts to give an analytical examination of the two systems from a theoretical perspective. Additionally, it looks for theoretical issues with the guarantee system's implementation and suggests frameworks for the criminal justice system's growth that will guarantee a balance between obligations and rights. With an emphasis on contrasting the most important legal texts and concepts in each nation, the study took an analytical and descriptive approach, mainly depending on an examination of legislative documents, legal literature, and court decisions. The study's position as a theoretical reference that aids in the development of a cognitive grasp of criminal procedure systems was strengthened by the objective analysis of legal sources that was utilized to identify differences, similarities, and theoretical flaws. According to the study's findings, there are numerous fundamental similarities between the two systems. Nonetheless, there are significant variations in the quality of legal guarantees offered, which correspond to variations in the degree of protection afforded to defendants' rights. Adopting judicial procedures that are in line with human rights and international norms can help to improve these disparities. The study also made clear that some laws in Jordan and Iraq need to be revised and strengthened in order to improve legal guarantees and fortify individual legal protection, especially during the stages of inquiry and trial. The study highlights how crucial it is to logically harmonize criminal procedure concepts and fortify legal safeguards within the context of human rights-based judicial practices. It also provides theoretical suggestions for creating a legal system that complies with international norms and brings about the intended justice.

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1. Introduction

Systems of criminal procedure are essential for improving the effectiveness and integrity of the criminal justice system. They serve as the cornerstone that governs the course of investigations and trials in order to protect the rights of both defendants and the general public [1]. The criminal procedure system is a crucial component of the legal framework that guarantees the application of justice principles and offers legal protections to shield pertinent parties from abuses of authority or breaches of human rights [2]. The integrity and efficacy of the legal system are directly impacted by this [3].

There is a study gap concerning the actual comparative comparison of the criminal procedural systems in Jordan and Iraq, specifically with regard to the degree of application of legal safeguards and their capacity to protect rights in reality rather than just in written documents [3]. It is observed that research on the critical evaluation of judicial procedures and the adaptability of legal systems to global norms is lacking [4]. This is made worse by the fact that there are many theoretical studies that develop laws but few that assess how they are used in real-world situations [5].

Therefore, the significance of this study resides in its attempt to close this gap by providing a thorough comparative analysis that identifies the advantages and disadvantages of both systems, poses legislative and practical issues, and makes useful suggestions for improving the two systems in order to improve defendants' rights and maintain a balance between the need to uphold human rights and the pursuit of justice. The study's goals are to evaluate how the laws in place now affect the criminal justice systems in Jordan and Iraq and to offer suggestions for creating procedural frameworks that adhere to international norms.

2. Literature Review

One of the main tenets of criminal justice is thought to be the Criminal Procedure Code. It lays out the guidelines that control the criminal justice system from the beginning to the end of the trial, whether it ends in a conviction or an acquittal. It highlights the necessity of abiding by legal principles that ensure justice and transparency, explains the legal procedures that prosecutors, police, and judicial authorities must follow, and creates a framework that safeguards the rights of all parties—especially the accused.

The Criminal Procedure Code's significance stems from its capacity to structure the inquiry and trial process in a way that upholds human rights, inhibits the abuse of power, and advances the idea of judicial justice. In order to guarantee that all required protections are provided throughout the process, it also seeks to strike a balance between the rights of the accused and public power. Because it directly affects the integrity of court decisions and public trust in the judiciary, the efficacy of this system is therefore essential to attaining justice [6].

This relates to the significance of a precise and unambiguous legal system that makes the steps of the proceedings obvious, protects the right to defend, upholds the assumption of innocence, and offers legal protections throughout liberties, investigations, and trials. These are necessary components for advancing justice. International legal norms and tendencies, which are based on human rights agreements and constitutional principles, support this [7].

2.1. Fundamentals of International Criminal Procedure and an Analysis of Jordan and Iraq

National legal systems are not isolated entities. Instead, they draw from and are based on broad concepts found in human rights treaties and international legislation, especially when it comes to criminal justice processes. The principles of public trial, the right to defense, the presumption of innocence, guarantees of a fair investigation, judicial impartiality, confidentiality at certain stages to protect the parties, and judicial oversight of the entire proceedings are some of the fundamental principles of criminal procedure at the international level [8].

First Principle is the Public Court System, this implies that the public can keep an eye on the administration of justice since hearings are performed in public and the parties have the right to examine the papers. This principle guarantees transparency and protects against bias.

Second Principle is the Defense Right, in addition to reviewing the evidence against him, the accused has the right to offer defense evidence, be represented by legal counsel, and establish his innocence. Among the most significant assurances of justice is this one.

Third Principle is taking the Premise of Innocence, this is regarded as a fundamental principle that states that the burden of proof rests with the prosecution, not the accused [9].

2.2. Fundamental Legal Protections in Criminal Cases

In the context of criminal proceedings, legal guarantees are crucial components for protecting the rights of defendants and parties to a lawsuit. These include, for instance, the right to a defense, the right to know the charges against him, the right to a fair trial, the right to appeal decisions, the protection of the other party's rights, and the assurance that the accused won't endure torture or other cruel, inhuman, or degrading treatment.

Since they strengthen the protection of rights and limit the authority of inquiry and prosecution, international accords mandate the provision of these guarantees, which are mirrored in national laws. The following are the main guarantees found in legal texts [10, 11]:

- The accused has the right to a defense, which includes the rights to select an attorney, examine the evidence and interviews, and provide supporting documentation.
- As part of the right to a fair trial, the court must be impartial and independent, and the trial must take place in a reasonable amount of time.
- Judicial oversight: This guards against infractions and guarantees that the inquiry and trial stay within the bounds of the law.
- guarantees throughout the investigation, including the right to legal representation for the accused, the ban on torture, and the provision of humane treatment.

It is evident from analyzing legal documents and court decisions that fundamental legal guarantees are intended to safeguard defendants' rights, maintain the integrity of court procedures, and provide equitable and balanced access to justice. Although there may be some variations in the way the law is applied or specifics, these guarantees have been established in both the Jordanian and Iraqi legal systems in a way that upholds the fairness concept [12].

The Code of Criminal Procedure in Iraq, for instance, upholds the accused's rights to a defense, to attend the inquiry, and to appeal decisions, however it has been modified to reflect political and security developments. Similar rights are granted to the accused under Jordanian law, which also places a strong emphasis on the need to uphold due process, strengthen judicial independence, and offer enough protections to guarantee impartiality and transparency.

Based on the research and decisions, it can be said that additional elements including institutional capability, training, and the political and legal climate affect how these guarantees are actually implemented. To guarantee that the main objective of justice is fulfilled, this calls for constant efforts to activate and enhance them [13].

3. Iraq's Criminal Procedure System

The foundational element that organizes the investigation and trial process is the Criminal Procedure System. It seeks to safeguard society against crimes while ensuring the rights of all parties, particularly the accused, in conformity with the values of justice and human rights. Despite the difficulties and political and security circumstances it encounters, Iraq holds a unique position in this regard because of the overlap between ancient and new laws and its ongoing upgrading to meet

international standards. The steps of the legal process, the laws and legislation, and the legal guarantees given to the parties are all thoroughly covered in this section. In order to give a thorough picture of the Iraqi system from a strictly theoretical standpoint, it also offers a critical critique based on legal literature and court decisions [14].

3.1. An Overview of Legislation and Laws

The Iraqi Code of Criminal Procedure No. 23 of 1971, which serves as the fundamental legislative framework governing the conduct of investigations and trials, is the cornerstone of the country's criminal procedure system. Despite the changes it has undergone, the law generally emphasizes the fundamentals for protecting the rights of the victim and the accused while specifying jurisdiction and the steps that the appropriate authorities must take. Other subsidiary laws, including the Anti-Terrorism Law and the Judicial Organization Law, also have an immediate effect on how the law is applied in particular situations [15].

In contrast, it should be mentioned that Iraqi laws typically emphasize classic procedural elements while incorporating some contemporary ideas. But several clauses continue to follow antiquated legal precedents, which makes it difficult to adopt more adaptable and efficient processes, particularly in a setting where political and security developments are constant. Since the system is based on written legal norms, it is also crucial to take into account how well they align with international standards, especially those pertaining to the accused's rights, as there are differences in how these standards are followed, which we shall examine in more detail later [16].

3.2. Judicial Procedure Stages

The stages of the criminal procedure are well defined in the Iraqi system, and they usually start with the preliminary investigation, in which officials look into possible facts. This entails gathering information, questioning witnesses, and obtaining any required statements while upholding the accused's rights, such as the right to a defense and the ability to examine the evidence. Following that, the case is forwarded to the appropriate court for a preliminary investigation. After that, the trial sessions adhere to a particular legal structure designed to guarantee justice. Lastly, the court renders a decision with the potential for appeal, usually supported by substantial evidence that all parties have agreed upon.

However, administrative and bureaucratic limitations can sometimes be found in Iraqi investigation and trial processes, which might obstruct fundamental rights, especially the accused's right to a fair and speedy trial, and slow down proceedings. These processes must be updated to meet international standards, particularly in light of evolving investigative techniques, the use of technology in court, and the establishment of safeguards for parties' rights [17].

3.3. Legal Promises to Parties

In general, the criminal procedure system in Iraq offers a set of fundamental guarantees to parties with the goal of defending the accused's rights. These rights include the right to a defense, the right to access evidence, the right to a fair trial before an impartial judge, and the right to appeal decisions. However, despite the legislative provisions that guarantee these rights, there are instances when practical implementation presents difficulties, particularly given the political and security environments that impact the independence and professionalism of the judicial authorities [18].

The accused also has a preexisting right to legal representation and to be present during the investigation. In accordance with the presumption of innocence until proven guilty, the length of pretrial custody and the terms of provisional release are established. The extent to which these obligations are truly upheld, however, is called into question by reports of power abuse and extended pretrial detention without enough explanation. The critical analysis will address this [19].

3.4. Critical Evaluation of the System Using Judicial Decisions and Legal Literature

It is evident from legal literature and court decisions that Iraq's criminal procedural system faces many difficulties that compromise its efficacy and equity. On the one hand, it is seen that judicial procedures and legal texts significantly overlap. However, there are certain limitations to their usage, especially those brought on by political and security circumstances, which can occasionally result in rights breaches for defendants, like extended imprisonment without a fair trial or the employment of capricious tactics during investigations.

Additionally, even though the Iraqi constitution and legislation guarantee the judiciary's independence, this is not always the case in practice, which compromises the fairness and integrity of the legal system and, in turn, the public's trust in it. To ensure fewer infractions and a more effective administration of justice, current trends, however, support legislative and administrative reforms aimed at enhancing human rights, updating processes, and harmonizing standards for investigations and trials [20].

Numerous cases of discrimination in the way processes are applied to particular groups might be found by reviewing court decisions. Judges' and judicial staff's abilities must be immediately developed in order to guarantee complete adherence to legal protections, strengthening the idea of justice and defending the rights of all parties.

Therefore, it is clear that significant changes are needed to Iraq's criminal procedural system that are both in line with international human rights norms and take into consideration local conditions. Legislative changes are advised to strengthen investigative processes in times of war or terrorism, give defendants more protection, build judicial and administrative capabilities, and improve oversight and monitoring instruments. To increase public trust in the legal system, it is also advised to endeavor to increase community understanding of their rights and the function of justice in defending society [21].

4. Jordan's Criminal Procedure System

Jordan's criminal procedural system is a legal framework based on sound legal precepts. In order to provide justice and fairness for all parties involved while upholding legal requirements for a fair trial, it is expressed in a collection of laws and legislation that govern the conduct of criminal justice. According to the theoretical analysis, this system is distinguished by a series of steps and processes that a case goes through from the time of arrest until the verdict is rendered, as well as protections that defend the rights of the accused and the general public.

4.1. An Overview of Legislation and Laws

Jordan mostly uses the 2007 Code of Criminal Procedure, which is an extensive revision of several criminal procedure elements. It seeks to strike a compromise between protecting defendants' rights and accelerating case adjudication. This law stresses the preservation of parties' rights and arbitration in legal procedures, and it contains a set of broad rules governing the investigation, prosecution, trial, and execution processes. Furthermore, there are specific laws and subsidiary regulations that stay up to date with contemporary advancements, such as international agreements that Jordan has acceded to and human rights legislation, which have strengthened defendants' rights by adding new guarantees [22].

It is important to note that Jordan has adapted numerous legal concepts from contemporary legal systems to fit its unique legislative and political environment. This makes it possible for its system to integrate sophisticated and adaptable processes that meet contemporary criminal justice standards while guaranteeing respect for defendants' privacy and human rights clauses [23].

4.2. Judicial Procedure Stages

The arrest and investigation phase, where the Code of Criminal Procedure is applied, is the first of numerous phases of Jordanian legal processes. This outlines the authority of the judicial police, who are in charge of conducting investigations and gathering evidence while making sure that the accused's rights—such as the right to legal representation and the freedom from torture and coercion—are respected. After that, cases proceed to the prosecution phase, when the public prosecutor reviews the evidence and, in compliance with the law, issues an order for an arrest or detention.

The trial, which is held in front of an impartial court, is the following phase. Fairness and integrity are upheld as the evidence is presented and the accused is allowed a defense. It is important to note that the system incorporates essential processes to ensure the accused's rights, including notifying them of the charges against them, giving them the chance to present a defense, and granting them the right to appeal the decision to the Court of Appeal, including cassation.

The last phase is implementation, which entails putting sentences into effect when they have acquired final force while taking humanitarian and legal considerations into account, making sure that inmates' rights are upheld, and providing them with chances for reform and reintegration [24].

4.3. Legal Protections for an Equitable Trial

In line with international human rights standards, the Jordanian legal system places a high priority on protecting defendants' rights. Its judicial ideology is based on this principle. The defendant's rights to a defense, to know the charges against them, to hire an attorney, to see all the evidence and documents, and to be convicted only based on solid and supported legal evidence are some of the most well-known guarantees in the system.

In addition, the defendant is not required to say anything that might contradict their right to a defense and is free to keep quiet. This includes the ability to ask for a public trial while, if required, upholding confidentiality and privacy requirements. The system guarantees the transparency of the trial and investigative processes, permits appeals, and adds new remedies to guarantee justice.

It is important to remember that Jordan has long been dedicated to bringing its laws into compliance with international norms, especially when it comes to defending people's rights during criminal prosecutions. As a result, a sophisticated legislative framework that guarantees the adoption of the values of justice and openness has been developed [25].

4.4. An evaluation that strikes a balance between theory and practice

There are certain obstacles that affect the application of these useful guarantees, even with the legislative and awareness-raising framework set up by the Jordanian legal system. The most prominent of them include concerns about the inadequate infrastructure of certain judicial institutions, which can result in sluggish processes and postponed case decisions; a lack of continuous training for law enforcement and judicial staff; and a shortage of human resources. On the ground, there is also oversight of adherence to these guarantees and principles because there are instances of infractions or selective application of procedures, which erodes public trust in the legal system. However, continuous legal reforms, the development of supervision procedures, and the advancement of human rights all help to improve the real world and bring practice into line with legal texts and theoretical ideas.

In conclusion, it is clear that Jordan's criminal procedure system offers a solid foundation for upholding defendants' rights and bringing about justice. To achieve the intended goals of bolstering the rule of law and defending rights, it necessitates ongoing improvement to guarantee optimal implementation and handle real-world issues [26].

5. Results and Discussion

Similarities and differences between the criminal procedure systems in Iraq and Jordan were identified through an analytical comparison of the two countries' systems. This was accomplished by removing the practical elements and concentrating on the theoretical and analytical parts of the legal frameworks, fundamental ideas, and the actuality of applicable legal guarantees. The purpose of this research is to identify gaps, foresee potential reform opportunities, and provide theoretical viewpoints that aid in the creation of legal concepts pertaining to criminal procedures.

5.1. Laws and Procedures: Similarities and Differences

A thorough analysis of the requirements of the laws and legislation that are in place in both systems serves as the starting point for the comparison. The two systems' histories, their level of engagement with international accords, and the legal norms established within the framework of comparative law provide the foundation of the disparities. The Code of Criminal Procedure No. 23 of 1971, which has undergone multiple revisions but has remained relatively rigorous in terms of its fundamental principles, serves as the principal foundation for the criminal procedure system in Iraq. The Code of Criminal Procedure No. 9 of 1961 is the main source of the criminal procedure system in Jordan. Although there have been changes to this code as well, the core principles of extending the protection of defendants' rights have not changed.

In terms of resemblance, we discover that both systems have legal frameworks that thoroughly govern every phase of the investigation and trial, as well as the rights to defense, appeal, and protection from coercion. The organization of preventive measures, the boundaries of executive intervention, the level of judicial independence, and the measures protecting the accused's rights—particularly with regard to pretrial procedures, detention periods, and wiretapping—all exhibit variations in their congruence with international norms [27].

5.2. The Efficiency of Each System's Legal Guarantees

Legal theory, which emphasizes the significance of offering substantive rather than formal guarantees to ensure defendants' rights, achieve justice, and shield defendants from arbitrariness or misapplication, is used to evaluate the efficacy of legal guarantees. Legal texts that forbid arbitrariness, clearly define the boundaries of the use of power, provide judicial review, and establish processes that ensure defense and the right to protest are all examples of legal guarantees, according to the idea.

Strong theoretical guarantees like the right to defense, legal processes that prevent arbitrary detention, and judicial inspection are included in the texts, but their practical implementation in Iraq is beset by a number of issues, such as a lack of judicial independence, protracted legal proceedings, and poor investigation management, all of which reduce the effectiveness of the guarantees. Consolidating the rights of the accused is given increasing importance in Jordan, especially through the implementation of laws restricting arrest and release and improved court supervision. Despite certain shortcomings, like the short timeframe for inquiry and incarceration, this increases the guarantees' efficacy [28].

5.3. Theoretical Difficulties and Developmental Ideas

The need to modernize ideas about human rights guarantees and connect them to more open judicial and administrative procedures and policies while maintaining judicial independence is one of the theoretical issues that both systems face. Clear regulations that prevent diverse interpretations and unify the fundamentals of criminal justice should underpin procedural laws.

The necessity of integrating legal texts and judicial application through a comparative analysis that creates accepted international standards based on human rights principles is one of the theoretical recommendations that can be made. It should also activate parliamentary and administrative control over the execution of court rulings and incorporate judicial review

procedures. In order to make it more adaptable and enforceable, it is also advised to reevaluate how the executive and judicial branches of government are balanced within the legal system and to develop the idea of ensuring the right to legal defense.

Theoretically, legal guarantee systems must be developed and updated immediately to conform to international human rights norms, going beyond formal texts to provide practical and enforceable assurances. This calls for bolstering the judiciary's independence, defending the accused's right to a strong defense, and establishing policies that guard against arbitrary and excessive imprisonment. Additionally, systems for ongoing assessment of these processes' efficacy through solid statistical and field research must be implemented [29].

In conclusion, it may be claimed that while there are obvious distinctions in the degree of codification and application between the Jordanian and Iraqi systems, there are also fundamental parallels in terms of broad concepts. In order to do this, a theoretical framework that improves the efficacy of legal guarantees, guarantees ongoing legislative development, and ensures practical implementation in the interests of justice, individual rights preservation, and judicial system confidence must be developed. To stay up with global legislative and legal developments, it's also critical to take a comparative approach and conduct ongoing analysis.

6. Conclusion

The study's findings show that the criminal procedure system is the cornerstone of maintaining criminal justice and safeguarding the rights of all parties involved, including victims and accused. The study's significance as a foundational step in comprehending the efficacy of the legal protections offered, recognizing the advantages and disadvantages of each system, and helping to formulate crucial insights that will aid in the development of the criminal justice systems in both nations is highlighted by the comparison of Iraq and Jordan.

The findings showed that there are still theoretical and practical issues, as well as glaring differences in the degree to which legal protections are being applied. To guarantee more justice and openness, this necessitates modernizing processes, bolstering judicial independence, and harmonizing laws and norms. It was also emphasized how crucial it is to put in place measures that uphold defendants' rights, maintain their dignity, and foster public trust in the legal system. This illustrates how much legislation affects how courts and other judicial organizations operate.

The comprehensive analysis in this study adds value by shedding light on the basic distinctions and similarities between the criminal procedure systems in Jordan and Iraq. It also emphasizes how urgently more sophisticated and adaptable laws are needed to unite the core tenets of justice and human rights obligations. In order to create a more efficient and open legal system, this research makes a clear request to officials and decision-makers to reevaluate laws and practices and embrace reform models grounded in international norms and human rights principles.

In the end, this study paves the way for more research that examines practical issues, gauges the degree of reform implementation, and determines whether or not it complies with modern standards. This will accomplish the goal of effective and sustainable justice while also advancing the criminal justice systems in Jordan and Iraq.

Author Contribution: All authors contributed equally to the main contributor to this paper. All authors read and approved the final paper.

Funding: This research received no external funding”

Conflicts of Interest: “The authors declare no conflict of interest.”

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