



Legal Solution to the Administrative System Crisis In the Kurdistan Region- Iraq

This paper is prepared by:
Paper Preparation Committee in the
Kurdish Institute for Elections (KIE)

December 2015

Public Policy Papers



Preface:

The administrative system of different countries exhibits that the relation among the ministries and administrative units, if vertical, is central to the same extent and the voices of local administrative unit constitutes and their demands are not realized. If horizontal, the system is decentralized administration, approaching to realizing the local interest and making the administrative unit demands into projects is more apparent.

To comprehend the core of the administrative system of a state or a region, we should seek refuge into the laws beforehand, which exhibits the nature of the administrative system, the mechanism of decision making, authority of the officials and the level of political participation by the people in making decision. These are suitable measures to evaluate the administrative systems in terms of centralization and decentralization.

We have more than one which shows the relation between the authority of the ministries and the administrative units in the Kurdistan region. In this paper, we have selected most of the laws relevant to administrative centralization and decentralization concept to some extent, as the basis to our work.

In order to investigate the core issue which is the structure of the administrative system, this paper depends on four major laws in the Kurdistan region:

- The Law number 3 of 2009, law of the provinces in the Kurdistan region.
- The Law number 9 of 1993, law of the Ministry of Interior in the Kurdistan region.
- The Law number 13 of 1992, law of the Ministry of Finance and Economy in the Kurdistan region.
- The Law number 6 of 1993, the amended law of management of municipalities in the Kurdistan region.

The Core Issue

Augmenting powers in the Ministers Council and ministries according to the laws, is the major problem of the administrative system in the Kurdistan region.

Targeted Groups

The groups targeted by this paper are:

- **Members of the Provincial Councils in the Kurdistan Region:**

This paper is important for the members of provincial councils as it can be used as a guide to the members when they prepare their recommendations to amend the law of the provinces and ministries in order to be benefited from it.

- **Members of Parliament:**

The paper tries to shed light on the re-arrangement of the administrative system of the government to the parliament members, in order to approve a de-centralized administrative system in their laws while amending the provincial council law.



• Solutions and Alternatives:

Through amending the laws which are related or affect the type of administrative system in the Kurdistan region, this paper suggests solutions where the powers will not augment in the hands of the premiere of the Ministers Council and ministries, as it will be distributed through various ways to the administrative units.

We have suggested three solutions in this paper, which are:

First Solution: Only the law number 3 of 2009 of Provincial Councils of Iraqi Kurdistan region to be amended:

Any legal attempt to decentralize the administrative system of Kurdistan region leads us to amend the law number 3 of 2009. In the necessities of the law, it mentions that the law is passed to realize decentralized administration. However, by reading the law script, many of its sections and paragraphs clearly show that the law requires a lot of amendments to realize the aim to which it has passed for. We'll exhibit the most important elements that explain the existence of centralization in the law:

- The powers given to the administrative unit councils are taken by the other laws in effect in the Kurdistan region, because it's written in the end of the law, "It must not be in contradiction to the constitution and existence laws of [Kurdistan] region." While the "centralized" element is hidden behind the law of the ministries, especially the law of the Ministry of Interior (read the fifth article of the law).
- Suggesting that special projects to develop provinces and filing it to the Ministers Council through relevant ministreies (sixth article, ninth paragraph).
- The power to dismiss general managers in the provinces is only endowed to the authority of the Ministers Council, while the provincial council only has a right of recommendation (sixth article, 12th paragraph).
- In the text of the oath sworn by the head of the provincial councils, centralisation is exhibited (16th article).
- The oath of the governor in front of the president of [Kurdistan] region, and attended by the minister of interior (16th article, second paragraph).
- The oath of the mayors and municipal heads in front of the minister of interior and attended by the governor (16th article, third paragraph).
- While governor is elected by the provincial council, he/she is bound to the Ministry of Interior in terms of duty and administration (18th article, second paragraph).



- Issuing a presidential decree to announce governor's admission (18th article, third paragraph).
- Employing both deputy governors by the order of the Ministers Council (18th article, 4th paragraph).
- Appointing the time of administrative unit council elections in the Kurdistan region is by the Ministers Council (38th article of the Provinces' Law in the Kurdistan region).
- While amending the law number 3 of 2009, the amended law number 6 of 1993 to managing municipalities should be disbanded and the powers vested in the municipal councils should be given to the provincial councils of the Kurdistan region, which means dissolving the municipal councils and linking the administrative institutions of the municipalities to the Ministry of Municipalities.

+ The positive aspects of dissolving municipal councils are:

Easing the financial burden over the general budget of the administrative units.
Lack of having to elected bodies in one province.

Putting an end to the illegitimate and illegal body which exists for 10 years in the municipal councils in the Kurdistan region.

Second Solution: Amending all the laws affecting administrative centralization crisis:

This means not only amending the Provincial law of Kurdistan region, number 3 of 2009, but all the other laws that prevent imposing a de-centralized administration and finance to be amended. For example, the laws of Ministers Council, the laws of Ministry of Interior, Finance, Municipalities, and annual budget of Kurdistan region as well.

We try to exhibit some general principles in this way which are required while amending these laws.

- While amending the law of Ministers Council, head of the Ministers Council should give more authority to the general managers in administrative units.
- While amending the law of the Ministry of Interior, the principle of governor having no links with this ministry should be considered, and his/her powers should be vested by the Provincial Council.
- While amending the law of the Ministry of Finance and Economy, a financial commitment should be allocated to the provinces.



- While amending the annual budget of the Kurdistan region, the provinces' budget should be allocated based on the population number of each province, regardless of the provincial development budget allocated by the federal government to the provinces.
- While amending the provincial law number 3 of 2009, two points should be considered:
 - The ministries, before implementing any service projects inside the administrative units, should take the permission of the respective administrative unit.
 - The administrative unit councils of Kurdistan region should not fall under the control of any ministries as they are not bound to them.
 - The administrative unit councils of Kurdistan region has their own financial independence falling under independent auditing committees, such as Financial Auditing Committee, Transparency Committee of parliament and etc, along with Civil Society Organizations which have the right to monitor the performance and affairs of the councils.

+ The positive impact of this solution:

- Reform process is inclusive. If realized, creates a strong legal infrastructure for the decentralized administration.
- No financial expenditure is required.
- The weakness of this solution.
- It takes a lot of time.

Third Solution: Issuing a decree by the Ministers Council of the Kurdistan region:

Issuing a decree by the Ministers Council aiming at distributing the powers vested in them partly to the administrative units of the provinces, townships, municipalities, each according to their traits. Meanwhile, the ministers of each ministry should give up some of their powers to the managers of general departments in the administrative units.

The powers of Ministers Council and the ministries that should be given to the head of the administrative units in the provinces, townships and municipalities are:

The powers given to the governor:

- I. The governor should have the authority to open an office, a department, and a general department in their territories.
- II. The governor should have the power to transfer services of employees and employ them.
- III. The governor should be able to issue instructions under the laws of his/her province.
- IV. Giving permission without salary to the employees of their respective territory for five years.
- V. Giving salaries and promoting the employees of their province from rank 10 to rank 2, with commotions and appreciation to the employees in the above mentioned level.

**The powers given to the district mayor:**

- I. Mapping plans and general policy for their territories, under the condition of returning the provincial authorities in the matters related to the province.
- II. Recommending opening departments and office if necessary to the governor.
- III. Transferring employee services and employing their in their administrative territories, from the rank 10 to rank 4,
- IV. Promoting their employees from rank 10 to rank 4, commotions and appreciations in the abovementioned level.
- V. Preparing the project budget to the district jointly with the institutions of the territory.

Powers given to the Sub- District mayor

- Mapping the program and general policy of their territories, under the condition that they return to the district in matters relevant to them.
- Transferring the employee services or employing people in their territory from rank 10 to rank 7.
- Promoting ranks and allowances of employees from rank 10 to rank 7, giving commotions and appreciations in the same level.
- The positive aspects of this solution are:
 - It has no financial due, and requires little time
 - Easing the burden of head of the Ministers Council and ministries.
 - Reducing the administrative routines.
 - Giving an opportunity to the officials in the administrative units to offer a better example.

The negative aspect of this solution:

- Issuing ministerial decisions has not legal authority.



• KIE's Suggestion Solution

As members of the Paper Preparation Committee, we find the second solution as the most suitable one because all of the laws related to decentralization will be amended with a new perspective and a decentralization tendency, as to rid of the centralized aspect of the applied laws.

Past experience shows that, despite activating law number 3 of 2009, of provinces of the Kurdistan region after the election of 30 April 2014, applying decentralization is still on its elementary phase. The reason is first the law itself, and preventive measures from the other applied laws in the Kurdistan region. As the first step, the law number 3 of 2009 should be amended considering the amendments mentioned in the first solution, later under the light of this amendment, all the other laws mentioned above, should be amended.

▪ Recommendations

- Kurdistan parliament to amend the Law of the Provinces of Kurdistan region, number 3 of 2009, the law of the relevant ministries as well in accordance to the principle of decentralization.
- The Provincial Councils of Erbil, Sulaymaniyah, Duhok and Halabja should work to prepare a project to amend the laws related to decentralization.
- To spread awareness about the significance of the administrative decentralization principle in the society, provincial councils or executive bodies of administrative units, in cooperation with NGOs, should conduct various media activities concerning the concept of decentralization.

• Sources:

- The law number 3 of 2009, law of the provinces of the Kurdistan region - Iraq.
- The law number 9 of 1993, the law of the Ministry of Interior/KRG.
- The law number 13 of 1992, the law of the Ministry of Finance and Economy/KRG
- The law number 6 of 1993, the amended law of managing municipalities in the Kurdistan region.



• Prepared By:

- Aram Jamal: Head of the Paper Preparation Committee in the KIE.
- Muhsin Adib: member of Paper Preparation Committee in the KIE.
- Hallsho Abdulfatah Kaka: member of Paper Preparation Committee in the KIE.
- Karwan Kazim: member of Paper Preparation Committee in the KIE.
- Zardasht Khalid: member of Paper Preparation Committee in the KIE.

Kurdistan Institute for Elections KIE is an independent NGO formed in the mid 2002 by some legal experts and lawyers, which works to make people aware of the concepts and elements of election and political participation.

Address: Sulaymaniyah, Bakhtiyari Neighbourhood, Hakkari Alley, Hanal Apartment, Third Floor

aramnma@gmail.com

aram.jamal@kie-ngo.org

www.kie-ngo.org

00964 053 318711

00964 7701573210