

# Banning Political Work on Judges is a Guarantee of Human Rights

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**Abstract:** *The judiciary is the authority that individuals resort to when their rights , freedoms are exposed to danger, and the matter is settled for those who are exposed to the rights and freedoms of individuals, whether it is ordinary individuals or other state authorities, especially the multiple executive branches of the authority, the authority of the judiciary also extends to adjudicating cases that arise between the authorities of the other state among themselves, so that the judiciary is the one with jurisdiction to protect rights and freedoms, as well as the importance of the role played by the judiciary, the matter requires that, this authority enjoys complete independence. Perhaps one of the most important elements of independence is the reluctance of members of that authority from engaging in political work because of that reason leading to many deviations on the course of judicial work as a result of political pressure that happen to judges when they belong to parties or other political institutions, due to the seriousness of this and its significant effects on human rights, most constitutional regimes were keen to attend political work for judges.*

**Key words:** *Political work, judge, human rights, prohibition, independence of the judiciary.*

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## Introduction

The judiciary has a prominent feature that distinguishes it from other legislative and executive powers of the state as the body that aims to ensure the application of the rule of law in relation to disputes between individuals between them or between them and the state or between the multiple state agencies among them, which made it the body of the souls of individuals reassured of it and left to it, it has become the right of the guarantor of their rights and freedoms and confronting those who derive those rights and freedoms, whether by wasting, diminishing or restricting them. In order for the judiciary to carry out the tasks entrusted to it as one of the legal foundations of the state, it must enjoy independence, and perhaps one of the most important foundations and pillars of independence is to avoid political action for its members.

Since the independence of the judiciary depends on the existence of the rest of the legal components of the state, therefore there is no value to the constitution in addition to the principle of separation of powers and no guarantee of rights and freedoms except with the presence of a neutral and impartial judicial authority whose control is to rule its work the provisions of the law to ensure respect for constitutional principles as well as legal norms in the state with the achievement of Ensure that all other state authorities exercise their powers under the principle of separation of powers, for this reason, it was necessary for the judiciary to perform far from political work, there is no authority over it other than the law, that is, the freedom of a judge to form his faith when conducting judicial work should be limited only by law in accordance with constitutional rules, that guarantees ensuring the judiciary remains a parallel authority to the other state's authorities in terms of legislative and executive aspects , free from political influences , whims to preserve the rights and freedoms of individuals from their exposure to the risks of violation and at the level of all disputes that arise before the judiciary or that the judiciary addresses on its own accord in accordance with constitutional and legal texts.

All of this is according to the study on the issue of constitutional, legal prohibition of judges from the legal , legal standpoints, and knowing the level of their impact on individuals 'rights and fundamental freedoms.

## The problem of study

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The current study tries to answer the following questions:

- How sufficient are Iraqi laws to ensure that the principle of political work is banned on judges?
- Did the legislator take a fixed or changing position on this principle, and what is its effect as a guarantee of human rights?

### **The significant of study**

Perhaps the significant of choosing the topic of the study lies on the fact that the principle of prohibiting political action on the members of the judiciary is at the heart of studies that address a vital topic related to the human right to have his case examined through a fair trial by a judicial authority working to provide a real guarantee of the rule of law.

### **The methodology of study**

In order to fulfill the requirements of the subject of the study, we divided it into two requirements: the first dealt with the study of the concept of the principle of political work attended by judges and the second discussed the aspects in which the judge is a practitioner of political work.

### **The first requirement: The concept of the principle of prohibiting political action for judges**

One of the main pillars upon which the independence and impartiality of the judiciary is based is the principle of prohibiting judges from working in politics as it represents the last resort for individuals when their rights and freedoms are exposed to the risk of violation, In addition to the relevance of this principle to the other pillars of the independence of the judiciary, which are almost inseparable from each other, the judiciary is the prominent and bright feature in the forehead of the judiciary, which is one of the recognized principles in democratic systems.

To clarify the concept of this principle, we will undertake this by examining the following: -

### **The first branch: The origin of the principle of political action attended by judges**

The principle of the prohibition of political action on judges is rooted in the rule of law, in which the individual is a donor to the legitimacy of the state as a citizen through democratic mechanisms that he is entitled to exercise, so that the state represents the total constitutional institutions aimed at guaranteeing both the general right of the state on the one hand and the personal rights and freedoms of individuals on the other hand <sup>(1)</sup>.

A discussion of this principle will be through the independence of the judiciary, which is a natural result of the principle of separation of powers, since avoiding members of the judicial authority for political work and enjoying their impartiality and integrity in the eyes of all constitutions and legal jurisprudence is an order imposed and required by the nature of the judiciary in any country that seeks to provide protection for individuals and their rights, whether during or outside conflicts. Being the body with inherent competence to achieve the state's legal goal of preserving the security and protection of individuals in all aspects of multiple life <sup>(2)</sup>.

Analyzing the concept of the principle of prohibiting political action for judges, which we find embodied in all elements of the rule of law, but both the independence of the judiciary and the separation of powers are the most prominent in this regard.

It was agreed that the theory of separation of powers emerged in the late eighteenth century, carrying many opportunities and possibilities related to understanding this theory or the possibility of looking at it.

Despite the partial differences between the concepts of the theory, its essence remained one, Having confirmed its relentless pursuit of a suitable alternative to the power of absolute authoritarian rule, it maintains sovereignty and does not lead to abuse of the power that results from it, until it became in the modern era, it represents a basic standard that shows the work of each of the state's legislative, executive and judicial powers and the nature of dealing with each other.

The emergence of the principle of separation of powers dates back to ancient times, the prominent role in laying the foundations upon which the principle of separation of powers was built, as Plato explained in his book (The

Laws), the functions of the state should be distributed among a number of different bodies, with a state of balance between them, in order not to single one of them by ruling because of the resulting number of disturbances, revolutions, and rebellions against this tyranny <sup>(3)</sup>. However, the true view of the principle of separation of powers is the French thinker and philosopher (Baron Charles Lewis Secondat Montecchio) whose principle has been attached to his name a lot even though he is not a brainchild, he was influenced by the ideas of Locke, who had previously advocated the same principle, in addition to being influenced by the English constitutional system, in which rights and freedoms flourished because of its being a mixed and moderate political system in which power was distributed among multiple bodies, compared to what was going on in his country, France, in violation of rights and freedoms, under the absolute monarchy <sup>(4)</sup>.

Montesquieu went except that the exercise of the legislative and executive powers by a person or group of persons, this combination would constitute tyranny through the unjust and despotic implementation of laws through the same authority that it had legislated on its own, which required that the judiciary be independent from both the legislative and executive branches, therefore, the primary goal and significance of the principle of separation of powers was to move away from the concentration of powers in the hands of one person or a number of persons, an entity or body, and whether it was legislative, executive or judicial, as this prevents abuse in its use, as well as the result of achieving some degree of control over any of them over the other and is in the process of exercising its powers <sup>(5)</sup>.

The content of the principle, according to Monticio's view, is that experience has proven that a person is, by his nature, inclined to abuse when using the authority granted to him, as he aims to achieve his personal interests at the expense of public interests, what made the merging and concentration of powers in the hands of one person or one body conducive to their tyranny and violation of the rights and freedoms of individuals and that the way to safeguard these rights freedoms is to distribute power between a number of bodies and each of them can limit and stop other bodies at their borders <sup>(6)</sup>. In this context, the principle of separation of powers does not mean the complete independence of each authority from the other, that total independence is practically inconceivable, because the authorities, despite their separation, will find themselves in the necessity of the nature of things obliged to cooperate, solidarity and walk together, according to Montesquieu, therefore, we believe that the separation of powers should be flexible, relative, and based on cooperation and balance between them <sup>(7)</sup>.

It is dangerous for freedoms that both the legislature and the enforcement authority meet in the hands of one person or be entrusted with one organization, as that person or organization is afraid of enacting unfair laws , then implements them to achieve his inclinations and desires, thereby achieving his own interests, as well as freedom, if there is no judicial authority independent and separate from the legislative authority, it is - freedom - for the people of the homeland as well as for their lives at their mercy, the judge is still the legislator himself, in the case where the judiciary is part of the executive branch, then the judge is considered despotic. In another context, Professor (Maurice Doverege) believes that partisan influences and political blocs clearly influenced the principle of the separation of powers, as the political systems of the majority do not adopt the principle of separation of powers according to Montesquieu's vision and perceptions as they applied another pattern to the principle of separation of powers, as we find the limits of the authority of the political majority in Parliament when the so-called opposition authority, which exercises its powers within Parliament through the concept of minority powers.

In the same direction, we see the powers of the majority grow exponentially with the growth of the powers of the deficient minority due to the numerical influence, which needs from the main means that make it a solid opposition that can find a kind of balance and cooperation between it and the authority of the majority and affirms jurisprudence, and this is what we support. The basis for this cooperation and balance is represented by a pattern Another of the powers is the constitutional judiciary, which should enjoy the full independence of all its members and not be affected by the political ideas governing the work of both the majority authority and the opposition authority by not doing any of the members of the constitutional judiciary to work politically in order to preserve rights and freedom S individuals that should be entrusted with the responsibility of protecting the party enjoys real independence <sup>(8)</sup>.

Therefore, most of the jurisprudence of positive law believes that the intended independence of the judiciary in general is considered a practical application of the principle of separation of powers, which we believe that the separation of judges from political action or affiliation with political parties is the pillar of the independence of the judiciary. So, the independence of the judiciary represents the broader door to the applications of the principle of

separation of powers, as the independence of the judiciary is one of the consequences of adopting the principle of separation of powers.

Being calling for the creation of an authority independent of both the legislative and executive powers , working to realize the right and wrong with falsehood and preserve and protect public freedoms from the risks of derogation and rumors from other authorities that may be driven by a passion for authoritarianism by subjecting to the judiciary if it intersects with what you feel or becomes dependent on what you want . The independence of the judiciary must be independent of the legislative and executive branches, respecting the judiciary's rulings, it is not sufficient for the authorities simply to refrain from interfering in order to amend or cancel the judgments issued by the judiciary, it should also not be subjected to it by means of criticism and defamation, as it is the title of justice, the last refuge for individuals when their rights and freedoms are exposed to injustice and from any party whether they are members of society or multiple government agencies, however, this does not restrict the authority of parliament to issue laws related to the organization of the judiciary or to clarify its powers, but on the condition that this does not lead to undermining the independence of the judiciary or diminishing it, in the same context, the judiciary supervises and monitors the actions of both the legislative and executive branches by examining the constitutionality of other laws and legislations <sup>(9)</sup>.

Therefore, we can say that most modern democracies have established in their constitutions the principle of separation of powers based on cooperation and balance between them, but the practical reality has shown that the powers of the state as a whole are of importance, but the judiciary is distinguished from others from the powers of the other state, the work is doing and it is in the process of exercising her competences as a real guarantee of human rights as the officer for the rhythm of the work of other authorities with multiple organs, and this is evident through the constitutional judiciary in the state, which should be far away from business and political influences in order to preserve the rights and fundamental freedoms of individuals.

On the international level, international covenants have affirmed and affirmed the necessity of finding a judicial authority that enjoys neutrality and independence without practicing political action and prohibiting it from all its members. Judicial Scope Article (8/1) provided that "judges are prohibited from engaging in any extra-judicial activity that is inconsistent with their judicial function or with the normal functioning of the court to which they belong ", or any activity that might be affected, or it is seen on the basis that it undermines their integrity and independence " likewise, Article (8/2), which was more explicit and explicit, as it stipulated that "it is prohibited for judges to engage in any political action"<sup>(10)</sup>. Many legislations have decided the principle of prohibiting political action for judges, including the Code of Ethics for United States judges, according to the seventh principle of which it decided that judges should not hold any positions in political societies, support candidates, raise funds, or attend political meetings of any kind <sup>(11)</sup>. Likewise, the Egyptian legislator also prohibits members of the judiciary from expressing political opinions in addition to practicing political action by stipulating that: "Courts are prohibited from expressing political opinions, judges are also prohibited from engaging in political work, they may not run for elections to the People's Assembly, regional bodies, or political organizations, except after submitting their resignations". <sup>(12)</sup>

The Palestinian legislator stated this by stipulating that "judges are prohibited: c - practicing political action" <sup>(13)</sup>, also, the Qatari legislator stipulated that: "Judges are prohibited from expressing political opinions or engaging in political work, and they are not permitted to stand for election to legislative or alternative councils during their judicial work." <sup>(14)</sup>

As for the Iraqi legislator, it was not explicitly stated that political action is prohibited for judges under the Judicial Organization Law No. 160 of 1979, but he mentioned a general text stipulating that "the judge shall abide by the following: - First: Preserving the dignity of the judiciary and avoiding anything that inspires suspicion of integrity, Not to engage in trade or any work inconsistent with the function of the judiciary " <sup>(15)</sup>. Some Iraqi jurisprudence sees this and this is what we support except that the Iraqi legislator did not explicitly and explicitly declare the prohibition of political action on the judges or their affiliation with political parties, and this was intended as there is no desired benefit from mentioning this text containing the prohibition in light of the one-party dominance and the lack of multi-partisanship <sup>(16)</sup>. But after the year 2003 and the departure of Iraq from the era of one-party control, we find the basis for prohibiting political action on Iraqi judges in accordance with the constitutional texts, which we see as a sure and effective guarantee of the neutrality of the body entrusted with preserving the security of individuals in their lives and ensuring respect for their rights and freedoms. This is evident through the constitutional text which decided that "The

judge and public prosecutor are prohibited from the following: or not: to combine the judicial function with the legislative and executive positions or any other work. Second: to belong to any political party or organization, or to engage in any political activity.”<sup>(17)</sup>

Of course, this text is calculated for the Iraqi legislator, and therefore some aspect of Iraqi jurisprudence has gone, except that the Iraqi constitutional legislator was intended to include this text to ward off suspicions on all members of the judiciary and they are in the process of exercising his judicial work, which we believe is definitely aimed at overshadowing it and adversely affecting the performance of the judicial work and neutrality judges and their integrity, and thus this prohibition leads to the protection of the judiciary, as well as to the judicial function security<sup>(18)</sup>.

However, it is unfortunate when the Law (45 of 2017) of the Iraqi Supreme Judicial Council Law was issued as it was devoid of stipulation that judges are prohibited from engaging in political work or belonging to political parties, we believe that the political divisions and sectarian quotas that afflicted the country had a prominent impact and a clear impact on the Iraqi legislative system represented in the House of Representatives from the failure of the law to adopt the principle of prohibiting political work, but, it is possible to resort to the constitutional text mentioned in Article (98) of the 2005 constitution when the judicial work is skewed by keeping in line with political and partisan whims.

### **Second: What are the political actions prohibited for judges?:**

Some have defined the science of politics as: "It is the science of government and its art. It is the science that deals with the form of the state, its organization and administration, or part of it according to the laws of this state, as well as the organization of its relations with other countries." <sup>(19)</sup> Political also means studying the state and its institutions and the authority of those institutions and their relationship with each other and with society as well as the relationship with external political forces, politics is the art of exercising power in state administration in order to achieve and protect the interests of individuals, besides achieving harmony, resolving disputes between rulers, the ruled on the basis of the principle of rights and duties, and strive to achieve the interests of the external state <sup>(20)</sup>. As a general principle, the science of law separates from the science of politics, the separation of constants from the variables according to the opinion of a trend from the Iraqi constitutional jurisprudence, this is what we support and this is due to the orbit of the variables in which political science revolves and which is full of rapid events occurring both internally and internationally, whereas the science of law is based on the basic principles and theories that aim in essence to regulate the relations and transactions between the rights and freedoms of individuals and not to collide with them, therefore, political science lays out the means that aim to gain power and tighten its grip, while, legal science is concerned with laying the foundations and theories that achieve justice and equality through the main tool achieved for that, which is the judiciary, which should disassociate itself from all its institutions, branches and degrees from slipping into the circle of political action in order to preserve the rights and freedoms of individuals <sup>(21)</sup>.

It is recognized that every law issued is expressive of certain policies that establish a system for the conditions of individuals in accordance with those policies decided by the authors of this or that law, but when those policies are formulated in the form of a law that is issued and becomes a system, it applies and applies to all groups covered by its provisions of persons and behaviors, Its validity and applicability extends to the law-makers themselves, the law is the embodiment of and expressed in certain policies, however, once it is established and issued, it is distinguished from those same policies, to have a specific matter in terms of drafting in its provisions and logic, whoever applies to them from persons, facts and behaviors according to its texts and legislative drafting, which are general, abstract" this generalization and abstraction distinguishes it from persons who decided it and from their own intentions, it is in its general and abstraction validating people with their objective descriptions, not with their own selves <sup>(22)</sup>, the fact that the objective value of each law depends on the extent of the impartial application of its provisions and assigned to the judicial authority, which should enjoy sufficient independence that guarantees the safety of the balance of justice and this will not take place unless the judge's ruling is not subject to the control factors, which we see among the most severe of these factors is the judge's direction of political action or partisan submission <sup>(23)</sup>.

But in terms of the speech that the executive and government agencies offer about the concept of politics is different from what we mentioned earlier, because politics here is intended to compete and partisan struggles to control government and public policy, or the conflict may be on the negative aspects of politics, such as the conflict

resulting from the acquisition of spoils or prevarication and political distortion based on falsifying the facts that characterize politics in most of the speeches and conflicting proposals that prevail in political life in a number of countries, we believe that Iraq is the most prominent example in the practical application of such behavior, the thing that made every indication that the judges should stay away from political actions in this sense, it carry out a desire to place the judiciary and the judges in its supreme position and position that keeps them from indulging in the "politics world in the aforementioned sense" as some have described, this proposition is considered sound "on the face of things and we see that it represents an important guarantee for the rights and freedoms of individuals because of the major implications for the judiciary of integrity, impartiality and the imposition of legal truth through its rulings " (24).

In the context which the policy means separating the authorities on the basis of balance and cooperation as well as removing restrictions on individual liberties or removing contradictory legislation and ambiguity, as well as eliminating duplication in the organization of legal centers, non-violation of the legislative and executive powers of fundamental rights and freedoms of individuals and the effective role played by the judiciary in protecting those rights and freedoms, then, those matters that appear to be political, they enjoy from being of a level of constitutionalism as well as being legal, which is at the heart of each authority's interest and good performance of the various ruling authorities in their actions and their non-departure from the law and the scope of their constitutional function in achieving human rights guarantees, so these actions are constitutional there is no impurity (25). As for the indulgence of judges, as mentioned above, in the world of narrow partisan and political struggles when belonging to political parties and groups, it is prohibited for judges, which led some to say that: "If politics enters the campus of the judiciary, justice will inevitably come out of it." Therefore, justice and justice are two things that go hand in hand, the judiciary is the tool through which justice is achieved, and in the case where the judiciary is not fair, the first loses its importance and does not seek the trust of individuals as the way in which they can obtain their rights and freedoms, accordingly, "The independence of the judge is one of the one who is bound by his attributes, because if he is not independent in his ruling, our systems have collapsed, and you have denounced the reassurance among the people." (26)

Some argue that political work prohibited by judges is directed to a deliberate type that applies to something of habit and perseverance, is a person's meekness as a professional for a profession, it is based on a measure of importance in terms of continuity and habit, in this case, if it was related to politics, this would put the judge in the circle of links, biases, and rivalries with many other parties, according to the dictates of the political action, "which would prejudice the impartiality and balance of the judge, which would be possible to appear before him by litigants with different directions", in another direction, the sheer expression of political or non-political opinion is not in itself an exercise in political action as a citizen who has the right to vote during elections and political referendums, in addition to what he has, other than the judicial work, to write as he wants from historical studies or social studies and others that may be related to political affairs, the fact that this does not include him in the category of partisanship and is not considered part of an institutional formation that dictates his involvement in political formation (27).

Therefore, the European Charter on the Statute of the Judges intends that "they must refrain from any act, behavior, or expression that would affect confidence in their impartiality and independence" as well as the Bangalore Principles, which called on judges to refrain from any action inconsistent with their employment status and promised that "to the judge, like any ordinary citizen, the right to freedom of expression .... in a manner that does not contradict the provisions of the law and its job duties, and in a way that preserves the prestige of the judicial function and the integrity and independence of the judiciary. (28)

In Iraq it appeared after 2003, some judges belong to political parties and are nominated in lists of political blocs for elections to the House of Representatives, and this is without a doubt that it hurts the position of the judge, we are surprised that the judge who nominates for the elections is given compulsory authorization, and if he fails in the elections, he returns again to the practice of his judicial work, the question that arises specifically about the judge's impartiality is whether he continues to enjoy his candidacy in favor of a partisan party that definitely has ended his neutrality, what is the way by which we can guarantee that the candidate judge who loses the elections is fair in his rulings and has no authority over him except the law, he is not inclined towards achieving the wishes and demands of his political or party bloc, what should he do while he is considering a case where one of his parties is the head of his party or one of its leaders, which requires amending the articles regulating the judge to step down, we strongly believe that these restrictions need to be stopped and blocked; because this has a major impact on the course of justice and the treatment of that lies in the judge's dismissal from his job and he is not allowed to refer to it permanently even if he lost in the elections, " we have noticed how a candidate running for elections acted and performed a heinous act when he began distributing land titles for the purpose of soliciting voters, the esteemed judge

had to distance himself from such sliders, because of the disadvantages that it affects the position of judges, the rights of citizens and the proper functioning of justice, so how is it possible for a judge to contribute to the issuance of judgments and then to be nominated on the list of a political party and after losing it to the judicial institution, this affects the stability of the professional status of the judges, which negatively affects their work, their productivity, and their fairness. " (29)

From the foregoing, we can say that political work prohibited by judges is to engage in political work and practice it through membership in political parties or associations, or the practice of any other type of work that involves political activity, which some see as requiring some kind of recognition (30), but participation in public life is a basic right and it comes in the section of rights and freedoms mentioned in the Iraqi constitution by stipulating that "Citizens, men and women, have the right to participate in public affairs, to enjoy political rights" (31), the abstract is that a distinction must be made between both political actions and participation in public life, participation is one of the general rights in which both members of the judiciary and other citizens are equal members of society based on the principle of equality stipulated in the Iraqi Constitution in 2005 in Article (14) thereof, but the members of the judiciary, according to some, and this is what we support that they "It is more important for others to exercise these rights with their culture, experience, favorability, visibility and clarity of vision, and this does not contradict his family with their independence, impartiality and integrity." This is in line with the international declarations related to the independence of the judiciary, while the practice of political action based on recognition, it is prohibited for the judiciary in Iraq and many other countries of the world (32).

#### **The second requirement: The manifestations of the judge's practice of political action and its impact on human rights.**

The prohibition of political work on the judges behind it is apparent and clear intent, as the engagement in the field of politics leads to great results that undermine the independence and impartiality of the judiciary, which should be described, perhaps the most important of which are the maneuvers and criticisms faced by the judiciary by those who oppose them, because of that, a profound and negative impact on their prestige and prestige that will be shaken in the hearts of litigants, in addition to the fear that arises from the influence of the judge's opinions and political tendencies on the feelings of individuals and their feelings of impartiality, whoever intersects and disagrees with the judge in terms of political direction, it is difficult to convince that this difference does not affect what will be issued by rulings, and this should not be allowed (33), this, in turn, entails shaking the image and status of the judiciary among individuals who see in the judiciary the last resort through which they can protect their rights and freedoms.

There are some aspects of the judicial work through which the impact of judges' exercise of political activity, the impact of this on human rights is highlighted, in order to fulfill the requirements of this topic, we divided it into the following points: -

#### **First: Politicizing the function of the judiciary**

An aspect of Iraqi jurisprudence describes the designation of political justice in the situation in which the work of the judiciary is politicized, what it sees as the situation in which the courts become one of the tools through which the policies of the ruling party are carried out in light of its uniqueness and totalitarian domination of all the reins of government in the state as a result of the lack of party pluralism, the matter through which the judiciary is not seen as an entity that enjoys impartiality and is in the process of settling the disputes before it, even if one of its parties is the executive authority, rather, the government represents itself, and there is no room for prosecution, which vibrates the position of individuals and weakens in front of them, therefore, in light of this image of the judiciary, we cannot talk about human rights and individual freedoms because the judiciary lacks its most important features, which is independence based on a group of pillars, foremost of which is neutrality and integrity, and this is followed by the absence of one of the basic conditions that constitute the state of law in which human rights are preserved (34).

The idea of politicizing the judiciary finds its extension in many countries that have been dominated by contemporary totalitarian regimes, including many Arab regimes. The establishment of special or exceptional courts is considered a form of political justice and special courts are defined as: "Courts which extract the jurisdiction of the ordinary judiciary in certain articles, or for private denominations of citizens, it exercises jurisdiction in accordance with its own laws, follow trial procedures that differ from those applied in ordinary courts, which lack guarantees of justice, include aggression against the rights and freedoms of individuals" (35)

Professors Merle et Vitu wrote: "The term (exceptional courts) is sometimes used in debates in which political fancy prevails, to denote the courts that occur during critical periods, to face forms of criminality, it would threaten public order and the very existence of the state by resorting to extremist means ... " <sup>(36)</sup>. Extraordinary courts are often formed outside the legal or customary contexts, due to their emergence in exceptional circumstances, and they are characterized by being temporary that disappear when the conditions of their establishment cease to exist and do not require legal conditions in those who take over these legal conditions as is the case with judges of the judiciary <sup>(37)</sup>. Egypt witnessed the establishment of many of these courts, and due to the circumstances of the July 1952 revolution, exceptional political courts were established, such as the Revolution Court, which was established on September 13, 1953, the Treachery Court, which was established by Law No. 344 of 1952, then the Supreme State Security Courts became competent to look into the political crimes that occurred from individuals that were established when declaring a state of emergency, and therefore they are characterized by being temporary courts, in 1967, Law No. 48 was issued, deciding to re-establish the Revolutionary Court in charge of the case referred to it by the President of the Republic relating to crimes of a political nature, however, upon the issuance of the Egyptian constitution in 1971, it added constitutional value to the courts of a political nature, according to the chapter on the judiciary, which referred to the law the arrangement of state security courts and their jurisdiction, as well as the conditions that should be enjoyed by those in charge of the judiciary <sup>(38)</sup>.

The other is the Iraqi history, which is rich in terms of the pre-2003 ruling regime's adoption of many special and exceptional courts, as this type of court was formed alongside the so-called customary courts since the monarchy, after the establishment of the republican system in the wake of the fall of the monarchy, the special and exceptional courts continued to work, it was characterized by the fact that its decisions are not subject to discrimination and its component is free of any judge or human rights, but it provided a legal touch to it in the presence of a human rights prosecutor, on February 8, 1963, each of the headquarters of the National Guard had its own court, in addition to the specialized investigative committees through which the ugliest and harshest forms of torture and killing and a clear violation of human rights were practiced, during a series of coups and Iraqi atrocities, those courts evolved into state security courts, which lacked all the ingredients for a fair trial, then the ill-fated revolution court was formed that Iraqis remember with sorrow and pain in the soul, it is entrusted with the task of looking into cases that the Iraqi judiciary does not intend to consider, the authority identified it with all security issues related to state security <sup>(39)</sup>. The revolutionary court is one of the killing tools used by the Iraqi authority during the dictatorial rule that ruled Iraq before 2003. The rulings of this court were characterized by repression, unfair rulings from mass executions, deportation in prison, decisions to displace components on ethnic and sectarian grounds. The court was competent to consider cases referred to it by the security services the state, like the office of the President of the Republic, the intelligence, and security services, whose goal was to maintain the longevity of the regime's stay in power as long as possible, the procedures and decisions of this court were not subject to the proper legal contexts from the supervision of the Court of Cassation or the passage of its decisions by legal means of appeal, through its provisions, it creates texts of its own relating to punitive terms and the explicit violation of Iraqi criminal laws, in the light of which ordinary court decisions are issued.

Therefore, the way in which exceptional or special courts try to reflect individuals on the extent of the anomaly in the legal status of systems that adopt this type of court, this is evidenced by the rulings issued by these courts that reveal the clear retaliation of the opponents of the ruling authorities, being deemed to have been effectively issued by the executive branch rather than the judiciary, it is also one of the spot pictures that aims to exterminate and defraud individuals with a legal veil <sup>(40)</sup>. Some attribute the reason behind the illegitimacy or suspicion of the special courts, this is what we support to the principle of separation of powers through which the constitution regulates the basic authorities in the state and defines their terms of reference in order to protect human rights and not to allow slanderous women from the state's powers, because the principle of the separation of powers from the role of independence is less authority in the exercise of its jurisdiction, it does not do a work that falls within the scope of another authority, this entails the judicial authority's uniqueness in the judicial function, it excludes the establishment of special courts in order to preserve the rights and freedoms that are the highest goals that the judiciary works to achieve <sup>(41)</sup>.

There is another type through which the task of the judiciary is politicized or some people can say in giving political work to the tasks assigned to judges outside the framework of the judicial function, for example, what happened in Iraq when the Independent High Electoral Commission Law No. (31) of 2019 <sup>(42)</sup>, the second chapter of it included the components of the commission, which consist of: "Or not - the Board of Commissioners. And..." <sup>(43)</sup>.



Likewise, the aforementioned law clarified the components of the Board of Commissioners by stipulating that "the Board of Commissioners shall consist of nine members as follows: First: Five of the first class judges chosen by the Supreme Judicial Council from among the total candidates, taking into account justice between the appellate regions. Second: Two of the first class judges chosen by the Supreme Judicial Council from among all the candidates sent by the Judicial Council in the Kurdistan Region, taking into account their distribution to the appellate regions in the region. Third: Two members of the State Council who are exclusively consultants and candidates from the State Council, who are chosen by the Supreme Judicial Council. Fourth: Those mentioned in the items (first, second and third) are chosen by direct lot in the Supreme Judicial Council in the presence of the representative of the United Nations ... " (44). The law clarifies the conditions that should be met by whoever is nominated for membership in the Board of Commissioners, by stipulating that "whoever is nominated to the Board of Commissioners shall meet the following requirements: Third - to be politically independent ... "(45). The Iraqi Judicial Council explained its position on this law through a speech it issued in this regard, and in some of them it was stated that: In the previous elections that produced the House of Representatives at its current session when the House of Representatives in its previous session issued the Third Amendment Law of the House Elections Law No. (15) of 2018, who entrusted the work of the Electoral Commission to the judges, the Supreme Judicial Council at the time objected to that, strongly supported efforts to overturn the law through the lawsuit submitted to overturn that law because of its belief in the necessity of excluding the judiciary from tasks that do not fall within the professional work of judges. Because their role in the issue of elections is limited to checking the extent of the implementation of the law correctly by the Board of Commissioners by monitoring the decisions of the Board of Commissioners by the Judicial authority for Elections in the Court of Cassation because the process of counting and sorting or carrying out executive tasks in the elections are by nature technical tasks that need specialized expertise and are in all cases. It is not within the jurisdiction of the judiciary. However, unfortunately, the efforts of the Judicial Council and the parties that filed the lawsuit to overturn the law at the time did not help despite the clear constitutional violations in that law in terms of the procedures for its legislation or its content.

The judiciary was compelled to play the role that the law established for the judges, despite the many challenges and difficulties, the judges performed their mission under the supervision of the United Nations and the mission was accomplished well, but unfortunately, some losers made false accusations that questioned the judges' work at the time.

On the basis of this harsh experience on the judiciary, the Supreme Judicial Council once again objected to the appointment of judges to the membership of the Electoral Commission Council, the view of the Judicial Council opposing this was conveyed to all concerned during the stage of discussions that preceded the approval of the current law that we are now in the process of implementing, but unfortunately the same mistake was repeated (from the judicial point of view) and the judiciary was again thrown into this task.

Because of the judiciary is obligated to apply the law as it is, the Judicial Council at its session held on 12/15/2019 discussed the process of applying this law and setting up mechanisms that are believed to be correct to implement the law. (46)

## **Second: The constitutional judiciary**

"The constitutional lawsuit fails to guarantee the supremacy, supremacy, or supremacy of the constitution, that is: it aspires to ensure the constitutionality of the constitution over all persons and their actions within the territory of the state, and those who represent it formally abroad" (47). The constitutional judiciary undertakes legal and other political tasks, for the tasks it performs in controlling political life within the state, in addition to the role he plays in the scope of the state's political authorities, which requires him to stand at the same distance the multiple state authorities, always stands by the constitution because it represents the basis or cornerstone on which the rights and fundamental freedoms of individuals are based and based, along with achieving what is required to preserve the constitutional and democratic order in the state.

The constitutional judiciary plays a prominent, highly influential role in political life, a great controversy has resulted from it being a political judiciary, since its work involves many matters of a political nature, including its interference in the circle of political parties, as some constitutions give the task of monitoring the establishment of political parties for the constitutional judiciary and controlling the exercise of their activities as well as granting it jurisdiction to dissolve political parties, besides his competence in the consideration and adjudication of parliamentary

appeals, these add to what he does in many other traditional specializations in his oversight of the constitutionality of laws and his competence to interpret constitutional texts, all of this makes him a constitutional institution whose work is characterized by political character <sup>(48)</sup>. Which prompted some to say that the work of the constitutional judiciary is different from the judicial work of other judicial bodies, the role played by the constitutional judiciary through the separation of the constitutionality of laws, in turn, is in direct and close contact with the work of the legislative authority and an indication of the extent of its ability, and it is in direct relation to its legislative competencies with high efficiency and efficiency under the umbrella of the constitutional texts, this work requires the constitutional court to extend its eyesight to the political considerations related to the subject of the constitutional lawsuit, and without a doubt they are worthy considerations, therefore, the work of the constitutional judge is based on a balance between both political and legal considerations <sup>(49)</sup>.

Another side believes that the most important actions carried out by the constitutional judiciary, which sparked widespread debate about whether the constitutional judiciary is practicing a political act embodied in the process of its interpretation of the constitutional texts, justifying this to the fact that the constitutional judiciary is in the process of practicing its work by interpreting the constitutional texts imposes political views and gives them binding force to what It is issued from the provisions related to this matter, which led them to say that the work of the constitutional judiciary here is considered a form of political action <sup>(50)</sup>. A part of the Iraqi constitutional jurisprudence in his speech on the extent of the independence of the Supreme Federal Court from the legislative and executive powers confirmed that referring the formation of the court to ordinary law is undoubtedly prejudicial to the independence of the court, citing the fear of interference by the legislative authority and its ruling when legislating the law by defining the method that The court is formed according to which the legislative authority can dominate the appointment of members of the court in addition to refusing to nominate them or to go further than , the possibility of removing them or by setting specific conditions or characteristics for the membership of the court "which would lose it professional nature, and approaching it towards the political character " <sup>(51)</sup>.

And based on what has been stated, a binding distinction must be made between the constitutional judgments issued by the political authorities that carry the perception of superiority and the supremacy of constitutional texts, especially those related to the rights and freedoms of individuals and the imposition of respect for them and not being exposed to the risks of violation by all public authorities, especially the multiple executive bodies, the dominance of the legislative authority and its direct or indirect interference as a political body in forming the constitutional judiciary or organizing its work according to the political whims of that (legislative) authority, which in turn reflects negatively on the performance of the constitutional judiciary and makes it a political judiciary in which the rights and freedoms of individuals are exposed to the risks of violation.

## Results

1. One of the main pillars upon which the independence and impartiality of the judiciary is based on the principle of prohibiting judges from working in politics, as it represents the last resort for individuals when their rights and freedoms are exposed to the risk of violation.
2. The origin of the principle of attending political work on judges goes back to the rule of law, in which the individual is a donor to the legitimacy of the state as a citizen through democratic mechanisms.
3. The majority of positive law jurisprudence considers that what is meant by the independence of the judiciary in general is a practical application of the principle of separation of powers, which we believe that the separation of judges from political action or affiliation with political parties is the pillar of the independence of the judiciary.
4. On the international level, international covenants have emphasized and affirmed the necessity of creating a judicial authority that enjoys neutrality and independence without practicing political work and prohibiting it from all its members.
5. The political action prohibited by the judges is directed to a deliberate type that applies to something of habit and perseverance and is an object of the person as a professional for a profession, it is based on a degree of consideration in terms of continuity and habit, and in this case if it is related to politics, this would put the judge in the circle of links, biases, and rivalries with many other parties, as dictated by political work.
6. The idea of politicizing the judiciary finds its extension in many countries that have been dominated by contemporary totalitarian regimes, including many Arab regimes the establishment of special or exceptional courts is a form of political justice.

7. The constitutional judiciary carries out legal and political functions, because of his duties in controlling political life in the country, in addition to the role it plays in the scope of the state's political authorities, which requires him to stand at the same distance from the multiple state authorities, always stands by the constitution because it represents the basis or cornerstone on which the rights and fundamental freedoms of individuals are based on along with achieving what is required to preserve the constitutional and democratic order in the state.

### Recommendations

1. We suggest adding an explicit article, by amending the Law of the Iraqi Supreme Judicial Council No. (45) for the year 2017 to prohibit political work for judges. Elections, in order to preserve the rights and freedoms of individuals, to storm political passions.
2. Amendment to Article (13 / Third) of the Iraqi Independent High Commissioner for Elections Law No. (31) for the year 2019 to become as follows. 80% of what they earn during their work).
3. We propose to amend the Iraqi constitution for the year 2005 by deleting paragraph (second) of Article (92) and adding a new article along the lines of Article (93) of the same constitution in which it clarifies the components of the Federal Court and determining their number and categories and regulating the method of their selection and clarifying the mechanism of their work and the inability to isolate them for life, He avoided referring this to a law enacted by the House of Representatives to preserve the independence of the Federal Supreme Court and excluding the domination of the House of Representatives from controlling the way it was formed or functioning, thereby making it the cave-guard that individuals resort to when their rights and freedoms are exposed to the risk of violation by the state's public authorities.

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