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## The administrative role of independent bodies in Iraqi legislation

**Mohammed Ghatar Dayekh and Aqeel Obaida Hamzah**

### Abstract

The expansion of the function of the Iraqi state and the tasks assigned to it as a result of the developments taking place, which included new horizons that were not extended to it in the past, necessitated the need to establish independent financial, administrative and technical bodies that would undertake the administrative and supervisory role to advance the country's national economy. The development of societies and the increase in needs have led to the emergence of independent bodies that must be established based on standards that ensure that they enjoy political, administrative and financial independence, impartiality, transparency and professionalism, so that they can carry out their work and achieve their goals, especially their administrative role in Iraq. If the three basic authorities in any state are legislative, executive, and judicial, the need has created the necessity of establishing independent bodies entrusted by the constitution to exercise specific powers and objectives, to enable them to carry out their supervisory and administrative role in order to serve the public interest.

**Keywords:** Iraqi legislation, administrative role, independent bodies, council of ministers

### Introduction

There is no doubt that the expansion of the function of the Iraqi state and the tasks assigned to it, which included new horizons that could not have been extended to it in the past, necessitated the need to establish independent financial, administrative and technical bodies that would undertake the administrative and supervisory role to advance the national economy. Moreover, there are bodies in every country that exercise oversight, whether that includes oversight carried out by the legislative authority or by the executive authority, however, after the development of the role of the state and the expansion of the administration's activity, specialized agencies emerged to exercise oversight over state institutions. In addition, these agencies are characterized by many characteristics that distinguish them from other state agencies, which qualify them to exercise an effective oversight role. Independent bodies are part of the state structure. They emerged as a result of the expansion of the work of the executive authority and the diversity of the tasks assigned to it in various economic, political, administrative, social and other activities, especially after the introduction of the scientific revolution and the technical developments that accompanied it, which had a noticeable impact on the rights and freedoms of individuals, which necessitated the establishment of administratively independent bodies. Financially, it works to regularize the functioning of the state's public utility and ensures the principle of legitimacy through the oversight granted to it while exercising its shortcuts in accordance with the constitution.

### First: The Research Significance

The importance of research lies in the administrative role of independent bodies in Iraq, with their distinct characteristics that support the belief that these bodies will perform tasks better compared to traditional administrative bodies. On the other hand, the legislator aims that these bodies are entrusted with carrying out the burdens of the new function of the state in the economic field, which is regulating... And control aspects of various economic and administrative activities.

### Second: The Research Problem

The research problem lies in ensuring the maximum degree of independence and flexibility for organizational bodies, to ensure efficiency and effectiveness, and its goal was the result of being influenced by some modern theories in the field of public administration, such as the theory of non-traditional public administration.

**Third: The Research Methodology**

The method that was followed in addressing the research topic is based on an analytical approach based on the analysis of Iraqi legislation, which is concerned with explaining the administrative role of the independent bodies of the three authorities and their applications.

**Fourth: The Research Plan**

We will discuss the research in two sections, the first section is the concept of independent bodies, and in the second section the specialization of independent bodies in Iraq, and the conclusion shows the conclusions and recommendations.

**Section One****The Concept of Independent Bodies**

Independent bodies are considered as one of the modern concepts in the Iraqi law, and these bodies are not a fourth authority among the three authorities because they are an administrative body due to the nature of their work, which enjoys more administrative independence compared to other traditional government bodies. The names and descriptions given to independent bodies also vary depending on the countries that have applied this term. In Sweden, it is called "The Ombudsman", in Britain, it is called "The Parliamentary Commissioner", and in France, it is called the "governmental mediator or (the independent authorities)". As for Iraqi legislation, we find that the Iraqi legislator sometimes uses the term (bodies), "commission", or (supreme national commission), while at other times he uses the term (commission), (high commission), (institution), (chair), or (council) or (network) or (device) to refer to these independent bodies, and at other times the conventional name is used, as is the case with the Central Bank of Iraq and the Financial Supervision Bureau. Whatever the name used, independent bodies have multiple definitions <sup>[1]</sup>.

**First Requirement****Definition of Independent Bodies**

The body is the state in which something exists, whether tangible or reasonable. In administrative custom, bodies are often administrative units that carry out a technical activity that requires a great deal of specialization. Thus, they are part of the general administrative structure of the federal authorities in the country, but they are independent in terms of managing their administrative and financial affairs and the implementation of its powers, tasks and duties in accordance with its own laws. This does not mean that it should be "independent in the sense of liberation and freedom from the neck of restriction and control, or independent in the sense of the tendency to be freed from the grip of the supreme supervisory authority, because bodies that enjoy administrative and financial independence only do not fall out of the circle of domination. The authorities associated with it controlled it in any way, whether in its powers, tasks, or in its administrative and financial matters <sup>[2]</sup>.

Some researchers have defined them as regulatory bodies that operate according to a comprehensive scientific approach that requires integration and integration between economic, accounting, and administrative concepts, through which they aim to preserve public facilities, raise their efficiency, and achieve effectiveness from the results achieved from them. Others defined it as verifying

implementation in accordance with what is stipulated in the plan and within the limits of objective instructions and rules, with the aim of discovering weaknesses and errors, treating them, and avoiding their recurrence, provided that it addresses all aspects of activity in the public facility. Others believe that independent bodies are the ones that have a set of procedures and means that are followed to review the actions carried out by executive agencies subject to oversight, measure the extent of their efficiency and ability to achieve the set goals, and confirm that the goals achieved are what should have been achieved, and that those goals were achieved in accordance with Plans made, and within the specified times <sup>[3]</sup>. It was defined by the British Minister of Public Employment that independent administrative authorities are bodies established by authority, that is, by a decision that could be a royal preamble, legislation, or a simple ministerial decision, with the aim of performing a function that the government wants to carry out, and therefore without the responsibility being directly to a minister or department. Ministerial appointee <sup>[4]</sup>. Over time, these bodies began to specialize in certain economic sectors and not others, which created a kind of specialization and confidence in the performance of these bodies based on this basis. Accordingly, with the emergence of these bodies, which were later called independent administrative bodies or independent administrative authorities as a general term, they emerged from during it, and in particular from this general principle, it has, among other things, that it is an independent administrative authority, and on this basis councils and bodies were formed with different names and through special laws under the umbrella of the independent administrative authorities <sup>[5]</sup>. Independent administrative bodies are national bodies that are not subject to presidential authority or administrative guardianship. They are the opposite of traditional administration, as they enjoy organic and functional independence from either the executive authority or the legislative authority, but they are subject to judicial oversight. These bodies have broad powers that make them distant from advisory bodies. Their tasks are to control the economic sector, and thanks to their independence, they guarantee neutrality as long as the state intervenes in the economic field, as an aid, so it is not imagined that it will be an opponent and an arbiter <sup>[6]</sup>. There are also a number of political and administrative considerations that prompted countries to create various independent bodies, but these considerations were not the only ones, but other considerations stood alongside them, including legal considerations. The goal of the existence of independent bodies is to reach a kind of balance and cooperation between the two legislative authorities. And the executive, which will ultimately lead to achieving the public good by advising the administration to avoid deficiencies and informing it of the desires of the citizens so that it works on its part to achieve those desires. On the other hand, the establishment of independent bodies ensures the neutrality of the work of the state's executive bodies in their work and their distance from political pressures exerted on them by other state authorities. The emergence of independent administrative authorities goes back to the Anglo-Saxon countries, whether in the United States of America or in Britain <sup>[7]</sup>. They also appeared and developed in French law, and French jurisprudence has classified them as a new legal category <sup>[8]</sup>.

These bodies are part of a new representation of authorities and counter-authorities, and they are part of the perspective of strengthening democracy and limiting executive authority. What enhances the independence of these bodies is the recognition of their legal personality, which allows them to be legal bodies in their own right. It is also self-evident to recognize their financial and administrative independence which allows it to self-regulate <sup>[9]</sup>. The establishment of independent administrative bodies reflects the state's transition from an administrative function to a group of mechanisms inspired by the new public management, which reduces the state's control over the economy and makes these bodies a shield and a protective barrier against the dangers that threaten modern liberal societies, as they are more responsive to market requirements and constitute an alternative to traditional administration. Which was shouldering the burden of development, especially in developing countries, and due to globalization, it found itself accused of increasing politicization, favoritism, and bureaucracy <sup>[10]</sup>.

## **The Second Requirement**

### **Constitutional organization of independent bodies in Iraq**

#### **First: The constitutional organization of independent bodies in Iraq before the 2005 Constitution**

The constitutional organization of independent bodies in Iraq before the 2005 Constitution, as the Iraqi constitutions provided for independent bodies, since the founding of the Iraqi state in 1921, albeit under different names. The first Iraqi constitution, known as the Iraqi Basic Law of 1925, stipulated in Article (75) of the formation of sectarian spiritual councils, as religious courts. It also stipulated, in Article (81), the establishment of a Supreme Court to try ministers, consider political crimes, and interpret the provisions of the Constitution. And the establishment of a bureau specialized in interpreting laws. Article (88) also stipulates that it is permissible to form special courts or committees, when necessary, military, tribal, and administrative, and to manage land. Article (104) also stipulates a department to audit government accounts for the purpose of financial oversight. Article (122) also stipulated the Islamic Endowments Department as one of the official government departments and its work is regulated by a special law. As for the Constitution of July 27, 1958, it was devoid of any provision for independent bodies, and the reason for this was the short period of time in which the Constitution was written, as it was written during (13) The day and circumstances in which it was written. Therefore, a short constitution was issued that contained only (30) articles, and the matter applies exactly to the constitution of April 4, 1963, which was called the National Council for Revolutionary Command Law No. 25 of 1963 <sup>[11]</sup>. Accordingly, we find that the constitutional development regarding these bodies did not take much importance in the previous constitutions since the founding of the Iraqi state in 1921, which did not address this aspect except what related to the Office of Financial Supervision and a few bodies, which was included in the aforementioned Iraqi Basic Law of 1925 and the interim republican constitutions of the years. 1964, 1968 and 1970, and many of them have been formed since that time and were called (parties not linked to a ministry), such as the Central Bank of Iraq, for example <sup>[12]</sup>. As for the abrogated Constitution of April 29, 1964, it

stipulated the formation of the National Defense Council headed by the President of the Republic, with its powers being determined by a special law. It also stipulated the establishment of an authority for public financial supervision and control, and its powers and how to carry out their implementation would be determined by a special law. It also stipulated the formation of the Public Prosecution Authority, and with the issuance of the Iraqi State Administration Law for the Transitional Period of 2004, new names were included, as terms such as national bodies were mentioned in Chapter Seven, as the text included the establishment of the competent Iraqi criminal court, the Supreme National Commission for Public Integrity, and the Supreme Commission for the Resolution of Real Estate Ownership Disputes and the Supreme National Commission for De-Baathification, and also stipulated the formation of the National Commission for Human Rights. Article (2/2) of Order No. 56 of 2004 stipulated the Central Bank of Iraq Law. In an effort to achieve the goals of the Central Bank of Iraq, and to accomplish its tasks, the Central Bank of Iraq shall be independent and responsible. As stipulated in this law, except as otherwise specified in this law, the Central Bank of Iraq has not received instructions from any other entity, person, or institution, including government institutions. The independence of the Central Bank of Iraq will be respected, and no person may improperly influence any member of the decision-making body of the Central Bank of Iraq while performing its duties at the bank or interfering in the activities of the Central Bank of Iraq <sup>[13]</sup>.

#### **Second: The constitutional organization of independent bodies in Iraq after the 2005 Constitution**

Independent bodies were defined in the Permanent Constitution of the Republic of Iraq in 2005, in Article (102) thereof, as (the High Commission for Human Rights, the Independent High Commission for Elections, and the Integrity Commission independent bodies, subject to the oversight of the House of Representatives, and regulating their work) as stated in Article (103-First) of the Constitution, "The Central Bank of Iraq, the Financial Supervision Bureau, the Media and Communications Authority, and the Endowments Offices are considered financially and administratively independent bodies, and the law regulates the work of each body". Then it was stipulated in the following articles for the establishment of other new bodies, which are the Authority of the Martyrs Foundation, an authority to guarantee the rights of regions and governorates not organized into a region, the Authority to monitor the allocation of federal revenues, and the Federal Service Council. Then Article (108) came to state that (other independent bodies may be created according to Need and necessity by law). The term "independent bodies" was included in Chapter Four of Part Three relating to the federal authorities. Articles (102) to (108) were devoted to them, and they were also allocated to them in the last sixth chapter of the Constitution, which are Articles (134), (135), and (136). respectively regarding the Supreme Iraqi Criminal Court, the Supreme National Authority for De-Baathification, and the Real Estate Ownership Dispute Resolution Authority, and it is possible to take into consideration what concerns the Supreme Judicial Council, the Supreme Federal Court, the State Shura Council, and the Iraqi National Intelligence Service in texts (9), (84), (90), and (91), (92), (93), (94) and (101) of the Constitution <sup>14</sup>.

The Constitution also considered the High Commission for Human Rights, the Independent High Electoral Commission, and the Integrity Commission to be independent bodies not subject to the oversight of the executive authority (Article 99), and placed the matter of monitoring them in the hands of the highest legislative body in the country, which is the House of Representatives, and defined their work in accordance with laws issued to regulate their work in accordance with those laws. Thus, the Constitution gave these bodies the legal force that protects them from the interference of the executive and judicial authorities, and specified for them their work and the body that can dissolve them. The Constitution also considered the Central Bank of Iraq, the Financial Supervision Bureau, the Media and Communications Authority and the Endowments Bureaus to be independent bodies as well. The Constitution also specified that these bodies are linked to the House of Representatives and that their work is regulated by laws, with the exception of the Endowments Bureaus, which are linked to the Council of Ministers, just as the Martyrs Foundation is also linked to the Council of Representatives. Ministers, and the work of each of them shall be regulated by law. As the Constitution referred to the establishment of a public body to guarantee the rights of the regions, as well as the governorates not organized into a federal region, it takes upon itself the foundations of fair participation in the management of the various federal state institutions, including fellowships, missions, delegations, and regional and international conferences, consisting of representatives of the federal government and the regions and governorates not organized into a region. It is certain that such a body should be independent and not subject to executive authority, given that its work includes the rights of regions or governorates that are not included under a region. Naturally, it is subject to the Federal House of Representatives <sup>[15]</sup>. The Constitution also established a general authority to monitor and allocate federal revenues, which undertakes to verify the fair distribution of international grants, aid and loans according to the entitlements of regions and governorates not organized within a region, verify the optimal use of federal financial resources and their division, and adopt transparency and justice when allocating funds to the governments of regions and governorates not organized within a region. According to the legally prescribed percentages that are approved in accordance with the decisions of the House of Representatives and in a way that ensures fairness in the distribution of grants, loans and aid for the purpose of building regions and other governorates. For the purpose of regulating the affairs of the federal public service, the Constitution also established a Federal Public Service Council that regulates the formation, promotion, and appointment of the position in accordance with the law that regulates its work, and that this council must also be independent. The constitution affirmed the continuation of the work of the Property Claims Authority as an independent body and in coordination with the judicial authority and other executive bodies, and granted the right to dissolve this body to the House of Representatives by a two-thirds majority of its members, with all the practical overlap between the work of the body and the jurisdiction of the Iraqi civil judiciary. However, the existence of such a body after the formation the legitimate government also creates a kind of overlap in work and the creation of a kind

of institutions similar in form and content. The Constitution also allowed the Supreme National Commission for De-Baathification to continue its work as an independent body and required its work to be in coordination with the judicial authority and executive agencies within the framework of the laws regulating its work. In this way, several authorities were involved. The Constitution had stressed the necessity of separating their work within this body, which makes its decisions hybrid and not followed. A clear path of implementation and reference, and he specified the entity to which this body is linked to the House of Representatives, and authorized, under the second clause, the House of Representatives to dissolve the De-Baathification Commission (after the end of its mission) by an absolute majority <sup>[16]</sup>. Despite the status of independence attached to these bodies, some of them are linked to the House of Representatives and others are linked to the Council of Ministers, and the constitution grants the House of Representatives the right to interrogate officials of independent bodies and dismiss them by an absolute majority (Article 61/Second/H) <sup>[17]</sup>.

These bodies can be divided into three types, the first of which is subject to the oversight of the House of Representatives or linked to it. The second is the bodies affiliated with the Council of Ministers, and the third is the bodies not affiliated with my agencies:

**First: Bodies subject to the oversight of the House of Representatives or linked to it**

1. The High Commission for Human Rights.
2. The Independent High Electoral Commission.
3. Integrity Commission.
4. Financial Supervision Bureau.
5. The Media and Communications Authority.
6. Central Bank of Iraq
7. Second: Bodies affiliated with the Council of Ministers.
8. Endowments offices.
9. Martyrs Foundation.

**Second: Bodies affiliated with the Council of Ministers.**

- 1 Endowments offices.
- 2 Martyrs Foundation.

**Third: Unrelated bodies**

- 1 A public body to guarantee the rights of regions and governorates that are not organized into a region.
- 2 The General Authority supervises the allocation of federal revenues <sup>[18]</sup>.

**Section Two**

**Specialization of independent bodies in Iraq**

**The first requirement**

The importance of oversight by independent bodies is considered one of the issues closely linked to people's lives. No individual or group, ruler or ruled, is connected to it. Dealing with state funds and public property cannot be neglected. This is why it was necessary to establish specialized agencies in the field of protecting public funds and combating corruption. And support those responsible for it. Among these bodies are <sup>[19]</sup>:

**First: Financial Supervision Bureau**

During its work, the Federal Bureau of Financial Audit went through five historical stages, starting in 1927 and ending in

the year 2011 with the issuance of its new law and its amendment in the year 2012. This body is considered one of the most prestigious auditing and financial institutions in the country. The clear international basis for the work of the Bureau is found in the United Nations Convention against Corruption of 2004. This agreement is the first internationally binding agreement to prevent corruption. Iraq joined this agreement in Law No. 35 of 2007. This agreement called for international cooperation in combating corruption and emphasized the development and implementation of effective, coordinated policies to combat corruption. This agreement stipulated the prevention of corruption by ensuring all A State Party, in accordance with the basic principles of the legal system, shall establish anti-corruption bodies, as appropriate, to prevent corruption. Therefore, the Financial Supervision Bureau is considered one of the bodies concerned with combating corruption in Iraq and its work is in light of the agreement. There is also the Arab Anti-Corruption Agreement, which Iraq signed in 2010 and ratified in Law No. 42 of 2013. This agreement is considered similar to the previous agreement in terms of wording, but differs from it in that it's a specific regional agreement in Arab countries that are members of the Arab League <sup>[20]</sup>. Article 5 of the amended Financial Supervision Bureau Law No. 31 of 2011 stipulates that (the Bureau is a financially and administratively independent body with a legal personality and is considered the highest financial oversight body linked to the House of Representatives, represented by the Chairman of the Bureau or his authorized representative). The importance of stipulating legal personality in the text of the law, not only for the office but for all state institutions, appears in the fact that this personality arranges rights and obligations, after granting it legal personality. The recognition of the institution as a legal personality according to the law that regulates its work by granting it administrative and financial independence, hopes for administrative independence, which is represented by the existence of a body An independent person who possesses the competencies and powers that help manage the institution, conduct its affairs, and achieve the objectives required of it, and financial independence, which means that the institution has a financial liability independent of the financial liability of the government <sup>[21]</sup>.

The Bureau consists of the Council, the President of the Bureau, the Vice-Presidents, and the Bureau's departments. The Bureau performs the following tasks.

**First:** Monitoring and auditing the accounts of the activities of entities subject to supervision and verifying the proper disposal of public funds and the effectiveness of the application of laws, regulations and instructions, provided that this is included.

- A. Examining and auditing public spending transactions to ensure that they are sound, that they do not exceed the allocations allocated to them in the budget, that public funds are used for the purposes allocated to them, that there is no waste, extravagance, or misuse of them, and that their returns are evaluated.
- B. Examining and auditing the transactions of estimating and verifying the collection of public resources and to confirm the suitability of the approved procedures and the soundness of their application.
- C. Expressing an opinion on the financial statements, statements and reports related to the business results

and financial conditions of the entities subject to supervision, and indicating whether they are organized in accordance with legal requirements or approved accounting standards and reflect the true financial position, the results of the activity and the cash flows.

**Second:** Monitoring the performance evaluation of entities subject to the Bureau's oversight.

**Third:** Providing technical assistance in the accounting, control and administrative fields and related organizational and technical matters.

**Fourth:** Evaluating the financial and macroeconomic plans and policies established to achieve the goals set for the state and committing to them.

**Fifth:** Conducting an audit of the matters that the House of Representatives requests to conduct an audit <sup>[22]</sup>.

### **Second: Integrity Commission**

The Integrity Commission is considered one of the independent bodies established after the year 2003 if it was established pursuant to the dissolved Coalition Authority Order No. 55 of 2004 in accordance with Article (1) thereof, which stipulates: "The Governing Council is empowered by this order to establish an Iraqi commission concerned with public integrity, which shall be an independent body responsible for Implementation and enforcement of anti-corruption laws...). The Governing Council authorized its establishment as an independent government body responsible for implementing and enforcing anti-corruption laws and public service standards under the name (Public Integrity Commission), and changing its name to the Integrity Commission based on the text of the Constitution of the Republic of Iraq for the year 2005 stipulated in Article 102, saying: (The High Commission is For Human Rights, the Independent High Electoral Commission, and the Integrity Commission are independent bodies subject to the oversight of the House of Representatives and whose work is regulated by law). The Integrity Commission is part of the formations of the federal authorities because the aforementioned constitution dealt with it in Chapter Four, which bears the title Independent Bodies, in Chapter Three, called federal authorities. The Iraqi council of representatives issued integrity commission Law No. 30 of 2011 <sup>[23]</sup>.

### **Objectives of the integrity commission**

1. Combating administrative and financial corruption through a set of investigative legal powers and procedures.
2. Preventing manifestations of corruption by relying on a broad methodology in proposing draft laws related to combating corruption in all its forms, issuing professional conduct regulations, and adopting the principle of transparency in the work of government institutions.
3. Establishing fair and just governance and instilling people's confidence in the government through the independence of the Commission's work and protecting it from any external influences.
4. Spreading the culture of integrity among society through programs aimed at educating individuals and

institutions, as well as developing cooperation frameworks between civil society institutions with the aim of organizing these institutions within a framework of work with the Commission that serves the general direction of combating and preventing corruption <sup>[24]</sup>. The establishment of the Integrity Commission is an advanced step in the field of financial oversight and anti-corruption, at least from the theoretical aspect, as there is no supervisory body in the Arab countries that enjoys these powers granted to the Public Integrity Commission, and the most important of these powers are the following:

- A. Receiving complaints about crimes of financial and administrative corruption, investigating them, referring them to the competent courts, and following up on them as a party to the case representing the public right.
- B. Proposing laws to combat financial and administrative corruption to the House of Representatives.
- C. Proposing to amend laws with a supervisory nature, spreading a national culture to develop ethics and principles of personal integrity and self-commitment to public service standards.
- D. Reviewing the reports submitted by those responsible for their financial interests and auditing and verifying the information contained therein. From the above, it becomes clear to us that the scope of the Integrity Commission's jurisdiction is much broader than that of the Financial Supervision Bureau, if its work constitutes a broader scope than the scope of the work of the Financial Supervision Bureau, whose work is determined by the nature of reviewing accounts and verifying the extent of their conformity and validity. Its jurisdiction relates exclusively to financial oversight of financial and accounting matters in an attempt to uncover cases of embezzlement, corruption, financial deficit, etc. As for the Integrity Commission's jurisdiction, it is an absolute jurisdiction in confronting all authorities and departments throughout Iraq, as no specific jurisdiction or specific location has been defined for it, even if there are some obstacles. Which greatly hinders the work of this body, foremost of which is the body's inability to carry out its oversight work except based on a complaint <sup>[25]</sup>.

### **The integrity commission's relationship with other oversight bodies**

#### **A. The integrity commission's relationship with the investigating judge**

The Commission exercises its powers to investigate any corruption case through its investigators under the supervision of the investigating judge, which means that the orders related to summons, detention, and arrest warrants against the accused are issued by the investigating judge based on the investigative procedures conducted by the Commission, noting that the investigating judge is not obligated to the investigation and referral that it conducts. The Authority. The law regulates the Authority's relationship with the investigating judge from two aspects: the authority to preserve news and the authority to complete the investigation. The law grants the Commission the right to preserve the news without presenting it to the investigating judge if it finds that it does not contain a crime, or is proven to be untrue or false. In return, the investigating judge has the right to request any news that

has been preserved and take what he deems appropriate regarding it in accordance with the provisions of the law. As for the authority to complete the investigation, the Commission has the right to preserve the news without presenting it to the investigating judge. To ask the investigating judge to submit any corruption case to complete the investigation by one of its investigators, and if he refuses for any reason, she has the right to appeal his decision <sup>[26]</sup>.

#### **B. The integrity commission's relationship with the administrative investigation committees**

The law has given priority to the investigative jurisdiction of the Commission over the jurisdiction of other investigative bodies, including the military investigative bodies and the investigative bodies of the Internal Security Forces, and obliges them to deposit papers, documents and data related to corruption cases to the Commission whenever it desires to complete the investigation into them. Thus, the law grants the Commission general jurisdiction over corruption cases in the ministries. And departments not affiliated with a ministry as the competent investigative body <sup>[27]</sup>.

#### **Third: The Iraqi authority for control of radioactivity sources**

The Iraqi Authority for Control of Sources of Radioactivity was established based on Coalition Authority Order No. 72 of 2004.

1. An Iraqi authority to control radiation sources shall be established pursuant to this order and shall be called (the Iraqi Authority for the Control of Radiation Sources), which shall be an independent agency.
2. The Authority has the authority to regulate radiation sources and all activities related to exposure or the possibility of exposure to ionic radiation from radiation sources and radioactive waste, with the exception of radiation source activities or radiation sources specifically excluded in this matter <sup>[28]</sup>. It requires protecting people and the environment from any radiation risks, and a national regulatory infrastructure to control radioactive sources. To ensure radiation safety when using radioactive sources and operating relevant facilities, there is a need to develop a system that includes legislation, regulations and guidelines, resources and qualified and appropriately experienced personnel, and implement regulatory control activities such as notification and issuance of permits. Inspection, enforcement and guidance on the import and export of radioactive sources <sup>[29]</sup>.

### **The Second Requirement**

#### **Administrative specialization for independent bodies**

It can be said that independent bodies or independent authorities play a regulatory role in accordance with political, economic, social, or religious trends, according to the vision of the legislator and the aspirations of modern states. Independent bodies are nothing but a new, distinct type of state administration. They do not work in isolation from government work, and implement the goals of government policy. Although it enjoys many advantages over other authorities, the method of formation and guarantees directed to the heads of bodies, and its exclusive setting of regulatory rules that govern its work. From everything mentioned in this opinion, we find that the

independent authorities are of an administrative nature and belong to traditional state bodies and enjoy special autonomy and special tasks and functions that they perform for the benefit of the state and are subject in one way or another to a system of special oversight and judicial oversight. This system was implemented in France because the independent authorities are of a nature Administrative<sup>[30]</sup>.

### **First: The Independent High Electoral Commission**

It is an independent and impartial governmental professional body subject to the oversight of the House of Representatives. It has exclusive responsibility for organizing, implementing and supervising all types of elections and referendums. It is a constitutional institution in accordance with Article 102 and was formed pursuant to Commission Law No. 11 of 2007 to replace (the Independent High Electoral Commission in Iraq/Electoral Commission Transitional Council, which was responsible for holding elections and the referendum on the constitution in 2005<sup>[31]</sup>. Commission Law No. 11 of 2007. After voting on the constitution and installing the legal framework for independent bodies based on Article (102) thereof, it became necessary for the House of Representatives to legislate the Election Commission law and organize its structure, and in fact, the draft law for the Independent High Election Commission was voted on in the House of Representatives' session No. 62 on 1/23/ 2007, as Article (1), the first paragraph of the above law stipulates the cancellation of Administrative Order No. 92 of 2004 regarding the formation of the Election Commission during the era of the civil governor, "Paul Bremer". As for the second paragraph of the same article of the law, it stipulates the following: "Under this law, a body called the Independent High Electoral Commission shall be established." Article (2) of the same law stipulated the definition of the Electoral Commission as: an independent and impartial governmental professional body that has a legal personality and is subject to the oversight of the House of Representatives<sup>[32]</sup>.

### **Functions of the independent high electoral commission**

The Independent High Electoral Commission is considered the only government body that has the authority to set the foundations and rules approved for federal and regional elections and referendums throughout Iraq and to announce, organize and supervise all elections and referendums, including voter registration, general elections and provincial council elections. The independent high electoral commission consists of a board of commissioners and administration. The Electoral Commission includes 19 nineteen offices covering all of Iraq's governorates, including (two offices in Baghdad) in addition to the office of the Kurdistan Regional Authority. The Board of Commissioners of the Independent High Electoral Commission represents the legislative body in the Commission and is composed of nine commissioners, including the head of the Electoral Administration. They were chosen by the Iraqi Council of Representatives, which took into account, when selecting them, the legal and objective conditions, including citizenship, eligibility, and university degree, in addition to electoral experience, specialization, integrity, and independence, and the representation of women was taken into account. The

Commission Law also stipulates that the Council of Commissioners shall include at least two laws. In its first session, the Council shall elect from among its members, by a majority of at least five of its members, a president, a deputy, a rapporteur, and a head of the electoral administration who does not have the right to vote.

### **Functions of the board of commissioners**

- The Board of Commissioners is responsible for approving the general policy of the electoral process, its management, and monitoring the performance of the electoral administration. Therefore, it performs the following functions: Supervising the creation and updating of the voter registry in cooperation with governorates and regional electoral offices.
- Organizing the process of registering and certifying political entities competing in elections.
- Organizing and certifying the list of candidates for the elections.
- Granting accreditation to observers, agents of political entities, and media representatives.
- Decide on all electoral complaints and objections.
- Certification of procedures.
- The Board of Commissioners is responsible for approving the general policy of the electoral process, its management, and monitoring the performance of the electoral administration. Therefore, it performs the following functions:
  - Supervising the creation and updating of the voter registry in cooperation with governorates and regional electoral offices.
  - Organizing the process of registering and certifying political entities competing in elections.
  - Organizing and certifying the list of candidates for the elections.
  - Granting accreditation to observers, agents of political entities, and media representatives.
  - Decide on all electoral complaints and objections.
  - Certification of procedures<sup>[33]</sup>.

### **Second: Media and Communications Authority**

It is an independent body not linked to any governmental body. It was established in 2004, under the Iraqi constitution. Its mission is to regulate and develop media and communications in Iraq within modern international standards. The Iraqi government assumes direct responsibility for developing and adopting a strategic policy in the field of communications and issuing legislation regarding it. The Media and Communications Commission plays the role of the independent regulator that implements this policy in addition to developing its own field policies, the administrative responsibilities of the Authority:

- Regulating broadcasting, communications networks, and services, including licensing, pricing, internal connectivity, and determining the basic conditions for providing public services.
- Planning, coordinating, distributing and determining the use of broadcast frequencies.
- Organizing media designs and developing press mechanisms.
- Establishing, developing and strengthening election media rules.

- Supporting and encouraging professional qualification and adopting professional conduct directives on media topics.
- Developing and publishing communications and media policies and proposing laws to the government and concerned parties in this regard.

In the field of media, the Commission engaged in the tasks of consolidating the rules of independent free media and developing its various means, whether in terms of its own effectiveness or through active participation and support for any media activities taking place on the Iraqi scene, leading to the development of freedom of expression and the development of free media in Iraqi society. In the field of communications, the Commission is working to regulate the concept of modern communications and develop its mechanisms in various fields to overcome the severe deficiency that Iraq suffers from in technical and organizational matters in this vital field, and to keep pace with a new world in which the subject of communications has become a criterion for the extent of the effectiveness and development of societies. The effective Iraqi legislation The Communications and Media Commission was assigned exclusive powers as a body with legal powers to grant licenses and regulate communications, broadcasting, and information services on Iraqi soil <sup>[34]</sup>.

### **Third: The Shiite Endowment Office**

It is the institution responsible for the Shiite endowments in Iraq after the dissolution of the Iraqi Ministry of Endowments and Religious Affairs in 2003 due to the abolition of the previous Ministry of Endowments and Religious Affairs and the distribution of its tasks to the offices of endowments and the relevant sects. The law establishing the Office of Endowments and Islamic Affairs was enacted in order to organize the Islamic endowments and their affairs, and its tasks, divisions and formations were defined. Based on what was approved by the House of Representatives and approved by the Presidency. Based on the decision of the Governing Council dated October 22, 2003, a law was issued that stipulated the establishment of an office concerned with the endowments of Shiite Muslims in all their sects and Islamic affairs, called the Shiite Endowment Office. It is linked to the Iraqi Council of Ministers, enjoys a legal personality, and is represented by its president or whomever he authorizes. This institution supervises Shiite places of worship. Husseiniya and Shiite shrines throughout Iraq, and their president is appointed by the Prime Minister <sup>[35]</sup>.

### **The Bureau seeks to achieve the following goals**

**First:** Promoting and developing Islamic culture, reviving the Islamic heritage, and paying attention to heritage books, manuscripts, and Islamic antiquities and preserving them. Organizing the affairs of Shiite endowment property management and developing its resources.

**Second:** Taking care of the affairs of the holy shrines, the shrines of the Imams, peace be upon them, and their deputies, and the shrines of the Companions and saints.

**Third:** Taking care of the affairs of mosques, mosques, Husseiniya, and religious institutions, maintaining and

furnishing them, and organizing the affairs of their employees inside and outside Iraq.

**Fourth:** Taking care to implement the conditions of the endowments and supervising the attached endowments.

**Fifth:** Securing the requirements for the optimal performance of the Hajj and Umrah rituals and religious tourism of the holy shrines and Islamic monuments.

**Sixth:** Strengthening religious ties between Islamic sects and promoting rapprochement between Islamic sects <sup>[36]</sup>.

### **Appreciating the administrative role of independent bodies**

These systems have characteristics that distinguish them from other means of oversight. Unlike judicial oversight, they do not require any fees or expenses. They also have a speed that judicial oversight lacks. In addition, they do not require any formality in submitting complaints. Complaints are also not required to have the best interests of the person submitting them. The opposite of legal dispute. Although some systems went to stipulate this after the increase in the number of complaints submitted to them, these bodies often monitor the issue of the appropriateness of administration decisions vis-à-vis individuals, and derive their authority from the principles of justice, the highest values in society, and the spirit of the law, in addition to their contribution to proposing and amending legislation in accordance with what is appropriate for proper application. It has the right to preserve the rights and freedoms of citizens, and one of the objections to these bodies is that they are not obligated to take a specific action in the complaint submitted to them, on the one hand, and do not have the authority to issue decisions binding on the administration, on the other hand. It directs them to follow a specific method in their dealings with individuals, and through that, it requires Amending, canceling or changing its decisions, his authority is moral in this regard. It appears that the Iraqi constitutional legislator has adopted this method of administrative oversight for the first time, as it was stated in the text of Article (102) thereof: "The High Commission for Human Rights, the Independent High Commission for Elections, and the Integrity Commission are independent bodies, subject to the oversight of the House of Representatives, and their work is regulated by law." We can only hope that these bodies will compensate in their jurisdiction for the serious exceptions that have marred the judiciary's mandate to eliminate the work of the administration and the many defects that have surrounded parliamentary oversight, as the Iraqi person needs more protection, and the creation of the High Commission for Human Rights, along with the Integrity Commission, is a sure guarantee to provide that" <sup>[37]</sup>.

### **Concluding**

This study examined an important topic in practical life, which is the administrative role of independent bodies in Iraqi legislation, and reached a set of conclusions and suggestions, the most important of which are:

### **Conclusions**

1. The independent bodies that carry out the administrative and supervisory role derive their basis from legislation, and the text in the constitution is the advantage that gives them freedom of formation and independence in performing their tasks from the goals



that have been achieved and those that the administration was not able to achieve.

2. One of the most important administrative and oversight problems facing independent bodies is weak coordination and information exchange among themselves or with other competent bodies.

### Recommendations

1. We suggest that the legislator stipulate in the constitution the independent bodies and their independence clearly in the Constitution of the Republic of Iraq of 2005 by stipulating that they are independent bodies subject to the legislative authority as the supervisory authority that can ask them about the violations they commit in violation of the law within their area of jurisdiction.
2. We suggest that the three authorities pay attention to the reports issued by the regulatory bodies and follow up on the cases of corruption that these reports reveal and not neglect them.

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