

Constitutional Protections for Higher Education Institutions in the Jordanian Constitution: A Comparative Study

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Abstract

This study investigated the extent to which the Jordanian Constitution provides protection for higher education institutions and highlights the latter's need of these protections. This study used a descriptive, analytical, and comparative methods. This study found that Jordanian Constitution addresses the right to education, the state's guarantee for this right does not address higher education. The Jordanian Constitution, moreover, does not address the independence of higher education institutions, in the manner the Egyptian constitution does. Although the judiciary in both Jordan and Egypt have contributed to the protection of these institutions, there is still an urgent need for greater protections.

Keywords: Jordanian Constitution, Institution, University, Higher Education, Protection.

Introduction

Education is of paramount importance as an inherent human right. It is necessary for promoting the creative development of individuals, developing their intelligence, and training them in important principles, like those of tolerance and openness. Education also provides social and economic stability, enhances civilian values, and promotes civilization. Hence, Article (26) of the Universal Declaration of Human Rights reiterates the right to education. To promote this right, states must establish institutions that work on providing and spreading education, as well as make it available to all people using various appropriate means (Sabarini, 2015). Herein, a knowledge-driven society is better able to afford the basic needs of its population (Păunică, 2011). Education, therefore, affects all other rights and duties.

Additionally, education is closely associated with sustainable development, which is often included in states' plans (Aboul Fotouh, 2022). In this context, higher education institutions are the pillar of this development and should be the first to receive constitutional protection. However, in Jordanian society specifically, the constitutional protection of higher education is ambiguous. A question then arises around the extent to which the Jordanian Constitution, specifically, as well as its judiciary, provide adequate protections for higher education institutions and ensure their independence.

The significance of this research is derived from the fact that it is related to one of the most important institutions in society, namely education. Specifically, the research focused on higher education institutions, which have significant importance in modern life because of their

essential role in the contemporary era. However, this topic has not attracted the anticipated academic attention that has been directed to other research topics. This study, therefore, is an important addition to prior literature in this area. Studying the rulings of the Constitutional Judiciary in Jordan and their role in achieving and consolidating the state of societal institutions, furthermore, is significant because they are what guarantee stability and establish legal security, which is regarded as the umbrella of the concept of state law.

This study aimed to highlight the constitutional protections for higher education institutions in Jordan and their role in the cultural transformation processes in this society, as well as direct future academic studies towards this subject.

Specifically, this research investigated the availability of sufficient constitutional texts that protect higher education institutions and the necessary guarantees involved therein to ensure their implementation and development to advance the education system, as well as whether these constitutional legislations respect education and its institutions and regard them as a path to progress and prosperity. This study also highlighted the role of the Jordanian judiciary in protecting higher education institutions and drew numerous results and recommendations that can be used to enhance the role of these institutions and enable them to more effectively perform their role in wider society.

This research adopted a descriptive, analytic method and compared its findings with the Egyptian Constitution, which is a modern constitution that has developed significantly after various important political events. The researchers also examined all jurisprudential, legal, and judicial references to illustrate the constitutional texts and court rulings, as well as analysed and compared them with the provisions contained in the comparative constitutional systems to identify similarities and differences so as to derive important results on which useful recommendations and proposals in this area can then be based.

This research, therefore, tackles what higher education institutions are, illustrates the concept of constitutional protection for them, and analyses the judicial oversight of the violation of the provisions of these constitutional protections.

What are higher education institutions

As stated, this study conducted an investigation into all relevant legal texts around higher education. The following section will present our research on higher educational institutions and their related protections within both the Jordanian and Egyptian constitutions based on current literature.

Higher education institutions are a tool used to disseminate knowledge and technology. They are the professional bodies that gather scientists and other academics, build the foundations of their knowledge, and polish their expertise and talents. They, therefore, perform a task that is vital to modern society. The role of university education is not only to train scientists, professionals, and technicians, but also build up authentic and scientifically educated manpower, in line with modern concepts and developments, to prepare graduates to fulfil the requirements of the modern era (Toaima & Al-Bandari, 2004).

With increases in the number of university students; the expansion of universities, colleges, and higher institutes; and an increase in their numbers, the need has emerged to regulate the work of government, private, and community higher education institutions to

ensure that they are able to continuously provide their services, as well as keep pace with and absorb modern developments from various areas (Al-Haddad, 2017).

Higher education institutions include universities, colleges, and other higher institutions that students attend after completing high school. Herein, universities are the highest level institution of higher education. Other names are given to universities and some of their affiliated institutions, such as colleges, institutes, academies, complexes of technical colleges, and higher schools. These names can sometimes cause confusion because they convey different meanings from one country to another. Although the word 'college' is usually used to describe an institute of higher education, this study's researchers found that some countries who follow use this word to refer to a private high school. Likewise, an 'academy' often describes a higher education institute or school (Muhammad, 2018).

To clearly explain the nature of institutions that provide education in general, as well as those that provide higher education in particular, this study's authors divided the research selection into two requirements. The first defines higher education institutions in general, while the second illustrates the types of higher education institutions.

Definition of Higher Education Institutions

Higher education institutions offer education in various majors after one has completed their basic schooling phase. Article No. (2) of the Jordanian Law of Higher Education and Scientific Research No. (17) of 2018 defines higher education institutions as 'Institutions which take on the responsibility of the higher education whether Universities, Community Colleges, or others'. Thus, every institution that offers higher education programs that take place after one has finished high school is considered a higher education institution, whether it happens to be a university, a community college, or any other related facility. Further, these institutions can be governmental or non-governmental. The Jordanian Universities Law no. (18) of 2018 defines a university as 'Public or private higher-education institution offering university degrees'.

The Jordanian Universities Law differentiates between government and private universities. Article (3) of this law stipulates that a government university has a legal personality and is financially and administratively independent. As such, it may own movable and immovable money and carry out all legal transactions, including concluding contracts; borrowing after obtaining the approval of the Cabinet; and accepting endowments, aids, donations, grants, and wills. It, furthermore, has the right of litigation, carrying out all legal and judicial procedures, and appointing on its behalf a civil prosecuting attorney or any other attorney appointed for this purpose.

Thus, public universities can be seen as independent public persons that are subject to the supervision of the Council of Ministers in certain financial matters, such as in the borrowing and accepting of endowments, aid, donations, gifts, grants, and wills.

Article (4/a) of the Jordanian Universities Law states that:

a private university is established through a decision by the Council [Higher Education Council], based on an application submitted by the owner, and in accordance with the conditions and guarantees prescribed by the relevant regulation, provided that the Council makes its decision regarding such application within a maximum period of four months as of its submission date.

Paragraph (c) of the same article addresses universities' legal personality. It explains that, subject to the owner's right, they may own movable and immovable money and that:

a private university has a legal personality and is financially and administratively independent. As such, it may carry out all legal transactions, including concluding contracts; litigation; and accepting endowments, aids, donations, grants, and wills after obtaining the approval of the Cabinet.

As is the case with government universities, private universities are subject to the supervision of the Council of Ministers regarding accepting endowments, aids, donations, gifts, grants, and wills. The researchers believe that increased control over government and private universities will help ensure that their educational services are provided in an effective manner while maintaining their independence.

Types of higher education institutions

The government is responsible for the provision of education in various stages via public educational institutions. Various economic, social, cultural, and technological conditions, however, dictate the participation of the private sector in the educational process. There are, moreover, various objective reasons for the state to encourage and boost such participation, the most important of which being the increasing need to spend more money on education because of the increase in the population and the resulting increase in their needs and the growing interest in knowledge and its relation to the needs of individuals and society (Al-Khazraji, 2012). This then highlights the importance of the private sector's participation in education. Private education, furthermore, has succeeded in providing distinguished educational models.

Higher education institutions are thus divided in terms of their ownership into government, private, and community institutions. Government institutions are those owned by the government, private institutions are those owned by the private sector, and community institutions include either non-profit and/or non-governmental institutions.

In terms of levels, these institutions are divided into universities, middle community colleges, and higher institutes. Universities usually offer Bachelor of Arts (BAs), Master's, and PhD degrees. Middle community colleges and higher institutes offer higher diploma degrees that can be earned after one has finished high school. This classification may vary from one country or educational system to another, as some institutes offer BAs, Master's, or even PhD degrees.

In terms of the body they work under, higher education institutes are divided into military or civilian universities, colleges, or institutes. They are sometimes described as health institutes if they work under or are supervised by the Ministry of Health or offer health-related programs. These institutes may also be described as national or foreign if either a national or a foreign person(s) or organization(s), respectively, owns them.

The constitutional protection of higher education institutions

Education in general, especially higher education, is one of the most prominent rights that a state must provide and protect, whether through government or private institutions. This is because education achieves sustainable development for people internationally and serves to shape the future of numerous countries (Alwan & Almosa, 2014). Therefore, countries are competing to sustain education in all respects and regulate it properly through legal means that represent a sound basis upon which the educational processes and behaviours of educational bodies are built.

It is well known that any action taken by the state or its authorities has specific legal effects (Al-Khatib, 2022). The executive authority and all its components are not far from this as well (Metwally, 1989). In fact, it is easier to judge the legality of their actions, as they are in direct contact with the needs of individuals and have an obligation to satisfy them. Their individual and organizational decisions have legal effects on the position of individuals dealing with them, provided that these effects are based on constitutional and legal texts that represent the basis for their validity. Whatever the circumstances the state is currently going through, the legality of its decisions is an undisputed matter because this is related to the basic rights and protection of the public from any act that violates the law (Omran, 2020). In this context, various constitutions have tackled the right to education; however, have their texts included the role of higher education institutions? This question is then addressed in this study's two requirements.

Right to education as outlined in the constitution

The right to education is different from the freedom of education, although they are complementary. The freedom of education means enabling an individual to choose the subjects that they wish to learn after acquiring the basic principles of education, which are considered a right that the state should then provide to them (Al Dabbas & Abu Zaid, 2017). The right to education refers to the right of every individual in the community, which the state should guarantee and take measures to provide, such as the adoption of free education for all individuals, the establishment of public schools and universities, or other measures that guarantee the right to education for all people (Al-Khatib, 2007). It may also mean providing equal educational opportunities for all, respecting the freedom of parents to choose educational institutions for their children, and providing continuous professional training (Al-Mazoughi, 1990).

The researchers of this study reiterate that education is both a right and a duty. It is a right that is acknowledged by international laws and conventions, which obliges every country to provide it for free and create the conditions that facilitate its provision. It is also a duty, according to the texts of various legislations that stipulate that it is compulsory, because it involves knowledge and scientific research that advance societies and promote their progress and prosperity.

The right to education, as regulated and protected by the constitution, means the human right to obtain education that suits each person's talents and mental abilities, in addition to the right to engage in research and learning. This right is linked to growing needs at the social, economic, and even political level, as scientific progress cannot be separated from the plans that allow growth in these areas. The requirements for practicing scientific research, moreover, have evolved in line with the scientific development of our time, which calls for the adoption of a set of institutions, mechanisms, and methods for promoting this purpose (Talib, 2017).

The state provides education through official institutions to allow students to obtain their right in this area. Article (6, paragraph 3) of the Jordanian Constitution of 1952 and its amendments stipulate that the state shall guarantee the right to education within the limits of its capabilities and allow equal opportunities for all Jordanians. Article (20), however, specifically stipulates that basic education is compulsory and free to all Jordanians. Thus, it does not meet Jordan's global obligations under international treaties, most notably Articles (13) and (14) of the International Covenant on Economic, Social, and Cultural Rights, and Article (28) of the Convention on the Rights of the Child. The Egyptian Constitution of 2014 and its amendments acknowledge the right to education in general in Article (18), which states that 'Education is a right that is guaranteed by the state and it is compulsory in the primary

stage and the state shall work to make it compulsory in other stages'. It is understood from this text that this stipulation is not limited to its citizens specifically but includes all residents of the country.

The researchers note that the Jordanian Constitution provides the right to education within the limits of the country's capabilities and restricts it to Jordanians. It also only makes the basic stage of education free and compulsory. It does not, however, have a text similar to that in the Egyptian Constitution that outlines that the state shall work to extend free and compulsory education to other educational stages. The Egyptian Constitution, moreover, is praised for not restricting the right to education to Egyptians only.

Higher education institutions in the constitution

Each country, in addition to its constitutional entity and basic powers, has several institutions on which it relies to run its matters, direct its policies, and create a specific social order. Institutions are the means with which to organize society, production, and services, with the concept of state of institutions being the way in which to achieve political and economic progress; that is, to achieve democracy and various related freedoms (Al-Bahri, 2009; Al-Kiswani, 1983). Among these are educational institutions that run the affairs of the education system in line with the general policy of the state, which are expressed in its constitution as a basic legislative tool that reflects the supreme policy of the state (Eid, 2014).

Higher education institutions play an essential role in a given society because of their remarkable impact on the development of future generations. The association between a country's constitution and its institutions, such as educational ones, brings to mind a question about the extent to which these constitutional texts consider the issues and problems of education and to which these institutions enjoy constitutional protection. This is a natural question as the objective of the constitution, in this context, is to reflect the hopes and ambitions that communities and wider society pin on the educational system.

Another issue here is the extent to which constitutional texts related to education are implemented, as well as the necessary guarantees that are provided, if they are found to address these issues or any related aspects. Having a constitution that includes texts that showcase that the state cares for educational institutions is not enough, as the availability of guarantees that ensure their implementation in reality is also required.

There is no doubt that the constitution provides some protections for institutions in general, regardless of their functions. However, constitutions do vary in this respect. The Jordanian Constitution of 1952 and its amendments in 2020, for example, do not include higher education institutions when regulating the right to education and when making basic education compulsory and free.

Investigating Arab constitutions for the sake of comparison has shown that the Egyptian Constitution of 2014 and its amendments have a clear text outlining the independence of universities. Article (20) stipulates that

The state guarantees the independence of universities, scientific, and linguistic academies. It shall commit to providing university education in accordance with global quality criteria and developing free university education in state universities and institutes, as per the law.

This text refers to government university education. It moreover refers to private universities in the same article by stipulating that

The state shall encourage the establishment of non-profit community universities. It shall also guarantee the quality of education in private and community universities, their commitment to global quality criteria, qualification of their faculty members and researchers, and allocating a sufficient percentage of its returns to develop the educational and research process.

Article (21) further stipulates the protection of the rights of faculty members in universities, as follows,

Teachers and members of the teaching staff and their assistants are the main pillar of education. The state shall guarantee the development of their academic competencies and professional skills and care for their financial and moral rights, in order to ensure the quality of education and achieve its objectives.

Thus, it is necessary for constitutional texts to guarantee protections for universities that then include their faculty members and employees in a way that is commensurate with their major roles.

The researchers have found that the Egyptian constitution offers better regulations and guarantees for the protection of higher education institutions compared to the texts contained in the Jordanian Constitution. This is reflected in the former's protecting of the independence of higher education institutions and obligating them to develop and guarantee the quality of higher education and to qualify teaching and research cadres.

Judicial oversight of violations of constitutional protections of higher education institutions

The judiciary in general, and the Constitutional Judiciary specifically, are the centrepieces of the balance between various institutions that is based on the rule of law, which is the basis of the system of government in the state. The constitution is the text that establishes these institutions, defines their tasks and objectives, and controls the relationships between them. The constitution is a set of rules that must be applied and principles that must be respected. It therefore needs a constitutional judiciary that protects it from violations, maintains its stature, and imposes constitutional legitimacy throughout the state (Mekhnach, 2021).

The importance of judicial oversight to protect higher education institutions lies in the monitoring of legal texts and administrative decisions to ensure that they do not violate the constitution. Judicial oversight is effective as the judiciary enjoys independence, impartiality, and objectivity. It therefore constitutes an important guarantee for the protection of higher education institutions specifically.

Judicial oversight on the constitutionality of laws regulating higher education institutions

The constitutional judiciary is the basic guarantee used to protect the constitution from breaches and guarantee its sovereignty in the face of various authorities and the laws that they enact to maintain legitimacy, which is the basis of the concept of the rule of law. In its early stages, the constitutional judiciary faced strong opposition from a large stream of jurists under the pretext that it contradicts popular sovereignty and overtakes parliament's authority. Moreover, it has been described as a government of judges or one of retirees (Al-Husban, *Res Militaris*, vol.12, n°3, November Issue 2022

2012). By the time of this study, the constitutional judiciary has had a prominent position among other authorities in Jordan as a fourth authority that maintains balance, draws borders, and regulates the relationship between all other authorities to become one of the key pillars of the democratic system and the basis for building a state of institutions (Mekhnach, 2021).

Herein, judicial oversight over the constitutionality of laws is an important means of protecting public rights and freedoms, including the right to education, to prevent them from deviating from their basics or facing obstructions to their practice (Failakawi, 2018). Thus, judicial oversight over the constitutionality of laws is one of the most prominent aspects of constitutional protection for higher education institutions because this oversight on the constitutionality of laws regulating these institutions would provide effective protection for them.

Jordanian judicial oversight over the constitutionality of laws regulating higher education institutions

The Jordanian Constitutional Court is newly established. Article (58) of the Jordanian Constitution, which was amended in 2011, stipulates the establishment of a constitutional court by the Law. Article (59) of the Jordanian Constitution and its amendments, however, limit the powers of the Constitutional Court to oversight over the constitutionality of laws and regulations in force and the interpretation of the constitution. The Constitutional Court Law No. (15) of 2012 was issued to regulate the competence of this court, the most important of which is its oversight over the constitutionality of laws. The researchers note that, because the Constitutional Court has been newly established, it has not yet issued any ruling regarding the oversight of laws regulating universities, as no constitutional case in this regard has been filed before it.

Before the establishment of the Constitutional Court, it was within the jurisdiction of the High Court of Justice to rule on any appeals submitted by aggrieved parties requesting the suspension of the provisions of any temporary law or regulation that contradicts the Constitution, in accordance with Article 9/a/7 of the High Court of Justice Law no. (12) of 1992. It is worth mentioning that the High Court of Justice has been cancelled according to the Administrative Judiciary Law no. (27) of 2014, following the constitutional amendments of 2011 that established the Constitutional Court and made it the sole authority in terms of monitoring the constitutionality of individual laws.

As one example, seven private universities filed a lawsuit before the High Court of Justice requesting the suspension of the temporary Jordanian Private Universities Law No. (43) of 2001, the temporary Higher Education Law No. (41) of 2001, and instructions issued by the Minister of Education and Scientific Research based on Article (13/b) of the Higher Education Law No. (41) of 2001. Additionally, they requested the annulment of the two decisions issued by the Minister of Higher Education that involved establishing an internal control and auditing unit and would prevent private universities from appointing one of the owners or shareholders in the company as their president, based on the temporary Private Universities Law no. (43) that contradicted the constitution. The High Court of Justice issued ruling no. 267/2002 dismissing the case in form due to the expiration of the legal appeal period regarding suspending the temporary Jordanian Private Universities Law No. (43) of 2001 and the temporary Higher Education Law No. (41) of 2001. The court also dismissed a case in form regarding the annulment of the aforementioned instructions and decisions because it fell outside the court's jurisdiction. This was because the law had never given the court the jurisdiction to annul instructions, and the contested decisions were not administrative decisions

as they were limited to a request to inform the Minister of Higher Education about the fulfilment of these conditions in private universities (Qistas Publications: <https://qistas.com>).

Egyptian judicial oversight on the constitutionality of laws regulating higher education institutions

The legacy of the Egyptian constitutional judiciary has played an important role in protecting higher education institutions. The Egyptian Supreme Constitutional Court issued ruling no. 131/2002, which stipulates the unconstitutionality of Article (4) of Law no. (82) of 2000, which amended certain provisions of Law No. (49) of 1972 on the Regulation of Universities regarding the applicability of the provisions of this law to full-time professors who reached 70 years old before enforcing it. The said article stipulated that:

This law shall be published in the Official Gazette and shall come into force as of 1 July 2000 and its provisions shall apply to faculty members who have been appointed as full-time professors before the date of its enforcement.

The court, however, rejected this ruling, claiming the unconstitutionality of Article (121) of the same law, which stipulates that

All those who reach the age of termination of service shall be appointed in a personal capacity in the same college or institute until they become 70 years old, unless they ask not to continue working. Such period shall not be taken into account when calculating the pension and they shall receive a total financial remuneration equivalent to the difference between the salary plus other prescribed salaries and allowances and the pension, while combining the remuneration and the pension.

The court argued that this text did not transcend the discretionary authority of the legislator in regulating the work of Egyptian universities and faculty members, particularly in line with the state's objectives to develop universities and enable them to perform their scientific and academic related tasks. The court added that the aim was to acknowledge general rules that regulate the work of 12 Egyptian universities and more than 55,000 faculty members and did not include anything that affected the right of litigation.

The same ruling dismissed a challenge against the amendment of Article (19) of the Law on the Regulation of Universities on the grounds that it violated the independence of universities. This same article gave the Supreme Council of Universities the authority to 'impose general controls for distributing work among faculty members, full-time professors, and part-time professors in a manner that achieves full benefit from their expertise and continuous development of education at the undergraduate, graduate, and postgraduate levels'. The court believed that the article was harmonious with the content of Article (18) of the Egyptian Constitution regarding the state's guarantee of the right to education, the supervision of all aspects of education, and the guarantee of the independence of universities because this independence is closely associated with society's needs and functioning. The purpose of the powers entrusted to the Supreme Council of Universities is to impose controls over the various faculty members, full-time professors, and part-time professors, according to the conditions of the various university colleges and within the scope of the overall purposes of the law, which aims to develop university education and allow these institutions to perform their scientific and academic duties appropriately (The official website of the Egyptian Supreme Constitutional Court. Available at: <http://www.sccourt.gov.eg>).

The researchers of this study believe that the Egyptian Constitutional Court is intent on monitoring both the constitutionality of the laws regulating the work of higher education institutions and their harmony with the constitutional guarantees aimed at protecting these institutions. This is seen in the ruling of the unconstitutionality of a legal text that affected the legal position of full-time professors retroactively. The court also monitors the legislator's use of their discretionary power to regulate the work of Egyptian universities and guarantees that the latter does not part ways with the constitutional guarantees aimed at protecting these institutions and their independence.

The Egyptian Supreme Constitutional Court also issued an important ruling on Case No. 5541, dated 08 October 1984. It ruled that numerous legal texts were unconstitutional. This included Article (76) of the executive regulations of the Law on the Regulation of Universities promulgated by virtue of the Presidential Decree No. 809 of 1975, the third paragraph of Article (123) of Decree-Law No. 232 of 1959 regarding conditions of service and promotion for officers of the armed forces, Article (1) of the Presidential decrees No. (742) and No. (743) for the year 1975, and the decisions of the Supreme Council of Universities regarding the children of workers in the Ministry of Higher Education and the residents of remote governorates and areas and those in border governorates. The reason for this was that these articles granted the abovementioned groups admission to colleges or higher institutes without them having to obtain the required grades in high school or its equivalent. The court viewed these texts as giving an exceptional advantage to certain groups without a valid basis with reasons that were not related to the nature of this type of education, its objectives, and the requirements of enrolling within it. This then violated the principles of equal opportunity and equality before the law ([The official website of the Egyptian Supreme Constitutional Court. Available at: http://www.sccourt.gov.eg](http://www.sccourt.gov.eg)).

The researchers believe that this ruling offered a strong protection for higher education institutions through preventing the legislator from interfering and giving exceptions regarding the high school GPA requirements for prospective students' enrolment. The exceptions in the abovementioned case have been granted to students living in remote areas as well as the children of those working in the armed forces or in the Ministry of Higher Education. This is a clear violation of the constitutional right to education and the constitutional principles of equality before the law and equal opportunities.

Judicial oversight of constitutional violations of administrative decisions related to higher education institutions

The importance of judicial oversight of administrative decisions lies in maintaining the principle of the rule of law ([Al Shobaki, 2001](#)). The administrative judiciary makes sure, through the rulings that it issues in administrative cases, that any contested administrative decisions do not violate the provisions of the constitution or its various laws. The administrative judiciary, therefore, annuls administrative decisions that would violate the constitution and any related laws and awards compensation for the damage caused to the plaintiff because of them ([Al-Qabilat, 2018](#)).

Jordanian judicial oversight of constitutional violations made by administrative decisions related to higher education institutions

The Jordanian Administrative Court issued ruling No. 185/2015, dismissing a lawsuit filed by the president and board of trustees of a private university to challenge the decision of the Higher Education Council not to renew the term of the university's president. The lawsuit claimed that the decisions had violated both the constitution and the law. The lawsuit argued that Article (12/c) of the Jordanian Universities Law no. (20) of 2009 stipulates that the board of trustees of a given university appoints its president and then seeks the approval of the Higher

Education Council for such appointment. This article has been amended by virtue of Article no. (16) of 2010, in which the legislator gave the Higher Education Council the authority to appoint the president of a private university based on the recommendations of the board of trustees. Because the term of appointment of the first plaintiff, the president, had expired on 02 February 2015, the amended article is the one that should be applied. The contested decision of the Higher Education Council, therefore, does not contradict the provisions of the law (Qistas Publications. Available at: <https://qistas.com>).

This study's researchers believe that the Administrative Court's oversight of the decision of the Higher Education Council not to renew the term of the president of this private university indicates its intention to ensure that this kind of administrative decision is subject to the constitutional principle of the rule of law. That is why the court dismissed the case after ensuring that the decision conforms with the law.

Ruling No. 280/97 issued by the Jordanian High Court of Justice dismissed an appeal against the decision of a private university and the director of their admission and registration department not to accept the plaintiff as a law major in their university. The court also dismissed the appeal against the decision issued by the Council of Higher Education and the Minister of Higher Education to set the minimum admission rate within private universities for law majors to a 60% GPA in high school. This ruling explains that the decisions of the private university and the director of its admission and registration department were not administrative in nature because private universities are not public law persons. As for the decision of the Higher Education Council and the Minister of Higher Education, the court stated that it does not contradict Article 6/1 of the constitution, which stipulates that Jordanians are equal before the law and there is no distinction between them in rights and duties. The court explained that equality meant not distinguishing between individuals of similar legal capacities. It added that a given legislator has the right to define the legal capacities that achieve equality between individuals before the law because the Jordanian Constitution stipulates in Article 6/3 that the country would provide education within the limits of its capabilities (Qistas Publications. Available at: <https://qistas.com>).

The researchers note that the court monitored the decision issued by the Council of Higher Education and the Minister of Higher Education, which set the minimum admission rate of private universities for students attempting to study law as their major, in terms of its agreement with the provisions of the constitution that guaranteed the right to education and affirmed equality. The court concluded that the decision was consistent with the Jordanian Constitution because equality involved not discriminating between individuals if their legal positions are the same and that the legislator, when regulating the right to education, was allowed to set conditions by which it determined the legal positions with which individuals were equal before the law.

As for the Jordanian Supreme Administrative Court, it dismissed, in its ruling no. 144/2015, an appeal and upheld the ruling issued by the Administrative Court that dismissed the case that involved a request to cancel the decision of the Deans' Council at a public university to expel a student for a period of two semesters for distributing a leaflet to other learners that prompted them to refuse increases in tuition fees, as well as asking them to sign a petition inside the campus. The student claimed that the ruling issued by the Administrative Court violated the constitution and international conventions; however, the actual violations were not specified. The Supreme Administrative Court dismissed the appeal, ruling that the decision issued against the learner was correct and consistent with the disciplinary measures taken against students at public universities (Qistas Publications. Available at: <https://qistas.com>).

The researchers found that the Jordanian Supreme Administrative Court had also examined the reason for challenging the Administrative Court's ruling on the basis that it violated the constitution. The court, however, found that the plaintiff did not adequately explain the violation of the constitution that they had claimed and, therefore, the court ignored this reason. Furthermore, in dismissing the appeal, the court made sure that the administrative decision was harmonious with the provisions of the law.

Egyptian judicial oversight of constitutional violations within administrative decisions regarding higher education institutions

The Egyptian Supreme Administrative Court issued ruling No. 52595 dated 20 January 2021 regarding the admission of Egyptian high school and vocational school graduates to technical health institutes and technical institutes of nursing for the academic year 2017/2018. The admission was previously governed by the rules of geographical distribution, which meant that only students who had obtained their degree from the educational districts in which these institutions were located were allowed to enrol in them. This was an implementation of the decision of the Minister of Higher Education and Scientific Research, Chairman of the Supreme Council of Universities, No. 2437 of 2017. The court stressed that adopting this rule of geographical distribution as a basis for regulating the admission of students to universities and institutes would completely ignore the students' grades and, therefore, involved a type of discrimination that contradicted the country's constitution. The court added that geographical distribution involved the use of an arbitrary preference that affected the students' right to enrol in the type of education/institution that they wished to join by subjecting them to a legal rule different from that applied to their colleagues who had obtained the same GPA and had the same legal position but would be awarded a seat in a particular college on the sole basis of their residing in the geographical location required for admission, even if their GPA was much lower than that of their non-resident colleagues. Thus, this clearly reflected an invalid standard that was not suitable for use as a basis for selecting potential students who were competing to find a place in these colleges because it lacked objectivity and contradicted the principles of equality and equal opportunities guaranteed by the constitution ([The official website of the Egyptian Legislation Portal \(ELP\)](https://elpai.idsc.gov.eg/Judgements)). Available at: <https://elpai.idsc.gov.eg/Judgements>).

The researchers also note that the ruling of the Egyptian Supreme Administrative Court affirms that using geographical distribution as a basis for regulating the admission of students to universities and institutes involves a type of discrimination that contradicts their wider constitution. This is because it implies that an advantage is given on the basis of geographical location and would thus affect the students' right to education and to choose the college that they wish to enrol in. This constitutes a protection for higher education institutions through the controlling of administrative decisions that impose admission standards according to criteria that violate the constitution and infringe on the principle of equality.

It should also be noted that ruling No. 1998 of the Egyptian Supreme Administrative Court dated 14 August 1994, affirmed that the state was constitutionally responsible for providing university education within its actual capabilities. It therefore has the right to regulate student admission according to objective conditions through which the principles of equal opportunities and equality before the law are achieved. Admission to university education is thus based on one's grades obtained during their high school exams and the criteria of merit and excellence as purely objective selection criteria for university enrolment. The ruling reaffirmed the Egyptian Supreme Constitutional Court's ruling of the unconstitutionality of exceptions contained in several laws regarding the admission of students in a manner that was contrary to the aforementioned objective criteria ([The official website of the Egyptian Legislation Portal \(ELP\)](https://elpai.idsc.gov.eg/Judgements)). Available at: <https://elpai.idsc.gov.eg/Judgements>).

Additionally, ruling No. 51165 of the Egyptian Supreme Administrative Court, dated 05 January 2022, annulled the previous ruling of the Administrative Court of Assiut, which sustained the administrative decision to dismiss two students from the Faculty of Law at Assiut University who were suspended following the implementation of a contested administrative decision, that then enabled the two claimants to pursue their studies and continue to take their exams. The court explained that the contested administrative decision violated the provisions of the internal regulations of the English Language Division at the Faculty of Law, Assiut University, as issued by the Minister of Higher Education Resolution No. 2396 of 2016. The court stated that the Egyptian constitution guaranteed the right to education as one of the most important functions of the state. The state, therefore, when regulating this right must ensure the right of citizens to receive an amount commensurate with their inclinations and abilities, in accordance with the rules set by the legislator to regulate this and not to confiscate or detract from it. The court concluded that educational institutions must abide by the general principles of educational systems, as well as the relevant regulations, and should not violate them, to ensure the stability of legal educational positions for their students ([The official website of the Egyptian Legislation Portal \(ELP\)](https://elpai.idsc.gov.eg/Judgements)). Available at: <https://elpai.idsc.gov.eg/Judgements>.

The researchers then found that the Egyptian Supreme Administrative Court provides protection for higher education institutions by emphasizing that they have the right, according to the executive regulations of the Law on the Regulation of Universities, to set internal regulations for their study systems that consider the nature of study in certain disciplines. These internal regulations must be issued by virtue of a decision by the Minister of Higher Education. As such, the court decided to cancel the university's decision to dismiss the two students from the Faculty of Law because it did not violate their internal regulations.

Results & Recommendations

Based on this study, the researchers managed to draw up numerous results and recommendations.

Results

This study drew up several key results, the most important of which that the education system in Jordan faces numerous societal issues and neglecting these serve to weaken this system's ability to achieve its objectives and build a civilized society. To solve this, more attention to the education system is needed in this country's constitution as this provides the nation's supreme legal rules.

The Jordanian Constitution tackles some issues faced by the education sector, such as the state's provision of education within the limits of its capabilities and making elementary education free and compulsory. The Constitution, however, does not tackle higher education in terms of its institutions, in making it compulsory, or in regards to the independence of higher education institutions, which is done in other modern constitutions, such as the Egyptian Constitution.

The Jordanian Constitution limits the right to education to Jordanians and excludes non-Jordanians. This is one of its major drawbacks as it does not meet Jordan's global obligations under international treaties, most notably the International Covenant on Economic, Social, and Cultural Rights and the Convention on the Rights of the Child. The Egyptian Constitution, on the other hand, includes all individuals in its protection of the right to education, without requiring a certain nationality.

The judiciary in Jordan has taken part in providing protection for higher education institutions through the former High Court of Justice by monitoring the constitutionality of temporary laws and regulations prior to the establishment of the Constitutional Court under the constitutional amendments of 2011. So far, the Jordanian Constitutional Court has not issued any ruling regarding higher education institutions following its relatively recent inception. The Administrative Court, Supreme Administrative Court, and former High Court of Justice—before being cancelled by virtue of the Administrative Judiciary Law No. (27) of 2014—have also monitored the administrative decisions issued regarding higher education institutions to ensure that they do not violate the Jordanian Constitution. The Egyptian Supreme Constitutional Court has also taken part in monitoring the constitutionality of laws, while the Egyptian Supreme Administrative Court monitors all administrative decisions to ensure that they do not violate the provisions of the Egyptian Constitution, which does provide protections for higher education institutions and their employees.

Recommendations

Considering this study's main results, the researchers have formulated the following recommendations:

1. To include in the Jordanian Constitution explicit provisions to promote and develop the education system, as this would pave the way in establishing a more modern state, and make use of constitutional provisions, as well as both Arab and global expertise, in providing for the protection of higher education institutions, their independence, and overall development.
2. To amend the Jordanian Constitution to meet Jordan's obligations under international treaties in terms of providing the right to education for all individuals without requiring them to possess a certain nationality or meet any other conditions.
3. The constitutional judiciary must perform its duty of protecting higher education institutions due to their important role in wider society. This will enable them to disseminate knowledge, conduct scientific research, and serve the community. This can be done by exercising effective control over legal texts and their adherence to constitutional guarantees to protect the public's right to education and higher education institutions.
4. To develop the administrative judicial system to ensure, through its effective oversight, that all administrative decisions related to higher education institutions do not violate any constitutional provisions, as well as ensure the independence and protection of these institutions.

Conclusion

Higher education institutions are among those societal systems that play essential roles in wider society because of their remarkable impact on the future development of ongoing generations; hence, they deserve individualised care and protection. After comparing the Jordanian and Egyptian constitutions, this study found that these protections often vary from one constitution to another. The researchers found the necessity of amending the Jordanian constitution to provide sufficient protection of higher education institutions, their independence, and overall development.

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