



OPEN ACCESS

SUBMITTED 30 June 2025

ACCEPTED 29 July 2025

PUBLISHED 31 August 2025

VOLUME Vol.05 Issue08 2025

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Conflict Of Jurisdiction Between The Governor And The Governorate Council In Iraq

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Abstract: The legislator adopted decentralization in the organizational structure of governorates not organized into a region after 2003. However, it did not link the governor to the central government according to the administrative hierarchy of employees, nor did it link him to the governorate council with a functional link, but rather a supervisory link. This may lead to a conflict of jurisdiction between him and the governorate council, as a result of a lack of full awareness of his position in the state's organizational structure, when he made his connection to the governorate council greater than it is in the federal authority, with his function mediating the political and institutional organization between the federal authority and the governorate community, which must allow communication between the supreme leader and the parties within the framework of the executive performance of the official bodies in the state. This led to undermining the opportunities for advancement and development in the governorates. The article concluded that this problem must be reconsidered legislatively, by formulating a text based on an understanding of the governor's function in the political and administrative organization of the country.

Keywords: Conflict of jurisdiction, governor, provincial council, Federal Supreme Court.

Introduction: The decentralized system is considered one of the fundamental systems adopted in democratic countries, based on the fact that the principle of centralization is often a source of authoritarianism. Therefore, Iraq followed this approach after the fall of dictatorial rule in 2003. It transitioned from imposing a system of local administrations on the governorates to electing their local administrations by the people of the governorates, whether they were formed within a region, as in the Northern Iraq region, or remained as

they were. Elected local councils were included—while maintaining the position of governor, who represents the political and administrative authority in the governorate—within the decentralized organizations, which play an essential role in social, administrative, economic, political, and other aspects of life. This is due to their role in formulating the governorate's policy through planning, implementation, oversight, and follow-up within the governorate's various departments, which play the most significant role in solving citizens' problems and providing them with services. In the amended Law No. 21 of 2008 on Governorates Not Organized into a Region, the legislator assigned numerous powers to local councils, which primarily involve supervising and monitoring the executive bodies and facilities located within their administrative borders. However, the nature of the work sometimes requires a conflict of jurisdiction between the governor and the provincial council. Therefore, this article aims to conceptualize the occurrence and resolution of this issue in accordance with relevant legislation.

First: The Research Objective

The primary objective of the article is to highlight and address the problem that arises when a conflict of jurisdiction occurs between the governor and the provincial council in Iraq (administrative or judicial). This can be envisioned in the management of provincial affairs, decision-making, or both, due to differing views between the governor and the council, conflicting jurisdictions, or a lack of clarity in jurisdictions, which increases the chances of conflict. The importance of resolving the conflict is evident in achieving the public interest, protecting citizens' rights, and ensuring the stability of local administration. Failure to resolve it negatively impacts citizens, delays development projects, and disrupts administration. Prominent examples of this include the management of development projects, land allocation, and budget allocation. In such cases, the Federal Supreme Court is the competent authority to resolve this conflict under the constitution and the Provincial Law.

Second: The Research Problem

The research problem lies in resolving the conflict. By seeking assistance from the competent authorities, usually the Federal Supreme Court, or by adjudicating the dispute by having the court issue a decision to resolve it and implement it by both parties concerned, or by having the court determine the original jurisdiction of each party in accordance with the constitution and applicable laws, or by referring the dispute to the court, which examines the evidence and legal arguments presented by both parties and the

facts.

Third: Scope of Research

The scope of this research is limited to examining the jurisdictional conflict between the governor and the provincial council in Iraq, with reference to the constitution and applicable Iraqi laws for resolving this conflict.

Fourth: Research Methodology

The article employed a descriptive and analytical approach, extracting information from its sources, indexing and presenting it, and then describing and analyzing it to achieve the desired goal.

Fifth: Research Plan

This article is divided into two parts:

The first part clarifies the concepts that must be defined in a manner that avoids doubt or confusion with others, as they are more general than those used in other fields of science, in two sections. The first section defines conflict of jurisdiction, while the second section defines the governor and the provincial council.

The second section explains the authority to resolve conflicts of jurisdiction between the governor and the provincial council.

Section One: Concepts

Defining the concepts upon which studies in general, and legal studies in particular, are based is an essential condition (1). Defining them facilitates the expression of the ideas sought by the researcher (2) and prevents the researcher from provoking controversy with others (3). These terms, in any given research, are merely practical tools or mechanisms for investigation (4) and an essential link between the researcher and the reader and the intended explanation (5). Therefore, dispensing with a clear definition of them is considered a methodological shortcoming (6). Thus, this section is devoted to clarifying the key concepts that need to be mentioned.

Because most of these concepts appear in legal thought as a combination of two words, each with an independent meaning and another within the idea formulated in the manner of addition (7), inclusion (8), or a revealing and specific characteristic (9); Considering that most scientific concepts consist of two or more words (10) in an additional, mixed, or hybrid construction (11), scholars and thinkers sometimes use the term to mean the general, absolute term, and other times to refer to the specific meaning used in the field exclusively. Therefore, it is necessary to address them as follows:

First Topic: Defining Conflict of Jurisdiction

First Section: Defining the Two Terms in Linguistics

First: Conflict: A noun derived from the root (n z'), meaning disagreement and dispute (12). Originally, it denotes uprooting (13), implying violence, difficulty, and resistance. This is because something easy cannot be uprooted, but rather is removed (14).

Second: Specialization: Originally, it is derived from the root (ikhtisas) (15), which denotes singling out a person for something, or singling out a thing to the exclusion of others absolutely (16). Therefore, it implies exclusivity in grammar (17).

Second Section: Defining Conflict of Jurisdiction in Terminology

The compound concept, according to legal scholars, has not significantly deviated from the linguistic meanings of the two words. Therefore, they defined it as: "a dispute between two judicial bodies regarding the consideration of a specific subject, such as the dispute that occurs between the regular judiciary and the administrative judiciary in countries that adopt the dual judiciary system" (18), which the Iraqi legislator adopted in the Second Amendment Law to the State Council Law - No. (65) of (1979) (19) - No. (106) of (1989) (20), and it was adopted by the federal system after the year (2004) pursuant to the State Administration Law for the Transitional Period of the year (2004) (21) and the Permanent Constitution of the year (2005) (22); In the event of a conflict of jurisdiction between the ordinary judiciary and the administrative judiciary (23), this conflict occurring between two or more courts is sometimes negative, meaning that all or some of the courts refuse to consider the case, claiming that it is not within their jurisdiction, so they refer it to another court, and so on, and at other times it is positive, meaning that each court maintains its jurisdiction to consider the case (24). It is necessary to "designate the competent authority from among the judiciary or bodies with judicial jurisdiction" (25).

Then, Municipal Administration Law No. (165) of 1964 was issued (62), which replaced Law No. (84) of 1931 (63). Article (4) stipulates that the municipality shall have a council with a minimum of five and a maximum of twenty-one members, including the mayor. Article (21) specified that council members shall be elected from among the population by direct, free, and secret ballot, in accordance with a special electoral law.

Article (43) defined the functions and powers of the municipal council, including the preparation of basic city plans and submitting them, along with objections from citizens, to the Minister for approval within three months.

Other articles stipulated multiple functions for the council, related to social, cultural, agricultural, health, urban, and other aspects, provided that the council's

decisions are subject to objection by the presidential authority within one month from the date of their submission. In financial matters, they are subject to ratification by the competent Minister, the Council of Ministers, and the administrative authority, as stated in Article (57) thereof, according to the amount to be disbursed.

Article (71) stipulates that the central authority shall oversee the work of municipal councils.

It states that the Council of Ministers, based on the Minister's proposal, may dissolve the Capital Municipality Council. The Minister, based on the proposal of the administrative authority, may dissolve councils of other types of municipalities if the limits of their powers stipulated in the Law are exceeded, if their continued existence becomes harmful to the public interest, or if the council loses a majority of its members.

Provided that a new council is elected within a period of forty-five days from the date of the council's dissolution, during the period between the dissolution of the council and the election of a new council, a committee formed by the Minister shall carry out the council's duties during this period. This committee shall not take any decision requiring the disbursement of sums from the municipal fund that the council has not previously approved.

The legislator was keen to highlight the relationship between the central authority and the decentralized body, represented by the municipal council, in a manner that represents the general principles regulating the exercise of presidential authority. He granted the latter legal personality, defined its powers and duties in the manner indicated, and defined its relationship with the central authority as follows:

1 - The central authority exercises its powers to monitor the work of the decentralized body through its right to object to the decentralized body's decisions.

2 - The central authority must ratify the decentralized body's decisions regarding disbursements if the amount to be disbursed exceeds a specific limit.

3 - The central authority supervises the work of the decentralized body, monitors budget implementation, and audits its accounts.

4 - The central authority has the right to dissolve the decentralized body, based on a proposal from the central authority's representative (the administrator), in cases stipulated by Law.

5 - The central authority may appoint heads of administrative units who manage the work of decentralized bodies, such as the governor, the district governor, the district director, and heads of sub-

districts. These heads are linked to their employees through functional subordination, based on a hierarchical structure.

With the issuance of the 1970 Constitution (64), the trend toward decentralized administration in Iraq was confirmed. Article 8/b stipulated the division of the Republic of Iraq into administrative units, organized based on decentralized administration. This was the first reference in the Iraqi Constitution to the principle of decentralized administration. Meanwhile, the 1964 Constitution (65) and the 1968 Constitution (66) contained a single text in Articles 83 and 84 of the 1964 Constitution and Articles 77 and 78 of the 1968 Constitution, dividing the Republic of Iraq into administrative units organized and administered in accordance with the Law.

The bodies representing the administrative units are concerned with matters relevant to all the units they represent and contribute to the implementation of the state plan (67). They are a regional public legal entity that exercises administrative functions over a specific part of the state's territory (68), meaning that they are the administrative division granted legal personality by Law (69).

Provinces Law No. (159) of 1969 (70) - which replaced the District Administration Law No. (16) of 1945 and its amendments - defined in Article (1/3) the administrative unit as the governorate, district, and sub-district. The region was then established after the issuance of the Autonomy Law (71), pursuant to which the administrative units inhabited by a Kurdish majority were unified into a single administrative region with a separate entity within the framework of the state's unity. The legislative and executive bodies stipulated in the Law above also emerged (72).

Therefore, Article (2) of the Governorates Law stipulated that the country be divided into governorates, each of which would be divided into districts, and the second into sub-districts, each of which would have legal personality. Articles (4, 5, and 6) thereof outlined how administrative units should be formed. A governorate is created, its center and name are determined, its borders are confirmed and modified, and its districts and sub-districts are severed and attached to another governorate by a republican decree issued based on the proposal of the Minister, the approval of the Council of Ministers, and the ratification of the Revolutionary Command Council (dissolved). A district is created, its center and name are determined and changed, its borders are confirmed and modified, its sub-districts are severed and attached to another district by a republican decree issued based on the proposal of the Minister (based on the decision

of the provincial council) and the approval of the Council of Ministers. The same applies to the sub-district.

Article (3) of the law defines the powers of the administrative unit as follows:

- 1 - Exercising the powers that enable it to perform services and functions in accordance with the provisions of the Governorates Law and other laws.
- 2 - Collecting taxes, fees, and wages in accordance with the provisions of the laws.
- 3 - Enjoying the rights granted to the administrative unit by law.
- 4 - Concluding contracts of various types in accordance with the provisions of the law.
- 5 - It may be a party to all lawsuits filed for or against it.

Article (52) stipulates the formation of local administrative councils, each of which shall have a local administrative council. At the governorate level, the governorate council shall be formed, consisting of the Governor as chairman of the council and a vice-chairman from the elected members of the council, permanent members by virtue of their positions, and elected members whose number shall be double the number of permanent members. District and sub-district councils shall be formed in the same manner.

To ensure the implementation of decentralization, Article 84 of the law stipulates the formation of a Supreme Authority for Local Administration, headed by the Prime Minister and including the Ministers of Housing, Public Works, Information, Culture, Education, Interior, Agriculture, Youth, Health, Labor, Social Affairs, Finance, and Transportation. The Authority is responsible for formulating general policy for the activities of administrative unit councils and transferring functions, services, and powers exercised by the relevant ministries and relevant agencies, along with the financial appropriations allocated in the general budget, to administrative unit councils on a gradual basis, within a period not exceeding ten years from the date of the law's issuance.

Article (86) specifies the functions of administrative councils related to educational, agricultural, youth, social, and health affairs, and transportation services. Article (90) specifies the services and functions performed by administrative councils that are transferred from the ministries (the central Authority) to the local councils. This is done by a decision of the Supreme Authority for Local Administration based on the proposal of the Minister. Article (102) of the law stipulates that the competent Minister (the central Authority) may entrust the implementation of projects related to his ministry to one of the local councils (the

decentralized body), directly or upon the request of the competent council, to carry them out on behalf of the ministry. Indeed, the legislator went further in the framework of coordination between the central Authority and the decentralized body; Article (103) stipulates that the ministries of the central Authority shall seek the advice of the provincial council in many matters related to administrative activity, such as educational institutions and schools affiliated with the Ministry of Education, agricultural projects undertaken by the Ministry of Agriculture, and other aspects of administrative activity.

This is a new trend in the way the central Authority exercises its Authority, which entrusts the decentralized bodies with carrying out some of the duties assigned to them and seeks their advice regarding some aspects of administrative activity. This is an indicator of the impact of administrative development on the practice of this method. While it is well known that the lower administrative Authority is guided by the opinion of the higher administrative Authority, in the case referred to, the exact opposite occurred, as the legislator obligated the central Authority to consult the opinion of the decentralized body. This is a new trend that clearly indicates a direct relationship between the decentralized body and aspects of administrative activity, based on its understanding of the region's needs. Therefore, the legislator did well when he obligated the central Authority (the ministry) to consult the lower Authority. In doing so, the legislator introduced a new trend to the relationship between the central Authority and the decentralized body (73).

The law defined the method of the central Authority's oversight of the work of the decentralized bodies as follows (74):

1 - Postponing meetings of the administrative unit councils for a period stipulated by law. Article (129) of the Governorates Law stipulates that the Council of Ministers, upon the proposal of the Minister, may dissolve the administrative unit councils if the councils violate their duties or their continued existence becomes harmful to the public interest.

The Minister may also exercise oversight by postponing meetings of administrative unit councils. The Governor (representing the central Authority) may postpone meetings of the District Council and the District Council for a period not exceeding fifteen days if these councils cannot continue to meet or if justifiable reasons exist for such a postponement. The reasons for the delay must be stated in the decision. This decision may be appealed to the Council of Ministers or the Minister,

depending on their respective jurisdiction. Postponement may not be made more than twice within a one-year period.

Suppose the administrative unit council is dissolved or its meetings are postponed. In that case, a committee headed by the head of the administrative unit and comprising permanent members shall temporarily assume the duties of the administrative unit council until the new council is formed or the postponement of meetings is lifted. Decisions issued by this committee during the period of dissolution or postponement shall be presented to the new council immediately upon its convening for approval. One form of central Authority oversight of local councils is oversight carried out by administrative inspectors sent by the Ministry of Interior regularly to inspect the governorates and their affiliated departments, monitoring the extent to which these departments comply with laws, regulations, and instructions. These reports are submitted to the headquarters of the Ministry of Interior to take the necessary action in this regard.

One of the forms of administrative oversight exercised by the central authority over the work of local councils and departments affiliated with the governorates is stipulated in Article (132) of the Governorates Law (75), which stipulates holding annual administrative conferences for governors in Baghdad. These conferences are attended by members of the Supreme Council for Local Administration (76), the Mayor of Baghdad, Undersecretaries of the Ministries of Interior and their Directors-General, members of the Administrative Inspection Authority, local administration advisors, experts, engineers, and representatives of official and semi-official departments. (77) The conference aims to study the general problems common to all governorates. (78) The conference submits its recommendations to the Prime Minister and the relevant ministries. (79) Administrative conferences are also held at the governorate level to study problems specific to the administrative units therein, helping to enhance the efficiency of local administration and coordinate its work with the central authority. (80)

2 - Appointing heads of administrative units, who are heads of local councils and are subject to the central authority under presidential control. (81) Appointed employees are also subject to their heads under presidential control.

3 - Dissolving the councils of administrative units in cases stipulated by law.

In general, the motivations, justifications, and advantages of the trend toward administrative decentralization can be highlighted as follows:

1 - Administrative decentralization reduces the burden placed on the contemporary state in managing public facilities and projects, which are constantly evolving as a result of the state's increased intervention in new areas and activities that it had previously refrained from. The multiplicity of activities and their concentration in a single entity can lead to a sense of suffocation. (81) Furthermore, concentrating all activities (social, economic, cultural, and political) in the capital may result in differences in the levels of development and growth among members of a single society. (82) This has prompted the adoption of a system of administrative decentralization, with local decentralized bodies assuming the management of local facilities and interests, as well as administrative bodies and institutions with a distinct character. (83)

2 - Other benefits of administrative decentralization are evident in some countries (84), such as Iraq, in areas whose residents are bound together by special ties based on shared interests.

3. Administrative decentralization is considered a complementary factor to political democracy, by involving the residents of regions and areas in the management of their local affairs by electing their regional bodies, selecting the best individuals to manage local facilities, and providing them with experience and expertise in public affairs.

4. Administrative decentralization is characterized by the fact that decentralized bodies, whether public or local, are more capable than the central administration in managing local interests and facilities, or bodies and institutions recognized as legal entities, without the complex administrative procedures experienced by the central administration.

5. Adopting a system of administrative decentralization helps increase the growth of state activity, whether in government administration, the social sphere, the economic sphere, or elsewhere.

6. Administrative decentralization is considered more capable than the central system in confronting emergency crises that occur from time to time within the regional or public sphere. It creates a sense of solidarity among the people of the local unit, such that interests intertwine and efforts combine to confront them. This is something rarely found in a centralized system.

7 - The idea of adopting planning can be applied in various fields under the system of administrative decentralization, in social, economic, and other areas, which the modern state has worked hard to conquer and compete with individuals over.

8 - The increase in state functions and their complexity

makes it impossible to concentrate government activity in the center or capital, and the accompanying obstructions and obstacles stand in the way of democratic life and social and economic development plans.

9 - The adoption of a system of administrative decentralization ensures fairness in the distribution of taxes, as each region or local unit receives its share of them to manage its regional facilities.

Section Two: Defining the Governor and the Provincial Council

First: Defining the Governor

1 - The Governor in Linguistics

The governor is an active participle derived from the verb "hafaz" (to preserve). It refers to one who fulfills a contract, upholds friendship, preserves the right of companionship, upholds social and political traditions, and manages the affairs of an institution, a large country, or a group of countries. This is called a governorate, and from this comes the governor of the capital and the governor of the bank.

It generally refers to a person (or group) who supervises, preserves, or cares for something, or who maintains or ensures its continuity and survival. Therefore, it is often used to describe a person who tends to maintain the status quo and rejects radical change, someone who adheres to prevailing traditions and customs, a shepherd or guardian, or someone who preserves and protects something.

2 – The Governor in Terminology

The modern meaning of the term "governor" has not deviated significantly from its original linguistic meaning, although it has become more specific. It refers to the administrative employee responsible for managing the affairs of the governorate (85).

Therefore, the research here will focus on the legislative framework regulating the affairs of the governor, his definition, position, selection criteria, powers, and relationship with the federal authority, in the decentralized system in Iraq (86):

A - The Legislative Framework Regulating the Affairs of the Governor

The legislation regulating the governorates and their working mechanisms in Iraq after 2003 differed from what was prevalent before that. (87) The governorates were subject to the central system, with concentrated oversight over local administrations, which led to the obliteration of the features of the decentralized system within them, an exaggeration. (88) Nevertheless, they enjoyed legal personality, meaning that a legal person was exercising administrative functions over a portion

of their territory. However, they lacked some other components, as there were no bodies elected by the people of the governorate, responsible for exercising administrative functions and managing public facilities within them (89).

Law No. (159) of 1969, which was repealed, regulating the affairs of the governor, gave the position of governor a political character rather than an administrative one, because he represents the single central government and the (sole) president of the republic in the governorate, and implements its policies at a special level. He is no more than an employee; therefore, the order to appoint him is issued by a republican decree based on the minister's proposal and the approval of the Council of Ministers. After the issuance of the order to appoint him, he must, before starting his work, take the oath before the president of the republic. Following the end of the dictatorial era, the conclusion of the occupation government's term, and the enactment of the Transitional State Administration Law of 2004, decentralization was officially implemented in its political and administrative aspects across Iraqi governorates. It gave them, outside the Kurdistan Region, except Baghdad and Kirkuk, the right to form regions among themselves, and the interim government to propose mechanisms for their formation, provided that they are presented to the National Assembly and regulated by special legislation for their formation with the approval of their residents through a referendum. Thus, the regions and governorates enjoyed clear independence in their administrations, which their people carry out through democratically elected councils. These councils advance the interests of the governorates and the country, promote development in the social and economic fields, and rebuild the infrastructure (90). Some researchers believe that the Iraqi legislator has benefited from the experiences of similar countries, which have proven successful in transferring powers and authorities to regions or governorates from centralization. This has led to administrative disruption and a boring routine for citizens and the central government, naturally resulting in delayed progress in all areas. The creation of local councils elected by their communities and granted executive and legislative powers within their regions enhances local governance if they are formed in a manner that does not conflict with the sovereign duties of the federal government. Therefore, decentralization is considered part of the requirements of the democratic approach, as it is based on giving the local community an important role in political participation, the ability to make the outcomes of government performance more expressive of its requirements, contributing to the formulation of public

policies and interacting with their content, and maximizing indicators of good governance that achieve the sustainable political construction of democratic activities in the state (91). B - Definition of the Governor in Legislation

Section (3) of Coalition Provisional Authority Order No. (71) of 2004, regarding the definition of the powers and responsibilities of governorates based on the principle of administrative decentralization, defined the governor as: "The highest civil official in the governorate, responsible to the governorate council. His role is to coordinate, guide, and monitor activities in implementing the decisions of the governorate council." He was granted the authority to appoint employees of the governorate (92).

At that time, Iraq consisted of eighteen governorates, three of which constituted the Kurdistan Region, governed by the Kurdistan Region Governorates Law No. (3) of 2009 (93), while the other governorates were governed by the Law of Governorates Not Organized within a Region No. (21) of 2008 (94), as amended, to clarify the powers and competencies of governorates and their associated districts and sub-districts. Based on the provisions outlined in the Constitution, the law comprises fifty-five articles distributed across four chapters, which include procedures for forming local councils, membership conditions and termination, their powers, and the privileges and rights of their members. It also encompasses the financial resources of the governorate, as well as the heads of administrative units, and all matters related to their duties and the organization of their work.

According to Article 122 of the Permanent Constitution of 2005, the governor elected by the provincial council is considered the highest executive authority in the province to exercise the powers granted by the commission. In light of the general principles, there must be an executive authority to implement the decisions issued by the legislative authority in an institutional organization. The governor is the head of the provincial executive apparatus. The constitutional legislator stipulates that he is "the president," granting him the privileges required by the general principles of the president and his subordinate (96).

Accordingly, the position of head of the administrative unit is of considerable importance in the management of local affairs. The Iraqi legislator has set several conditions for the person nominated for this position, in accordance with the mechanisms referred to in the Law on Governorates Not Organized into a Region No. (21) of 2008, as amended, which constitutes the sole legal framework for local organizations in Iraq. Three amendments have been made to it, reflecting the Iraqi

legislator's approach to aligning its provisions with the country's realities and its constitutional frameworks, to achieve general objectives (97). C - The Governor's Position in the Local Organization

In decentralized systems, the governor combines both political and administrative characteristics. On the local level, he is considered the executive figure who represents the pinnacle of the administrative hierarchy in the governorate. In the former, he describes the central authority, which is responsible for implementing its general policies in the governorate. Therefore, his oversight is divided into two simultaneous aspects: political and administrative (98).

As part of the executive authority, it undertakes diverse and broad duties, including supervising the implementation of development plans and projects in the governorate, preparing the governorate's general budget and submitting it to the governorate council, implementing governorate council decisions that do not conflict with the constitution and legislation, following up on the work of government departments in the governorate and ensuring smooth workflow, caring for public roads and securing transportation, providing the necessary means to raise the agricultural level and protect agricultural products, sponsoring projects aimed at caring for youth, preserving ancient monuments and caring for tourism, exercising the authority of administrative control and seeking assistance from police and armed forces when necessary, following up on the work of the police directorate in the governorate and receiving complaints related to its work, being responsible for providing security and maintaining order in the governorate, seeking its opinion on essential matters carried out by ministries and official departments in the governorate, implementing the state's general policy within the governorate's borders, bearing responsibility for implementing governorate council decisions, submitting periodic reports to the governorate council on the progress of work, sponsoring popular organizations and conveying citizens' views to the competent authorities, supervising the removal of real estate encroachments, following up on the implementation of projects approved for the governorate and reviewing progress reports, and following up implementing approved projects for the governorate, reviewing progress reports, following up on and reviewing the implementation of the governorate's annual plan, submitting recommendations and proposals to the relevant authorities, and others (99). He also enjoys the rights of a public employee and his job salary. He is subject to the provisions of the Disciplinary Law, the Unified Retirement Law, the Civil Service Law, the Personnel

Law, and other applicable laws. However, he differs from a public employee in that he is not subject to the administrative hierarchy that exists within the Iraqi government apparatus. Although he holds the rank of Undersecretary, he is not linked to a minister or the Prime Minister, and his connection to the governorate council is one of oversight, not of function. Therefore, his position is considered the most prominent position in the formation of local government in practice, as he undertakes many tasks. He is a representative of the local unit and the main guide in organizing its affairs administratively and politically, and a coordinator of the various governmental efforts within the governorate. One of the pillars of the institutional organization in the state, and his role is important by virtue of the legislation that made him the highest executive president in the governorate, and this is what necessitates that the legislative framework be more precisely organized and more precise in what relates to determining his legal and political position, organizing the mechanisms of monitoring and guidance, and the limits of the field of work in a way that does not allow for the multiple interpretations and vague interpretations that accompanied the reality of the work of governors in Iraq (100).

D - Conditions for Selecting a Governor

The legislation sets out specific conditions for a candidate for the position of governor, including that he be an Iraqi citizen, at least twenty-six years of age, of good reputation and administrative experience, thoroughly competent, free from disease, hold at least a middle school certificate, be a native of the governorate or have resided there continuously for at least ten years, and not be subject to accountability and justice procedures (101).

Second: Definition of the Governorate Council

The law defines a governorate as: "an administrative unit within its borders, consisting of districts, sub-districts (102), and villages" (103). Its boundaries are determined by law and divided into smaller units called districts, sub-districts, and villages. Article (2) of the Second Amendment to the Law on Governorates Not Incorporated into a Region stipulates the following:

First: The Governorate Council is the legislative and oversight authority in the governorate. It has the right to issue local legislation enabling it to manage its affairs in accordance with the principle of administrative decentralization, provided that it does not conflict with the Constitution and federal laws, which fall within the exclusive jurisdiction of the federal authorities.

Second: The councils enjoy legal personality and financial independence and are represented by their chairperson or their authorized representative.

Third: The councils are subject to the oversight of the House of Representatives.

Fourth: Local governments are responsible for everything required to administer the administrative unit in accordance with the principle of administrative decentralization.

Fifth: Local governments exercise the powers assigned to them by the Constitution and federal laws in local affairs, except for the exclusive powers of the federal authorities stipulated in Article 110 of the Constitution.

Sixth: The shared powers stipulated in Articles (112, 113, and 114) of the Constitution shall be administered in coordination and cooperation between the federal government and local governments. Priority shall be given to the Law of Governorates Not Organized into a Region in the event of a dispute between them, in accordance with the provisions of Article (115) of the Constitution.

The Constitution aims for councils to operate freely and to the extent that meets the needs of the governorate. This means that they are required to work with care, responsibility, objectivity, and professionalism to deliver the best administrative performance, thereby providing the best services to the governorate's residents. Therefore, local councils in the governorates must exercise oversight over the executive bodies, which are represented by local administrations and security and service departments in the governorate, headed by department directors, district directors, district mayors, governors, and similar officials.

Article (7) of the Third Amendment to the Council Members Election Law sets forth the conditions that each candidate must meet. The legislation stipulates that candidates must be Iraqi citizens of full legal capacity, at least thirty years of age, have a university education (except for the component quota, where the preparatory certificate is required), have not been convicted of a felony or misdemeanor involving moral turpitude, or have been convicted of administrative or financial corruption, and be a native of the governorate. These conditions are also met in the general requirements for governors (106).

Second Topic: The Reference in Resolving Conflicts of Jurisdiction Between the Governor and the Provincial Council

The Federal Court monitors the rulings and decisions issued by the Administrative Judiciary Court. Judicial oversight of governors' performance is then summarized in actions that constitute crimes under the law, such as bribery, embezzlement, and breach of trust. The amended Law on Governorates Not Organized into a Region No. (21) of 2008 stipulates

another original jurisdiction for the governor, namely, its authority to resolve conflicts of jurisdiction between the governor and the provincial or local Council. The reference to the formation of the Federal Supreme Court first appeared in Iraq in the repealed Iraqi Administrative Law for the Transitional Period of 2004. It was formed in accordance with Article (44/A) thereof; to fill the two vacuums (the judicial) that constitute a source of numerous disputes, and the vacuum (the legislative), which appeared after the Federal Supreme Court Law legislated the invasion of Iraq in 2003, and its work No. (30) of (2005) (107). Then, after the permanent Constitution of the Republic of Iraq for (2005) was codified in force, Article (92/Second) thereof also stipulated its formation, and decided that: "The Federal Supreme Court shall consist of: a number of judges, (108) experts in Islamic jurisprudence, and legal scholars; their number shall be determined, and the method of their selection, and the work of the court shall be regulated by a law enacted by a two-thirds majority of the members of the Council of Representatives" (109). It became completely administratively and financially independent from the regular judiciary, and all links between them were severed. Its headquarters were made in Baghdad, the federal capital, and its decisions became final and binding on all authorities, as were its rulings and decisions.

It is considered the highest authority in the Iraqi judiciary, as the highest judicial authority therein. It became the focus of attention and the sole authority during the administrative, political, and economic circumstances that Iraq experienced, such as the election of the country's President, the expiration of the constitutional and legal deadlines for forming governments, and the paralysis and inability of the Council of Representatives to function due to sit-ins inside or outside the Council (110).

Article 93 of the Constitution stipulates: "The Federal Supreme Court shall have jurisdiction over the following:

First: Overseeing the constitutionality of applicable laws and regulations.

Second: Interpreting the provisions of the Constitution.

Third: Adjudicating cases arising from the application of federal laws, decisions, regulations, instructions, and procedures issued by the federal authority. The law guarantees the right of both the Council of Ministers and interested parties, whether individuals or others, to appeal directly to the court.

Fourth: Resolving disputes that arise between the federal government and the governments of regions, governorates, municipalities, and local administrations.

Fifth: Resolving disputes that arise between regional or governorate governments.

Sixth: Resolving accusations against the President of the Republic, the Prime Minister, and ministers, and this shall be regulated by law.

Seventh: Ratifying the final results of the general elections for membership in the House of Representatives.

Eighth: A - Resolving conflicts of jurisdiction between the federal judiciary and the judicial bodies of regions and governorates not organized within an area.

B - Resolving conflicts of jurisdiction between the judicial bodies of regions or governorates not organized within an area.

The Federal Supreme Court Law stipulates its functions. Article (4) stipulates that "the Federal Supreme Court shall undertake the following functions:

First: Resolving disputes that arise between the federal government and the governments of regions, governorates, municipalities, and local administrations.

Second: Adjudicating disputes related to the legitimacy of laws, decisions, regulations, instructions, and orders issued by any entity that has the right to issue them, and annulling those that conflict with the provisions of the Iraqi State Administration Law for the Transitional Period. This will be based on a request from a court, an official body, or an interested claimant.

Third: Reviewing appeals filed against rulings and decisions issued by the Administrative Court.

Fourth: Reviewing lawsuits filed before it on an appellate basis. Its jurisdiction is regulated by federal law (120).

The Federal Court exercises two types of functions:

First: Judicial or mission jurisdiction, which is the review of lawsuits and disputes.

Second: Referendum jurisdiction, which is the response to requests submitted by federal authorities to interpret any unclear constitutional text or one that may be interpreted in a different light. The court then delves into its interpretation, taking into account the country's public interest, and issues its opinion (121).

Therefore, it issued its Decision No. (24/Federal/2023) on (2/27/2023) in a case whose facts can be summarized as the President of the Iraqi Central Federation for Bodybuilding and Fitness submitting a request to the Federal Supreme Court to interpret the paragraph regarding granting licenses to practice a specific game or sport in clubs, centers, and academies and supervising them, contained in Article (30/First) of the National Sports Federations Law No. (24) of (2021)

(122). The Federation disputed with other parties claiming such a right in their legislative laws, including the Iraqi Athletes Syndicate. The court decided to reject the inquiry request on the grounds of a lack of jurisdiction (123).

Here are some observations made by a group of jurists (124):

1 - The court decided that it is not competent to consider requests for interpretation of laws as a matter of principle, but rather as a subsidiary matter, when considering the constitutionality of a law; Considering that the approval or conformity of the contested law with the Constitution necessarily requires its interpretation by the court, and this is an indisputable matter, and it decided that it is not a body competent to answer an inquiry submitted to it by one of the official bodies or one of the authorities in the state or unions or federations; since the court is not a body that issues fatwas and expresses opinions, which is a sound direction that is consistent with the status of the Supreme Court in terms of subject matter and jurisdiction; therefore, it was stated in the grounds for its Decision that the Federal Supreme Court finds that the request must be rejected in form due to lack of jurisdiction; The powers and jurisdiction of this court are exclusively stipulated in Articles (52) and (93) of the Constitution of the Republic of Iraq of 2005, Article (4) of the Federal Supreme Court Law No. (30) of 2005, as amended by Law No. (25) of 2021, and some other special laws. None of these powers and jurisdictions grants the court jurisdiction to interpret the provisions of laws, except in the event of a challenge to their unconstitutionality. It also lacks jurisdiction or authority to answer inquiries submitted to it by official bodies, state authorities, unions, or federations, since the Federal Supreme Court is not a body that issues fatwas or expresses opinions. The operative part of the Decision indicated that it will not accept a request to interpret legislation from any party, including state authorities, whether federal or local, which is a sound approach that is consistent with the Constitution and the Court's law. 2 - The Federal Supreme Court defined the controls for legislative interpretation in its Decision No. (48/Federal/2021) dated 6/6/2021. It stated that it has the authority to interpret legislation if it is in force, that its interpretation be in connection with a dispute before this court to decide on the constitutionality of the law subject to interpretation, and that the interpretation be in connection with an inquiry submitted exclusively to it by one of the federal authorities. It considered its jurisdiction to interpret legislation in this case an exception branching from its original jurisdiction to interpret the Constitution.

In accordance with this Decision, it permitted the

acceptance of requests for legislative interpretation as a matter of principle if they were submitted by one of the federal authorities. However, it partially amended this rule of the Decision, in accordance with the principle contained in Decision No. (24/Federal/2023) dated 2/27/2023, the subject of the comment. This Decision stated that requests for interpretation from official bodies or any other authority are not acceptable.

Federal authorities are not entitled to request the original interpretation of legislation. Because it falls outside the court's jurisdiction and its internal regulations lack any reference to the conditions, controls, and information required for submitting the original request for legislative interpretation, this falls outside the court's jurisdiction as stipulated in Article 93 of the Constitution.

3 - The summary of Resolution No. (24/Federal/2023) dated February 27, 2023, states that it does not have jurisdiction to consider requests for legislative interpretation as a matter of principle, as it is not a body that issues fatwas or expresses opinions. Its authority remains in place to interpret legislation, when considering the constitutionality of laws, or when resolving disputes that arise between the federal government and regional, governorate, and local municipal governments, and when resolving conflicts that arise between regional and governorate governments, as stipulated in the court's jurisdiction mentioned in the Constitution and the law. This approach prevents the court from being distracted by requests for interpretation, allowing it to focus on its primary mission of protecting the Constitution.

CONCLUSION

The Iraqi legislator has made the governor's connection to the provincial council stronger than his connection to the federal authority. He is not functionally subordinate to any minister or the Prime Minister. This creates confusion in the functional hierarchy that has existed in the modern Iraqi state since its founding. This is because the governor represents both the political and administrative authorities in the province. This principle, in addition to what has been mentioned, may result in a clear gap between the province and the central government. This is due to the lack of mechanisms that enable communication and engagement between the supreme authority and parties within the framework of executive performance by official state bodies. The role of the federal authority has overshadowed the extent of the governors' connection to it, according to the local organization legislation in Iraq after 2003. This has weakened the political influence of the governor's position. Therefore,

it is necessary to re-enact laws that regulate the legislative framework for local authorities, the oversight of directors' duties, and the controls for coordination between them.

First: Conclusions

1 - The persistence of the social, administrative, and political culture prevalent in Iraqi society before 2003, which treated the governor as the sole representative of the President of the Republic in all his decisions. The governor was appointed directly by the President, regardless of his place of residence, which required him to be familiar with the governorate. This requires educating society about the governor's duties in the new legislation introduced after the 2003 change.

2 - The apparent confusion between the administrative, executive, and political roles of the governor has negatively impacted the advancement of the governorates. This lack of understanding has depleted the capacity for efficient operations within institutions, which have become hostage to the ineffectiveness of the administration, which is based on defining roles and coordinating the institutional hierarchy and integrated achievement.

3 - Noting the apparent contradiction between legislative texts regarding the governor's role in the institutional and political organization of the state, which has led to multiple legal interpretations.

4 - The presence of other issues that undermine development, most notably the quota system in the political system, which has led some blocs to dictate political agreements to the governor, at the expense of the choices of the local community and its representative institutions.

Second: Proposals

1 - Enact legislation linking the governor to the highest political authority in the country according to the hierarchy, so that he reports directly to one of the ministries or to the Prime Minister. His position would be that of a serving minister, and the provincial council would oversee his decisions, actions, and executive actions.

2 - Strengthen the role of institutions and activate the principle of productive citizenship for political participation based on competence, and motivate elites to adopt programs that address the challenges of the current era, produce development solutions, and consolidate the principles of good governance.

3 - Serious cooperation between the efforts of all official institutions and components of civil society and social actors to codify the cultural framework of society and promote practices that generate social awareness that recognizes the importance of the individual and

their contribution to protecting the state's resources.

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 117. Dr. Ahmed Talal Al-Badri: *The Federal Supreme Court does not have the original jurisdiction to interpret legislation* (Article: B T) published on the website: (<https://iraqfsc.iq/news.4956>). Dr. Abbas Majeed Al-Shammari: *The concept of the supreme interest of the state in the decisions of the Federal Supreme Court: A comment on Federal Supreme Court Decision No. (24/Federal/2022) issued on: (February 13, 2022), (Article: 2023), published on the website: (<https://iraqfsc.iq/news.5102>)*.

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