

The legal system of administrative decentralization in Iraqi law

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Abstract

The administrative decentralization system is one of the most important systems that help the state to maintain its unity, especially in democratic countries, as it is one of the most important pillars for the success of the democratic process in the state, especially in countries that are transforming from a centralized dictatorial system to a decentralized democratic system. 2005 and currently in force, and as a result, many laws were issued in implementation of what was included in the constitution in Iraq to draw the legal system of administrative decentralization in it, including the main features of evaluating this system, and this will be the goal of our research, shedding light on the concept of administrative decentralization and its pillars and elements.

Keywords. Decentralization, administrative, dictatorial system

Introduction

Administrative systems in all countries of the world are subject to legal rules that determine the nature of the administrative system in them, and these texts usually derive their sources from the constitution, which determines the foundations on which their administrative system is based, whether it is a centralized system, which is intended to keep the state as a public legal person with all administrative authorities, or decentralization, which It means the transfer of authority from the state to another person of the public law, who may be a region less extensive than the state, or an attached public person with specialized competence by nature, due to the extent of the development of the principles of administrative law, taking into account the political, economic and social influences that shape the nature of the system In the new constitution, Iraq adopted the administrative decentralization system in distributing administrative power between the federal government and the governorates in the decentralized system¹.

The foregoing is within the scope of the distribution of the administrative function only, which is what is called in the administrative law in the administrative organization of the state, and this will be the purpose of our working paper by dividing it into three demands, which are:

The second requirement: The pillars of administrative decentralization

The third requirement: The first requirement: The concept of decentralization and its types.

elements of administrative decentralization.

¹ See Paper 116 of the new Iraqi constitution for the year 2005

The concept of decentralization and its types

Administrative decentralization is based on the distribution of part of the powers of the executive authority (administrative function) in the state, which is one of the three authorities in any state between the central authority and independent administrative bodies subject to the central authority in the exercise of its responsibilities², or by granting parts of The territory of the state is a legal personality, and it is called a regional administrative decentralization. As for some public utilities granting a legal personality, we will be in front of an accompanying administrative decentralization, and for the purpose of covering this issue well, this requirement has been divided into two branches. In the first, we deal with the concept of administrative decentralization and in the second the types of administrative decentralization.

The concept of administrative decentralization

It means distributing the competencies of the administrative function between the central authority and elected bodies or councils, and that it enjoys its independence from the central authority, with the presence of oversight exercised by the central authority towards it.

And it was defined as (the distribution of administrative functions between the central government from the capital and between local or interest bodies (annex) so that these bodies are in the exercise of their administrative function under the supervision and control of the central government)³.

We note that the Iraqi constitution has taken this definition, as it stated in Article 116 of it that (the federal system in the Republic of Iraq consists of a decentralized capital, regions, governorates, and local administrations)

Types of administrative decentralization

Decentralization is divided into two types: regional decentralization and attached decentralization. The first, which is called local administration or local government, exists when the law grants the legal personality to the regional administrative units smaller than the state, such as governorates and districts, and grants its management to a member of the community belonging to it in that area and supervises what concerns the residents of the region of public facilities, and this picture is what we see in the local administration system, which in some countries is called local government.

Decentralization is divided into two types: regional decentralization and attached decentralization. The first, which is called local administration or local government⁴ (4), exists when the law grants the legal personality to the regional administrative units smaller than the state, such as governorates and districts, and grants its management to a member of the community belonging to it in that area and overseeing what The people of the region are concerned with public utilities, and this picture is what we see in the local administration system, which is called in some countries the local government.

As for the second, it is achieved when the law gives the legal personality to the national or regional public utilities and places a public authority on top of it that administers it with

² Dr.. Abdel-Ghani Bassiouni Abdullah / Administrative Law An applied study of the foundations and principles of administrative law and their application in Egypt / publisher, Knowledge Foundation in Alexandria / 2005 / p. 145.

³ Dr.. Mohi Al-Din Al-Qaisi, Principles of General Administrative Law, Al-Halabi Human Rights Publications, 2003, p. 24.

⁴ See Paper116 of the new Iraqi constitution for the year 2005 and PaperOne/Eleventh Paragraph of the Provincial Law that is not organized in Region No. 21 of 2008 as amended.

some independence, then what is called the attached public persons, such as public bodies, and it is called decentralization of interest⁵.

The pillars of administrative decentralization

Since administrative decentralization is based on the distribution of administrative functions between the central government and between local bodies or independent interests, that is, in other words, the distribution of the administrative function between central agencies and between decentralized regional authorities or a relatively independent facility that is subject to the control of the central authority over it, the administrative jurisprudence tends to require certain foundations. Administrative decentralization is based on it for the purpose of recognizing that the state has adopted administrative decentralization and for the purpose of taking note of these pillars, this requirement has been divided into two branches, each branch assigned to one of the pillars.

- 1.1. There is a distribution of competencies between the central authority and the decentralized authority

The principle of distributing administrative competencies between the central authority and the decentralized authority is the first pillar of the establishment of the concept of administrative decentralization within the state. His constitution for the year 2005 to adopt this principle and grant local authorities (decentralization) wide powers in terms of number and importance, and here the trend was clear by the constitutional legislator to create a broad local government that is very close to the concept of the federal system⁶.

- 1.2. There is no hierarchy between the two authorities and their employees
We find that the second basis on which administrative decentralization is based is the absence of a hierarchical functional hierarchy between the central authority and the decentralized authority in terms of doing work, distributing tasks, issuing decisions and instructions related to the administrative function, and appointing employees of the decentralized authorities⁷.

2. Elements of administrative decentralization

Administrative decentralization rests on three main pillars or elements, which are:

- 1- The existence of local interests distinct from national interests.
- 2- That there are public, legal, regional persons other than the state.
- 3- Subject to the control of the central authority (administrative guardianship).

This will be the goal of our demand by dividing it into three branches

- 2.1. The existence of local interests distinct from national interests

Regional decentralization means that there are local affairs whose existence is recognized by the legislator, as he has distinguished in the general needs of society between the general needs of concern to the entire population of the state and the local needs that concern this or that region, and made public needs in the form of national public utilities the prerogative of the state alone, and made Local needs in the form of local public utilities are within the jurisdiction of other regional units⁸.

The legislator shall determine these needs exclusively and they shall be regulated either

⁵ Dr.. Mustafa Abu Zaid Fahmy / mediator in administrative law / New University House / Alexandria / 2005 / p. 118-119.

⁶ Mahmoud Abd Ali Al-Zubaidi / Administrative powers of the provincial councils Conflict and overlap in the light of the law of the governorates are irregular in the region No. 21 of 2008 / Journal of Law / College of Law / Al-Mustansiriya University / Issue (10) / Volume (3) / 2010 / Fifth Year / 2010.

⁷ See Paper7, Paragraph Three of the above law.

⁸ Dr. Mustafa Abu Zaid Fahmy / previous source / p. 120.

by law, as is the case in the United States of America and Britain, or by defining them in general according to general rules as is followed in France⁹.

Accordingly, we find that the constitutional legislator in Iraq has identified some of these interests in the body of the constitution, and others have been identified by the ordinary legislator through the legislation of the law of irregular governorates in the region No. 21 of 2008, as amended.

That there are public, legal, regional persons other than the state

The basic principle by which the independence of local units in managing their local affairs from the state is achieved is that each of the local units enjoys a legal personality, which leads to it enjoying an independent budget, so it has its money spent on its facilities and employees who manage these facilities, in addition to other benefits that accrue. As logical and legal consequences of the existence of legal personality.

This condition represents the legal basis without which regional decentralization cannot be established. It is the criterion for the basic distinction between centralization and decentralization, because if the state expands to a large extent in granting local employees the authority to make decisions in many matters, it remains committed to the central system in administration as long as these employees are affiliated with it, and no other regional public moral persons were located next to it¹⁰.

We find that the law of governorates that are not organized in a region has granted administrative units legal personality and financial and administrative independence¹¹.

The legislator's recognition of the legal personality of decentralized bodies and independence from the center entails that the decentralized legal person bears legal responsibility for the damages that result from its employees and workers and is obligated to compensate for them, and to face lawsuits and complaints filed against him by third parties¹².

In order for these bodies to be truly local bodies, they must meet several conditions, namely:

- 1- The selection must be made by the region itself, as the region is the one that chooses the local bodies, and its natural instrument in this is election.
- 2- Its members must be from the people of the region, from those who live in it and are aware of its problems and needs.
- 3- The local bodies must have independence from the central administration, and their independence is achieved by electing members of these local bodies¹³.

Accordingly, administrative jurisprudence tends to consider the formation of administrative decentralization bodies through elections by calling it absolute decentralization, but if it was formed by appointment, it is called relative decentralization¹⁴. Subject to the control of the central authority (administrative guardianship)

The independence of decentralized bodies with a specific jurisdiction is not a grant or

⁹ prof. Dr. Ghazi Faisal Mahdi / The Federal Law and Administrative Decentralization Systems in the Constitution of the Republic of Iraq for the year 2005 / Journal of Legislation and Judiciary / Research published on its website.

¹⁰ Dr. Mustafa Abu Zaid Fahmy / previous source / p. 120

¹¹ See Paper 22 of the law above.

¹² Dr. Abdul Ghani Bassiouni Abdullah / previous source / p. 151.

¹³ Dr. Mustafa Abu Zaid Fahmy / previous source / p. 121.

¹⁴ Dr. Abdul Ghani Bassiouni Abdullah / previous source / pp. 145-146.

favor from the central authority, but it is a genuine independence that comes from the legislator and sometimes the founding body. The local councils exercise their jurisdiction within the scope of the state's general policy and are obligated to respect the general plans drawn up by the central authorities in accordance with the principle of planning and decentralization of implementation¹⁵.

Therefore, oversight is one of the guarantees of the state's unity and preservation. Granting local bodies a legal personality does not mean separation from the central authority, but rather it is an independence with part of the competencies in the field of administrative function. On the functioning of public utilities in the state, directly or indirectly, therefore, granting legal personality to regional units does not lead to the final exemption of the central administrative authority from the performance of local public utilities, and therefore it monitors the functioning of public utilities in every region of the state¹⁶.

Hence, the state has the power of administrative control over the work of the local authorities, and it is not limited to that, but it extends to the people of the local authorities, because as people they may violate the law and exploit the authority beyond what is imposed on them from the duties of integrity, so they deviate with their authority and decisions towards achieving a special benefit for them, and here The central administrative control authority can intervene to hold them accountable, and this is the type of control in force in France, and we find this oversight in Iraq through some independent bodies and not by the central authority, such as the Office of Financial Supervision, the offices of public inspectors and the Integrity Commission, and this is what was referred to in Article 47 of the Law Governorates that are not organized in Region No. 21 of 2008, amended¹⁷, and this is what we find similar in some cases through presidential oversight procedures such as (dismissal, dismissal and retirement), but there is a fundamental difference in that the presidential authority of the minister, if it decides to dismiss the offending employee, it can To appoint a successor. As for administrative control, it does not give the right to the central administration. Rather, they must always be chosen by the region and by election, whether directly, such as the election of the district. They are not or chosen by the elected council as governors, and this is confirmed by Article 122 / fifth of the new constitution.

Although the Iraqi constitution and the provincial law did not provide for the direct control of the central authority over the decentralized authorities and did not give them the right to oversight, but rather made oversight a prerogative of the legislative authority (Parliament), as it gave the parliament the right to object and cancel decisions violating the decentralized bodies, as well as the right to dissolve the decentralized bodies upon request The governor or the request of one third of the council members (decentralized bodies)¹⁸.

We find that this type of oversight is a deviation in the legislation by the Iraqi legislator for a number of reasons, namely:

- 1- This type of oversight is a clear constitutional violation of Article 47 of the Constitution, which approved the principle of separation of powers, as we find here that the legislative authority monitors and interferes with the work of the executive authority on the part of the administrative function.
- 2- This type of oversight is contrary to the general principles and established upon

15 Dr. Suleiman Muhammad Al-Tamawi / Principles of Administrative Law / A Comparative Study / Book One / Arab Thought House / Cairo / 2014 / p. 187.

16 Faris Abdel Rahim Hatem / Administrative Decentralization in Iraq under the Law of Governorates Not Organized in Region No. 21 of 2008 / Kufa Magazine / Issue 2 / p. 123.

17 See Articles 102 and 103 of the Iraqi Constitution.

18 See Paper20 / first and second of the law of governorates that are not organized in a region.

which work is established by the executive authority, administrative jurisprudence and the administrative judiciary in any country, where oversight over decentralized bodies is given to the central authority in the capital. Its ability to achieve job and service stability in all regions of the country, and this leads us to conclude that decentralization in Iraq is closer to political decentralization (federalism) than administrative decentralization.

Despite this, we found that there is indirect control exercised by the central authority in the capital over the decentralized bodies through the State Consultative Council through the annual reports submitted by the Council to the Council of Ministers, where it stipulated in its law that one of the duties of the general body in the Council (Submit an annual report, or whenever it deems it appropriate, to the General Secretariat of the Council of Ministers that includes what judgments or research have shown of a deficiency or ambiguity in the legislation in force, or cases of abuse of power by any of the administration's bodies, or the transgression of its powers, or a proposal for the preparation of new legislation)¹⁹. Despite the presence of this type of indirect control of the central authority, it is weak control, as this oversight and reporting is only done by appealing decisions before the courts of the State Shura Council, which is the Administrative Judiciary Court and the Employees Judiciary Court, which is a single court based in the capital, Baghdad. Not all violating decisions are challenged. Before the court, as well as because of the confusion in the cases before the court, the period for settling the case is not less than two years as a minimum in the first degree, and the decision acquires the final degree after its cassation before the Supreme Administrative Court. Also, we did not find that the General Secretariat has held any decentralized body accountable based on a report to the State Shura Council.

Accordingly, we find that it is better to amend the law of governorates that are not organized in a region and to give the right of supervision to the central authority in the capital, similar to the control in France.

Conclusions

When we reach the conclusion of our research, our tagged work (the legal system of administrative decentralization in Iraq), there are several results, and we refer to them as follows:

- 1- Administrative decentralization means (distributing the competencies of the administrative function between the central authority and elected bodies or councils, and that it enjoys its independence from the central authority, with the presence of control exercised by the central authority towards it).
- 2- Decentralization is divided into two types: regional decentralization and utility decentralization.
- 3- There are two pillars of decentralization, namely, the existence of a distribution of competencies between the central authority and the decentralized authority, and the absence of a hierarchy between the two authorities and their employees.
- 4- Administrative decentralization is based on three basic elements, which are the presence of local interests distinct from national interests, the presence of public, moral, regional persons other than the state, and subjection to the control of the central authority.
- 5- The Iraqi constitution and the provincial law did not provide for the direct control of the central authority over the decentralized authorities, nor did it give them the right to oversight, but rather made oversight a prerogative of the legislative authority

¹⁹ See Paper2/Third -B-1 of the amended State Consultative Council Law No. 65 of 1979.

(Parliament).

- 6- There is indirect control exercised by the central authority in the capital over the decentralized bodies through the State Consultative Council through the annual reports submitted by the Council to the General Secretariat of the Council of Ministers on the deviation in power by all administrative bodies, whether central or decentralized.

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