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CONSTITUTIONAL REVIEW OF LEGISLATION REGULATING ARTIFICIAL INTELLIGENCE: BALANCING INNOVATION AND THE PROTECTION OF FUNDAMENTAL RIGHTS

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Abstract. The old question about how constitutional judges should look at legislation is now an urgent question: how to review legislation that governs a fast moving and opaque technology, while the constitution itself promises fundamental rights and is a commitment by the state to promote scientific research and innovation? This article addresses this question by analysing the two comparatively. It compares the European Union's risk-based approach (Regulation (EU) 2024/1689 as amended by Regulation (EU) 2026/1744); the United States where the focus has moved from legislation to litigation; and the soft law/principles-based approach in the Arab world. It then explores key decisions made in Germany, France and the Netherlands between 2020 and 2025, as well as by the Court of Justice of the European Union and the European Court of Human Rights. These courts, the article argues, did not put the technology itself on trial; they examined the conditions in which it is used, and in this way they converged on a four-part test: the lawfulness and precision of the laws, the principle of graduated proportionality, procedural safeguards (especially meaningful human control and a right to explanation), and temporal limitation combined with independent examination. The test is then carried out in relation to the 2005 Constitution of Iraq and on some recent rulings of the Iraqi Federal Supreme Court, and concrete recommendations are provided for the Iraqi and Arab legislators, as well as for the Iraqi Federal Supreme Court.

Keywords: constitutional review, artificial intelligence, proportionality, risk-based regulation, automated decision-making, Iraqi Federal Supreme Court, digital constitutionalism.

1. Introduction

1.1 Background and significance

Artificial intelligence can no longer be considered a technical issue that can only be left to engineers. It's a constitutional issue, because it alters the exercise of power, public and private, over individuals. The question is not just whether it works or not when an algorithm is used to determine whether a person is eligible for a loan, a job or a welfare benefit, or whether a smart camera recognizes protesters in a public square. It's about whether it could be used at all, and under what conditions. Giovanni De Gregorio has demonstrated that what is now being termed 'digital constitutionalism' is a response to the centralisation of power in the hands of digital actors and has altered the dynamics between rights and powers in the 'algorithmic society' (De Gregorio, 2022). The question is all the more pressing in Iraq. According to recent Iraqi studies, there is a clear gap in the legislation to regulate the administrative decisions coming from intelligent systems (Abd, 2025) and that the algorithm can become an influential actor in the constitutional state itself if there are no clear frameworks (Hashim, 2026).

1.2 Research problem

This article is concerned with a structural tension between two constitutional demands. The legislature is expected to accommodate technological innovation and to facilitate it, but it is not free to take away the essence of rights and freedoms. The central question is then what standards can a constitutional judge use to review AI legislation in such a way that this does not become an impediment to legislation but also does not turn into a rubber-stamping of what the legislature decides? It raises two sub-questions: What have comparative courts actually done with such laws, and how much can the Iraqi constitutional order accommodate the standards that the comparative courts have established?

1.3 The aims, method and scope are as follows:

The article aims to create an analytical matrix for the review of AI legislation from a constitutional perspective based on case law from other countries, and to suggest practical recommendations to the Iraqi and Arab legislatures, as well as to the Federal Supreme Court. It includes an analytical reading of the constitutional texts as well as the laws and decisions that have been issued in the European, American and Arab system, and then in Iraq. It is scheduled to operate between 2020 and October 2026—with the majority of the timeframe being October 2020 to October 2023. Substantively, it only applies to constitutional review, which is closely related to the review by supranational courts; civil liability for damage caused by AI is not in its scope of application.

1.4 Literature review and contribution

Some recent studies on Iraq have focussed on specific aspects of the topic. Abd explored the legal limitations in the administrative decision-making process of AI and concluded that there is a legislative gap in AI's regulation of the administrative decision-making process (Abd, 2025). Hamdan has written about the right to privacy in an AI context from a comparative constitutional perspective (Hamdan, 2025). Badai examined constitutional protections of freedom of expression in the era of digital media (Badai, 2026), and Hashim discussed the future of the constitutional review in the context of technological developments (Hashim, 2026). De Gregorio and Celeste theorise digital constitutionalism as an adaptation of modern constitutional principles to a digital society (De Gregorio, 2022; Celeste, 2019), and Kaminski has written an influential critique of the risk-based approach to AI regulation (Kaminski, 2023). While these works are valuable, none of them suggests a specific judicial test that would be applicable to AI legislation in Iraq and none of them relates the theory of proportionality with what comparative courts have done in this area and with the emerging case law of the Federal Supreme Court. This article aims to close this gap by suggesting a four-question test, based on Article 46 of the Iraqi Constitution and derived from comparative jurisprudence.

1.5 Structure

In Section 2, the conceptual and constitutional underpinning of AI regulation is presented. In Section 3, attention shifts to constitutional review and the processes of balancing innovation and rights and to the Iraqi constitutional order. The findings and recommendations are included in Section 4.

1.6 The conceptual and constitutional framework of AI regulation.

The premise of constitutional review is a clear object. This section thus clarifies the term legislation regulating AI and introduces the principal models of legislation, as well as the elements of the constitutional yardstick with which legislation is measured.

2.1 Legislation regulating AI: concept and models

2.1.1 The concept

Here are referred to two families of norms. The first are horizontal framework laws, which apply to the development, placing on the market and use of intelligent systems as a whole, with the EU AI Act as a prime example. The second type are the 'sectoral laws', which empower a public body to use a particular algorithmic tool, perhaps police data being analysed using an

algorithm or an algorithmic video surveillance or welfare fraud checking. Both sets of questions are primarily ones of delegation and of reliance on technical standards in the first, and interference with rights in the second. The majority of the judgments discussed below relate to the second family, implying that courts become involved in the field of rights rather than in abstract regulatory design.

2.1.2 The European risk-based model is a European initiative for implementing the Directive.

The EU Artificial Intelligence Act (Regulation (EU) 2024/1689) was adopted on 13 June 2024 and published in the Official Journal on 12 July 2024. Its first article defines its mission as to improve the functioning of the internal market, to foster human-centric and trustworthy AI and a high level of protection of health and safety and fundamental rights as set out in the Charter and to support innovation (Regulation (EU) 2024/1689, 2024, art. 1). It can therefore be seen that both poles of the balance mentioned in this article are presented in the text itself. The Regulation comes into force on 1 August 2024 and applies in stages (Regulation (EU) 2024/1689, 2024, art. 113): the prohibitions from 2 February 2025, some provisions from 2 August 2025, and general application from 2 August 2026, with some provisions from 2 August 2027.

That schedule would soon be broken. The European Commission proposed to include the implementation of the provisions on high-risk systems in the tabled "Digital Omnibus on AI" (European Commission, 2025), but the final agreement on the law set the deadlines instead (Niestadt, 2026). Regulation (EU) 2026/1744 was adopted on 8 July 2026, published on 24 July 2026 and entered into force three days later, shortly before the original deadline of 2 August 2026 (Regulation (EU) 2026/1744, 2026). The agreement provides for a postponement of the obligations for stand-alone high-risk systems listed in Annex III until 2 December 2027 and for systems embedded in products under scope of the Union harmonisation legislation (Annex I) until 2 August 2028, but the transparency obligations from Article 50 remain in place from 2 August 2026 (Gibson Dunn, 2026).

This episode is not only important to the calendar, it is also important to the constitution. The risk-based approach, marketed as protection for rights, relies on an infrastructure of technical standards and capable bodies for its effect; when this infrastructure is late, protection is late as well, although the text is still on the books. Here, Margot Kaminski's critique is strengthened. She is calling out the need for a shift in framing: "risks" of AI, rather than its harms, assumes that the technology will be adopted regardless of its harms, it focuses on mitigation instead of prohibition, and it could potentially ignore harms that are difficult to quantifiable and marginalised groups (Kaminski, 2023). The logic of risk management is that a statistically acceptable level of harm is tolerated; the logic of rights protection is that the essence of the individual's right cannot be sacrificed, however rare the harm may be, in aggregate.

2.1.3 The American model: from flexibility to a struggle over competence

As of this writing, there is no all-encompassing federal AI law in the U.S., and the hallmark of this time is the tug-of-war between federal and state law. On 11 December 2025, Executive Order 14365 instructed the Attorney General to establish an AI Litigation Task Force to sue states that do not comply with federal policy (Executive Order No. 14365, 2025; The White House, 2025), which included arguments based on the dormant Commerce Clause, federal preemption and the First Amendment (Anderson et al., 2026), and provided incentives for states to follow federal policy in the form of redirecting some federal broadband funding. 4–5). However, state laws continue to be in effect until either Congress takes action or legal challenges are successful (Webster et al., 2026). An executive order can't repeal a state law, but it can begin litigation which again puts the judge in the middle of innovation and regulation.

Colorado is an example of the oscillation. Under federal pressure, including a constitutional challenge to the original law in which the federal Department of Justice became involved, effective date for its SB 24-205 of 2024, which represents the first comprehensive state law

imposing a duty to avoid "algorithmic discrimination", was delayed from 1 February 2024 until 30 June 2026. The new law simply mandates that consumers be notified and that if a consumer has suffered an adverse outcome, they can correct their data and request a human review of the decision and will be in effect from 1 January 2027. A first comprehensive American law against algorithmic discrimination thus never took effect; pressure for innovation can make statutory protection an empty vessel at birth.

There are four principles of Arab models:

2.1.4 Arab models: principles before binding rules

The Arab approaches available are mainly in the form of soft-law instruments. In September 2023, Saudi Arabia's Saudi Data and Artificial Intelligence Authority (SDAIA) released the first iteration of its AI Ethics Principles, which outline seven principles—fairness, privacy and security, transparency and explainability, and accountability and responsibility—as well as four levels of risk (SDAIA, 2023). In Egypt, the National Council for Artificial Intelligence announced the Egyptian Charter for Responsible AI in April 2023, which is based on five values: Human centredness, Transparency & explainability, Fairness, Accountability, Security & safety (National Council for Artificial Intelligence, 2023). On 21 April 2019, the UAE Cabinet approved the National Artificial Intelligence Strategy 2031 (UAE Cabinet, 2019). In the case of Iraq, no AI statute was found in operation and no official published bill was found, confirming what is mentioned in the Iraqi literature regarding the absence of the law in Iraq (Abd, 2025).

The bottom line is that no matter how carefully moral principles are formulated, they do not meet the Iraqi constitutional requirement of the restriction of rights to "on the basis of a law" or "by law" of Article 46. Where the use of intelligent systems is limited to surveillance or in the decision-making of administrative bodies in the light of the mere guidelines, the first violation of the constitution is not the absence of proportionality but the lack of any legislation whatsoever.

The constitutional yardstick: rights at stake and competing interests.Rights at stake and competing interests

2.2 The constitutional yardstick:

2.2.1 Fundamental rights at stake

There are five overlapping circles of rights impacted by AI systems. The first is the right to privacy and data protection which is the most frequently mentioned right in comparative case law. The French Conseil constitutionnel found that processing of surveillance images by algorithms constitutes a specific interference with the right to respect for private life, given that it is based on systematic and automated analysis, while the German Federal Constitutional Court distinguished between the automated processing of stored databases and the other components of the interference. The right of every individual to personal privacy is guaranteed under the Iraqi Constitution (Article 17(1)), while articles 40 guarantee that no monitoring, interception or disclosure of information can take place without a legal and security necessity and with the decision of the Court. 17, 40). Intelligent software, which collects and analyses data and can even mimic a voice and a face, now makes intrusions into privacy possible (Hamdan, 2025).

Equality and non-discrimination is the second circle. Historical data can be used to train algorithms that can replicate discrimination, while appearing to be objective. In the case of passenger name record, the Court of Justice referred to Article 21 of the Charter as well as Articles 7 and 8 (Ligue des droits humains, 2022) and the Hague District Court in SyRI stated that the discriminatory effects of the system cannot be excluded because its logic cannot be verified (Rechtbank Den Haag, 2020). The Iraqi Constitution protects equality before the law, without discrimination on the basis of sex, race, ethnicity or origin, colour, religion or creed, opinion or economic and social status (Constitution of the Republic of Iraq 2005, art. 14).

The third circle is freedom of expression and assembly. In the case of Glukhin v. Russia, the European Court of Human Rights concluded that the use of facial recognition – a highly intrusive technology – to identify and arrest protesters in peaceful protests could have a chilling effect on freedom of expression and assembly (Glukhin v. Russia, 2023). In a context where the dissemination of contents is becoming more algorithmic, the lack of a comprehensive law on digital media in Iraq has created legal gaps that directly impact upon the freedoms stipulated in Article 38 of the Constitution, such as the freedom of expression by any means and freedom of peaceful assembly and demonstration (Constitution of the Republic of Iraq, 2005, art. 38).

The fourth one is fair treatment and giving reasons, which is closely related to the "black box" nature of intelligent systems. The Court of Justice ruled in Dun & Bradstreet Austria (2025) that the automated decision is made up of reasons that must be disclosed to the person who is the subject of the decision so that he/she can present a point of view and contest the decision effectively. The Iraqi Constitution gives every individual the right to be treated fairly in judicial and administrative proceedings (article 19(6)) and to an appeal challenging any law that renders a judicial or administrative act beyond challenge (article 100). 19(6), 100). The right to challenge a decision that is made without any understanding of the basis for the decision is no right at all.

The common root of the other four is human dignity: the fifth circle. Purely automated decision making is the treatment of the person as object of classification and not as a subject who can explain and object. The Iraqi Constitution stipulates that human liberty and dignity are protected (Constitution of the Republic of Iraq, 2005, art. 37(1)(a)).

2.2.2 Competing constitutional interests

Balance requires two parts. Support for innovation is an express legislative aim of the AI Act (Regulation (EU) 2024/1689, 2024, art. 1). Article 25 of the Iraqi Constitution states that the state shall reform the economy on a modern basis and encourage and develop the private sector, while Article 34(3) stipulates that the state shall encourage scientific research for peaceful purposes and foster excellence, creativity and innovation (Constitution of the Republic of Iraq, 2005, arts. 25, 34). Furthermore, security uses rely on constitutional-important public interests: while the European Court of Human Rights criticized the use of facial recognition in Glukhin (Cocito, 2024), the detection of crime is a legitimate aim, and the Conseil constitutionnel upheld the constitutional goal of preventing breaches of public order in approving algorithmic processing of surveillance images (Conseil constitutionnel, 2023).

The balance is therefore not one of "rights" versus "business interests" but one of constitutional values of equal footing. This precludes both the extremes – a ban on the technology in the name of rights and a free for all in the name of innovation – and focuses the discussion on standards, the subject of the next section.

3.1 A constitutional review and the balancing mechanisms.

The standards of review in comparative case law are:

The key instrument of review must be fixed before pinning out the standards: Proportionality. According to the formulation developed by Aharon Barak, a limitation of a constitutional right can only be justified if it meets four requirements: a proper purpose, a rational relation between the limitation and the purpose, necessity, in the sense that it is not possible to achieve the purpose without infringing upon the right, and proportionality stricto sensu, namely a proper balance between the benefit obtained from the purpose and the harm done to the right (Barak, 2012, pp. 131–174). This approach is inspired by Robert Alexy's concept of constitutional rights as "optimization requirements" which have to be balanced against other principles (Möller, 2007). This test, which is proposed in this article, is not meant to replace these aspects; it is intended to be an adaptation to the nature of AI. It defines legality and precision in a way that is more prominent than balancing, since it is impossible to balance if the law does not first determine the data and methods to be used; and it introduces two

components which are not so central in the classical formulation, namely procedural safeguards (human review) and temporal limitation (independent evaluation). Each of the elements has been articulated in comparative case law, as demonstrated in the subsections below.

3.1.1 The legislature is not allowed to delegate to the algorithm.

The decision of the German Federal Constitutional Court of 16 February 2023 (cases 1 BvR 1547/19 and 1 BvR 2634/20, BVerfGE 165, 363) is the clearest. Hesse and Hamburg permitted the police to analyse personal data gathered and held in their stores using automated processing, so that serious crimes could be prevented. It found them to be unconstitutional because of insufficient thresholds for intervention: the powers were drafted very broadly, in terms of the data and methods, so that the grounds for intervention were far removed from the constitutional threshold of a sufficiently identifiable danger. Hamburg provision was found to be unconstitutional and Hesse provision continued in force but limited in scope until new legislation took effect or until 30 September 2023 (Bundesverfassungsgericht, 2023b). Finally, and most relevant for the present purposes, the Court also correlated the level of interference with the type and scope of the data used as well as with the range of the analytical methods that can be used and, consequently, concluded that the legislature must limit the use of such methods and set out their essential features in the law itself, and not leave it to the administration (Bundesverfassungsgericht, 2023a).

This is the essence of the precision in the AI context. It was not the technology that was unconstitutional, but the legislature's action to cede the choice of data and algorithm to the police, thereby delegating to the executive the core of the legislative decision. In SyRI, the Hague District Court came to a similar conclusion. It ruled in its 5 February 2020 judgement (ECLI:NL:RBDHA:2020:1878) that the SUWI Act, as well as Chapter 5a of the accompanying decree, were not binding because they were incompatible with Article 8(2) ECHR: the interference with the right to respect for private life is not necessary in a democratic society and does not strike a just balance between the general and the particular interests of society (Rechtbank Den Haag, 2020). Lack of transparency was at the heart of the ruling. The risk model, the indicators and the analysis method was not public and people were not notified that their data was being processed, therefore they could neither trace nor contest this processing (van Bekkum & Zuiderveen Borgesius, 2021).

3.1.2 Graduated proportionality: the more serious the interference, the greater the safeguards.

Proportionality is not a threshold to be met or a prohibition to be respected, but a continuum that comparative courts have to apply. In Ligue des droits humains (C-817/19), the Court of Justice, sitting in the Grand Chamber, did not strike down the PNR Directive, but rather "repaired" it by interpreting it in a way compatible with the Charter. It qualified all the interferences with the rights in the articles 7, 8 and 21 as undeniably serious, and limited the powers granted by the Directive to what is strictly necessary (Ligue des droits humains, 2022). It noted that automated analyses involve a margin of error as they are based on unverified data and on pre-determined models and criteria (Ligue des droits humains, 2022, para. In her ruling, the Court found that the need to have pre-determined criteria excludes the use of the self-learning artificial intelligence systems that can alter the assessment criteria and their weighting without human action or review (Ligue des droits humains, 2022, para. 106). 194).

Decision no. 2023-850 DC of 17 May 2023 of the French Conseil constitutionnel on the law on the Olympic and Paralympic Games 2024 is consistent with this same idea. Under that law, the algorithmic processing of video-surveillance system images or images captured by a drone camera to detect and flag pre-determined events was authorized on experimental basis by article 10 of the law. The Conseil accepted the principle but had to make an interpretative reservation: the State's representative must revoke the authorisation as soon as the conditions

for granting it are no longer fulfilled (Conseil constitutionnel, 2023). Here proportionality is an ongoing requirement which follows the measure for its lifespan.

The European Court of Human Rights reasoned as such in the concrete case of Glukhin v. Russia (application no. 11519/20, judgment of 4 July 2023). The peaceful lone protester had been tracked by the authorities using facial recognition and they had arrested him and fined him. The technology's use in the circumstances was found by the Court to be incompatible with the ideals and values of a democratic society governed by the rule of law, and therefore a violation of Articles 8 and 10 of the Convention was unanimously decided in the case of Glukhin v. Russia (2023). It was the first international court judgment on this technology, according to Palmiotto & Menéndez González (2023). It has been observed that the Court did not rule facial recognition per se to be incompatible with the Convention but that it was found to be disproportionate in the circumstances of the case (Cocito, 2024).

3.1.3 Procedural safeguards: human review and right to explanation (3.1.3)

Precision and proportionality, as substantive standards, are rendered usable through procedural safeguards, and in this area the Court of Justice has established a consistent line of authority. In its first interpretation of Article 22 GDPR, it had ruled that the automated generation of a probability value by a credit information agency that reflects a person's ability to fulfil payment commitments is an automated individual decision if a third party bases itself heavily on this probability value when making a decision on establishing, implementing or terminating a contractual relationship (SCHUFA Holding (Scoring), 2023). This closed the loophole that protection could be avoided because that was a human that "decided" and in reality, it was the algorithm that "decided". The content of the right to information was then explained by Dun & Bradstreet Austria (C-203/22, judgement of 27 February 2025): the procedure and the principles actually applied must be explained in a concise and intelligible manner, so that the person can understand which personal data were used and how; mere communication of the algorithm is not sufficient; the complexity of the operations does not relieve the controller of the duty to explain. Secrecy is not absolute if trade secrets are involved, the relevant information must be provided to the competent supervisory authority or the competent court, which, in this case, will balance the interests.

These are, in our opinion, the most mature judgements that reconcile innovation and rights. They do not say a company must release its source code, thus safeguarding investment in innovation; but they do say that the company must allow its decision to be intelligible and contestable, thus safeguarding the right. Strikingly, Colorado's new law, which backs away from some earlier promises, maintains the consumer's right to human review of an automated decision with an adverse outcome (Thomas & Calcerano, 2026), an entitlement that even the most liberal legislative frameworks will not go, as if human review has become a minimum standard.

3.1.4 Time limits and experimentation: keeping the temporary temporary clause is a recommended reading.

The French path displays a fourth, usually not discussed, norm. Algorithmic surveillance was first approved by the Conseil constitutionnel in 2023 as a temporary measure, until March 2025, and then in a Senate information report entitled "extra time" Dumont & de La Gontrie, 2025). On 19 March 2026, the Conseil unanimously approved the law organising the 2030 Winter Games, which included the extension of the experiment with algorithmic video-surveillance until 2027 (Marchal, 2026). This is the actual constitutional threat of regulatory sandboxes and legislative experiments: something that was allowed as an exception through a series of extensions becomes the norm, and has never been considered on its own merits, thereby failing to be considered constitutional. A constitutional judge, thus, should require evidence of what the experiment has actually demonstrated when asked to approve an extension of the experiment.

3.2 Challenges of legislating AI

3.2.1The burden of proof and technical opacity.

Constitutional judges are not subject matter experts. The Court in Glukhin had some difficulty in determining whether facial recognition was actually used, but concluded that it could be inferred from the circumstances, including the lack of any denial of its use by the Government (Glukhin v. Russia, 2023). In SyRI, the State refused to reveal the model, and in doing so it also now takes on the effects of the lack of transparency (van Bekkum & Zuiderveen Borgesius, 2021). Technical opacity cannot be in the favour of the State deploying the system: any failure by the State to demonstrate safeguards of the system should count as evidence of disproportionality.

3.2.2. Rapid change, technical standards and regulatory sandboxes

The European way is to leave much of the meat of compliance to harmonised standards developed by standardisation bodies, which have caused delays in application (Gibson Dunn, 2026; Niestadt, 2026). The constitutional question is a question of delegation. How much room does the German Court leave to the legislature in the content of protection if the essential methods must be specified in the statute? We think that the answer is to distinguish the rights standard (what cannot be done to the individual and what must be guaranteed) from the technical standard (how to do that in engineering terms), with the former (the former being the rights standard) reserved to the legislative process, and the latter delegated. The same holds true for the regulatory sandboxes that are proposed in the AI Act (Article 57 et seq.) and for the expanded real-world testing under Article 60 in the omnibus package (Cooley LLP, 2025). This is a legitimate tool for promoting innovation but only if it is time-limited and subject to independent oversight and cannot be used to remove the basic safeguards of rights from participants, or it becomes an unconstitutional area exempt from the Constitution.

3.2.3 Multiple levels of review:

Now, the national constitutional judges do not work alone. On 5 September 2024, the Council of Europe Framework Convention on Artificial Intelligence and Human Rights, Democracy and the Rule of Law (CETS No. 225) was signed in Vilnius by various Member States such as the United Kingdom and the United States, as well as by the European Union (Council of Europe, 2024b). To enter into force it requires the consent of 5 signatories, which must include at least 3 member states of the Council of Europe, to be bound by the treaty within 3 months of the fifth consent (Council of Europe, 2024a, art. 30). The European Union ratified it on 15 May 2026 during the 135th session of the Committee of Ministers, while a report dated 8 June 2026 of the Council's Steering Committee for Digital Matters still urged for ratification so as to bring the Convention into force "as soon as possible" (Council of Europe, 2026b), meaning that the Convention had not yet entered into force at that time. The Convention does not establish any new fundamental rights, but rather points to rights that are already established in international and national law, notes Mario Hernández Ramos (Hernández Ramos, 2025, p. 1248). This reinforces the argument of the current article: "constitution for algorithms" is not what is needed, but the actual use of the guarantees of the constitution.

3.3 Application to the Iraqi constitutional order and the role of the Federal Supreme Court

3.3.1 The textual basis

The Constitution of Iraq of 2005 provides in its wording the mechanisms necessary to incorporate the standards mentioned above. According to the Constitution of the Republic of Iraq, 2005, art. 13(2) refers to the prohibition of enacting any law that is in conflict with the Constitution; art. 2(1)(c) that no law may limit or restrict the exercise of the rights and basic freedoms guaranteed in the Constitution; and art. 46 that the exercise of the rights and basic freedoms guaranteed by the Constitution can only be limited or restricted on the basis of a law and that such limitation or restriction does not violate the essence of the right or freedom. 2, 13, 46). Of the four standards, two are mentioned in our reading: legality (the requirement of law) and the minimum core (the prohibition on impairing the essence of the right). The

procedural safeguards can be taken from Articles 19(6) and 100. The text is even more solid in the area of surveillance: Article 40 provides that monitoring of electronic communications shall not be carried out except by law and in accordance with security necessity and a judicial decision; Article 15 states that no one shall be deprived of or have their right to life or security, or the right to liberty restricted, except by law and on the basis of a decision by a competent judicial authority (Constitution of the Republic of Iraq, 2005, arts. 15, 40). It is therefore hardly surprising that any law that allows algorithmic monitoring of electronic communications without a judicial ruling would be unconstitutional before even considering proportionality.

The Federal Supreme Court has jurisdiction regarding review of constitutionality of promulgated laws and regulations (Constitution of the Republic of Iraq, 2005, art. 93); interpretation of the Constitution (Constitution of the Republic of Iraq, 2005, art. 93); adjudication of cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority (Constitution of the Republic of Iraq, 2005, art. 93); and the decisions of the Federal Supreme Court are considered final and binding for all authorities (Constitution of the Republic of Iraq, 2005, art. 94). 93, 94). In the first amendment to Federal Supreme Court Law No. 30 of 2005 – Law No. 25 of 2021 – the jurisdiction of the Federal Supreme Court in its organic law has been restated.

3.3.2 Trends in the case law of the Federal Supreme Court

The seeds of the proposed standards are already in the Court's decisions. In Decision No. 171/Federal/2023 of 21 September 2023, the Court, referring to Article 46 (Federal Supreme Court of Iraq, 2023), interpreted whether a member of the Council of Representatives may work in trade unions and non-governmental organisations to be a restriction on the right to work and thus, concluded, that such restriction may arise only through law or on the basis of law and without impairing the essence of the right to work, as stipulated in Article 49(6). This is the first of the proposed test (legality) and second (of the essence). Similarly, in an interpretive decision, Al-Huwaija has demonstrated that balancing is not a new method in its reasoning, given that it took the public interest and the continuity of constitutional institutions over constitutional deadlines (Al-Huwaija, 2025). It has limits on its review, however. In Decision No. 17/Federal/2020, the Court was only concerned with the interpretation of the laws provided it does not delve into the motives of the legislature because it is a part of the discretion of the legislature (Al-Hilali, 2022). This is a sign that the best way to evaluate AI policies is to consider how precise they are and what protections they provide, not the legislators' intent.

However, the other side of the coin is reflected in the consolidated Decision No. 325 and 331/Federal/2023 dated 13 March 2024. The Federal Supreme Court of Iraq, 2024, ordered the Ministry of Communications and the Communications and Media Commission to block websites, platforms and applications that contain pornographic or indecent content, or content that is offensive to religions, or content that offends Iraqi social values. Some of these terms were too general to be applied accurately, and activists and journalists voiced concerns about their potential to target legitimate expression (Asharq Al-Awsat, 2024). It is from this standpoint that the requirement of a "blocking order" of this magnitude will, in practice, almost always necessitate the use of automated filtering tools, thus raising the very issues addressed by the four-part test, namely who determines the standards of classification, how are they published and can the owner of material the subject of the blocking challenge contest the blocking order before an independent authority?

3.3.3 Shortcomings

Three shortcomings emerge. First, Iraq is not a matter of jurisdiction but of knowledge and proof. Article 93(3) also covers instructions and administrative procedures, but typically individuals are not aware that an automated decision has been made concerning them and

they have no insight into the logic of the automated decision and cannot challenge it first. Iraqi scholarship has pointed out that the legislation in force, including the Electronic Signature Law, is not equipped for the particular nature of algorithmic decisions (Abd, 2025). Second, the Constitution does not explicitly refer to personal data as a stand-alone right, nor does it provide any right to be free from a purely automated decision; this is because it was written at a time before the technologies were so prevalent. Third, the concept of the 'essence of the right' in Article 46 has yet to be explicitly fleshed-out into a multi-stage proportionality test to be applied to new technologies. Therefore, what is proposed below is necessary if the concern raised by the Iraqi scholarship that the algorithm can become an influential player in the constitutional state is to be remedied (Hashim, 2026).

3.3.4 In the direction of an Iraqi test of review of the legislation about AI

We recommend that, in the case of any law, regulation or instruction that empowers the use of intelligent systems, which impact on rights, the Federal Supreme Court follow a four-stage test based on the above analysis:

1. Legality. Is there a legislative definition of the types of data that can be processed, the purpose for which, the categories of persons concerned, essential methods of analysis, or is it left to the executive? The question takes inspiration from the German judgment and is rooted in the necessity of 'law' as provided in Article 46.
2. Graduated proportionality. Is there a threshold for intervention that is proportionate to the seriousness of the intervention? The need for bulk data processing or for real-time identification of biometric data must be specific and serious, and for communications, a decision of the judge under Article 40.
3. Safeguards. Does the statute provide for any meaningful human review of the outputs, rule out systems that autonomously adapt their review criteria in sensitive areas and guarantee the individual's right to an intelligible explanation as well as to challenge the decision in line with Article 19(6) and 100?
4. Time limit and evaluation. Does the extraordinary measure have a time limit, and must it be independently and publicly assessed prior to an extension? This phase is based on the French experience.

The test is not an impediment to innovation. The legislature can meet the first and third stages with greater care in drafting without any intention of relinquishing the technology and the fourth stage provides for experimentation per se and experimentation is what it is.

4. Conclusion

4.1 Findings

1. In the judgments analysed (from 2020 to 2025), comparative courts did not outlaw, per se, AI technologies. They dismantled or limited through interpretive reservations any vague or overbroad legislation (the German judgment and SyRI) and they struck down any legislation that left too little room for interpretation (the French decision and Ligue des droits humains).
2. This case law can be broken down into four components: legality/precision; graduated proportionality; procedural safeguards; and temporal limitation/indépendent evaluation.
3. The risk-based approach is not constitutionally neutral and the protective effect relies on standards and institutions that have delayed the EU's high-risk obligations until 2027 and 2028.
4. The centre of gravity in the USA has moved from legislation to litigation and Colorado's extensive law was overturned before it came into force by a more restrictive one which still allows for a human check.
5. SCHUFA and Dun & Bradstreet Austria provide a balanced formula which allows to protect trade secrets and also provides an intelligible explanation, upon which challenging is possible.

6. We did not find an Iraqi AI statute in force, and Arab models are based primarily on non-binding principles, which do not meet the requirement of "law" in Article 46 of the Iraqi Constitution.
7. The Iraqi Constitution does not explicitly guarantee the right to personal data protection, nor does it expressly guarantee a right not to be subject to a purely automated decision, although it does contain sufficient textual tools (in particular, Article 17, 19, 40, 46, 93 and 100). While the Federal Supreme Court has applied the criteria of law and of respect for the essence of rights (Decision No. 171/Federal/2023), its 2024 decision on blocking websites shows a need for more specific standards in the review of digital content.

4.2 Recommendations

1. To the Iraqi legislature: pass a law relating to the protection of personal data and a principle law for the use of AI in the public sector before expanding the use of intelligent systems in administrative decision-making, or surveillance, and the principle law determines the data and purposes and essential methods.
2. Explicitly forbid automated administrative decision making that does not involve the human intervention of a person or body relating to the legal position of an individual except for a particular legislated case with safeguards, and ensure that the individual is informed that an automated decision relating to their legal position has been taken, is provided an intelligible explanation, and has the right to have the decision subject to meaningful human review.
3. Only allow algorithmic monitoring of electronic communications with a prior judicial order, as provided in Article 40 of the Constitution; restrict real time biometric identification to situations of particular and grave danger; and ban, in security and criminal context, self-learning systems that change their identification criteria without human intervention.
4. Implement limits on the duration, independent published evaluation, and no extension without providing an evaluation report to the Council of Representatives, for all regulatory sandboxes or legislative experiments.
5. In the opinion of the constitution-maker, in the event of a constitutional amendment, a paragraph should be added to Article 17 to ensure the protection of personal data and the right not to be subject to purely automated decision without safeguards.
6. To the Federal Supreme Court: apply here the four-stage proportionality test, articulate the reasoning of its decisions according to the four stages of the test and consider the refusal of an administrative authority to reveal the safeguards of its system as evidence of disproportionality.
7. To Arab legislators: gradually apply existing ethical principles, including those of the SDAIA and the Egyptian Charter, in law in high-risk areas, and possibly join the Council of Europe Framework Convention (CETS No. 225) which does not establish new rights but works to ensure their implementation.

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