

THE ADMINISTRATIVE AUTHORITY OF THE SPEAKER OF THE HOUSE OF REPRESENTATIVES: BETWEEN THE BOUNDS OF LEGAL GROUNDING AND JUDICIAL OVERSIGHT

A AUTORIDADE ADMINISTRATIVA DO PRESIDENTE DA CÂMARA DOS DEPUTADOS: ENTRE OS LIMITES DA FUNDAMENTAÇÃO JURÍDICA E DO CONTROLE JUDICIAL

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Abstract

In this paper we examine the administrative authority of the Speaker of the House of Representatives as one of the foundational pillars for ensuring the orderly and seamless conduct of parliamentary tasks, given the broad organisational scope it entails and the oversight challenges it brings about. The central problem around which this paper is based is addressing whether it is feasible to strike a balance between the requirements of administrative independence within the legislative institution with the demands of subjection to the principle of legality. The research problem revolves around the possibility of reconciling the requirements of the administrative independence of the legislative institution with the necessities of subordination to the principle of legality. The research begins by establishing the concept of this authority and explaining its legislative foundations, along with analyzing the legal nature of the actions and decisions issued by the Speaker. The research also focuses on studying the limits of oversight imposed on this authority through judicial review analysis within an analytical approach comparing judicial precedents. The research concludes that the differing legislative and judicial positions regarding the subjection of the Speaker's actions to oversight have resulted in a state of uncertainty in defining the dividing line between the necessities of parliamentary organization and the requirements of adherence to the principle of legality. This renders it necessary to reconsider the organization of this authority and activate oversight mechanisms over it, in a way that achieves a balance between

Resumo

Neste artigo, examinamos a autoridade administrativa do Presidente da Câmara dos Deputados como um dos pilares fundamentais para garantir o desempenho ordenado e contínuo das tarefas parlamentares, tendo em vista o amplo alcance organizacional que ela implica e os desafios de fiscalização que acarreta. A questão central em torno da qual este artigo se articula é a de determinar se é viável alcançar um equilíbrio entre os requisitos de independência administrativa dentro da instituição legislativa e as exigências de submissão ao princípio da legalidade. O problema de pesquisa gira em torno da possibilidade de conciliar os requisitos de independência administrativa da instituição legislativa com as necessidades de subordinação ao princípio da legalidade. A pesquisa começa estabelecendo o conceito dessa autoridade e explicando seus fundamentos legislativos, além de analisar a natureza jurídica das ações e decisões proferidas pelo Presidente da Câmara. A pesquisa também se concentra no estudo dos limites de fiscalização impostos a essa autoridade por meio da análise da revisão judicial, dentro de uma abordagem analítica que compara precedentes judiciais. A pesquisa conclui que as posições legislativas e judiciais divergentes quanto à sujeição dos atos do Presidente da Câmara ao controle resultaram em um estado de incerteza na definição da linha divisória entre as necessidades da organização parlamentar e os requisitos de adesão ao princípio da legalidade. Isso torna necessário reconsiderar a



the independence of the House of Representatives and ensuring the protection of rights and legal positions.

Keywords: Administrative Authority. Speaker of the House. Parliamentary Administration. Judicial Oversight. Parliamentary Management.

organização dessa autoridade e ativar mecanismos de controle sobre ela, de forma a alcançar um equilíbrio entre a independência da Câmara dos Deputados e a garantia da proteção dos direitos e das posições jurídicas.

Palavras-chave: *Autoridade Administrativa. Presidente da Câmara. Administração Parlamentar. Fiscalização Judicial. Gestão Parlamentar.*

1 INTRODUCTION

The administrative authority of the Speaker of the House of Representatives is considered one of the most controversial topics in contemporary constitutional and administrative jurisprudence, as there is no formation of the House of Representatives in which administrative authority is absent within the framework of this formation in terms of organization and workflow. Therefore, parliamentary councils in recent decades have paid attention to organizing this authority and have given it a portion of focus in their laws and internal regulations, albeit with differences in the process of organization due to the fact that this authority involves a delicate overlap between the requirements for the proper functioning of parliamentary work and ensuring the regularity of the parliamentary body on one hand, and the necessity of adhering to the principle of legality and not abusing authority on the other.

1.1 Research problem

The breadth of the administrative authority of the Speaker of Parliament represents fundamental legal issues related to its extent, the nature of its legal bases, and the degree to which it is subject to various forms of oversight, particularly judicial oversight and internal parliamentary oversight. Accordingly, the main question of this study is:

What are the limits of the administrative authority of the Speaker of the House of Representatives?

To what degree can it be subject to judicial review in accordance with the laws and internal regulations of legislative councils, especially with regard to Iraqi legislation?

1.2 Significance of the study

The study derives its importance from its addressing a central topic related to the essence of the balance between authority and oversight within the legislative institution. It contributes to clarifying the legal framework regulating the practice of the Speaker's administrative authority, thereby enhancing respect for the principle of legality and preventing arbitrariness or unilateral decision-making within the Council. The practical significance of the research is also evident in that it sheds light on judicial and parliamentary guarantees capable of controlling this authority and provides a comparative perspective that can be utilized in developing internal systems.

1.3 Objectives of the Study

The study aims to achieve a set of objectives, foremost among them:

- 1- To ground the concept of the administrative authority of the Speaker of the House of Representatives and illustrate its legislative foundations.
- 2- To define the scope of this authority and its limits in the light of internal regulations and judicial applications.
- 3- To analyze the forms of judicial oversight imposed on the actions of the Speaker of the House of Representatives.
- 4- To present proposals and recommendations that contribute to reinforcing legality within the scope of the Speaker's administrative authority, taking into account comparative internal systems and benefiting from prevailing parliamentary practices and customs.

1.4 Study methodology

The research relied on the analytical method in studying constitutional and legislative texts as well as relevant internal regulations, along with the inductive method in tracking judicial trends, analyzing them, and deriving conclusions from them.

1.5 Study structure

To help organize the discussion of the topic, the study was divided into two main sections. The first section dealt with the concept of the administrative authority of the Speaker of the House of Representatives, in terms of its definition and legislative foundations, while the second section was dedicated to clarifying the limits of this authority through studying the determination of the nature of the acts issued by the Speaker and the scope of judicial oversight over the Speaker's actions, according to the analysis of judicial precedents in Iraq, culminating in a conclusion that included the most important findings and recommendations.

2 SECTION ONE: THE CONCEPT OF THE SPEAKER'S ADMINISTRATIVE AUTHORITY

2.1 First: defining the administrative authority of the speaker of the house of representatives

Defining the administrative authority of the Speaker of the Council requires addressing it from three main aspects. The first aspect is the legislative definition, which is concerned with the laws and internal regulations of parliamentary councils. From reviewing the texts of the Iraqi Council of Representatives Law and the internal regulations of the Council, which represent the legislative basis of the parliamentary administrative authority alongside the Constitution, we notice that the legislator did not provide a specific definition or concept of the administrative authority of the Speaker of the Council. Rather, it only referred to the powers or administrative authorities enjoyed by the Speaker in various provisions of the internal regulations (Iraqi House of

Representatives Internal Regulation No. 1 of 2022, Article 34). In our view, the absence of a precise definition reflects the inherent difficulty of encapsulating this authority in a legal formulation that captures all its elements, this is because it is governed by an overlapping body of legal texts running from the constitution down through parliamentary laws and internal regulations.

The second aspect is represented in the judicial definition of the administrative authority of the council president. From an examination of the available judicial rulings in constitutional and administrative courts, it can be said that the Iraqi judiciary has not adopted a direct or explicit judicial definition of the administrative authority of the council president. This is due to the judiciary's fragmented approach in dealing with this authority, as it subjected some aspects to oversight while excluding many actions of that authority from judicial review. In other words, it looks at the outputs of the authority without establishing a definitional framework for its meaning, which has prevented the consolidation of a unified concept of the administrative authority of the council president. The third aspect is represented in the doctrinal definition of the administrative authority of the council president. It is noted that it has not adopted a specific definition of this authority but rather focused on clarifying the definition of parliamentary administration, defining its concept as 'an administration carried out by the powers, bodies, and parliamentary, political, and administrative institutions with the aim of achieving the objectives of the parliamentary function efficiently and effectively' (Kasib, 2011, p. 22). Others defined it as the main pillar upon which the work of legislative councils is based, through managing technical, administrative, and financial affairs, and providing the necessary services and facilities for council members to perform their constitutional duties, through its various functional staff (Al-Mushaqba, 2011, p. 16).

We should not fail to point out that the absence of a jurisprudential definition of administrative authority was not due to neglect or a shortcoming of jurisprudence in shaping this concept, but rather it is the result of a set of considerations and reasons, the most important of which is the novelty of studying the subject, as the administrative authority of the council president is considered a relatively modern field in administrative jurisprudence when compared to traditional administrative authority (Al-Sawi, 2025, p. 6).

Considering that most legal studies have focused on administrative authority within the executive institution, as it is the most clear and important in organizing public affairs, as well as the overlap of the administrative authority of the council president with his representative and political powers, which makes it characterized by a complex nature that includes organizing the council's work and managing its members alongside some tasks of a political nature. (Tu'ayba, 2015, pp. 400–401). Accordingly, this overlapping mixture of the functions of that authority makes it difficult for jurisprudence to provide a specific definition for it, as it requires precision due to its connection with the specifics of the parliamentary system and the nature of the relationships between public authorities. Moreover, the scarcity of judicial precedents has contributed to the lack of adoption by jurisprudence of a definition for the administrative authority, as no extensive and in-depth judicial rulings have yet been issued clearly defining the scope of the administrative authority of the Speaker of the House of Representatives, unlike the executive administrative authority, which has a wide range of judicial precedents.

In light of what has been mentioned, we can define the administrative authority of the Speaker of the Council as an attempt to highlight an important aspect of the legislative authority's work, namely the administrative side. It can be defined as a set of powers, organizational, disciplinary, and supervisory procedures granted to the Speaker by legislations, practices, and parliamentary customs, enabling them to manage the Council's internal affairs and shape its administrative policy through legal means to ensure the parliamentary facility operates smoothly and consistently.

2.2 Second: the legislative foundations of the speaker's administrative authority

The administrative authority of the Speaker rests on a set of hierarchically ordered legislative foundations, which may be summarised as follows:

2.2.1 Parliamentary laws

It can be said that the term 'parliamentary laws' has recently begun to be used in jurisprudential writings, after the parliamentary council became not merely a legislative and supervisory body but rather a comprehensive institution with a complex

administrative apparatus and a graduated organizational structure. In line with what has been mentioned, we notice that some jurists have attempted to define the concept of parliamentary law, and they were divided into two directions. The first direction is narrow and deals with parliamentary law as part of constitutional law, limited to the rules governing the work of the council, excluding from its provisions parliamentary practices and customs. According to this direction, parliamentary law is defined as ‘that part of constitutional law that deals with the rules followed in organizing, forming, authorizing, and operating political councils.’ (Mar’i et al., 2016, p. 4). The second approach is broad, as parliamentary law is not limited to legislative texts alone, but also includes customs, precedents, and parliamentary practices that have acquired binding force due to their repetition and stability. Accordingly, parliamentary law has defined it as “the set of rules governing the parliamentary council in its formation, administration, or activity, regardless of the nature of these rules (legal texts – practical practices) or their source (constitution – law – internal regulations – executive regulations).” (Fikri, 2006, p. 10).

It is worth mentioning that parliamentary laws in Iraq have notably emerged and continuously developed after the issuance of the 2005 Constitution. The Iraqi Council of Representatives has issued some parliamentary laws that regulate its work, including the repealed Council of Representatives Law No. (50) of 2007, the Council of Representatives and Its Formations Law No. (13) of 2018 which replaced the previous Council of Representatives Law, the Law on the Replacement of Members of the Council of Representatives No. (6) of 2006 as amended, and the Law on the Election of the Council of Representatives, Provincial Councils, and Districts No. (12) of 2018 as amended. The Council of Representatives and Its Formations Law is considered one of the most important parliamentary laws from which the administrative authority of the Council President derives its legal basis.

It may be useful in this regard to pose a very important question concerning the legal nature of the laws (parliamentary) that regulate the work of the legislative authority: Are they considered basic laws (supplementing the Constitution), or do they fall within the scope of ordinary laws?

Answering this question requires first clarifying the jurisprudential trends in determining the nature of these laws. The first trend, which adopts the formal criterion, holds that any legal rule issued by the Council and subject in its enactment and

amendment to special procedures different from the procedures for enacting and amending ordinary law is considered a basic law (supplementary to the constitution). Accordingly, according to this criterion, the parliamentary laws, i.e. regulating the work of the Council, fall outside the category of basic laws supplementary to the constitution whenever their enactment procedures resemble those of ordinary laws, even if they regulate subjects that are by their nature supplementary to the constitution, such as laws concerning the elections of the House of Representatives (Hasbu, 2001, p. 20; Al-Sha'ir, 1983, p. 343).

As for the second approach, which adopts the objective criterion for determining the nature of parliamentary laws, it is based on looking at the essence and subject matter of the law without consideration of the procedures followed in issuing the legal rule. Accordingly, according to this approach, all laws related to the organization and formation of public authorities and the manner of their functioning are considered basic laws (complementary to the constitution), even if the procedures for their issuance resemble those of ordinary laws.

As for the third approach, it has adopted a mixed criterion to determine the nature of parliamentary laws. It holds that parliamentary laws are considered basic laws (complementary to the constitution) whenever the procedures for their issuance differ from those of ordinary laws and pertain to organizing matters related to public authorities and individual freedoms (Ahmad, 1990, p. 27).

By reviewing these three approaches, it can be said that the laws issued by the legislative authority to organize its own affairs have a dual nature. On one hand, they are considered regulatory laws with an institutional character that define the powers of the Speaker in managing the parliamentary body in an orderly and continuous manner; on the other hand, they are considered laws complementary to the constitution.

2.2.2 Internal regulations

The internal regulations of legislative councils are the primary instrument for organising and ensuring the sound conduct of parliamentary work (Quwinis, 2001, p. 4). These regulations serve as the reference point for resolving disputes and disagreements,

determining duties, and setting out the parliamentary violations and penalties that may be imposed on a member (Al-Madwar, 2002, p. 7).

An equally important note here is that parliamentary systems have differed in the methods used to adopt internal regulations, and three approaches may be identified, reflecting the degree of executive influence over the legislature. The first method is to adopt internal regulations through a formal law, by this we mean this follows the same process as ordinary legislation. Since the executive branch is involved, particularly by ratifying the law, this approach can compromise the council's independence from other branches (Al-Tabtaba'i, 1980, p. 282). In practice, the Speaker's administrative authority may also be affected, as executive ratification remains, after all, discretionary and allows the executive to challenge provisions relating to that authority.

The second method is for the council to devise its own regulations by resolution, without taking a leaf out of any other branch's book. This fact testifies to the council's right to manage its own affairs, based on the principle that it governs itself (Abu Shamalah & Batarsah, 2018, p. 164). The Iraqi parliament follows this model: Article 51 of the 2005 Constitution states that "the Council of Representatives shall establish its own internal rules of procedure to regulate its work.". That way, the council strengthens its administrative independence, which also reinforces the Speaker's autonomy.

The third approach we can note here involves adoption by the council after the regulations have been submitted to judicial review. This means that judicial oversight of the internal regulations precedes their entry into force. This approach was adopted by the French Constitution, which requires that the internal regulations of legislative councils be referred to the Constitutional Council before they take effect in order to verify their conformity with the constitution (Fikri, 2006, p. 22; Al-Jamal, 1985, p. 31; Abd al-'Al, 1992, p. 27).

2.2.3 Parliamentary codes of conduct

Parliamentary codes of conduct gain special importance in supporting the administrative authority of the Speaker of the House and establishing their disciplinary scope as a legislative foundation that the Speaker relies on in exercising their disciplinary powers. They enable the Speaker to take the necessary measures to maintain order during

sessions, ensure the smooth running of parliamentary work, and prevent any violation of the Council's dignity.

In a related context, some have defined parliamentary codes of conduct as a set of normative and value-based rules, behavioral patterns, and practices that council members can adhere to and follow while performing their parliamentary duties. (Abd al-Razzaq, 2016, p. 21; Al-Qaisi, 2017, p. 41).

We would like to draw attention to the fact that these definitions did not give the code a clear legal value and do not consider it an official or legislative document, but rather one of a guiding or advisory nature, without clarifying the consequences of violating it, which makes it limited to covering the elements of parliamentary codes of conduct. Therefore, we can define the concept of these codes as a system of legal rules supplementary to the internal regulations of the council, concerned with regulating the parliamentary behavior of its members by establishing guiding standards and parliamentary duties that impose a direct obligation on the member, and violation results in the member's disciplinary accountability according to the established mechanisms and procedures.

It may be useful in this regard to pose a question about the legal nature of parliamentary codes of conduct, for the purpose of determining the extent of their impact on the administrative authority of the Speaker of the House of Representatives.

To start with, the parliamentary systems that moved towards adopting a code of parliamentary conduct have varied in explaining the legal nature of these codes, and have split into two directions. The first direction sees parliamentary codes of conduct as having a guiding (advisory) nature, limited to offering guidance and principles that members of the council should follow without imposing any direct legal penalties if their provisions are violated, which weakens the code's impact in countries that lack strong oversight institutions (Abdallah, n.d., p. 169). One example of a code of this guiding nature is the Jordanian House of Representatives Code of Parliamentary Conduct of 2015, which does not impose any disciplinary sanction on a violating member but confines itself to issuing a verbal or written notice of the infraction committed (Jordanian House of Representatives Code of Parliamentary Conduct, 2015, Article 6).

As for the second approach, it gives the code of conduct a legal value equivalent to that of the internal regulations of the House of Representatives, making the code a part

of the legal system that governs the work of the council, and imposing penalties on members who violate the provisions of the code (Al-Sharif, 2021, p. 102). One code that has adopted a binding character is the Iraqi House of Representatives Code of Parliamentary Conduct of 2013 as amended by Council Resolution No. 5 of 2016. That code states explicitly that “these rules are to be considered an annex to the internal regulations of the Iraqi House of Representatives” (Iraqi House of Representatives Code of Parliamentary Conduct, 2013/2016, Article IV(A)). It also sets out a range of disciplinary penalties that may be imposed on a member who violates parliamentary conduct standards (Article V(5)), and includes disciplinary competences for the Speaker in addition to those provided for in the internal regulations (Article III(A)).

3 SECTION TWO: THE LIMITS OF THE SPEAKER’S ADMINISTRATIVE AUTHORITY

3.1 First: determining the nature of acts emanating from the speaker

First and foremost, it can be said that addressing the issue of judicial oversight of the administrative authority granted to the Council President is only appropriate by starting with defining the legal nature of the acts and decisions issued by him. Accordingly, the scope of judicial oversight expands or contracts depending on the nature of the acts issued by the Council President. In this context, jurisprudence and practice have established that the House of Representatives undertakes two types of acts: the first of which are parliamentary legislative acts, which are embodied in setting general and abstract legal rules through ordinary legislation, or in the form of legislative decisions (Al-‘Ayadi, 2020, p. 23). The second type is represented by non-legislative parliamentary work, which is in turn divided into two parts. The first part is oversight work issued by the council in the course of performing its supervisory function, meaning it relates to the nature of the relationship between the legislative and executive authorities or between the legislative authority and independent bodies. The second part is regulatory work, usually handled solely by the council president or together with his deputies, or undertaken by the council as a collective body. This relates to organizing the council’s internal workflow and managing matters concerning its members and staff, meaning its effects are confined

within the council and do not extend to its relationship with other authorities (Halwas, 2015, p. 238).

It is unavoidable to say that the real point of difficulty emerges when dealing with the second type, which represents non-legislative parliamentary work, especially the second part of it related to the Council's organizational work. This includes all legal and material actions and measures issued by the House of Representatives or one of its bodies, covering decisions related to the Council's internal regulations, maintaining internal order, forming permanent committees, disciplining one of the council members, and decisions concerning the council's employees.

Since a considerable portion of these organizational tasks falls under the administrative authority of the council president, the core issue that arises here is the question about the nature of these actions: Are they administrative in nature and therefore part of administrative work, or do they fall outside the administrative classification to be considered parliamentary work of a political nature?

To answer this question, it is necessary to first look at what scholars, legislation, and the judiciary have attempted regarding drawing the line between parliamentary work and administrative work.

3.1.1 The doctrinal position

In dealing with this issue, jurists tended to rely on more than one criterion. The first is the formal criterion, which emphasizes the form of the act over its substance, making its nature dependent on the authority that issued it rather than its content or effect. Under this view, an act becomes administrative as long as it is issued by an administrative authority, even if its content conflicts with the legislative rule (Fawdah, 2010, p. 175). According to this criterion, everything issued by the chairman of the council is considered part of parliamentary work, not administrative work, even if it takes on an administrative nature limited to organizing the council's internal affairs and is not directly related to the council's oversight role or its relationship with other authorities. Supporters of this criterion argue that its advantage lies in its simplicity, clarity, and ease of application (Al-Zayni, 1986, p. 14). However, it is criticized for being a superficial criterion that only looks at the surface and doesn't get into the depth of the content, so it overlooks the

essence of the work, leading to an oversimplified view of parliamentary reality by focusing solely on the source of the work, ignoring that the nature of the work is determined by its essence and impact, not just by who created it (Hafiz, 1993, p. 392).

In contrast to the formal criterion, supporters of the substantive criterion went to distinguish between parliamentary work and administrative work by looking at the nature of the work and its subject, regardless of the authority that issued it, so that the identity of the source is overlooked and the most important consideration is given to the content of the work and its effect (Laylu, 2010, p. 179). Supporters of this criterion argue that it is rational and logical, and avoids the criticisms directed at the formal criterion (Fawdah, 2010, p. 177). Its importance also lies in the fact that, in certain cases, the legislative authority issues administrative decisions, making it a useful tool for characterising some of its acts and identifying their administrative nature (Al-Tamawi, 2006, p. 112). However, it has been criticized for supposedly leading to an expansion of the principle of separation of powers on one hand, and broadening the scope of parliamentary actions to include all actions issued by the executive authority (Allawi, 2009, p. 303).

Reviewing the two criteria, it becomes clear to us that the objective criterion is the most suitable for determining the nature of the actions issued by the council president, whether those actions were issued by the president alone, in cooperation with his deputies, or even some actions issued by the council, considering that the organizational actions issued by the council president, whose effects are limited within the council, are of an administrative nature, as most of them relate to administrative matters.

3.1.2 The legislative position

So if we take a look at the position of the Iraqi legislator, we notice that the State Council Law adopted the formal criterion to distinguish between parliamentary work and administrative work, as it defined the jurisdiction of the Administrative Judiciary Court as ‘deciding on the validity of individual and regulatory administrative orders and decisions issued by employees and bodies in ministries and non-ministerial entities..’ (Iraqi State Council Law No. 65 of 1979 (as amended), Article 7(IV)). And according to the concept of violation, if the legislator intended to adopt the objective standard, the wording would have included the phrase ‘deciding on the validity of orders and

administrative decisions issued by state authorities for which no appeal reference has been designated.’ In the same context, if we move to the Egyptian legislator, we notice that it also adopted the formal criterion to distinguish between parliamentary acts and administrative acts, considering that the Egyptian State Council Law defined the jurisdiction of the State Council courts to decide on matters related to appeals against final administrative decisions issued by administrative authorities concerning appointments, promotions, or other administrative disputes. (Egyptian State Council Law No. 47 of 1972, Article 10).

3.1.3 The judicial position

The picture looks rather different at the judicial level. Looking at the stance of the Iraqi courts on adopting a specific criterion to distinguish parliamentary work from administrative work, it turns out there hasn’t been a clear approach. They haven’t explicitly indicated a specific standard to differentiate between parliamentary and administrative work, probably because parliamentary experience in Iraq is still relatively new, considering that parliamentary work has only really been recognized after 2003 (Fanjan, 2022, p. 23).

As for the Egyptian judiciary, it seems that it explicitly adopted the formal criterion initially, as the Administrative Court stated in one of its rulings: ‘The crux of the dispute regarding the distinction between legislative work, which is immune from annulment, and administrative work subject to annulment, is the criterion to be applied, whether it is the substantive or the formal criterion. There is no doubt that the rulings of this court have consistently taken the formal criterion; the issuance of a decision by the executive authority, whatever its nature, makes it subject to annulment like any administrative decision....’ (Egyptian Administrative Court, 1953, Case No. 218/4Q, as cited in Fawdah, 2010, p. 179).

3.2 Second: the scope of judicial review over the speaker's acts

In this context, the fundamental question arises: To what extent can the judiciary exercise oversight over the actions of the Council President in light of the fine distinction between parliamentary work and administrative work?

Initially, legal scholars disagreed on defining the scope of judicial oversight over the administrative actions of the Council President, dividing into two directions. The first, which is the opinion of the majority of administrative and constitutional scholars in Egypt, holds that all actions issued by the Council President or the Council itself, regardless of their nature, are actions immune from both constitutional and administrative judicial oversight, and the Council alone possesses authority over them, with no entity allowed to exercise oversight over these actions, as this would violate the principle of separation of powers. The only exception to this is administrative actions and decisions related to the affairs of the Council's employees, as they are subject to judicial oversight. In this context, the fundamental question arises: To what extent can the judiciary exercise oversight over the actions of the Council President in light of the fine distinction between parliamentary work and administrative work?

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From this, we are entitled to express our astonishment at this jurisprudential opinion, considering that not subjecting administrative acts issued by the head of the council or the council itself to judicial review leads to the abuse of power by the head of the council against the council members and at the same time results in unacceptable outcomes. It turns the principle of separation of powers into a justification for the

squandering of rights, while the purpose of this principle is not protection but achieving balance.

Meanwhile, another jurisprudential trend has considered it permissible to challenge these acts, especially the decisions related to the council members, and the statement that challenging them contradicts the principle of separation of powers is a rejected opinion, since the principle of separation does not mean isolating the legislative authority from the judicial authority without the presence of oversight (Al-Khalfi, 1999, p. 223). In turn, we tend to favor this jurisprudential trend, considering that not subjecting the administrative actions issued by the Speaker of the Council to judicial review means opening the door wide for the Speaker to abuse his administrative authority.

As for the stance of legislation regarding the scope of judicial oversight over the actions of the Speaker of the Council, we note that the Iraqi legislator did not explicitly refer in the Constitution or the Council of Representatives Law or in the internal regulations to subjecting the administrative actions issued by the Speaker of the Council to judicial review, and only mentioned the jurisdiction of the Supreme Federal Court in ‘resolving disputes arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority.’ (Iraqi Constitution, 2005, Article 93(III); Iraqi Federal Supreme Court Law No. 30 of 2005 (as amended by Law No. 25 of 2021), Article 4(III)).

At first glance from examining the text of the above article, it becomes clear to us that appeals against administrative acts issued by the Chairman of the Council alone or in cooperation with his deputies, or those issued by the Council itself, are to be brought before the Federal Supreme Court, considering that it is the competent authority to examine decisions and procedures issued by the federal authority. In contrast, the Egyptian legislator remained silent regarding regulating the issue of judicial oversight over administrative acts issued by the Chairman of the Council.

As for the judiciary’s stance on the scope of oversight over administrative acts issued by the Chairman of the Council, it is observed that the Iraqi judiciary has not adopted a clear path on this issue, given that the Federal Supreme Court has not subjected all administrative acts issued by the Chairman of the Council to its oversight. Rather, it refrained from extending its jurisdiction over some administrative decisions made by the Chairman of the Council related to the internal functioning of the Council, considering

them as internal organizational matters within the powers of the Chairman of the Council and outside the court's jurisdiction.

It was stated in one of its decisions regarding the appeal against the decision of the Council President, which indicated that the required majority for voting on the position of Minister of Defense was not achieved, where the plaintiff argued that the Council President's decision was an individual and personal decision not based on practical grounds in counting the votes, but rather relied on his personal opinion and decided that the majority was not achieved. Consequently, he violated the manual counting mechanism conducted by the session reporters. The court decided to dismiss the case due to the lack of proof of the majority stipulated in Article (59/Second) of the Constitution in favor of the plaintiff, based on the report of forensic experts, and considered that the procedures related to voting, such as the mechanism of counting the votes, which were violated in the internal regulations of the Council of Representatives, are organizational matters that the Federal Supreme Court is not competent to review in appeals (Iraqi Federal Supreme Court, 2019, Decision No. 237/Federal/Media/2018).

As it went in another decision of hers, whose substance revolves around the President of the Council determining a hierarchical mechanism for using parliamentary oversight tools, where a deputy does not have the right to use a means without resorting to the previous one. The plaintiff claimed that this arrangement constitutes a violation of the constitution and the internal regulations. However, the court responded that prioritizing the use of parliamentary oversight tools is among the organizational matters of the Council, which fall within the jurisdiction of the Speaker of the House of Representatives, and the Supreme Federal Court does not have the authority to intervene in these organizational matters concerning the work of the House of Representatives. Therefore, the plaintiff's request is outside the jurisdiction of the court (Iraqi Federal Supreme Court, 2009, Decision No. 51/Federal/2009).

In the same direction, the court ruled in another decision involving an appeal against the procedures and decisions of the Council President related to the management of the session, in which the plaintiffs requested the annulment of that session and its invalidity. The court decided that the entirety of the appeal concerns procedures related to maintaining security and order within the House of Representatives chamber, and that the procedures of managing the session and others are considered organizational matters

that fall outside the jurisdiction of the Supreme Federal Court (Iraqi Federal Supreme Court, 2023a, Decision No. 72/Federal/2023).

According to these data, it becomes clear that the Supreme Federal Court has, in a number of its decisions, settled on not extending its supervision over the regulatory acts issued by the Speaker of the Council, considering them among the powers granted to him which are beyond its jurisdiction. However, this approach was not consistent, as the court, in other decisions, expressed a contrary direction, ruling that some administrative acts issued by the Speaker of the Council are subject to its supervision, which reveals a divergence in its judicial rulings and a lack of stability in its position regarding this matter.

It was stated in one of its rulings: ‘The appeal against the decision issued by the Speaker of the House of Representatives, which includes lifting the immunity of a deputy, falls within the jurisdiction of this court pursuant to the provisions of Article (93/Third) of the Constitution.’ (Iraqi Federal Supreme Court, 2021, Decision No. 90/Federal/2019).

In a similar vein, it ruled in another verdict concerning the appeal against the decision of the Council’s President regarding the transfer of two deputies’ membership from the Integrity Committee to the Agriculture Committee and the other to the Migration and Displaced Persons Committee against their will. It indicated that transferring the plaintiff to the Agriculture Committee is closer to his specialization on one hand, and that the process of transferring one or two members from one committee to another cannot, in any case, affect the voting process or the submission of proposals or recommendations within the committees on the other hand. Therefore, it decided to dismiss the plaintiffs’ lawsuit due to the absence of a constitutional violation (Iraqi Federal Supreme Court, 2023b, Decision No. 56/Federal/2023).

It becomes clear from the foregoing that the Federal Court has adopted an approach that emphasizes the subjection of some administrative actions of the Speaker of the Council to judicial supervision. Accordingly, it can be said that, through reviewing the jurisprudence of the Federal Supreme Court, it has distinguished between two types of actions issued by the Speaker of the Council. The first is represented by the internal organizational actions of the Council, whose impact is limited to the administrative and technical aspects related to the daily parliamentary work, such as managing and organizing sessions, the Council’s agenda, and other matters whose effect is confined to organizing the internal work of the Council. The second type of actions consists of

administrative actions with a legal effect, so to speak, such as decisions issued by the Speaker of the Council that result in effects on established legal positions, affecting legal or constitutional positions of individuals or institutions, or touching upon established constitutional rights. We note that the Court extended its supervision to the Speaker's decisions concerning the lifting of parliamentary immunity because they affect the legal status of the member.

It also imposed its supervision on the process of transferring the matter from one committee to another, even though that process is purely administrative, while refraining from overseeing the matters related to the convening of the session, its management, and maintaining security and order within the council. However, its approach in differentiating between administrative acts issued by the council president raises a number of critical observations. The court exercises its supervision over some administrative acts whenever they have legal effects on existing legal positions, while excluding from its jurisdiction other administrative acts on the pretext that they are limited to the internal organizational matters of the council. This differentiation is not based on a consistent criterion that can be clearly relied upon, because some administrative acts classified as internal organizational matters may have significant implications affecting constitutional rights.

As for the administrative decisions issued by the Council President concerning the Council's employees, the Federal Supreme Court has excluded those decisions from its jurisdiction, as it stated in one of its rulings concerning the appeal against the Council President's decision, which involved creating the position of Secretary-General of the Council with ministerial rank and his deputy with Undersecretary rank, and issuing orders for their appointment in the Council. The Court considered that the decision was issued contrary to the provisions of Article 147 of the internal regulations, which stated, '(The administration of the Council's Diwan shall be undertaken by the President of the Diwan with a special rank...)' and did not refer to the position of Secretary-General of the Council with ministerial rank or the position of Deputy Secretary-General with Undersecretary rank. The Court deemed that these orders are administrative orders and that examining them does not fall within the jurisdiction of the Federal Supreme Court, which requires dismissing the case on the grounds of lack of jurisdiction (Iraqi Federal Supreme Court, 2014, Decision No. 34/Federal/Media/2014). As an explanation of this,

the Federal Supreme Court does not have jurisdiction to consider appeals related to administrative decisions concerning the Council's employees. Therefore, the question that arises in this regard is: which authority is competent to consider appeals related to those decisions?

Initially, it can be said that jurisprudence unanimously agrees that administrative decisions issued by the President of the Council concerning the Council's employees are considered administrative acts that can be appealed for annulment before the State Council courts (Khalifah, 2005, p. 66). Since it was directed towards addressing the category of employees within the council, it is indeed the case that the administrative judiciary in Iraq has tended to extend its judicial oversight in reviewing appeals submitted against administrative decisions issued by the president of the council regarding the status of council employees. The Iraqi State Council, in one of its decisions issued at the request of the council president concerning the calculation of previous job service for the purposes of determining the salary and grade for those who submitted a request to have it counted from council employees after the issuance of their appointment order, confirmed that Article (22) of the Civil Service Law No. (24) of 1960, as amended, is applicable regarding reappointment for former employees who are reappointed as employees in the Council of Representatives. Furthermore, Article (28) of the Unified Retirement Law No. (27) of 2006 is to be applied to an employee who is appointed or reappointed (Iraqi State Consultative Council, 2012, Decision No. 43/2012).

As for the stance of the Egyptian judiciary regarding the oversight of administrative acts issued by the President of the Council, the Administrative Judiciary Court ruled that 'the assessment of the legal status of the employees of the Egyptian Parliament, considering them as public state employees, and the decisions issued concerning their professional life are administrative decisions that do not violate the principle of separation of powers; on the contrary, they support and reinforce it...' (Fawdah, 2010, p. 181). It was also ruled that if the dispute, according to its legal description, is a dispute regarding rank, it is permissible to litigate it before the Administrative Court, even if the appellant is a parliamentary employee and the entity he is disputing with is one of the two parliamentary houses (as cited in Fawzi, 2006, p. 19).

4 CONCLUSION

- 1- It has been observed that the legislative basis for the administrative authority of the Speaker of the Council of Representatives in Iraq is fragmented, as the constitution contributed to shifting the organizational burden onto the Law of the Council of Representatives and the internal regulations, which deprived this authority of direct constitutional support. This fragmentation did not provide a clear legal framework defining the scope of this authority or the guarantees related to it, which led to overlapping sources of organization and opened the door to divergent interpretations and practical implementation difficulties.
- 2- The study concluded that the practical basis of the administrative authority of the Speaker of the Council of Representatives is reinforced by parliamentary practice and accumulated conventions, which often fill the legislative gap, granting this authority a broader practical dimension than explicitly determined by the legislator. However, the Iraqi legislator did not move towards codifying the parliamentary precedents and traditions in an official code, unlike the Egyptian legislator who established their codification as a complementary regulatory source. This weakened the binding effect of these precedents in Iraq and turned them into practices subject to the discretion of the Speaker, instead of being a stable legal tool.
- 3- We concluded that the administrative authority of the Speaker of the Iraqi Council of Representatives is subject to a dual judicial control system, as administrative actions that affect the legal and constitutional positions of the members, the council's formations, and its relations with other authorities are subject to the oversight of the Supreme Federal Court, whereas decisions related to the affairs of the council's employees are subject to administrative judiciary oversight. However, the practical application of this dual judicial system requires setting precise criteria to distinguish between the two scopes of oversight, ensuring the clarity of the limits of administrative authority and the unification of judicial jurisprudence.
- 4- This research revealed that the problem does not lie merely in the expansion of the administrative authority of the Speaker of the House of Representatives, but

rather in the absence of precise controls governing its exercise and the lack of clear standards in legal systems to define the limits of oversight.

- 5- It becomes evident from following the rulings of the Supreme Federal Court that the scope of its oversight over the actions of the Speaker of the House of Representatives has been inconsistent. It extended its oversight to administrative decisions that have an impact on legal and constitutional positions, while refraining from overseeing administrative decisions related to the organization of the internal work of the council, without adopting a clear standard to distinguish between these actions. This led to differences in the scope of applying oversight and created ambiguity in the limits of the court's jurisdiction, which negatively reflected on the level of legal protection for the groups affected by the decisions of the Speaker of the House.

5 RECOMMENDATIONS

- 1- There is a necessity for adopting an official code concerned with documenting parliamentary precedents and traditions that the House of Representatives has established since its first session up to the present, in order to serve as a complementary regulatory source to fill legislative gaps, especially in the field of the administrative authority exercised by the Speaker of the House in matters not stipulated.
- 2- For the purpose of giving the parliamentary code of conduct legal value equivalent to the value of the internal regulations of the House, ensuring stability in the exercise of administrative authority within its disciplinary scope, we propose that the legislator explicitly stipulate in the internal regulations, not in the code, that this value is granted, by adding the following text: (The parliamentary code of conduct approved by the House shall be considered an integral part of the rules of these regulations, complementing their provisions, and enjoying the same binding force prescribed for them).
- 3- Reorganizing the scope of judicial oversight over the administrative authority of the Speaker of the House of Representatives, aiming to unify the standard of oversight and reinforce the principle of legality without prejudice to the

independence of the Council in managing its internal affairs, through the addition of the following text to the Law of the House of Representatives and its formations No. (13) of 2018: (Administrative decisions issued by the Speaker of the House of Representatives, which result in an impact on existing legal positions or the constitutional rights of Council members, are subject to oversight by the Supreme Federal Court, with the exception of administrative decisions regarding Council employees, which are subject to oversight by the competent administrative courts).

- 4- In order to fill the legislative gap concerning appeals against the decisions of the Council President regarding the Council's staff affairs, we propose that the legislator introduce a legal provision explicitly referring to the right to file complaints against administrative decisions issued against Council employees before a committee formed by the Head of the Legal Committee, acting as chair, and two members. The committee may accept the complaint and present it to the Council's Presidency for reconsideration of the decision or its rejection. In this case, the employee has the right to appeal the decision before the competent administrative judiciary courts.
- 5- The study recommends amending the provisions that allow the Speaker of the House of Representatives to exercise certain administrative measures unilaterally, by introducing the element of participation or prior approval from the Council's Presidency in decisions with significant impact, to achieve a balance between administrative effectiveness and the principle of collectivity.

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