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## **Fiscal decentralization: A review of the Iraqi Constitution of 2005**

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**Abstract.** Every state needs something to suit its demands, whatever its form, and there is no disagreement over this; what matters is how to allocate revenues for the federal states. There is no specific way or ready model for distributing financial competencies between the federal government and the states, but it varies from state to state. Iraqi legislators adopted the method of political decentralization and regional administrative decentralization, as outlined in the Iraqi State Administration Law for the Transitional Period of 2004, and the Iraqi Constitution for the year 2005. There are many problems resulting from overlapping in jurisdictions or from the legislative insufficiency of a specific jurisdiction for a specific party. The concept of local development has outgrown its reliance on the central system that countries used in the 1960s and 1970s, and it can no longer be sustained in a rational manner. For the purpose of studying the subject from a legal point of view, we followed in this research the binary division approach, as the research was divided into two parts: the first section deals with the nature of administrative decentralization, and the second section deals with administrative decentralization in the Constitution of the Republic of Iraq for the year 2005, and in conclusion we reached several results and proposals We will mention it at the end of our research.

**Keywords.** Fiscal decentralization; Iraqi Constitution of 2005; The Constitutional law; Public budget; Law

### **Introduction**

There is no doubt that every state needs something to suit its demands, whatever its form. The form of government does not affect the need for funds. This need is a meeting point for all forms of federal States, and there is no disagreement over it. However, what matters for the study is how to allocate revenues for the federal states, as it may raise numerous issues that may be disputed. Because the financial competencies of the federal units constitute the bedrock of the federal state, it is not possible to imagine the existence of real federal units without these units enjoying financial revenues of their own and exercising financial competencies that these units exercised initially without referring to the federal government.

Two fundamental reasons underlie the importance of the issue of the distribution of fiscal jurisdictions in the federal state. The first is that the allocation of financial resources is what allows the authorities at their various levels to exercise their jurisdictions specified in the Federal Constitution. The federal authority needs financial resources to cover the aspects of

public expenditure, especially after the increase in the functions of the modern state and its intervention in many areas, which requires that it have its own financial resources to meet its various obligations, which have expanded unlike the states as well. The same is true for the member states that need the financial resources to achieve their financial independence, which is one of the most basic elements in their independent existence, which allows these states to implement their distinct programs within the limits of their responsibility; and secondly, that the taxation and spending authorities are in themselves important tools for controlling and influencing the economy.

Accordingly, it is the constitution of the federal state that often distributes the jurisdictions of each of the federal authorities, the powers of states or regions, and the responsibilities of each of them, and there is no specific way or ready model for distributing financial competencies between the federal government and the states, but it varies from one state to another and according to the circumstances of each state. For example, the 2005 Constitution of the Republic of Iraq delegated to the federal authorities the authority to develop fiscal and customs policies, issue currency, and organize trade policy across the borders of Iraq's regions and governorates, Setting the state's general budget, drawing up monetary policy, and establishing and managing the central bank The constitution also allocated to the regions and governorates a fair share of the federally collected revenues sufficient to carry out their responsibilities and responsibilities, taking into account their resources, needs, and the proportion of the population in them. not organized in a region, as well as verifying the optimal use and sharing of federal financial resources and ensuring transparency and fairness when allocating these funds to the governments of regions and governorates that are not organized in a region.

Following the political and constitutional changes that occurred in Iraq after 2003, which affected the state's shape, political system, nature, and type, Iraqi legislators adopted the method of political decentralization and the method of regional administrative decentralization, as outlined in the Iraqi State Administration Law for the Transitional Period of 2004, and the Iraqi Constitution for the year 2005.

This trend was also confirmed by the legislator in several basic legislations, the most important of which were Coalition Authority Orders No. 71 of the repealed and No. 94 of 2004, as well as the amended Law of Governorates Not Organized in a Region No. 21 of 2008.

Despite the success achieved, there are many problems resulting from overlapping in jurisdictions or from the legislative insufficiency of a specific jurisdiction for a specific party, which needs to make constitutional and legal amendments, adding, deleting, revising, developing or correcting the constitutional or legal text for its application to a product of the desired goals in harmony with the adoption of the pillars of sound administrative decentralization.

Thus, the shift in the concept of financial decentralization has become a necessity imposed by contemporary changes, and there is no doubt that money is the main pillar in the political body of the federal state to provide regular resources to finance the federal budget and to fulfill the current and future obligations of the federal government, and if the essence of local development depends mainly on the governorates' administrations What helps in this is the shift in financial and economic concepts, as most researchers today believe that the concept of local development has outgrown its reliance on the central system that countries used in the 1960s and 1970s, and it can no longer be sustained in a rational manner. Absolutely, after many national plans and programs that adopted this approach failed, although there are still those who

believe that local development cannot occur in isolation from the contributions of the central system in achieving it.

The advocates of decentralization, despite their different tendencies, also see that there is a possibility to achieve local development through rapprochement and integration between the central system and the decentralized system, but provided that fundamental changes are made at the economic, political, social, and even cultural levels, and in a manner that leads to achieving economic well-being and social stability for the people in the various regions of the state.

And that the adoption of the strategy of financial decentralization is a necessary necessity whose importance increases with the increase in its ability to achieve the requirements of citizens at the local level, as long as the new reality shows beyond any doubt that there are tangible changes to the concept of the local administration system adopted during previous stages, as it is no longer a mere organization A national or regional administration that reflects the concept of administrative and financial centralization or lack of administrative focus, which is addressed by administrative law, as is the case for the existing administrative hierarchy at the time, but it extended in particular to local administrative strategies that reflect the concept of administrative and financial decentralization based on the management of individuals or local communities and their requirements. Primarily, which is dealt with by the local administration branch emanating from the administrative law of the state.

That is why we find that countries follow a centralized system in order to allocate their limited resources and distribute them equitably to the regions and to try to achieve rapid economic development to reduce the gap that separates them from the industrialized countries.

The situation has changed since the past two decades, as the state's hegemony over governance in developing countries faced great challenges, including Iraq, due to political, social, economic, and technological changes, which were the result of globalization, which prompted it to show an increasing and accelerating interest in adopting administrative and financial decentralization, targeting from which it strengthens the capabilities of its local administration systems and supports them with the idea of accountability, transparency, and popular participation, based on its view of the modern state, which seeks to continuously develop administrative methods in order to promote human well-being.

On the other hand, administrative and financial decentralization in Iraq faces problems and difficulties in terms of organizational structure, methods and patterns of forming local councils, limited financial capabilities of local units, and strict administrative and financial control over the work, people, and decisions of local councils under Law No. 21 for provincial councils.

### **The Significance of the Research:**

It is no secret to specialists and experts that there are insufficient official reports and systemic data to study the reality and prospects of financial decentralization in Iraq, and by reading the laws of the general budget and the provincial law in its last amendment, and from the experiences of work in the government apparatus, the research tried to draw possible features of the transformation process in Iraq, and to the extent that makes it understandable in the common vocabulary for analyzing and evaluating contemporary governmental systems, especially in the financial dimension. Accelerating the completion and development of the regular preparation of administrative and financial statements and their issuance in periodic reports will help stimulate research in this vital field and extract it from preconceptions towards facts and objective analysis.

The intent of this paper is not to document the structure and functioning of the financial government system in Iraq and the comparison countries, or to suggest a specific design for a decentralized financial system, but rather to contribute, as much as possible, to providing information, some analysis, and evaluation criteria that may help in organizing the transition process and re-division of work between the central government and other levels of government in Iraq.

### **Research Problem:**

The governorates of Iraq lack the effective application of financial decentralization, as they are characterized by a low degree of participation with the central government, ineffective electoral systems, in addition to a lack of transparency in decision-making, and this is reflected in the lack of independence of local units in setting their financial budgets, as local budgets are considered part of the general budget. The state, which led to the insufficient financial resources of local units and the weak response of local governments to their citizens, in addition to the availability of an institutional environment that supports the implementation of financial decentralization, which limits the achievement of the desired benefits from the application of financial decentralization in the governorates.

Thus, the main research problem arises in the "effectiveness of fiscal decentralization in achieving political stability in federal states".

This problem raises numerous questions, the most important of which are:

- What influence does fiscal decentralization have on federal state political stability?
- What role do Iraq's constitution and legislation perform in establishing fiscal decentralization?

### **Research Methodology:**

The analytical research method and the comparative method (between a federal state such as Iraq and other Arab countries) were adopted in the research of this topic, as they are the two most appropriate methods for the nature of the topic and in reaching the desired results, taking into account when comparing legislation that there is no typical federal application, as it was applied in different forms under different circumstances, and then federal applications were numerous and varied, especially in the economic and social aspects; the number and size of the constituent units of the federal state; the distribution of powers, wealth, and financial resources in accordance with the law; and the mechanisms for resolving disputes between them.

### **1.1 The Concept and Characteristics of Financial Decentralization**

In managing their affairs and running their affairs, developed countries apply one of two administrative systems, namely the central administrative system or the decentralized system, at a time when financial decentralization is one of the most important types of decentralization. As a result, defining a clear concept of financial decentralization was critical, and it was given a strategic dimension at the federal state level.

Fiscal decentralization has been defined as: "Assigning elected local bodies some spending responsibilities and some powers of mobilizing local revenues to finance the activities they carry out, in a way that guarantees these local bodies' independence in making their financial decisions". (Ebel & Yilmaz, 2002)

Decentralization has also been defined as "the degree of deconcentration of power, i.e., the dispersal of power and its distribution among people at the different administrative levels in the organization or at the state level, or in other words, it is the transfer of power to geographical

bodies that enjoy a sufficient degree of financial and administrative independence determined under the control of the central authority". (Yushkov, 2015)

In addition to that, it is also defined as a process of transferring powers from the central authority to the elected local authority and as "the distribution of the administrative and financial functions between the central authority and elected local bodies that genuinely represent the local population and have the authority to decide and act on issues that concern the interests of these local populations under the supervision of the central authority". (Smoke, 2001)

And to clarify the importance of what was mentioned; this part was divided into two sections as follows:

### **Financial Decentralization Overview:**

Decentralization is a method of organizing the distribution of political, administrative, or financial functions, tasks, and powers according to law between the central authority and other independent bodies in the state.

In the same context, the World Bank classified decentralization into four overlapping types: political decentralization; administrative decentralization; financial decentralization; and market decentralization.

Fiscal decentralization is concerned with economic decision-making within the framework of federal applications, whereby public sector decisions are made at different levels of government. Federal countries differ in their choices regarding the nature of fiscal decentralization, especially in the way of distributing and dividing fiscal powers between different areas and the financial arrangements associated with them. The additional financial arrangements resulting from these choices are often subject to periodic review to adapt to changing circumstances at home and abroad, as in Canada, or as a result of how courts interpret constitutional and statutory provisions, as in Australia and the United States of America, or as a result of the interpretation of different levels of government. (Xie et al., 1999)

All government expenditures, whether they are federal, local, or provincial, provide an important criterion for measuring the scope of fiscal centralization or decentralization (expenditures, program management, and service delivery), and then measuring the degree of financial independence of each level of government. (Watts, 1987)

And the financial independence of the constituent units of the federal state is relative, not absolute, due to the many restrictions it contains, including the following:

1) When the constituent units of the federal state prepare and organize their financial budgets, they are obligated to abide by the constitutional rules and not to violate the general principles established by the central legislation, given that these units are nothing but self-organization within the legal, economic, and political limits of the state.

2) With regard to imposing customs duties on the entry or exit of goods that pass within the constituent units of the federal state, it must refrain from imposing them, or abide by the constitution and law regulation of this jurisdiction.

3) With regard to the imposition of taxes, the constituent units of the federated state must refrain from imposing them, or the obligation to regulate the constitution and law of this jurisdiction, which may involve them in the administration, limitation, and collection of tax resources, or may give them the power to impose or reduce regional duties and taxes or grant additional exemptions, with the right to issue necessary legislation and orders to collect public funds within the territory of those units.

The size and nature of transfers, whether they are conditional or unconditional grants or tax shares from one level of government to another, provide an indication of the degree of dependence or independence through which levels of government perform their responsibilities. The availability of public borrowing for the constituent units of the state is another indicator of the degree of financial independence, provided that their governments are not overwhelmed with debt. Unhindered access to both domestic and foreign borrowing. (Boadway & Watts, 2000)

The financial affairs of states and their constituent units include two main aspects: the first relates to the collection and collection of resources or revenues, and the second relates to their expenditures. (Watts & Hobson, 2000)

The federal, regional, and local authorities have the power to make decisions about revenue and expenditures, and then all of those powers are accountable.

The process of distributing and delegating competencies among the constituent units of the state and the federal authorities requires an adequate financial allocation to enable them to perform their local tasks. The legislator can grant regional and local authorities the power to collect certain financial revenues or achieve financial returns.

The pursuit of fiscal decentralization in federal states requires fundamental reforms in fiscal policies in general and in the field of expenditures in particular. as well as reforming tax policies, reforming the borrowing policy with the approval of the central government, and encouraging investment policies, as is the case in Brazil, Argentina, Colombia, Costa Rica, El Salvador, Chile, Peru, the Bahamas, and Suriname. (Garman et al., 2001)

It also requires federal states to put in place measures to build capacity, implement information systems, set budgets, and adopt transparency in political, administrative, economic and financial affairs. These measures are not only for the successful implementation of financial decentralization, but also for the successful implementation of programs and projects funded through the aid provided by the international community to regional and local authorities.

Moreover, the meaning of decentralization (idiom) is the distribution of administrative functions between the central government in the capital and between local bodies or independent interests so that these bodies, in the exercise of their administrative functions, are under the supervision and control of the central government.

While others defined it as: (the distribution of the administrative functions between the central government on the one hand, and other independent and specialized management bodies on a regional or interest basis on the other hand, and these bodies exercise their authority within the scope prescribed for them in the law, under the control and supervision of the state without it being subject to the rule of law. (Taima Al-Jarf, 1970)

And It was defined by Ibrahim Abdel Aziz Shiha as (a system related to how to exercise the administrative function in the state, by distributing the burdens of this function between central authority bodies on the one hand, and other regional or affiliated persons independent of the state on the other). (Ibrahim Abdel Aziz Sheha, 2012)

As for the idiomatic meaning of the term "finance", it is everything that can be possessed, acquired, and benefited from, or everything of material value among people. There are several divisions of money, including its division in terms of who owns it, into individual money and public money, which is what is owned by the state. (Al-Husseini Muhammad Taha Hussein, 2016)

From a legal point of view, money is: every right has a material value, and financial rights are either in-kind or personal. (Chung, 2009)

And The original or accessory real right in rem is the direct legal authority of a specific person over a specific thing, and the original real rights are the right of ownership, the right of disposal, the right of land, the right of usufruct, use, housing, easement rights, the right of endowment, and the right of long lease. Ancillary in-kind rights are the right of security mortgage, the right of possession mortgage, and the right of concession. (Wautelet, 2020)

As for the personal right, it is a legal bond between two people, a creditor and a debtor, whereby the creditor demands that the debtor transfer a real right or to take an action or refrain from an action. It is also considered a personal right, the obligation to transfer ownership, regardless of whether it is in cash, homosexuality, or values, and it is also considered a personal right, the obligation to hand over a specific thing.

As for public funds, they are real estate and movables belonging to the state or legal person, which are actually allocated for a public benefit or by virtue of the law. These funds may not be disposed of, placed in custody, or possessed by prescription. Public funds lose their character by the end of their allocation for the public benefit in accordance with the law or the end of the purpose for which those funds were allocated for the public benefit. (Foksha, 2014)

Based on the foregoing, it becomes clear that there are two conditions that represent a criterion for determining public money, whether real estate or movable, subject to the provisions of the Administrative Law, which are:

i. That the money is real estate or movable property owned by the state, or by a public legal person other than the state, such as its constituent units and others.

ii. That the money is real estate or movable owned by the state, or by a public legal person other than the state, such as its constituent units and others.

Through the foregoing, the idiomatic meaning of fiscal decentralization can be clarified by combining the meanings of decentralization and fiscal, as it means the allocation of more revenue-collecting authority to subnational units in the federation.

## **1.2 The Characteristics of Financial Decentralization**

Fiscal decentralization, despite its diverse applications in various federal states, is characterized by the following:

a) **Fiscal decentralization aims to achieve material interest between the governmental and administrative levels:** Technical and technological development and the spread of market economies have led to the creation of socio-economic conditions that help support the applications of political and administrative decentralization, including: stressing contractual relations; recognizing the decentralized nature of the market economy; and flourishing markets on the basis of pluralism, competition, and cooperation rather than homogeneity, which enhanced the realization of It is not necessary for a good relationship between state units and their other components in order to benefit each other, but rather the interest that will necessarily be directed to serving the citizens (Watts, 1998).

b) **Fiscal decentralization affects the preparation and implementation of development policies:** The applications of fiscal decentralization have a direct impact on the preparation and implementation of development policies in the constituent units of the state, especially when the constituent units of the state are given the powers to determine and collect local taxes and to make spending local. Therefore, it is important to support the regional and local authorities financially as well as legally to help them collect certain fees and taxes for their own benefit, with the aim of achieving successful administrative-financial decentralization.

c) **Fiscal decentralization includes determining the revenues of the state's constituent units and transferring funds to them from the federal authorities in accordance with the constitution and the law:** Among the most important principles that must be taken into account when implementing fiscal decentralization in the federal state are (Shao et al., 2020):

i. To determine the sources of income of the constituent units of the state, after studying the types of fees, taxes, and income that can be collected, and to the extent of the powers of each of the federal authorities and the constituent units of the state, the proportions of expenditure and types of fees and taxes for each are divided.

ii. The procedure for transferring funds from the federal authority to the constituent units of the state after separating the funds of each of them.

iii. The system of local fees and taxes should be free from complexity to facilitate the process of their collection.

iv. The importance of adopting informatics and establishing electronic management.

v. That the financial control mechanisms imposed by the federal authorities on regional and local authorities do not hinder the implementation of development and investment projects.

d) **Fiscal decentralization implies that the constituent units of the state are subject to various types of financial control in accordance with the constitution and the law:** Financial control aims to ensure the proper use of public funds in accordance with the objectives of administrative organization. That is, it aims to achieve accounting goals, adhere to accounting and financial policies and procedures, preserve resources and property, verify compliance with applicable legislation in the collection of public revenues, and disburse public expenditures in the aspects specified by law and in a manner that serves the public interest. (Kramer, 1966)

In addition, financial control has political, financial, and administrative objectives as follows:

1) The political objective is to ensure that what the legislative authority has approved in terms of the budget is implemented, which means using the appropriations for the purposes for which they were allocated and collecting revenues in accordance with the regulations.

2) The financial objective is to verify the correctness of the accounts and the soundness of the financial actions and procedures and to detect deviations, financial errors, and embezzlement. It is also represented in monitoring performance in accordance with the set goals and monitoring rationalization in spending.

3) The administrative objective is to ensure that work systems lead to the greatest possible benefit with the lowest possible expenditures and to correct administrative decisions that lead to the smooth running of work in all stages of planning, implementation, or follow-up.

Political decentralization is the distribution of the functions of governance between the national, regional, and local levels. Hence, the actions and actions of its bodies are of a legislative, executive, and judicial nature. Therefore, the body for its oversight and accountability must be of a political or judicial nature, entrusted to the constitutional judiciary. (Al-Khafaji, 2021)

As for financial decentralization, it is the distribution of public revenues between the governmental and administrative levels in the state and the allocation of its expenditures, and then the actions and actions of its bodies are of a financial-administrative nature in the event that they are applied under administrative decentralization. The actions and actions of its bodies are of a legislative and executive nature in the event that they are applied under political

decentralization, so the body for its oversight and accountability must be of an administrative, political, judicial, or constitutional nature.

On the basis of the foregoing, administrative decentralization can be applied within the framework of the unified state and the federal state of all kinds, while political decentralization can be applied within the framework of the federal state, and the application of financial decentralization is within the framework of the application of administrative decentralization and political decentralization, and within the framework of the federal state.

### **2.1 Financial Revenues and the Expenditure Authority**

The constitution granted governorates that were not organized into region broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization. (The Administration of the State for the Transitional Period Act, 2004)

Moreover, the constitution referred the regulation of this to the law, and indeed it legislated the amended Law of Governorates Not Organized in a Region No. 21 of 2008. (Governorates Not Organized into a Region Act, 2008)

In this requirement, we will address the revenues of the federal authority, the constituent units of the state and their distribution, and the authority competent to spend financial revenues in the federal state as follows:

#### **Revenues of the Federal Authority and the constituent units of the State and their distribution:**

The Iraqi Constitution of 2005 emphasized that taxes and fees may not be imposed except by law, and the same applies to amending, collecting, and exempting them (Iraqi Constitution, 2005). This type of law is not expressly excluded under the Constitution from the retroactive effect of laws.

Needless to say, the authority to legislate tax and fee laws in accordance with the 2005 Iraqi constitution is the federal authority, in particular the President of the Republic and the Council of Ministers, which present draft laws, and the Council of Representatives, which specialize in proposing and enacting federal laws.

The constitution has determined the exclusive competencies of the federal government with regard to policy-making, budgeting, and regulating the financial aspects at the internal and external levels of the state, as follows:

- i. Drafting, signing, and completing borrowing policies; and developing the sovereign foreign economic and trade policy.
- ii. Drawing, signing, and concluding borrowing policies; drawing up the sovereign foreign economic and trade policy; drawing up fiscal and customs policies; issuing currency; regulating trade policy across the borders of regions and governorates in Iraq; setting the state's general budget; drawing up monetary policy; and establishing and managing the Central Bank.
- iii. drafting the general and investment budgets.

The executive authority is the one who prepares the general budget in Iraq for the following reasons: (Abed, 2021)

- 1) The budget preparation process needs information, data, financial statements, expertise and competencies, as all this information and expertise are more readily available to the executive authority.

2) The executive authority, being responsible for public and service utilities and administrations in general, is therefore the most capable and efficient in estimating its revenues and expenditures accurately and objectively.

3) The executive authority is the one who carries out the budget execution process. Because implementation is the result of preparation, and because it allows it to identify the strengths and weaknesses of its own policies more than any other authority.

4) The general budget expresses the political, economic, and social programs of the government, so it is logical to leave the government the task of preparing and preparing the budget so that it expresses these programs, and thus the people can hold the government accountable through its representatives in Parliament, in the event that it does not implement its promises and commitments contained in its programs.

The budget preparation process goes through several stages before it is referred under the draft general budget law to the House of Representatives. October of every year.

As for the country's investment budget, the Ministry of Planning prepares its details after discussing it with ministries and departments not affiliated with a ministry and submits it in its final form to the Council of Ministers, accompanied by a report on the results of implementing the investment budget and its implications for the country's economic situation and expectations for the next fiscal year. After it reaches the Council of Ministers, it is discussed on a date no later than October of each year.

As for the preparation of the foreign trade plan, it is submitted by the Ministry of Commerce. Finally, the foreign exchange budget is set by the Central Bank of Iraq, which commits, within three months after the end of each fiscal year, to preparing annual financial statements on the financial situation and the financial and monetary policy of the country.

Thus, the legislative and executive federal authorities participate in preparing and enacting the general budget law, as the Council of Ministers prepares the draft general budget law and the final account, and submits it to the House of Representatives for discussion and approval. Although the constitution has granted the Council the power to transfer between the chapters and chapters of the general budget, and reduce the total The amounts of the general budget and the Council, when necessary, may propose to the Council of Ministers an increase in the total amounts of expenditures, and then the President of the Republic ratifies and issues the general budget law.

It is clear from the above that the federal government is exclusively competent to impose taxes and fees at the national level, and it is authorized to borrow.

The Federal Minister of Finance was authorized to continue borrowing from the International Monetary Fund to complete the amount of 4.5 billion dollars (four billion five hundred million dollars), and from the World Bank to complete the amount of two billion dollars (two billion dollars) during the year 2012. And the use of the SDR's special drawing rights of up to 1.8 billion dollars (one billion eight hundred million dollars), to cover the expected deficit in the federal general budget, in addition to internal borrowing under treasury transfers.(The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

Nevertheless, the law has decided to adhere to the fair distribution of loans provided to the federal government to the regions and governorates of Iraq according to the proportions of their population, after taking into account the strategic projects financed by these loans exclusively, and taking into account the priority of distributing new loans to ministries, regions, and governorates that did not benefit from loans previously.

The federal government is also responsible for Iraq's international debts, and thus the region or provinces may not borrow from any international party, nor do they bear any burden arising from the state's foreign debts.

The constitution has specified objective criteria for the distribution of fiscal revenues to the regions and governorates, which are: (Iraqi Constitution, 2005)

- 1) The distribution of imports should be in accordance with the principle of fairness and justice, which takes into account the burdens, needs, and available resources.
- 2) Adoption of the principle of proportion and proportion between the number of population and imports.
- 3) granting a financial share for a specific period to the constituent units of the affected and deprived state, provided that the financial share and the time period are determined in accordance with a law regulating this.

As for customs, the constitution has made their management joint between the federal authorities and the authorities of the regions, and in coordination with the governorates that are not organized in a region, provided that this administration and that coordination between those levels of government shall be regulated by law.

And the revenues of the federal general budget for the fiscal year 2012 were estimated at 102,326,898,000 thousand dinars. (The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

The revenues of the federal general budget for the fiscal year 2012 were estimated at 102,326,898,000 thousand dinars. The revenues resulting from the export of crude oil were calculated on the basis of an average price of 85 dollars per barrel and an export rate of (2,600,000) barrels per day (two million six hundred thousand barrels per day), including (175,000) barrels per day (one hundred and seventy-five thousand barrels per day) for the quantities of crude oil produced in the Kurdistan region. Compensation for the Kuwait war, or any other percentage decided by the Security Council and paid to the UN Organization. (The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

### **The Competent Authority for the Expenditure of Fiscal Revenues in The Federal State:**

In practice, the federal authorities allocate the expenditure of financial revenues to the constituent units of the state. This indicates that the distribution of financial revenues is centralized, while spending by the region and the governorates will necessarily be decentralized.

Perhaps one of the most important areas of spending guaranteed by the federal authorities in accordance with the constitution are:

- i. protection of children and prohibition of their economic exploitation, protection of maternity and old age, care of children and youth, and provision of adequate housing. (4,p6)
- ii. Providing social and health security in the event of old age, illness, inability to work, homelessness, orphanhood, or unemployment.
- iii. Healthcare and the provision of prevention and treatment methods through the establishment of various types of hospitals and health institutions.
- iv. Care and rehabilitation of the handicapped and those with special needs.
- v. Caring for the families of the martyrs, political prisoners, and those affected by the abuse of the previous political regime, and compensating the families of the martyrs and those injured as a result of terrorist acts.

The practical reality indicates that these areas require much more spending than others, and therefore the federal government must provide large financial allocations to meet its

requirements, especially since the disbursement of these funds to social, health, educational, and other institutions affiliated with the federal ministries will be within the spatial and human scope of the region and provinces.

In fact, a total of 11, 712, 2930,150 dinars (one hundred and seventeen thousand, one hundred and twenty-two billion, nine hundred and thirty million, and one hundred and fifty thousand dinars) has been set aside for fiscal year 2012 expenditures . (The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

Of which, 11,476,224,538 thousand dinars were allocated to the education sector (eleven thousand, four hundred and seventy-six billion, two hundred and twenty-four million, five hundred and thirty-eight thousand dinars). And 20.460,594,721 thousand dinars (twenty thousand four hundred and sixty billion five hundred and ninety-four million seven hundred and twenty-one thousand dinars) were allocated to the energy sector. (The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

And allocated (5740,233,945) thousand dinars to the environment and health sector (five thousand, seven hundred and forty billion, two hundred and thirty-three million, nine hundred and forty-five thousand dinars), and 15,544,085,421 thousand dinars (fifteen thousand, five hundred and forty billion, eighty-five million, four hundred and twenty-one thousand dinars) to the social services sector, and (3869,673,567) thousand dinars (three thousand eight hundred and sixty-nine billion six hundred and seventy-three million five hundred and sixty-seven thousand dinars), and 386,673,567 thousand dinars (three thousand eight hundred and sixty-nine billion, six hundred and seventy-three million, and five hundred and sixty-seven thousand dinars) allocated to the water, sewage, and sanitation sector , and 1,142,000,684 thousand dinars were allocated to the construction and housing sectors (one thousand one hundred and forty-two billion, six hundred and eighty-four thousand dinars) .(The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

It was supposed to establish a general authority to monitor and allocate federal imports, composed of experts and representatives of the federal government, regions, and governorates; To perform the following verification tasks:

- 1) Verify the fair distribution of grants, aid, and international loans according to the entitlement of regions and governorates that are not organized in a region.
- 2) Verify the optimal use and sharing of federal financial resources.
- 3) ensuring transparency and justice when allocating funds to the governments of regions or governorates that are not organized in a region in accordance with the established proportions.

and granting governors and heads of provincial councils the power to spend in light of the allocations approved within their annual budget. And that the disbursement is made in accordance with the appropriations approved in the annual federal general budget for the purposes specified, as well as the spending plan approved by the Federal Minister of Finance. It is necessary to restrict the appropriations allocated in the federal general budget, and it is not permissible to spend more than that, or to approach the Federal Ministry of Finance about the request for any additional allocations outside the budget allocations after its legislation (3,p8).

With regard to the guarantees established by the constitution for public funds, it affirmed the sanctity of public funds and obligated everyone to protect them.

Some jurisprudence believes that legal protection should extend to both public and private state funds, and therefore it is better to amend the text of item (first) of Article 27 of the constitution to make this happen.

## **2.2 Imbalances, Remittances, and Financial Independence in Iraqi Law**

In this part, we will address the vertical and horizontal imbalance in the financial resources and revenues in the federal state, the financial transfers, and the financial independence of the constituent units of this state as follows:

### **A. Vertical And Horizontal Imbalances in Financial Resources and Revenues in The Federal State:**

The constitution stipulates that oil and gas are the property of the entire Iraqi people, and therefore this field must be within the jurisdiction of the federal authorities, but the constitution has required that the federal government manage the oil and gas extracted from the current fields in cooperation with the governments of the producing regions and governorates. The constitution also requires that they draw up the necessary strategic plans to develop the oil and gas wealth in Iraq.

That is, the partnership between those different levels of government: federal, regional, and local, defined in the constitution, includes the management of the producing and discovered fields in Iraq until 2005, and does not include the fields that will be discovered after this date, as the process will necessarily be under the administration of the producing regions and governorates. Nor can the non-producing governorates participate in that administration, nor in formulating strategic policies for the development of oil and gas wealth. And in this constitutional organization of oil and gas management, there is a clear legislative shortcoming.

Some jurisprudence believes, and rightly, that the Iraqi people do not enjoy a legal personality and that ownership, as a right in rem, must be held by the state as a legal and moral person in accordance with the provisions of Article (47) of the Iraqi Civil Code. (Iraqi Civil Code, 1951)

As for the remaining competencies, the constitution recognized for the region and the governorates all the remaining powers that were not provided for within the exclusive competencies of the federal authorities. It also gave priority in the application of the law of the region and the provinces in the event of a dispute over joint powers with the federal government.

The priority of implementing the law of the region or governorate that does not contradict the Federal Constitution in accordance with Article (115) of it, does not mean at all to amend or cancel the federal law in the event of a dispute between them, which is what the Federal Supreme Court stated in its decision No. 6-Federal) issued on 4/2/2009, as it stated: (The law to be enacted by the provincial council shall not be considered amending or nullifying the federal law). (*Federal Supreme Court Decision No. 6, 2009*)

The vertical imbalance in the financial revenues in Iraq makes it clear that the federal government is the one who allocates funds to the region and the governorates at rates exceeding (99%) of its total financial revenues. As for the horizontal imbalance in the financial resources and revenues, it is clear that there are governorates rich in natural resources and, consequently, wealth.

Therefore, the federal government allocates to it an additional share represented by the petro-dollar ratio, for example, as it is the equivalent of one dollar for each barrel of crude oil produced in the governorate and one dollar for each barrel of refined crude oil in refineries. The governorate produces equivalent to one dollar for every 150 cubic meters of natural gas produced in the governorate. The amounts are distributed according to the production of each governorate and delivered to the federal government.

### **Financial Transfers and Financial Independence of The Constituent Units of The Federal State:**

Although the provincial council has independent finances, it still needs federal government transfers because of the insufficiency of the financial budget allocated to it, with its misuse in practice on the ground, and the spread of the phenomenon of financial corruption.

The constitution grants the regions and governorates the right to receive a fair share of the revenues collected by the federal authorities, allocated to them sufficiently to carry out their duties and responsibilities, taking into account their available resources and their actual needs.

The share of the Kurdistan region was set at (17%) of the total expenditures, and the shares of the governorates were determined on the basis of the percentage of their population in the total expenditures. (The Federal General Budget Law of the Republic of Iraq for the Fiscal Year, 2012)

The constitution also authorized the delegation of the powers of the federal government to the provinces or vice versa with the consent of both parties, provided that such delegation is regulated by law.

As for grants and donations provided by foreign governments and institutions to ministries and entities not affiliated with a ministry or governorates and provincial councils, their amount is restricted as a final revenue to the federal public treasury, whether these grants and donations are in the form of technical assistance or the implementation of projects, provided that their speculative values are recorded in the records. The ministry or the entity not associated with a ministry or the relevant regions, governorates, and provincial councils, accepts cash or in-kind grants and reallocates them in coordination between the beneficiaries and each of the ministries of planning and finance.

### **Conclusion**

One of the reservations about financial decentralization, which must be paid attention to in the case of adopting the decentralization system of its various types, is that what is suitable for one country or region may not be suitable for another country or region, as the implementation of decentralization requires the availability of an appropriate social, economic, and political climate in terms of its components, compositions, and procedures.

Fiscal decentralization is a complex and dynamic system, and there should be more flexibility in fiscal policies to change the details of the implementation tools and at the same time preserves the political and philosophical principles in the constitution and operational structures in financial laws and instructions. Fiscal decentralization can take many forms, such as: self-financing or cost recovery or co-production to expand local revenues; sales taxes, costs or overheads; intergovernmental transfers, which transfer general revenue from taxes collected by central government to local governments for general or specific uses; as well as the right to borrow.

Building financial decentralization with an efficient scientific approach to providing goods and services and pumping large amounts of investments in light of financial decentralization requires capacity building, development plans, improving financial management systems for performance at the level of regions and governorates, and applying transparency and financial accountability in the budgeting process at all stages.

Fiscal decentralization requires the availability of an effective administrative apparatus in order to be able to put in place a legal framework to enable local councils to increase their efficiency and establish rules of transparency and accountability in managing community resources.

The provincial council exercises the authority to formulate general policies for the development of the province in coordination with other relevant ministries, taking into account the exclusive competencies of the federal government. The practical reality confirms the existence of overlap in legislative or executive competencies between the federal government and provincial councils or in their actual and realistic exercise.

The provincial council prepares the annual budget for operation and maintenance and submits it to the Federal Ministry of Finance. The provincial council approves the draft budget for development and reconstruction projects prepared by the governor and submits it to the Ministry of Planning to be included in the general federal budget, taking into account constitutional standards.

### **Recommendations**

1. In order to implement fiscal decentralization in a sound and beneficial manner for the state, achieve a fair and equitable distribution of financial wealth, and prevent vertical and horizontal imbalances in it, fiscal policy reform in general, and reform of spending, tax, fees, borrowing, and investment policies in particular.

2. We propose the enactment of the law of the Federation Council in implementation of Article 65 of the Iraqi constitution and that its oversight role be effective, especially since it will include representatives from the regions and governorates; that is, that the texts of its law be formulated to ensure that it performs effective oversight that does not detract from the independence of the provincial councils at the same time. This guarantees the guarantee of public interests when formulating the general policy of the state.

3. In application of Article (106) of the Iraqi Constitution, the necessity of enacting a law (the General Authority for Monitoring the Allocation of Federal Revenues) because of this authority's oversight role in the field of distributing grants, aid, and international loans; verifying the optimal use and sharing of federal financial resources; and ensuring transparency and fairness when allocating funds to regional governments or governorates that are not organized in a region.

4. Provincial councils must prepare competent staff to manage and establish the rules of transparency and accountability for the collection and spending of community resources within the governorates that have the ability to implement the decentralization system after it was found that the decentralized system or method of managing community affairs has become one and irreplaceable path, especially with the increase in population.

5. The importance of finding decentralized funding outlets for the Kurdistan region and the provincial councils, districts, and sub-districts, by encouraging investments in them

6. The federal government should help local governments abide by legal and constitutional provisions that prevent abuse of public funds and the spread of financial and administrative corruption. Programs should be developed to assist local governments in meeting objectively achievable financial performance standards to provide revenues, provide services, and develop local investments.

7. We should start reforming the local system with a clear definition of the different competencies at all administrative and financial levels. This is in addition to the need for homogeneity and integration between these competencies. This is in addition to the fact that the implementation of decentralization must be linked to the presence of a strong state, and there must be homogeneity and partnership between the central government and local

authorities at the governorate level. in managing the affairs of the state and achieving its interests.

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