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## Administrative Decentralization of Governorates not organized in a region under the Constitution of the Republic of Iraq of 2005 (Analytical Study)

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اللامركزية الادارية للمحافظات غير المنتظمة في إقليم في ظل دستور جمهورية العراق لسنة ٢٠٠٥ دراسة تحليلية

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المستخلص

لما كانت الحياة لا تسير على وتيرة واحدة وان التغيير والتجديد في انماطها امر حتمي ولا مناص منه الامر الذي يستجلب معه وجوبية مواكبة هذه التغييرات لسد الحاجة الجماعية من الخدمات واشباع هذه الحاجات وعلى رأسها انتظام حياة الفرد داخل المجتمع وسرعة الاستجابة لمتطلباته الامر الذي كان دافعا لظهور اللامركزية الادارية التي هي ايضا مجالا للتغيير من كونها طريقة لتوزيع الوظيفة الادارية بين المركز والهيئات الى نظام اداري خاص بالهيئات بمعزل عن المركز وهجر التبعية الادارية والتحول الى العلاقات الاتحادية حتى في الدول البسيطة. وان دستور جمهورية العراق لسنة ٢٠٠٥ قد خلط بين سلطة الأقاليم وسلطة المحافظات وحاول ان يساوي بين الاثنين بينما هنالك اختلاف جوهري بين النظام الفدرالي ونظام الإدارة اللامركزية وان عدم خضوع مجالس المحافظات لسيطرة وارشاف السلطة المركزية وذلك حسب ما نصت عليه المادة ١٢٢ من دستور جمهورية العراق ٢٠٠٥ وهذا يتعارض مع مبدأ اللامركزية الإدارية.

Abstract

Since life does not move at a single pace and change and renewal in its patterns are inevitable and unavoidable. They bring with it the necessity of keeping pace with these changes to meet the collective need for services and satisfy these needs, especially the regularity of the individual's life within the society and the speed of response to his requirements. This was the impetus for the emergence of administrative decentralization. It is also a subject of change from being a way of distributing the administrative function between the center and the authorities to an administrative system for the bodies independent of the center and the abandonment of dependency Administrative and the shift to federal relations even in simple countries. The Constitution of the Republic of Iraq of 2005 confused the authority of the regions with the authority of the provinces and tried to equate the two, while there is a fundamental difference between the federal system and the system of decentralized administration. The provincial councils are not subject to the control and supervision of the central authority, as stipulated in Article 122 of the Constitution of the Republic of Iraq in 2005. This is contrary to the principle of administrative decentralization. Key Words: Decentralization, Provinces, not organized in a region.

Introduction

The system of administrative decentralization, when it emerged after the alleviation of the arbitrariness of the central administrations, through the lack of administrative centralization, was a necessity resulting from the expansion of administrative activity and the emergence of local interests that need to move quickly to address, provide or maintain them. Yet, they have continued to weaken under the arbitrariness and domination of the central authorities. Some countries have tried to get rid of it and move to local councils elected according to the narrowest administrative organizations that exercise their administrative activity in a new manner, decentralized, internal and federal, under the constitution with the authority of the federation under the administrative machine

granted by law. This is what we will discuss through the decentralization of the governorates that are not organized in a region.

### **The importance of the research**

The importance of the research is to show some of the gaps in the legal texts, which have added to the occurrence of some problems in practice. They are usually the victim of the citizen in the governorates that are not organized in the region, and the many inquiries and judicial disputes before the Federal Court, and interpretations of constitutional and legal texts that may overlook the interest of the citizen. This is what we will explain with how to address it in this research.

### **Research Problem**

The research revolves around the problem of the lack of clarity of the phrases contained in the law of the provinces that are not organized in a region. In addition, the ambiguity is tainted in terms of its technical purpose, which some interpretations may contradict the constitution, and the lack of clarity in the way of exercising the competencies. This is far from right or is it an organizational method within the governorate, and if so, what are the tools to practice it? In the midst of this uncertainty, the reality remains in the form of a centralized system rather than a federal system between Baghdad and the provinces, and this is a neglect of the constitutional texts in terms of practical reality.

### **Research Methodology**

In our research, we relied on the analytical method based on the analysis of the texts of the laws concerned with this matter, recording the weak points and weaknesses in them, and proposing the correct, as well as the descriptive approach in simplifying the general description and then delegating it to the textual and practical reality, and finding the accurate description and the extent of the comprehensiveness of these texts in dealing with and containing them.

### **Research Design**

In order to reach the objectives of this research, we will divide the research into two demands, where in the first demand, we will deal with the meaning of administrative decentralization and its comparison with the desired decentralization stipulated in the Constitution of the Republic of Iraq for the 2005 for the unorganized governorates in a region. In the second demand, we will deal with the tools of the governorates that are not organized in a region to practice and promote decentralization, especially the legislative machine, focusing on some of the texts that deal with this issue and analyze them and then find alternatives .

### **The first requirement**

#### **The Meaning of Decentralization**

Administrative decentralization, like any idea, is generated, developed, and modified according to societal needs. So falling into the decentralization under study requires us to explain its meaning by finding the definitions that have been said in it and comparing them with what we have according to the legal texts to identify the purpose of decentralization that was mentioned in the Constitution of the Republic of Iraq for the year 2005. This is in addition to studying its rules and pillars with comparison, and its field of work through the competencies that aim to decentralize its administrations in a useful and efficient way. For the governorate that is not organized in a region, this is what we will list in this demand in two branches (Al-Watari, 1976):

#### **Section One**

##### **The Concept of Administrative Decentralization**

The study of any term requires identifying it through the definitions that have come to explain its concept and going into the depths of this term to understand it well. Thus the formation of its concept, as some have defined it, is a method of democratic administration according to which it does not have the competence of the central authority (legislative, executive and judicial), but rather it is the attraction of the practice of the executive power between the central administration and the administrations of other administrative units. Others defined it as an administrative organization based on the establishment of administrative units in the various regions of the state and granting them the legal personality to manage their affairs independently of the central government in the capital. It is the distribution of the administrative function of the State between the central government in the capital and between public bodies or legal persons or elected local councils. They exercise the administrative function independently and under the supervision and control of the central government. We see here that these definitions dealt with administrative decentralization according to a certain pattern, namely decentralization within the framework of a simple state that consists of a capital and governorates. They are in the first place the central government, and in the second the decentralized bodies and under the supervision of the central

government. This is not in line with modern administrations, specifically Iraq, where the term central government is never mentioned either in the constitution or in the law of the irregular provinces in the region No. 21 of 2008, as amended, but vice versa, where the reasons are mentioned. The following phrase is required for the enactment of the law (and for the purpose of regulating these competencies in accordance with the new form of the state based on the federal system and the decentralized system...) as well as in the Constitution of the Republic of Iraq of 2005 The Republic of Iraq was established as one independent and sovereign federal state (Article (1) of the Permanent Iraqi Constitution of 2005). It also stipulates that "the federal system in the Republic of Iraq consists of the capital of regions, decentralized governorates and local administrations", as well as the following: "The provinces that are not organized in the region shall be granted broad administrative and financial powers to enable them to manage their affairs in accordance with the principle of administrative decentralization, and this shall be regulated by law" (Article (116) and Article (122/Second) of the Constitution of 2005).

Thus, we see that all texts used the term decentralization limited to the governorates and never used the term central government, which indicates the following:

1- The decentralization referred to in these texts is a pattern of management of public utilities within the governorate that is not organized in a region, i.e., it is the method of organizing work and powers between the central administration in the province and the non-central bodies in the governorate itself according to the legal or administrative tools that have been provided and in a manner that does not contradict the constitution and federal laws.

A- The constitution explicitly stipulates that the granting of financial and administrative powers to the administration of the provinces that are not organized in a region is by law and not by the executive authority by waiving some of its powers. Also, when the law grants these powers for a specific purpose, which is the management of the affairs of the province and with a specific administrative system. It is decentralization, which indicates that the latter is limited to the scope of the governorate only, and decentralization ends with the expiration of the status of a legal person in the governorates that are not organized in a region, for example, if one of the governorates It has turned into a region under the mechanism mentioned in the constitution. So does its system remain decentralized, but it turns into the formation of three authorities, as in the federation, it certainly changes without a change in its relationship with the federation, which proves that the new decentralization is specific to the governorates and their internal affairs only.

B- As for the evidence from the law of the provinces that are not organized in the region, we will mention here the following:

1- When the decision of the district council conflicts with the decision of the judicial council, priority shall be given to the former, unless the decision concerns the entire judiciary, then priority shall be given to the latter. If the latter conflicts with the decision of the provincial council, priority shall be given, unless the decision concerns the governorate, then priority shall be given to the former.

2- The law gave the provincial council legislative and supervisory authority and did not make it oversight by the federal government. These are some of the indications of what we have found that the decentralization desired by the constitution and the law is the establishment of the system of administration within the province and has nothing to do with the relationship between the federal government and the local governments, and that those who study it find in it some political decentralization, where the provinces have legislative and executive powers, although we have reservations about the word authority, but it is stated in this way in the law (Al-Khatib, 2012). Anyone who looks at the constitution finds that the constitutional legislator has sought to put the non-federal administrations on the path of administrative and financial independence, in addition to the legislative authority, which qualifies them to be a region in the near future, and in the distant future, the issue will turn into a central federation, and this is what is evident to us in the distribution of competencies, which we will show when we talk about the distribution of competencies. It is an administrative style for organizing life within the governorates, arranging the affairs of the governorate and exercising the competencies assigned to it by the constitution according to a vision to divide the roles of the administration between the administration of the provincial council on the one hand and the board of local administrations on the other hand.

## **Section Two**

### **Rules of administrative decentralization and distribution of competencies**

After we have unveiled the exact meaning of administrative decentralization on the purpose of the constitution and the law, it has become necessary for us to examine the rules on which decentralization and the distribution of competencies are based and compare them with our experience, as stated in the constitution and the law, as

stated in the two agencies: First: Rules of administrative decentralization: These are the most prominent pillars of decentralization, which are as follows:

1. The existence of restricted local or private interests, which are interests that belong to a particular particular area, in addition to common national interests, and are usually specific to a region, governorate, or others (Al-Tahrawi, 2012). We believe that this rule is suitable for decentralization in its early stages, which represented a breakthrough in countries where the central authority controlled all administrative activity and limited it to its hands only, and because of the emergence of these special interests after the development of societies and the expansion of administrative activity, the idea of decentralization emerged by relinquishing some of its powers, while the decentralization in question is not a waiver of jurisdiction, but rather an administrative system defined by the constitution and not because of the existence of special interests, but for the right of the citizens of these governorates By managing their affairs themselves and through their representatives of their own volition, as they know what is best for them and the priorities of their society, which may differ from one governorate to another, and the high status of the governorates under the constitution, this became clear when it allowed the federal government to delegate some of its exclusive competencies to the provincial governments, and vice versa, and this is regulated by law (Article 123 of the Constitution of Iraq of 2005).

2- Independence of decentralized bodies from the central government: by entrusting the management of local interests to local bodies that enjoy a kind of independence vis-à-vis the central authority. In the absence of this basic condition, there will be no talk of the existence of decentralization, and independence does not mean that the central authority does not interfere, but rather intervenes through the selection of some members of the local councils, and sometimes even their appointment (Bdeir et al, 2000).

3. Existence of central control: Decisions issued by decentralized bodies are subject to central control exercised by the central authority to ensure compliance and compliance of the decentralized administration with the laws when they are applied (Khamas, 1988). The forms of exercising this control are either through the appointment of the heads of administrative units who are employees of the central authority and their assumption of the chairmanship of the councils of those units, in addition to the appointment of a number of members of these councils, as well as through the supervision of the work of local authorities through the approval of these acts by law. This is despite the oversight bodies provided for by law (Allawi, 1988), their right to dissolve the local councils that represent the decentralized administration (Mansour and Abdullah, 1978).

Here, too, we find that the above rules do not apply at all to the decentralization brought by the constitution and the law, and we mean the decentralization of the governorates that are not organized in a region, for the following reasons:

1- The provincial councils are not subject to the control or supervision of any government entity linked to a ministry, and the federal executive authority does not have any supervisory role over these councils. Thus, eliminating the central control exercised by the central administration over the decentralized bodies was a condition for the establishment of decentralization in its new era at the beginning, but in the case of the decentralization of the governorates. The councils conduct their affairs by their decisions, and the latter are not subject to evaluation by any entity linked to the federal executive authority in terms of organization and supervisory administrative linkage (Article 122/II of the Constitution of the Republic of Iraq for the year 2005).

2. The councils of the governorates, districts and districts and their members are elected by the citizens of those governorates, and the federal government has no authority to create their legal centers, as they are elected under the electoral democratic practice under the Elections Law No. 36 of 2008 for the Governorates, Districts and Districts Councils, as amended.

3. The councils and the governorate are subject to the control of the House of Representatives, as well as all the work carried out by the decentralized administration in all its departments under the supervision of the Federal Audit Office, which is also one of the independent bodies and is subject to the House of Representatives (Article 2 (II) and Article (47) of the Law on the Non-Organized).

4- The local councils and the provincial council can only be dissolved by the House of Representatives when cases specified by the legislator are achieved, and the federal government has no role in this process (Article 20 I/III of the Governorates Law No. 21 of 2008). Thus, we see that all that has been said in the aforementioned rules has not been applied in the decentralization of the governorates, because the latter, as we have mentioned above, is a system or administrative style that has its own meanings and has its features that distinguish it from the previous one, as it is a flexible system and not a rigid system, as if it is done Applying it in its correct form and according to the intention of the constitution, it is that the provinces that are not organized in a region and at

least will turn into regions after a short period of time, and this is what we will find apparent in how the competencies assigned by the constitution to the governorates are managed and how these competencies are distributed-

### **The second requirement**

#### **Governorates' Tools in Succeeding Administrative Decentralization**

When we were convinced that the decentralization granted by the constitution to the unorganized governorates in a region is a new administrative system that is very different from decentralization in its modern era. It was necessary to give tools that enable them to activate this system and increase its effectiveness to manage the governorate and exercise its constitutional competencies. Referring to the law, we found that it has a legislative authority with our reservation about the term authority as well as a supervisory mechanism. So, we will explain in this demand the concept of legislative authority and then adapt this authority as a tool of practice. The constitutional competencies are as follows:

#### **Section One**

##### **The Concept of Legislative Power**

The legislative authority is one of the most important authorities in any country, as it is the source of legitimacy for actions and a reflection of the needs and requirements of society, as it is made up of representatives of the people to express their collective will. It is also the decisive factor in distinguishing between what is issued by the ruler and the agents, and this is what the modern trend of democratic systems has gone to, since the legislative power is given only to the rulers, as they are the ones who set the laws that the state follows. Also, since this power is from the people who are the ruler, the agents are represented by the government. Its bodies must apply these laws in accordance with the intention of the street and what the legislator wants when he sets them, and these agents grant them this status, whether the administration is centralized or decentralized (Al-Shawi, 1996).

This is to learn more about the meaning of the legislative power, when the authority bodies and their specialization in in order to cover this sovereign mantle. This helps to distinguish between the acts that are characterized by legitimacy and those that are not characterized by this description in relation to their similarity to the products of the above-mentioned authority. First: The concept of the legislative authority: It is stated in the Larousse Dictionary that the authority is an institution whose role cannot be limited to consultation, i.e., its role is in the exercise of power through leadership and decision in the precise legal language (Walid, 2003). The philosopher Tropier also says that they are directives, i.e., orders issued by the state, not suggestions, and although both are issued by the state (Trooper, 2003), the difference between them is that orders are issued from an authoritarian side and suggestions are issued from an authoritarian party (Al-Zayat et al). Legislation is defined as a set of abstract general legal rules issued by the legislator on a binding basis, and those who violate them are subject to penalties, and issued by a competent authority under the Constitution, which is the law issued by the constitutionally competent authority to enact laws (Shlebek, 2002) The legislative authority is defined as the ability or capacity to make laws, or the activity or authority under which laws are enacted and which is the legislative function (Cornu:2009). Thus, it can be defined as the constitutional machinery granted to one of the sovereign authorities representing the people and the true expression of their will. It distinguishes it from others by its competence to enact laws that are below the basic legislation (the Constitution) and supersede the subsidiary legislation (instructions, regulations and decisions). Second: Types of legislation: Legislation is of three types:

1- Basic legislation: It is the highest and most important level of legislation in society and consists of a set of legal rules that adopt the ruling political system in the state, its foundations, its official language, the general rights and freedoms of individuals, and the basic means to guarantee and exercise these rights by them (1). It also refers to the constitution or the constitutional document on which the less powerful laws are based, and in the event of their violation, the latter is invalid because it is flawed and unconstitutional, because of the characteristic of constitutional legislation over other legislations, whether formal or substantive.

2. Ordinary legislation: It is the general and abstract legal rules enacted by the legislative authority within the limits of its competencies granted by the Constitution, and this authority is the only competent authority with this power, unless otherwise provided by the Constitution. This legislation shall have subsidiary legislations and anything issued contrary to this law shall be defective to illegality, i.e., violation of the law, and this type shall be called the word law. It also means the establishment of the competent public authority in the State. It also includes legal rules in written form and giving them binding power, as well as enacting the text whose content comes into existence and obligation Abdel (Al-Bakri and Al-Bashir, 2010).

In this definition, there is a blockage that cannot be expanded, which is the right one, as ordinary legislation can only be issued by the constitutional authority, which is the legislative authority, unless the constitution chooses for itself other lines such as delegation and others, and with this confinement, our constitution of 2005 came as it did not give any opportunity to be issued by any other party other than the legislative authority.

3. Sub-legislation or Regulations: These are the administrative and organizational decisions issued by the executive authority under the competence conferred on it by the Constitution. It refers to the legislation enacted by the executive authority to implement laws, since the latter defines the general frameworks, and the details remain for the executive authority by virtue of its proximity to the public, and because it is executive, it must not deviate from the laws, and it may not include an amendment or abolition of the legal rule from the rules established by the laws (Al-Sada). These are also decisions that guarantee abstract general rules, and these decisions apply to persons who are not self-determined, and in Iraq they are called regulations or instructions, as they are sometimes called by sub-legislation (Allawi. 1991). Some defined them as regulations issued by the executive authority for the purpose of regulating public interests and utilities in the State, including the necessary and independent regulations because they are self-contained, which are not based on a law that works to implement it (Saad and Qasem, 1975). Thus, it can be said that the legislative authority is the mechanism for making laws based on proposals or projects received from the executive authority or the competent parliamentary committees granted by the Constitution. Accordingly, the provinces that are not organized in a region do not have a legislative authority in the constitutional sense that we have determined, i.e., they do not have the right to issue laws, and therefore it remains for us to adapt what is issued by the Provincial Council in accordance with the laws in force and the Constitution, and this is what we will address in the second section.

## **Section Two**

### **Adaptation of the legislative authority of the Council of Governorates that are not organized in the region**

We have learned since the legislation has always adhered to its hierarchy, and anything that contravenes that is either constitutional if it violates the constitution and legitimacy if it violates the law. Since the subsidiary legislation is of the lowest rank, the latter is not allowed to violate the law as well as the constitution. When it is violated it, it is nothing more than a defect in the constitutionality at times and the legitimacy at other times. The focus of our work in this research is to adapt the authority granted to the provincial councils in order to know what their product is, which is considered the management tool to exercise its competence according to the principle of decentralization of the following agencies: We have already seen that the laws enacted by the constitutional legislature do not exist for any other authority to attract and share its competence because the constitution has made its competence prohibitive, and there are two cases of exercising this jurisdiction as an exception, namely the case of delegation, and the decisions issued by it are called delegations, which are issued on the basis of the permission granted to it by the legislature by virtue of a delegation to the executive power. The state of necessity is when the state faces a danger in the absence of a parliament, and it is worth mentioning that the Iraqi constitution of 2005 did not obey any mandate as we mentioned above. This is a good course, as the text of Article (61) of it is stated exclusively (the House of Representatives is competent to do the following..... First, the legislation of federal laws.....) (Saleh, 2023). Article 48 of the Legislative Council states that the legislative authority consists of the House of Representatives and the Union. It was preceded by Article 47 by stating the federal authorities, which are legislative, executive and judicial, by applying the principle of separation of powers. These are all constitutional indications that the only authority that has the power to legislate is the federal legislative authority, and by referring to the law of the provinces that are not organized in a region, we found that the legislator has gone far with discretionary power, as the Provincial Council has described some descriptions that deserve to be paused It has, including:

1. The law defines the Provincial Council as the legislative and supervisory authority in the governorate and has the right to issue local legislation in a way that enables it to manage its affairs in accordance with the principle of administrative decentralization (Law of the Governorates Not Organized in a Region No. 21 of 2008, as amended, art. 2/I/A). It is worth mentioning that the phrase was before the amendment (it is the highest legislative and supervisory authority). This is an indication of what we have already concluded that the legislator intends to grant very large powers to the regions with this law, which is almost around the corner, and thus created a new pattern of decentralization that would be a corridor for the regions, and the term legislative authority raised a confusion. We will discuss the interpretation of this term with local legislation and whether the Provincial Council can enact the law. Also, we will present the evidence that does not accept doubt from the law itself that what is meant by local legislation is administrative decisions. If it is organizational, it is called subsidiary

legislation or regulation, and we will provide the evidence with an explanation of which subsidiary legislation is the closest to the law and the following agencies:

1- The text of the law of the provinces that are not organized in a region while listing the competencies of the provincial council. It includes the issuance of a newspaper in which the decisions and orders issued by the council are published. The governor's competencies also stipulated the implementation of the decisions issued by the provincial council in a manner that does not contradict the constitution and the laws in force, and the governor is also allowed to object to the decisions of the provincial council and the local council.....) (Law of the Governorates Not Organized in a Region No. 21 of 2008, as amended, arts. 7/XII & 31/II(13)).

2- A Lord who says, "Yes, these words have been mentioned, but the phrase 'issuing local legislations, regulations and instructions' has also been mentioned." We say here the following:

The Provincial Council does not have the authority to issue decisions to facilitate the implementation of laws, as they are one of the exclusive competencies of the Council of Ministers in accordance with Article (80/III) of the Constitution, and it comes exclusively as it is mentioned in the following way: (... Third: Issuing regulations, instructions and decisions with the aim of implementing laws.

B- The Provincial Council does not have the right to issue delegation decisions because, as we said above. It needs to be authorized by the Constitution, and as we said above, our Constitution did not give this delegation to the federal executive authority, let alone the administration of the provinces. So we say that the legislator in the law of the irregular provinces in a region deviated from the constitutional correctness when they called the province machine the authority and added it to the legislature, as well as when they used the word "local laws" because there is no delegated license from the constitution, which requires the review and amendment of these texts (Law of the Governorates Not Organized in a Region No. 21 of 2008, as amended, arts. 7/XII & 31/II(13)). Accordingly, only the organizational decisions remain the legislative machine that the Council can express its will, and it must have its own newspaper in which these decisions are published, because they represent abstract general rules.

The means of this knowledge are to be published in the Official Gazette stipulated by law, and perhaps there are those who invoke the following texts adhering to the wording of the law:

1- The constitution stipulates that... Other powers shared between the federal government and the regions shall take precedence over the law of the regions and governorates that are not organized into a region in the event of a dispute between them.

2- The constitution stipulates that "the powers of the federal government may be delegated to the governorates and vice versa" (Article (115) and (123) of the Constitution of 2005). Therefore, this is an explicit term in the law as well as an explicit term in the delegation, and the texts should not be looked at individually until they reach the exact meaning. Yet, the texts must be taken into account according to the rule of (texts complement each other) and upon closer look. It is concluded that if we look at Articles 114 and 115 of the Constitution. All the mentioned for the regions and governorates that are not organized into regions has been mentioned in the phrase "governments of regions and provinces that are not organized in a region" in the plural more than once In the same article and in the light of the competencies, except in this case, the phrase (... Therefore, the law of regions and governorates that are not organized in a region has priority, so it did not say laws. Therefore, what is meant by the text is the federal law specialized in organizing regions and governorates, and it currently means (the law of the irregular provinces in the region No. 21 of 2008, as amended). The guide stipulates that what is issued by the provincial council should not contradict the constitution and federal laws. If what is issued by the councils are laws that have the force of law, it would not stipulate that there should be no opposition, as for the delegation. According to the Iraqi constitution did not, the delegation is granted to the federal executive authority, and the issue of delegation of competencies between the federal government and local governments is an executive matter that is not related to legislation and is regulated by a federal law that does not contradict the constitution, i.e., this delegation cannot be interpreted on the issue of delegating the legislative authority to its jurisdiction, because it is not constitutionally permissible, as we have already separated (Mubarak, 1982). According to the issue, the authority of the provincial councils is to issue organizational decisions, and thus they do not replace the legislative authority. Yet, they rather exercise their original right under the law with the apparent texts available to us. Also, the implementation of the texts is more important than neglecting them and issuing wrong things contrary to the law. It goes without saying that the law of the provinces that are not organized in a region has been contradicted once again. It has made the appeal against the decisions of the Council, which has been recognized by more than one text, as decisions that have been challenged before the Federal Supreme

Court (Law of the Governorates Not Organized in a Region No. 21 of 2008, art. 31), which are unfair and contrary to jurisdiction and other laws because:

1. The jurisdiction of the Federal Supreme Court is clear, as it has jurisdiction over the following:

a- The unconstitutionality of laws and regulations, even if it is said that the regulations are decisions, we say that they are challenged for their violation of the constitution and not the federal law.

b. Interpretation of constitutional texts.

C. Adjudicating disputes that arise when applying federal laws, decisions, regulations, instructions and procedures issued by the federal authority..... Disputes between the Federal Government and the governments of the regions and governorates that are not organized into a region, municipalities and local administrations. According to Article 93 of the Constitution of Iraq (2005) , therefore, the decisions of the provincial councils are not within the jurisdiction of the Federal Supreme Court.

2- The decisions issued by the Provincial Council that are contrary to the law are considered to be contrary to legitimacy and not constitutional, and therefore the party to challenge them is the administrative judiciary considering the latter as legitimate control, while the Federal Supreme Court exercises constitutional control as a constitutional authority of reference. This is considered the tool that the provincial councils possess so that the affairs of their competencies granted to them by the constitution are carried out in accordance with the principle of administrative decentralization, which the law has drawn new features that are as close as possible to the powers of the regions and represent a new administrative pattern that does not derive its legitimacy and powers from the central authority, but through the constitution. The law is sometimes a legal equivalent in the exercise of the competences of the federal government.

**Conclusions** It is an administrative system with new features that differs from the old administrative decentralization, which is based on the distribution of the administrative function by the transfer of part of its powers to the governorates, and what has been given to the Provincial Council in terms of legislative machinery and the adaptation of this legislative authority. What is issued from it is a tool that enables the Provincial Council to manage its affairs to exercise its constitutional competencies. First: Conclusions: The decentralized system adopted by the Iraqi legislator in the law of the provinces that are not organized in a region is not the distribution of the administrative function through the transfer of some of its powers by the central authority to the local administration. Yet, it is an administrative system characterized by autonomy that is almost close to the regions, if not a mature regional project. The legislator was not successful when enacted the law of the non-organized governorates in the region No. 21 of 2008, as amended, in the use of the word legislative authority in the definition of the non-organized provincial council in the region. It confused the work of the councils in terms of the ceiling of the upper limit of what can be legislated, which made some believe that the governorate councils have the possibility of enacting laws within the meaning of the law. It invalidated many of the decisions issued by the council, so the legislator should have used other words that do not bring confusion in the accurate understanding of the text. The Law of the Non-Organized Governorates No. 21 of 2008, as amended, does not regulate the issue of delegation of competencies between the federal authority and the non-organized governorates in a region, despite the fact that the constitutional text requires it to be regulated by law. The ability of the Provincial Council to issue legislation represented by organizational decisions in accordance with the provisions of the law itself. It is consistent with the accurate understanding of the constitutional and legal texts in comparison to the type of administration that the Constitution has approved for the governorates in decentralized administration. It results in the publication of the decisions as they contain abstract general rules, in terms of the method of appeal, the object of appeal, and the competent judiciary. The legislator was not in accordance with the Law of the Governorates Not Organized in Region No. 21 of 2008, as amended in the management of the process of appealing the decisions of the Provincial Council and the Local Council. Despite the approval of the law on the description of the decisions issued by them, it makes the appeal body the Federal Supreme Court, although it is outside the issues considered by the court. Yet, it is the jurisdiction of the administrative judiciary, specifically the Court of Administrative Justice in the Iraqi Council of State in accordance with the Council Law No. 87 of 2017. The use of the word "the principle of administrative decentralization" by the constitution and the legislator, even though decentralization has stabilized a management system for the activity and is in a state of continuous prosperity and development. It has declassified the principle that characterized it at the beginning of its formation, and it is better after its stability as a method of management to strip it of the word principle and mention it as it is decentralized management or administrative decentralization. **Second: Recommendations:** Based on above findings, the followings are recommended:

- 1- Amending Clause (Second) of Article 122 of the Constitution by deleting the word "principle" and replacing it with the word "system" to be the phrase "according to the system of administrative decentralization" and deleting any word of principle wherever it appears in the Law of the Governorates Not Organized in the Region No. 21 of 2008, as amended, and replacing it with the word "system".
- 2- Amending Article (2), paragraph 1, of the governorates that are not organized in the amended Region No. 21 of 2008 to read (The Provincial Council is the supreme administration of the governorate within its borders, exercising the supervisory function. It has the right to issue decisions in a way that enables the governorate to manage its affairs in accordance with the decentralized management system and in a manner that does not contradict the federal laws and the Constitution). Replacing the phrase "and local regulations, instructions, laws and local legislations" with the phrase "decisions" wherever they exist.
- 3- Amending the Law of the Irregular Governorates in the Region No. 21 of 2008 as amended by adding texts dealing with Article (123) of the Constitution by establishing the mechanism for delegation of competencies between the Federal Government for its exclusive competencies and the governments of the provinces that are not organized in the Region, as the law concerned with the organization of the affairs of the non-organized governorates in the Region, with the obligation to regulate this matter, since the above article is appended with the phrase "and this shall be regulated by law".
- 4- Amending Article 31, paragraph eleven/3 of the Law of the Governorates Not Organized in the Region, as amended, and making the validity of the decisions of the Council after objecting to it by the Governor. If the decision is contrary to the Constitution, the matter shall be referred to the Federal Supreme Court. Yet, if it is a violation of the laws in force and because the issued decision is defective due to the defect of illegality, its validity shall be considered before the Court of Administrative Justice, as it is the competent authority to consider the validity of decisions issued by federal and decentralized state institutions. Also, the appeal shall be the same as the previous one in other texts of the law.
- 5- Amending paragraph twelve of Article 7 of the Law of the Governorates Not Organized in the Region No. 21 of 2008, as amended, and appending it with the phrase "The decision shall not be considered effective until after it is published in the Official Gazette or from the date determined by the published decision". Because it is necessary to know the validity of the organizational decision towards individuals and bodies, and the presumption of knowledge thereof is to be published, so it must be published in the Official Gazette.

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