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**Remarks on the Functions of the
Iraqi Judiciary**

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Remarks on the Functions of the Iraqi Judiciary

by

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Abstract:

The present paper has been prepared as a result of a background research to formulate a general context for subsequent researches on the Iraqi Special Tribunal from an international criminal law perspective.

This work however rather concentrates on the general principles guiding the operation of other Iraqi courts, and is intended to outline the distribution of competences and various court structures.

Introduction:

The Iraqi Constitution stipulates that the Legislative Authority, which is handled by the Courts, diverse in its levels and specializations is constituent in a system abided by Law by which the latter provides the necessary guarantees for Judges and litigants. On the other hand, the conditions and the limits of the legislative guarantees are the Law's jurisdiction. The Judges are independent in the conduct of their jobs and decisions and judgments are enacted in all courts in the name of the Iraqi people. Accordingly personal freedom is guaranteed by Law and hence individuals are only arrested or imprisoned or sequestered according to the Provisions of Law the same determining a crime or setting a penalty. The Constitution also states the freedom of belief and the respect of the personal status issues.

The Judicial Authority Act No. 26 of year 1963² organized the judges' affairs in Iraq since the precedent legislations of Jurisdiction organization in Iraq were laid in circumstances and times where the legislator did not envisage the sanctity and independence of the Jurisdiction as much as envisaged for the benefit of the Governors at the expense of justice. The most important development of this Act is changing the name of the Committee of Governors and Judges Matters which managed the Judges' affairs to (Judiciary Council). The selection of the Jurisdiction Council included, according to the aforementioned Act, the President of the Court of Cassation, Chairman of the Juridical Cassation Board, Chairman of the Judicial Inspection Authority, Vice-President of the Court of Cassation and a senior official of the Ministry of Justice. The Judiciary Council continued in the exercise of its functions in the management of Judges' affairs till year 1977 where the Ministry of Justice Act No.101 of year 1977³ was issued which abolished the Judiciary Council hereby and was substituted by the Council of Justice which is chaired by the Minister of Justice. As such, the Jurisdiction which did not enroll its function lost its independence and hence the Executive Authority was represented by the Minister of Justice dominating the latter and pursuant to its own political theories which posed a serious and sharp turning point in the history of the Iraqi Judiciary. The aforementioned status remained till the political system was changed on 09/4/2003.

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² The Foundation of Iraqi Legislation - date of legislation: 4/28/1963, Source: Iraqi Facts Issue No. 802 of 05/14/1963 Part 2 of Set of Laws and Regulations of 1963

Note: this law was revoked by the Judicial Organizational Law No. 160 of 1975

³ The Matrix of Iraqi Legislation - date of legislation: 7/27/1977 legislation title: Ministry of Justice Act No. 101 of 1977, Source: Iraqi Facts Issue No. 2602 of 08/01/1977 Part 2 Set of Laws and Regulations of 1977

Note: this law was revoked by the Ministry of Justice Act No. 18 of 2005

During the period of the abolishment of the Judiciary Council in year 1977 and its reform on 18/09/2003 after the fall of the precedent political system on 09/04/2003, the obstacles of the judges increased when performing their duties the former being unjustified transfer, transfer to a civil job, discharge and deprivation from performing the law career which culminated sometimes to imprisonment. Also the blockage of qualified judiciary entities in resolution impeding the positioning in judiciary positions due to the lack of system affiliation and vice versa as in opening the path for unqualified elements to enter the judiciary career and attaining important positions due to their affiliation and beliefs in the system.

The abolishment of the (Judiciary Council) and the entrustment of the judges' and the Public Prosecutor members' affairs to the (Council of Justice) pursuant to the Ministry of Justice Act No.101 of year 1977 posed a serious and sharp turning point in the history of the Iraqi Judiciary and a harsh regression from the principles of the independence of the Jurisdiction since the Justice Council is chaired by the Minister of Justice. The minister even becoming part of the Executive Authority executes its policy and is keen for its interest even if such conflicted with the rights of the society members. The aforementioned is proven by the practical reality where some governmental suits were directed in the Justice Councils – explicitly or implicitly – the imperativeness of the consideration of the Government interests on the expenses of the people. At that a huge prejudice in and influence on the neutrality of the Jurisdiction. Also the Justice Minister presided the legislative meetings of the Justice Council where the former had a huge influence on the guarantees of the judge in transfer, promotion, judiciary positions achievement. The aforementioned has become and pursuant to the Act of Judiciary Organization the competence of the Justice Council as stated during the different eras that passed by the Justice Council whose policy changed in accordance to the Minister of Justice and how that was reflected positively or negatively on the Judges' issues and affairs and on the negative behavior of some of them. As a result a changing point was attained in order to restore things back to normal by laying realistically the guarantees of the Judiciary Independence.

The principle of Judiciary Independence in Iraq was first referred to in Act No. 35⁴ issued by the Coalition Provisional Authority (CPA) in the country on 13/09/2003 and which states the formation of the Supreme Judiciary Council as an independent authority from the Ministry of Justice. In accordance to the Iraqi Constitution which was approved in year 2005, the Iraq is a

⁴ The Matrix of Iraqi Legislation – Type of Legislation: The Coalition Authority Order No. 35 – date of legislation: 09/18/2003 - Title of Legislation: Re-establishment of the Supreme Judicial Council - Paul Bremer, director of the Coalition Provisional Authority.

Note: this law was revoked by Article No. 11 of Law No. 112 of 2012

According to the Supreme Judicial Council Act No. 112 of 2012 pursuant to what passed by the House of Representatives in accordance with the provisions of sub-section (I) of Article 61 and Article 90 of the Constitution and the passage of the legal limit set forth in sub-section (III) of Article 73 of the Constitution, the following Law was issued:

Article 1

First: The Supreme Judicial Council is the supreme governing body which administers the Juridical Authority and is based in Baghdad.

Second: The Council has a moral figure, financial and administrative independence and is represented by the President or his deputy members of the Board.

Article 9

The Supreme Judicial Council formed under the provisions of this law replaces the Judicial Council formed by order of the Coalition Authority No. 35 of 2003 and the Supreme Judicial Council, formed pursuant to Article No. 45 of the Administrative Iraqi State Transitional Period Law and the rights and obligations due to or against it are passed upon the abovementioned.

Article 11

The dissolved Coalition Provisional Authority Order No. 35 of 2003 is abolished.

Federal Government and is a Democratic Parliamentary Republic and has three authorities which are the Executive, Legislative and Judiciary which all function on the basis of the severance between the authorities.

However the constitution did not elaborate the Juridical Authority Function System leaving the aforementioned to be stated by normal Law. Opposed to the absence of the monitoring on the constitutionality of laws in the past, new laws were introduced that organized the Juridical Authority Function discharging of constitutional texts of its content and rendering the Jurisdiction a role and the Judiciary an administrative device. As such, the Supreme Juridical Council does not have the powers necessary to make it the highest reference for the Jurisdiction, hence the Act of Judiciary Organization regulated the principle of judiciary independence in Chapter One hereof in (Basic Principles and Law Foundation) and Article 2⁵ of the hereabove Act mentioned that the Jurisdiction is independent not driven by any authority except that of Law.

The Judiciary System in Iraq after 2003

The project of Law Development in Iraq in its published report in 2006 considers that there are a handful of important reforms that the Iraqi Jurisdiction has witnessed such as a wider independence in the Juridical Structure which included the formation of the Supreme Juridical Council constituted exclusively of a group of judges and whose function is to manage the judiciary aspect independently from the Ministry of Justice and the Government. In addition to that, there were other reforms by the development of the judiciary supervision whose texts are in the remodeled Constitution of 2005. The structure of the Iraqi Courts is set by specific paragraphs in the Iraqi Constitution, by the Act of Judiciary Organization No. 160 of year 1979⁶, by CPA Decision No. 35 of year 2003 and by CPA Memorandum No. 12⁷. The aforementioned courts are divided into Civil and Criminal. The Civil Courts are divided into Courts of first instance and appeal courts whereas the Criminal Courts are divided into Major Crimes Courts and Minor Crimes Tribunals. There is also the Court of Cassation which is considered the last appeal court regarding the Major Crimes and the Minor Crimes. A new Court was established which is the Federal Supreme Court pursuant to a paragraph in the Constitution which did not mention the possibility of forming Military Courts and which forbade the forming of Special or Exceptional Courts. The Draft of Law Development states that the Courts in Iraq are Courts of First Instance, Courts of Personal Status, Appeal Courts, Misdemeanor Courts, Criminal Courts, Investigation Courts, Juvenile Courts, Labor Courts, Courts of Customs, Court of Cassation, the Federal Supreme Court and the Administrative Courts.

Act 12 reaffirmed the independence of the juridical authority via providing the administrative and financial independence of the Juridical Councils from the Ministry of Justice also included putting the courts employees generally under the supervision, administration and control of the Supreme Judiciary Council pursuant to Article (3/4) of the hereabove Act.

⁵ Judicial Organization Law No. (160) for the year 1979 - Article 2 of the Act to amend the judicial organization

⁶ The Foundation of Iraqi Legislation – Legislation No. 160 issued on 12/10/1979, Legislation Title: Judicial Organization Law No. 160 of 1979 Source: Iraqi Facts Issue Number 2746 dated 12/17/1979 Part 2 / Set of Laws and Regulations of 1979.

⁷ The Matrix of Iraqi Legislation – Type of Legislation: The Coalition Authority Order No. 35 – date of legislation: 2003 (Memorandum No.12) Title of Legislation: Re-establishment of the Supreme Judicial Council - Paul Bremer, director of the Coalition Provisional Authority.

The Judiciary independence was set in the Iraqi Constitution pursuant to its Article No. 47 establishing three federal authorities in the State whose independence is guaranteed by the constitution and they are the Legislative, Executive, and Judiciary authorities where each functioned on the basis of the severance between the authorities.

In addition to that, the judiciary authority is considered independent and its tasks and functions are performed by the courts of different kinds and levels. The courts issue their rulings pursuant to Article 87 of the Law. Moreover, the judges are independent and are not submissive to any form of authority except that of the Law while performing their tasks and no authority can interfere in the jurisdiction or the management of Justice pursuant to Article 88.

Chapter One: The Formation of the Iraqi Judiciary System:

The Iraq and all those concerned about the independence of the Jurisdiction called for the need of the restoration of the (Judiciary Council), the order of the judiciary affairs and the members of the Public Prosecution and the need for the independence of the aforementioned council from the Justice Minister. The voices increased in intensity after the change movement in Iraq which happened on 9/04/2003 being the date of the fall of the Dictatorship System which governed the Iraq for three centuries and a half.

The formation of a Justice Council in any form was only pursuant to the Executive Authority, chaired by the Minister of Justice and hence the management of the judges affairs is in the power of the Executive Authority and subject to that all the affairs of the jurisdiction and the members of the Public Persecution are under the mercy of the Executive Authority. Subjugating the Jurisdiction which is a symbol for Justice to the whims of the Executive Authority is considered an interference in and a breach of the justice affairs and conflicts with the Constitutional texts which govern those authorities.

If justice is meant to symbolize fairness, then it can only be attained when the jurisdiction is completely independent from the executive department. Such independence must be conceived by all parties being rulers and ruled and hence such a change guarantees rights and freedom and founds an independent jurisdiction that functions for truth and justice.

The nature of the juridical function is to realize justice, protect rights and liberties, and respect the law, in order for its function realization, which require the non interference any authority herebefore otherwise the juridical work will malfunction and lose the society confidence.

The conscious of every judge, Public Persecution member and any affiliate to justice affairs a desire for the sovereignty of the law and for distancing any executive interference in the jurisdiction affairs and a will to establish a just government where the independence of the jurisdiction is one of its basic and prime pillars and the confidence in the temporary management of the CPA at then. Hence the independence of the jurisdiction is an important factor for preserving the safety and insurance of the community for the desired democratic guarantees for the Iraq. Order No. 35 was issued in 18/9/2003 in the re-establishment of the Juridical Council lead by its preambles which stated the following: “The way to impose the provision of Law is the existence of a free and independent juridical system uninfluenced by foreign interventions staffed by proficient individuals represents a fundamental condition to provide the sovereignty of the Law.”

The objective was evident in this matter and it was the realization of (State of Law) and the erection of a forte that will protect the state the former being the independent juridical system.

With the issuance of the hereabove Order, two positive principles were realized:

Firstly, the re-establishment of the (Juridical Council) to be a responsible and a supervisor of the Juridical System Function in the Iraq, and independent from the Ministry of Justice. **Secondly**, the pursuit in the erection of the (State of Law) with the re-establishment of the (Juridical Council), the draft stated the existence of an independent juridical authority which provided the full and complete function of the jurisdiction and the Public Prosecution members without any influence on the sovereignty of their actions except for their conscious and the provision of Law.

The aforementioned was affirmed by (Section Six) in the hereabove Order which addressed the independence of the Council, since it stated that the Juridical Council performed its functions and responsibilities in an independent manner from any censorship or supervision from the Ministry of Justice and the suspension of any text in any law which conflicted with its independence. Also the (Juridical Council) substitutes the (Justice Council) which was formed pursuant to the Ministry of Justice Act No.101 of year 1977, accordingly the judge and Public Prosecutor members resumed their roles independently of the Executive Authority uninfluenced from any part, and fearless of transfer, retraction, delayed promotion, punishment, discharge and unfairly imprisonment specially when the judge's reference action has become his/her fellow judges.

The Juridical Council includes as stated by the hereabove (Order) all the Judges' Affairs Officials and Public Prosecution members. The Council's formation is presided over by the President of the Court of Cassation, its five Membership's deputies, the President of the Shura Council State, the President of the Public Prosecution, the President of Judicial Oversight Commission, Director General of the Administration Department – if part of the Public Prosecution – and the Heads of all Appellate Courts totaling fourteen at then and which has a staff of employees managed by the (Council Secretary General) of the jurisdiction.

All the members are from the core of Jurisdiction and are knowledgeable and knowing of – in order to perform its duties – its affairs, its needs and the guarantees that must be met for the judges and the Public Prosecution members in order for each to perform their roles independently and neutrally and to provide the sovereignty of the Law by attaining justice through the methods depicted by the Law unwavering by the affiliations and the career, financial and social positions of the adversaries.

The tasks entrusted to the (Juridical Council) were stated in the (Third Section) of the hereabove Order and are the following:

- The full and administrative supervision on the judges' and all the Public Prosecution members' affairs with the exception of the Cassation Court members where the administrative supervision is performed by the President of the said Court⁸ due to the privacy of this court and its consideration as the highest form of juridical entity in Iraq before the formation of the Federal Supreme Court.
- Candidacy of the qualified for the judges position and general performance and recommending their assignments. The assignment in the juridical position as stated in both the Organizational Juridical and Public Prosecution Law.

⁸ Article 15 (first /section A) of the Code of Judicial Organization

- Promotion, upgrade, legation and transfer of judges and Public Prosecution members.
- Investigation in the breaches related to judges and Public Prosecution members and their disciplinary prosecution and issuance of suitable punishments including their dismissal from their jobs.

The (Order) referred to above kept the door open to the assignment of the (Juridical Council) with new tasks by an Act.

Based on the privileges entrusted to the Council, it was realized that the jurisdiction was self reliant without any interferences from any authority or source since the provisions mentioned in (Section One), (Section Three) and (Section Six) of the Order No. 35 of year 2003⁹ conclusively clarified:

(that the Council is responsible for the supervision of the Juridical System in Iraq and to execute its tasks independently from the Ministry of Justice) and (to perform its tasks and responsibilities independently from any censorship or supervision from the Ministry of Justice and to suspend any text in any Iraqi law that might conflict with the texts of the aforementioned Order and specially the Judiciary Organization Act No. 160 of year 1979 and the Public Prosecution Law No. 159 of year 1979). In addition to the aforementioned, the efforts made by the Council during its short career were effective in the severance of the Juridical Council's fiscal balance from the Ministry of Justice's fiscal balance. The former's management was entrusted to the Juridical Council as well as the management of the working Cadres in all the juridical departments hence becoming its competence. The Council was given the ownership of the financial movable and immovable requirements which were under its management pursuant to the Legislative Order No. 12¹⁰ issued on 8/5/2004. The aforementioned related to the change in the career of the Iraqi Judiciary was stated in Chapter Six of the Iraqi State Administration Law during the transitional phase issued on 8/3/2004, of which major changes being the sanction that the Law is (an Independent Judiciary Service), is not managed in any possible way by the executive services¹¹ and its financial balance is directly provided by the National Association and not from the Ministry of Finance¹². Also the judge is not discharged unless convicted with a crime related to dishonor or integrity and it is not viable to reduce or suspend the payment of his/her pay for any reason during the period of service.

The fundamental idea upon which the principles of the severance of authorities is founded, is the necessity of the distribution of key governance functions: Legislative, Executive and Judiciary upon equal and separated entities each independent from the other in the execution of its tasks; as a result, the power is not monopolized as each entity is specialized in its Constitutional competence and shows its expertise and performance. Consequently, this separation between the three authorities guarantees the rise of the Law State and does not alienate them from each other but inter-creates an objective specialization and objective censorship in their specializations and obligations of the Constitutional and Juridical texts. The aforementioned provides the realization of a balance, the organization of the relationship and the cooperation of the authorities maintaining neutrality in censorship and in

⁹ Ibid (The Matrix of Iraqi Legislation – Type of Legislation: The Coalition Authority Order No. 35 – date of legislation: 09/18/2003 - Title of Legislation: Re-establishment of the Supreme Judicial Council - Paul Bremer, director of the Coalition Provisional Authority).

¹⁰ The Matrix of Iraqi Legislation – Type of Legislation: The Coalition Authority Order No. 12 – date of legislation: 08/03/2004 - Title of Legislation: Re-establishment of the Supreme Judicial Council - Paul Bremer, director of the Coalition Provisional Authority

¹¹ Article 24 and Article 43 of the Law of the State Administration of Iraq for the Transitional Period

¹² Article 47 of the Law of the State Administration of Iraq for the Transitional Period

performance. It is assured that the existence of an Independent Juridical Authority provides the individual the ability to prosecute the authorities to attain the citizen rights and freedom and prevent the personal resort to acquire justice.

To insure the existence of an Independent Juridical Authority which executes its tasks perfectly, the constitution has to be embedded when modulated into clear texts which devote the principle of juridical independence and its independence from the other two authorities: Legislative and Executive. It's not adequate to sanction general texts, as occurred in the previous Constitutions, thus the sanctioning of texts disclosing the fundamental principles which constitute the juridical independence, of which:

First: the sanction of the principle of juridical independence and recognizing it as an independent authority functioning in its domain alongside with the two authorities: Legislative and Executive formulating together the pillars of the modern state. Accordingly the public state is exclusively the competence of the Jurisdiction regarding all conflicts and all the natural and normal people including the government taking into consideration the International Conventions.

Second: the juridical authority is the only authority which manages the judges', Public Prosecution members' and the juridical related services' affairs. The two authorities: Legislative and Executive are not allowed to interfere in its affairs in any possible form where the intervener is subjected to Legal sanction.

Third: the juridical institution includes all the juridical services which are the Courts, the Public Prosecution circulars, Judicial Oversight Commission, Judiciary Preparation Institute, Public Prosecution members, the related intermediate staffs, the Protection Services and others.

Fourth: the President of the Judiciary authority is directly legated to the State President the latter considered the symbol that represents the state hence accentuating the independence of the Juridical Authority from the other two authorities: Legislative and Executive.

Fifth: the Juridical Authority is provided with moral character, financial and administrative independence, independent financial balance which is managed with the cooperation with specialized financial entities. The financial balance is directly submitted to the Parliament for approval accentuating the independence of the Juridical Authority hence omitting the opportunity for the financial balance to be a method of pressure and influence or a limitation for the activities or the independence of the Juridical Authority.

Sixth: the juridical authority is specialized in determining and sponsoring the procedures followed by the juridical courts and services in conflict resolution and its performance of its other tasks.

Seventh: the provisions and decisions issued by the Courts and the rest of the juridical services affiliated to the Juridical Authorities are mandatory and obligatory where any abstainer is subjected to Legal sanction.

Eight: assigning the judges and the members of the Public Prosecution is exclusive to the Juridical Authority and the other two authorities: Legislative and Executive are not to interfere with the afore mentioned.

Ninth: the judges' affairs and the performance of all members are managed by the Juridical Authority which is represented by the Supreme Judiciary Council starting from assigning, upgrade, promotion, transfer, stability at job, salary and allocations setting, taking disciplinary measures, permission of Criminal accountability, continuous Juridical rehabilitation, securing the liberty of expression and formation of the professional and economical associations.

Tenth: the Juridical Authority commits to laying a law which organizes the judges', Public Prosecution members' and the related juridical service working intermediate staffs' affairs. The law also regards the right for the judges and the Public Prosecution members in independency in their performance of their tasks and obligating them to do as such according to the Law. In addition, it regards their promotion based on their qualifications and their juridical sufficiency disregarding gender, faction and ethnicity. They have to be provided with all the financial supplies and by the guarantees preventing any threats of revenge due to their performing of their tasks and any influence on their performance via media or intimidation or any other way. They are to be accounted for any misconduct by the highest juridical entities. As for retiring, they should be provided by sufficient financial supplies, as well as their families in case of death. Finally, the Law provides stability and assurance towards the future. The aforementioned is to prevent the members of this authority to illegal methods in order to obtain the above.

Eleventh: the Constitutional texts related to the Juridical Authority are not to be modified unless consultation and coordination with the Juridical Authority itself.

As such the Constitution and its texts can provide an affirmative guarantee to ensure the independency of the Jurisdiction and its ability to serve and accentuate the Law State and protect the human rights and freedom insuring justice to society.

Regarding the Iraqi State Administration Law for the transitional phase, it is the temporary Constitution which determined the course of the new Iraqi State during the transitional phase which ended by the laying of the permanent Constitution and the formation of the elected Government according to the said Constitution.

(Chapter Six) of Iraqi State Administration Law for the transitional phase specialized in and under the title of (Unified Juridical Authority) in the organization of the jurisdiction in Iraq generally and not in details, since it stated in the Paragraph (A) of Article No. 43 that (the Jurisdiction is independent and is not in any way managed by the Executive Authority including the Ministry of Justice). The text also ensured that the Jurisdiction performed its privileges without any interference from the two authorities: Legislative and Executive. It indicated in the Article mentioned that there are two kinds of Courts: Federal Courts and Regional Courts. It also determined in Article No. 46 of the aforementioned Law, the concept of the Federal Courts which are found outside of the Region of Kurdistan presided by the Court of Cassation in Baghdad, the Appeal Courts and the rest of the current varied Courts outside the Region of Kurdistan. These Courts enact the Federal laws. In addition to the Federal Courts are the Regional Courts (Local) which are the varied Courts in the Region of Kurdistan.

Definitely there will be a new Law for the Juridical Organization that details the general provisions and depicts the details of the Juridical Organization in Iraq in a comprehensive and detailed manner, of the Federal Jurisdiction and its relation to the Jurisdiction in the Regions

and everything related to the management of the Jurisdiction affairs and the consolidation of its independence.

If Order No. 35 of 18/9/2003 re-established the Juridical Council pursuant to (Section Two) here of , then Iraqi State Administration Law for the transitional phase issued on 8/4/2004 pursuant to Article No. 45 modified some of the provisions mentioned in the Order No. 35 where it changed the name of the Juridical Council to become (Supreme Juridical Council) and held the other provisions unmodified. The same aforementioned Article modified the presidency of the Council where it entrusted it to the president of the Supreme Federal Court instead of the president of the Court of Cassation as well as the addition of each president of every Regional Court of Cassation and its deputies to the membership of the Council.

Regarding the formation of the Supreme Federal Court which is considered the highest Juridical entity in Iraq, the president of the Supreme Federal Court is the president of the Supreme Juridical Council who represents the Juridical Authority in Iraq and is elected by secret ballot which is unanimously performed by the members of the Council. Article No. 45 of Iraqi State Administration Law for the transitional phase rendered the president of the Court of Cassation as a vice president who replaces the president when the latter is absent.

It is worthy to mention that the position of the president of the Supreme Juridical Council requires the expertise, sufficiency and good management. This is also applied to the presidency position of each of the Federal or Regional Cassation Court, the Appeal Courts, Public Prosecution and Judicial Oversight Commission. The presidency position should not be occupied according to political, party and factional considerations and the Jurisdiction should be distanced of such to remain independent in order to protect all the Iraqis and gain their approval.

There were speculations around the unification of the presidency of the Supreme Juridical Council and the Supreme Federal Court which was quashed by the fact that the Supreme Federal Court in the Juridical Field the highest form of Juridical entity due to its specialization hence its president is the chief of Juridical Authority which represents the Supreme Juridical Council which manages such authority pursuant to Article No. 90 of the Iraqi Republic Constitution of 2005. This is the case in many Arab countries where the president of the Supreme Juridical Council in those countries is the president of the Supreme Juridical Court, regarding the difference in the nomination of those Courts, such as Jordan, Kuwait, Syria and others...

The State Administration Law also stipulated in Article No. 44 the establishment of the (Supreme Federal Court), designated how to form it and indicated the specializations of the Court. The Court will be discussed when the (Formations of the Judicial System in Iraq) matter is tackled in the Third Chapter of this study. State Administration Law also stated in Article No. 45 on the establishment of a Supreme Juridical Council which manages the functions of the Juridical Council established pursuant to Order No. 35 of 18/9/2003 in order to also manage the Federal Judiciary and the financial balance of the Jurisdiction. The Supreme Juridical Council is formed by its president, the president of the Supreme Federal Court, and the membership of each of the president and vice president of the Federal Cassation Court, the president of the Federal Appeal Court and the president and two vice presidents of every Regional Appeal Court. As such the Supreme Juridical Council in Iraq is presided by the president of the Supreme Federal Court and the membership of each the president and vice president of the Federal Cassation Court, the president of the Federal

Appeal Courts, the president and his two vices of the Kurdistan Regional Cassation Court, the president of Public Prosecution and the president of Judicial Oversight Commission.

The Supreme Council Court in Iraq supervises the Jurisdiction generally meaning that it depicts the General Political Judiciary without interfering in the options of the Juridical Councils in the provinces, where said councils handle the Jurisdiction affairs in the provinces as appointing the judges and the members of the Public Prosecution, their transfer, promotion and retirement.

The Supreme Council Court also handles the management of the Federal Judiciary specialized in the management of the Federal Courts and in the governorates not affiliated to provinces. It also executes its competence as texted in Article No. 93 of the Constitution and as dedicated in Article No. 3 in the draft of the Supreme Juridical Council Act which was raised to the parliament for its sanction; the competence being the nomination of the judges to the Juridical positions such as the membership to the Federal Cassation Court, the presidency of the Public Prosecution and the presidency of the Judicial Oversight Commission.

Consequently and regarding all the aforementioned, the Juridical Authority has achieved a new stage of complete independence, affirmed by the independence of the Iraqi Republic Constitution of year 2005 in both Articles No. 19/1st and No. 87 hereof. It is definitely distanced from any influence attaining its role in leadership in the Law State. The judges represent justice which sponsors prestige and reverence of the sovereignty of Law and Justice due to their conscious without domination of any person or authority over them. Hence the judges are tasked of ensuring the proper application of the Constitution and all legislation, providing Justice Deferrals in accordance with legal procedures to reflect the independence of the Iraqi judiciary.

The authors of the Iraqi State Administration Act for the transitional phase have realized that it is an interim constitution during Iraq's transition to full sovereignty; the democratic federal system ascertains this fact as stated in Article No. 44 hereof on the formation of a Court in Iraq, by Law, and is called the (Supreme Federal Court). The State Administration Act selected the terms of reference of this court and how to set up and mandated in Article No. 39 the issuance of the decision on its formation to the (Council Presidency) after the Supreme Judicial Council nominated three times the required number for the presidency and membership of the Court in order for the (Council Presidency) to choose (the President and members of the Court from among the candidates).

The Supreme Judicial Council in its hearing on 21/07/2004 assumed to provide the names of the candidates to the presidency after a secret and free ballot process and the number of votes obtained by each candidate.

Chapter Two: Courts

First "": The Federal Supreme Court:

The Iraq and since its State establishment lacked the existence of a Supreme Court responsible for the severance of the constitutionality of the laws, the decisions, the orders, the systems, and the instructions issued by both authorities: Legislative and Executive which

created a juridical vacancy that negatively reflected on the peoples' rights and the sovereignty of the Law.

The normal jurisdiction was stalled by the fact of not being capable of severing the constitutionality and legitimacy of the laws based on the reason that it is a jurisdiction whose function is to apply the Law and not debate its legitimacy; as a result, often the jurisdiction clashed with the Executive Authority in Iraq, in the former's continuous attempts to discuss its illegitimacy in some laws or decisions which had the power of the Law.

Accordingly, it was imperative to establish a Supreme Court which assumed the aforementioned task to ensure the respect for the contents of the constitution and establish the principle of the sovereignty of the Law and to prevent the Legislative and Executive Authorities from violating the basic principles or provisions contained in the Constitution and adjudicate disputes that arise between the authorities.

The Federal Supreme Court draft was set after the consultation with the Judicial Councils in Kurdistan hence the Council of Ministers issued on 24/02/ 2005 - after the approval of the Presidency Council - and by his powers of legislative Order No. 30 of the year 2005 in the Code of Federal Supreme Court and Article No. 1 hereof stated the rise of a court called the Federal Supreme Court, and will be based in Baghdad exercising its functions independently not subjected to any authority except that of the Law.

It was determined in Article No. 4 the functions of the Court:

- 1) The decisiveness of the conflicts occurring between the (Federal Government) and the Provinces, Governorates, municipalities and the local administration services.
- 2) The decisiveness of the disputes related to the constitutionality and legitimacy of all the legislations and the omission of what may be in conflict with the constitution.
- 3) The consideration of appeals submitted on judgments and decisions issued by the administrative court.
- 4) The consideration of cases brought before the court as an appeal and organization of this competence by an Act.

With the issuance of this law, the formation of a Supreme Court was realized to preserve the balance between the authorities in the state, and assume the function of the abolition of legislations in violation of the Constitution and to uphold the grievances that lied on all persons.

On 1/6/2005 the Presidency Council issued a Republican Decree No. 2 to appoint the Chairman and members of the Supreme Federal Court.

After the publication of the Constitution and its entrance into force, it cited some changes on the formation of the court from what it was in Law No. 30 of year 2005, where in addition to the judges, experts in Islamic jurisprudence and scholars-in-law were admitted and whose determination was according to Law No. 82. The Constitution also added new terms of reference, hence its latter became as set out in Articles No. 52 / II and No. 93 as follows:

The Supreme Federal Court is competent in the following:

First: the supervision on the constitutionality of the Laws and the regulations in force.

Second: the interpretation of the Constitution texts.

Third: the decisiveness in the issues that arise from the application of federal laws, resolutions, regulations, instructions and procedures issued by the Federal Authority and the Law ensures the right of each of the Council of Ministers and concerned parties from individuals and others the right to appeal directly to the Court.

Fourth: the decisiveness in the disputes that arise between the federal government and provincial governments and the provinces, municipalities and local administrations.

Fifth: the decisiveness in the disputes that arise between the governments of the regions or provinces.

Sixth: the decisiveness in the accusations against the President, Prime Minister and the ministers and is regulated by an Act.

Seventh: Approval of the final results of the general election for the membership of the Parliament.

Eighth:

A) The decisiveness in the conflict of jurisdiction between the federal judiciary, judicial bodies of the regions and governorates that are not organized in a region.

B) The decisiveness in the conflict of jurisdiction between the judicial bodies of the provinces or the governorates that are not organized in a region.

Ninth: the appeal against the decision of the Council (ie, the decision of the Parliament with its legitimate membership) in front of the Federal Supreme Court within thirty days from the date of issuance.

Paragraph 2 of Article No. 52 of the Constitution stated another competence which is the consideration of the appeal against a decision of the Parliament related to legitimacy of the membership in front of the Federal Supreme Court within (30) days from the date of issuance, also the Nationality Act No. 26 of year 2006 added another competence which is to appeal the decision of the Minister of the Interior by rejecting an application for naturalization. The issuance of this law realized the formation of a Supreme Court that preserves the balance between the authorities in the State and assumes the omission of legislation in the violation of the Constitution and to uphold the grievances that suffered from on all persons.

The Supreme Federal Court in Iraq is considered the highest juridical entity competent in the Constitutional Jurisdiction accordingly it represents the first threshold of the Juridical Authority where the Federal Juridical Authority is constituted of and as mentioned in Article No. 89 of the Iraqi Republic Constitution of year 2005 of the Supreme Juridical Council, the Supreme Federal Court, the Federal Cassation Court, the Public Prosecution Service, Judicial Oversight Commission, and the other Federal Courts organized by the Law. The Supreme Federal Court is considered according to the cited competence in Article No. 93 of the Constitution, the legal reference in censorship of the constitutionality of laws and regulations

and the interpretation of the constitutional provisions. It is also considered the references in the decisiveness of the disputes occurring between the federal government and regional governments or provinces unassociated to the regions, and between municipalities and local administrations, in the decision on the charges against the President or the prime minister or ministers, as well as the ratification of the final election results and the decisiveness of the competency disputes between the federal judiciary and jurisdiction entities of the regions or provinces not associated to the regions. The Constitution stipulates in Article No. 94 that the decisions of this Court became binding to all the Authorities. This Legal Power targets the maintenance of the Legal System and ensures the sovereignty of the provision of Law as entrusted to protect the rights and freedom¹³.

The Supreme Federal Court is constituted of 9 members. The Supreme Juridical Council firstly consults with the Regional Federal Councils for the nomination of at least 17 to 18 judges for the reason of occupying the vacancies in the mentioned Court, then implies the same method to nominate 3 members for each vacancy resulted by death, resignation or discharge. Then the precedent (Council Presidency) followed by the President of the Republic appoints the members of the above Court and nominates one of them as President. In the case of refusal of any position, the Supreme Juridical Council appoints 3 new candidates as stated in the Paragraph (E) of Supreme Federal Law No. 30 of year 2005 on whose basis the Supreme Juridical Council held its hearing on 21/07/2004. Consequently, a secret ballot was performed to nominate three times the required number of senior judges in the service, taking into account ongoing experience and competence and career history and to send a list of candidates and votes obtained by each of them and a career history of candidates.

For the purpose of re-assortment of the Court as contained in Article No. 95 of the Constitution above mentioned, the Supreme Judicial Council prepared in coordination with members of the Federal Supreme Court and experts in constitutional law a draft law for the Federal Court to accommodate this variable and other things brought about by the application of Law No. 30 of year 2005, and was sent to the Iraqi Parliament for legislation.

Administratively, the Federal Supreme Court consists of the General Directorate of Administrative Financial and Legal Affairs and managed by a General Manager and includes the following section:

- 1 - Department of lawsuits.
- 2 - Department of Administrative and Financial Affairs.
- 3 - Secretarial department.

The Iraqi Financial Management System (IFIMS) was applied to insert all transactions and revenue expenditure of the budget in the information system after including them in the records. A number of employees were trained to use the system, work on data entry processes for the transactions and print the necessary reports. This includes the Federal Supreme Court as well as a library provided with a set of books and legal sources¹⁴.

Second: The Federal Court of Cassation

¹³ Jurisdiction in Iraq – Judge Mihad Hammoud – p. 84 year 2000 – Ameer Dar and Bookshop

¹⁴ Jurisdiction in Iraq – Judge Midhat Almahmoud Hammoud – p. 86 year 2000 – Ameer Dar and Bookshop

The Court of Cassation, as defined in Article No. 12 of the Code of Judicial Organization is the supreme judicial entity that exercises control over all courts, consists of a president, five vice-presidents and judges all not less than of thirty and is based in Baghdad. The court was established on 24/12/1925 pursuant to the Royal Decree issued on 4/12/1925.

Articles No. 35, No. 203 and No. 206 of the Civil Procedure Law No. (38) of year 1969 identified the competence of such court which are:

- The consideration of the cassation appeals provided on discriminatory judgments and decisions issued by Appeal Courts in their original capacity and by Courts of First Instance in their discriminatory capacity which are not the competence of the Appeal Courts and the judgments and decisions issued by the Personal Status Issues Courts and the courts of personal items (for Non-Muslims) and all the issues competent of the jurisdiction of the Court of Cassation¹⁵.

- The specialization in audit provisions that are subject to discriminatory checks whether the concerned parties appealed or did not appeal and that is the civil and criminal fields and they are provisions issued upon the House of Money or Endowments or the incapacitated as well as pilgrims all considered as provisions and the provisions issued of the death penalty or life imprisonment.

The Court of Cassation includes a number of entities which ensure its fullest and perfect function of tasks and it is taken into account the multiplicity of the specialty of the entities regarding the genre of the claims.

The Court of Cassation is considered as a degree of litigation which is audit and censorship as it does not have to hold a pleading in a suit but it does have the right in the decisiveness if found valid as such after the overturn of the sentence issued by it based on its competence pursuant to Article No. 214 of the Code of Civil Procedure. The sentence issued is prone to appeal through its correction by the capable entity at the Court.

The aforementioned court is presided by the president of the court which has its own independent financial balance. The work function is distributed by the (Presidency) which is constituted of the Court's President and the vice presidents or senior judges at the court in the absence of any Vice-President. It has complete independence.

Based on Article No. 13 of the Juridical Organizational Law No. 160 of year 1979 the Court of Cassation is constituted of the following authorities:

First: General Authority

It is presided by the President of the Federal Court of Cassation or the senior Vice-President when the former is absent or the existence of a legal obstruction for his/her participation, the membership of MPs and all the working judges at the Court and is competent at:

- 1- Matters referred to it from one of the bodies if it considers to reverse the principle of a previous decision of the provisions - criminal cases in which the death sentence was issued.
- 2- The decisiveness in the conflicts which occur for opposing provisions and decisions issued by the Federal Court of Cassation.

Second: The Civil Authority

¹⁵ Article 309 of the Code of Civil Procedure and Article 254 of the Code of Criminal Procedure No. 23 of 1971 and Article 16 of the Public codification Law No. 159 of 1979.

It is presided by the President of the Federal Court of Cassation or the senior Vice-President when the former is absent or the existence of a legal obstruction for his/her participation and the membership of MPs not less than 6 judges and is competent at:

- 1- The conflict of the execution of two equally legal contradictory sentences regarding a specific subject whether between the conflicting parties or one of the sentences pertaining to one of the parties, hence the above Authority outweighs one of the sentences and executes it disregarding the other.
- 2- The conflict occurring on assigning a specialization regarding a suit or claim between two courts.
- 3- It is the competence of the Court to be decisive on the matters that the Court President refers to the Court for final ruling on provisions and decisions pursuant to the Law related to those provisions and decisions of the civil cases and personal status issues.

Third: Criminal Extended Authority

It follows the same rules of convening as that of the Civil Extended Authority and is competent at:

- 1- It is the competence of the Court to be decisive on the matters that the Court President refers to the Court for final ruling on provisions and decisions pursuant to the Law by which those provisions and decisions were issued related to the Criminal Cases.
- 2- The decisiveness in the conflict occurring between the Criminal Courts related to its qualitative specialization.

Fourth: Civil Authority

1 - Appellate Body / Real Estate

Is convened in the presence of the Vice-President and at least 4 members of judges and is competent in the consideration of the provisions and decisions issued by the Appellate courts due to its original capacity regarding Civil and real estate suits and its ramification.

2- Appellate Body / Movable:

Is convened in the presence of the Vice-President and at least 4 members of judges and is competent in the consideration of the provisions and decisions issued by the Appellate courts due to its original capacity regarding Movable Money and its ramification.

It is also competent in the decisiveness in the appeals presented by the President of the Public Prosecutor regarding appealing for the benefit of the Law pursuant to Article No. 30 of the Public Prosecution Law No. 159 of year 1979.

It is also competent in the decisiveness in the presented appeals regarding claims against Lawyers and disciplining them and matters which the Attorneys Law No. 173 of 1965 - amended - has consented on appealing according to Law.

3 - Civil Authority / Real Estate:

Is convened by the Vice-President or senior member of the Authority and at least 2 members of judges and is competent in the consideration of appeals of provisions and decisions related to real estate and its ramification and which was not appealed through resumption or that cannot be appealed through resumption and also the consideration of the decisions issued by the Oil Compensation Committee which are established pursuant to Decision No. 1018 of year 1982.

4- Civil Authority / Movable and Miscellaneous

Is convened and formed exactly as the Civil Authority / Real Estate and is competent at: the presented appeals regarding the provisions and decisions which were not appealed by the resumption or that cannot be appealed through resumption and the related to the Moved and its ramification and other varies matter of which:

- The decisiveness in the appeals presented by the decisions of the Retired Issues Audit Committee pursuant to provisions of Paragraph 3 of Article 20 of the Unified Retirement Law No. 27 of 2006 as amended by Law 96 for the year 2007.
- Discriminatory appeals presented by the decisions of the Compensation Committees regarding cases of death or injuries caused by vehicles pursuant to the provisions of Mandatory Insurance Act against car accidents No. 52 of year 1980 pursuant to its formation by Decree No. 815 of year 1982.

Fifth: The Personal Status Authorities

First Authority of Personal Status

It is convened by the Vice-President or a senior member of the Authority and at least 2 members of judges and is competent at: the appeal of provisions and decisions issued by the Personal Status Courts according to their specialization pursuant to Article 300 of Civil Procedure Act No. 83 of 1969, as amended, and the consideration in issues of personal items for non-Muslims.

Second Authority of Personal Status

Is convened and formed exactly as the First Authority of Personal Status and is competent at: appeal of the filed provisions and decisions pertaining to contracts and what is related hereto and the absentees and minors pursuant to the Welfare of Minors Act No. 78 of 1980, as amended.

Sixth: Criminal Authority

1- First Criminal Authority

It is convened by the Vice-President or a senior member of the Authority and at least 4 members of the Court judges and is competent at the consideration of provisions and decisions issued by the Criminal Courts.

2- Second Criminal Authority

It is convened and formed exactly as the First Criminal Authority and is competent of the same field and according to the work distribution among it and the First Authority.

3- Juvenile Authority

It is convened by the Vice-President or a senior member of the Authority and at least 2 members of the Court judges and is competent at the consideration of decisions and measures issued by the Juvenile Courts pursuant to the Juvenile Welfare Act No. 76 of 1983.

Seventh: Competency Assignment Authority

It is formed of six members of which three are chosen by the President of the Cassation Court from the mentioned court members and the other three are chosen by the Chairman of the State Consultative Council from the mentioned council members and is convened and presided by the President of the Cassation Court pursuant to Article 7/IV of the State Consultative Council Law No. 65 of year 1979 as amended and is competent in the consideration of the occurring conflict of the competency among the Administrative Juridical Court and the Court of First Instance. The decision of the competency Assignment Committee is final and binding.

The Cassation Court has suffered a huge shock when 10 of its members were forced to retirement in 1993 due to a decision issued by the Court then which did not appeal to the Ruling System back then and hence caused a strong dissatisfaction in the Juridical field and impacted the independence of its Juridical provisions and decisions.

After the System reform on 9/4/2003, the Juridical Public Opinion escalated for the reinstatement of those 10 judges to their positions at the Court. Accordingly and thanks to the sincere efforts and based on the Order No. 15 issued by the Coalition Forces, it was decided to omit the Resolution issued on 10/02/1993 for the seclusion of the Cassation Judges to retirement and hence their reinstatement to their positions and endorsing them with the adequate compensations¹⁶.

Third: Other (Federal) Courts

1- Civil Courts

A) Appellate Courts: Juridically the Iraq is divided into sixteen appellate jurisdictions with the exception of the Kurdistan Regional Courts.

The Appellate Jurisdiction is managed by the President of the Appellate Court whose seat is at the center of the region. The court is formed of a President, a number of Vice-Presidents and judges as needed, exercises its terms of reference specified by law and all the other courts that are located within the its geographical sphere of competence are “Administratively connected” to it.

The Appellate Court presidency handles the distribution of labor among the judges of these courts and provides the working personnel and the financial requirements from the budget allocated to the courts.

As for its Juridical competence as stated in Article 34 of the Code of Civil Procedure is as follows:

- To consider the resumption of the appeal in the judgments of the Courts of First Instance primarily suits whose value exceeds ten thousand dinar, in the issued judgments regarding bankruptcy and the liquidation of companies and other issues which are of the Appellate Court competency pursuant to laws, and as such it is considered as a second-degree prosecute court.

- To consider discriminately the judgments and decisions provided for by law and is considered an Audit Court in some of the issues as follows:

To consider the appeal via discriminatal actions regarding the issued judgments by the First Instance Courts when these courts exercise the specialization of the Magistrates' Courts (canceled) also to consider discriminately the decisions issued by the Summary Jurisdiction and Judiciary State and the rest of the decisions provided for in Article (216/1) of the Code of Civil Procedure if issued by the courts of first instance. Finally, it considers discriminately the judgments and the decisions which are the competence of the Appellate Court as stated by law.

¹⁶ In a Juridical Meeting convened on 11/8/2003 presided by the Judge Midhat al-Mahmoud supervisor to the Ministry of Justice at then, it was decided the reinstatement of the Judges: Hashim al-Haj Ibrahim, Mustafa Madamgha, Karim Sharif, Ahmad Jalili, Hamid Jumaa, Hisham Ahmed Diaa, Farouk al-Sami, and Mohammed Hassan Kashkool.

B) Courts of First Instance:

Article 21/1st of the Judicial Organization Act stated that the (formation of a Court of First Instance or more at the centers of each province or jurisdiction and may be formed in the regions). The Court of First Instance is convened by one judge and is competent in the consideration of claims and issues stated by the Law. The Code of Civil Procedure has determined this court's competence as follows:

- The consideration of the Civil claims as stated in Article 31 of the Code of Civil Procedure where its judgments in this case are of the last degree subjected to appeal discriminately in front of the regional Appellate Court that falls within the its jurisdiction,
- The consideration of the Civil claims as stated in Article 32 of the Code of Civil Procedure where its judgments are of the last degree subjected to appeal discriminately in front of the Cassation Court unless the value of the claim exceeds one thousand dinar hence its judgments are of the first degree subjected to appeal via resumption.
- The consideration also in the urgent matters which have limited time.

C) Civil Substances Courts

The Court of First Instance is nominated as such when considering personal status issues claims for the Iraqi and foreigners Non-Muslim on whom in their personal status is applied the civil law and not the Islamic Shariaa Provisions. The judgment in these claims is of the last degree subjected to appeal discriminately in front of a Federal Cassation Court¹⁷.

D) Personal Status Courts

Article 26 of the Judicial Organization Act stated on the (formation of a Personal Status Court or more wherever there is a Court of First Instance). The Personal Status Court is formed of one judge and is competent in the consideration of Personal Status Issues by the provisions of Law, and Articles 300, 302 and 305 of Code of Civil Procedure have determined the competence of this Court exclusively and when considering conflicts the application of provisions stated in the Personal Status Law No. 188 of year 1959 on all the populace except who was exonerated by a special law and accordingly the special law is hereof applied. The judgments and decisions issued by this Court are of the last degree and are subjected to appeal discriminately before the Federal Cassation Court.

E) Labor Courts:

Article 137 of Labor Law No. 71 of year 1987 stated the formation of a Labor Court or more in all the provinces and is formed of one judge. Its competence is entrusted by the Court of First Instance on its formation in some of the provinces. Its judgments are of the degree subject to appeal discriminately in front of a Federal Cassation Court.

The competence of the Labor Courts is the consideration of the civil and criminal claims, cases and disputes as stated by the Labor Law, Labor Pension and Social Security Law and the rest of the legislations related to labor issues.

2- Penal Courts:

A) Criminal Courts:

¹⁷ Ibid –page 54 Midhat Al- Mahmoud

At the center of every province a Criminal Court or more is formed and is held by the President of the Court of Cassation or one of his/her Vice-President and 2 judge members. The nomination of the Court's president and the membership is determined by a statement issued by the Supreme Juridical Council. The above Court is competent at the consideration of Criminal Cases filed upon by the Investigation Courts or Misdemeanor Courts in case the latter finds that the claim forwarded by the Investigation Court is out of its competence pursuant to the severity of the crime. The above court's judgments are subject to appeal discriminately in front of a Federal Cassation Court.

(The Iraqi Central Crime Court) appends the Criminal Courts. The former was formed by Order No. 13 on 11/7/2003 and is competent at the consideration in the important crimes and is held in the same manner as the other Criminal Courts. Its judgments are of the last degree and are subject to discriminate appeal before a Federal Cassation Court. The above Court is seated in Baghdad.

The Central Crime Court is constituted of two centers.

B) Criminal Court: it is constituted of several Criminal Authorities.

C) Investigation Court: is competent at the consideration in important cases such as terrorism, organized crime, kidnappings and administrative corruption.

D) Misdemeanor Courts: is formed wherever exists a Court of First Instance and is composed of one judge. In case a specialized judge is not appointed hereto, the Court of First Instance Judge assumes its functions. Misdemeanor Courts are competent at consideration of misdemeanor crimes and infractions crimes which are forwarded upon it by the Investigation Courts. It is decisive based on law and the judgments issued are of the last degree subject to appeal discriminately before an appellate Court in the region regarded as a cassation court.

Alongside the Misdemeanor Courts exist the Specialized Misdemeanor Courts competent at certain claims of which the Traffic courts, which are composed of one judge and decide on traffic offenses.

3- Juvenile Courts:

A) Juvenile Investigation Courts: assumes the investigation of crimes assigned to a juvenile which pursuant to Article 3 of Juvenile Welfare Act No. 76 of year 1983 are who have computed 9 years in age but is not yet 18 years. The Juvenile Court is formed as a Criminal Court specialized in juvenile prosecution.

B) Juvenile Courts in character as objective courts are which assume the prosecution of juveniles who committed the relative crime. If it was a crime then the above court is presided by the judge and 2 memberships specialized in forensic sciences or the related sciences of juvenile affairs, otherwise and when the offense committed is a misdemeanor or violation then the court is presided by the Juvenile Judge only.

The judgments issued by the Juvenile Court are of the last degree and subject to appeal discriminately in front of a Federal Cassation Court conditioned that the judgment is not issued to a crime. However if the offense committed by the juvenile was a crime, hence the judgment issued is subject to mandatory discrimination before a Federal Cassation Court

whether appealed by the concerned parties or not appealed pursuant to Article 16 of Public Prosecution Law No. 159 of year 1979.

C) Customs Courts: The Customs Courts are competent at the decisiveness in the claims related to customs matters and is held by the presidency of a judge, the membership of another judge both equally qualified nominated by the Supreme Juridical Council and a legal employee whose degree is no less than a General Manager nominated by the Minister of Finance. The judgments issued by the above court are of a last degree to be subject to discriminate appeal before the different discriminatory authorities formed pursuant to Article 250 of Customs Law No, 23 of year 1984.

D) Investigation Courts: Article 35 of the Judicial Organization Act permitted on the formation of an Investigation Court or more wherever there exists a Court of First Instance. The court is held by one judge and is competent at investigating all crimes.

The Law has also permitted an Investigation Court or more to investigate in a genre or more of crimes such as Investigation Courts of Crime Fighting and Investigation Courts of Serious Crimes.

E) Alongside the courts that are attached to the Supreme Juridical Council, there exist courts that do not follow the aforementioned such as (Administrative Judiciary Court) which are instead attached to the (State Shura Council) and considers the legitimacy of the administrative orders and decisions issued by administrative staff and entities of the governmental departments and the socialist sector to which the law did not appoint a reference for appeal. The Administrative Judiciary Court is formed pursuant to Law No. 106 of year 1989 and is composed of the presidency of a judge of the first degree or an consultant of the State Shura Council and 2 judges or 2 Assistant advisor of the State Shura Council members. Its judgments are of the last degree subject to appeal discriminately before the Supreme Federal Court. The formation of the above court was constricted to Baghdad seat from the issuance of the aforementioned Law of 1989 and till now.

F) (The General Discipline Council) is related to the State Shura Council too and considers the contests forwarded by the employees on the decisions that are issued against them by their job references. The General Discipline Council is composed of the presidency of the president of the State Shura Council or one of his/her Vice-Presidents or one member of the original Council or an assigned judge and the membership of 2 members of the Council Board or assigned judges. The General Discipline Council issues judgments of the last degree subject to appeal discriminately before the Public Authorities of the State Shura Council which caused a breach to the unity of the jurisdiction where is it mandatory for the Administrative Judiciary Court to be related to the Juridical Council and the General Discipline Council and for its judgments to be subject to appeal in front of a Juridical Authority.

As for the courts formed in the Region of Kurdistan (the Regional Courts), they also follow the same rules of the rest of the formed Courts throughout the Iraq worthy to mention is the Court of Cassation, the Court of Appeal, Regional Courts of first Instance, Personal Status Courts, Human Resource Courts and the Regional Penal Courts.

Fourth: Provisions Organizing the Tasks of the Federal Cassation Court:

The Cassation Court was the highest Juridical Authority in Iraq – prior to the formation of the Supreme Federal Court in year 2005 – to which the law entrusted its management and the

organization of its juridical work function to its president and judges. The Law established an Authority composed of the court's president and vice-presidents called (The Presidency Authority) and its function is to choose the presidents and the members of the Juridical Authorities for the Courts an action which guarantees the court's work independence administratively. However, the Law in its Article 55/1st/C obliged the President of the Court of Cassation to submit an annual report on the work of the court to the Minister of Justice and to the Council of Justice. Article 1/2nd of the Ministry of Justice Law permitted the Minister of Justice to hold seminars and meetings with judges, including judges of the Court of Cassation to ensure the achievement of the objectives of (the Party and the Revolution). From these two Articles, it is found that the power of the Executive Authority over-reaches to shadow the independence of the above Court.

Fifth: Provisions Organizing the Tasks of the Federal Courts of Appeal

The Judicial Organization Act entrusted the president of the Court of Appeal the task of supervision over the courts and their work in his/her region and the distribution of the work among the judges¹⁸.

A Council was formed in every juridical region composed of the president of the Court of Appeal, membership of his/her vice-presidents and the Court of Appeal judges. The council is called (Regional Appeal Council) and assumes the study of the difficulties and problems facing the courts in the juridical region, presents the appropriate proposals to address them, provides leads to improve working methods and raise the level of performance in the courts¹⁹.

Despite this independence under the supervision and organization of the administrative work at the Federal Appellate Regional Courts in Iraq as stated in Article 18 of the Law, Article 55/1st hereof presented to the Minister of Justice the right of supervision of all the courts and the judges and the observation of the latter's personal and official behavior and the extent of their commitment to their work and working hours hence reflecting the interference of the Executive Authority in the Juridical matters.

Sixth: Provisions Dealing the Judges' Affairs

The Judicial Organization Act entrusted a Committee composed of 3 judges chosen by the (Council of Justice) from its members at the beginning of every year to consider the complaints and disciplinary matters attributed to judges²⁰.

Article 4/3rd of the Ministry of Justice Act No. 101 of year 1977 stated the formation of the above Committee and entrusted to it the consideration in the filed disciplinary proceedings

¹⁸ Article 18 of the Judicial Organization Act states that the president of the Courts of Appeal assumes the supervision over the courts and their work in his/her region, distributes the work among the judges and has the right to authorize one of his/her vices for such privileges.

¹⁹ Article 19 of the Judicial Organization Act states:

Firstly: A Council is formed in every juridical region called a (Regional Appeal Council) composed of the president of the Court and the membership of the vice-presidents and the Court of Appeal judges.

²⁰ Article 60 of the Judicial Organization Act states:

Firstly: The Minister of Justice issues a resolution to file disciplinary proceedings upon a judge referring the latter to a Judges' Affair Committee conditioned that the said resolution includes a statement on the incident committed by the judge and supporting evidence and that both the judge and the prosecution are notified.

upon the judges and in the arising issues regarding the application of the Judicial Authority Law, which was in force²¹.

The disciplinary matter filed upon the judge is investigated and trialed in front a committee composed of judges according to the official procedures which guarantee the judge his/her right of defense since its decisions are subject to appeal before the extended authority of the Court of Appeal.

The principle of investigation with the judge and his/her disciplinary trial regarding his/her work from a juridical entity is a historical principle which was worked by in most of the other countries of which the Iraq who exercised it in light of the Cancelled Judicial Authority Law²².

²¹ Article 4/3rd of the Ministry of Justice Act states:

The formation of a committee called the (Governors' and Judges' Affairs Committee) and is composed of 3 members chosen by the Council from its members at the beginning of every year. The Committee is competent in considering the disciplinary matters concerning Governors and judges and in its decisiveness pursuant to Chapter 8 of Law No. 26 of year 1963 as well as lawsuits arising from the latter's provisions. The Committee's decision is subject to appeal at the General Authority of the Court of Cassation by the Minister of Justice or by the accused Governor or judge within 30 days of the notification and the committee's decision herein is final.

²² Article 4/3rd of the Ministry of Justice Act states:

The formation of a committee called the (Governors' and Judges' Affairs Committee) composed of 3 members chosen by the Council from its members at the beginning of every year. The Committee is competent in considering the disciplinary matters concerning Governors and judges and in its decisiveness pursuant to Chapter 8 of Law No. 26 of year 1963 as well as lawsuits arising from the latter's provisions. The Committee's decision is subject to appeal at the General Authority of the Court of Cassation by the Minister of Justice or by the accused Governor or judge within 30 days of the notification and the committee's decision herein is final.