

# Legal Status of Foreign Artist Comparative Analytical Study

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The Iraqi constitution in force in 2005 does not permit any provisions related to the foreigner's status in terms of rights, but it can be inferred by analogy with the concept of violation. The foreign artist does not enjoy any political rights as the right to nominate, elect and vote. Restricting the right to work to Iraqis only - constitutionally - observing the rules of social justice, even though he can exercise this right in accordance with the new and effective labor law for the year 2015. The state guarantees social and health security for Iraqis in the event of old age, disease, disability etc. However, this guarantee can be covered by the foreign artist if there is an international agreement guaranteeing that. Also, free education and sports exercise are a right for every Iraqi. A foreign artist is obligated to respect the social system, to respect the legal, political, and economic system and to pay taxes and fees to the state. The foreign artist should adhere to the conditions of valid and lawful residence, otherwise his marriage will be considered invalid and no party may conclude this contract if the foreigner violates this restriction.

**Key words:** *Foreign Artist - Artists Syndicate - Naturalization of the foreign artist.*

## Introduction

This research discuss the defining issue of the legal status of a foreign artist, that location which the successive Iraqi laws have established over the years, especially those legislations that came after 2003 and the entire political and legal changes that have passed through Iraqi society, as well as seeking to clarify the scene to foreign artist who wants to work and artistic production in the Iraqi environment, through drawing and shaping the paths that he should see and understand before starting the artistic activity in the Iraqi region. From the reasons of choosing the research is a quick survey that we conducted, which shows us the necessity of single addressing to status of the foreign artist because of its novelty in the Iraqi social

environment, (Ali, 2011) and Iraq from the first countries wishing to promote cultural and artistic aspects in all its aspects, it is necessary to explain the legal rules regulating the status of foreign artist in order to achieve the desired openness, as the artistically investment environment can grow and flourish only in light of clear and specific visions of what the situation of the foreign artist in Iraq, whether he is a worker or an investor, and also ignorance is almost completeness in legal issues related to the subject of art in general, and the foreign artist in particular, which are assumptions that give serious attention to dealing with and attention of it, (Ali, 2006) the new in the research is that it is the first research - at our discretion - that deals with the subject of the legal status of the foreign artist in the light of the provisions of Iraqi law, as well as the first study trying to mix the artistically aspects with the legislative and legal aspects, under the foreign artist umbrella and the paths of his organizational choices, as well as the first address which care of the general rules and detailed solutions that can be adopted to organize foreign artist's center in his artistic environment or in the social generally, and the first attention opens the door for a foreign artist to be able to naturalize him with Iraqi nationality by his choice and easily without giving up his previous nationality, the research relied on the inductive approach in an effort to collect and showing the totality of rules governed by effective and modern Iraqi legislation applicable to the status of foreign artist, as well as describing these texts with a view to adopting them as a primary material and basis for subsequent studies. (Ali, 2017)

## Literature Review

### *The Status of Foreign Artist in the Texts of the Iraqi Constitution in Force for the Year 2005*

Constitutionally, the citizen is the one who enjoys the state nationality, and he who creates the authority and assigns it to whoever wants and legislates laws and entrusts its implementation to whom he sees, there are no limits to his freedoms and rights except what he is bound by specific restrictions. (The Court of the Americas Human Rights Court, 1984) In Iraq, wherever the word "Iraqis" mentioned, it is concerned with who has this capacity and withholds that right or that freedom from anyone else, which is included within the concept of "foreigner", every text that addresses the Iraqi corresponds to the non-Iraqi exodus from his rule, and with reference to the Iraqi Nationality Law in force No. 26 of 2006, paragraph (b) of the first article of it declares that "the Iraqi: the person who enjoys Iraqi nationality", and return to the texts The Constitution in force for the year 2005, we stand for the following, the second article of its third paragraph states that "it is not permissible to enact a law that contradicts with the fundamental rights and freedoms mentioned in this constitution", Article 14 stipulates that, "Iraqis are equal before the law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, economic or social status," and Article 20 stipulates that "Citizens, men and women have the right to participate in public affairs, and enjoy Political rights, including the voting right,

elect, and election", the text of Article 21 "It is forbidden to surrender an Iraqi to foreign authorities and entities." Article 22 also stipulates that "work is a right for all Iraqis in a manner that guarantees them a decent life. From Article 23 "An Iraqi has the right to own property anywhere in Iraq, and it is not permissible for others to possess the immovable property except what is exempted by law, where ownership for the purposes of population change is prohibited. "The second paragraph of Article 30 stipulates," The state guarantees social and health security for Iraqis in the event of old age, illness, inability to work, homelessness, orphan hood or unemployment, and works to protect them from ignorance, fear poverty and want, provides them housing, and curricula for their rehabilitation and care, this is regulated by law “, article 31 of its first paragraph states, “Every Iraqi has the right to health care, and the state is concerned with public health, and the means of prevention and treatment are guaranteed by establishing various types of hospitals and health institutions.” the text of the second paragraph of Article 34 “Free education is a right for all Iraqis in its various stages.” Text of Article 36 "sports are a right for every Iraqi, and the state must encourage its activities, sponsor it and provide its requirements." and outside Iraq, and it is not permissible to exile or excluded an Iraqi, or to prevent him from returning to the home." The Iraqi constitution tried to protect the Iraqi citizen from falling prey to the condition of statelessness or its absence, (Khazraji, 2005) by introducing the constitutional text and granting him the constitutional We note the text of Article 41, "Iraqis are free to adhere to their personal status according to their religions, sects, beliefs, or choices, and this is regulated by law”, supremacy in Article 18, paragraph three, "It is forbidden to revoke citizenship by giving birth by any reason whatsoever ...", the same text in Article 11 paragraph - B - From the Transitional Administration Law of the State of Iraq for the year 2004, and with this we are assured that every Iraqi by birth may not be subjected to the penalty of revocation of citizenship, but that the legislator went further than that when he stated that, in completing the previous text, "whoever has been deprived of it - Iraqi nationality - has the right to request its restoration, and this is regulated by law. With noting that -, the in force nationality law for the year 2006 - is excluded from that for whom Iraqi citizenship was revoked, according to the provisions of Law No. 1 of 1950" and the law No. (12) for the year 1951, they are the Jews who left Iraq during that period, and the effective Iraqi constitution for the year 2005-according to paragraph B/third of Article 18 thereof, withdrawal the Iraqi citizenship from naturalized citizens only in cases provided by law. (Othman, 2011)

**The foreign artist position in the normal Iraqi legislation** must confirm on important point, which is the necessity of the foreigner to obligate toward any country with three main obligations, which are : obligation to respect the social system of the state, the obligation to respect the legal, political, and economic system, and the obligation to pay taxes and fees to the state, hence for the sake of drawing the general framework of the foreign artist position in

the face of the provisions of Iraqi law, we recommend that it be distinguished on the following points. (Al-Abboudi, 2012)

**The foreign artist and exercise of political rights** from the most important political right is the right to vote and nomination, the Iraqi legislator has prohibited a foreigner from exercising the right to vote and nominate in Iraq. The Electoral Law No. 16 of 2005 stipulated that a voter must be an Iraqi in accordance with Article 3 thereof, and the candidate must be a voter, i.e. an Iraqi also, according to Article 6 thereof. Likewise, Article (5 / A) of the Governorates Law, which is not organized in a region No. 21 of 2008, as it stipulated in the candidate for council membership that he be an Iraqi, Article (3 / second -b) of the Independent High Electoral Commission Law No. 11 of 2007 stipulating in the candidate for the Commission Board that an Iraqi residing in Iraq a permanent residence, and so on with the referendum law on the draft constitution No. 2 of 2005, as required by Article 3 Whoever has the right to vote in the referendum. (Al-Yasiri, 2011)

**The foreign artist and the practice of work** The original principle is that the right to work is restricted to Iraqis only, which is evident through the text of the first article of the Law of restricting professions in Iraqis No. 21 of 1936, and for the sake of the importance of the work in relation to the foreign artist - as described legally as a worker - on the one hand, and the newness of the legal organization for foreigners to work in Iraq, we provide the following progressive details (Emad, 2018) from the new Iraqi Labor Law in force No. 37 of 2015, the foreign worker - with Article 23/1 of the above law - every natural person who does not have Iraqi nationality working or desiring to work in Iraq as a worker, other than work that does not have his own work, and the foreign artist - as a worker - must according to the above law and in accordance with instructions for foreigners to work in Iraq No. 18 of 1978 obtaining a work permit according to the conditions and procedures specified in the above instructions, Abandonment of work upon license expires unless renewed, to submit a written commitment to train one or more Iraqi workers - artists - who are in the project on the work that he performs during the leave period to practice the work, while the procedures for obtaining a license to practice work in Iraq are represented - according to Article 6/2 of the instructions above - providing legal documents proving that Iraq has entered and resided legally in it, to submit a written request to the Department of Labor and Social Security in Baghdad or its departments in the provinces or by the employer who intends to operate it, the request includes all information related to the qualifications documented by the certificate and documents available to him, along with an indication of his name, nationality, type of work, duration, the name of the employer, his full address, and partly from the above instructions, foreign workers who are recruited for a period not exceeding (30) days to work in Iraq as experts or for the purposes of maintenance or providing technical advice, the work permit is canceled in two cases - according to Article 9 of the foregoing instructions - which are: If the

information and documents when requesting the leave are proven incorrect, and if the presence of the foreign worker becomes harmful to the public interest.

### ***The Status of the Foreign Artist in the Investment Law and Property Right***

In view of the great overlap between the two subject above - in terms of the right subject only - we have mentioned them together, as we will proceed to detail them according to the Iraqi legislator, according to the Iraqi Investment Law No. 13 of 2006 amended, between the Iraqi investor and the foreign investor in the fields of investment (**John, 1999**) and in the benefits and facilities In this law, the general principle is that it is permissible for a foreigner to possess movables - as is clear from the text above - without movables of special economic value such as ships and airplanes, Article 22 of the Weapons Law No. 13 of 1992 permits a foreigner to carry a firearm and his equipment in Iraq according to the reciprocal rule - the requirement to give the firearm to the nearest police station in exchange for a meeting that the latter informs the issuing authority for the purpose of providing the foreigner with the permission to carry a weapon, or that his weapon be returned to him with his equipment upon leaving Iraq, as for real estate, the basic principle is that the foreigner may not own the property, however, (**Saeed, 2004**) it is permissible - according to the first article of alien owns the property in Iraq No. 38 of 1961 - foreigner should be treated in a way that treats the Iraqi people in the right of ownership and In the case of the transaction of the property in accordance with the reciprocity rule, as defined in Article 5 of this law and Article 155 / 2 of the Real Estate Registration Law-No. 43 of 1971- the type of real estate and the amount of real estate that the foreigner can possess, Law No. 72 of 1978 also organized the provisions for Arab citizens to have immovable property in Iraq, but what is very important in this field is the Revolutionary Command Council's decree number 23 of 1994, which suspended all laws and decisions that allow non-Iraqi ownership of real estate or investment of its money in companies. Inside Iraq and everything that would possess or invest in any way - while emphasizing that the provisions of the Iraqi Investment Law No. 13 of 2006 it is the basis that is now approved in Iraq to organize the issue of the extent to which foreigners can enjoy the right of possessing the untransformed in Iraq. (**Al-Hassan, 2008**)

### ***The Status of Foreign Artist of Social Security and Medical Practice***

Iraq has joined Law No. 29 of 1977 to the Agreement on Social Security between Egypt and Iraq - the agreement was issued on 12-12-1976 and ratified by Iraq in 1977 - as this agreement equated the citizens of the two countries in terms of benefiting from social security, and Iraq also joined Law No. 37 of 1976 to the Arab agreement on the minimum level of social insurance (social security), where this agreement was equated among Arab nationals, but with the condition of reciprocity, and the health professions law, No. 153 of 1969, was stipulated, in the member to be an Iraqi, this is also included in the provisions of

the Regulation for the Disabled care Institutions No. 10 of 1959, as amended, and the Regulation of Institutions of the Blind No. 3 of 1959. (Ghareb, 2018)

### ***The status of Foreign Artist of the Right to Education***

The second article of the Regulatory Act of Foreigners Situation in Iraq No. 177 of 1974 states the following: foreigners residing illegally in Iraqi schools, institutes and universities are not accepted, whereas a foreigner may enjoy the opportunity of an education if he has a legitimate residence in Iraq under the Primary Schools System No. 12 of 1950 and the Secondary Schools System No. 2 of 1977, as he is excused Resolution No. 131 of 2002 Palestinian students studying in Iraqi universities and institutes of entry permits fees into Iraq, as for whether the Palestinian has permanent residence in Iraq, he treats the treatment of the Iraqi in all rights and duties except for the right to obtain Iraqi citizenship, as Article 23 of the effective foreign residency law exempted foreign students enrolled in high schools and institutes in addition to their wives and minor children from paying fees. (Alford, 2004)

### ***The Status of Foreign Artist in the Marriage and Residence***

The Regulation Act of the Foreigners Status in Iraq, No. 177 of 1974, regulates the mechanics of concluding a marriage contract for a foreigner - which includes the concept of statelessness - as the third article of it stipulates the following: **A-** It is not permissible for any official party to enter into a marriage contract for an foreigner residing illegally in Iraq. **B -** Every person or official party that has concluded the marriage of foreigner residing illegally in Iraq is punished with imprisonment for a period of no less than six months and not more than a year or a fine of no less than five hundred dinars and not more than one thousand dinars, or both penalties, "while such rights cannot be exercised for foreigners, unless he has the necessary documents and fundamental approvals, as passport, residence documents, registration of arrival news and approval of the residence officer or the competent security departments, which was confirmed by the first and second paragraphs of the second article and the third paragraph of the tenth article of the new Iraqi foreigners residence law and enforced No. 76 of 2017, and can be imagined against the foreigner, (Stapleton, 2007) as it is permissible to take it out and remove it from the Iraqi region according to paragraphs 9 and 10 of the first article of the Iraqi Foreigners Residence Law for the year 2017 and therefore the problem of searching for shelter or refuge is the first problem that results from statelessness, so if the countries are a haven for their members Who hold their nationality, and if the states allow foreigners - according to the principles established in international law - to enter their territories, where it is not essentially obligated to accept their stay on its territory, and therefore it has the right to deport them and remove them forcibly, but deportation may involve practical difficulties represented in the inability to take this measure in the face of the foreign artist; because it may not belong to any country and is not

considered by any of its nationals, and therefore none of them is obligated to accept it on its territory, however if a country finds it acceptable - a situation that is difficult to imagine - then there is no objection to deporting it.

### ***The Status of the Foreign Artist in the Professional and Organizational Aspect***

The features of this requirement revolve around two important points, the first is reflected in the regulations set out in the Union of Artists Law No. 129 of 1969 and amended by No. 86 of 1971 and Law No. 38 of 1983, and the second is research into the possibility of naturalizing the foreign artist with Iraqi nationality - in addition to his foreign nationality or by giving up on him.

**Controls related to the artist's profession:** These are the ideas that the Iraqi legislator has formulated to deal with the artist's profession - with a general complaint - which is reflected in the following articles - from the Artists Syndicate Law above - the Artists Syndicate - Article 1 / 1 - It is the foundation according to this law and includes artists working in the fields of theater, radio arts, cinematic, television, musical, plastic and folklore, the artist Article 1 / 5 - is every active member or participant in the Syndicate according to this law, Article 3 / 2-3-6 The Syndicate works to achieve the following purposes through the means decided by the Council and the General Assembly and through .... Participation in local, Arab and international artistic conferences and sponsorship of gatherings of Iraqi artists inside and outside the country, Article 5 / 1 the member must have the following: An Iraqi who is not convicted of a non-political offense or a misdemeanor. It is the same text stated in Article 9/1 of the Iraqi Journalists Syndicate Law No. 178 of 1969, Article 6/2. An Iraqi who does not have the technical certificate is accepted as a participating member of the Syndicate, Article 11/1. The head of syndicate is required to be an Iraqi by birth and from Iraqi parents. It is the same condition stipulated in the text of Article 15 / of the Journalists Syndicate Law, Article 10/29 and 10% fulfillment of the fees of non-Iraqi artistic groups and of non-Iraqi artists are paid when submitting their artistic productions inside Iraqi territory and those entities must deduct them directly from the account of the teams or artists and transfer them to the Syndicate account, Article 33 Practicing the profession is working in one of the professions of the people listed in the fields of theater, audio, visual, cinematic, television, musical and plastic arts, Article 34/1 It is not permissible to practice the profession for non-members of the union and its participants, Article 37 and under the heading of general provisions, we note that the Council of the Union may prevent Iraqis and others from practicing the profession for their own account or companies, it is noted on the above advanced texts that it came in line with the general rule mentioned in the Iraqi constitution in force for the year 2005 and the rest of the other Iraqi laws, in terms of restricting dealing on the side of affiliation with an Iraqi or more strict restriction of nomination for the position of head of artists who was Iraqi and for Iraqi parents by birth. (Hopt, 2011)

### ***Regulations Rules of Foreign Artist Status***

The research in this field revolves around the foundations mentioned by the Iraqi legislator - in the new nationality law for the year 2006 - to open the way to the foreigner - the artist - who wants to naturalize Iraqi citizenship, and is represented in the following texts (**Iyad, 2019**): Article 3 / A of the above law that the Iraqi is who born from Iraqi father or mother. The fact is that the artist is not considered a foreigner if he was born an Iraqi father or mother, and Article 4 of it stipulates the following: "The Minister may consider whoever is born outside Iraq of an Iraqi mother and an unknown or stateless father of Iraqi nationality if he chooses it within a year from the date until majority, unless difficult circumstances prevent this, provided that he is residing in Iraq at the time of submitting the application to obtain Iraqi citizenship." This means that the artist may be a foreigner and if an Iraqi mother is born if the birth is outside Iraq and the father is unknown, but he can enjoy Iraqi nationality if the conditions of this article apply to him , as stated in Article 5 of the Law in force for the year 2006, where "the minister may consider as stated in Article Five of the Law in force for the year 2006, (**Zamzam, 2011**) where as stated in Article (5) of the Law in force for the year 2006, where "the minister may consider an Iraqi who was born in Iraq and until majority in that of a non-Iraqi father who was also born there and was habitually resident there at the time of the birth of his son, provided that the son submitted a request to grant him Iraqi citizenship." This article is closely related to the foreign artist in terms of the possibility of including it by describing his birth and the foreign father in Iraq, here this foreign artist can naturalize Iraqi citizenship down when applying the conditions of this article, and article 6 of the current 2006 law stipulates the following: First: The Minister may accept the naturalization of a non-Iraqi when the following conditions are met: He is an adult of legal age, and he entered Iraq legally and resides in it when submitting the naturalization application, with the exception of those born in Iraq and those residing in it and who have a civil status book and did not obtain a certificate Citizenship, and resided legally in Iraq for a period not less than 10 consecutive years prior to submitting the application, and must be of good conduct and reputation and was not convicted of a felony or honor misdemeanor, means of livelihood; and, and that he be safe from transitional diseases, Iraqi citizenship may not be granted to Palestinians as a guarantee of the right to return to their homeland, and Iraqi citizenship is not granted for the purposes of a policy of population settlement disrupting the composition Population in Iraq, and all decisions to grant Iraqi citizenship issued by the previous regime to achieve its objectives are reviewed, this article is among the rules that a foreign artist can adopt in order to obtain the acquired Iraqi nationality, and Article 7 stipulates that it includes the following: "The Minister may accept the naturalization of a non-Iraqi married to an Iraqi woman, if the conditions mentioned in Article 6 of this law are fulfilled, the period of residency stipulated in Paragraph C of the first clause of Article 6 of this law is not less than five years with the marital bond remaining " (14), as well as Article

11 of the law in force which stipulates that:" A non-Iraqi woman married to an Iraqi must acquire Iraqi citizenship under the following conditions: A- Submit an application to the Minister. B- Five years have passed since her marriage and residence in Iraq. C - The continuation of the marital bond until the date of submitting the application, with the exception of those who were divorced or her husband died, and she was from her applicant or her deceased husband was born. "These two articles are considered the basic formulas for the naturalization of the foreign artist with Iraqi nationality, and it is possible to rely on the provisions of the applicable Iraqi laws to conclude some solutions, such as the text of Article 2\ paragraph 3 of the Passports Law No. 32 of 2015, which includes that "The Minister of Interior, based on the requirements of the public interest, may decide: A- Grant non-Iraqi people passports", Article 6 of the same law states: "Eighth: Issuance of travel documents for some foreigners and an indication of the form of these documents and how they are issued." Article 16 of the foreigners Residence Law in force in 2017 states that: "When foreigner cannot be deported or removed or he is stateless, The Minister may decide to specify his place of residence for a period to be determined in the decision, if necessary, to be extended ", Article 26 of this law also states that: "The provisions of this law do not apply to: 4- Minors who are covered by the passports of their relatives. 5- Whoever the Minister decides to exempt from all or some of the provisions of this law." (Al-Yasiri, 2010)

## Conclusions

- 1- The Iraqi constitution in force in 2005 does not permit any provisions related to the foreigner's status in terms of rights, but it can be inferred by analogy with the concept of violation.
- 2- The foreign artist does not enjoy any political rights as the right to nominate, elect and vote.
- 3- Restricting the right to work to Iraqis only - constitutionally - observing the rules of social justice, even though he can exercise this right in accordance with the new and effective labor law for the year 2015.
- 4- The state guarantees social and health security for Iraqis in the event of old age, disease, disability etc. However, this guarantee can be covered by the foreign artist if there is an international agreement guaranteeing that.
- 5- Also, free education and sports exercise are a right for every Iraqi.
- 6- A foreign artist is obligated to respect the social system, to respect the legal, political, and economic system and to pay taxes and fees to the state.
- 7- The foreign artist should adhere to the conditions of valid and lawful residence, otherwise his marriage will be considered invalid and no party may conclude this contract if the foreigner violates this restriction.

8- As for the affiliation of the foreign artist to the Iraqi Artists Syndicate, this matter is prohibited from him because he is not an Iraqi, nor can he be a head of Iraqi artists for life, as they contradict that and the controls of laws and related instructions.

9- It is possible to assist the foreign artist in conducting an optional curriculum by going to acquire Iraqi nationality in accordance with the provisions of the new and effective nationality law for the year 2006 - without affecting its foreign nationality - to count the Iraqi legislator's reluctance to multi-nationalities, and through a set of cases, including: Approving naturalization with long residence (Article 6) or mixed marriage (Article 7 and 11) and so that.

10- We recommend the necessity of expanding research and legal studies related to the status of the foreign artist, as it is one of the new issues that did not take place in the pens of researchers and is still a new for specialized studies.

11- The need to pay attention to the details of the new laws in Iraq that are related in one way or another to the foreign center in general, and the subject of the artist in particular, as they are important and developed legislation starting with the Iraqi constitution for the year 2005 and the nationality law for the year 2006 and the passports law for the year 2015 and the amended investment law for the year 2013 and the labor law for the year 2015 and the Residence Law of 2017.

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