

العنوان:	Administrative and Political Decentralization in Iraq's Constitution 2005
المصدر:	المجلة المصرية للدراسات القانونية والاقتصادية
الناشر:	احمد عبد الصبور الدجاوي
المؤلف الرئيسي:	Saeed, Iqbal Naje
المجلد/العدد:	ع11
محكمة:	نعم
التاريخ الميلادي:	2018
الشهر:	يوليو
الصفحات:	454 - 486
رقم MD:	913520
نوع المحتوى:	بحوث ومقالات
اللغة:	English
قواعد المعلومات:	IslamicInfo, EcoLink
مواضيع:	العراق، الدستور العراقي، اللامركزية الإدارية، اللامركزية السياسية
رابط:	<a href="http://search.mandumah.com/Record/913520">http://search.mandumah.com/Record/913520</a>

Administrative and Political  
Decentralization in Iraq's  
Constitution 2005

Dr. Iqbal Naje Saeed

College of Isra University

Law Department

## ملخص البحث باللغة العربية

## اللامركزية الادارية والسياسية في دستور العراق لعام 2005

بعد احتلال العراق وإسقاط نظامه في 9 نيسان/أبريل 2003 أخذ التفكير يتجه إلى إعادة صياغة شكل الدولة العراقية من دولة موحدة إلى دولة اتحادية. وقد أصدر مجلس الحكم في العراق عام 2004 قانون إدارة الدولة للمرحلة الانتقالية، التي تنص المادة الرابعة منه على "أن نظام الحكم في العراق جمهوري اتحادي فيدرالي ديمقراطي تعددي". وفي دستور العراقي الاتحادي الدائم عام 2005 أوضح في مادته الأولى "جمهورية العراق دولة مستقلة ذات سيادة، نظام الحكم فيها نيابي برلماني ديمقراطي اتحادي". إن العراق كغيره من البلدان التي تحتوي مجتمعاتها على خصوصية وطنية، ويتفاعل معها صراع التنوع الديني سواء بشكله المصطنع أو الطبيعي؛ يحتاج إلى تجربة ديمقراطية تؤسس لدولة الإنسان والمواطنة وتكافؤ الفرص، هذه التجربة تعطي نتائجها في ظل إعطاء الحقوق لتلك الهويات التي عانت عقوداً من الظلم، ومحاولات الصهر داخل هوية وطنية مزيفة صنعتها النظم على مقاسها في الفترة السابقة. فلا استقرار ولا بناء للدولة العراقية ولا حلول عملية لأزماتها الحالية دون دستور موحد وشرعي يؤسس لبناء دولة المؤسسات، ويتحقق ذلك بإحدى الآليات الديمقراطية العصرية؛ مبدأ اللامركزية الإدارية للهويات الصغيرة، واللامركزية السياسية (الفيدرالية) للهويات الكبيرة. تكمن أهمية الدراسة في تناولها موضوع اللامركزية السياسية والإدارية من المنظور الإيجابي للامركزية، ومن منظور الحاجة الاجتماعية والسياسية للحالة العراقية في هذه المرحلة. أما مشكلة الدراسة فنكمن في طرح حل من الحلول الافتراضية لمجموعة من الأزمات العراقية، ذلك الحل هو نفسه مشكلة تضاف إلى مشاكل العراق وأزماته. ويقوم البحث على فرضيتان مفادهما أن العراق بحاجة حقيقية للنظام اللامركزي بشقيه السياسي والإداري؛ لعلاج مشاكل العراق وخاصة مشكلة الحقوق؛ ومن أجل تثبيت الديمقراطية وإرسائها وبناء الدولة. وأزمات العراق لن تنتهي مباشرة إذا ما طبقت اللامركزية الإدارية والفيدرالية، لكنها ستنتقل وتخضع للسيطرة، وتصبح في سياق حلها بالشكل الصحيح بدلاً من حالة الفوضى والصراع من أجل الصراع.

After the occupation of Iraq and the overthrow of its regime on 9 April 2003, thinking was going to reshape the shape of the Iraqi State from a unified state to a federal state. In 2004, the Iraqi Governing Council passed the Transitional Administration Law, article 4 of which states that "the Iraqi regime is a federal, democratic and pluralistic republic." In Iraq's permanent federal constitution in 2005, he explained in his first article: "The Republic of Iraq is an independent and sovereign state, with a federal parliamentary parliamentary system of government." Iraq, like other countries whose societies have a national peculiarity, is intertwined with the conflict of religious and ethnic diversity both artificially and naturally; it requires a democratic experiment that establishes the human state, citizenship and equal opportunities. This experience gives its results in giving rights to those identities that have suffered decades of injustice , And attempts to smelter within a false national identity created by the systems in size in the previous period. There is no stability and no building for the Iraqi state and no practical solutions to its current crises without a unified and legitimate constitution that establishes a state of institutions. This is achieved by a modern democratic mechanism; the principle of administrative decentralization of small identities and the political decentralization of big identities. The importance of the study is to address political and administrative decentralization from the positive perspective of decentralization and from the perspective of the social and political need for the Iraqi situation at this stage. The problem of the study is to propose a solution of virtual solutions to a set of Iraqi crises, that solution is the same problem added to the problems of Iraq and its crises. The research is based on two assumptions that Iraq needs a decentralized system, both political and administrative, to deal with the problems of Iraq, especially the problem of rights, and to consolidate democracy, establish it and build the state.

The crises in Iraq will not end immediately if administrative decentralization and federalism are applied, but they will be mastered and controlled, and will be properly resolved rather than chaotic and conflictful for conflict.

## Contents

- Dedication
- Conclusion
- The first topic:
  - What is decentralization
  - The first requirement:
    - Definition of decentralization and types
    - Branch I: - Definition of decentralization
    - Branch II: - I decentralized
      - First: - Geographical decentralization
      - Functional decentralization
      - Third: Political decentralization
      - Fourth: Administrative decentralization
  - The second requirement:
    - Foundations of decentralization in the administrative system
    - The first section:
      - Elements of the success of administrative decentralization
      - Section II: - Types of administrative decentralization
        - First: - The pattern of independent decentralization
        - Second: the semi-independent type of decentralization
        - Third: the pattern of decentralization
        - Fourth: The pattern of decentralized decentralization
    - The second topic: - Requirements for decentralization of the administrative system and its results
      - The first requirement: - Factors and elements of the establishment of administrative decentralization
        - The first branch: - Factors affecting administrative decentralization
        - Branch II: - Administrative Decentralization Staff
      - The second requirement: - Results of administrative decentralization

- The first section: - The positives of decentralization
- Section II: - The disadvantages of decentralization
- The third topic: - Applications of decentralization
- The first requirement: - Models of administrative decentralization
- Branch I: - Decentralization in Iraq
  - First: The Transitional Administrative Law of 2004
  - Second: - CPA Order No. 71 of 2004
  - Third: The Constitution of the Republic of Iraq for the year 2005
- Section II: - Law of Governorates not organized in the region No. 21 of 2008
  - First: - The independence of local bodies from the central authority
  - Second: Granting the moral personality of a part of the territory of the State
  - Third: Administrative guardianship in accordance with the provisions of Law No. 21 of 2008
- Conclusion
- Results
- Suggestions and recommendations
- Sources

## Conclusion

After the occupation of Iraq and the overthrow of its regime on 9 April 2003, thinking was going to reshape the shape of the Iraqi State from a unified state to a federal state. In 2004, the Iraqi Governing Council passed the Transitional Administration Law, article 4 of which states that "the Iraqi regime is a federal, democratic and pluralistic republic." In Iraq's permanent federal constitution in 2005, he explained in his first article: "The Republic of Iraq is an independent and sovereign state, with a federal parliamentary parliamentary system of government." Iraq, like other countries whose societies have a national peculiarity, is intertwined with the conflict of religious and ethnic diversity both artificially and naturally; it requires a democratic experiment that establishes the human state, citizenship and equal opportunities. This experience gives its results in giving rights to those identities that have suffered decades of injustice , And attempts to smelter within a false national identity created by the systems in size in the previous period. There is no stability and no building for the Iraqi state and no practical solutions to its current crises without a unified and legitimate constitution that establishes a state of institutions. This is achieved by a modern democratic mechanism; the principle of administrative decentralization of small identities and the political decentralization of big identities. The importance of the study is to address political and administrative decentralization from the positive perspective of decentralization and from the perspective of the social and political need for the Iraqi situation at this stage. The problem of the study is to propose a solution of virtual solutions to a set of Iraqi crises, that solution is the same problem added to the problems of Iraq and its crises. The research is based on two assumptions that Iraq needs a decentralized system, both political and administrative, to deal with the problems of Iraq, especially the problem



of rights, and to consolidate democracy, establish it and build the state. The crises in Iraq will not end immediately if administrative decentralization and federalism are applied, but they will be mastered and controlled, and will be properly resolved rather than chaotic and conflictful for conflict.

## Introduction

In the period since 2003, the terms of administrative and political decentralization have emerged in practical terms and have come into effect effectively on the basis of constitutional and legal provisions, thus turning Iraq from a simple state into a A state complex in governance and requires the transition of a new scope of state administration in accordance with rules and procedures that differ radically from what was previously applied, so found the federal system and because Iraq is characterized by cultural diversity, national and sectarian, so religiously composed of Iraqi society from Muslims, who make up 97% of Iraqi society and are divided into two main sects, the Shiites (55%) are distributed among Arabs, Turkmen and Kurds, in addition to the Sunnis, who make up about 40% of the Arabs, Turkmen and Kurds. While the rest of the nationalities constitute 3% of the total population of Iraq, according to statistics prepared previously by the Ministry of Culture, Iraqi planning and the United Nations.

With such diversity, Iraq needs a genuine democratic system that preserves the rights of all components. Because dealing negatively with this diversity may lead to divisions and conflicts and may challenge the application of democracy correctly and thus lead to a return to dictatorship and perhaps ignite a new civil war.

Therefore, the role of the state in the production and direct management of its institutions in favor of decentralized institutions, granting the private sector and civil society institutions a greater role in the development process, and enhancing accountability and transparency to strengthen the local administration system should be relied on. Distributed as follows:-

The first topic dealt with the nature of decentralization in terms of definition and types and all related to the concept.

In the second section, I tried to meet some of the requirements that are supposed to exist until decentralization is achieved While the third topic dealt with the applications of decentralization in the administrative system in Iraq in particular.

**Research problem:**

The problem lies in the ambiguity and confusion in the interpretation of the legal texts that deal with the determination of the powers of the central authority and the authorities of the regions, which led to confusion in the work of the central authority and local administrations, which would exceed the powers established by the Constitution.

**Research Goals:**

The research aims to clarify the concept of administrative decentralization in accordance with the legal organization and determine the powers given to the provinces under the laws in force and in this lead to the good management of the local units and thus lead to the consolidation of the principles of democracy

**Research Methodology:**

The subject of administrative and political decentralization and the attention given to it by the modern international community. In this study, we adopted an analytical (descriptive) approach to review the components and elements of decentralization administrative and Political Decentralization in Iraq's Constitution 2005

**The first topic: "What is decentralization?"**

There are countries that want to strengthen their central authority, making the administrative function in their own hands because of the political ideology of the Authority or because of fears of dividing the state which includes different minorities and Progress We can say that decentralization is only a method of organization based on the

distribution of competencies between the central authority and created others independent of them legally and in this sense may be decentralized political, economic, administrative or financial.

### **First requirement**

### **Definition and types of decentralization**

#### **Section 1 (Definition of Decentralization)**

**Decentralization:** It is meant to share the administrative function between the state and represented by the central government on the one hand and the local administrative units on the other hand so that the central authorities are tasked with satisfying the national public needs that benefit the general public throughout the country. Which are limited to individuals in a geographical area of their own <sup>(1)</sup>

Mustafa Abu Zaid Fahmi defined it as the transfer of power from the state to another person of public law who may be a regional person who is "less expansive" than the state or an "affiliated" public person with specialized competence by nature<sup>(2)</sup>. Muhammad Kamel defined it as a way and a road One of the methods of administration includes the distribution of the administrative function between the government and local and local elected bodies which exercise their powers in this regard under state control.<sup>(3)</sup>

---

(1) Mohammed Omar Mouloud, 2009, Federalism and its applicability in Iraq i 1, Majd Foundation, Beirut p. 140.

(2) Dr. Mustafa Abu Zaid, mediator in Administrative Law, Legal Library, Printing House, University House Egypt, p.

(3) Dr. Mohamed Kamel Layla, Principles of Administrative Law, Administrative Organization and Management Activity, Faculty of Law, Beirut University 1968, p. 8.

## Section II (Types of Decentralization)

### First: "Geographical decentralization

Which is represented in the process of the distribution of power between the provinces or provinces and regions of one state, which enjoys a moral personality represented by a local council elected all or some of its members by citizens of regions and provinces and has the authority to establish an independent budget and the adoption of administrative decisions related to the management of projects and public utilities within the administrative regions of the province and launches This type of decentralization is governed by local administration <sup>(1)</sup>The moral personality of this type of administrative center is granted according to "regional considerations, namely the emergence of local interests distinct from national interests that require recognition, A.

### Second: functional decentralization

Is the process of the distribution of powers and powers at the hierarchical levels and between the specialized sections within the organization or the one ministry and highlight the need for this pattern as the functions of the higher levels and increased its work and time spent on running things efficiently and effectively

### Third: Political Decentralization

(Legislative, executive, and judicial) between the government in the center of the country and the authorities in other centers of the same country. This distribution results in a type of government called the Federal Union. It consists of several vehicle governments that collectively constitute a single union.

---

(1) Mohamed Zuhair Garana, Principles of Egyptian Law, Abdullah Wahba Library, Egypt, 1944.

Political decentralization is a constitutional status based on the distribution of various government functions between the federal government in the capital and Where the units exercise their internal sovereignty and establish a parliament. "A government is established, enacted and governed by legislation. Political decentralization aims to give citizens or their democratically elected representatives greater authority in the decision-making process, both during the planning and preparation stage and in implementation. It also requires constitutional or legislative reforms aimed at creating an enabling environment for political parties, stronger parliaments and local political units, and also "the existence of effective lobbying groups." The concept of political decentralization is based on the fact that directly elected representatives at the local level are better able to communicate and cooperate With their constituencies to meet their demands and needs.

Political decentralization enhances the concepts of democracy and good governance at the national level through broader participation in decision-making.

Political decentralization means that decision-making power is transferred to local units represented by councils elected by local citizens and refers to the degree of political independence. It should be pointed out that political decentralization shortens its presence in the United State as a "central" union and no place in simple states.

In Iraq, for example, "Iraq's Constitution of 2005 specifically states" (1) that "the Republic of Iraq is a single, independent and fully sovereign federal state with a democratic parliamentary parliamentary system, which guarantees the unity of Iraq."

Article 117 of the Constitution states that "the Kurdistan Region shall have political powers and decentralized administrative powers, as it has legislative authority, executive authority and authority." It has

administrative and decentralized powers enjoyed by the provincial councils comprising the region, namely Erbil, Sulaymaniyah and Dohuk, where each governorate has a governorate council or governor elected by the Council and has financial and administrative independence subject to the control of the regional central authority.

While the rest of the provinces of the Republic of Iraq is not regular in a region subject to decentralized administrative system and under which enjoys administrative independence and represents the province elected council and a governor elected by this Council and an independent budget under Article (122) of the Iraqi Constitution, the second item (grants provinces that have not organized in the province administrative powers And extensive finance to enable it to manage its affairs in accordance with the principle of administrative decentralization and regulated by law).

Accordingly, the law of governorates not organized in a region under No. (21) of 2008, which will be explained in detail.

-----

- The United States is a "central" federation which is a group of organized states, some of which constitute a State. These states have constitutions, legislative powers, executive and judicial powers, and the United States has a "central" constitution.

- A simple state has a single constitution, a legislative authority and an executive and judicial authority. Its authority extends across all regions and territories to a decentralized administrative system.

- The Constitution of Iraq for 2005

Fourth: Administrative decentralization

Is an administrative system for the distribution of administrative authorities between the central government on the one hand and local elected administrative bodies, which manage their local affairs in

coordination with and under the supervision of the central authorities. The system is based on the idea of the distribution of administrative functions between the central government in the capital and local elected or elected bodies, in the exercise of their administrative functions for the supervision and control of the central government<sup>(1)</sup>.

Another source defined it as "an administrative style based on the distribution of the administrative function between the central administrative body and independent bodies on a regional or objective basis." This is different from political decentralization in that it is limited to the administrative function and can be carried out in complex and simple countries<sup>(2)</sup>.

### **The second requirement: - Foundations of decentralization in the administrative system**

The foundations of administrative decentralization are based on a number of important factors that lead to a close relationship between the central government and the local administrations, which lead to the crystallization of the general policy of the state and the development of culture among the inhabitants of local areas and thus the creation of political, economic and social stability.

#### **Section I: Elements of the success of administrative decentralization**

There are several factors working on the success of decentralization in the administrative system, including:

**First:** Recognition of special interests of regional units distinct from national or national interests.

---

(1) Sulaiman al-Tamawi, Principles of Administrative Law Comparative Study, Dar al-Fikr al-Arabi, Egypt, 1966, p

(2) Dr. Shashab Touma Mansour, Administrative Law, Part I, Dar al-Tafs and the National Publishing House Baghdad 1970-1971 p



Because the basis of administrative decentralization is to recognize that there are special or regional interests would be better left to supervise and direct them to those interested in order to devote the central government to the interests of interest to the whole country so that this factor justified "to adopt an administrative system that allows the management of these interests, This is the result of the establishment of national and national facilities throughout the country and local facilities that meet the needs of the region. Recognizing the

existence of distinct local interests, noting that independence in the management of regional facilities is not absolute. " But the local decentralized people are subject to a kind of control of the central authority called administrative guardianship in order not to harm the unity of the state or damage the interests themselves.

**Second:** - Recognition of local units with independent legal personality

The recognition of the existence of interests of a local character managed by the sons of each local unit requires that these units necessarily have an independent legal personality distinct from the legal personality of the central authority. In the system of administrative decentralization there are many general legal persons and the acquisition of local units of the legal personality must have administrative and financial independence Shall have the right to own property, litigation and contracting, an independent financial liability of its own, and a budget of its own revenues and expenses, also independent of the budget of the other units and all other rights conferred by law. The performance of obligations and duties imposed by law "and borne by local units as a

result of the enjoyment of the moral personality responsible for his work<sup>(1)</sup>

These independent legal persons are appointed to manage these interests to ensure that their objectives are achieved, namely, the boards of directors of the Authority and the regional public interests, to exercise the rights and responsibilities of the moral personality.

**Thirdly:** - To entrust the management of decentralized or local units to an elected entity among its members

Where the element of election is an important element in the administrative decentralization of the response of this system of democratic ideas and is considered essential to "give the local authorities broad powers towards the center because it represents the popular will in the exercise of power.

**Section II:** - Types of administrative decentralization

UNDP classified decentralization into four model

**First:** - The pattern of independent decentralization

In this type of decentralization, the central government relinquishes some of its competencies to local micro-units, such as state, municipal and other local authorities, and grants it to be separate decentralized units. Under this pattern, the central government transfers some powers to these local units in a transport mode.

Local units have independence and a moral personality that is separate from the government and not under their direct control. The local units have clear and legally defined geographical boundaries. "The authorities exercise public functions." Local units also have an institutional legal status and have the necessary financial resources to carry out their functions.

---

(1) Dr. Munir Mahmoud Al-Wattari, Centralism and Decentralization in Public Law, First Edition. Al Ma'arif Press. Baghdad 1976, pp. 8-9.

In addition to the concession of the central government for some of its powers to the local units accompanied by at the same time the citizens as institutions providing services to satisfy their needs and that them Ability to influence it like other central units. The central government has a reciprocal relationship with local units for the purpose of harmonizing relations and sharing benefits.

**Second:** - The semi-independent type of decentralization

In this type of decentralization, the local units enjoy semi-independence. Many powers are delegated to the local units by the central government through contracting or through legislation. Governmental decisions and administrative authorities and responsibilities for a strictly defined interest to institutions that are often under government control, indirect or semi-independent.

**Third:** - The pattern of decentralization

This form is characterized by a lack of administrative focus and contains a few issues of authority and powers and decision-making for administrative and financial functions. This model represents the least patterns of decentralization, which is considered by some as a method of low central administration. This model is characterized by the subordination of the lower units of the central government. The fields of politics, financial and administrative affairs, however, depend on the financial resources and revenues from the center. This model represents the least patterns of decentralization in terms of degree of autonomy granted to administrative units, such as branches of ministries In the region in one state.

**Fourth:** - The pattern of decentralized decentralization

This pattern of decentralization refers to all units outside the formal governmental structure, which are either non-governmental or private

sector units. This type is not preferred to be treated as a form of decentralization, but it is treated with impartiality and separation.

The meaning of the separation refers here to the transfer of planning and public functions of the government to other voluntary institutions or non-governmental organizations such as chambers of commerce, trade unions, political parties and others and the transfer of these institutions the right to grant permits and licenses and organization and supervision of its members to perform some functions that were controlled by the government and in other cases The government may shift responsibility for the production of goods and services to private enterprises<sup>(1)</sup>.

**The second topic:** - Requirements for decentralization of the administrative system and its results

**First:** Factors and elements of administrative decentralization

**Section I:** Factors Affecting Administrative Decentralization

The administrative system in countries is influenced by political factors as part of the general political system of the state, in addition to the social, cultural, demographic and geographical factors that can be clarified by:

- 1- The philosophy that the administration or the state believes in. The authorities are based on a dictatorial ideology that does not favor decentralization while the existing authorities tend to have an ideology that is open to the people and which adopts the principle of popular participation in decentralization.
2. People's awareness As political awareness increases, the public's desire for political participation increases.

---

(8) Quasi Antique, Administrative Decentralization in the Maghreb, p. 63.

3. The people's need Because the peoples that are composed of different national and ethnic groups need to be decentralized because they achieve their national unity and have the best way to face the dangers of separation and division.
- 4 - Multiple cultural factors such as language and religious beliefs calls for the use of the decentralized system to benefit from it as a vessel that includes this pluralism and contributes to ensure the participation of all in development programs.
5. The geographical dispersion calls for the application of the decentralized system to manage the affairs of these regions.
6. The number of decisions taken by officials at lower levels and their frequency, as the number of decisions increases, the degree of decentralization increases.
7. The importance of decisions As decisions made at the lower levels are of great importance, it can be said that the system is becoming decentralized<sup>(1)</sup>.

## **Section II:** - The pillars of administrative decentralization

Decentralization is based on key pillars

**First:** The existence of local public interests in addition to the national public interests. These interests concern certain areas such as the governorate and the judiciary, and their existence is recognized by the legislator either in the constitution or the law.

**Second:** Local authorities shall administer the interests and satisfy the local needs.

**Third:** - Supervise the central authorities on the work of decentralized local bodies.

---

(9) Dr. Hanan Mohammed al-Qaisi, al-Wajiz in explaining the law of the provinces irregular in the territory of the Library of Sanhoury 2012 p. 11.

**The second requirement:** - The results of administrative decentralization

The first section: - The positives of decentralization

Decentralization has many advantages, both at the social level, where it is the system that eliminates factors of delusion and fear of rulers, in addition to increasing awareness of the people and the people of the regions of their importance and the importance of their participation in development projects as a result of the national desire to progress and competition.

As for the decentralization achieved at the political level, it achieves the application of local democracy and hinders the monopolization of power. In addition, it increases the chances of political participation in society and contributes to the promotion of national unity in countries composed of diverse national or religious groups.

In addition to the above, the decentralized system has administrative advantages as well. It is to reduce the burden of the central authorities because it frees the central administration from the task of managing some administrative affairs and leads to a multiplicity and diversity of administrative decisions. The administrative efforts vary accordingly. In addition to achieving independence in the administration where the sons of the local unit manage their own affairs almost freely according to the wishes of the inhabitants of the local unit itself regardless of the opinion and positions of the national majority, They manage local affairs and take administrative decisions on them to achieve local interest and satisfy the desires and needs of the local population unit.

One of the advantages of administrative decentralization is that it helps to motivate workers by allowing them to participate in decision-making processes.

**Section II:** - The disadvantages of decentralization

Decentralized organization, like other administrative systems, is flawless, mainly "weak authority and control of the central authorities in all regions of the state, which may threaten the unity and the state entity, and the excessive and exaggerated population of local units to defend their interests and intolerance may harm the public interest.

One of the disadvantages of decentralization may affect the unity of the administrative and political state. It is possible that the granting of local powers to the local authorities will lead to the disintegration of these bodies. The central government will lose control over these administrative units.

Therefore, there is a conflict between the decentralized bodies and the central authority for the two to enjoy the moral personality and because the local bodies often "serve the interests of the local public interests, creating communities that close inside and separate from the national public life and the regions and regions are not on one level of human and material potential Administrative decentralization to achieve its development and development goals. "One of the drawbacks of decentralization is the increase in financial burdens due to the recurrence of some units such as legal and administrative affairs at the local level, Dispersion of the target. In addition, some may tend to independence, especially if decentralization is accompanied by feelings of national, religious or ethnic hostility.

**The third topic:** - Applications of decentralization**First:** - Models of administrative decentralization

Local administration or local government systems vary among countries and have adopted two modes of administrative organization: administrative decentralization and administrative decentralization.

Where the central administrative approach, the oldest in terms of appearance to limit the administrative function in the hands of the executive branch alone in the capital without the presence of other administrative authorities independent of them. While the decentralized approach in the administration tends to decentralize the administrative function and the participation of decentralized bodies and authorities so as to give the powers of the administration of services to local elected authorities in the regions. Administrative decentralization is closely related to the issue of administrative freedom of district administration and the promotion of local democracy to enable local communities to participate in managing their facilities and achieving the best results Public and national interest.

#### **First Branch: - Administrative Decentralization in Iraq**

Political change in Iraq after April 9, 2003 led to a change in the administrative system. It has eliminated the restrictive decentralization that was based on a wide decentralization that initially took different names and "according to its geographic location and after the consolidation of the military unification in Iraq under the resolutions adopted by the Security Council in 1483 on 22/5/2003 as a military occupation. In this context, UN Resolution 1511 of the Security Council that the Iraqi Governing Council take the necessary steps to write the constitution and return the authorities to the Iraqi people.

First: "- The Iraqi State Administration Law for the Interim Period 2004

The law was issued on March 8, 2004, which established the interim constitution governing Iraq and the text of the State Administration Law on the formation of a productive Iraqi government in accordance with a permanent constitution written by a national productive association. This law contained 62 articles and 9 sections aimed at preventing the



concentration of power in the hands of the government Federalism and encouragement of the exercise of local authority by officials.

**Second:** - CPA Order No. 71 of 2004

Coalition Provisional Authority Order No. 71 was issued on 6 April 2004 by the Administrator of the Coalition Provisional Authority (Paul Bremer). This decision confirms the principle of decentralization in the Transitional Administrative Law of Iraq, but in detail in terms of the formation of provincial councils and the activation of their competencies.

**Third:** "- The Constitution of Iraq for the year 2005

The Iraqi constitution adopted the principle of decentralization in the government administration in a step that constituted a qualitative leap in the development of the country's political system. The constitution guaranteed the province and the provinces that do not organize in a region of great independence and powers that were not seen before.

This independence comes to the fact that the provincial government and provincial councils are not appointed by the centers but come through direct elections and are therefore directly accountable to voters.

Article 122 of the Constitution stipulates that the Iraqi constitution, which states in its first article that "the Republic of Iraq is a federal state, An independent and fully sovereign system of government in which parliamentary parliamentary democratic and this Constitution guarantees the unity of Iraq. <sup>(1)</sup>

Has taken or divided the administrative system into 3 sections as previously mentioned, "and remained to mention that Baghdad and the capital did not allow it to organize in a province and provided for in Article (124).

---

(1) Constitution of the Republic of Iraq, 2005, p1.

Despite the definition of powers to the regions and the central government as well as "provincial councils in the provinces of irregular regions, we find some ambiguity in the prerogatives of those mentioned in advance" because of conflicting provisions and constitutional powers on the distribution of wealth and policy and the deployment of security forces and many things related to it. It is possible to summarize some of this ambiguity or inconsistency in the text of article 110 of the Constitution in force (the formulation of diplomatic policy and the negotiation of treaties and international conventions and policies of presumption, signature and conclusion and the formulation of economic, trade and foreign policy) of the competencies of the federal government, but in the first and fourth paragraphs of Article "121" The Iraqi Constitution grants the provinces and governorates broad sovereign authority to open offices in embassies and diplomatic missions to follow up the cultural and developmental affairs of the Aflim ", in which there is a clear contradiction in the mechanism of work and the representation of the Doleomasi That satisfy the terms of reference of the federal central government, and there is also "a lot of contradictions in the materials relating to oil, gas and administrative borders of the provinces and the disputed areas.

**Section II:** - Law of Governorates not regulated in the region No. 21 of 2008

The province is the basic regional unit and is established based on the decision of the political authority. The constitution of Iraq in force in 2005 divided the governorate in article 122 (first) as "(consisting of a number of districts, districts and villages) and in order to embody and activate the principle of administrative decentralization. "The fourth paragraph of Article 122 of the Iraqi Constitution, which provides for ((shall be regulated by law, the election of the provincial council and the

governor and their powers)) has been passed the law of irregular provinces in the region No. (21) for the year 2008 with a view to clarify the terms of reference and powers of the provinces commensurate with and compatible with decentralization Political and administrative The framework has been granted provincial administrative, political and financial powers extended Besides granting councils of local people's multiple functions.

It also stipulated "this law on coordination between the provinces through the establishment of the supreme body for coordination between the provinces in all matters related to local affairs and management and address the problems and obstacles that guide them

Decentralization has become more widespread in developed countries and the ideas and application of democracy have begun to crystallize.

The Law of Unregulated Governorates in Region No. 21 of 2008 was promulgated in Iraq on March 19, 2008. This law recognizes the principle of regional administrative decentralization in Iraq, which applies to governorates that have not been organized in regions. We will clarify in this section the subject of 3 aspects, namely the independence of local bodies from the centralization and granting of moral character part of the territory of the state and finally "administrative tutelage based on the provisions of Law No. 21 of 2008.

The independence of local bodies from the central authority is a natural result of granting these bodies a moral personality. The consequences of granting the general moral character is the independence of these bodies by their financial responsibility for the central authority, its independence, responsibility and the participation of the central authority in part of its powers. If all members of local bodies are elected and if some members of other bodies are appointed administrative

decentralization is relative or incomplete, so the Iraqi legislator decided this matter and chose the administrative decentralization fully, as it was clear "in the text of article (122) A "of the Iraqi constitution in force

"The governor elected by the provincial council, the chief executive executive in the province to exercise his powers authorized by the Council" and stated in article (122 / IV) "mentioned above" to be regulated in the law of the election of the provincial council and its authority and so it is clear that the law of the provinces Irregularity in a region that has adopted complete administrative decentralization flawlessly, this provides a clear independence from the central authority, which is promoted by the legislator on the subject of administrative tutelage and will be mentioned later.

**Second:** Granting the moral personality to a part of the territory of the State

Article 22 of the Law of Governorates that are not organized in Region No. 21 of 2008 stipulates that (each administrative unit shall have a moral personality, financial and administrative independence ...) and administrative units. According to the first article of the law is the province (judiciary - the area) and therefore the granting of personality is a natural result of the application of the principle of administrative decentralization provided for by the law in the second article which was based on Article 122 of the Constitution in force, which emphasized the principle of administrative decentralization in the organization of irregular governorates In the province.

**Third:** Administrative guardianship in accordance with the provisions of the Law of Governorates not organized in Region No. 21 of 2008

Administrative tutelage in regional administrative decentralization means controlling the application of local law by local bodies and the proper management of local public approval.

"There is no administrative tutelage except in explicit text, and the limits of this provision, contrary to presidential control, do not require a text and do not give the central government the right to direct orders and instructions binding on decentralized bodies. This is contrary to the independence of these bodies. The authority to amend or dissolve the decisions of the decentralized bodies as in the matter of presidential oversight, since what they are doing is to ratify the decisions of these bodies completely or to reject them altogether. The purpose of administrative tutoring is to ascertain the legality of decisions and actions of decentralized bodies and their compatibility with the law " <sup>(1)</sup>.

---

(1) Administrative decentralization, a double-edged weapon, Taher al-Janabi, p. 38.

### Conclusion

The call for administrative and political decentralization properly establishes the reality democracy and meets the needs of citizens, depending on the extent to which they are linked to the conditions of them and reach practical laws. Therefore, the success of administrative and political decentralization does not depend on slogans but on all projects involved in all political and legal dimensions. Decentralization, Types, Elements, Staff, and Applications of an Analytical Descriptive Study We would like to prove the most important findings and proposals we have reached.

**First "": - Results**

- 1 - The Constitution of Iraq 2005 came in some of its texts in ambiguity, "which may lead to interpretations of the interpretation of some terms concerning the exclusive competencies of the central authorities (11 of the Iraqi Constitution 2005)
- 2 - Interference between the constitutional texts and the provisions of the Law of Governorates not organized in the first region to the intertwined powers and failure to perform services
- 3 - The Iraqi legislator signed in a clear confusion in Article 119, which is in direct conflict with Article (1) as the Constitution guarantees the unity of Iraq while containing materials to clarify the procedures of the composition of the regions including 119  
The text of Article (2) of Law No. 21 of 2008, which is believed to need to be reviewed in terms of the period (first), which relates to granting the Council legislative authority or paragraph (II) granting the control of the central government on these councils and this is a clear violation of the pillars of decentralization Admin
5. Political and administrative decentralization is consolidating and achieving democracy without decentralization. Iraq needs the values, mechanisms and means of democracy that have been emptied of its contents in more than 10 years.  
Through partnership, partnership is achieved and power, wealth and influence are shared.

**Second: Proposals and recommendations**

1. The 2005 Constitution of Iraq did not distinguish between the authority of the regions and the authority of the provinces. Therefore, it was necessary to mention in the text of Article (116) of the Constitution in force

**First:** "- The federal system in the Republic of Iraq consists of the capital, regions and provinces

**Second:** - Central authorities are divided between the central government and the provincial government

**Third:** "The regions and the provinces are divided into regional administrative units operating according to the principle of decentralization." Because the mentioned in the current constitution leads to confusion between the concept of federalism and administrative decentralization.

2 - The central government should be exclusively concerned with "the acts of sovereignty without involving the governorates that are not organized in a region in some of these works because the provinces operate according to the principle of administrative decentralization and the importance of these works that affect the supreme interests of the state"

3 - activating the role of judicial control over the work of the provinces because of the elimination of the general mandate and because parliamentary control may be dominated by sometimes "political nature may be subject to conflicts between the parliamentary parties in contrast to judicial control, which is characterized by independence and impartiality by virtue of the experience of its members of the competent judges.



### Sources

- 1 - Federalism and its applicability in Iraq, 2009 Mohamed Omar Mouloud
- 2- Mediator in administrative law, Egypt Dr. Mustafa Abu Zaid
- 3 - Principles of administrative law, Beirut, 1968 d. Mohammed Kamel night
- 4- Mohamed Zuhair Garana, Principles of Egyptian Law, Egypt
5. The Constitution of Iraq 2005
- 6- The Law of Governorates in the Region, No. 21 of 2008
7. Administrative Law, Baghdad, 1970
8. Principles of Administrative Law, Egypt, 1966, Suleiman Al-Tamawi
9. Centralism and Decentralization in Public Law, Baghdad, 1976
10. Administrative Decentralization in Maghreb Countries, 2005 Old Quasi
- 11 - Brief in explaining the Law of Governorates not organized in the province, Dr. Hanan Mohammed al-Qaisi
12. Coalition Resolution 71, 2004
13. The State Administration Law for the Interim Period 2004
14. Regional Administrative Decentralization Tahir Mohammed Al-Janabi -
- 15-Federalism and Decentralization in Iraq, d. Abdul Jabbar Ahmed, published research, Friedrich Ebert Foundation, Jordan Office 2013
- 16-The Iraqi State between Centralization and Decentralization, Mohammad Hashim Al-Tai, published research, Legal Consultancy Center 2016

- 17 -Suhaila Abd al-Anis, in the Proceedings of the Democratic Transition in Iraq, Unpublished Study University of Mustansiriya, collage of Law, Iraq-Baghdad 2007
- 18 -Iraqi vision in the transition to decentralization <http://vision4iraq.blogspot.com/2011/10/2003.html>
- 19 -Article in the civilized dialogue on decentralization in Iraq <http://www.ahewar.org/debat/show.art.asp?aid=295952>