

Judge

Madhat Al-Mahmoud

The Head of the Federal Supreme Court – IRAQ

Former Head of the State Council – IRAQ

From
the legal recording divan
To
State Shura Council
To
the State Council
1933 — 1979 — 2017

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From legal drafting divan

To the State Consultative Council and to the Council of the State

1933-1979-2017

- Historical background of the Council

After British occupation to Iraq, the military administration carried out issuance of enactments as a statements, orders, regulations or laws. The enactment on this form continued till issuance of powers handing over statement to the national government on 16/July/1921. Then, the situation settled on that each Ministry of Iraqi Ministries carried out the task of preparing a law bills by itself, and send it to the Cabinet for approval, and later on issuing it.

In 1927 an office in the Ministry of justice carried out the task of scrutinizing the law bills. But practical implementation proved that this office is not capable for this task, whereas a number of confused, contradicting and inaccurate laws were issued. So, there was a study to establish (legal drafting divan), whereas the necessity was urgent to build and creating an office carrying out the task of preparing law bills, providing opinions and Fatwa for the Iraqi Ministries. Therefore, the

government thought to prepare a law shall guarantees a creation of this formation to carrying out the task of drafting and Fatwa. The law of (drafting divan) had been issued which hold the No. (49) For 1933, and it was published in the Iraqi gazette Ref. (1280) on 3.8.1933 in the era of King Ghazi. The law became valid from the date of its publishing on 3.8.1933.

The jurisdictions of (legal drafting divan) had been determined, starting from preparing and arrangement of law bills and regulations. Also providing opinion and legal consultation in conventions and treaties, and clarification of law provisions and other cases which tried by it. Even if the (legal drafting divan) decisions were consultative and non-obligatory, but working with it is right.

Then the law of (State Consultative Council) had been issued No. (65) For 1979 which formed according to what listed in it to taking place of (legal drafting divan). The legal tasks of that divan were huge, and this divan contributed in building a solid legislative basis in Iraq, which still effective till our day. This Council was involving senior Judges and Jurists whom participated in preparation of studies and law bills, also scrutinizing what the Cabinet refers to them to providing opinion and advice in legal cases. In addition to the task of

interpretation and clarification which related to provisions, decisions and laws. The divan persisted on issuing printed (number of laws and regulations) which includes legal legislations which issued from 1917 to 1979 for documenting and consider it precedence, judicial and legal jurisprudence.

The law of legal drafting divan contented (13) thirteen articles, (first article) of it obliged the government to compose drafting divan, so it is stipulated (the drafting divan consist of a President and legal drafters not less than four. Their reference is the Minister of justice).

As for (second article) of it, which determined the conditions of the drafters, including his well knowledge of Arabic language. The article (third) of it determined the divan jurisdictions and tasks, which they are:

- 1. Prepare and organize laws and regulations' drafts pertaining judicial affairs, and other matters related to offices that associated to the Ministry of justice.*
- 2. Scrutinizing the laws' drafts and regulations which related to the other Ministries, except those of customs and duties.*
- 3. Providing advice and consultation on contracts, conventions and treaties made with a natural or Juristic person, or State whenever the Government*

deems consultation with the divan is necessary in this regard.

- 4. Providing opinion and consultation in controversial subjects and legal dealings which contains a controversy between two Ministries or more. Or if there was a hesitance about it in one of the Ministries.*
- 5. Clarification the legal provisions when there is an enquiry about it from a Ministry.*
- 6. Trying the trueness of orders and decisions issued by the employees, board of Directors and municipalities, including the Capital Municipality Council, with a condition:*

Alif. No complainant or a case shall be initiated before the Courts.

Beh. The order or the decision shall not submit to any challenging methods.

Jeem. The order or the decision must not be related to fees or taxes of any kind.

Article (6th) commissioned the divan the tasks of (general discipline Council) according to provisions of State's employees' disciplinary law No. (41) For 1929.

As for the divan departments, article (9th) of the law indicated to it. Whereas it stipulated that the drafting divan according to interior works in its competence should be divided into three divisions:

1. Rationing division.

2. Consultation division.

3. Trial division.

The law also allowed to assign one of the drafters to administrate one division aforementioned or more, and a drafter of a division may participate with a drafter of another division if necessary.

The law didn't stipulate on forming a general committee for all drafters. But the law allows all the divan members to join a subject study may be decided by the President, then it issues the decision unanimously or by majority. The President has the right to prefer an opinion if votes were equal.

Many amendments were made on drafting law. So its name became (legal drafting divan). Among the Judges whom worked in the divan, the Judge Hameed Saeed Khudair, the Judge Abdul Razaq Mubarak, the Judge Mohammed Ameen Kammona and the Judge Dhia'a Sheet Khattab.

The law remained in force till the law of (State Consultative Council) had been issued No. (65) For 1979 (amended), whereas its rationales clarified reasons of issuance as listed below:

Regarding to changes which occurred in the political, economical and social life after issuance of legal drafting law, these changes forced to turn legal drafting divan into the (State Consultative Council) to carrying out the same tasks which carried out by the legal drafting divan with a new forms which corresponds to circumstances aforementioned.

To let The State Consultative Council burdening its responsibilities. It is important to determine its tasks, and creating its formations regarding to the stage's necessities without neglecting the positive experiments and experiences of legal drafting divan which the divan gained during previous duration.

The new law endeavored to care about the Council's creating, and developing a new cadres which has a legal horizon that corresponds to legal and social changes. Besides benefitting from Jurists who has experience and specialty whom works in the divan, the law cared about introducing a new members including Judges, administrators and university professors. Those new members will be able to

burden their responsibilities in the Council in the future. At the same time, the law aimed to raise the level of employees in the Council of the State, and granted them an enough guarantees that corresponds with the volume of tasks which they assigned for.

Many amendments were made on the Council's law, and most important was the 5th amendment which issued by the law No. (17) For 2013 and became valid on 29.7.2013. Article (1) of it stipulated – amending for previous text-

Article – 1- 1st: A council shall be established called (State Consultative Council), this Council enjoys personal entity and associated to the Ministry of justice. Its headquarter in Baghdad, consist of President and two deputies. One of them is for legislation, opinion and Fatwa affairs and the other is for administrative Judiciary affairs with a number of Consultants not less than (50) fifty Consultants and a number of assistant Consultants not less than (25) twenty five assistant Consultant, not more half number of Consultants.

2nd: The Council has an independent account unit includes the Ministry of justice budget.

3rd: The President of the Council and his two deputies, Consultant and assistant Consultant regarded a Judge for the purpose of this law when practicing the tasks of administrative Judiciary.

Article (2) of it (amended) stipulated on the Council's formations and its jurisdictions. The new matter in this article is forming (the higher administrative Court) and clarifying of its jurisdictions which is it trying the challenges that presented against the decisions of (administrative Judiciary Court) and the (employees Judiciary Court). Here it will take the role of Federal cassation Court in trying the challenges, also takes decision in litigation between the administrative Judiciary Court and the employees' Judiciary Court. It also takes decision in litigation about two decisions issued by these Courts, as listed in article (2) (amended):

Article – 2 – 1st: The Council consist of the following:

Alif- the general committee.

Beh- the Presidency committee.

Jeem- specialized committees.

Dal- the higher administrative Court.

Heh- the administrative Judiciary Courts.

Waw- the employees Judiciary Courts.

2nd: alif- the general committee consist of the President of the Council and his two deputies and Consultants. Its session shall be convened by the President or whom he authorizes of his deputies in case of absence.

Beh- 1- the general committee shall be convened with attendance of its members' majority.

2- The general committee takes its decision with the majority of attendees' members. If votes were equal, the side whom the President voted with is preferred.

Jeem- the assistant Consultants attends the general committee and they participates the discussion without having the right of voting.

3rd: alif- the Presidency committee shall be convened by the President of the Council, membership of his two deputies, the Presidents of the committees and the President of higher administrative Court.

Beh- the committee of the Presidency shall pertaining in trying of the following:

1. Presenting an annual report, or whenever it sees that to the secretariat of the Cabinet. This report includes what judgments or researches may lack in

valid legislation, or ambiguity in it. Also cases of power abuse from any office of administration offices, or transgressing its powers or propose preparation a new legislation.

- 2. Reconsideration of increasing the number of specialize committees in the Council or combining it.*
- 3. Suggestion of forming another Courts for administrative Judiciary or employees Judiciary in the center of governorates if necessary.*
- 4. Choosing the President two deputies among the Consultants.*
- 5. Recommendation of appointing a Consultant and assistant Consultant, or promoting him to a Consultant.*
- 6. Recommendation of assigning of those whom listed in articles (24) and (25) of this law.*
- 7. Recommendation of appointing a general secretary of the Council from the Council's employees.*

4th - alif- the higher administrative Court shall be formed in Baghdad. The Court convenes and headed by the President of the Council or whom he authorizes from deputies, and a membership of (6)

six Consultants and (4) four assistant Consultants named by the President of the Council.

Beh- the higher administrative Court practicing the jurisdictions which practiced by the Federal cassation Court which stipulated in civil procedure law No. (83) For 1969 when trying the challenges of administrative Judiciary Court's decisions and employees Judiciary Court.

Jeem- the higher administrative Court is competent of trying the following:

1-Challenges against decisions and judgments issued by administrative Judiciary Court and employees Judiciary Courts.

2-Litigation which concern specifying of case's trying that occurred between administrative Judiciary Court and employees Judiciary Court.

3-Litigation in executing decisive judgments, which are contradicted and issued by administrative Judiciary Court or employee Judiciary Court that concern one subject. If it was between litigants themselves or one of them was a party of these two judgments. To prefer one of the judgments and decide to execute it instead of the other judgment.

5th: alif- the competent committee shall convened and headed by the President's deputy of legislation, opinion and Fatwa affairs, or the senior Consultant with a number of assistant Consultant. Their percentage should not be more than tertian number of Consultant.

Beh- the President of the Council if necessary can nominate whom he choose of Consultants to head specialized committee.

6th: each specialized committee has a secretary, his post is not less than a Director. He attained a bachelor's degree in law, and he helped by a number of employees.

The Council's formations:

Article (3-2nd) of The State Consultative Council law (amended) stipulated on its administrative formations as following: the Council consist of the following formations:

Alif- Department of financial and administrative affairs.

Beh- Department of legislation sources.

Jeem- Department of information technology.

Dal- Department of higher administrative Court management.

Heh-Secretariat of pertaining d committees.

Waw- Department of planning and follow up.

Zin- Departments of administrating Courts of administrative Judiciary in Baghdad and the other governorates.

Ha- Department of administrating Courts of employees Judiciary in Baghdad and other governorates.

Ta- Department of scrutiny and interior monitory.

Yeh- Department of pension.

Kaf- Technical office.

Lam- the President of the Council office.

As for jurisdictions of Council of the State, article (4) the law stipulated on it:

Article -4- the Council shall pertaining in administrative Judiciary tasks including Fatwa, forming, preparing, studying and scrutinizing law bills, and providing opinion in legal affairs for State's offices and public sector.

In addition to its jurisdictions in field of administrative Judiciary which article (7) (emended) of the law stipulated on.

- The Council jurisdictions in field of administrative Judiciary:

The Iraq Judiciary system remained for a long time lacking to existence of an administrative Judiciary which carrying out the task of trying the challenges which presented on orders and decisions issued by committees and administrative employees if it were based on abuse of using the power, or on a mistake in implementation or other reasons that allow challenging. This matter created a space in a branch of Judiciary power branches, there is must be a specialized administrative Judiciary that guarantees trying the cases which initiated against committees and administrative employees in the executive power whom the orders or decisions issued against them were unjust and violated the law or abusing in using the right. In spite of that, the regular Judiciary carried out this task in side of its judicial activity, but this is not a replacement of administrative Judiciary, because the administrative Judiciary has a special nature characterized with flexibility and goes to jurisprudence in many cases and to judicial precedence in similar

cases because there isn't an administrative codified law in many affairs which tried by the administrative Judiciary. As well as in the regular Judiciary which depends in an objective sides and as base on civil law articles and its branches...

Therefore, the efforts were accelerated to finds an administrative Judiciary in Iraq with the form that achieves the target of its existence. Such as developed countries which knew similar Judiciary to be a haven and assistance for those whom a decision or abusive administrative order had been issued against them, or the administration made mistake in issuing it.

Based on these efforts, the administrative Judiciary in Iraq had been created according to the law No. (106) for 1989 (second amendment law for The State Consultative Council law No. (65) For 1979). Whereas article (7) of The State Consultative Council law amended by adding a new jurisdiction to the Council which is it practicing administrative Judiciary. Then, article (7) of the law was rephrased according to the Fifth Amendment by the law No. (17) For 2013, whereas article (7) amended of the law clarified the administrative Judiciary formations and its tasks in details. This matter came as a response to a need, and to

complete an important side of Judiciary in Iraq as following:

Article -7- 1st: a Court for administrative Judiciary and for employees Judiciary shall be established, and these two Courts headed by the President's deputy for administrative Judiciary affairs, or a Consultant and two members from Consultants or assistant Consultants in the following regions:

Alif- the northern region which includes the governorates of Nineveh, Kirkuk and Salah Aldeen and its center in the city of Mosul.

Beh- the central region which includes the governorates of Baghdad, Al-Anbar, Diyala and Wasit and its center in the city of Baghdad.

Jeem- the middle Euphrates which includes the governorates of Karbala, Al-Najaf, Babylon and Al-Qadisiyah and its center in the city of Hilla.

Dal. The southern regions which includes the governorates of Dhi Qar, Al-Muthana, Basra and Mayssan and its center in the city of Basra.

2nd - it is ratified if necessary to form another Courts for administrative Judiciary, and for employees Judiciary in the center of the governorates with statement issued by the Minister of justice according to a suggestion

from the Presidency committee. This order shall be published in the gazette.

3rd - it is ratified to commissions a Judges from the first level or the second level with a nomination from the higher judicial Council to the administrative Judiciary Courts or employees Judiciary Courts.

4th - the administrative Judiciary Court is competent to take decisions in trueness of individual, regulative and administrative orders and decisions which issued by employees and committees in the Ministries and offices unassociated to a Ministry and the public sector. This matter is specified to orders and decisions which there is no reference determined to challenge them before it, according to a request from someone with known interest and possible. In addition to that possible interest is enough if there was something needs to be afraid of, and may aggrieving related persons.

5th - some reasons for challenging the orders and decisions are the following:-

1- The order or the decision which includes an infringement or violation to the law. Also if it was violating regulations, instructions or the bylaws.

2- The order or the decision had been issued contrarily to jurisdiction rules, or flawed in its form or in the procedures. Its situation or reason.

3- The order or the decision contains a mistake in implementing the laws, regulations, instructions or the bylaws. Its interpretation, or it may contains an abuse or unjust in using the power or deviated from it.

6th - it regarded an order or decision any rejecting or refusal from the employee or the committee when taking an order or a decision they had to take it legally.

7th - Alif- stipulating that before presenting the challenge to the administrative Judiciary Court, it must be complained before the administrative specialized office within (30) thirty days from the date when he informed by the challenged order or administrative decision, or he considered informed. This office should take a decision in this complaint within (30) days from registering the complaint at its office.

Beh- if there is no decision were token in complaint or rejected by specialized administrative office. The complainant shall present his challenge to the Court

within (60) sixteen days from the date of his complaint rejection with a proof or judgment. The Court shall register the challenge after taking legal fee. If the Court didn't took a decision for the benefit of the complainant, it is not prohibited to let the complainant to initiate a case before the regular Judiciary to demand his rights in compensation of damages produced by infringement or violation of the law.

8th - Alif- the administrative Judiciary shall takes a decision in challenge presented to it. It has the right to reject the challenge, annulling the order or challenged decision. With judging by compensation if needed, based on the request of the plaintiff.

Beh- the decision of the Court which stipulated in clause (alif) of this item is challengeable appealingly at the higher administrative Court within (30) thirty days of notifying date, or regarded him notified.

Jeem- unchallenged Court's decision, and the higher administrative Court issued as a result of challenging is decisive and binding.

9th - Alif- the employees' judiciary Court shall pertaining of taking decisions in the following issues:

1- To trying the case that initiated by the employee against the State's offices in rights that produced from civil serving law, laws or regulations that governs the relation between the employee and the office he works for.

2-To trying the cases that initiated by the employee against the State's offices and the private sector to challenge discipline sanctions which stipulated in State's employees discipline law and the public sector No. (14) For 1991.

Beh- the cases which initiated according to provisions (1) of clause (alif) shall not be tried after (30) days of employees notification by the objected order or the decision If he was inside Iraq, and (60) sixty days if he was abroad.

Jeem- it is allowed to challenge appealingly before higher administrative Court by the employees' Judiciary Court according to provisions of clause (alif) of this item within (30) thirty days from the date of notification with it, or regarded notified.

Dal- unchallenged decision of the employees' Judiciary Court, and the decision of higher administrative Court after challenging considered decisive and binding.

10th - the provisions of higher administrative Court, administrative judicial Court and employees' judicial Court shall be issued by the name of the people and executed according to the law.

11th - civil procedure law No. (83) For 1969 and evidence law No. (107) for 1979 and criminal procedure law No. (23) For 1971 and justice fees law No. (114) for 1981 shall takes effect in the subject of procedures that followed by the higher administrative Court, administrative Judiciary Court and employees' Judiciary Court. If there isn't a special text in this law.

12th - if the competence of administrative Judiciary Court and employees' Judiciary Court were litigated with the competence of a civil Court, the reference shall appointing a committee called (reference appointing committee) consist of (6) members, (3) three of them chosen by the Federal cassation Court among the Court's members, and (3) three others chosen by the President of the The State Consultative Council among the Council's members. The committee convened and headed by the President of Federal cassation Court, and the decision issued by it unanimously or majorly considered decisive and binding.

The The State Consultative Council had been headed the following sirs starting from 11.7.1979:

Seq.	Name	Date	
		from	to
1.	<i>Judge Fakhri Madhat Hussein</i>	<i>11.7.1979</i>	<i>16.12.1980</i>
2.	<i>Judge Abdul Rasool Al-Jassani</i>	<i>17.12.1980</i>	<i>14.4.1984</i>
3.	<i>Judge Akram Abdul Qadir Ali Al-Doori</i>	<i>15.4.1984</i>	<i>17.1.1988</i>
4.	<i>PhD. Ali Hussein Al-Khalaf</i>	<i>8.1.1988</i>	<i>25.6.1989</i>
5.	<i>Judge Abdul Majeed Salman Al-janabi</i>	<i>26.6.1989</i>	<i>24.9.1991</i>
6.	<i>Mr. Adnan Abood Ahmed</i>	<i>25.9.1991</i>	<i>2.8.2000</i>
7.	<i>Judge Madhat Al-Mahmood</i>	<i>3.8.2000</i>	<i>23.8.2004</i>
8.	<i>PhD. Kais Abdul Sattar Othman</i>	<i>24.5.2004</i>	<i>23.1.2007</i>
9.	<i>PhD. Esmat Abdul Majeed Bakir</i>	<i>24.1.2007</i>	<i>1.4.2007</i>
10.	<i>Mr. Ghazi Ibrahim Al-Janabi</i>	<i>13.5.2007</i>	<i>30.12.2010</i>
11.	<i>The Consultant Samiyah Khadhim Mohammed Al-Fatlawi</i>	<i>2.1.2011</i>	<i>Currently in her post</i>

- *The State Consultative Council turned into Council of the State.*

Article (101) of the Republic of Iraq Constitution for 2005 allowed creating (Council of the State). It is pertaining in administrative Judiciary tasks, Fatwa, drafting laws and representing the State before public offices and general committees.

Referring to the jurisdictions of the State Consultative Council are the same jurisdictions which the Constitution put for (the Council of the State). The law No. (71) For 2017 had been issued, and became in effect from 7.8.2017. According to this law (the Council of the State) has been created, which it is in fact (the State Consultative Council) with a new name, with all its tasks and jurisdictions in field of administrative Judiciary, Fatwa and drafting. Except its role in providing opinion to the Ministries and offices unassociated to a Ministry when it has a hesitance in a legal affair. This jurisdiction is no more including jurisdictions of (Council of the State) jurisdictions, therefore the

(Council of the State) took the role of (the State Consultative Council) completely. Whereas article (2) of (the Council of the State) law aforementioned stipulated on validity of provisions listed in the State Consultative Council No. (65) For 1979 and its amendments on (the Council of the State) which the law No. (71) For 2017 meant. The law moved commitments and rights from the State Consultative Council to the (Council of the State), as well as the law stipulated on that (the Council of the State) is an independent committee which enjoys legal entity and represented by its President whom chosen among the Consultants in the State Consultative Council. The President according to the law enjoys the power of a Minister.

By that the (State Consultative Council) with all its formations and personnel turned into (the Council of the State) in the Republic of Iraq, and disengaged from the Ministry of Justice. It enjoys complete financial and administrative independence similar to the Councils of the State in developed Countries.

Statistical table for Council of the State activity

(State Consultative Council – previously – Republic of Iraq)

For the period from 1.1.2018 to 30.9.2018

<p><i>1st - in field of codifying and forming</i></p>	
<p><i>1- Law bills, regulations and instructions.</i></p>	<p><i>119 projects</i></p>
<p><i>2nd - in field of providing legal opinion</i></p>	<p><i>137 requests</i></p>
<p><i>3rd - in field of administrative Judiciary</i></p>	
<p><i>1-Administrative Judicial Court</i></p>	<p><i>3735 lawsuits</i></p>
<p><i>2-Employees' Judicial Court</i></p>	<p><i>2586 lawsuits</i></p>
<p><i>3-Higher administrative Court.</i></p>	<p><i>3222 objection cases</i></p>
<p><i>4th - number of actual Consultants in the Council, including the Head of the Council and her two deputies.</i></p>	<p><i>19 Consultants</i></p>
<p><i>5th - the actual number of Assistant Consultants</i></p>	<p><i>11 Consultants</i></p>