

# Appointing of Judges According to the Islamic Fiqah, Romano-Germanic and Common Law Legal Systems

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DOI: 10.47760/cognizance.2024.v04i08.008

## Abstract:

Among the most important factors that influence the freedom and independence of the judiciary is the method of recruiting and appointing judges and the methods appointing have been determined for them, and these methods are very different, but the understanding of these differences and the discovery of necessary reforms are very helpful in solving judicial corruption, which in the Islamic judicial system, qualified judges are usually appointed by the Caliph and sometimes appointed by the Caliph's representative. Also, in exceptional cases, they can be appointed by the senior judge, dominated person (rebellious Amir) and the infidel ruler, and their dismissal is also related to the Caliph, and the reason behind this is to preserve the independence of the judiciary and be free from any kind of pressure, coercion and illegitimate requests in their work and affairs, but in the in those law-system countries which are influenced by the common law, judges are usually appointed from among experienced lawyers. The position of a judge is considered a kind of reward because appointed person has done the job of a lawyer in the courts for a long time and has gained experience that is why they have this authority. But in Romano-Germanic law system, the judges are appointed from among the university students. The purpose of this applied and comparative study and writing is the selection and appointment of judges according to the Islamic jurisprudence, the system of selection and appointment of judges in the United States representing the Common Law, and the selection of judges in France representing the Romano-Germanic. This study and research use the bibliographic and descriptive method, where the freely appointment of judges by judicial in the law system of America and the method of appointment are the important discussions. In the federal system of the United States, according to the federal constitution, each state has special laws that accept and determine the general organization of forces and the conditions and methods of selecting judges based on their political and philosophical views. The judicial organization of one state will be different from the judicial organization of another state. Unlike the United States of America, judges in France are selected from among the students of high schools (universities). The difference is that the judges of the general courts are national Judiciary School students and judges of administrative courts are mainly selected and recruited from among senior expert students and also from general law students who have studied in the National Administrative school, and after theoretical and theoretical lessons, they complete their work-study stage in the French State Council, which then divides their employment with a large institution (Dewan of Accounts), which is led by the National Administrative Seminary. People with high marks in the exam are recruited to the French Council of State, who will then continue to work as judges in the courts.

**Keywords:** Judge, Appointment, Islamic Fiqah, Romano-Germanic law and Common law.

## Preface

Allah is the creator and inventor of this universe and Allah has given a special characteristic to this universe that they should live together in society because human beings have both material and spiritual needs in their life and is impossible to fulfil their need in isolation from the society. Yes, in society, human being sometimes come across some problems or conflicts. The reason can be the different natural desires and instincts of human beings, such as the instinct of arrogance and selfishness, the instinct of acquiring wealth and wealth, sensuality and wild instincts. In order for justice to be established in a good form, the oppressed should be supported and the oppressor's hand should be shortened from oppression. Therefore, for this purpose, there was a judge and a court in the early stages of human life, even though it was not like in the current form, which would solve the disputes between people in the light of special principles and rules. But in the judiciary, the principle of independence and freedom must be respected, because the independence of the judge is one of the effective guarantees of the rule of law and a fair trial, which means that the judge is responsible to solve the matter at the time of the investigation, in full freedom and on the basis of the facts and the balance of rights, without any kind of pressure, interference or improper influence, any party, whether it is the government or other organizations, should solve the problem and decide that one of the guarantees of the independence of the judge is the selection of the judge in an appropriate way, that the presence of equal and committed judges is the main way to realize the independence of the judges, and those judges who are not equal to the conditions, then it lowers the independence, glory and dignity of the judiciary, and in such case the judiciary will suffer more damage from external influences.

In any case, the more the method of selecting judges is based on ability, individual abilities, measured and objective standards, the more independent and self-confident the judge will be in his actions and opinions, on the contrary, where Judge selection is based on vague and undefined standards and unhealthy political connections, and the lack of scientific and experimental ability, so the circle of independence will be limited to the recommendations and

recommendations of high authorities. Therefore, the selection and appointment of a judge should be based on objective rules, and should be done by independent and non-political institutions. Such selection and appointment should be impartial and fair. What is the best method for selection? Each of the selection methods has advantages and disadvantages.

In this study, we are discussing the reference of appointment of a judge, the rules of appointment and the procedure of appointment from the perspective of Islamic jurisprudence, Roman-German and common law systems. From the French law system, and on behalf of the Common Law, from the United States law system, we will examine this matter in a comprehensive way and write the result and conclusion at the end.

## Outline of the Research

The fact that today in the law field, there are three law systems in practice at the level of the world, which are the Islamic law system, the Romano-Germanic and the common law systems, so the problem is to find out and specify that which law system these three law systems uses the best method and procedure in appointing a judge.

## Goals of the Research

1. Describing the procedure of appointing judges in accordance with Islamic Fiqah, Romano-Germanic and common law systems.
2. To introduce the best approach and procedure between the aforementioned three law systems in the appointment of a judge.
3. Building a mindset about applied studies in law systems.

## Importance of the Topic:

**In accordance with the status of the judge:** The fact that the independence of the judge is one of the principles of fair trial, and the method of selection and

appointment of the judge is the guarantee of the independence of the judge, so in this research we will find a reasonable and best method that will be used and does not cause any harm to the independence of the judge and to the judiciary in general.

**In accordance with the Islamic Fiqah and comparative studies of Traditional enforced law systems:** In this research, the appointment of a judge in a scientific and professional manner, the method of appointment will be studied in a comparative manner between the Islamic Fiqah, Romano-Germanic and Common Law systems, and the reasonable way from among these three systems based on the reasons will be proved.

### **Research questions:**

Main questions

1. Does Islamic Fiqah have a disagreement with existing law systems on the appointment of a judge or is it in agreement?
2. Do the existing law systems (Romano-Germanic and Common Law) agree on the appointment of a judge or have different views?
3. What is the best method or procedure for appointing a judge?

Incidental Questions:

1. What is the reference of appointing judges according to the Islamic Fiqah? And what is the procedure?
2. What the reference and procedure of appointing judges according to the Romano-Germanic law system?
3. What is the reference and procedure of appointing judges according to the Common law system.

### **Hypothesis:**

First Hypothesis: It is believed that Islamic Fiqah has a complete disagreement with the existing law systems in regard of reference and procedure of judges' appointment.

Second Hypothesis: It is believed that existing law system (Romano-Germanic and common law systems) are unified and have no variance in regard of reference and appointment procedure of judges.

## Literature Review:

Specifically, despite many efforts, I could not find any article or research titling (appointment of judges from the point of view of Islamic Fiqah, Romano-Germanic and common law systems), so this research is new research in itself, of course some such There are articles in which the appointment of judges is written in a comparative manner between the leading countries of the constitutional law systems (Romano-Germanic and Common Law), But the view of Islamic Fiqah has not been taken into consideration, such as (the study of applicable conditions and processes of selection and appointment of judges in the law systems of Iran and England) which was written by Ahmad Reza Nezhad in which only the Romano-Germanic and Common Law systems of leading countries have been compared in regard of appointment of judges.

## Research Methodology:

I have used the library method in writing of this research and mostly utilized original and professional resources. And when I have not found detailed information regarding to the topic, the I have referred to the non-original and sub-ordinating resources. I have desisted of my own opinions. But sometimes for analysis of the information, I have used my own words. Also, as per my scientific ability and talent, I have mentioned common points and difference between the three systems in the mentioned research.

## First Chapter

In this chapter, we will discuss the reference of appointment and the procedure of appointment of judges based on the various topics in the light of Islamic Fiqah, Romano-Germanic and common law systems.

### First discussion: Appointment of Judges as per Islamic Fiqah

As everyone can't get the post of judge according to their wish and appoint themselves as a judge and decide between the people even if they are having all the conditions and skills of the judge, because the judge assumes the duty of the government. Therefore, the responsibility of this position should be determined by those who have the authority to appoint. The person who is having this

authority to appoint judges is Caliph by himself or his representatives. In this discussion, are going to study relevant references in regard of appointment of judges<sup>1</sup>.

### **First Item: Caliph**

The principle is that the caliph, the King or the president are the people who appoint the judge, because judgment is one of the duties of the caliph, but because of the heavy load of government affairs, it is permissible for the caliph to appoint someone else for judgment. The person who is being appointed as a judge is the representative of the caliph in judgment. It is not right to leave the post of judge because the appointment of the judge is one of the duties of the caliph<sup>2</sup>. But the question is, is it a necessary for the caliph or the head of the state to be just in order to appoint a just Muslim as a judge? Islamic scholars have said that it is not necessary for a caliph to be just in appointing of the judge. They are arguing that fellow-companion Islamic scholars have accepted Hajjaj Bin Yousef as judge despite the lack of knowledge and justice and was the representative of the Caliph in determining the judgment, despite the fact that oppression and cruelty was present in Hajjaj, but the condition of being a judge is be power over his orders. If the judge loses his power over his orders because of the cruel caliph or king, then taken the authority as a judge is not allowed for him<sup>3</sup>.

### **Second Item: Representative of the caliph**

It is permissible for the caliph to choose another person for appointment of judges, but it is not permissible for this chosen person to choose himself to be a judge and take over the judicial task himself. It is also not allowed for him to give his father or son the duty of justice, because considering Qeyas (comparison method of judgment), it is not allowed for the father or son to give financial charity to each other.

1. Dr. Abdul Karim, Zeidan. (1395 AH). Judiciary system in Islamic Sharia, translator: Zakrullah Zakari, Kabul: Mustaqbal publishing house, p. 47
2. Imam Abu Al-Hasan Ali bin Muhammad, Al-Mawardi. (1972-1392 AH). Al-Qadi Literature, Vol. 1, Al-Thaqiq: Muhiy Hilal Al-Sarhan, Baghdad: Al-Aani Press, p. 137
3. The same, the system of justice in Islamic Shari'ah, p. 47 and he took it from Sharh Adab al-Qadi by Ibn Maza, vol. 1, p. 129-130.

It is also not allowed for him to give his father or son the duty of justice, because considering Qeyas (comparison method of judgment), it is not allowed for the father or son to give financial charity to each other. But it is possible if all the required term and condition are existed in father or son, it is true to be appointed to the post of judge<sup>4</sup>.

### **Third Item: Rebel**

Sometimes if a region is not in circle of the authority of the Caliph, while a dominant person has been found in that region and declares himself as a ruler in the territory of the law caliph and makes himself a rebel. Is it permissible for a just Muslim to assume the position of judge from this rebellious ruler and accept it on the behalf of law caliph? Is it a law authority of the rebel ruler to appoint a judge? In addition to being rebel and declaring enmity aging the law caliph, Islamic Fiqah scholars accept the authority of rebel ruler to appoint judges. But here rebellion does not mean to declare rebellion against the law caliph, or have declared his own freedom or have separated some territories from the circle of Islamic caliphate. The reason behind this is to prevent from big events and loses in Islamic caliphate<sup>5</sup>.

### **4<sup>th</sup> Item: Infidel Ruler:**

Whenever the infidels prevail over the Muslims and appoint an infidel governor, or an Islamic state comes under the authority of an infidel ruler by force, is it permissible for the Muslims to accept the duty of justice from this infidel ruler to judge between Muslims? The sayings of the Islamic Fiqah scholars are as follow in regard of this matter:

A: Hanafī Fiqah says “Becoming Muslim for being judge is not necessary<sup>6</sup>.”

4. Abdullah ibn Muhammad ibn Qudama al-Hanbali. (1968-1388 AH). Al-Mughni Laban Ibn Qudama, vol. 9, Cairo: Cairo School, p. 106
5. The same, Judicial System in Islamic Sharia, p. 49-48...
6. Shiekh-O-Nizam wa Jamaatu min olama-ol-hind, (1411-1991) Fatawa-Hindia, vol.9, Darul-fikar publisher, p.3-7

**B:** It is stated in al-Dur al-Mukhtar in the commentary of Tanweer al-Absar that it is permissible for unjust and cruel ruler to assume the duty of justice even if he is a disbeliever, but if he cannot decide on the right, then in this case justice is not allowed for him<sup>7</sup>.

**D:** The commentary of Dur al-Mukhtar by Ibne-Aabedin says “when a Muslim territory is occupied by infidels, and they appoint a judge for them, this authority is valid only in case when the Muslims are justified with it<sup>8</sup>.”

**E:** Abdus Salam Shafi'i Fiqah Scholar has said that if the infidels conquer a large territory and appoint a person to carry out the affairs of the Muslims, then this idea should be done, because with this, the general interests attracting and erasing old corruptions will takes place<sup>9</sup>.

#### **5<sup>th</sup> Item: Climate Rulers and Judges:**

It is permissible for the rulers of the regions to appoint a judge as a representative in their territory with the permission of the Caliph, and it is also permissible for the judge who has been appointed by the Caliph in any territory to appoint a judge in some parts of his territory if necessary<sup>10</sup>.

#### **6<sup>th</sup> Item: Senior Judge**

It has been stated in Badaya Wan-nihaya saying that Imam Abu-yousef said that when he was as appointed as judge by Hadi, he was the first person to gain the title of senior judge and was famed as the world senior judge. The reason that he was appointed by a ruler who was the ruler of multi-climate territories<sup>11</sup>. Although it is been found out from the claim of Imam Abu-yousef that the first judge appointed and titled as the senior judge. And the holder of this position can make any kind of justice in the framework of government under the control of a ruler<sup>12</sup>.

7. Muhammad Amin al-Ma'am Babin Abidin, (b.t). Commentary of Rad al-Mukhtar, Ali al-Dar al-Mukhtar, Commentary of Tanweer al-Absar, vol. 5, Beirut Lebanon: Dar al-Fikr publisher, p. 368
8. Muhammad Amin bin Umar bin Abdul Aziz, Ibn Abidin (1412 AH - 1992 AD). Al-Dar al-Mukhtar and Commentary of Ibn Abidin (Rada al-Mukhtar), Volume 5, Beirut: Dar al-Fikr: p. 368
9. Abi Muhammad Azal-Din Abdul Aziz bin Abdul Salam Al-Salami. (1411 AH - 1991 AD). Qaaba al-Ahkam fi mashal al-anam, Vol. 1, Al-Thaqiq: Taha Abdul Rauf Saad, Cairo: Al-Alkaliat Al-Azhariya publisher, p.81
10. The same, Adab al-Qadi 1/137-138
11. The same, the system of justice in Islamic Shari'ah, p.52, and from the beginning and the end, taken from Ibn Kathir, vol.1, p.21.
12. Same as above, p.52



## 7<sup>th</sup> Item: Holders of Knowledge and Views

In times of need, when a territory does not have a judge, it is permissible for the judge to appoint a person from a group of knowledgeable people who have knowledge and opinion as a judge, and the people of the mentioned territory should not take their problems to another judge, but when there is no caliph from among the Muslims, then it is necessary for the people to choose a person from among themselves, but if a caliph is found after that, then It is not permissible for a judge to continue judging without the permission of the new caliph<sup>13</sup>.

### Second Discussion: procedure of appointing judge as per Islamic Fiqah

Before the caliph or his representative selects a person as a judge, he must investigate his judicial qualifications and competence. There are cases for which we can summarize this issue in two points:

#### First Item: procedure of selecting a reasonable person to the position of judge

The Islamic Fiqah Scholars have said that it is necessary for the caliph to appoint a qualified and suitable person to the position of judge, but the question is, what kind of qualified person should the caliph recognize for this serious position? If caliph knows the person, then he is allowed to appoint him as judge based on his knowledge and understanding. The caliph can recognize the right person based on his knowledge, and it is necessary for the caliph to find out his competence and invite the judge to himself and test his level of knowledge in order to emphasize more in judicial matters. The caliph asks some questions and when the caliph is done with his investigations and sure regarding to the person's justice and judicial competence, then the caliph is allowed to issue an order to appoint that person as judge<sup>14</sup>. In addition, it is required to create regulations and rules for the determination of justice based on the demands of legitimate expediency, such as having scientific certificate or testimony, which is a proof in the field. This can be considered valid method, as well as there will be no restrictions on the examination procedures for those who are interested in the post of judge, as well as the competition against those who have succeeded in the examination in order to protect the quality and safety of the senses.

13. The same: Adab al-Qadi, vol. 1, p. 140

14. The same, al-Mughni Laban Qudama, vol. 9, p. 38

The person can be seen that there is no prohibition, as well as researching the justice of the appointed person, after his academic guarantee, especially after giving the exam, such regulations are selected in the field of judicial determination<sup>15</sup>.

### **Second item: acts for new-employment of a judge**

A person who has been issued an order for his appointment as judge must be prepared to travel to his place of work, especially when it is in an area which is not his place of residence. It is also necessary for the judge to get enough information about his place of work for example: he should get information about the scholars, virtuous and the righteous people of his working place. When he first reaches to the working place, an announcer, announces that such person was appointed as the judge of this territory. Also, the new judge will hand over the documents from the former judge, which are the guarantees and claims of the people who are present with the former judge, as well as handing over the records of the former judge, which are written by the former judge<sup>16</sup>.

### **Third Discussion: Appointment of judge as per Romano-Germanic and Common law system**

In this discussion, we will have a comprehensive discussion on the appointment of a judge from the perspective of the Romano-Germanic. We have chosen France as the leader of this system as the leading followers of Romano-Germanic and as the representative and leading follower of the Common law system we have chosen the United States of America. First, we discuss the appointment of a judge based on the law documents of the United States of America, and in the second step, we discuss the appointment of a judge according to the French laws:

#### **First Item: appointment of judge as per Common law system**

As we have already mentioned, we are discussing the appointment of a judge and the appointment procedure in accordance with the laws of the United States of America on behalf of the common law system.

15. The same, the system of justice in Islamic Sharia, p. 54-53

16. The same, Al-Mughni Laban Qadamah, Vol. 9, p. 54-44

## **Fist Clause: appointment of judges in the United State of America**

The method of appointing a judge in the United States is considered one of the most important issues related to judicial independence, but state and federal judges are appointed in different ways. According to the federal constitution of the United States, each state has its own special law. Naturally, the judicial organization of one state differs from another state. Therefore, the study of American law is very difficult and there are several reasons for this, one of the biggest reasons is that there is no single law in America, but each state has special rights that the state supreme court is only supervising it<sup>17</sup>. another reason for its difficulty is the mixing of old theories in their rules and rights. In federal countries that have two judicial organizations, each jurisdiction is determined by law.

In America, there is no mixed judicial organization of administrative courts like in France. The best struggle has been between administrative organizations and judicial courts in the American judicial field during the last half century. One thing that we should pay attention to is that the role of a judge in America is much greater than a European judge. In this way, this matter should be considered that the federal judicial organization in the United States is older than the state judicial organization in terms of time and is considered to be the manifestation of the judiciary in the United States<sup>18</sup>. The method of selecting federal judges is provided in the Constitution of the United States of America, but with the passage of time, other methods have been added to the method of selecting judges, which we will be studied below.

### **First sub-clause: Designation of Federal courts' judges**

There are two types of federal courts in the American judicial system at the federal level. The first is the courts of the third principle, which are related to the third principle of the Constitution. These courts include: the United States District Court, the Federal Court of Appeal Courts, the United States Supreme Court, the United States Court of Claims, the United States International Trade Court, all judges of the courts of the Third Circuit are appointed by the President with the advice and consent of the Senate. Judges can assume this position on the condition of good behavior. In the Constitution of this country (the United States of America), it is not necessary that federal judges have law documents. The second type of federal courts are those that which are determined by Congress.

17. Nadra, Tank. (1358). Laws of the United States of America, translator: Seyed Hossein Safai, Tehran: Publications of the Institute of Applied Law, Tehran, p. 9

18. Ferdinand, F. Aston, (1350). Fundamental rights institutions of the United States of America, translator: Seyed Hossein Safai, vol. 1, Tehran: Sahami Habibi Company, p. 39-38

Operational courts, bankruptcy courts, military courts of appeals, US tax courts, veterans' appeals courts, these courts are called legislative courts, the judges of these courts are appointed by the president and the senate. The assembly is appointed for (15) years by consultation and agreement<sup>19</sup>. The Department of the Federal High Court is elected on the recommendation of the President and with the approval of the Senate. The term of office is the same as that of the (8) members and can only be removed by congressional impeachment<sup>20</sup>. When one of the states has enacted a law that has both harm and benefit, the people who have been harmed by such laws can refer to the federal courts. The power of the courts does not depend on the implementation of the law, but in cases where the state law is found to be in violation of the federal law, it also covers this situation<sup>21</sup>. The Supreme Court of the United States is superior to all courts in terms of powers and law quality. And that the Supreme Court also deals with claims arising from laws and treaties, and especially deals with claims related to national laws, and the sole purpose of this court is to enforce federal laws, and also deals with disputes between states<sup>22</sup>.

Article (2) of the Constitution of the United States of America gives the President the power to appoint Supreme Court judges. The President, with the advice and consent of the Senate, on the condition that the active senators agree, appoints ambassadors, general ministers and advisers, judges of the Supreme Court and other officials and officials of the United States of America, but it is also possible that the Congress appoints low-ranking officials<sup>23</sup>. Therefore, as stated in the constitution, the judges of the appeal courts (supreme courts) and the judges of the district courts are appointed by the president, and the Senate of the United States approves their appointment. Usually by confirming report these nominees are in charge of the Judiciary Committee of the Senate. Based on Article (3) of the Constitution of the United States of America, the term of appointment of judicial officers is long-lasting<sup>24</sup>, where three important factors play vital role in appointment of judges including:

19. O,connell,Fiona &McCaffrey,Rau,(2012), Judicial Appointments in Germany and the United states p19-20
20. Ali Abolfath and Naderi Mihan, (1381). Strategic assessment of the United States of America, Vol. 1, Tehran: Institute for Cultural Studies and International Contemporary Research, p. 155-154.
21. The same, p. 309
22. Alexey Du, Toqueville, (1374). Democracy in America, translator: Rahmatullah Moghadam Maragheh, Tehran: Zwarba Publishing Co., Franklin, pp. 316-316
23. <http://www.usconstitution.net/const.html#Article3>
24. Same, Judicial Appointments in Germany and the United States, P.23

**A:** The senators' opinion is requested at the confirmation stage so that the selection of judges does not face difficulties.

**B:** Taking opinion of the twelve-member committee of the of the United States, which was established in (1946) and became known as the Federal Judiciary Committee. Although this committee does not have an official status, but the opinion of the judges of the federal courts is taken, although the opinions of this committee are advisory and do not create any law responsibility for the president, but the president often take it into consideration.

**C:** The opinion and belief of other judges who are engaged in judicial affairs at the relevant level and rank, this attitude is used especially in the Supreme Court of America<sup>25</sup>.

### **First Clause: Role of Senate in appointment of Federal Judges**

After the nominee is introduced to the Senate, they are referred to the Judiciary Committee, usually this committee is responsible for the reporting of appointment of the nominee. Judicial candidates participate in the question-and-answer session with the members of the judicial committee. After hearing, the committee members may send follow-up questions to the candidates in written format and put the work on the list of the committee in the meeting of the executive officers<sup>26</sup>.

### **Second Sub-Clause: Role of the Standing Committee of the American Lawyers' Center in the Selection of Federal Judges**

In 2009, the Standing Committee on the Federal Judiciary of United States Lawyers' Center, as in the past, conducted a presentation of the professional qualifications of potential candidates for federal courts before the President's appointment to the White House, in 1953. Until 2000, every president consulted with the Committee on Judicial Nominations, which is necessary for the impartiality, independence and work of this committee to achieve results and the executive officer and the American Lawyers Center, the representatives of other officials cannot interfere in the work of the committee in any way<sup>27</sup>. The basis of the investigation method of the committee is confidential and confidential rules are not disclosed to others except the members of the committee. But the interviewer refused to be confidential.

25. Rashond Bokani, Mahdi. (2008). The independence of the judge and the judiciary in the laws of Iran, the United States and France, Tehran: Islamic Revolution Center, P. 125.

26. Same, Judicial Appointments in Germany and the United States, P. 24

27. American Bar Association.(2009)..Standing Committ ee on the Federal Judiciary,ISBN:1-60442-461-3

Committee members give the names of potential candidates only at the discretion of the interviewers, and each interviewer is asked to keep the names of potential candidates' secret, after evaluating the potential candidates and before the committee votes, the committee chairman contact the White House and summarize the likely outcome of the committee's assessment that this information is being held securely<sup>28</sup>.

### **Third Sub-Clause: Standards of Introducing Nominees into the Senate.**

The evaluation of judges' competences is not only limited to law competences, but economic, political, administrative and social competences are also important. Therefore, in the selection of judges, financial, diplomatic, executive, legislative or political expertise and law expertise should be considered. The position of judge is such important in America saying that it is the position looking for a suit person by itself rather than the person is looking for it<sup>29</sup>.

#### **A: Getting the position of Human Rights activist**

At the time of evaluation, the length of time of the law professional and the type of employment of the applicant's lawyer's job should be taken into consideration. Talent, as well as effective writing, should be considered by all candidates of the Center, including civil servants, law aid associations, public benefit organizations and state courts.

#### **B: Individual Characters**

The laws and regulations of the Judicial Conference emphasize that a judge must be competent and have a moral character, and must also be tolerant, patient, healthy, ethical and emotionally stable. Having good personal characteristics such as high intelligence, honesty, stability and appropriate behavior, impartiality, reasonableness, justice, effort and effort, physical and mental health, involvement in civil and social affairs are considered as criteria in the selection of a judge.

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28. The same, Standing Committee on the Federal Judiciary, P:2

29. The same, Rashund Bokani, p. 103-100

## C: Working Background

Professional reputation among the members of the Law Center, ability, integrity and experience of complex problems, having work experience as a government official, judge or lawyer, writing skills, court experience, federal familiarity with laws and conduct, as well as participation in associations and professional and public benefit activities, is considered a position of reputation and background that the candidate must have<sup>30</sup>.

### Second Clause: Appointment of judges in state level in USA.

In general, the introduction of judges to the state courts is not an easy task, because each state can organize its judicial system as they wish, and usually there are differences between the states in the judicial systems and the jurisdiction of the judges<sup>31</sup>. After the democratic revolution, there is an elective judge within the boundaries of ten states, who is appointed through general voting.

This system has come under discussion and criticism, and according to some, such a choice has been kept for sensitive reasons or to avoid bad choices. In case of the death or resignation of the judge, his replacement is appointed by the leader for a temporary period, and the same person is usually appointed through general elections. In some states, the candidates must be selected by the lawyers and the members of the lawyers agree to introduce qualified and important candidates. In some states, they try to appoint experienced and knowledgeable judges by increasing the salary and service of the judges<sup>32</sup>. At the state level, there are different ways to select judges based on service in the courts, which can be divided into five parts, but we must remember that no two states use the same method of selection, in many cases. There is more than one method of selection in the states and when the same method is used, there are differences in the practical implementation<sup>33</sup>.

30. ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS,2010, P.11

31. The same, Andre Tank, (1358). P.76

32. The same, P.77

33. University of Denver,2008, American Judicature Society (judicial selection in the states), Institute for the Advancement of the American law System, P.6

There are two types of judicial appointment by lawyers, formal and informal. Some states use different selection methods for different levels of judicial strength. Undervalued, selection is the real way for judicial posts, internal selection is followed as judicial posts become vacant<sup>34</sup>, five methods for judicial selection 1, appointment by executive power 2, Statutory appointment, 3, Pleasure appointment, 4, non-pleasure appointment, 5, competence-based appointment. As we will discuss each one briefly.

### **First: Appointment by Executive Power**

This type of appointment is similar to the appointment of federal judges by the President of the United States, but with the difference that the appointment by the governor (state governor) does not require the approval of the assembly. It is obvious that the governors are choosing to maintain their local position or to have relations with a certain group allows potential candidates to be screened for eligibility. Considering the differences between the appointment systems in the United States, approval by the Executive Council may be required<sup>35</sup>.

### **Second: appointing judges through general voting (election)**

The method of appointment is similar to political election, this method allows judges to use political groups to carry out their electoral activities and to appear on the electoral scene in the name of Republican or Democratic judges, unlike non-political elections do not allow judges to work or be members of political groups<sup>36</sup>. Moving towards non-political appointment was the starting point for reforms in the judicial sector. At present, eight states have political appointment and thirteen states have non-political appointments. In this way, judges vote like other political candidates. They are accountable to the voters and must respect the people's vote. In more than half of the states, judges are appointed through elections, which means that the judiciary will not be in line with the government's ideology that the people are under their control. Yes, based on this philosophy, there should be no special authority for general positions, and the electorate will decide on their authority<sup>37</sup>.

34. Holmes and Emrey,2006, P.1-12

35. The Same, Judicial Appointments in Germany and the United States, P.24

36. Ginsburg,2009, P.7

37. The same, Newbur, P: 325



In some states, judges are appointed through party elections (the candidate's party name is written on the ballot paper). From the historical background, it appears that this method gives the party leader the ability to support his party through judicial position. In other states, judges are appointed through non-party elections (not writing the name of the relevant party). In addition to this, there is a possibility of party influence in non-party elections. Traditionally, in the United States, the competition for the post of judge is having little importance, and this often takes place when the number of voters is small. However, the candidates for the judicial office rely on village programs such as the administration of justice and others, and mention them a lot in their campaigns and promise to strengthen them.

The lack of information and the small number of voters in the elections cause the previous judges to be successful in re-election. Therefore, whether it is elective or appointment, the chance of not being re-elected as a judge is very low, so far there are very few judges who have not been able to be elected to the position of judge for the second time and very few have been dismissed from their duties<sup>38</sup>.

### **Third: appointment through Jury Panel**

Appointment by the Jury Panel is where the applicant of judge position is evaluated and then the introduction of the person who was chosen is sent to the governor. The chosen judge is invited to have some question-and-answer meeting. In 1913, the method of selecting judges was established under the name of the best selection. In this method, the governor of the state appoints a judge, but the selection of the governor is from the group of people whose documents have been evaluated by an independent commission. Judges who are elected in this way, after a certain period of time, in order to remain in the judicial position, they must participate in elections repeatedly. These elections, which are known as retention elections, are not competitive and the voters are only asked whether this judge will remain in office or not and the voters express their opinions<sup>39</sup>.

38. The same, Newbur, P: 326

39. Wheelr,p(2005).Judicial independence in united states: current issues and relevant background, Colombia Law Review,vol.34.no.5,P.14

In the implementation of this method, the American Bar Association and the American Association of Judges have a role. In 1903, the American Association of Judges and the American Association of Bar Associations presented the best selection method for improving judicial independence. However, these two institutions do not support this type of method and do not consider political and non-political selection appropriate. In 1940, Missouri was the first state to use the best selection method, and after that several other states accepted this method. The method Best Selection and the competence are monitored by commissions like the Supreme Judicial Council. The supporters of the best selection method believe that this method selects competent candidates and prevents the influence of political groups, and if the judges act politically, they will be removed from the election<sup>40</sup>.

In fact, this method was created to reduce the influence of politics in the judicial system. (Don't enter politics to the court) is a key term repeated by the judicial reformer for a long time. These reformers oppose the election of judges by the people because the voters do not know the standards of a good judge.

On the other hand, election-based appointment is something which forces the judge to make careful decisions. The reformers supported Missouri's lawyers' method, the best selection. The reason behind naming of this method was that this method was firstly applied in Missouri state. Selection of the judges on the as per their ability is a combination of different methods that each method is suggesting for a special commission for selecting candidates for judicial positions, in which there are lawyers and non-professionals, and a list of competent (qualified) persons. The governor decides on the final selection as a high-ranking official, but the governor is obliged to select one of the people from the list<sup>41</sup>. After a short period of time (that is usually one year), the new judge will be unopposed, but the question is whether the judge can remain on his position. Since the judge has the majority of the positive vote, he has the office of the judge for the whole time, and there is no risk of being removed, and most of the judges, probably 7 percent of the vote holders remain in their position, but yes there is a small number judges who were dismissed from their positions.

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40. Philips,T(2003),keynote address:electoral accountability and Judicial independence of OHIO State Law Journal,vol.64,p.2

41. The same, Newbur, P:326

For example, 50 judges lost their positions in 3912 cases of judgment in ten states to remain in office, of which 28 cases occurred in Illinois. According to the law in this state, a judge must have received 60 percent of the votes to remain in office.

In fact, what the reformers want is to root out politics from judicial departments. This method has reduced practically the influence of political parties, while the authority of the law community has increased<sup>42</sup>.

This method of selecting judges was adopted on a large scale in Missouri in the 1940s by the judiciary in favor of dominance over judicial selection, and in filling judicial positions based on merit which later became a model for 34 other states<sup>43</sup>. The main steps in the appointment are as follows: announcing the judicial position, receiving the petitions of the candidates, appointing the candidates, interviewing the candidates by the commission and evaluating them, arranging and presenting the list of appointed persons to the governor, and the selection of a person from the list by the governor<sup>44</sup>.

Despite this, there is no single strategy in appointing judges, in some states every candidate is eligible for interview, but in some others, only those candidates whose names are on the final list are invited to the interview, and in some states, judges are appointed by the governor. But in some states, the collaborative decision of the group-meeting is must. Currently, two-thirds of the states and some parts of Columbia appoint their judges based on the meritocracy system. Anyway, appointment through meritocracy system has drawn a big scale of attention. Most of the states use this system at least at the state court system level, however, some states are in the process of evaluating this system. Based on the importance of this system, all states that have changed the way of electing judges in recent years. This system has been implemented in one way or another, even those states that do not use this system officially, governors use the system of meritocracy for temporary positions<sup>45</sup>.

42. Taylor, Clifford W. (2009). Merit Selection: Choosing Judges Based on their Politics under the Veil of, P.97-101

43. <http://www.judicialselection.us/judicial-selection/index.sfm?state=MO>

44. <http://brennan.3cdn.net/31e6c0fa3c2e920910-ppm6ibehe.pdf>

45. The same, Newbur, P. 327

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## **Second Item: Appointment of Judges through Romano-Germanic law system**

As we have already mentioned that we have chosen France as a representative and the leading follower of the Romano-Germanic law system, so now we are discussing the appointment of judges according to French laws.

### **First Clause: Appointment of judge according to the France Law system**

Until the French Revolution, the position of judge in this country was hereditary and could be bought and sold. After the beginning of the revolution, the Constituent Assembly stopped this tradition, and elected judicial officials through elections, but this arrangement did not have positive result and at the time of the consuls, the authority of appointment of judges was given to the Executive power<sup>46</sup>. Hereditary and the tradition of buying and selling judicial positions had led to put the judicial system down, the great revolution of France put a dot to this method. The constituent assembly load the responsibility of appointment of the judges through election, and since unprofessional people could find their way to the position of judge through election, so this measure was canceled after some time and the authority of selection of judges was given to the executive power and later the judges were appointed by Senate around the country. In 1804, Napoleon eliminated the general election system, and replaced it with a presidential election, a procedure that is being continued without interruption up to now. In 1848, some attempts were made to return the election process into the general elections, but in recent years, interest the mentioned procedure has been decreased and there is no demand for general elections and those who were in the favor of general elections are Radical party followers (reformers).

During the National Defense Government (1870), it was decided that lower-ranking judges will be elected by higher-ranking judges and councilors will be elected by both houses of parliament. Overall, it was decided that the authority of appointing judges should return to executive power<sup>47</sup>.

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46. Mateen Daftari, Ahmed. (1349). Code of Civil and Civil Procedure, Vol. 1, Tehran: Antarhat Daneshgah, P. 151.

47. Jalal al-Din Madani. (1369). Fundamental Rights in the Islamic Republic of Iran, Vol. 6, I, 1, Tehran: Soroush, P. 303

At present, according to the law of the French judicial system approved on December 22, 1958, and amended on March 16, 1979, every Frenchman who is of legal age, has a bachelor's degree in related field, has social rights, has good morals and mental balance and having good physical conditions and enough work experience can participate in election of judge appointment election. The successful candidates are selected for judicial training by the Minister of Justice to study at the National Judicial School. The selection of judges in France should be studied from the perspective of the General Courts and Administrative Courts<sup>48</sup>.

### **First item: recruitment of judges to the public courts**

Most of the judges in non-administrative courts are those who have studied at the National Judicial University during their studies<sup>49</sup>. The France National Judicial University has created a new method through which judges can create a common culture of rights and create unity in the new legislative changes via professional ways.

1. Training of those French General courts' judges who have been recruited through examination after their university graduation.
2. Continuous professional training for judges during their professional life, judges are legally entitled to 5-day training per week.

Those who are going to participate in National Judiciary Training must have their university graduation degree. But successful candidates are those who have law studies degree and having some other professional skills. Candidates can participate in the local judicial institutions during their university in order to pass the necessary period as defense lawyers. The entrance exam consists of written questions in civil law, criminal law, general law, and an oral exam in various topics such as commercial law or administrative law<sup>50</sup>. The period for those who are studying judicial universities takes for about 31 weeks. In judicial universities In the Judicial University, students participate in classes and seminars in which some parts are devoted to the judicial ethics. At the end of this period, when the students are given any research, they learn how to work in legal institutions, general institutions or international organizations, the students get familiar with those institutions. This kind learning is not obligatory, but it is optional and usually takes two months.

48. Abdallah, Shams. (1391). *Ayin Dad Rasi Durah Pishrafta* Vol. 1, P. 150

49. Rahalah, Sawari Dehaqi. (1394). *The structure of the doctrine of justice* (research case: Shia jurisprudence and European thought), Vol. 1, P. 92.

50. Aloyt and Vernon. (1382). *French Legal System*, Volume 1, Tehran: Center for Research of the Islamic Majlis Shura, P. 351.

Other work-study courses are conducted in courts under the supervision of experienced judges so that students can become familiar with other dimensions of the judicial system. Judges are evaluated every two years by the head of the court.

All students in the National Judicial University are considered government employees and get a salary. The academic period is divided into two parts, the theoretical period and the practice work-study period.

The first theoretical period is 13 months where students are studying and learning at National Judicial University. The classes are practical for students in order to be familiar with what an actual judge is doing. Following this, another 14-month period is started where student help the judges in a variety of judicial cases and you will see students working in attorney office for hours in order to get experience.

At the end of this period, students participate in an exam, and then students are divided into different specialization categories. Then they spend 6 months of their study period in a pre-assigned activity and area. This process may be assisting a judge in a particular court, or in other areas such as local courts or children's courts or others. Those candidates who successfully complete the mentioned period, usually start working in the same area where they have worked in the last 6 month, and start working as **Ready-to-Work judge**. Of course, those who have been in working on the mentioned position as their study period, and at the end having remarkable achievement, they are certainly appointed in higher position of judicial departments even as a judge<sup>51</sup>.

Every judge takes the oath before his first job and says “I swear that I will do my job faithfully, keep secrets, and work as an honest and trustworthy judge.” He also swears that there is an organizational relationship between the National Judicial University and the judicial system, such that their managers are strong members of the judiciary before and now, and the majority of the strong members of the judiciary form their directorate<sup>52</sup>.

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51. Sameh, Eliot and Vernon, P. 352-351

52. The same, Shams, P. 151-150

## A: Enrollment in National Judicial University

The National University is responsible for providing basic education and service training to all members of the judiciary. The selection is made through a competitive exam. There are three types of these exams:

1. The first test is taken from people under the age of 27 who have specialized university documents, and the other selection conditions are included: French nationality, having social rights, moral character, physical equality and performing military contracts.
2. The second competitive exam is among government employees, that is, those who have served in the government for at least 4 years.
3. The third competitive exam was introduced in 1996. This exam is for those who have been selected as a professional member of the local court for 8 years. In addition, people who want to join the national university without taking the exam, they should have the following additional condition along side the above-mentioned principles: having a law degree, 4 years of work experience in legal, social and economic activities that provides them with the conditions for a strong judiciary, or having a doctorate in law, or having documents related to other relationships, or conducting legal research, and the candidate must be accepted by the commission, the commission that is responsible for improving the quality of judges. In all three types of recruitment, exam is conducted in one form with have several stages which may differ in its details. In the first written exam, the answers are written on four sheets, the first sheet is on social, legal, political and cultural topics, the second sheet is on civil rights topics, and the third sheet is on criminal law or general law and about the European Union, the last stage is about an administrative report about a legal problem based on a document.

Those who succeed in this stage of the examination will be invited to the oral examination which will be conducted by the jury and the topics will be commercial law or administrative law, a question from criminal law and specialized questions related to the judicial system, therefore, this specialized question is in the administrative, criminal, civil or court-related fields, and one of the other exam materials is the language and ports test. The board of directors of the examination is composed of strong judges, university professors, members of the government and other people.

53. Giuseppe Di Federico, 2005, RECRUITMENT, PROFESSIONAL EVALUATION AND CAREER OF JUDGES AND PROSECUTORS IN EUROPE, Research Center for Judicial Studies (CeSROG), University of Bologna, Italy P.47-48

## **B: Appointment of Judges through other ways**

As most of the candidates apply to study at the judicial university shortly after receiving their documents. Some very old people have the right to participate in the exam in a special and abbreviated order, and some others are exempted from the exam. They include: among the candidates who have worked in a legal profession for at least four years, in 1998, in order to overcome the shortage of judges, 100 candidates with documents who were interested in the post of judge were appointed for the period of six months of which half of them were appointed in district courts, and the other half of them were appointed in case revision courts. In fact, these individuals should have started a training program in the court they are assigned to, one month after the start of their studies at the National Judicial University, in order to be able to perform the duties efficiently in the mentioned position at the end of the 6-month program. It seems that the training is not strictly designed to train judges for courts, but they are short-term solutions. The main topic of discussion is that some people are accepted as judges immediately and without any pause and without graduating from the National Judicial University. This type of attraction of the judges, which was included in the decree of 22 December 1958, has increased in recent years, but is applicable to very few people.

Only those people who are mentioned in the table of 1958, which includes the defense lawyers who have been working as lawyers for at least 7 years. Only a few numbers of judges based on their background are as English or Welsh judges, meaning that they have trained as advocates, in addition, some judges are sometimes temporarily assigned to provide expert reports or only to increase the number of judges immediately<sup>54</sup>.

### **Second Item: Judges Administrative Courts**

The French administrative justice system is based on two pillars: The Government Council and Administrative Courts. Dealing with complaints against government is the responsibility of provincial administrative courts, and the Government Council deals with some claims and complaints in the initial stage or some in the review stage.

54. Same, Eliot and Vernon, P. 354-352



The judges of the provincial administrative courts who are traditionally called advisers, are selected through free competition after they graduate from National Institute of Administration in Paris. In administrative courts, judges do not have formal or actual status but are just employees of the government employed by the Minister not by the Supreme Court, although they are not directly supported by the constitution 1958, but in 1980 the Constitutional Council announced that the independence of administrative judges is one of the basic principles of the French Republic. They regulate duties and professions, and in terms of courts, the status of a judge is different from other courts<sup>55</sup>.

In the selection of Administrative Judges At the lower level, candidates must pass an examination at the National Institute of Administration, and at higher levels, they can even be appointed to the State Council as Judges, as the Administrative Judges of the country, As the administrative judges work closely with other officials of the country, the experience they have gained can be used in the government council.

Another way to enter the administrative courts is the exam that is taken from law graduates, as the competitive aspect of this exam is very serious and tough, candidates who have some other qualifications in addition to a law degree are likely to be accepted. Candidates will spend a 6-month approved period in the Council of State and can hope to be appointed as an administrative judge outside of Paris.

In France, the judges of the general courts are appointed by the National Institute of Justice and study there, while the judges of the administrative courts are appointed from the graduates of the National Institute of Administration. Article 2 of 233 Law states: The members of the primary and appeal courts are selected from the graduates of the National Institute of Administration<sup>56</sup>. Most of the judges for recruitment and employment in the courts, if they are selected from the National Institute of Administration or any other method, have a master's degree in general law or above, the exam material for joining the National Institute of Administration is general law. Although the lessons of the National Institute of Administration have many aspects, still general rights have a basic and important place in these studies<sup>57</sup>.

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55. The same, P. 315

56. The same, Eliot and Vernon, P. 356

57. Sayed Nasir Sultani. (1392). Basic laws and methods of recruitment and training of administrative court judges in France, II, Tehran: Judiciary research, P: 8.

## **A: Ways of appointing judges at administrative courts and increase of candidates**

Judges are appointed through different four ways in administrative courts in France.

**First Way/Method:** The method of recruiting graduates from the Higher Institute of Administration, this method of recruiting is the best method, every year 120 people choose the job of cooperating with the administrative courts based on their rank and scores. To enter this institution, are three ways:

- In the general examination in which students participate.
- Internal testing for employees.
- People who are not included in the above two categories can enter the institution.

### **Second Method: Recruiting Judges from governmental (Military or Non-military) employees**

Also, the employees of the National Councils who have academic rank, experience, good historical background and educational documents are selected and evaluated by the High Council of Administrative Courts and Courts of Revision. The director of the French Council of is at the leader of this council.

### **Third Method: Employment of Governmental employees in judicial courts**

A part of the judges of the administrative courts can be assigned or transferred from the courts, general courts, universities, university professors, postal and telecommunications administrative staff, hospital workers who are equivalent to administrative staff in terms of profession to be accepted as members of administrative courts. These people should have the following conditions: familiarity with administrative laws, accuracy, ability to work and order, open thinking and motivation, ability to do group work, ability to analyze and research.

### **Fourth Method: Over-all Recruitment**

This method is done through a general test (written and oral), and people with relevant professional documents can participate and must be at least 25 years old. to participate in it, the level of the examination is equivalent to the examination of the administrative institute. In this examination, the

governmental employees who are in A group can also participate in this examination. The level of this examination is equivalent to the examination of the National Administrative Institute examination level. In 2012, 40 people were elected in this method. These people were selected from the group of 222 people who had reached to the second stage. At the end of 2001, the administrative court had 867 members, of which 705 people were engaged in judicial duties. In the same year 64 people were recruited to the administrative courts, of which 11 people from the Higher Institute of Administration, 10 people in the second method, 20 people from the mission (18 civilians and 2 soldiers, and 23 people were selected through recruitment. In 2012, 1269 judges were active and working in administrative courts<sup>58</sup>.

**B: Terms and condition of entering to the Governmental Council of France**

The administrative council has approximately 300 members, these people are appointed by the government from among the graduates of the National Institute of Administration with the highest scores through an examination. The membership in the government council is divided into three parts: Councilors (the highest rank), inspectors (middle rank) and workers (lower rank), which workers are also divided into the first level and the second level, in addition to this, there are also special positions such as the government secretary, the head of the department, the head, and the assistant to the president, the assistant to the president of the state council, the president of the state council is the prime minister who is asked to head the council in special situations. The recruitment of the State Council and the Accounts Court is done jointly in two different methods, the competitive examination and external recruitment. The recruitment of State Council employees is done only through competitive examination, and the recruitment has been changed since 1945. The directive and manual of October 9, 1945 has eliminated all competitive recruitment for the main institutions of the state and recruitment for the ministries. Therefore, for the selection of central administrative institutions, individuals must participate the examination of the National Administrative Institute set by the directive of October 9, 1945, and after passing the examination, based on the obtained scores and grades, they are introduced to the qualified jobs.

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58. The same, Sultani, P. 8-10

The State Council together with the f Investigation and Accounts Bureau appoint those who have obtained the highest marks in the exam. It should be noted that not only the students participate in this exam, but those who used to be the experienced employees of the government<sup>59</sup>.

### Summary:

1. From the point of view of Islamic Fiqah, judiciary is one of the duties of the government, and the main party or authority to appoint judges is caliph, but as the caliph is busy with other government affairs, so he appoints someone else as his representative to organize the judicial affairs. In some exceptional cases, the emir, the infidel ruler, and the assembly of Muslims can appoint judges.
2. In the American legal system, considering the federal pattern of the government, there are two law system. In the federal system, as the judicial organization of the United States is ahead of the judicial organization of the government in terms of time, the structure of the federal government has come under the influence of the United States in many cases. According to the federal constitution, each state has its own special law, and the composition of the general power, the conditions and the method of selection are determined in accordance with the accepted political culture. Therefore, the judicial organization of one state is different from another state. While in France, considering the fundamental rights of the country, the judiciary is managed by the central government and the Supreme Court.
3. According to the Constitution of the United States, at the federal level, the judges of the Supreme Court, the judges of the Court of Appeals, and the judges of the District Courts are appointed by the President and confirmed by the United States Senate. It is done by the members of the President's party. Usually, the confirmation of the report of these candidates is in charge of the Senate Judiciary Committee. The three important factors in determining the judges are: Asking the opinion of the senators so as not to face problems in the selection stage of the judges. The opinion of the 12-member committee of the Lawyers' Code and the opinion of other judges who work at a similar level and rank, in addition to this, some other criteria such as active legal experience, personal characteristics and legal skills may be taken into consideration.

59. Mohammad Javad, Rezaizadeh. (1384). Administrative Courts in France and their Jurisdiction in Administrative Litigation, Vol. 1, Tehran: Directorate, P. 74-70

4. There are various ways to choose judges at the state level of the United States, which basically predicts five ways to reach the judicial position, which can be said that no two states use the same way. The establishment of the position of judge is carried out in two official and unofficial ways, the selection of judges by the governors and appointment based on competence are the ways to fill the vacancies of judges.
5. In general, we can say that in spite of all the criticisms that have been made on the selection and appointment, the appointment of judges is processed and created as per the fundamental rights, legal system and shared beliefs of every country. In the American judicial system, both methods of appointment and election have been placed, and because of these two methods of selecting judges (selection and appointment), judges have been able to solve problems without taking into account partisan and directional issues. And this is the reason why the American constitutional law system is known as the judges-based system. Judges in this legal system have unprecedented power and authority. In the United States, the common law system has an influence on the selection and appointment of judges. Besides, having experience and having information in various fields is considered essential for the post of judge. Additionally, having a healthy spirit and suitable personality is also considered as a required condition for the position of judge. Judges of the high courts are usually selected from the group of people who have work experience in private or judicial institutions or should be from among the members of the legal profession with a historical background. For clarity, the authorities should pay attention to the opinion of the heads of the law. The Law of committee should give participation to representatives and representatives of other civil society organizations to take part in judicial decision-making.
6. The French legal system, known as the Romano-Germanic legal system, as there are different methods of the appointment of judges, most of the judges of the general courts are recruited by the National Judicial Institute who study there, while the judges of the administrative courts are appointed from the graduates of the National Institute of Administration.
7. The National Institute of Justice, which has an organizational relationship with the Supreme Court and the French judicial system, is responsible for the

primary education and training of all members of the judiciary. The long-term training course of the National Judicial Institute, which contains practical and theoretical lessons, is conducted by students who are members of the judiciary.

8. The judges of the administrative courts are appointed in a different way from the judges of the general courts. These judges are appointed from the graduates of the National Institute of Administration who hold a master's degree or above in law, who complete their training in the French State Council. The members of the State Council are selected through an examination in which the successful candidates are divided with the Accounts Court, where the examination and selection process is conducted by the National Institute of Administration. The French legal system, confirms the expertise of recruiting judges from among general law graduates for administrative and state council courts.
9. Considering some formal differences that exist between the legal systems of the two countries (the United States and France), it should be understood from the way of appointing the best people in the field of selection judges at the state level of the United States that this way is it is developing at the state level, and on the other hand, the recruitment of judges in the French legal system, the graduates of law of National Administrative Institute and other judges appointed by the National Judicial Institute are important.

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