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PROBLEMS OF THE FEDERAL SYSTEM IN THE IRAQI CONSTITUTION
OF 2005

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ABSTRACT

There have been many problems raised in the Iraqi constitution of 2005 in force, which may be an obstacle to the application of the federal system in the Republic of Iraq, and therefore they must be discussed and appropriate constitutional amendments made so that we are faced with Integrated factors capable of implementing's and its success, and among the most important of those constitutional problems that the federal system faces are: the problem of forming the Federation Council according to the federal bi-parliamentary system, the problem of establishing and how to Find a division of the regions outside the influence of the contradictory political blocs and currents, the problem of distributing powers, resources and wealth and how to distribute competencies between the federal state and the member states or regions.

INTRODUCTION

The form of governance that prevails in human groups is one of the most important manifestations of their civilization and represents a measure of the degree of their sophistication and a reflection of their cultural and civilized reality. Humanity, through many eras of time, moved from the primitive form of government (the tribe), to the state system that developed with changing circumstances, events and economic, social and political transformations, which Find more than one type of state, and of these types is the federated federal state that has emerged recently, as it is modern in relation to other forms of government.

There are many problems raised in the Iraqi constitution that may constitute an obstacle to the implementation of the federal system in the Republic of Iraq,

and therefore they must be discussed and the appropriate constitutional amendments made for them so that we are faced with integrated factors capable of implementing federalism and its success, and among the most important constitutional problems facing the federal system, are The problem of forming the Federation Council according to the parliamentary dual system, the problem of establishing regions and how to find a division of the regions outside the influence of the contradictory political blocs and currents, and the problem of distributing powers, resources and wealth and how to distribute competencies between the federal state and the member states or regions, because the federal union basically aims to reconcile two factors There are two contradictions: the factor of unity and the factor of independence, that is, it aims to reconcile and balance the equation of establishing a single federal state with the necessary constitutional powers to enable it to protect its power and the general interests of the people of the union, and between preserving the autonomy of the member states or regions and the competencies they enjoy. This union and its stability to reconcile aforementioned workers.

We will discuss under this title three problems with the federal system in the Iraqi constitution and what are the proposed formulas for its implementation in Iraq according to the following three demands.

The First Requirement

The Problem of Forming the Federation Council

The legislative branch is made up in federal ,and state according to the system of bilateral parliamentary , as a rule of two chambers: the People 's Assembly and is often called the House of Representatives , or the lower house , and the distribution of seats according to the population of each state, and the consequences of this to have large numbers of seats more than the US, and is this Council more representative of the people, and the Council of States Or the Supreme Council in which the states are represented on an equal footing, as each state is given an equal number of representatives without regard to the state's importance in terms of area, population or natural wealth .

When this system is adopted, this requires a difference between them in terms of composition, and in terms of competence, and without this differentiation, our professor, Dr. Maitham Handal Sharif, sees that (the reason for parliamentary duplication is eliminated if each parliament is similar to the other, this difference between them is what justifies the advantages of this system and the legal principles that govern its formation, and worthy of constitutional recognition and legal regulation) .

The existence of the Council of States helps that the inhabitants of the Union contribute equally among all regions to the exercise of power in the federal state, and this guarantees these regions from the domination of large regions over small regions in the federal state.

This is because of the characteristics of the federal system are characterized by the duality of the legislative authority represented by the stipulate in their

constitutions these two councils and define their tasks, competencies and working mechanisms. However, the Iraqi legislator, did not mention the nature of this council Its powers and the mechanism of its formation are clearly and explicitly stated, and this contradicts the principles of the federal system in countries with federal constitutions based on the duality of the legislative power, which is a derogation from this Council, which the legislator should make parallel to the House of Representatives in terms of tasks and competencies, not to legislate according to an ordinary law By the second part of the legislative authority, which is equivalent to it in tasks and powers, as the powers granted to this council under ordinary law do not amount to the strength and supremacy of the constitutional text, and therefore its legislation in this way will make it subject and subordinate to the House of Representatives, and its provisions will be subject to amendment and interpretation by the Council of Representatives. Representatives who control all matters relating to it, and despite the expiry of four electoral cycles: The Federation Council has not yet been formed, not by means of the first amendment neither constitutional nor by an ordinary law enacted by the Council of Representatives, so the legislative role of the legislative authority in Iraq will remain incomplete until the approval and formation of this Council.

The fact that the two-chamber system is one of the requirements of the federal system for the need to maintain a balance between the interests of the union state and the interests of the states. Confronting the large states, and this is why the tendency has been to find a legislative council in which all regions are represented equally regardless of their area, population, or wealth. the number of its members, and the Council of States, together with the People's Assembly, contributes to making federal state laws.

But in Iraq, the formation of the Union Council by the Council of Representatives, which is the second part of Parliament, is completely strange. This means that part of the parliament (the House of Representatives) will have absolute authority to control the strength and composition of the other part of the parliament itself, and the other issue that raises eyebrows about the Union Council Article of the Constitution postpones the implementation of the provisions of the articles related to the Federation Council, wherever they are mentioned in this Constitution, until a decision is issued by the House of Representatives, by a two-thirds majority, and in its second electoral session that it convenes after the entry into force of this Constitution.

It is noted that there is a clear connection between the delay in the formation of the Federation Council and the issue of forming regions for the purpose of achieving a balance in the number of members of the Council, as it specifies one member for each entity or state in the Federal Union, as if it is intended to motivate Parliament to be slow in writing the legislation for the Federation Council and to give it a longer space of time Therefore, given what this new parliamentary body enjoys and what powers it will have parallel to or superior to those of the current parliament.

In this context, we see that leaving the organization of the Federation Council in terms of its composition, the basis of representation in it, its functions, and everything related to it to a law enacted by the House of Representatives, leads to the submission of this Council, which represents the regions and reflects the federal side of the federal state, to the dominance of the House of Representatives, which represents the people and reflects the unity The state and in the end could threaten the federal system of the Iraqi state by making it a formal system only, as the House of Representatives can control the Federation Council, and it has absolute authority to reduce its competencies by simply enacting a law with a majority of two-thirds of its members, and as a result, the competencies of this Council are not protected because they are not specified In the federal constitution, which makes this council a weak council and awaits the powers of the parliament, and through what we mentioned above, it becomes clear to us that the Iraqi constitutional legislator was not successful in forming the legislative authority and did not meet the parliament's duality under the current 2005 constitution A real success .

The Second Requirement

The Problem of Establishing Regions

The Iraqi constitution is characterized by the status of (federal) federalism as a comprehensive principle in Article (first) of it, and the federal system consists of a decentralized capital, regions, governorates, and local administrations of the new Iraqi constitution. He had previously recognized the region (Kurdistan and its existing authorities, as a federal region according to the first paragraph and the new regions that were established in accordance with its provisions according to the second paragraph of the same article above), without specifying what laws on which these regions are founded, and leaving the issue of enacting a law He sets the executive procedures for the formation of regions to the Council of Representatives within a period not exceeding six months from the date of the first session.

Herein lies the problematic issue; How can a division of the regions be found that departs from the influence of the contradictory blocs and currents in the House of Representatives itself, which is what actually happened.

The calls to form regions were affected by the divisions and disputes between the parliamentary blocs, and the calls for the establishment of the Southern Region, which includes the governorates of (Basra, Nasiriyah, Maysan) and the Central Region and includes the governorates) Karbala, Najaf, Babil, Diwaniyah, Samawah) and the western region includes the provinces (Anbar, Salah al - Din, Mosul), is that the House of Representatives can, by a simple majority of the members present, approve the law that defines the procedures for forming regions.

Federalism here departs from being a voluntary union of nationalities in one country and goes beyond it to what could lead to a sectarian federation, and that it gives little value to the opposition voices that reject any law regulating it, even if these voices are more than those who voted for the law.

We note here in this particular article a disregard for a very serious and important issue, which is the issue of dividing the country into regions and leaving them subject to the desires of the different currents. You get approval to form regions without any trouble, even if that region is formed on a sectarian basis.

In view of this, the Iraqi legislator had to overcome all these problems by predetermining the law on the formation of regions, or at least defining the conditions and controls to be taken into account when forming regions, and the issue of the ease that the constitution permitted in the matter of forming regions is clarified which also stipulates: Each province or more has the right to form a region based on a request for a referendum on it, and the proportion of one-third of the provincial council members or one-tenth of the voters is a fairly small percentage that any council can achieve.

Among the observations that refer to Article 120, which states (that the region shall draw up a constitution for itself, specifying the structure of the region's authorities and powers, and the mechanisms for exercising those powers, provided that they do not conflict with this constitution) which states: The authorities of the regions have the right to exercise the legislative, executive and spatial powers in accordance with the provisions of this Constitution, with the exception of what is stated in it regarding the exclusive powers of the federal authorities).

The problem raised by the second paragraph of the same article above, which states that (the authority of the region has the right to modify the application of the federal law in the region, in the event of a contradiction or conflict between the federal law and the law of the region, regarding a matter that does not fall within the exclusive powers of the federal authorities, this article It contradicts the highness of the constitution stipulated What is also surprising is what was stated in the fourth paragraph, which stipulates that offices for regions and governorates should be established in embassies and diplomatic missions, to follow up on cultural, social and development affairs; because this contradicts With the features of federalism that require that external representation be entrusted to the federal government exclusively and from its competence, and the regions are not entitled to exercise this competence except as an exception .

In the same context, we see that the fifth paragraph states: "The regional government is responsible for all that is required for the administration of the region, in particular the establishment and organization of the internal security forces for the region, such as the police, security and the guard of the region." If the region's need for police and security is a clear concept, then what It is the need for the region's guard, and what are its functions, are they external or internal, and is this commensurate with the features of federalism that require the presence of a single national army, and granting the region's authorities the right to establish and organize internal security forces for the region such as the police, security and guards of the region will conflict with the development of security policy patriotism and at the same time promotes

regionalism while it requires the strengthening of the patriotic spirit; Therefore, it can be said that the constitution created new problems that lead to conflicting authorities and powers and laws, and entering into countless problems because of that, as well as marginalizing the role of the federal authority in favor of the authorities of the regions and governorates.

The Third Requirement

The Problem of The Distribution of Powers, Resources and Wealth

The Iraqi constitution of 2005 has attempted to address the problems, reservations and observations that were raised regarding the distribution of powers, resources and wealth and the adoption of the foundations and principles of federalism in Iraq, through its emphasis on the unity of Iraq's land and people in more than one article, and its assertion that the basic wealth in the country is the right of all Iraqis , and that it is distributed equitably, and the problem of distributing powers and competencies will be addressed in the first section, and then we will address: The problem of distributing resources and wealth in the second section, as follows -:

First :the problem of the distribution of powers and competencies

When studying the distribution of these powers and competencies in the constitution between the levels of government in the federal state, the problems that relate to the nature and limits of those powers and competencies emerge, including the following:

1. Lack of agreement between the center and the region on common competencies: What is meant by the common competencies contained of the 2005 constitution is not to single out any of the central authority or regions to act or carry out activities related to the areas that the legislator enumerated in the aforementioned article without both of them participating in legislation or enforcement, and if there is a possibility of agreement between the central authority and the regions, and is required, then the possibility of disagreement and conflict between them is also possible. Therefore, a fundamental problem arises based on who dictates or imposes on whom ?The central authority over the region or vice versa?

2.

The constitutional legislator has resolved this question in favor of the regions by giving priority to their laws over federal laws in case of conflict, and for this reason the regions can enact laws that determine the water share, for example, despite the objection of the central authority. It takes into account the interests of other regions or governorates in matters of public concern such as the environment, customs revenues, internal goods and others, which foretells the emergence of a real problem that rises to the level of a crisis between the regions and governorates as long as the central authority remains well-positioned. Therefore, we suggest amending the text by giving priority to Federal law over regional law in the event of a conflict between them, similar to comparative constitution.

3. The legislative vacuum in the exercise of competencies: The

legislator, when defining the common competencies, referred many issues to the need to issue laws to regulate the exercise of these competencies, the most important of which are those related to the management of oil and gas investment, customs management, antiquities, archaeological sites, or internal water resources policy.

The question that arises here is: If the law by which the constitution is subject to the regulation of these issues is not issued, who has the right to carry out these tasks, the central authority or the authorities of the regions? With our belief that the two authorities believe that they are right to exercise those powers, the central authority, as being responsible for the unity of the country and the integrity of its territories, has the right to intervene and exercise those tasks, while the authority of the regions is based on the legislator's implicit will to weaken the central authority for the sake of the regions and between this and that crises will appear cascading.

That is why we suggest that the legislative deficiency be filled with constitutional texts that allow the central authority to intervene and exercise its functions in the case of a legislative vacuum until the issuance of its own law, in a manner that suits the new reality, especially if we know that natural resources and archaeological sites are a national wealth and are not a monopoly of the region or a privilege of it alone .

4. The right of the central authority to intervene to exercise the powers of the region¹⁸⁾ .) : entrusts 2005 Constitution, the responsibility of maintaining Iraq 's unity, integrity, independence, sovereignty and democratic system the federal central authority , and this case carries the responsibility to do everything necessary this duty, and in this context , the question is asked about the possibility of the central authority to intervene and exercise The powers assigned to the regions in the event of a threat to the country's unity, integrity, independence or democratic system.

In fact, the constitution did not assist the central authority with a text that grants it the right in this area specifically, but rather limited its authority exclusively and opened the door wide for the regions to exercise other powers, and with this case the possibility of the regions failing to carry out their duties, or taking an approach of violence, oppression and tyranny against their citizens will appear, which It constitutes a constitutional violation of the fundamental rights and freedoms of individuals, and through the follow-up it becomes clear to us the keenness of the constitutions of the federal states to place restrictions on the powers of the regions with the motive of protecting the citizen in the face of the authority of the region on the one hand and maintaining the security and safety of the country on the other hand, and therefore we suggest that the constitutional legislator grant the central authority the right Interfering with the exercise of the powers assigned to the regions if the latter fails to avoid problems that may arise in the future .

5. Inaccurate legal drafting of the texts related to powers in the 2005 constitution: The constitutional legislator in Iraq failed in three places when drafting the texts related to powers, regardless of whether there was an intent or not, and they are.

The first position :The Constitution mentioned when stipulating the exploitation of natural resources, oil and gas only, without other resources such as (sulfur, phosphate, mercury, uranium ... etc.), which creates a problem

between the central authorities and the region about the right to exploit them, for this we suggest Replacing the term (oil and gas) with the term (natural resources) for its comprehensiveness and generality.

The second position :The legislator mentioned the exploitation of oil and gas in the current fields, and when interpreting the text, the question arises who has the right to exploit the future fields, that is, those that will be discovered in the future. current or that will appear in the future) instead of the phrase in the constitutional text.

The third position :The legislator added the phrase (provinces that are not organized in a region) whenever he mentioned the term regions, equating them between them in terms of legal status. The region means a political unit that has the right to exercise the powers of legislation, implementation and judiciary independently of the central authority, while the governorate is an administrative unit that follows the capital and depends on Its central legislative, executive and judicial authority, with some executive powers granted to it.

The contradiction reached its climax when the legislator granted the regions wide powers of independence, as he linked the governorates that are not organized into a region with the central authority that is managed in a decentralized manner. Federal and the federal judiciary without exercising the powers of the regions on the one hand, and on the other hand, the governorates that are not organized in a region cannot issue ordinary legislation as they are for the region; Because they are administrative units exercising powers to issue administrative decisions, and this is not a health thing to suggest administrative decisions issued by the provinces on the central ordinary legislation issued by the authority if we accept debate the validity of the meaning given in for violating the principle included legal rules as one of the pillars of the state legal .

Second :The problem of the distribution of resources and wealth

Came to recognize that oil and gas belong to all the Iraqi people, but it hastened to add the phrase (in all regions and governorates), which creates confusion and lack of understanding. Equal distribution across the country, or shared with micro - units (regions and provinces).

As for, the federal government shall manage the oil and gas extracted from the current fields with the governments of the producing regions and governorates, provided that their imports are distributed in an equitable manner commensurate with the population distribution throughout the country, while specifying a share for a specific period of the affected regions, which were unfairly deprived of them. by the previous regime, which was subsequently damaged in a way that secures the balanced development of the different regions of the country, and this is regulated by a law.

The federal government and the governments of the producing regions and governorates together draw up the strategic policies necessary to develop the

oil and gas wealth, in order to achieve the highest benefit for the Iraqi people, adopting the latest techniques of market principles and encouraging investment.

It is noted that these phrases carry many meanings that may cause problems and disputes between the federal authorities and the authorities of the region and the oil-producing governorates, as if these parties are not internal but rather relations between states, as they do not specify how to manage the extracted oil and gas, as if the federal authority is equal to the authority of the region in managing Wealth, while non-producing regions or governorates are deprived of the responsibility of managing it, which contradicts the features of federalism that make the extraction, distribution and investment of wealth the prerogative of the federal government, and that the same article, in its first part, talks about distributing revenues in an equitable manner, without specifying what is meant by the phrase (fair), also used the phrase affected provinces, knowing that all Iraqi provinces suffered equal deprivation of wealth .What is also noteworthy is that the distribution of resources is limited to the current) discovered (fields , which means that the fields that may be discovered after the constitution are drawn up are excluded from the resource distribution clause, especially since all evidence points to the presence of oil in various parts of Iraq, so where will the imports of these fields go to the federal government, given that The oil and gas is the property of the Iraqi people, or is it controlled by the regional government in which these fields are located?

CONCLUSION

After we are done of writing our research that titled (the problems of the federal system in the Iraqi constitution of 2005), and after analysis, presentation and comparison, we reached a set of conclusions and recommendations, which we summarize as follows:

1. The federal system is being adopted in all countries that have implemented it as a solution to the problem of societal pluralism in them.
2. There is no application of the federal system in one formula, but the special circumstances of each country are taken into account in its application.
3. One of the most important features of the federal system, which is one of the guarantees that gives it its effectiveness, is the duality of the legislative power, meaning that it is composed of two chambers: the Federation Council representing the regions or states, and the House of Representatives representing the whole country.
4. The application of the federal system and the establishment of regions in Iraq does not mean dividing it, and that the matter depends on how to deal with its sects and components in a way that preserves its entity and privacy and guarantees its rights.
5. One of the basic characteristics of the federal system is the distribution of powers and authorities, some of which are federal powers enjoyed by the State of the Union with the participation of all regions in its formation and implementation of its decisions, and other regional powers enjoyed by the member regions of the Union.

RECOMMENDATIONS

1. The necessity of amending the texts of some articles of the current constitution, especially those concerned with implementing the federal system and restoring the balance between the federal authorities regarding the formation of the Federation Council, and finding a division of regions that deviates from the influence of the contradictory blocs and currents in the House of Representatives., which gives the regions the right to draft a constitution and exercise legislative, executive and judicial powers, which leads to the enactment of laws of a sectarian nature in a particular region.
2. The establishment of the Council of Regions or the Federation Council, as the Iraqi constitutional legislator called it, should be expedited, as it guarantees the rights of regions in federal systems, especially when its work is alongside the Council of Representatives when drafting legislation and constitutional amendments.
3. The Iraqi constitutional legislator must be precise and clear when distributing powers, competencies and powers between the federal government and the governments of the regions under it, as the current constitution contains vague and unclear texts, which causes confusion and interference with the basic laws of the federal state.

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