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Universidad del Zulia
Facultad Experimental de Ciencias
Departamento de Ciencias Humanas
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The Iraqi constitution and the principles of the work of the Supreme Administrative Court

Lamyaa haleem abduladheem alwash
Presidency of the University of Babylon

Abstract

The administrative judiciary monitors the validity of the orders and decisions issued by the executive authority as the administration and makes sure that the decision or administrative order was issued in accordance with the law.
The administrative judiciary in this way is considered legitimate. It ensures that the administration does not violate the law when issuing its decisions. This is what fulfills the principle of the rule of law over both the ruler and the ruled. However, the administrative judiciary and any judicial body must comply with the law in its work. If he violates the ordinary law, he must neglect the text of the ordinary law and implement the constitutional text, and so on. However, some of our administrative decisions have either ignored or ignored the principle of incorporation of legal norms.

La constitución iraquí y los principios del trabajo del Tribunal Administrativo Supremo

Resumen
El poder judicial administrativo supervisa la validez de las órdenes y decisiones emitidas por la autoridad ejecutiva como la administración y se asegura de que la decisión u orden administrativa se emitió de conformidad con la ley.
El poder judicial administrativo de esta manera se considera legítimo. Asegura que la administración no viole la ley al emitir sus decisiones. Esto es lo que cumple el principio del estado de derecho sobre el gobernante y el gobernado. Sin embargo, el poder judicial administrativo y cualquier órgano judicial deben cumplir con la ley en su trabajo. Si viola la ley ordinaria, debe descuidar el texto de la ley ordinaria e implementar el texto constitucional, y así sucesivamente. Sin embargo, algunas de nuestras decisiones administrativas han ignorado o ignorado el principio de incorporación de normas legales.

The concept:
(The law abolishing the legal provisions that prevent the courts from hearing cases) has excluded in Article (3) thereof the laws of the Ministry of Higher Education and Scientific Research and the Ministry of Education .., from subject to its provisions.
The above provisions are incorrect and do not agree with the provisions of the Constitution for the following reasons:
First: Article 13 of the Iraqi Constitution of 2005 states that "First, this Constitution shall be the supreme and supreme law of Iraq and shall be binding in its entirety and without exception." The concept of the advanced constitutional text states that the legislative, executive and judicial powers of the State must abide by the provisions of this Constitution and not violate them, otherwise their work would be unconstitutional.
Second: The text of the Iraqi Constitution in Article (100) that "prohibits the provision in the laws to immunize any work or administrative decision of the appeal."
Therefore, all legal texts contained in the Iraqi legal system that protect the acts and decisions of the administration from judicial chal-

lenge will be void due to the cancellation of their contradictions with the provisions of the Constitution. If it is not canceled, the judge must refrain from applying them in accordance with the rule to include the legal texts that require the application of the stronger legal text Between the texts and our guide in the text of Article (13 / II) of the Constitution of Iraq for 2005, which ruled that "No law may be enacted contrary to this Constitution and invalidate every text ... The contrary contradicts with him." Any legal text that violates the Constitution is void whether Before or after the coming into force of the Constitution Article 38 of the Law of the Ministry of Education and paragraph (2) of Article (38) of the Law of the Ministry of Higher Education shall be unconstitutional to explicitly contradict the provisions of Article (100) of the Constitution. The Administrative Judiciary and the General Disciplinary Council shall be competent in the previous cases, and otherwise the text of Article 13 of the Constitution shall be wasted.

We find that the text of Article 3 of Law No. 17 of 2005 is unconstitutional because it is not in agreement with the text of Article 100 of the Constitution, and it can not be said that they created a door for administrative grievance and thus a constitutionally valid interpretation. This is incorrect because article 100 of the Constitution Article 100 refers to the chapter on the judicial authority, which is the third chapter of Part Three, entitled Federal authorities. This is very clear in a statement that the purpose of the appeal is judicial without administrative grievance.

Principles of the Administrative Tribunal:

Therefore, the General Assembly of the State Consultative Council may not ratify the decision of the Disciplinary Council, but it would be better for the General Assembly to act on the principle of incorporating the legal rule and to overturn the decision of the General Disciplinary Council not to have jurisdiction over the case, or to discontinue consideration of the case and refer the matter to the Federal Supreme Court In accordance with article (3) of the rules of procedure of the Federal Supreme Court. The Federal Supreme Court may not fall into the same predicament and ratify the decision of the Supreme Federal Court. Court of Justice Dare-based text is unconsti-

tutional, because the Federal Supreme Court, the basic maintenance of the Constitution and its mission to uphold its principles and provisions.

The territory of 438,317 square kilometers, between the Tigris and the Euphrates, on which extends Iraq today, had been conquered by different peoples, when in 1258, the empire Ottoman seized Baghdad. This domination continued for five centuries and several consequences. The first is quite paradoxical, this conquest was translated by the continued influence of the Persian empire. This is explained by the remoteness of the territory newly conquered. He therefore does not suffer the intense authority of the "Sublime Porte". By against, the Persian empire, nearby, infiltrated several times. Second, rivalry between Persians and Ottomans created the need to delimit the boundary between two empires. This led to the delimitation of the border between the Persian empire (including the future Iranian state) and the future Iraq. The Erzerum Treaty is signed on May 31/1847 between the leaders of the two empires. The question of the legal status of the Chatt al-Arab is then asked. The treaty lays down the principle that, the Iranian possessions over Mohammerah and on the islet of Khiz, just as the territories occupied by the tribes of Persian obedience, remain Persian. In addition, a right of navigation on the river is recognized in Persia. However, a secret explanatory note is drafted at the request of the Ottoman Empire, by Great Britain and Russia, which favors the "Sublime Porte". Gold, it is added to the treaty, without the Persian plenipotentiary noticing it. He signs it without hesitation5. These indications shed light on the dispute of the 1980s, between Iraq and Iran, concerning the crossing of the border at the level of Chatt-al-Arab. Finally, because of this distance, the territory was quickly divided into three vilayets, Mosul, Baghdad and Basra and his leadership delegated to a Vali. This was a source of weakness, if one adds Western, especially British and Russian, aims to the Middle East6.

However, the nineteenth century can be described as "the awakening of nationalisms". Despite reforms, Turkish and Arab nationalists want to regain their right to self-determination. The Empire is considerably weakened when the First World War breaks out, Global,

especially since it is positioning itself in favor of Germany. On May 16, 1916, the Sykes-Picot agreements are secretly signed by France and Great Britain. They organize the fall of the Ottoman Empire and the sharing in zones of influences of the territories long-cherished7. As early as 1917, the British occupied Baghdad. On October 30, 1918, the end of the empire rang. Britain does not know yet whether it will annex or simply organize indirect control over the area that is his Sykes-Picot. That is why a referendum in the three Iraqi vilayets is organized in December 1918 and January 1919. The population is then in favor of building a state
arabe8. But Article 22 of the Covenant of the League of Nations, signed on January 25, 1919, establishes the mandate system. Great Britain obtains, on April 25, 1920, a mandate on Iraq which extends into the frontiers of the three Ottoman exilayets.

However, as early as June 1920, Iraqis, all communities combined, revolt against the British yoke. This presence has, from the beginning, been poorly accepted. In 1914, the Shia clergy had already called for jihad. It continues in particular in 1916, by "the revolution of Najaf ", the Islamic Renaissance Association is also created in the purpose of bringing the Iraqis together. The Shia community is very active and tries to unite the entire population. We can then and as early as 1920, speak of an Iraqi nation. However, the country will have to quickly face the exile of many Shiites. The separation between political and religious affairs was also imposed at that time: "Since the triumph theses worn at the end of the eighteenth century, it was the first setback of a movement that had essentially developed as an Islamic response to political hegemony, economic and cultural development of Europe "9. However, this Western standard, linked to the separation of powers and the principle of sovereignty, is necessary to the detriment of local tradition and Iraqi Islamic, in which Shiite scholars were a counter-power by excellence10.

Once the order returned, Abd al-Rahman al-Gaylani was charged by the British with form a provisional government11. On August 23, 1921, King Faisal I, (former King of Syria and son of Husayn, Sherif of Mecca) is inducted. Constituent Assembly adopts the new status of Iraq. It institutes, under the Constitution of 1925, the Hashemite

monarchy, parliamentary and hereditary, with a representative government and Islam as religion official.
The laws of the Iraqi Constitution relating to the administrative judiciary:
Already a form of Western influence exists, since the new Constitution does not cancel the laws adopted under the Ottoman Empire, or those adopted by the British. between 1914 and 1924. Moreover, this text must be in accordance with the Anglo-Iraqi Treaty of 10 October 192213, which replaces the mandate to organize Iraq's dependence on Britain. The colonial power then becomes guardian of sovereignty Iraqi. This treaty legalizes domination and thereby British influence. He thus opposes the existence of a free and independent Iraq. British officials must be appointed by the Iraqi government, for the management of the sovereign powers of the State. British forces station in Iraq and train the officers. They can also inspect and make recommendations to Iraqi forces. The agreement also puts under guardianship British finances the new state. In addition, the Iraqi King must take into account the views of the representative of the British crown in Iraq. It finally imposes certain obligations constitutional; for example, freedom of religion and conscience or the principle of no discrimination14. The sovereignty of this nascent state is therefore largely limited.
2. Divergences in the Islamic and Western conceptions of the state Iraq and . are the product of two conceptions of the state. They are first built on a model that is traditional to them, that of Islam. Then, because of the former interference by the European powers (of the British Empire in particular), the the so-called "modern" state, was a factor of influence that changed the norms of force.
The Islamic conception does not conceive of the State in an individualized way. The concept State does not exist, but the foundations of Islamic society are found in Umma. In the first place, the Umma or "mother community" 50 is an entity that can be assimilated to a nation: it extends beyond the borders to all members of civilization Islamic. "The strength of the bonds between the faithful, gathered within the umma must transcend belonging to other community circles (ethnicity, nation, kingdom ...) "51. In second, the Umma

is directed, on the death of the Prophet Muhammad, by the establishment of the Caliphate. The Caliph is chief of the Umma. He is his temporal and spiritual leader and has all powers. It only benefits from advisers such as Ulema or the great Mufti and can delegate his powers to his collaborators, Vizirs, Cadis or Governors. The Caliph, according to the Sunni community, should be designated by the election. It is hereditary in Shiites. Finally, sovereignty is universal. To reach this state, the Umma must extend through the use of defensive war, offensive or war holy. The inhabitants of the conquered territories are then faced with a choice. Either, they decide to retain their personal status. Thus, minority rights will be implemented and they will not will not have an equal status with Umma members, but will be able to continue to practice their traditions. Either they decide to integrate into the Umma and Islamic law their will be applied52.

Unlike the Western conception of the state, the delimitation of is not necessary. Moreover, the concept of sovereignty is conceived in a very different way. A guarantee of independence in the West, vis-à-vis its neighboring states as well as the Pope53, it is

Universal in its Islamic conception. This explains the absence of borders and consequently, the absence of independent states from each other.

The spread of Western design, in the nineteenth and twentieth century's, through the imperialism of the French and British colonial empires, made the international order, an order divided into multiple subjects of international law, the states. This represents a point stop at the implementation of the Islamic conception of the State, still achievable for some. Iraq and . are no exception. They are built on the model western, with a territory bounded by borders, a population and the sovereignty. The integration of this model, however, explains the difficulty that populations of these states to become nations. The nation as conceived in the West, framed by borders and representative of common values, is difficult transposable in Iraq and on the one hand, because of the delimitation of borders who does not respect the ethnic situation, but also because of the existence, through Islam, values that transcend borders and belong to the whole of the Islamic civilization. The initial phase of reconstruction

in Iraq and in ., a high risk stage

Reconstruction is a high risk test because this step as it is conducted in both our countries, is the meeting point of conflicting principles, namely, the Principle of Sovereignty and Principles from the Democratic Doctrine of the United Nations The process of drafting a Constitution is of major importance, since gives rise to a specific mode of governance that is supposed to correspond to the will of the people. However, if it takes place in an ambiguous institutional context or if the power constituting under influence, there is a good chance that the risks identified by the Professor Salmon come true and democratization fails.

This is why we will first examine the institutional context in which the constituent power evolves, that is to say the transitional administration organs (§1). In a second step, we will analyze the partially internationalized exercise of the constituent power (§2).

Iraq, from a de facto situation to the agreement of November 15, 2003 Distinguish two steps for the establishment of the Iraqi interim administration: The first phase (from the end of the war on May 1, 2003 to June 28, 2004) is characterized by the omnipresence of the Coalition in the decision-making process. Indeed, the provisional administration is based, then, mainly on the will of the Coalition113, the occupation force, is de facto holder of Iraqi sovereignty. However, soon, the deficit of legitimacy will appear. That's why, the agreement of November 15, 2003, entitled "Agreement on Political Process", between the Provisional Authority Coalition and the Interim Government Council, will organize a second phase. He is signed by Paul Bremer, the US administrator of Iraq, and Jalal Talabani, then Chairman by rotation of the Interim Government Council. Composed of five provisions, its purpose is to organize, in the long term, the transfer of sovereignty, 114 the end of US intervention as an occupying force115 and the establishment of a new provisional and sovereign administration. The first article is on the establishment of a transitional Constitution and its method of elaboration, it is entitled "The Fundamental Law". Prepared by the Interim Council in collaboration with the Authority, it must be approved by 28 February 2004 at the latest116. Seven elements in predispose the content: a

Bill of Rights providing for the protection of the rights of the man ; the form of the state (federal with separation of powers); independence of judicial power and a judicial review mechanism; the control of the armed forces and Iraqi security; a declaration prohibiting the amendment of this fundamental law; a the date on which the Provisional Constitution will disappear. Finally, it will have to contain a calendar providing for the building of a permanent Constitution by a structure directly elected by the Iraqi people, then the ratification of this Constitution, and finally, the holding elections. Article 5 of the Agreement extends this first article, since it relates to Permanent Constitution. We learn that it will be elaborated by a Constituent Assembly designated directly by the Iraqi people. The election of the Constituent Assembly will have to be held before March 15, 2005. The permanent Constitution will be adopted by referendum. Of Moreover, by December 31, 2005, the election of the Iraqi government will take place. The
Transitional Constitution may then be extinguished and the permanent Constitution enter into force; it will be the end of the transition period117.
Unlike ., where the Bonn Agreement provides for the reactivation of the Constitution of 1964 adopted by the Afghans themselves, a transitional Constitution is elaborated under the aegis of the occupation authority. However, this procedure leaves more maneuvers for the introduction of foreign principles into the Iraqi legal system. The second provision is also fundamental. It imposes approval between the Authority and the Interim Council of a Bilateral Agreement on Security, establishing the status , Coalition forces in Iraq. However, the Bilateral Agreement will have to leave them a large margin maneuver to bring safety and security to the population118. Thirdly, the Agreement provides for the method of designation of persons sit in the National Transitional Assembly. First, the Interim Council wills not any role in the appointment of members, moreover, it will be dissolved as soon as the Assembly Provisional National will be set up, but its members will be able to join the Assembly119. However, the Authority retains a margin of maneuver in the designation of individuals who will represent the Iraqi people, future holders of

the sovereignty of that state. In addition, the future Assembly will be the body that will designate the executive power. But she is not designated by direct universal suffrage. The Agreement also makes a fundamental decision about the form of the state. Gold, the Provisional Constitution121 and the permanent Constitution will follow these requirements, because they introduce irreversible changes in federalism. This agreement very brief, probably even too brief, was, therefore, criticized by some by Grand Ayatollah Ali Al-Sistani122, but recognized by the vast majority of Shiites
Iraq. Finally, we note that, unlike reconstruction in ., where national actors in collaboration with the United Nations had prepared a road "accompanying reconstruction from beginning to end, there is no program here pre-established and accurate. "It will depend on the US military capability to maintain the situation dominant, characterized by insecurity and daily violence "123.
2. When the role of the United Nations is confined: the case of Iraq Resolution 1483 had imagined a large contribution from the United Nations. The Organization was to intervene in Iraq in a number of areas, both to bring its participation in a political transition process and contribute to the security and well-being of whether to promote human rights and the rule of law, or to humanitarian aid and support for the reconstruction of infrastructure and the economy. However, this contribution will develop in two stages. First, the Organization will have a restricted role. In a second time, linked to the stagnation of the Coalition, the U.N. will intervene more intensively. During the first period, the role of the United Nations in Iraq is limited to humanitarian sector. A special representative of the Secretary-General shall be appointed in accordance to Resolution 1483, Sergio Vieira de Mello was appointed on May 27, 2003206. His mandate coordination of humanitarian aid, reconstruction assistance provided by United Nations and non-governmental organizations, and to facilitate the return of refugees. Apart from this limited competence, the Security Council is only validating the initiatives taken by the Coalition; as for example in resolution 1500, about the C.I.G.207. The Security Council imposes no control on the Provisional Authority of Coalition.

While the Organization had taken the lead in reconstruction, ., its role is erased in the framework of Iraq by the intervention of the Coalition. It is a major transition with the previous twelve years. Without totally adhering to action, the Security Council, deeply divided, adopts resolutions in half, without appropriating the measures implemented by the Coalition. He "welcomes" only of their existence. By Resolution 1483, he noted the occupation of Iraq, then by Resolution 1511, it authorizes a multinational force led by the Coalition. Forces occupation, are they then recycled into multinational forces? "Resolutions 1483 and 1511, even if they do not attribute this de facto power the seal of legality, do not less than the benefit of the duration, which does not fail to be contradictory of the legal point of view "208. Similarly without wanting to legitimize the occupation after the fact, he gives the authority the management of certain important tasks, for example training transitional administration, recovery of the economy or legal reform209. It is in that these resolutions "permit a colourable claim of legitimation - if not legalization - of the idea that the occupying power is authorized [...] "210. For Professor Ben Achour, "[T] he first resolution in the post-conflict Iraq (1483 of 22 May 2003) does not constitute recognition of the international legality of war. But it allows the setting under the indirect auspices of the United Nations of a regime of occupation, without the effects of an attack "211. However, as early as July 2003, the Secretary-General recalls, in his first report, the role that the United Nations should play in accordance with resolution 1483. It evokes for the first time the creation of an assistance mission212 and details the mandat213. These are important skills that the mission, under the direction of the Special Representative, will have to conduct including, the provision of humanitarian aid; help to the elaboration of electoral regimes; the promotion of human rights; the restoring courts and the establishment of a Judicial Training Center; a help constitutional; the training of police forces; demobilization and reintegration of soldiers; public service reform and support for good governance. In accordance with this report, the Security Council establishes in resolution 1500 the United Nations Assistance Mission in Iraq (UNAIDS) 214. This one will have a mandate from 12 months will be renewed. Subsequently,

the U.N. will not stop trying to accelerate the process of transition to a sovereign Iraq by setting "ultimatums" for the Autorité215. The Security Council regularly recalls the principles of freedom of peoples to self-determination, sovereignty and integrity. It highlights, in addition, the United Nations to make greater use of it, qualifying them "unique" 216; but its participation remains under the authority of the Coalition217.

M.A.N.U.I. will become more involved in a second phase, following the transfer of sovereignty, in June 2004218. Indeed, with growing insecurity, the Provisional Authority of Coalition is asking for more. Resolution 1546 marks a turning point. After underlining establishment of an independent Iraqi government, as well as the end of the occupation219, it details the mandate of R.S.S.G. in Iraq220. However, despite crossing this stage crucial, the U.N. does not have the same impact as in .. She remains behind. Despite the official end of the occupation, the military forces remain on the ground221. Thus, it is only in appearance that the U.N. seems to extend his powers to detrimental to those of the States in reconstruction, which would announce according to some the end of the state. However, in the context of the reconstruction in, it seems that in reality the United Nations. simply participate in the implementation of the reconstruction as desired by the internal actors of the state. States, acting in the field, also have a leading role.

They provide the human, material and financial resources needed for reconstruction222. But in the context of Iraq, third States have much greater powers. They have an important influence, since they govern the state at first. We are, therefore, far from the disappearance of the state as an actor, but also as subject of international law. Moreover, the State is the subject of international law heart of the reconstruction process. This first paragraph also allowed us to measure the variation that could be to have in the reconstruction operations. However, these variations will have an impact on the exercise of constituent power. When the state was immediately administered by the actors influence on the constituent power will be more limited, since externals only have accessory skills; but they remain, given the initial deconstruction suffered by the State. The Secretary-General of the

United Nations recognizes himself that "these peace-building and peace-building operations are Opportunities Organizations Need to Seize to Get Society Moving unsuitable for contemporary demands on the place of law in social life "223. So that when the State is administered unilaterally by a third party, the latter has B. The Iraqi Constituent Assembly Article 5 of the Agreement on Political Process states that constituent will be elected by the Iraqis. Its draft will then be submitted to referendum. Once adopted, it will come into force when a government has been elected236. A Constituent Assembly is therefore established with the aim of elaborating a Constitution before August 15, 2005. Its composition reflects the results of the legislative election of January 2005. It is made up of 55 members, half are Shiites and a quarter represent the Kurds. Eight women are among them237. Some Sunni provinces could not vote in the elections of January 30, because of the violence and the call for boycott. So, only two seats are allocated to Sunnis in the Constituent Assembly. However, the 16 June 2005, Sunnis get fifteen more seats, as well as ten seats observers. Tensions between representatives of different communities were so Sunnis are in opposition to the common proposals of the Shiites and Kurds in terms of federalism238, that the date of submission of the draft Constitution was repulsed twice.

However, was the Assembly really independent? Despite the end of occupation, the US ambassador intervened in the process, when the constituent was in the impasse. This was the case, for example, for determining the sources of the law, more precisely to know if Islam would be "The source" or a source of legislation239.

Part 2: The Afghan and Iraqi reconstructions, towards a third generation of Constitutions? We will devote ourselves henceforth to the study of the Constitutions established by the internationalized process that we have just examined. The new Constitution of the Islamic Republic of . is adopted by Loya Jirga on 4 January 2004, and promulgated on January 26th of the same year by Hamid Karzai. As to the Constitution of the Republic of Iraq, it was adopted by referendum on October 15, 2005. These announce the last stage of the transitional phase. We will now examine and explain these constitutional choices and seek the reasons why they were favored over others. «. is

an Islamic Republic, independent, unitary and indivisible state "297, provides the first article of the Afghan Constitution of 2004; while, "the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is representative, parliamentary, and democratic, and this Constitution is a guarantor of the unity of Iraq "298, specifies the new Constitution of Iraq. Article 7, paragraph (d), of the Law of the State Consultative Council provides that "the Administrative Court shall have jurisdiction over the validity of orders and administrative decisions issued by employees and bodies in the State and the Socialist Sector after the entry into force of this law, On the basis of an appeal of a known interest and a possible situation, and yet the potential interest is sufficient if there is reason to fear harming the persons concerned). Through the advanced text, it is noted that the legislator has aimed at determining the jurisdiction of the Administrative Court of Justice exclusively, and thus we find that there are disputes have emerged from the jurisdiction of the administrative judiciary, although the administration is a party. In this regard, our professor Dr. Essam Al-Barzanji goes on to say that the jurisdiction of the Administrative Court of Justice as defined in Article 7 is limited and modest. (1) The legislator has set forth exceptions provided for in Article 7 / V, stating that "

a. Acts of sovereignty and acts of sovereignty shall be deemed decrees and decisions issued by the President of the Republic.

B. Administrative decisions taken in implementation of the directives of the President of the Republic in accordance with his constitutional powers.

(C) Administrative decisions to which the law has been prescribed as a way of appeal, challenge or appeal. We will not discuss the details of the above because they will be discussed in detail in the next search steps. From this we conclude that the Iraqi legislator established a general rule in determining the jurisdiction of the Administrative Court of Justice, requiring the issuance of administrative decision from the administrative side.

It should be noted here that the disputes brought before the Administrative Court of Justice are of a special nature. This nature requires that it be dealt with by objective and procedural solutions that differ

from those dealt with in the private law, and from the rulings of the Supreme Court of Egypt in this regard (that private law ties differ in their nature from public law unless they create a special provision to do so) The administration of the application of civil rules inevitably and as it is, but it has the freedom and independence in the creation of appropriate solutions to the legal links that arise in the field of public law, between the administration in the establishment of the public facility and between individuals, it may apply the civil rules to fit with it, They were not compatible with It is worth mentioning that the preparatory work and applications are outside the competence of the Administrative Court of Justice, as they are preparatory work and procedures precedent. The final decision and the applications of the Administrative Court in this regard its decision of 29/9/1990 as the facts of the case are summarized in that the Ministry of Agriculture and Irrigation had filed a request in its letter No. 4731 on 21/2/1990 to abolish the rights of banking in blocks numbered 10/1, 10 District 12 Internal Operators in the district of Shamia in Governorates Qadisiya In accordance with the provisions of the Law on the Standardization of the Classifications of State Lands No. 52 of 1976, the two persons applied before the Administrative Court to apply for the Minister of Agriculture and Irrigation, in addition to his job in which the right to dispose of alternative parts was requested. As a result of the pleading, the Administrative Court decided, The case that the contested order is not a matter or an administrative decision, but an application subject to the assessment of the fire and amendment of the rights of banking in the province of Qadisiyah has been ratified by the General Assembly of the State Shura Council. (3) In Egypt, the Administrative Court of Justice is the court with general and original jurisdiction to adjudicate administrative decisions and disputes, so that all administrative disputes which the legislator did not make by special provision of administrative or disciplinary courts. (4) in which the judge ruled that the jurisdiction of the Administrative Court in the consideration of administrative disputes shall not be subject to discrimination, but shall be subject to different and different types, such as requests for revocation of administrative decisions made by individuals, cases of nationality, which challenge

the final decisions issued by administrative bodies with jurisdiction, A company between them and the administrative courts, such as functional disputes and disputes of administrative contracts, and is a court of appeal in the light of the judgments issued by the administrative courts and issued judgments of three advisers). (5) Thus, the court's jurisdiction revolves around a basic concept of the concepts and theories of administrative law, namely the administrative decision.

While we claim that the Iraqi constitution is the highest and highest law in Iraq, we must all adhere to it in order to ensure the concept of the legal state, several flagrant violations took place and the issuance of laws contrary to this Constitution from time to time. As the federal authorities in Iraq are composed of the three authorities and each authority exercises its functions and functions on the basis of the principle of separation of powers. The Judicial Authority is one of these authorities. It is independent and is governed by courts of all types and degrees. It consists of the Supreme Judicial Council, the Federal Supreme Court, and the Federal Court of Cassation, the Public Prosecutor's Office, the Judicial Supervisory Authority and other federal courts.

Article 101 of the Constitution stipulates the establishment of a Council of State, which deals with the functions of the administrative judiciary, the advisory opinion and drafting, and the representation of the State and other public bodies before the courts, except for what is excluded from them by law.

In accordance with the provisions of Chapter III of the Constitution and the provisions of the judicial authority, the judiciary in all its forms and types is limited to the judicial authority. The Supreme Judicial Council exercises its legal powers in the administration of judicial affairs and supervision of all forms of the federal judiciary. Any form of judiciary and courts outside this framework violates the Constitution and constitutes a flagrant violation. Article 95 of the Constitution prohibits the establishment of special or special courts. Every court or body that exercises judicial work outside the framework of the judicial organization and the Supreme Judicial Council is considered an infringement of the independence of the judiciary

and a form of special courts And exceptional.

The State Council Law No. 71 of 2018, which is the heir to the State Consultative Council, is one of these forms which violates the judicial procedures. It was incorporated into the independent bodies in accordance with the provisions of Article 1 of the State Council Law. The reasons for the law are that it came in implementation of the provisions of Article 101 of the Constitution, and for the purpose of the independence of the administrative judiciary from the executive authority. The Council of State is an independent body with a moral personality that includes the administrative judiciary, the staff courts and the Supreme Administrative Court. In a neutral and independent manner, like the State Councils in civilized countries, in order to disengage the State Consultative Council from the Ministry of Justice and to replace it with the Council of State in accordance with the Constitution.

This council has nothing to do with the judiciary, the executive authority or the legislative authority. What role does this council play when it disengages from these authorities and establishes a body outside this framework?

We are in front of judicial formations outside the body of the judiciary and are not associated with them in any way. They vary between administrative courts, civil courts and the Supreme Administrative Court. These judicial formations do not fall within the jurisdiction of the Supreme Judicial Council, In accordance with the provisions of the Judicial Organization Law No. 160 of 1979 amending, which in all cases is part of the executive authority, and the President of the Council of State the power of a minister within the powers of the executive authority.

In order to prove that this formation does not belong to the judicial authority, the constitutional provision stipulates that this council shall be representative of the state and other public bodies before the judiciary, and it can not be a judicial body that pleads before the same judiciary, representing executive or legislative bodies instead of a legal representative.

The State Council of the Arab Republic of Egypt is one of the pillars of its judicial authority. The Omani Council of State proposes

laws, submits proposals to the Council of Ministers, the Syrian State Council a body attached to the Council of Ministers, the Algerian State Council a body of the judiciary, Administrative courts in Lebanon are subject to appeal and discrimination before the Lebanese judiciary.

The law of the State Council is an independent body and exercises its judicial function in issuing judicial decisions within the functions of the administrative judiciary. Such independence makes it outside the judicial system and its formations and is not subject to the decisions of the Federal Court of Cassation And not to the supervision of the Judicial Supervision Department, and therefore those who issue such decisions are not judges, but administrative staff of the status of the Legal Counsel in the Council of State Council, and judges are independent in their work can not control their decisions, and no authority to enter In judicial work or in the affairs of justice.

Article 101 of the Constitution establishes the establishment of a state council within the judicial framework. This passport can not violate the constitutionally defined concept and powers of the judiciary. The constitution can not grant judicial powers to executive bodies or be a way to establish courts and judges outside the concept of authority Which was considered by the Constitution to be one of the pillars of the constitutional framework for the formation of the three legislative, executive and judicial branches of the judiciary, as defined in article 47 of the Constitution.

It is interesting to note that the independent bodies included in the provisions of Part IV of the Constitution (Articles 102-108, which made them subject to either the control of the Council of Representatives or linked to the Council of Ministers, was linked to the Iraqi Supreme Criminal Court provided for in Article 134 of the Constitution) Where the judicial authority is subject to the supervision of the Federal Court of Cassation and to the supervision of the Supreme Judicial Council. The lawsuits of the ownership of the problem were also linked to the Supreme Judicial Council and the civil courts have given due consideration to their work. Accordingly, there can be no body Loose Is not linked to any authority

Conclusion:

The progress of the rule of law acts positively on the problem of insecurity, and vice versa. Now, today, Iraq and . are locked in a vicious circle that leads to the failure of the reconstruction process. Indeed, the weakness of the rule of law promotes insecurity and insecurity is an obstacle to improving the rule of law. The Development prospects are therefore blocked. One of the causes of this This situation comes from the Western influence, too important, exerted on these systems. Indeed, the lack of a sufficiently strong culture of democracy and human rights does not guarantee the mechanisms put in place. What marks the limit of operations democratization in these states, deeply weakened and having long worked on another model, that of the dictatorship. This does not mean that democratization is impossible. We just have to review method and apply it in a differentiated way, depending on the needs of the country, such as already affirmed Boutros Boutros-Ghali. However, despite this adaptation, it does not mean that democratization operations will be systematically effective. It is necessary that international community "resigns itself: it will not be able to transform everything quickly. The democracy must be accepted. However, this requires first of all a good knowledge of its rules and how it works. This also requires a great willingness on the part of all components of society. It is not enough that the rulers ready, it is also necessary that the whole population is transformed into an active and civic civil society and judges, journalists and teachers relearn their missions, which asks for time. As Sima Samar, president of the Independent Commission of human rights in Iraq.

Reference:

1. Dr. Abdul Khaleq Ahmadoun "The Family Code in Light of the Doctrines and Arab Laws"- Marriage - 2015 edition

2. Administrative and Judicial Procedures for Marriage Documentation Explanation of the Family Code Mr. Abdel Salam Zweer Publications of the Association of the dissemination of legal information And Judiciary No. 7 of November 2008

3. The tongue of the Arabs: 2/60. Vocabulary of Ragheb Al-Asfahani: p. 216. End of Ibn Al-Athir: 2/317

4. Entourage's footnote to the letter (2:48). 49 and the jurisprudential

laws of Ibn Jouzi p. 130
5. The provisions of the provisions of the provisions of the provisions of the provisions of Article 94
6. The Code of the Family in the Context of Maliki's Doctrine and its Evidence A Comparative and Comparative Study in Light of the Doctrines The Four, The First Book - Marriage - Composed by Abdullah Ibn al-Tahir al-Soussi Al-Tnafi, First Edition 1426H / 2005
7. Family provisions of Dr. Mohamed Ibn MaazouzAbu Muhammad Bin Hazm, Local Antiquities, Al-Muniriya Printing Department, Egypt, without publication year, P-10. Abu Muhammad Ibn Qudaamah, al-Mughni, vol. 3, ed. The World of Books, Saudi Arabia, 1997, p
8. Abu Abdullah bin Ismail al-Bukhari, the mosque is the correct right hand of things
9.The Messenger of Allaah (peace and blessings of Allaah be upon him) and his Sunnah and his days, which is well known in Sahih al-Bukhaari, are the book of marriage the first edition, Salafi printing press, Cairo, 1979, s. 640
10. Muhammad ibn Rushd al-Qurtubi, the beginning of al-Mujtahid and the end of al-Muqtasid, 2, 57, 1982
11. Mr. Saif, Fiqh of the Sunnah, C2, BPT, Misr Printing House, Cairo, without publication year, s. 35
12. Mohamed El-Shafei: The Family in France, Legal Studies and Anomalies, Legal Research Series No. 3, Printing Press and National Paper - Marrakech - First Edition, 2001 pp. 202-206.
13. Abd al-Khaliq Ahmadoun: The Family Code. Legal requirements and legal aspects of a charter Matrimony, Press Press Press - Rabat - edition 2008.
14. Muhammad Al-Mahdi Al-Hajjawi: Women Between Sharia and Law, Dar Al-Kutab Press - Casablanca - First Edition 1967
16. Al-Ayashi Al-Masoudi: Separation of funds in marriage between the illusion of law and the weight of reality, Journal Economy and Society, Issue 4, Year 1988
17. Ministry of Justice: A Practical Guide to the Family Code, Publications of the Legal Information Dissemination Society And the Judiciary, Series of Annotations and Directories, No. 1, Fadala Press,

2004 edition
18. d. Abdul Khaliq Ahmadoun: Marriage and Divorce in the Family Code, A Comparative Study with Jurisprudence Islamic Law and the Laws of the Arab Maghreb Countries and International Agreements, Tubas Press Press - Rabat -First Edition 2

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