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Importance of Judicial Independence

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Abstract: This research focuses on the idea of state law in an attempt to curb the abuse of rulers in a legal framework that yearn to save human rights and maintenance his fundamental freedoms. And it shows importance of an independent authority that seeking to do right and deter falsehood with maintenance of public freedoms from erosion and encroachment that issues by other authorities. Moreover, this article draws a realistic theoretical that gives the independence and freedom to the judiciary, allowing it to exercise its important role in building the state of law and the consolidation of the principles of justice. Also, it clarify the scenario that gives to the judiciary the ability and freedom of movement on the performance and development within its circle, as well as how it can not affect by the political positions of executive power or without being bound by the two authorities to monitor kidney or interference in its work or decisions. This paper demonstrates the capacity of the judiciary in proper legal applications of the laws and the resolution of issues and the application of justice and the law impartially. And to enable the citizen to sue any center of legislature, or executive, and the judiciary in the case of a sense of violating the constitution or work in contravention of legal texts, which paid for the development and innovation in the research process and the conclusion.

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الكلمات المفتاحية :

الخلاصة: يركز هذا البحث على فكرة دولة القانون في محاولة للحد من إساءة الحكام للإطار القانوني الذي يتوقون لحفظ حقوق الإنسان وصيانة الحريات الأساسية له. أيضا يظهر هذا المقال أهمية سلطة مستقلة تسعى لإحقاق الحق وردع الباطل مع الحفاظ على الحريات العامة من التآكل والتعدي الصادر من السلطات الأخرى. وعلاوة على ذلك، يلفت هذا المقال أو البحث النظرية الواقعية التي تعطي استقلالية وحرية القضاء، والسماح لها بممارسة دورها الهام في بناء دولة القانون وترسيخ مبادئ العدالة. أيضا، فإنه يوضح السيناريو الذي يعطي للسلطة القضائية القدرة وحرية الحركة على الأداء والتنمية في دائرتها، وكذلك حتى لا يمكن أن تتأثر من المواقف السياسية للسلطة التنفيذية أو دون أن تنقيد بالسلطين للمراقبة الكلية أو التدخل في عملها أو القرارات. يبرهن هذا البحث قدرة القضاء في التطبيقات القانونية السليمة للقوانين وحسم القضايا وتطبيق العدالة والقانون دون تحيز. وتمكين المواطن من مقاضاة أي مركز في السلطة التشريعية، أو السلطة التنفيذية، والسلطة القضائية في حالة ما إذا كان هناك شعور بخرق الدستور أو العمل بما يخالف النصوص القانونية التي دفعت للتطوير والابتكار في عملية البحث والاستنتاج.

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Introduction

The theme of independence of the judiciary is function beyond the limits of the judges themselves. An independent judiciary essentially relevant to the issue of justice and balance of freedom in society, and in the civilized world. The values of justice and freedom influence positively and negatively by the independence of the judiciary in each country. When we are defending the independence of the judiciary and cling to it, we are defending ourselves, and when judges feel concern by the decrease of their independence, this concern will impact people in their cases automatically. The judiciary is of particular importance as the most important guarantee for the respect for human rights and the protection of the interests of individuals and groups. Therefore I will discuss under this heading, the concept of independence and its historical origin in the first section and its international and constitutional basis and

justification. I will focus on Judges' freedom of expression and the conscientiousness. Finally will be the independence of the judiciary and its impact on constitutional control.

The concept of judicial independence

The independence of the judiciary means the inadmissibility of intervention and influence by others parties on its actions, decisions and judgments. Intervention and influence are unacceptable, whether physically or morally, whether it has been directly or indirectly, or by any means. The judiciary is the body that specializes in settling disputes under the law, whether arising between individuals or with the government. The legal doctrine known as the independence of the judiciary generally refers to the non-interference of other authorities in the affairs of judges. In the opinion of jurisprudence doctrine that judicial independence has two concepts the first one is a narrow concept associated with personality of the judge who sits on the platform, invoking to his conscience and sentiments in achieving justice between the disputants. No authority over them except only to the dictates of their conscience. And enforcement of law in the sense of the inadmissibility of interference from any party, no matter how high its will. The broad concept of judicial independence represents inability of judges to isolate without disciplinary way and the independence of the judiciary budget, independent and non-interference by the legislative and executive in the acts of judiciary.

The Historic Independence of the Judiciary

The original historic independence of the judiciary associated with the principle of separation of powers, which coupled its name with name of the French jurist is Montesquieu. However, it is fair to mention that the leading role that played by the jurist in formulating question and implementing the principle of separation of powers does not eliminate the previous attempts in the search for a way to prevent concentration of power in one party or one person. This is the question Plato raised, and compared the state such as an object neighborhood adopts in his life on the important parts are - in his visualize - the heart and desire, mind, and if these parts cooperate in the conservation of his life, the heart and the

desire should be subject to mind, and this is like a law city beside political city. However, Friedman Barry emphasizes that "independence represents the aspiration to the rule of law the notion that adjudication should remain-almost uniquely-separate from politics."¹. Aristotle has gone to the part of the political jurisprudence to rooting the idea for his favor, so he select aspects of acts of the State and he believes that it is good to not put the acts of the State in one hand, but spread over several bodies cooperate with each other and censors on each other. From the other side Dodek and Sossin believe that the idea of judicial independence came from the act of settlement in the United Kingdom in 1701 which adopted in the Commonwealth where judges were working under the force of parliament that has power to isolate any judges who does not like this kind of style in attempting to control judiciary²

Justifications of Judicial Independence

The legal doctrine justifies judicial independence in several ways, which are traditional and some are linked to political realities, economic, social. The justification of traditional provides that the independence of the judiciary presence or absence is related to the idea of justice. Thus, the existing of judicial independence makes justice to take its course proper to protect the rights of individuals and their freedoms. The absence of judicial independence makes justice shaken and disturbed, and sometimes non-existent which will reflect negatively on individuals as it weakens their confidence in the judicial system. Therefore people will search for other means to obtaining their rights and in most cases, these means are illegal. Thus, the independence of the judiciary is a means to achieve justice.

The political justification

The political justification for the independence of the judiciary dictates on special circumstances that surround some countries, particularly those which met for decades under

¹ Judicial integrity / edited by András Sajó ; editorial support by Lorri Rutt Bentch. Law School, Valparaiso, IN. page 99.

² . Adam Dodok and Lorne Sossin. Judicial independence in context. Law School, Valparaiso, IN. page 3

the control of totalitarian regimes and military. When these regimes collapsed and turning its countries into the rule of democracy, the judges are facing a greater burden, judiciaries should be transformed and radically from being a just an extension of the executive authority or elite or military control into fair independent institutions. Therefore, it should be effective to promote the views of rights of citizens. Judge will find himself in the central of the conflict political and economic force in order to define the shape of society. In addition to what faces them from a dangerous criminal problems. It is often associated with periods of transition from the issues of administrative and financial corruption, whether it moved from the old systems, or grew up with the changes of circumstances.

The economic justification

The justification of economic for independence of judiciary is that the independent judiciary plays an active role in democratic societies that based on market mechanisms by creating a balance of power within the government. It protects the rights of individuals and maintains their security and their property through its adjudication on economic disputes, which is transparent, thus encouraging competition and economic development. Finally, the independence of the judiciary is justified as it contributes to social and active role in establishing the foundations of social peace in the country, including that provides the broad protection of the rights and freedoms, which in turn drives people to resort to the judiciary. But if it the opposite happened, people feel that their rights have been robbed and dignity had been flouted without saying the judiciary its word to dissolve. The force will replace with it, and the rule of law will be disruption, individuals will be forcing to obtain the rights by force and thus break down the rule of law as the basis for the regulation of relations in society and prevailing logic of force, weapons and violence.

Constitutional Basis for the Independence of the Judiciary

All the state constitutions ensure independence of the judiciary and although there are different genres in the expression of this fact aware of the need to find an independent

judicial body shall have the final say in resolving disputes that arise between individuals or with the authorities of the State. The Constitution of the United States that issued in 1787 stipulates that "The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior, and shall, at stated Times, receive for their Services a Compensation which shall not be diminished during their Continuance in Office."¹In this text, we find that the framers of the U.S. Constitution were careful to provide adequate safeguards for the independence of the judiciary by reference to the judges to hold office for life as long as they have a good behavior required for the legal profession. In addition, the UAS constitution provides on the salaries of judges are non-adjustable reduction by any authority whatever. The federal government of the United States, for example, gives the members of the Supreme Court and the Federal appellate courts the right to remain in office for life. And other federal judges the right to remain in office for long periods as 15 years for the judges of the competent courts of bankruptcy issues. The American Bar Association defended the appointment of judges who were selected on the basis of merit are still in controversy with the parliaments of many states of America, which favors the selection of judges is based on the basis elections by involving people. The American Bar Association and its branches in all States in general are considering that election of judges in this way should be based on the political skill of the judge not on judicial.

Al Gore v. George in Presidential Election

In the case of a lawsuit, Al Gore v. George Bush for objection to the results of the election, the judges who had been appointed by George HW Bush voted in favor of George W. Bush, which led to select him as president, which led to the revocation decision contrary that taken by the Florida Supreme Court and most of its members appointed by the rulers of the state Democrats, people deem it strengthened their claim to independence of the

¹ See Article 3/1 of The USA constitution 1787.

judiciary. The Supreme Court ruled that the Florida Supreme Court's method for recounting ballots was a violation of the Equal Protection Clause of the Fourteenth Amendment. Thus, the experience with the 2000 election litigation, particularly the United States Supreme Court's decision in *Bush v. Gore*, illustrate aspects of judicial independence that may be overlooked if too much focus is placed on linking the concept to the simple virtue of pressure-free, good-faith judging.

Moreover, *Bush v. Gore* is a useful starting point for thinking about judicial independence in terms of regime politics rather than the neutral application of law¹. Few scholars have been willing to defend the decision as an exemplar of impartial decision-making or as a stoic defense of the rule of law in the face of enormous political pressure, although some do make this argument. Election night 2000 was like a miracle that went on for weeks. Most of American people went to bed at that night thinking that Al Gore had won, only to discover in the morning that George W. Bush had been declared the president of the United States. Several states were up for a shock, but in the end this crisis came down to one which is Florida, where Bush's younger brother, Jeb, was governor. Florida electors were unable to commit themselves to either Bush or Gore owing to the closeness of the vote.

Comparative Constitutions

In Iraq, Iraqi constitutions successive in its commitment to the independence of the judiciary starting from the Basic Law of 1925 and ending to the Constitution of the Republic of Iraq in 2005. Basic Law that issued in 1925 addressed the independence of the judiciary in Part V under the title of the judiciary. stipulates that the "rulers appoints by the will of

¹ GILLMAN, HOWARD. "Judicial Independence Through the Lens of *Bush v. Gore*: Four Lessons fro Political Science" [Vol. 64: 249 (2003)].

ownership do not isolate except in the cases that stated in ad hoc law."¹ Also it provides that "the courts shall be free from interference in its affairs."²

Moreover, the Constitution of the Republic of Iraq in 2005 has dealt with the independence of the judiciary as a right of the citizen in the first branch of Covenant on Civil and Political Rights of Chapter I of Part II relating to the rights and freedoms provides that "the judiciary is independent, with no authority over it than the law."³ It means that an independent judiciary is the right of the citizen has been decided under the Constitution. Therefore, an individual could have been protest if his right is subject to the diminish or violation of any party.

The Basis of International

The international community is aware of the need for an independent and impartial judicial body and on a high degree of efficiency. On the global level the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 provides that "everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."⁴ Moreover, in the International Covenant on civil and Political Rights provides that "all persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."⁵ On the regional level, it has signed several

¹ See article 68 USA con.

²See article 71.

³ See Article 19 / I.

⁴ See article 10 of the Universal Declaration of Human Rights.

⁵ See article 14/1.

agreements and a lot of ads issued that emphasize the need for the independence of the judiciary and respect it.

The Methods of Government intervention in the independence of the judiciary

Government violations to the independence of judiciary are many and frequent are motives to the government to look the public interests in a different look to the judiciary and the second is located in third world countries, which describe its optical systems is inclusiveness or dominance on the executive branch.

First: to influence the judges themselves

Second: interference in the judicial work

Third: The effect on the litigants

First: Influence the judges themselves

The judge is the center of the judicial process and its justice, therefore, judges are often subjected to pressure and influence by the government with motivations that are not in the public interest. Marc and Kunz asserts that "an independent justice system must not be manipulated by actors with an interest in the output of a given process."¹ However, the influence on the judges can be either up to threatened to transport or assault on them or isolation or referral to the disciplinary council, or sometimes dismissal them from judicial work .

Second: - interfering in judicial work

The prejudice of the government to the independence of the judiciary doesn't stop with influence the judiciary, but also passes to impact negatively on judicial work. This is so-called judicial of the political where the courts are an instrument to implement the policy of the ruling party and the lack of pluralism and monopoly power, and thus judicial will lose the status of neutrality. Therefore, Adam and Sossin say that "we should design a judicial system

¹ Buhlmann, Marc and Kunz, Ruth "Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems." West European Politics. Mar2011, page 322, Vol. 34 Issue 2, p317-345. 29p. Christopher Center.<<http://web.Ebscohost.com/ehost/pdfviewer/pdfviewer?vid=3&hid=13&sid=88dcb815-2842-4365-afa2-5c6df8474cc9%40sessionmgr12>>

in which judges have a high degree of autonomy."¹ The idea of the political judicial was its extension took in some systems which seized power in some countries during the periods of time as was the case in Germany during the Nazi rule and the former Soviet Union during the communist rule. In judicial systems of contemporary Arab countries is that the judicial of political follows the executive branch. Special courts are forming especially in the Arab regimes that suffer from a real crisis in the democratic system of government, which has been the power by the leaders of military coups and often this method uses to filter people who control on a system of government that was overthrown. Iraq's political history is full with forms of interference in the judiciary particularly after the coup in 1958. Moreover, the prejudice of the government to the independence of the judiciary is not confined to influence the judiciary alone, but rather than to adversely affecting the judicial work either by interfering with the issues, whether criminal or civil or administrative. Also intervention can be through abstinence of the implementation of judicial rulings by executive branch.

Sometime intervention takes the constitutional form which is organized and that the provision in the Constitution the right of the executive branch in amnesty for perpetrators of crimes with the keenness of these constitutions on the independence of the judiciary and thus there is a clear contradiction adversely affect to return on society the murderers and thieves into it.

Third: - The Impact on Opponent

The effect of the government may not happen on the independence of the judiciary to judges or judicial action, but includes parties to the proceedings to push the litigants to refrain from raising their claims to the courts or bring it down or accept a settlement which is a clear danger to the course of justice.

Judges' freedom of expression and the conscientiousness

¹ Adam Dodok and Lorne Sossin. Judicial independence in context. Page 412. Law School, Valparaiso, IN.

Some crisis may occur between the judiciary and the government because of what judges issue of the provisions, or what they declare of views in the media, which raises the ire of the government and pushes it to the commission of behaviors that detract from the freedom of judges in the diligence, expression, and thus adversely affect the independence of the judiciary. The point that emerges in this regard is not centered on the legitimacy of the government to confiscate or restrict the right of judges in the endeavor and expression because they are guaranteed to them as members, and as representing the independent authority from other side, but it seems a theory to ensure these rights and the violation of the government to it. Therefore, it is worth legal remedy to rein the government's exposure to the judges because of their judgments and opinions. To view this dilemma we will show in detail the meaning of freedom of expression and the diligence and its constitutional basis in the first section and then adopt the government intellectual phenomenon of terrorism to the judges in the second section.

The concept of judge's freedom in the conscientiousness and expression and its constitutional basis

Freedom of thought goes in its essence to the right of the individual to adopt the ideas and opinions with conviction and declare it publicly. However, there is no interest for individual's conversion of these ideas without the possibility to express them in words or writing or any other form. Freedom of thought and freedom of expression are two faces of one coin that can not separate them from the Individual, also a judge cannot dispense with them because they are two ways for self-expression, in statement and the announcement of what is going on in judge's immortalized, therefore both are considered to be personal rights inherent in the human personality. Also they are the real indicator of the status of the State's legal. Status of the State's legal will be extracted from government, if judges are not able to think and declare what they are thinking in assessing of prevailing political views in the state, and criticize government policy without fear or direction to charge from it. Because the role

of the judiciary in the United State has served as a model for many other countries and region, it is appropriate for this collection to address the centrality of judicial independence in the former in the hope that it may clarify the concept in a free and democratic universe. Therefore, it says that free speech is the true essence of democracy. International conventions and national constitutions ensured on judge's freedom in the conscientiousness and expression as provides in the Universal Declaration of Human Right that "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."¹

Ensure the rights and personal freedoms of the judges

Arab constitutions ensured judge's freedom as it provides in the Egyptian Constitution of 1971, that "Every individual has the right to express his opinion and to disseminate it verbally, in writing, illustration or by other means within the limits of the law. Self-criticism and constructive criticism is a guarantee for the safety of the national structure."² It is clear from advanced text that there is keenness to ensure freedom of thought and expression for all individuals without exception, including judges. However, the basic principles of judicial independence that adopted by the United Nations reported its text to ensure the right of judges in the endeavor and expression, provides that "In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary."³ Thus, if the freedom of diligence and expression are guaranteed under the Universal

¹ See article 19. Universal declaration of human rights

² See article 47. Egyptian Constitution of 1971

³ See article 8. Universal Declaration of Human Rights

Declaration of Human Rights and national constitutions, this imposes an obligation on the government to not be subjected to them by confiscating their freedom of the conscientiousness and of expression, or to restrict it.

Conflict of authorities

Some scholars say that the executive should have power to restrict freedom of thought and opinion in order to maintain public order, because freedom is considered an originally which may the exception on that in attempt to establish the order in society and protect it from the breaches and, indeed, cannot deny what the government has the power to restrict freedoms in the limits of the law. But it may restrict it, if there is a conflict between the freedoms of opinion and thought with public order or evacuated decency and morality or has raised sedition in the community. Moreover, "judges did not enjoy large amount of discretion, another dimension of judicial power. As in civil law countries generally, judges were not granted an explicit right to interpret law and few decision were reported for other judges to learn about."¹ Judges issue their rulings in light of their exercise of power within the judicial system in order to establish justice. It doesn't matter if the judgment doesn't agree with the whims of the executive branch. In the contrary, it is an indication on a legal state if it is found bold judicial able to make fairness for the individual in facing the government, and this applies to the issues that relate to the higher interests of the country such as elections and parliamentary problems.

Restrictions of freedom

Freedom of judges doesn't limit, only to the extent that stated in the principles of judicial independence adopted by the United Nations in the above with regard to the requirement that the conduct of judges during their exercising of these rights should be a manner befitting them and maintain on respect for their jobs as well as the integrity and independence of

¹ Peter H. Russell and David M. O'brien. Judicial independence in the age of democracy. Page 231. 2012

judges. The court are regularly respected and enforced, probably in large part because of the independence and impartiality of the judiciary. The commitment of the judges in this condition estimates by judiciary itself, not the government. Therefore, if they leave it to the government it will use it against judges if their judgments does not agree with what government want. The judicial work has an especial nature regarding the need for commitment of judges to exact systematic thinking, and thus the imperative of ensuring freedom of thought and the strengthening of Queen diligence. Moreover, the work of judicial could have been isolated from achieving justice and do right if it is locked into a dictatorship and authoritarianism that stifles thought and thus lost the independence of the judiciary and its sanctity. In front this situation we cannot talk about the state of law at all.

Independence of the judiciary and its impact on constitutional control

If we're looking for control over the constitutionality of laws we must recognize the fact that the constitutional control do not be productive unless it supports the principle of independence of the judiciary, because there is a close relationship between each other. Moreover, if there is not an independent judiciary imposing judicial oversight on the constitutionality of laws, the minimum tool of legislative could be out on what Judiciary draws it. In this case we are in front of a violation of the rule of law and the principle of the legislation hierarchy. That can be reflect negatively on the rights and freedoms of citizens. Conventional wisdom asserts that strong and independent judicial systems provide positive benefits to democracy. For example: what happened in the Ukrainian elections in 2004 when there was a furore over the election results, where the Ukrainian Supreme Court's intervention was crucial when it canceled election and ordered a new election, which led ultimately to win of the pro-Russian candidate, Viktor Yanukovich. Separately of the judiciary in its decision was the best way to solve the conflict peaceful and democratic road.¹

¹ Gibler, Douglas M. and Randazzo, Kirk A. "Testing the Effects of Independent Judiciaries on the Likelihood of Democratic Backsliding." American Journal of Political Science. Page 696. Jul2011, Vol. 55 Issue 3, p696-709. 14p. Christopher Center, Valparaiso, IN. July 25 2013.

Also, if the judiciary was not independent, it will not be able to exercise its power to control whether the actions of the executive or legislative branch , effectively and therefore it will not be able to protect the path of individual rights and freedoms in society. These rights and freedoms will become worthless without an independent of judiciary that gives the freedoms and rights its specific meanings in the light of legal provisions and purposes of the framers. However, texts alone are not enough to guard the rights and freedoms of citizens, these texts is falling apart in front the forces of oppression and terrorism that can affect when freedoms and rights conflict with its interests. Thus, if human misses the independent judiciary, injustice and tyranny will be pioneer.

Guarantee the independence of the judiciary in comparative constitutions

Since the Constitution is the document that containing the set of rules or principles or high foundations that the society is based on it, so the principle of independence of the judiciary is part of the supreme values of society. The principle of independence of the judiciary is based on the basis that in order to achieve equality and ensure justice in the court decision requires the decision-making process through the application of the law.

Marc and Kunz say that "We argue that the judicial system cannot obtain legitimacy through competition. Thus, it is the properties of the judicial system itself that must be perceived as generally trustworthy."¹ This means that the judge rules on matters that submitted to him of the facts according to his understanding of the facts and his understanding of the law away from any influence or direct pressure and indirect from any quarter and for any purpose. However, the intellectuals legal distinguishes between the independence of the judiciary and the independence of the judge. Independence of the judiciary means liberation from the oppression of the executive or legislature, and the independence of the judge is the liberation

¹ Buhlmann, Marc and Kunz, Ruth "Confidence in the Judiciary: Comparing the Independence and Legitimacy of Judicial Systems." West European Politics. Mar2011, Vol. 34 Issue 2, p317-345. 29p.

from the effects, whatever its origin, which means as well as abstraction the judge and his integrity and not to comply to any effect only justice derived from the texts of law and his conscience. The constitutional protection for judicial independence means the formulation of the principle of independence of the judiciary in the constitutional provisions rise to the level of legal obligation and protect it from abuse and denial. There are number of constitutions having taken earmarking texts of judicial independence and the development of safeguards to ensure the preservation and respect without prejudice it from any other authority or entity. The constitutions that addressed the independence of the judiciary. Constitution of Sudan (1998), by stating that "Judicial competence in the Republic of the Sudan shall vest into an independent authority to be known as the " Judiciary" to assume the judicial power in adjudication of disputes and judgments on the same in accordance with the Constitution and the law."¹

The Turkish Constitution for the year (1961), provides that "judges shall be independence in the discharge of their duties. they shall pass judgment in accordance with the constitution, law, justice and their personal convictions."²

Refrain from pushing the judges in political action

Political science differ from the science of law with diversity of variables and constants. Politics science spins in the orbit of the accelerated variables and events, whatever it signed at the international or domestic. While science of law IS based on the theories and basic principles that are based in its essence on the organization of transactions and to prevent collision between the rights and freedoms of individuals. Therefore politics science puts the ways to reach the power and the provisions of the grip on it. While science of law puts the foundations and theories that achieve the justice, equality, and its tool in the judiciary. However, Gibler and Randazzo argue that "an independent judiciaries are sometimes formed

¹ See article 99. Constitution of Sudan (1998)

² See article 132. Turkish Constitution 1961

in unstable political environments strongly influenced by antidemocratic forces."¹ An independent judiciary alone is the one that can achieves the purpose. that will waste and lost if the law has become a tool in the hands of the rulers. Law itself an independent entity applies to everyone without exception and discrimination. For apple it applies even to its authors. This ban turn up in-laws for the organization of the judiciary. In Iraq, the mentioned ban reported in the Judicial Authority Law, 26 of 1963 that provides " the rulers, the judge and deputy governor shall follow the following duties: - A: Do not belong to political parties or engage in policy."²

Constitutional jurisdiction

The Constitution judge in the United States when he interprets the Constitution to reveal the rule of law, he is not based on political action on variants as I have mentioned of belonging to political parties or permit the views or take over portfolios .. Etc.. But he uses the ideas that dominate on the political constitution and form a part of the idea of the prevailing legal order to ensure the conformity of legislation of the Parliament to his provisions. Judicial independence is not a privilege or prerogative of the individual judge, but entails a responsibility imposed on each judge.³ Thus, the judge's function by this way is difficult and tedious. Often it subjects him to slander politicians. Especially when constitutional provisions are vague. in this situation his function will be serve as close to the legislator. However, the political thought, which is retained by the judge when the interpretation is not biased thinking, which is owned by politicians, but it is thought keen to ensure the rights and freedoms of individuals in light of the vague constitutional rules. And that can tolerate more than one interpretation. Cases of racial discrimination is proof of that.

Fourteenth Amendment of USA Constitution

¹ Gibler, Douglas M. and Randazzo, Kirk A. Page 706.

² See article 52.

³ Mahoney, Paul "The International Judiciary – Independence and Accountability." Law & Practice of International Courts & Tribunals. Page 321. 2008, Vol. 7 Issue 3, p313-349. 37p. Christopher Center, Valparaiso, IN. July 25 2012.<<http://web.Ebscohost.com/ehost/pdfviewer/pdfviewer?vid=3&hid=13&sid=88dcb815-2842-4365-afa2-5c6df8474cc9%40sessionmgr12>>

The text of the Fourteenth Amendment of United States Constitution provides that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.

nor deny to any person within its jurisdiction the equal protection of the laws."¹ According to that there are a number of laws issued which was called (the laws of Jim Crow), which deprived whereby Negroes to attend school or riding a train, or use bathrooms or Golf or entering restaurants that frequented by whites. The constitutional Supreme Court has approved these laws in Plessy v. Ferguson in 1896 because the term "equal protection of laws" means that the laws issued in this regard is constitutional as long as the facilities and equipment available to the rest of the elements equal and available with the rest for the other people in its essence. Since that time the Court proceeded on the same principle when its decision issued in a case Sweet. v Baines in 1950, which approved that the state of Texas must accept Negroes in the Faculty of Law, or open to them another school with the same specifications that given to the College of whites people according to same text. In 1954 in the famous lawsuit filed by Brown v. Board of Higher Education. The Supreme Court abolished the doctrine of the year 1896 and acknowledged that state laws that providing for racial segregation in public schools is a violation of the laws of the Fourteenth Amendment.

Conclusion

To sum up, the independence of the judiciary is a noble goal that seeks to achieve justice in the community. All societies and free people who stood up to tyranny and despotism to change the totalitarian regimes to the legal institutions. So justice has become a function of an independent judiciary that is associated with it. Upon reflection in the system of constitutional and legal status of any country in the civilized world, we found that it agrees on the principle of "judicial independence", and boasts of it. And it became a constitutional

¹ See section I. USA con.

principle and the inherent right of association to the protection of human rights. Even countries that are totalitarian regimes are advocated by it defense from the international condemnation.

In Iraq, the permanent constitution stated on it, as mentioned in the previous constitutions, and we find in the Constitution some signs which show on seeking of the legislature to ensure the independence of the judiciary through the texts that is protected it in various ways. However, the text constitutional on this principle is not enough, but must be translated into practice through the normal legislative texts "laws", and which exists in the principle of independence of the judiciary effects of the intervention of the executive and legislature.

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