

Received: May 2023 Accepted: June 2023
DOI: <https://doi.org/10.58262/ks.v11i2.295>

Oversight Rights of Local Units Towards Administrative Agencies

Sajjad Kadhim Ghali AL-Kaabi¹, Amer Zghair Mohaisen²

Abstract

Recognizing local units' independence towards the central government and their right to enjoy constitutional and legal rights, this results in the governorates not being organized in a region fully recognizing their jurisdictions, this reflects the independence enjoyed by local units through the legal means they exercise in regulating their administrative, financial and supervisory matters independently and undertake the necessary legal work. It also has the right to censor local administrative bodies, their local staff and other rights that require constitutional and legal texts to be fully exercised in accordance with the law.

Introduction

The formation of decentralized administrative bodies through election and their enjoyment of legal personality and granting them administrative and financial independence in accordance with the principle of administrative decentralization entail granting them supervisory competence through their bodies in order to ensure the functioning of the executive facilities to provide services to the local citizen. The governorate councils have supervisory and regulatory powers over the local bodies operating in the governorates in order to achieve development and improve the reality of the governorates and the performance of local organs in order to serve the local population.

Study Importance

The importance of research is highlighted by describing the governorates' supervisory role vis-à-vis administrative bodies and their local staff, whether they belong to the central government or the federal government. This role is important in preserving the existence of governorates and ensuring that they do not deviate in the exercise of their competence as defined by law. The aim is also to reflect the shortcomings and shortcomings of the irregular governorates' law of the Territory No. 21 of 2008, as amended.

Problems of the Study

The problem of research revolves around the supervisory competence granted to local units. Whether the constitutional enshrinement is clear in granting the governorates broad administrative and supervisory powers, and whether the irregular governorates' law No. 21 of 2008, amended in a territory, fully regulates this right or guarantees a violation or negativity of the governorates' supervisory rights resulting from the granting of moral personality.

¹College of Law, University of Misan. Email: Sajadkadhim1122@gmail.com

²College of Law, University of Misan. Email: amerzghair@uomisan.edu.iq

Methodology

The approach to research is the analytical legal approach through the analysis of constitutional and legal texts dealing with the rights and powers of the governorates in order to highlight their vulnerability and imbalance. We have also followed the comparative approach with the comparative countries in question (France and Egypt) in order to analyze the weakness of the legal texts contained in Iraqi law.

Supervisory Role of the Provincial Council Towards the Heads of Administrative Units

The law of the irregular governorates in a region has privatized councils to elect the governor and gave them the right to dismiss him or one of his deputies, but before dismissing him, he must be questioned for certain reasons. Similarly, in the case of district and district councils, in the above law, governorate councils have the authority to oversee and supervise the work of heads of units and all their administrative organs in various public facilities, i.e. have comprehensive general control over the organs of local authorities in order to follow up their administrative activities, the Provincial Council also has a supervisory role vis-à-vis local councils in the District, which is entitled to be dissolved at the request of the "resident" or at the request of one third of the members of those councils (Al-Qaisi, 2012, p. 129).

Supervisory Role of the Governorate Council towards Local Employees

After the transfer of branches of some federal ministries to the governorates under the Second and Third Amendment to the Irregular Governorates Act of the Territory No. 21 of 2008, as amended, these departments of the ministries became local departments and are therefore financially and administratively subordinate to the local government, thus, all local staff of the Administrative Unit are subject to the supervision of the Provincial Council because the irregular provincial law in a territory has defined what is meant by higher office holders under Article (1/7) and also what is meant by subdistricts (Al-Badiri, 2021, 99). The Provincial Act did not specify the means by which the provincial councils could exercise their supervisory role over local officials, which led the councils to fill this vacuum in the Act by adopting methods used by the legislature. These include:

- A. **Question:** Through the request of provincial councils for information or reports on the functioning of local administrations under the Constitution and laws, by hosting the person to be asked at the meetings of the provincial council. However, the legislator in the provincial law did not provide for the right to ask, which prompted the provincial councils to stipulate in the council's rules of procedure.
- B. **A general theme for discussion:** It is a means of exchanging views in the governorate. The governorates' law is not provided for by the internal regulations of the governorate councils.
- C. **Interrogation:** The provincial law explicitly stipulates interrogation and article 7 (VIII/1), which states: "The governor or one of his deputies shall be interrogated at the request of one third of his members..." Article 51 of the Act stipulates that: "Any order exempting or removing him shall be preceded by an interrogation hearing of the person concerned.
- D. **Investigation:** Provincial councils can set up committees to investigate legal irregularities that are located in the organs of the local unit. These committees report on their work to the councils of those units and thus with regard to the administration of a facility or department of the local unit (deyaa, 2020, p. 235).
- E. **Briefing requests:** Governorate councils draw the attention of the head of the administrative unit or department employees and inform him of a specific matter.
- F. **Hosting:** Local councils carry out their oversight role by hosting the head of the administrative unit

or department directors before the council to clarify a specific topic or provide specific information.

- G. **Dissolution:** It is considered one of the dangerous means, as under it the local councils or the governorate council are structured in accordance with what was stipulated in Article (20/First/Third) of the Governorate Law, which stipulates self-dissolution or the dissolution of other local councils, or the solution may be from the House of Representatives (Al-Jubouri, 2014, p. 69).

The Provincial Council's Supervisory Role towards Central Government Employees.

With reference to the Provincial Irregular Governorates Act No. 21 of 2008, as amended, the Act gives provincial councils the authority to oversee all activities of State departments in order to ensure the proper functioning of their work, despite the fact that the Act does not contain a direct and explicit provision authorizing provincial councils to monitor central government officials. However, the governorates exercise control on the basis of article 7 (VII) of the Act, or exercise such control on the basis of authorization by the central Government and under the terms of the Act, as in the Investment Act No. (13) of 2006. Thus, the control of the local government over central government employees became its own and not that of central government employees (Al-Maliki, 2012, p. 370). Accordingly, the provincial councils have the authority to oversee all the activities of the state departments and security agencies within the governorate, with the exception of those that are linked to the central government. In this regard, the provincial council has no power to exempt them. In this regard, it has the means of monitoring (Al-Aboudi, 2014, p. 70). We refer to them as follows:

1. Monitoring the implementation of federal and local laws by departments of the central government.
2. Monitor the functioning of the services and their managers.
3. Governorate councils perform their oversight role through the permanent and temporary committees they form, etc.

In the comparative countries in question, France's Municipal, Provincial and Territorial Rights and Freedoms Act, No. 213 of 1982, gave the Provincial Council the right to supervise the heads of local units by monitoring their actions and actions (Francois deruel, 1989, p.192). There is a previous control over financial matters when the governor is based at the governorate level, there is also subsequent control over financial matters, namely the existence of a governorate committee that checks the governor's accounts and holds him accountable, as for the level of indirect oversight, we find that what is known as the "Financial Chambers" was established above, which is responsible for monitoring the decisions and actions of the local authorities in the governorate (Voir, 1884, p. 1557).

In Egypt, the Egyptian Local Administration Act No. 43 of 1979 established a local people's council and an executive council in each administrative unit, the law also granted the People's Councils the right to oversee the local executive organs and their superiors through means explicitly defined by the law. This is similar to the law of the irregular governorates of Iraq, which did not specify the control tools of the provincial councils (Al-Khafaji, 2014, p. 22). Among these legal means are:

- A. **Right to submit proposal:** Each member of the people's councils shall have the right to oversee the heads of local units or directors of executive departments by submitting proposals and submitting them to the council.
- B. **General topic for discussion:** Under this method, each member has the right to follow up on a particular topic to request a local official, department director or head of an administrative unit to clarify the policy of the executive organs on a subject related to the local public utilities.

- C. **Briefing requests:** People's councils are also entitled to the attention of the governor or heads of other units or a director of departments or executive bodies in order to brief them on a particular subject.
- D. Question: The question is one of the oversight tools that local people's councils have vis-à-vis local executive organs "governor, local departments, and other local organs", to hold them accountable for matters related to the interests of individuals. Apart from the legal means at issue, there are also other means of supervision provided for by law and guaranteed to the members of the People's Council for Governorate, but not to other units councils, since there is no such legal regulation and explicit provisions for the supervisory competence of local bodies in the law of the irregular governorates in the Iraqi region. These include:
1. Local people's councils of governorates "have the right to request reports and data from the governor or other departments and executive organs regarding their activity.
 2. Financial control exercised by local people's councils, "Previous control may be the approval of the draft budget by local people's councils. There is also subsequent censorship of the existence of a statement recording the State's expenditures and all the amounts collected (Al Amiri, 2012, p. 89).

Conclusion

First: Results

The Iraqi Constitution of 2005 grants the governorates extensive administrative and financial powers and refers them to the governorates' law, However, the law is not bound by this despite the fact that it is a local body with moral personality but does not enjoy the administrative and financial independence referred to constitutionally because of the lack of legal texts governing those powers. Most of these texts lead to the application of other texts and therefore the supervisory competence exercised by the provincial council's vis-à-vis local administrative bodies and local employees has the right to take legal action against them. However, the governorates' law did not explicitly regulate this oversight role and did not specify the means to enable the governorates to exercise this role, governorate councils also have a supervisory role vis-à-vis central government officials, pursuant to article 7 (VII) of the Governorates Act No. 21 of 2008, amending the Act, which gives the councils' oversight role over all activities of State departments.

Second: Recommendations

We call on the Iraqi legislature to include an explicit provision in the law of the irregular governorates in the amended region of No. 21, 2008, which sets out the control mechanisms of the governorates' council's vis-à-vis local officials and does not rely on the legal provisions contained in the internal regulations. We also recommend that the Iraqi legislature explicitly refer to the law and provide for the right of the governorate councils to oversee the central government officials in respect of the departments that have transferred their powers and not indirectly invoke the exercise of this role on the basis of article 7 (VII) given to the governorate councils.

References

First: Legal Books

Ismail Assa Gedan Al-Badiri, Legal Organization of Supervisory Competence of Heads of Administrative Units in Iraqi Law, Faculty of Law, University of Babylon, and research published in the Journal of Investigator Hali for Legal and Political Sciences Issue II, Fourth Year, 2021.

- Amir Abdullah Ahmad al-Jabouri, competencies and oversight of irregular governorate councils in the region, master's thesis, Faculty of Law, Tikrit University, 2014.
- Jassim Kazem Kabashi al-Aboudi, oversight competence of local governments in Iraqi legislation, research published in the Journal of the University College of Science Rafidain, No. 34, 2014.
- Hanan Mohammed Al-Qaisi, Governors in Iraq, Comparative Legislative Study, T1, Al-Ghafran Library for Printing Services Baghdad, 2012.
- Raed Hamdan al-Maliki, Local Governments, T1, Sinhoori Library, Baghdad, 2019.
- Ali Abd al-Razak al-Khafaji, Local Governments and Public Policymaking in Iraq, i 1, Sinhoori Library Baghdad, 2014.
- Deyaa Abbas Ali, the authority of provincial councils to regulate and oversee local government organs in Iraq, without the edition of Sinhoori Library, Baghdad, 2020.
- Mohammed Hadam al-Amiri, supervisory jurisdiction of local authorities in Iraqi law, master's thesis, Faculty of Law University of Babylon, 2012.
- Nizar Mohammed Jassim al-Mousavi, Mutual Control of Local Governments in the Irregular Governorates Law of the Region No. 21 of 2008 amended, Master's thesis, Alamein Institute for Postgraduate Studies, Najaf al-Ashraf 2017.
- Francois deruel. Finances publiques. Eme edition ntas dalloz Paris. 2eme Edition. 1989.
- Voir, Loi municipal De 05 avril 1884, jorf de 6 avril, 1884.

Second: Constitutions & Regulations

- Constitution of the Republic of Iraq of 2005.
- Egyptian Constitution of 2014 amended.
- French Constitution of 1958 amended.
- Provincial Irregular Governorates Act No. 21 of 2008, amended.
- Egyptian Local Administration Act No. 43 of 1979, amended.
- French Community Rights and Freedoms Act No. 213 of 1982.