



Article

Legal Regulation of the Management of State Institutions Via Agency

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Abstract: Because of the major employee's absence, the agency for administrative posts is actually a temporary arrangement that forces the administration to assign whatever it thinks is suitable for a given amount of time. By doing this, the agent uses the principal's authority to guarantee the public service runs regularly and consistently. The administration is dedicated to choosing the most qualified, effective, seasoned, and trustworthy individuals to oversee the administrative leadership roles. In the event that no one satisfies the aforementioned requirements, the administration will use the legal authority provided to it to designate from among its personnel, for a predetermined amount of time, whoever it believes to be honest and capable to occupy the post. Throughout the time allotted to it, it keeps an eye on their work and decides how best to lead subordinates to foster unity and accomplish the department's or institution's objective. The administration removes the individual from his job and ends his assignment if he disregards the aforementioned guidelines. The regularity of changes that seemed to be a means of altering administrative leadership without terminating the administration's functional relationship with them or without legal basis underscored the significance of the issue. It allocates its workers for a set amount of time and then exempts them based on the modifications made to its power and the privileges that are intended to serve the public interest. It employs the strategy of giving them job management responsibilities and granting them extensive authority to do so through the agency.

Keywords: Organization, Management of State Institutions, Mission, Termination of Mission

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1. Introduction

Section one

1.1 The Significance of the Study

The importance of this study in the legal regulation of those occupying senior positions by representation has emerged, despite the limited attention it has received. Furthermore, the issue of administrative agency in senior positions has become a difficult issue that no government has yet resolved [1].

1.2 The Core of the Study

Administrative agency occupies the greatest importance in senior administrative positions. Although it is a temporary situation, it achieves the primary purpose of ensuring the smooth and steady operation of the public service [2], [3]. Through it, it adds legal legitimacy to the employee's exercise of the duties of the principal. Specific conditions must be met, and the employee may be assigned to manage the position via representation.

1.3 The Problem of the Study

The changes that have occurred since 2003 and continue to this day, whereby the central government has resorted to appointing acting administrators for successive years, and the Iraqi legislator has endeavored in the Federal Budget Law for 2019, 2023, 2024, and 2025 to oblige the government to end the practice of acting as administrators of state institutions, have not yet been implemented [4]. Among these reasons, we have addressed this research, noting the Iraqi legislator's position on it, in addition to the conditions that must be met by those appointed as administrators, and whether the competent authorities have been identified for the appointment, along with an explanation of the position of the Administrative Court on it, and an explanation of the issue of when the position is administered by acting and its legal nature [5].

2. Materials and Methods

2.1 The Methodology of the Study

In my study methodology, I followed an analytical approach to legal texts and an analysis of judicial opinions and rulings related to the administration of state institutions by proxy, taking into account the experiences of other countries that have regulated administrative agency.

2.2 The Structure of the Study

We will divide this study into two sections. The first section addresses the concept of assignment and proxy dismissal, while the second section addresses the mechanism for dismissing administrative office holders and the oversight of administrative judiciary oversight.

2.3 The Nature of Mission and the Legal Nature of Performing Chief Positions

The concept of assignment to administrative positions is a term used in the public service. It is frequently used in all Iraqi state institutions. The phrase "assigning an employee to a senior administrative position" is frequently used in all Iraqi state institutions. Despite this important matter, we have not seen any regulation of this important and vital principle by the Iraqi legislature. This is what we will explain. In the first section, we will address the nature of assignment to administrative positions, and in the second section, we will explain the mechanism for relieving those holding administrative positions and the oversight of the administrative judiciary over them.

2.4 What is the nature of the mission to administrative position via representation?

The scope of the administrative body is very broad, and the role of the appointment of senior administrative positions by representation plays a significant role in its scope of work and contributes effectively to maintaining an important principle: the regular and steady operation of the public service and preventing the disruption of public services. Therefore, the administration resorts to the appointment by representation for a specific period, which may be extended or limited to the person who originally holds the position. Its legal nature is linked to the occupants of administrative positions by representation. Based on the above, we will address these terms with their linguistic and technical definitions in the first section, and in the second section, the legal nature of the appointment of administrative positions by representation, as follows:

Assignment is known linguistically as undertaking a matter, i.e. bearing it with difficulty and agency is to entrust someone else to do a job for him and the assignment is technically known as "an exceptional method of appointment to the position", because there is no text in the Civil Service Law or in the laws that were enacted before it that specifically defines the concept of "assignment to administrative positions".

If we look closely at some of the University Service Laws No. (23) of 2008, we see that this is mentioned as a term to add the duties of the employee to the university service, i.e. "the teacher", he is assigned to job duties during the specified official working hours and on official holidays, and this is done through the issuance of a university order by the supreme president "the university president", or by the college's board of directors "the college council".

In Lebanon, Lebanese Legislative Decree No. (70) of 1977, which stipulated the basis for appointment by agency to senior positions, did not include this. We found that Legislative Decree No. (112) of 1959, concerning the Lebanese Civil Service System, defined an agent as "an employee temporarily assigned to occupy a position other than his original position" Article (44) of Legislative Decree No. 112 of 1959, as amended, concerning the Lebanese Civil Service System. Unlike the Jordanian legislator, who was satisfied with the concept that emphasizes the issue of "If a vacancy in any job department of the senior category or what is similar to it becomes vacant or its occupant is absent for any reason, it may be filled by proxy." Article (93) ietm (a) of the Jordanian Civil Service System No. 9 of 2020.]), although the legislator did not know it, but referred to it in the text of the aforementioned article, and this is complete evidence that the Jordanian legislator wanted to establish a fixed standard for managing senior positions via representation. From the above, we note that the Yemeni legislator was real when he referred to the Civil Service Law No. 19 of 1991 and called it "deputation," as "the temporary assignment of an employee to fill a position, whether independently or in addition to the duties of his original job within his administrative unit" Article (144) of the Executive Regulations of the Yemeni Civil Service Law No. 19 of 1991.

Based on the above, we have not seen any statement or reference from legislators, whether Yemeni or Lebanese, regarding the assignment of administrative agency to a legal text that addresses the management of state institutions via representation.

In a ruling by the Supreme Administrative Court in Iraq, it was found that it referred to the concept of agency through the administration's temporary assignment of an employee to occupy a position other than the original one due to the absence of the original employee based on legal texts or in accordance with the rule of conducting business and ensuring the regular and steady operation of the public facility Ruling of the Supreme Administrative Court in Iraq in Case No. 1566/Employee Judiciary/Cassation/2018 on 11/29/2018. and it is the result of the complete conviction that performing the work they do in any position in the administration leads to serving the public and achieving the public interest that everyone seeks, in accordance with the basis upon which the assignment system is based through the agent exercising all the powers granted to the original after the administration issues the administrative order to assign him if the required conditions are met, and through this, the administration, if it is proven that the employee is not competent or qualified, i.e. the person assigned, to exercise the job duties, it is possible to exempt him from exercising the duties of the position assigned to him, and as agreed upon, the exemption is more beneficial to the public interest than keeping him in the management of the position assigned to him

2.5 The Legal Nature of Appointing Administrative Positions via Agency

The method of appointing an agent to fill administrative positions by agency differs from the legal nature of appointing an agent. This means that there must be legal provisions that grant the agent the legitimacy to exercise the powers of the principal. When the administration issues an appointment decision, it is bound by the legal provisions it deems consistent with the public interest at the time of issuance of the appointment decision.

While the ruling of the Supreme Administrative Court in Egypt confirmed that the assignment is an exceptional tool for appointment to public positions, and is subject to the provisions of the laws and regulations that regulate the issue of assignment the ruling of the Supreme Administrative Court in Appeal No. 1115 of the 28th Supreme Court year, in the session of 5/24/1986. In order to preserve the principle of the regular and steady operation of public facilities and not to disrupt this vital and important facility in all Iraqi state institutions, which is the basis upon which the administration can rely in legitimizing the work entrusted to it, we find that the decision of the Supreme Administrative Court in Iraq indicated that when the administration issues an administrative decision to assign an employee to occupy a senior position, it is based on a legal text or on the rule of conducting business and ensuring the regular and steady operation of the public facility Ruling of the Supreme Administrative Court in Iraq in Case No. 1566/Employee Judiciary - Cassation/2018 on 11/29/2018, State Council Decisions and Fatwas for the year 2018.]).

Those charged with managing these positions, whether “acting or in person,” must undergo a certain probationary period. We see these periods as renewable, as they enjoy all privileges, including financial ones. We found that those who were charged with the duties of the position of Director General in a number of ministries had exceeded (4) years and had been renewed for a period of one year. While the decision of the Federal Supreme Court in Iraq, especially with regard to the management of administrative positions by representation, issued a state order to stop the implementation of the phrase “The concerned departments shall stop all financial allocations and administrative powers in the event that they continue after the aforementioned date” in accordance with the provisions of Article (71) of the Federal Budget Law No. (13) of 2023 Article (71) of the Federal General Budget Law of the Republic of Iraq for the fiscal years (2023 - 2024 - 2025) No. 13 of 2023 stipulates that “The government is obligated, by a date no later than (11/30/2023), for the concerned department to stop all financial allocations and administrative powers in the event that they continue after the aforementioned date, and the Council of Ministers shall send those assigned to the positions of heads of independent bodies and special grades (1-B), undersecretaries of ministries and advisors to the Council of Representatives 30 days before the above date, and the Council of Representatives is obligated to take the decision by voting within 30 days from the date of Sending names.]), while the government remains committed to implementing what is stated in the text of the above-mentioned article, and until the case filed before the Federal Court to challenge the constitutionality of the aforementioned article is resolved, to ensure the continued operation of public facilities and not to disrupt them for any reason The case filed before the Federal Supreme Court No. 223/Federal/2023 has not been resolved yet.]).

Upon the emergence of a new, integrated House of Representatives, the first task that was confirmed to be completed was the file of managing acting positions by the year 2019, as the House of Representatives included in the Federal General Budget Law for the year 2019, in the text of Article (58), if it specified a time period to complete this file, and we are all fully aware that what was stated in the text of the above article is considered a grave error that allowed a constitutional challenge before the Federal Supreme Court, because the Federal General Budget Law has nothing to do with this matter, and is limited to “matters of the budget, expenditures and revenues” and not other matters far from the nature of its work.

Accordingly, the employee’s interruption in performing the duties of the position he is assigned does not terminate the job relationship, and as soon as the assignment is terminated, the employee returns to the nature of his original work before the assignment, and it is possible to question the assigned employee about any failure in his job duties and also accept the resignation if it is submitted in writing or terminate his assignment Ruling of the Supreme Administrative Court in Egypt No. 972 of 30 Q. Supreme, in the session of 2/27/1988.)).

While assignment is considered a tool for appointment to public positions, this is because assignment is carried out by force of law and requires the issuance of an administrative decision authorizing the assignment. This decision grants the person assigned the position the legal status, along with all its obligations and benefits. Furthermore, the assignment must be made in accordance with appropriate conditions that are consistent with the assignment's need to ensure the smooth running of the public service Ruling of the Supreme Administrative Court in Egypt in Case No. 5979 of 44 Supreme Court, in session dated 12/29/2001.)). Exemption is also a legal qualification resulting from the administration's conviction that it can change those occupying administrative positions, whether at the end of the legally specified term or before its expiration. It may also deem it necessary to assign another person to achieve the public interest.

Based on the above, we note that the Iraqi Council of Ministers has issued many executive orders that include the dismissal of undersecretaries or general managers in a number of ministries, and some of them have been referred to retirement in accordance with instructions issued by the General Secretariat of the Council of Ministers. We found that neither the Civil Service Law Civil Service Law No. (24) of 1960, as amended.]), nor

the State and Public Sector Employees Discipline Law No. (14) of 1991, as amended, contained the concept or term of dismissal.

While this term was mentioned in the Law of Governorates Not Organized into a Region No. (21) of 2008 Article (7/Ninth/2) states: "The dismissal of holders of senior positions in the governorate by an absolute majority of the council members based on the request of one-fifth of the council members or based on a proposal from the governor. The Council of Ministers has the right to dismiss at the proposal of the minister based on the reasons stated in the text of paragraph (8) of this article.]), this matter confirms to us that the legal nature of dismissal from administrative positions is nothing but a way to occupy the position without any interruption or severance of the relationship with the public service.

When we referred to the Revolutionary Command Council Resolution No. 12 of 1997, despite its effective handling of filling a senior position by proxy, the resolution stipulated that if the position of Director General becomes vacant for any reason, the competent minister or the head of the entity not affiliated with a ministry may assign one of the most senior and competent employees of the department, ministry, or entity not affiliated with a ministry, if necessary, who holds at least a first university degree or in a similar specialty, to manage it by proxy for a period not exceeding three months until a full Director General is appointed for it. The acting Director shall enjoy all the powers of the Ministry. The position of the Iraqi legislator confirms the government's right to dominate senior officials working for the state, and the interest of the employee and his dismissal from the position without being questioned or investigated, meaning that there must be legal reasons for his dismissal from the position.

3. Results and Discussion

Section Two

3.1 The Mechanism for the Exemption of Administrative Positions and the Administrative Judiciary's Oversight of Them

We are all fully aware that public office is considered a national assignment aimed at providing a service, namely the public interest and serving citizens, under the applicable laws. Article (3) of the State and Public Sector Employees Discipline Law No. (14) of 1991, as amended, states: "Public office is a national assignment and a social service, the person performing it aims to serve the public interest and serve citizens, in light of the applicable legal rules."]), and based on the text of the aforementioned article, the administration has the right to assign public employees tasks for some senior administrative positions, i.e., leadership positions, especially if this position is assigned "in person or via representation" In another context, we see the impact of assigning an employee with the tasks assigned to him "in person or by representation" on the administration's authority to terminate his assignment to the duties of the position [6]. The administration may enjoy broad discretionary power over the employee who was assigned to the position by representation. It may terminate his assignment simply by issuing an administrative order to be relieved of the position whenever the administration sees its opinion on the dismissal consistent with the proper functioning of the public service regularly and consistently proven that the assigned person committed job violations. Through what we have indicated above, we will divide this requirement into two branches. In the first branch, we will address the mechanism of dismissal from administrative positions, and in the second branch, we will address the oversight of the administrative and constitutional judiciary over the dismissal of those occupying administrative positions [7], [8], [9].

3.2 Mechanism for dismissal from acting senior administrative positions

Given the importance of the issue, and as previously noted, the dismissal mechanism, whether in local or central administrations under the federal system, is that the Iraqi Constitution of 2005 and the law establish special procedures for holding officials accountable for violating the provisions of the constitution and the law [10]. Upon closer examination of the text of the Constitution of the Republic of Iraq for the year 2005, we find

that the text of Article (61/Eighth/e) The text of Article (61/Eighth/e) of the Iraqi Constitution for the year 2005 states that "The Council of Representatives has the right to question the officials of independent bodies in accordance with the procedures relating to ministers, and it has the right to dismiss them by an absolute majority [11].), which has given the Iraqi Council of Representatives the power to question them and dismiss them from the positions they are assigned to occupy, whether they pertain to the heads of bodies or ministers, while the text of the aforementioned constitutional text in its sixth paragraph The text of the above article in its paragraph (previously/c) indicated that "A member of the Council of Representatives, with the approval of twenty-five members, may direct an interpellation to the Prime Minister or the ministers, to hold them accountable in matters that fall within their jurisdiction [12]. Discussion of the interpellation shall not take place until at least seven days after its submission.")), the emphasis on the validity of the interpellation of the Prime Minister or the ministers and the specification of a period of seven days [13], [14], [15].

We note, based on the aforementioned constitutional text and its paragraphs that we discussed above. Sometimes, the administration does not issue a decision to dismiss until after it has formed investigative committees in the event of functional violations committed by the occupant of the administrative position. The administration issues its decision to dismiss based on the recommendations of the investigative committee. In other words, the administration has no discretionary authority to dismiss and must obtain the approval of the relevant minister or the Prime Minister [16]. The situation is different when assigning an agency, as the administration uses its discretionary authority to terminate the assignment from the duties of the position whenever it sees that the dismissal decision is consistent with the regular and consistent proper functioning of the public service, or if it is proven that the occupant committed administrative violations [17], [18].

3.3 Administrative and Constitutional Judicial Oversight of the Dismissal of Administrative Positions

When senior management exercises judicial oversight over a dismissal order issued by the competent authority (either dismissal or assignment), and within the framework of exercising its duties to regularly and consistently manage public facilities, it may assign certain employees to administrative positions, based on its discretionary authority and several principles, such as "competence and experience." This may be for employees who have acquired experience and whose suitability for the position has been confirmed by the administration, whether acting or in person [19], [20], [21]. The administrative judge's oversight is represented by the dismissal of administrative positions and any impact on their enjoyment of the job privileges they are entitled to. In this case, recourse is to the Civil Service Court to appeal administrative decisions, requesting that the court, which has jurisdiction over administrative disputes, provide redress against the abuse of the administrative authority [22]. This is confirmed by State Shura Council Law No. 56 of 1979, as amended.

Upon reviewing the legal texts in the above law, I found a text that included a number of paragraphs that are extremely important Article (7/Fifth/1) of the above law states that "the order or decision must include a breach or violation of the law, regulations, instructions, or internal regulations." The paragraph confirms to us that in the event of an appeal against the exemption order, it must include a breach or violation of the text of the law [23], [24], [25].

While we note that the text of the aforementioned article, in paragraph (2), refers to the text of Article (7/Fifth/2 and 3) of the State Shura Council Law No. 65 of 1979, as amended.), the order or decision must have been issued in violation of the rules of jurisdiction or be defective in its form, procedures, place, or reason [26]. The last paragraph of the same article emphasized that "the order or decision must include an error in the application or interpretation of laws, regulations, instructions, or internal regulations, or include an abuse or arbitrary use of power or deviation therefrom." It is clear to us, from

the text of the above article, with its three paragraphs, that it emphasizes a very important matter, namely, the necessity of an error or the issuance of a violation of the rules of jurisdiction or an error in application, in order for the order to be appealed before the Administrative Court and the Civil Service Court [27], [28]. The administrative judge can monitor the decision to dismiss those occupying administrative positions by proxy, if the discretionary power granted in general, when the administrative body exercises or enjoys freedom to take legal actions when exercising its powers Dr. Essam Abdel Wahab Al-Barzanji, *The Discretionary Power of Administration and Judicial Oversight*, Dar Al-Nahda Al-Arabiya, Cairo, 1970, p. 61 [29].

We note that the discretionary power granted to the administration, especially with regard to those who occupy senior administrative positions, we find that the administration, when assigning some individuals to fill public positions, is not obligated in some cases to follow the methods used in the appointment, i.e. the conditions of appointment, so it assigns whomever it deems appropriate to fill administrative positions Dr. Badawi Abdel-Alim Sayed Muhammad, *The Principle of Competence in Public Positions and Guarantees for Its Application*, 1st ed., Dar Al-Nahda Al-Arabiya, Cairo, p. The administration must adhere to the law and its provisions, as well as the regulations governing the position. The conditions for holding positions therein must serve the public interest as a whole by raising the level of job performance within the state's administrative apparatus [30]. We note that if all of these factors are met, the outcome will include increased productivity in terms of work and achieving the public interest (occupants of administrative positions). The Iraqi Council of State (State Shura Council) has affirmed the independence of the administration in assigning and dismissing employees to administrative positions on an interim basis, based on its discretionary authority in this regard. The Supreme Administrative Court has established a legal principle emphasizing the "lack of judicial oversight over decisions to dismiss employees from leadership positions on an interim basis Supreme Administrative Court Ruling No. 727/728/Employee Judiciary - Cassation/2016) dated January 12, 2017, Decisions and Fatwas of the Iraqi Council of State for the year 2017, p. 441 [31].

Based on this progress, we can state that there is no legal provision for terminating an interim assignment. However, the Administrative Judiciary Court has established a solid dam with a number of important decisions granting the administrative authority the right to terminate an interim assignment. The administrative judiciary has no oversight over the administration's work in this regard, and this falls within its discretionary authority, ensuring the smooth and steady operation of the public service [32].

In a decision by the Supreme Administrative Court, the court found that the plaintiff held the position of Director General of the Legal Department at the Ministry of Agriculture as an acting, not a full-time, employee. This is considered a temporary position, and the administration has the right to terminate her at any time, despite her having committed job violations that necessitated the termination of her assignment. The court clarified in its decision that the administration's right to dismiss is not provided for in the applicable Civil Service Law. References to the dismissal of the lawsuit regarding the administration's right to terminate the assignment are included in the general attachment Supreme Administrative Court Ruling No. 301/Civil Service Judiciary - Cassation/2019 dated April 11, 2019, published on the website of the Administrative Court.

The administration must adhere to the law and its provisions, as well as the regulations governing the position. The conditions for holding positions therein must serve the public interest as a whole by raising the level of job performance within the state's administrative apparatus. We note that if all of these factors are met, the outcome will include increased productivity in terms of work and achieving the public interest (occupants of administrative positions). The Iraqi Council of State (State Shura Council) has affirmed the independence of the administration in assigning and dismissing employees to administrative positions on an interim basis, based on its discretionary

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4. Conclusion

At the end of the study, "The Legal Regulation of the Management of State Institutions by Representation," we reached a number of conclusions and recommendations:

First, Conclusions:

1. Administrative agency is a temporary situation resorted to by the administration when the main employee is absent and the position is vacant. To ensure the smooth running of public services, it appoints an agent.
2. The government's inability to fulfill and resolve the management of state institutions by representation within a specific period of time is due to the failure to select competent and experienced individuals to manage the positions within a specific period. This has led to the government making the wrong choice due to time constraints.
3. We have found a lack of agreement between the government and parliament from the beginning of the implementation of the Iraqi Constitution of 2005 until this moment. We have not seen successive governments present their candidates for senior positions to the Iraqi Council of Representatives except in a limited manner. This poses a significant risk to the government, which bears full legal responsibility for its selection. Iraqi law does not explicitly stipulate cases in which the agency for senior administrative positions ends.
4. The acting employee enjoys all the powers granted to the principal.

Second, Recommendations:

1. We recommend that the Iraqi legislature swiftly amend Article (58) of the Federal General Budget Law for the fiscal year (2023-2024-2025). This should be done by removing the time limit from the general budget, and the matter here should be limited to calling on the government to address and resolve this issue within all state institutions and end the administration of state institutions by acting.
2. We recommend that the government resolve the issue of acting administration in order to ensure the smooth and consistent operation of public facilities, to avoid disruption and the complete paralysis of state institutions when state institutions are administered by acting. The government should also expedite the approval of the Federal Civil Service Law.
3. We recommend that the Iraqi legislator include an amendment to the current Civil Service Law No. 24 of 1960, and that it include a comprehensive treatment of the filling of senior administrative positions by proxy, and that the administration's decisions regarding the termination of assignment be subject to the supervision of the administrative judiciary so that the administration does not abuse its discretionary power.

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