IMBALANCE OF THE QUORUM IN THE FEDERAL SUPREME COURT AND ITS IMPACT ON THE CASE PRESENTED

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ABSTRACT

Federal Supreme Court: It is the highest court in Iraq, which specializes in adjudicating disputes between (the federal government) and (the governments of regions, governorates, municipalities and local administrations) and to settle disputes related to the constitutionality of canceling what contradicts the constitution, And to consider appeals against the rulings and decisions issued by him and the legality of all legislations, The administrative judiciary and the consideration of cases brought before the court in an appellate manner. This jurisdiction shall be regulated by law. This research was chosen in order to define the functions of the Federal Supreme Court and its importance in

1. Preserving the constitution and its basic principles

2. The principle of separation of powers

It will address the Federal Supreme Court in the Iraqi political law for the year of the establishment of the Federal Supreme Court, historically starting with 1925, the interim 1968 constitution, the 1970 interim constitution, and the 2005 permanent constitution, Clarifying the jurisdiction of the Federal Supreme Court under the 2005 constitution. Reasons for a defect in its work as a result of a quorum imbalance

key words: Federal Supreme Court, Federal authorities, quorum, Parliament

I. INTRODUCTION

The existence of the Federal Supreme Court in the Constitution of the Republic of Iraq in 2005 as the highest federal judicial body with the authority to control the constitutionality of laws and regulations and the interpretation of the provisions of the Constitution and other terms of reference of particular importance, where it can be said that a specialized constitutional judiciary has been established in Iraq, thus emulating the developed countries in this area, eager to achieve the description of the state of law and constitutional institutions.

There is no doubt that the supreme federal courts play a key role in:

1. Protecting the Federal Constitution by safeguarding the Constitution and preserving its integrity by protecting the rights and freedoms guaranteed by the Constitution

2. Adopt the establishment of the territories, establish the Kurdistan Region and introduce the principle of separation of powers,

3. The establishment of the Federal Supreme Court was established and its terms of reference were determined by the Supreme Federal Court Act No. (30) of 2005, as stipulated in article (44), and the Constitution of the Republic of Iraq of 2005 confirmed the existence of the Court and defined its terms of reference with articles(52/II) and (61/VI/b) from which the judicial system in Iraq became based in the form of a pyramid at the top of which the Supreme Federal Court exercises its specific powers and exercises its specific powers as a law. Through its provisions in chapter 2 of Chapter III, relating to the Federal Supreme Court, the
Constitutional Legislator has taken into account the fact that this court should be made an independent judicial body in article (92/I) of it, and it singled it out specific jurisdictions in the constitutional texts, as well as other legal texts, such as the control of the constitutionality of the laws and regulations in force, the interpretation of constitutional texts and their jurisdiction in considering discriminatory appeals relating to the provisions and decisions of the Administrative Court based on a judicial committee whose basic attribute is full awareness of the affairs of the Iraqi state and various policies, and any absence in this committee will have a negative impact on the actions addressed to it, as we now note what is happening due to the absence of several members of the committee and its significant negative impact on the its decisions and work and on the Iraqi street.

There have been several suggestions made to avoid this big problem and reduce the problems caused by this imbalance.

**Research Questions**

- The absence of a member of the Federal Supreme Court committee has had a clear impact on the conduct of political business in the country, particularly as it is the highest authority.

- In our research, we will talk about the impact of this problem on the claims before the Court by addressing the most prominent problem (presidential elections), proposals for a solution and different views from the House of Representatives.

**Research Importance**

The importance of this research involves discussing and knowing who the Federal Supreme Court is, who does its work, what its role is, and what it is. The incomplete quorum in the Federal Supreme Court has had an impact on the country and balance in its work as the highest judicial authority in the country.

**II. RESEARCH OBJECTIVE**

The research aims to:

- Identify the Federal Supreme Court of Iraq.

- The effect of the imbalance of quorum on the claims before the court.

**Research Limits**

- Objective limits: imbalance of quorum in the Federal Supreme Court

- Spatial borders: Iraq - Baghdad

- Temporal boundaries: The research was conducted in the 2021 academic year.

**The first research - the Federal Court established and its functions throughout history.**

1. **The establishment and establishment of the Court in the Iraqi Basic Law of 1925:**

   Article (83) of the Iraqi Basic Law of 1925 entrusted the task of determining the constitutionality and interpretation of the provisions of laws to the Federal Supreme Court, which indicates that the law is based on making the adjudication of constitutional matters a unique special court function without other courts, a doctrine of central judicial oversight, which is subsequently abolished, and therefore it is natural that the Supreme Court's ruling has absolute authority that is not limited to both sides of the conflict.

   The Constitution is the highest legal pyramid in the State, and the laws passed must be compatible with it or it will be considered unconstitutional and the provisions that conflict with it must be repealed.

   The 1925 constitution was the first after the founding of the Iraqi state in 1921 as part of the establishment of the Iraqi state until the adoption of the Basic Law.

   The constitutional situation in Iraq before 1925 was characterized by chaos, the dominance of the Ottoman authorities and its submission to the provisions of the Ottoman Basic Law of 1876, and then its submission to the
British occupation in 1917, after which the interim government was formed and it was its full-time task to prepare the draft constitution, so there was a great need for a judicial body to draft a constitution regulating the laws of the country and preventing external interference. The Court consists of eight members other than the President elected by the Senate, four of its members and four governors of the Court of Cassation or other senior governors, and is convened under the chairmanship of the President of the Senate and if the President is unable to attend the court hearing, his deputy shall preside over the court hearing on the basis of article 16 of the Second Amendment Act.

The article states: "The Senate elects the President and his two deputies for a period starting from the start of the regular meeting the following year and the result of the election is presented to the King for ratification, and if the House of Representatives is dissolved, their term will not expire until the new council meets unless their membership is over.

At the time, the Supreme Court had jurisdiction over the trial of ministers and members of the National Assembly, consisting of the Senate, the House of Representatives and the governors of the Court of Cassation accused of political crimes or crimes relating to their public functions of article 82/3. (If an order concerning the interpretation of the provisions of this law must be decided, or whether one of the applicable laws violates the provisions of this Law, the court shall meet with a royal will issued with the approval of the Council of Ministers, after it is composed in accordance with the third paragraph of the previous article.

The Basic Law has entrusted the Court with interpreting constitutional texts and monitoring the constitutionality of laws.

According to the Court, it consists of the same number of governors of the Court of Cassation and the remaining members of the Senate headed by the President of the Council, but if the Council of Ministers does not interfere in the selection of the members of the Court by royal will.

2. The establishment of the Supreme Constitutional Court in the Interim Constitution of 1968

As a result of the change in the ideas and philosophy of the new regime and the new clutches of power, and following the passage of law No. 159 of 1968 on the formation of the Supreme Constitutional Court, which was stated in the reasons for the law.

The establishment of this court in order to interpret the provisions of the Constitution illustrates the ambiguity of its texts. Article 1 stipulates: A Supreme Constitutional Court is formed headed by the President of the Court of Cassation of Iraq or from a representative of the Court of Cassation when he is absent, the chairman of the Financial Supervisory Board, the Head of the Legal Notation Bureau, three permanent governors of the Court of Cassation and three members of senior state officials with a career of at least the degree of Director General and four Two members of the Court of Cassation of Iraq and two senior state officials of at least the degree of Director-General appointed by the Council of Ministers at the suggestion of the Minister of Justice and issued with a republican decree, the term of membership of the Court is three years renewable and carried out on the basis of a case filed by its President when needed.

The terms of reference of the Supreme Constitutional Court:

Article 4 of the Court Act specifies the terms of reference of the Supreme Constitutional Court:

1. Interpretation of the provisions of the Interim Constitution
2. Deciding on the constitutionality of laws
3. Interpretation of administrative and financial laws
4. Deciding whether to violate the decrees for its legal bond
5. The Law was defined on the basis of Article 5 of the Supreme Constitutional Court Act No. 159 of 1968

Therefore, individuals did not have the right to appeal the unconstitutionality of the law, whatever it was clearly and directly before the court, and therefore lost the guarantee of ensuring the rights and freedom of the individual, and we find that the court gave and granted, in addition to the interpretation of the Constitution, the jurisdiction to interpret the laws, which is a constitutional orientation distinct from the Iraqi Basic Law of 1925, which defined the task of interpreting laws in the Office of Special Interpretation.

B. Those who have the right to initiate proceedings:
On the basis of Article 5 of the Supreme Constitutional Court Act No. 159 of 1968, the law specified those who have the right to initiate proceedings:

1. The President of the Republic,
2. Prime Minister,
3. Minister of Justice,
4. The competent minister,
5. Iraqi Court of Cassation

C. The composition of the court:

On February 26, 1969, a republican decree was issued to form the Supreme Constitutional Court, based on Article 1 of the Supreme Constitutional Court Act No. (159) of 1968. On the basis of the minister of justice's offer, it was approved by the Council of Ministers and approved by the Revolutionary Command Council to form the Supreme Constitutional Court.

III. FEDERAL SUPREME COURT IN THE INTERIM CONSTITUTION OF 1970

Iraq’s interim constitution of 1970 did not talk about constitutional censorship and it remained up to the judiciary, as it did not include a provision on the formation of a supreme court to control the constitutionality of laws and regulations despite the existence of the constitutional text, the Iraqi judiciary did not take it upon itself to refrain from applying texts contrary to the constitution. Article 66 of the 1970 Constitution contains all laws and decisions of the Revolutionary Command Council in force prior to the promulgation of this Constitution that may only be amended or repealed in the manner set out in this Constitution, and the question of oversight of the constitutionality of laws was automatically raised by the court during the hearing of the case.

IV. FEDERAL SUPREME COURT AFTER 2003:

In the Iraqi State Administration of The Transitional Period Act of 2004 after the events of 2003, there has been a significant development in Iraqi legal systems, as the Supreme Federal Court of Iraq was created under article 44 of the 2004 Iraqi State Administration of Transition Act, which regulates the work of the basic state authorities during the transitional period from the date of its promulgation until the promulgation of the 2005 Constitution. The work of the basic state authorities during the transitional period following the end of the CPA until the promulgation of the 2005 Constitution, and includes a clear reference to constitutional oversight of laws, while ensuring that a federal supreme court must be formed. The Iraqi State Administration of Transition Act 2004 provided for the formation of the Federal Supreme Court: “The Federal Supreme Court consists of nine members, the Supreme Judicial Council initially nominates at least eighteen to twenty-seven individuals to the Judicial Councils of the Said Court, and in the same way subsequently nominates three members for each subsequent vacancy due to death, resignation or isolation, and the Presidency appoints Members of this court and the naming of one of them as its president.”

If any appointment is rejected, the Supreme Judicial Council nominates a new group of three.

The vote on decisions within the Court is generally taken by a simple majority, with the exception of decisions concerning the exclusive and original jurisdiction of the Court in the proceedings between the Iraqi Transitional Government and the provincial governments, provincial administrations, municipalities and administrations that must be by a two-thirds majority, and the text of the article above gave the Court absolute authority in implementing its decisions.

The Iraqi State Administration for Transition Act 2004 stipulated that: The Court is made up of nine members, including the President of the Court, nominated by the Supreme Judicial Council, in consultation with the provincial judicial councils and appointed by the Presidency Council, and the court law is left with details of the conditions to be met by its members and their rights.
The decision to form the nine members of the Court, including the president's nomination of the principle of separation, is carried out by the presidency without the Supreme Judicial Council, whose role is limited to nomination, which is contrary to the authorities, which means that the Presidency Council can reject candidates in accordance with article 44 paragraphs (e).

It gave the Presidency Council the right to reject and the Judicial Council should nominate a new group.

**Second Research - Federal Supreme Court in Law No. 30 of 2005 (continuing to be in force to date)**

1. **Components of the Federal Supreme Court**

   **The Federal Supreme Court consists of:**

   A president and eight members appointed by the Presidency Council on the nomination of the Supreme Judicial Council in consultation with the judicial councils of the provinces as stipulated in article (44) of the Iraqi State Administration of the Transitional Administration Act, the Supreme Judicial Council nominated 27 candidates of the court and the nine members of the court were selected through a secret voting process under official records submitted to the Presidency Council. At its July 21, 2004 session, the Supreme Judicial Council submitted the names of the candidates to the Presidency council and the audit lasted seven months. The President and members of the Federal Supreme Court were subsequently selected by Republican Decree No. 398 on May 3, 2005.

2. **The mechanism for the convening of the Federal Supreme Court:**

   The Federal Supreme Court has not been a permanent and stable organ of the State because its establishment is in accordance with the task assigned to it and referred to it, it is an interim body that is not permanent and does not carry out its work and functions on a continuous or regular basis, and is not independent of the rest of the authorities, whether it is formed temporarily or by the intervention of the Council of Ministers and the exercise of its powers by examining the constitutionality, or in terms of considering the President of the Court as the President of the Senate.

   It is held at the invitation of the President of the Court for its members and well in advance of the deadline, which the President of the Court appreciates with the letter of invitation, agenda and numbered documents, and in order for the meeting to be valid, all members must be present and if one of them fails to hold the hearing due to lack of quorum, and the membership of the work of the Federal Court is for life, the Federal Court is a constitutional court as well as a discriminatory body for the rulings of the Court of Administrative Justice.

   The 2005 Constitution affirmed the independence of the judiciary, ensured the principle of legitimacy and established the Federal Supreme Court. Article 92 of the Constitution states:

   The Federal Supreme Court consists of a number of judges, experts in Islamic jurisprudence and jurists, whose number is determined and the work of the Court is regulated by a two-thirds majority law. The 2005 Constitution did not specify the number of members of the Court, but left it to a law enacted by Parliament with the approval of two thirds of its members, as the court consisted of judges, Islamic jurisprudence experts and jurists. There are those who believe that members of Islamic jurisprudence have an advisory role and a statement of opinion only on the basis that the judiciary alone has the right to make a decision and decide on antagonism because the judiciary is the one that deals with resolving disputes under the law, whether these disputes are between individuals or between them and the Government.

3. **The functions and jurisdictions of the Federal Supreme Court:**

   1. Control the constitutionality of laws and regulations in force.
   2. Interpretation of the provisions of the Constitution.
   3. Adjudication of cases arising from the application of federal laws, decisions, regulations, instructions and procedures issued by the Federal Authority, and the law guarantees both the Council of Ministers, individuals and others the right to directly appeal to the court.
   4. Adjudication of disputes between the federal government, provincial, provincial, municipal and local administrations.
   5. Adjudication of disputes between provincial or provincial governments.
   6. Adjudication of charges against the President of the Republic, the Prime Minister and ministers.
   7. Ratification of the final results of the general elections for the membership of the House of Representatives.
8. Adjudication of jurisdiction disputes between the federal judiciary and the judicial bodies of the provinces and irregular provinces in the province.
9. Adjudication of jurisdiction disputes between the judicial bodies of irregular provinces or provinces in the territory
10. Consider challenging the Decision of the House of Representatives, issued within 30 days of its issuance.

4. The organizational structure of the Federal Supreme Court

The organizational structure consists of:

1. Office of the President of the Federal Supreme Court
2. General Manager's Office.
3. Secretariat of the Office of the President of the Federal Supreme Court.
4. Secretariat of the General Manager.
5. Advocacy Section
6. Legal Affairs Department.
7. Department of Administrative Affairs
8. Finance Department.
10. Central Post and Transportation Department.
11. IT Department.
12. Media Section.
13. Guard Section

5. Members of the Federal Supreme Court

The court consists of:

1. Head
2. Vice-President
3. Seven original members
4. Three part-time reserve members, all first-class judges continuing to serve at least 15 years of active service in the judiciary

6. Jurisdiction of the Federal Supreme Court

The principle of transcendence can prevail under democratic systems, it is considered one of the most important results of the principle and law of legitimacy, and becomes without guarantees to protect it, and the existence of a supreme court with powers such as oversight of the constitutionality of laws is one of the most important ways and means by which any attack on the Constitution can be removed by the legislator, it is a judicial body that may have all the guarantees that guarantee it independence.

By approving the final results of the parliamentary elections and deciding on the validity of the membership of article in accordance with the 93/7 of the Permanent Iraqi Constitution of 2005, the Federal Supreme Court has the right to ratify the final results of the general elections for membership of the House of Representatives after the elections are held by the High Electoral Commission, where article 8 stipulates. From the Independent High Commission Electoral Act No. 11 of 2007, the Court of Cassation shall form a body called the Judicial Electoral Commission consisting of three part-time judges to hear appeals referred to it by the Commission or submitted by those affected by the decisions of the prosecution without the rest of the elections and the referendum Elections such as provincial council elections and the formation of provinces, the Federal Court is the real guarantee of the results of the elections, and the role of members of parliament begins after giving the Federal Court the final results of the elections, no party has the right to challenge them or challenge them and is binding in accordance with article 94 of the Permanent Constitution of Iraq 2005.

V. QUORUM IMBALANCE IN THE FEDERAL SUPREME COURT

The Supreme Judicial Committee represents one bloc in its work as the absence of one of its members prevents its legitimacy in making any decisions. As we mentioned earlier, a prerequisite for the court's due hearings must be completed by the absence of a member from the hearing.
The nature of the case before the Federal Supreme Court is different from other cases brought before the ordinary or administrative judiciary, so the procedures are different from the rest.

Vacancies in members of the Federal Supreme Court for the causes of death and retirement have left them in a broken sentence, absent from power and deciding on due process. It was necessary to find a solution to this problem through a meeting of the House of Representatives to develop proposals to help resolve the issue.

After many discussions and differences between the various political forces, the Iraqi Parliament voted to amend the old court law, although some political blocs boycotted it, but the quorum was completed in preparation for the selection of new judges for the federal court.

The Supreme Federal Court is the highest judicial authority in Iraq and has exclusive federal functions and powers.

**First. The effect of quorum imbalance: one of the most prominent effects of quorum imbalance**

- Lack of meetings and handling of due issues
- The Court's almost complete absence from politics

One of the most prominent and important reasons that led to the need to find a definitive and final solution to this problem is to hold presidential elections where there are no elections without a supreme court so it was the duty to hold a parliamentary session to solve the problem

**Second; Proposals to solve the problem of quorum imbalance: there were several proposals to resolve this issue**

- Some religious blocs try to add Islamic jurists
- Reformulate new laws
- Amending the Constitution by changing the laws relating to the court that have become outdated and voting

**1. Add Islamic jurists:**

Islamic jurists are added to the members of the Federal Supreme Court as part of a new draft law for the Court. This was considered to be contrary to the spirit of the Constitution, and the Supreme Court lost its independence, standing at a distance, from various quarters and components. Some of them went on to say that the structure of the court consisting of the judicial, Islamic and legal element is not really good for the Iraqi legislator, since the inclusion of the element of Islamic jurists in that structure is not used to other legislation and constitutions, but it can be said that the Iraqi legislator is the only one who introduced to the structure of the court an element composed of experts from the Group of Islamic Jurisprudence

Some believed that it had led them to copy the system of others and try to apply it to the Iraqi Federal Court by imposing Islamic jurists in a federal court, which assumes neutrality and professionalism, and not to submit to sectarian, sectarian, sectarian and religious conflicts, as Iraq is a multi-religious, multi-religious and national country, and a certain religious, sectarian or national color cannot be imposed on the Federal Court, namely, the provision in interpreting laws and the Constitution, and resolving disputes and adjudicating them if they occur, for example between the federal government and the governments of the provinces, as well as between the federal government and the provincial governments. It is the body authorized to ratify the results of the general elections, which means that they should be named, for differences and factional considerations.

However, the text of article (92/II) of the 2005 Constitution set out a new principle in the formation of the Federal Supreme Court, which it did not constitute in one category (judges), as did the 1925 Constitution in the Supreme Court, or a combination of the judicial and administrative aspects as the 1968 Constitution did, but added other categories to the formation of this court, namely experts of Islamic jurisprudence and the category of jurists.

**2. Reformulate new laws**
The government submitted a ready draft and many blocs had legislation on the court, but there were legitimate fears and reservations from the currents calling for the civil state, and the separation of religion from the state. The Presidency of Parliament urged the presence of two thirds of members of Parliament to vote on the bill, but attempts to reach an understanding and consensus between the various blocs on the subject failed, resulting in an imbalance of quorum, and the draft was not passed.

3. Proposals to amend the Constitution:

When the court was formed in 2005, it took into account many things that were appropriate at that time, including taking into account Iraqi diversity, with a Christian judge and two Kurdish judges, the rest of the Arab judges, Shiites and Sunnis, but because of the recent death of a judge, and the referral of two judges to retirement, the rewriting of the constitution had to be reviewed in accordance with the current situation and to avoid many confusions and obstacles. Especially since the issue is not likely to be postponed, and the court approves the results of the elections, before adopting them," the amendment was voted on, and approved with the addition of a very important article, provided by small components, on ensuring a balance of representation of all Iraqi components in the Federal Supreme Court.

This amendment is a major gain for democracy, pluralism, and the civil state of Iraq, and to ensure the neutrality and integrity of the Supreme Court, and is a major failure, for attempts to transfer the model of the regime of the faqih to Iraq, and to impose it on the highest arbitral jurisdiction, in the country.

Third- The most prominent differences between political blocs over the court's law:

1. Determining the status of new members, should the member be a judge, an expert in Islamic jurisprudence or a legal jurist?
2. Who is the committee that nominates the members?
3. Who is the authority to endorse the new members?

When the court was formed in 2005, it was approved by the government and not by the constitution, and therefore the court does not comply with the constitution, but it continued because the political blocs could not legislate a new law of the Federal Court that complies with Article 92, which speaks of the mechanism for forming a new court law of members, judges, the president of a court and jurists in law and Islamic law.

The problem is that the Federal Court must approve by a two-thirds majority of the members of the House of Representatives and therefore the majority has become difficult to agree between them, but the rest of the laws are in line with the majority, and therefore difficult to approve unless there is a political consensus among the political blocs, and the debate about the adoption of the court law before the early parliamentary elections in October this year and the great importance of the court represented by the approval of the results of those elections.

The court law should be voted on in its old and amended versions quickly and one of the suggestions was that Islamic jurists and scholars of doctrines should be present in general within the Federal Supreme Court to take their opinion, the problem of the Federal Court is the subject of the experts of jurisprudence and their representation and number, and the disagreement that it is from the loudest voice are the experts of Islamic jurisprudence? Or not?

Iraq is a multi-religious country with two-thirds of 220 deputies, and national consensus means different nationalities and religions, where civilians or women's rights claimants fear challenging their rights and issues by jurists such as the personal status law that women care about and revolves around custody of children.

Fourth-Qualities of the Federal Court:

1. Federal Supreme Federal Court
2. Constitutional Court

VI. CONCLUSIONS AND RECOMMENDATIONS

Conclusions
1. It must be considered that the public interest is the most important and that the Supreme Court is the basis of this interest.
2. Making adjustments is sometimes a duty and a necessity to protect the country.
3. Security in any country can only be achieved if the judiciary is easy and sound and the speed to overcome obstacles and gaps is proof of its stability, strength, good governance and organization.
4. The court represents the strongest authority in the country and its suspension means that there has been a major imbalance and disruption, so it is important to rely on the selection of competent and suitable persons to take up their positions on the Court Committee.

Recommendations
1. Overcoming punishment needs wisdom, a brief plan and the choice of the best and proportional to the present time to ensure security and stability.
2. It is best and most important to focus on selecting judges who are worlds of law and politics to take up these positions and to achieve the completion of the court's quorum in a manner that meets the requirements.
3. Finding a compromise that satisfies all the opposing parties is essential to overcome this problem and restore the role of the Court to it properly and balanced.
4. Making sometimes amendments to the Constitution can be necessary to make it more flexible and proportionate to developments and the general atmosphere of the country to achieve the best and most appropriate for all.
5. Making claims before the Federal Supreme Court must be made easier and easier to prevent repeated pitfalls in the face of political action and prevent the Court from performing its functions.

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