

## THE PRINCIPLE OF FINANCIAL FREEDOM OF MUNICIPAL COMMUNITIES ON THE BASIS OF CONSTITUTION OF IRAQ

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**Abstract:** This article examines the principle of financial independence of local governments that are able to form their budgets within the framework of the current Iraqi constitution. At the level of municipal legislation, issues of decentralization of public finances are also considered in order to assess and implement the real budget of local government by creating new financial mechanisms while providing a full effective service of public services to the local population. At the level of municipal legislation, the possibilities of decentralizing the budget of local governments are also being considered through the creation of new financial mechanisms to provide more efficient public service to the local population.

**Key words:** financial independence, municipal legislation, municipal legislation.

### 1 Introduction

Financial resources, represented in the sources of financing (due to the availability of their own income and significant local taxation) are the most important means necessary for the local government in Iraq to exercise their powers.

The Iraq's Constitution of 2005 captures decentralization as a fundamental principle of the administrative organization, providing the local government with the important place in the economic and social development in the course of the integration with the state, especially in significant political and economic changes, determined by the international environment, which is aimed at strengthening freedom of the given decentralized units and the development of their regional and international role.

In order to exercise its administrative and financial functions, the municipality and the province should possess a certain degree of financial freedom and greater freedom in the preparation and control of their budget, the determination of its income and expenses, and also a possibility to carry out various financial transactions that they consider relevant to local needs, since the provision of financial independence to local government makes it possible to be a more reliable subject for private organizations and has a significant positive influence on local people's level of trust.

### 2 Methods

The methodological basis of the research is constituted by the general scientific dialectic methods of cognition, scientific methods of analysis and scientific forecasting, synthesis and deduction, systemic methods, as well as special methods of studying legal phenomena - historical-legal, comparative-legal, structural-functional, etc (Shariat & Nonahal Nahr, 2016).

### 3 Results And Discussion

Iraqi legislation has not explained the concept of financial independence of local government from the municipality, but only mentioned the expression "provision of financial freedom" in the first article of the municipal legislation (Federal Law of Iraq of November 22, 1964), the same for province, in the article I (Federal Law of Iraq of March 19, 2008), of the law on provinces. Thus, the legislation acknowledged the financial freedom of local government without clarifying its concept and nature. Such ambiguity in the text of the legislation leaves local government unaware of the practical aspects of this notion and deprives them of their existing rights due to the complexity of its concept.

Although the legislation of Iraq, as well as comparative legislation, does not provide the clear definition of the principle of financial freedom of the local government, just expressing it as provision of financial independence, we notice a deliberate desire

to create such ambiguity, with the aim to support state power at the local level and preserve its monopoly on the most important local resources, making them unknown even to those who have the right to them (local government).

Even if we understand and realize that this is mainly due to the political and economic choice of the state, which, as a rule, requires the universality of the legislative text, we do not downplay the role of local governments, which are part of the state and also participate in the formation of its state policy. However, the fact, that the legislation did not provide the clear concept of the mechanism, causes the loss of legal guarantees even at the level of the constitutional text. However, this did not prevent the legal doctrine from giving some characteristics and elements suggesting financial freedom for local government (Albadri, 2007), including:

- provision with sufficient own financial resources to the local communities
- independent and free determination of their income and expenses by the local communities while drawing up the budget, except the cases, stipulated by legislation;
- the following financial control of local governments and carrying out of every previous control only in exceptional cases;
- the distribution of financial resources is consistent with the responsibility and authority that they have.

This principle is applied to identify and determine the financial situation (the budget of local bodies and the sources of their financing, and also the freedom to receive income).

Probably, one of the most important reforms, which have been accepted by the legislator since 1967, is the is the amendment and creation of the Law on Local Governments (municipalities and provinces). It is aimed at reforming their finances, by developing mechanisms for their development and providing local governments with freedom or relative freedom of access to financial management, thus contributing to the fulfillment of their duties and functions in order to be able to fulfill any new task set by the state on a temporary or permanent basis (Federal Law of Iraq of June 04, 2004).

The municipal law No. 14 of 1967 approved the principle of self-government in all local spheres, especially in economic and financial spheres, but insufficient income did not allow fulfilling these obligations in the best way. Then the Law No. 21 of 2008 provided the municipality with the grant to help correct the negative situation, which arose as a result of Law No. 14, and namely, that every new task set at the level of municipality shall be accompanied by the financial reinforcement.

In this connection, the creation of local bodies possessing financial competencies should be provided with an independent budget prepared jointly with the elected body and approved by various laws of the municipality and the province.

According to various provisions relating to local authorities, since 1967 to 2005, each municipality has a special budget, including a schedule of income and expenses changes (Federal Law of Iraq of March 19, 1974).

This financial document is prepared for the municipality by the Secretary General of the municipality under the leadership of the chairman of the National Assembly, independently and within the time limits established by legislation (Hassan, 2005). As for the province, the head of the province is responsible for this task. The legislation provides freedom in the process of the revision of the municipality's and province's income and expenses, and also helps to maintain the administrative and advisory apparatus, without external influence on income and expenses, with the exception of cases specified in Art. 102 of municipal law No. 14,

which includes the intervention of the governor in the formation of the balance of the municipal budget to account for mandatory costs. At the same time, the legislator is interested in the compliance with the distribution process and limitation of mandatory costs. Local governments have the right to prioritize their income and expenses, as required by public accounting rules.

The legislator through municipal and state law also provided the expenses managers (the chair of National Assembly and the head of the province) the freedom to transfer funds from the source for the intended purpose within the frames of the budget, as far as possible in accordance with Art. 114 of the Law.

Iraqi legislator in the municipal law No.14 of 1967 assigned the responsibility for collecting income (property, budgetary resources ...) to the Secretary General of the municipality. The chairman of the People's Municipal Assembly manages the spending procedure, which allows the legislator to control the financial situation of the municipality and its treasury at any time, provided that this complies with the legal framework regulating the relations of the employee responsible for orders and the state accountant, according to the law on public accounting.

As for the province, in the frames of its financial resources evaluation, the legislator provided the province council with the freedom to review and collect local income, on the condition that it maintains financial balance between income and expenses. It also activated the role of the state treasury in order to cover the needs of the provincial treasury (i.e., the municipality and the province) with a part of the deduction from the budget, but not exceeding 10% of the government revenue, aimed at creating profitable property or preparing existing property that it considers appropriate for each local authority to improve the revenues of these bodies and their assessment, which allowed the legislator to appeal to the direct use method according to the provisions of Art. 11 of Municipal Law and Art. 13 of Province Law.

In accordance with the foregoing, decentralization requires local governments to freely determine the extent to which their domestic financial sources are filled, as well as the amount and rate of the tax rate. Nevertheless, several countries provide this freedom to local governments, and the absence of such freedom is a weakening of local tax policy and the responsibility of local authorities to taxpayers.

The administration of several taxes by central government and their complete transfer to the local governments also complicates the tax collection system. According to the classification of the Organization for Economic Co-operation and Development, the degree of independence and freedom of local governments related to the income is determined by two conditions:

- freedom to determine the tax base;
- Determination of the tax rate (al-Qaisiah, 2014).

Since domestic taxes are the main and most important part of local income budgets, the ability to control this ratio is a necessary and an important indicator of the independence and freedom of governance of local authorities.

Some professors, such as professor Ali Mohsen Jabari, and some other financial specialists consider that financial independence often does not reflect the existence of a budget authority (Jabari, 2010; Jaafar, 2007; al-sultan, 2009).

#### 4 Summary

In our opinion, the legislator has the complete freedom to determine the competence of local authorities in this sphere, an also, according to the constitutional judicial system of Iraq, it must follow certain procedures and control measures in the exercise of jurisdiction and authority in establishing local fees 9.

For the purposes of the foregoing, Federal Supreme Court of the Iraq as a legislator in the process of the local self-government's

ruling rejected some of the arguments contained in the legislator's requests regarding the inapplicability of the principle of administrative freedom, as a result the municipality has the power to reduce local taxes and fees.

Even at the constitutional level the given argument is inadequate, because the local governments in fact do not possess the administrative freedom. At the same time, they cannot be allowed to adopt decisions on changing income from local fees, required to cover other new costs, since local government is not related to the importance of local fees 10.

Although the legislator deals with exceptions to the local tax system, it is entitled to abolish the freedom granted to local authorities in this sphere, which is approved by the constitutional judiciary in Iraq.

#### 5 Conclusion

Thus, the self-government of the local fees is determined by the fact that the local governments are entitled to identify and evaluate local fees, not protected by the Constitution, the more especially this work is the exceptional competence of the legislator, as it was mentioned above (Mardani & Fallah, 2018).

The recognition of the existence of self-government within the framework of the Constitution shall be regulated by two basic principles guaranteed by the Constitution: firstly, equality of fees; secondly: equality before taxes.

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