



GUARDIAN COUNCIL

GUARDIAN COUNCIL (*Šurā-ye Negahbān*), a powerful 12-member council with vast legislative and executive jurisdictions that forms a cornerstone of the Islamic Republic's Constitution (q.v.). According to Art. 91 of the Constitution, it consists of twelve members, six of whom are theologians (*foqahā*) and six are jurists (*hoquqdān*) versed in different legal branches. The former are appointed by the "supreme leader," the latter are elected by parliament (Majles) from among the "Muslim jurists" introduced by the head of the judicial system; the head of the judicial system is also appointed by the leader. The duration of their term in office is six years (Art. 92 of the Constitution). The scope of the Guardian Council's various powers, as set out in the Constitution, will be discussed in four sections: legislative jurisdiction, the interpretation of the constitution, supervision of elections, and other prerogatives.

Legislative jurisdiction: The Guardian Council is authorized to examine all parliamentary decisions "as to their consistency with the tenets of Islam and constitutional law." "Should there be a contradiction between them, the Gaurdian Council sends them back to the Majles. Otherwise, the decision can be carried out" (Art. 94). This right of opposition on behalf of the Guardian Council is of such great importance to the Islamic Republic of Iran that, as expressed in Art. 93 of the Constitution: "The Majles shall not be considered valid without the Council of Guardians except when approving the credentials of the representatives and choosing the six jurists of the Council of Guardians." However, this right is not equally distributed among the members of the



Council. Article 96 states that its theologians alone may decide on the compatibility of the decisions of the Majles with the precepts of Islam, while all twelve members of the Guardian Council participate in the decision when the compatibility between parliamentary resolutions and the Constitution is at stake.

This right of opposition has so far been used by the Guardian Council against a number of parliamentary decisions by establishing their incompatibility with either the *šari'a* or the Constitution and by sending the issue in question back to the Majles. The proportion of rejected parliamentary decisions varies from one period to the next, ranging from 27 to 40 percent (Schirazi 1997, p. 91). From the beginning of the sixth parliament on 28 June 2000 until December of the same year, the Guardian Council rejected 17 out of 44 decisions (Mir Moḥammadi, *Iran*, 13 Āḍar 1379 Š./4 December 2000). Until the establishment of the Expediency Council (Majma'-e taškīš-e mašleḥat-e neẓām) in February 1988 and its inclusion in the 1989 Constitution, a decision by the Majles, unless it was dropped by the latter, could be sent back and forth between the two authorities until the changes made by the Majles satisfied the Guardian Council (Madani, IV, p. 179 ff.; Schirazi, 1997, p. 91). However, since the Expediency Council was organized, the Majles has been able to pass on issues rejected by the Guardian Council for the ultimate decision of the Expediency Council. This happens when the Majles is not willing to fulfill the Guardian Council's wishes for modifications.

The parliamentary decisions demanded by the Guardian Council are usually of great importance as to their effect on social life in the Islamic Republic. They deal, for example, with the control of foreign trade, landed property, banking, industrial law, cooperative systems, press laws and decisions concerning women's rights.

The Guardian Council's right of opposition is not restricted to the bills approved by the Majles, but also applies to statutes approved by boards of organizations and societies belonging to, or affiliated with, the state (art. 85). The Guardian Council also exercises its right of opposition to statutory instruments approved by the cabinet and other executive organs, decrees of the Cabinet, treaties and statutes, by referring to Article 4 of the Constitution. The latter states that "all civil, penal, economic, administrative, military and political laws and rules must be based on Islamic criteria" and that "this shall be at the discretion of the theologian members of the Guardian Council."



The Guardian Council rarely explains the arguments supporting its points of view (*naẓariya*) about parliamentary decisions. These views usually say nothing more than that such decisions would contradict the *šari'a* or a certain principle of the Constitution. Sometimes they briefly mention the direction in which desired changes are to be made, but this is done in such vague and brief phrasings that even experts find them difficult to understand. Exceptional cases may arise when the Guardian Council is under inescapable pressures. In such cases, a member of the Council addresses the public and makes a few remarks about the disputed decision of the Guardian Council (Schirazi, 1997, p. 91).

An analysis of their reports leads one to the conclusion that they do not rely on the so-called Islamic ordinances (*aḥkām*), but on “Islamic principles” (*mawāzin*), the identity and significance of which there is hardly any agreement among Islamic jurists and theologians. Even the Constitution of the Islamic Republic abstains from clarifying whether the criterion for the consistency of the laws, prescriptions, etc. of the *šari'a* lies with Islamic principles or ordinances.

The Guardian Council’s rejection of articles (*māddas*), notes (*tabšeras*) passed by parliament, or decrees of the Council of Ministers (*tašwib-nāmas*), etc. is expressed by formulae such as “contradicts the principles of the *šari'a*,” “there exists a contradiction from the point of view of the *šari'a*,” “is inconsistent with the principles of the *šari'a*,” etc. From these and similar phrases, it may be concluded that the Guardian Council is not interested in the compatibility between the parliamentary decisions and the principles of the *šari'a*, but does not want them to contradict one another. In other words, the Guardian Council is aware of the fact that legislation includes an area which is not covered by Islamic law, so that compatibility cannot be raised as a criterion. This fact is also expressed in the constitution of the Islamic Republic itself, where, despite some ambivalence, the absence of contradiction can be made into a criterion (Art. 72, 96).

Even during the first legislative period of parliament, its representatives and members constantly expressed their displeasure about the way in which the Guardian Council handled their decisions. Protests became louder when decisions considered essential by a parliamentary majority were rejected. The conflicts thus caused between the Majles and the Guardian Council finally led Ayatollah Khomeini, in the early 1980s, to limit the Guardian Council’s authority in legislative matters.



Khomeini's first step was to authorize parliament to take measures contradicting the *šari'a* or primary Islamic regulations in cases of emergency. The condition for this was the attainment of an absolute majority for the corresponding decision. In that case the Guardian Council could no longer object. The main cause for this decision were the measures taken by the Revolutionary Council and later by parliament to reduce private property as far as agricultural and communal ground was concerned (Schirazi, 1993, p. 175 ff.; Idem, 1997, p. 175 ff.). These decisions were rejected by some of the higher clergy and later by the Guardian Council due to their inconsistency with the *šari'a*. Yet the leaders of the Islamic Republic considered them to be indispensable, so in October 1981, Khomeini authorized parliament to pass them. Since this decree did not break the resistance of the Guardian Council, which could still obstruct certain parliamentary decisions, Khomeini issued a further decree on 24 January 1982, in which, to satisfy the Guardian Council, he made the relevant parliamentary decisions dependent on a two-thirds majority. In this case the Guardian Council could no longer use its veto.

Since even this solution could not eliminate the problem arising from the contradiction between the *Šari'a* or the Guardian Council on one part and the need for a modern legislature on the other, Khomeini took much more extensive measures in January 1988. He granted the Islamic state, which the Islamic Republic of Iran was meant to be, the right to disregard Islamic regulations when taking decisions and passing laws. The only principle to follow was "the interest (*mašlahat*) of the state order." The Islamic state could, if required in the interests of the regime and Islam, cancel all Islamic principles, even prayer, fasting and pilgrimage (*Kayhān*, 17 Dey 1367 Š./7 January 1988). After corroborating the interests of the state, Khomeini called for a "committee for establishing the interests of the state" (Expediency Council). Among the members of this committee were six theologians from the Guardian Council, who no longer made their decisions on the basis of the *šari'a*, but in the interest of the state. On this basis, they could give their consent to the same parliamentary decision which they had rejected as guardians of the *šari'a* in the Guardian Council.

Even after the establishment of the Expediency Council and its inclusion in the 1989 Constitution, the Guardian Council regularly checked the decisions of the Majles and sent them back to the latter when finding anything contradicting the *šari'a* or the Constitution. The difference with the period before the formation of the Expediency Council lies in the fact that parliament no longer



has to follow the recommendations of the Guardian Council. It can reject them and leave the decision about the matter to the Expediency Council in the hope of a suitable result.

The interpretation of the Constitution. Art. 98 of the Constitution provides the Guardian Council with the right to interpret the Constitution. This requires a two-thirds majority. The Guardian Council thus acquires further possibilities to exercise its power. This right has often been used by the Guardian Council, especially during the first years of its activity (Madani, IV, p. 399, Mehrpur in *Resālat*, 4 Esfand 1371 Š./ 23 February 1992). But even afterwards, the Council has repeatedly used this means to solve problems by interpreting the Constitution in line with its conservative leanings. When these interpretations are accepted by a two-third majority, they are as valid as the Constitution itself. Otherwise they are considered as an “advisory decision” without compelling force. According to its own statutes, the Guardian Council interprets the constitution on request. Applicants can be the Head of Parliament, the Supreme Court of Justice, the Cabinet, or the President. In practice, the Guardian Council also acts as interpreter on behalf of the lower echelons of the State. Whether or not an application is accepted is decided by the Guardian Council itself. The Guardian Council’s interpretations of the Constitution mainly concern the mutual relations between particular authorities of the State or the relationship between different offices within each State authority. Some interpretations also concern economic relations between Iran and foreign countries. Through its frequent interpretations of the Constitution, the Guardian Council can, and often does, use its influence to steer decisions in the desired conservative direction.

Supervision of the elections. Supervision of the election of the President, the members of Parliament and the Council of Leadership (Majles-e *ko*bragān-e rahbari), as well as referenda, are also incumbent on the supervision of the election (Arts. 99 and 118 of the Constitution). The way in which this right is exercised is described by the corresponding laws and ways of execution formulated jointly by parliament and the supervision of the election, or, as in the case of the elections for the Leadership Council, by the latter itself, or on behalf of it, by the supervision of the election. The essential points in these texts concern, first of all, the conditions that the candidates must fulfill to run for the office in question. This concerns the exact determination of the abilities to be understood under the concept of supervision. While the conditions mentioned tend to exclude any candidate suspected of not recognizing the



conservative interpretation of the “absolute rule of Islamic jurists” (*welāyat-e faqih*), the Guardian Council tends to expand the limits of its supervisory rights as far as possible. The election law of 1983 defined them as “general and concerning all phases and concerns regarding the elections.” In 1991, the Guardian Council provided for a constitutional safeguarding of these rights by interpreting Art. 99 of the Constitution as an approval of supervision (Schirazi, 1997, p. 89).

Taking advantage of this law, the Guardian Council has at each election denied the suitability of a large number of candidates. Out of 3,150 candidates at the general elections for the fourth parliament (1992-96), for example, 1,110 candidates were rejected. At the elections for the fifth parliament (1996-2000), 2,089 out of 5,365 candidates were rejected, and at the elections for the sixth parliament (2000-2004) the corresponding numbers were 576 out of 6,856. The drastic drop in the number of rejected candidates may be attributed to the resistance of the Ministry of the Interior (*Wezārat-e kešvar*) under Khatami’s administration. The same process took place during the presidential elections. Here the percentage of approved candidates varied between 2.5 and 8.8. If the number of rejections at the elections for the Leadership Council is not as extreme, this is due to the conditions for the candidacy of this institution. The latter are so exclusive that many potential candidates abstain from applying. The number of candidates is thus low in comparison with parliamentary elections. In 1998, 396 people applied. Among them, 214 failed in the examination for the candidature of the third period of the Leadership Council. In 1990, 178 people had applied for the candidature of the second period of the Leadership Council. Among them, 62 were refused. Those rejected not only included candidates with a secular or liberal-Islamic attitude, but very often people who had proved their practical loyalty to the Constitution. Among them are the names of numerous persons who, before their rejection, were members of parliament or of the Cabinet or of the Constituent Council. The Guardian Council usually refuses to make known its grounds for rejecting applicants, and does not even inform the candidates themselves as to these grounds. In 1999, the Expediency Council attempted to make the Guardian Council explain its reasons for rejection to the candidates themselves under certain conditions. In practice, however, the Guardian Council has often refrained from doing so.

Among its supervisory rights, the Guardian Council also includes the cancellation of election results in certain wards which it considers improperly



run. In addition, it can cancel all or part of the votes in certain ballot boxes. The Guardian Council can also suspend elections in certain towns and provinces under the pretext that they may cause unrest. This right has been used by the Guardian Council in all parliamentary elections hitherto held. In the elections from the first to the sixth parliamentary periods, the results were cancelled in 30, 12, 15, 3, 14 and 10 Wards, respectively. As an example of the cancellation of votes we may mention the elections of the sixth parliamentary period, when in Tehran alone the Guardian Council declared 534 ballot boxes, totaling 726,266 votes, to be invalid. This amounted to 25 percent of all votes cast in Tehran. This practice can often lead to alterations in the election results. In the case of the Tehran elections just mentioned, two conservative candidates, 'Ali-Akbar Hāšemi Rafsanjāni and Ġolām-'Ali Ḥaddād 'Ādel, who fought a losing battle before the cancellation, afterwards advanced to the 20th and 28th places, i.e., to the rank of the elected. The number of cancellations is directly dependent on the Guardian Council's measure of success in controlling the various phases in the overall procedure of the elections. The farther the Interior Ministry (the proper authority for holding the elections) withdraws from their control, the greater becomes the Guardian Council's inclination to use the ultimate weapon of its approving supervision.

Other prerogatives. In addition to its above-mentioned authorities, the Guardian Council has a seat and a voice in many of the branches of State authority connected with the Constitution. Thus, in the Expediency Council (Art. 112 of the Constitution) it participates with its six clerics (Art. 112) after the leader's decision; with all its members (Art. 178) in the Council for the Revision of the Constitution (*Šurā-ye bāznegari-e qānun-e asāsi*); and with one of its clerics (Art. 111) in the Provisional Council in the event of the leader's sickness, death, resignation, or removal from office.

Since the members of the Guardian Council are directly (the six theologians) and indirectly (the six jurists) nominated by the leader, their preferential and recognizable political, religious and social inclinations depend on that of the leader. Consisting of conservative clerics and jurists, the Guardian Council has adopted a markedly conservative position in its present practice. The Ayatollahs Aḥmad Jannati, Moḥammad Yazdi, Abu'l-Qāsem Kaẓ'ali, Moḥammad Emāmi Kāšāni, Reẓā Ostādi, Moḥammad Moḥammadi Gilāni, Moḥammad Moḥsen, Ġolām-Reẓā Reẓwāni, Ḥasan Ṭāheri Korramābādi, Loṭf-Allāh Šāfi, Maḥmud Hāšemi expressly support this approach as clerics in the Guardian Council, and so do jurists such as Reẓā Zavāra'i, Ḥosayn Mehrpur,



Moḥammad Reżā ‘Alizāda, Moḥammad Reżā ‘Abbāsi and Ḥasan Ḥabibi.

BIBLIOGRAPHY

Sayyed Jalāl-al-Din Madani, *Ḥoquq-e asāsi dar Jomhuri-e Eslāmi-e Irān*, 4 vols., Tehran, 1987.

Idem, *Ḥoquq-e asāsi wa nehādhā-ye siāsi-e Jomhuri-e Eslāmi-e Irān*, Tehran, 1994.

H. Mehrpur, *Majmu‘a-ye nazariyāt-e Šurā-ye negahbān*, 3 vols., Tehran, 1992.

Rawābeṭ-e ‘omumi-e Daftar-e taḥkim-e waḥdat, ed., *Nezārat-e estešwābi*, Tehran, 2000.

A. Schirazi, *Islamic Development Policy: The Agrarian Question in Iran*, Boulder and London, 1993.

Idem, *The Constitution of Iran. Politics and the State in the Islamic Republic*, London and New York, 1997.