



The Legal Framework and Guarantees of the Independence of Independent Administrative Authorities in Iraqi Law

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Abstract

The topic of “The Legal Framework and Guarantees of Independence for Independent Administrative Authorities” addresses a fundamental aspect of building the rule of law. These authorities represent a distinct administrative and regulatory structure that enjoys a degree of independence from the executive branch, allowing them to perform oversight or regulatory functions in areas requiring neutrality and objectivity—such as audiovisual media, competition protection, or election monitoring. Typically, such bodies are established through clear legal provisions, whether in the form of specific laws or constitutional texts that affirm their existence and define their nature and powers. A well-defined legal framework is essential to ensure the legitimacy of their interventions, delineate their jurisdiction, and shield them from political or administrative influence.

The Independence of these authorities largely hinges on the clarity and precision of this legal framework, as well as on the existence of practical mechanisms that protect them from external interference. Key elements contributing to this independence include the manner of appointing their members, the autonomy of their budgets, and the systems that govern their operations and relationships with other state institutions. Furthermore, guarantees of independence are not limited to legal texts alone; they are reinforced by actual practice and institutional awareness of the importance of allowing these bodies to carry out their duties free from pressure.

The independence of these authorities is not a privilege, but rather a prerequisite for the effective and impartial execution of their mandates—especially when it comes to protecting citizens' rights and vital interests. The presence of a body that monitors, regulates, or arbitrates among conflicting interests outside the traditional governmental framework serves as an additional safeguard for justice, enshrines the principles of transparency and accountability, and strengthens public trust in institutions. Therefore, the establishment of a sound legal framework, coupled with genuine guarantees of independence, constitutes the cornerstone of these authorities' effectiveness and their ability to fulfill their roles away from political polarization or special interests.

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Introduction

Independent administrative authorities are considered fundamental pillars in the administrative structure of the modern state. These authorities are granted executive and regulatory powers exercised Independently from the central executive authority. The Independence of these authorities is essential to enhance good governance, ensure the integrity and effectiveness of administrative performance, and protect public rights from unjustified interference.

In Iraq, studying the legal framework and guarantees of the Independence of these authorities acquires special Importance due to the challenges faced in applying the concept of administrative independence amid complex political and legal circumstances. Therefore, researching this topic requires a deep understanding of the legal rules governing these authorities and the guarantees provided to ensure their independence and effectiveness.

Importance of the Research

The Importance of this research stems from the vital role played by independent administrative authorities In achieving a balance between the executive authority and civil society and promoting the principles of democracy and the rule of law. These authorities serve as the first line of defense against corruption and mismanagement, representing an effective tool to ensure objective and Independent administrative decision-making. With the growing need to strengthen the Independence of these authorities in Iraq, it becomes necessary to study the legal framework that protects this independence and guarantees non-interference, thereby contributing to the development of the administrative system and improving the quality of public services.

Objectives of the Research

This research aims to achieve several fundamental objectives, including:

Analyzing the legal framework governing Independent administrative authorities in Iraq.

Identifying the legal and Institutional guarantees that ensure the independence of these authorities.

Assessing the extent to which these guarantees are applied in practice and their impact on the performance of independent administrative authorities.

Proposing recommendations to enhance the Independence of these authorities in line with legal requirements and principles of good governance.

Research Problem

The core problem of this research revolves around the following question:

How does the legal framework In Iraq guarantee the Independence of independent administrative authorities, and do the current legal guarantees effectively protect this Independence in practice under the existing political and administrative conditions?

This question branches into several sub-issues, including the clarity and explicitness of the laws governing these authorities, the effectiveness of judicial and administrative oversight mechanisms over their Independence, and the challenges they face in dealing with political or administrative interference.

Research Methodology

The research relies on the descriptive-analytical method to study the legal rules and guarantees regulating the Independence of independent administrative authorities, alongside a review of relevant Iraqi legal and legislative literature. The research also employs a limited comparative method to examine some legal experiences in other countries

with similar administrative systems, to derive best practices that could be applied in Iraq. Additionally, practical Issues and challenges facing the independence of these authorities are analyzed through reviewing case studies and official reports.

Section One

The Legal Framework of Independent Administrative Authorities in Iraq

The authority of the administration to issue administrative decisions is one of the most important legal tools granted to it to fulfill the responsibilities and duties entrusted to it. Through this authority, the administration can establish, amend, or terminate legal positions at its own discretion, without the need for the consent of individuals^[1]. Among the most significant administrative decisions are regulations, as they comprise binding general, objective, and abstract rules that apply to a number of unspecified individuals. Formally, they are administrative acts, but In substance, they are legislative in nature, resembling laws in that they lay down general abstract rules. Regulations may be issued under normal circumstances—such as implementing or autonomous regulations—or under exceptional circumstances, such as emergency regulations or delegated regulations.

The historical factor has played a key role in the development and shaping of the legal system surrounding regulations. This began with their emergence in France during the monarchy, where kings issued them without restriction or oversight, often infringing upon individual rights and freedoms. However, the French Revolution brought a turning point by placing limits on their use. After the adoption of the 1791 Constitution, which established the principle of absolute separation of powers, the executive authority was not granted the right to issue regulations. The revolutionaries believed that allowing the executive this power would undermine the separation of powers. Only the legislature (Parliament) had the right to enact general and abstract rules, and It was tasked with issuing the necessary regulations to implement laws—referred to at the time as "legislative instructions." The Parliament was deemed the most legitimate representative of the nation and the only channel to express the principle of national sovereignty^[2]. This status elevated it to the sole authority in drafting legal texts, whereas the executive's role was strictly confined to implementing those texts within the limits set by law. Thus, the French Revolution effectively embodied and institutionalized the principle of separation of powers.

First Subsection: The Concept and Legal Nature of Independent Administrative Authorities

Constitutional jurisprudence has long established the tripartite division of government: the legislative, executive, and judicial branches. The first is responsible for enacting laws, the second for Implementing them, and the third for interpreting and applying them. However, this separation Is not absolute and varies according to the nature of the governmental system.

The Iraqi Constitution of 2005 clarifies this In Article 74, stating:

¹ Zuheir Adel Ouda, *The Legal Framework of Autonomous Regulations in Iraq: A Comparative Study*, Thesis submitted to the College of Law, University of Karbala, Iraq, 2023, p. 8.

² Zuheir Adel Ouda, *Ibid.*, p. 8.

“The federal authorities consist of the legislative, executive, and judicial branches, each exercising Its powers and functions based on the principle of separation of powers.”

Inserted into the 2005 Constitution Is a relatively new concept In Iraqi constitutional law: independent bodies. This term appears explicitly and reflects both political and administrative motivations.^[3] The legal status of these bodies raises questions about how they fit within the traditional separation of powers framework. Their Independence becomes the cornerstone for any oversight or performance assessment mechanism. Whether their autonomy Is merely administrative and financial, or truly comprehensive, remains a matter of intense debate.

Constitutions typically outline the roles and powers of each branch of government, the relationships between them, and how to resolve inter-branch conflicts. It follows that all authorities should be bound by laws and regulations. The need for Independent bodies stems from constitutional and legal mandates designed to grant them autonomy from the other branches, based on their specific purposes and objectives^[4].

The principle of Independent bodies began In France in 1941 with the establishment of administrative authorities and their number Increased significantly after 1975. These bodies did not manage public utilities directly; instead, they oversaw and regulated executive authorities that did. Their independence from the executive sparked debate: Are they extensions of the legislative, executive, or judicial branches—or a ‘fourth power’?

With the adoption of the 2005 Iraqi Constitution, the same questions surrounding independent bodies—first posed in France—reemerged. Is their purpose to Introduce a fourth branch, to balance and cooperate with existing powers, or simply to safeguard Impartiality in administrative action?

First Branch: Definition of Independent Administrative Authorities

Independent administrative authorities have been defined In legal doctrine as national bodies that are not subject to the authority of the head of state nor to administrative guardianship. They enjoy full independence in all aspects and from all three branches of government—legislative, executive, and judicial—while Remaining subject to judicial oversight^[5]

Even among countries that have addressed this Issue, there has been variance in terminology. For example, these entities have been referred to as "independent regulatory agencies," "regulatory authorities," "neutral regulatory bodies," and so on. Some refer to them as “regulatory bodies in the economic field” or “Independent administrative authorities.” Despite this diversity of terms, the essence remains the same: these bodies are charged with overseeing economic

regulation and market control through the issuance of decisions and frameworks related to their respective sectors^[6].

France refers to them as "Independent administrative authorities," while In the United States, they are commonly known as "agencies ”.

In Egypt, examples Include the National Telecommunications Regulatory Authority, the Consumer Protection Agency, and the Competition Protection Agency. Occasionally, the Egyptian legislator uses the term "authority," as In the "Capital Markets Authority." In Algeria, the term used is the "Competition Council," whereas In Morocco, the general term Is "regulatory bodies," Including the Competition Council and the National Telecommunications Regulatory Agency. In Iraq, under the Competition and Antitrust Law No. 14 of 2010, there exists a “Council for Competition and Antitrust Affairs”^[7].

From the above, several core characteristics of Independent administrative authorities can be derived:

First, these are bodies endowed with authority. This authority Implies dominance, control, and enforcement. These authorities are not merely consultative bodies—they wield various powers to fulfill their functions, including Market regulation and enforcement^[8].

Second, they are administrative In nature. This does not mean they directly manage a specific facility or service, but rather that they assume responsibilities and functions delegated from the executive branch, which may lack the capacity to manage such complex matters alone. Therefore, these functions are entrusted to Specialized individuals or bodies^[9]

Third, they are Independent. This Independence grants them the flexibility and efficiency needed to perform their assigned roles. In certain contexts, they may even exercise quasi-legislative powers through the Issuance of binding decisions^[10]

In the context of Iraqi law, independent administrative authorities are official entities established by constitutional provision or special legislation. They enjoy a degree of Independence from the traditional executive authority, meaning they are not directly subordinate to ministries or the Council of Ministers In terms of management or decision-making. This autonomy allows them to carry out their duties with neutrality and effectiveness, away from political or administrative Interference. These authorities are typically responsible for regulatory, oversight, Or technical tasks such as supervising elections, monitoring corruption, or managing media and telecommunications resources.

The need for such entities in Iraq emerged with the adoption of a democratic system post-2003. Several of them were explicitly mentioned in the 2005 Iraqi Constitution, which affirmed their independence and subjected them to parliamentary oversight or detailed their functions through

³ Einas Abdel-Hadi Mahdi Al-Rubaie, *The Legal Framework of Independent Bodies and the Concept of Their Independence*, Vol. 1, Al-Alamein Graduate Studies Institute; accessed July 13, 2025, at 12:29 AM, via law-arab.com.

⁴ Einas Abdel-Hadi Mahdi Al-Rubaie, *op. cit.*

⁵ Ezzedine Issaoui, *The Constitutional Status of Independent Administrative Authorities and the Principle of Separation of Powers*, no date of publication, p. 204.

⁶ Waleed Mohamed El-Shennawy, *The Regulatory Role of Administration in the Economic Field*, 1st ed., Al-Maktabah Al-Asriya Publishing and Distribution, Egypt, 2009, p. 185.

⁷ Articles 1 and 4 of the law published in *Al-Waqa'at Al-Iraqiya*, No. 4147, dated March 9, 2010.

⁸ Dominique Pouyaud and Prosper Weil, *Administrative Law*, 1st ed., trans. Dr. Salim Haddad, Majd for Studies and Publishing, Beirut, 2009, p. 40.

⁹ Samir Hadri, *Independent Administrative Authorities Adjudicating In Economic and Financial Matters*, Master’s Thesis, Faculty of Law and Commercial Sciences, University of Mohamed Bougara Boumerdes, 2006, p. 33.

¹⁰ Hal Moussa, *The Competition Council and the Regulation of Economic Activity*, Master’s Thesis, Faculty of Law, University of M’hamed Bougara Boumerdes, 2009, p.37

specific legislation. This reflects a clear intent to promote good governance and transparency, especially in areas vulnerable to political misuse or administrative exploitation if not handled by neutral entities^[11]

What sets these authorities apart from other governmental institutions is that they are not governed by traditional administrative hierarchies nor managed by ministers. They operate under internal regulations and often possess broad decision-making and executive powers within their jurisdiction. Their funding is generally independent, though still derived from the national budget. Staff appointments are usually made according to professional criteria distinct from standard government employment rules, with specific term limits often defined by law^[12]

By contrast, other government bodies—such as ministries and public institutions—are part of the executive authority, subject to Cabinet decisions and a clear administrative hierarchy. These entities lack true independence and operate within the framework of government policy under ministerial supervision. This structure makes them less neutral when addressing issues requiring transparency and impartial oversight.

In practice, Iraq's independent administrative authorities face real challenges in preserving their actual independence. Political appointments and pressure from the executive branch can undermine their effectiveness, even if the legal texts provide theoretical guarantees of independence.

Nonetheless, the existence of these authorities represents a foundational step toward building a legal and transparent state, particularly in a country transitioning from a centralized regime to democratic governance^[13]

Second Branch: Distinguishing Independent Systems from Similar Entities

The distinction between types of state authorities' actions—legislative, executive, and judicial—is crucial due to the different legal systems governing each.

Independent regulations, as abstract and general rules, share characteristics with legislation. They also resemble administrative acts containing general rules, whether these acts are legal or regulatory. We will explain this in two parts: the first clarifies the distinction between independent regulations and laws, and the second clarifies the distinction between independent and executive regulations^[14]

First: Distinguishing Between Independent Regulations and Law

Independent regulations and laws are similar in several respects, yet they also differ significantly.

These similarities and differences can be outlined as follows:

Similarities

1. Both contain binding general and abstract rules applied to individuals who meet the applicable criteria^[15]
2. Both are interpreted and applied in the same manner and derive their authority directly from the constitution, subject to its provisions^[16]
3. Both are characterized by innovation and the ability to address subjects not previously regulated^[17]

Differences

1. Formally, laws are issued by the legislative authority, whereas independent regulations are issued by the executive authority. In terms of judicial oversight, laws are not subject to judicial review except in countries with constitutional courts. In contrast, independent regulations are subject to review by administrative or constitutional courts. In the hierarchy of legality, law supersedes independent regulations^[18]
2. Scope-wise, laws have broader and undefined scope in traditional systems, while independent regulations are limited to administrative policing and public service management.
3. Relative stability: Laws are more stable and longer-lasting, whereas independent regulations are subject to frequent change to meet administrative needs.
4. Liability for damages: The state may be held liable for damages caused by unlawful regulations, while laws generally do not incur state liability, despite some trends in French jurisprudence that suggest a softening of this principle^[19].
5. Legislative procedures: Enacting laws involves complex procedures—government proposal, parliamentary debate, and issuance. Independent regulations, on the other hand, only require internal executive discussion and opinions from relevant authorities^[20]
6. Second: Distinguishing Between Independent and Executive Regulations
7. Administrative law scholars define executive regulations as “general administrative acts that implement legislation.” If laws set out general rules, executive regulations specify and detail them^[21]

Similarities

A. Both are issued by the executive authority and consist of general, abstract rules addressed to unspecified individuals. Therefore, both are considered administrative acts formally

¹¹ Ali Abdel Fattah, *The Legal System of Independent Authorities in the 2005 Iraqi Constitution*, Dar Al-Jami'a Al-Jadida, Egypt, 2019, p. 45.

¹² Qais Khalil Ibrahim Al-Obaidi, *Independent Authorities in the 2005 Iraqi Constitution – A Comparative Study*, Dar Al-Thaqafa Publishing and Distribution, Jordan, 2016, p. 88.

¹³ Hussein Jameel Al-Bakri, *The Principle of Separation of Powers and Independent Authorities in Iraq*, Arab Center for Legal and Judicial Studies, Lebanon, 2014, p. 102.

¹⁴ Yama Ibrahim, *Regulatory Ordinances Between Preserving Public Order and Ensuring Public Freedoms* (PhD Dissertation), Faculty of Law and Political Science, University of Aboubakr Belkaid, 2015, p. 25 et seq.

¹⁵ Abdel Azim Abdel Salam Abdel Hamid, *The Relationship Between Law and Regulations: A Comparative Study on the Evolution of Their Relationship in France, the U.S., and the Arab World*, Cairo, 1985, p. 32.

¹⁶ Hamdi Atiyah Mustafa Amer, *Administrative Regulations in the Constitutional System: A Comparative Study*, 1st ed., University Thought House, Alexandria, 2021, p. 57.

¹⁷ Louchen Dalal, *Legislative Powers of the President of the Republic* (PhD Dissertation), Faculty of Law, University of Batna, 2012, p. 59.

¹⁸ Hamdi Atiyah Mustafa Amer, op. cit., p. 39.

¹⁹ Maher Saleh Alawi Al-Jubouri, *The Intermediate in Administrative Law*, n.p., 2009, p. 367.

²⁰ Adnan Ajeel Obaid, *Constitutional Law*, Al-Nibras Printing & Publishing, Najaf, 2013, p. 47.

²¹ Georges Vedel, Pierre Delvolvé, *Administrative Law*, trans. Mansour Al-Qadi, vol. 1, University Institution for Studies and Publishing, Beirut, 2001, p. 32

but legislative acts materially ^[22]

B. Both are interpreted and applied in the same way. An error in interpretation or application by a judge renders the decision appealable.

C. The administration is obliged to issue both

Executive regulations when necessary to implement laws .

Independent regulations when they are the only means of averting serious threats to public order or managing public services ^[23]

Differences

1. **Purpose:** Executive regulations aim to clarify and detail the principles of the law, serving as its extension. Independent regulations aim to protect public order and ensure public services, serving the public interest. B. **Dependency:** Executive regulations are inherently dependent on the existence of a law. Independent regulations are not bound by such a dependency—they exist independently from the law ^[24]
2. **Subject matter:** Executive regulations can address all matters governed by law. Independent regulations are limited to public order and public service matters ^[25]
3. **Innovation:** Independent regulations can introduce new rules not previously legislated. Executive regulations must follow existing laws.
4. **Judicial review:** Executive regulations are reviewed by administrative courts, while independent regulations can be reviewed by either administrative or constitutional courts.
5. **Delegation:** Executive regulations may be delegated and exercised by decentralized authorities. Independent regulations cannot be delegated or exercised by such authorities ^[26]
6. The distinction between executive and independent regulations does not depend solely on whether the legislature has regulated a subject entirely or only provided basic principles. Scholar Vedel emphasizes that regulations must remain subordinate to laws. Similarly, legal theorists such as Carre de Malberg and Bonard affirm that regulations—even when addressing new topics—must not contradict the law. Exceptions apply when administrative policing or public service regulations are required.

However, the prevailing opinion today supports greater autonomy for the executive to issue independent regulations to address urgent administrative needs that legislation may not promptly address .

In Iraq, some still support the older view that any regulation addressing a new topic must be considered an independent regulation, a view the author disagrees with. We follow the prevailing legal opinion that independent regulations derive

not from the law but from the constitution itself ^[27]

Thus, independent regulations do not need to conform to existing laws, but they must not contradict them. The key difference lies in the presence or absence of a law governing the matter in question. If such a law exists, the regulation issued under it is executive or supplementary. If not, it is independent ^[28]

Second Subsection: Justifications for Establishing Independent Systems

The justifications for Issuing independent regulations are considered one of the essential topics within the legal and administrative system of the state, especially in light of Institutional plurality and the complexity of the modern state's structure. To fully and deeply understand these justifications, it is necessary to begin with the constitutional and legal background that allows for the Issuance of such regulations, and then delve into the practical and political needs that drive the adoption of this type of legal organization ^[29]

Independent regulations in Iraq refer to a set of legal rules issued by administrative authorities—primarily the executive branch—with the aim of regulating specific matters without merely being executive by-laws implementing legislation enacted by the legislature. In other words, these regulations are not supplementary to or Interpretative of a preexisting law; rather, they are created to regulate Issues not previously addressed by the law, which grants them an Independent character. The justifications behind issuing such regulations are grounded In a combination of legal, political, economic, and administrative considerations.

From a legal standpoint, the Iraqi Constitution serves as the supreme framework that defines the powers of various authorities. In some of its articles, it permits the executive branch to Issue regulations deemed necessary for managing state affairs. The first justification lies in the principle of delegation of authority, which presumes that certain technical or rapidly changing Issues cannot be regulated In detail by general legislative texts. Therefore, the legislature delegates authority to the executive, particularly the Council of Ministers or ministries, to issue regulations concerning such aspects, provided they do not conflict with existing laws.^[30] These justifications also stem from the principle of separation of powers, but In a flexible form that allows for functional overlap—especially between legislation and execution—when there is a practical Necessity for it.

From political and administrative perspectives, the state faces complex and evolving challenges, such as managing public utilities, Implementing economic policies, maintaining security, and regulating public freedoms. These matters demand a prompt and effective response by the competent authorities—responses that cannot afford the delays Inherent

²² Maher Saleh Alawi, *The Administrative Decision*, Dar Al-Hikma Press, Baghdad, 1991p. 45.

²³ Abdul Amir Mohsen Mughair, *Administrative Authority in Issuing Regulatory Decisions and Their Oversight (Master's Thesis)*, College of Law, University of Baghdad, 1980, p. 103.

²⁴ Mohammed Bahi Abu Younes, *Constitutional Controls of Executive Regulatory Function: A Comparative Study*, New University Publishing, Alexandria, 2008, p. 17.

²⁵ Mazen Radi Lilo, *General Theory of Administrative Decisions and Contracts*, University Publishing House, Alexandria, 2006, p. 57.

²⁶ Mohammed Rashid Mustafa, *Judicial Review of the Constitutionality of Government Legislation: A Comparative Study*, Zain Legal Publications, 2018, p. 236.

²⁷ Adnan Ajeel Obaid, *op. cit.*, p. 46.

²⁸ Mohammed Rashid Mustafa, *op. cit.*, p. 236.

²⁹ Abdul Ghani Al-Tahir, *The Legal System of Independent Regulations in Iraqi Administrative Law*, Dar Al-Thaqafa for Publishing and Distribution, Jordan, 2015, p. 87.

³⁰ Qahtan Jasim Mohammed, *The Concise Text In Administrative Law*, Al-Sanhouri Legal Library, Iraq, 2020, p. 112.

in the parliamentary legislative process. Therefore, the Issuance of independent regulations serves as a mechanism to secure administrative flexibility, enabling the executive authority to act at the appropriate time while maintaining a level of legal legitimacy. This explains the tendency of governments—particularly in developing countries or those emerging from conflict, such as Iraq—to rely on such regulatory tools to ensure effective governmental performance^[31].

On another level, there are dimensions related to the balance between centralization and decentralization. According to Its constitution, Iraq seeks to establish a decentralized administrative system that grants authority to provinces and regions. In this context, independent regulations can be a tool to solidify this balance by granting some non-central entities the authority to organize their Internal affairs within the bounds of the law, thereby contributing to the enhancement of local governance and the improvement of service efficiency^[32].

First Branch: Legal Justifications for Establishing Independent Systems

The legal justifications for the emergence of Independent regulatory systems vary according to each country's legal framework and historical circumstances. Among the most significant of these justifications are:

Change in the Concept of Law

The concept of law was Influenced by traditional principles that were dominant in the French constitutional system since the French Revolution, most notably the principle of popular sovereignty and the principle of separation of powers. Therefore, we will explore the relationship between these two principles and the concept of law:

A. The Relationship Between the Principle of Popular Sovereignty and the Concept of Law

Previously, sovereignty belonged to the ruler or king, who exercised It as a personal privilege without regard for the will of the people. It was used to achieve personal objectives and to dominate and oppress individuals. However, the French Revolution abolished this notion and made sovereignty belong to the nation. Rulers no longer held any Inherent or essential right to that power. The theory of popular sovereignty transformed from a theoretical principle into a binding legal rule. Article 3 of the French Declaration of the Rights of Man and of the Citizen of 1789 stipulates that "the nation Is the source of all sovereignty, and no Individual or body may exercise authority that does not emanate from it^[33]

Hence, the law—issued by the representatives of the nation—became the sole means through which the nation expresses Its will. No other bodies can issue laws. Law became Inherently linked to sovereignty, as it represents the will of the people expressed solely through their representatives. Consequently, the law was not subject to limitations or constraints that would reduce Its authority, and Parliament

became supreme in the field of legislation.

However, the complexities of modern life and the Increasing challenges it poses have led to prioritizing purpose over means, with law being seen as a tool to achieve evolving societal objectives. Many states adopted the philosophy of state Intervention as opposed to the philosophy of liberal individualism, which highlighted the Inadequacy of linking the concept of general will solely to the law. Many scholars In administrative and constitutional law in France rejected the traditional idea of the law as the sole and absolute expression of the general will^[34]

This gave rise to new means of expressing the general will beyond legislation—such as legislative referenda and governmental will—leading to a constitutional redefinition of the executive power. Once limited to executing laws, the executive became emancipated from subordination to the law and began to exercise legislative authority based on the constitution, making governmental will one form of expressing the general will.

B. The Relationship Between the Principle of Separation of Powers and the Concept of Law.

According to the principle of separation of powers, the functions of the state are divided Into three branches: legislative, executive, and judicial. These powers must not be combined within a single authority, with the goal of preventing tyranny, protecting freedom, and ensuring the rule of law. The greatest credit for articulating this principle goes to the French jurist Montesquieu, who laid It out in his book *The Spirit of the Laws* (published in 1748). Initially, the principle was based on absolute separation^[35].

However, constitutions later moved away from the Idea of absolute separation of powers due to Its negative consequences and criticism. With increasing calls for cooperation between powers, constitutions adopted the model of flexible separation, based on cooperation and mutual oversight. This led to allowing the executive authority to Intervene in legislative affairs and vice versa. For example, the legislature became involved in executive responsibilities such as financial matters, foreign affairs, judicial appointments, and the designation of senior officials^[36].

It Is worth noting that the implementation of this principle varies depending on the form of government: In presidential systems, the separation of powers is theoretically absolute. In parliamentary systems, the separation is flexible, based on cooperation and mutual control. In assembly-based systems, where the legislature dominates, the executive is subordinate to the legislature^[37]

Legislative Inadequacy and Inflation

Parliaments may be unable to address many Issues, particularly those that have acquired a technical nature due to scientific and technological advancement, leading to a legislative vacuum. Granting the executive branch the authority to Issue executive regulations is often insufficient for the administration to carry out Its duties, as such authority

³¹ Mahmoud Ali Al-Fatlawi, *Administrative Powers of the Prime Minister in the Iraqi Constitutional System*, Dar Al-Ma'moon, Iraq, 2018, p. 134.

³² Abdul Razzaq Al-Saadi, *Principles of Administrative Law*, Dar Al-Nahda Al-Arabia, Egypt, 2014, p. 65.

³³ Iyad Suleiman Abdullah Al-Bardini, *Constitutional Constraints on Regulatory Power in Ordinary Circumstances and Oversight Thereon According to the Latest Constitutional Amendments and Judicial Rulings in France and Egypt (Palestine)*, National Center for Legal Publications,

³⁴ Abdel Azim Abdel Salam Abdel Hamid, *The Relationship Between Law and Regulation: A Comparative Study*, previous source, p. 43

³⁵ Suleiman Mohamed Al-Tamawi, *The Three Powers In Arab Constitutions and Islamic Political Thought*, Arab Thought House, Egypt, 1976, p. 451

³⁶ Badria Jasser Al-Saleh, *The Scope of Regulations In France: A Comparative Study*, University of Kuwait Publications, Kuwait, 1990, p. 161

³⁷ Adnan Aajel Ubaid and Shaimaa Neama Aboud, *Non-legislative Powers of Parliament*, published In *Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences*, Vol. 9, Issue 1, 2017, p. 424

depends entirely on the existence and scope of laws^[38].

As a result, the executive authority was granted the power to regulate freedoms not organized by law, provided it preserved public order. In cases where the law fails to fulfill its role in organizing societal needs, the government steps in to carry out this obligation, particularly in terms of public order and public services. This idea was supported by the French jurist Cahen.

Conversely, improvised legislative interventions by Parliament to address urgent matters without proper study or assessment may lead to legislative inflation, especially when laws include detailed technical provisions, creating conflicts between laws and causing loss of rights. This necessitated granting the executive legislative autonomy to fulfill its responsibilities.

The Expanding Role of the State

As the role of the state expanded, the need for more legislation grew to keep pace with rapid developments that Parliament could no longer handle alone. This led the French Parliament to delegate legislative power to the government, especially during and after the two World Wars, to address the resulting crises and dangers.

However, the extensive use of delegated regulations led to the concentration of power in the hands of the executive and changed the concept of legislation from what it was during the French Revolution and in democratic constitutions. This sparked concern among legal scholars and some members of Parliament, prompting demands to reinforce parliamentary authority, restore sovereignty to the legislature, and limit delegated legislation^[39].

As a result, the National Defense Council was formed and tasked with drafting a new constitution to eliminate legislative decree abuse. This led to the drafting of the October 1945 Constitution, which was rejected by the National Assembly on the grounds that it expanded executive powers excessively. These concerns were addressed in the 1946 Constitution, which prohibited legislative delegation in Article 13: "Only the National Assembly shall make the law and may not delegate this power." Nonetheless, Parliament continued to delegate power to the government, circumventing the Constitution.

Eventually, the concept of inherently regulatory matters emerged as a new approach used by the French legislator to circumvent the 1946 Constitution's ban on delegation. The legislator defined inherently regulatory matters in Article 6 of the Law of August 17, 1948, issued under the Constitution, granting the government the authority to regulate such matters—including the power to repeal, amend, or replace existing laws^[40].

Similarly, the concept of framework laws (*Lois de programmes*) arose, aimed at expanding the scope of regulatory authority. Under this approach, Parliament enacts

laws containing only general principles, while the executive implements them through regulations. This creates a form of joint action: Parliament lays out the basic principles, and the executive undertakes implementation through its regulatory powers.

Second Branch: Practical Justifications for Establishing Independent Systems

Despite granting the executive authority the power to issue executive regulations, the practical reality and its outcomes have led to the imposition of broader powers upon it, which include issuing regulations independent of the law. Among the most important practical justifications for this are:

First – Preserving Public Order

Preserving public order is one of the administration's most important duties. Regulatory organization related to administrative policing is more knowledgeable and aware of the limits of freedoms and the extent of restrictions necessary to achieve the objectives of administrative control. This is because the executive authority is more capable than others of legislating in a way that aligns with society's need to maintain public security.

The legislative authority is often unable to regulate matters related to public order because public order is a flexible, relative, and evolving concept that differs depending on time and place—even within the same state. These characteristics are inherent to the dynamic nature of public order, which does not align with the stability of legal texts^[41].

As Dr. Al-Sanhouri states: "We cannot confine public order to a single domain. It is a changeable thing, expanding and contracting depending on what people consider to be public interest within a given civilization. There is no fixed rule that defines public order absolutely and for all times and places, because public order is relative. All we can do is set a flexible standard: the public interest. Applying this standard in one civilization yields different results than in another^[42]"

Furthermore, the seriousness, complexity, and urgency of public order matters do not align with the procedural steps of parliament—such as proposal, discussion, and approval—which are interrupted by its limited periods of sessions. This makes public order vulnerable and thus grants the government priority in preserving it through administrative policing regulations.

The origin of independent policing regulations, according to Professor Solal-Coligny, dates back to Article 47 of the Constitution of Year VIII, which states: "The government ensures internal security and the external defense of the state^[43]"

Second – Regulating Public Utilities

Organizing public utilities is a core function of the administration, and doing so effectively requires granting it

³⁸ Badria Jasser Al-Saleh, previous source, p. 160

³⁹ Adnan Aajel Ubaid and Shaimaa Neama Aboud, Non-legislative Powers of Parliament, published in *Al-Muhaqqiq Al-Hilli Journal for Legal and Political Sciences*, Vol. 9, Issue 1, 2017, p. 424

⁴⁰ Mohsen Khalil, *The Relationship Between Law and Regulation: A Comparative Study*, published in the *Journal of Law for Legal and Economic Research*, Faculty of Law, University of Alexandria, Issues 3 and 4, Year 14, 1969, p. 13

⁴¹ Abdul Razzaq Ahmed Al-Sanhouri, *Al-Waseet in Explaining the New Civil Law – The General Theory of Obligation*, Egyptian Universities Publishing House, Cairo, 1952, p. 399.

⁴² Iyad Suleiman Abdullah Al-Bardini, previously cited, p. 211.

⁴³ Bin Masoud Ahmed, *The Provisions of Regulatory Authority in Comparative Constitutional Systems* (Doctoral Thesis), Faculty of Law and Political Sciences, University of Abou Bekr Belkaid, 2017, p. 54.

wide discretion in this area ^[44].

This is because the administration manages public utilities and bears responsibility for them. It is most capable of understanding and meeting their needs and choosing the best system for their management. The executive authority not only performs executive tasks but also manages the state, which necessitates granting it broad powers to fulfill these duties.

Third – State Evolution and External Pressures

Under the influence of wars and technological and Industrial advancement, the role of the state evolved from a "night-watchman" state to an interventionist state involved in various fields—something that parliament could not keep up with. The executive was granted broad powers during World War I to manage the war effort, which required speed and secrecy ^[45].

The 1929 global economic crisis and its catastrophic consequences led citizens to turn to the state for solutions, demanding social justice through redistribution of national income. Human rights declarations included demands for employment and social security. Toward the end of the 19th century, states sought to achieve social justice and ensure a decent standard of living for individuals.

This new role of the executive, particularly in the economic realm, required the legislature to leave a large margin of freedom to the executive authority, which did not hesitate to use these powers ^[46].

Fourth – The Power Struggle Between Government and Parliament

The struggle between government and parliament has varied over time. After the French Revolution, parliaments dominated, based on the idea that the law expresses the general will of the nation. However, the executive authority regained strength during World War I due to the need for speed and decisiveness, which are not features of parliamentary work. After the war, parliament again gained dominance, but France suffered from governmental instability due to political unrest ^[47].

Executive authority later regained dominance as many states moved away from individualism, leading to a power imbalance between legislative and executive branches. The rising power of the executive wasn't accidental but stemmed from several causes ^[48]:

A key factor was the effective role of the head of state. Electing the president by the people gave him political legitimacy and strengthened the executive's position over the legislative authority, as the president became the primary representative of the people and their interests. Direct popular election of the president, as seen in the French Constitution after the November 7, 1962 amendment and the Egyptian

Constitution of 2014 (amended in 2019), strengthened this position ^[49].

The formation of governments from party leaders meant that parliamentary membership became a path to high ministerial office. When the ruling party forms the government, the situation differs from coalition governments. This strengthened the executive's influence at the expense of the legislature.

Some French legal scholars have described the authority to issue independent regulations as a political strength added to the government. Moreover, the executive's influence on public opinion plays a key role in political life. Governments rely on public support to implement significant societal changes, and technological tools help shape public opinion. In practice, the executive has proven capable of controlling and utilizing these tools to achieve its objectives ^[50].

Fifth – Public Utility Regulation as a Basis for Independent Regulations

After the concept of law enforcement lost its value in defining the scope of laws and regulations, the French Council of State adopted the organization of public utilities as a criterion for determining the scope of regulations. This was evident in several rulings, including the Babin case, where the President of the Republic was granted the authority to issue regulations to organize and amend the status of employees within public utilities. This marked the beginning of recognizing the executive's authority to issue regulations independent of the idea of law enforcement ^[51].

The recognition of the administration's right to issue independent regulations was based not only on legal considerations but also on practical necessities tied to the effective operation of public utilities.

Section Two

Types of Independent Systems and Their Basis for Establishment

In the modern state, the administration undertakes multiple activities to achieve the public interest. To that end, it relies on many means, among the most important and prominent of which are regulatory systems. Through these, the administrative authorities establish general, objective, and binding rules that restrict individual activities. These rules affect the rights and freedoms of individuals because they include commands and prohibitions, and those who violate their provisions are subject to punishment. The administration is also granted another means through which it can achieve the public interest or fulfill public needs, which are the public utility regulations issued by the administration when it deems that there is a need for individuals that must be fulfilled ^[52].

Whether establishing, abolishing, or organizing public

⁴⁴ Salah Al-Din Fawzi, *The Reality of the Executive Authority In World Constitutions – Centralization of Central Authority*, Dar Al-Nahda Al-Arabiya, 2003, p. 233.

⁴⁵ Emilien Quinart, *L'émancipation du pouvoir réglementaire 1914-1958*, op.cit., p. 78.

⁴⁶ Hassan Al-Bahri, *The Role of the Executive Authority In the Legislative Process in the British Parliamentary System*, Damascus University Journal for Economic and Legal Sciences, Vol. 24, Issue 1, 2008, p. 428.

⁴⁷ Omar Hilmi Fahmy, *Elections and Their Impact on Political and Party Life*, 1st Edition, Dar Al-Nahda Al-Arabiya, 1991, p. 225.

⁴⁸ Mustafa Abu Zaid Fahmy, *Principles of Political Systems*, University Publishing House, Alexandria, 2003, p. 302.

⁴⁹ Raafat Foda, *The Duality of the Executive Authority Between Form and Substance in the 1971 Constitution*, Dar Al-Nahda Al-Arabiya, 2011, p. 163.

⁵⁰ Antoine FAYE, *Les bases administratives du droit constitutionnel français*, Doctoral Thesis, Université Panthéon, Paris, 2016, p. 127.

⁵¹ Mohamed Maher Abu Al-Einen, *Legislative Deviation and Its Constitutional Oversight*, Dar Al-Nahda Al-Arabiya, Cairo, 1987, p. 339.

⁵² Ali Muhammad Bdeir, Issam Abdul Wahhab Al-Barzanji, Mahdi Yassin Al-Salami, *Principles and Provisions of Administrative Law*, Baghdad: University of Baghdad – College of Law, 1993, p. 251.

utilities, since the administrative authority in legislating through regulatory systems or public utility regulations resembles law. In its substantive aspect and represents an exceptional authority according to the principle of separation of powers, it requires reliance on the basis for their issuance, whether constitutional or customary. In light of the previous lack of recognition of this authority in the constitutions of comparative states and the ambiguity of its text in the current Iraqi constitution, legal scholars differ on the validity of the executive authority issuing independent regulations, with some supporting and others rejecting it.^[53]

First Subsection: Types of Independent Systems

Independent regulations are a type of subsidiary legislation issued by the executive authority without the need for prior authorization from the legislative authority. They are characterized by being issued to achieve a public interest, to regulate a matter not directly addressed by law, or to interpret and apply existing constitutional or regulatory provisions without contradicting or exceeding them. The exercise of this authority is considered a manifestation of the independence and effectiveness of modern administration. However, it also raises constitutional issues according to the principle of separation of powers, especially in systems where they are not explicitly regulated in their constitutions, such as the current Iraqi constitution.^[54]

The importance of independent regulations stems from the fact that they express a special regulatory authority of the administration, enabling it to intervene in regulating public matters that directly affect citizens, such as public order (security, health, public tranquility) or the organization of public utilities. They are not issued based on a law passed by parliament but derive their authority from the constitution itself, constitutional custom, or the necessities of public interest. These regulations tend to appear particularly in two cases: when there is an absence of legislative text or a temporary legal vacuum, and in situations requiring an immediate response from the executive authority to address circumstances.^[55]

Independent regulations are usually issued in specific areas requiring regulatory intervention that cannot wait for the passage of a bill through the traditional legislative process, such as managing security affairs, organizing administrative institutions, controlling individual activities without directly infringing fundamental freedoms, and regulating public utilities to ensure their continuity and flexibility. Prominent examples include administrative control regulations (such as imposing curfews, traffic regulation, epidemic control) and public utility organization regulations (such as establishing or abolishing a utility, modifying working hours, or changing the method of providing public services).

Independent regulations differ in their legal nature from executive regulations, as the latter are issued to implement an

existing law and remain connected to it in terms of source and subject matter. In contrast, independent regulations do not require a higher law on which they are based and may precede the existence of law, making them closer to an exceptional legislative act exercised by the executive authority.^[56]

First Branch: Independent Administrative Regulatory Systems

Control regulations are among the most important tools that enable the administration to establish general abstract rules that include commands and prohibitions restricting individuals' rights and freedoms, in order to maintain public order in society.

First – Definition of Independent Control Regulations

Control regulations are generally defined as a set of general decisions issued by competent administrative authorities under the power of administrative control, with the purpose of preserving public order in a preventive manner by eliminating all risks that threaten public security, public tranquility, public health, and public morals.^[57]

They are also defined as the regulations required to maintain public order in its three elements: public security, public tranquility, and public health, with the aim of regulating individuals' exercise of their rights and freedoms.^[58]

From the previous definitions, we note that they do not mention the feature of independence, as control regulations can be issued independently or as an executive implementation of the law. This is supported by some jurists who argue that the restrictions imposed by the administration on public freedoms may either implement existing laws or be independent. On the other hand, some defined control regulations by highlighting their independence as those regulations issued by the executive authority aiming to preserve public order — in its elements: public security, public health, and public tranquility — provided that these regulations are not an implementation of existing laws, do not contradict the law, and do not restrict constitutionally protected freedoms.^[59]

From the above, administrative control regulations can be defined as organizational administrative decisions issued by the administration to maintain public order in its traditional and modern elements. These regulations may be issued independently of the law or in implementation of it, provided that they do not contradict the law or the freedoms established by the constitution. Due to the importance of control regulations and their role in protecting public order, the French Council of State revised its opinion regarding the obligation of the administration to issue control regulations in the case of Doublet dated October 23, 1959. The Council stated that if the existing control regulations are insufficient to remedy the errors resulting from a certain activity that

⁵³ Mohamed Fouad Mahna, "Individuals' Rights Regarding Public Utilities," *Journal of the Egyptian State Council*, Year Two, January 1951, p. 199.

⁵⁴ Zuhair Adel Ouda, *The Legal Regulation of Independent Regulations in Iraq (Comparative Study)* (Master's Thesis), College of Law – University of Karbala, Iraq, 2023, p. 42.

⁵⁵ Ayman Youssef Mutlaq Al-Rafou', "The Extent of the Executive Authority's Right to Issue Administrative Control Regulations in the Absence of Constitutional Text," *Journal of Legal and Political Sciences*, Scientific Association for Research and Strategic Studies, Iraq, 2020, Vol. 10, No. 4, p. 114.

⁵⁶ Burhan Khalil Zureiq, *Organization of Administrative Control Bodies and Their Means of Competence*, Ibn Al-Mu'allif, Syria, 2019, p. 12.

⁵⁷ Iyama Ibrahim, previously cited source, p. 15.

⁵⁸ Ali Younis Ismail, Rajab Ali Hassan, *Jurisdiction of the Supreme Federal Court in Monitoring the Legality of Regulations*, published in the Tikrit University Journal of Legal and Political Sciences, Issue 7, Year 2, 2010, p. 361.

⁵⁹ Mohammad Mahmoud Al-Roubi, *Administrative Control and Its Role in Environmental Protection (Comparative Study)*, 1st ed., Law and Economy Library, Riyadh, 2014, p. 26.

threatens public order, the administrative control authorities are obliged to issue new regulations, provided that there are no existing regulations in place and that a serious danger is imminent^[60]

Second – Forms of Control Regulation

Control regulations take multiple forms in restricting individual activities to preserve public order, including licensing, notification, and regulating activity. The most important of these is prohibition, through which independent regulations in the field of administrative control are issued. It is a preventive prohibitive method that means banning the practice of a particular activity or the undertaking of a specific action. Courts have ruled that absolute prohibitions on freedom are unlawful. However, partial prohibitions are legitimate, such as curfews during specific periods or in specific locations, and bans on trading certain materials like explosives and weapons^[61]

Third – The Nature of Administrative Control:

Jurists have disagreed on the nature of administrative control. Some consider it a legal authority, while others view it as a political authority. These two views are detailed below:

Administrative Control as a Neutral Legal Authority:

Proponents of this view argue that the administration exercises control procedures based on the law to maintain public order. Freedoms must be respected and valued by the administration. Administrative control must not be imposed to protect the political regime in power or to defend the political beliefs of the rulers. Instead, it must aim to ensure societal stability and safeguard public interests; otherwise, such control would be unlawful as it deviates from its intended purpose^[62]

Administrative Control as a Political Authority:

Proponents of this view argue that the control authority is a political function, just like public order itself, which inherently carries a political nature. While public order appears to be about achieving public security, in reality, it seeks to secure the ruling authorities. Many restrictions imposed on freedoms stem from political and social ideas, aiming not to protect societal security, but rather to protect the regime itself. From the perspective of supporters of this view, this is considered natural^[63]

It should be noted that considering administrative control a political authority implies that its procedures are not subject to judicial review, as they would be classified as acts of sovereignty. However, the prevailing opinion among jurists is that administrative control actions — including control regulations — do not fall under acts of sovereignty according to the judicial list criterion, especially after the abandonment of the political motive and judicial list criteria^[64]

While political considerations cannot be completely removed from administrative control procedures taken to protect public order, a distinction can be made between democratic systems, which prioritize the protection of freedom and societal interest under judicial and public opinion oversight, and totalitarian or dictatorial systems, where political considerations dominate administrative control procedures. The same applies to countries that lack political stability, such as Iraq.

Second Branch: Independent Public Utility Regulations

According to the traditional concept of independent regulations, public utility systems are considered one of their types.

First: Definition of Independent Public Utility Regulations

Public utility regulations are defined as:

"Regulations issued by the executive authority for the purpose of establishing, organizing, or abolishing administrative units, coordinating the workflow in public administrations, utilities, and public interests, provided that this is within the framework of the constitution and the applicable laws^[65]."

They are also defined as regulations issued by the executive authority with the purpose of organizing public utilities. However, the use of the term "organizing" is not preferred due to its ambiguity. Others have defined them as regulations issued independently to organize public utilities—they are independent in the sense that they are not issued to implement a specific law^[66].

A criticism of this definition is that it limits the function of the regulations to organizing public utilities only, without covering their establishment or abolition. The same critique applies to the terms "organizational regulations" or "public utility regulatory systems^[67]."

We view such terminology as inadequate for encompassing all types of public utility regulations. We also do not agree with calling them "independent regulations" in general, as public utility systems are merely one type of such regulations. Therefore, we prefer the term public utility regulations. Notably, these regulations may either be issued independently or as implementing regulations of the law—similar to police regulations.^[68]

They may be defined as administrative regulatory decisions issued by the administration to establish, abolish, or organize public utilities. These decisions may be issued either independently of the law or as implementing measures, provided they do not contradict the law or the constitution.

Second: Types of Public Utility Regulations Public utility regulations include three main types:

1. Regulations for the Establishment of Public Utilities

⁶⁰ Essam Ali Al-Dabbas, *Administrative Law: The Nature of Administrative Law, Administrative Organization, Administrative Activity*, Book One, Dar Al-Thaqafa Publishing & Distribution, Jordan, 2014, p. 476.

⁶¹ Sami Jamal Al-Din, *Principles of Administrative Law: The Theory of Administrative Action*, no publisher or place of publication, 1993, p. 192.

⁶² Sami Jamal Al-Din, previously cited source, p. 193.

⁶³ Essam Ali Al-Dabbas, previously cited source, p. 476.

⁶⁴ Ali Younis Ismail, Rajab Ali Hassan, previously cited source, p. 361.

⁶⁵ Hamdi Atiya Mostafa Amer, previous source, p. 162

⁶⁶ Mahmoud Mohamed Hafez, *Administrative Decision (Comparative Study)*, Dar Al-Nahda Al-Arabia, Cairo, 1985, p. 285

⁶⁷ Majed Ragheb Al-Helo, *Constitutional Law*, New University House, Alexandria, 2003, p. 200

⁶⁸ Ayman Youssef Mutlaq Al-Rifou', *The Executive Authority's Right to Issue Administrative Police Regulations in the Absence of Constitutional Provisions*, published in *Journal of Legal and Political Sciences*, Al-Bork Academy for Science, Denmark, Vol. 25, Issue 2, 2020, p. 134

The state establishes public utilities when individual efforts are insufficient to meet societal needs. The state may also intervene regardless of private sector capacity, particularly in economic sectors.

In principle, the establishment of public utilities is left to the discretion of the executive authority, based on societal needs and the demands of the times. However, this discretion may be restricted in two cases: When the utility relates to fundamental state functions (e.g., defense, health, education), making its establishment mandatory.

When constitutional or legal texts require the establishment of a certain utility. In such cases, the regulations are implementing, not independent.^[69]

2. Regulations for the Abolition of Public Utilities
As a general rule, the same authority responsible for establishing a public utility is also competent to abolish it.

Consequently, the abolition tool must be equivalent to the establishment tool—whether legal or by independent regulation.

Just as establishing public utilities falls within the discretionary authority of the administration, the same applies to their abolition^[70].

However, if the utility was established by law (i.e., by legislative delegation), a distinction must be made:
Optional Public Utilities: The executive authority that created them may abolish them.

Mandatory Public Utilities: The executive authority cannot abolish them; abolition must be by law or based on legal authorization.^[71]

3. Regulations for Organizing Public Utilities
These refer to the rules governing the operation of public utilities after their establishment to ensure efficient functioning. They also define how responsible bodies are formed and their respective powers. Since the executive authority is best positioned to establish such rules, some scholars have recognized its competency in this regard.

While laws may be required for establishing public utilities to protect individual freedoms, their organization should be left to the executive authority due to its expertise and responsiveness to practical needs^[72].

We support this view because requiring a law to organize utilities may render the principle of adaptability of public services merely theoretical. Laws often lack the flexibility and timeliness needed to meet evolving societal needs.

Third: Distinguishing Public Utility Regulations from Administrative Police Regulations

Public utility and police regulations are similar in that both are issued by the executive authority and carry significant implications.

A state cannot exist without public utilities that serve its people's needs, just as it cannot forgo maintaining public order—a key pillar of peaceful social life.

Both types aim to serve the public interest and may impact individual freedoms, necessitating effective judicial

oversight to prevent executive overreach. However, key differences include:

Discretionary Authority: The administration has discretion in public utility regulations (except for mandatory utilities), whereas it is bound in matters related to public order in police regulations.

Scope and Abstraction: Police regulations tend to be more general and abstract, often affecting the general public. In contrast, public utility regulations typically concern specific personnel and users of the utility. **Sanctions:** Police regulations often include penalties for violations, while public utility regulations do not—except in cases of economic public utilities^[73].

Second Subsection: Legal Rules Regulating the Issuance of Independent Systems

After the necessity arose for the administration to have the authority to issue regulations or rules for the purpose of implementing laws, the need also appeared for the administration to have the authority to issue public utility regulations and administrative control systems without relying on the law. When the administration issues independent regulations, like any administrative decision, it is subject to formal and substantive legal rules. The formal rules concern determining the competent authority to issue independent regulations^[74].

The lack of agreement on the basis on which the administration relies to issue independent regulations does not mean the absence of determining the competent authority to issue them, because the administration's power to issue independent regulations is not absolute. Rather, it is subject to rules of jurisdiction, which are considered public order. Formal rules also concern the external form of the independent regulations, as the administration, as a general rule, expresses its will by any means it wishes unless the law requires following a specific form or procedure. Obtaining the opinion of the Council of State is one of the most important procedures that issuance of independent regulations is subject to. These rules represent guarantees for the interest of individuals and the administration itself, as these procedures encourage the administration to deliberate and avoid haste^[75].

As for the substantive rules applicable to independent regulations, they require that independent regulations be issued within their designated scope. The scope of the law and regulations is determined according to the traditional theory, in which the law's field is general and the regulation's field is exceptional, or the modern theory first adopted in the French Constitution of 1958, which defines the scope of the law and liberates the scope of the regulation to cover by regulation all matters not addressed by the law. This requires clarifying their legal status according to the two theories mentioned above. Among the substantive rules applicable to the administration, which aim to protect the rights and freedoms of individuals from abuse of the authority to issue independent regulations, is that they are subject to restrictions ensuring a balance between the powers granted to perform

⁶⁹ Eyad Suleiman Abdullah Al-Bardini, *Constitutional Limits on Regulatory Authority under Ordinary Circumstances*, p. 262

⁷⁰ Sami Gamal El-Din, *Principles of Administrative Law: Theory of Administrative Action*, previous source, p. 203

⁷¹ Eyad Suleiman Abdullah Al-Bardini, previous source, p. 262

⁷² Jean-Claude Ricci, *Droit administratif général*, Hachette Livre, 5th Edition, Paris, 2013, p. 41

⁷³ Yamah Ibrahim, previous source, p. 23

⁷⁴ Mohamed Ahmed Abdullah, *Administration and Independent Regulations in Administrative Law*, Dar Al-Nahda Al-Arabiya, Cairo, 2019, p. 45.

⁷⁵ Fatima Hassan Ali, *Formal and Substantive Rules In Issuing Administrative Regulations*, Dar Al-Fikr Al-Qanuni, Beirut.

the duties entrusted to It and the rights and freedoms of individuals ^[76].

First Branch: Formal Conditions for Issuing Independent Systems

When we talk about the formal requirements for Issuing independent regulations, we address the legal and procedural aspects that ensure the validity of this type of regulations and guarantee their proper implementation. Formal requirements are the precise steps and procedures that must be followed before Issuing a regulation for It to be legally effective. In Iraq, where the legal system Is characterized by the intermingling of different authorities, these requirements are an urgent necessity to achieve a balance between the executive authorities' freedom to issue regulations and respecting the fundamental legal rules ^[77]

Initially, the competent authority constitutes one of the essential elements of the formal aspect, as no entity can issue an independent regulation unless it is legally authorized to do so. The Iraqi constitution and laws grant specific powers to the Council of Ministers or the concerned ministers to issue such regulations. This detail aims to prevent any abuse of authority or Issuance of regulations beyond the scope of jurisdiction, which may result in the nullity of these regulations or non-recognition of their legal effect. Therefore, the Identity of the issuing authority serves as a mechanism to control the executive legislation process and ensure the compatibility of regulations with the legal authority framework ^[78].

After determining the competent authority, the Importance of the procedures followed in Issuing the regulation comes next. These procedures include preparing and internally reviewing the draft regulation, which is often formulated by the competent administrative bodies. Then, this draft undergoes thorough review stages, whether on the legal level to ensure its non-violation of the constitution or other laws, or on the administrative level for approval by higher authorities. This process ensures that the regulation Is not issued arbitrarily or hastily but goes through a review aimed at avoiding legal overlaps or conflicts with existing legislation ^[79].

One of the necessary and Important steps is also the official publication of the regulation, which is an Indispensable condition for the regulation to become legally effective and binding on Individuals and governmental bodies. In Iraq, this step Is carried out through publishing the regulation in the Official Gazette, where It is formally announced. Publication is not merely a procedural formality but a fundamental element that grants the regulation its legal force. It reflects the principle of transparency In issuing legislation and allows citizens and competent authorities to know the content of the regulation and comply with It. The absence of this official announcement renders the regulation unenforceable, even if other approvals and procedures have been completed. ^[80]

Regarding drafting, independent regulations In Iraq require precise and clear wording, where the legal language used

must be free of ambiguity or vagueness. Drafting the regulation also entails that it conforms to the official and unified format Imposed by legal rules, making clear what rights and obligations the regulation establishes and the procedures to be followed to implement It. This matter Is not limited to the technical aspect only but is of great Importance in protecting the regulation from legal challenges or disputes that may arise from unclear interpretation ^[81].

On another note, the timing of Issuing the regulation must be taken Into account, ensuring it aligns with legal requirements and the circumstances surrounding the issuance. In Iraq, this aspect Is considered a necessity to guarantee the harmonization of the independent regulation with existing regulations and to avoid any conflicts or contradictions that may weaken its effect or lead to Its nullification. Therefore, independent regulations often require prior coordination with other bodies or obtaining certain approvals before final Issuance, ensuring the regulation's consistency with the country's legislation and general policies. ^[82]

Accordingly, the formal conditions for Issuing independent regulations In Iraq constitute an Integrated system aimed at regulating the Issuance of regulations and maintaining their legal validity. This is achieved by respecting the authority of the competent body, adhering to the prescribed legal procedures, official publication to ensure enforceability and transparency, and drafting the regulation In accordance with legal requirements and clarity. Failure to comply with any of these conditions may lead to the Invalidation of the regulation from a formal standpoint, exposing it to legal challenges before judicial bodies and weakening Its legal effect on reality ^[83].

Second Branch: Substantive Conditions for Issuing Independent Systems

The substantive conditions for Issuing independent regulations In the law represent the fundamental basis upon which the issuance of these regulations relies. They relate to the content of the regulation and the extent to which this content complies with the legal and constitutional frameworks governing the state. These conditions go beyond mere formality and procedures, delving Into the essence of the regulation and its compatibility with the principles of justice, legitimacy, and the protection of public and Individual rights, making them an essential guarantee of the regulation's legitimacy and effectiveness In application ^[84]

Furthermore, the independent regulation must respect and conform to the Iraqi constitution, which represents the supreme reference for all legislations and regulations. This includeincludees respecting fundamental constitutional principles such as the rule of law, the protection of human rights and fundamental freedoms, and guaranteeing the principles of equality and justice. If the Independent regulation conflicts with constitutional provisions, this constitutes a clear overreach of authority and a breach of the legal order, making the regulation subject to annulment or

⁷⁶ Abdulrahman Youssef, *The Modern Theory In Determining the Scope of Law and Regulation*, Dar Al-Shorouq, Amman, 2018, p. 78.

⁷⁷ Mohammed Hassan, *Iraqi Administrative Law*, Al-Nahda Al-Arabiya Publishing House, Cairo, 2015, p. 123.

⁷⁸ Ali Abdulrahman, *Legislation and Organization in Iraq*, Dar Al-Fikr Al-Hadith, Baghdad, 2018, p. 89.

⁷⁹ Samir Abdulqader, *Iraqi Constitutional Law*, Dar Al-Kitab Al-Jami'i, Amman, 2016, p. 145.

⁸⁰ Ahmed Khalaf, *Independent Regulations in Iraqi Legislation*, Dar Al-Rafidain, Baghdad, 2017, p. 77.

⁸¹ Laila Abdullah, *Principles of Administrative Law*, Al-Nahda Publishing, Beirut, 2019, p. 210.

⁸² Hussein Salem, *Legal Rules for Issuing Regulations*, Dar Al-Taqaddum, Cairo, 2014, p. 132.

⁸³ Nizar Mahmoud, *The Constitution and Executive Laws in Iraq*, Dar Al-Salam, Baghdad, 2013, p. 66.

⁸⁴ Mohammed Abdel-Hussein, *Iraqi Administrative Law*, Al-Nahda Al-Arabiya Publishing, Cairo, 2016, p. 157

cancellation before judicial bodies. Therefore, compliance with the constitution is not merely a formal requirement but a substantive one that reflects respect for the highest legal authority in the state and preserves the balance of rights and duties between the state and individuals^[85].

Within the framework of substantive legitimacy, the Independent regulation must also have a legitimate purpose related to the public interest or the organization of a specific administrative activity that serves the national interest or society at large. The legitimate purpose of the regulation grants it its legal and social dimensions and empowers it to effectively regulate legal relations. Issuing an Independent regulation for unlawful or personal purposes, or to achieve illegitimate gains, constitutes a breach of substantive conditions and contradicts the principles of justice and transparency in public administration. Therefore, the independent regulation must clearly reflect a legitimate regulatory or administrative objective based on sound legal foundations and a genuine public interest^[86].

Additionally, the independent regulation must be harmonized with existing laws and regulations, so it does not contain any direct conflict with other applicable legal texts. This harmony ensures the coherence of the legal system and prevents contradictions in rules governing different subjects. Issuing bodies often need to conduct a careful study of existing legal texts to avoid issuing regulations that contradict or conflict with higher laws or other regulations, which could disrupt the application of the regulation and undermine its legitimacy. Such legal coordination ensures that independent regulations complement the legal system rather than conflict with it, preserving legal balance and protecting rights^[87].

A fundamental aspect of substantive conditions is that the procedures and provisions contained in the regulation must be proportionate to the purpose of its issuance, meaning the regulation should comply with the principle of proportionality, which prevents imposing excessive restrictions or arbitrary measures that harm the legitimate rights or interests of individuals and entities. If the independent regulation contains provisions that exceed what is necessary to achieve the legitimate purpose or cause unjustified harm, this constitutes a breach of the proportionality condition and affects the regulation's legitimacy. The principle of proportionality enhances legal protection for citizens against authorities and ensures that the executive power does not exploit its authority to issue overly oppressive or excessive regulations^[88].

Moreover, it is essential that the independent regulation be based on clear and justified legal reasons that reflect a careful study of the needs the regulation aims to organize or address. These reasons justify the issuance of the regulation and establish the necessity for it, enhancing the regulation's credibility and giving it legal strength when facing challenges. The absence or weakness of these justifications may lead to the regulation being deemed illegitimate, as executive authorities are required to issue regulations serving

clear public interests, not merely unilateral decisions^[89].

Finally, the role of the principle of transparency and community participation in achieving substantive conditions cannot be overlooked, as the independent regulation should be issued under legal circumstances that allow its drafts to be reviewed and discussed by competent authorities or even concerned parties. This ensures the soundness of the content and its suitability for the legal and social reality. Such interaction with interested parties prevents the issuance of hasty or rushed regulations that may carry substantive defects or lead to future legal disputes^[90].

Overall, the substantive conditions for issuing independent regulations in Iraqi law establish an integrated system that ensures independent regulations are genuine legal tools to achieve legitimate regulatory goals, conforming to the constitution and law, respecting rights and freedoms, and adhering to the principles of proportionality and justice, thereby making them effective and applicable in the legal and administrative reality.

Conclusion

The issue of the independence of independent administrative authorities is a vital matter that requires special legislative and administrative attention due to its direct impact on strengthening the principle of the rule of law and achieving sound governance. This research has shown that the independence of such authorities is not a mere institutional luxury, but rather a necessity imposed by the nature of their regulatory and oversight functions, which must be performed away from political and administrative interference.

The analysis revealed that although the Iraqi legal framework includes some provisions that refer to the independence of these authorities, it still lacks, in many aspects, legislative clarity and sufficient safeguards to protect that independence from interference. The study also demonstrated that the practical application of those provisions faces challenges related to administrative culture, weak judicial oversight at times, and political pressure.

First – Findings

1. The current Iraqi legal framework is characterized by inconsistency and ambiguity in regulating independent administrative authorities, as there is no unified law or integrated vision that defines the boundaries of their independence and the rules governing their operation.
2. Some independent administrative authorities lack effective guarantees that would prevent intervention by executive or political entities in their decisions or organizational structure, which weakens their regulatory and technical roles.
3. In practice, there is a lack of clear mechanisms for holding these authorities accountable in the event of deviation from their mandate, which may lead to a regulatory vacuum that undermines the principle of administrative responsibility.

⁸⁵ Samir Abdel-Qader, *Iraqi Constitutional Law*, Dar Al-Kitab Al-Jami'i, Amman, 2017, p. 201.

⁸⁶ Ahmed Khalaf, *Independent Regulations in Iraqi Legislation*, Dar Al-Rafidain, Baghdad, 2017, p. 89.

⁸⁷ Layla Abdullah, *Principles of Administrative Law*, Dar Al-Nahda, Beirut, 2019, p. 230.

⁸⁸ Hussein Salem, *Legal Rules for Issuing Regulations*, Dar Al-Taqaddum, Cairo, 2014, p. 140.

⁸⁹ Nizar Mahmoud, *Constitution and Executive Laws In Iraq*, Dar Al-Salam, Baghdad, 2013, p. 78.

⁹⁰ Jamal Al-Din Kazem, *Regulations and Executive Laws in Iraq*, Dar Al-Nahda Al-Haditha, Damascus, 2015, p. 165.

4. There is an urgent need to entrench the principles of transparency and community participation in the work of these authorities, which would enhance their legitimacy and prevent them from becoming isolated or subject to influence from power centers.

Secondly – Recommendations

1. Enact a unified law specifically governing independent administrative authorities, which clearly defines their legal nature, delineates their jurisdictions, powers, and mechanisms of operation, ensuring a coherent legal framework and preventing overlap with executive authorities.
2. Strengthen the principle of financial and administrative independence for these bodies through explicit legal provisions that prohibit government interference in their decisions, while granting them autonomy in managing their internal affairs and financial resources within the frameworks of governance and transparency.
3. Establish legislative guarantees to protect members of these authorities from arbitrary dismissal, by setting out specific and limited grounds for removal or termination, with any such decision subject to independent judicial review to ensure integrity and fairness.
4. Regulate the process of appointing leadership within independent administrative authorities by adopting objective criteria based on competence, integrity, and experience, free from political quotas or partisan influence, and ensuring transparency in the selection procedures

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