

## Fighting for rule of law in Iraq: Why Iraqis should uphold judiciary's decision on polls

*The Cassation Chamber achieved a Pyrrhic victory that can save the elections*

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Thursday, February 11, 2010



It took the US Supreme Court 180 pages to issue the controversial – and by most accounts, poor – Citizens United decision which equated corporations with individual human beings and which threw overboard a hard-to-reach bipartisan law meant to reduce the power of money in US elections.

In its Abd al-Amir decision of February 3, 2010, it took the Iraqi Cassation Chamber 10 lines to bring hope to an endangered electoral process in Iraq. It was published on February 4 on the Higher Judicial Council's website. An English translation of the decision and a line by line comment follow.

I argued that last month's Citizens United decision repeated the ill-bent precedent of the infamous Bush v. Gore decision of December 2000 because the judges appeared to act as mere political agents for the parties of the presidents who appointed each of them. At great cost to the judiciary's credibility, both cases split down the middle politically, with five Republicans against four Democrats. Hence the finesse, in contrast, of the Iraqi judiciary's Abd al-Amir decision.

In an occasionally endearing ruling about the risk of being a judge in a country like Iraq, the Cassation Chamber admitted the appeals lodged by some 500 candidates on the basis of their exclusion from the electoral lists. That exclusion was decreed by the Accountability and Justice Committee on account of the candidates' organic ties with the previous Baath regime. The court declared that it did not have time to examine the appeals, and that while candidates had a constitutional right to run for elections, the court could cancel the results in case of success if the "democratic credentials" required by the anti-Baath law had not been met.

At the origins of the electoral turmoil in Iraq was the precedent created by the botched Afghan presidential election, which saw the rigging of the election of incumbent President Hamid Karzai go unpunished.

Challenges to the stability of the electoral system in Iraq started with the late approval of the electoral law on November 8, 2009. From the start, this appeared to be a harbinger of fishy dealings because it left candidates with little time to establish their tactics and coalition strategy. Then Tareq al-Hashimi – one of the three members of the Iraqi Presidency Council – unreasonably vetoed the law on November 18, pushing the date beyond the January deadline requested by an earlier ruling of the Federal Supreme Court. In a country with deep national and sectarian divisions, this was perceived as a Sunni ploy – Hashimi being Sunni. The unease was continued by rumblings of the president of the Kurdish region, Masoud Barzani, who threatened that same week to boycott the elections if certain Kurdish demands were not met. This was perceived as a Kurdish ploy. As soon as the date was finalized in the wake of a last-minute compromise with Hashimi and the Kurds, the crisis of the excluded candidates was set by the decision of the Accountability and Justice Commission on January 19, 2010. This was perceived as a Shiite ploy.

Since almost one-sixth of the candidates were excluded, the crisis is grave and threatens the integrity of the elections.

At the heart of the last crisis lie two conflicting basic principles: the candidate's freedom to run, and the public's right to be shielded from self-styled advocates of the Baath system.

The Court rendered nothing less than a Solomonic judgment. Tempers run high in elections, and Iraq is no exception. The Accountability and Justice Commission certainly erred in delaying the examination of candidates' credentials until so late in the day, and disqualified too many people for its decision not to appear excessive so close to the elections.

On the other hand, in a country where some politicians continue to boast about a ruthless "resistance" which kill dozens of innocent civilians at a time when American troops are anxious to leave the country, there is a legitimate question as to whether some of the unrepentant Baathists should be allowed to use what they decry as "US-imposed democracy" to run for elections. Some thought should also be given to the quandary faced by the Accountability and Justice Commission: it can only vet candidates' qualifications once they are announced, and when the announcement comes so late in the day, only basic conditions can be checked, like the age and nationality of the candidate. As soon as the candidate's "political" credentials are at stake, the process becomes fraught with impossible deadlines.

The Cassation Court tried to square the circle with a remarkable ruling. By holding that their democratic credentials might still be examined after the elections, because it simply did not have the time to thoroughly and professionally examine every file, the Cassation Chamber achieved a Pyrrhic victory that saves the polls, but only if its writ is widely accepted in Iraq.

Since the decision was issued, all hell broke loose, in large part because the main parties in government and Parliament did not appreciate the quality of the ruling considering the difficulties. The seven-member court was originally appointed by the Higher Judicial Council on the request of Parliament in order to give the candidates banned by the commission the right to see their appeals adjudicated in a court of law. The judges simply did not have time to examine several hundred cases, nor did the law allow them to accept candidates who supported or who continue to support the members or advocates of the former regime, which was rightly described by Tony Blair as "monstrous" in his recent appearance before the Chilcot commission. Candidates whose rights to run were reinstated should take the decision seriously and should avoid triumphalism during the campaign. Similarly, all factions in Iraq must abandon posturing and must run a decent campaign which has for all intents and purposes fully started, while the brutal bombings meant to derail the elections continue and intensify.

The political maneuvers since the decision was issued are ill-conceived, and one should salute President Jalal Talibani's refusal to attend a session to which the chief justice was summoned. A "compromise" was announced, according to which the court would look into the candidacies by January 12, and the Iraqi electoral commission (IHEC) postponed the official opening of a campaign – which has been in full swing since the electoral law was passed – to give window dressing to the announced compromise. This does not bode well for the rule of law in Iraq, or the integrity of the elections. For where will the right of the disqualified candidates to a proper hearing stand in such a rush?

When the ill-advised decision *Bush v. Gore* was issued, losing candidate Al Gore expressed impressive democratic poise on December 13, 2000: "Now the US Supreme Court has spoken." Iraq should be shielded from further uncertainties created by suspicious candidates and parties. All must accept that "the Iraqi Court has spoken" in a far better decision. The Iraqi judiciary gave Iraqis a respite which will only take effect if its decision is upheld for its extraordinary humane and legal quality. Its hasty reversal bodes ill for Iraqi democracy.

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