

The Role of the Judiciary in Supervising the Activities of Political Parties in Iraq

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Abstract

This study aims at identifying the supervisory role of the Iraqi Judiciary over political parties. It discusses the judicial supervision on political parties from the foundation to the dissolution processes. The study discusses that role in light of the Constitution of Iraq (2005), the Political Parties Law (2015), and the Elections Law (2020). The study shows the effectiveness of the Judiciary in such matters and presented examples of its involvement in political events and in settling disputes among political parties.

Keywords: judicial, supervision, political, parties, foundation, election, law.

1 Introduction

Modern political democracy is defined as “a system of governance in which rulers are held accountable for their actions in the public realm by citizens, acting indirectly through the competition and cooperation of their elected representatives” (Schmitter & Karl, 1991). It is also established in the literature that the relationship between political parties and democracy is essential to the existence of the political process. Political Parties, therefore, have always been a great part of the democratic process and the political, social, and cultural role they play in the political process is crucial to the stability of democracy. In fact, building democracies is assumed to the most crucial role of political parties.

However, due to significant roles and functions that political parties are supposed to perform, it is necessary to have legal frameworks that organize the political life. Such frameworks are different from one country to another. However, they all share the importance of judicial supervision due to the independence of the judiciary. It is also because the Judiciary is the most neutral authority since members of the Judiciary are prohibited from founding or joining a political party and the have the choice of resigning from their judicial position if they want to do so. In addition, judges have better knowledge in law as well as legal issues. All this contribute to the importance of the study along with the political life in Iraq as the study will show in the coming sections.

2 Political Parties

Before discussing the nature of the supervision imposed on political parties, this section presents a general introduction on political parties. It discusses their nature and their basic functions.

2.1 What is a political party?

Political parties can be defined as “the principal institutional means for translating segmental cleavages into the political realm” (Powell, 1979). According to Platteau and Gaspard (2003), a party is “not a community, but a collection of communities, a union of small groups dispersed throughout the country (sections, committees, local associations, etc.), and linked by coordinating institutions” (Platteau & Gaspard, 2003).

The Iraqi Political Parties Law (36) of 2015 defines a political party as “a group of citizens who are organized under a name on the basis of shared principles, aims and visions attempting to get power to achieve their goals by democratic means in a manner that does not conflict with the provisions of the Constitution and the laws in force”.

2.2 Functions of political parties

Gunther and Diamond (2003) present a seven-function list of the political parties noting that it is a representative list of the world widely functions of political parties rather than an inclusive one. The first function is candidate nomination which the candidates that are supposed to represent the party in the coming election are chosen. The second function, referred to as electoral mobilization, involves the party encouraging and felicitating the participation of its supporters in elections to support the party's candidates. Those two functions combined, according to Gunther and Diamond, form the core function of parties and that is elite recruitment. The third function is the parties' involvement in issue structuring, Societal representation forms the fourth function of political parties since a party, symbolically or in the pursuit of specific goals, usually represents a variety of social groups. This function can also be performed when bills are developed and debated. Political parties also perform the function of interest aggregation. This fifth function can take place during the election or even after in the case of negotiating a governing coalition. The sixth and seventh functions will be social integration and forming and sustaining governments. The later indicates that citizens are enabled by a party to efficiently participate in the political process and they need to feel that they have a vested interest in the continuation of the party in government.

According to Correia et al. (2016), the various possible functions of parties can be categorized into representative functions and institutional functions. The representative functions include interest articulation, interest aggregation as well as policy formulation. The institutional functions include political leaders' recruitment as well as the organization of parliament and government.

3 Political Parties and the Judiciary in Iraq

It is important here to establish some facts about the political life as well as the powers of the Judiciary in Iraq. This section briefly presents the current situation of parties as well as legislation that organizes such matters. It also briefly discusses the separation of powers in the country to establish whether or not the Judiciary plays an important role in supervising political parties.

3.1 Iraqi political parties

Iraq witnesses a democratic openness and a clear tendency towards multi-party system. This has come after a long period of centralization and a one-party dominance system. As it is known, the previous political system in Iraq before 2003 was not included under democratic competitive systems and it did not allow political pluralism. Therefore, Iraq can be considered as one of the recent countries in partisan work.

The new Iraq has witnessed the foundation of various political parties as well as a growth in the legal framework in that aspect. The Constitution of Iraq (2005) sets the basic ground rules of political work. That has been enforced by the issuance of the Political Parties Law No. (30) of 2015 and the Elections Law No. (9) of 2020.

3.2 The Judiciary independence

Judicial independence is considered to a fundamental precondition for laws to be administered, and accordingly to ensure equal treatment for all people and entities regardless

of their political status or influence. Judiciary independence refers to the ability of a judge to issue an equitable decision with no fear of sanctions (Grove, 2018). It is also referred to “a court’s ability to make decisions that are unaffected by political pressure from outside of the judiciary” (Taylor, 2014). The Constitution of Iraq confirms the judiciary independence and separation of powers. It states that the legislative, executive, and judicial powers shall constitute the federal powers and that they must exercise their authority based on the principle of power separation. Further, the Constitution points out that the judiciary is independent and there is no power above it except the law. Such supremacy of the judicial power is confirmed in the Constitution and more article states the independence of the judiciary and courts. It states again that the judges are independent and that there is no power above them except the law.

4 The Iraqi Judiciary Supervisory Powers over Political Parties

It can be said that the Judiciary in Iraq effectively participate in the supervision of the political parties’ activities. This part of the study discusses that statement by presenting the powers guaranteed to the Judiciary in the related legal framework.

4.1 The Constitution of Iraq and the supervision of political parties

The Constitution of Iraq (2005) in Article 39 the freedom and forming and joining political parties. However, it should be assured that such freedom is regulated by law.

Since freedom is indivisible, the Constitution also guarantees that people cannot be forced to join any party. However, political freedom should not be free from all restraints. There should be rules to organize the way political parties perform their activities, or solve any disputes in the case they occur. That is where judicial supervision takes place.

The Constitution in Article 39 guarantees the freedom of joining political parties and prohibited forcing people to join parties or to continue membership in any party. As the Constitution assures that freedom of people in joining or leaving parties is guaranteed, it also, as stipulated in Article 7, prohibits founding parties or organizations that promote racism or terrorism or based on takfiri or Saddamist Ba’athi ideas. Such entities may not be part of political pluralism in Iraq. All this, as indicated in the Constitution, must be regulated by law. This is where the Political Parties Law comes forward.

4.2 Political Parties Law and the supervision of political parties

The Political Parties Law (2015) has been issued, as it states, due to the political, economic, social and technical changes taken place in Iraq. It is considered a great step in organizing the legal framework for the work of the political parties in a country where people have almost been deprived from practicing their political freedom. Therefore, the Law is an essential requirement of the political life in Iraq since it sets the rules for founding parties, settling disputes, etc. the Law also presents the role of the Judiciary in supervising and settling the issues related to political parties.

This section discusses the supervisory role of the Judiciary on the political parties in Iraq during the foundation process of parties and what comes after including issues that may result in the dissolution of parties. The section also introduces previous cases of the involvement of the judiciary in such matters.

4.2.1 The Judiciary and the foundation of a political party

The supervision of the Judiciary over political parties starts at the very beginning. According to the Political Parties Law of Iraq, Article 9, a person who has been convicted by a final judgment of a competent court for certain crimes cannot establish a political party. These

crimes include the crime of premeditated murder, a crime against honor, or crimes of terrorism or financial or administrative corruption. The same article also banned members of the judiciary from establishing political parties. Moreover, members of the judiciary are subject to penal punishment if they violate the provisions of this article. They can be punished by imprisonment for a period of not less than six months and no more than one year, or a fine not exceeding five million dinars. That is to ensure the independence of the judiciary and grantee their impartiality. For the same reasons, Article 10 of the Political Parties Law stipulates that members of the judiciary cannot join a political party. In both cases, a member of the judiciary can choose between retiring from his job and establishing or joining a political party.

Submitting a copy of a criminal record of every founding member to the Department of Political Parties is one of the requirements to finish the process of formally registering a political party. Such records are required to prove that each founding member has been convicted with any of the mentioned crime. If the Department of Political Parties does not receive the copies of the required records within thirty days of receiving the application of founding the party, then the application will be considered only conditionally accepted.

It should be notified here that the Department of Political Parties has been established in accordance with Article (17) of the Political Parties Law. The Department forms the competent body to issue permits to found parties and monitor their activities and assess their compliance with the law. It also monitors and investigates violations of political parties. In addition, the Department attends court sessions in cases related to political parties, submits appeals before the competent courts, and initiates complaints and lawsuits against political parties in case of violation. Despite the fact that the Political Parties Law has given the Department of Political Parties supervisory role over political parties, it has given the Judiciary the “upper hand” in that matter as the study shows in the discussion of the Judiciary’s supervisory role.

Accepting or rejecting an application to establish a party by the Department of Political Parties is not final. Article 14 of the Political Parties Law states that such acceptance or rejection is subject to appeal by any interested party. An appeal can be filed in the trial court within 15 days from publishing the decision by the Department.

In the case of the decision of the Department of Political Parties is annulled by the trial court, the application should be re-examined for a second time. However, the trial court’s decision is subject to appeal before the Federal Supreme Court. The party is considered official only from the date of the Federal Supreme Court approves the decision of the trial court. However, if the Federal Supreme Court annuls the trial court’s decision, the trial court need to rule on the case again in accordance with the requirements of the Federal Supreme Court.

It is worth noting that, according to the Political Parties Law, one of the functions of the Department of Political Parties is attending court sessions in cases related to political parties and submitting appeals before the competent courts.

A political party needs to comment itself and its members to initiating a criminal case against any of its members when they violate the provisions of the Political Parties Law.

Several offences are included in the Political Parties Law are punishable by a court. The punishment varies between imprisonment of various periods and various fines based on the type of offence. Running, joining or financing an unregistered party, for example, is punishable by imprisonment for a period of no less than six months and no more than a year. However, in the case of establishing, running, joining or financing an unregistered party that carries "takfiri" or terrorist ideology, or incites, promotes or justifies sectarian or ethnic cleansing, the

punishment is imprisonment for a period no less than ten years. In both cases and on conviction, the court of subject matter issues a decision to dissolve the party, close its headquarters, and confiscate its funds and assets after exhausting all legal appeals.

Any person who founds a political party shall be punished by imprisonment for a period of no less than six months and no more than one year, or a fine not exceeding five million dinars if it is proved that the founder is a member of the judiciary, military, or police forces. The same punishment applies if the founder is a member of the Independent High Electoral Commission, the National Centre for Human Rights, or the Commission of Integrity. Demotion may also be added to the previously mentioned punishments. The person with one of the previous positions can resign before establishing the party.

4.2.2 *The Judiciary and what follows the foundation of a political party*

The judiciary has the authority to issue decisions to dissolve, suspend the activity, or withhold the party subsidy. According to the Political Parties Law, the Political Parties Department needs to submit a reasoned request to the court of subject matter by in that regard. Then court of subject matters need to decide on the request within 30 days from the date of its submission. The decision of the court of subject matters is subject to appeal before the Federal Court.

The judiciary can even dissolve a party. As Article 31 of the Political Parties Law stated, a political party may be dissolved by a decision of the court of subject matter based on a reasoned request submitted by the Political Parties Department. That can happen if, during the foundation process, a party fail to achieve the condition of providing a name and a logo that are different from the one of previously registered parties. It can also happen if the party fails to achieve the *founding conditions*. The party fails to achieve conditions if

- the party's principles conflict with the Constitution;
- one of the party's founders, leaders or members is proven to have advocated or participated in promoting the publicity of ideas that contradict the provisions of the Constitution;
- the party does not have a program to achieve its goals;
- the party have a similar organizational form as a military or paramilitary organization;
- the party performs an activity of a military or paramilitary nature;
- the party is associated with any armed force;
- the party performs any activity that violates the constitution or uses violence in the exercise of his political activity;
- the party acquires, possesses, or stores military weapons, firearms, or explosive materials in its head office, branch offices, or any other place; or
- the party performs any activity that threatens the security of the State, its territorial integrity or sovereignty, or its independence.

A judicial decision may be issued to withhold party subsidy for a period of six months at a reasoned request from the Political Parties Department. This can happen if the party commits an act that would infringe the rights and freedoms guaranteed to state institutions, other parties, unions and non-governmental organizations. A decision to suspend a political party can also be issue if the party interferes in internal affairs of other countries to the detriment of the interests of Iraq.

The judiciary can also issue a decision to suspend the activity of a political party for a period of six months based on a reasoned request from the Political Parties Department if it is proven that the party has received money from foreign bodies in contravention of the

provisions of the Political Parties Law. The political party is dissolved if this violation is repeated.

4.2.3 *The Judiciary and disputes*

The term *dispute* “suggests disagreements and competing claims that may only require an arbitrator or mediator to settle” (Vickery, 2011). In Iraq, the Judiciary effectively participate in solving disputes in case the take place between political parties. Such disputes may result from different views in regard to explaining constitutional or legal articles. For instance, the Federal Supreme Court has issued an interpretative decision in response to a request for interpreting what is meant by "largest parliamentary bloc" in the first paragraph of Article 76 of the Constitution of Iraq. The decision states that the "largest parliamentary bloc" is either the bloc that is formed after the elections by one electoral list, which has participated the elections with a registered name and number and has got the highest number of the winning candidates, or the bloc that is formed after the elections by two or more electoral lists which entered the elections with various names and numbers and then joined together in the Council of representative as a single bloc. Accordingly, the nominee of the largest bloc that gets the largest number of the elected members is charged by the President of the Republic to form the Council of Ministers.

Another example of dispute is what happened between Islamic Dawa Party and Islamic Dawa Party – Iraq Organization, where the first filed a lawsuit demanding the change of the other's name due to the apparent resemblance. The case is finally resolved by a decision of the Federal Supreme Court.

4.3 *The Judiciary and the elections*

The Judiciary in Iraq has a powerful supervisory role in the election process. This is very noticeable from the structure of the Independent High Electoral Commission and the Electoral Judicial Panel. This is also confirmed in the provisions of the Iraqi Election Law No. (9) of 2020 as it is shown below.

4.3.1 *Independent High Electoral Commission*

The Independent High Electoral Commission is an independent entity that sets the regulations of elections and referendums in all Iraq. It is also the one to announce, organize, implement and supervise all types of elections and referendums. The highest component of the Commission is the Board of Commissioners which consists nine members. All the members are selected by the Supreme Judicial Council and seven of those members are judges. This gives us a clear idea on the nature of the major participation of the Judiciary in the elections.

It should be mentioned here that the Board of Commissioners has wide powers. Some of these powers are:

- approving the electoral register and recognizing the political parties and the candidates;
- resolving electoral complaints and appeals;
- approving counting and sorting procedures;
- approving and announcing the final results of elections; and
- setting regulations and instructions that preserve the integrity of the electoral process.

4.3.2 *Electoral Judicial Panel*

The Electoral Judicial Panel, which may be referred to as the court of subject matters in this study, is formed by the Supreme Judicial Council. It consists of three judges to consider

appeals related to election issues and referred to the Panel by the Board of Commissioners (the primary component of the Independent High Electoral Commission).

Appeals to the Electoral Judicial Panel can be made by a political party or a candidate against the decision of the Board of Commissioners within three days from the publication of the election results. The appeal request is submitted to any electoral office of the Board of Commissioners or directly to the Electoral Judicial Panel. The Board of Commissioners must reply to all requests and inquiries of the Electoral Judicial Panel regarding the appeals within a period that do not exceed seven working days from the date of their submissions. The Panel, then, issues decisions on the appeal within a period that does not exceed ten working days from the date of the Board of Commissioners' reply to the appeal.

4.3.3 Elections Law and the supervision of political parties

Elections laws are indicated to be critical to legitimize the election process and they have to reflect the society members' expectations of democracy (Gauja, 2016). The laws must present "good reasons for all participants – losers and winners – to accept and abide by the outcome" (Nwangwu & Ononogbu, 2016).

The Iraqi Election Law No. (9) of 2020, as it states, is issued to ensure holding free and fair elections that is conducted with high transparency, and to ensure that the voters' will is truly represented via the election process. It is also to allow legitimate competition and equal opportunities and to develop the democratic process. The Law confirms the importance of the role of the Judiciary in supervising the activities of political parties in Iraq. Beside stating that a person that has been convicted with a felony cannot be a nominee in the parliament election the Election Law presents a long list of penal provisions for various violations and the competent court is entitled to issue decisions against people or entities that commits such violations.

The punishment can be imprisonment a period of no less than six months and a fine of no less than two hundred and fifty thousand dinars and no more than one million dinars in the case of violations in regard to the electoral register. Such violations include enlisting a name that does not meet the requirements, voting with the knowledge that the voter is enlisted in violation of those requirements, voting in the name of someone else, and voting more than once. People who post photos of candidates in places that are not specified for such thing, or people who attack candidates' posters or programs that are put in their specified places are also subject to this punishment.

The imprisonment can be no less than one year in the case of violation against voters. The punishment is applicable to a person who uses force or threats to prevent a voter from using his right, or promises a voter with a benefit to induce him to vote in a certain way or to abstain from voting. A person who spreads incorrect news among voters about the behavior or reputation of one of the candidates or enters the election headquarters with a firearm or any other weapon is subject to the same punishment. Insulting or assaulting polling station workers and tampering with ballot boxes, voter records, or any documents related to the electoral process are crimes that also receive the same punishment.

The punishment goes as high as imprisonment for a period of no less than one year and a fine of no less than one million dinars and no more than five million dinars in the case of concealing, damaging, or stealing ballot papers or voter records, or altering the results in some way. The same punishment applies in the case of violating election's freedom or order by using force or threat.

These are examples of the punishments which give a clear idea of the supervisory power the Judiciary have over the election process and hence over political parties. It should be noted

here that the fine in the previous violations goes up to twenty-five million dinars if a political party is proven to be involved in the commission of any of those electoral crimes.

The Supreme Judicial Council in Iraq have recently issued a decision to punish those who attack pictures of election candidates. Since the Parliament elections are due shortly and to limit the phenomenon of attacks on the candidates' pictures and their electoral programs, the Council has stated that it is necessary to direct the courts of inquiry to take legal measures against anyone who violates the provisions of Article (35) of the Elections Law No. (9) of 2020. This article is the one included in the penal provision and it, as mentioned earlier, stipulates the punishment of those who deliberately attack pictures of candidates or their programs published in the places designated for them.

5 Conclusion

The study attempts to determine the supervisory function of the Judiciary in relation to the activities of political parties in Iraq starting from the foundation of the parties and ending with their dissolution. The importance of the study comes from the importance of the political parties' functions to political life and democracy are required, which accordingly, requires special supervision. The provision of such supervision by the judiciary adds exceptional importance to the matter due to its independence.

The study shows that the Iraqi Constitution, the Political Parties Law No. (36) of 2015, and the Elections Law No. (9) of 2020 confirm the importance of such supervision and the Judiciary in Iraq is guaranteed great powers in the process. By such powers. The Constitution defines the basics of the Judiciary's supervisory function. The Political Parties Law stipulated how the Judiciary supervises the general activities and settles the disputes of the parties when happening. The Elections Law indicates the role of the Judiciary in monitoring the election process. In conclusion, the Judiciary in Iraq plays a crucial role in supervising parties' activities in general.

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