



# THE CONSTITUTIONAL MECHANISMS FOR THE INDEPENDENCE OF THE SUPREME FEDERAL COURT

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Article history:	Abstract:
<b>Received:</b> 30 <sup>th</sup> June 2025 <b>Accepted:</b> 26 <sup>th</sup> July 2025	The Supreme Federal Court is the highest judicial authority at the apex of the Iraqi judicial hierarchy. It is a court established under the Law of Administration for the State of Iraq for the Transitional Period in 2004 and the Constitution of the Republic of Iraq of 2005, currently in effect. The constitution emphasizes providing constitutional guarantees for its independence to enable the court to fulfill its assigned duties effectively.
<b>Keywords:</b>	

## INTRODUCTION

All praise is due to Allah, the Lord of all worlds, and may peace and blessings be upon the noblest of Messengers, Muhammad Al-Ameen, as well as upon his family and all his companions.

The Supreme Federal Court is one of the most significant judicial institutions in Iraq and stands as the highest court within the judicial hierarchy. It holds the authority to oversee the constitutionality of laws and regulations and to interpret constitutional provisions. As such, it functions as a specialized constitutional judiciary in this domain, in addition to other competencies defined by the court's own law<sup>1)</sup> and the Iraqi Constitution of 2005.<sup>2)</sup>

The importance of the Federal Supreme Court's jurisdiction and its critical nature necessitate that it enjoys full independence to carry out its assigned duties without external interference or internal or external pressures, whether from individuals or institutions. Therefore, Iraq's Constitution emphasizes the necessity of the Federal Supreme Court's independence and establishes constitutional mechanisms to ensure this protection.

The research problem revolves around the effectiveness of the Iraqi Constitution in ensuring the independence of the Federal Supreme Court, preventing interference in its affairs, guaranteeing and reinforcing the principle of separation of powers, and the impact of these measures on the rulings and decisions issued by the court.

The researcher adopted a descriptive-analytical approach to address the research problem by analyzing constitutional provisions that stress the necessity of the Federal Supreme Court's independence in Iraq and assessing their effectiveness in this regard.

The research is divided as follows:

Chapter One: Formation and Independence of the Federal Supreme Court

Section One: Formation of the Federal Supreme Court.

Section Two: Independence of the Federal Supreme Court.

Chapter Two: Constitutional Guarantees for the Independence of the Federal Supreme Court

Section One: Constitutional guarantees against external interference in the Federal Supreme Court's work.

Section Two: Guarantees of procedural neutrality of the Federal Supreme Court.

## Chapter One

### Formation and Sessions of the Federal Supreme Court

The Federal Supreme Court was established under the Transitional Administrative Law of 2004, and its existence was further reinforced by the Federal Court Law No. (30) of 2005. This law defined the mechanisms of its formation, stipulating that the court consists of eight judges appointed by the Presidency Council, after being nominated by the Supreme Judicial Council. There is an agreement between these laws and the 2005 Constitution, currently in force, on the independence of the Court's work. This ensures that the Court operates independently, enabling it to carry out its responsibilities, considering the importance of independence in the judicial field and the necessity for judges to be free from influence.

<sup>1)</sup> The Federal Supreme Court Law No. (30) of 2005

<sup>2)</sup> This is stipulated in Article (44) of the Constitution of the Republic of Iraq of 2005, currently in force, which emphasizes the existence of this court and defines its jurisdictions in Articles (93), (52/Second), and (61/Sixth) thereof.

Regarding the mechanisms for convening the Court, it is held when the Chief Justice calls the members to convene. In such cases, the Court is considered to be in session, exercising its mandated powers and duties. There is also a substitute member who replaces any member who does not attend, ensuring that the Court always convenes with a full quorum. The alternative system for members was established to guarantee the full attendance necessary for the Court's functioning.

The mechanisms of formation of the Federal Supreme Court under the Transitional Administrative Law of 2004 differ from those under the 2005 Constitution. The details of these differences will be explained in the following sections, with this chapter divided into the two sections below:

Section One: Formation of the Federal Supreme Court.

Section Two: Independence of the Federal Supreme Court.

### Section One

#### Formation of the Federal Supreme Court

The Federal Supreme Court was created under the Iraqi Transitional Administrative Law of 2004—now repealed—which functioned as Iraq's interim constitution at that time.

#### Chapter One: Formation of the Federal Supreme Court and its Convening

The Federal Supreme Court was established through the Transitional Administrative Law of 2004, and its existence was reinforced by the Federal Court Law No. 30 of 2005, which defined the mechanisms of its formation. The court consists of eight judges, appointed by the Presidency Council after being nominated by the Supreme Judicial Council. These laws, along with the 2005 Constitution, agree on the independence of the court, allowing it to operate independently to fulfill its responsibilities. This independence is crucial in the judicial field, ensuring that the judges remain impartial.

Regarding the mechanisms of the court's convening, it takes place through a call from its president to the members for a session. In this case, the court is considered convened to exercise the tasks entrusted to it. There is also a substitute member who replaces any absent member, ensuring the court convenes with its full membership. Thus, a substitute system has been adopted for its members to ensure a complete quorum for the sessions.

The mechanisms of the Federal Supreme Court's formation under the Transitional Administrative Law of 2004 differ from those outlined in the 2005 Constitution. We will elaborate on this distinction by dividing this chapter into two sections:

#### Section One: Formation of the Federal Supreme Court

The Federal Supreme Court is a new court established under the Iraqi Transitional Administrative Law of 2004, which was a temporary constitution for Iraq at the time<sup>(1)</sup>.

"The court came into existence under its own law, No. (30) of 2005, during the transitional government, where it has the authority to issue legislation in accordance with the provisions of Section Two of the Appendix of the Interim Constitution for the Transitional Period, issued on June 1, 2004<sup>(2)</sup> .

Based on the above, we will divide this request into the following two branches:  
Branch One: Mechanisms for the formation of the Federal Supreme Court under the Law of State Administration for the year 2004 and the Constitution of 2005.

Branch Two: Mechanisms for the convening of the Court.

#### Branch One

#### Mechanisms for the formation of the Federal Supreme Court under the Law of State Administration for the year 2004 and the Constitution of 2005

We will address these mechanisms in both phases as follows:

**First:** Mechanisms for the formation of the Federal Supreme Court under the Law of State Administration for the year 2004.

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<sup>1</sup> ) The text refers to Article (44) of the now-repealed Transitional Administrative Law of 2004.

<sup>2</sup> ) "Article (4) of the Federal Supreme Court Law No. (30) of 2005 stipulates the following:  
The Federal Supreme Court shall perform the following duties:

1. Settling disputes between the (Federal Government) and the governments of regions, provinces, municipalities, and local administrations.
2. Deciding on disputes related to the legitimacy of laws, decrees, regulations, instructions, and orders issued by any authority with the right to issue them, and annul those that conflict with the provisions of the Iraqi Interim Administration Law for the Transitional Period, upon request from a court, an official authority, or a party with a legal interest.
3. Reviewing appeals filed against rulings and decisions issued by the Administrative Court.
4. Considering exceptional public lawsuits brought before it, and its jurisdiction is regulated by a federal law.

After the year 2003, the Law of State Administration for the Transitional Period of 2004 was enacted, which serves as the constitutional document that regulated the work of governmental institutions and state departments until the enactment of the Constitution of 2005. This document organized the work of the judiciary in its sixth chapter, titled the Federal Judicial Authority<sup>(1)</sup>.

"On March 17, 2005, the Council of Ministers, after obtaining the approval of the Presidency Council, issued the Federal Supreme Court Law No. (30) of 2005, which emphasized in its first article the establishment of the court with its headquarters in Baghdad<sup>(2)</sup>.

"The law defined the mechanisms for the formation of the court, where it consists of eight judges to be appointed by the Presidency Council after being nominated by the Supreme Judicial Council<sup>(3)</sup>.

"What can be observed about this article is that it does not detail the mechanisms of the court's operation but refers this matter to the Iraqi Law of State Administration for the Transitional Period of 2004, specifically to Article 44<sup>(4)</sup>.

Refer to the text of Article (44) of the Iraqi Law of State Administration for the Transitional Period of 2004, in addition to defining the duties performed by the court<sup>(5)</sup>.

### **Second: Mechanisms for the Formation of the Federal Supreme Court under the 2005 Constitution**

Under the 2005 Constitution, the Federal Supreme Court was established and addressed in Chapter Three of Part Three, with a dedicated Section Two titled "The Federal Supreme Court<sup>(6)</sup>.

The Constitution itself affirmed the financial and administrative independence of the Federal Supreme Court<sup>(7)</sup>.

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<sup>1</sup> ) Article (44) of the Iraqi Law of State Administration for the year 2004 stipulates the following:

A. The Federal Supreme Court shall be established by Iraqi law.

B. The Federal Supreme Court's jurisdiction includes the following:

1. The exclusive and original jurisdiction in cases between the Transitional Iraqi Government and the governments of regions, provincial administrations, municipalities, and local administrations.

2. The exclusive and original jurisdiction, based on a lawsuit filed by a plaintiff or referred by another court, in cases where a law, regulation, or instruction issued by the Federal Government, regional governments, provincial administrations, municipalities, or local administrations is inconsistent with this law.

3. The appellate discretionary authority of the Federal Supreme Court shall be determined by federal law.

C. If the Federal Supreme Court decides that a law, regulation, instruction, or procedure challenged is inconsistent with this law, it shall be annulled.

D. The Federal Supreme Court shall establish its own system of procedures for filing lawsuits, allowing lawyers to appear before it, and it shall publish it. Its decisions shall be taken by simple majority, except in cases concerning the disputes specified in Article 44 (B-1), which must be decided by a two-thirds majority. The decisions are binding, and the Court has full authority to enforce its decisions, including the authority to issue contempt of court orders and take the necessary actions related to them.

E. The Federal Supreme Court shall consist of nine members. The Supreme Judicial Council, in consultation with the Judicial Councils of the regions, shall initially nominate no less than eighteen to Twenty-seven individuals shall fill the existing vacancies in the court. For each subsequent vacancy resulting from death, resignation, or dismissal, three candidates shall be nominated. The Presidency Council appoints the court members and selects one as its President. If any appointment is rejected, the Supreme Judicial Council shall propose a new set of three candidates.

<sup>2</sup> ) Article (2) of the Federal Supreme Court Law in Iraq, issued under Order (30) of 2005, stipulates that: The Federal Supreme Court is financially and administratively independent.

<sup>3</sup> ) Article (3) of the Federal Supreme Court Law in Iraq, issued under Order (30) of 2005, stipulates that: The Federal Supreme Court consists of a president and eight members, who are appointed by the Presidency Council based on nominations from the Supreme Judicial Council, in consultation with the Judicial Councils of the regions, as stipulated in paragraph (E) of Article (44) of the Iraqi Law of State Administration for the Transitional Period.

<sup>4</sup> ) Refer to the text of Article (44) of the Iraqi Law of State Administration for the Transitional Period of 2004.

<sup>5</sup> ) Article (4) of the Federal Supreme Court Law in Iraq, issued under Order (30) of 2005, stipulates that the Federal Supreme Court shall undertake the following tasks:

1. Resolving disputes between the (Federal Government) and the governments of regions, provinces, municipalities, and local administrations.

2. Adjudicating disputes concerning the legitimacy of laws, decisions, regulations, instructions, and orders issued by any authority with the right to issue them, and annulling those that conflict with the provisions of the Iraqi Law of State Administration for the Transitional Period, based on a request from a court, an official body, or an interested party.

3. Reviewing appeals against judgments and decisions issued by the Administrative Court.

4. Considering cases brought before it in an appellate capacity, with its jurisdiction regulated by federal law.

<sup>6</sup> ) Article (89) of the effective 2005 Constitution stipulates that: 'The Federal Judicial Authority is composed of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judicial Oversight Commission, and other federal courts regulated in accordance with the law.

<sup>7</sup> ) Article (92) of the effective 2005 Constitution stipulates the following: First: The Federal Supreme Court is a financially and administratively independent judicial body.

## Section Two

### Mechanisms for the Convening of the Court

The Federal Supreme Court Law clarified the mechanisms for the convening of the Federal Supreme Court, including the authority of the Court's President to call its members to convene<sup>(1)</sup>.

The same principle was established by the Constitutional Court Law No. (159) of 1968 under the Provisional Constitution of 1968<sup>(2)</sup>.

The same rule applies to the Supreme Constitutional Court with regard to its convening, where it meets with all of its members at the invitation of the President of the Court. Additionally, there is the rule known as the "substitute member rule," where the substitute member replaces the original member in the event of his absence or incapacity to consider the case<sup>(3)</sup>.

The Federal Supreme Court is composed of a General Directorate for Administrative, Financial, and Legal Affairs, headed by a Director General, and encompasses the following departments:

1. Lawsuits Department
2. Administrative and Financial Affairs Department
3. Secretariat Department<sup>(4)</sup>

## Section Two

### Independence of the Federal Supreme Court

The independence of the Federal Supreme Court is considered one of the important issues, as it is the highest authority in the judicial hierarchy in Iraq. In order for it to carry out its tasks, it is required to protect the constitution and ensure its proper application, preventing any deviation from its principles. Its independence is one of the means that ensures it does not lean or deviate from the path of criminal justice. Therefore, legal scholars have unanimously agreed on the necessity of the Court's independence<sup>(5)</sup>.

The independence of the court means that it, or its judges, are not subject to the authority of any party, and their work is solely dedicated to resolving the disputes presented before them and addressing the cases they handle. They must adhere to religious law, the law itself, and the dictates of their conscience, without considering any other factors. This can only be achieved if the judiciary is truly independent in practice<sup>(6)</sup>.

Judicial independence requires that the judiciary has the authority to consider all legal disputes and that the judge performs his duties with integrity and professionalism<sup>(7)</sup>.

Based on the above, we will divide this section into the following two branches:  
Branch One: Independence of the Federal Supreme Court under the Law of Administration for the State of Iraq during the Transitional Period of 2004.

Branch Two: Independence of the Federal Supreme Court under the Constitution of 2005 (currently in effect).

#### Branch One

Second: The Federal Supreme Court is composed of a number of judges, experts in Islamic jurisprudence, and legal scholars. Their number, selection process, and the functioning of the Court shall be regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives.

<sup>1</sup>) Article (5) of the Federal Supreme Court Law in Iraq, issued under Order (30) of 2005, states the following:

First: The President of the Court shall summon its members to convene sufficiently in advance of the scheduled date and shall attach to the summons the agenda and any related documents. The convening of the Court shall not be valid unless all members are present. Judgments and decisions shall be issued by a simple majority, except for judgments and decisions concerning disputes between the Federal Government and the governments of regions, provinces, municipalities, and local administrations, which require a two-thirds majority.

Second: The judgments and decisions issued by the Federal Supreme Court are final.

<sup>2</sup>) Article 2 of the Supreme Constitutional Court Law No. 159 of 1968

1. The Supreme Constitutional Court shall convene with all of its members upon the invitation of its president whenever necessary. The substitute member from the judges of the Court of Cassation shall replace the original member in the event of his absence, and the substitute member from senior state officials shall replace the original member in case of his absence.

2. The decisions of the Supreme Constitutional Court shall be issued by a majority of votes, and in the event of a tie, the side of the president shall prevail.

<sup>3</sup>) Dr. Ghazi Faisal Mahdi, Constitutional Amendments Regarding Judicial Oversight, Al-Mustaqbal Al-Iraqi Magazine, Issue No. 9, March, Volume 3, 2007, p. 46.

<sup>4</sup>) Judge Raheem Hassan Al-Akili, Studies in Civil Procedural Law, Vol. 1, 1st Edition, Dar Al-Sanhouri, Baghdad, 2006, p. 97.

<sup>5</sup>) Maki Najee, The Federal Supreme Court in Iraq, Dar Al-Diya Printing, Najaf, 1st Edition, 2007, p. 28.

<sup>6</sup>) Hassan Jamil Jureish, The Federal Supreme Court, A Comparative Study, Dar Al-Siyab Printing, Publishing, and Distribution, London, 1st Edition, 2009, p. 79.

<sup>7</sup>) Dr. Maha Bahjat Al-Salahi, The Federal Supreme Court and Its Jurisdiction Over the Constitutionality of Laws, House of Wisdom, Baghdad, 1st Edition, 2008, p. 55.

## **Independence of the Federal Supreme Court under the Law of Administration for the State of Iraq during the Transitional Period of 2004.**

This court was still formed based on the Law of Administration for the State of Iraq, and its internal law is based on this abolished constitutional framework. No new legal regulation has been issued in this regard. Any regulation on this matter should be based on the new constitutional framework created by the Constitution of 2005, which is currently in effect<sup>(1)</sup>.

The Law of Administration for the State of Iraq during the Transitional Period of 2004 conditioned the mechanism for forming the Federal Supreme Court on the will of another authority, represented by the Presidency Council (the executive authority)<sup>(2)</sup>.

As for the President of the Federal Supreme Court, he holds another position in the judiciary, which is the presidency of the Supreme Judicial Council, which oversees the work of the federal judiciary<sup>(3)</sup>.

It is clear from the above that this arrangement did not grant the Federal Supreme Court full independence from other institutions, especially with regard to the Presidency Council and the Supreme Judicial Council. The first, known as the "Presidency Council," has the authority to appoint and reject appointments, which in turn has a significant impact on the independence of the Court. As for the second, it involves the Court being presided over by the President of the Supreme Judicial Council, which could affect the Court's independence and neutrality, particularly if the Council itself is a party in the case, if a constitutional provision requires interpretation, or in cases of judicial jurisdiction disputes. Therefore, the Court did not achieve an adequate level of independence under this legal framework that established it.

### **Branch Two**

#### **The Autonomy of the Federal Supreme Court under the 2005 Constitution**

##### **(currently in effect)**

The features of this constitution in this regard can be identified as follows:

**First: Dependence on the Principle of Separation of Powers** This constitution relies on the principle of the separation of powers and explicitly and clearly affirms it<sup>(4)</sup>.

##### **Second: Judicial Independence**

The constitution affirms the principle of judicial independence, stating that the judiciary is subject only to the law<sup>(5)</sup>.

##### **Third: Independence of Judges**

The constitution affirms that judges are independent and are not subject to any negative or positive external influences, except for the law<sup>(6)</sup>.

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<sup>1</sup> ) Article 1 of the Federal Supreme Court Law in Iraq, issued under Order (30) of 2005, stipulates: A court shall be established, named the Federal Supreme Court, with its headquarters in Baghdad. It shall perform its duties independently, and no authority other than the law shall have control over it.

<sup>2</sup> ) Article 44 (h) of the Law of Administration for the State of Iraq during the Transitional Period of 2004 stipulates: "The Federal Supreme Court shall consist of nine members. The Supreme Judicial Council, initially and in consultation with the judicial councils of the regions, shall nominate no less than eighteen to twenty-seven individuals to fill vacancies in the aforementioned court. Subsequently, the same process will be followed to nominate three members for each subsequent vacancy caused by death, resignation, or dismissal. The Presidency Council shall appoint the members of this court and designate one of them as its president. In the event of any appointment being rejected, the Supreme Judicial Council shall propose a new group of three nominees.

<sup>3</sup> ) Article 45 of the Law of Administration for the State of Iraq during the Transitional Period of 2004 (now abolished) stipulates:

A Supreme Judicial Council shall be established, assuming the role of the Council of Judges. The Supreme Judicial Council oversees the federal judiciary and manages its budget. This council consists of the President of the Federal Supreme Court, the President and Vice Presidents of the Federal Court of Cassation, the heads of the Federal Appeals Courts, and the President and Vice Presidents of each Regional Court of Cassation. The President of the Federal Supreme Court shall preside over the Supreme Judicial Council. In his absence, the President of the Federal Court of Cassation shall preside over the Council.

<sup>4</sup> ) Article 47 of the Constitution of 2005 (currently in effect) stipulates: The federal authorities consist of the legislative, executive, and judicial branches. Each branch exercises its powers and duties based on the principle of the separation of powers.

<sup>5</sup> ) Article 19, First, of the Constitution of 2005 (currently in effect) stipulates: "The judiciary is independent, and no authority other than the law shall have control over it.

Article 87 of the Constitution of 2005 (currently in effect) stipulates: The judiciary is independent and is exercised by courts of all types and levels, and they issue their rulings in accordance with the law.

<sup>6</sup> ) Article 87 of the Constitution of 2005 (currently in effect) stipulates: Judges are independent, and no authority shall have control over them in their judgments except for the law. No authority may intervene in the judiciary or in matters of justice.

This means the independence of the Court from the Supreme Judicial Council, which is affirmed by the current Iraqi Constitution of 2005<sup>(1)</sup>.

The Supreme Judicial Council is responsible for managing the affairs of the federal judicial bodies, including the Federal Supreme Court, as stipulated by the current Iraqi Constitution of 2005<sup>(2)</sup>.

In addition to its independence from the legislative and executive branches, as stipulated by the current Iraqi Constitution of 2005<sup>(3)</sup>.

It can be said that the Constitution of 2005 (currently in effect) ensures the independence of the Federal Supreme Court in a manner that enables it to perform its duties correctly and properly.

## Chapter Two

### Constitutional Safeguards for the Independence of the Federal Supreme Court

The Constitution is the protector of the rights and freedoms of individuals and public institutions. From this standpoint, the Iraqi constitutional legislator worked to provide guarantees to ensure the independence of the Federal Supreme Court. It established the principle of separation of powers between the legislative, executive, and judicial branches, and emphasized the independence of the judiciary, asserting that no authority other than the law shall control it.

The 2005 Iraqi Constitution set specific guarantees against external interference in the work of the Federal Supreme Court, as it is the highest judicial body in the judicial hierarchy of Iraq. It confirmed that no interference in judicial affairs or the judiciary's work is allowed, in addition to guarantees related to the trial process, such as the reasoning of judicial decisions, confidentiality of deliberations, and the right to appeal in two degrees.

Additionally, there are guarantees related to the neutrality of the Federal Supreme Court from a procedural perspective. The Iraqi Constitution affirms the procedural neutrality of judges and requires them to have full independence to be able to carry out their assigned duties. Moreover, the judge must remain neutral, standing at an equal distance from the parties involved, and issue a ruling based on their personal conviction formed through the collection of evidence.

Based on the above, we will divide this chapter into the following two sections:

Section One: Constitutional Guarantees Against External Interference in the Work of the Federal Supreme Court.

Section Two: Guarantees of the Neutrality of the Federal Supreme Court from a Procedural Perspective.

Section

One

Constitutional Guarantees Against External Interference in the Work of the Federal Supreme Court

To ensure the independence and neutrality of the Federal Supreme Court, there must be constitutional guarantees that prevent any interference in its affairs. Mere constitutional provisions prohibiting interference are insufficient; there must be specific penalties for such interference, so that the constitutional provision holds legal and constitutional value<sup>(4)</sup>.

This is because interference in judicial affairs is a serious matter that undermines the principle of separation of powers and the principle of judicial independence, which are constitutional principles enshrined by the Iraqi legislator. These principles, along with others, serve the purpose of preserving judicial independence. For the judiciary to effectively fulfill its role in maintaining security, ensuring safety for individuals and society, and protecting public and private property, it must enjoy full independence and freedom in the areas of investigation and issuing judicial rulings. This ensures that decisions are in line with the law and the constitution<sup>(5)</sup>.

Based on the above, we will divide this section into the following two branches:

Branch One: Prohibition of Interference in Judicial Affairs.

Branch Two: Guarantees Related to the Rules of Trial.

Branch

One

#### Criminalizing Interference in Judicial Affairs

Interference in judicial matters is considered a crime punishable by law due to the serious consequences it entails, as it undermines criminal justice and the right to justice. It carries several risks, including the wrongful conviction of an innocent person, as interference in such matters disrupts the principles of criminal justice and diverts it from its natural

<sup>1</sup> ) Article 89 of the Constitution of 2005 (currently in effect) stipulates: "The federal judiciary consists of the Supreme Judicial Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution, the Judicial Oversight Commission, and other federal courts that are organized in accordance with the law.

<sup>2</sup> ) Article 90 of the Constitution of 2005 (currently in effect) stipulates: The Supreme Judicial Council is responsible for managing the affairs of the judicial bodies. The law regulates the method of its formation, its powers, and the rules of its operation.

<sup>3</sup> ) Article 92, First, of the Constitution of 2005 (currently in effect) stipulates: The Federal Supreme Court is an independent judicial body, both financially and administratively.

<sup>4</sup> ) Judge Madhat Al-Mahmoud, "Explanation of the Civil Procedure Law No. 83 of 1969 and Its Applications," 2nd Edition, Al-Sanhouri Publishing House, Baghdad, 2008, p. 257.

<sup>5</sup> ) Ghazi Faisal Mahdi, "Proposals for Amending the Jurisdiction of the Federal Supreme Court," Al-Zaman Newspaper, Issue No. (2149), Eighth Year, June 29, 2005, p. 8.

course. Additionally, it may result in the criminal escaping punishment, which is a natural outcome of such interventions, and the case may end either by being closed or by wrongfully convicting an innocent person<sup>(1)</sup>.

In this context, the Iraqi constitutional legislator emphasized the independence and neutrality of the judiciary, affirming that no authority other than the law shall have control over it<sup>(2)</sup>.

The Iraqi legislator has emphasized the independence of the judiciary, including all courts under this authority. However, it has stipulated that they must issue their rulings in accordance with the law, which serves as the primary standard for the legality of their actions and judicial decisions. Independence does not mean that the courts are above the law or the constitution, nor does it imply that they can violate legal and constitutional provisions<sup>(3)</sup>.

In the area of judicial independence, the Iraqi legislator has emphasized the independence of judges, stating that no authority has control over them except the law<sup>(4)</sup>.

It is clear from the text of this article that the Iraqi legislator granted judges the necessary independence to enable them to perform the tasks assigned to them and entrusted to them, and prohibited any interference in their work or any form of influence on them.

Regarding the independence of the Federal Supreme Court, its law issued under Order No. (30) of 2005 affirmed its independence in both financial and administrative matters<sup>(5)</sup>.

## Section 2: Judicial Guarantees Related to the Principles of Trial

There must be judicial guarantees related to the principles of trial to ensure that it is fair and just, so that every right is upheld and the dispute is definitively resolved. These guarantees include the following:

### First: The Reasoning of Judicial Rulings and Decisions

Reasoning, in this context, means requiring the court issuing the ruling to clearly state the factual evidence, legal arguments, and legal foundations that serve as the basis for the judicial decision. In other words, when a judicial decision is issued, there must be legal grounds and justifications on which it is based<sup>(6)</sup>.

This is a task that is not easy for judges, as it may take a lot of time and effort to gather and scrutinize evidence, forming the personal conviction of the competent judge. The importance of this matter lies in ensuring the proper functioning of justice, as it leads to deliberation before issuing a ruling, giving the judge the opportunity to carefully consider the case, gather evidence, and reflect before making a judicial decision. Additionally, it serves as direct oversight on the actions of the Federal Supreme Court, ensuring that the parties involved have been properly represented and that their viewpoints were considered. Furthermore, the public prosecution can monitor judicial decisions in terms of legality and how well they align with the law and the constitution<sup>(7)</sup>.

The Iraqi constitutional legislator emphasized the necessity of reasoning judicial rulings and obligated the court to provide reasoning for the judgments it issues. Additionally, the Iraqi legislature in the Civil Procedure Law also emphasized the need for reasoning judicial decisions<sup>(8)</sup>.

Second: Confidentiality of Deliberations One of the essential guarantees for the integrity of litigation is the confidentiality of deliberations. These deliberations must remain confidential to ensure that judges have complete freedom to issue the appropriate judicial decisions.

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1 ) Imad Hamid Ahmed Al-Qadu, "Preliminary Investigation," Master's Thesis, Faculty of Law and Political Science, Department of Law, Arab Open Academy in Denmark, 2009, p. 186.

2 ) Article 19 of the Constitution of the Republic of Iraq, 2005 (currently in effect), stipulates the following:

First: The judiciary is independent, and no authority shall have control over it except the law. Second: There is no crime or punishment except by law. No punishment shall be applied except for an act that is considered a crime by law at the time it was committed, and no harsher punishment than the one applicable at the time of the crime may be applied.

3 ) Article 87 of the Constitution of the Republic of Iraq, 2005 (currently in effect), stipulates the following:

"The judiciary is independent, and it is exercised by courts of various types and levels. They issue their rulings in accordance with the law.

4 ) Article 88 of the Constitution of the Republic of Iraq, 2005 (currently in effect), stipulates the following:

"Judges are independent, and no authority shall have control over them in their judicial work except the law. No authority may intervene in the judiciary or in matters of justice.

5 ) Article 2 of the Federal Supreme Court Law, issued under Order No. (30) of 2005, stipulates the following:

The Federal Supreme Court is financially and administratively independent.

6 ) "Dr. Mahmoud Al-Sayed Omar Al-Tahyoui, Issuing Judicial Rulings in Light of Jurisprudence and Judicial Decisions, Analytical and Practical Study, 1st Edition, Al-Wafa Legal Library, 2011, p. 16."

7 ) "Dia Shait Khattab, Explanation of the Iraqi Civil and Commercial Procedural Law, Al-Aani Printing Press, Baghdad, 1967, p. 352."

8 ) Article (159) of the Civil Procedure Law No. (83) of 1969, as amended, states the following:

1. Judgments must include the reasons on which they are based and must be grounded on one of the legal grounds specified in the law.

The court must specify in its judgment the reasons that led it to accept or reject the claims and defenses presented by the parties, along with the legal provisions it relied upon.

A penalty of annulment may be imposed on the judicial decision if the confidentiality of deliberations is breached. Some legal scholars have restricted the deliberations to the judges themselves, prohibiting anyone else from entering or participating in the deliberations<sup>(1)</sup>.

Secrecy of deliberations aims to achieve two goals: A) Enabling the judge to express their opinion and form their conviction freely, thereby forming their belief and judgment regarding the judicial decisions they issue. B) Imposing the dignity of the court and demonstrating the extent of its respect for procedural laws that stipulate these matters<sup>(2)</sup>.

Third: The Right to Appeal in Two Stages One of the most important guarantees of proper litigation is the right to appeal in two stages. A person who is subjected to a ruling has the right to appeal. This also serves as a key guarantee for judicial independence because, in the case of multiple courts, conflicting rulings may be issued, leading to the loss of rights and the violation of freedoms<sup>(3)</sup>.

The second requirement: **Guarantees of the neutrality of the Federal Supreme Court from a procedural perspective**

There are many procedural guarantees that ensure the neutrality of the judge and prevent bias toward one party over another. The judge must stand at an equal distance from all the parties involved in the dispute and should not favor one party over the other except based on truth and after having sufficient evidence and reasoning that allows him to form his belief and conviction that the truth lies with one of the parties. If the judge feels any conflict of interest that could affect his neutrality, he should inform the court to ensure that his impartiality is not compromised<sup>(4)</sup>.

Therefore, the judge must have full independence that allows them to perform the tasks entrusted to them without any specific influences, in order to preserve the principle of separation of powers. This is because the judiciary is independent from the other authorities, and no interference in its work is allowed. This has been affirmed by the Iraqi constitutional legislator<sup>(5)</sup>.

Based on what has been mentioned, we will divide this section into the following two demands:

**First branch: The Judge's Neutrality from the Subjective Perspective.**

**Second branch: The Independence the Judge Enjoys.**

**First Branch: The Judge's Neutrality from the Subjective Perspective**

Neutrality is a crucial issue that serves the interest of criminal justice. Therefore, the judge must possess the necessary neutrality that enables them to issue a fair judicial ruling, which resolves the dispute and grants each party their rightful entitlement<sup>(6)</sup>.

If the judge is free from personal and narrow factional interests towards all the disputing parties, his independence will be fully realized, and he will issue his judgment with complete impartiality and objectivity. His judgment will be correct and in accordance with the provisions of the law<sup>(7)</sup>.

The judge's impartiality should cover the subject of the dispute and should not be limited to the parties involved. Impartiality must be present in all the details and aspects of the case, from the beginning to the end, without any personal interest, benefit, or advantage to the judge from this case or that one<sup>(8)</sup>.

This highlights the importance of judicial impartiality in this field, as it leads to independence. The more impartial the judge is, the more independent they become<sup>(9)</sup>.

Judicial impartiality means the absence of any relationship between the judge and one of the parties in the case. The judge must avoid favoring one party over the other, refraining from leaning toward one party at the expense of the

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<sup>1</sup> ) Dr. Iman Mohammed Ali Al-Jabri, "The Certainty of the Criminal Judge: A Comparative Study in Egyptian, Emirati, Arab, and Foreign Laws," Manshahat Al-Ma'arif, Egypt, 2005, p. 501.

<sup>2</sup> ) Mahaoud Mahmoud Mustafa, *Explanation of Criminal Procedure Law*, 1st edition, Cairo University Press, Cairo, 1988, p. 489.

<sup>3</sup> ) Dr. Iman Mohamed Ali Al-Jabri, "Certainty of the Criminal Judge: A Comparative Study in Egyptian, Emirati, Arab, and Foreign Laws," Previous Source, p. 501.

<sup>4</sup> ) Dr. Fouad Al-Attar, "Administrative Judiciary," Al-Nahda Al-Arabiya Publishing, Cairo, 1966, p. 181.

<sup>5</sup> ) Article (19/First) of the Constitution of the Republic of Iraq, 2005, states the following: The judiciary is independent, and no authority shall have control over it except the law."

<sup>6</sup> ) Dr. Farouk Al-Kilani, **Independence of the Judiciary**, 2nd Edition, Arab Center for Publications, Beirut, 1999, p. 27.

<sup>7</sup> ) Dr. Hassan Bashiit Khwein, "Guarantees of the Defendant in Criminal Cases During the Trial Phase," Master's Thesis, Faculty of Law, University of Baghdad, 1979, p. 19.

<sup>8</sup> ) Dr. Ahmed Muslim, "Principles of Procedural Law: Judicial Organization, Procedures, and Judgments in Civil and Commercial Matters," Dar Al-Fikr Al-Arabi, Alexandria, 1979, p. 43.

<sup>9</sup> ) Dr. Abdulhamid Al-Ahdab, "Encyclopedia of Arbitration," Vol. 2, Al-Halabi Legal Publications, Beirut, 2009, p. 216.

And the translated text of your content: Independence in this sense refers to a person being free from any burdens or subordination to anyone. In this situation, the judge's decisions come from within, based on their personal conviction, unaffected by any external influences. The judge makes decisions autonomously. Independence, therefore, is a subjective emotional state that contradicts all forms of dependency, submission, and reliance on others

other, and adhering to the legal and procedural rules in this regard to ensure the proper administration of criminal justice<sup>(1)</sup>.

In order for the judge to maintain his neutrality, he must rid himself of personal biases. The judge must distance himself from self-interests in his thinking, so that his judgment is fair and addresses the case before him, resolving the dispute presented to him<sup>(2)</sup>.

All of these factors work towards strengthening the neutrality of the judge and the independence of the judiciary to the extent that it has become a universal principle and one of the key and prominent principles in international law. International charters and conferences have called for the neutrality of judges and the independence of the judiciary, with the Universal Declaration of Human Rights of 1948 being one of the foremost advocates for this<sup>(3)</sup>.

## The second branch

### Judicial Independence

A judge must also be independent to maintain the required neutrality, which carries two meanings:

#### First: The meaning of judicial independence from a personal perspective

Judicial independence, in this sense, refers to the independence of the judge, which stems from the independence of the judiciary itself from both the legislative and executive branches. The judge is independent according to constitutional provisions that emphasize this, as long as they remain subject to the authority of the law. This has been affirmed by the Iraqi constitutional legislator under the effective 2005 Constitution<sup>(4)</sup>. To strengthen judicial independence, the Iraqi constitutional legislator has stipulated that judges cannot be dismissed except in cases defined by law<sup>(5)</sup>.

Secondly: The Objective Meaning of Judicial Independence This refers to the independence of the judiciary from both the legislative and executive branches. The judiciary must be separate from the other branches of government, and no authority should be allowed to interfere in its operations<sup>(6)</sup>.

The Iraqi legislator confirmed this through the provisions of the active 2005 constitution<sup>(7)</sup>.

The Law of the Federal Supreme Court also emphasized its independence<sup>(8)</sup>.

To ensure the court's independence, the Iraqi constitution of 2005 prohibited the formation of exceptional or special courts, as the judiciary is the reference for all disputes<sup>(9)</sup>.

Furthermore, the Iraqi legislator emphasized the principle of the separation of powers, making it one of the important constitutional principles<sup>(10)</sup>, and also confirmed the independence of the judiciary<sup>(11)</sup>.

### Conclusion

This section includes the findings and recommendations.

#### First: Findings

1. The structure of the Federal Supreme Court as stipulated in the 2005 Iraqi Constitution differs from its structure in the (expired) Transitional Administrative Law of Iraq 2004 and the Federal Court Law No. 30 of 2005, which required a specific law to be issued by a two-thirds majority of the members of the Iraqi parliament (Article 92, second). However, this law has not yet been enacted.

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<sup>1</sup> ) "Salim Rawdan Al-Mousawi, The Principle of Judicial Independence in Iraqi Legislation, Journal of Legislation and Judiciary - No. 3 - July-August-September, 2009, p. 69."

<sup>2</sup> ) Dr. Ramsis Behnam, Judicial Psychology, Mansharet Al-Ma'arif, Alexandria, 1997, p.

<sup>3</sup> ) Article (10) of the Universal Declaration of Human Rights of 1948 states: "Everyone, without any discrimination, has the right to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."

<sup>4</sup> ) Article 88 of the Iraqi Constitution of 2005 stipulates: "Judges are independent, and no authority shall have control over their decisions except for the law. No authority may intervene in the judiciary or in matters of justice."

<sup>5</sup> ) Article 97 of the Iraqi Constitution of 2005 stipulates: "Judges are not subject to dismissal except in cases specified by law. The law also defines the specific provisions for them and regulates their disciplinary accountability."

<sup>6</sup> ) Ismail Jaber, "The Importance of Judicial Independence," Published Research on the Internet, available at the following website: <http://pulpit.alwatanvoice.com/content-76940.html>.

<sup>7</sup> ) Article 19, first paragraph, of the Iraqi Constitution of 2005 states: "First: The judiciary is independent and no authority shall have power over it except for the law."

<sup>8</sup> ) Article 1 of the Federal Supreme Court Law in Iraq, issued by Order No. 30 of 2005, states: "A court shall be established called the Federal Supreme Court, with its headquarters in Baghdad. It shall perform its duties independently, with no authority over it except for the law."

<sup>9</sup> ) Article 95 of the Iraqi Constitution of 2005 states: It is prohibited to establish special or exceptional courts.

<sup>10</sup> ) Article 47 of the Iraqi Constitution of 2005 states: The federal authorities consist of the legislative, executive, and judicial powers, which exercise their functions and duties based on the principle of separation of powers.

<sup>11</sup> ) Article 87 of the Iraqi Constitution of 2005 states: The judiciary is independent, and it is exercised by courts of various types and levels, which issue their rulings in accordance with the law.

2. The distribution of the Federal Supreme Court's competencies between the constitutional provisions of the 2005 Constitution and the Federal Court Law itself may weaken its role as the highest judicial institution in Iraq.
3. The decisions of the Federal Supreme Court are final and binding and are not subject to appeal.
4. The Judicial Institute is currently under the authority, oversight, and under the supervision of the Ministry of Justice, whereas it should be under the authority of the Supreme Judicial Council, in accordance with the principle of judicial independence. This would ensure greater independence, as it would be independent even from the Ministry of Justice.
5. The Constitution and the Federal Court Law do not include provisions for compensation for damages resulting from violations of laws and regulations that contradict the Constitution.

### **Second: Recommendations**

1. It is necessary to form the Federal Supreme Court according to the principles set forth by the 2005 Iraqi Constitution, specifying the number of members, including judges and experts in Islamic jurisprudence and legal experts.
2. The Federal Court Law should include provisions for compensating damages resulting from violations of laws and regulations that contradict the Constitution.
3. The supervision of the Judicial Institute should fall under the authority of the Supreme Judicial Council, not the Ministry of Justice, to ensure neutrality and independence of the court.
4. There is a shortcoming in several rulings of the Federal Supreme Court regarding the reasoning behind the judicial decisions, which could undermine the guarantees of a fair trial.
5. There is a need to amend certain competencies of the Federal Supreme Court that are secondary in nature, such as its role in ratifying the final results of general elections for the membership of the Iraqi parliament and hearing cases on the validity of parliamentary membership.

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