THE CONSTITUTIONAL FOUNDATIONS OF LOCAL ADMINISTRATIVE ACCORDING TO THE JORDANIAN CONSTITUTION AND THE JUDGMENT OF JORDANIAN CONSTITUTIONAL COURT

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Abstract - This paper addresses The Constitutional Foundations of local administrative according to the Jordanian Constitution and the judgment of Jordanian Constitutional court, which concludes that Article (121) of the Jordanian Constitution which states "Municipal and local council affairs shall be administered by municipal or local councils in accordance with special laws" , is the sole constitutional basis for establishing two levels of regional decentralized administrations Without any other details, represented by municipalities and local councils, and this text, as currently drafted, would create a conflict between the constitutional texts specially article (120) of the Constitution, which requires the constitutional legislator intervention to amend that text article (121) of the Constitution to set clearly the foundations of the regional decentralized administrations and to remove the conflict between the constitutional texts. It also concluded that even though the Constitutional Court specified the conditions that must be met for the establishment of local administrations under Article (121) of the Constitution and showed the intent of the constitutional legislator of that article but it equally treated the administrative unit and the local councils in terms of being legal entities to establish regional decentralization system, in contravention of the model concept of that system, and and the philosophy of the legal entities.

Keywords - Constitutional Foundations, Local Administrative , Jordanian Constitution, Jordanian Constitutional Court, Regional Decentralization.

I. INTRODUCTION

Regional Administrative decentralization and its practical application; represented by domestic management, is considered authentic approach in the Jordanian State. Applying such approach passed successive evolutional stages whereas the modern States seek to perform the administrative job. The start thereof started by municipalities law of 1925, then concerned laws followed via municipal councils under the main law of 1928 and Jordanian constitution of 1947, until the issuance of 1952 constitution, under which, decentralization application administrative evolution followed to include domestic municipal councils as well. Article 121 in the constitution states

Quote

"Municipal affairs and domestic councils are managed by municipal or domestic councils according to special laws."

Unquote

By virtue of such constitutional text, villages management act of 1954 was issued, via which rural management law of 1954 was issued, whereas rural councils were established that enjoy moral personality to represent new form of Regional Administrative decentralization in Jordan in addition to municipal councils.

Evolution of regional decentralization application in Jordan was not restricted to such limit, as Municipalities law No. 29 of 1955, as amended by law No. 22 of 1982, introduced, for the first time, what is called Joint services council. Para (C) of article 41 in the law states

Quote

"The Minister, under recommendation offered by governor and moderator, may establish joint services councils for close group of municipal or rural councils that enjoying moral personality and such council practices the authorities of the municipal or rural council, as stipulated for in laws in force, relating to joint projects and services performed by it". The aim of the legislator from establishing such councils to promote the domestic system management and allocate type of cooperation among such units; represented by municipal and rural councils to carrying out joint projects which any of them is not able to perform solely.

Such regional decentralized applications in Jordan formed the lowest image of local administration, as the local bodies authorities were restricted to controlling the local interests within narrow geographical scope, represented by the city or village, and further running some traditional powers. Starting from such point, the necessity of promoting domestic management system started to rise through presenting an advanced application, as to regional decentralized concept, by expanding its scope to include wide regional units that exceed the city or village borders. Besides to grant the elected domestic councils wide power that enhances administrative democracy values and achieve the comprehensive development of all regions in the HKJ. This was concluded by endorsing new law named Decentralization law No. 49 of 2015.

This new law applied for the first time the regional decentralization at the regions level, and established domestic councils called the regions councils. This matter, under rural councils' integration with neighboring municipalities in 1996, means that municipalities and regions councils represent regional decentralization application issue in Jordan.

Whereas the constitution is the supreme legislation, via which the State defines the State offices and entities' duties and relevant competencies pursuant to powers separation principle, we find here that respective directorates derive its legality and existence from the constitution provisions. From such point, this research is set out to show the constitutional basis of the regional centralization in line with constitutional legislator plan and Jordanian constitutional court judiciary.

1. The extent that the constitutional legislator adopted, while devoting basis of regional decentralization?

Followers of constitutions that adopted by Jordanian State, find out that all contained text on regional Decentralization, via its applications that are represented by municipalities and domestic councils. However, the question raised herein is directed towards the constitutional legislator devoting extent of basis that regional decentralization depend on, in a way that forms real guarantee that control violating thereof in the relevant laws.

In replying thereto, we find out that we should define, in the first beginning, adopted methods in comparative constitutions to define the basis which regional decentralization is based on. Further, to show the constitutional legislator stand from such methods. This issue is what we are going to present in the following requirements:

1.1 Method of defining basis that regional decentralization is based on in comparative constitutions.

Researchers in comparative States notice dissimilarity in its stands in terms of being interested in regional decentralization system. Such dissimilarity is considered normal under political, social and economical circumstances difference in each State. However, and whatever such dissimilarity is, we can classify constitutions stand from regional decentralization system, under the following categories:

1.1.1

The constitutions of States, that came free of any regional decentralization system; such as USA constitution issued in 1778, or any amendments thereto. This means that USA constitution granted States authorities to allocate local States, specify its competencies, amending or cancelling thereof (1). However, the issue is no more than method to distribute the specialties between federal State and other States. Moreover, the British constitution belongs to such category, being customary constitution (2).

It is worth mentioning herein that such States, even though its constitutions doe not text about regional decentralization, but we must not understand that it deny such system and does not adopt it. Everybody knows that Britain is considered cradle and originator of the domestic administration.(3)

In conclusion, the constitutional legislator in such States offered complete freedom for the States or ordinary legislator, as the case may be, to define basis of regional decentralization system; in terms of specifying the regional administrative units and forming its management councils, competencies, financial resources, and controlling thereof. We further shall not forget that such basis shall lack any constitutional guarantees. (4)

1. Mousa, Mustaf, Administrative organization between centralization and decentralization, comparative study, Egyptian body for book 1992, p357, Also Kashkash, kareem, administrative domestic organization(centralization and decentralization), comparative study, 1st. edit 1997 p83, Raslan, Anwar, constitutional basis, Cairo University press p5
2. Al Hamdani, Sami Local management and applications in Iraq and comparative state 2014, 180.
3. Tahrawi, Hani, local management, local regime in Jordan, UK and study of the modernist amendments relating to local authorities structure in both systems, culture and publication house 204, p 229.
4. Mousa, Mustafa, - previous reference, p 357, Raslan Anawr, previous reference p5

1.1.2

Constitutions of States that treated slightly the regional decentralization issue; as such constitution includes, only, provision relating to such system; i.e. Kuwait constitution (5), Lebanese (6) and Jordanian constitution, the later shall be the core of our study. We notice from such method that it offers the normal legislator wide authority when setting out regional decentralization system issue.

1.1.3

The States' constitutions that include more than one provision to show the general basis that regional decentralization is based thereon, when setting out details of such system which is restricted by non-violating the basis referred to in the constitution. The foregoing forms constitutional guarantees that are

free of assessment authorities. From such constitution we can say; French, Egyptian, Tunisian, morocco, Syrian and Iraqi. Researcher on such constitutions category finds dissimilarity interest among it, in evolving the foundations and pillars, that regional decentralization is based thereon; i.e. recognition of legal personality, domestic councils formation mechanism, administrative independence, financial independence and subjugation to administrative tutelage

1.2 Method of defining the foundation, which regional decentralization if based on pursuant to Jordanian constitutional legislator

We noticed in the 1st. requirement that the Jordanian constitution falls under the category that treated slightly the regional decentralization. The three Jordanian constitutions, if not free of provision on regional decentralization system, the constitutional legislator added one short provision on such system. "Article 57 of the basic law includes provision on Municipal affairs in East Jordan cities and towns, which are controlled by municipal councils according to special law". Whilst, article 70 of 1947 constitution states," about municipal affairs in HKJ cities and its municipalities which are controlled by municipal councils based on special law". Article 121 of 1952 constitution states "Municipal affairs and local councils are controlled by municipal or local councils according to special laws". We have conducted analysis of such constitutional texts and came out that the constitutional legislator included some basis that municipalities are based on, considering thereof as an application of regional decentralization applications.

1. article 133 of Kuwait constitution states (the law organizes the public institutions, municipal management bodies, and guarantee independence under the State directions and control
2. aticle 3 of Lebanese constitution states " Adminst. Areas borders are not subject to be amended unless via law
3. Shantawi Ali, local administration , Wayel publications house 2002, Amman p163

He referred to municipal affairs as an expression on local interests, which are considered the 1st. output for regional decentralization outbreak. Controlling thereof is assigned to the municipal councils rather than central authority.(7) However he left defining the remaining basis relating to municipal councils formation, competency, administrative & financial independence and reporting to the central authority, to the normal legislator under municipalities' laws issued based on such provisions.

However, what relating to the local councils, and assuring the texting problem, which the constitutional legislator was subject to, we can say that on the light of the current text , the constitutional provisions include only one factor that the regional decentralization is based on; represented by local councils factor, and left defining the remaining basis to normal legislator.

This constitutional approach may lose the basis, that the regional decentralization must be based on; as real guarantees to restrict the normal legislator power in establishing laws in a way that displays constitutional legislator real concern as to such administrative method. Further more, the constitutional provisions, which are the historic source of article 121 text.

2nd. research
Constitutional court stand from foundations that regional decentralization are based on

The chance to define the foundations the regional decentralization is based on, was made available for the Jordanian constitutional court. The later court was required to offer interpretation of the article 121 in the constitution. Dashed from its role; to identify constitutional text deliberations, and to interpret the legislator intention from article 121 text, the court issued its interpretive decision No. 1 of 2015. This decision fixed the basis, which should be devoted in the laws that institute the regional decentralization directorates' levels represented by municipalities and domestic councils in order to allocate relevant constitutional basis in such article. From this point, the question arises " Do the basis that the constitutional court required its availability in the directorates via article 121 are in harmony with the agreed upon jurisprudence's basis for the rise of regional decentralization system, and further match with model concept of such system in contemporary States?

Referring to the constitutional court decision, we can find that it reached to a conclusion that the following basis in the directorates, that the legislator intention is directed to establish under article 121 should be available:

1. Recognizing the legal personality of the administrative unit or the local council
2. Financial and administrative independence of the local bodies.
3. Election should be part of forming the local councils.
4. To be subject to central State control, to ensure the general policy of the State in its central and decentralized bodies and make sure that the offered activities and services are offered in efficient, equal manner, and in harmony with administrative trusteeship's philosophy

In fact, the constitutional court decision, even though the agreed upon basis are devoted, to large extent; to

rise the regional decentralization, but the decision equality between council recognition or regional unit from one side, and legal personality from otherside, as well as the absence of a condition; that the election is the predominant factor in local councils formation, are not compatible with the model concept of the regional decentralization.

II. CONCLUSION

Whereas we completed our searching in the regional decentralization basis subject, we shall tackle the most important outcomes, which we reached at:

First
Although the Jordanian constitutional legislator did not ignore, in any of the three State Constitutions, the regional decentralization system, but treating such subject came roughly, and does not imply its interest in any method of executive authority performance of its administrative job. Although one hundred years elapsed since enactment of the basic law of 1928, but the text which is considered the constitutional basis to establish the regional decentralization directorates is still standing in place and witnessed limited development only and further it lacked legal drafting formation.

Second
Although the constitutional court, even it devoted, to large extent, in its interpretive decision, the agreed upon basis to rise the regional decentralization, but the decision equality between administrative unit recognition or local council to setting out the regional decentralization. The Jordanian legislator was influenced by such option, via recognizing to the region council without maintaining the legal personality.
In fact, this is in conflict with legal personality philosophy, and further leads to serious outcomes, the most of which is the absence of legal personality once the local council is solved, or its term expires.
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