

Reflections from the Chief Justice of the Federal Supreme Court and President of the Higher Judicial Council of the Republic of Iraq

We had a pressing interest in examining the experience of the countries that have preceded Iraq in choosing and implementing a federal system as a form of government. How is such a system administered; how does it fulfill its responsibilities; is there a centralized judicial institution that administers the judicial system in all the constituent units, and if so, to what extent, or is the regional judiciary in each state run separately without central supervision?

These questions were going through my mind as I set forth, as the head of the Iraqi judicial delegation, to the roundtable. This event offered the Iraqi delegation a golden opportunity to obtain answers to the aforementioned queries through detailed discussions with eminent Swiss politicians, civil servants, and judges from the cantonal (state) and federal level, scholars, as well as three Supreme Court chief justices from Brazil, India, and Nigeria.

We learned in particular about how the Swiss judiciary fulfills its duties in the pursuit of justice and guarantees private and public rights. We visited the courts of several cantons, where we were informed about the laws being applied, particularly the penal and civil procedures as well as the evidence act. We noted there are some differences between the cantons because of differences in culture, traditions, and history, but we also noted a partial or full similarity with regard to certain laws. During our discussions, we found out that there was a shared desire to unify the laws of civil and penal procedures and the evidence act in the federal judicial system and that efforts were being made in this regard.

We realized that although there are some common rules for selecting and promoting judges, some disparities remain in other facets of the judicial systems in the cantons, because of traditions and heritage and the extent of people's attachment to them, as well as the fear of change, which is usually associated with transitional periods. We also examined the role of the federal Supreme Court and its jurisdiction within the federal judicial system. What we found suggests that there is a means to unify jurisprudence and deal with certain rulings issued by the regional judiciary.

I became aware of obvious differences between the Swiss, Brazilian, Indian, and Nigerian judicial systems. These differences can be attributed to several factors, such as the judicial systems of the constituent units, as well as political viewpoints or theories in a country, the concept of the federal state, and the jurisdiction of the central authority and the regions, which may vary.

During the roundtable I also reviewed the judicial system in Iraq, which in 2003 adopted a federal political system of government, and examined the repercussions of this new political system on the judicial organization, as well as the future perspectives of the judiciary in Iraq. It is well known that before 2003 the judiciary in Iraq was centrally administered by the Ministry of Justice through a Council of Justice. The Council was presided over by the Minister of Justice, who, of course, was part of the executive authority, which

continuously tried to interfere with the independence of the judicial decisions. Following the political changes, the Higher Judicial Council was formed and entrusted with the task of administering the judiciary independently of the Ministry of Justice. The judiciary was then recognized as an independent power, as are the legislative and executive powers.

So what would the role of the federal judiciary be with respect to the regional judiciaries that were formed in accordance with the 2005 Iraqi constitution? Will the regional judiciary remain completely independent from the federal judiciary, and will it continue to be administered autonomously as an independent regional judicial authority, with no supervision whatsoever from the federal judiciary? And if the federal judiciary were to supervise the judiciary in the provinces, what form would such supervision take, and what would be its extent?

After examining the experience of the judiciaries of the Swiss, Brazilian, Indian, and Nigerian federations, I can say that we can benefit from these experiences and use some of their rules when forming the federal and regional judiciary in Iraq. Basically, there will be a judicial authority in each region, which will administer all fields of the region's judiciary, including all matters pertaining to the judges and to the safeguarding of their independence. The federal and regional judiciary shall complement each other and coordinate their work through the membership of the regional judicial authorities' presidents in the Higher Judicial Council. They will draw up the judicial policy in the federal states, set the rules that will guarantee the independence of the judiciary, unify the judicial code of conduct and the rules governing the appointment of judges, ensure compliance with the provisions of the constitution and with the international standards stipulated in international charters and treaties, unify the laws of procedure and the evidence acts in both the civil and penal field, form federal courts in the regions that would dispose of disputes arising from the federal government's exercise of its exclusive powers or other powers stipulated by the constitution and by federal laws, and form regional courts to dispose of disputes arising from the regional governments' exercise of their non-exclusive powers.

This is a summary of our vision of the federal and regional judiciary in Iraq based on the actual Iraqi situation and our examination made during the roundtable.

Medhat Al Mahmoud, Baghdad, Iraq, May 4, 2009