
RESEARCH ARTICLE

Municipal Chief Manager in the Iraqi Legislation

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ABSTRACT

The idea of this research started from the great importance of the issue of the municipality chief manager in Iraqi legislation. It is one of the important topics in the Iraqi administrative system and the municipality as a form of administrative decentralization and a legal person. There is no doubt that the municipal chief manager performs his executive duties according to the law, and he differs in his work from the municipal council as it is an executive body that deals directly with the citizen. It needs a number of deputies to advance the service reality due to the increase in the population. Then we exposed his power, and it was found that he exercises administrative, legal, financial, and technical powers that help him in implementing them by employees, but he needs to grant other authorities, including appointment, for the purpose of addressing the shortage of staff to perform services, especially after transferring power to the provinces and in order to present an integrated picture of the municipal chief manager in Iraqi legislation. We adopted the analytical approach, with a statement of the position of jurisprudence regarding the appointment of the municipal chief manager and the position of the judiciary regarding providing protection in the event of an attack on the director.

KEYWORDS

Municipal Chief Manager; Iraqi Legislation; administrative decentralization; jurisprudence

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1. Introduction

1.1 The Importance of the Topic

The importance of the issue lies in the director's statement in Iraqi legislation, as it is one of the important administrative positions in the administrative organization in general and at the municipality level in particular; Through the power that he exercises for achieving the desired goal of establishing the municipality.

1.2 Research objectives

The objectives of the research are manifested by giving a look at the municipality chief mongering Iraqi legislation by proposing solutions and legal amendments for addressing the legislative shortcomings to advance the service reality by granting the chief manager the authorities to enable him to direct the municipality.

1.3 The Research Problem

The research problem for the municipality chief mongering Iraqi legislation can be raised by asking the following questions:-

- 1- Who is the municipality chief manager according to the amended Iraqi Municipal Administration Law No. 165 of 1964?
- 2- What is the method of choosing the director? Is it electing or appointing?
- 3- What are the authorities that the legislator entrusted to the director, and did they expand after transferring the authorities to the governorates, or did they remain the same?

1.4 The structure of the research

To study this topic, we divided the research into two requirements, the first one deals with choosing the municipal chief manager, and the second requirement we allocate to the authorities of the director.

For the purpose of answering the questions, it is necessary to study the municipal chief manager of the Iraqi legislation by identifying the method of his selection and the powers he exercises regarding the management of the municipality as a decentralized administrative organization.

1- Choosing the Chief manager

Before starting to explain the details of the subject, some may ask who is the director? Is he appointed or elected? Does he have deputies? Before answering the above questions; It must be stated that no country relies on the absolute central administrative system or the absolute decentralized administrative system but rather combines the two systems and gives priority to one over the other for the breadth and complexity of jobs and to provide services to citizens in the easiest way ⁽¹⁾. The municipality as a form of administrative decentralization in Iraq ⁽²⁾ and organized according to the amended Municipal Administration Law No. 165 of 1964, as it cannot practice its activity to satisfy public needs as a local institution with a legal personality that enjoys financial and administrative independence except in the presence of a natural person who manages the municipality and has a group of employees, which is (the municipal chief manager), ⁽³⁾. A representative of the legal person and has a group of employees, each of whom works according to his specialization and is subject to the laws, regulations, and instructions related to his field of work. To clarify who is the municipal chief manager, we must refer to the Municipal Administration Law No. 165 of 1964, as we find that the Iraqi legislator did not explicitly define the municipal chief manager in the above law, but rather It is implied that it is the one who has the power to implement in the municipalities ⁽⁴⁾. As for the nomenclature, the Iraqi legislator was not in a consistent position. Once, we find that the name (the municipal chief manager of the municipality) was mentioned as one of the members of the municipal council ⁰ and in another text, the name (the municipality manager) was mentioned and not the municipal chief manager, as it stipulated "..., and the municipality manager The specialist,..." ⁽⁵⁾ So we call on the Iraqi legislator to control the texts and standardize the nomenclature, and the Iraqi legislator has explicitly specified that the municipal chief manager is appointed by the competent authorities ⁽⁶⁾ but he did not specify who is the competent authority. Is it the minister, the governor, or someone else?

After we have explained the legislator's position on choosing the municipal chief manager of the municipality, it is necessary to clarify the position of jurisprudence. Therefore, we find that the position of jurisprudence regarding the appointment of the municipal chief manager is divided into two directions:-

1- **The first trend:** Some jurists criticize the method of appointment for the Chief Manager and prefer the election because the appointment contradicts the administrative decentralization system that is based on the election and considers it a retreat from what was followed by previous laws, including the Ottoman Provincial Municipalities Law of 1877, which adopted the election system for the director).

2- **The second trend:** It is the trend that supports the method of appointment because the mere appointment by the central power does not lead to the demolition of the idea of administrative decentralization because there is control by the central power over the work of the municipality by agreeing to legal actions such as selling and renting. It is also the most dangerous thing that the central power owns. It is the abolition of the municipality because it disappears as soon as the purpose of its establishment ends, and when it is abolished, there will be no survival for its president. ⁽⁶⁾

From our side, we support what the second opinion held, because of the arguments and justifications it has, including oversight and approval of legal actions.

The legislator also specified the conditions for occupying the position of the municipal director as follows:-

- a. That he has completed twenty-five years of age.
- b. To have a high school diploma of no less than four years after high school or its equivalent for the municipalities of the Capital Municipality and the municipalities of the excellent and first-class.
- c. He must have a secondary school certificate for second-class municipalities.
- d. He must have an intermediate certificate for the third and fourth category municipalities.

According to the above text, we find that the conditions are not compatible with such a sensitive position that requires experience and competence, so the researcher suggests to the Iraqi legislator to amend the text of Article 23/1 of the Municipal Administration Law No. :-

- A. The municipal chief manager must have completed thirty years of age.

- B. The municipal chief manager of the municipality should have a doctorate or master's degree in engineering or law in the municipalities of the governorate center and the excellent category.
- C. The municipal chief manager of the municipality must have a bachelor's degree in engineering or law in the municipalities of the first, second, third, and fourth classes.
- D. He must be experienced and specialized and have a service in municipal work of no less than (10) years.

The legislator also specified that the mayor has one deputy appointed by the municipal council(), but it is taken that appointing one deputy does not agree with the volume of services because it increases with the increase in the population and, therefore, the number of deputies must be increased with the increase in the population, and we did not find any interest By the Iraqi legislator, especially with regard to appointing women to head the municipality. Therefore, there must be equality between men and women and give them an opportunity to participate in the management of the municipality since there are many competencies that were not given the opportunity to manage municipal institutions, so the researcher suggests to the Iraqi legislator that the mayor of the municipality has more than one deputy to ensure continuity of work and provide the best services and that there be a special law defines the authority responsible for appointing the mayor and amending the conditions for assuming the position of the mayor and his deputies so that there is an obligation to implement and not delay in providing services to citizens.

2. The second section

2.1 Powers of the chief manager

Before starting to explain the details of the subject, some may ask what the powers of the manager are? Is it defined by law or instructions or something else? And if it is defined according to the law, is it the same after transferring powers to the governorates, or has it expanded?

To answer the above questions, it is necessary to refer to the amended Municipal Administration Law No. 165 of 1964. We find that the Iraqi legislator has assigned the mayor the authority to implement the administrative functions represented by the following ():-

- 1- Managing municipal affairs and supervising the work of employees and workers.
- 2- Managing and maintaining the municipality's funding and real estate.
- 3- Managing the municipality's revenues and collecting them, and monitoring its accounts.
- 4- He signs the calls issued by the municipality.
- 5- He represents the municipality before the courts and official and semi-official departments or through an agent on his behalf when his interest conflicts with the interest of the municipality or someone who takes his place as the representative and represents the municipality in parties and public events
- 6- He exercises all the powers granted to him by the Municipal Council, and he must submit to the administrative authorities a summary of the work through reports, either semi-annual in the month of November or annually at the end of each year or final at the end of the council's term.

- The mayor of the municipality has the power to impose a fine as a general authority on anyone who builds without a building permit in the amount of (25,000) thousand dinars for residential uses and (50) thousand dinars for commercial uses, and the decision of the municipality manager to impose the fine is final ⁽⁷⁾. One of the most dangerous powers of the mayor is a member of the committee to remove abuses on municipal real estate in accordance with Resolution 154 of 2001 as a representative of the municipality, which exposes them to facing many dangers that may reach the threaten or lose their lives. The killing of the director of Karbala municipality (AS) and the attempted murder of one of the employees while they were carrying out their official duty, which is to remove the abuses that occurred on municipal property in the Karbala governorate in the Al-Ma'malji area on 12/8/2021. The assault was by one of the trespassers after the Violations Committee directed the demolition of the commercial architecture bypassed by its accused building, which impeded the implementation of a project to open a sluggish street for years to reduce the momentum during the fortieth visit, but the government and the judiciary did not stand idly by. The killer of the municipality director was arrested, and Karbala criminal court issued the sentence to death by hanging until death in accordance with Article (406/1/H, G) of the Iraqi Penal Code No. 111 of 1969 as amended and in accordance with Cabinet Order No. 3/First/4 of 2004, as well as the right of the families of the victims to review the civil courts to claim compensation ⁽⁸⁾. As for the transfer of powers to the governorates that were not completed except with the issuance of the third amendment to the Law of governorates not organized in a region No. 21 of 2008, the amended, which confirmed that the municipal departments were transferred with their staffing, financial allocations and competencies from the ministry to the governorate office after the abolition of the higher authority whose task is to coordinate between ministries and governorates From the first item of Article (45) of the Law of Governorates Not Organized in a Region No. (21) of 2008, as amended, as it stated: "1- Transferring subsidiary departments,

devices, jobs, services and competencies exercised by the ministries of municipalities, public works, construction and housing.. ..., with its appropriations allocated to it in the general budget and its employees and workers to the governorates within the scope of their functions set out in the Constitution and related laws gradually," ⁽⁹⁾.

In order to find out the powers enjoyed by the mayor after transferring the powers to the governorates, a visit was made to one of the directorates affiliated with the Directorate of Municipalities of Babylon Governorate⁽¹⁰⁾, and the mayor was interviewed and inquired about the powers granted to them after transferring the powers from the ministry to the governorate. The answer was given to him That the director of the municipalities of Babylon and based on the powers entrusted to him and in order to deepen the principle of decentralization in the administrative work and eliminate red tape, and facilitate the provision of services to citizens, issued an administrative order to the mayors of the municipalities in the districts and sub-districts that includes the powers assigned to the mayor as follows ⁽¹¹⁾:-

1- Administrative powers

A- Granting a regular leave to municipality employees inside the country for a period of (10) days with full salary in accordance with the provisions of the amended Civil Service Law No. (24) of 1960 ⁽¹²⁾.

B - Granting leave for pregnancy, childbirth (), maternity (), and the waiting period () for the periods specified in the laws

C- Issuing an administrative order to leave the breadwinner after completing the fundamental approvals.

D- Deploying employees inside the country for a period of one (1) day in accordance with the provisions of the Dispatch and Travel Allocations Law No. 38 of 1980, as amended ⁽¹³⁾.

E - Evaluation of employees through a form for the purposes of promotion and bonus and for all job titles

F- Recommendation to send letters of thanks and award rewards to employees ⁽¹⁴⁾

G- Promote the treatment of referring employees to retirement in accordance with the provisions of the Retirement Law ⁽¹⁵⁾.

H- Relieving and assigning people's officials in his district

I- Recommending the issuance of a confirmation order for employees when they are appointed for the first time in accordance with the amended Civil Service Law No. (24) of 1960 ⁽¹⁶⁾.

J- Nominating employees for the purpose of participating in training in coordination with the Planning and Follow-up Division in the Directorate of Municipalities since participation in the course is mandatory for promotion in accordance with the Civil Service Law ⁽¹⁷⁾.

K- Approaching official departments for the purpose of facilitating transactions and completing mail

L - Forming audit committees to scrutinize issues that require this

M-Promoting political separation transactions

N- Issuing a direct order of appointment after completing the fundamental approvals.

O- The recommendation to terminate the services of employees who are interrupted without a legitimate excuse in accordance with the amended Civil Service Law No. (24) of 1960.

P- Granting an allowance to employees who are in the fifth degree or less ⁽¹⁸⁾.

2- Legal powers/property

A- Recommending contract extension approval ⁽¹⁹⁾.

B- Approving the termination of contracts in case the tenant breaches the terms of the contract or to achieve a public interest in accordance with the controls and instructions in force in this regard.

C- Recommending the leasing of properties belonging to municipal institutions ⁽²⁰⁾

D- Recommending the installment of sale and rent allowances in accordance with the amended Law No. 21 of 2013 on Sale and Rent of State Funds, with the exception of rent allowances for musataha, slaughterhouses, and all kinds of fees.

E- Recommending the issuance of decisions related to the lease of industrial lands and the approval of reports of appreciation for the owners of industries or industrial crafts in accordance with the relevant legislation (Law Regulating Industrial Services No. The lease is valid as long as the tenant continues to work in the industrial and craftsmanship if the lease contract is for the lease of the industrial district, and the lease allowances are re-estimated every five years⁽²¹⁾ or the lease is in accordance with the Industrial Investment Law for the Private and Mixed Sectors No. (20) for the year 1998 as amended⁽²²⁾.

3- Financial powers

A- Proposing a draft operating budget in coordination with the Budgets Division in the Babil Municipalities Directorate according to the expected revenues and the cash flow available for the purpose of approval by the authorized person.

B - disbursement of up to (100,000,000) one hundred million dinars for each case at the expense of the current budget.

C- Disbursement of permanent advances up to (8,000,000) eight million dinars and miscellaneous advances up to (3000,000) three million dinars.

D- Renting the mechanisms, equipment, and means of transportation that contribute to the process of rainwater extraction at the prevailing prices.

D- Technical powers

A- Approving the technical statements of the projects implemented in the municipal institutions, regardless of the funding body (investment plan, budget, 000, etc.), taking into account the application of the technical conditions and specifications, controls, and instructions for that, except for strategic projects, in accordance with the amounts, controls, and instructions issued by the Projects Division in the Municipalities Directorate⁽²³⁾

B- Approving the minutes of the initial and final receipt of projects implemented in municipal institutions and deciding them in accordance with the amounts, controls, and instructions issued by the Projects Division in the Municipalities Directorate.

According to the foregoing, it is clear that the powers of the manager issued under administrative orders are not included in the Municipal Administration Law, so it must be made within the provisions of the Municipal Administration Law to confirm their legality and be more binding because the orders may be rescinded at any time. Appointment according to the owners' movement system (deletion and creation) within the municipality's borders and among the residents of the region, due to the lack of qualified staff due to a large number of transfers in municipal institutions to other ministries and the resort of most employees to take the five-year leave.

3. Conclusion

3.1 The conclusions

1- The mayor is the one who takes over the management of the municipality as he is a legal person and exercises multiple powers. We did not find the legislator's position fixed on naming, once he is called the mayor and once the director of the municipality.

2- The mayor is appointed by the competent authorities in accordance with the conditions for occupying the position, but the competent authority has not been determined, and the conditions contained in Article (23/1) of the amended Municipal Administration Law No. 165 of 1964 have not been made despite the issuance of more than one amendment to the law as to the deputy mayor of the municipality One in each municipality and did not take into account the number of residents in each municipality.

3- Not granting the mayor the power to appoint within the municipality's boundaries despite the municipality enjoying financial and administrative independence and not giving women an opportunity to occupy the position of mayor despite the availability of many competencies.

3.2 Recommendations

1- We suggest to the Iraqi legislator unifying the name of the executive body and making it the mayor of the municipality, and canceling the name of the municipality director wherever it is mentioned in the law.

2- We suggest to the Iraqi legislator to amend paragraph (2) of Article (22) of the amended Municipal Administration Law No. 165 of 1964 and make it appoint one or more deputy mayors on the basis of the population.

3- We suggest to the Iraqi legislator the amendment of Article (23/1) of the Municipal Administration Law No. 165 of 1964, which amends the conditions for occupying the position of the mayor in terms of experience, competence, and age, as it is one of the important positions.

4- We suggest to the Iraqi legislator granting the mayor the power to appoint within the municipality's boundaries to fill the shortage in the job cadre by giving women an opportunity to occupy the position of mayor due to the presence of many talents.

5- We suggest that the Iraqi legislator include the powers within the law because the transfer of powers to the governorates requires enacting a law because administrative orders are canceled at any time, which leads to confusion in work.

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