



THE ADMINISTRATION'S AUTHORITY TO MANDATE SPECIALIZATION IN THE CONSTITUTION

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Article history:	Abstract:
<p>Received: 20th August 2024 Accepted: 11th September 2024</p>	<p>In modern administrative systems, the administrative mandate is considered of great importance in job development policies due to the advantages it achieves in the interest of the work, the employee and the development of the service provided by the public facility to which the employee belongs. This happens when the administrative heads mandate partial assignment of some specializations to one of the subordinate employees in the same functional facility. This aims at scoring many advantages such as: the officials are devoted to accomplish duties of higher importance, training subordinates to perform these new tasks and many other benefits that will be mentioned in this research. It's worth mentioning that the permanent Iraqi 2005 constitution was keen to adopt the mandate system within the framework of the policy of distributing powers between the various state authorities and in more than one place. Thus, we'll try in this research to shed light on what is related to the public job and the relationship of mandate with the development of public job.</p>

Keywords: The constitution, Administrative authorization, management authority, delegation jurisdiction,

THE IMPORTANCE OF RESEARCH: The importance of the research regarding the issue of the Constitution's guarantee to the administrative mandate system within the framework of the public job can be explained through the advantages of the mandate system that positively affects the public job as well as the performance of employees in the public facility and leads to professionalism through: the distribution of administrative powers, combating administrative concentration and monopoly of authority and specializations, achieving the highest degrees of balance in job performance.

This is added to its importance in developing the skills of subordinate employees, discovering the areas of job creativity and achieving the highest levels of efficiency in investing the human resource in the public job, which is consistent with the policies of the constitutional legislator in achieving the public interest within the framework of the public job by ensuring its governing principles such as continuity and development.

Moving to the research methodology, this study was divided into two sections: the first is concerned with studying the concept of mandating in administrative competencies and its importance in modern administrative systems, while the second section is devoted to studying the constitutional organization of mandate in the Iraqi constitution and some comparative constitutions according to the following:

The first topic: The Concept of Administrative Mandate in Specialization

The 1st requirement: Definition of mandate

The 2nd requirement: Types of mandate

The second topic: The Mandate of Specialization in the Constitution

The 1st requirement: justifications for the constitutional organization of the mandate system

The second requirement: mandate of specialization in the Iraqi and comparative constitution

The first topic

The Concept of Administrative Mandate in Specialization

Based on the general rules of the administrative law, the rules of subjective specialization require that the administrative decision be issued by the administrative body stipulated in the law and within the limits of its specialization. Furthermore, the employee must exercise his powers himself. The adherence to this principle may generate negative results in administrative work such as disruption of the principle of work continuity regularly or slowly in the stages of its completion, in addition to harming the public interest, as concentrating power in one hand may lead to the administrative head being drowned in details that increase his burdens and responsibilities.

Therefore, it was necessary to search and find methods as well as legal means that facilitate the work of administrative officials. Perhaps mandate of specialization is among the most important of these means. Thus, we'll try to research its concept as an important administrative system and explain its types in this section, in which the study will be divided into two topics, as follows:

The first requirement:

Definition of administrative mandate

Dr. Suleiman Mohammad Al-Tamawi defines mandate as follows: [A person with competence entrusts the exercise of an aspect of his competence, whether in a specific issue or in a specific type of issue, to another individual]¹. It is also defined as the case when an [administrative member entrusts some of his powers to another administrative member to exercise these powers for a temporary period in his place if there is a legal text in the same law that granted him the power, or another legal text, at the level of this text, or higher than it that allows him to be mandated]².

Mandate is a system that is closely related to the theory of specialization, as it is an exception to the principle of personal exercise of specialization. The emergence of the mandate system represents a response to the new circumstances that necessitated the exercise of specialization without its holder in order to achieve the principle of the regular and steady operation of public facilities. Thus, administrative mandate is a way of accomplishing administrative tasks through the flow of specialization from a higher authority to another lower authority in the administrative apparatus to maintain regular work continuity. Based on the above, the researcher does not need much mental effort to recognize the advantages of the administrative mandate system for specialization.

The importance of mandate is not limited to the administrative field alone, as it occupies a prominent place in constitutional law. Therefore, the mandate system has turned to the base for many contemporary constitutional studies.³

As for the definition of mandate in the Iraqi law, we can note that the Iraqi legislator, within the framework of his legislative policy, has stipulated the word [mandate] in many laws, as we will see, but he/she did not provide a definition of administrative mandate. Furthermore, the Iraqi legislator has created vocabulary that carries in its content the same meaning as mandate and the flow of powers between different administrative bodies. For example, we find that the Iraqi legislator, in the framework of the Law on Governorates Not Organized in a Region No. [21] of 2008, used the word [grant] instead of the word [mandate]. In our estimation, the one who grants the powers is he/she who owns it, and the one who is granted those powers is the one who's mandated in accordance with the general context of the legislative text related to granting competencies, which states the following: [The Governorate Council or the Judicial Council may grant the District Council any other powers in a manner that does not conflict with the applicable laws]⁴.

Perhaps one of the most important principles agreed upon in administrative law is that specialization is not a personal right for those who exercise it, but rather it is a power that allows an employee to act on a specific matter based on constitutional, legal or regulatory texts.

Thus, we can say that administrative authorization is a system imposed by the developments in administrative life that necessitated the exercise of specialization away from his original owner as an implementation to the order to achieve the principle of regular and steady operation of public facilities, which constitutes an exception to the principle of personal exercise of specialization.

The mandate is an administrative system that can be resorted to in order to confront the principal's unusual circumstances that prevent him/her from performing his/her duties in the best way. Therefore, it is an exceptional procedure as it is considered a departure from the original and the principle of performing administrative specialization.

It is also considered a legal means to alleviate the phenomenon of concentration in the administrative job due to circumstances necessitated by the practical considerations necessary to carry out job duties in the best manner.

Finally, it was necessary to point out that mandate as an administrative system is characterized by a number of advantages that justify its adoption in legislation such as: saving effort and time for administrative heads to devote themselves to the most important matters, given that mandate usually focuses on issues and competencies that are secondary to administrative heads. Also, mandate is considered an opportunity to develop the efficiency of those being mandated and their capabilities by assigning new specializations to them. Moreover, mandate has a role in evaluating the performance of qualified employees to occupy senior positions in the career and institutional pyramids and provides them with the opportunity for development and innovation.

¹ Al-Tamawi Mohammad, The Administrative Judiciary, Volume 1, Judiciary of Abolition, Al-Fikr Al-Arabi, 1967

² . Al-Barzanji Issam, Badir Mohammad, Al-Salami Mahdi, Principles and Provisions of Administrative Law, 4th Edition, Al-Atak Book Manufacturing Company, Cairo, 2009.

³ Rajah Ahmad, Mandate of Specialization in The Administrative Law - A Comparative Maste's Thesis Study, Al-Nahrain University, Baghdad, 2007

⁴ Review Article 12, Paragraph [11] of the Law on Governorates Not Organized in a Region No. 21 of 2008.

Despite these advantages, mandate has a number of obstacles and disadvantages, which can be summarized by the following points:

- 1- It is a system that doesn't succeed in the absence of mutual trust between managers and subordinates. Managers believe that carrying out work themselves is better than mandating it to subordinates. This means that managers' trust in subordinates is insufficient.
- 2- Managers feel that mandate could result in a threat to their job positions from subordinates. Therefore, mandate isn't successful in an environment in which the monopoly of power and positions prevails.
- 3- Subordinates lack a desire to bear the burden of responsibility and prefer to receive direct orders instead of making decisions themselves.
- 4- The subordinates' feeling of bearing responsibility without any return on their effort in making decisions and carrying out the tasks mandated to them¹.

The second requirement Types of Mandate

Mandate is of several types depending on different considerations [including signature authorization, mandate of authority...etc.] and as far as the matter is concerned with the subject of the research and the authority to mandate and its constitutional basis, the authorization may be legislative or administrative, as the authorization is legislative if the legislative authority entrusts some of its powers to the executive authority represented by its president and within the limits stipulated by the Constitution.

Meanwhile, administrative mandate happens when an administrative body or what represents it assuming a specific specialty, whether inside or outside a single administrative body, entrusts some of its powers to another administrative body within the limits stipulated by the law or regulation. This happens if both the administrative and legislative mandate are compatible with the fact that each of them involves an original competent authority transferring part of its powers to another.

There are several aspects of differences between the two types. Administrative mandate is usually limited to one or several tasks, and the mandate ends upon its completion. While the legislative mandate does not include such a restriction. Therefore, when we are facing a specific time and specific circumstances, it is permissible to confront any action as long as such confrontation is necessary and for that reason the legislative mandate was approved. Each of the two types also differs in that the legislative is only carried out by a decision of the Legislative Council, while the administrative is carried out by a decision of the principal. The former is subject to the provisions of constitutional law, while the latter is subject to the provisions of administrative law.²

We'll try to detail the scope of each type of mandate according to the following:

First: The Administrative mandate of specialization: This happens when an administration in the same apparatus entrusts or transfers some of its powers to another body that is usually lower than it. The applications contained in administrative mandate within the framework of the executive authority in Iraq are many in Iraqi law, including, for example:

1. Higher Education and Scientific Research Law No. [40] of 1988, in which Article [18] gave the university president the authority to mandate some of his powers to the deans and his assistants or to whomever he deems appropriate to perform the mandated tasks.
2. Real Estate Registration Law No. [43] of 1971, in which Article [103] authorized the Director of the Real Estate Registration Department to authorize his assistants, along with one of the clerks in the directorates, to take the approval, whether that approval was made in the same department or outside it.
3. The amended law on Discipline of State and Public Sector Employees No. [14] of 1991 that allowed in its article [11] the minister to authorize an employee in his ministry to impose the disciplinary penalties stipulated in the law.

It must be noted here that there are some powers that may not be delegated by the president to his subordinates, [[These are those administrative powers or powers granted to the president in his personal or political capacity]]. This was also mentioned in the Iraqi administrative judiciary that pointed out, in a decision of the General Authority of the Iraqi State Shura Council, which served as a court of cassation in the administrative judiciary, that "the penalty for removing an employee from the job is within the personal powers of the minister and may not be mandated to another employee, based on the validity of the decision of the General Discipline Council, stating that "the imposition of the penalty of dismissal shall be by a reasoned decision from the competent minister, and the minister may not mandate this authority as it is a personal power, and no one else may impose the penalty of dismissal even if the minister approves the recommendations of the investigative committee."³

¹ Antoine Henri, Management of Technology, Cairo, 2009

² . Al-Saleh Othman, The Constitutional System and Political Institutions in Kuwait, Volume One, 1989

³ Ministry of Justice, State Shura Council, [Decisions and Fatwas of the State Shura Council], Modern Endowment Press, Baghdad, 2011, p: 39

Second: The Legislative mandate of powers: Legislative mandate means the executive authority issuing decisions that have the force of law based on a mandate from the Parliament in order to regulate some issues that form the core of Parliament's specialization and which must be regulated by law.¹

As the specialization of legislative mandate is an exception to the principle of parliaments being solely responsible for legislative tasks and limiting the role of the executive authority to simply implementing laws, some constitutions have covered this principle with a set of controls, whether substantive or procedural, to prevent the Parliament from refraining from doing its basic legislative role stipulated in the constitutional. Upon examining the articles of the Iraqi Constitution of 2002, we do not find a text indicating, even by reference, the permissibility of mandating any specialization to the Prime Minister under normal circumstances.²

This type of mandate is clear and evident in exceptional circumstances when war or a state of emergency is declared, in accordance with Article [61/Paragraph Nine] of the effective Iraqi Constitution, which states that the Parliament shall have the following powers:

- 1- Approving the declaration of war and a state of emergency by a two-thirds majority, based on a joint request from the President of the Republic and the Prime Minister.
2. A state of emergency is declared for a period of thirty days, and is subjected to extension, once the approval is granted each time.
3. The Prime Minister is granted the necessary powers that enable him to manage the affairs of the country during the period of war declaration and the state of emergency. These powers are regulated by law, in a manner that does not contradict with the Constitution.
4. The Prime Minister shall present to the Parliament the measures taken and the results during the period of declaring war and the state of emergency within fifteen days from the date of its expiration. [It is clear from the text that the delegation and authorization of authority was given to the Prime Minister, as this constitutional procedure did not come in vain, but because the system followed in accordance with the Iraqi constitution is the parliamentary system in which the reins of power are granted to the government and its head.

It is perhaps worth noting that the powers of the President of the Republic are specified in the Iraqi Constitution of 2005 in Article [73], while the powers of the Prime Minister are specified in the text of Article [80]. Therefore, based on the constitution, there is no room for mandating the President of the Republic or the Prime Minister with any legislative powers.

The second topic

Mandating of Specialization in the Constitution

The difficulty in the field of rooting does not arise when the constitution or law determines the powers of each of the three state authorities or the powers of each state employee.

It explicitly stipulates that each authority shall exercise its powers by its own and not mandate them to others, or that each employee shall exercise his powers himself and not transfer them to others. Nor does any difficulty arise when the constitution or law permits mandating of some powers from one authority to another or from one employee to another. The principle in both cases is not mandating, and the latter is an exception.

On this basis, there is no difficulty in the French constitutional and administrative system or the Egyptian constitutional and administrative system affected by it. Both systems define the powers of each of the three authorities and the powers of each state employee, they are required to exercise by themselves and not delegate them to others unless they are permitted to do so by an explicit constitutional, legal, or regulatory text.

The principle, then, is the not to mandate, and the exception is mandating in the event that there is a text requiring that. From this standpoint, we found that it's necessary to divide the study in this section into two requirements in which we address the justifications for the constitutional regulation of mandating, while we will examine its applications in Iraqi and comparative constitutions, according to the following:

THE FIRST REQUIREMENT

Justifications for the Constitutional Organization of the Mandate System

Legal jurisprudence identifies many legal and practical justifications that require the adoption of the mandate system in local constitutions and legislation due to the necessities and advantages arising from it. The most important of these justifications can be summarized as follows:

First: Fighting administrative concentration: Transferring specializations means when the authority that has the authority of transferring the specialization of a particular authority itself moves it to another authority. This is done with the same legal means. What distinguishes it from administrative mandate is the permanence of the authority to which the specialization is transferred, as it exercises it permanently and absolutely without restriction or condition. Moreover, the legal value of the means used to transfer specialization is of the same rank as the legal act that used to

¹ Ghailan Othman Salman, Parliament's legislative Specialization in Financial Affairs, A research published in the Journal of Judiciary and Legislation, first issue, 2009

² Talib Mohammad, the Mandate of Constitutional Powers Under the 2005 Constitution in Iraq, Resalat Al-Hoquq Magazine, Al-Qadisiyah University, 1st Issue, 2015

exercise it, and the authority to which the specialization is assigned is of the same rank as the authority that was exercising the mandated work.

Sometimes the transfer of specialization occurs from central to local authorities, and in this case the transfer of specialization is a means of administrative deconcentrating. In other words, it is a means of achieving decentralization in the system, and this results in the administrative authority to which the specialization is transferred bearing responsibility for its actions in terms of results.¹

Second: Preventing the defect of lack of administrative specialization: The issue of specialization in the administrative law is one of the issues related to public order.²

This means that the legal rules regulating the specialization of various bodies in the administrative authority is related, as a general rule, to the public order. Therefore, an administrative decision tainted by the defect of lack of specialization is a decision subject to cancellation, and this is what the Administrative Judicial Court in Egypt confirmed in its ruling issued on January 27, 1957, where it ruled that [The defect of lack of specialization remains to this day the only aspect of cancellation that is related to public order].

Third: Limiting the financial costs arising from administrative work: On one hand, the administrative decision has a financial cost represented by the value of the materials used, the consumption of machines and equipment, and the rent of places, and the wages of employees and the sums of money paid to them for the working hours required by the process of preparing and issuing the decision on the other hand. Furthermore, adhering to the principle of concentrating authority and referring all administrative issues to the Supreme President for consideration and issuing the appropriate decision leads to an increase in financial burdens, given the procedures this process takes that require financial expenditures in order to prepare the reports, memos, documents, and data necessary to study the issues raised before deciding on them by the administrative head. This is added to the time and effort wasted in completing this series of work, as wasted working hours have their financial costs represented in the wages and bonuses of workers in these documents, all of which is added to the financial cost of administrative decisions.³

Fourth: Ensuring speed, accuracy and shortening time in administrative work: The administrative organization process is a continuous process. It happens when the jobs are filled and the competencies assigned to the main jobs in the organizational structure are not equivalent to the time and effort possessed by these authorities, whether this is due to an overestimation of the competencies when organizing them or the occurrence of this overrun as a result of the expansion of administrative work, seasonal work pressure, or an increase in the volume of work due to increasing management obligations over time. The mandate system can fill these gaps, as this system has great flexibility that is not available in the system of redistribution of powers, as the latter may require the intervention of other parties outside the administrative unit and also requires the issuance of a ministerial decision or law, depending on the circumstances.⁴

In this context, we find that the extent of the effort that such procedures require isn't hidden, in addition to the time that is wasted in doing so. Shortening the distance between issuing the decision directly by the authorized employee and returning to the administrative head brings great benefit and saves effort and time that could have been wasted while waiting for the decision to be issued by the administrative head. This advantage may appear clearly in the external mandate from the minister to the heads of departments located in the regions, as it achieves great speed in deciding on the issuance of administrative decisions in a timely manner.

The second requirement

Mandate of Specialization in the Iraqi and Comparative Constitutions

The Constitution is considered the basic source of all laws and is the one that establishes and defines the competencies of public bodies and sets general rules for the activity of each of them. The constitution outlines the system of the government and defines the powers of the state's legislative, executive and judicial authorities.⁵

First: Iraq:

In Iraq, we find that the constitution is the primary source of rules governing the distribution of powers among public bodies in the state. In the Iraqi Constitution of 2005, the following is stated in Article [119], which addresses the issue of distributing powers between the federal government and the governorates that are not linked to a region [the powers of the federal government may be mandated to the governorates, or vice versa, with the consent of both parties, and this is regulated by law].

Mandate finds its basis in the Constitution [2]. Article [123] stipulates the following: "The powers of the federal government may be mandated to the governorates, or vice versa, with the consent of both parties, and this shall be regulated by law." [Some may be surprised by this move in the Iraqi law, since the principle is that the highest authority delegates its powers to the lower authority and not the other way around, as is the case in the above constitutional text].

¹ Rajah Ahmad, previous source p: 76

² Rajah Ahmad, previous source p: 9

³ Al-Suwaidi Khudir, The Legal Regulation for Mandating Administrative Specialization, Babylon University, Journal of the Babylon Center for Humanitarian Studies, 2018

⁴ Rajah Ahmad, previous source p: 96

⁵ Hassan Abdul Fattah, The Mandate in Administrative Law and the Science of Public Administration, 1970

However, this matter can be explained by the fact that the relationship between the authorities in the federal system is one of balance, as none is superior to the other. Each of them has its own powers and specialization that it derives from the constitution, and it is not permissible to bypass them. Otherwise, this would be considered a usurpation of power, as we find that the Iraqi constitution in force like other constitutions referred to the issue of mandating of powers in general, that is, it took the principle of mandating. This is noted in the texts of the Constitution. In parallel, this reference or text on mandating in the core of the Constitution is necessary in light of the transformation of the Iraqi state into a federal and decentralized state as well as the legislator's tendency to distribute powers between regions and governorates, not organized in a region. It is known that the federal authorities in Iraq, whether legislative, executive, or judicial, exercise their powers and tasks on the basis of the principle of separation of powers.

It is worth mentioning that the Iraqi Constitution of 2005 referred in Article 72 to a system similar to the administrative mandate, which is administrative solutions. The following is stated in the [2nd] Paragraph of the aforementioned Article [The Vice President of the Republic shall replace the President in the event of his absence, as well as the [3rd] Paragraph of the same Article which stipulating that [The Vice President of the Republic shall replace the President of the Republic when his position becomes vacant for any reason whatsoever].

Second: The Comparative Constitutions:

In France, the 1946 Constitution stipulated in Article [54] of giving the head of state the right to mandate some powers to ministers. In addition, in the 1958 Constitution, this constitution gave the same mandated powers to the Prime Minister. As for Egypt, it seems that mandating is limited to non-constitutional issues, that is, in which the powers of the president were not determined by a text in the Constitution, but rather by a text in one of the laws. The laws' general rules stipulate that the person with the specialization must exercise his jurisdiction himself, unless one of the constitutional, legal, or regulatory texts permits him to delegate part of it to others within the limits specified by the text. This is what was expressed by the Supreme Administrative Court in Egypt when it said, "...and if the legislation assigns a specific competence to an employee by an explicit text, no one else may assume this competence or replace its owner except by the rule of law, whether by original or by mandating, otherwise he is usurping authority."¹

Within the framework of constitutional mandate of executive powers, we find that some constitutions explicitly permitted this type of mandate, such as the Egyptian Constitution of 1955, which stipulated in Article 145 that [the President of the Republic may mandate some of his powers to the Prime Minister, to the ministers, or to the governors, in the manner regulated by law].²

Conclusion

First: Results:

1. It has also become clear to us that the increase in public burdens placed on the administrative authority as a result of the expansion of the state's public functions and the development of the activity of the administrative apparatus is among the matters that require flexibility in administrative work and the movement of administrative competencies from one party to another to cope with that increase, and this can only be achieved by adopting the mandate system within the framework of the constitution and the law.
2. The administrative mandate resembles an important means of adopting the decentralized administration system, which the Iraqi legislation, most notably the constitution, tends to adopt due to the great advantages it leads to in the state administration system and the distribution of powers between the governorates, which the legislator was keen to organize in the permanent Iraqi constitution of 2005.
3. The legal system for the administrative powers and their redistribution is based on a fixed assumption, which is the adequacy of the administrative authority to carry out the tasks assigned to it, regardless of the circumstances, and given that this assumption isn't consistent with the reality of the administrative life, as it doesn't take into account the circumstances and factors that befall these administrative authorities that make them incapable to carry out these duties, which makes administrative mandate the ideal solution to confront these variables.

Second: Recommendations:

1. It's necessary for the Iraqi constitutional legislator to carry out a constitutional amendment that would ensure that the constitution explicitly stipulates that it is not permissible to mandate some important powers to the executive authority, such as the power of the Prime Minister in the field of command of the armed

¹ A set of principles approved by the Supreme Administrative Court in Egypt in the year -13- No. -11- Case 224 S12,,p: 50.

² When comparing this text with its counterpart in the Iraqi constitution, we find that the Iraqi constitution singled out an independent branch for the President of the Republic. In Article 73 it addressed the powers of the President of the Republic. However, despite all that, we did not find a constitutional text that allows the President of the Republic to delegate any of these powers to his deputy or any person. Another, mandate in general, whatever its type, requires the presence of an explicit text permitting the mandate.

public forces and some powers of a political nature, such as the powers related to the field of international relations.

2. The field of administrative delegation must be expanded within the framework of regular legislation in a way that is compatible with the nature of the Iraqi state's administration, which is based on adopting a decentralized management system by authorizing governorates and district administrations with some powers that are compatible with the nature of their executive work, given the great advantages that we found that mandate provides in the administrative work, which was previously mentioned in this research.
3. It is essential to surround the administrative mandate with some conditions and controls within the framework of the law and instructions that would impose civil and penalties arising from the mandated administrative actions in order to avoid a negative mandate situation that would turn it into a capricious process or that seeks escaping or disavowing that responsibility.

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