

Abstract

After 2003, Iraq witnessed radical changes on all political, social and economic levels, and so forth. The result of these transformations was the choice of the democratic process as a mechanism to advance that stage. The main basis of this process is the political participation represented by the elections. .etc.

However, the choice of the democratic process alone is not enough to take the positive steps in order to carry out the reforms required by that stage. Rather, it is necessary to consolidate it. This can only be done through guarantees that guarantee the citizen's confidence first in the integrity of these mechanisms, and secondly in the official institutions entrusted to him. The task of supervising them, because the absence of these mechanisms of integrity guarantees will lead to a loss of confidence in the political system as a whole.

The most important of these guarantees are the existence of bodies that are responsible for monitoring the procedures of the electoral process at various stages. These bodies can be reverted to two forms. The first is the official bodies in which the legislator has the authority to supervise, through its competence to consider electoral disputes, The stages of the electoral process or which are inherently influential, and that authority is the judicial authority.

The second is to refer to non-official bodies that directly or indirectly supervise the electoral process based on the purpose of their existence as effective and effective tools in the process of democratic transformation that the country has undergone since 2003 and until now. These are political parties and community organizations Civil society, the media, public opinion polls, etc. However, the supervisory role exercised by the official bodies is much more effective than that of the other parties mentioned above, because of the constitutional neutrality and independence of the other authorities.

The role of the judiciary in the consideration of electoral disputes in various forms, especially after it has become a public authority independent of the executive branch, such as the basic guarantee of the process of peaceful transfer of power and the consequent legalization of the political system, The electoral disputes did not go to all judicial bodies in the country and represented by the ordinary judicial and administrative and constitutional.

The second is the constitutional representation of the Federal Supreme Court in the consideration of electoral disputes, despite the follow-up of Iraq since 1989 to the dual judicial system, which provides for the competence of the administrative judiciary to consider electoral disputes as a form of administrative disputes.

However, the general mandate in the consideration of electoral disputes was referred to the judicial body of the elections. The Federal Court was limited in both time and objectivity in the consideration of these disputes and in view of the scope of the supervisory role played by the Commission as the general jurisdiction of these disputes and the lack of legal studies Its composition and secondly its competences and its authoritative decisions, which have been chosen as the focus of our research.

As for the problem of research, which was the basis for many of the questions raised in that study, despite the praise and importance of the direction of the legislator towards the jurisdiction of the judiciary in the consideration of electoral disputes, but the organization of this trend by granting the judiciary to the election exercise of this jurisdiction was subject to criticism by Because the Authority's exercise of that power was in the presence of a judicial body which was supposed to exercise its jurisdiction by considering such electoral disputes on the one hand.

On the other hand, the confusion in the formation of the body and the practical reality of exercising its competencies, which resulted in the issuance of many judgments - as described by our professor Dr. Ghazi Faisal in his comments on the judgments of the administrative judiciary - which did not delight the publication, we hastened to comment on them and the remarks on them is not intended to be offensive , But for advice and guidance to achieve consistency between studies and the judiciary to work together in order to ensure the proper application of the provisions of the law, so we have lined up a set of those judgments for comment in our research.

We can not fail to mention the concerns of the ineffectiveness of exercising this jurisdiction to allow other judicial bodies to exercise certain electoral powers, which raises the possibility of conflict between the decisions and decisions issued by the Authority and those bodies.

For these and other reasons, it is necessary to study the legal organization of the judicial body for the elections.

In our study of the methodology of scientific research, we have relied on the analytical method of interpretation, criticism and reasoning, as well as the use of the comparative approach to shed light on the role of the judiciary in general in the consideration of electoral disputes in France in accordance with its Constitution of 1958 and Egypt in accordance with its Constitution of 2014 compared with the adopted trend in Iraq under its constitution issued in 2005, as well as a number of constitutions of those constitutional systems.

In order to clarify the subject of the research, we discussed it through a two-door structure. We highlighted in the first part the role of the judiciary in the consideration of electoral disputes in the comparative constitutional systems that have been studied. The chapter was divided into three chapters according to the competent judicial authority. Chapter I dealt with the role of the ordinary judiciary in the consideration of electoral disputes. The second chapter focused on the competence of the administrative judiciary to adjudicate these disputes. Finally, Chapter 3 went to the role of the constitutional judiciary.

As for the second part of our study, it focused on studying the theoretical and practical aspects related to the judicial body of the elections whether in its discriminatory capacity or as a subject court. The study of these aspects is divided into four chapters.

In the first chapter, we discussed the formation and formation of the Commission under the title of the legal basis for the establishment and formation of the judicial body for the elections, or the second chapter, where the competencies of the body were identified sometimes as discriminatory, and sometimes as a court subject.

In the three chapter we examined the authoritative decisions and rulings of the Commission and the extent to which the electoral jurisdiction of the judicial authorities influenced that authority. In concluding chapter II, we dealt with the judicial applications of the Commission's exercise of its powers.