

Restriction of constitutional rights and freedoms by Iraq's cabinet government in handling Covid-19

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Abstract

This study investigates the constitutional legitimacy of the measures enacted by the Iraqi government to prevent the COVID-19 spreading, which restricted the rights and freedoms enshrined in the Iraqi Constitution 2005. Even though the epidemic is a health emergency, the House of Representatives has not declared an emergency state, as the Cabinet resorted to taking preventive measures to curb the crisis spreading, that restricted constitutional freedoms and rights even though the Iraqi constitution explicitly states that the rights and freedoms cannot be restricted except by law or based on it, however, this restriction was governed by administrative orders issued by a committee established by the Council of Ministers under Decree Order 55 of 2020, headed by the Minister of Health, which was amended then to become headed by the Prime Minister, for that purpose we have followed the analytical approach to assess the decisions taken by this committee through interpreting constitutional and legal texts and examining many of their restrictive resolutions imposed for demonstrating its legitimacy or illegitimacy and through this analysis we concluded that the majority of its decision on rights and freedoms under the pretext to prevent the spread of Covid-19 is unconstitutional even though the epidemic was serious it cannot be justified for violating democratic values.

Keywords: COVID-19, legality, restrict rights, the Supreme Committee

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Introduction

In Iraq as in many countries, when faced with the Corona pandemic, "Basically defining a pandemic as a large epidemic" (Morens et al., 2009) the government took several critical decisions by restricting the freedoms and rights of its citizens, such as curfews, travel bans, closure of shops and cafes, preventing gatherings, and closing educational institutions, which impacted significant individuals' rights, despite these actions being essential to prevent the epidemic spreading that threatens people's lives (Spadaro, 2020), but balancing rights protection with preservation of public health was and still is one of the biggest challenges encountered by most states. This is what existing research has focused on by studying the complex interrelationship between constitutional rights throughout an emergency and public health imperatives (Bastos & De Ruijter, 2019) due to the priority to protect health and life of citizens when there is a public crisis (Jiang, 2021).

The non-absolute nature of the freedoms and rights defined in the Iraqi constitution of 2005 may be identified through the provisions of Article 46. This article explicitly states that any restriction or limitation on the exercise of the rights or liberties specified in the constitution is prohibited, unless it is done through legislation or legal means, and as long as such limitation or restriction does not infringe upon the right or freedom's fundamental nature. Simultaneously, the constitutional framework imposes

limitations on legislative authority, prohibiting the enactment of laws that contravene the freedoms and rights enshrined in the constitution (Article 2/2). Consequently, any limitations imposed must be explicitly legislated or grounded in constitutional provisions, even in circumstances of emergency, as affirmed by the constitution in Article 61/ninth/c: *"In the event of a declaration of war and emergency state, the prime minister must be granted the necessary authority to effectively administer the affairs of the nation. The exercise of these powers must be governed by legislation in a manner that is consistent with the provisions of the constitution"* (Iraqi Constitution, 2005). However, the House of Representatives did not enact this, though urgently needed due to the security threat faced Iraq by ISIS and terrorist operations, although The Iraqi constitution obligated the legislator to legislate a law defining the prime minister powers throughout the war declaration and the emergency state to enable the management the country affairs in these times, despite the severity of the unexpected health situation, the Iraqi government didn't declare a emergency state which was notable as a different trend from many countries that do that such as France on 23/3/2020 (Platon, 2020) instead, the Council of Ministers took it upon itself to confront this epidemic by forming a committee that issued various decisions. These decisions negatively impacted citizens' freedoms and imposed penalties for violations. leading to questions about the measurement legitimacy taken by the Iraqi government and whether they comply with the constitution,

Accordingly, This research aims to examine the government's authority limits in restricting the freedoms of citizens by analyzed the legitimacy of decisions, made by filling this gap we strive to obtain a comprehensive and better understanding of the effectiveness and legality of the government's measures in confronting the coronavirus epidemic, and evaluates the legitimacy of the cabinet's decisions throughout emergencies by examining whether they are proportionate to the principles of the Iraqi constitution and the law. It also highlights the importance of protecting freedoms and rights throughout emergencies to comply with the law. This raises questions about the effectiveness and legality of these measures, especially since they were not taken under parliament's censorship. One question that arises is whether the Council of Ministers made the right decision not to request the emergency state declaration. Another question is whether relying on regulations is compatible with the Constitution and how it can ensure protection by the law's rule. By addressing these questions, this paper can contribute to understanding how the Iraqi government has dealt with the crisis and the limits of its respect for the law's rule principles in addition to the identification of the shortcomings of the regulation of infectious diseases if it exists

Despite this article focusing on Iraq, it's part of a broader debate concerning the possibility of reconciliation between the law's rule principle and public health, which posed a significant challenge to governments worldwide, this was a reason for differences in response in managing crises among states, however, can be noted common trends , States which swing the balance in favour of the public health handled the crisis as a security problem to use broad emergency power, for instance, Hungary and Philippines (Grogan, 2022), instead the governments that more aware of democracy try to respect the constitutional boundaries of their powers by declare a state of public health emergency as when the President of Portugal, declared the constitutional eemergency state on 18/3/ 2020 (Violante, 2022) also in Italy when declared the emergency state on 31 January 2020 (Pahor, 2020) although the International Covenant on Civil and Political Rights (ICCPR) has allowed governments to when a crisis is officially proclaimed restrict the rights under Article Four (ICCPR,1966)

by an official proclamation of emergency based on the law that governs such a proclamation (Richardson & Devine, 2021), number of states have relied to manage the crisis without declare a emergency state as the most appropriate measure to confront the pandemic and implemented measures to restrict rights based on legislations enacted previously or subsequently as Northern Ireland, Wales Scotland and England adopted restricting measures dependent on the public health control of disease Act on 1984 and Act on 1967 in Northern Ireland ,further, new legislation called coronavirus Act 2020 was enacted (López, 2023).

The Gulf region can be praised dealt with the pandemic as a regional crisis unlike European states which dealt as a health issue concerning each country individually, thus can be noted the similarity in their decisions by not declaring a emergency state, forming a committee to manage the crisis, implementing measures to restrict rights based on laws or orders according to their system of government (Cooperation Council for the Arab Gulf States, 2021), with a note some of them such as the UAE, Qatar, Bahrain, and Kuwait were used apps to track the movements of users in real-time, which Amnesty International in its report on June 16, 2020, mention that some of these apps around the world putting the privacy and security of people at risk this was the reason for the Norwegian government to pause on use tracing app.

Research Methods

This research adopt the legal analysis methodology to examine that is essential legal texts relevant to the research topic including laws, orders, and regulations to reach a conclusion based on a thorough understanding and objective interpretation in addition to the identification of legislative intent by studying the purpose of legal text, furthermore, we are critical analysis by identifying texts that may pose problems when apply, to providing recommendation and improvements to the legal text by that analyses we achieve the aim of this study to evaluate the legitimacy of decisions issued by the Cabinet related to restricting the freedoms and rights throughout The pandemic of COVID-19 by identifying the extent to which these decisions are in line with the legal and constitutional frameworks for freedoms and rights. The primary basic rule of analysis was the cabinet decisions That restricted freedoms and rights to confront the pandemic which were Published on the official website of the Council of Ministers , examine the laws regulating the emergency state and public health if its compatibility with the constitution or overstepped the constitutional limits in addition to judicial decisions issued by the Supreme Federal Court, which is the supervisory body responsible for the constitutionality of laws.

There is a challenge in studying the legality of decisions of cabinet because of the scarcity of available references therefore was complemented on narrow limits by media reports due to the limited availability of information sources ,as well as previous studies relevant to this research, and most of them addressed only specific aspects; for example, a study (Majeed, 2021) was limited in scope and focused on the theory of extraordinary circumstances, similarly, a Study by Esmael and Shamal `which focused primarily on the definition of a health emergency And its constitutional and legal basis the compared study in countries France, Morocco, and Iraq without discussion legitimacy of the Cabinet decisions except what he mentioned in page 134"“The rulers formed supreme committees at the ministerial level to combat the pandemic without a clear legal basis,” (Aristei et al., 2022). These limitations in previous studies have been the reason for conducting a comprehensive study that analyzes the legitimacy of Iraqi cabinet decisions.

Results and Discussion

The effectiveness of confronting the The pandemic of COVID-19 by declaring a emergency state.

Jurisprudence concurs that the grounds for declaring a emergency state relate to either a threat to the state's internal security or natural disasters or epidemics. Accordingly, the basis for declaring a emergency state emanates from an imminent threat to the safety and security of the state's entity composed of its territory, population, and political system (Sunshine et al., 2019). The executive branch is granted extensive and special powers, even legislative powers, to confront the threat, which may require limiting freedoms and rights (Jovičić, 2021). Such power shall be regulated by law and constrained to necessity without expansion. Declaring a emergency state is subject to the discretion of the entitled authority by balancing the situation required and the measures taken, bearing in mind balancing freedoms and rights and health protection (Bardutzky, 2020).

The Iraqi constitution regulates the emergency state in Article 61. By giving this power to the House of Representatives, the emergency state declaration is conditional upon submitting a joint request from the president of the republic and the prime minister and the consent of the House of Representatives by a two-thirds majority, although the framers of the Constitution were misguided in associating the emergency state with the declaration of war into one provision and should have instead been addressed through independent clauses. This argument is justified because the consequences of a emergency state decision differ from those of a declaration of war. That said, the unification of the emergency state and the state of war through their procedural requirement and equal leverage through their incorporation into the same clause is flawed and should instead have been distinct through different procedures and separate clauses to accentuate the distinct severity and impact of each, especially health emergency requires urgent actions preferably by executive authority, maybe the reason of that back to the influence the constitution by the order for defend National Safety No. (1) of 2004, which narrowed the concept of declaring a emergency state to the threat to the lives of the Iraqi people arising from violence (Rahim & Shahid, 2008).

According to that, the Constitution did not lose sight of organizing the state's emergency. However, the Iraqi government did not declare an emergency state when an unexpected event touched the lives of citizens. However, the media reports contained contradictory statements about the request for announcement by the president of the Republic and the prime ministry. The president's office walked back his statement by saying, *"It is too early, and the emergency state had not been declared"* (Mwazeen, 2020). the Iraqi state did not declare an emergency, however, assuming it was declared, the question arises: which law governs this situation? Noted that no law has been legislated based on article 61 /ninth/C of the Iraqi constitution.

Two laws were enacted before Iraqi Constitution 2005 was forced related to regulating emergency states. The first one is the Law of National Safety (LNS) No. 4 of 1965, which governs the emergency state when an attack occurs, whether it is a commando raid or war happens, threatened or if dangerous internal disturbance or epidemic occurs; the second one is the National safety defense order No.1 of 2004 (ODNS) legislate by coalition provisional authority (CPA) which identify causes of declaring a Emergency state when the individuals are exposed to the danger threatening the lives and a rise from violence in order to "Prevent the formation of

representative government in Iraq or disrupt the peaceful political participation of all Iraqis or any other purpose" (The National Safety Defense Order No.1 of 2004).

The constitutional provision that legislation remains "*In force unless repealed or amended by the constitution*" (article 130)(Iraqi Constitution, 2005) renders both remaining in force due to not being repealed explicitly, in that I disagree with some authors mentioned that LONS was canceled after legislated ODNS (Abdul & Jaafar, 2023). Based on The Coalition Provisional Authority Law No. (1) of 2003, issued by its Administrator at the time, Paul Bremer stipulates in Section 2 that "*In the absence of suspension, replacement, or supersedement by legislation enacted by democratic institutions of Iraq, the laws that were in effect in Iraq on April 16, 2003, shall remain applicable within the country, provided that these laws do not impede the enforcement of the CPA's rights and obligations, or contradict the current or any other Regulation or Order issued by the CPA.*" (The National Safety Defense Order No.1 of 2004) Thus, there was no explicit reference to the cancellation of the LNS; besides the jurisprudential rule 'the subsequent law replaces the previous one' has no field for application here due to a defense order regulating a specific situation in itself related to violence and the threat to security that prevents the holding of free and democratic elections and the formation of a broadly representative government in Iraq (Article (1) / ODNS) unlike LONS which includes in its concept more comprehensive topics (Saleh, 2019) Accordingly, the rationed material of each is different.

Therefore, We can say with certainty that both the law and the order remain in force and that any emergency not related to violence, such as natural disasters and pandemics, was regulated under the Law of National Safety; however, these laws may face the obstacle the unconformity with the constitution of 2005 as depicted in figure (1), LNS granted the power to declare a emergency state to the President of the Republic with the approval of the Council of Ministers, which conforms with the Interim Constitution of 1964 in force at that time, which grants the President of the Republic the power to declare a emergency state (Article 48 of the Interim Constitution of 1964) while Iraqi constitution requires the approval of the House of Representatives by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister, thus rendering the law no 4 of 1965 illegal due to unconformity with the constitution of 2005 that require that the law shall be repealed consistent with the principle of the supremacy of the Constitution as stipulate an article 13/ Second "*No law that contradicts this constitution shall be enacted. Any text in regional constitutions or any other legal text that contradicts this constitution shall be considered void.*"(Iraqi Constitution, 2005)

Similarly, the order to defend national safety, which empowered the Prime Minister, after the unanimous approval of the Presidency, to declare a emergency state in any region of Iraq, is inconsistent with the 2005 Constitution and should be repealed due to incompatibility, either through a legislative act or through a judicial decision of the Federal.

In light of the foregoing, even if assuming the approval of the Council of Representatives by a two-thirds majority on declaring the emergency state, the power of the Prime Minister will remain tied due to the lack of legislation regulating his authority throughout a emergency state, by the failure of the Council of Representatives has to undertake its legislative role in facing the Corona pandemic and positioned itself as a silent spectator. However, some states avoid declaring a emergency state because it's a critical decision that needs exceptional authority "*The exception is a moment where a political act surpasses legal form*"(Desai, 2023) maybe the

government fears negative public reaction especially with an uncertain ending to the epidemic or to avoid public panic or relying on citizens trust to compliance with health guidelines and have a legal framework to impose necessary measures without need to declare a emergency state, or need to complicated approval as in Iraqi constitution2005 as mentioned above.

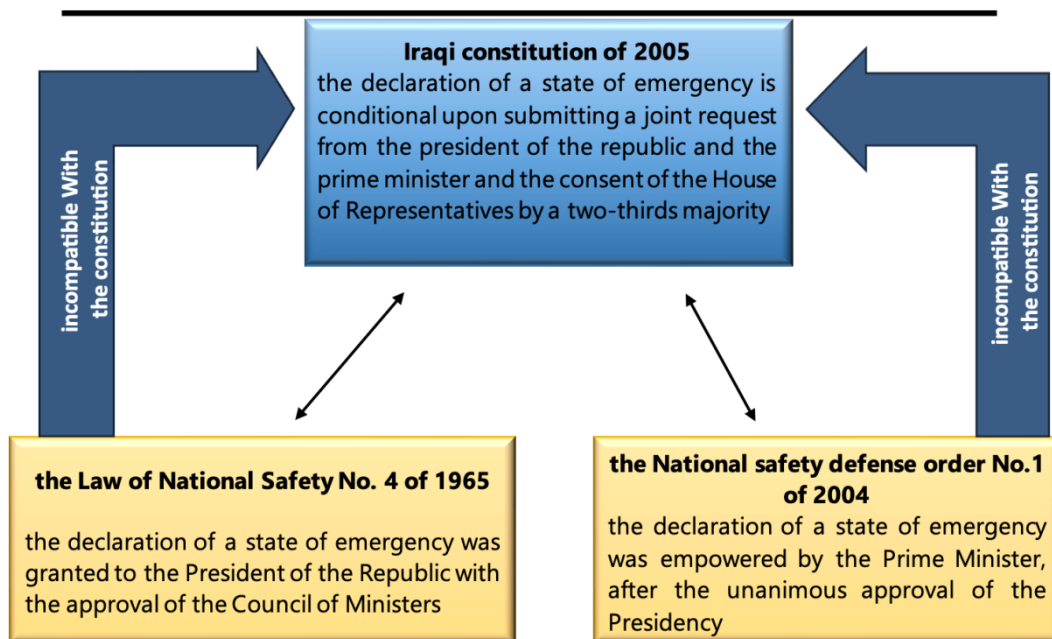


Figure 1. Analysis of conflicts between the Iraqi constitution and the laws
Source: processed by researcher

The effectiveness of confronting the Corona pandemic without declaring a emergency state.

In order for a state to take measures to respond to a serious threat to public health, it may limit certain Rights prevent the spread of the crisis (Toebes, 2015), however, these limitations under Article 61 of Siracusa principles "Not exercised in a legal vacuum; it is authorized by law", thus Protecting public health is an urgent need that must be regulated by law, In turn, the Iraqi legislator has responded to that by legislated the "Public Health Law (PHL) No. 89 of 1981", as amended, regulates the means of prevention and treatment of infectious diseases. This law did not explicitly address the state of health emergency despite the provision for extraordinary measures that can be taken by health authorities where the diseases are rampant after a statement by the minister of health or who authorizes to him (Ismael, 2022). It should be recalled these procedures are mentioned, for instance Thus, the health authorities have much flexibility to prevent morbidity such as including the restriction of movement and closure of public shops such as restaurants, hotels, educational institutions, and state departments (Article 46 / II), right to conduct health inspections of housing, public shops, and any other place and take samples for laboratory analysis from those in contact with the patient (Article51), and it is possible to quarantine any person suspected of carrying the disease (Article52).

Where The coronavirus pandemic as an infectious disease corresponds to the definition contained in the law: "Disease caused by Contagious worker or poisons Generator which results from the direct or indirect transfer of that factor from source to

host" (Article 44), furthermore, it falls under international health regulation thus becoming the legitimate basis for the state's measures to confront the pandemic.

The above analysis thus clarifies that there was an absence of gaps in the law to address the pandemic as shown in the table.1 below, which ensures the effectiveness of the legal system and protects the rights of individuals. Still, The executive authority—represented by the Council of Ministers—has undertaken a unique path. When tracking the decisions taken in the face of the The pandemic of COVID-19 since its declaration as a global epidemic, the Council of Ministers formed a committee headed by the Minister of Health under Executive Order 55 of 2020. Yet when the WHO declared COVID-19 became pandemic, the Council of Ministers amended its abovementioned decision, stipulating that the Prime Minister would thus head the committee. Since these committees made preventive and curative decisions to limit the spread of the virus, this analysis must consider the legality of the decisions issued by these committees, which we will discuss in the following section.

Table .1 Legal regulation of transmissible diseases subject to International health regulation under law No.89 of 1981

Description	Regulation	Concerned authority	Article
State declaration of health emergency	Mention	Minister of health or whoever authorize him	ART.46/First
Restriction on access and movement	Mention	Health authorities	ART.46/Second/a
Closure of Public shops, educational institutions, and factories	Mention	Health authorities	ART.46/Second/b
Prevent the sale or transport of food	Mention	Health authorities	ART.46/Second/d
Issuing Instructions to combat Transmissible disease in cooperation with relevant authorities	Mention	Minister of health	ART.48
Entrance to any place for the purpose of health inspection	Mention	Health authorities With approval of minister of health or whoever authorize him	ART.51
Isolation and quarantine	Mention	Health authorities	ART.52
Prohibition of the official working of infected persons	Mention	Health authorities	ART.54

Source: processed by researcher

Assess The legality of the committee's decisions of Order No. 55 of 2020

The council of minister has decided to form The committee by Order 55 of 2020 which headed by the Minister of Health and includes representatives of the Prime Minister's Office, and 12 other entities:(the Ministry of Defense, Ministry of Interior, Ministry of Foreign Affairs, Ministry of Health, Ministry of Agriculture, Ministry of Oil, Ministry of Transport, The National Security Service, the National Intelligence Service, the Border Crossing Authority, the Civil Aviation Authority and the Iraqi Media Network), the aim of this committee Focuses on promoting prevention and outreach to combat COVID in addition to the council of minister authorised the ministry of health

to close institutions which violate the 55th orders committee decision, after Iraq recorded the first confirmed infection on February 4, 2020, in the province of Najaf the Committee issued several decisions directed at the province and aiming at limiting the spread of the pandemic, including the suspension of working hours in schools and universities for 10 days, preventing gatherings and imposing a lockdown on the province through preventing travel to and from the province in addition, the committee issued the decision to establish a sub-committee in each ministry headed by the minister and in each government headed by the governor under the heading "Crisis cell" to issue precautionary decisions, including denying entry to foreign arrivals from specific countries into Iraq, which is Iran, Italy, South Korea, Japan, China, and Singapore, also shutter schools and universities in Najaf for ten days, and restricted travel between governorates in Iraq for fourteen (the general secretariat for council of ministries, 2020). However, after recording injuries in different governorates, the committee took general decisions in the meeting of 15/3/2020 covering all governorates of Iraq.

These included the prevention of gatherings and the authorization of governors to impose curfews in their governorates and suspend flights; curfews have been imposed comprehensively from Tuesday at 11 p.m. to Monday at 11 p.m. (the General Secretariat for the Council of Ministers, 2020). These decisions involved restrictions on freedoms and rights ensured by the constitution and primarily inhibited freedom of movement, which the Iraqi constitution guarantees in Article 44 states, "Each Iraqi has a freedom of movement, travel and residence inside and outside Iraq." This was confirmed by the federal superior court's decision in 2008. According to the court, Iraqi citizens can travel and move in and out of Iraq without constitutional limitations (The Federal Supreme Court, 2009). Likewise, the freedom to work, According to article 22, and education, According to article 34. As we referred, these rights can be restricted based on Article 46. The federal Superior Court confirms this in more than one decision, including its decision in 2020: "(The federal Supreme Court, 2021) *Most if not all of the world's constitutions agree to limit specific rights but only by enforcing the law.*" Regarding another decision in 2023, "*The restriction is a matter of organization and necessity, not an absolute limitation.*" The certain way to distinguish between restriction and regulation of rights is to enable citizens to exercise it; if empowerment has been exhausting and daunting, it has become a constraint (Mhmood & Hamady, 2022).

Wherever The Public Health Act permitted the health authorities to restrict these rights, as already indicated above, the minister of health chairs this committee. Its decisions are merely recommendations that will become effective only after its ratification. All these restrictions are exclusively within the powers of the health authorities according to law, and since the committee was formed by the decision of the Council of Ministers is headed by the Minister of Health in addition to his job, it can be said that the committee's decisions at the time were legitimate and in agreement with the Constitution in terms of their restriction of freedoms and rights and there is nothing wrong with them because the freedoms and rights contained in the Iraqi Constitution are not absolute, and can thus be restricted in certain circumstances by or based on the law noting that the restriction must not affect the essence of the right (article 46, Iraqi Constitution, 2005). However, should be discussed and analysis the decision of Diwani Order Committee Resolution No. 55 of 2020 on 15/3/2020., which authorizes 'governors to impose curfews in their governorates,' as we mentioned above was unlawful decision, infringes on the right of movement due to the Public Health Law authorizes the health authorities exclusively to take all measures to prevent the spread

of the disease and does not stipulate that this authority can be delegated – (46/first,1981) on one hand and on the other the provincials law No.21 of 2008 rendered the roaming ban declaration exclusive to the governorate council with the consent of the two-third majority by governor’s request this decision cannot be authorized to the governor according to the rule of delegated powers can’t be delegated to any one unless by law. of the foregoing it can be said, the decision issued by the committee to authorize governors to impose curfew exceeds the limits of its powers, thus rendering the decisions issued by the committee as nonvalid due to the lack of competency non-and pursuant subject to appeal before the Administrative Court for illegality ,according to that the decision took by The Governor of Anbar imposed a curfew in the province from 17/3/2020 to 21/3/2020 according to the administrative order No. 5121 on 16/3/2020, based on the recommendations of the crisis cell in Anbar province illegal decision because issued by an incompetent authority(Anbar government, 2020) , as well as what was announced by the governor of Babel to impose a curfew under Administrative Order No. 235 of 2020 , based on the authority vested in him and the implementation of the decisions of the crisis cell in Conservatism(Almawrid news, 2020) as depicted in figure (2)

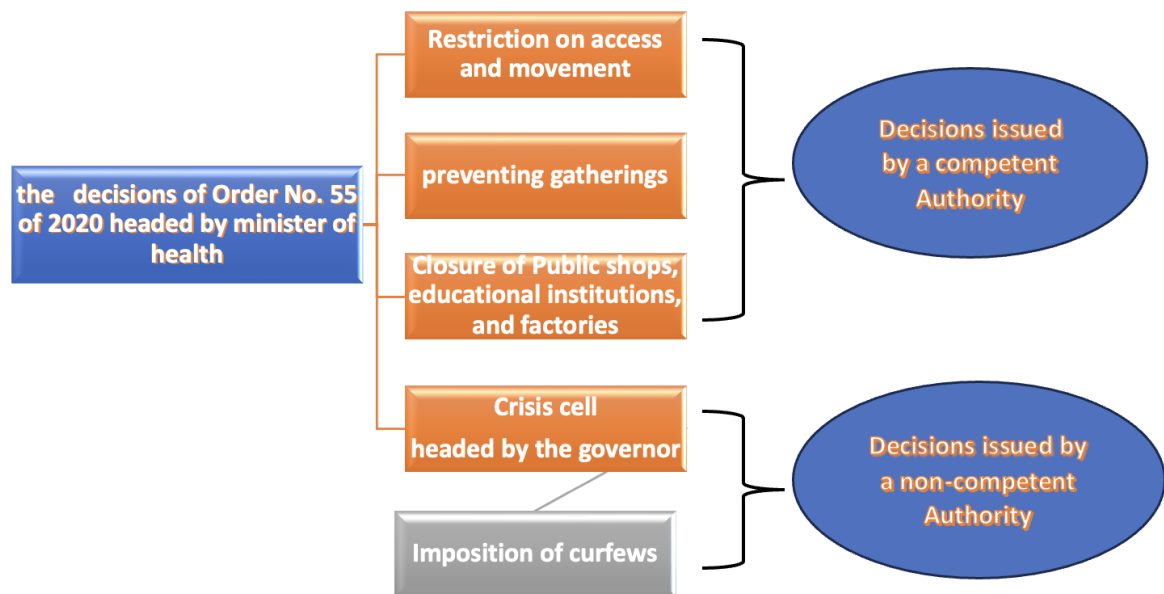


Figure 2. Analysis the decisions of order No. 55 of 2020
 Source: processed by researcher

Assess The legality of the Supreme Committee for National Health and Safety decisions.

After the World Health Organization announced on March 11, 2020, that the Coronavirus had become a global epidemic (World health organization, 2020) the Council of Ministers decided in its twelfth regular session held in 26/3/2020 by the decision no (79/2020) to modification of its decision no (64/2020) form the Supreme Committee for National Health and Safety (SCFNHS) to combat the Corona virus instead of The committee by Order 55 ,its tasks related to develop policies and general plans and supervise their implementation chaired by the Prime Minister and the membership including Minister of Health, Secretary General of the Council of Ministers, Director of the Prime Minister's Office, Governor of the Central Bank, National Security Advisor, Advisor to the Prime Minister and Chairman of the Board of Advisors(tanawue,

2020) , The Council of Ministers has authorized the Committee to develop policies ,general plans and supervise their implementation to combat the spread of the Coronavirus epidemic, provided that it submits its recommendations to the Prime Minister for approval. The committee ordered measures similar to the ones adopted by its predecessor, including the imposition of curfews, the closure of gathering places, and the suspension of working hours in state institutions, in addition to the travel ban and other measures that affect the freedoms and rights guaranteed by the Constitution in, which can only be restricted by law or based on it.

Accordingly, the procedures issued by this committee cannot be considered legitimate procedures in terms of the possibility of limiting freedoms because The committee was issuing recommendations which are subject to the Prime Minister's approval; accordingly, the decisions are considered to be issued by the Prime Minister, and since the Iraqi Constitution of 2005 did not give the Prime Minister the authority to restrict constitutional freedoms and rights,the measures taken by this committee restricting public freedoms and rights in their entirety are illegal and contrary to the Constitution, including the delegation of its powers to governors, which includes the suspension of official working hours in all state institutions and the imposition of curfews in the provinces an order issued Based on the guidance of the Prime Minister and the decision of the Supreme Committee for National Health and Safety, thus meaning that all decisions issued by the Supreme Committee for National Health and Safety relating to constitutional restrict freedoms and rights are null and void due to the lack of jurisdiction. one of the most important the law's rule principles is the issuance of decisions from an authorized person otherwise its decisions become illegal based on the rule of *jus ex injuria jus non oritur*, such as controversy arising about the legality of the establishment of the national coronavirus command council in the south of Africa due to granted powers which violate the disaster management Act No.57 of 2002(Dube, 2023)

The Supreme Committee for National Health and Safety (SCFNHS) has implemented a series of fines for violating COVID-19 prevention measures, which raises concerns about constitutional compliance. These fines range from 10,000 IQD for not wearing a mask outside the home to a substantial 5,000,000 IQD for organizing gatherings like weddings or funerals. Other penalties include a 50,000 IQD fine for taxi drivers carrying excess passengers or not wearing masks (with vehicle impoundment for repeat offenses) and a 25,000 IQD fine for exceeding passenger limits in vehicles. While these measures aim to curb the spread of the virus, their implementation without proper constitutional backing highlights potential legal issues in the committee's approach to pandemic management.

While the Supreme Committee for National Health and Safety (SCFNHS) justifies its imposition of fines based on public health protection under the Public Health Law, a closer examination reveals potential legal inconsistencies. The law's punitive provisions, outlined in articles 96 to 99, specifically target shop owners violating health regulations, with fines up to 250,000 IQD and possible confiscation of goods for repeated violations. However, these penalties are narrowly defined and do not extend to the broader population or to infractions such as not wearing masks. This limitation is further emphasized by the Iraqi Constitution's Article 19, which states that no crime or punishment can exist without a specific law, a principle reinforced by Federal Supreme Court decisions.

The implementation of fines by various government bodies, including the General Traffic Department, raises additional legal concerns. The Traffic Law No. 8 of 2019,

which has been cited as a basis for some fines, only authorizes the Director General of Traffic to issue statements related to the law's provisions, not to impose new fines for unrelated infractions. This limitation was confirmed by a 2013 Federal Supreme Court decision restricting traffic officers' authority to offenses specifically outlined in Article 27 of the traffic code. Furthermore, the Ministry of Health's use of Article 96 of the Public Health Law to impose fines appears to be an overreach, as the article pertains to specific acts not encompassing the broad range of COVID-19 related restrictions. These discrepancies suggest that many of the fines imposed for violating COVID-19 measures may lack proper legal foundation.

Many countries have recognized the necessity of imposing sanctions to enforce preventive measures during the COVID-19 pandemic, while also acknowledging the importance of maintaining legal certainty and respecting the rule of law. In response, several nations have either amended existing legislation or enacted new laws to regulate their authorities during the crisis. For instance, France passed the Emergency Act No. 2020-290 on March 23, 2020, authorizing the government to take extensive measures to address the pandemic (Savitri, 2022). Similarly, the United Kingdom introduced the Coronavirus Act 2020, which expanded the government's power to control infectious diseases (Pugh, 2020). Jordan declared a state of emergency through a royal decree, invoking Defense Law No. 13 of 1992, which granted the prime minister broad authority to restrict freedoms and rights. Importantly, Jordan published its penalty decisions in the official gazette, such as the decision to punish curfew violators under Defense Order Two, which appeared in Official Journal No. 5627 on March 20, 2020 (Alshoubaki & Harris, 2021).

Other countries have taken similar approaches to ensure legal backing for their pandemic response measures. Oman issued Amendment No. 32/2020 to the Infectious Diseases Control Act 73/92, introducing new penalties for violators and empowering the supreme committee to impose fines and procedural sanctions based on a Sultan's order (Qeshta, 2021). Qatar based its supreme committee for crisis management decisions on Decree-law No. 17 of 1990 on the prevention of infectious diseases, as amended by Act No. 9 in 2020. This amendment authorized the Council of Ministers, upon the Minister of Health's proposal, to impose sanctions. However, Qatar's approach, similar to Iraq's, has been criticized for potentially overriding the principle of legality by imposing sanctions based on a Council of Ministers decision rather than through legislation, which contradicts the constitutional provision in Article 40 requiring that punishments be imposed only by law (Alsayed, 2021).

From the foregoing, Public confidence in the government is an important factor in compliance with the instructions and orders from their leaders (Hashmi, 2023), one of these significant factors contributing to that is respect for the law's rule by legal certainty which enhances trust in the legal system, that's not been achieved in the penalties imposed by the Supreme Committee for National Health and Safety.

Conclusion

The law's rule is the Renaissance of nations cornerstone, and there is no plausible justification for having violated the values of democracy that can be compatible with effective crisis response, Even though Covid 19 pandemic is an exceptional circumstance that requires direct measures to be taken to limit the virus spreading and address its effects, that does not justify overriding the legitimacy of decisions, particularly on the freedoms and rights, so The lack of enacting a law regulating the executive authority powers when declaring a state of health emergency

impacts negatively on freedoms and rights, which was a result of a lack of legal cover for the validity of The decisions issued by the Supreme Committee for National Health and Safety , accordingly, restricting the exercise of constitutional freedoms and rights are void due to being issued by an entity lacking the power to limit constitutional rights and liberties furthermore, The imposition of fines on decisions infringers of the Supreme Committee for National Health and Safety is unconstitutional due to the lack of a legal basis underlying.

Based on the analysis presented in this research, several recommendations are proposed for the legislative authority to consider in order to avoid potential violations of freedoms and rights during similar public health emergencies in the future. First, it is suggested that the legislative body should activate Article IX/c of the Constitution by enacting a law to regulate the powers of the Council of Ministers when a state of emergency is declared. Additionally, the researchers recommend amending Public Health Law No. 89 of 1981 to establish a clear mechanism for declaring a health emergency in the context of a pandemic, delineate the decisions that can be issued by the executive authority, and outline the limits of legislative oversight over such measures. This should include a dedicated section on penalties for violating Ministry of Health decisions, such as curfews, travel bans, and other necessary steps to address an epidemic, to ensure a legally sound framework for the government's pandemic response.

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