

LEGAL SYSTEM OF JUDICIAL ADMINISTRATION IN THE REPUBLIC OF IRAQ (COMPARATIVE STUDY)

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Abstract: The lack of financial resources in all countries highlighted the issue of optimal management. The work of the judges is now seen not only as independent decision makers, but also as public officials providing some kind of public service; That is, judicial services, and therefore their administrative performance in providing such services is examined (1). However, in addition to issues of public administration, because the nature of the work of the judiciary is arbitration and the separation of hostility, and in one word, the administration of justice requires the impartiality of the judiciary and judges in the end, so the issue of the independence of the judiciary is a central and important issue in studies and theories about the judiciary.

Keywords: Iraq constitution, judicial administration, judicial institutions, current Iraqi constitution

1 Introduction

Examining the judicial and legislative branches in two important stages of Iraqi history is an issue in Very important, especially in the period before the fall of the previous regime and how the judiciary exercises its powers And study it as one of the most important authorities on which countries depend today Good governance and the rule of law, that principle that has invaded today's world in the Arab region in general and Iraq in particular (Abees Nima Al-Fatlawi, 2008).

The principle of the independence of the judiciary is one of the cornerstones of any democratic state, as it guarantees the existence of a true constitution and the realization of the idea of the rule of law. Building a civil society and quickly building a legal democratic state requires improving and strengthening a strong, independent and accessible judicial system for the population. Therefore, the development of the judiciary is receiving great attention.

According to art. 88 of the Constitution of the Republic of Iraq, judges are independent, they have no authority over their rulings other than the law, and no authority may interfere in the judiciary or in matters of justice.

Among the constitutional principles of the organization and activity of the judiciary, it is necessary to determine the most important of them, the implementation of which is largely able to ensure the effectiveness of justice - the exclusion of external influence on judges in the exercise of justice. This is the principle of the independence of judges and their subordination only to the law, and it undoubtedly determines the status of the court in the modern legal state. It should be noted that the high social value of the principle of the independence of judges and their subservience to the law only is a global value and is not limited in any way to the framework of the entity of one country only. Its importance is so great that ensuring effective protection of the rights and freedoms of citizens has become a subject of special debate in the United Nations.

The important question now is how to design an independent but accountable administrative structure for the judiciary. In this study, an attempt was made to determine the somewhat desired pattern using studies used in this field.

2 Methods

The methodological basis of the research is constituted by the general scientific dialectic methods of cognition, scientific methods of analysis and scientific forecasting synthesis and deduction, systemic methods, as well as special methods of studying legal phenomena - historical-legal, comparative-legal, structural-functional, etc.

3 Results and Discussion

The meaning of the judicial administration is a set of procedures, formalities, and departments that manage the court system. This has traditionally been associated with areas such as budget oversight, appointment of judges, transfer of cases to judges, determination of the court agenda, oversight of the performance of non-judicial personnel, etc.

When defining the meaning of judicial administration, some authors note that "from an organizational point of view, judicial administration means institutions that have already been created by law, including the constitution and ordinary or institutional laws of justice, but also in the general sense." (Abees Nima Al-Fatlawi, 2008) "It includes all the institutions created not to administer justice, but to administer it (such as ministries, judicial councils, etc.) (Moradi Berlian, 2016). The administrative structure of the judiciary varies according to the system of government in each country, but a kind of general similarity can be identified among them. Shimon Sheet it identified five general categories of administration systems responsible for the administration of the judiciary. In the first model, the executive is fully responsible for managing and organizing the judiciary; like the judiciary in Austria and Norway. In this model, there is also a modified subtype in which the practical administration of the judiciary is the responsibility of the judges, but they are responsible for their performance vis-à-vis the executive branch (Sheet Alkhagani, 2010). In the second model, the executive and the judiciary are jointly responsible for the administration of the judiciary. Judicial councils are the most important and common means of judicial judgment in this model, which is common in most countries of continental Europe and Latin America. In the third model, the administration of the judiciary is pure and exclusive in the hands of the judiciary, which is divided into two subtypes: the first sub-model in which the administration of the judiciary is in the hands of only one person, such as the judiciary in New York State and the second sub-model, which is the responsibility of a council and body Collective, similar to the United States judicial system.

In Iraq, according to Articles (91, 90) of the current Iraqi constitution, the Supreme Judicial Council is responsible for managing the affairs of judicial bodies, and the law regulates its composition, terms of reference, and rules for its functioning (Alavi Aljanabi, 2014). Iraq took an important step in 2003 when it shifted from the philosophy of subordination of the judiciary and courts to the Ministry of Justice (the executive authority) to adopting a philosophy that considered the judiciary as an independent authority, and this is what the Constitution of the Republic of Iraq adopted in 2005 as it stipulated two types of independence, the first of which: - (Judicial independence As an authority), as Article (87) of it stipulated:

The second type of independence is: - (Independence of the judge), as Article (88) of it stipulates: - (Judges are independent, with no authority over them in their rulings other than the law, and no authority may interfere in the judiciary or in matters of justice.).

The first text emphasized (the independence of the judiciary as an authority), while the second clearly affirmed (the independence of the judge) and prevented any authority, including the (judicial authority), from interfering in the judiciary or in matters of justice, no party has the right - even if it is part of the judicial authority - Interfering with the actions of the judge or influencing him in any way.

Rather, the independence of the judge is a concept whose scope is not limited to the necessity of ensuring the independence of the judge from the members of the executive and the legislative authority. Rather, it is independence that must also be guaranteed in the face of all, including opponents, others, colleagues of the judge and chiefs within the judiciary (Hassan Al-Aqeeli, 2010). The Council is an ancient formation in the Iraqi judicial system, where its roots go back to the law of rulers and judges' No. 31 of 1929, in which a committee known as the "Committee of Judges and Judges" was formed which can be said to have taken over Responsibility to organize the affairs of the judiciary (Zawin & Muhammad Hassan, 2020). Therefore, the texts that affirm the necessity of ensuring the independence of the judge as stipulated in Article (88) of the permanent Iraqi constitution - referred to above - are of little value unless they are translated into legal rules with clear mechanisms that protect the judge and guarantee him complete independence, usually included in the laws of authority Judicial or judicial organization. Also, the applicable judicial organization law violates the constitution in most of its provisions on the one hand, that the constitution made the authority to supervise and administer the affairs of judicial bodies in the hands of the Supreme Judicial Council (such as a council) exercise its authority in a collective manner, while the judicial organization law devotes many powers to the head of the Supreme Judicial Council and by the presidents Appeals and the hands of the heads of other judicial components, which are powers that effectively confiscate any value of the judge's independence within the judiciary, but rather puts him at the mercy of his administrative chiefs in a manner that enshrines submission and coercion to judges in the interest of their direct and indirect wishes and requests. Therefore, the judiciary is administered and subject to unconstitutional law in most of its provisions (Hassan Al-Aqeeli, 2010).

The transfer of administrative duties from the executive authority to the Supreme Judicial Council in Iraq prevents from interference in the judiciary and thus increasing the independence of the judiciary, and the transfer of these duties to the Judicial Council contributes to improving administrative processes and budget management for this organ.

In this sense, the logic of establishing judicial councils varies in countries such as France, Italy, Portugal and Spain, and the executive powers remain within the jurisdiction of the Ministry of Justice. In these countries, the primary concern in establishing such councils has been to enhance the independence of judges in litigation. In France and Italy, for example, the council is responsible for appointing judges, while in northern European countries such as Sweden and Denmark, the councils are involved in drafting judicial budgets, administrative and financial administration, construction and training, personnel training and automation. The judiciary plays an active role. In general, in Europe, there is a tendency to create independent judicial administration institutions, which are the most important councils.

The role of Supreme Councils in this model is often limited to dealing with judges and prosecutors. In other words, appointment, promotion, disciplinary issues, and job training are the main tasks of these councils, and issues of administrative, financial, and political authority are the sole responsibility of the Ministry of Justice.

In some countries, court administration and budget control are administrative and budgetary matters of the judiciary, taken from the Ministry of Justice or the Supreme Court, and delegated to the judiciary. In countries where this authority was obtained from the Ministry of Justice, this was done with the aim of

limiting external interference, especially interference by the executive branch of the judiciary (Amar Aside, 1997). In countries where these functions have been delegated from the Supreme Court to the Judicial Council, this has been done to make the courts more focused on judicial performance.

4 Summary

The main issue under consideration in this report was how to design a judicial administrative structure that could be accountable while preserving independence. The results of this report indicate that there is a trend towards judicial and participatory administration of the judiciary in Iraq and some of the mentioned European countries. This trend of the Judicial Council is not only to ensure independence and accountability, but also to improve its efficiency.

The independence of the judges and the independence of the court is a complex social problem, in addition to the legal aspect; it can be taken into account the social, economic, political and ideological aspects.

Solving the legal aspect of the problem only, in principle, is impossible without systematic accounting of the social, economic, political and ideological components of the specific problem. The problem of the independence of judges and the independence of the court in Iraq can be divided into two parts: First, partisan interventions that affect the independence of the judges of the court,. Second, the lack of organizational independence of the judicial system from other public authority institutions in the public financial budget, including salaries and social guarantees for the judiciary.

5 Conclusion

The results of this report show, at least, that the judiciary in Iraq has not been completely separated in any way from the government, especially the executive branch, as it is one of the public administrations on the one hand, and on the other hand, it is part of the primary competence to ensure independence and responsibility. Therefore, in most cases, in the main composition of the Judicial Council responsible for managing this system, there are a number of members, even in the minority, among law professors, lawyers, and employees from different legal professions.

In Iraq and in the countries under study, judicial councils perform administrative functions in addition to their judicial functions, to the extent that they do not constitute interference in the judicial affairs of judges (Aziz Hadi, 2008). This means that the executive and judicial affairs of the judiciary cannot be completely separated and their influence on one another can be completely neutralized. Finally, it can be said that the transfer of administrative powers today to autonomous councils and the administration of the judiciary in a decentralized manner is the dominant model governing the management of this body in order to ensure institutional independence and accountability. However, it is simply not possible to take this approach without the organizational and mental background of the directors of this organ to delegate authority to the judicial councils.

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