

**NATIONAL TECHNICAL UNIVERSITY OF UKRAINE
IGOR SIKORSKY KYIV POLYTECHNIC INSTITUTE
FACULTY OF SOCIOLOGY AND LAW
Department of Business Law and Administrative Law**

Manuscript

Allowed to the presentation

UDC

Head of department

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“ _____ ” _____ 2017p.

Master thesis

On specialization Administrative 081 “Law”

On subject:

**“Legal regulation of the Administrative judiciary and the
Consultative Council in the Iraq and Iraq's Kurdistan region”**

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Reviewer:

**I confirm that in this master thesis there are no
borrowings from the works of other authors without
the corresponding references**

Kyiv

2017

Abstract

Sipan Abdullah Ahmed. Legal regulation of the Administrative judiciary and the Consultative Council in the Iraq and Iraq's Kurdistan region. Master thesis. Kyiv. Igor Sikorsky KPI, 2017.

Comparative legal research of legal organization of the administrative judiciary in Iraq in the light of the provisions of the Fifth Amendment Law No. 17 of 2013 of the Iraqi State Consultative Council Law No. 65 of 1979 with the Law of the Shura Council of the Kurdistan Region of Iraq No. 14 of 2008.

The research devotes itself to examine the legal provisions set by the Iraqi legislator and the legislator in the Kurdistan Region of Iraq with an assessment of their values regarding the organization of the administrative judiciary in terms of its composition and functions, with comparing between them through points of convergence and difference.

The other task of the research is to finding a relationship formula between the existence of the dual judicial system with imposing the sovereignty of the law by the establishment of the principles of legitimacy, also addressing the important role of the administrative judiciary with accompaniment of its historical development, in playing the role of observer in order to prevent the abuse of power by the administration through violating the legal rules.

The research also tries to incursion into the depths of the provisions of the administrative judiciary in Iraq and answer many of the questions that poses itself in this regard, including: What is the importance of establishing the administrative judiciary in Iraq through the enactment of the Second Amendment Law No. 106 of 1989 of the Iraqi State Consultative Council Law No. 65 of 1979? What are the changes brought about by the promulgation of the Fifth Amendment Law No. 17 of 2013? What are some of the critical remarks and whether these "flaws" could have been avoided by legislators? What does it mean the establishment of the Supreme Administrative Court in Iraq in 2013? And what did carry with it the issuance of the law of the Shura Council of the Kurdistan Region of Iraq in 2008?

These questions and others related to the administrative judiciary are answered after extrapolating what the legislators have written and discover what the logic dictates and deducing what the reality embodies.

Сіпан Абдуллах Ахмед. Правове регулювання адміністративної судової системи і Консультативної ради Іраку і Іракського регіону Курдистан. Магістерська робота. Київ. КПІ ім. Ігоря Сікорського 2017.

Порівняльно-правове дослідження правової організації адміністративної судової влади в Іраку в світлі положень П'ятого закону про внесення поправок № 17 2013 року в Закон про Іракську державну консультативну раду № 65 1979 року із Законом Ради Шури Курдистанського регіону Іраку № 14 2008 року.

Дослідження присвячене розгляду правових положень, встановлених іракським законодавцем і законодавцем Іракського регіону Курдистан, з оцінкою їх підходів до організації адміністративної судової системи з точки зору її складу і функцій шляхом порівняння по пунктах схожості і відмінностей.

Також дослідження має на меті знайти формулу співвідношення між існуванням подвійної судової системи і забезпеченням верховенства закону шляхом встановлення принципів легітимності, а також розгляд важливої ролі адміністративної судової системи в контексті її історичного розвитку, яка відіграє роль спостерігача в цілях запобігання зловживання владою з боку адміністрації.

Дослідження також намагається проникнути в глибину положень адміністративної судової системи в Іраку і відповісти на багато з питань, що виникають у зв'язку з цим. Зокрема, в чому важливість створення адміністративної судової системи в Іраку за допомогою прийняття другого Закону про внесення поправок № 106 від 1989 року в Закон про консультативну раду Іраку № 65 1979 року? Які зміни викликані оприлюдненням П'ятого закону про внесення поправок № 17 2013 року? Якими є деякі з критичних зауважень, і чи можна уникнути цих «недоліків» з боку законодавців? Що означає створення Вищого адміністративного суду в Іраку в 2013 році? І що призвело до виходу закону Ради Шури Курдистанського регіону Іраку в 2008 році?

На ці питання і інші питання, пов'язані з адміністративною судовою системою, дані відповіді після екстраполяції того, що написали законодавці, і визначення логічних передумов і реальної сторони питання.

Сипан Абдуллах Ахмед. Правовое регулирование Административной судебной системы и Консультативного совета Ирака и Иракского региона Курдистан. Магистерская работа. Киев. КПИ им. Игоря Сикорского, 2017.

Сравнительно-правовое исследование правовой организации административной судебной власти в Ираке в свете положений Пятого закона о внесении поправок № 17 2013 года в закон об Иракском государственном консультативном совете № 65 1979 года с Законом Совета Шуры Курдистанского региона Ирака № 14 2008 года.

Исследование посвящено рассмотрению правовых положений, установленных иракским законодателем и законодателем Иракского региона Курдистан, с оценкой их подходов к организации

административной судебной системы с точки зрения ее состава и функций путем сравнения по пунктам схожести и отличий.

Также исследование имеет своей целью найти формулу соотношения между существованием двойной судебной системы и обеспечением верховенства закона путем установления принципов легитимности, а также рассмотрение важной роли административной судебной системы в контексте ее исторического развития, как играющей роль наблюдателя в целях предотвращения злоупотребления властью со стороны администрации.

Исследование также пытается проникнуть в глубину положений административной судебной системы в Ираке и ответить на многие из вопросов, возникающие в связи с этим. В частности, в чем важность создания административной судебной системы в Ираке посредством принятия второго Закона о внесении поправок № 106 от 1989 года в Закон о консультативном совете Ирака № 65 1979 года? Каковы изменения, вызванные обнародованием Пятого закона о внесении поправок № 17 2013 года? Каковы некоторые из критических замечаний, и можно ли избежать этих «недостатков» со стороны законодателей? Что означает создание Высшего административного суда в Ираке в 2013 году? И что привело к выходу закона Совета Шуры Курдистанского региона Ирака в 2008 году?

На эти вопросы и другие вопросы, связанные с административной судебной системой, даны ответы после экстраполяции того, что написали законодатели, и определения логических предпосылок и реальной стороны вопроса.

INTRODUCTION

Based on the nature of our life in this era, with the formation of states, governments and administrations, and with the importance of the existence of a judicial authority working on the impose of the sovereignty of law throughout the countries and the importance of separation of powers, has become a requirement of this era the existence of control and jurisdiction over the work of the administration, by the administrative courts or the Consultative Councils, to protect the rights of individuals and employees in the face of the arbitrariness of the administration in the use of power or deviation from the authority, and assisting government agencies through guidance and express opinion. In Iraq and Iraqi Kurdistan region for example, these Consultative Councils exercises its judicial powers through the administrative courts and the employee's courts, and also exercises its role in the field of rationing and legal advice.

In each country, the judicial system must be sufficient to achieve the sovereignty of the law. This sovereignty is based on many elements, including the selection of judges, ensuring the independence of judges and courts and safeguarding the rights of individuals. This is achieved by saving the rights of individuals in the face of the administration as an example. For that, it becomes necessary to follow the provisions of the dual judicial system and establish these administrative courts and consultative Councils.

There is no doubt that the existence of the administration as a party in a legal relationship or a judicial dispute with individuals sometimes leads to the administration committing some mistakes by ignoring the legal rules laid down by the legislator or the

illegality of some of its administrative decisions, especially against employees in the government departments. The defects of the administrative decision, whether the defect of lack of jurisdiction or defect of formality or any other defects that affect the fairness of the administrative process in the country and sometimes lead to the infringement of the administration on the rights of individuals and employees in its institutions or departments, so there should be judicial control over the works of the administrations and must subject to the jurisdiction of administrative courts and other judicial authorities.

The establishment of the Council of State in France was in the year 1799, but the important law was the law of May 24, 1872, which reorganized the Council of State of France and permanently delegated administrative judiciary to it, so that the Council became a general judge in administrative disputes and protects the rights of individuals facing administration. The Iraqi State Consultative Council was established on the basis of the Law of the State Consultative Council (No. 65) in the year 1979, thus making Iraq one of the countries that follow the dual judicial system.

In this research, in the first chapter, I will talk about the concept of the administrative judiciary and the historical development of the administrative judiciary in the France and in the Iraq and also about the principles of legitimacy and judicial control over the administration.

In the second chapter, I will talk about the State Consultative Council of Iraq and its composition and functions and I will make a comparative study between the Consultative Council of the Iraq's Kurdistan region and its composition and functions with the State Consultative Council of Iraq.

I will finalize the research by highlighting the results, solutions, suggestions and recommendations that I have created by writing the research.

Problem statement

The most notable problems related to research are:

1. To find a formula of integration, interdependence and differences between what the Iraqi legislator and the legislator in the Kurdistan Region addressed.
2. Activation the authority of the judiciary to the cases of arbitrariness of the administration in its decisions and the limits of the authority of the Consultative Council in this field.
3. The problematic of distinction between what the legislator wants and what has happened in matters related to the administrative judiciary.

Research objectives

The main objectives of the research are:

1. Getting the knowledge about the concept of the dual judiciary system and the importance of establishing administrative judiciary, administrative courts and Consultative Councils with its branches in the country.
2. Inform citizens and employees in the public sector of the nature and functions of the Consultative Councils and the administrative courts in order to guide them to claim their lost rights by the administration.
3. Try to give some suggestions and recommendations in order to improve the process of judicial and administrative judiciary in the country.
4. To stand on the most notable negative points signed by the Iraqi legislator and legislator in the Kurdistan region of Iraq.
5. Explain the concept of legality of administrative decisions that will activate the principle of the sovereignty of law throughout the country.
6. Ensuring that the administration is subject to the administrative judiciary authority and real embodiment of the concept of separation of powers.
7. As the administrative judiciary established newly, this research will open new perspectives in dealing with this subject and enrich the legal library.

Research methodology

The research is based on a comparative law which deals with the description and analysis and comparing of legal systems by comparing between legal rules in Iraq and in the Kurdistan Region of Iraq in the field of administrative judiciary with a comparison between the parts and branches of these legal rules.

Research limitations:

1. Objective limitations: The research is related to the administrative judiciary and its inception and the State Consultative Council in Iraq and the Consultative Council in the Kurdistan region of Iraq.

2. Geographical limitations: The research includes Iraq and the Kurdistan Region of Iraq (with one branch about the establishing of administrative judiciary in the France).

3. Time limitations: In general from the year (1979 to 2013), with some exceptions in the branch of the historical development of the administrative judiciary.

CONCLUSION AND SUGGESTIONS

After the writing of the research and addressing the subject from all angles and taking into account most of its aspects and highlighting the majority of the questions and related issues, it is necessary to reach some conclusions and suggestions in this regard, especially in the field of administrative judiciary in Iraq and also its establishment in the Kurdistan Region of Iraq, in addition to many proposals and solutions for the purpose of addressing some of the negative aspects existing in the current reality of the administrative judiciary, which will be referred to by the following:

CONCLUSION:

1. The establishment of the administrative judiciary and the transformation from the unified judicial system to the dual judicial system, with the establishment of the French Council of State, is due to several factors, including the ideas of the French Revolution of 1789 and the principle of separation of powers and preventing the judiciary from standing against some reforms and preventing ordinary courts from adjudicating administrative disputes through the formation of a competent judicial body.

2. Since the principle of legitimacy of the decisions of the administration is synonymous with the principle of sovereignty of the law in any country, so the judicial control over these decisions and the conduct of the administration in general, are also linked through a strong

relationship with the integrity of the judicial system and its possess of sufficient powers to prevent the administration from arbitrariness. Iraq has taken the right step by giving several jurisdictions to the administrative judiciary, but some other reforms should be made in the political, legal and judicial structure of the country to ensure that the measures taken are in appropriate.

3. The dual judicial system has the advantage over its counterpart the unified judicial system, based on its specialization in this regard and the accumulation of experience in the practice of a specific type of judiciary. In addition to, the administrative judiciary is constructional judiciary and contributes to the creation of featured legal rules, because the characteristic of the ordinary judiciary is that it is only an applied judiciary that sometimes impairs the judge's discretionary powers.

4. One of the most important changes that occurred as a result of the promulgation of the Fifth Amendment Law of the Iraqi State Consultative Council Law No. 17 of 2013, was by amending and removing the text of the fifth paragraph of the article 7 of the original law and after that from other related articles of its amendments, which stipulated that it is prevent for the judiciary to considering appeals submitted on the acts of state (sovereignty). This step constitutes an important development in the field of preventing the immunization of any administrative decision, including the acts of state, from subjecting to the control of the judiciary and this is in line with the Iraqi Constitution of 2005, which also stated in the article 100 the same provision.

5. The turning point for the formation of the administrative judiciary in Iraq is due to the promulgation of Law No. (106) of 1989 which was the Second Amendment Law of the Iraqi State Consultative Council Law No. (65) of 1979. This considered as positive step by the Iraqi legislature due to the urgent need to keep pace with the modern judicial systems in the world. However, this effort was not sufficient, but the promulgation of the Fifth Amendment Law No. 17 of 2013 of the aforementioned law, represents an important turning point, especially by the establishment of the Supreme Administrative Court.

6. The Iraqi legislator was successful in dealing with the issue of conflict of jurisdiction between the ordinary judiciary with the administrative judiciary and the legislator in the Kurdistan Region of Iraq also went to the same direction. The Iraqi legislator also resolve the conflict between the same administrative judiciary bodies (Administrative Judiciary Courts with Employee Judiciary Courts) after he concluded that the establishment of such courts in several regions and governorates in Iraq may lead to conflict of jurisdiction between the Administrative Judiciary Courts itself or between the Employee Judiciary Courts itself and he resolved this issue also in the Fifth Amendment Law aforementioned.

7. The Iraqi legislator noted that the existence of a single administrative court in Iraq is not sufficient, especially in the presence of difficulties in mobility and security conditions prevailing in the country which effect on the litigant in the outside of the capital by suffering from problems and delays because of the distance and bear the costs, which may lengthen the litigation. Thus he stated for establishment of Administrative Judiciary Courts and Employee Judiciary Courts in four zones of the country and gave the right for establish more at the need.

8. Both of the Iraqi legislator and the legislator in the Kurdistan Region of Iraq, stated that only the competent minister or the head of the entities not linked to the ministry may submit the cases to the council for giving its opinion on it. This, on the one hand, leads to stability in transactions and this is contrary to the chaos, but on the other hand, it leads to the centralization of this power in the hand of the minister or the head of the entities not linked to the ministry and its monopoly.

9. The existence of the majority of the legal provisions applied by the Employee Judiciary Courts inside the written laws that provided for all disciplinary penalties and matters relating to the service of the employee, I mean in the "Law of Discipline of State Employees and Civil Service Law" of Iraq, although it preventing the judge from the departure from the texts, at the same time, it limits the discretionary power of the judge and runs counter to the principle that the administrative judiciary is constructional judiciary.

Administrative law is also recognized as a non-codified law, but with many administrative legislations, the powers of the administrative judge will be restricted.

10. The Fifth Amendment Law of the Iraqi State Consultative Council Law resolved many of the negative points of the original law and its previous amendments and expand the base of the administrative judiciary, but compared to the legislation of other countries in this regard, may be some of the amendments are needed, especially in the field of judicial proceedings and adopt an explicit position about the legal estimation of the exceptions to the principle of legitimacy, in addition to determining the functions of the Supreme Administrative Court in a more precise manner to avoid conflicts of jurisdiction.

SUGGESTIONS AND SOLUTIONS:

1. The Iraqi legislator and the legislator of Kurdistan Region of Iraq should remove some of the existing contradictions regarding the acts of state which existing in different legislative texts and confirm their legal estimation, in addition to removing some ambiguity about the nature of the acts which are considered acts of state, as well as, state a more accurate provisions about the discretionary authority of administration and scope of it as exceptions to the principle of administrative legitimacy.

2. With the recognition of the existence of independence in the exercise of its functions, but the administrative judiciary, whether in Iraq or in the Kurdistan Region of Iraq, lacks its organic independence. Administrative judiciary is one of the components of the State Consultative Council and associated with it organically and the Consultative Council is one of the components of the Ministry of Justice, this constitutes a clear violation to the principle of separation of powers adopted by the Constitution of the Republic of Iraq of the year 2005 in the article “N. 47”. It is possible to reconsider this matter and establishing a State Council that is structurally linked to the Supreme Judicial Council.

3. The independence and separation of the administrative judiciary from the ordinary judiciary should be complete, so that there should not be any link between them in the litigation proceedings, through the independence of the provisions of the proceedings

followed in initiating the administrative suit before the Administrative Court or Employee Judiciary Court from the provisions stipulated by the Iraqi legislator in the Civil pleadings Law, Law of Evidence, The Code of Criminal Procedure and the Code of Judicial Fees in respect of these proceedings. This will be done through the issuance of legislation on the administrative proceedings.

4. Due to the nature of the administrative situation and the existence of several administrative bodies and the need to expedite the submission of appeals on the decisions of the administration, the formation of Administrative Courts and Employee Judiciary Courts in all governorates of Iraq and also in the all governorates of Kurdistan Region of Iraq, represent a necessary and urgent need. Thus, the presence of them should not be limited to only some zones and this is for the benefit of citizens in other governorates.

5. Regarding the members of the Council, including the President, the deputies and the advisors, the Iraqi legislator and his counterpart in the Kurdistan Region of Iraq provided for existence of a bachelor's degree in law with the actual practice in the judicial or legal field for several years by them as aforementioned, but they did not require the availability of higher certificates and did not require them to be judges. This may lead to the omission of the role of many of the holders of higher degrees in law and specialized judges, although the Council, especially in the Kurdistan Region of Iraq, is newly established and needs their efforts and experience.

6. The Chairman of the Iraqi State Consultative Council may nominate suitable advisor for the presidency of the specialized body in the Council when necessary, while the Iraqi legislator could assign for this matter the approval of the majority in the General Body of the Council according to the voting, in order to comply more with the principle of respect of the opinion of majority and go away from the centrality of powers to the President of the Council.

7. The Shura Council of the Kurdistan Region of Iraq consists of several bodies have been referred to in the research, but lacks the existence of specialized bodies which are

existing in the State Consultative Council of Iraq. It is possible to add such bodies to the Shura Council of the Kurdistan Region of Iraq.

8. The jurisdiction of the administrative judiciary in Iraq and in the Kurdistan Region of Iraq is limited to considering the decisions and acts of the administration issued by the unilateral will, which means excluding the legal acts that are issued according to two wills such as administrative contracts and leave them to the ordinary judiciary, whereas this jurisdiction (administrative contracts) belongs to the administrative judiciary in many countries that adopt a dual judicial system because of its distinguishing features with other contracts such as civil contracts. It is possible that the Iraqi legislator adopts the direction of these countries.

9. The Iraqi legislator and his counterpart in the Kurdistan Region of Iraq went to restrict the powers of the administrative judiciary after they stated that the administrative judiciary would not consider the appeals that the law has set another reference or method for appeal on it. It is possible to expand the functions of the administrative judiciary more by reviewing this matter.

10. There is an urgent need for expanding the legal determined periods which was referred to in the research, for submit a grievance against the decision of the administration or to submit appeal after that before the administrative judiciary by the legislator in the Kurdistan Region of Iraq. He can provide for those periods mentioned by the Iraqi legislator in this regard to provide greater protection for the rights of the individuals suffering from administration decisions.

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