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The Concept Of Fiscal Decentralization And Policy Management In Federal Countries

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Abstract

States shall ensure that the jurisdiction of the judiciary shall be divided among the different courts the legislator defines the definition according to which the jurisdiction of each jurisdiction is determined and the legislator intervenes to define the type of jurisdiction or type of courts that serve one jurisdiction. This distribution although it had the greatest impact on improving the authority and facilities of the judiciary, but it was at the time as a starting point for legal problems between arbitrators arising from conflict in defining their jurisdiction

El Concepto De Descentralización Fiscal Y Gestión De Políticas En Los Países Federales.

Resumen:

Los Estados se asegurarán de que la jurisdicción del poder judicial se divida entre los diferentes tribunales que el legislador define la definición según la cual se determina la jurisdicción de cada jurisdicción y el legislador interviene para definir el tipo de jurisdicción o tipo de tribunales que sirven a una jurisdicción. Esta distribución, aunque tuvo el mayor impacto en la mejora de la autoridad y las instalaciones del poder judicial, fue en ese momento como un punto de partida para los problemas legales entre los árbitros que surgen del conflicto al definir su jurisdicción.

The case may be rejected by the different judges in the case, which constitutes the image of the dispute negligence or insistence of the arbitrators on the consideration of the case however, these images of conflict are realized whether this conflict is the result of self-serving courts or from different jurisdictions, as is the case in countries that have a judicial system double standards, and it is becoming increasingly difficult for States with exclusive courts or administrative bodies Jurisdiction.

The conflict of jurisdiction, if not avoided, at the beginning of the proceedings has evolved and increased difficulty, as its consequences become more harmful to the principle of security law and the principle of legality, is that the insistence of both courts on the merits of the case will lead to the issuance of judgments are very contradictory and will be implemented on one subject. It is noteworthy that the Iraqi legislator has dealt with the issue of conflict of jurisdiction in the law of pleadings including the contradiction of judicial rulings, but the administrative judiciary has been The first attempt of the legislator Iraq in the second year of the Law of the State Council of the 65th year 1191 The legislator dealt with the state of separation of jurisdiction between administrative and other jurisdictions Cities, and then followed by legislator Iraq Law No. 19 of 2013 which is the fifth amendment to the law The State Consultative Council. Therefore, this topic has received the most important law and legitimacy.

The importance of the subject:

The most important aspect of this study is that it has provided an in-depth and accurate picture of the images of conflict whether the conflict of jurisdiction arises as a result of the consideration of the case or the dispute

Judgments are in accordance with Iraqi and comparative legislation, and this study also provides for the provisions of the judiciary and its role in the provisions of the provisions and principles of separation of jurisdiction in the field of justice and the importance of this subject by clarifying the procedures and rules adopted the basis for the differences between the courts in both cases of conflict of jurisdiction and conflict of court rulings this study also examines the reasons for the conflict of jurisdiction and the legal means In violation of their access.

Topic problem:

The study of this topic is focused on trying to solve solutions to several problems conflict of jurisdiction perhaps the most important of these problems:

1. Does the legislator have a clear vision of cases of conflict of jurisdiction and enforcement of Iraq contradictory in the field of administrative justice?
2. Was the legislator Iraq a good candidate, and it is difficult to prevent the situation from happening cases of conflict of jurisdiction
3. Was the legislator Iraq the best way to limit cases of conflict of jurisdiction in the field of jurisdiction or the field of contradiction of judgments?
4. Has the legislator created Iraq to regulate any effective law or case to deal with conflict issues Jurisdiction or contradiction of judgments?

Research Methodology:

The study of this topic has been based on the method of analysis in the field of organized legal texts.

We also adopted the comparative approach between Iraq and other countries, namely France, Egypt, Lebanon and the Gulf States, because they have a sophisticated law in the field of our research, as well as its adoption of the dual justice system, has been the appropriate example of the emergence of conflict situations jurisdiction in its conventional form and by the ordinary judiciary and the administrative judiciary

In our study, we also decided to resolve the judgments of the French and Egyptian courts. In Iraq, however, we paid attention to examining the judgments of the court of cassation because they were the first to expose them to a dispute Jurisdiction. We also tried to study the administrative judgments related to the subject matter of the study

Search Plan:

The study of the subject of the research has been divided into two sections Jurisdiction, terms, conditions and conditions, as well as the interpretation of the provisions and conditions to be achieved by And the second section is the court of competent jurisdiction to adjudicate disputes Jurisdiction,

as well as dispute resolution procedures and conflict rules contradictory judgments.

The first topic:

Defines the conflict of jurisdiction and contradicts the provisions photos of conflict of jurisdiction are determined in terms of conflict of jurisdiction and conflict. If there is one of these images, you must satisfy the terms of the offer it is the first demand of this subject, and there is a conflict of another kind that stems from conflict Jurisdiction has emerged in the implementation stage and has become a very controversial issue.

First requirement:

Definition of conflict of jurisdiction:

A similar position may be issued in the same case from different jurisdictions clinging to each of them In the case of the case or both of them, which led to a dispute on the definition of the same Jurisdictional jurisdiction, so we divide the conflict of jurisdiction into the type of Lord N:

Conflicting conflict, which itself counted as a threat to the rules of public order and conflict of negation found a kind from denial of justice and we are looking at this type N and the N branch.

First branch:

Photos of conflict of jurisdiction:

First: The conflict occurred in the case of the presence of calls raised in front of two courts for one district, the administrative judiciary or the ordinary judiciary or olden to different judicial authorities and each of them considers it competent to hear the case. The French legislator alone makes the rules of separation the conflict of jurisdiction to decide in favor administration, since it allowed the administration only in case of conflict of jurisdiction to meet the right to request payment. The jurisdiction of the ordinary courts to hear the case and refer it to the courts of administration, where the concerned administration is concerned to inform the Governor who is entitled to payment before the ordinary court of ordinary jurisdiction. If the court rejects the claim of jurisdiction, the governor has the right to challenge this decision is before the court of conflict, but we note that these measures are not raised by job judge of crimes and misdemeanors or military justice. The procedures are to protect the administration from the ordinary judiciary by excluding it from consideration and because the administration requires the administrative judge more than the ordinary judge, which counted on the separation of powers between the authorities adopted by France after the French revolution, and by the legislator Egyptian conflict is the conflict that arises as a result of the insistence of the

different judicial authorities on Case 2 was considered, and the Lebanese legislator did not refer to the conflict.

Second: Conflict of looting: Check the fight against corruption when presented to the administrative judiciary or between the courts of Abedah, the ordinary and administrative courts dealt with one dispute, each of which issued a judgment of no Jurisdiction, that is, both courts give up consideration of the case, and intentionally abandon here The judiciary itself is excluded from the consideration of the dispute before it, whether through a judgment. This was implicitly implied by its judgment and a significant implication of its extrapolation of its associated causes The relationship is not prior to division 3, so we are in this case between one of them is true and the other sinner and from the legislations that defined the conflict of jurisdiction of the legislator, the Egyptian legislator, said that this is the conflict which stems from the fact that the different courts differ from the consideration of the case and the subject matter. The Lebanese legislator also defined it as the result of a decision issued against the validity of one case, the first from the Administrative court and the second from the court of justice 4. The Iraqi legislator lost referred to the conflict of jurisdiction in general, did not know him as he did not evil to images conflict jurisdiction, At the level of the judiciary in Iraq, the Court of Cassation has defined the conflict as a crime A court of the courts considers that it is not competent In general, the perception of conflict of jurisdiction has been possible to circumvent the following cases:

1- Jurisdiction of courts of jurisdiction in the jurisdiction of one jurisdiction

Administration as if there had been a dispute between the French State Council as a court of first instance one court of administrative or administrative court in Egypt a court of first instance and one of the administrative courts or the administrative court and the court the removal of the employee in Iraq or the conflicting courts belonging to the ordinary judiciary.

2. If the conflict of jurisdiction has occurred in one of the administrative courts and in one of the parties the normal judiciary and this picture is the most important example of a conflict situation jurisdiction.

3. Conflict of jurisdiction between one of the administrative or ordinary courts and one of the parties the Egyptian legislator referred to this type of conflict jurisdiction 6.

4. In the case of the Union States, as in Iraq, the legislator mentioned in Article 13 of the Constitution the 2005 Constitution of the Republic of Iraq prevented conflicts of jurisdiction:

(A) The dispute of jurisdiction between the federal courts, the judiciary, and non-regular governorates are less.

(B) Dispute the dispute between the competent authorities, whether the judiciary or the non- (Regular). To my people, this constitutional provision is similar to the failure to put an end to what they called compassion the author and author of the study guide for the law, for several reasons, including:

1 The first paragraph of the above constitutional text referred to the state of conflict of jurisdiction between the parties. The federal judiciary is the judge of the matter, which is likely to fall, but what is discussed about this the text is the assumption that the conflict of jurisdiction between the federal courts and the judiciary in the non-regular governorates at least. The drafters of the constitution have lost the jurisdiction of the federal judiciary to the federal judiciary and six independent of it as in the case.

The second paragraph of the same article referred to the conflict of jurisdiction between the parties to the case. It is also possible to fall into conflict of jurisdiction for more than a short time, the text of the chapter on conflict of jurisdiction between the authorities in the non-regular governorates in the least is not sufficient to ensure that all authorities in the provinces In the case of irregular cases. But some have responded to this, the text gives another meaning that is meaningless

The conflict of jurisdiction is intended to be between the judiciary and the judiciary in the governorates, but this understanding of the constitutional text made the first and second paragraphs of the text constitutional one and the same meaning is the conflict of jurisdiction between the federal courts The judiciary has no jurisdiction over this matter, so this interpretation cannot be accepted.

On the other hand, there is no doubt that the images of conflict of jurisdiction do not appear in all countries Adopts a dual justice system, where there is an administrative district specializing in disputes. The administration with individuals as a general law judge, but this jurisdiction to o absolutely but select In accordance with Article 9, and other management disputes with individuals and not applicable thereto It is outside the jurisdiction of the Administrative Court and falls within the competence of the ordinary judiciary

The limits set the scope of jurisdiction for the different jurisdictions, which enabled with him imagine the conflict of jurisdiction in the face of the ordinary judiciary and administrative 3. It is also necessary to refer to the relationship between conflict of jurisdiction and the principle of project,

without a solution the conflict of jurisdiction is that the application of the principle of the project is inoperable. In the case of conflict of jurisdiction, the individual is more sensitive than the one who insists on continuing the consideration of the case.

This is the case of the judges who have failed to follow the procedure followed by each of them. Likewise, in the case of conflict of jurisdiction, the other negation leads to the denial of justice in a manner that prevents it. The principle of the project is realized, as is the importance of separating jurisdiction in the case of courts. The exclusion of the country's judicial system and the impact that these courts have on rights and freedom if it insists on considering the case. In the case of denial of justice, a denial is made the citizen is entitled to one of his constitutional rights, which is the right to claim and to be entitled to damage arising from failure The presence of a judicial body that hears and claims its claim.

In view of the foregoing, some States have developed several laws to avoid conflicts of jurisdiction but the effectiveness of this approach was uneven, and in any case it helped reduce cases Conflict of jurisdiction, but did not prevent it absolutely.

In France, the legislator granted the decree of July 25, 1160 to the courts of administrative justice to refer the case on its own to the court of dispute to determine the competent court to consider the case. The first: the assignment of force and if a judgment is issued against the jurisdiction of the case from - One of the administrative or ordinary judicial bodies and then filed suit before the other judicial authority, then the latter considers that it has no jurisdiction over the matter. The case shall be referred to the competent court to determine the court competent to hear the case.

Second: the passport assignment this case is limited to the highest courts of the administrative judiciary. The Court of Cassation and the Council of State, if any of the tribunals deems fit if a lawsuit is brought before it, there is a problem of jurisdiction, then it is permissible to review the case and refer the matter to the court of dispute to determine the court competent to hear the case.

In Egypt, the legislator referred to the referral system between the courts of different jurisdictions In the civil and commercial procedure act, the court is required to decide that it is not competent to refer the case shall be referred to the competent court, and this case shall be binding on the case It shall not be subject to the jurisdiction of the court, some have questioned the applicability of this to the conflict of jurisdiction within the judicial framework administrative aspect, a part of the jurisprudence that article

110 of the Egyptian Code of Procedure is not binding administrative bodies, and that this latter has enabled him to apply them to the question of settlement, he decided Dr. George Schiff) that it is not conceivable that a judge will be in one of the parties judging that the separation of whether the question of what enters or does not enter the jurisdiction followed the other better than the judge himself, the latter is able to determine what income and what is not within his competence (13).

However, the supreme administrative court of Egypt responded to this clearly and resolved the dispute when the courts of the State Council have decided to adjudicate the cases referred to them by another court in accordance with article 110 of the code of civil and commercial procedure, even if it is outside the law jurisdiction legally established for the courts of the State Council 14, from the foregoing it can be said that the referral system provided by the Egyptian legislature has contributed to the reduction.

Application of conflict of jurisdiction between the courts of ordinary and administrative courts or courts to one jurisdiction, but not to prevent them in full or to the Egyptian legislator's job. The conflict of jurisdiction between the judges of the court and the supreme constitution. The assignment did not address the conflict of jurisdiction between one of the administrative or ordinary courts.

The court has jurisdiction over the case, because the law did not assign to these parties the assignment to one of the parties Judiciary 15.

In the same direction, the legislator went on to grant the judge who considered the case the possibility of referral the case to the dispute tribunal for the determination of the waiver subject, and this being a non-determinative cause to appeal.

As for Iraq, there is more than one thesis to address this:

1- Some saw that the best method to prevent the occurrence of conflict of jurisdiction, (96) of the civil procedure Code No. 33, others argued that it was possible to avoid conflict of jurisdiction in accordance with Article 95 of the Law - Civil procedure No. (33) of the year 1161, amended by the court of cassation The case shall be brought with the case before another court if it is determined that there is an association with In this case, the case was sent to the other court, and the decision of this court with the refusal of the Union to be privileged before the supreme administrative court.

However, it was taken on this view that the legislator stipulated that there should be a link between the law and the legislator the degree or degree of this correlation, whether it is at the level of unity of the subject only or

requires unity reason or unit of liabilities. This requirement also requires both courts to be competent In the case of the case, which does not achieve the area of conflict of jurisdiction between the courts of administrative justice or between different jurisdictions.

On the whole, we believe that the best solution to avoid conflict of jurisdiction is the fact that In the event that the court decides to consider the case on its own initiative or upon the payment of one of the litigants the same dispute shall be before another court, whether it is adjudicative or administrative the ordinary judiciary, regardless of whether they are both competent to hear the case or any of them the case shall be binding upon the referral of the case to the court of superior management if the dispute is the result of the dispute.

Administrative courts for the purpose of determining the court to hear the case, either in case of dispute administrative justice and the point of view of the ordinary judiciary, we prefer that the jurisdiction of this jurisdiction of the court is disputed competent and independent. In case of conflict of jurisdiction, article 93 of the Civil Procedure Code No. 33 of the year 1161 the arbitrator is obliged to refer the case to the court and if the court referred to it refuses to consider the case for lack of jurisdiction, its decision this can be challenged. It was noted from the foregoing that the most effective means adopted by the State legislatures are to address the conflict of jurisdiction, which has already occurred, is a reason for the denial of justice Wassabal, although the best case contributes to the reduction of the case of conflict of jurisdiction, but it does not the limit is entirely limited, and the state of conflict of jurisdiction is not sufficient to meet the required problem. The seriousness of the fact that it is the door of the lord to verify the state of contradiction of the provisions of the law.

Section two conditions to verify the conflict of jurisdiction there are a number of conditions that are available to verify one of the images of conflict or theft; we will review these terms and conditions:

Conditions related to the conflicting courts: One of the most important conditions related to the courts -

Prosecution case:

1. A decision is issued by two arbitrators, both of whom have the right to hear the case or both with no jurisdiction in the case, and France required that these be the courts in different jurisdictions, such as one being administrative court and the other Ordinary Court of Justice. The Egyptian legislator also stipulated that, but also to the extent possible dispute between administrative or ordinary courts with one of the competent committees

and committees, and the administrative judiciary of Egypt has clarified the limits of the competent authorities. The case is considered to represent the adversarial element and the decision-making of these directives as well as the extent to which they are competent to deal with disputes of a particular nature and to apply the procedures and procedures safeguarding the right to sue 11. And the most prominent committees and committees with jurisdiction in Egypt the court of cassation and the committee on agriculture reform.

It is clear from this that the dispute over the definition of jurisdiction should be governed by tribunals different jurisdictions will have a dispute with the competent court Jurisdiction, but if the dispute is held by two courts of one jurisdiction, such as the administrative judiciary or the ordinary judiciary, the court competent to resolve the dispute shall be which is the supreme court of the administrative system and the council of state France and the supreme administrative court of Egypt in relation to the dispute between the administrative courts and the court of cassation If the conflict of jurisdiction between the courts of worship of the ordinary judicial system because it is the enemy of the parties others argued that it was possible to avoid conflict of jurisdiction in accordance with Article 95 of the Law - Civil Procedure No. (33) Of the year 1161, amended by the court of cassation. The case shall be brought with the case before another court if it is determined that there is an association with In this case, the case was sent to the other court, and the decision of this court with the refusal of the union to be privileged before the supreme administrative court.

However, it was taken on this view that the legislator stipulated that there should be a link between the law and the legislator the degree or degree of this correlation, whether it is at the level of unity of the subject only or requires unity reason or unit of liabilities. This requirement also requires both courts to be competent In the case of the case, which does not achieve the area of conflict of jurisdiction between the courts of administrative justice or between different jurisdictions. On the whole, we believe that the best solution to avoid conflict of jurisdiction is the fact that in the event that the court decides to considers the case on its own initiative or upon the payment of one of the litigants. The same dispute shall be before another court, whether it is adjudicative or administrative. The ordinary judiciary, regardless of whether they are both competent to hear the case or any of them. The case shall be binding upon the referral of the case to the court of superior management if the dispute is the result of the dispute administrative courts for the purpose of determining the court to hear the case,

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In case of conflict of jurisdiction, article 93 of the Civil Procedure Code No. 33 of the year 1161. The arbitrator is obliged to refer the case to the court and if the court referred to it refuses to consider the case for lack of jurisdiction, its decision this can be challenged. It was noted from the foregoing that the most effective means adopted by the State legislatures are to address. The conflict of jurisdiction, which has already occurred, is a reason for the denial of justice Wassabal, although the best case contributes to the reduction of the case of conflict of jurisdiction, but it does not the limit is entirely limited, and the state of conflict of jurisdiction is not sufficient to meet the required problem. The seriousness of the fact that it is the door of the lord to verify the state of contradiction of the provisions of the law. Section two conditions to verify the conflict of jurisdiction there are a number of conditions that are available to verify one of the images of conflict or theft; we will review these terms and conditions:

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supreme administrative court of Egypt in relation to the dispute between the administrative courts and the court of cassation. If the conflict of jurisdiction between the courts of worship of the ordinary judicial system because it is the enemy of the parties on the basis of jurisprudence, a part of the jurisprudence went to stipulate the unity of the framework of the case for the purpose of verification. Jurisdiction case 35, FW Others went through that 36.

As for us, we believe that the requirement of the unit of the framework of the lawsuit will not reduce the cases of conflict jurisdiction to the extent that they lead to the conditions of a law that is not acceptable, as the requirement of the unit of the courts in case of conflict of jurisdiction will lead to the issuance of contradictory judgments. This is a form of denial of justice, and this has been reinforced by the fact that the legislator in many states, including the legislator, Iraq did not require the unit of the framework of the suit to achieve the state of contradiction provisions the case.

Also, the requirement of the unity of the courts in the cases of conflict of jurisdiction of the robbery will be performed the other is to deny justice in cases of conflict of jurisdiction that are not provided by a unit of law suit. The second requirement is conflict in the field of conflicting judgments the judgment shall be the title of the right and shall mean a certificate of the validity of the procedures followed in issuing that judgment. Therefore, the judgment shall enjoy the pleading of the provisions that prevent the dispute elimination again.

Therefore, the existence of contradictory judgments will doubt the actions of both and will be implemented together which has undermined the confidence of individuals in the judiciary and become a reason for the violation of rights, and we are looking at this. In Section 1, we address the definition of inconsistency as we look at two conditions for verification contradictions.

First branch:

Defining the contradiction of the provisions contradictory contradiction is contradictory contradiction is contradictory and contradictory and contradictory, contradictory and contradictory the two persons: Abtalh and did not recognize and contrast in the sense of conflict of things do not match the meaning of the words:

The argument is that each one revokes the other, and the logic of logic contradicts that the thing is not the same and at the same time reduced. The same thing is neither true nor null.

As for the term, it has gone from a part of the scholars of the origins that

the contradiction in speech will be necessary to be one is truthful and the other is a liar, and so is the red of contradiction It is the invalidity of the Dalai, and thus it is not the same as the difference between the equal and the equal Their invalidity 33.

At the level of legislations, they are used to use the term contradiction without knowing it, at the time of the French legislator, the court of conflict also had the competence to adjudicate a contradiction. The provisions in accordance with the law of 20 April 1132 in addition to what it had previously had jurisdiction to deal with the conflict of jurisdiction of robbery and theft, but he did not see the contradiction 31.

The provisions of the 2014 constitution are set out in Article 112 of the Egyptian constitution. The court is the constitution that stipulates the conflict of jurisdiction between the judiciary and the courts with jurisdiction over the dispute, and the dispute over the implementation of a contradictory provision one of which was issued by one of the judicial authorities or a court of competent jurisdiction, and the other on the one hand and disputes relating to the implementation of its provisions and decisions issued by it. This constitution was the first Egyptian constitution to state clearly the jurisdiction of the supreme constitutional court by separating the contradiction between the judgments of the prophet.

Article 25 / III of the Court's Law the Egyptian Constitution No. 43 of 1981 provides for (chapter on the dispute concerning the implementation of contradictory provisions) as well as article 32, of the same law provides that:

Any interested party may request the court to have a public constitution the conflict over the implementation of contradictory provisions. As for the Algerian legislator, he used the term contradiction in Article 13 of Law No.3/13 of year 1113, when it is provided that the notifying judge shall notice that there is a dispute a case that has ruled on its jurisdiction or non-jurisdiction and that its decisions will lead to inconsistencies in provisions. The case of a different system involves referral of a case by reason of a reasonable and non-appealable decision. The court of dispute is adjudicating the jurisdiction and in this case all proceedings are pending the decision of the court of dispute.

The legislator also used the term "inconsistency" in the Evidence Law No. (109) for the year 1981, as amended Article (64) stipulates that "If the headquarters is opposed to what was previously approved, it would be prohibited hearing the claim or payment (as indicated by Law No. 160 of the year 1981, amended Article 13 (1 / B / 1) that the), the dispute over the

implementation of the provision of the provision of the degree of bits contrary to the provisions of Article 203 contradicting another provision), as well as the text of article (219) of the same law, which is mentioned below The Fifth Amendment law of the state consultative council law No. 19 of 2013 also used the term “ Contradiction in Article 2 (IV / C / 3) is the conflict over the implementation of acquired governance the degree of contrasting bits).

The above affirms that the Iraqi legislator did not set a clear and clear definition of the contradictions of judicial rulings but only to mention the cases and conditions to achieve contradiction provisions.

However, at the time of the judiciary, the court defined the Egyptian constitution as contradicting the provisions that are sentenced to two different sentences if they are perpendicular to each other one shop and cannot run together.

As for the doctrine of jurisprudence, some have known that it is the rule of both the ordinary and administrative courts issued Ruling on the same subject in a manner those conflicts with the other.

Others have identified it as a direct conflict with the rule of cities and another leads to impossibility of implementation. But we believe that the contradictions of the verdicts of the judgment of the judges of the court of appeal of the court of arbitration one or the other of which is issued by the same entity or that one of them has been issued In a manner that leads to the impossibility of implementing or denying justice.

France is one of the countries that organized the subject of contradiction of judgments. Perhaps the first case to be heard by the French judiciary on this subject are the famous cases in France,(Haullebraque) was a nineteenth-century French frigate Because of a storm into the Russian waters, Russian guns hit and dumped him The frigate shall file a lawsuit before the ordinary courts of the insurance company, which is insured on the frigate. He demanded compensation, arguing that the ordinary court ruling rejected the award of compensation, on the basis that The fire was caused by the war, and then the frigate brought suit before the council, State to demand compensation from the state, but the state council refused to grant him compensation because the damages were caused by the storm that caused the frigate to fly.

The second issue is the Rosary case which took place at the beginning of the 10 the century a private accident occurred that would be taken by a person in addition to a previous incident with a military escort. The collision injured the passenger in the private vehicle and sued the driver to sue

for compensation before the ordinary judiciary who refused to grant compensation on the basis of that the mistake is returned to the owner of the military service, when the passenger returns the case to the state council France against the military administration to demand compensation, and the French state council rejected the ruling to compensate on the basis that the mistake rests with the owner of the private vehicle, and this has resulted Contradictory judgments issued by the judiciary 43.

It should be noted that the contradictions of the provisions do not limit the state of contradiction between the two judgments one district or different courts, but there are other images to contradict the provisions of them contradictions between the operative parts of one sentence or between the operative and the reasons or reasons with others, and the conflict may be evidence of proof or may conflict with the text of the law the text of another law. Because of the contradiction between the judgments and the negative consequences on the state's judicial system, states have been careful there is a need for an effective law to prevent contradiction. The first and the same as the permissible means of preventing the conflict of jurisdiction mentioned above. It also has a second important law which is the most important issue. The law of validity of the fact that adhering to it prevents the reconsideration of the case before it is terminated of the public order, which is permissible for the opponents to pay them, as the judge is authorized to uphold them and agreed. The parties have the right to review the claim and have the ability to raise the claim at a stage where the claim is pending which prevented the recurrence of the ruling in the same case, and there is no doubt that the application of this legal instrument is not followed

The task will lead to labor problems that can only be resolved through intervention and intervention. Contrary to the provisions of Article 203.

Contradicting another provision, as well as the text of article (219) of the same law, which is mentioned below? The parties and the directors of the executive directors asked the Court of Cassation to consider the dispute arising out of the execution.

The fifth amendment law of the state consultative council law No. 19 of 2013 also used the term", the above affirms that the Iraqi legislator did not set a clear and clear definition of the contradictions of judicial rulings but only to mention the cases and conditions to achieve contradiction provisions.

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It should be noted that the contradictions of the provisions do not limit the state of contradiction between the two judgments one district or different courts, but there are other images to contradict the provisions of them contradictions between the operative parts of one sentence or between the operative and the reasons or reasons with others, and the conflict may be

evidence of proof or may conflict with the text of the law The text of another law.

Because of the contradiction between the judgments and the negative consequences on the state's judicial system, states have been careful there is a need for an effective law to prevent contradiction. The first and the same as the permissible means of preventing the conflict of jurisdiction mentioned above It also has a second important law which is the most important issue. The law of validity of the fact that adhering to it prevents the reconsideration of the case before it is terminated of the public order, which is permissible for the opponents to pay them, as the judge is authorized to uphold them and agreed. The parties have the right to review the claim and have the ability to raise the claim at a stage where the claim is pending which prevented the recurrence of the ruling in the same case, and there is no doubt that the application of this legal instrument is not followed the task will lead to labor problems that can only be resolved through intervention and intervention.

Conclusion:

After studying the subject of separation in the conflict of jurisdiction, we have been presented with a number of results the most important recommendations are:

1. The conflict of jurisdiction arises from the examination of the basis by different jurisdictions and results take a similar stance toward the suits brought before her, hold both eyes the case or both abandon the case, which resulted in conflict of jurisdiction the case was initially initiated when the case was examined in a formal manner and before the case was dealt with on a case-by-case basis.
2. The legislator of race has not contested the conflict of law in the case of Law No. 33 of the year 1161 and the Law of the state council of state No. 65 of 1191, as amended the legislator of Iraq, in both of these laws, refers to the conflict of jurisdiction between the two sides.
3. The constitution referred Iraq to one of the cases of conflict of jurisdiction and disputes between them one of the judicial bodies at least the federal judiciary, as pointed out legislator Iraq in the state council Law No. 65 of 1191 amended to the cases of the conflict of jurisdiction is the conflict of jurisdiction between the administrative courts, the second case is the conflict of jurisdiction between an administrative district and other cities. But the legislator Iraq did not refer to the case of conflict of jurisdiction between one of the administrative courts and one management bodies with jurisdiction.

4. Iraq's civil procedure Law No. 33 of 1161, or law, was not included in the law state consultative council No. 65 of 1191 and sufficient law to deal with a conflict situation Jurisdiction, as it has done with the case of conflict of jurisdiction. The case shall refer the case to the arbitrator which it deems not competent. The court's decision to dismiss the case is subject to appeal.

5. The Iraqi legislator did not have the civil procedure code or the law of the state consultative council it is clear from the necessity of combining the framework of the lawsuit and its reasons for achieving one of the cases of conflict Jurisdiction.

6. The conflict of jurisdiction of the court resulted in one case of conflict of jurisdiction to address it with one of the waqab of the case, beginning with the prosecution, which led to the issuance of verdicts by different judicial authorities, in contrast. According to the count the contradictions of the rulings in the matter are one of the cases of conflict of jurisdiction, and this is confirmed by this right is that the contradiction between the contradictory provisions in Iraq is based on jurisdiction the administrative and city courts.

9. The contradiction is achieved if two conflicting rules collide and are challenged There was a logic that could not be implemented together because one of them destroyed the other and was perpendicular to a subject.

10. The contradiction of the provisions is not in the form of a judgment, or if one of them is a strike, because the judgment. The contract does not constitute the basis of the court's ruling, which does not envisage obtaining it contradictions in this case.

11. The legislator of Iraq shall only be in a state of conflict with the provisions resulting from the absence of the case and, in this case, avoid contradictory judgments by one of the courts administrative. The case of contradiction between the provisions of administrative courts in the same or with one of the ordinary judicial bodies or one of the administrative bodies with jurisdiction of the judiciary one of the federal administrative courts and one of the courts at least a film It has legislator Iraq.

12. The legislator has also not dealt with the situation of Iraq in contravention of the tribunal's judgments. The administrative body shall be the administrative or ordinary courts in the event of a court hearing. The public administration of the case is in accordance with Article 214 of the civil procedure code, and it becomes even more difficult if the contradiction of the provisions relates to a judgment issued by the court the court is superior to the case law.

13. The legislator of Iraq has been tasked with resolving the conflict of jurisdiction to three sides:

A- The high court of Justice If the conflict of jurisdiction is a matter of one of the courts - federal and one of the judiciary at least.

B- The supreme administrative court if the dispute of jurisdiction is held by the administrative courts only. The meaning of the reference is whether the conflict of jurisdiction is the outcome of one of the courts administrative and other cities.

12. The law of the state consultative council did not provide for special procedures for the purpose of adjudicating jurisdiction by the court of public administration or by reference, which would require the adoption of the same procedures provided for in the civil procedure act, however, this treatment was brief, and we have the following observations:

If the legislator did not mention the data to be included with the request for reference, such as the necessity of sending all the appeals and the judgment of both courts the legislator of Iraq has not resorted to a state of conflict and the consequent necessity - In accordance with the procedure of dismissal of the case before the courts. The legislator explained to Iraq whether the reference is for a period of time - Specific or suspect that in each case conflicts jurisdiction.

14. The legislator did not specify Iraq as a case law or a shore law the state is in contradiction with the contradictory judgments, but the judiciary is represented by Iraq the court of cassation relied on the precedent of the judgment in favor of the ruling court The first on the second rule, but what is taken on these instructions to: -

However, in the past, in the hierarchy of sentences, it is possible to count on him if the judgment the contradictions are different from one administrative district, contrary to the principle of argument As is the case in accordance with article 2 (IV / C / 3) of the law of the state consultative council In the past, there is no remedy for a ruling by a court ruling. The court that issued the previous judgment is not competent to hear the case and the father, which made the previous ruling void, do not enjoy the argument of the commandment; this will enable the second referee to rule on the first referee.

The legislator did not address Iraq if one of the contradictory provisions had already been implemented and the impact on the extent of the contradiction between the provisions of the case.

The Iraqi judiciary tried to remedy this shortage by adapting it to the Iraqi courts, the judgment actually executes and repeats it to the other ruling

which has not yet been implemented, but note on this approach is that the court of cassation did not distinguish between the situation and the possibility of reinstating the situation prior to implementation, in this case the court's position is, and where possible to restore the case to what was previously before the implementation in the case of revocation or annulment of the judgment the whole negation.

Recommendations:

This study resulted in the following recommendations:

1. To examine the parties that may be parties to conflict of jurisdiction and contradiction of the provisions: We propose:-

For the purpose of addressing all cases of conflict of jurisdiction, the inclusion of other parties on the condition of the entity Its decisions and the end of the dispute and one party or parties, and from these bodies, which was a court or a semi-judge as the appeals board established in accordance with the communications and information commission (No. 65) of 2004 and the competent committees dealing with disputes related to property claims The problem under Law No. 13 of 2010, and the pension review board.

2. To investigate preventive measures to prevent conflicts of jurisdiction: We propose that the civil procedure law be prepared Iraq has sought to resolve the issue of conflict of jurisdiction in order to prevent its aggravation and turn it into a case of contradiction between the provisions of the case, because through the text is mandatory. The court shall hear the case that the defendant must wait for the case and refer the case. The competent authority may resolve the conflict of jurisdiction if it considers its competence in considering the case if a case is submitted by a party, the court shall appeal against the jurisdiction of the court. The court shall inform the court before it of the case against the subject for the purpose of examining the case for the response of the competent authority in resolving the dispute Jurisdiction.

3. The Court of competent jurisdiction to adjudicate the conflict of jurisdiction: We propose to unite the dispute in the conflict of jurisdiction and contradict the provisions through its composition to a single court rather than distributed by

The three courts of the Supreme Court, the supreme court of justice, are the reference and we propose. The establishment of a dispute tribunal to be entrusted with this task and shall be characterized by independence from the administrative judiciary and the objective of the ordinary judiciary in terms of its severity, its merits and the commitment of other courts on the other. Provided that the jurisdiction of the Court remains exclusively su-

terior to cases conflict of jurisdiction and contradictions of the judgments of administrative courts because they represent a party appeal against the provisions of these courts.

4. The discussion of dispute resolution procedures: We propose that the law of the state consultative council be prepared No. 65 of 1191 amended by taking into account the following:

(A) The need for the courts to comply with the rules of conflict in order to review the case from the moment dispute the dispute to the court competent to resolve the dispute and do not take any action taken of these courts thereafter.

(B) The obligation of the courts in the case of conflict of jurisdiction, including a request for reference, the case, as a necessity to send all the pleas and the judgment of both courts n. In the case of contradiction of the provisions, the request for registration shall include a copy of the judgment the alleged inconsistency, the inconsistency between them and considered that a fundamental measure of loss of a request Al-Turaj.

A request for clarification shall be made by the court decisions of the competent court to deport him a law that does not involve the contradiction of denial of justice arising from the impossibility of implementing the provisions together.

5. of the court's jurisdiction to resolve the conflict of jurisdiction: We propose that the separation of conflicts of jurisdiction and contradictions of the provisions in accordance with the rules of jurisdiction or the type or type The contradictory provisions of a single court, as in the case of the article (2 / IV / C / 3) of the Law of the state consultative council No. 65 of 1191 amended, according to the previous ruling, with the first ruling being passed on the other referee.

6. We propose explicitly the law of the state consultative council to implement a provision. The contrary does not make it an excuse to justify it, whether it is issued by a competent party in contravention of the jurisdiction rules or the judgment was issued by a single court. The execution sentence is the second sentence of the previous judgment in the issuance, in contradiction to the argument of the matter edited. A plan to restore the situation to what it was before implementation is possible.

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