

The legal regulations Of The mutual control between the Provincial Council and Governor

BY

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Abstract

There are two types of control over local authorities represented by the Provincial Council and Governorate. The first one is the control of the central authority represented by legislative, administrative and judicial control and control of independent bodies. The other type includes mutual control among local bodies specifically the Provincial Council and Governorate which enables each authority to monitor the other authority's work.

The means of mutual control between the Provincial Council and Governor which is enacted by the Act of governorates not organized in a region and the Provincial Council's bylaws resembles largely means of mutual control between the legislative and executive authority that enacted by the bylaw of Iraqi Council of Representatives, with a relative divergence for both in the frame and effectiveness.

Provincial Council is the legislative and regulatory authority that has the right to issue domestic legislation to allow it to manage its affairs in accordance with the principle of administrative decentralization, without violating the constitution and federal laws that fall within the exclusive powers of the federal authorities as stipulated by Article (2/First) of the applicable Act of Governorates not Organized in a Region. As to the governor who is elected by the Provincial Council is deemed the highest executive official in a governorate, and s/he is of a rank of deputy minister regarding rights and employment service as stipulated in the applicable Iraqi Constitution Article (122/Third) and the Act of Governorates not Organized in a Region, in force in Article (24).

The mutual control between a Provincial Council and Governor has been stated by the legislator in different texts, of unspecified nature of control and without

specifying control means used by each party. This led to resorting to bylaws of Provincial Councils to fill the gap and address legislative insufficiency. However, these regulations have raised the problem of lack of being consolidated in one bylaw which caused a problem of difference among these regulations in determining regulatory means and systems, thus we call on the legislator to amend the Act of Governorates no Organized in a Region, in the form that the supreme coordinating commission takes the initiative to prepare and circulate this system among Provincial Councils, and to grant such Councils the right to add some provisions relating to the nature of each governorate to this system on condition that such provisions do not interfere with the unified bylaw.

The mutual control between the Governorate and Governor discloses the imbalance between parties of control. The Provincial Council has had many means towards the Governor including questioning, interrogation and investigation, and raise a general issue for discussion in addition to other indirect procedures, while the governor has only a means of objection on decisions made by the Council, and a means of requesting to resolve the Provincial Council which are considered as indirect means. The Supreme Federal Court has the right to decide on the objection made by the governor on a decision made by the Provincial Council, and a request to resolve the Council should be submitted to the House of Representatives which should gain an absolute majority of its members.

But these two mechanisms contradict the Constitution that determines jurisdiction of the Supreme Federal Court and jurisdiction of the House of Representatives exclusively. Hence we recommend the administrative judiciary court is to be responsible for deciding on an objection made by the governor on Provincial Council's decision which is in line with the Constitution. Also, we recommend to a request of resolving the Provincial Council is to be submitted to the Council of Ministers, not to the House of Representatives, as it is consistent with the administrative decentralization.

The effect of mutual control leads to the dismissal of the governor or dissolution of the Provincial Council. The dismissal is conducted when the exclusive reasons stipulated by law are available such as dishonesty, abuse of office, causing the waste of public fund, the loss of one of the requirements of membership and intentional negligence.

As to the dissolution of the Provincial Council, it is accomplished through an application submitted to the House of Representatives based on the exclusive reasons stipulated by the law such as gross breach of the tasks entrusted to him, violation of constitution and laws and loss of two thirds of representatives to their membership's requirements.