

# Obstacles to the Delegation of Powers and Transfer of Competences and the Role of the Judiciary in Addressing Them: A Comparative Study of Iraqi and Iranian Law

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This study aims to identify the legal, regulatory, administrative, and financial obstacles that confront the delegation of powers and the transfer of competences in Iraqi and Iranian law, to analyze the effectiveness of the legal frameworks governing these processes, and to clarify the role of the judiciary in defining the boundaries of competence and reviewing the exercise of powers by administrative bodies. The importance of the study derives from the fact that delegation of powers and transfer of competences are among the principal means of achieving administrative decentralization, improving administrative efficiency, and enhancing the quality of public services. Judicial review is likewise essential to ensuring respect for the principle of legality and preventing administrative bodies from exceeding their legally assigned authority. The study adopts a descriptive-analytical method through analysis of relevant constitutional and statutory provisions, decisions, and judicial judgments, together with a comparative method for examining the Iraqi and Iranian experiences and identifying their similarities and differences. The study finds that the most significant obstacles in Iraq are ambiguity and overlap in the allocation of competences among the Federal Government, governorates, and regions, inadequate preparation and training of personnel, and failure to complete the transfer of financial and human resources together with the transferred functions. In Iran, the principal obstacles are the persistence of centralizing tendencies, the limited effective powers of local units, and their weak administrative and financial independence. The study also concludes that the judiciary plays an important role in addressing these obstacles through the Federal Supreme Court and the administrative judiciary in Iraq and through the Court of Administrative Justice in Iran, thereby protecting the principle of legality and ensuring that competences are exercised or delegated only within the limits established by the Constitution and the law.

**Keywords:** *Delegation of Powers; Transfer of Competences; Decentralization; Iraqi Law; Iranian Law.*

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## 1. Introduction

Delegation of powers and transfer of competences are among the fundamental mechanisms used by public administration to organize administrative work and achieve greater efficiency, speed, and flexibility in

the performance of public functions. These mechanisms make it possible to distribute workloads among different administrative levels and to enable competent bodies and officials to perform the tasks falling within their respective spheres of authority, thereby contributing to the proper and continuous functioning of public services.



Nevertheless, the exercise of delegation or the transfer of competences is not free from legal and administrative difficulties, particularly where competences overlap, legal rules lack clarity, the prescribed limits of delegation are exceeded, or disputes arise concerning the legality of decisions issued on the basis of delegated authority. The role of the administrative judiciary therefore becomes particularly important in controlling these practices by verifying compliance with rules of competence and with the limits governing delegation and transfer of powers, protecting the principle of legality, and preventing abuse of power.

The research problem lies in the fact that, despite the importance of delegation of powers and transfer of competences in ensuring administrative effectiveness and improving performance, these mechanisms may encounter a range of legal and practical obstacles. The most prominent include ambiguity in the rules governing them, failure to define precisely the scope of delegated or transferred powers, overlap among the competences of administrative bodies, the possibility that a competence may be exercised by a body other than the one designated by law, and the possibility that the limits of an authorized delegation may be exceeded. The importance of this problem increases because legal regulation differs from one state to another. This raises the question of whether Iraqi and Iranian legislation adequately regulates delegation of powers and transfer of competences and whether the judiciary in each system is capable of resolving the resulting disputes while maintaining a balance between the requirements of administrative effectiveness and the guarantees of legality.

The study also seeks to explain the legal framework governing delegation of powers and transfer of competences in Iraqi and Iranian law, analyze the principal obstacles that limit their effective application, and identify the legal consequences that arise when the governing rules are violated.

The significance of the study also derives from the importance of administrative competence itself, which is one of the fundamental principles on which the administrative system and the principle of legality are based. Proper allocation of competences and the exercise of powers within the limits established by law constitute essential guarantees for protecting individual rights and ensuring orderly administrative activity. The study also

has academic significance because it provides a comparative examination of Iraqi and Iranian law concerning the obstacles to delegation and transfer of competences and the role of the judiciary in addressing them, thereby contributing to legal scholarship in the field of administrative law.

The study relies primarily on the comparative method by comparing the legal rules governing delegation of powers and transfer of competences in Iraqi and Iranian law and analyzing the similarities and differences between the two systems. It also uses the descriptive-analytical method to examine relevant legal texts and judicial principles, interpret them, and explain their legal effects.

## 2. Obstacles to the Delegation of Powers and Transfer of Competences in Iraqi and Iranian Law

Every administrative system requires certain foundations for its existence and continued operation. Among the most important of these are human resources capable of carrying the burdens of the administrative system; without such personnel, the system is effectively deprived of its substance.

### 2.1. Legal and Regulatory Obstacles to Delegation of Powers and Transfer of Competences

With respect to Iraqi legislation, the constitutional approach has been to enumerate the competences of the federal center exhaustively. The view advanced here is that the competences of the regions should instead have been defined exhaustively, with residual competences left to the federal authorities, so that the federal authorities could exercise a broader sphere of powers than the regions in light of the relative novelty of the federal system in Iraq. From this perspective, the scope of regional competences would need to be limited and precisely defined in order to prevent excessive expansion, demands for additional competences, or encroachment on the competences of the center. Practical reality, however, points in another direction because the federal authorities themselves exercise broad competences (Al-Nashi, 2018). It may also be said that the current Iraqi Constitution and the Governorates Law are insufficiently clear in defining the relationship between local governments and the Federal Government. They use vague and undefined legal expressions, including public policy, legislation,

oversight, and the “broad” financial and administrative powers of the governorates, without explaining the precise nature of those powers. The mere use of the word “broad” leaves substantial room for interpretation (Al-Wahah, 2017).

Law No. 21 of 2008 on Governorates Not Incorporated into a Region, as amended, did not clearly explain what is meant by legislation at the governorate level. Even with respect to supervision, the Iraqi Constitution does not expressly assign the Federal Government a clear role in supervising local governments. This ambiguity in the Constitution and in the Governorates Law regarding the grant of powers and competences to local governments has directly affected the functioning and performance of local governments in Baghdad and the other governorates. The overlap of powers between the center and the governorates has been one of the most significant factors affecting local governmental performance, especially in financial and administrative matters. The 2005 Constitution of the Republic of Iraq does not provide a sufficiently clear mechanism for allocating competences between the center and the governorates, which has allowed each level of authority to encroach upon the sphere of the other. This has created confusion in the work of local governments and has often confined them to narrow functions and competences that do not meet the aspirations of local populations (Al-Khafaji, 2014).

Following Iraq's shift from a centralized administrative model toward administrative decentralization, governorates not incorporated into a region acquired broad powers and authorities that they had not possessed under the former system. Among these powers is the authority to issue local legislation in specified matters within the administrative boundaries of the governorate (Fayyad, 2008). Support for this position may be drawn from Article 115 of the Constitution, which provides that all powers not stipulated as exclusive competences of the federal authorities belong to the regions and governorates not incorporated into a region. The same article gives priority, in the event of a conflict, to the law of the region or of the governorate not incorporated into a region in matters outside the exclusive federal sphere. On this reading, the Iraqi constitutional legislature intended to grant governorates a power of local legislation comparable in certain respects to that enjoyed by the

regions under the federal system. Article 115 even gives priority to local law where it conflicts with federal law on a matter that does not fall within the exclusive federal competences listed in Article 110. The study argues that this arrangement sits uneasily with the classical concept of administrative decentralization, under which decentralized units ordinarily exercise powers granted to them within the legal framework of the central state; according to this view, giving the governorate priority over the Federal Government in such a conflict is inconsistent with the traditional essence of administrative decentralization (Al-Ibrahimi, 2011).

Financial obstacles consist of the challenges and barriers that impede local authorities in exercising their functions. A provincial council must therefore observe constitutional standards when the governor prepares the governorate's budget. The Federal Ministry of Finance may object to the budget, transfer appropriations, and return the entire budget to the council for the amendments required to ensure conformity with constitutional standards and consistency with the federal budget (Al-Mahmoud, 2010). Budgets allocated to the governorates are submitted to the Federal Ministry of Finance, which prepares the federal budget and obtains the approval of the Council of Representatives. With respect to locally collected revenues, the text explains that such revenues are remitted to the Federal Ministry of Finance and that the governorate does not have unrestricted authority to dispose of them. Local governments are financed to a very large extent by the Federal Government, making their projects and activities dependent upon the timely arrival of federal funds. The problem becomes more serious when the funds actually provided do not equal the amounts approved in the budget, forcing local governments to seek additional transfers from the Federal Government or, where the law permits, to resort to borrowing or indebtedness. These circumstances weaken the relative independence that administrative decentralization is supposed to provide (Elias, 2019).

In Iran, the central governments have historically been able, through their control over revenues derived from oil resources, to formulate and implement broad national objectives without depending to the same extent on local institutions in designing national programs. This model of control contributes to the dominance of the ruling elite over rent revenues and

gives those who control such revenues substantial discretion over public expenditure. The text attributes this situation to two considerations: first, the government's receipt of large oil rents reduces its financial dependence on society and reverses the familiar relationship between taxation and representation; second, elites controlling rent revenues can use them to secure the cooperation of other social groups and elites (Al-Mahmoud, 2010). The existence of a rentier state has also been described as an obstacle to political development. When the government controls a large proportion of social wealth, it also acquires substantial control over sources of political, cultural, and social power. The concentration of resources in governmental hands inhibits their distribution across society and restricts the empowerment of social groups. It also limits the ability of those groups to challenge government action and weakens mechanisms of social oversight and governmental accountability (Fayyad, 2008).

In Iran, although judicial supervision by the Court of Administrative Justice is designed to address deficiencies that may remain in the Speaker of Parliament's supervision of government regulations, before the amendments to the Court law adopted on 10/2/1402 (Solar Hijri), numerous regulations were enacted and implemented within the Iranian legal system despite conflict with governing laws and resulting infringements of rights. The text attributes this weakness in part to the passive and insufficiently effective role of the Court of Administrative Justice in supervising government regulations during that period. Before the amendments, the Court's review was largely triggered by complaints brought against particular regulations, with the result that some binding regulations that conflicted with ordinary or constitutional law could remain in force and affect individual rights. The deficiency in judicial supervision was considered sufficiently serious that failure to address it could diminish the value of the Court's supervisory function over administrative regulations and, in some cases, render that function ineffective. In response to this concern, Article 120, added to the Court law on 10/2/1402, required the President of the Court to designate one of his deputies to bring complaints concerning actions and decisions that infringe public rights and to seek annulment of regulations and other

general rules affecting public rights when they conflict with the grounds specified in Article 12 of the law. The purpose is to protect public rights and prevent their infringement within the jurisdiction of the Court of Administrative Justice. Because of the nature of these functions, the office may be described in legal scholarship as the Court's "Deputy for Public Rights." Although establishment of this office represents a positive development in the supervision of government regulations, the legal framework created by Article 120 has also been subject to objections that may materially affect the effectiveness of the office (Hayyoub, 2020).

Another legal obstacle in Iran concerns the constitutional status of Islamic councils. The Constitution addresses these councils in several provisions, recognizes their legal status, and devotes Articles 6 and 7 and Chapter Seven to the subject. Article 7 identifies councils at the provincial, county, city, district, neighborhood, and village levels as organs of decision-making and administration in the country. Accordingly, just as the Islamic Consultative Assembly exercises decision-making authority at the national level, other councils are intended to exercise decision-making authority within their respective territorial spheres under the constitutional framework. The relationship between Article 7 and Article 100, however, has generated differing interpretations of the limits of council authority and competence. Article 7 presents the councils as one of the pillars of the decision-making system, whereas Article 100 emphasizes their supervisory and local administrative role. In its Opinion No. 14950/102 concerning the bill on sustainable revenues and expenditures of municipalities and village administrations, the Guardian Council relied on Article 100 and considered aspects of the bill inconsistent with that constitutional provision. The debate centers on whether legislation governing local taxation and other municipal powers can confer functions extending beyond the supervisory role contemplated for city and village councils, and the objection remains that an unduly restrictive reading may itself sit uneasily with the constitutional status accorded to councils (Al-Khafaji, 2014).

A related problem concerns the limited delegation of duties and powers to local councils despite the constitutional recognition of councils in Article 7 and the provisions governing their formation, powers, and

duties. The Councils Law regulates elections, council functions, and procedures for dealing with violations. Chapter Three of that law, which sets out the powers of Islamic councils, grants municipal Islamic councils only limited decision-making powers in managing certain public matters related to municipalities. Other functions assigned to the councils are framed in terms such as supervision, participation, cooperation, submission of proposals, encouragement and persuasion, and preparation of a suitable environment. These constitute the principal forms of authority granted by ordinary legislation, and the difficulty is compounded by the absence of sufficiently specific, appropriate, and legally effective mechanisms for exercising these limited powers (Al-Fatlawi, 2013).

## 2.2. Administrative and Practical Obstacles to Delegation of Powers and Transfer of Competences

Administrative obstacles are impediments encountered by administrative bodies in attempting to achieve their objectives efficiently. Bureaucracy is one such obstacle because complex procedures may delay administrative decision-making (Hafez, 2007). One of the most important administrative obstacles in Iraq is the inadequate preparation of middle and senior leadership. Middle-level leaders are responsible for communicating or implementing decisions and serve as the link between senior leadership, from which decisions originate, and first-level employees who carry them out. Senior leaders, by contrast, formulate general plans at the level of the department and coordinate them with higher administration, whether in the governorate or in the federal ministries (Ghaidan & Karbal, 2008). The problem becomes particularly significant in relation to directorates whose competences, personnel, and posts have been transferred, because the exercise of these functions requires adequate experience in matters that were previously handled by central departments of the federal ministries. Responsibility for preparing personnel may therefore fall on both the ministries and local administrations. Although the Second Amendment to the Governorates Law provided for the transfer of subsidiary directorates to the governorates, federal ministries and governorates did not always undertake the necessary preparation and training of personnel for the new powers. Several reasons are identified. First, after enactment of the law, the Council of Ministers was

reluctant to begin implementation for a number of reasons, including doubts about the ability of governorates to administer the transferred directorates and services. This suggests that the legislative process was not fully coordinated with the constitutional relationship between the Council of Ministers and the legislative authority; effective implementation of federal legislation requires close coordination between the Council of Ministers and the Council of Representatives. The resulting gap should be addressed by all authorities in order to ensure consistency between legislation and implementation (Saleh et al, 2005). Second, ministries and governorates did not sufficiently prepare personnel capable of managing the directorates or services under the new powers and, in some cases, relied on courses or workshops without measuring their actual effect on performance, thereby undermining the objectives of the transfer of competences. Third, some employees, particularly at middle and senior levels, were reluctant to work in local departments because of the material or professional advantages associated with federal ministries. Fourth, there was insufficient preparation of human resources capable of working effectively as a unified team. Human resources often make the difference between successful administration and a traditional administration that produces limited results. Thus, some local departments, especially those with capable senior staff, succeeded in delivering services to their local communities, while others failed even where financial resources were available, demonstrating the importance of personnel in the success of local administration (Imara, 2005). Completion of the process of delegating powers, together with completion of the transfer of competences, personnel, and posts of ministries covered by the transfer of subsidiary directorates under the Governorates Law, must therefore proceed on sound foundations and according to systematic planning after the required administrative and legal measures have been completed. Personnel preparation is central because those officials bear a major responsibility for local development. Development and administrative modernization should proceed together: modernization cannot be reduced to training designed merely to improve occupational skills, but should also include administrative reform and should take account of the needs and circumstances of

the local community and its specific environment ([Hatim, 2010](#)).

Among the major problems that have burdened the work of provincial councils is the limited knowledge of administrative law and the hierarchy of public authority among many council members, together with uncertainty concerning the councils' position in relation to federal legislative, executive, and judicial authorities. The text attributes this to two main deficiencies: first, inadequate legal awareness among many council members and failure to involve them in specialized training on the relevant laws; and second, the absence, at the relevant time, of sufficiently specific legislation governing the governorates. In that environment, some actors relied on Coalition Provisional Authority Order No. 17 of 2004. That order included provisions granting contractors immunity from Iraqi legal process in relation to specified activities connected with their contractual functions and subcontracts; foreign contractors and their non-Iraqi employees were accordingly afforded immunity from Iraqi criminal jurisdiction within the scope defined by the Order ([Al-Fatlawi, 2013](#)).

Additional difficulties include the absence of integrated plans governing the nature of council work, the lack of a comprehensive political or administrative project in many councils, and the tendency for council priorities to become tied to particular personalities rather than to an institutional program, regardless of whether such an approach is sound. Councils may also lack day-to-day administrative coordination with the central government and may adopt an oppositional posture toward many decisions in order to impose particular views, even where some members lack the technical basis for such positions and the central government relies on specialist advisers in implementing service and infrastructure projects. Moreover, many provincial council members are politically linked to members of Parliament from the same political blocs and are influenced by their decisions, producing divisions inside the councils and allowing political positions to affect the daily work of administrative units. Another weakness is insufficient field presence across the governorate and inadequate on-site follow-up of services and local conditions, even though citizens typically judge local government by tangible realities on the ground rather than by figures and administrative reports ([Sarhan, 2003](#)).

In Iran, a central question in reducing political concentration concerns the willingness of the ruling political elites and their view of local government. After the Islamic Revolution, and despite measures such as the laws on five-year development plans, the general policies associated with Article 44, national land-use planning policies, general policies of the administrative system, reduction of state ownership, delegation of matters to the provinces, selection of special governors in certain provinces, and reform of government institutions, the emphasis remained largely on reducing the size of the administrative apparatus, applying administrative decentralization, and delegating some executive powers to local authorities acting as representatives of the central government, without a corresponding transformation in the role of government within the political structure of the country ([Al-Fatlawi, 2013](#)). This is presented as evidence of insufficient political willingness to transfer meaningful affairs and authority to the local level, so that reduction of the size of government has sometimes remained principally a matter of legal texts rather than effective implementation ([Al-Wahah, 2017](#)). Managers and policy-makers who favor concentration and accumulation of authority may fear losing their dominant position. Consequently, the way those holding power and making decisions perceive their institutional environment becomes highly significant in the Iranian system. Administrative technocracy may resist the transfer of functions to municipal councils and oppose the strengthening and development of those councils. In short, despite emphasis on elite consensus, the political culture of elites may continue to be characterized by competition directed toward preservation of their own interests ([Al-Khafaji, 2014](#)).

Another obstacle discussed in the Iranian context is the risk of corruption arising from inadequately regulated relationships between municipal council members and the mayor. Council supervision of the municipality often has an approval-based character: certain municipal actions and measures by related bodies require the approval and ratification of the municipal council and are ineffective without that approval ([Al-Khafaji, 2014](#)). Important examples are found in Article 80 of the Councils Law, including approval of proposed municipal regulations, approval of the comprehensive statement of municipal revenues and expenditures, approval of the

municipal budget and its expenditure, and other similar matters. In practice, the relationship between council members and the mayor has at times been associated with widespread allegations or instances of corruption, posing a serious challenge to decentralization. The text notes a widespread public perception that the creation of local institutions has, in some circumstances, been accompanied by the spread of corruption and violations across the country.

A further obstacle is the absence of systematic communication between urban management and citizens. Islamic councils were established to enhance citizen participation in governance and self-determination and to strengthen democracy at the local level, yet the Councils Law has not provided a fully developed institutional basis for completing the council system. After elections, there is often no systematic and continuous relationship between council members and citizens, creating a form of structural separation between urban management and the public. This conflicts with the logic of decentralization, which seeks to facilitate citizen participation in policy-making. Although efforts were made during the successive terms of Islamic councils to bridge this gap through council-based institutions, the problem persisted because of legal ambiguity and lack of clarity regarding the duties of council members and their relationship with the councils (Al-Fatlawi, 2013). The cultural, economic, and social diversity of different cities produces differing and sometimes conflicting needs, making it important to develop an urban management system that reflects the aspirations and values of local communities. Nevertheless, the current electoral system based on plurality or majority voting does not necessarily result in representation of the entire constituency (Al-Khafaji, 2014).

### 3. The Role of the Judiciary in Regulating Delegation of Powers in Iraq and Iran

The constitutional and ordinary judiciary has an important role in assisting both the legislative and executive authorities by clarifying constitutional and statutory provisions and defining competences more precisely, provided that judicial interpretation itself remains within the framework of the Constitution and the law.

#### 3.1. The Role of the Iraqi Judiciary in Regulating and Reviewing Delegation of Powers

##### First: The Role of the Federal Supreme Court in Iraq.

The Constitution defines the jurisdiction of the Federal Supreme Court in relation to the exercise of powers between the Federal Government and governorates not incorporated into a region. It provides for adjudication of cases arising from the application of federal laws and of decisions, regulations, instructions, and measures issued by the federal authority, and the law guarantees the Council of Ministers and interested individuals and other parties the right to bring direct challenges before the Court. The Court also adjudicates disputes between the Federal Government and the governments of regions, governorates, municipalities, and local administrations (Ahmad, 2014). Accordingly, laws and regulations issued by federal, regional, or governorate authorities may be challenged before the Federal Supreme Court where they fall within its constitutional jurisdiction. The constitutional text is framed in general terms rather than confining review to a single level of government, and the Court's judgments are final and possess binding authority of a general character rather than merely relative effect between the immediate parties (Abboud, 2010).

Delegation of powers therefore falls within the Court's jurisdiction where it is challenged in circumstances covered by the relevant constitutional provisions. The Court has issued a number of judgments and interpretive opinions on such matters under the legal framework originally enacted during the period of the Law of Administration for the State of Iraq for the Transitional Period and subsequently amended under the current Constitution. Within its constitutional jurisdiction, the Court may review legislation that conflicts with the Constitution where it delegates powers contrary to competences reserved exclusively to federal authorities or otherwise disturbs the allocation of exclusive or shared competences. It may also review the constitutionality of regulations that violate constitutional rules governing those competences. The role of constitutional adjudication is therefore to protect the competence reserved to each of the executive and legislative authorities within its legally defined sphere, whether in implementing laws, issuing decisions having legal force where constitutionally authorized, or exercising the legislature's law-making power (Hussein,

2018). The text further notes that the Court continued to operate under a law enacted during the transitional constitutional period and that, although the current Constitution prescribed a mechanism for establishing the Court, enactment of a fully corresponding statutory framework was delayed for a long period. The pre-amendment legal framework was criticized on constitutional grounds. The study therefore argues that the Court's governing legislation should conform to the mechanism and requirements prescribed by the current Constitution and, where necessary, should be replaced or comprehensively amended so that both the Court's composition and the exercise of its competences rest on a clear constitutional basis (Khudair, 2020). Through its interpretive opinions and the constitutional challenges brought before it, the Federal Supreme Court has played a significant role in identifying the constitutional basis for administrative delegation in Iraq. Although the study cannot discuss every judgment in detail, those decisions illustrate the Court's central role in controlling delegation and protecting the respective competences of federal authorities, regions, and governorates (Hayyoub, 2020).

A distinction must be drawn between the legal effects of interpretive opinions issued by the Federal Supreme Court and judgments delivered in constitutional litigation, particularly in cases involving conflicts of competence. Even where constitutional provisions are not entirely clear or categorical, such conflicts may form the basis of constitutional litigation. Interpretation of constitutional and statutory texts is not a simple exercise; it requires understanding a provision in relation to other provisions and reconciling the text with the legal framework as a whole before a final meaning can be adopted (Hayyoub, 2020). Judgments delivered in actual disputes produce legal effects with respect to legal positions and acquired rights (Zouagri & Ben Bouabdallah, 2014). The Federal Supreme Court has also expressed an important view concerning the foundations of administrative decentralization and, consequently, the scope of administrative delegation in the exercise of governorate powers. After the abolition of subdistrict councils, the Court held, in the decision cited by the study, that the constitutionally required local councils are the provincial councils (Zouagri & Ben Bouabdallah, 2014).

**Second: The State Council.** State Council Law No. 65 of 1979 defines the Council's competences in the field of legal opinion and consultation. The law confers substantial advisory functions on the State Council through its specialized bodies of advisers and assistant advisers, enabling it to clarify legal provisions and provide opinions on matters disputed among ministries, governorates, and independent bodies. Because the Council is composed of legal specialists, it can assist both federal and local administrative authorities. Its opinions are generally advisory rather than binding, yet they have acquired considerable practical respect and may be followed by administrative officials despite their formally non-binding character, reflecting the important institutional position of the Council within Iraqi administration (Jawad). The Council also plays a broader role through legal consultation because its analysis of statutory provisions may identify constitutional or legislative inconsistencies and thereby assist the legislature in correcting or amending provisions whose continuation could generate future conflicts over the exercise of powers (Badir et al., 2011).

Through its specialized bodies, the State Council also examines draft legislation and can therefore express an opinion on bills that include delegation of powers to governorates. Where such provisions are inconsistent with the Constitution, the Council may draw the competent authority's attention to that inconsistency (Jawad). Through its legal opinions and consultations, the Council can likewise clarify whether administrative and legal measures proposed or applied by ministries or governorates conform to the Constitution and the law. The legal framework gives the Council of Ministers and ministries authority to issue decisions and regulations for implementation of laws, while governors and other heads of administrative units may issue regulatory decisions within their respective competences. Such administrative regulations remain subject to review by the administrative judiciary (Al-Ani, 2015).

In addition to its advisory opinions, the State Council contributes to the correction of administrative practice through the cases adjudicated by its courts, including decisions of the Employee Judiciary Courts, the Administrative Judiciary Court, and the Supreme Administrative Court. Administrative authorities can evaluate and adjust their conduct in light of these judgments. In a State Council decision concerning the

imposition of fines by a provincial council, the Council stated that a provincial council could not enact laws because legislative authority of that kind belongs to the Council of Representatives (Al-Ani, 2015).

### *3.2. The Role of the Iranian Judiciary in Regulating and Reviewing Delegation of Powers*

The judiciary gives particular attention to strengthening its institutional position and protecting individual and social rights and freedoms, which are presented as important criteria for the effectiveness and legitimacy of restoring public rights (Zouagri & Ben Bouabdallah, 2014). In 2016, the World Justice Project ranked the Islamic Republic of Iran 86th with respect to access to and implementation of justice according to the indicators cited by the study. In a 2017 meeting between the then Head of the Judiciary and the Supreme Leader, restoration and enforcement of public rights and protection of the people's legitimate freedoms were identified among the judiciary's important responsibilities. The judiciary was described as having to take a leading role in restoring public rights and responding to violations of those rights at all levels. The discussion was linked to Article 156 of the Constitution, which assigns the judiciary responsibilities that include restoration of public rights and extension of justice and legitimate freedoms. On that basis, and with reference to the powers provided in Article 158 of the Constitution, the Head of the Judiciary may formulate and submit judicial bills to the Islamic Consultative Assembly in order to create or clarify an effective institutional structure within the judiciary and its interaction with other branches of government (Zouagri & Ben Bouabdallah, 2014).

In Iran, the Court of Administrative Justice is the principal judicial institution for reviewing actions of administrative bodies. The constitutional basis for the Court is Article 173, under which it operates under the supervision of the Head of the Judiciary. One of its central functions is to annul government regulations and decisions that conflict with the law. At a broader supervisory level, Article 174 of the Constitution establishes the General Inspection Organization, which also operates under the supervision of the Head of the Judiciary. Unlike a judicial court, that organization does not itself exercise adjudicatory power; it conducts inspections, prepares reports identifying violations,

refers matters to the competent authorities, including, where appropriate, the Court of Administrative Justice, and may make proposals for improving administrative performance. Ordinary courts also exercise judicial functions within their own jurisdiction. Defining the scope of the Court of Administrative Justice's competence to hear complaints concerning administrative decisions and regulations ultimately depends in part on the legal meaning attributed to the term "government" in Article 173 of the Constitution (Al-Ani, 2015).

Further support for this analysis is found in the note to Article 12 of the Law on the Organization and Procedure of the Court of Administrative Justice. That note excludes certain enactments or decisions of specified high-level institutions, including the Expediency Discernment Council, the Head of the Judiciary, the Supreme National Security Council, and the Assembly of Experts, from the General Board's ordinary supervisory jurisdiction. These institutions cannot simply be equated with the "government" in the narrow sense of the executive branch, and the statutory exclusions therefore help to delineate the boundary of judicial review (Al-Ani, 2015). Article 170 of the Constitution provides the principal constitutional basis for judicial control of government regulations that conflict with Islamic rules or laws or exceed executive authority. When read together with the Law on the Organization and Procedure of the Court of Administrative Justice, the term "law" is treated broadly for purposes of determining the scope of review. Article 1 and the relevant provisions governing applications to the General Board indicate that the legality of a general administrative regulation may be examined against both ordinary legal rules and constitutional requirements. Article 80, which sets out essential requirements for an application seeking annulment before the General Board, requires the applicant to state the grounds for alleging inconsistency with Islamic rules, law, or constitutional norms where applicable. On this basis, constitutional legality may form part of the review undertaken by the General Board of the Court of Administrative Justice. The Court's supervisory jurisdiction over government regulations therefore operates alongside the supervisory role exercised by the Speaker of the Islamic Consultative Assembly under the relevant legal framework (Al-Ani, 2015).

Under Article 170 of the Constitution and Article 13 of the Court of Administrative Justice Law, the General Board has authority to annul regulations that violate Islamic rules or other controlling legal norms within its jurisdiction. As a general rule, annulment produces its legal effect from the time specified by the governing statute. The text criticizes a purely prospective approach in some circumstances on the ground that, once a regulation is determined to have been unlawful, the defect may have existed from the date of its adoption unless the controlling legal norm itself entered into force only later. In such a case, the relevant date may depend on the date on which the superior legal rule became applicable rather than solely on the date of the Court's judgment. Subject to these qualifications, Article 13 governs the temporal effect of decisions by which the General Board annuls regulations (Al-Ani, 2015). Where the General Board considers a regulation contrary to Islamic rules on the basis of the views of the jurists of the Guardian Council, or where retroactive effect is required to prevent infringement of individual rights in the circumstances recognized by law, annulment may operate from the date on which the regulation was originally adopted. Judicial review by the Court of Administrative Justice thus addresses some of the objections raised concerning the effects of parliamentary supervision over government regulations. Because the Court is a judicial institution, the legal system also contemplates claims for rights impaired through implementation of an unlawful regulation. In addition, Articles 92 and 93 of the Court law give decisions of the General Board a special binding effect. Under Article 92, compliance with the General Board's ruling is obligatory for the respondent body and for other relevant authorities and officials of institutions falling within Article 12 once the decision has been duly notified or published in the Official Gazette (Al-Ani, 2015).

The study further presents Iranian judicial doctrine as affirming a principle of non-delegability with respect to powers that the law assigns personally to a designated public authority, including certain administrative, financial, governmental, and appointment-related functions. It cites Decision No. 674, dated 30/1/82, and the report presented to the General Board, according to which the duties and powers of public officials, including judges, are personal in character and may not be

transferred to others except where delegation is authorized by law (Badir et al., 2011).

In Decision No. 460, dated 22/9/83, the powers of the Article 5 Commission of Iran's Supreme Council for Urban Planning and Architecture were held not to be delegable to another authority, including the mayor. In Decision No. 119, dated 31/3/83, the General Board of the Court of Administrative Justice, referring to the constitutional allocation of governmental decision-making and to the requirement of a presidential proposal and approval by the Council of Ministers, emphasized that powers and responsibilities specifically assigned to the Council of Ministers may not simply be delegated to other persons (Hayyoub, 2020). The decision also addressed the relationship of this principle to the constitutional mechanism provided in Article 127 and annulled the challenged Council of Ministers decision.

With respect to implementation of Article 173 of the Constitution concerning the jurisdiction and manner of operation of the Court of Administrative Justice, the Law on the Organization and Procedure of the Court of Administrative Justice, approved by the Islamic Consultative Assembly on 22/9/1390 (Solar Hijri), constitutes the governing statutory framework referred to in the study. The law defines both positive and negative aspects of the jurisdiction of the Court's branches and its General Board. Positive jurisdiction refers to the sphere in which the Court is legally authorized to intervene in acts and decisions of the authorities and institutions specified by law. The Court's positive jurisdiction is divided between its judicial branches and the General Board. Negative jurisdiction, by contrast, may be understood as the outer boundary of that positive jurisdiction. The notes to Articles 10 and 12 identify categories that fall outside or are excluded from the ordinary jurisdiction of the branches or the General Board. In the literature on judicial review, these operate as exceptions to judicial supervision: the legislature has excluded certain governmental decisions or enactments from the Court's jurisdiction, and the Court therefore lacks authority to adjudicate those matters (Al-Ani, 2015).

#### 4. Discussion and Conclusion

The study concludes that the obstacles to delegation of powers and transfer of competences in Iraq and Iran arise from legal, regulatory, administrative, and financial

factors, most notably ambiguity in the allocation of competences, weaknesses in human resources, and the persistence of centralizing tendencies. It also finds that the judiciary in both systems plays a fundamental role in defining the limits of delegation and protecting the principle of legality, with the Iranian administrative judiciary exercising specialized review of administrative action and emphasizing that delegation requires a legal basis. The principal findings are as follows:

1. The study shows that both Iraq and Iran distribute public competences among different levels and institutions; however, Iraq suffers particularly from overlapping competences and ambiguous legal rules, whereas Iran continues to exhibit centralizing tendencies and strong central control over decisions and resources, which limits the effectiveness of competence transfer.
2. The principal legal and regulatory obstacles in Iraq arise from the lack of clarity concerning the boundaries of competence between the Federal Government and the governorates, whereas in Iran they are reflected in the limited powers of local councils and the numerous legal constraints imposed on them.
3. Successful delegation and transfer of competences require adequate human and financial resources. Iraq faces weaknesses in personnel preparation and incomplete transfer of resources together with functions, while Iranian local units face limitations on their administrative and financial independence.
4. Administrative and political culture constitutes a common obstacle in both systems. In Iraq, weak coordination and insufficient legal awareness are prominent problems; in Iran, the difficulty is associated with the persistence of a centralizing culture and the reluctance of administrative elites to relinquish a meaningful portion of their powers.
5. Judicial review is an essential guarantee for regulating delegation and transfer of competences. In Iraq, the Federal Supreme Court plays an important role in resolving conflicts of competence, whereas in Iran the Court of Administrative Justice specializes in

reviewing administrative action and government regulations.

6. The study indicates that Iraqi and Iranian judicial approaches both require respect for the rule of competence and a valid legal basis for delegation, while the mechanisms of review differ. In Iraq, relevant review functions are distributed among several judicial bodies; in Iran, the Court of Administrative Justice has a more specialized role in reviewing administrative legality.
7. The study concludes that effective delegation requires clarity of competences, transfer of the necessary financial and human resources, development of administrative capacity, and effective judicial review. Iraq particularly needs to address overlap between the center and the governorates, while Iran needs to strengthen the effective autonomy of local units.

### Recommendations

1. The Iraqi and Iranian legislatures should reorganize the legal rules governing delegation of powers and transfer of competences in a clearer and more precise manner, identifying original and delegated competences and the limits of each so as to prevent overlap between central authorities and local units and reduce disputes concerning competence.
2. The Iraqi and Iranian legislatures should link the transfer of competences to the transfer of the financial, human, and technical resources necessary for their exercise and should avoid merely formal transfer of powers. Legal mechanisms should ensure sustainable financing and appropriate preparation of employees and local leaders in accordance with the nature of the new competences.
3. Legal guarantees for the independence of local units in exercising their competences should be strengthened while retaining central supervision within the limits required by legality and without turning supervision into a mechanism of administrative domination. The objective should be to maintain a balance between the unity of the state and the requirements of administrative decentralization.

4. The judicial role in reviewing delegation and transfer of competences should be strengthened by ensuring prompt resolution of competence disputes, promoting consistency in judicial principles governing delegation, and enabling courts to annul administrative decisions issued outside the legal competence of the issuing authority or without a valid legal basis, thereby reinforcing the principle of legality and protecting individual rights.

## Authors' Contributions

Authors contributed equally to this article.

## Declaration

In order to correct and improve the academic writing of our paper, we have used the language model ChatGPT.

## Transparency Statement

Data are available for research purposes upon reasonable request to the corresponding author.

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## Declaration of Interest

The authors report no conflict of interest.

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## Ethical Considerations

In this research, ethical standards including obtaining informed consent, ensuring privacy and confidentiality were observed.

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