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Constitutional Protection of Future Natural Resources under the Iraqi Constitution Of 2005

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Abstract

Most constitutions of the world's countries are keen to regulate the issue of protecting natural resources at the core of the constitutional document. Therefore, these constitutions are eager to provide constitutional protection for these resources, whether they exist or may exist in the future. Consequently, we discussed the constitutional protection of future natural resources under the Iraqi Constitution of 2005 in our research. This research is vital because the Iraqi Constitution stipulates the regulation of natural resources and focuses on the oil and gas resources, as they are the most prominent among these resources and are considered a significant source of revenues in the state's general budget. The study focuses on the fact that the process of sharing natural resources, especially future ones, was not clearly stated in the Constitution, as the texts it contained were marred by ambiguity and inconsistency due to ambiguous wording and the failure to legislate a law for these resources that clarifies the details of the constitutional texts. Hence, disputes arise between the federal government and the regions and governorates—not organized by region on future natural resources. The research was divided into two requirements according to a scientific plan that adopted the scientific sequence in studying the research. In the first requirement, we addressed the constitutional framework for the future natural resources in Iraq in two sections. The first is an explanation of the concept of natural resources. The second deals with the distinction between constitutional protection and criminal protection as an entry point with which we pave the way for entering into the study. The subject of the study. The second requirement deals with the federal government's authority over future natural resources, as per the provisions of the Iraqi Constitution of 2005, in two sections. The first section dealt with the constitutional organization of the relationship between the federal government and the region's governments and governorates regarding future natural resources. The second section was devoted to constitutional principles and their role in protecting future natural resources. Then, we ended with a conclusion that included the most important results and proposals drawn from the research.

Keywords Constitutional document, constitutional protection, natural resources.

INTRODUCTION

The constitutions of the countries of the world regulate the sharing of natural wealth and the protection of this wealth at the heart of the constitutional document, as this wealth is among the essential foundations on which the population

of countries depends to achieve economic well-being and the strength of the state depends on the natural wealth it possesses. Therefore, constitutions work to provide constitutional protection for this wealth, whether they exist or

may exist in the future. Consequently, we discussed the constitutional protection of future natural resources under the Iraqi Constitution of 2005 in our research.

This research is vital because the Iraqi Constitution stipulates the regulation of natural resources and focuses on the oil and gas resources, as they are the most prominent among these resources and are considered a significant source of revenues in the state's general budget. How did the Constitution organize the issue of managing natural resources and sharing wealth, especially future natural resources? What is the federal government's authority over these natural resources, and has the Constitution provided constitutional protection for them to ensure the state's sovereignty over them?

The problem of the research lies in the fact that the process of sharing natural resources, especially future ones, was not clearly stated in the Constitution, as the texts included in the Constitution were marred by ambiguity and contradiction due to the ambiguous wording by the constitutional legislator and the failure to legislate a law for these resources that clarifies the details of the constitutional texts. Hence, disputes arose between The federal government and the regions and governorates that are not organized into an area, especially on the issue of future natural resources.

We have adopted the descriptive analytical approach by analyzing constitutional texts and describing legal phenomena in preparation for explaining the constitutional protection of these texts. The research was divided into two requirements according to a scientific plan that adopted the scientific sequence in studying the research. In the first requirement, two sections addressed the constitutional framework for future natural resources in Iraq. The first is a statement of the constitutional concept of natural resources. The second deals with the distinction between constitutional protection and criminal protection as an entry point with which we pave the way for entering into the study. The subject of the study. The second requirement dealt with the federal government's authority over future natural resources by the provisions of the Iraqi

Constitution of 2005 in two branches. The first section dealt with the constitutional organization of the relationship between the federal government and the region's governments and governorates over future natural resources. The second section was devoted to constitutional principles and their role in protecting wealth. Future nature, then we ended with a conclusion that included the most important results and proposals drawn from the research.

The first requirement

The theoretical constitutional framework for future natural resources in Iraq

The process of sharing natural resources between the federal government and the regions' governments and governorates that were not organized into a region took place according to the principles stipulated in the Iraqi Constitution of 2005. However, it overlooked some critical issues related to the process of sharing and distributing these resources, especially future natural resources, and it dealt with them with some brevity, ambiguity, and lack of clarity in drafting the constitutional text by Articles (111, 112, 114, and 115). Hence, disputes arise over the sharing of future natural resources between the federal government and the governments of the regions and governorates. Therefore, it is necessary to clarify the concept of natural resources, distinguish constitutional protection from criminal protection of natural resources as an introduction to the study, and lay the foundations on which we rely in this research in the following two sections.

First branch

Constitutional concept of natural resources

Natural resources are one of the foundations on which the population of any country in the world depends because of the importance they represent for the continuation of human life and affect the standard of living of the population of that country. It is one of the rights guaranteed by the International Covenant on Economic, Social, and Cultural Rights, as it represents a guarantee on which the strength of the state depends. This wealth provides most of the needs and requirements for living, and a decent life is offered

to individuals.

Natural wealth in countries is divided into two main types: natural and unnatural (1).

Natural wealth has been defined as (all material things that have economic value and humans have no direct involvement in creating them, such as the natural stock of minerals and therefore enter into the formation of the earth, as well as vegetation and animals that live on the surface of the planet and may be found in the seas or the atmosphere) (2).

Natural resources are strategic reserves of a permanent and continuous nature in all countries. The principle of Sovereignty over natural resources and its connection to the state's freedom to determine the optimal policies for exploiting them and the extent of the state's ability to control its wealth constitutes the essential foundations stipulated in the constitutions of the world's countries. Therefore, these constitutions, especially in developing countries, paid great attention to imposing control over their natural wealth based on the principle of the state's ability to control its resources and natural wealth. This concept emerged clearly after the issuance of United Nations General Assembly Resolution No. 1803 of 1962, in which reference was made to the right of peoples to permanent Sovereignty over their natural resources to achieve development and the well-being of their people within the state in question, as this resolution is the legal basis for subsequent decisions that enable the state to Sovereignty and control over its natural resources. The right to development is that Sovereignty over wealth and natural resources is part of the human right to development, which is linked to the right of people to self-determination (3).

From the above, it is clear that the concept of natural resources is divided into two types: stored natural resources, such as oil and other minerals, and apparent natural resources, such as forests, water, and others.

Iraq possesses natural resources such as oil, gas, and other minerals, and it also possesses apparent natural resources such as rivers and other natural resources. The Iraqi Constitution of 2005 referred in Articles (111, 112, 113, and 114) to some of this

wealth, as the effective Iraqi Constitution affirmed that oil and gas belong to the Iraqi people in all regions and governorates (4) and made the management of oil and gas extracted from The current fields are a joint mission between the central government and the governments of the producing regions and governorates, provided that their imports are distributed equitably based on population distribution throughout Iraq, with a specific share for a limited period allocated to the affected regions, especially those that were unjustly deprived of them by the previous regime, to achieve balanced development of the areas. Various matters in the country provided that this is regulated by law (5). This text is criticized as needing to be more precise and tainted with ambiguity because it limits joint management to current oil and gas rights, leaving other natural resources and how to manage them, which are many. On the one hand, and the other hand, what about the fields that will be discovered later? Is their management up to the federal government alone, or will it be? Its ruling is the same as the current fields because proving something does not negate everything else. This is a deficiency that the constitutional legislator must avoid, mainly since the text referred to its regulation by law, and because of this wording, this led to a difference in the interpretation of the text, which was reflected in the issuance of an oil and gas law, with our reservations about this naming of the law, which could be titled the Natural Resources Law to include all The wealth present in the region and the governorates is not organized into an area, especially since the Iraqi land is rich in other natural resources in its various parts.

Also, Article (112/Second) of the Constitution is also a reference to the partnership of the federal government and the governments of the regions and governorates that produce oil and gas in formulating the strategic policies necessary to develop this wealth by market principles and encouraging investment, and this needs detailing, as the issue of contracts and exports is considered a sovereign issue. The state does not enter into the issue of management of the fields since Article (111) of the Constitution stipulates that oil and gas are the property of the Iraqi people in all regions

and governorates. Therefore, the issue of contracting with other parties to export this wealth and marketing it must be included in the budget of the federal state, as it is responsible, according to the text—constitutional law on this matter.

Second section

Distinguish between constitutional protection and criminal protection.

The rule of law prevails in contemporary international society despite the differences between countries in defining its content. This principle requires the commitment of all members of society and state agencies to the laws issued by the competent authority as a basis for the legitimacy of their actions (1). This principle guarantees respect for the rights and freedoms of individuals in the face of public authority because they are governed by law, far from the whims of the authority or its control.

The principle of legality in law is also meant to be those principles that guarantee respect for human rights and establish a balance between the public interest and which the state must adhere to when exercising its functions (2). The content of legitimacy varies depending on its source. If the source is the Constitution, we face a constitutional legitimacy that the state authorities are obligated to respect. If the source of legitimacy is the law, we face a legal legitimacy that those addressing it are strictly obligated to respect.

As an introduction to our study, we must understand constitutional protection, criminal protection, and how the effective Iraqi Constitution deals with the protection of future natural resources in the event of a violation of the provisions of the Constitution regulating them by one of the authorities, whether the federal authorities or the region and governorates.

Criminal protection is the rule that criminal law aims to secure and reconcile two conflicting rights, namely, the rights of individuals and the rights of the group. It is known that if an individual commits an act that the Penal Code considers a crime, corresponding punitive measures must be taken. The penalty prescribed for it must be implemented to guarantee the group's rights. Also, the accused

must guarantee his right when charged to defend himself from the crime, prove his innocence, and achieve his interest, and thus not deserve punishment (3). Accordingly, criminal protection has a specific concept: criminalization is based primarily on protecting interests that the legislator has considered to be among the interests worthy of protection, so he defines them by stipulating them in the law and estimating the degree of protection they deserve. The legal text revolves around the interest it protects in its existence, absence, and modification; thus, the interest loses its worthiness. Protection when the reason for criminalization is absent, and the legal text loses its justification accordingly. Therefore, the state must protect society's interests and ensure stability through legal rules, whether constitutional or regulations contained in ordinary legislation. Regulating the issue of protecting natural resources in the state is considered one of the most critical issues for which the state must guarantee protection, whether this protection is constitutional or criminal, to ensure the principles specified by the Constitution, as well as preserving the interests of individuals in society and achieving justice and equality among its members to ensure the stability of that country. Based on the above, there must be a balance between the requirements of the state's right to punish and prevent crimes to protect recognized interests (4).

Criminal protection has types that differ depending on the protected interest. If it were viewed in terms of its relationship in the abstract to the exclusion of others and his jurisdiction over it, it would be a private interest, and its counterpart is a public interest if it concerns society. The interest is also divided, based on location, into a material interest when it relates to a person, his body, and his money, and a moral interest if it relates to A person regarding his honor, reputation, and other ethical matters (5).

As for constitutional protection, the Constitution is the best place to codify the constitutional protection of natural resources in general and future ones in particular. Therefore, the constitutional legislator raises the text to the ranks of the critical constitutional principles included in any constitution so that the ordinary legislator

cannot violate those principles.

Future natural resources are among the topics for which the Constitution stipulates the importance of providing constitutional protection because of the great importance they represent for the future and sovereignty of this or that state.

The constitutional protection of natural resources in constitutions is that the Constitution includes essential principles that, in turn, constitute guarantees in the protection of the state's natural resources. These principles are represented in the principle of separation of powers as a first guarantee for the constitutional protection of natural resources, as well as the doctrine of the supremacy of the Constitution, which makes the rules of the Constitution transcend. All laws are in the pyramid of the state's legal system. The other principle is equality in distributing this wealth's revenues (6), as we will explain later in this research.

In addition to these principles, there is a body that adjudicates the dispute in the event of a dispute over the application of these principles to protect the constitutional rules, in addition to the legal texts regulating the subject, which is represented by the constitutional judiciary, as stipulated by the Iraqi constitutional legislator in stipulating the Federal Supreme Court and stating its powers in the Constitution (7). Notably, the effective Iraqi Constitution came with special and independent provisions regarding natural resources such as oil and gas in Articles (111, 112, 113, 114).

The second requirement

The federal government's authority over future natural resources is by the provisions of the Iraqi Constitution.

After we explained in the first requirement the constitutional framework for future natural resources in Iraq in terms of explaining the concept of these resources and the distinction between constitutional protection and criminal protection in the field of textual protection of future natural resources as an entry point for this study, so we will show in this requirement the constitutional organization of the authority of the federal government in managing and distributing wealth.

Natural resources in two branches. In the first section, we discuss the constitutional organization of the relationship between the federal government and the regions' governments and governorates in managing and distributing natural resources. As for the second section, we discuss the constitutional principles and their impact on this protection.

First branch

The constitutional regulation of the relationship between the federal government and the regions and governorates in the management and distribution of future natural resources

The process of sharing and managing natural resources in Iraq occurred between the federal government and the governments of the regions and governorates, which were not organized into an area according to the principles stipulated in the Iraqi Constitution of 2005. Still, it left out important issues that should have been specified with some clarity, as the Constitution addressed these issues in brief texts tinged with ambiguity. Leaving the issue of regulating its details to legislation issued later, and from here arise disputes over the authority of the federal government over natural resources, especially about the oil and gas resources, as in the contracts concluded by the Kurdistan Regional Government of Iraq with foreign investment companies, and from here the study in this research came. To determine the federal government's authority over Iraq's future natural resources.

As Articles (111, 112, 114, and 115) referred to constitutional texts regulating the authority of the federal government over natural resources, Article (111) of the Constitution indicated that oil and gas are the property of all ethnic people and that the state, represented by the federal government, is the one who manages and distributes these. Wealth belongs to members of the people, as this article stipulates the general principle that wealth is the property of the people, and what is meant by the right of ownership here is not the right to private ownership as in private Law, which gives the owner the freedom to exploit, use and dispose of, but rather state ownership by the provisions of Articles (47 and 1048) of the Civil Code. As

amended, Iraqi No. 40 of 1951 means that the owner must dispose of his property in all types of transactions permissible under Law (1).

Consequently, this article made natural resources available to the state to meet the needs of citizens in all parts of the country and allocate its revenues to members of the people, and the ownership of the people here is common property for all its members without exception.

Article (112/First) of the effective Iraqi Constitution gave the federal government the right to manage the oil and gas extracted from the current fields in cooperation with the governments of the producing regions and governorates, as well as to distribute the revenues of these two resources to the provinces and governorates in proportion to the population distribution in Iraq, and to determine a share for a specific period. For the affected regions that were deprived of it, provided that this is regulated by law, the central federal government is the one that manages the oil and gas extracted from the current fields in cooperation with the governments of the regions and governorates. The second paragraph of the same article refers to the collaboration between the federal government and the governments of the regions and governorates in a situation and the formulation of strategic policies to develop the oil and gas sector to benefit the Iraqi people.

Through this text, we find that the Constitution distinguished between current fields and future fields of oil wealth on the one hand, and on the other hand, the powers of the authorities, whether federal or regional and governorate, in the matter of management and distribution, were not precisely and clearly defined, leaving that to a law issued later due to weakness—the constitutional provisions of this article and their need for more clarity. Accordingly, the constitutional text is marred by ambiguity due to the ambiguous wording, which is the wording that the legislator sets and its meaning or what the legislator intended cannot be easily known, or it is a matter of controversy due to the failure to specify the will of the legislator (2). This, in turn, leads to legal problems when applying the constitutional text and then not knowing the boundaries through

which the features of the legal framework for managing and sharing natural resources are drawn between the federal government and the governments of the regions and governorates that are not organized in values. The reference to regulating current fields but not future ones raises many disputes about the extent to which they are subject to the exact constitutional text about current rights or whether the regions and governorates are unique in managing future fields based on their not being included within the exclusive powers of the federal government referred to in Article (110) of the Constitution, nor within the powers. The joint venture is referred to in Article (114) of the effective Iraqi Constitution (Eid). Especially since Article (115) of the Constitution stipulates: "Everything that is not stipulated in the exclusive powers of the federal authorities shall be within the jurisdiction of the regions and governorates not organized into a region, and other powers shared between the federal government and the regions shall have priority over the law of the regions and governorates not organized into a region in the event of a dispute." between them).

Also, as we previously explained, Article (112) itself refers only to oil and gas wealth without referring to other natural wealth. It would have been more appropriate for the constitutional legislator to refer to all-natural wealth.

From the above, we see that the Iraqi constitutional legislator could have been more successful in regulating the relationship between the federal government and the regions' governments and governorates not organized in an area on the subject of future natural resources. The constitutional texts related to this matter were marred by ambiguity due to the flexible wording and shortcomings, which made them open to interpretation due to the contradiction of the texts. In this regard, the failure to legislate a natural resources law has made the constitutional texts a source of controversy and disputes between the levels of authorities in Iraq. Therefore, the constitutional legislator must amend what the Constitution has drawn up in a way consistent with the federal federal system in Iraq and the powers granted to the federal government. The

governments of regions and governorates are not organized into an area.

Second section

Constitutional principles and their role in protecting future natural resources in the Iraqi Constitution

We have previously shown that the Iraqi Constitution of 2005 approved constitutional principles to protect rights in general, including implicitly protecting future natural resources as a right of the state and the people to preserve their natural resources. Among these constitutional principles are:

- The principle of separation of powers.
- The principle of the supremacy of the Constitution.
- The principle of equality.

These constitutional principles are essential in protecting future natural wealth because they are the constitutional guarantee through which the state can preserve its natural wealth and thus preserve its unity and sovereignty.

The first principle is the principle of separation of powers, which the Iraqi Constitution of 2005 adopted explicitly and clearly in Article (47), which stipulates: "The federal authorities shall consist of the legislative, executive, and judicial authorities, exercising their powers and tasks on the basis of the principle of separation of powers." This principle means the Distribution of state functions into separate and independent bodies. Each of these authorities is independent of the other in performing its function, as there are three authorities within the state: the legislative authority, the executive authority, and the judicial authority (1). The primary meaning of this principle is to avoid the concentration of powers in the hands of one person, group of people, or one body, whether legislative, executive, or judicial. It also provides the three authorities with the possibility of exercising powers by any of those authorities, whether by exercising part of those powers or By conducting a review of this practice, according to the intention of the framers of the Constitution (2). This principle is considered an

essential constitutional guarantee to protect any right mentioned in the Constitutional Document, and based on this principle, no authority can exceed the limits of its constitutional powers stipulated in the Constitutional Document, which constitutes a guarantee for the protection of future natural resources in Iraq, as it prevents the abuse of powers from During the separation of powers and clarifying the limits of each of these powers, if one of these powers exceeds its actions, its actions are invalid under the Constitution through the authority that decides on disputes that occur between the authorities, and in Iraq, the Federal Supreme Court, according to the Iraqi Constitution of 2005, is the competent authority to decide—disputes between authorities (3).

Based on this, when the Iraqi Kurdistan Regional Government concluded contracts in the field of oil investment without the approval of the federal government, which led to a conflict between the federal government and the regional government, and the Iraqi Kurdistan Regional Government concluded these contracts with oil companies based on the Kurdistan Region's Oil and Gas Law No. 22) of 2007, which stipulates (...the future field: the oil field that had no commercial production before 8/15/2005 and any oil fields discovered or that may be found as a result of subsequent exploratory operations) (4).

It is noted that the oil above and gas law for the Kurdistan region included a reference, neither remotely nor remotely, to the issue of sharing revenues with the federal government, nor even in the joint management of the fields, but instead restricted it to the region alone. Hence, based on the principle of separation of powers, the Federal Supreme Court decided to resolve the issue of this conflict within the framework of protecting natural resources, as the Federal Supreme Court issued its decision in Case No. 59/Federal/2012 and its consolidated No. 110/Federal/2019 on 2/15/2022, a decision not to The constitutionality of the Oil and Gas Law of the Kurdistan Regional Government of Iraq No. 22 of 2007 and its abolition based on the provisions of Articles (110, 111, 112, 115, 121, 130) of the Constitution of the Republic of Iraq for the year 2005 and obligating the regional government to hand over the entire oil production

from the oil fields in the region to the government Federal (sermon). Accordingly, the principle of separation of powers constituted a guarantee through the Federal Supreme Court's response to settle the dispute on the one hand, as well as defining the powers of the authorities and not overstepping them in the constitutional document on the other hand.

The other principle is the principle of the supremacy of the Constitution, which constitutes a guarantee for the protection of the legal rules contained in the Constitution, and among these rules are those that stipulate future natural resources. The principle of the supremacy of the Constitution means the supremacy of constitutional legal rules over other legal regulations applied in the state. This means that any law issued by the state must not violate the Constitution, and there is no difference whether this Constitution is written or customary (6). That is, the Constitution is the supreme law of the state and is superior to other laws, whether this superiority is substantive or formal.

The effective Iraqi constitution referred to this principle in Article (13), which stipulated: (First: This constitution is the supreme law in Iraq and shall be binding in all parts of it, without exception. Second, It is not permissible to enact a law that conflicts with this constitution, and every text shall be considered invalid. It responds to the constitutions of the regions or any other legal text that conflicts with it. As far as the matter is concerned in the subject of our study regarding the constitutional protection of future natural resources, the supremacy of the constitution constitutes an absolute guarantee for the invalidity of any text that contradicts the text of the constitution about these resources.

The third principle, which constitutes constitutional protection for natural resources in general and future ones in particular, is the principle of equality. This principle is based on considering all citizens to the same degree without discrimination based on gender, color, creed, economic conditions, or social status. The Iraqi Constitution in force explicitly stipulates this principle in Article 14: "Iraqis are equal before the

law without discrimination based on gender, race, nationality, origin, color, religion, sect, belief, opinion, or economic or social status." On this basis, this principle constitutes a constitutional protection of equality in rights and natural wealth in the state, including future natural wealth and non-discrimination between members of the people about the distribution of this wealth.

CONCLUSIONS

After we completed the research study (constitutional protection of future natural resources under the Constitution of the Republic of Iraq for the year 2005) and reached essential results and recommendations that contribute to the development of the legislative system related to this, we found it appropriate to highlight the most critical results extracted from the aspects of the research, in addition to that a proposal The most important recommendations related to addressing the defect that may occur in some texts.

RESULTS

1—The Iraqi Constitution of 2005, in force, did not address clearly and explicitly the issue of future natural resources, leaving a blank that was the subject of controversy and conflict between the central federal government, the governments of the region, and the governorates not organized into a region.

2—The constitutional texts regulating natural resources in the 2005 Constitution of the Republic of Iraq were plagued by ambiguity and conflict due to their ambiguous wording.

3—The Iraqi Constitution of 2005, which is in force on the subject of future natural resources, focused on the oil and gas wealth, leaving the rest of the natural resources, despite their importance, without mentioning them, and this is considered a deficiency in the Constitution.

4—The Constitution did not include punitive texts in the event that one of the authorities at various levels exceeds its constitutional powers, including those related to the issue of natural resources. It would have been better for it to organize punitive texts, especially on the issue of natural resources, to clearly guarantee the constitutional protection of these texts.

5- A natural resources law has yet to be legislated under the Constitution despite this being stipulated solidly in the Constitution.

6—The Iraqi Constitution of 2005 was not devoid of constitutional principles that guarantee the protection of rights, including the right of the people to the fair distribution of natural resources. These principles include the principle of separation of powers, the principle of the supremacy of the Constitution, and the principle of equality.

Recommendations

1- We recommend that the legislator remove the ambiguity and contradiction by amending the constitutional texts regulating the subject of natural resources found in Articles (111, 112, 114, 115) and formulating them explicitly and clearly that define the powers to manage and share natural resources, whether those of the federal government or the regions and governorates.

2- Strengthening the role of the authority of the central federal government in the issue of wealth management, the future nature of the fact that this wealth, according to the Constitution, belongs to all the people, and that the federal government is the one who can protect this wealth, and that the federal government represents the sovereignty of the state.

3- Placing punitive texts at the heart of the constitutional document guarantees the constitutional protection of the texts if one of the authorities exceeds its constitutional powers, especially in the issue of natural resources.

4- Issuing the Natural Resources Law that regulates the issue of natural resources throughout Iraq and how to manage and share these resources in Iraq.

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