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# The Legal System for the Oversight of Provincial Councils Over the Performance of Administrative Bodies A Comparative Analytical Study

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## Abstract

*According to the constitution and the ad hoc laws of governorates that are not incorporated into a region, provincial councils in Iraq have extensive oversight authority. This kind of authority includes monitoring the work of executive agencies within their respective provinces, which includes assessing and analyzing the performance of public institutions and government departments as well as reports on the completion of projects and initiatives. Moreover, these councils have the authority to take part in the decision-making process concerning the work of these governorate-based bodies. The provincial council has the authority to discuss certain matters, such as the development programs and budget of the administrative bodies. To find out the efficiency of these programs and initiatives, the council may ask for reports from the public institutions and organizations of the governorate. Provincial councils are considered an effective force in administrative decentralization, contributing to improving the lives of local communities, promoting development, and achieving sustainable development.*

**Keywords:** Provincial councils, administrative decentralization, supervisory powers of provincial councils, limits of provincial council oversight, administrative bodies in the governorates.

## Introduction

### First: The Research Topic

In Iraq, provincial councils have gained significant importance as a result of the expanding duties of the federal authority, which made it impossible for them to do their tasks without giving some of their authority to local parties. The decentralization system is one of the administrative systems that tries to involve everyone in making decisions regarding the development of societies in a way that achieves interests. This system is concerned with implementing powers of all kinds, whether at the governorate or center level, which is why it is regarded as one of the development tools in the nation. The local administration system was created to achieve several goals, such as reducing the burdens of the authorities at the center by transferring some of their executive powers to local councils that supervise the interests of the local people. Electing council members from within the local population, who are better equipped to understand and oversee their requirements, is one way to achieve what is known as democracy of administration. It is important to take into account that local governments are

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only permitted to operate within a certain geographic territory.

### **Second: The Research Importance**

The importance of the current research lies in examining the way the provincial councils supervise the agencies and administrative bodies within the governorate, as well as self-oversight. This oversight reflects the vision of the central authority when organizing local needs-based affairs. Therefore, we can see how essential this kind of oversight is because it examines one of the most significant functions that the provincial council exercises: the supervisory powers, which the legislature has always attempted to restrict by all possible means. Consequently, the use of supervisory powers by provincial councils is regarded as a manifestation of the modern state or a reasonably modern administrative technique used by advanced modern nations.

### **Third: The Research Problem**

The problem of the research is that it discusses one of the main powers of the provincial councils, which represents one of the axes behind establishing the provincial councils. Despite the significance of these powers, they are determined by the partisan, self-interested framework created for purely political motives and goals. This is because these interests control the process by which these councils are formed and determine all of their powers, particularly the supervisory ones, even though, on the one hand, they are specifically granted a special law that lays out the procedures for exercising their powers. Nevertheless, this research clarifies the most important difficulties because the oversight exercised by these councils over local authorities may intersect with the oversight powers exercised by the central presidential authority over these agencies. Although the nature of each of the two kinds of oversight is different, an intersection between them is possible.

### **Fourth: The Research Hypothesis**

The research hypothesis is based on the question of the legality of the supervisory powers granted to the provincial councils, their quality, and the wisdom behind their presence in achieving the public good? Does the level of performance of the provincial council authority in this area achieve the desired goal? Is the scope of powers exercised by provincial councils sufficient? What is the role of political, administrative, and judicial oversight exercised by provincial councils? What is the most prominent expression of this kind of oversight? What is the future of this oversight in Iraqi democracy?

### **Fifth: The Research Objectives**

The research seeks to achieve the following goals:

1. Studying the provincial councils and their supervisory powers in terms of definition.
2. Identifying the elements of good and effective oversight performance and their availability in provincial councils.
3. Determining the impact of supervisory characteristics on the performance standards of administrative agencies in the governorate.
4. Explaining the extents and limits of provincial councils' oversight of the performance of administrative bodies.

### **Sixth: The Research Methodology**

We will encourage efforts in this research to use a mixed approach based on the overlap and

interaction of the whole and the parts. We found it preferable to adopt several approaches in order to achieve the greatest possible detail in the study. Therefore, we relied on inductive and analytical approaches, analyzing the texts correctly and deriving detailed rulings in order to identify any defects that may be tainted in those texts that could be corrected.

### **Sixth: The Research Plan**

The research plan includes an introduction and two sections. The first is manifested in defining the provincial councils and their supervisory powers. The second topic will be about the supervisory powers of the provincial councils over the performance of the administrative bodies in the governorate and an explanation of the limits of this oversight. In conclusion, we summarize the most important points and the suggestions that we find necessary to enrich the research topic and provide the necessary solutions to its problems.

### **The First Topic: Introducing The Provincial Council and its Oversight Powers**

To explain the idea of provincial councils, we had to explain their definition that fully expresses their concept, as this would not be complete without highlighting their importance and the role that these councils play at the governorate level. Therefore, we divide this topic into two sections: the first deals with defining the provincial councils, and the second deals with defining the supervisory powers of the provincial councils.

### **The First Requirement: Definition of the Provincial Council**

The division of administrative authority within the federal state is based on region and Governorates not incorporated into a region. This distribution is made up of the obligations taken on by the president and the members of the governorate and regional councils to perform public administration. This does not mean that this authority is uncontrolled when it breaches its financial and administrative obligations; on the contrary, it is vulnerable to judicial, legal, or public oversight. Therefore, in addition to the higher councils' supervision over the inferior councils, the federal authorities also exert central authority over these councils. The law related to Governorates not incorporated into a region No. 21 of 2008 was primarily created to address the powers granted to provincial councils under the current Iraqi constitution of 2005, as well as to ensure their organization and harmony in a manner that is consistent with the structure and the evolving circumstances of the country. The Second Amendment Law to the Governorates Law No. 19 of 2013 was issued according to the amendment of Article 2 of the Governorates Law, clarifying the definition of the provincial council as follows:

Article 2 (First: The Provincial Council: It is the legislative and supervisory authority in the governorate...)(Iraqi Journal. 4284, 2013).

We comment on the above definition as follows: First, we find that what was stated in the amended article of the Governorates Law has deleted the phrase (the provincial council is the highest legislative and supervisory authority, as it was sufficient to say that "the provincial council is a legislative and supervisory authority. We believe that this was in line with what is the case in federal countries around the world, especially after a conflict occurred in light of the aforementioned Article 2, which indicated that the provincial council is the highest legislative and supervisory authority. This caused some confusion regarding the nature of the control exercised by the local authority. Is it administrative, judicial, or political? We find that this confusion was a result of incorrect extrapolation of the text of Article 115 of the Constitution, which referred to common powers between both the federal government and the regional governments, and accompanied with it the governorates not incorporated into a

region.

We see that this error was made by the constitutional legislator by confusing the federal system, in which powers were distributed between the federal authority and the regions with the decentralized administration system. This distribution is the distribution of the administrative function between the central authority and local bodies and is regulated by ordinary legislation. The Constitution puts this general detail on one side. On the other hand, we find that the second amendment to the law of the governorates not incorporated into a region, in Article 2/Third, kept the provincial councils under the oversight of the House of Representatives (Third: The councils are subject to the oversight of the House of Representatives).

We find that the legislator in the same amendment stated in Article 4/Six about the nature of the supervisory powers of the provincial councils when discussing the types of powers granted to the provincial council. We find the amendment stipulated that (Sixth: Oversight of all activities of state departments in the governorate to ensure the proper performance of their work). It is clear from the above text that the supervisory powers have an administrative nature as they are focused on following up on the activities of state departments in the governorate in terms of good administrative and functional performance. This amendment also granted the sub-district council oversight powers, as Article 6/Fourth stipulates that (Fourth: Oversight of the activities of state departments in the sub-district to ensure the proper performance of their work).

### **The Second Requirement: Definition of the Supervisory Powers of Provincial Councils**

The main purpose of the provincial councils exercising their duties in achieving greater oversight or follow-up, as well as supervising whatever falls within the work of the administrative agencies in the governorate, is to ascertain the mechanisms exercised or how to deal with the available resources to accomplish the desired plans. In addition, it aims to ensure that errors or deviations that may occur are eliminated in a way that achieves the greatest public interest. It also aims to ensure good performance, which aims to improve quality at all levels to achieve the public interest (Anajjar, 2011). The supervisory jurisdiction of local councils grants them the authority to supervise and inspect the activity of entities subject to supervision with the aim of determining how well local agencies carry out the tasks entrusted to them and the extent of their commitment to the previously established plan. Local councils are responsible for monitoring and supervising facilities and businesses that fall within the jurisdiction of their administrative units. (Abdulmunim, 2001)

The higher local councils also exercise oversight powers over the junior ones through certain mechanisms. The oversight process carried out by local councils includes all components of the local authority, including individuals, facilities, sites, machines, equipment, capabilities, and various activities, as well as the manner in which these activities are performed. The justification for this is to achieve legitimacy and commitment to the role assigned to these councils, especially at the development level, through direct supervision of their executive performance to ensure good management of local facilities, reduce deviation and corruption, develop the economy, and exploit all capabilities to advance development efforts in all fields (Badeer, 2007). The supervisory role of local councils represents one of their most important competencies, as the legislator has provided them with many mechanisms through which they can exercise this role with some degree of effectiveness. One of the most prominent of these mechanisms is the competence of local councils to direct, supervise, and administer administrative inspection and to achieve accountability for heads of administrative agencies, as well as the possibility of

holding this group accountable, which may lead to resignation (Alwai, 1991)

However, despite the above, agreement on a specific meaning of oversight and its importance is one of the difficulties facing legal jurisprudence because the term oversight has connotations that differ according to the administrative systems applied in contemporary countries. In addition, there are many forms of oversight and levels of supervisory work depending on the criterion taken as the basis for determining this. Accordingly, we discuss the definition of censorship linguistically and terminologically in preparation for arriving at the correct legal meaning.

Linguistically: 'rakabah' oversight' has several meanings, the most important ones are preservation, waiting, supervision, and care, which means preserving something. It also means monitoring, observation, caution, and observance (Al-Razi, 1981). It is derived from the word "rakaba' keep an eye on something", 'yarkubu' watch over it," "rakabhu' monitored it' (Mustafa, 1989). The Watcher, The Guardian, and The Preserver are the names of Allah Almighty. Allah is the Watcher Who watches everything. 'Rkabah' control' is mentioned in the Holy Qur'an in the Almighty's saying: فَارْتَبِعْ إِنَّهُمْ مُرْتَقِبُونَ Wait then (O Muhammad; verily, they (too) are waiting.). (Al-Dukkan, 59). (إِنَّ اللَّهَ كَانَ عَلَيْكُمْ رَقِيبًا) Surely, Allāh is Ever an All-Watcher over you). (Anisa, 1), أَنْتَ الرَّقِيبُ عَلَيْهِمْ وَأَنْتَ عَلَى كُلِّ شَيْءٍ شَهِيدٌ You were the Watcher over them; and You are a Witness to all things. (Al-Mai'da, 117). Likewise, the word "rakabah' 'watching" also refers to guarding, monitoring, and being on guard. Allah Almighty is The Watcher because He protects His servants, and it is said, "Rkaba Alahu Ta'ala' 'flet that Allah Almighty watching him," and it means "to fear Him Allah'. It is said that "fulan la yuragibu Allah' means he does not look at his punishment. So, he/she commits sins. (Al-Wasit Dictionary, 1989). The Watcher comes from the verb base "raqib' watched', 'raqubah watching' which means "herasa' 'guarding, preserving', and the servant who guards the belongings or the like. The word "Watcher" means the power of direction, authority, inspection, or selection (Masud, 1992).

Idiomatically, 'rakabah' oversight, surveillance, or monitoring' means setting specific goals and objectives, working to achieve them, and subjecting them to control throughout the implementation period to ensure their full quality and in accordance with the established plan. Therefore, it is referred to as the process of confirming that the objectives have been sufficiently met, identifying roadblocks, and attempting to get beyond them as quickly as feasible. Oversight represents the cornerstone of administrative decentralization, as it seeks to preserve the political and legal unity of the state and to protect the interests of the local community and public money from exploitation, which leads to achieving balance for all components of the state. Therefore, oversight is defined as (confirming the extent to which management complies with laws, rules, and instructions in carrying out its duties to accomplish the objectives set forth in accordance with the plans created effectively and efficiently; detecting shortcomings and errors and then striving to correct them and avoid their recurrence) (Al-Qubilat, 1998).

It is also known as (control in its broadest sense, and ensuring the extent to which administrative activity achieves the established objectives, that is, verifying that what is accomplished is consistent with what was decided in the objective plan) (Jawda, 2012). It is also known as (making sure that everything is being done according to what was planned in advance, for the purpose of detecting any weaknesses and errors that exist, treating them, and avoiding their recurrence) (Fayol, 1946). It is also known as (a task performed by the appropriate authority with the intention of confirming that the work is progressing suitably and on schedule in line with the established goals) (Al-Attar, 1974).

Oversight has many definitions, depending on the entity by which it is observed. Therefore, we find that there is a clear discrepancy between legal jurists, management jurists, as well as financial oversight jurists in its definition. Administration jurists defined it as striving to achieve the goals planned under the control and supervision of the responsible administrative body (Al-Wattari, 1976). According to this concept, oversight constitutes an element of the administrative process, such as planning, organization, and performance. It was also defined as choosing the best way to exploit the available capabilities in order to achieve the desired goals (Hayawi, 2004).

As for the definition of financial oversight, several definitions have been provided, including (a set of procedures carried out by specific agencies, in order to preserve public funds and ensure their proper collection and spending accurately, effectively, and economically in accordance with what the legislative authority approved of the budget and other financial laws, and in accordance with the plans drawn up for the entities subject to oversight) (Al-Amouri, 2005).

It is also known as the process of supervision and follow-up by a higher authority to ensure that the activities of any institution are moving towards achieving its pre-determined goals (Al-Rubai, 2006). It is also defined as (activities that focus on identifying what is achieved and comparing it to the plan in order to identify differences, identify deviations, and suggest addressing them) (Al-Obaidi, 1991). It is defined as (the application of accounting information for the purpose of organizing, testing, comparing, and presenting numerical and accounting statistical information extracted from all relevant records to assist responsible managers in monitoring and making the daily decisions necessary for implementation and work procedures" (Murad, 1978).

It is also defined as a group of inspection, examination, and review processes intended to determine that each public economic project operates within the limits that confirm that it achieves the purpose for which it was established, to suggest the optimal solution that eliminates the reasons that hinder the implementation of this purpose, and to determine who is responsible in the event of an error. tampering and referring it to the competent judicial authorities. (Al-Humeiry, 1977)

Accordingly, the supervisory jurisdiction of the provincial councils can be described with all the legal powers that these councils have, which are granted to them by the authority to supervise, follow up, hold accountable, and maintain the activity of the entities subject to supervision. This is in order to determine how well these agencies carry out the tasks assigned to them at the administrative, legal, financial, accounting, and other levels and the extent of their commitment to the plans established in advance, in addition to the extent to which they adhere to the limits of the law in accordance with certain mechanisms. It is also noted from the previous definitions that the concept of oversight has evolved to keep pace with legal, administrative, economic, and political developments and the expansion of the state's role in legal, administrative, financial, and economic activity.

The scope of oversight expanded to include all government departments, institutions, and companies within the governorate. The scope of oversight is no longer limited to following up on implementation to determine the regularity and adequacy of the approved implementation methods to determine responsibility for negligence, and errors that may occur. In addition, it has become aimed at assisting the executive authority in reforming the applied financial systems and policies and addressing the resulting defects, errors, and gaps in the laws.

## **Second Section: The Council Oversight of the Performance of Administrative Bodies and their Limits**



The presence of provincial councils and their follow-up of the work of administrative bodies are at the core of the reasons that called for adopting a system of administrative decentralization. However, this control is not absolute, but is limited by law to certain restrictions that cannot be exceeded. We will present this oversight and its limits in the following two sections: the first is about the Council oversight over the good performance of the administrative bodies, and the second is about the limits of the oversight over the good performance of the administrative bodies.

### **The First Requirement: The Oversight of the Council over the Proper Performance Of Administrative Bodies**

One of the main roles played by the provincial council is that they exercise their oversight over the work of bodies within the province in terms of good performance and quality. Judicial bodies, the armed forces, and higher education institutions such as institutes, colleges, and universities are excluded from this oversight, in order to achieve a greater guarantee of good performance, with the exception of agencies whose jurisdiction extends throughout the country in general. Therefore, the exercise of this jurisdiction by the provincial council includes all facilities in the governorate, such as education, health, housing, municipalities, internal security, etc., and of course all of this in a way that does not affect the internal regulations adopted by the relevant ministries (Al-Khafaji, 2014). We wonder here whether one of the facilities that is immune from the oversight of the provincial councils has caused harm to the governorate through its activities? (Hussein, 2012)

In response, we conclude that it is preferable to impose a form of indirect control on these facilities in order to keep an eye on how well they are performing their duties. In the governorate, the governor can file a complaint with the competent minister, who is represented by the presidential authority in the center, on behalf of the executive authority. Here, we would like to imply that Iraq has adopted a decentralized administrative system that is based on the separation of administrative entities into three categories: districts, governorates, and districts. There will be a council in each of these administrative divisions, with members chosen by direct election. It goes without saying that the fact that these councils were established by direct voting ensures, at least in part, that they are somewhat independent of the center. This allows them to carry out the legal duties that have been assigned to them without being influenced by the central government, which might happen if some of the council members were appointed. Its supervisory function as the citizens' representative in the administrative entities to prioritize the people's interests within the bounds of the legal authority is a reflection of this. Because of this, the supervisory role is carried out by these councils within a certain scope, which changes according to the standing of the administrative entity that these councils represent. (Al-Anbakki, 2010). Of course, the oversight function exercised by the provincial council is more general and comprehensive than that carried out by the lower local councils, whether it is a district council or a district council. As we mentioned previously, the provincial council is responsible for monitoring all activities of local administrative bodies to ensure the proper performance of their work, except for departments with federal jurisdiction. The federal authorities have the following exclusive powers:

- First: Drawing up foreign policy and diplomatic representation, negotiating international treaties and agreements, signing and concluding borrowing policies, and drawing up sovereign foreign economic and trade policy.
- Second: Develop and implement a national security policy, including the establishment and management of armed forces, to protect and ensure the security of the Iraqi borders and

defend it.

- Third: Drawing up financial and customs policy, issuing currency, organizing trade policy across the borders of regions and governorates in Iraq, setting the state's general budget, drawing up monetary policy, and establishing and managing the central bank.
- Fourth: Organizing the matters of measurements and weights.
- Fifth: Regulating matters of nationality, naturalization, residency, and the right to political asylum.
- Sixth: Regulating the policy of broadcast frequencies and mail.
- Seventh: - Developing a draft general and investment budget.
- Eighth: Planning policies related to water sources from outside Iraq, and ensuring the levels of water flow to it and its equitable distribution within Iraq, in accordance with international laws and norms.
- Ninth: - Statistics and general population census)

The departments with federal jurisdiction are the ones that exercise the powers stipulated in the current constitution of 2005 in Article 110 thereof. Therefore, as we previously indicated, the jurisdiction of the provincial council with supervisory jurisdiction is characterized by generality and comprehensiveness with the exception of the internal instructions of the ministries regarding the work of their facilities in the province (Mahdi, 2009).

### **The Second Requirement: The Limits of the Council's Oversight of the Proper Performance of Administrative Bodies**

In this section, we investigate the limits of the supervisory authority granted to the provincial council for the districts located within the administrative boundaries of the governorate. Is it absolute or limited to specific cases? In responding to this inquiry, we say that by referring to the provisions of Article 7/Six (stipulating that the provincial council is responsible for the following: Sixth: Oversight of all activities of state departments in the governorate to ensure the proper performance of their work, which referred to the supervisory powers of the provincial councils. These powers are absolute over all agencies within the governorate's borders (Al-Qaisi, 2012). We also refer to Clause Four of the same article above, which stipulates that the provincial council shall be responsible for the following: drawing up the general policy of the Governorate and determining its priorities in all fields in mutual coordination with the ministries and concerned authorities. In the event of a dispute, priority will be given to the decision of the provincial council. It also stated that one of the powers of the provincial council is to formulate work policies within the province, as well as to foster mutual cooperation with the ministries and their facilities spread throughout the province and supervise them. The last word (supervision) also refers to one of the meanings of oversight over all administrative agencies within the governorate in a comprehensive manner. We emphasize that the law stipulates the phrase "administrative bodies" that are subject to the control and supervision of the Provincial Council, and it does not specify what these bodies are. Does it include the ministerial branches as a whole, which represent the executive side of the authority? Or all administrative bodies?

The State Shura Council clarified this ambiguity in the text with its decision: The administrative bodies in the governorate are all state and public sector formations that have a role in managing plans and services in all fields, except for what is stated in the text. What indicates this is the text of Article 9 of Amendment 3 Law No. 10 of 2018, the Third Amendment Law to the Governorates Law. It stipulates that ministries and entities not affiliated with a ministry are



obligated to notify the governor of the communications they conduct with their departments and facilities within the governorate, so that he can review them and monitor their implementation. Local governments are obligated to notify the competent department in the Ministry of the technical procedures related to the progress of work with their local counterparts. The heads of public departments and facilities within the governorate are committed to the following:

- First: Informing the governor of their official correspondence with their departments in the governorate center.
- Second: Submitting reports to the governor regarding the matters he refers to them.
- Third: Informing the governor of their actions that affect security, issues related to more than one department in the governorate, or the behavior of their employees.
- Fourth: Informing the governor of their commencement of the job, their separation from it, and their abandonment of work.
- Fifth: Completing the tasks and work of the committees assigned to them. It addressed the issue of the obligation of all ministries to notify the governor of all correspondence they receive with the administrative agencies in the governorate.

This is another clear indication of the comprehensive jurisdiction of the provincial council's indirect oversight of the administrative bodies, through the governor, who is the highest executive director in the governorate (Marid, 2008).

The provincial council exercises oversight over the financial operations of administrative agencies, including how these agencies handle the finances that are assigned to them and the degree to which the intended purpose of these organizations is fulfilled. The provincial council's authority to oversee financial activities at the governorate level was acknowledged by the lawmaker, who approved the governorate's budget upon its referral and handled all transactions within the council with the consent of an absolute majority of members. (Lazim, 2013).

Normally, this cannot be done without following the constitutional principles in dividing it between the governorate and its districts, and then approaching the Ministry of Finance to unify it with the federal budget. It is considered a previous oversight, and the law requires the governor to present the draft annual budget to the provincial council, including the budgets of the governorate's local units (districts and sub-districts) (Attiya, 2014). It is required that the draft budget be prepared for an appropriate period before the start of the fiscal year, but the legislator did not specify a specific period for that (Mahdi, 2005).

The provincial council exercises its supervisory rights over the governorate's yearly budget by debating the draft budget and its contents, as well as the degree to which it is compatible with and the extent to which it is ineffective in carrying out the planned strategies. Since the council is exposed to the majority of the actions of local units, this conversation, if it occurs, provides a form of effective follow-up that would improve the supervisory function. if the provincial council has been given permission by the legislature to adopt the yearly budget of the council. This indicates that he can reject some of its clauses and send them back to the governor for review and revision. (Al-Amiri, 2012)

However, it is noted that the law did not oblige the governor to present the final accounts to the provincial council for approval. We believe that this constitutes a deficiency in the Council's supervisory role in the financial field, because the approval of the budget constitutes a kind of

previous oversight. Failure to grant the provincial council the authority to approve the final accounts is considered an omission of subsequent oversight because of the provincial council's approval of the draft final accounts by the governorate. If done in the required manner, it would allow the council to effectively exercise its oversight role over all financial activities in the governorates. Therefore, we propose amending the law to allow the provincial council to approve the governorate's final accounts (Al-Janabi, 2008).

What is worth noting is that the governorate, judicial, and district councils exercise a supervisory role similar to what we mentioned regarding the provincial council. However, it is taken into account that the oversight exercise takes place within a narrower framework than the governorate level. Rather, the size and scope of oversight vary according to the level of the administrative unit represented by the relevant council. Regarding the supervisory jurisdiction of the Judicial Council, we find that the law granted the Judicial Council a number of oversight powers, including monitoring the functioning of the local administration in the judiciary as well as monitoring and evaluating the administrative activities necessary to provide services within the Judicial Council through the provincial Council. The basis for this is the text of Article 8, which stipulates that (Fourth: Monitoring the progress of local administration operations in the judiciary)

The judiciary also plays a role in financial oversight by approving the budget plans for the judicial departments and referring them to the governor for the purpose of merging them with the governorate budget and presenting them to the provincial council. This was addressed in the provincial law in explaining the powers of the Judicial Council, and was stipulated in Article 8, which stipulates (Fifth: 1- Preparing the draft budget of the Judicial Council. 2- Approving the budget plans for the judicial departments and referring them to the governor. The Judicial Council is responsible for approving the security plans submitted by the heads of the security services through the District Attorney. Furthermore, in the agricultural field, it has the possibility of following up on the reform of agricultural lands and working on everything that develops the agricultural sector in the governorate (Al-Zaidi, 2010).

The Judicial Council is also responsible for monitoring educational aspects and submitting proposals to the provincial council in order to develop this vital field. It is noted that the term educational activities is a general term that includes the educational activities of the Ministry of Education, such as school activities and educational curricula, as well as sports, cultural, and artistic educational activities. (Najim, 2014). In this paragraph, the role of the Judicial Council is limited to monitoring and evaluating these activities and making recommendations regarding them, and it must submit them to the provincial council to take appropriate measures in accordance with the law (Alawi, 2009)

We do disagree with what the legislator stated in the last two cases, that the procedures of both the Judicial Council and the District Council be limited to submitting recommendations to the councils higher than them. We believe that the decisions of both councils will be effective and binding immediately upon their issuance because they are more knowledgeable about the reality of the work of the departments within their scope. In addition, the limitation of its powers to make recommendations weakens its oversight role towards these departments. The law stipulated that oversight work was not limited to the provincial council and the judicial council. Rather, the law gave the district council oversight jurisdiction to exercise over the progress of the administration's work in the district. However, successive amendments to the law abolished these powers, as it stipulated that the District Council should monitor the districts located within the geographical boundaries of the district and submit recommendations regarding them

to the Judicial Council (Al-Shamari, 2013). This was in Article 12 regarding the powers of the District Council, but it was canceled in accordance with Article 15 of the 3rd Amendment Law to the Governorate Law. Article 15 was also canceled pursuant to Federal Supreme Court Decision No. 117/Federal/2019.

The law specified a similar oversight role for the Judicial Council in Articles (13 and 14), but within a narrower scope within the borders of the district. This role includes monitoring the conduct of local administration operations, exercising oversight over the administrative bodies within its department, making proposals and referring them to the Judicial Council, in addition to approving the budget plans for the district departments and referring them to the Judicial Council. However, Article 13 was canceled pursuant to Article 7 of the 2nd Amendment Law to the Governorate Law, and Article 14 was canceled pursuant to Article 15 of the 3rd Amendment Law to the Governorate Law.

After this brief review of the oversight work carried out by the provincial councils and lower-ranking local councils, we have some observations regarding their oversight work, as these councils are blamed for carrying out their oversight work in a random and unorganized manner. In general, these councils rely on the individual efforts of council members, complaints submitted by citizens, or the individual perceptions of council members. The councils resort to carrying out their oversight work through (the council members themselves conducting field visits, seeking temporary cadres to carry out these tasks, or assigning executive employees from within the local executive departments to carry out oversight work for the benefit of the Council, which is known as a liaison member). Therefore, we find that these methods may obstruct oversight work or fail to produce the desired results. A member may be prevented from attending council meetings discussing issues related to the governorate or local unit, as well as the employment of temporary cadres, because of field visits. Most often, these cadres lack the skills or background needed to carry out the supervisory duties. We see that delegating executive staff to oversee work results in redundant tasks and goes against the impartiality that oversight work is meant to possess. How can we assume that the executive employee monitors the work of his department in an impartial and independent manner?

In addition to the criticisms we have reviewed, we add that the provincial law did not clarify the nature of the supervisory authority and what its limits are, nor did it address the means of supervisory work. Consequently, the legislation did not adequately provide clear procedures or organize the oversight process. In this case, the provincial councils were urged to create suitable procedures for performing the supervisory function and incorporate them into internal policies. Thus, we think that in order for the oversight powers of the council to be included in the oversight mechanisms, the legislation, the executive instructions of the law, or the bylaws of the council activity, must be amended. It is necessary to form a committee arising from the council to follow up on the implementation of the decisions of the provincial council. This committee is responsible for following up on complaints and evaluating the performance of local administrative bodies operating in the governorate, as well as receiving citizens' complaints related to the reality of services provided by executive departments. Therefore, the provincial council can diagnose weaknesses and defects in the performance of the executive departments, provided that this committee is headed by a member of the council. In this regard, we emphasize direct meetings with citizens, because these meetings contribute to identifying the needs of the local citizens and benefiting from their opinions in all fields. These meetings and seminars allow identifying the parties responsible for negligence in performing the tasks assigned to them under the laws. We also believe that it is possible to benefit from modern

means of communication, as they are available to most citizens and easy to reach. The council has allocated telephones to receive complaints or e-mail. Some councils have actually worked to follow these methods, as the provincial council at Wasit allocated mobile phones to receive short messages from citizens about the reality of services (Al-Rakaby, 2012).

## Conclusion

In conclusion, we come up with the most important conclusions.

### First: Conclusions

1. The independence granted to the provincial councils is not a grant from the central authority but an inherent independence that comes from the law or the constitution. The trend towards administrative democracy necessitated the adoption of administrative decentralization, which created a legal entity independent of the state's personality in terms of its eligibility or financial liabilities. The independence of the council does not mean that it has absolute independence. Rather, the link between the decentralized bodies and the central authorities must be maintained and not severed, no matter how broad the scope of local interests.
2. It is clear that the provincial councils are one of the solutions that the legislator considered with the increasing burdens of the state and the need for it to take certain measures to perform its work. These councils undertake the management, supervision, and oversight of executive bodies, especially local facilities.
3. We found that most constitutions stipulate regulating the powers of provincial councils by law, including supervisory powers. The latter powers are considered necessary to carry out the tasks assigned to the council and implement its development projects in accordance with the principle of administrative decentralization.
4. Despite giving the provincial councils extensive powers, such as supervisory powers, they are still unable to exercise them fully due to the conflict of interests of the partisan components within the council and the partisan composition in most Iraqi provincial councils of partisan and political blocs that differ in their ethnic, party, or even national, religious, and sectarian affiliations.
5. The supervisory powers of the provincial councils over the administrative agencies in the governorate are among the important basic powers of the administrative process carried out by the council, which in its entirety includes oversight, planning, organization, coordination, implementation, and follow-up. This is attributed to the fact that it plays an important role in achieving higher policy goals through the services it provides and the projects it implements. The importance of these powers is reflected in following up on the implementation of the governorate's general policy in a manner that reflects efficiency and development.
6. The importance of the supervisory powers of provincial councils over administrative agencies is derived from their close and permanent oversight, especially they are relatively independent from the central authority. The council can focus on managing and controlling its local facilities. If disturbances occur in the capital, it can work to manage and supervise these facilities because the one in charge of them is a local authority far from the central authority.
7. The supervisory powers of the provincial councils are not limited to the administrative bodies only superficially, but are deeper than that. They monitor the employees at all levels of work (managers and employees), including those with special grades in the governorate, especially directors, and those of their rank and heads of security services in the governorate, as well as employees in lower grades. This excludes some special degrees,

such as those of army commanders, university presidents, and judges.

## **Second: Suggestions**

1. We see the need to reorganize the oversight of the provincial council over the administrative bodies. We noticed that the council carries out its oversight somewhat randomly and in a way that is not organized at all. Rather, we found that it was based on the individual efforts of some members of the Council only. Sometimes it was based on certain ideas of some members as well, and other times it was based on complaints submitted by citizens. The legislator must pay attention to and regulate these powers to avoid self-acting mechanisms for exercising oversight work.
2. We propose that one of the mechanisms for monitoring administrative agencies be the formation of a committee from the council itself to follow up on the implementation of the decisions of the provincial council. This committee is responsible for following up on complaints and evaluating the performance of local administrative bodies operating in the governorate, as well as receiving citizens' complaints related to the reality of services provided by executive departments.
3. We find that the oversight of the council over administrative agencies is sometimes formal, for reasons related to the issue of party quotas at the level of departments and bodies within the governorate, as well as the provincial council.
4. We believe that an effective governorate law must include a robust oversight system that guarantees the proper exercise of the supervisory powers of the provincial councils, adherence to the limits of the law, and ensuring that these councils are not alone in power and decision-making. This may make the rights and freedoms of citizens and the level of services provided to them in the custody of council administrations unable to bear responsibility for carrying out the tasks assigned to them. Moreover, people may be afflicted by authoritarian council administrations that violate their rights and freedoms without oversight or accountability.
5. The relationship between the local community, its administrative bodies, and the provincial councils should be developed by holding open discussions, sessions, and seminars in the presence of the media between the leaders of local administrations and the local community in order to identify the most important problems and needs of the local community and the extent of the performance of its administrative bodies and find solutions to these problems through drawing up policies and plans that help better develop the local community.
6. A joint coordination committee called the Joint Follow-up Committee should be formed to be merged with the committees of the council, which will be responsible for monitoring the administrative bodies' work entrusted to them and ensuring that they carry out their work with complete impartiality and without discrimination.
7. The supervisory powers of the provincial councils have a number of basic objectives that the provincial council exercises over the local administrative bodies in the governorate. However, we see that, despite the importance of these goals achieved by oversight powers, they must not exceed certain limits. These powers obstruct administrative activity, paralyze the work of local administrative bodies, and prevent the development of the capabilities of local officials for fear of being subjected to legal accountability.
8. We also believe it is necessary to re-work the supervisory coordination committee that was formed pursuant to an agreement between the provincial council and the official supervisory authorities in the governorate. This committee exercises its powers and duties by discussing the supervisory reality and the work of the administrative bodies in the

governorate, whose membership includes the provincial council, the offices of general inspectors in government departments in the governorate, the Financial Supervision Bureau, the Integrity Commission, the Commercial Control Directorate, the Environment Directorate, the National Security Center, the Directorate of Internal Affairs, as well as the local councils in the districts. This committee shall make appropriate recommendations in this regard in a manner that does not conflict with the provisions of the Constitution and the applicable laws, which have now been suspended for unknown reasons.

9. We believe that the Council should avoid ambiguity, secrecy, and vagueness in its work when exercising its oversight powers over administrative agencies. The Council must work in a transparent, clear, open, and announced manner with all citizens by being more widely and directly open to them and getting closer to them in order to recognize their local needs and problems with the administrative bodies. All media must be allowed to attend the Council meeting to convey the meetings and decisions to all citizens, especially its oversight work on the administrative bodies. Citizens who are related to the topic that the council will discuss must also be allowed to participate in attending council meetings and to hear their opinions without voting. This in turn brings the Council closer and strengthens the relationship between the Council and citizens.
10. The Council shall pay more attention to training and development programs for members. At the same time, there must be a serious and real commitment by members to training and development programs on how to exercise supervisory competence in order to raise their efficiency and capability to perform their local work.
11. It is necessary to keep on cooperating between the members of the provincial council and civil society organizations so that the members of the provincial council can recognize the citizens' needs through field visits and direct meetings with them to learn about the reality of their local needs. When implementing the decisions issued by the Council, directors of executive departments must avoid quotas and partisanship and work in accordance with professional controls and standards, with complete impartiality and without distinction between implementing decisions.
12. We call on the legislator to unify the bodies of appeal against the decisions of the councils to terminate membership and the dismissal of the council president before the Administrative Judicial Court, as the judiciary is competent for everything related to public office disputes.

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