

# The Decentralized Administrative Legal System” "A Comparative Study"

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## ABSTRACT

The system of administrative decentralization stands as one of the most significant administrative organizational systems. While centralized administration used to prevail in most countries worldwide, it has become inadequate in the face of the world's evolution. It no longer meets the needs of individuals, leading many nations to adopt the system of administrative decentralization. This system sparks numerous legal discussions as it addresses one of the most vital topics concerning state administration. This system provides an opportunity for the residents of administrative regions to manage their affairs through their representatives, who oversee their concerns. However, despite its numerous positives, this system is not without its drawbacks, which we will elaborate on in this research.

**Keywords:** Administrative decentralization, Local decentralization, Centralization.

## INTRODUCTION

### First, the subject of the research:

The administrative decentralization system is considered one of the most important systems applied in the administrative organization of most countries around the world. This system is based on the distribution of administrative functions between the central authority in the capital and the local bodies in the regions belonging to the state. The central authority recognizes the legal personality of the bodies in those regions and grants them a set of powers in managing their internal affairs. However, these bodies are subject to the control of the central authority in the capital.

In recent years, there has been an increasing trend in the implementation of the administrative decentralization system in various countries worldwide. This is aimed at reducing the burden on the central authority in the capital.

### Second, the importance of the research:

The importance of the research is evident through the study of one of the most critical topics that aligns with the trend of countries towards administrative decentralization in managing facilities and achieving the optimal administrative approach in state governance. This is accomplished by realizing the public interests of society and developing the work of the administrative cadre of state employees. The research also aims to clarify administrative decentralization and prevent its confusion with other concepts.

### Third: Research objectives:

The research aims to identify the difficulties encountered in the implementation of the administrative decentralization system and shed light on the problems and obstacles faced by this system. Additionally, the research aims to elucidate the relationship between decentralized administrative bodies and the central authority in the capital. Furthermore, it presents applications of administrative decentralization in some countries, compares them with others, and determines the most suitable approach for state governance.

### Fourth: Research Problem:

Despite the adoption of the administrative decentralization system by most countries worldwide, this system still faces numerous challenges and difficulties during its implementation in various parts of the world. This can be attributed to a range of reasons that hinder the application of this system.

### **Fifth, the research methodology:**

For every scientific research, its nature is distinct, setting it apart from other types of research. In light of this fact, the methodologies and tools of scientific research vary from one study to another. In our study, we have adopted three different methodologies, each complementing the others, with the aim of thoroughly examining the research topic and gaining insights into its various aspects. To achieve this goal, we followed the following approaches:

**The Comparative Methodology:** This approach involves conducting a scientific comparison between the stances of legislations and laws in some countries around the world.

**The Analytical Methodology:** This scientific method is fundamentally based on the analysis of jurisprudential opinions, their discussion, examining legislative positions, and deducing scientific results.

**The Applied Methodology:** The administrative decentralization system doesn't address theoretical issues but rather deals with real-world problems. Therefore, we will enhance the topic with a range of applications from various countries around the world.

### **Sixth, Research Outline:**

#### **Introduction**

**First Section:** Definition of Administrative Decentralization

**Second Section:** Forms of Administrative Decentralization

**Third Section:** Fundamental Elements of Administrative Decentralization

**Fourth Section:** Evaluation of the Administrative Decentralization System

#### First Section

##### Definition of Administrative Decentralization

Administrative decentralization is defined as a method within the administrative domain for distributing the responsibilities of administrative functions between the central authority in the capital and independent councils or bodies separate from the central authority. However, these councils or bodies remain under the control and supervision of the central authority in the capital <sup>(1)</sup>. Administrative decentralization is also characterized by the allocation of responsibilities to various administrative entities, each bearing direct responsibility for its actions. This distribution provides administrative entities with a significant space and flexibility in conducting their operations and making decisions independently of the central authority. Nevertheless, it does not exempt the central authority from overseeing and supervising the decisions of the administrative entities <sup>(2)</sup>.

Adopting the administrative decentralization system involves transferring some of the powers from the central authority in the capital, which holds general jurisdiction over all parts of the state, to local authorities that do not have the same level of authority <sup>(3)</sup>. This aligns with the trends observed in various countries around the world that implement this system. These delegated powers are intended for managing public facilities and easing the burden on citizens in different regions.

Administrative decentralization can be either political or administrative. Political decentralization is a form of political organization that involves the three branches of state power: legislative, executive, and judicial. In a state composed of multiple entities, each may have its own constitution and general authorities. The United States is an example of such a state, where there is a federal government at the center, as well as state governments, each with its own constitution and powers defined by the United

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1) Dr. Issam Abdel Wahab Al-Barzanji and others, Principles and Provisions of Administrative Law, without a publishing house, year 1993, p. 121, Muhammad Omar, The birth of federalism and the possibility of its application in Iraq, Majd Foundation, Beirut, 2009, p. 140.

- 2) Samah Al-Sayyed Abdel-Aty, Administrative Decentralization System in Local Administration, Journal of Financial and Commercial Research, Volume 22, Issue Three, 2021, Port Said University - Egypt, p. 55
- 3) Dr. Tharwat Badawi, Administrative Law, Dar Al Nahda Al Arabiya, Cairo, 1971, p. 359.

States <sup>(1)</sup> Constitution.

On the other hand, administrative decentralization is a form of administrative organization based on the distribution of administrative functions between the central authority in the capital and local regional authorities <sup>(2)</sup>. To distinguish between the two systems, political decentralization and administrative decentralization, the following points can be highlighted:

- 1) Administrative decentralization is limited to a portion of administration, and the administrative unit can only have specific and limited authorities. It does not possess legislative or judicial powers. On the other hand, political decentralization allows each regional unit to have its own legislative council, responsible for legislating laws specific to the state, province, or region <sup>(3)</sup>.
- 2) Administrative decentralization is a part of the administrative system within a country, and thus, it is subject to administrative law. Political decentralization, on the other hand, is a part of the political system of the state, and therefore, its issues are subject to constitutional law <sup>(4)</sup>.
- 3) According to administrative decentralization, the formation of the decentralized administrative unit should be through elections. However, concerning the establishment of administrative units in a federal state, elections are not mandatory. Elections are considered a guarantee of the independence of decentralized administrative units from the central authority in the capital <sup>(5)</sup>.
- 4) Under the political decentralization system, each state in the federation has the authority to legislate its own laws, except for what is exempted in the constitution of the federal state. Each state in the federation has its own courts that apply its specific laws. In this case, the laws of one state may differ from those of another state.
- 5) Dr. Burhan Zureiq, Administrative Authority, without publishing house, Ta, Syria, 2016, p. 41.
- 6) Dr. Muhammad Al-Shafi'i, Abu Ras Administrative Law, without a publishing house, p. 188.
- 7) Dr.. Muhammad Al-Saghir Baali, Administrative Law, Dar Al-Ulum for Publishing and Distribution, Annaba, 2002, p. 50, Dr.. Tharwat Badawi, previous reference, p. 359 et seq.
- 8) Muhammad Bouboush, Lectures on Moroccan Administrative Law, Part 1, Moroccan Administrative Organization, without a publishing house, year 2020, p. 49.
- 9) Dr. Tharwat Badawi, previous reference, p. 360.

As for the legislative and judicial functions, they are exercised under the administrative decentralization system based on the laws of the state being followed <sup>(1)</sup>.

5. The units subject to the system of administrative decentralization do not possess any aspect of internal sovereignty, unlike political decentralization, as they enjoy aspects of internal sovereignty. Advocates of the fundamental difference between administrative decentralization and political decentralization argue that units of administrative decentralization do not have any aspect of internal sovereignty, unlike political decentralization. The latter possesses aspects of internal sovereignty, evident in its participation in legal sovereignty affairs, as it has the right to contribute to the formation of the will of the federal state. This is in contrast to the decentralized system, where units do not exercise any share of subordinate sovereignty, similar to the constituent states of the union.

On the other hand, states or units in the centralized union are considered authentic organizations and thus have their foundational authorities. They possess legislative authority in matters not falling within the jurisdiction of federal legislation. As for units in the system of administrative decentralization, they derive their authorities and powers from the established authority. It is evident from the foregoing that proponents of this view base their argument on the premise that ordinary legislation determines the jurisdictions of local units in the system of administrative decentralization. This differs in the case of political decentralization, where the authority of the federal government in the capital is restricted to the specified jurisdictions for

independent units. In this context, the constitution of the union is the one that determines these jurisdictions<sup>(2)</sup>.

- 1) Dr. Issam Abdel Wahab Al-Barzanji and others, previous reference, 136
- 2) Dr. Muhammad Abdel-Al Al-Sanari, Principles and Theories of Administrative Law, A Comparative Study, Dar Al-Nahda Al-Arabiya, 1st edition, Cairo, year 2005, pp. 444 et seq

## Second Section

### Forms of Administrative Decentralization

The approach of administrative decentralization is considered one of the methods shrouded in mystery and complexity. Administrative decentralization, a term used to describe the devolution of powers from central authorities, can also refer to administrative units. In this sense, one could say that a governor is an administrative authority that is not centralized.

This aspect makes the idea of administrative decentralization somewhat unclear and intricate. The term "administrative decentralization" itself might not be suitable. Therefore, some countries worldwide have opted for a more precise term, replacing it with "self-administration."

The concept of administrative decentralization refers to the existence of diverse administrative entities within a single state. These entities have a degree of self-independence for the purpose of managing their own affairs<sup>(1)</sup>. In light of the above, we will now elucidate the manifestations of administrative decentralization with a degree of detail.

### Firstly: Local Administrative Decentralization

The administrative decentralization approach is one of the methods of administrative organization within a state, relying on the distribution of administrative tasks. Local decentralized entities possess independent legal personality despite being subject to the control and supervision of central agencies in the capital<sup>(2)</sup>. This implies recognition by the legislator of the local administrative units' legal personality as part of the state's territory. It grants considerable independence to these units in managing local facilities and affairs. This concept of administrative decentralization aligns with the idea of democracy, meaning that residents of local administrative units have the right to manage their own affairs and facilities independently. Consequently, local administrative units must be elected by the residents of those units, in line with the right of those communities to manage their affairs without conflicting with the interests

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1) Dr. Tharwat Badawi, previous reference, p. 362.

2) Ali Hatem Abdel Hamid, Administrative decentralization and its applications in Jordan and Iraq, Master's thesis, Faculty of Law, Middle East University, Amman, Jordan, 2016, p. 32.

of the central state in the capital<sup>(1)</sup>. In this way, it can be said that local administrative decentralization involves transferring the authority to make administrative decisions within the local unit's jurisdiction from the central authority in the capital to councils elected by the residents of those units<sup>(2)</sup>.

### Second: Functional Decentralization:

Functional decentralization, also known as service or functional decentralization, represents the second aspect of administrative decentralization. In this model, authority is transferred or delegated from the central authority in the capital to individuals specializing in public law within a specific sector of public services or facilities. The aim is to consider a specific interest that is not necessarily tied to specific geographic considerations. This interest may encompass the entire state or be limited to a specific part of the state's territory. This form of decentralization is evident through public bodies and institutions. These entities, in turn, confer legal personality to individuals to engage in the administration of a public or commercial facility based on the requirements of the public interest.

Local administrative decentralization aligns with functional decentralization in the need to grant legal personality and enjoy financial and administrative independence from the central authorities in the capital.

However, this autonomy does not exempt them from being subject to the oversight and supervision authority granted to the central authority in the capital.

In contrast, local administrative decentralization differs from functional decentralization in that functional decentralization adheres to the principle of specialization. Unlike local administrative decentralization, which has a general jurisdiction, functional decentralization involves the specialized management of a public facility.

1) Dr. Muhammad Refaat Abdel Wahab, *The General Theory of Administrative Law*, New University House, Alexandria, 2012, p. 144, Dr. Jaber Gad Nassar, *Administrative Law "Summarized"*, Dar Al-Nahda Al-Arabiya, Cairo, without year of publication, p. 73, Zakkar Mahfouz, *The role of decentralized bodies in protecting the environment, municipal local groups and the state*, Master's thesis, Faculty of Law and Political Science, Zian Ashour University, Algeria, 2017, p. 46

2) Dr. Abdel-Ghani Bassiouni Abdullah, *Administrative Organization*, Alexandria Knowledge Facility, 2005, p. 89.

Similarly, local decentralized authorities are subject solely to subsequent annulment oversight by central authorities when one of the local authorities exceeds the legal boundaries set for them and issues decisions beyond their designated powers or competencies. This is in contrast to functional decentralized authorities, which are subject to supervisory authority that includes conformity alongside legitimacy. Conformity involves guidance, supervision, and adjustment authorities to ensure the implementation of the imposed conditions <sup>(1)</sup>.

Also, local legal entities consist of a group of individuals bound by common ties and interests, unlike functional legal entities composed of public facilities. Attached entities aim to achieve a set of public services, and the state intervenes in their management. Moreover, local legal entities can establish attached legal entities with general competencies in managing the affairs of the local unit, necessitating the creation of bodies or public institutions. Attached legal entities, on the other hand, are created for a specific purpose and are governed by the principle of specialization <sup>(2)</sup>. Despite the differences between local decentralization and functional decentralization, they both agree on not concentrating administrative authority solely in the hands of the central authority in the capital.

**Researcher's Opinion:** We support not concentrating administrative authority solely in the hands of the central authority in the capital. Concentrating authority leads to administrative confusion and the creation of administrative routines, resulting in delayed delivery of services to citizens. In contrast, administrative decentralization alleviates the burden on both citizens and the central authority, streamlining procedures.

1) Dr. Rajab Mahmoud Tajen, *authorizing administrative law according to the latest legislative and judicial applications*, without publishing house, without year of publication, p. 47.

2) Dr. Yahya Qasim Ali Sahl Al-Sahl in *Yemeni Administrative Law*, Al-Sadiq Library and Center for Printing, Publishing and Distribution, first edition, Sana'a, 2020, p. 95.

### Third Section

#### Fundamental Elements of Administrative Decentralization

##### Firstly: The Existence of Local Public Interest alongside National Public Interests:

This means that these interests should be concerned with the general welfare of a specific area within the country's territory, such as a province or district. Recognition of this local interest by the legislator is essential, allowing the residents of that region to manage their local affairs and meet their needs. This recognition should be explicitly stated in the law or the constitution <sup>(1)</sup>. The idea of having a set of interests that pertain to a specific region fosters a kind of social solidarity and Social bonding among the individuals in that region. The variation or difference between the various regions of the country can be observed in terms of economic, social, and climatic conditions. For example, what residents of desert or agricultural regions need undoubtedly differs from the needs of urban dwellers <sup>(2)</sup>. These units are organized based on



dividing the country's territory into different units according to each country's circumstances. From these divisions, we can refer to the divisions followed in England and France, and in Iraq, as follows:

### **The English System:**

Administrative units in Britain are divided based on the division of the state's territory into units that vary according to their importance and needs. Administrative units with legal personality diversify on this basis, making it difficult to distinguish between them easily. According to the law issued in 1972, they are divided into counties, with two types: advanced counties and ordinary counties. Advanced counties are further divided into urban centers, while other counties are divided into centers, and these centers, in turn, are divided into parishes. In addition, London has a special legal status based on

1) Dr. Maher Saleh Allawi, Principles of Administrative Law, without publishing house, Baghdad, 2009, p. 38.

2) Dr. Ayman Eid Al-Saadani, Lectures on Administrative Law, Faculty of Law, Cairo University, 1st edition, year 2023, p. 57.

the 1963 law. Naturally, each country in the world has its own administrative division that may agree or differ with other countries according to the state's interests.

### **The French System:**

The French system is based on dividing the state into administrative units throughout France, according to Law No. 213 of 1972. There are three local units: the department, the province, and the municipality. These units have similar competencies, except for Paris, which has its own law based on the 1969 law <sup>(1)</sup>.

### **The Iraqi System:**

According to the Constitution of the Republic of Iraq for the year 2005, Article 122/1 stipulates that the province is the fundamental regional unit and consists of districts, sub-districts, and villages. To solidify administrative decentralization, Article 122(4) of the Constitution stipulates that the election of the Provincial Council and the Governor shall be organized, and their powers shall be determined by law. The Law of Non-Regular Provinces in the Region No. 21 of 2008 was issued, specifying the competencies and powers of the provinces in line with the system of administrative decentralization. The law grants the provinces and their councils some administrative and financial powers for the purpose of managing their affairs.

### **Secondly: Local Authorities Independent of Central Administration**

In addition to the existence of distinct local interests separate from national interests, it is required to have local authorities and individuals overseeing those interests. These individuals must be residents of those units and elected by their members, representing those units rather than the central authority. The importance of this aspect of administrative decentralization is evident in the fact that those who represent the residents of these units are better equipped to understand and advocate for their interests. They are elected by the inhabitants of these areas, serving the purpose of preventing the administration of local affairs from being handled by individuals dispatched from outside those regions.

Dr.. Ismail Sasa' Ghaidan, Regional Administrative Decentralization in Iraq, Risala Law Journal, Faculty of Law, University of Karbala, Special Issue of Research of the First National Legal Conference for the Fourth Year, 2012, p. 26.

Outsiders often lack a comprehensive understanding of the genuine interests of those areas or units. If this condition is not met, we find ourselves facing a lack of administrative focus rather than a system of administrative decentralization.

The best approach for ensuring the independence of the local bodies or units in managing their local interests <sup>(1)</sup> is through the election of these bodies or units. However, there is an opinion suggesting that there is no objection to the appointment method by the central authority in the capital. This is justified by the argument

that the crucial element distinguishing administrative decentralization is the adoption of the concept of self-administration. This essential element can only be fulfilled if real independence from the central authority in the capital is achieved. If this independence is realized, then true administrative decentralization exists, whether through the election or appointment method <sup>(2)</sup>.

Regarding the relationship between decentralized bodies and the central authority in the capital, countries differ in their approaches, which can be summarized in two methods:

**The first method** is followed in Britain and some countries similar to the British system.

**The second method** is followed in France and some countries that adopt the French system.

We will elaborate on these two methods in the following:

### English System:

The English system explicitly defines the powers of local councils and bodies, making it clear that these councils cannot exercise powers that are not explicitly stipulated in legislation. This means that the central government in the capital holds the inherent authority to carry out administrative activities in the country. Therefore, local councils are the exception, and they are not allowed to intervene in administrative activities

1. Dr. Issam Abdel Wahab Al-Barzanji and others, previous reference, p. 123.
2. Ayman Eid Al-Saadani, previous reference, p. 57 et seq. except based on explicit legal provisions. The English legislator may assign specific responsibilities to certain councils that are not granted to other councils <sup>(1)</sup>.

### French System:

The French approach differs entirely from the English one. The French legislator has defined the powers of local bodies with general rules, making it impermissible to deviate from them unless specifically exempted by a special provision and granted to the central authorities in the capital. In this way, local bodies, in exercising their jurisdiction, are subject to more stringent and precise scrutiny than what exists in the English system. They are subject to oversight by the Parliament, the judiciary, and also extensive oversight from the central government in the capital.

### Iraqi System:

Article 122(3) of the Constitution of the Republic of Iraq for the year 2005 states that the governor, elected by the Provincial Council, is the highest executive authority in the province and has the right to exercise the powers granted to him by the elected Provincial Council. Paragraph 4 of the same article specifies that elections for the Provincial Councils and their powers shall be regulated by law. From the foregoing, it is evident that the Constitution of the Republic of Iraq has adopted the system of administrative decentralization. We support this direction considering the advantages it brings to state administration and its alignment with the modern approach to state management.

### Third: Retention of central authority's right to control local bodies:

Administrative decentralization does not imply complete independence from the state. Independence here refers to autonomy in managing the legal entity within the boundaries defined by the law, rather than political independence <sup>(2)</sup>. Therefore, most laws, regulations, and jurisprudential opinions emphasize the preservation of legal and political unity in the state.

- 1) Moataz Nayef Tarawneh, The limits of administrative guardianship powers over decentralized public authority bodies in Jordan, Master's thesis, Faculty of Law, Middle East University, 2013, p. 21.
- 2) Dr.. Fawzi Habeish, Public Administration and Administrative Organization, 3rd edition, Dar Al-Nahda Al-Arabiya, Beirut, 1999, p. 337.

Countries following this approach often lean towards either the English or French style of control, and we will clarify these two styles as follows:

## The English System:

Local bodies in Britain exercise their powers with complete freedom under the scrutiny of Parliament and the judiciary, with specific oversight from the central government in the capital.

**Parliamentary Oversight:** Local bodies in Britain are creations of the British Parliament. Parliament is responsible for their establishment, conferring legal personality upon them, determining their jurisdictions, and overseeing their operations. Parliament also has the authority to amend their system, either by narrowing or expanding their powers. From a theoretical perspective, the prevailing legal system in Britain is customary law. This legal framework supports the independence of local governance in Britain, granting it various privileges and powers. Consequently, this has limited Parliament's authority in overseeing these local bodies from a practical standpoint.

**Judicial Oversight:** The British judiciary exercises its oversight over the actions of public bodies through the unified judicial system. This means that individuals and the state are subject to private law (ordinary courts). This oversight extends beyond the annulment of individual administrative orders and regulatory measures that violate laws and regulations or compensating for them. The British system does not recognize a principle of administrative independence in the face of the judiciary. Therefore, British judges have the authority to issue orders and directives to the administrative authority, and their decisions are binding on it <sup>(1)</sup>.

**Government Oversight:** The central government has the right to oversee the activities of decentralized bodies, and this oversight is manifested through the government's ability to:

A. Challenge the actions of decentralized bodies if they violate laws. This challenge takes place before the ordinary judiciary rather than the administrative judiciary.

1) Dr. Toaima Al-Jarf, Administrative Law, A Comparative Study, Modern Cairo Library, Cairo, 1970, p. 126.

B. The government has the right to supervision and direction by inspecting the activities of decentralized bodies, providing guidance and advice to these bodies. Additionally, the government has the right to oversee these bodies when they deal with municipal properties or enter into contracts.

C. The government is entitled to issue regulatory administrative decisions for decentralized bodies based on the authorization granted by the British Parliament.

D. Oversight becomes evident when the central government requires approval for certain actions of decentralized bodies <sup>(1)</sup>.

## The French System:

Decentralized bodies in France are subject to the oversight of both the legislature and the judiciary. It is noteworthy that there is effective control by the central authority, which is broader than the oversight in the British system. This control takes two forms, represented as follows:

**A. Oversight of Decentralized Bodies Themselves:** This oversight is evident through the central authority in the capital retaining the right to appoint some members of decentralized bodies. Consequently, the central authority can appoint the president of the council. Furthermore, the central authority reserves the right to suspend or remove appointed members of these bodies. This is based on its authority to dismiss and suspend its employees, considering that these employees are appointed by it. This authority extends to giving the central authority the right to dissolve or suspend these councils in their entirety, even if they are elected.

**B. Oversight of the Activities of Decentralized Bodies:** This oversight focuses on the actions of these bodies themselves and monitors the implementation of their procedures. Many actions require prior or subsequent authorization for approval by the central authority.



Dr. Muhyiddin Al-Qaisi, General Administrative Law, 1st edition, Al-Halabi Legal Publications, Beirut, 2007, p. 30, Fawzi Habeish, previous reference, p. 338.

Regarding obtaining prior authorization for carrying out activities, decentralized bodies must seek permission from the central authority in the capital before engaging in those activities. As for subsequent approval, the actions taken by decentralized bodies are not considered valid until they receive approval from the central authority in the capital. The central authority has the power to withhold approval for those actions.

In addition to what has been mentioned, there are certain actions referred to as "negative actions." These actions are also subject to the oversight of the central government in the capital. If these bodies abstain from carrying out actions mandated by the law, the central authority has the right to dissolve those bodies.

The central authority plays a crucial role in the implementation of decisions made by decentralized bodies through positive intervention by the central administration. This can include actions such as property confiscation, demonstrating the influence of the central authority in the capital over decentralized bodies. However, this oversight has its limits, and the central authority cannot exceed them. It is distinct from presidential authority, which, by legal principles, grants the president complete control over the actions of subordinates unless the legislature explicitly restricts it. In the case of administrative guardianship <sup>(1)</sup>, the president is responsible for the actions of subordinates. Conversely, in administrative decentralization, decentralized bodies are allowed various practices, such as:

A. The system of administrative decentralization allows local authorities a degree of independence in carrying out their administrative functions. However, this independence is not absolute, as these bodies remain subject to a form of supervision and oversight conducted by the central authority. This oversight serves as a guarantee for the unity and integrity of the state, both politically and administratively. This system is referred to as the system of administrative guardianship <sup>(2)</sup>.

- 1) Dr.. Suleiman Al-Tamawi, Organization of Public Administration, 1st edition, Dar Al-Fikr Al-Arabi, Cairo, 1955, p. 37 et seq.
- 2) Dr.. Maged Ragheb Al-Helou, Administrative Law, Alexandria University Press, 1996, pp. 97 et seq., Abdul Rahman Fawaz Hamad, Organization of Administrative Decentralization in the Law of Local Authorities, Master's Thesis, Faculty of Administration and Finance, Al-Aqsa University, Palestine, year 2022, p. 25, Farah Samah, Lectures on Administrative Law , Faculty of Law and Political Science, Guelma University, Algeria, 2016, p. 34.

B. The central authority does not have the right to modify the decisions of decentralized bodies. The oversight by the central authority is limited to granting permission for actions, approval of actions, suspension, or postponement of implementation. However, it does not extend to the authority to modify or replace the actions taken by decentralized bodies.

C. The central authority in the capital does not have the right to make decisions within the jurisdiction of decentralized bodies. Only decentralized bodies have the right to make decisions within their authority, while the central authority in the capital retains the right to oversee their actions. An exception to this could be if the central authority steps in to make decisions in cases of negligence or failure by decentralized bodies to fulfill their decision-making role. This exception is justified to prevent endangering public services and facilities.

D. Decentralized bodies have the option to retract from actions approved by the central authority in the capital if doing so serves the public interest.

Regarding the system of administrative guardianship in France, it was abolished under the Law on Administrative Decentralization on March 2, 1982. As a result, decisions made by elected decentralized

bodies became effective, and the dissolution of any elected council is no longer possible before establishing a new council to replace the old one. This measure is taken to prevent any vacancy in the functioning of decentralized bodies.

Consequently, the central authority in the capital is now on an equal footing with ordinary citizens when dealing with elected bodies. Challenging the decisions of decentralized bodies is possible through administrative litigation before the administrative judiciary. Additionally, administrative appeals can be made by submitting complaints to the authority that issued the decision <sup>(1)</sup>.

### **The Iraqi system:**

The oversight of decentralized administrative bodies by the central government in the capital is almost non-existent. Referring to Law of Governorates No. 21 of 2008, there is no apparent form of oversight by the central authority in the capital over local bodies or governors. However, Article 2, Paragraph 2 of the mentioned law grants the Iraqi Council of Representatives the right to oversee governors and members of the governorate council.

1) Dr. Muhyi al-Din al-Qaisi, Previous reference, p. 31 et seq.

It is noteworthy that the 2005 Constitution of the Republic of Iraq prohibits control over governorate councils but does not explicitly forbid oversight. Consequently, there is a possibility that these councils may be subject to oversight by the central authority in the capital, as there is no legal provision explicitly prohibiting it. We strongly support the notion that governorate councils could be subject to oversight by the central authority in the capital.

## **Fourth Section**

### **Evaluation of the Administrative Decentralization System**

The administrative decentralization system has many advantages that distinguish it from other systems, as well as several drawbacks, which we will discuss in this article. In the first point, we will address the advantages of administrative decentralization, and in the second point, we will cover the drawbacks of administrative decentralization:

#### **First, the advantages of administrative decentralization:**

**Application of True Democracy:** Administrative decentralization is an application of true democracy, as evidenced by the participation of the residents of regions in the decision-making process for their areas through the election of local councils that represent them.

**Simplification of Administrative Procedures:** The objective of implementing the administrative decentralization system is to serve the residents of the region and beneficiaries of public facilities. To achieve this goal, these authorities should seek to simplify their administrative procedures to facilitate the individuals in the region. Additionally, this approach aims to reduce economic expenses and avoid wasting time and effort <sup>(1)</sup>.

**Enhancement of Public Facility Efficiency:** The administrative decentralization system contributes to increasing the efficiency of public facilities by liberating them from the constraints imposed by the centralized administrative system <sup>(2)</sup>.

**Relieving the Burden on Central Authority:** It alleviates the burden on the central authority in the capital, providing the opportunity to focus its capabilities and concerns on national issues, thus avoiding the waste of time and effort <sup>(1)</sup>.

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- 1) Dr. Muhammad Al-Shafi'i Abu Ras, previous reference, p. 192.
  - 2) Dr. Majid Ragheb Al-Helu, previous reference, p. 100.

**Training Local Alternative Administrative Leaders:** Administrative decentralization works to train local alternative administrative leaders who can share the responsibility of state management with the central authority in the capital <sup>(2)</sup>.

**Enhancement of Crisis Response Capability:** The administrative decentralization system contributes to improving the ability to face and address exceptional circumstances through local decentralized bodies whose members have a better understanding of the conditions of the represented local entities <sup>(3)</sup>.

**Equitable Distribution of National Income and Taxes:** The administrative decentralization system leads to a fair distribution of national income and taxes by allocating them to various decentralized bodies. This distribution helps meet the needs of local decentralized entities <sup>(4)</sup>, preventing the dominance of public facilities in the capital and major cities over local facilities <sup>(5)</sup>.

**Achieving Social Solidarity:** From a social perspective, the administrative decentralization system fosters a form of solidarity among the inhabitants of administrative units due to similar interests. This provides an opportunity for cooperation and collaboration to achieve these common interests <sup>(6)</sup>.

- 2) Dr. Muhammad Abdel-Al Al-Sinnari, previous reference, p. 154, d. Iqbal Naji Saeed, Administrative Decentralization in the Constitution of the Republic of Iraq, research published in the Journal of Legal Sciences at the College of Law, University of Baghdad, first edition, 2020, p. 250.
- 3) Dr. Jaber Jad Nassar, previous reference, p. 73.
- 4) Ali Hatem Abdel Hamid, previous reference, p. 43, Dr. Muhammad Refaat Abdel Wahhab, previous reference, p. 151.
- 5) Dr. Mazen Lilo Radi, Administrative Law, 3rd edition, without publishing house, p. 59, Dr. Muhammad al-Saghir Baali, previous reference, p. 60.
- 6) Kamal Khairy Kasir, Prospects and Challenges of Administrative Decentralization, doctoral thesis submitted to the Faculty of Law, Islamic University of Lebanon, in 2020, p. 79.
- 7) Rashid Majeed Rashid Administrative Decentralization in Lebanon and Iraq Master's thesis submitted to the Faculty of Law at the Islamic University, Lebanon, year 2021, p. 53.

## Second: Disadvantages of administrative decentralization:

- 1) **Preference for Local Interests over National Interests:** The administrative decentralization system tends to prioritize local interests over the national interests of the country <sup>(1)</sup>.
- 2) **Financial Costs:** Administrative decentralization leads to high financial costs due to the administrative expansion of the state between central and decentralized administrative bodies. This requires an expansion of services at both the national and local levels <sup>(2)</sup>.
- 3) **Possibility of Misuse of Public Funds:** The widespread implementation of the administrative decentralization system can lead to the potential misuse of public funds due to the lack of experience in implementation by local bodies. This can impose a heavy burden on the state treasury, and elected local councils may misuse the powers granted to them <sup>(3)</sup>.
- 4) **Creation of Independent Administrative Units:** The administrative decentralization system results in the creation of independent administrative units with local interests, leading to administrative inconsistency. Local decentralized bodies may prioritize local facilities over central or national facilities in the capital, potentially causing conflicts between local and central bodies <sup>(4)</sup>.
- 5) Abdul Rahman Fawaz Hamad, previous reference, p. 28
- 6) Dr.. Rajab Mahmoud Tajin, previous reference, p. 4
- 7) Kamal Khairy Kassir, previous reference, p. 84
- 8) Rasheed Majeed Rasheed, previous reference, p. 54

## CONCLUSION

I have addressed, throughout this research, the definition of administrative decentralization and the extent of its implementation in various countries worldwide. I have also illustrated different forms of administrative

decentralization and clarified its fundamental elements. Additionally, I have presented an evaluation of the system in some detail.

In conclusion, I present to the reader and researcher a brief overview of this research. I have concluded this study by summarizing the results and recommendations that contribute to enriching the legal library, especially concerning the legal process of implementing administrative decentralization and addressing certain legal issues. The research covered several axes: the first axis involved defining administrative decentralization, the second axis examined different forms of administrative decentralization, the third axis presented the fundamental elements of administrative decentralization, and the final axis was dedicated to evaluating administrative decentralization.

Based on the foregoing, I have reached a set of results and recommendations which are:

### **First: the results:**

1. The system of administrative decentralization is based on the presence of local interests that differ from national interests, necessitating the consideration of these interests and ensuring the needs of the local population. This imposes the necessity of financial allocation and administrative independence specifically for local authorities.
2. The system of administrative decentralization assists the central government in the capital city in facing national and external challenges while leaving internal affairs to the local decentralized entities.
3. The system of administrative decentralization helps in creating new political and administrative leadership through the work of council members of governorates, as well as through managers and employees of local decentralized units.
4. The system of administrative decentralization leads to revitalizing the economic situation of regions by appointing their residents in regional private institutions and by providing the necessary resources to undertake economic projects.
5. The distribution of powers between decentralized authorities and the central authority in the capital city is considered a cornerstone for countries following an administrative decentralization system. This grants a form of administrative independence, if not political independence, to the decentralized authorities from the central authority in the capital.

### **Second: the recommendations:**

- 1) Avoiding confusion between the concepts of administrative decentralization and political decentralization and delineating the authorities of decentralized bodies concerning the management of public facilities.
- 2) To achieve optimal implementation of administrative decentralization, a set of reforms is necessary, including the development of laws and regulations specific to administrative decentralization. Additionally, the central government should combat administrative corruption by utilizing its authority in monitoring and supervising decentralized bodies.
- 3) It is essential for the central government to assist local leadership by establishing a clear plan aimed at training and developing new administrative leaders to confront the challenges they may encounter while performing their duties.
- 4) Both the central authority in the capital and local decentralized bodies must respect the enforcement of laws and resort to legal means in case disputes arise concerning the application of those laws.
- 5) There is a necessity to solidify economic, legal, and democratic values between decentralized bodies and the central authority in the capital by respecting and practically applying these values in their operations.

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