



Decentralization of the administrative system

Study in political geography

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1. Introduction

Since the last quarter of the twentieth century, there have been rapid changes in the political, economic and administrative aspects. However, the most prominent thing is the shift towards respect for the privacy of societies.

As a result of phenomenon of globalization and the emergence of new issues, especially in third world countries. Such as deepening economic and social problems and poverty, which need a deeper solution than those at the central government level.

If the modern administrative organization of the state was containing many different administrative bodies, this multiplicity does not mean the multiplicity of administrative authorities, because if the state takes the system of administrative centralization, that's mean there is an administrative authority which confined to all the functions that's related to the administrative function ,so that the competences immediately in all parts of the territory of the State.

All that means there is only one public moral character in the central system of the State, possibly the character back to the State itself, which exercises the administrative function on its own.

On the other hand, advocates of decentralization recognizing that the adoption of the strategy of decentralization in administrative necessity for the crisis which is becoming increasingly important ability to meet the requirements of citizens at the local level, especially with regard to citizens according to their geographic end within the borders of the state, as long as the new reality shows beyond a doubt that there is no longer just a national or regional management organization that reflects the concept of administrative decentralization or administrative lack of focus, but rather extends to local management strategies that reflect the concept of administrative decentralization and personnel management or local communities for the first-class requirements.

In order to do that I had to rely on the wider participation of the citizens in the process of managing and the reducing of the role of the state for production and the direct management of their enterprises in favor of decentralized institutions and the granting of the private sector and civil society institutions play a greater role in the development process, and strengthen accountability and transparency to strengthen the local administration system.

2. Research problem

The research problem is summarized in confusion in the interpretation of legal texts which dealing with the designation of the central authority, the authorities of the territories and the provinces, which access of confusion in the work of the central authority and local administrations, which would exclude the powers established by the Constitution, in addition to failure to address the powers relating to the administration Domestic legislation with explicit and clear legal provisions to prevent future problems.

3. Research importance

It is already clear the importance of the study of the subject of decentralization in the administration system on addition for the development of our country and the issuance of the new law regulating the decentralized management of the governorates which are not organized in the region (No. 21 of 2008), which is still a new topic that has not been deal with clearly and what is included in the constitution of the Republic of Iraq For the year 2005.

4. Research goals

The research aims at clarifying the concept of administrative decentralization in accordance with the legal organization and determining the powers given to the governors under the laws in force, in a manner that leads to the smooth running of the local units and thus leads to the consolidation of the principles of democracy.

5. Research Methodology

Given the specificity of administrative decentralization and the attention that given to it by the modern international community, we are adopted a comparative legal study in this system.

The first topic

What is decentralization?

States vary in how they manage their territory due to several factors that differ from state to state and they are political, historical, economic and social. There are countries who want to strengthen the central authority to make the administrative function in their own hands as a result of the political ideology of the Authority or because of fears of the division of the state, which includes different national or religious minorities.

1. The concept of decentralization and its types

1.1 The concept of decentralization

Decentralization Means the distribution of functions, duties and authorities between the centralization and authorities local bodies that enjoy a legal personality due to the decentralization rules .

In a country ,there an multiple publications legal personality that are refried to public legal persons ,which are local managing bodies like multiple offices or different kinds of institutions.

The decentralization aims as distribution the authority of making decisions among several demonstrative authorities beside the central one they are independent, don't follow the central authorities as its own authority. They are not be supervised ¹ by them. This is by the administrative country to keep the unity of political and constitutional country ²

Decentralization Is defined as the function duties and authorities between the persons and different levels of administrative of the country .and being not limited to one person or authority.

It's also defined as the transmission of authority to geographical institutions that is financially and administrative independent ³.

Is country's confessions of the regional Government concerning issuing administrative the decision .Thus central government is not long concerned in administrative the local affairs as it was ,before since it's on the authorities if the new regional government .It is also based on electing the candidate. The decontrol authority grows by side without central one .4

It is noteworthy that both concepts demonstrate the level of delegation , these terms can be perception that the way progression of both ways to the axis of the Credentials Committee, where indicates that the decentralization indicate the maximum delegation of functional activities and decision-making power of the subordinates, while the central indicate the lack of credential 5). That decentralization is a method in the organization based on the distribution of competences between the central authority and other independent bodies legally. And in that sense might be decentralization of political or financial decentralization, decentralization of economic or administrative decentralization (6).

1.2 Trends in the application of the decentralized system in the political and administrative aspects of the State

Decentralization of a political nature is defined as a process by which the various governmental functions - legislative, executive and judicial - are divided between the central government and the entities in the geographical units of the state itself. This distribution results in a type of government called the Federal Union. And each government has three legislative, executive, and judicial powers. This type of government is often observed in states composed of states such as the United States of America, Switzerland, Argentina, Brazil, Mexico, and the Soviet Union. (Former Yugoslavia, Australia, India, Indonesia, etc.)¹.

The system distributes various governmental functions (legislative, executive and judicial) between the federal government in the capital and state, republican, cantonal or other subordinate geographic units. Where the said units exercise their internal sovereignty, establish a parliament and establish a government, enforce and govern legislation. Political decentralization aims to give democratically elected citizens or representatives' greater authority in the decision-making process, both during the preparation and planning stage. It also requires constitutional or legislative reforms, an environment conducive to the growth of political parties, stronger parliaments and local political units. Political decentralization also requires effective lobbying groups. The concept of political decentralization is based on the fact that directly elected representatives at the local level are best able to communicate and cooperate with their constituencies to meet their demands and needs².

Political decentralization means that decision-making power is transferred to geographical units, represented by councils elected by local citizens. This dimension refers to the degree of political independence and the nature of the accounting system. In highly centralized states, the central government chooses local staff and has full control of their activities of the civil service of the State in terms of appointment, promotion, salaries and other matters. Of course, the local organs are responsible to the central government represented in the various ministries and central agencies. On the other side of the Central Association of Decentralization, all local agencies, including executive bodies, are selected by local citizens. Their salaries are paid from local resources and are accounted for locally, which means that these local bodies are accountable to the local community and not to the central government.

Some constitutional schools have always considered administrative decentralization and political decentralization to be of one nature, and the difference between them is in degree and extent³.

The general trend in constitutional jurisprudence between them on the basis of difference in substance .

The main differences between the two systems are as follows:

1. Political decentralization referring to the form of the state and its constitutional structure in terms of the distribution of powers between the center and geographical units that have their own laws and constitutions. They are of a political nature. Administrative decentralization relating to the administrative system of the state and the distribution of administrative competencies between central authority and geographical units. Of an administrative

nature . Political decentralization, therefore, is limited only to composite States, while administrative decentralization can exist in all States¹.

2. The powers vested in the constituent geographic units of the Union in political decentralization are not subject to the control of the central authority and can only be withdrawn or amended by modifying the Constitution. In administrative decentralization, the geographical units are subject to the control of the central authority. The terms of reference granted to such units may be withdrawn or modified, and the central authority may dissolve local councils in certain cases or isolate some of its members. This is due to the federal constitution in political decentralization and the competencies between the constituent units of the union. Federal constitutions generally are characterized by stalemate. The competency of the constituent geographic units of the Union can only be violated with their consent.

In administrative decentralization, it is quite different. The geographical units derive their powers from the legislature's law, which can be more easily modified than the constitutional amendment, without reference to mandates⁴.

3. In political decentralization, the constituent units of the Union shall participate in the formation of the will of the federal State, and in the case of administrative decentralization, where the territorial units shall not contribute to the formation of the will of the State. This difference in the two systems is due to the competencies granted in both systems. In political decentralization, the constituent units of the Union contribute to the authority with the federal state. It exercises the function of legislation within its territory, which is guaranteed by the Constitution. The constituent units of the Union also contribute to the amendment of the Federal Constitution, since the amendment of the Constitution is not only with its consent, which means that these units have the right to express their will to amend the Constitution, and also contribute to the formation of the will of the Union. While regional units in administrative decentralization do not have anything to do with matters outside their administrative competencies defined by law⁵.

4. The constituent units of the Union in political decentralization are political units, each with its own legislative, executive and judicial body. It has its own constitution. These units apply their own laws in addition to federal laws within the framework of the Constitution and federal laws. In administrative decentralization, regional units are considered to be mere administrative divisions under the laws prevailing in the whole State. The terms of reference of these units have only administrative functions as determined by law⁶.

5. The Union's constituent units in political decentralization will not be subject to the control of the Union Government in the exercise of its powers. Yes, they may be subject to the supervision of the federal judiciary or the control of independent bodies in the event of departing from their jurisdiction or excluding the competencies of other units. These units also exercise some form of control over the actions of the federal authority. Regional units in administrative decentralization are under the control of the central authority⁷.

Researchers differed about these differences between the two systems of political decentralization and administrative decentralization. Some of them went to be considered differences in degree and extent does not touch the essence and nature⁸.

But the general trend is that the differences between political decentralization and administrative decentralization are due to differences in nature and substance, not only in degree⁹.

1.3 Administrative decentralization:

Is an administrative method based on the distribution of administrative function between the central administrative body and other independent bodies on a regional or objective basis. They are therefore different from political decentralization in that they are limited to administrative function and can be carried out in both complex and simple States.

Thus, the difference between federalism as a political system that depends on political decentralization and administrative decentralization is a difference in type and degree. Political decentralization depends on the duplication of constitutional and political authority, with the determination of their relative powers. While administrative decentralization depends on the unity and centrality of constitutional and political authority¹⁰.

Professor d. Suleiman Al-Tamawi defined administrative decentralization by saying: (Administrative decentralization refers to the distribution of administrative functions between the central government in the capital and between elected local councils or elected institutions so that these bodies are in the exercise of their administrative functions under the supervision and control of the central government).¹¹

Dr. Malika Al-Saruk defined administrative decentralization as: (the distribution of administrative functions between the central government in the capital and between local or interest groups, which are subject to the supervision of the central government).¹²

Dr. wail Abdullatif has defined administrative decentralization: (Administrative decentralization is an administrative method based on the distribution of the administrative function between the central administrative body and other independent bodies on a regional or objective basis, so different from political decentralization in that it is limited to administrative function only, (Both in complex and simple States).¹³

State-specific books have listed many definitions of administrative decentralization, because the idea of regional administrative decentralization (in particular) is not of a fixed nature to be formulated in a specific legal definition, and therefore any definition will be limited to giving a full concept of regional administrative decentralization, And expanded its facilities since the beginning of the twentieth century, according to the expansion and multiplicity of state functions, which led to the multiplicity of administrative institutions, as well as economic and professional).¹⁴

Local authorities are permitted a certain degree of independence to exercise their powers in relation to local affairs where they can establish some public facilities and projects within these administrative units. While the central

administration retains its powers in relation to the supreme interests of the State and the public affairs of the entire people. We find that this does not mean that these local bodies enjoy full independence from the central authorities, but are subject to exercise their powers to supervise and control the central authorities .

Local authorities exercise their powers under the law and replace the central authority on the basis of the principle of power solutions, because local administrative bodies derive their powers from the election of citizens to local authorities and so have inherent powers not delegated to them by the ¹⁵central authority.

1.3.1 Geographical factors and their impact on administrative decentralization

The effect of geographical factors is the distribution of power between provinces, provinces and regions of a single state, which enjoys a moral personality represented by a local council elected by all or some of its members by citizens of regions and governess= and has the authority to establish an independent budget and to take administrative decisions related to the management of projects and public utilities within the administrative regions and some call this type of administrative decentralization to the local administration. The moral personality of this type of administrative center is granted according to geographical considerations, namely the emergence of local interests distinct from the national interests that must be recognized and entrusted to the inhabitants of the territory to take over the administration. The local decentralized bodies administrator all local facilities for their management, which are diverse and heterogeneous, because they include all the services provided to the population of the region, including health, education, transportation, electricity, water and other services and services that meet the necessary and important needs of the people of the region¹⁶.

The geographical components contribute to the granting of part of the national territory to the moral personality, which means granting him administrative and financial independence in the exercise of the powers entrusted to him in order to achieve local interests under the supervision and control of the government. And to represent the region or the province before the authorities and other moral persons and before the judiciary and express his will using the powers vested in it within the geographical limits specified by law⁽¹⁷⁾

¹Geographical factors affect the success of decentralization applied in the administrative system With a number of factors, perhaps the most prominent is:

First: recognizing that the interests of geographical units are exist and distinct from national interests

The geographical factor has the greatest impact in recognizing that there are special interests of a particular geographic area, It is best to leave it's supervision and management to those who concerned, so that the central government can devote itself to the interests of the state(1). thus factor is considered as a justification for adopting an administrative system which allows the running, regulation, and managing these interests domestically not centrally,

So that a national facilities are being set up to provide services throughout the country, Alongside it, there are local facilities that meet the needs of a particular region, This project identifies and distinguishes the local facilities from the national facilities on the basis of recognizing the existence of local distinct interests, It should be noted that, Independence in the management of regional facilities is not absolute, local decentralized persons are subject to a form of control by the central authority, which is called administrative guardianship, in order not to undermine the unity of the state or to prejudice local interests in case that the local authorities are unable to manage their local facilities owing to a lack of financial or technical resources or a lack of proper functioning.

The comparison is between local interests on the one hand and national interests which concern all the entire population on the other hand, the comparison is not between the interests of local units to each other, The interests of all local units are one or at least close and similar, Decentralized regional logic based on the idea that the administration of these interests is not is not the competence of the central authorities; it handled by local bodies, as a result this bodies assumes its financial capacity from the central authority, be responsible, and share the central authority a part of their authority.(2)

This raises the question of who is competent to identify these distinctive interests, since it is inconceivable that such jurisdiction could be given to the local bodies themselves. This is a dangerous authority which, if misused, could deviate from the rules of the political system and move towards separation. Therefore, the power to determine local interests is more often given to parliament as the representative of the public desire.

In other words, the state constitution gives the parliament the authority to determine the local bodies interests, and if the parliament is the competent authority to determine the distinct local interest.(3)

In practice, two legal methods are used to support geographical realities, one of which may be used in order to identify and distinguish local interests from national interests :

A. legislative census: the legislator mention exclusively the competence of the local bodies, and interests which not mentioned in the law are considered as a national, with the result that local bodies may not take any administrative decisions on matters which not mentioned in the law, otherwise they would be acting unlawfully and contrary to the rules on the distribution of jurisdiction.(4)

B. the general criterion: is that the legislator uses a more succinct method than the previous one, setting a general standard and allowing its content to be determined by the local authorities themselves under the supervision and control of the central authorities. This is where the legislature distributes competences equally to all local bodies, having defined them in a single law.(5)

It should be noted that the dividing line between national and local interests is very thin, as the principle of local interest is relative and constantly evolving, in the sense that what is a local interest varies over time and space together, and what was once a local interest is not necessarily at present, and What is a local interest in one country

may not be the same in another, and it must be noted that the process of determining local affairs is not always a legal and technical matter, but is often based on purely political considerations, As noted In practice, the department of local affairs tends to be constrained when the highest authorities control all parts of a state's territory, leaving only a small amount of administrative matters to local authorities, while in some states the list of local affairs is long and multiple, with some matters that by their nature are considered to be national and are administered exclusively by central authorities, such as the army and the judiciary.(6)

Second: recognition of geographical units as independent moral persons :

In order to recognize the existence of local interests managed by members of each geographical unit, these units must necessarily have an independent legal personality distinct from the legal personality of the central authorities,

In the administrative decentralization system, there is a multiplicity of public legal persons and, as a result of the acquisition of legal personality by the geographical units, each unit has administrative and financial independence, and has the right to own property, to litigation and to contract, and has its own separate financial unit, and its own revenue budget, which is also separate from that of the other units.(7)

These independent legal persons are represented by bodies which administer these interests in order to ensure the achievement of their purposes, represented in the boards of public bodies and interests to practice the rights and responsibilities of this moral personality.

With regard to the composition of these bodies and boards in the geographical units, they may be constituted by election, which is the original rule, or by appointment, or by election and appointment together.

First, the Independent decentralization pattern:

In this type of decentralization, the central government concede some of its competencies to lower geographical units such as state, municipality and other local authorities and confers legal status as separate decentralized units. Under this style , the central government transfers some authorities to those units in a transport mode,(8) This manner of independent decentralization is characterized by:

- Geographical units are independent and have a moral personality that is separate from the government and not under its direct control.
- local units have clear and legally distinct geographical boundaries, over which authorities and public functions are performed.
- The geographical units have an institutional legal status and have the necessary financial resources to carry out their functions.

- The concede of the central government of some of its authorities to the geographical units is accompanied at the same time by the consideration citizens as institutions that provide the services needed to satisfy their needs, and that they have the capacity to influence them like other central units.

Secondly, the semi-independent decentralization pattern:

In this type of decentralization, geographical units are almost independent, with many of the central government's powers to local units being delegated, either through legislation or by contract, to the extent of abdication, as in the first type.

The delegation here refers to the transfer of government decision-making, administrative authorities and responsibilities from strictly defined functions to institutions that are often under indirect government control, or that are semi-independent, and here are meant refer to decentralized public institutions.

Thirdly, the subordinate decentralization pattern:

This pattern is called a lack of administrative focus, with little devolution of powers and make specific decisions for administrative and financial functions. This model is the least decentralized, as it is considered a low form of central administration. This model is characterized by the subordination of the central government's geographical units, although they are given specific policy, financial and administrative powers. Unless it's dependent on financial resources and income from central authority. This model is the least decentralized in terms of the degree of independence granted to administrative units and examples of this type are provincial branches of ministries in the same state.

Fourth, the separated decentralization pattern:

This type of decentralization refers to geographical units outside the formal government structure, which are either non-government or private sector units, and this type is not preferred as a form of decentralization, but is treated with impartiality and separation.

Separation refers here to the transfer of planning and public functions of the government to private voluntary, or non-governmental institutions such as Chambers of industry and commerce, trade unions, political parties, professional associations and others, and conveys to those institutions the right to grant permits and licenses, organize and supervise their members for certain functions which were controlled by the government, and in other cases governments may shift responsibility for the production of goods or services to private institutions.(10)

Second topic

requirements and results for applied the administrative decentralization

1- Factors affecting administrative decentralization:

The administrative system in the state is Influenced by political factors as part of the state's general political system, in addition to social, cultural and geographical factors, which can be summarized as follows:

1. The philosophy of administration or the state, the authorities based on dictatorial ideology do not favor decentralization, while the authorities based on an ideology that is open to the people and based on the principle of popular participation tend to be decentralized.
2. The nation need's is such that a nation composed of diverse national and ethnic groups needs to be decentralized because it achieves its national unity and is the best way to address the dangers of secession and division.
3. awareness of the nation, the greater the political awareness, the greater the willingness of the people to participate politically, and decentralization is one of the means of political participation in government.
4. The multiplicity of cultural factors, such as language and religious and confessional beliefs, calls for the use of a decentralized system to serve as a vehicle for this pluralism and contribute to ensuring the participation of all in development programs.
5. Geographical dispersion calls for a decentralized system to manage the affairs of these regions.(11)
6. Number and frequency of decisions taken by officials at the lower levels; the greater the number of such decisions, the greater the degree of decentralization.
7. The importance of decisions, since the more important decisions are taken at the lower levels, it can be said that the system is decentralized.
8. Multitasking, the more multiple the tasks or processes affected by the decisions of officials at the lower administrative levels, the more decentralized the system is.
9. The extent to which higher levels control decisions taken at lower levels, the less such control, the more decentralized the system. (12)

Elements of administrative decentralization:

administrative decentralization is based on the main elements of:

a) the existence of local public interests in addition to national public interests, i.e. interests of a particular geographical area, such as the province or the judiciary,

The judiciary shall be recognized as having such local interests by the legislator, who shall be responsible for administering local interests and satisfying needs and shall be recognized by the legislator either in the constitution or by law.

b) local authorities are responsible for managing local interests and satisfying local needs, It should be entrusted to a body representing the people of the area to provide the local needs and local interests, and the election of the bodies which responsible for supervising the local interests directly elected by the people of the region or province which concerned the best way to form these bodies.(13)

For decentralization to be genuine, those acting on behalf of local bodies must be representative of the population and the building of the geographical unit and not of the central authorities of that unit. In order to achieve this desired representative character, it is important to have two basic conditions:

First Condition:

local bodies who manage the geographical unit must belong to the inhabitants, in order to be local, the management of the unit must be entrusted to its members, so that local authority must be chosen from this setting and made up of the local community. Thus, local administration laws usually require residency as an essential condition for nomination.

Second Condition:

election is the only means available and possible for selecting members of local organizations. Democracy is a system which allows a particular society to govern itself rather than to be governed, and an electoral system allows a particular geographical unit to manage its own affairs through its own members, but If some members of local bodies are elected and some are appointed, the researchers consider this decentralization to be incomplete or relative.(14)

C) saying that local bodies are independent of the management of local public utilities and the care of local affairs does not mean that they are totally independent of central authority because such a statement threatens the political unity of the state, therefore the decentralized system is based on the fact that the practice its competences by local

bodies remains under the supervision and control of the central authority (administrative guardianship), which differs from the concept of presidential authority.(15)

The concept of administrative guardianship means that the independence of decentralized units is neither complete nor absolute, and central authority retains some control over them.

2: Results of applied the administrative decentralization:

2-1 The Impact of applied the administrative decentralization on the state:

Decentralization has multiple advantages at various levels, since it is a system that eliminates the factors of fear of the governor and its authorities. Over time, the central authorities have been instilled in the minds of the people that they represent the power, authority, and influence that they exercise freely and with no control over the exercise of these powers, In the past, the actions of rulers and their representatives in the provinces contributed to and strengthened this social sentiment.

The impact of decentralization can be summarized in several aspects, the most important of which are:

- Raise awareness among the people and people of the regions of their importance and the importance of their roles.
- Regional residents' contribution to development projects as a result of national desire for progress and competition.
- Local residents have to cope with local problems and work to resolve them quickly.
- Hamper the singularity in controlling the power.
- Increase opportunities for political participation in the society.
- Make it easier for decisions made by the regions to conform to their political interests.
- They help to strengthen national unity, in the nations which various national or religious backgrounds.
- Reduce the load of the central authority better than administrative in concentration, resulting in multiple and diverse administrative decisions.
- Regional decentralization achieved the independence of the local governance.
- Decentralization achieves administrative effectiveness, due to the knowledge and familiarity of the local members with the local affair.(16)

It should be pointed out that, as any other administrative organization, geographical decentralization is not without disadvantages, which present in the weakness of the authority and control of central authorities in all regions of the country, which could threaten the unity of the state, The excessive defense and intolerance of local interests by the members of the local unit is also detrimental to the public interest.

The management of local affairs by elected local councils undoubtedly weakens the authority and influence of the central authorities in the regions, which no longer impose their authority on local bodies because of their elected composition and representative character.

Fear of the independence of certain communities residing in a certain part of region of the state, which are linked with each other by race, religion, language, and different from the bond which bind the majority of the population. Decentralization may lead to the strengthening the separatist conflicts in these communities. In addition, the decentralization may increase inequality between different local bodies, especially between rich and poor local bodies, wealthy bodies are favored at the expense of the poor, and this creates misunderstanding or even hostility toward central authorities, and this risk increase whenever communities are large and financially powerful.(17)

Third topic

decentralization applications in the administrative system

Countries vary in how their region is managed, due to several factors that differ from one country to another, including political, historical, economic and social, In addition to administrative reasons related to the good management of public utilities:

1-3 Decentralization application:

1-1-3 Application forms of decentralized management:

The tendency of countries to use decentralized or decentralized states depends on the desire of governments to expand towards broad-based development in order to develop the regions that are farther away from the capital on the one hand and depend on the geographic dimension of the state on the other. The more the state is large and the more respected the parties, While decentralization is the best and most successful management style in the country.(18)

Economists influenced by neo-liberal ideas saw it as a means of transferring power from the central state to local administrations, and advocates of political pluralism saw it as a way to give groups and individuals a space of freedom and the ability to organize and compete, while the leaders of some dictatorial regimes in Asian and African

countries saw it as an alternative to democracy At the national level, while democratic politicians in developing countries saw a way to make the government more responsive to local needs and priorities.

In any case, administrative decentralization is now more prevalent in developed countries And began to attract many departments of third world countries.

2-3 Administrative decentralization in Iraq:

The political change in Iraq in 2003 caused by a direct military intervention led to a change in the administrative system. From both theoretical and practical point of view, the State of Iraq acted to decentralize the system(19),Or activate the local authorities, and elimination of restricted decentralization, which existed and replaced it with broad decentralization, took a different names at first. The Governing Council passed the Iraqi state administration Law For the transitional period, On 19 March 8, 2004, the law which drafted the temporary Constitution which governing Iraq, the State Administration Law provided for the designation of an elected Iraqi government in accordance with a permanent constitution written by an elected national assembly. The law came in nine sections and 62 articles. The aim of this law, according to its authors, is to prevent the concentration of power in the hands of the federal government and to encourage the assumption of local authority by the officials.

Coalition Provisional Authority order No. 17 was issued on April 6, 2004 by Coalition Provisional Authority Administrator Paul Bremer. The order enshrines the principle of decentralized administration, Which is provided by the Iraqi State Administration Law for the transitional period, but more extensively in the formation of the regional councils, and the activation of their powers.(20)

While the Iraqi Constitution adopted the principle of decentralization in government administration in a step which constituted a qualitative leap in the development of the country's political system, the constitution guaranteed to the regions and governorates which are not organized in a large independent territory a broad powers not seen by previous times.

This independence is based on the fact that the region government and provinces councils are not selected by the center, but come through direct elections and are therefore directly accountable to voters.

Undoubtedly, the elections give local authorities the legal and moral power to stand up to the central authorities in peer to peer position, and make it in a long-term to pay greater attention to the interests and development of the people of the region.

In accordance with paragraph (4) of Article (122) of the Iraqi Constitution, the law of governorates that are not organized in Region No. (21) of 2008 was adopted in order to clarify the powers of the governorates in accordance with administrative and political decentralization. The elected governor (not the appointee as in the previous covenants) is the chief executive who is authorized to carry out his duties by the provincial council and is not subject

to the control or supervision of any ministry or non-governmental entity. As stated Law on the establishment of body called the Supreme Authority for coordination among the provinces in order to coordinate among the provinces in all matters relating to its affairs and manage local and address the problems and constraints faced.

Decentralization has become more widespread in developed countries, and its ideas have begun to spread, and as an application of democracy, issued in Iraq on 19/3/2008 a law of governorates which not organized in a region 21 of 2008.(21)

This law recognizes the principle of regional administrative decentralization in Iraq, which applies to governorates that have not been regulated by the federal system. Article 122 of the 2005 Constitution of Iraq states that the governorate consists of a number of districts and villages. In this subject we will examine the rules of regional decentralization. By dividing the subject into two sub-sections, the first section granting the moral personality to a part of the country's region, And in the second section the provisions of the Administrative Law in accordance with the provisions of the law.

Section 1: Granting the moral personality to a part of the country's region:

Article 22 of the Law on Non-Scheduled Governorates in the Region No. 21 of 2008 stipulates that: (Each unit has administrative, moral, financial and administrative independence). Administrative units according to Article 1 of the law are (governorate and judiciary) Grant moral personality is a natural result of the applied of the principle of decentralization, which is stipulated in the second article of the law, which is based on article (122) of the current constitution, which affirmed the principle of administrative decentralization in the regulation of governorates not organized in a region, To comply with the provisions of this law, we shall study it through the consequences of granting the moral personality As follows :

First: Recognize the existence of local public facilities which distinct from national public utilities.

In accordance with the Iraqi Constitution, which thwart to the determination of the competence of the federal central authorities, Article 122 (paragraph 2 of the Constitution), and clarified common competencies between the central authorities on the one hand and between the regions and governorates on the other, for both the federal and decentralized administrative systems, (Article 110 of the Constitution itself). Unless the Constitution provides for the competence of the federal authorities, it shall be the prerogative of the regions and the irregular governorates and the priority shall be given to the law of the regions and governorates which are not organized in a region when there is a dispute between the central authority and the local authority Article 115 of the Constitution .

The constitutional legislator gave the provinces broad powers after stated the competence of the central authority Exclusively, These are the competences of the judiciary, which cannot be envisioned doing it by the provinces, as

well as for the common competences. The word in these jurisdictions is for the legislative authority, The rest of the competences is to the provinces by the text of the Constitution.

It should be noted that the measure which used to determine the sovereign powers from the local powers, has not received the attention of the constitutional legislator, which is subject to various political, economic and social conditions(22), For the body that determines these interests, it is agreed that the legislative authority is the one who determines this and does not The executive branch and local authorities(23).

If leaving the competence of the local bodies to these bodies will lead to the predominance of the special interest of these bodies and to the abuse of this power and the departure of the political system towards separation.(24)

The constitutional legislator's regulation of the powers of the regions in the federal system and the governorates not organized in a region in the decentralized system in a single constitutional text is a something which is taken on the constitutional legislator because the federal system and the decentralized system are two systems of a different nature. As we have mentioned above, the legislator's approach is to mix two systems Different in legal nature. The governorate council is the supreme authority in governorate (m2) of the Governorate Law which is not organized in the region and exercises legislative powers within the administrative boundaries in accordance with the principles of administrative decentralization.

In this connection, we note that the Iraqi legislature has followed the French system of determining the competence of local bodies by specifying that they are competent in all local public services except those provided for by law. Consequently, the legislature has little discretion in its direction, as the provisions of the constitution have restricted it in this regard.

Secondly: the independence of local authorities from central authority:

The independence of local bodies from central authority is a natural consequence of the granting of such bodies' moral personality. The consequences of the granting of public moral personality are the independence of their financial entities from the central authority and their autonomy of responsibility and the participation of the central authority in part of their powers.(25) Administrative decentralization is complete if all members of local bodies are elected and if some members of local bodies are elected and others are appointed.(26)

The Iraqi legislature has decided on this matter and has chosen full administrative decentralization, This is provided for in article 122, paragraph iii, of the constitution, Paragraph iv, of the same article regulates the act on the election of the provincial council and its powers. The law subsequently assents to the provisions of the constitution with regard to election and withdrawal of the ordinance to judicial and district councils, Article 3, paragraph 4, of the convention stipulates that: "members of the councils shall be elected by the provincial council, the council of the judiciary and the district council by direct secret election in accordance with the electoral law for the councils, Article 7, paragraph 7, of the act, which concerns the functions of the provincial council, stipulates that the council

shall elect the governor and his deputies in an absolute majority of the number of members of the council within a maximum period of 30 days from the date of its first session.

Clearly, the law on irregular provinces in a territory has adopted flawless administrative decentralization, which provides a clear independence from central authority, as will be seen from the legislature in the matter of administrative guardianship.

Section ii: administrative guardianship in accordance with the provisions of the law on irregular provinces of the province

Administrative guardianship in regional administrative decentralization is the control over the application of the law by local bodies and the proper management of local public utilities. The size of the independence of local bodies is inversely proportional to the severity of administrative guardianship

Administrative guardianship is the control of the central administrative authority of public moral persons and thus independent of the central authority as public persons, as well as of the general state. Oversight here is only by law, which is different from the presidential authority, in which the administrative head deals with subordinates on the basis of the nature of this relationship, and not by a legal provision, but by a subordinate and subordinate relationship, whereas administrative guardianship is a relationship of a public person with a public person, even if one is superior to the other.

Conclusion:

After we discussed the concept of decentralization, its types, foundations, elements, factors, characteristics and applications, a comparative study of research and analysis, we would like to prove that we have concluded our most important conclusions and proposals.

First: results

1. The constitution of the republic of Iraq was unique, since it first took the method of exclusively defining the competencies of the central authority (art. 110 of the Iraqi constitution) and left the rest to the provinces, it also referred to the method of joint competences and then eliminated any similarities between it and other federal entities, by involving the provinces which are not regular in a region a certain powers that were supposed to be Shared by the central and provincial authorities, and based on the idea of political decentralization.

2- Articles (112-113-114)of the constitution establish the joint competencies of the central government, the territorial and provinces which are not organized in a region, for example (customs administration in coordination with the territorial governments and the provinces which are not organized in a region, environmental policy to

ensure the protection of the environment against pollution, public health policy in cooperation with the territorial and provinces which are not organized in a region), These joint competence which provided in the constitution do not meet the constitutional reality, since provinces which are not regular in a territory operates on the principle of administrative decentralization, and the competencies exercised by administrative departments are defined by law rather than by the constitution, Thus, the introduction of irregular provinces into the exercise of the same territorial jurisdiction has confused and obscured the systems of political decentralization and administrative decentralization.

3- Article 115 of the constitution equates regions with non-regular provinces when granting them the right to legislate and conferring upon them all general competencies (except those of the federal authorities), This means that the constitution grants the provinces all the conditions for political decentralization, even though article 122 of the constitution emphasizes the adoption of the principle of administrative decentralization.

4-The constitution has defined the competence of the federal authorities exclusively, while the competence of the provinces and provinces that are not organized in an open territory has remained open to receive more jurisdiction over time. This confusion between the two texts would make the administration in the provinces broad to face the exclusive prerogatives of the federal government and could affect the federal jurisdictions.

5- The Iraqi legislator was clearly ambivalent regarding the term "geographical limits" (P / 122 / first) which means borders that separate countries from each other and are placed under international law, treaties and agreements, and these boundaries change by changing the factors of land degradation.

6- Since the provinces are divided into districts, they are administrative units within the geographical area of the governorate. These units elect their councils to carry out the tasks entrusted to them, and there is another division related to the city of Baghdad Municipalities, and neighborhood councils, perhaps the obvious criticism is that they are not mentioned within the definitions of the provincial administration law that are not organized in a region, which means that these councils located within the city of Baghdad are outside the concept Which the legislator brought.

7- The text of Article (2) in its paragraphs is problematic and needs to be reviewed both in terms of granting the councils legislative powers or in terms of preventing the control of the central government on these councils, in the first paragraph (granting legislative powers) overlap with political decentralization, and in the second Prevention of Central Government Control Demolition of a well-known administrative headquarters.

Second: Proposals

1- The Constitution of the Republic of Iraq of 2005 did not distinguish between the provincial authority and the governorate authority. The first is that the federal system in the Republic of Iraq consists of the capital, regions and governorates. Second, central authorities are divided between the central government and provincial governments. Thirdly, the regions and governorates are divided into regional administrative units operating according to the principle of decentralization. This will not confuse the federal concept with the concept of decentralized management.

2- The provisions of paragraph 1 of Article 122 of the Constitution shall be as follows: the governorate is an administrative unit within its administrative boundaries consisting of districts, towns and villages, as this would preserve the unity and independence of the State and avoid any problems that might arise in the future.

3- The term "municipal councils" shall be used in conjunction with the terms of the local councils and the term local councils of the neighborhood with the district councils to correspond to the two types of councils. The definition shall be defined in Article (1): Local councils: the Council of the Judiciary or the District Council.

4- It is preferable that Article (2) of the Provincial Administration Law reads as follows: "The Governorate Council is the highest administrative authority within the governorate limits and has the right to administer its affairs in accordance with administrative decentralization in accordance with the principles of the Constitution and the federal laws".

5- The central government should be exclusively concerned with the functions of sovereignty without involving the other governorates. In some provinces because the governorates operate according to the principle of administrative decentralization. Because these actions affect the supreme interests of the state as a whole and therefore the basis of the work of the federal government.

6- To activate the role of judicial supervision over the work of the governorates because of the judicial control of a public jurisdiction. Parliamentary oversight (Parliament) is often of a political nature and is subject to inter-parliamentary interaction, in contrast to judicial oversight, which is characterized by its independence, neutrality and professionalism in this area by virtue of the experience of its members of the competent judges.

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