

I. Iraq

1. Background

In Iraq, the implementation of the 2005 constitution has still not been completely successful. The reasons for this are varied and can be found in Iraqi society but also in the constitution itself.

Inspired by Iraqi lawyers and politicians, the Iraq Team began its work at the beginning of 2009. The projects focused on the wishes of the Iraqi partners. The key aspects were seminars on constitutional issues, judicial training and the strengthening of democratic institutions. The overall aim of the project is the promotion of the rule of law and therefore the stabilisation of Iraq's fragile state structure. In particular, conferences and training seminars on constitutional jurisdiction, basic rights, federalism and similar fundamental issues are held in Iraq in this context. At individual events in Heidelberg, the participants also find out about how German constitutional bodies function.

2. Projects

The project is comprised of three main components: the Constitutional Colloquia in Heidelberg, the seminars for judges and other lawyers and the Rule of Law Conferences in Erbil.

a. Constitutional Colloquia in Heidelberg

In the context of its advisory role, the project team supports Iraqi institutions in the further development of constitutional practice. At seminars and conferences, institute members work together with leading Iraqi lawyers and politicians to find solutions to the numerous constitutional problems. This includes federalism, for example, which is established in the constitution but in reality is not implemented coherently. While the focus was originally on supporting the constitutional revision

committee of Iraq's National Assembly, the project team has held colloquia in Heidelberg with the Iraqi Federal Supreme Court since 2010, as the court is able to implement the jointly developed ideas more effectively. The Iraq Team invites internationally renowned constitutional lawyers to the discussions in order to give impetus to the search for solutions by means of comparative law.



Chief Justice of the Iraqi Federal Supreme Court, Medhat Al-Mahmood, Prof. Dr. Rüdiger Wolfrum and the leading Shiite parliamentarian Sheikh Humam Hamoudi (left to right)

The first Heidelberg colloquium, held in August 2010, dealt with the topic "The Role of the Iraqi Supreme Court in Solving the Iraqi Constitutional Crisis". An urgently required constitutional reform was not successful in the National Assembly before the elections in March 2010. After the election, conflict first broke out because of the election result and later due to the forming of government. The constitution only offered a weak framework for orientation. It was against this backdrop that the judges of the Iraqi Supreme Court wanted guidance as numerous constitutional questions were brought to them. German Constitutional Court judges also took part in the event along with renowned international constitutional experts.

In July 2011 the project team organised a second colloquium on a range of topics entitled “Separation of Powers - Relations between the Judiciary and Legislature in Iraq”. The participants discussed, amongst other things, the constitutional and legislative foundations of the Federal Supreme Court, administrative jurisdiction in Iraq, the establishment of a state council as well as the competency and legitimacy of constitutional jurisprudence. The participants at the event included the Chief Justice of the Iraqi Constitutional Court, Chairman of the Constitutional Reform Commission of the Iraqi Council of Representatives and a judge from the ECtHR.

b. Seminars for judges and other legal professionals

The project team holds seminars for Iraqi judges, public prosecutors and other lawyers with the aim of strengthening the rule of law and, in particular, the safeguarding of human rights in Iraq. The specific goal of these events is to bring about a rethink of the justice system and bring citizens and their rights to the centre of the administering of justice, rather than state interest as was the case during the Baath regime.

For the series of seminars, the Iraq Team compiled the *Max Planck Manual on Constitutional Law for the Judiciary of Iraq*, which forms the basis of the seminars and the content of which is discussed with the help of case studies. The handbook, produced by the project staff, was translated into Arabic. The focal points are Iraqi state principles, particularly the division of powers and federal structure, the development of Iraqi justice, fair trial principles, constitutional and human rights, the role of Islam in Iraqi law and the international contracts embedded in the Iraqi constitution.

In 2010, following a planning conference, Arabic- and Kurdish-speaking lecturers were prepared for deployment by project staff, who trained participants from all over the country. The lecturers are high-ranking judges from the Iraqi Federal Supreme Court, university lecturers and other experienced legal professionals from Iraqi institutions. Lawyers and Ministry of Justice personnel also take part in the seminars, alongside judges and public prosecutors. The Iraqi Supreme Judicial Council, the

national Bar Association and the corresponding institutions in the Kurdistan region are responsible for the selection of participants.

The first seminar took place in December 2010 in Erbil and the second in February 2011 in Basra. The theme was, as in subsequent events, "Constitutionalism in Iraq – from theory to practice". In November and December 2011, the team organised further seminars in Najaf and Erbil. In April 2012, more seminars followed in the north Iraqi locations of Dukan and Suleimaniye, where legal professionals from the whole country took part as usual. The composition of these seminars has an important side effect, namely the creation of trust between participants of different backgrounds, e.g. Arabs, Kurds, Turkmen and also Shiites, Sunnis, Christians and members of diverse minorities. In total, 416 people have taken part in the seminars to date.

c. Rule of Law Conferences in Erbil

The series of Rule of Law Conferences goes beyond the constitutional law focus of the Iraq project.

To date, the series comprises three conferences, which all took place in Erbil. The topics dealt with at the first conference in autumn 2009 were the challenges for the justice institutions, the relationship of state and citizens and the fair trial principles. The events also aimed to improve contact with decision-makers on a national level and in the Kurdistan region, in order to attain precise information about the situation regarding justice institutions in Iraq. This information is important to determine the future strategy of the Iraq project.



Participants at the Rule of Law Conference of the MPIL in Erbil (Iraq)

The second conference in autumn 2010 addressed mainly lawyers and dealt with the importance and development of an organised legal profession in a constitutional state. This could make an important contribution towards counteracting threats to stability and freedom in society. In addition, individual contributions broached the issues of criminal law and business law.

The third Rule of Law Conference took place in Erbil in November 2011. The theme "Unity and Diversity of the Judiciary and Law in Iraq" reflects a core problem in the development of rule of law, namely the inconsistencies not only in the normative foundations, but also in practice. Three main topics were dealt with: The relationship between courts, legislation and the Bar Association in Kurdistan and Central Iraq; transitional justice using the example of the Iraqi High Tribunal and International Criminal Court and their relationship with ordinary criminal justice as well as the international settlement of disputes and enforcement of arbitration awards in Iraqi law. Numerous Iraqi and international (German, Swiss and US) constitutional law experts took part, including the President of the Iraqi Federal Supreme Court and several judges from the FSC and Iraqi High Tribunal, officials and politicians such as the Justice Minister of the Kurdistan region, the

Vice President of the International Criminal Court Dr. Hans-Peter Kaul and the Swiss Professor Thomas Fleiner.

d. Further projects

The Iraq Team remains in constant contact with Iraqi legal professionals and politicians and meets many of them to exchange information and give counsel in Iraq and Germany.

By working closely with the Iraqi partners, it was possible to compile an online database in which judicial and, in particular, constitutional documents are recorded. The database contains, amongst other things, English translations of Iraqi laws and decisions made by the Iraqi Federal Supreme Court.

In the framework of the institutes's cooperation with the Kurdish Regional Parliament, German documents, including the Baden-Württemberg regional constitution and the Rules of Procedure of the German *Bundestag*, as well as numerous decisions made by the German Federal Constitutional Court, were translated into Arabic and made available to the Iraqi partners.

e. Summary

The project activities are being very well received in Iraq and the Iraqi project partners are explicitly requesting that the conferences and training continue. The materials, compiled by the team at the Max Planck Institute (e.g. on "Constitutional Law" and "International Human Rights Treaties"), are also being well received. In particular, the role of the Max Planck team as a neutral point of contact and as a provider of comparative law knowledge is appreciated and the acquired knowledge is being used in practice. The security risks in Iraq are partially hindering the work. On the other hand, relations with high-ranking officials and politicians built up over several years facilitate the work and also provide a basis for continued knowledge transfer with Iraq in future.

3. Further planning

Despite much progress, Iraq is still a long way from achieving rule of law. From a judicial point of view, several factors are responsible, including the unstable constitutional structure (even after seven years, neither federalism nor the institutions laid down by the constitution have been established), the gap between citizens and state and the considerable difficulties encountered by political figures in agreeing on reforms and implement them. In light of this finding, the Max Planck team plans to concentrate on three subject areas as of 1 January 2013. Firstly, continuing to guide the Supreme Court which, due to the ineffectiveness of legislative and executive authority, plays a key role in the stabilisation of the state. Secondly, federalism is to play a central role in the project because attempts are currently being made in some parts of the country to form federal entities (so-called "regions"). Thirdly, the topic of administrative law is becoming increasingly important; perhaps the project staff can also make a meaningful contribution in this area.

The first measures to these ends were already implemented during the current project phase. A constitutional colloquium on the theme of federalism took place in July 2012 in Heidelberg and a further Rule of Law Conference on administrative law took place in November 2012 in Erbil.

4. Academic works and publications

a. Handbooks and compilations of legal texts

- *Max Planck Manual on Constitutional Law for the Judiciary of Iraq* 2011, English and Arabic.
- *Max Planck Compilation of International Human Rights Treaties – Iraq*, Second edition 2011, English and Arabic

The *Max Planck Manual on Constitutional Law for the Judiciary of Iraq* forms the basis for all events dealing with current problems pertaining to the

functioning of the state. The handbook covers Iraqi constitutional history and the hierarchy of norms as provided by the Iraqi constitution of 2005. Additionally, the book concentrates on the fundamental constitutional principles of the Iraqi state, the separation of powers and the federal structure of Iraq as derived from these principles. The structure and functioning of the Iraqi judiciary is described in great detail.

b. Works for academic qualifications

Alongside the practical project work handbooks is the following thesis project:

Dr. Bawar Bammarny completed his thesis with the title “Treu und Glauben und UN-Kaufrecht (CISG) – eine rechtsvergleichende Untersuchung mit Schwerpunkt auf dem islamischen Rechtskreis“, published in 2011.

