



# **Project For The “Provision Of Legal Training Components For Legal Institutions Of Iraq”**

## **Training Session on “Judicial Ethics, Judicial Integrity and Judicial Independence”**

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### **EXPLANATORY NOTE**



**Arab Center for the Rule of Law and Integrity**

## Introduction

Justice is the basis of governance and it is the solid rock on which community is based for establishing rights and duties, and achieving a balance between conflicting interests. Given that democracy is the first of the pillars of governance, there is no democracy without justice and no justice without a law that gives to each person the rights he is entitled to, and that defines the duties and obligations of each individual on the basis of equality between citizens and non-discrimination of a category over another, notwithstanding the powers of said category. This is a hard and superior mission that may only be carried out by men who are true to their covenant with God, who enjoy the greatest level of integrity and honor in such a way that they may be compared to righteous saints<sup>1</sup>.

The truth is that the judiciary is an obligatory ordinance and a followed practice, and hence the power of the judiciary is deemed one of the most esteemed and dangerous powers, enjoying the highest standing and the greatest relevance since it prevents the shedding of blood, safeguards honor and protects funds and assets. Whereas nations live through their ethics and since their cultures are perpetuated through the dignity of justice, the rightful truth shall always prevail. Given that the judiciary is the origin of Justice in its content and meaning, and since it is the means and the instrument to realize such justice, it becomes in every nation one of its most cherished and sanctified cornerstones and one of the most expensive and eminent ingredients of its heritage and culture<sup>2</sup>.

The mission of the judiciary has always been since ancient times a dignified mission relating God to his subordinates. This mission prospered in the era of Islam when the Holy Quran was revealed to the Prophet Muhammad (peace be upon him), who managed by his unique character, and with the wisdom God endowed him with to gather the scattered remnants of the Arabs in one religion calling for Justice, divine morals, equality, freedom, respect for the law and the safeguarding of human rights. Therefore, we must seek to abide by the book of God in order to acquire the ethics prescribed therein, to comply with its discipline and reflect on its holy verses, since they are the most sanctified light that guides the judge to the right way, that clears his spirit and lights up his heart, so that he speaks the word of truth guided by the Holy light of God.

The best evidence on the foregoing is the Hadeeth of the Messenger of Allah (peace be upon him), which portrayed the dangerous mission of justice, and the severity of the judgment rendered by a judge *the day whereon neither wealth nor sons will avail, except him who brings to Allah a clean heart*. Moreover, the Hadeeth specifies the following: “*One judge in Heaven and two in Hell; the one in Heaven was knowledgeable therefore ruled justly...but the other two in Hell, one of them ruled ignorantly...and the other knew the truth but ruled its opposite.*” There are more examples on the greatness of judiciary, after the Muslim conquest, providing that *the judge's determination in establishing the truth shall not be prejudiced even against the Prince or*

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<sup>1</sup> Counselor Farouq Seif El Naser, his speech before the international conference on the independence of the judiciary, published in the semestrial judicial magazine 1999

<sup>2</sup> Counselor Farouq Seif El Naser, Minister of Justice of the Arab Republic of Egypt, in his speech delivered before the Conference on the Prevention of Crime, Cairo, 1995

*Sultan*. It is told that the Chief Minister during the Khilafah of Al Rashid - namely Al Fadel Ben Rabih - requested to testify in a case submitted before the judge Abu Yusuf, when the latter was in charge of the judicial system in Baghdad, and that said judge refused to accept his testimony, and that as a result of his insistence on this refusal, the Chief Minister submitted a complaint against him to the Khalifah, who called the judge and asked him about the reason for his refusal to accept the testimony of his Chief Minister. The response of Judge Abu Yusuf was the following: *"I heard him one day telling you that he is your subordinate... If it is true, the subordinate's testimony may not be accepted and if he was lying his testimony may not also be accepted"....* This reveals the level of impartiality of the judge's sentence. This examples shows us that the judge was not afraid to render a judgment based on what he believes is right and just, since the judge, when performing his mission, should not be afraid of any one, and when rendering his judgment, he shall only take into account the words of God Almighty, before whom alone judges shall bow<sup>3</sup>.

## **Importance of the independence of the judiciary**

All national constitutions and international conventions emphasized on the importance of the independence of the judiciary from the executive and legislative powers in order to achieve justice among people, and to protect individuals in the face of the authority, since the existence of an independent judiciary is a basic guarantee for the rule of law and the individual freedoms, since the performance by the judge of his mission, with freedom and independence is the best guarantee to protect the public and private rights, and since the independence of the judiciary is the slogan that prevails over all of the divine concepts consecrated by the judiciary. Moreover, there is no doubt that the judge is a core element in the justice system, he translates the conscience of justice in his society and its values and his judgments reflect the effectiveness of the prevailing legal system and the extent of its stability. However, the efficiency and effectiveness of the justice system is not based on the efforts of the judge alone, since in order for the judge to be independent, he must have basic guarantees, including the existence of a special legal regime for the appointment, transfer and promotion of judges. This task must be executed by a Council formed of judicial bodies to be determined in accordance with the provisions of the law. Furthermore, the judge's remuneration must be sufficient and he should be immunized against transfer and removal from office, except in accordance with the law, so that this is not used as a means of pressure upon the judge. The latter must be selected with particular care among individuals enjoying a high level of academic efficiency, integrity and honesty, since if the judge is not well acquainted with the law and its principles and if he lacks integrity, injustice and the loss of rights are inevitable consequences<sup>4</sup>.

## **International standards on the independence of the judiciary**

In fact, without an independent and impartial judiciary any declaration of the rights and

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<sup>3</sup> Counselor Farouq Seif El Naser, Opt.Cit

<sup>4</sup> Dr. Saad Abdul Majid "the independence of the judiciary in the Arab Countries" Al Nahda Publishing House, 2008.

freedoms, or equality before the law, or even any declaration of the right of defense would be worthless, therefore, it is logical that all international conventions - despite the different tendencies - stress on the independence of the judicial authority, which is the first condition for ensuring freedoms<sup>5</sup>. In confirmation of the foregoing, the peoples of the world confirmed in the Charter of the United Nations, inter alia, their determination to establish conditions under which justice will prevail. Moreover this clearly appears in the Universal Declaration of Human Rights, which sets forth, in particular, the principles of equality before the law, the presumption of innocence, and the right to a fair and public trial by a competent, independent and impartial court established in accordance with the law. Furthermore, the drafters of the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights ensured the exercise of these rights, in particular, the International Covenant on Civil and Political Rights which requires and stresses on the guarantee of the right to a trial without undue delay. Whereas there are still, in many cases - especially in third world countries - a gap between the vision underlying those principles and the actual situation, therefore, the organization and administration of justice affairs in each country must be realized in lines with those principles, and efforts must be deployed to fully translate said principles to reality. On the other hand, national rules on the exercise of judicial functions must be aimed at enabling judges to act in accordance with those principles, especially since they are entrusted with taking the final decision with respect to the lives and freedoms of citizens, their rights, duties and properties.

Based on the foregoing, national judicial systems must show the utmost due diligence when selecting and training judges. Moreover, within the scope of their national legislations and practice, governments must abide by and comply with the following basic principles developed to assist member states in the international community in their mission to ensure and strengthen the independence of the judiciary.

### **Principles of the independence of the judiciary<sup>6</sup>**

1. Each State shall ensure the independence of the judicial authority by providing for such independence in the Constitution and in the laws governing the work of the judiciary, and it shall be the duty of all governmental institutions and of other institutions to abide by and observe the independence of the judiciary.
2. The judicial authority must settle the cases submitted before it with impartiality, on the basis of the facts and in accordance with the law without being bound by any improper influences, inducements, pressures, threats or interventions, whether direct or indirect, from any party or for any reason.
3. The judicial authority shall solely have the right to jurisdiction over all matters of a judicial nature, and it should have exclusive authority to decide whether any of the cases

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5 Dr. Ahamad Fathi Srouf, Constitutional protection of rights and freedoms, Al Shourouq Publishing House, 2000 ed.

6 See the full text of the Basic Principles on the Independence of the Judiciary: <http://www1.umn.edu/humanrts/arab/b050.html>

submitted before it for adjudication fall within the scope of its competence in accordance with the definition included in the law.

4. No improper or unjustified interventions are admitted in the work and procedures of the judiciary, and judicial rulings issued by the court shall not be subject to re-examination, without prejudice to the principle of judicial re-examination or to the amendment or alleviation by the competent authorities, of the judgments rendered by the judiciary, in accordance with the law.
5. Each individual has the right to be tried before ordinary courts or tribunals applying the admitted legal procedures, and therefore, special judicial bodies not applying said procedures may not be established.
6. The principle of independence of the judicial authority must ensure that judicial proceedings are conducted fairly, and that the rights of all parties are respected.
7. It is the duty of every State to provide adequate resources to enable the judicial authority to properly perform its functions.

### **Freedom of expression and association**

1. The members of the judicial authority, just like other citizens, are entitled to freedom of expression, conviction, association and assembly; provided, however, that judges always maintain a good conduct when exercising their rights, in such a way that preserves the dignity of their office and the impartiality and independence of the judiciary.
2. Judges shall enjoy the freedom to form and join associations of judges or other organizations to represent their interests, advance their professional training, and protect their judicial independence.

### **Qualifications and selection**

The individuals selected for occupying judicial positions must enjoy integrity and efficiency, and must have received the appropriate training or have the proper qualifications in law. The rules of selection of judges shall include guarantees against judicial appointments in order to avoid acts out of courtesy and suspicious acts. Moreover, the process of selection of judges shall not include any discrimination to any individual on the basis of race, color, sex, religion, political views or other views, origin, property, birth or status, while it is worth mentioning that the condition requiring that a candidate for judicial office must be a national shall not be deemed a discriminatory condition.

## **Terms and duration of service**

1. The law shall guarantee for judges in an appropriate manner, the prescribed period of their service, their independence, security, their adequate remuneration, conditions of service, pensions and the age of retirement.
2. The judges must also have, whether appointed or elected, a guaranteed tenure until they reach mandatory retirement age or until the expiry of their duration of service, whenever applicable.
3. The promotion system of judges, wherever such a system exists, must be based on objective factors, in particular, their efficiency, integrity and experience, and a permanent and systematic evaluation of judges' performance, as well as the cases on which they rendered final judgments.
4. The assignment of cases to judges within the scope of the court to which they are affiliated is an internal matter falling within the exclusive jurisdiction of the judicial administration of the court.

## **Professional secrecy and immunity**

1. All judges must be bound to preserve all of the secrets of the profession and particularly with respect to their deliberations and to confidential information acquired during the performance of their other duties, excluding public proceedings. Judges shall not be compelled to give testimonies in these issues.
2. All judges should enjoy personal immunity against any civil actions for monetary compensation as a result of any improper acts or omissions during the exercise of their judicial functions, without prejudice to any disciplinary action or any right to appeal or to compensation from the state, in accordance with the national law.

## **Discipline, suspension and removal from office**

1. The accusation or complaint filed against the judge in his judicial and professional capacity must be examined in an urgent and just manner, and by virtue of the appropriate procedures. The judge has the right to a fair trial and the examination of the subject in the first stage shall be kept confidential, unless otherwise requested by the judge.
2. Judges shall only be subject to suspension or removal from office for reasons of incapacity or for an improper conduct rendering them unfit to perform their duties.

3. All disciplinary actions, suspension or removal from office procedures shall be determined in accordance with the applicable standards of judicial conduct.
4. The decisions issued with respect to disciplinary actions, suspension or removal procedures must be subject to re-examination by an independent body.

### **The independence of the judiciary from the executive and legislative authorities and the relevant effect:**

There is no doubt that the concentration of the authority in the hands of a single ruler or in the hands of one governing body, will constitute a major threat to the freedoms of the governed individuals and their rights, and will often lead the ruler or the governing body to show unrestrained exercise of power and tyranny. Therefore, with the increasing political awareness of the governed individuals and in order to ward off this danger, the governed individuals no longer accept the concentration of the authority in the hands of one individual who shows unrestrained exercise of power and tyranny, and thus it was necessary that authority be separated and distributed among the different governing bodies, each of them supervising the other to prevent any of them from exceeding the limits of its function. The call for democracy played a major role in achieving this end, since the recognition of the right of the people to exercise the authority led to the establishment of bodies for representing the people and for participating in the government on behalf of the people, and thus several bodies were established and the authority was distributed among them. Over the centuries, the judicial authority kept its independence and its important role in most democratic countries as an independent authority from the legislative and executive authorities so that the judges exercise their functions in full freedom, in way that ensures the protection of the rights and freedoms of individuals, since the independent judiciary is the last resort for individuals to protect their rights and freedoms<sup>7</sup>.

The truth is that the judiciary as an authority must be independent from the legislative authority. If the latter is the authority that sets forth the general abstract rules to be applied to all, not to individuals or specific cases only, the judiciary is the authority that applies these general rules on the disputes arising before it between individuals, or between individuals and the various authorities of the State, and therefore, one may not imagine that the judicial authority be subject to the legislative authority, otherwise the objective of the principle of separation of powers would be nonexistent, and the legislative authority would dominate over all authorities, enacting laws and legislation at its absolute discretion. In order to avoid the foregoing, supervision must be exercised over the legislative power, represented in the supervision of its legislative activity. On basis of the foregoing, supervision over the constitutionality of the laws is the first technical means to protect this principle, since if the function of the legislative authority is the enactment of laws, such laws shall be promulgated within the scope of the provisions of the Constitution, and they may not violate said provisions. In this case, it seems logical to entrust another body or authority with the protection of the constitution and the observation of the constitutionality of

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<sup>7</sup> Dr. Ghaleb Ghanem “the independence of the judiciary between reality and expectations” “استقلال القضاء بين الواقع “ والمأمول” Dar Al Nahda Al Arabiah, 2007

laws. This French Doctrine admitted this prevalent opinion and retained the necessity for the judiciary to exercise supervision over the constitutionality of laws without the need for a special provision, considering such supervision as falling within the scope of the competence of the judiciary and as part of said competence, and as a practical aspect of the independence of the judicial authority.

In addition to the foregoing, the supervision by the judicial authority is in fact considered the most comprehensive type of supervisions and the most adequate means to protect the rights of individuals, since it is exercised by an impartial and independent entity, which makes it an effective and productive supervision, given the adequate legal know-how, the proven impartiality, the education and acquired knowledge, and the neutrality of the members of the judicial authority, qualifying them to exercise said supervision. Therefore, the supervision by the judicial authority over the legislative authority is the best guarantee for the safeguarding of the independence of the judicial authority itself, is the means for ensuring the effective protection of individual rights and freedoms, and does not represent any encroachment on the jurisdiction of the legislative authority in a way that prejudices the principle of separation of powers.

## **The position of Iraqi legislations regarding the independence of the judiciary**

All Iraqi constitutions promulgated as a result of the Iraqi consecutive authorities, included texts confirming that the judiciary shall be independent, but this was not the case in reality<sup>8</sup>. The majority of laws concerning the organization of the judiciary since the evacuation of the British occupation included texts confirming the independence of the judiciary from the executive and legislative authorities, and its financial and administrative independence, as well as the independence of the judges in the performance of their duties, and their immunity against removal from office or disciplinary actions. We will address briefly the most prominent of these laws and constitutional provisions legislated in support of the independence of the judiciary.

### **I: The Hokkam (arbitrators) and Qodat (judges) Act No 31/1929**

The first national law governing the affairs of the judiciary in Iraq was promulgated in 1929. This law included the conditions for the appointment, promotion, transfer and disciplinary trial of *Qodat* and *Hokkam*. It was indeed the first gain, which enhanced the judges' stature and independence<sup>9</sup>. For the first time in the history of the Iraqi Judiciary, a committee from the *Hokkam* and *Qodat* called "the *Hokkam* and *Qodat* Committee" was formed under the provisions of this law. The committee was entrusted to manage the affairs of all the *Hokkam* and *Qodat*. The committee nominates the *Hokkam* and *Qodat* for appointment in these positions and mediates with the Minister of Justice to issue a royal decree to officiate that appointment, ... the Committee is also responsible for nominating *Qodat* for promotion in the judicial posts and of submitting this nomination to the Minister to issue a decree to that effect or reject the nomination by a grounded decision<sup>10</sup>. "The *Hokkam* and *Qodat* Affairs Committee had the power to hold

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<sup>8</sup> Judge Medhat Al Mahmoud, President of the Federal Supreme First Instance Court, and President of the Supreme Judicial Council, in "The judiciary in Iraq, a study of judiciary legislations in Iraq", 2010, p.35

<sup>9</sup> Opt. Cit., p.22

<sup>10</sup> Opt. Cit., p.23



disciplinary trial for *Hokkam* and *Qodat* if they committed an act inconsistent with their posts or if they neglected performing their functions. Disciplinary trials are held by virtue of an order by the Minister who is also entitled, by rule of law, to serve a notice to the *Hakim (arbitrator)* or *Qadi (judge)*. According to Article 18, the committee has power to impose the following penalties: reprimand, demotion and removal from office. Penalties must be approved by the Minister. In case the committee decides the removal of a *Hakim* or *Qadi* from his post, the law stipulated in Article 22 that in addition to the approval of the Minister, that the case must be submitted to the Council of Ministers to give a yes or no decision upon the removal decision<sup>11</sup>.

## **II: The Judicial Service Law No. 27 of 1945**

Given the emerging needs, law No. 27/1945 was promulgated. Among the most important provisions introduced by the new law was the restructuring of the *Hokkam* and *Qodat* Committee in a form different from the committee established previously. This law puts the Committee under the presidency of the president of the Court of Cassation with two members of the court of cassation and two members of senior officials at the Ministry of Justice. The two senior officials are appointed by the Minister annually. This law also specified that no *Hakim* or *Qadi* shall be suspended or be subject to legal prosecution unless following the Minister of Justice's approval, with the exception of the case when he is caught in a serious felony in presence of witnesses. This law granted the *Hokkam* and *Qodat* special allowances and provided for remunerations higher than the ones provided for in Law No. 31 of 1929, and its amendments<sup>12</sup>.

## **III: The Judicial Service Law No. 58 of 1956**

This law was promulgated eleven years after the implementation of Law No. 27 of 1945. It was issued to regulate the judicial affairs in Iraq. Among the most important new provisions in this Law was the provision on restructuring the *Hokkam* and *Qodat* Committee, which became known as "*Hokkam and Qodat Affairs Committee*" and was designed to regulate the affairs of the judiciary in Iraq. The new Law also prevented the transfer of the *Hakim* or *Qadi* to a civil post except with his written approval. By virtue of Article 49 of this Law, a temporary Council called the Supreme Judicial Council was formed, whose mission was to thoroughly examine the position of all *Hokkam* and *Qodat* and issue decisions on each of them individually either to instate the *Hakim* or *Qadi* in his post or terminate his service.

## **IV: Judicial Authority Law No. 26 of 1963**

The mandating reasons given for the promulgation of this law includes that the laws regulating the judicial affairs in Iraq were laid down under circumstances and at times the legislator did not observe the sanctity of the judiciary and its independence as much as he observed the interest of the rulers to the detriment of justice. Explaining why the Law was called the Judicial Authority Law, the explanatory memorandum of the Law indicated that this title was given in parallel to the Executive Authority Law. The issuance of the Judicial Authority Law, thus, was an

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<sup>11</sup> Opt. Cit. p.25

<sup>12</sup> Opt. Cit. pp. 28-29

announcement considering the judicial authority an independent authority, operating side by side with the legislative and executive authorities. The most important amendment introduced by this new Law was that it amended the name of the *Hokkam* and *Qodat* Affairs Committee formed under Law No. 58/1956 into the Judicial Council while keeping the same competences.

#### **V: Law No. 160 of 1977 organizing the Judicial authority**

This law included provisions governing the work in the Federal Court of Cassation, the highest judicial body in Iraq - before the establishment of the Federal Supreme Court in 2005. This law entrusted the President of the Court and its judges with its management and the organization of the judicial work in it. This law also established the Presidential body whose mission is to choose the heads of judicial bodies of the Court and its members. It is worth mentioning that this represents a good guarantee for the independence of the Court, however, Article 55 / I / c of this law ordered the President of the Court of Cassation to submit an annual report on the works of the Court to the Minister of Justice and the Council of Justice, moreover, Article 1 / II of the Law on the Ministry of Justice authorized the Minister of Justice to hold seminars and meetings with judges, including judges of the Court of Cassation in order to ensure the achievement of the objectives of the party and the revolution. One may deduce from these two provisions that the executive power's jurisdiction encroaches on the independence of the Court<sup>13</sup>. This law consecrated the independence of the Federal Courts of Appeal when it assigned to the President of the Court of Appeal the mission of supervising the courts and their work in his jurisdiction, as well as the mission of distribution of work between the judges of said courts. This law also formed a council in each appeal region, which shall study the difficulties and problems faced by the courts in the appeal region and provide appropriate proposals to address them as well as all what leads to the improvement of working methods and enhancement of the performance level in the courts. Despite this independence of supervision, Article 55/I of this law conferred to the Minister of Justice the right to supervise all courts and judges and to monitor their personal and official behaviors and the extent of their commitment to their duties and working schedule, and this reflects the executive authority's interference in the judicial scope. Moreover, the law organizing the judicial authority assigned the mission of examination of the complaints and disciplinary matters, attributed to judges, to a committee composed of three judges selected by the Council of Justice from among its members at the beginning of each year.

It clearly appears from the foregoing provisions that the law on judicial organization, even if it mentions the independence of the judiciary in its texts, however said independence is in accordance with the perspective of the political power at that time, which did not believe in the principle of separation of powers in the state and which sought after the exclusion of institutions and entities from the community, and which considers the judiciary a facility among the facilities of the one power taking over the ruling<sup>14</sup>.

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<sup>13</sup> Opt. Cit. p. 41

<sup>14</sup> Opt. Cit. p. 42

## **VI: The Law on the Management by the State of Iraq of the Transitional Period of 2003**

Paragraph (a) of Article 43 specifies that the judiciary is independent, is not manipulated in any way by the executive authority, including the Ministry of Justice. The judiciary is exclusively fully competent to decide the innocence of the accused or to indict him according to the law, without interference from the legislative or executive powers. Paragraph (c) of the same article specifies that the National Assembly shall prepare an independent and adequate budget for the judiciary. Moreover, Article 44 established the Federal Supreme Court, and paragraph b thereof determined its competences. As for the Supreme Judicial Council, the Law confirmed its role in Article 45 which defined its role, functions and composition. Article 47 consecrated the independence of judges by stipulating that "A judge or a member of the Supreme Judicial Council may only be removed from office if convicted of a crime against honor, or of corruption, or if permanently incapacitated; the removal from office shall be upon the recommendation of the Supreme Judicial Council and by virtue of the decision of the Council of Ministers following the approval of the Presidency Council."

### **Seventh: Order No. 35 of September 18, 2003**

This order was issued for re-establishing the Judicial Council in the wake of the fall of the former regime and it aims at achieving two purposes. The first is the re-establishment of the Council which shall be responsible for and in charge of the supervision of the judicial system of Iraq. The Council shall perform its functions independently of the Ministry of Justice. The second purpose is to establish the rule of law. By ordering the re-establishment of the Judicial Council, the legislator recognized the existence of an independent judicial authority ensuring the best fulfillment by judges and members of the public prosecutor's office of their duties, away from any influence, subject only to their conscience and the rule of law. The order also specified that the Council shall perform its duties and responsibilities independently of any control or supervision by the Ministry of Justice and that any provisions conflicting with the provisions of this Order shall be suspended. The Order also stipulated that the Judicial Council shall take the place of the Council of Justice previously established by virtue of the Law governing the Ministry of Justice No.101 of 1977, and thus the judge and the member of the public prosecutor's office shall exercise their functions independently from the executive authority without any influence from any authority and without fear of being transferred, of their promotion being delayed, being punished, removed from office, or unjustly imprisoned. The order specified the following competences for the Judicial Council:

1. To provide comprehensive administrative supervision over all judges public prosecutors affairs, excluding, however, the members of the Court of Cassation, where administrative oversight is carried out by the President of the Court given the specific nature of this Court and considering it the highest judicial body in Iraq before the establishment of the Supreme Federal Court.
2. To nominate capable persons as required to fill judicial vacancies or public prosecutor vacancies, and to recommend their appointment.

3. To appoint judges and prosecutors to hold specific judicial and prosecutorial posts as provided for in the Law of Judicial Organization and the Law of Public Prosecution.
4. To promote, upgrade, delegate and transfer judges and prosecutors.
5. To investigate allegations of violations involving judges and members of the public prosecution, and, when appropriate, to take appropriate disciplinary actions against them, including but not limited to, their removal from office.

### **VIII: The Constitution of the Republic of Iraq of 2005**

The Constitution of the Republic of Iraq added many legal texts protecting the independence of the judiciary. Paragraph 1 of Article 19 specified that “The judiciary is independent and no power is above the judiciary except the Law”. Article 87 stipulated that “The judicial power is independent. The courts, in their various types and levels, shall assume this power and issue decisions in accordance with the law”. Article 89 specifies that “The federal judicial power is comprised of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated in accordance with the law”. Then Article 88 added that “Judges are independent, and there is no authority over them except that of the law. No power shall have the right to interfere in the judiciary and the affairs of justice”. Article 97 consecrated the independence of the judiciary when it asserted that “Judges may not be removed except in cases specified by law. Such law will determine the particular provisions related to them and shall regulate their disciplinary measures.” In fact, these texts broadened the scope of the manifestations of the independence of the Iraqi judiciary by preventing the legislative authority (the parliament) and the executive authority from interfering in the judiciary or administration of justice in any way, and due to this important evolution, the judicial authority in Iraq became capable of standing on an equal footing with the legislative and executive authorities with respect to the constitution.

In practice, the Iraqi judiciary is completely independent from both the administrative and financial aspects, and it has the decision-making competence. Among the most important manifestations of its independence is the re-establishment of the Supreme Judicial Council, which manages the administration of justice and the affairs of the judges in terms of appointment, transfer and removal from office, without any intervention from other authorities. This reflects the Iraqi judges’ ambition since the establishment of the modern Iraqi State, to achieve the independence of the judiciary in the constitution and in reality. It is worth mentioning in this respect that the President of the Supreme Judicial Council Professor Medhat al-Mahmoud played a central role in this development, in addition to the efforts deployed by his colleagues from among competent judges who contributed over time through their researches, and articles in this field. This truly historical development makes the Supreme Judicial Council bear a greater responsibility. The Council shall continue to exert efforts for improving the performance of judges and their associates and for providing them with the necessary means for

having access to modern legal sciences and for retaining research traditions well-established among the judges<sup>15</sup>.

## **The judge's ethics**

### **1- Righteousness**

Righteousness is moderation, and moderation is a kind of Justice. The letter sent by Umar Ibn Al-Khattab to Abu Musa Al-Ash'ari when appointing a judge in Al-Kufah specified the following: *“Consider all the people equal before you in your court and in your attention, so that the noble will not expect you to be partial and the humble will not despair of justice from you”* The expression *“Consider all the people equal before you ”* means in this respect the equality among people, since equality is one of the requirements of justice, and the equality between the litigants before the court is also one of the duties of justice so that the litigant is re-assured as to the impartiality of the judge.

### **2- Independence**

The independence of the judge from all powerful and weak authorities and individuals is inevitable. The independence of the judge from the executive authority is essential for establishing the rule of law in the State. However, the law alone does not provide independence, rather, said independence is achieved through the integrity of judges when fulfilling their mission. As for the immunity of the judge, it is not acquired only by virtue of a decision, just like the independence of the judge is not achieved by a law alone, since the immunity of the judge and his independence are derived from the judge himself. Therefore, it is necessary that the judge be mentally and morally and spiritually prepared to take over his mission and carry it forward without wavering and relentlessly. The judge, within his field of work, shall apply the law set forth by the legislative power in the light of political, economic and social philosophy of the State. By fulfilling his mission the Judge executes the will of the people and renders judgments in its name, and therefore the law should provide him with adequate protection so that he may protect the people's will<sup>16</sup>.

### **3- Tolerance**

The judge's court is not a place of amusement or diversion; it is a court for litigation, enmity and hatred. If the judge is not tolerant, the court would fall into chaos. The judge who is not tolerant may not be fulfilling the mission of a judge, since in this case his judgment would not be fair among people since he did not hear their defenses or arguments. Consequently, each judge must be tolerant and provide the opportunity for each member of the litigants to submit his defense before him as long as said defense is related to the action being subject to deliberation. This is the meaning of tolerance.

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<sup>15</sup> Professor Fares Hamed Abdul Karim Al Ajrash, “the independence of the judicial authority and the balance of authorities in the State”. <http://iraqja.org/researches/faris%20esteqlal%20wa%20tawazn.htm>

<sup>16</sup> Judge Medhat Al Mahmoud, reference No. 8, p. 39

#### **4- Serenity**

The judge's serenity is very important, since the judiciary is a place where principles, ideas and opinions are mixed up. The judgment rendered under the influence of emotional reactions is not a safe judgment, moreover, if the judge reacts emotionally his judgment would be vitiated by a flaw, and if he shows extremism his judgment would not be moderate, and therefore, the judge must never be an extremist and should always be moderate, serene, with a peaceful mind so that he may clearly distinguish right from wrong.

#### **5- Chastity of the tongue**

The judge is a role model, and he is considered by the public as a generous king and therefore, he shall never show any demerit. Moreover, it is not conceivable that a judge addresses a litigant, an accused or a witness with degrading expressions or insults, since the judge must abide by the discipline of the judiciary, and he should treat all persons with respect and address them politely.

#### **6- Patience**

Pleadings, hearings and investigations make take a lot of time and the judge may be working for long hours without finding in what he heard or hears anything convincing, and he may become harsh on the litigant, the accused or the witness. The truth is that this is wrong, since the judge should always bear in mind that he only seeks justice and the truth, and he who seeks the truth must be patient in order to reach said truth and must endure hardship with patience in the search for such truth.

### **Code of ethics and conduct of the judge according to judicial traditions<sup>17</sup>**

#### **I. The Judge must not receive any gift**

It is prohibited for a judge to receive a gift from a person he does not know, or even from one of his acquaintances in a suspicious occasion. The person giving the gift does not usually disclose his intention behind his act, he may resourcefully beg the judge for accepting said gift, he inquires about the judge's need for a specific good or service, and seizes the appropriate time for making such gift in a way that pushes the judge succumb to this temptation.

#### **II. The judge must be precautious when accepting invitations**

The judge must be precautious when accepting any invitation addressed to him, whether public or private, and he must not automatically accept said invitations, but must show prudence and vigilance in this respect. Should the judge accept an invitation, he must try to thwart any influence behind this invitation for obtaining a special favor from him.

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<sup>17</sup> Counselor Farouq Seif Al Nase, reference No.1

### **III. The judge must not request favors**

Judges are not civil servants among whom the exchange of favors and benefits are common. If the judge asks for a favor, what would be the favor requested from him in return? The return of the favor will surely be related to the cases examined by the judge and this is unimaginable and unacceptable and the exchange of favors is impossible for the judge. Therefore, the judge must refrain from requesting any favor, even if in dire need for it, since judges are just like ascetics who renounced the vanities of this world and preferred seeking the eternal reward in the afterlife.

### **IV. The judge must not put himself in a suspicious situation**

This is clearly explained by the Hadeeth of the Holy Prophet (peace be upon him) indicating that the person who puts himself in a situation subject of accusation, would be accused and will have no requital. The origins of suspicions and accusations may not be exhaustively enumerated, and the judge's friends must have the same virtues and principles as him. The judge must also refrain from making friends from among court officers - lawyers or forensic doctors, police or court staff, and he must also refrain from going out with them to public locations where the litigants may see them together. The judge must not to put himself in a suspicious situation or in any situation making him subject of any accusation.

### **V. The judge may not use his capacity for receiving a special treatment**

This happens a lot when a judge who wants to carry out a formality or purchase a commodity identifies himself in such capacity. Another example is when we hear a judge in a crowded public place saying: "pave the way for the President of the Court". The judge shall always keep his judicial capacity separate from his personal activity, since judges must honor this capacity, and not publicly display it, exploit it, or disclose it for obtaining a privilege or an ephemeral commodity.

### **VI. The judge shall not be a party to any litigation**

If the judge becomes a party to any litigation he shall be subject to the judgment of a fellow judge. A free judge refuses to be judged by a fellow judge. The judge embodies the law, and therefore, it is not conceivable for a judge to misbehave and become subject of a complaint and grievance and it is further inconceivable that a judge shows any misconduct to the extent of being a party to any litigation and becoming a litigant. However, if the judge is not able to avoid said litigation, he shall abide by the law and avoid embarrassing the fellow judge examining the litigation to which he is a party. Moreover, the judge's ruling must not be influenced by said litigation.

### **VII. The judge shall abide by the code of ethics and conduct in public places**

It is prohibited for a judge to sit in cafes by the side of the road, since people passing by may be

watching him attentively. The Judge must also abide the code of conduct when entering a public place, and he must refrain from mingling and exploiting his capacity, since the ideals and principles of the judge are not a luxury but a necessity, and if he does not adhere to said ideals and principles he must quit his office. Accordingly, nothing justifies or alleviates the violation by the judge of the judicial traditions or of the requirements of his appearance and intellect.

### **VIII. The judge shall behave in a righteous manner**

It is not conceivable that a practiced judge commits violations, since righteousness is one of the characteristics and virtues of the judge in his work and behavior. The judge must always keep in mind that he is a role model for the society in which he lives, since the public is always watching him and looking up to him as an example of good manners, knowledge and virtue. If the judge does not take the right path, he shall no longer enjoy the prestige of the judiciary and judges, and thus he would greatly harm this dignified profession.

### **IX. The Judge's wife and children**

The judge's wife is his partner and his children are a part of him and on this basis they shall abide by the same code of conduct and ethics of the judge. The judge and his wife must not be different and have separate beliefs and opinions, this means that the men of the judiciary shall have self-esteem, shall preserve their dignity and make the right choice when it comes to their life partners.

### **Conclusion**

The training session on "Judicial Ethics and Integrity and the Judicial Independence" held on January 09-12, 2011 in Erbil, will tackle all of the issues raised above, either in theory or in practice. The training strategy will be based on the division of the training course into three sections. The first section addresses the subject of "Judicial Ethics and Integrity and the Judicial Independence" in theory, i.e. through lectures on the subject of administrative and financial independence of the judiciary, the constitutional independence of the judiciary and the independence and impartiality of the judge, the public prosecutor's independence, and the judicial ethics and integrity. The second section is practical and includes practical training modules aiming at improving the level of information of the participants in the field of judicial independence in practice in terms of the subject of the institutional independence of the judiciary, integrity, equality and impartiality in the judicial work, the independence of the individual judge, and the independence of the judge and the public prosecutor (the Egyptian and Iraqi experience). To this end, the participants will be divided into two working groups for discussing and analyzing case studies. As for the third and final section, it includes the training of trainers aiming at developing the professional skills of the trainees and at improving their



capacity and efficiency in the subject of the training session and at benefiting from them by forming them to be trainers on the same subject for their colleagues working in judicial field.

As for the assessment of trainees, the closing session will be allocated to the post-measurement of information aiming at measuring the extent to which the trainees benefited from the information provided during this training session.