
(GOVERNANCE OF THE CONSTITUTIONAL JUDICIARY) IRAQ AS A MODEL

Khitam Hamadi Mahmood

Lecturer, University of Baghdad /College of law.

Email: Khitam.h@colaw.uobaghdad.edu.iq

Abstract

Our research entitled (Governance of the Constitutional Judiciary (Iraq as a model) came to study the concept of governance, to explain its most important standards, and to apply these standards to the constitutional judiciary in Iraq. Which is the extent of citizen satisfaction with the performance of the constitutional judicial institution, and the transparency and quality of the work of this institution In terms of the formulation and causation of judgments, the speed of adjudication of the case, and the extent to which the members of this institution are subject to accountability, efficient and effective judicial oversight will not be achieved without these criteria and without them the citizen's confidence in the judiciary facility is lacking It poses a challenge towards developing and improving judicial work by reforming its flaws in various aspects, especially in light of the transformation in the political and democratic system that Iraq witnessed after the approval of its 2005 constitution, which imposed an independent and impartial judiciary that secures security and reassurance for the people. We have preferred to adopt the descriptive and analytical approach in the study, through which it became clear that there are many defects and gaps in the work of the constitutional judicial institution in Iraq, which weakened the citizen's satisfaction with its performance and violated the integrity and transparency of the judgments issued by it, which requires upgrading the performance of the judiciary, whether within the scope of the rulings issued by it. Or within the scope of citizen satisfaction with its performance and the services it provides.

Keywords: Governance, constitutional judiciary, quality, standards.

Introduction

Constitutional justice aims to strengthen and establish the foundations of a legal State based on the rule of law and prevent derogation from the Constitution as the governing tool of the basic norms to be respected in the State, to defend the constitutionally guaranteed rights and liberties of individuals. In order to ensure efficient and effective constitutional judicial oversight and to enhance the functioning of this institution, There must be principles and standards underlying the judiciary's work and judgements to ensure the quality of these rulings, and achieving citizen satisfaction with the performance of the judicial institution, which ultimately leads to the achievement of the so-called " (Judicial security). These standards, which are the foundations of governance, are: (The standard of citizens' satisfaction with the functioning of the constitutional judiciary, the accountability of the members of the Court, the transparency of the functioning of its work, and the quality of judgments in terms of drafting and reasoning).

First: The problem of the study: The problem of research (on the governance of the constitutional judiciary is centered on the existence of many gaps in the texts governing this institution's work: (Constitution of the Republic of Iraq of 2005, Federal Supreme Court Act No. 30 of 2005 amended, as well as laws relevant to the subject matter of the study). Which contributed to their poor performance. As well as the absence of legal texts that meet standards of integrity, transparency, and accountability. Not to mention the political interventions that have contributed to undermining the independence of this institution. So this study has made a modest contribution to evaluating the functioning of Iraq's constitutional judiciary, by applying the standards of governance and attempting to come up with some solutions in order to achieve better functioning of this institution, thereby ultimately protecting rights and freedoms and providing services consistent with citizens' aspirations and confidence in the fairness and efficiency of this higher institution.

Second: The importance of the study lies in its handling of one of the most important legal subjects in modern times, which is of great importance globally, but it has not attained its right to legal studies, which is (Constitutional Justice Governance). This institution requires continuous development simultaneously with

constitutional, legal, technical, and technological developments in order to reform the functioning of this institution and to ensure that the judiciary is not derailed. Its importance is also evident through the study of governance standards as a tool for evaluating and evaluating the work of Iraq's constitutional judicial institution. As well as identifying deficiencies and shortcomings in the legal texts governing them that have prevented them from improving the functioning of the constitutional judiciary, indicating some judicial applications relevant to the topic of the study. Finally, the academic importance of this study must be noted by using it and using it as a base to other studies that complement what we have come to.

Third: The methodology of the study: In our study of the topic, we relied on the analytical-descriptive curriculum through our research of sources and information to identify the most important standards of governance and their contribution to evaluating the work of the constitutional judiciary and establishing the foundations of transparency and accountability, as well as the analysis of constitutional and legal texts to identify the most significant gaps in those texts. A sample of citizens and law professionals was also questioned to identify the citizen's satisfaction with the performance of the Federal Court with reference to some judicial applications relevant to the topic of the study.

Fourth: The hypothesis of the study: The study's premise is:

- 1- To contribute to transparency in the functioning of Iraq's constitutional judiciary.
- 2- To make sure that the members of the Federal Supreme Court are held accountable.
- 3- To develop a code of conduct governing the conditions to be met by members of the Federal Supreme Court.

Fifth: Objectives of the study: This study aims to identify the applicability of governance standards to the functioning of Iraq's constitutional judiciary. The following sub-objectives derive from this objective :

- 1- Develop a theoretical and intellectual framework that helps clarify the concept of governance in the constitutional judiciary.
- 2- Determine the level of functioning of Iraq's constitutional judiciary.
- 3- Reach results and make recommendations that help to improve the functioning of the constitutional judiciary by strengthening its governance standards and principles.

Sixth: The limits of the study: It is worth mentioning that our research on the governance of Iraq's constitutional judiciary will be confined to the most important criteria underlying the concept of governance consistent with the nature of the judicial institution. (citizen's satisfaction, transparency, quality and accountability) and the application of these standards to the work of the constitutional judiciary in Iraq with a view to achieving results that have a positive impact on the advancement of this supreme institution.

Seventh: The structure of the study: the nature of the research required dividing the study into three sections in order to cover all aspects of the subject. We dedicated the first section to the study of the concept of the governance of the constitutional judiciary, where the study was divided into two requirements. We first dealt with the definition of the governance of the constitutional judiciary, and the second with the emergence of the idea of governance. While the second section examined the criteria for the governance of the constitutional judiciary, and where the study was divided into four requirements: The first dealt with the criterion of citizens' satisfaction with the functioning of the constitutional judiciary, the second with the criterion of transparency and the third with the criterion of the quality of judgments and decisions. We devoted the fourth requirements to examining the standard of accountability and accountability. The third research examined the application of the standards of constitutional justice in Iraq and divided it into four claims: The first dealt with the application of the citizen's satisfaction standard, the second with the application of the transparency standard. The third requirement dealt with the application of the quality standard. The fourth requirement was devoted to the study of the application of the accountability and accounting standard. The study was concluded with a conclusion containing a set of results and recommendations.

First research: The Concept of Constitutional Justice Governance

There is no doubt that the term governance overlaps with many legal, administrative and financial aspects. Legislative governance, economic governance and administrative governance. We are concerned here with

judicial governance, so we will focus on defining it and indicating the basis of its origin in two issues, as follows:

First requirement: Definition of the governance of the constitutional judiciary: The search for a definition of the governance of the constitutional judiciary requires clarification of the meaning of the term in the linguistic and terminological aspects:

Section I: Linguistic Definition of Governance: Governance is a modern term in Arabic expressed and approved by the Arabic Language Complex in Cairo in 2002 translation of the English Word (Governance) (Dictionary of Electronic Meanings, 2020). Its roots extend to the Greek (KUBERNAN) in the 13th century and means: Command of the warship. Then moved to Latin with the word (GUBERARE) at the beginning of the 14th century, and in the same sense, then appeared in French in 1478 with the word (GOUVERNANCE) which meant the art and method of government, then its use was neglected in France and became an old vocabulary, and the use of the said word was resumed again in England under the term (Governance) (Abd al-Ra 'uf, 2013, p. 9) (Govern), which means governing, presiding or adjusting and from which the word (Government) (Al-Farouqi, 1972, p. 107) is also derived. Which means government or power (Al-Wahab, 1963, p. 114), including the word "Governor" in the sense of a governor or governor (Aloh, 2011, p. 215). In the Arabic language, judgment is one of the attributes of God Almighty, and He is the wisest of judges. Accordingly, specialists initially traded the English translation into Arabic (governance) to the Governor, then it was objected to according to this meaning and was later Arabized with the word "governance". A man is said to be wise if he is judged by experience, and a wise man who masters matters (Nubani, 2016, p. 15)

Section II: Terminological Definition of Judicial Governance: The term governance is common modern terminology. However, although it is common, there is no overarching definition to it but its definitions are various according to the vision and angle from which the concept is viewed. Some jurists generally define governance as: Adherence or discipline and control through the establishment of strong rules and regulations with disciplined and firm oversight, rational vision, and conscious perception through the use of legal, ethical, administrative, and cultural references (Salah, 2020, electronic article). And some others defined it to be the discipline in work by establishing well-established norms and standards to be implemented under strategies starting with legislation (Sergeant, 2020, electronic article). Governance was also defined as: (A system whereby the activity of institutions is subject to a set of laws, regulations, and decisions aimed at achieving quality and excellence in performance, by choosing appropriate and effective means to achieve the plans and objectives of the institution and regulating the basic relationships affecting performance (Al-Baghdadi, 2020, p. 34).

As for judicial governance, some jurists have defined it as: "Subjecting the judicial institution to judicial methods and policies to achieve quality, excellence, transparency and justice in judicial work" (Abdelhamid, 2019, p. 12), as well as some who defined it as: "All organizations, procedures, and measures taken to enable the judiciary to perform its task fully" (Qandeel, 2020, electronic article)

Based on the foregoing, we can define the governance of the constitutional judiciary as: a set of legal and technical procedures and means aimed at assessing and evaluating the work of the constitutional judiciary and redressing its shortcomings in order to achieve quality, excellence, efficiency, effectiveness, transparency and judicial security.

Second requirement: The emergence of the idea of governance:

The origin of the idea of governance goes back to ancient thinkers, such as (David Hume) and (Jean-Jacques Russo), who put forward ideas suggesting that stability, freedom and democracy are achieved only if there is individual satisfaction with the ruler, respect for public administration and recourse to rational reason.

The basic principles of institutional governance, including the judiciary, date back several centuries, but some jurists see that the term institutional governance emerged in the early 70s. Investigations into (Watergate) scandals led to the emergence of the Law on the Reduction of Bribery and Corruption in 1977, which contained specific paragraphs on the need to develop, review and maintain internal control systems (Nasba, 2014-2015, p. 7).

In the 1970s and 1980s, some economists addressed the term as an expression of a range of measures to undertake institutional reforms to ensure the success of various economic programs and to create internal coordination aimed at reducing market transaction costs.

At the beginning of the 1990s, the focus had become on the political and institutional dimensions of the concept, in terms of strengthening and operationalizing the participation in society, and everything that makes the State a legitimate representative of its citizens.

After the mid-1990s, the concept of governance was intensified, particularly by international organizations such as the World Bank and United Nations Development Program and other international, regional, and local organizations, in order To give a value judgment on the exercise of political power to run the affairs of society in a developmental and progressive direction. For example, the World Bank has used the term governance to denote governance, which focuses primarily on improving public administration in the context of the change in the nature of the Government's role, as part of the change that occurred in the nature of the role of the government on one hand, and the development of political science and public administration on the other. And then the concept was given similar attention by many Governments, civil society organizations, and researchers, even though their respective perceptions of the concept and the reasons for their interest differ. The process of evolving the concept of governance has thus passed through time stages through which it was formed in view of practice as well as theoretical studies, Specialized international institutions and organizations have also contributed to this. In the last three decades of the 20th century, the idea has become of great importance in most countries of the world to achieve the aspirations of the citizens by providing and sustaining inclusive development. (Sharif, 2020, electronic article).

Section II: Criteria for the governance of the constitutional judiciary

Governance is based on a number of criteria that demonstrate the quality of the institution's work, including transparency, efficiency, effectiveness, integrity, participation, accountability, beneficiary satisfaction and quality. We will limit our study to the most important criteria relevant to the evaluation of the work of the constitutional judiciary:

First requirement: Citizen's satisfaction

Citizen satisfaction is a key element of the analysis of strengths and weaknesses in performance, and a factor in the development and renewal of many services. This factor is an indicator and a benchmark for the success of the organization in providing its services. And satisfaction is a feeling of psychological satisfaction, pleasure, and reassurance that accompanies the achievement of goals, such as satisfaction resulting from the achievement of one's goal in both life and work, as well as satisfaction is a psychological condition felt by the individual according to the degree of satisfaction of his needs, The higher this degree, the more satisfaction he has. (Syed, 2020, electronic article) and the criterion of success of any organization is customer satisfaction (citizens) for the products and services they provide and satisfaction is a prerequisite for quality.

It should be noted that evaluating the work of courts and verifying the integrity of their performance cannot be measured without knowing and surveying their clients' opinions and its reviewers. And here the term satisfaction is not intended as people's satisfaction with the consequences of judicial rulings that cannot be satisfied by all parties to the adversarial process. What is meant is the satisfaction of court dealers with the style and method of performance such as the proximity of appointments and the ease of proceedings, the guarantee of litigants' rights to defend themselves and to submit all their arguments; The integration of the facilities and sections that serve them, the protection of lawyers' rights and the provision of the means to them to play their role, all of which serve to improve the functioning of the judicial institution (Al-Qaisi, No. 1, 2020, p. 225).

Second requirement: transparency

There are various definitions of transparency, some jurists define it as: Every citizen's right to access information and to know about institutional decision-making mechanisms and is a necessary requirement for the development of ethical standards and an institutional work charter for the trust they lead to. In addition to helping to detect corruption, transparency is a prerequisite for the legal State's realization of its paramount importance in achieving justice and equality, which contributes to sustainable development. Transparency is a vital issue affecting the lives of all societies. Whenever the rules followed in decision-making and the management of state affairs are clear and visible to all, this helps all citizens to follow the approved methods adopted in the management of State affairs. (Mukhammar, 2016, p. 279). There are some who define it as: Sharing information, detection, free and comprehensive flow of information and access to information so that it becomes accessible to all and provides clear procedures and organs among stakeholders and officials, including the disclosure of the various rules and instructions adopted in the formulation and implementation of policies and decision-making so as to allow subsequent accountability. Which is an important entry point

for detecting corruption, combating patronage, and strengthening oversight (Fahima, 2015-2016, p. 15). And some consider that transparency in the work of the judiciary means the openness of hearings and the right to access and deliberate information (Guru, 2015, p. 291). Transparency relates to two aspects: (First), the clarity of work within the institution and the clarity of the relationship with citizens benefiting from or helping to finance its services. While (second) the procedures and objectives that must be public are not confidential for any reason (Abu Deh, 2004, p. 7). It should be noted that the transparency of the judiciary's work is based on two main factors:

Section 1: Public hearings: Because judicial hearings should be open to everyone, public hearings lead to greater transparency and clarity in the work of the judicial institution on the one hand, and constitute a kind of popular oversight of the proper conduct of litigation proceedings and the result of instilling confidence in the judiciary and achieving judicial security on the other hand. The right to a public hearing is based on the idea of the public and transparent application of justice, which is an important safeguard of the interests of the individual and of society as a whole as the right to a public hearing, is determined by the ability of the public as well as the parties to the case to be present during the judicial proceedings, is at the core of the role of the trial controller's role. The absence of such a right would exclude public scrutiny of judicial proceedings, and help to ensure the transparency and impartiality of the judiciary. Public surveillance affects judges and prosecutors to conduct their work impartially and professionally and allows public confidence in the administration of justice to be maintained (Code of International Fair Trial Rights, 2013, p. 62). However, the right to a public hearing is not absolute but restricted by considerations of the right to privacy, public security, public order, or morals.

Section II: Right of access to judgments and judicial decisions: This requires the public issuance of judgments and judicial decisions so that they can reach the public. The importance of disseminating judicial decisions is reflected in ensuring access to judicial decisions and decisions that are a source of law. The dissemination of such decisions enhances legal oversight of the judiciary's work and impartiality. (Barghouti, 2004, p. 21), which is one of the most important rights reflecting transparency in judicial work in view of citizens' freedom of access to and access to sources of information.

Third requirement: Quality of judgments and decisions
Some jurists has defined quality as performing the work correctly so that the client can obtain his requirements (Alwadi, 2010, p. 20). And the United States National Institute of Standards as a variety of features and characteristics of the commodity or service that makes it capable of meeting certain needs. And ISO is defined as the set of qualities and characteristics that affect the ability of a commodity or service to meet a particular need. Some jurists define quality in judicial judgment as the set of characteristics and characteristics of the judgment to be able to meet individuals' need for access to justice.

We believe that quality is linked to the purely technical aspects of the judiciary's work:

Section 1: Imposition of judgments: The imposition of judgments is one of the most important conditions for achieving quality in judicial judgment and ensuring a fair trial and the consequent investigation of judicial security, which constitutes the primary advantage of eliminating other public authorities. It must listen to the arguments and demands made before him and formulate his answers to them on the basis of legal principles and provisions and through that he shall be subject to the control of public opinion. (Justice Society, 2006, p. 17):

(i) **The protection of the judge:** The judicial and factual arguments and justifications on which the judge relies confirm the judge's jurisprudence, his search for the truth, his pursuit of justice and his remoteness from all kinds of influence and temptation that can affect the fairness of sentences.

(ii) **Protection of litigants:** The justification leads to persuade the parties to the proceedings of the importance of the solution guaranteed by the judgment, makes them convinced of of the court's fairness, which leads to instilling confidence in the judiciary as an authority and judges as persons, which ultimately achieves judicial security.

Section II: Drafting judgments: The wording of judgements depends on the common sense, the legal and linguistic culture of each judge and the judicial judgement as an expression of the judge's thinking. It should be clear in its sense that it is crucial in its premises. (Al-Qaisi, No. 1, 2020, p. 227 and its dimensions), and quality is achieved in the drafting of constitutional judgements and decisions when it is surrounded by constitutional norms and encompassed to be consistent with principles that restrict power in favour of rights and freedoms and reveal the lawmaker's will to limit the authority of the authorities, thereby contributing to

the flexibility of the political system and its ability to respond to the rule of law (Obeid, 2021, p. 10). Quality is achieved in the drafting of constitutional judgements and decisions, when it is surrounded by constitutional norms and encompassed to be consistent with principles that restrict power in favour of rights and freedoms, and reveal the legislator's will to limit the authority of powers, thereby contributing to the flexibility of the political system and its ability to respond to the rule of law (Obeid, 2021, p. 10).

Section III: Speedy adjudication (fair justice): Fair justice is defined as the courts' completion of cases fairly and expeditiously. And some jurists consider that achieving speedy adjudication of proceedings is through the provision of legislative frameworks for the establishment of so-called electronic courts (E-courts) to reduce the slowness of litigation proceedings that make punishment lose value and influence in the justice system and the society's system (Hanafi, 2020, electronic article). The idea of tele-litigation is one of the Government's e-applications that provides the advantage of transferring electronic litigation documents to the court via e-mail, where documents are examined by the competent official and decided upon to accept or refuse and notify the litigant of the result. And remote litigation has been defined as an authority for a specialized group of magistrates to hear proceedings and initiate judicial proceedings by electronic means developed within integrated judicial systems, software and information files linked to the International Network (Internet), whereby the case is adjudicated and the sentences are executed (Handkerchief, No. 21, 2014, p. 103). However, complete justice does not mean speed in achievement without justice, but rather it means justice first and then achievement. In this regard, we refer to the decision of the United States Supreme Court to affirm the speedy adjudication of the case as a guarantee of the individual's rights of litigation in *United States v. Marion* 1971, in which it declared: The defendant's rights to a speedy and fair trial under the Sixteenth Amendment to the Constitution broadens his correct understanding of the need to expedite the indictment proceedings and not only to ensure a fair trial. The Supreme Court upheld the lower Federal Court's decision in this regard. And based on those substantive and subjective rules applicable in the Court, The State Act has become unconstitutional in the state of North Carolina, which allows the prosecution to initiate criminal proceedings and prepare the indictment at any time deemed appropriate by the investigating judge. Following these successive court jurisprudence, the United States Congress was obliged to pass the Swift Trial Act, which provides for the reduction of delays in federal criminal cases by setting a maximum date of 100 days between the arrest and the trial (Al-Klash, 2015, p. 138).

Fourth requirement: Accountability
Accountability is defined as the obligation of public servants, whether elected or appointed, to report periodically on the results of their work, their interpretation of their decisions and their effectiveness in implementing them, to ensure that their work conforms to democratic values, the provisions of the law, and the rules of good work. Accountability is linked to answerability, which means that those holding public office are subject to legal, administrative, and moral accountability for their decisions and actions. Which is the responsibility of those holding public office before their officials and so until the top of the pyramid in the institution. (Transparency International Researchers' Group, 2006, p. 36). In addition the UNDP defined by as request officials to provide the necessary clarifications to stakeholders on how to use their powers and discharge their duties, take criticism of them and meet the necessary requirements and accept responsibility for failure, inefficiency or deception and fraud (Sayeh, 2012, p. 58) Judicial responsibility is not exercised in a vacuum. Judges must operate within the limits of the laws and rules and in conformity with their oath, which deters them from thinking that they can do whatever they want. A question may be raised about the extent to which this criterion contradicts the principle of judicial independence? The answer to this question is that judges are held accountable through the special manner, in which they exercise their work by subjecting them to a code of conduct through which they commit themselves to disclose their property and file their financial disclosure, and are obliged to spill and publish their decisions and to sit open to the public (Masaleh, 2013, p. 67).

Although one of the most complex functions of the judiciary is that it requires certain specifications and precision, in which it is held and that it relates to the very important topic of justice. However, this does not necessarily mean immunizing those in this position and making them free from accountability, even if judges are selected under complex and heinous conditions that surround scientific and ethical aspects. This does not preclude the fact that the judge is a human being, and that he has to be wrong and distracted and sometimes in a legal offense. (Aziz, No. 2, 2007, p. 147).

Thus, it is clear that there is a close correlation between impartiality and accountability. All international standards of judges' professional conduct are based on the fundamental point that judges must perform their functions independently and impartially. judicial impartiality must be ensured through accountability mechanisms that respect the independence and impartiality of judges and the judiciary (ICJ, 2016, p. 4).

Third research: Applications of Constitutional Justice Governance Standards in Iraq

Applying governance standards to the work of the constitutional judiciary in Iraq would give a clear picture of the advantages and disadvantages of this judiciary. Governance as a comprehensive concept is present in all matters relating to judicial work. It is now integrated into the various scientific literature on public and private affairs. We have therefore decided to address in this study the application of the criteria for the governance of Iraq's constitutional judiciary by dividing it into four claims according to the following:

First requirement: Applications of citizen satisfaction standard

The credibility of judges, although not derived from ballot boxes, stems from citizens' confidence in the judiciary. This requires quality in the judicial facility itself, in terms of the availability of appropriate buildings and the proper handling of judges and staff at the facility (tribunal) with litigants and citizens, protection of lawyers' rights, facilitation of their employment, and other aspects of quality standards in judicial work s confidence in the functioning and impartiality of the constitutional judiciary. There are many factors that have contributed, including the difficulty of individuals attending court hearings because of the obstacles they face in accessing the Tribunal's workplace. In particular the conceptual barriers and tight inspection procedures, not to mention the lack of conviction of legal experts in some decisions of the Federal Supreme Court due to external interventions (The intervention of the legislative and executive branches) in the work of the Constitutional Judiciary. As some of the Court's decisions have raised suspicion of politicization and undermining the independence and impartiality of the Court by the Executive, in particular, its decisions on interpretation (The most numerous parliamentary bloc) and (linking independent bodies to the Council of Ministers) whose research we will address our study to apply the quality standard of judgments and decisions (We refer to it to prevent repetition). In the view of some, citizens' satisfaction and confidence in the constitutional judicial system can be strengthened if the judge has a deep and varied knowledge that goes beyond the technical sphere of the law to areas of concern to society, as well as the judge's personal skills and understanding of the courts that allow the conduct of proceedings and the handling of all persons concerned in a proper and sensitive manner. (United Nations Office on Drugs and Crime, 2007, p. 167). In order to verify citizens' satisfaction with the performance of the Federal Supreme Court, a questionnaire involving a set of paragraphs was conducted with a sample 200 private individuals and legal professionals have shown us the results described in the table below:

		I agree	I disagree	I agree	I disagree
	Paragraphs	F	F	%	%
1	The Federal Supreme Court is known by the speedy completion of cases and the ease of the procedure followed when appeals are filed	88	112	44.0	56.0
2	Complementarity of the departments and facilities of the Federal Supreme Court that provide services to the citizen	107	93	53.5	46.5
3	Independence of the Federal Supreme Court and its remoteness from political interventions	81	119	40.5	59.5
4	Transparency of the Court's performance and easy access to judgements and decisions	96	104	48.0	52.0
5	Quality of judgements of the Federal Supreme	105	95	52.5	47.5

	Court in terms of reasoning and drafting				
--	--	--	--	--	--

F=Frequency, %= percent

- Source: Prepared by the researcher based on the SPSS program.

Second requirement: The application of the transparency standard applications

We have already made it clear that transparency in the work of the courts means that all court proceedings are public and understandable. As well as the foregoing declaration and dissemination of reports on the performance of the courts in terms of the number of cases decided, the receipt and backlog of cases, their types and other relevant information. Based on the foregoing, we will address the application of the standard of transparency to Iraq's constitutional justice through the adoption of legal texts that regulate the functioning of constitutional justice as a supreme institution in accordance with the following:

Section I. Public hearings of the Federal Supreme Court: Article 19 (VII) of the Constitution stipulates that court hearings are public unless the Court decides to make them confidential, as stipulated in article 10 of the Court's Rules of Procedure No. 1 of 2005 (Iraqi Facts No. 3997, 2/5/2005): (The Court shall hear disputes in public unless it decides to be confidential if necessary in the public interest, public order or public morals, and by the decision of its President). It is noted that (public interest, public morals, public order) are flexible and indefinite concepts, which may result in the Court taking advantage of this provision by making its hearings confidential for any reason, thereby impairing the transparency of the Court's work and impeding the right of individuals to be informed of its performance. At a time when individuals are supposed to have the right to attend court hearings and to be informed and disseminated through newspapers and various media, thereby helping to reassure individuals of the justice of the judiciary, In practice, there are many obstacles to the transparency of the work of the Tribunal, including the difficulty of individuals' access to the workplace of the Tribunal, since there are many restrictions on stringent inspection procedures. s access, all of which undermine transparency.

Section II: Publication judgments and decisions: There are many obstacles and challenges to the transparency of the Court's work. There is no provision in the Constitution that refers to the publication of the decisions of the Federal Supreme Court in the Official Gazette. In practice, the Court's decisions are already published on the official website of the Court. Article (16) of the Court's Rules of Procedure No. 1 of 2005, stipulates that: (... the judgment and the decision must include its reasons. If it is not unanimous, the dissenting opinion shall be accompanied by its reasons.) Article 160/2 of the Civil Procedure Act No. 83 of 1969, as amended, stipulates that: (The contrary member shall record his or her opinion and the reasons for his or her violation, shall not utter the violation, shall reserve the term of the case, and shall not give copies thereof.) In our view, limiting the dissenting judge's right to express his or her opinion and codification in the draft judgement without publication is incompatible with the specificity of the judgements and decisions of the Federal Supreme Court, as they have a significant impact on all aspects of life, since the dissenting opinion should be disseminated in pursuit of the principle of transparency in order for public opinion to have access to it. This increases citizens' confidence in the justice of the judiciary and facilitates specialists in monitoring, analyzing, and demonstrating the strengths and weaknesses of decisions, and allows the judge to exercise his right to express his opinion, while noting that the publication of decisions encounters another difficulty, the Right to Information Act. Which guarantees the right of individuals and the press to access the court and to information, including decisions, data, and statistics, is not legislated within the limits of the Act. Convention of the United Nations ", despite Iraq's ratification of the United Nations Convention since 2007 by Law No. (35) 2007 (Iraqi Facts, No. 4047, 08/30/2007), which guarantees the adoption of laws on the right of access to information. We, therefore, call upon the Iraqi legislature to stipulate in the Constitution the right to information directly as a fundamental right that promotes the values of democracy and transparency. The adoption of the Access to Information Act guarantees the right of any citizen and any institution, primarily the press, on the basis of the immunity granted to journalists under the Iraqi Journalists' Rights Act No. 21 of 2011 (Iraqi Facts No. 4206, 08/28/2011).

Third requirement: Application of the quality standard of judgments and decisions

In order to achieve the overall quality of the constitutional judiciary's work, as represented by the Federal Supreme Court, it is necessary to highlight the most important tools for achieving quality in its judgments and decisions, as follows:

Section I: Reasoning of judgments: Article 16 of the Rules of Procedure of the Federal Supreme Court No. 1 of 2005 stipulates that: (If the judgment or decision is pronounced, the draft of the judgment must be filed after the signature of the case. The judgment and the decision must include its reasons.) The judgement of the Federal Supreme Court does not differ from the judgement of the ordinary court in form. Article 159/1 of the Civil Procedure Act No. 83 of 1969, as amended, stipulates: (judgements must include the reasons on which they are based and be established on one of the reasons for the provision set out in the Act). This indicates the invalidity of the judgment, in which the reasons and reasons, for which the Court built its doctrine, were not mentioned.

Despite the above-mentioned texts, we find that some of the judgments of the Federal Court were absent, including its explanatory decision No. 37/Federal/2017 on 04/18/2017, which states: (... interrogation of the Minister may be conducted in accordance with the provisions of the Constitution and the rules of procedure of the Chamber of Deputies, if he does not attend the interrogation session in the Chamber of Deputies after being informed and without providing a legitimate excuse. This shall be considered as an acknowledgment of the questions of interrogation and a waiver of the right of reply.) (The official website of the Federal Supreme Court), affirming the same decision in its judgment in case No. 23/Federal/Media/2017 when it ruled that: (...) The Court also finds that an absentee interrogation may be granted by the House of Representatives after the official has been informed and has not been present without providing a legitimate excuse to the House of Representatives, which is considered to be a matter of approval as attributed to the interrogator (official website of the Federal Supreme Court).

If it is noted in the two decisions that the Court did not mention the reasons for recognizing the right of the House of Representatives to conduct interrogation in absentia, particularly since article (61) of the Constitution makes no reference to interrogation in absentia. So what are the bases on which the court relied in establishing such a judicial principle? Since it was not mentioned in the decision, it is clear that the court violated the provisions of the article. (159) of the Civil Procedure Act No. 83 of 1969, as amended, it was worth the court to explain these reasons because of their great importance in achieving transparency in the work of the judiciary and in avoiding suspicions about the work of the judge.

Section II: Drafting judgements: The judicial judgement is described as an expression of the judge's thinking and therefore requires that it be clear in its words and decisive in its sense. As we have explained earlier, this requires in the language of the judiciary precision, simplicity and clarity in the drafting of judgements in order to facilitate its implementation by the public authorities and the achievement of quality in the decision (Al-Qaisi, No. 1, 2020, p. 235). Especially since the Court refrains from correcting its judgments by stating in its decision No. 7/Federal/Discrimination/2006 in 03/28/2006 that: (... when considering the contested decision of this Court, it was found not to be subject to appeal by way of a correction application because the judgments and decisions of the Federal Supreme Court are deemed patent.) (the official website of the Federal Supreme Court). And we consider that the Federal Supreme Court's reliance on the text of article 94, which mandates and decides the decisions of the Federal Supreme Court, is not correct because the above article does not conflict with the correction of material errors if they exist in the judgment. In our view, the achievement of quality in constitutional judgments is not limited to reasoning and drafting, but also requires independence in the issuance of judgments without any influence by either the legislative or executive branches. In practice, it is noted that there are some decisions of the Federal Supreme Court in which the executive branch has been complimented, including:

1. Decision No. 25/Federal/2010 on the identification of the most numerous parliamentary bloc in the 03/25/2010: (... the Court finds that the expression of the most numerous parliamentary bloc means that the bloc formed after the elections through a single electoral list entered the elections by a given name and number and won the most seats. Or the bloc that gathered from two or more electoral lists that entered the elections with different names and numbers, and then coalesced into one bloc with one entity in the House of Representatives, whichever is more numerous... The President of the Republic assigns the candidate of the parliamentary bloc whose seats in the first session of the House of Representatives are more numerous than the bloc or blocs. The Council of Ministers was established on the basis of the provisions of Article (76) of the Constitution (Official Website of the Federal Supreme Court), its Interpretative Decision No. 170/Federal/2019 of 22 December 2019 states: (... after reference to the priorities of its interpretation of the provision of article 76 of the Constitution of the Republic of Iraq of 2005, pursuant to its decision of 25 February 2010 of 03/25/2010, which was confirmed by its decision of 45 July 08/11/2014. T/2014. Which states that the term "most numerous parliamentary bloc" in article 76 of the Constitution means that the bloc formed after the elections through a single electoral list, or the bloc that was formed after the elections from two or more electoral lists and entered the House of Representatives, and became its seat after entering the House, and being sworn in by the oath of office in the first session, the most numerous of the remaining

blocs...) (The official website of the Federal Supreme Court). The concept of the most numerous parliamentary bloc was indicated and affirmed, since the text of the article 76 is clear and didn't mention the possibility that more than two parliamentary blocs could be merged to form the most numerous parliamentary bloc. It is clear from the text that the most parliamentary bloc won a majority of votes (in elections) and (before) the first session of the House of Representatives.

2. Decision No. 88/Federal/2010, in which it was decided to link independent bodies to the Presidency of the Council of Ministers, in contrast to articles 102 and 103 of the Constitution, which stipulate: The association of certain independent bodies with the House of Representatives does not preclude the supervision of the Council of Ministers in accordance with article 80 (I) of the Constitution. The reference of the independent bodies associated with the Council of Ministers or that have not been established by the Constitution and exercising executive functions is to the Council of Ministers. (Official website of the Federal Supreme Court), in contravention of the Federal Supreme Court's previous decision No. 228/T6/2006 of 10/09/2008, which states: (The members of the Integrity Commission shall be independent in the performance of their functions provided for by law and shall have no authority to perform these functions other than for the law. No one shall interfere with or influence the performance of the functions of the Commission. The Authority shall be subject to the control of the House of Representatives in the performance of these functions. This means that this body manages itself in accordance with its own law, as does the Central Bank, which guarantees this autonomy to enable it to perform its functions without interference from one of the authorities (official website of the Federal Supreme Court).

Section III: Speedy adjudication (fair justice): Achieving this standard requires a series of actions that accelerate the Federal Supreme Court's work in adjudicating cases and achieving fair justice. Above all, the use of modern technology through digital transformation in litigation and decision-making, and the training of judges in dealing with modern communications and information technologies referring to the judges' distance from these matters. The achievement of full justice requires that the legislative environment be created to digitize the functioning of the courts, by amending the provisions governing the functioning of the Federal Supreme Court in terms of procedure by adding texts requiring the use of modern technology in line with the development of the judiciary in most of the world's countries. This prevents the judiciary from stopping and disrupting its work, which is the result of practical realities, especially in the current circumstances (the coronavirus pandemic), which requires the establishment of an electronic platform to operate in accordance with certain regulations, aimed at achieving sustainable development.

Fourth requirement: Application of the accountability and accounting standard

One of the most significant shortcomings of Iraq's constitutional judicial system is the lack of disciplinary accountability rules for judges as well as the absence of rules and frameworks for judges' work ethics. Because no reference was made in the Constitution to the conditions to be met by the judges of the Federal Supreme Court, which were concerned with the requirement of impartiality, impartiality and good conduct, but which referred the Constitution to the law. Law No. 30 of 2005, as amended by Law No. 25 of 2021 (Iraqi Facts No. 4635 of 7 June 2021), does not contain any conditions relating to judges' conduct and impartiality. The relevant provisions are contained in the Judicial Organization Act No. 160 of 1979, as amended. (Iraqi facts edition 2746 in the 02/17/1979) applicable to judges under the Supreme Judicial Council. The judicial supervisory body shall monitor the conduct of judges in all courts other than judges of the Federal Supreme Court. The article (3) of The Judicial Supervisory Authority Act No. 29 of 2016 (Iraqi Facts No. 4418 of 10/03/2016) stipulates that: (First; Oversight and supervision of the performance of federal courts except the Federal Supreme Court. Fifth; Investigation of the facts attributed to judges and members of the Public Prosecutor's Office that constitute a violation of the rules of judicial conduct other than judges of the Federal Supreme Court). Hence, this matter does not apply to the judges of the Federal Supreme Court, as it is financially and administratively independent. Moreover, it is noted that the legislator stipulated in Article (98) of the Constitution of the Republic of Iraq for the year 2005 that: (The judge and Member of Public Prosecution Mayati: First; Combining judicial, legislative, executive or other functions), without indicating the accountability mechanism in case of a violation of that provision. It was worth the Iraqi legislator to enact a provision in the First Amendment Act of the Federal Supreme Court Act of 2021 containing rules and conditions relating to the conduct of judges of the Federal Supreme Court. And that a disciplinary council consisting of the President of the Federal Supreme Court and four of its senior judges be established if any of the members of the court committed a violation of the rules of judicial conduct. However, in the case of acts constituting crimes, they are referred to the criminal courts in accordance with the general rules because they are not immunized from their acts, or at least a code of conduct for judges that is consistent with international standards, including the Bangalore Principles of Judicial Conduct.

Conclusion:

The research study entitled " Governance of the Constitutional Judiciary (Iraq as a model) ", which examines the concept of constitutional justice governance by applying governance standards to the Federal Supreme Court of Iraq in order to evaluate and assess the work of this Supreme Institution. We now can summarize the most important findings and recommendations as follows:

First: Results:

1. The definition of governance varies according to the perspective in which the concept is viewed. It turns out through the study that the governance of the constitutional judiciary is a set of legal, technical and technical measures and means aimed at assessing the work of the constitutional judiciary and redressing its deficiencies in order to achieve quality, excellence, efficiency, effectiveness, transparency and judicial security.
2. Governance dispose of my standards that differ according to the nature of the institution to be applied to it. In addition, the most important ones consistent in the nature of the constitutional judiciary is the consent of the citizen, and transparency in the judiciary's work through the openness of court hearings, and the dissemination of judicial decisions. The quality standard of judgments and decisions is highlighted by the spelling of the Court's decisions and clarity and accuracy in the drafting of judgments, the speedy disposition of proceedings or so-called "fair justice", and the accountability of members of the constitutional judiciary.
3. The application of the transparency standard to the work of the Federal Supreme Court of Iraq has shown that there are many flexible and undefined concepts. Such as public interest and public order, etc. contained in the Constitution and the Court's Rules of Procedure No. 1 of 2005, which may result in the Court taking advantage of these provisions by making its hearings confidential for any reason that impairs the transparency of the Court's work and impedes individuals' right to access to its performance.
4. There is no provision in the Constitution that states that the decisions of the Federal Supreme Court should be published in the Official Gazette. As well as that the laws governing the work of the Court exclude the dissenting member's opinion of the judges of the Court from publication without regard to the particular nature of the decisions of the Federal Supreme Court.
5. Through the application of the Quality of Judgments and Decisions Standard, it was found that some of the judgments of the Federal Supreme Court were absent in the case, in violation of article 159 of the Civil Procedure Act No. 83 of 1969, as amended. Not to mention political interference in the functioning of the constitutional judiciary, which undermines the independence of the Court and is supported by some interpretative decisions in which the Court, despite the clarity of the constitutional texts dealing with those issues, has encroached upon the Court's executive power. Aside from the challenges facing the application of electronic justice in Iraq, since we have not seen any real steps to automate constitutional justice, since no attempt to establish electronic courts in Iraq has been successful.
6. By applying the criterion of accountability, it became clear that there were no texts indicating that members of the Federal Supreme Court could be held accountable. In addition to the absence of provisions in the Constitution and the Federal Supreme Court Act containing the conditions to be met by judges of the Federal Supreme Court, in particular the requirements of impartiality and good conduct, since the conditions set out in the Judicial Organization Act No. 160 of 1979, as amended, apply exclusively to judges of the Supreme Judicial Council. Not to mention that there was no setting for a code of conduct for judges of the Federal Supreme Court.

Second: Proposals:

1. We call upon the Iraqi legislature to enact a law governing the working procedures of the Federal Supreme Court that differs from those of the Civil Procedure Act No. 83 of 1969, as amended, taking into account the special nature of the Court's work and its decisions, as they reflect and affect all spheres of life.
2. We call upon the Constitutional Court to include in all its decisions the reasons on which it is based in order to achieve quality and impartiality in judicial decisions, as well as to improve the drafting of judgments by involving judges in specialized courses.
3. We call on the Iraqi legislator to amend the Court Law by including provisions that contain rules and conditions relating to the conduct of judges of the Federal Supreme Court, and that a disciplinary council

consisting of the President of the Federal Supreme Court, and four of its senior judges should any members of the Court commit a violation of the rules of judicial conduct.

4. The use of modern means of technology, training the judges to deal with modern communications and information technologies, and the creation of a legislative environment to digitize the functioning of courts, by amending the texts governing the functioning of the Federal Supreme Court in terms of procedure by adding texts obliging the use of modern means of technology in line with the development of the judiciary in most countries of the world.

5. Cooperate with the Ministry of Science and Technology and other judicial bodies in order to achieve the digitization of the constitutional judiciary, to ensure the achievement of fair and accurate justice in the performance of work.

6. Legislation of the Right of Access to Information Act, that guarantees the right of individuals and the press to access the court and to receive information, including decisions, data, and statistics within the limits of the law.

Reference List:

First: Books:

1. Abu Dih, Ahmed, 2004, Corruption (Causes and Methods of Combating It), T1, Ramallah, Palestine, Coalition Publications for Integrity and Accountability, Aman.
2. Sabih, Ahmed Mustafa, 2016, Financial and administrative control and its role in reducing administrative corruption, first edition, Egypt, Center for Arab Studies for Publishing and Distribution.
3. International Commission of Jurists, 2016, Judicial Conduct and Preparation of Code of Ethics in the Light of International Standards, Morocco.
4. Legal Code of International Fair Trial Rights, 2013, Office for Democratic Institutions and Human Rights OSCE/OSCE, Warsaw, Poland.
5. Barghouti, Bilal, 2004, Right to Access or Freedom of Information, Law Development Project Series, Ramallah, Palestine, Palestinian Independent Commission for Citizens' Rights.
6. Justice Society, 2006, Judicial Security and Quality of Sentences, Morocco, Dar al-Qalam.
7. Al Nubani, Khulu Freiz and Siddiqui, Abdullah, 2016, Islamic financial institutions governance, no publishing country, no publishing place.
8. Musaleh, Abir, 2013, Integrity, Transparency and Accountability in the Face of Corruption, T3, Ramallah, Palestine, Coalition for Integrity and Accountability Publications -Aman.
9. Obaid, Adnan Urgent, 2021, Quality of Judgments of the Federal Supreme Court of Iraq, First Edition, Najaf Ashraf, Iraq, Publications of the Dar es Salaam Legal Library.
10. Alwa, Mohamed Naim, 2011, Legal Guide, Triple Dictionary, Beirut, Zain Al-Haqqiyah publications.
11. Al Wadi, Mahmoud Hussein, and Samhan, Mohammed Hussein, 2010, Total Quality Management in Banking, T1, Oman, Safa Publishing and Distribution House.
12. Researchers' Group, Transparency International, 2006, Arab System of Integrity against Corruption, Beirut, Lebanese Centre for Studies.

Second: Terms of Reference:

1. Abdul Hamid, Ahmed Talal, 2019, Strategy for the Governance of Legislation in Iraq, doctoral thesis, Faculty of Law, Baghdad University.
2. Al-Amin, 2014-2015, the importance of applying the principles of governance in the public sector, Master's thesis, Faculty of Economic and Commercial Sciences, Martyr Hamah Lakhdar University of El-Wadi.
3. Abdul Rauf, Mohammed Yasser, 2013, Economic Facilities Governance in Syria, Comparative Legal Study, Master's Thesis, Faculty of Law, University of Aleppo.
4. Hima, Ben Lakhel, Kahanah, and Ait Amrawi, 2015-2016, Administrative Transparency, Memorandum for Master's Degree, Abdul Rahman Meera University, Faculty of Law and Political Science, Bejay University.

Third: Research:

1. Napkin, Asad Fadil, 2014, Remote Litigation, Kufa Journal of Legal Sciences, vol. 1, No. 21.
2. Al-Qaisi, Hanan Mohammed, 2020, Quality of Judgments of the Administrative Court of Iraq, Journal of Legal and Economic Research, Iraq, vol. 3, No. 1.
3. Sayeh, Bo Zeid, 2012, Ways to Enhance Accountability and Transparency to Fight Corruption and Empower Senior Governance in Arab States, Scholar Magazine, No. 10.

4. Aziz, Amar Tariq, 2007, Discipline of Judges, Journal of the Faculty of Law, Nahrin University, vol. 9, No. 2.
5. Al-Baghdadi, Mohammed, 2020, Judicial governance in light of the laws of the judicial professions, Journal of Business Disputes, Morocco, No. 53.

Fifth: Legal texts:

1. Constitutions:
 - 1.1. Constitution of the Republic of Iraq of 2005.
2. Laws and Regulations:
 - 2.1. Civil Procedure law No. 83 of 1969, amended.
 - 2.2. Judicial Organization law No. 160 of 1979, amended.
 - 2.3. Federal Supreme Court law No. 30 of 2005, amended.
 - 2.4. The Federal Supreme Court's Rules of Procedure No. 1 of 2005.
3. Iraq's facts:
 - 3.1. Iraqi facts, 2746 in 02/17/1979.
 - 3.2. Iraqi facts, 3996 in 03/17/2005.
 - 3.3. Iraqi facts, 3997 in 05/02/2005.
 - 3.4. Iraqi facts, 4206 in 08/29/2011.
 - 3.5. Iraqi facts, No. 4418 on 10/03/2016

Sixth: Glossaries:

1. Al-Wahib, Abraham Ismail, 1963, Legal Dictionary, English Arabic, Al-Ahliya Printing and Publishing Company, T1, Iraq, Baghdad.
2. Al-Farouqi, Harib Suleiman, 1972, Legal Lexicon, Arabic/English, Lebanon Library, Beirut, without publishing house.

Seventh: Websites:

1. Sherif, Amin Faraj, 2020, introduction to the concept of governance, article available at <https://www.ahewar.org/>.
2. Hanafi, Rania, 2020, Electronic Courts to Counter Slow Litigation and Rapid Deterrence, article published at the e-address: www.ahram.org.eg <http://>
3. Salah, Razan, 2020, What governance is, an article available at <https://mawdoo3.com/>.
4. Mr. Abdelnasser Mohamed, 2020, evaluating the process of measuring beneficiaries' satisfaction with public services in government institutions in the Arab Republic of Egypt, research available at: <https://jsst.journals.ekb.eg/>
5. Sergeant, Fahd, 2020, Governance and Government, Success Strategy, article available at <https://alqabas.com/>.
6. Qandil, Wissam Abdulazim, 2020, Judiciary Governance, article available at: <https://pulpit.alwatanvoice.com>