

**Eximia Journal**  
**(ISSN 2784-0735)**

**Vol. 13**

**2024**



## **Constitutional regulation of the legislative competence of provincial councils in Iraq**

**Samer Hameed Safar**

Nasiriyah Technical Institut , Southern Technical University, Iraq, Basra

**Abstract.** This study aims to highlight the constitutional legitimacy of local laws issued by the governorate councils under Law No. 21 of 2008, which are not related to a specific region. These entities began to issue local laws after the recent amendments under the 2005 Constitution, based on the principle of separation of powers and using the analytical approach. Through analyzing the legal texts of the Iraqi Constitution and the laws of the governorates, the study concluded that these legislations issued by these councils are unconstitutional. The study provides recommendations aimed at correcting the course of legislators and addressing the defects that may affect democracy regarding the work of those councils and their response to the legislative process. The Iraqi Parliament should handle the legislation since the purpose of these councils is to satisfy the local needs of the governorates that are not organized into regions, as stipulated by the Iraqi Constitution for the year 2005, especially after the transformation of the Iraqi state into a democratic system. The study concluded that the local councils need to amend their law to keep up with the political developments that Iraq and the world are witnessing, in particular.

**Keywords.** legislative jurisdiction, provincial councils, legislation, constitution

### **Introduction:**

There is no doubt that the role of world powers in helping countries to democratic transformation has reflected positively on the Iraqi state, which was living the dictatorial regime, and after 2003, Iraq turned into countries that are moving towards democracy by adopting a constitution issued in 2005 and the Iraqi state turned from a central state to a federal democratic state and irregular provinces in a region governed by the decentralized administrative system. To manage its administrative and financial affairs under the supervision and control of the Central Government, provided that this did not continue.

Rather, these provinces began to move in a more democratic direction, represented by legislation in accordance with the competencies owned by them with the presence of the current constitution of 2005, which granted those provinces independence to the extent that guarantees the unity of the Iraqi state and the achievement of the principle of decentralization of administration in administrative work and indeed has achieved financial and administrative independence after the issuance of the "Law of Governorates not organized in the region No. 21 of 2008" and its amendments, through this law we see that those provinces with the presence of their elected legislative bodies, which seek to satisfy public needs And the public benefit investigation began to move in the direction of applying the principle of decentralization through the competencies granted to them in the presence of the Constitution and the

Governorates Law, which made those councils undertake their administrative and legislative competencies stipulated in the laws and here it was necessary to know the possibility of legislation for those councils despite the existence of legal texts, but it needs more clarification and interpretation regarding the legislative issue because it leads to overlap between them and the central government.

### **The importance of research:**

The importance of the research is evident in the statement of the validity of the legislation granted to the "provincial councils" with the presence of the Iraqi federal state in the 2005 constitution to enact laws that are binding on it because this has come in application of administrative decentralization and the fact that this jurisdiction is one of the most controversial competencies for many reasons, including that the authority to enact laws is specific to the authority of the center in the capital, including that the provincial council does not have the financial, technical and technical capabilities that qualify it to address such a subject, which necessitates us to indicate what is meant by legislative competence and what These are the laws that these councils have the right to issue and that should not oppose the central authority, especially in recent times in which the Iraqi state, represented by the people, has witnessed an absolute rejection of these councils and because they did not provide what was hoped for.

### **Problematic Research:**

The research deals with the study and analysis of the provisions of the Constitution and laws that employed the legislative competence of the Provincial Council and the statement of the most important legal effects and what is meant by legislation and the extent of its application and whether those councils, with their modest capabilities, address such a subject because legislation is a difficult legal process for the House of Representatives with its material and technical capabilities, and our study of this research examines the extent of acceptance and rejection of those councils, especially after the events experienced by Iraq in light of popular rejection for these councils.

### **The first topic: the nature of the provincial councils in Iraq under the current 2005 constitution**

In this section, we deal with the statement of the most important definitions that have been said in connection with determining what is "provincial councils" in the first requirement and in the second requirement of this section we address the most important procedures to be followed, provided that we address these topics as follows:

#### **The first requirement: Introducing the Iraqi provincial councils:**

The management of resources and the provision of services in order to satisfy public needs can not be handled by a single central body, but must be managed by bodies much closer to citizens than the federal authority in the center The councils of administrative units (governorates) being "formed local governments have characteristics, components, functions and powers through which citizens can satisfy their public needs that the term local government, although by some, is considered an organization with a population residing in a certain geographical area with a permissible organization. and a governing body as well as an independent legal personality and authority to provide public services or a particular government with a significant degree of autonomy including legal and actual authority to obtain revenue." (Salim, 24, p. 24)

He knew "United Nations Programme Development Local government as a set of institutions, mechanisms and processes that allow its citizens and groups to vary their interests and needs and settle Their differences Exercising their rights and duties at the local level

requires a partnership between local government institutions, so-called civil society organizations and the private sector in order to achieve local and political development and the delivery of services in a participatory and transparent manner. and help" . (Al-Ithawi, 2018, p. 2)At the same time, its mission By strengthening the bonds People's democracy by allowing citizens to participate in the political process, which makes them able to manage their local affairs. "It exercises its competences on a local regional basis. This organization specializes in the affairs of one of the regions of the State and at the level of the interests of the operation. For a group of individuals, on the other hand, there are those who said that local government is that integral part of the State, but it is concerned with matters of interest to the citizens of a particular region, in addition to matters that Parliament deems appropriate to be administered by local authorities.". (AL sayeed, 1996, p. 18)

The Definitions In this regard, there are many and varied, some of which went to the fact that it is a method of administrative organization of the state as it is based on the distribution of activities and duties between Local and central government agencies Equally taking into consideration the nature of the area in which this government is located, there are many jurisprudential norms that are presented and divided among themselves in determining the definition of local councils, but in light of these jurisprudential differences The definition Provincial Council Whether it starts from the objectives or whether that structure is the administrative apparatus or it is the so-called local bodies that differ from one country to another according to the political pattern Prevailing her. (Al-Qadir, 1983, p. 94)

The definition of provincial councils as " Those small local governments that manage their local affairs and in which they do not represent an attack on the central authorities, but rather there are participation Between her and Government The goal of centralization is to satisfy public needs, and this is what the central government has to do. ". (Al-Wasiti, 2022, p. 14)

It was and still is the administrative formation in each country of the world of great importance at the internal level as it is affected by a number of factors, including political and economic prevailing in the world, which are reflected at the internal level, and if these factors aim to transform countries to democracy, on this basis we see that the Iraqi Constitution issued in 2005 was and still is the basic and only reference for all laws issued in the Iraqi state because it represents the organizational basis for the pyramid of formation Legal and administrative in the state, the form of this constitution qualitative shift towards democracy, where Iraq turned under it to a state moving towards democracy, which requires it to take its requirements, which is to transform into a state with a decentralized administrative system that believes in the sharing of powers and competencies under the one state and between the provinces and in a fair manner that achieves political and economic stability and has already issued the law of the provinces not organized in the regions No. (21) for the year 2008 amended, which in turn took over the task of introducing the provincial councils As "First: ... The highest legislative and supervisory authority within the administrative boundaries of the governorate, has the right to issue local legislation within the boundaries of the governorate to enable it to manage its affairs in accordance with the principle of administrative decentralization in a manner that does not conflict with the constitution and federal laws, Second: The provincial council and local councils are subject to the control of the House of Representatives. (legislation, 2008, p. 1)

Thus, we see that what the legislator went to in the above has shown the status of these councils in the current constitution and after the democratic transformation of the Iraqi state, which was then reflected in the laws that were issued successively, and thus turned the province into a degree of democracy through its enjoyment of issuing legislation that concerns its internal

affairs and within its local borders. The central authorities of the state, namely the legislative authority, because granting such competence will lead to incompatibility between the federal authority in the capital and the competence of the provincial councils and is incompatible with their function.

The latter are part of the public bodies in the state and they carry out the administrative function, and the legislative orientation of these councils is also inconsistent with the administrative decentralized system, which adopts the administrative function and its distribution away from the issue of issuing codifications because the issue of legislation is a complex process that requires a kind of carefulness, vision and legal queen that we rarely find among members of the "provincial councils" and the status enjoyed by the provincial councils under the 2005 constitution as the highest body that took over legislation and oversight within the administrative boundaries. The governorate has the right to issue local laws to enable it to manage its local affairs and daily tasks and to formulate its policies in cooperation and coordination with other ministries and provincial councils have specific powers under the Law of Governorates Not Organized in Regions No. 21 of 2008, provided that these competencies and powers do not conflict with the central government, so the decisions of the provincial council are taken by simple majority and terminate itself by an absolute majority of its members. (Legislation, Article Seven, paragraphs 17, 2008, p. 5)

These councils are considered as local governments in contemporary countries and constitute a self-contained entity with a realistic legal content with characteristics, components, functions and powers, as several governments have realized that the management of resources and services and the legalization of participation in political life are so broad that they cannot be assumed by one central body.

### **Second Requirement: Procedures for Establishing the Provincial Council:**

The Who is it The most important procedures Operation followed in the provincial councils as stipulated in the 2005 constitution was and still is the cornerstone followed in the existence of Those entities throughout all Iraqi provinces, where the article stipulates (3/First/1) of the Law of Governorates not organized in the region No. 21 of 2008 "The provincial council consists of twenty-five seats, in addition to one seat for every (2,000,000) two hundred thousand people for more than (5,000,000) five hundred thousand people and be on the basis of election as went to that Article III, fourth paragraph first of the aforementioned law, provided that there is a selection through election for members of the direct secret councils according to the Elections Law for provincial councils. " (Legislation, Article Three, 2008, p. 6)

However, these elections will not take place until after the census is conducted to be adopted in calculating the number of seats for the governorates, as indicated by the third article mentioned above, provided that the latest statistics are adopted to identify the number of seats that are added to what is stated in item I of this article and what is meant by the third article, perhaps the legislator has done well when he determined the elections with the census, provided that Iraq has conducted the last population census in 1987, in which all participated Governorates followed by the 1997 census, which was conducted without the participation of the Kurdistan Region, and no population census has not been conducted since the establishment of the modern Iraqi state after 2003, due to great difficulties that prolong its explanation, and therefore the previous text on the census was not conducted, although this is the restriction on the elections, but the few are the ones who remember it, which is unfortunately not in force, as the reliable in this regard are the estimates prepared by the Central Bureau of Statistics according to equations and standards. Statistically, it is often the most general estimates of this

apparatus of the Iraqi Ministry of Planning. The provincial council, as an administrative unit that undertakes the administrative and financial tasks in the province, must consist of people capable of carrying out such tasks to the fullest or as much as possible, they must meet the following conditions, which are stipulated in the law of non-organized provinces in the region No. 21 of 2008 in Article V, which stipulated, that he must be a fully qualified Iraqi and has completed thirty years of age at the time of nomination. He must have a preparatory certificate or its equivalent, as well as a good conduct, reputation and behavior, and not convicted, and must be a resident of the governorate under the civil status register or a continuous resident for a period of not less than twenty years, provided that his residence is not for the purposes of demographic change, and that he is not a member of the security forces or a member of these institutions at the time of nomination, and that he is not governed by any provisions and procedures for de-Baathification or any other law, and that he is not He shall have been illegally enriched at the expense of public funds and a court shall rule. (Salah, 2023, p. 1) (Legislation, Law of Governorates Not Organized , 2008, p. 8)

Through the previous texts dealt with by the Governorates Law, we see that the role lies with the Independent High Electoral Commission, which in turn makes sure that these conditions are met, provided that the Board of the Commission considers those appeals submitted to the validity of membership and its decision is subject to appeal before the Federal Supreme Court for the absolute importance enjoyed by the members of the provincial council and because they enjoy immunity from the opinions expressed in accordance with the text of Article V of the Governorates Law and because they are considered public taxpayers. (Ali, 2022, p. 185)

The provincial council convenes after the announcement of the results by the Election Commission and after their approval, starting with the day following the legal period of (15) fifteen days, which the governorate or his agent is supposed to in the event of his absence to direct the invitation to the Council to convene before starting any activity, the legal oath must be taken according to Article (49) of the Governorates Law and the start of membership tasks is topped by taking the oath, but the membership is proven by election and not by taking the oath, if the member refrains from performing it, membership does not fall from it, and this is what The legislator also went to him in the rules of procedure of the Council of Representatives, as Article (14) of the rules of procedure of the Iraqi Council of Representatives included that the elected candidate is a member of the Council and enjoys all his membership rights starting from the date of ratification of the election results and assumes his duties after taking the constitutional oath. (Al-Rubaie, 2011)

The Council shall assume in its first session "the election of the President of the Council and his deputies in accordance with Article 7 first of the Governorates Law, and the election is the means taken by the legislator and be valid as he voted in favor of one of the candidates for the Presidency of the Council by an absolute majority of the number of members, which is half the number of members, with an increase of one member, as for determining the quorum of the meeting, the Governorates Law has indicated the presence of the absolute majority of the number of members." (Legislation, Article Seven, paragraphs 17, 2008)

The quorum of that vote shall differ from the quorum of the meeting according to the type of subject voted on, but the general rule is that the vote shall be by simple majority unless the law provides otherwise, and that the simple majority is half the number of members with one increase after the quorum of the meeting is achieved, provided that the Council shall issue its own rules of procedure at the beginning of its session and vote on it by a majority of the number of members in accordance with the provisions of Article 7, paragraph fourteen. It ends after four years starting from the first meeting and ending with specific cases described as usual,

resignation, dismissal or termination of the membership of one of its members and extraordinary.

**The second topic: the legislative organization of the provincial councils and the role of jurisprudence:**

In this regard, we address the legislative organization of the councils of administrative units (governorates) as it is among the most important competencies exercised by those councils, despite the other competencies, but our study will be limited to this jurisdiction because of the importance and the abundance of confusion and misunderstanding in the extent of the legal texts that the provincial councils are entitled to issue to them, provided that we dealt with this subject will be in the first requirement legislative competence and in the second requirement the role of jurisprudence and the judiciary in addressing such a subject and indicating the extent of its validity or not This is as follows:

**The first requirement: the competence of legislation for the provincial councils:**

There is no doubt about the great and important role played by these councils in the existence of decentralization in Iraq, especially in its provinces, in line with the supremacy of the principles of democracy approved by the Iraqi Constitution under the Constitution (2005) and confirmed by the Law of Governorates Not Organized in Region No. 21 of 2008, as the provincial council has many powers, the most important of which is the legislative authority as it represents an administrative unit elected by the people of the province and the legislative competencies are as follows:

**Local Laws:**

In application of the administrative decentralized system on which the modern Iraqi state is based under the constitution (2005) and the change of institutions in the state through the implantation of democratic values in society, it was necessary for the residents of the provinces in their provinces to understand what the responsibility entrusted to them by supporting the governments represented by the councils in the governorates are those that are considered and here a measurement with the difference as if it is a mini-government of the state because it follows the administrative decentralized system and on this basis we see that these governments in the provincial councils sought from the first glance to exercise their competencies Legislation is a simple part of the internal sovereignty enjoyed by those provinces. (Najim, 2014, p. 309)

“Meanwhile, there are those who know the legislation and have excelled in describing it, such as the Federal Supreme Court in the United Arab Emirates. Legislation is the general rules that regulate the relationships between the parties concerned by the provisions of the law, and it is issued by the Union through the authorities that have the right to issue it in accordance with the forms and according to the procedures stipulated in the Constitution. In the case of laws or decrees that have the force of law, legislation cannot generally violate any text of the Constitution, and it must include general and abstract rules, without going into details of individual cases that are at the heart of executive work.” (Mahmoud, 2022)

The competence to enact laws for these provinces, in application of the stipulation in accordance with Article (116) of the Iraqi Constitution that the provinces that are not organized in a region enjoy broad administrative and financial powers in order to satisfy their administrative requirements and conduct their affairs in accordance with the principle of

administrative decentralization and in application of that went the Law of Governorates Not Organized in the Region No. 21 of 2008 in its presentation of the competencies of the provinces. (Constitution, 2005, p. 87)

The Iraqi legislator has approached to consolidate the principles of democracy and emphasize the importance of regions under one state, which would lead to the unification of the Iraqi people of various spectrums, as he stressed this in Article (1) of the Constitution that Iraq is one independent federal state and this federal system in Iraq consists of a capital, regions, decentralized governorates and local administrations as stipulated in Article 116 of the Constitution and granted those provinces broad administrative powers in the organization of Its affairs and widely.

By examining what was stipulated, it becomes clear that the constitutional legislator has explained the meaning of the legislation issued in the Iraqi federal state, which is as follows:

### **Administrative Laws:**

The current Iraqi Constitution and subsequent laws, including the Provinces Law, stipulate the powers of those provinces, as they have been granted administrative and financial powers for the purpose of enabling them to manage their affairs in accordance with the decentralized principle for the purpose that we will address the most important of these competencies:

### **Administrative legislation:**

This competence is the basic and necessary competence of these councils to carry out their role in accordance with the principle of democracy as they seek to satisfy public needs and achieve the public benefit based on the principle of Decentralization For this Laws are issued Local administrative in accordance with the principle of administrative decentralization and in accordance with the powers granted to provincial councils, and perhaps the most important of these administrative powers, in addition to the internal system that is developed by the provincial council, is its powers to create administrative units such as the creation of a district or a judiciary or the merger of a district or a district or changing the name of a district or district Her example Granting the second clause of Article 26 of the Rules of Procedure of the Babylon Provincial Council such power to the Provincial Council by stipulating the following: Approval by an absolute majority of the number of members of the Council on the procedure of Some modifications Administrative districts, districts and villages by merging and creating or changing their names and status and the consequent administrative formations of the governorate based on the proposal of the governorate or one-third of the members of the Council. (Salim, 24, p. 130)

as well as issuing Laws Other administrative that can Provincial Council Enacted by those related to local administrative control and what it requires to protect public order with its three or four elements, public security, public health, public tranquility, morals and public morals, which is represented in protecting the general appearance of the beauty of cities and their opinion, and protecting arts and culture as well, such as issuing local legislation to regulate curfews in the governorate as one of the competencies that were based on the exercise of local government based on the law of governorates that are not organized in a region, provided that Order with Authorities of the Union State This restriction does not affect the essence of right or freedom.. (Moses, 2018, p. 85)The provincial councils are also competent in setting the rules of procedure, such as what went to Article 27, second paragraph of the rules of procedure of the Babylon Provincial Council, that it is the powers of the Council to approve an internal system



for the work of the Council within a month from the date of its first meeting and approved by an absolute majority, and such a system has actually been developed .

### **Financial legislation:**

They are those legislations enacted by the provincial councils to regulate financial affairs in the governorate, including legislation related to the imposition of taxes, fees and local fines and legislation related to donations and donations provided to the governorate, as it is one of the priorities of the tasks of the provincial councils and based on the principles of the constitution, including what is stipulated in Article (28), paragraph I of it, provided that taxes and fees are not imposed, amended, collected and exempted from them only by law, where the provincial councils have specialized in such competencies in order to regulate internal matters in the province to ensure a kind of administrative and financial independence in the conduct of the affairs of the province and to emphasize the principle of administrative decentralization. (Constitution, 2005)

Based on that, taxes or fees are imposed only by a law issued by the provincial council, and thus the constitution of Iraq has drawn a path in how to finance the provinces, where they were allowed under the constitution to obtain financial revenues through taxes and fees, and this is on the one hand, while the other side is to allow the provincial councils to obtain financial funding, according to what is specified by the Provincial Law in Article (44) thereof, provided that the financial resources of the province are as follows: They are:

- 1- The financial budget, which is the one that is from the share of the governorate as stipulated in the constitution, as the central government according to the data submitted to it by the governorates and according to the need of those governorates and in light of the high oil prices seeks the federal government to make the budget granted to those governorates more abundant financially in order to give us the ability to achieve administrative stability and keep pace with projects to achieve the principle of administrative decentralization, as the amounts granted to the governorate take into account the deprived of those governorates of services and what they enjoy These provinces have the ability to export oil or gas, which is taken into account when granting this province or that financial budget.
- 2- The total financial revenues collected by the province as a result of the services it provides and the investment projects carried out, and here it is necessary to indicate the role of local governments represented by the provincial councils and their ability to provide services as a result of the projects carried out or those planned to be carried out, so that governorate must take into account the importance of the residents of that province and their right to access services and achieve welfare for investment projects directly for citizens and indirectly for the governorate from the material returns it collects.
- 3- The revenues that are collected from local fees and fines imposed in accordance with the constitution and federal laws and those previously referred to, as here is embodied in the accuracy of the local government in the application of the law through the imposition of fees and fines for violators of the law and to achieve security and stability as a result of the imposition of fines because they are the harshest when they are inflicted on citizens, which would achieve public discipline.
- 4- Donations and grants obtained by the province in a manner that does not conflict with the constitution and the laws and the federal in force, we have in this matter a pause related to the amounts of donations and donations received by those provinces and by

those who can receive them by people or by countries, there must be control represented by the central government on those donations provided to these provinces, not to mention donations and knowledge of their purpose.

- 5- Revenues obtained from allowances for the sale and lease of movable and immovable state funds in accordance with the Law on the Sale and Rent of State Funds and other laws; Perhaps in this regard, we should clarify the role of control that must be imposed on those governorates in this regard because the sale and lease of state funds is not absolute without the presence of control by the central government in order to preserve state funds, which may all be exposed to sale, which turns the governorates with their real estate into funds belonging to private law persons instead of Public law.
- 6- Not to mention the revenues that the province is supposed to obtain from oil and gas that are in dispute so far with the Kurdistan Region for not enacting a law that guarantees the fair distribution of oil, perhaps this matter is among the most important controversial issues that successive governments are trying to solve and collide with the political consensus of a new ministerial government, as most successive governments have tried and are trying to solve this dilemma with the Kurdish brothers, but their attempts are short-term and not the final solution to that dilemma.

### **The second requirement: the opinion of jurisprudence and the judiciary on the legislative role of the provincial councils:**

#### **First: Jurisprudential opinion:**

The recent developments experienced by the Iraqi state, represented by the massive demonstrations that swept across Iraq, and their goal was to change the political system and create a political system that believes in citizenship and the state. The Iraqi state went through periods of instability and chaos. At that time, the rational political forces of senior politicians in Iraq and the wise people of the homeland and the rational authority tried to reduce this security chaos that Iraq witnessed, and after listening to the demands made by those who call or call for revolutionaries and who wanted to amend The Iraqi constitution and the abolition of provincial councils as an empty link in the political hierarchy of the Iraqi state.

Elections were held and a prime minister was chosen who tried as much as possible to achieve calm by meeting the requirements of the demonstrators and achieving a kind of stability that this was the efforts of the good politicians who sat at the negotiating table and agreed among themselves for the sake of Iraq and indeed this was achieved as the Iraqi state was able to stand again in the face of the challenges that affected it for a while and after Iraq was suffering from crises under the former regime became thanks to the 2005 constitution a country moving towards democracy at a pace After the government of Mr. Al-Kazemi, the government of Mr. Muhammad Shia Al-Sudani strengthened the position of the Iraqi state, enhanced security stability and started developing the infrastructure for the period in which it ruled.

Here we are now in the process of delving into the experience of local council elections, which were considered by some as an empty circle or that prevented between the governorates and the achievement of the principle of decentralized administration, as it led to the confiscation of the local will and its reduction by the will of the members of the provincial council who belong to parties and seek to achieve the interests of those parties that pushed them to power, and in application of that and in light of the unsuccessful experiences of provincial councils, which have become a fertile hotbed for corruption and extortion and sought to achieve the interests of Its members only had to address such councils and limit their competencies because

although they are recognized by the legislative competencies, they are not those that are the competence of the legislative authority, but rather the local administrative legislation for the conduct of administrative affairs of the province because to say otherwise will turn the provincial councils into another legislative authority and we turn from provinces to regions, i.e. those bodies turn into a region. (Al-Khafaji, 2014, p. 156)

Which prompted some jurists, including Prof. Dr. (Ghazi Faisal) to the following question: Is there a necessity for provincial councils?

We, the current popular opinion and the reality of the situation of Iraqis all wonder? There is no doubt that Iraqis agree that there are two categories, one benefiting group praising the role of provincial councils, and another group that considers the experience of provincial councils that took place in the old years a failed experience because some because it was a breeding ground for corruption in order to achieve personal benefits.

Perhaps the reality of the provinces in which they were formed is a proof of what we say, although the democracy of the administration is not the ready recipe for application in the countries of the world, but rather unstable principles that can be modified and changed according to the conditions of the country and the degree of awareness of its people.

The jurists explain that the logical rejection by the street of those councils is Suspicions Corruption that It started to float to the surface because There are some parties that exploit public money using State funds for electoral propaganda for its candidates, how much time, effort and money will be spent for elections in which the turnout is very expected to be less than a little. (Faisal, 2023)

The experience of local governance represented by provincial councils is among the most important modern experiences experienced by Iraq under the 2005 constitution, which made these councils a fait accompli imposed by the constitution and the law, and therefore their abolition is one of the things that require constitutional and legal intervention in cooperation with the political blocs that have the highest votes in the elections, those that have the House of Representatives legislative body capable of changing such a situation, and perhaps Prof. Dr. (Ghazi Faisal) has explicitly referred to that By saying that the constitutional texts are not sacred texts that refuse to amend and change because this is contrary to the Sunnah of life, for which we have not found a change or a transformation, and on and around the subject, we mention the following:

1- The House of Representatives has already issued a law under the pressure of the October demonstrations to freeze the work of the provincial councils indefinitely, which is still in force, so let's continue to work until we proceed to amend the constitution, and this is not difficult, as committees have been formed in the Presidency of the Republic and the House of Representatives for the aforementioned purpose and made important recommendations that we only have to revive in them, so the desired amendment is made.

2- We have already proposed that the provincial councils be in the form of advisory bodies to the governor that include employees with different competencies and are cut off from political parties and blocs because they did not interfere in an affair but spoiled it.

3- Granting the governorates, under the heading of administrative decentralization, broad competencies to enable them to manage their affairs and complete the projects entrusted to them (4) Re-introducing the administrative control system, or as jurisprudence calls it administrative guardianship, which means the control of the central authority over the governorates and the limits set by the law in an accurate manner, thus reducing the manifestations of rampant corruption.

Based on The above We see what others don't see that Those councils In its old form, it constitutes a heavy burden on the state's general budget and opens the door wide to the corruption that has spread in the country. The spread of fire in the dying wildfire. (Faisal, 2023) It was necessary to confront this issue with a kind of courage in order to diagnose the mistakes faced by those councils and try to reduce them by adopting a new approach that seeks to achieve the interest of the people, who elect members of their provincial councils in order to achieve the public benefit for all and not for a special group or private interest (democracy is a very wonderful idea and its application is very difficult) for the different countries and societies that accept democracy.

Not to mention that the matter of addressing the legislation is a matter of disagreement between jurists, which made them divided into two directions between a supporter of that, as it refers to the validity of the competence of provincial councils to legislate and absolute legislation on the preservation that does not conflict with federal legislation based on what is stipulated in the Constitution in Article 115 of it that the laws and legislation of the province that is not organized in the region of priority over local legislation when conflicting and this poses a great danger as the law of the province that regulates the province is higher than the law issued by the legislative authority in the federal state

The provincial law has also recognized the validity of legislation by provincial councils in the words of issuing local legislation, which means that the competence of provincial councils is to issue local legislation, regulations and instructions that regulate the local administrative affairs of the governorate, which relate to the administrative and financial aspect only.

Article 110 of the current Constitution refers to a set of exclusive federal authorities , including:

1. "The foreign policy of the Iraqi state and the diplomatic representatives of Iraq in the fields of negotiation, signing, conclusion of international treaties and agreements, lending policy and formulation of economic and trade policy.
2. Emphasis on the formulation and implementation of a policy including the establishment and management of armed forces to protect, secure and defend Iraq's borders.
3. Financial and customs policies, issuing currency, organizing trade policy across the borders of regions and governorates in Iraq, setting the general budget of the state, drawing monetary policy, establishing and managing a central bank.
4. With regard to the organization of measures, weights and weights .
5. Regulation of matters of nationality, naturalization, residence and the right of political asylum.
6. Broadcasting and mail frequency policy .
7. Draft general and investment budget .
8. Planning and policies related to water sources from outside Iraq and ensuring water flow levels and equitable distribution inside Iraq , in accordance with international laws and norms .
9. Census and General Population Census"

Thus, it is the number of exclusive competencies of the federal authorities, without including within those powers the monopoly of legislation on the federal authorities alone.

In Article (115) of the Constitution, which stipulates that all that is not stipulated in the exclusive competences of the federal authorities shall be the competence of the regions and governorates that are not organized in a region and other powers shared between the federal government and the regions, in which priority shall be given to the law of regions and governorates that are not organized in a region in case of disagreement between them.

- 1- The legislation that the provincial councils are allowed to issue is that of local legislation, i.e. regulations and instructions that relate to the administrative and financial affairs of the governorate only.
- 2- What is stipulated in Article 115 of the Constitution is intended to be the conflict that occurs in the regulations and instructions related to the administrative and financial aspects of this or that province and not others, as such regulations and instructions are undoubtedly the first to apply to the regulations issued by the government.
- 3- Legislation is a complex process that requires a set of technical procedures that are identified by the parliament and provincial councils cannot replace the Iraqi Council of Representatives because it is the only one competent to legislate according to the text of Article (61) of the Constitution.
- 4- Drafting legislation and what it requires from inclusive phrases that prevent the text and prevent it from strange words and its entry on the text is very difficult to take note of by the members of the provincial councils who manage the administrative affairs of the governorate in their work with the governor.
- 5- Publication is the most important procedure for legislation in the Official Gazette in order for the law to be in force, and this matter is impossible to obtain in the provincial councils. (Nayla, 2011, p. 51)

#### **First: Judicial opinion:**

The Federal Supreme Court in Iraq is one of the most important judicial bodies, dealing with constitutional cases in accordance with the provisions of the Iraqi Constitution of 2005 in articles 94-93. Its decisions are final and binding on all authorities, as they are the highest judicial authority in the judicial hierarchy in the country. The Court shall interpret the provisions of the Constitution and address any conflict between the application of laws and the Constitution. The Court has issued several rulings confirming that the legislative competence of the provincial councils is limited to the management of administrative affairs within the framework of the administrative decentralization of those councils. This was confirmed through a series of rulings that were issued, which are an affirmation of article 122 of the Iraqi Constitution concerning the powers of provincial councils to grant them administrative and financial powers to manage their affairs in accordance with the principle of administrative decentralization. This is also reflected in article 7 of the Governorates Law on the promulgation of local laws, regulations and instructions regulating administrative and financial affairs, based on the principle of administrative decentralization.. (Salim, 24, p. 139)

The court's decision came in response to an appeal by Iraqi provincial councils, including Kirkuk and Nineveh, against the approval of an amendment to the 2019 election law that included suspending the work of provincial councils.

The financial and administrative powers only within the principle of administrative decentralization and the constitution did not authorize them to exercise legislative powers, and therefore Law No. 27 of 2019 is the second amendment law to the Provincial and District Councils Elections Law No. 12 of 2018, the amendment, which ended the continuity of the work of the provincial councils, is in accordance with the constitution, and on the basis of that, the court decided to dismiss the lawsuit.

Therefore, we see that the Federal Court on every occasion it deals with considers the unconstitutionality of legislation issued by provincial councils, which deviates from the administrative and financial matters of the governorate, including, but not limited to, the

interpretative decision of the Federal Supreme Court No. 8 of 2012 The court canceled the decision of the provincial council, which includes not approving the export of oil outside the borders of that governorate for violating the provisions of the constitution, and the Federal Court also addressed another decision issued by one of the governorates, which stipulates the allocation of Sums of money to local clubs in that province from the revenues of the border crossings for violating the provisions of the Constitution and the Budget Law of 2012 No. 12. Referring to the text of Article (116) of the Constitution federal system in the Republic of Iraq, we see that it dealt with "Iraq consists of a capital, regions, decentralized governorates, and local administrations, and it was not specified in this article the form of decentralization, whether it is political decentralization or administrative decentralization until Article 122 II of the Constitution granted the provinces that were not organized in the region of the broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization. However, paragraph five of the same article 122 states: " The provincial council shall not be subject to the control or supervision of any ministry or any entity not associated with a ministry and has independent finances."

### **The end**

We concluded through our study of the constitutional organization of the legislative competence of the provincial council newly established in the new Iraqi state under the 2005 constitution and what those councils did during the period that passed until the recent demonstrations, which resulted in the formation of a new government and then the elections were held, which resulted in the dissolution of those councils until elections take place, and they are now in the stage of preparation and preparation for holding elections for these councils, despite the fact that they are not accepted by the Iraqi street and because they Its political life was characterized by a lot of failures and internal conflicts between the parties and the result was the direction of some provincial councils to enact laws consistent with their political orientations, which may contradict the Iraqi constitution, which made the Federal Supreme Court address this issue strongly, solidly and sophisticated by it through our study of this subject was reached the following results:

- 1- The current administrative organization in Iraq, according to what is stipulated in the constitution, is that which believes in federalism for the regions, especially the Kurdistan Region of Iraq, while the governorates that are not organized in the region are subject to the system of administrative decentralization, but the practical reality proves the confusion between administrative decentralization and political decentralization of the governorates by stipulating the right of the provinces to legislate.
- 2- Confusion in administrative work after stipulating the right of the governorates to legislate, as this is inconsistent with the administrative nature granted to the governorates, which would create a kind of conflict between the central government and the governorates.
- 3- The popular rejection of the provincial councils as a result of their previous work and their mismanagement of the provincial file in that period, which made them one of the rejected ideas as an excessive link in the administrative apparatus of the Iraqi state and its presence hinders many procedures that can proceed easily in the absence of those councils.
- 4- The law that the governorates have the right to address is that which concerns the administrative and financial aspects that regulate the affairs of the governorate only.

- 5- The Federal Supreme Court had an important and prominent role in confronting the provincial councils that try to confront the legislative process and determine its jurisdiction.

#### **Recommendations:**

- 1- Restructure provincial councils by adopting quick and serious measures in order to correct their work for the next stages, as it is a realistic reality imposed by the constitution.
- 2- Emphasizing that the legislation that the governorates are entitled to issue are those related to the conduct of the internal daily affairs of the governorate and do not go outside the scope of the governorate, i.e. its geographical scope.
- 3- Trying to clarify the legislative boundaries of the provinces and the legislative boundaries of the regions, provided that they do not conflict with the competencies of the central government, which requires an attempt to amend some articles of the constitution, although this is impossible, but it is an attempt.
- 4- The Federal Court was and still is credited with correcting government wrongdoing by addressing any act that violates the Constitution.
- 5- Emphasizing the role of the Federal Court to consider disputes, even if they are between governorates, because it is the only body with independence in its decisions.

#### **References**

- AL sayeed, M. S. (1996). The local administration system in Egypt between theory and practice. In M. S. AL sayeed, *The local administration system in Egypt between theory and practice* (p. 18). Cairo: Arab Renaissance House.
- Al-Ithawi, A. Y. (2018). Local governments: a study of the British model. *Political issues* 52 ,Volume p. 2.
- Al-Khafaji, A. A.-R. (2014). Local governments and public policy making in Iraq. In A. A.-R. Al-Khafaji, *Local governments and public policy making in Iraq* (p. 156). Baghdad: Al-Sanhouri Publications.
- Al-Qadir, A.-S. A. (1983). Local administration theory. In A.-S. A. Al-Qadir, *Local administration theory* (p. 94). Aman : Arab institutions for studies.
- Al-Rubaie, H. K. (2011). Governorates that are not organized in a region between administrative centralization and decentralization. *City of Elm University College Magazine*, Vol 2 .NO.2 ,p. 61.
- Al-Tamimi, I. A. (2018). The powers of the regions and governorates not organized into a region related to oil and gas. In I. A. Al-Tamimi, *The powers of the regions and governorates not organized into a region related to oil and gas* (p. 56). Baghdad: Al-Sanhouri Library.
- Al-Wasiti, A. H. (2022). The legal organization of provincial councils in the Federal Constitution of Iraq 2005. *Master Thesis*. Aman: Middle East University.
- Constitution. (2005, December 28). Article 116. *Constitution of the Republic of Iraq of 2005*. Baghdad: Official Gazette.
- Faisal, G. (2023, 8 20). *Is there a need for provincial councils*. Retrieved from FaceBook: <https://www.facebook.com/100028331233169/posts/pfbid02Bvxn6c1YmYo7WXxCp dYRjMMN6VpSePPwaqtJg596LPQHJwrsrT3nM5qshfV5FxLdl/?mibextid=cr9u03>
- Hanan, A.-Q. (2008). Administrative decentralization system and provincial councils in Iraq. *Al-Multaqa Magazine*, Vol 2 .NO. 1 p. 185.

- legislation. (2008, 3 31). Article Two, Paragraph First. *Law of Governorates Not Organized in a Region No. 21 of 2008*. Baghdad: Official Gazette.
- Legislation. (2008). Article Seven, paragraphs 17. *Law of Governorates Not Organized in a Region No. 21 of 2008*. Baghdad: Official Gazette.
- Legislation. (2008). Article Three. *Law of Governorates Not Organized in a Region No. (21) of 2008*. Baghdad: Official Gazette.
- Legislation. (2008). *Law of Governorates Not Organized* . Bghdad: Official Gazette.
- Mahmoud, M. A. (2022, March 1). Local laws violate federal laws regarding disputes with judges in the UAE. *University of Sharjah Journal of Legal Sciences*, Vol19, NO 2, p. 453.
- Musa, R. H. (2012). Notes on administrative decentralization in Iraq in light of the provisions of the Iraqi Constitution and the law of governorates not organized into a region. *Studies and research* (p. 195). Baghdad: Administrative Decentralization Conference.
- Najim, S. H. (2014). Local administration and its applications in Iraq and comparative countries. In S. H. Najim, *Local administration and its applications in Iraq and comparative countries* (p. 309). Iraq: National Center for Legal Publications.
- Nayla, A. M. (2010). Legislative and financial powers of governorate councils not organized into a region. *City of Elm University College Magazine*, Vol 2, NO, 12 , pp. 51-52.
- Salim, A. M. (24). Constitutionality of the legislative jurisdiction of the governorate councils that are not organized in a region in Iraq. *Al-Rafidain Law Journal*, Vol 22 , NO ,80 p. 129.