

# Making Sense of Iraq's Politicized Supreme Court Rulings

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## ABOUT THE AUTHORS



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Brief Analysis

**From removing the speaker of parliament to overturning election results, the court has repeatedly overstepped its role to a degree that warrants more international pressure.**

On November 14, Iraq's Federal Supreme Court (FSC) made waves by [ruling on a complaint \(https://apnews.com/article/iraq-parliament-speaker-halbousi-federal-court-4689a98ba4b52f7bee25cb8f7441756d\)](https://apnews.com/article/iraq-parliament-speaker-halbousi-federal-court-4689a98ba4b52f7bee25cb8f7441756d) against Speaker of Parliament Mohammed al-Halbousi, ultimately deciding to revoke his membership in the legislature. In the absence of any appeal mechanism, Halbousi will have to step down from the speakership he has held since 2018—a development that will have ripple effects on the provincial elections scheduled for December 18.

## A Controversial Institution from the Start

When the U.S.-led coalition established the FSC in 2003, it was intended to serve as the top line of defense for the rule of law in post-Saddam Iraq. Two years later—but, crucially, just before the new constitution was adopted—the Law of the Federal Supreme Court (Law No. 30) was passed granting the FSC extensive powers to determine the constitutionality of legislative and regulatory acts, arbitrate disputes between Baghdad and the provinces, validate parliamentary election results, and assert exclusive jurisdiction over prosecutions against top government authorities. The court was also given several guarantees of independence, including at the administrative and financial levels.

The FSC's legitimacy has always been controversial—even its constitutionality remains the subject of ongoing legal debates. Article 92 of the 2005 constitution ordered parliament to pass a law defining the court's status, but this never occurred. As a result, the FSC still functions under Law No. 30 of 2005.

The court has also been the subject of regular criticism as a symbol of sectarianism. This is partly because parliament and other actors have turned the process of appointing judges into a heated battle for sectarian balance,

but also because the FSC has **decisively interfered (<https://orsam.org.tr/tr/irakta-yargi-sisteminin-isleyisi-ve-temel-sorunlari/>)** in the political process, especially during the stalemates that often emerge during post-election government formation and sectarian bargaining.

Most infamously, the court permitted the reinstatement of Nouri al-Maliki as prime minister in 2010 despite the fact that Ayad Allawi's party won the majority of votes in that year's parliamentary contest. In a highly contentious interpretation of the constitution, the justices determined that the winning party in a national election does not hold an exclusive right to form the next government—that power can be granted to a coalition of parties instead, even if said coalition emerges after the election. Many observers believe this decision was influenced by Shia parties that opposed Allawi for breaking ranks with them **and leading a secular coalition (<https://www.nytimes.com/2011/02/06/magazine/06ALLAWI-t.html>)**.

## The FSC Under Faeq Zaidan

**T**he FSC has become even more controversial in recent years under the leadership of Judge Faeq Zaidan. In 2017, he became president of the Supreme Judicial Council (SJC), the body that oversees most of the judiciary and gives him some degree of sway over the technically independent FSC. His influence reached new heights in 2021, when his only remaining rival in the senior judicial ranks—Medhat al-Mahmoud, chief justice of the FSC—was forcibly retired by an **amendment to Law No. 30 (<https://www.washingtoninstitute.org/policy-analysis/one-less-hurdle-iraqi-elections>)** that mandated a new age limit for Supreme Court judges. While Zaidan had seemingly aligned himself with the country's pro-Iran camp, Mahmoud had drawn the ire of these factions by showing favor to Muqtada al-Sadr's rival Shia movement. Notably, the same amendment that sidelined Mahmoud also established the principle of sectarian balance in the FSC's composition, spurring an increase in Shia justices from southern provinces.

Zaidan subsequently used his new authority to implement key judiciary changes and facilitate laws that further strengthened his authority and influence. For instance, the SJC established a "career management" commission with significant powers over the promotion, extension, transfer, and retirement of judges and public prosecutors, essentially giving Zaidan the power to hire and fire all of the country's judges. He also used his influence to shape the FSC selection process, including the appointment of new chief justice Jassem Mohammed Aboud, whose loyalty to Zaidan is notorious.

## From Tipping Elections to Open-Ended Judicial Activism

**W**hen Iraq called for an early parliamentary election in 2021 following months of public protests, the government's preparations for that vote included overhauling the Independent High Electoral Commission (IHEC). Zaidan quickly took advantage of this process, ensuring that IHEC's board was composed of judges so that he and his circle could influence important pre-election decisions.

In the weeks following the October vote, Zaidan guided the FSC in ways that supported the pro-Iran bloc. Initially, the court seemed to take a balanced position by validating the Sadrist bloc's electoral victory and putting an end to fraud allegations by rival Shia groups. Before long, however, the FSC issued a string of decisions favoring the Coordination Framework, the pro-Iran Shia bloc opposed to Sadr.

Perhaps the **most crucial decision (<https://www.washingtoninstitute.org/policy-analysis/iraqs-two-coups-and-how-us-should-respond>)** related to parliament's selection of a new president, the first step in the government formation process. In simple terms, the court took a longstanding requirement for a two-thirds majority vote and distorted it into a two-thirds quorum requirement. According to this unprecedented interpretation, at least two-thirds of legislators must be present to certify the vote for president—a decision that enabled the pro-Iran bloc to act as a blocking minority by simply boycotting relevant parliamentary sessions. This in turn paved the way for the

resignation of Sadr's faction and the Coordination Framework's rise to power.

The FSC has also issued rulings that had the effect of punishing the pro-Iran camp's political opponents. In February 2022, the court declared the Kurdistan Regional Government's 2007 natural resource law unconstitutional, **effectively dismantling** (<https://www.washingtoninstitute.org/policy-analysis/death-oil-federalism-implications-new-iraqi-court-ruling>) a framework that had been designed to compensate for the lack of a federal hydrocarbons law and enable the KRG to proceed with oil sales. Although the weaknesses of the 2007 framework were indisputable, the FSC's ruling had a clear political motivation as well—to pressure the Kurdistan Democratic Party into abandoning Sadr's camp, thereby preventing him from forming a government that would have excluded pro-Iran factions. Such punitive meddling continued well after the Coordination Framework achieved its goal and formed a government. In **January 2023** (<https://www.rudaw.net/english/middleeast/iraq/250120231>), the FSC ruled that transfers from the federal budget to the KRG were unconstitutional, and **in May** (<https://www.rudaw.net/english/kurdistan/30052023>), it overruled the attempted extension of the KRG parliament's term.

Other politicized cases have likewise generated controversial (and, notably, pro-Iran) rulings. On September 4, the FSC **overturned** (<https://amwaj.media/media-monitor/iraq-kuwait-khor-abdullah-iran-saudi-arabia-arash-dorra>) a law ratifying the 2012 Iraqi-Kuwaiti agreement on navigation in the Khor Abdullah waterway. The case was brought by a parliamentarian from the Hoquq bloc, a political organ of the Iran-backed, U.S.-designated militia **Kataib Hezbollah** (<https://www.washingtoninstitute.org/policy-analysis/profile-kataib-hezbollah>). Besides the pro-Iran camp's general hostility toward the Sunni Arab-ruled Gulf states, the case may have stemmed from Tehran's recent tensions with Kuwait and Saudi Arabia over exploitation of the Durra natural gas field. In any event, the ruling threatened to **severely disrupt** (<https://www.reuters.com/world/middle-east/kuwaiti-foreign-minister-invited-iran-amid-tensions-over-gas-field-2023-08-03/>) Baghdad's diplomatic relations with Kuwait, spurring Prime Minister Mohammed Shia al-Sudani **to intervene** (<https://new.thecradle.co/articles/iraq-seeks-constitutional-solution-to-maritime-dispute-with-kuwait>). Zaidan **eventually signaled** ([https://ina.iq/eng/28700-sjc-president-receives-the-kuwaiti-ambassador-to-discuss-cooperation-between-the-two-brotherly-countries.html?\\_cf\\_chl\\_tk=aBM7ULNbjBADcRqD81RSfxxrXY\\_AKS4hqtSsW5gHiZw-1696452393-0-gaNycGzNDpA](https://ina.iq/eng/28700-sjc-president-receives-the-kuwaiti-ambassador-to-discuss-cooperation-between-the-two-brotherly-countries.html?_cf_chl_tk=aBM7ULNbjBADcRqD81RSfxxrXY_AKS4hqtSsW5gHiZw-1696452393-0-gaNycGzNDpA)) that the decision could be reversed.

The November 14 ruling against Halbousi continued the trend of highly politicized FSC actions. Over the years, he had managed to become the undisputed leader of Iraqi Sunni politics and maintain his leadership role in parliament despite numerous changes in government and repeated attempts to dethrone him. In the end, he was taken out by an activist high court—specifically, after a member of his own political alliance, Taqaddum, took him to court on accusations that he had forged a resignation letter for the plaintiff.

## Implications

**D**espite the multitude of instances in which Faeq Zaidan's judiciary has issued rulings that benefited Tehran and its proxies, determining the precise extent of Iranian influence on the Supreme Court is not so simple. Even FSC rulings that align with Tehran's interests often reveal strains of Iraqi nationalist ideology—especially the goals of recentralizing power in Baghdad at the expense of Kurdish autonomy and reforming the constitution to break the country's chronic cycle of post-election crises and instability. Zaidan himself articulated these ideas in a **February 2022 article** (<https://www.sjc.iq/view-en.69250/>) published on the SJC website.

In his pursuit of judicial supremacy, Zaidan has often shown strategic patience by playing with the rules rather than disregarding them outright. Hence, his highly problematic judiciary should not be conflated with the country's Iran-backed militias—unlike them, his institution remains a potential partner for the international community. For example, cooperation with Iraq's judiciary has been fruitful on issues related to the Islamic State, with Zaidan

publishing [legal analysis \(https://twitter.com/jnbeuze/status/1628306603895037952\)](https://twitter.com/jnbeuze/status/1628306603895037952) earlier this year that should facilitate civil documentation for children born under the jihadist group’s so-called “caliphate.”

At the same time, partners who want to loosen Iran’s grip on Iraq would be wise to maintain pressure and close monitoring on political issues where the court has overstepped: the election and government formation processes, the [various disputes \(https://www.washingtoninstitute.org/policy-analysis/how-stop-iraqi-kurdistan-bleeding\)](https://www.washingtoninstitute.org/policy-analysis/how-stop-iraqi-kurdistan-bleeding) between Baghdad and Erbil, and Iraq’s international obligations, including agreements with Gulf states. Countering Iranian influence inside the judiciary itself will require the West to play the long game, in part by developing academic cooperation and training for the next generation of judges. This approach would align with Zaidan’s yearning for international recognition, as evident in his trips to [London \(https://ina.iq/eng/17652-zaidan-heads-to-london-on-an-official-visit.html\)](https://ina.iq/eng/17652-zaidan-heads-to-london-on-an-official-visit.html) and [Paris \(https://ina.iq/eng/25948-mou-between-the-iraqi-judicial-institute-and-the-french-school-of-judiciary.html\)](https://ina.iq/eng/25948-mou-between-the-iraqi-judicial-institute-and-the-french-school-of-judiciary.html) and his recent request to visit the United States.

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