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The Role of the Jordanian Constitutional Legislator in Protecting the Essence of Right A Comparative study* Second researcher Senior Researcher

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Abstract

International treaties and constitutions guarantee that the fundamental nature of rights and freedoms is unaffected by any bias or deviation from them, preventing the law that governs rights and freedoms and establishes their controls from undermining the value of those rights and freedoms' constitutional consecration. The essence of right and freedom cannot be restricted or lessened for any reason since it is distinct from the right and freedom themselves. The study was divided into two parts, the first dealt with the essence of the right, and the second dealt with the constitutional guarantee of the essence of the right. The study concluded that each of them has given its protection to the essence of right and freedom, and the constitutional texts have guaranteed it, although the German constitutional legislator in Article (18) of the Basic Law has authorized the loss of some rights. The study recommended that the Jordanian judiciary devote its control to the essence of the right, and also recommended activating the role of jurisprudence in studies on the protection of the

essence of the right.

Keywords

essence, right, freedom, prejudice, guarantee

Introduction

Human rights and fundamental freedoms are natural rights deriving from the natural law founded in human thought, according to the preamble of the Universal Declaration of Human Rights, which was adopted by the United Nations General Assembly in 1948. The preamble stipulated that: " All people are born free and equal in dignity and rights, and they are endowed with reason and conscience , and they must treat one another in a spirit of brotherhood " (The Universal Declaration of Human Rights, 1948, Article (1)). This text means that human rights and basic freedoms are linked to his moral being as a human being, as is the physical connection between the head and the body. Therefore ,it is not permissible for the authority that undertakes to regulate rights and freedoms to undermine their essence or strip them of the purposes of the constitution.

The importance of the study

The study's significance seems to rest on how the German and Jordanian constitutions defend the fundamental principles of freedom and rights, as well as whether or not such documents act as a constitutional safeguard against the exercise of political authority infringing upon those principles.

The problem of the study

As the law is the only instrument that may be used to define or regulate rights and freedoms, it is the regulatory authority's responsibility to do so. The laws that govern rights and freedoms, however, may jeopardize the fundamental nature of the rights and freedoms of those who are subject to the rules of law under pressure from realistic circumstances or as a result of a deviation from the constitutional legislator's intentions, whether on purpose or unintentionally. The constitutional language, which applies to all authorities and forbids them from doing so, forbids them from violating the fundamental nature of rights and freedoms through legislation, regulatory decisions, personal choices, or material activities.

Structure of the study

reach the objectives of the study , we have been accustomed to dividing it into two parts . As for the first section , we devoted it to: what is the essence of the right , while the second section we devoted it to :the constitutional guarantee of the essence of the right.

The essence of the truth

International constitutions and conventions guarantee the rights _ public and individual freedoms . Rights are plural of right , and the right in jurisprudence according to the personal doctrine (theory of will ,)whose proponents are "Windscheid", "Gierke" is: " a voluntary power or power conferred by law upon a specific person(". Abdullah, 1978, p. 8 .) According to the objective doctrine (interest theory), Which was first advocated by the German Ihering . Abd al -Razzaq al-Sanhouri defined it as " : a legally protected interest ("Ghanim, 1966, p . 13). According to the mixed doctrine that combines power and interest , it is : "ability." Voluntary is given to a person in order to achieve an interest," or he is: "a protected interest that you watch over its realization and defend it with a willful ability" (Al-Hilli ; Al-Zubaidi, 2007, p. 28). It was defined by the Belgian jurist "Daban" It is : "exclusivity of a certain value that the law grants to a person and protects him (". Friday, 1977, p. 293 .)We tend to hold the view that the right" :is a privilege granted by the law to a specific person , in order to achieve a legitimate interest for him within the limits and protection of the law(" Al-Zoubi, 2017, p. 69.)

As for liberties, it is the plural of freedom, and freedom is: "the absence of hardship that an individual suffers from within or without him " (Al-Shukri, 2011, p .)18 .And from the jurisprudence of those who believe that the right is not a right except with the freedom to enjoy it, and for this reason the right was linked to freedom with the term human rights and freedoms (Tuaimat , 2006, p-30 .p. 31). International instruments did not differentiate between rights And freedoms, until they became All freedoms are rights in those instruments . And freedom ,as we see it , is the elixir of life , and it is the state of a person who is not owned and linked to his right and ability to choose, without fear or coercion.

And every thing has an essence " : The world with all its parts is a creation, and it is a composite of essences and accidents , and essences are what exists logically by itself , and they are either complex like a body , or simple like essence , i.e. the indivisible part(the individual essence) (Al-Amadi, 1993, p. 110) . Therefore, if everything has an essence , then the truth has an essence . What is the essence of the right ,what are its foundations, and what is its relationship to the public order?

The concept of the essence of truth

The law that organizes rights and freedoms , and sets their controls , is not permissible to undermine the essence of those rights and freedoms , because by doing so, it will distort them and lose their constitutional consecration value . Therefore, the essence of Rights and freedoms It places an obligation on the legislative authority to ensure that the legislation it issues and regulates rights and freedoms does not lead to a gross violation of those rights and freedoms that empties them of their value . and its content. Accordingly, the violation that is

directed to the essence of rights And freedoms is considered the most serious violation because it undermines the right and freedom in their entirety.

The idea of substance sparked widespread controversy among philosophers such as John Locke , Barclay , and David Hume . Essence metaphysics. And Al - Jawhar : "singular of Jawaher ", which is the reality of a thing and its essence or its origin and substance , and Al-Jawhar is a name attributed to "Essence " and it is neither formal nor accidental . Men , " what good are they " (Omar, 2008, p. 425).

Therefore, if the essence of a thing is its essence and its core , then the essence of right and freedom is that which no public benefit can limit or justify limitation . (Kiwa , 2017 , p. 142). In order for it to be possible to say the essence of the truth , it must be comprehended " , the existence of a thing lies in its comprehension (" Berkeley , 1954, 179 .)Essence differs from presentation , and Ibn Sina believes that: "Every entity that is not in a subject is a substance , and every entity that has substantive substance is a subject . " (Ibn Sina, 1331 AH, p. 325).

Essence is unlike appearance, so they are contradictory. Essence is a hidden element, while appearance is an apparent element, and essence is deeper than appearance, and essence is based only on itself, as it does not depend in its foundation on something else. Essence is the product of the inherent qualities of a thing, while appearance is the product of external qualities that are revealed by the senses (Rosenthal ; Yudin, 2019, p. 172.)

As a result, we might characterize the core of a right as a fundamental value that is distinct from the right itself, bestowed onto it with the individual's protection by the law. The body that controls rights and freedoms may impede or limit them.

pillars of the essence of truth

Referring to the definition of the right , it is possible to derive the foundations of the essence of the right, by relying on three things, the first of which is exclusivity of a value, and the value that can be monopolized may be tangible, such as the right of ownership, or it may be intangible, such as the rights of the author and the melodies of the composer (Al-Anbaki , 1999, p. 37). The second is that the monopoly of that value enjoys the protection of the law, the basis of which is domination and exigencies together. And authoritarianism means the ability to dispose of the thing that is the subject of the right, while requirement means respecting others, because the right holder monopolizes the value legally granted to him as the owner of the right , by refraining from every assault on that value (Abdul Rahman, 1976, pp. 20-22). The third is that the value subject to exclusivity is worthy of the protection of the law, so that it does not conflict with the interests of the group, in order to achieve a kind of balance between the individual interest and the interest of the group (Al- Anbaki , 1999, p. 38). monopolizing their rights.

The relationship of the essence of the right to the public order

Once the constitutional judge concludes that the legislation or procedure has undermined the essence of the right or freedom, then he does not have to stop at the rest of the challenges in the legislation, because these challenges will not be of any benefit, because they are less than the degree of prejudice to the essence of the right in question. Or the essence of the freedom in question, and given the seriousness of the constitutional violation represented in the violation of the right or freedom, the issue of the constitutional judge verifying that the legislation does not prejudice the essence of the right or the essence of freedom is considered one of the issues related to public order, which he has the right to address and raise on his own. without a request by the parties to the case, through his interpretation of the right or freedom itself.

Judicial control over the essence of right and the essence of freedom is a control related to public order, and it is a control over the work of the authority that undertakes the regulation of rights and freedoms. The essence of the right makes the authority entrusted with regulating rights and freedoms obligatory, so that the legislation regulating those rights and freedoms should not empty them of their content or distort them, to the point of losing the purpose of constitutionally enshrining them (Xavier, 2014, p. 23).

or the essence of freedom cannot be justified. If the right or freedom can be restricted, but the essence of either of them cannot be prejudiced, then it is considered as a violation of the essence of the right and freedom to restrict the right of ownership in a way that empties it of its content or establish a previous censorship on freedom of expression. In order to verify that the procedure does not prejudice the essence of the right or freedom, the right or freedom related to the procedure must be determined. The decision to demolish part of a family residence raises the question as to whether it is related to the right of ownership or the right to a decent life. If it does not affect the essence of The right to property, for it inevitably touches the essence of the right to a decent life (Al-Karrai, 2021, p. 19.)

The jurisprudence of the United Nations Special Committee on Human Rights has established that it is not permissible to impede the essence of the right, with the restrictions that are placed, and the committee has indicated that the essence of the right is the guarantor that: "The relationship between the right and the restriction and between the rule and the exception does not change," by making the principle an exception and making the exception is the principle (Al-Majri, 2017, p. 77.)

The committee has attached special importance to the essence of the right, and indicated that defining rights and freedoms should not amount to their execution. With regard to freedom of movement, the Committee held that the restrictions that may be imposed on the rights protected under Article (12) of the International Covenant on Civil and Political Rights must not invalidate freedom of movement, and it is subject to the condition of necessity stipulated in Paragraph

(3) of the same Article, and the extent of the need for harmonization and the rights recognized in the International Covenant on Civil and Political Rights (Civil and Political Rights Committee, 1999, Commentary No. 27)

And applying the judicial control over the essence of the right, the European Court of Human Rights has affirmed, in the case of the killing of people by GDR soldiers, who tried to pass between the two German states, by saying that: "The practice followed by the GDR, with regard to border control, cannot be protected, because it ignores flagrantly the basic rights, especially the right to life, which is the highest value within the scope of human rights at the international level... This practice, which emptied of its essence the legal legislation on which it was supposed to be based, and which was imposed on all state apparatuses, including In that is its judicial apparatus" (Al- Hamrouni , p. 33). The court proceeded with the case of " Kovaļkovs c. Lettonie " That he considers having to pray and read religious books while contemplating the presence of other detainees is an inconvenience that can not be avoided in prison, but does not violate the essence of an individual's right to manifest his religion (European Court of Human Rights, 10/29290 .)With regard to the right to religious freedom, the court stated that the essence of that freedom is the prohibition of forcing anyone to convert to a particular religion, and this does not include convictions and the practice of religious rites, which can be limited without prejudice to the essence of religious freedom" (Al-Majri ,1979 ,p. 79.)

The constitutional judge's control over the essence of the right, and ensuring that the legislative authority does not prejudice it, in the legislation it issues that regulate rights and freedoms, based on its constitutional authority and competence in that matter, is considered the solid core of the judicial protection of rights and freedoms. Oversight of the constitutionality of laws will not work if the essence of right and the essence of freedom are not under the oversight of the constitutional judiciary. It is an oversight that is at the heart of the constitutional judge's work, and it is his first priority, because there is no point in guaranteeing rights and freedoms constitutionally, if the legislative authority does not refrain from impeding the exercise of rights and freedoms, or hindering the use of them, or diminishing them.

The constitutional guarantee of the essence of the right

The international constitutions' guarantee of public and individual rights and freedoms did not stop at their constitutional consecration. Rather, that guarantee extended to ensure that the essence of those rights and freedoms is not affected by the legislation issued by the legislative authority. Comparative constitutions express this guarantee of constitutionality in different expressions, as some of them stipulate: "The essence of the content of the basic right shall not be prejudiced" (German Basic Law, Article .))1/1 Some of them stipulate: "Not diminishing the scope of the essential content of the right " (Article (18/3) of the Constitution of Portugal) and some of them stipulate: "Respect for the basic content of rights and

freedoms "(Constitution of Spain, Article (53/1)). Some constitutions used the expression: "not affecting the essence of rights or affecting their origin "(Jordanian Constitution, Article (128/1)) and some stipulated: "not restricting rights in a way that affects their origin or essence" (Egyptian Constitution ,Article (92)). And there are some constitutions that confer sacredness on the essence of the right: "The essence of fundamental rights is sacred to the utmost extent" (Constitution of Switzerland, Article (36)).

The essence of the right in the Jordanian constitution and the German Basic Law

The Universal Declaration of Human Rights is an indication of the era of international organization, and is distinguished by its comprehensiveness and global character over the previous charters. The Declaration guaranteed the essence of the right : Everyone has the right to enjoy an international social order in which the rights and freedoms set forth in this Declaration are fully realized (" Universal Declaration of Human Rights , 1948 , Article 28 .)And " No provision in this Declaration may be interpreted as inclusive. confer on any state or group, or any individual, any right to engage in any activity or any act aimed at the destruction of any of the rights and freedoms set forth in it (" Universal Declaration of Human Rights , 1948 , Article 30 .)

Other international covenants have surrounded the essence of the right with protection, as this article (3/19) of the International Covenant on Civil and Political Rights states" : The exercise of rights to (freedom of expression) entails special duties and responsibilities . Accordingly ,it may be subject to some restrictions, but provided that they are specified by the text of the law and are necessary (a) to respect the rights or reputations of others, (b) to protect national security, public order, public health or public morals .From this provision it is clear that the restriction of rights And freedoms can only be by law and by the necessities required to protect national security , maintain public order, public health and morals, and respect the rights of others, provided that it is not permissible that restriction undermines the essence of those rights and freedoms. The right to freedom of expression , for example , can be restricted as needed . To respect the rights and dignity of others, but not to prejudice his origin .Referring to the International Covenant on Economic, Social and Cultural Rights , we find that Articles 1 to 15 confer protection on the essence of the right to development , especially Article 11 of which relates to the right to enjoy an appropriate and adequate standard of living .

The Basic Law of the Emirate of Transjordan of 1928, the Constitution of 1946, and the Constitution of 1952 did not address the essence of the right, just as the constitutional amendments of the years (1958, 1965, 1973, 1974, 1976, 1984) did not address. To protect the essence of the right, however , the Jordanian constitutional legislator has protected the essence of the right in the constitutional amendments of 2011 by stating that: "The laws issued under this Constitution to

regulate rights and freedoms may not affect the essence of these rights or affect their basics(" Jordanian Constitution, Article 128/1.)

In application of that text, the Jordanian Constitutional Court ruled : "Since the efficient guarantor of the fairness of all legislation in force, and the empowered watchdog over its non- contravention of the provisions of the Constitution, is the Constitution itself, and to achieve this oversight, the legislator established the text of Article (128/1) of the Constitution. It serves as a beacon without which the legislation in force cannot be upright as a solution or a contract , and its performance is not regulated. This ruling came as a result of a constitutional amendment and the birth of a qualitative civilizational shift in 2011 , in addition to the fact that those working in the legal field, whether from jurisprudence and judiciary, believe that this text A teacher, and even a guiding light, that prevents the laws that the legislator sets to regulate rights and freedoms from affecting those rights or affecting their basic components(" Jordanian Constitutional Court, Judgment No. 7 of.)2018

In Germany, the Basic Law of Germany of 1949 and amended in 2012 guaranteed the essence of the right and clarified That human rights are non-derogable and irrevocable, "Accordingly, the German people recognize non-derogable human rights as a fundamental basis for coexistence in every society, and for peace and justice in the world" Basic Law, 1949, Article (1/2 .)) In addition, in Article (2/19) it stipulates that: "It is not permissible in any way to prejudice the essence of the content of the basic right ." This last text is what the German jurist Peter Häberle considered the most effective and successful text in the world. He also looks with great respect at the idea of preserving human dignity and sees in it a warning that has resonated throughout the whole world .Deutscher Bundestag, 2022, In Wikipedia) .)this The German constitutional legislator protected the essence of the right of legal persons. " Fundamental rights also apply to legal persons within the state, and to the extent permitted by the nature of these rights ("German Basic Law, Art.) 3/19 .

However, the German constitutional legislator has authorized the issue of losing basic rights in the event of their misuse" , anyone who abuses the freedom of expression, especially the freedom of the press (paragraph (1) of Article 5) , or the freedom of education (paragraph (3)of Article 5) freedom of assembly (Article 8), freedom of association (Article ,)9 secrecy of letters, post and communications (Article 10), the right of private property (Article 14), or the right of asylum (Article 16a) , in fighting the regime The free democratic foundation loses the enjoyment of these basic rights, and the Federal Constitutional Court issues a ruling on this loss and its extent " (Basic Law, 1949, Article (18 .))

What we notice on the approach of the German constitutional legislator is that in Article (18) of the Basic Law he legislated the loss of some rights, while in Article (19) he established the principle of inadmissibility of prejudice to the essence of the right. How is it possible to reconcile these two matters in the relationship between the right and the limits set by the authority for that right if those limits

would overthrow the essence of the right ? There are rights that, by losing them , lose their essence. The right to the safety of the body loses its essence in harming that body through torture that may be practiced by the representative of the authority .This was confirmed by the Constitutional Court in Switzerland when it monitored the essence of the right, and among its jurisprudence in this field, its jurisprudence related to the essence of the right to life, saying: "The right to life is distinguished from other manifestations of personal freedom, in that every limitation imposed on it represents at the same time an infringement on its essence which enjoys absolute protection, and therefore the right to life cannot be subject to any limitation, and it is inconceivable that it is the subject of a limitation stipulated by the law and justified by the public interest" (Al-Majri, 1979, p .)79 .In this case, it is not possible to state the proportionality between the limit set by the authority to regulate the right and its obligations, because the German constitutional legislator has used the term (loss of rights) , and the loss is by a decision by the Federal Constitutional Court . All , although the legislator had left it to the court to determine the extent of the loss of that right, whether in terms of value or in terms of time, but in the end he spoke of the loss of the right in a commanding text related to public order. And if we believe that the German constitutional legislator has linked and stipulated the loss of those rights, which do not include the right to life, by using them by the person to fight the state system, giving priority to the general national interest over the individual interest.

What we see is that the approach of the Jordanian constitutional legislator is more conciliatory than that of the German constitutional legislator , when he surrounded the essence of the right with legal protection, and avoided delving into the issue of losing rights and freedoms, contenting himself with referring to their organization and identification according to the requirements that require that. For example, we find that the Jordanian constitutional legislator has provided for the protection of personal freedom (Jordanian Constitution, Article (7/1)) and permitted its restriction in certain cases in accordance with the law, but it did not stipulate the permissibility of absolute deprivation and loss of it , nor did it permit the deportation of a Jordanian About the kingdom's home under any circumstances (Article (1/9), just as the legislator guaranteed freedom of opinion and made its limit not to exceed the limits of the law (Jordanian Constitution , Article (15/1) without affecting its essence.)

The constitutional judiciary in Germany played an important role in protecting the essence of the right, as it was concerned with monitoring the essence of the right, so that it did not accept the argument that the requirements of national security should prevail at the expense of basic rights and freedoms, and it considered that the authorization of the armed forces in accordance with Article 14.3 of the Aviation Security Act issued on January 11, 2005 for the purpose of shooting down an aircraft carrying armed men threatening the passengers of the aircraft following the events of September 11 in America that would affect the essence of the right to life of the innocent people on board , and those innocent

people who may be affected by The fall of the wreckage of the plane , as it was considered that this procedure is not compatible with the guarantee of human dignity Bundesverfassungsgericht, 2006, 1 BvR 357/05) _ .

The authorities concerned with protecting the essence of the right

The constitutional legislator's speech is addressed to the administration as well as the derived constituent authority, the legislative authority, and the judicial authority. It is not intended to prejudice the essence of the right. The methods and policies adopted by all of these authorities must be based on the constitutional text's intended purposes.

With respect to the derived constituent power , When the original constituent authority finishes drafting the state's constitution , its work ends, as it is an authority that creates the constitution and establishes the state and is not bound by rules prior to its existence, so its work is creative, and its work may be dangerous to state institutions (Al-Shawi, p . A power that then grants the power to amend the constitution. The constitution grants authority to the derivative constituent authority, which must, each time it makes constitutional amendments ,respect the forms and procedures imposed by the constitutional document . The constitution does not prevent the deriving constituent authority from intervening and making constitutional amendments . However, it obliges them to protect the essence of the right for those addressed by the legal rules.

In order to ensure respect for the rules of the constitution and respect for the rights and freedoms guaranteed by it, and not to prejudice the essence of those rights and freedoms, the Jordanian constitution required the approval of a two-thirds majority of the National Assembly "the Senate and the House of Representatives "(Jordanian Constitution, Article 126), and the Basic Law of Germany required the approval of two-thirds of Parliament The " Bundestag " and two-thirds of the Bundesrat "the Council of States("Basic Law of Germany , Article (79/2)) , which is a majority different from the majority for amending ordinary laws . This is evidence of the status of the essence of right and freedom in the minds of the founders of the constitution .However, the Basic Law of Germany required any constitutional amendment not to prejudice the requirements of Article (1) related to human dignity and the binding force of his basic rights, and Article (20) related to constitutional principles and the right to resist anyone who tries to threaten the constitutional system . It stipulated that“ :No amendments to this Basic Law affecting the division of the Federation into Länder, or the principled participation in the legislative process, or the principles contained in Article (1) and Article (20) shall be accepted (" Basic Law of Germany , Article 79 /3) , and there is no such text in the Jordanian constitution.

As for the legislative authority, the ordinary legislator intervenes in regulating the rights and freedoms guaranteed by the constitution, and he must take into account the constitutional controls when he intervenes, and not restrict

rights and freedoms except within the limits of necessity and proportionality and for reasons required to protect national security, public order, public health, or morals. General or respect for the rights of others , but it is not permissible for the ordinary legislator to prejudice the essence of rights and freedoms, as the constitution prohibits only the amendment that undermines the acquisitions of rights and freedoms or that which undermines their guarantees or their essence (Kolb, 2014, pp305-330 .)The constitution guarantees non-regression in the field of rights and freedoms, as well as non-violation of their essence.

administration must respect the essence of the right , and avoid every attempt to undermine it , whether in its legal or material actions . It is a constitutional priority in the preparation of draft laws to ensure respect for the constitutional text that surrounds the essence of the right to protection. Due to the seriousness of the role played by the administration in the field of rights and freedoms, it may be useful to subject the restrictions it places on rights and freedoms to prior control to ensure that they do not prejudice the essence of the right.

As for the judiciary ,the judiciary institutions in Jordan and Germany constitute an essential guarantee for the protection of the essence of the right. The judiciary in Jordan and Germany has enshrined the principle that right and freedom are the rule and defining them is the exception. One of the rulings of the Jordanian Court of Cassation, in which it dealt with the protection of the essence of the right, said“ :The authority given to the legislator to regulate the use of these rights according to the laws can be considered as an authorization for the legislator to regulate the use of rights , in a manner that does not affect their essence . That is, the authority of the legislator may not It undermines the controls and rights stipulated in the constitution , and that this authority of the legislator may not go beyond regulation to squandering or confiscating the right in any way” (Jordanian Discrimination ,Judgment No. 3578/2017.)

And the German Constitutional Court went to protect the essence of the right even if the right holder wished to waive it, so it went to the unconstitutionality of Article 217 of the Criminal Code related to the person’s right to request the assistance of associations or people to help him commit suicide, because of its incompatibility with the general right to life of a person who wishes in suicide. The court also held that the state should not allow individuals to benefit from offers of assisted suicide abroad, and the state should ensure the necessary protection of basic rights in accordance with Article (1/3) of the Basic Law ”(Bundesverfassungsgericht , 2020, Urteil Nr. 12/2020) .

The essence of truth is not subject to restriction

The phrase" democratic society "imposes more Among the obligations of the state , which must establish evidence that restrictions do not weaken the performance of a democratic society, and there is no specific model for a democratic society that respects the human rights stipulated in the United Nations Charter and

the Universal Declaration of Human Rights (Siracusa Principles, 1984 .)Accordingly, if the competent authority to regulate rights and freedoms has the right to restrict them according to necessity , linking them to a legitimate goal, if that goal achieves a legitimate goal represented in protecting the rights of others, protecting national security, or preserving public order, public health, or public morals. However, it may not prejudice the essence of rights and freedoms. Hence, that authority must link between the legitimate goals it aims for and those restrictions it imposes in the texts that regulate rights and freedoms, and make sure that the relationship between the legislative text and the limits on rights and freedoms dissolves within the framework of the constitutional text that guarantees right and freedom , In the sense that it establishes the measures it takes within the limits of the constitutional contents and objectives, to ensure that there is no retreat in rights and freedom on the one hand, and that it is free from prejudice to the essence of right and freedom on the other hand.

The relationship between the right to life and the death penalty, for example, or the relationship between the essence of the right and the rights for which a special definition has been mentioned, however, raises a problem that can only be resolved by examining the connection between the authority's obligations and its limitations. This indicates that, as long as the fundamental nature of the right is not breached, the authority must weigh appropriateness, proportionality, and need before limiting rights and freedoms.

Conclusion

The essence of the truth is based on itself, as it does not depend in its foundation on something else .It is a hidden element deeper than the truth itself . The essence of the right is the guarantor to protect the right from the restrictions that the authority places on it. The legislation issued by the authority and regulating rights and freedoms may not lead to a gross violation of those rights and freedoms that empties them of their value and content . Accordingly, and after the study dealt with an explanation of the essence of the right and showed the extent of its constitutional guarantee in the Jordanian Constitution of 1952 and the German Basic Law of 1949, it reached the following conclusions and recommendations

Results

- The Jordanian and German constitutional legislators guaranteed the essence of the right, and each of them established the principle that it is not permissible to prejudice the essence of the right.
- constitutional legislator permitted in Article (18) of the Basic Law the loss of some rights, at a time when he established the principle of inviolability of the essence of the right , and this creates a problem in interpretation and application and burdens the judiciary.
- The constitutional discourse related to the inadmissibility of prejudice to the

essence of the right is addressed to each of the derived constituent authority, the legislative authority, the judicial authority, and the administration.

- The essence of the right does not accept restriction ,and the authority that regulates rights and freedoms and sets limits for them must base the measures it takes within the limits of the constitutional contents and objectives, to ensure that the essence of the right and freedom is not compromised.
- The German judiciary had a major role in perpetuating the idea of protecting the essence of the right ,to the point that it did not accept the claim of giving priority to the requirements of national security at the expense of basic rights and freedoms .As for the Jordanian judiciary, the idea was not fermented sufficiently, although it was exposed to it in some of its rulings.

Recommendation

- We hope that the German constitutional legislator will amend Article (18) of the Basic Law or cancel it, so that it does not remain an obstacle to the implementation of Article (19) of the same law.
- We urge the Jordanian constitutional and administrative judiciary, as well as the ordinary judiciary, to shed light on protecting the essence of the right and to give it sufficient care in its rulings and decisions.
- We urge the administration in Jordan and Germany to support the essence of right and freedom, and to bear in mind not to prejudice it when carrying out its legal and material actions.
- We urge the Jordanian jurisprudence to give the essence of the right the necessary care through study and research to consolidate the idea in all branches of law, especially in the criminal and tax fields because of their impact on human dignity.
- We hope to adopt the idea of protecting the essence of the right in national forums, conferences, and seminars in Jordan, to spread legal awareness about it, as a step towards its consolidation in judicial rulings and in the minds of those working in the field of law and the public.

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