

The Judge Relinquished the Civil Case

Mustafa Ibrahim Abdulhassan

National University of Science and Technology, Dhi-Qar, Iraq

Corresponding Author Email: mustafa.aljabri@nust.edu.iq

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Abstract

The judge's relinquished aims to ensure the impartiality, independence and impartiality of judges, consolidate the principles of justice and fairness, and spread confidence in the judiciary and its rulings. Suspicions swirling around him that would cause opponents to be insecure about him.

Introduction

The judiciary is a great profession, as the security, prosperity and peace of any human society depends mainly on the extent to which the judicial system is organized, its effectiveness and its integrity in that society. Protecting their independence and fairness before litigants, which leads to the issuance of judicial rulings far from suspicion, and leads to a feeling of tranquility in the hearts of litigants towards the penal institution. The judge falls under factors or conditions that undermine his impartiality and integrity, favoritism in one of the litigants, or deceive, or push him to cheat or treachery in one of the litigants to obtain a material or moral benefit.

This led the legislator to adopt this and to set severe penalties for erring judges and to put in place certain procedures to avoid the errors resulting from them, in order to consolidate the principles of justice, fairness and people's trust in the judiciary.

research importance

Referring to the effectiveness of the complaint system against judges in Iraqi law requires familiarization with the legally established provisions, and knowledge of the extent of its application in terms of subject matter, persons and procedures.

Research problem

The system of complaints against judges was established for specific purposes, as it is assumed in its provisions stipulated in the law that it includes every judge who practices the profession of judges, individually or within a judicial body and at any level of the courts operating in the country, and this raises the question about the legitimacy of the legal text relating to Determining the personal scope of the complaint against judges in the Civil Procedures Law No. (83) of 1969.

Research Structure

We will discuss this research according to two sections. In the first section, we will talk about the concept of the judge's abdication in the civil case. On the basis of that, we will divide this topic into two demands. We will talk in the first requirement about the definition of judges' abdication and its reasons. As for the second requirement, we will talk about distinguishing the judges' abdication from what is similar, and in the second topic We will talk about the general framework for the judge's stepping down in the civil lawsuit and on the basis of that we will divide this topic into two demands.

Chapter one : The concept of the judge's abdication in the civil case

The judicial system aims to ensure the impartiality, independence and impartiality of judges, to consolidate the principles of justice and fairness and to spread confidence in the judiciary and its rulings. Definition of judges relinquishing and its reasons. As for the second requirement, we will talk about distinguishing judges relinquishing from something similar.

The first requirement : Definition of judges' relinquished and its reasons

We will deal with this requirement according to two sections. In the first section, we will talk about the definition of judges stepping down. In the second section, we will talk about the reasons for judges to step down.

Section one : Definition of judge's resignation

It is to prevent the judge from considering a case brought to him in connection with a specific dispute in specific cases exclusively in the law in order to protect the judge's impartiality, because it is not enough for the judgments to be fair, but rather it must be far from bias and suspicions in order for the judiciary to remain respected and brings peace to souls as a guarantee of people's rights And their freedoms, so restitution is one of the basic rights of the litigants in order to have confidence in the justice of their judiciary, because it is linked to the right to litigate before the courts(), which is to prevent him from considering a specific case that falls within his jurisdiction based on the availability of one of the reasons specified by law for the judge's inability to consider the case that calls for doubt In his judgment without inclination or prejudice.

Relinquishment in general: the emergence of a legal situation that prevents the judge from considering a case according to reasons specified by law exclusively. The basis for disqualification is not doubt in the integrity or impartiality of the judge, but the basis is the possibility that the judge will not be impartial in the consideration of the case.

Most of the laws have been keen to stipulate the conditions of relinquishment in order to ensure the impartiality of the judge and to distance the suspicions surrounding him that would cause the opponents to become unsure about him.

However, some of them see that there is no need to stipulate such reasons, but rather that they must be respected, which is imposed by the principles of public order (). Cases of relinquishment are sometimes called cases of "preventing judges from adjudicating a case" or "states of conflict.() "

The reason for the lack of validity here is the establishment of a legal situation with the judge that makes him unable to participate in the case.

Section two : Reasons for the judge's resignation

The reasons for rejecting the judges are if one of the parties was employed by him, or he used to be entrusted by one of the parties or cohabiting with him, or he had received a gift from him before or after filing the case, then the litigants before the general judiciary may take the judges' response as a means to coerce or slander in the litigation Or delaying the adjudication of the case if they feel that the judgment will not be issued in their favour. As for the reasons for the judges' response, there are exclusive reasons for the response specified by the law in eight cases, and it is not permissible to compare them if he or his wife has a direct or indirect interest in the case, even after the dissolution of the marriage, if There is a relationship between him or one of the litigants up to the fourth degree, if he is a fiancé for one of the litigants, if he was previously an agent or guardian for one of the litigants in his business. If he had previously been a witness in the case, if one of the plaintiffs had chosen him as a judge in a previous case. If there is a strong enmity between the judge and one of the litigants, and in order for the legislator to ensure the impartiality of the judge's oneness and distance him from the possibility of falling into the inclination, the legislator has created certain conditions that the judge refrains from considering the case.

The matter revolves around protecting the judge from himself in case she wants to follow her whims, and protecting him from people, and at the same time protecting people from the judge.()

This system is called "the system of relinquishment" or some of them call it "invalidity" or "temporary penalties" and the reasons for the obligatory relinquishment (invalidity) were mentioned exclusively, as there is no room for analogy with them or expanding their interpretation, given the seriousness of the consequences that result from them if they are available. Where the judge loses his powers to consider the case, and he must withdraw from its consideration even if one of the litigants does not want him.

These reasons are considered conclusive legal presumptions, if there is a reason, including the invalidity of the judgment, even if it is proven that the judge was not biased in his judgment (). If he issues a judgment, the judgment is rescinded on appeal or reversed by distinction, and if any action is taken, this action is void, and this procedure is not valid even if it is done by the agreement of the litigants, as invalidity is considered a public order, and it is not acceptable to waive it and may be adhered to at any stage of the lawsuit, and in The Egyptian law is adhering to it by appealing the invalid judgment even if it was issued by the Court of Cassation, which is an exception to the original, while the Iraqi law did not show how to adhere to this invalidity, and in our opinion, the upholding is based on a lawsuit initiated by invalidity. Agreeing on what contradicts it, and at the time when the legislator has specified reasons for which he obliged the judge - if they are available - to relinquish the case, which is known as (mandatory relinquishment). In other cases, it has been permitted for the judge to withdraw from hearing the case if he feels embarrassed about that, which is known as (passport relinquishment). With it, none of the litigants has the right to reject it, and the judgment is then considered correct, but to ensure the seriousness of this feeling, his position is presented to a judicial body to verify its seriousness. Cassation, the President of the Court of Cassation considers this acknowledgment, and the role of the judicial authority is limited to clarifying the effect of these reasons presented by the judge, without investigating these reasons. The case again, as its decision has become irreversible, and one of the reasons that the judge feels embarrassed in considering the case is if he has expressed a scientific opinion in an author, article or legal research that serves one of the parties, or one of the litigants is a friend of a relative of him.()

And in the event that the judge expresses his desire to step down, and that coincides with one of the litigants submitting a request for recusal for the same reason or for another reason, then it is better for him to proceed with the stepping down procedures.

The second requirement : Distinguishing the judges' response from other systems

We will divide this requirement into two sections. In the first section, we will talk about distinguishing judges' responses from incompetence, while in the second section we will talk about distinguishing judges' responses from relinquishing.

Section one : Distinguishing judges' response from invalidity

Disqualified judges: - In order to ensure the judge's hearing, in which the judge must appear before the litigants and the public, and in order for the judge to be influenced in his judgment by reasons that usually weaken the soul, the legislator has stipulated certain reasons that combine these considerations. Hearing it, even if one of the litigants did not want it, and if he nevertheless proceeded with it any procedure or decided in it, his work or judgment will be null and void, even if the litigants agreed on the reasons for invalidity()

-If the judge is a relative or brother-in-law of one of the litigants to the fourth degree, and if the judge or his wife has an existing litigation with one of the litigants in the case, and if the judge is an attorney for one of the litigants in his private business, or as a guardian, curator, or inheritance to him()

,or he was related to the fourth degree by kinship or affinity with the trustee of one of the litigants or the trustee over him or to one of the members of the board of directors of the competent company or one of its directors, and this member or manager had a personal interest in the case, and if the judge, his wife, one of his relatives or in-laws are on the line of descent or Whoever is his representative, trustee or trustee has an interest in the existing case()

And if the judge had issued a fatwa, pleaded for one of the litigants in the case, or wrote in it, even if that was before he worked in the judiciary, or he had given testimony in it, or he had previously examined it as a judge, expert, or arbitrator, and if the judge had requested his recusal, he would file a compensation suit against the applicant If a litigation is filed

against the judge, and he decides that it is acceptable, then from the date of this ruling it becomes unfit to hear the case, and if it is among the judges sitting in the circuit that considers the case, or between one of them And the representative of the prosecution or the representative of one of the litigants or his defender is a kinship or affinity up to the fourth degree. This means that the legislator differentiated between the reasons for invalidity and the reasons for refutation on the basis that the reasons for invalidity usually weaken the soul, in contrast to the reasons for refutation as they have less impact on the impartiality of the judge for this The legislator obliged the judge, as soon as one of the reasons for his invalidity was established, not to consider the case, even if one of the litigants did not reject it, and his action or judgment was considered null and void, even if it was agreed upon by the litigants. the n See the case again.()

Section two: Distinguishing judges' response from stepping down

The judge's stepping down is to prevent him from considering a specific case that falls within his jurisdiction based on the availability of one of the reasons stipulated by the law for the judge's inability to consider the case that calls into question the wisdom of a bias or bias towards the other party.

If the judge is not fit to consider the case or has a reason to respond, then he must step down obligatory in the first case, while he is not forced to step down in the event that one of the reasons for the response is available, the obligatory step down, but it depends on the request of the opponent.

The right of reply granted to litigants in the judge's response system is distinguished from the recusal system in that the judge's response is an optional right for each party to the case, and it is a personal procedure, meaning that the judge's response involves a specific judge or a number of judges looking into the case, but if the response addresses all court judges Or a number of them so that the court cannot be formed, in this case we are more likely to transfer the case than to respond to the judge.

Chapter two : The general framework for the judge to step down in the civil case

The issue of the judge's stepping down is one of the important issues, because of the consequences of preventing the judge from looking into the case and hearing it, and for the serious and important effects that result from stepping down and rejecting. On the basis of that, we will divide this topic into two demands. In the first requirement, we will talk about the types of judges stepping down. As for the second requirement, we will talk about the effects of the judge stepping down on the civil lawsuit.

The first requirement: Types of judge's resignation

The judges' relinquishment is either an obligatory relinquishment or a permissible relinquishment, and on the basis of you we will divide this requirement into two sections. In the first section, we will talk about the obligatory relinquishment, but in the second part we will talk about the legal relinquishment.

Section one: obligatory step down

The Iraqi legislator obliges the judge "to obligatorily refrain from considering the case in the following cases:

First: If he is a husband, brother-in-law or relative of one of the litigants up to the fourth degree, if he and his wife or one of his children or one of his parents have an existing litigation with one of the parties or with the wife or one of his children or one of his parents, if the judge is an agent, guardian or trustee of one of the litigants or an apparent heir to him, or if he has a relation of blood or affinity to the fourth degree with a litigant's representative, guardian or trustee, or a member of the board of the company that is a party to the case, or one of its managers, if it is for him, his wife, ascendants, their spouses, descendants, their spouses, or For a person who is his representative, trustee or trustee with an interest in the existing case, if he had issued a fatwa or pleaded on behalf of one of the parties in the case, or had previously considered it as a judge, expert, or arbitrator, or had given testimony in it, meaning that the obligatory relinquishment if issued If the judge issues his judgment in favor of one of those mentioned, the litigants doubt his integrity and honesty.() On the contrary, if he issues his judgment against these people, it may lead to an abuse of the relationship that binds him with them. Also, if the judge issues the judgment in favor of his relatives, it will not be valid in the eyes of the opponent

who issued the judgment in favor of Relatives of the judge, even if the judgment is in itself No, because it is not sufficient in the judgment to be just in itself, but rather it must be convincing against the opponent in whose interest the judgment was issued, and that the relationship of kinship is either direct or is the link between the origins and branches or indirect, and it is the kinship of the footnotes and it is the link between people who have a common origin without That one of them is a branch of the other, just as the kinship of one of the spouses is considered in the same kinship and degree with respect to the other spouse, and the degree of direct kinship is taken into account in consideration of the descendant of the degree when ascending to the origin by leaving this asset and when calculating the degree of kinship of the footnotes, the multiplicity of degrees going up from the branch of the common ancestor to another branch .

Second: If the judge or his wife or one of his children or one of his parents have litigants with one of the parties or with his wife or one of his children or one of the parents, the litigation must be ongoing before the courts. In the case, there is no reason to prevent the judge from considering the new case if this case is for the judge's response, and the litigation must exist at the time of considering the case.

Third: If the judge is an agent or guardian of one of the litigants, a trustee or an apparent heir, or if he is a relative or affinity to the fourth degree, the agent of one of the litigants, the guardian or the trustee is one of the members of the board of directors of the company that is the party to the lawsuit or one of its managers.

Fourth: If the judge or his wife and his arrival or their spouses or descendants or their spouses or whoever he is his representative or assessing his interest in the existing lawsuit and lawsuits that are for the judge .

Fifth: If the judge had issued a fatwa or pleaded for one of the parties in the lawsuit or had testified in it, as the reason in this case may lead the judge to lean towards the side in which the fatwa or pleading took place in his favor, or if he had previously been a witness in the case, meaning there is He has information about the case known to him, and this does not agree with the judge's forbidding the ruling to his personal knowledge, just as the judge refrains from considering the case if he had previously considered it as a judge, expert or arbitrator.

Section two : Relinquished allowed

If the opponent is his servant or the one who used to eat him, and it is intended to repeat the invitation to food and accept the invitation, and it is equal that the one who paid the price is the judge, one of the litigants or a third person. The ruler or the judge is in one dwelling, or in one hotel, one room, or one private suite, regardless of who makes them pay the expenses of the dwelling. on the ruling, or if the judge had previously given his opinion on the case.

It is also permissible for the judge if he feels embarrassed to consider the summons for any reason that the original is not permissible for the judge or the judge to step down on his own, and there is no reason for the response, because this is considered an objection to the performance of the duties of the position, and perhaps his fear for himself may be misplaced, so he does not have to deprive the court and the parties to the invitation Whoever has his knowledge and experiences, but the legislator desires to remove the embarrassment from the judges or judges when the judge is related to the lawyer, i.e. the agent of one of the parties to the call for that in order to give the judge or the judge an opportunity to rest his conscience, and in this case the law left its discretion to the opinion of the judge or the judge who is looking In the invitation and nothing for anyone in it.

The second requirement : Effects of the judge's relinquished in the civil case

We will divide this requirement into two sections. In the first section, we will talk about the procedures followed in the mandatory step down. In the second section, we will talk about the effects of the obligatory step down.

Section one : Consequences of passport resignation

Article (92) allows an Iraqi to plead with the judge in the event that he feels embarrassed for any reason from looking into the case, to present the order of his disqualification to the president of the court to consider his approval to step aside .

That is, the legislator did not stipulate specific reasons as he did in the obligatory step down and the reasons for the response. Rather, he left that to the conscience of the judge. However, he did not make this absolute. Rather, he restricted it to the necessity of obtaining permission to approve his recognition of his abdication. On the one hand, a real justification for stepping down.

.Also, the judge's extreme sensitivity and excessive sense of embarrassment is not a way for him to relinquish the case, thus disrupting the workflow in the courts, and whatever the court's decision in this regard is, it does not require a judgment to be issued. It is not subject to appeal as it is one of the actions of the judicial administration, because it is not permissible to appeal for distinction in the work of the judicial and state administration.

The work of the judicial administration is not related to the rights or interests of the litigants and does not deal with them directly, so the litigants may not challenge them. However, there are those who believe that there is no need for the court to agree to the judge's stepping down, and if the matter is presented to the president of the court, it is just to prove permission to step down as a purely procedural act without either of them (the chief of the court or the consultation room) having any supervision over it, because the feeling of embarrassment It is an internal feeling that possesses the judge so that it becomes clear to him his latent desire to settle the dispute in a certain way, as the text was intended to oblige the judge to inform the court so that it is aware of him and so that it has the power to assess in cases where the judge leaves his opinion to it or to the president of the court.

There is an opinion that mediates the two previous opinions, as it is of the opinion that a distinction must be made between whether the judge informed the court president of the reason for the existing response and his intention to step down, as the court responds to his request so that he does not continue to consider a case that he feels embarrassed in his consideration of it.

But if the judge's intention is to mention the reason for the response to the president of the court to be aware of it, leaving it the discretion, then it may or may not authorize him. If the permission was refused, the judge continued to consider the case without this affecting the judgment he issued, and the litigants may not appeal the Judgment on the grounds that the judge has requested permission to step down.

After accepting the judge's refusal, another judge shall be appointed to look into the case, and the judgment issued in the case must prove the judge's abstention and the replacement of someone in his place without mentioning the reasons and procedures required by law to step aside are obligatory, and every action in contravention of it is void, so if the judge refers the case to a circuit Another case to feel embarrassment and set a session to consider it before that circuit referred to, then his decision is invalid for violating the procedure required by law, which is the need to present the issue of his disqualification to the president of the court to consider his approval to step down, and therefore the correct procedure is to postpone the case to another session with referral to the president of the court to determine another judge or circuit Others due to his sense of embarrassment.

Finally, it remains to point out that in the event that the judge's request to step down coincides with the request of one of the litigants to return him for the same reason or another reason, then it is better to be left in the procedures for stepping down, and we referred to that when we discussed the stepping down.

Section two : Implications for the obligatory step down

Based on the text of Article (92) Iraqi pleadings, the legislator has decided the invalidity of any action taken by the judge in which there is one of the reasons for the obligatory relinquishment, as he clarified that the judgment issued by the judge is subject to rescission or cassation according to the court that issued it and the procedures taken in it are invalidated. (). That is, these effects result from the force of the law, that is, even if one of the litigants does not request that, since seeing the case with the availability of one of the reasons for the obligatory stepping down is a violation of the text of an order related to public order

On this basis in Egypt, we find that it is permissible to challenge the judgment issued by the judge by means of permissible appeal, even if it was issued by the Court of Cassation, because the effect of the invalidity of the authority or the judge

who issued the judgment in the case is the invalidity of the judgment, not its absence, and therefore the inadmissibility of the obituary only by appealing by means legal basis without resorting to a case of nullity.

The permissibility of appealing the ruling, even if it was issued by the Court of Cassation, is an exception to the general rule that it is not permissible to challenge the rulings of the Court of Cassation in any way, as it is considered the finality of the matter, as the legislator permitted that with regard to the reasons for the obligatory relinquishment only, as the matter is presented to the court itself that orders By canceling the judgment and re-examining the appeal before another circuit, which is known as “withdrawing the judgment,” and this matter is not permissible except in that one case.

Appealing the cassation judgment and requesting its withdrawal due to the availability of one of the reasons for the obligatory relinquishment shall be in the same court of cassation and not others, and in the procedures followed in filing appeals by cassation, i.e. by depositing a newspaper in its clerk’s registry without being bound by the deadline for appealing by cassation.

Conclusion

After completing the writing of this research, we reached a number of conclusions and recommendations, which are:

First. The results.

1. The judicial system aims to ensure the impartiality, independence and impartiality of judges, to consolidate the principles of justice and fairness and to spread confidence in the judiciary and its rulings.
2. The judge’s stepping down is to prevent the judge from considering a case brought to him in connection with a particular dispute in exclusively specific cases in the law in order to protect the judge’s impartiality
3. of the reasons for the judges to step down is if one of the parties was employed by him, or he used to eat or live with one of the parties, or he had received a gift from him before or after filing the lawsuit
4. The issue of the judge’s stepping down is one of the important issues, because it prevents the judge from looking into the case and hearing it
5. To salute the judges. Either it is an obligatory relinquishment or a permissive relinquishment
6. After accepting the judge’s refusal, another judge shall be appointed to look into the case, and it must be established in the judgment issued in the case that the judge’s refusal and the replacement of someone in his place without mentioning the reasons and procedures required by law to step aside

Second . The recommendations.

1. We recommend that the state should be a guarantor of the errors that are made by the judicial authority to guarantee the right of the injured in the event of the judge’s insolvency, provided that it returns to him what it paid and does not leave that to interpretation and interpretation.
2. The best compensation that can be given to the injured is to cancel a judgment that has been proven incorrect. It is not fair to keep an invalid judgment that was proven if it was issued based on a grave mistake or fraud. Therefore, it is imperative that the Iraqi legislator intervene and make the invalidation of the judgment issued one of the consequences of establishing the responsibility of the judge.

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