

Oversight over the Grass-roots Local Councils Decisions in Algerian and Tunisian Legislations - a comparative study –

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Abstract:

Algeria and Tunisia shared the experience of the local community, particularly the grassroots community, in order to embody the choice of a decentralized system, under which various laws were made to theoretically and practically develop this experience.

The grassroots local councils play an important role in establishing the principle of independence, on which the decentralized system is based, which led t The Tunisian legislator to try to give all the elements of independence by abolishing previous control and maintaining subsequent and financial control from the core competence of the central authority, which the Algerian legislator overlooked and maintained the so-called full control of the central authority.

Throughout this study, several shortcomings were discovered during this study, both at the legal and practical levels, with the Tunisian legislator outperforming his Algerian counterpart in implementing independence requirements at the level of the legislative and regulatory framework governing grassroots local communities.

Key words: head of the municipal council, Head of the region, tutorship, decisions, solutions control, cancellation control...

المخلص:

تشاركة الجزائر وتونس في تجربة الجماعة المحلية خاصة القاعدية منها وهذا كتجسيد لخيار النظام اللامركزي، والتي أصدرت بموجبها العديد من القوانين بغرض تطوير التجربة نظريا وتطبيقيا. إن المجالس المحلية القاعدية لها دور مهم في مسألة إرساء مبدأ الاستقلالية والتي يقوم عليها النظام اللامركزي وهو ما أدى بالمشروع التونسي إلى محاولة إضفاء كل مقومات الاستقلالية من خلال إلغائه للرقابة السابقة والإبقاء على الرقابة اللاحقة والمالية من صميم اختصاص السلطة المركزية وهو الأمر الذي أغفله المشروع الجزائري وأبقى على ما يسمى الرقابة التامة للسلطة المركزية على الهيئات القاعدية من خلال قناة الوالي كما تبين من خلال هاته الدراسة أن هناك عدة نقائص يجب تداركها سواء على المستوى القانوني أو العملي، مع ملاحظة تميز المشروع التونسي عن نظيره الجزائري في تنزيل مقتضيات الاستقلالية على مستوى الإطار التشريعي والتنظيمي المسير للجماعات المحلية القاعدية.

الكلمات المفتاحية: رئيس المجلس الشعبي البلدي، رئيس الجهة، الوصاية، الرقابة، القرارات، الصادقة، الإلغاء.

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INTRODUCTION

As a general rule, the provincial communities carry out all activities and works that achieve the public interest, as they are the ones that conduct local affairs and freely take care of the requirements of the region, but in some cases law requires obtaining the ratification and approval of the central authority where issued acts by local community are in force, and in other cases the actions of the latter face cancellation, for that discrimination has been made, in the field of oversight over the councils' decisions, between the legitimacy of decisions and the visa system on important decisions and resolutions made by this Council.

The significance of this topic lies in the study of oversight that sheds light on grassroots local councils, given that these councils are elected and authority oversight is central, which leads us to discuss the core of this oversight, and thus the following problematics may arise: *How effective have Algerian and Tunisian lawmakers been in establishing a framework for overnighing grassroots local council decisions? Is this censorship limiting and threatening the independence of local grassroots organizations?*

To address this issue, we separated the content into two parts as follows:

Section (01): the oversight over the legitimacy of decisions

Section (02): the endorsement system on the basic local decisions and resolutions

Section one: The oversight over the legitimacy of decisions:

Local communities, like other administrations, exercise a wide range of administrative powers to carry out their tasks and meet their commitments.

Administrative decisions are one of the most essential ways of carrying out most of their operations because of the speed and effectiveness they acquire in administrative work. (عماد أبركان، 2016، صفحة 146). One of the pillars of governance is effective control over local authorities, which focuses on the legitimacy of local activity and its appropriateness and effectiveness when it is not subject to cumbersome processes. To discuss monitoring the validity of the Council's choices, one must first define an area of monitoring exercised by the tutorship, followed by the responsibilities allocated to the same tutorship to exercise legitimate control over the council chairman's and council's decisions. (سعايدية حورية، 2020-2019، صفحة 328)

1. Determining the scope of the tutorship's oversight:

In Algeria, the wali has tutorship authority over municipalities, which is embodied in Law No.11_10 on the municipality, particularly articles 98 and 99, where he monitors the work of the People's Municipal Assembly acts, which he can ratify or nullify (شوقي، 2014-2013، صفحة 16), as well as control over municipal decisions concerning organizations.

The President of the Municipal People's Council, under the supervision of the governor (wali), is also responsible for:

- Notification and execution of local legislation and regulations.
- Maintaining peace, calm, and public hygiene.
- Vigilance in assuring the appropriate application of precautions, prevention, and intervention in the field of first aid. He is also tasked with all responsibilities

that have been approved by legislation and related rules. (مختاري، 2016، الصفحات (27-26)

In Tunisia, implementing the idea of free administration in local authorities management does not imply complete independence for the local administration. The principle of free remedy was completely flawed in the Republic of Tunisia's 1959 Constitution, which was quoted from the French Constitution (شوشان، 2021-2020، صفحة 64) and stated in the current Constitution in Chapter 09, where it stipulated that "local communities shall enjoy..... and the management of local interests in accordance with the principle of free administration," and this principle is considered the first constitutional freedom. (سمير الفراتي، 2016، صفحة 54)

This principle emphasizes that the mayor has the freedom to act freely in municipal issues, without being coerced by the central government or its representatives' directives. (حسن، 2020، صفحة 103).

Municipalities can now conduct local affairs with complete freedom. The constitutional article specifically indicates that local authorities are not subject to central government monitoring. However, this was inadequate to improve the mayor's standing. It is vital to develop safeguards, the most effective of which is the idea of free administration. To do this, many basic requirements must be satisfied, the most important of which is the establishment of elected municipal councils.

2. Tasks allocated to the supervisory authority to conduct legal control over the president's decisions and the council's resolutions:

In Algerian legislation, the law on municipality has assigned some tasks to the head of the province (municipality) to exercise administrative control over the legitimacy of the president of the council's decisions and the council's resolutions, as opposed to the Tunisian legislator, which abolished the prior administrative censorship and maintained the subsequent control represented in the dissolution, which both systems differ in origin.

2.1. Interventions of the tutorship in the framework of coordination and accompaniment to the work of the councils:

Within the framework of the role entrusted to the provincial head (wali), in particular to assist mayors and communes, coordinate the activities of the central administration's decentralized services, and ensure their proper functioning, (عبد الفتاح بلخال، محمد باسك منار، الصفحات 115-113) the Law on Municipality and the Organic Law relating to local authorities have been assigned tasks that can be summarized as follows:

a- Works related to the election of the Council's members and meetings:

The head of the province (wali), as the tutor of the People's Municipal Assembly in Algeria, intervenes in some of the work related to the election of the organs and the meetings of the Assembly through:

- The Governor (wali) shall call the People's Municipal Assembly to hold a public meeting in order to inaugurate the chairman and his deputies .
- Presiding over the inauguration session of the President of the People's Municipal Assembly. (صليحة، ملياني، 2016/2015، صفحة 101).
- Receiving a copy of the minutes prepared between the outgoing President of the People's Municipal Assembly and the new President. (عمار بوضياف، صفحة 209).

- Requesting the People's Municipal Assembly to organize an unusual meeting whenever municipal affairs so require.
- To be notified by the meeting of the People's Municipal Assembly in case of exceptional circumstances associated with an imminent danger or major disaster.
- (مختاري، 2016، صفحة 31) - Determining the meeting place of the People's Municipal Assembly after consulting the President of the Council in another place outside the territory of the municipality in case of force majeure that precludes meeting in the territory of the municipality. (الصفحات، 2016/2015، سمية) (51-22)
- Appointing administrators and assistants when necessary entrusted with the task of managing the affairs of the municipality in the event of the dissolution of the People's Municipal Assembly. (سعايدية حورية، 2020-2019، صفحة 328)

b- Informing and notifying the tutorship about the minutes of the meetings, the resolutions of the council and the decisions of the chairman:

The People's Municipal Assembly in Algeria should tell the governor (wali) on the minutes of the meetings, its resolutions, and the president's decisions, which must include:

- Notifying him about the deliberations of the People's Municipal Assembly concerning the loss of elected status.
- Notifying the governor (wali) about the sack of local elected. (شوقي، 2014-2013، صفحة 55)
- Sending the deliberation proving the resignation of the President of the People's Municipal Assembly to the Wali, which shall become effective from the date of its receipt by the latter.
- The presence of the governor (wali) of the unusual meeting proving the abandonment of the President of the People's Municipal Assembly to his position.
- Notifying him by a copy of deliberations within eight days In return for receipt. (المرسوم التنفيذي رقم 13_105، 2016/2015، صفحة 24)
- Notifying him by a copy of the decision about signature delegation.
- Approval of the Council's bylaws. (المرسوم التنفيذي رقم 13_105، 2013)
- Notify the decisions of the President of the People's Municipal Assembly within 48 hours from the date of their issuance.

Municipal decisions affecting public organizations become enforceable one month after they are sent to the governor (wali), and in the event of an emergency, the council chairman can promptly implement the municipal decisions after contacting the wali.

c- Warning the Council, its Chairman and accountability of members:

The 2011 Law on Municipal obliges the wali before exercising the power of subrogation and requesting the dissolution of the council to issue an ultimatum to the council and its president in the following cases:

- Warning the Council in case of serious disagreements between its members that hinder the normal functioning of municipal affairs. (المرسوم التنفيذي رقم 16-104، 2016)
- Warning the President of the People's Municipal Assembly who refrained from taking the decisions entrusted to him under laws and regulations.

– Warning the People's Municipal Assembly when voting on the budget again without balance or without stipulating the compulsory expenses. (جابوري, إسماعيل، 2017، صفحة 147)

d- Exercising functions within the framework of coordinating the activities of the decentralized services of the central administration:

The head of the province (wali) in the Algerian system shall undertake the following:

– Issuing an ultimatum to the People's Municipal Assembly in case of serious disagreements between its members that impede the normal functioning of municipal bodies. (المرسوم التنفيذي رقم 104-16، 2016)

– When municipal officials fail to preserve security, cleanliness, public serenity, and the long-term viability of the public facility, he steps in.

3- Cases of exposure to the tutorship:

The executive Decree No.13_105 related to the model bylaws of the People's Municipal Assembly in Algeria enabled the wali and within the framework of administrative control to be exposed to the rules of bylaws of the Council and accordingly the governor is exposed to the bylaws the Council within 21 days at most from the date of filing the deliberation to the governor (2013 _13 رقم المرسوم التنفيذي رقم 105) and the exposure entails a new deliberation by the People's Municipal Assembly regarding the decision taken for a second reading to be ratified after the laws and regulations in force and the governor has confirmed this legally.

However, the Algerian lawmaker did not specify if the Council follows the norms of process, whether the governor submits the subject to the judiciary, or whether a fresh resolution is issued to cancel this debate. (سعايدية حورية، 2019-، صفحة 330، 2020)

In terms of the tasks assigned to the head of the region in Tunisian legislation for administrative control over the legality of the mayor's decisions and decisions, the Tunisian legislator went so far as to reduce the burden of administrative control by abolishing the previous control while retaining the latter. (أميرة أولاد الحاج، 2017/2016، صفحة 16)

With the promulgation of the Republic of Tunisia's Code of Local Authorities, the municipal council's decisions gained direct executive effect while informing the central authority of the content of the municipal council's decisions, while also retaining the authority to approve the municipal council's planning and reconstruction.

a-Enforcement of the Municipal Council's decisions:

The Tunisian legislature has abolished all forms of censorship prior to ratification, revocation and authorization which was focused on the enforcement of the decisions of the Municipal Council and subject to the control of the governor .

By the issuance of the Code of Local Authorities deliberations and decisions of the Municipal Council became in force directly without the need for the authority of supervision and through that the legislator has sought to define between two types of decisions (ordinal decisions and individual decisions).

Ordinal decisions are characterized by a degree of generality and impartiality and often have an organizational and managerial character The individual decisions have a personal character as they address a specific person

himself and his identity (نعمان النصيري، 2019، صفحة 50) Decisions ordinal adjust the formulas of publication And arranged and applied by government order (مجلة) (مجلة الجماعات المحلية) or based on the order of the Supreme Administrative Court and be effective after the lapse of five days from the date of publication on the website of the Official Gazette of Local Authorities, that is, five days after their publication in the Official Gazette, (مجلة الجماعات المحلية) as for individual decisions of the municipality, they are not subject to the obligation to publish in the Official Gazette. (مجلة الجماعات المحلية)

b-Mandatory notification of the central authority (supervisory authority):

The Tunisian legislator has enshrined the media mechanism in light of the application of the provisions of the Code of Local Authorities, and the media is considered one of the least severe means of censorship, as well as a means for the use of other means of censorship, such as objection and a stay of execution. Informing the central authority of municipal decisions before they go into effect does not allow the central authority to amend or cancel them if it considers them illegal, (النيفر، محمد، 2020/2019) and the central authority should only use the judiciary. Individual judgments issued by local authorities must be reasoned, and so become legitimate from the moment they are informed to those to those concerned or aware of them, taking into account the right to appeal before the judiciary (مجلة) (حسن، 2020، صفحة 103) for those who have an interest in this. (مجلة الجماعات المحلية)

c-The authority of the Municipal Council over preparation and reconstruction:

The Tunisian legislator has granted the municipal council the authority to approve examples of planning and reconstruction, (مجلة الجماعات المحلية) as outlined in article 239 of the Code of Local Authorities, as well as the process of controlling building permits and protecting the privacy of the municipality's architecture. (ناجي البكوش) Despite Tunisia's legislative tendency to abolish previous aspects of censorship, within the framework of decentralized cooperation and with regard to the ratification of international conventions, (مجلة) (الجماعات المحلية) the provisions of article 40 of the Code of Local Authorities stipulate that the local community must be obliged to consult with the competent services of the Ministry in charge of foreign affairs in order to sign. (أسامة الرياحي، 2022-2021، صفحة 149)

d- Supervising the decisions of the President of the Municipal Council:

The mayor makes several sorts of choices, which are seizure and executive decisions are not immune to control, the power of the decision in the sphere of control is mostly due to the mayor, (مجلة الجماعات المحلية) which is subject to administrative control. The governor exerts administrative control powers over municipalities based on legitimacy, with the goal of protecting public order components. (ريم الحاج صالح، 2014/2013، صفحة 17) As for executive choices, the control of supervision of these decisions must be subsequent control. The governor can also exercise the mechanism of solutions in order to take decisions and steps on his behalf, and this method must be supported by a clear abstention or negligence on the part of the executive structure of the municipality. (ابتسام مقني، 2022/2021، صفحة 62)

Section two: The system of endorsement on resolutions and decisions:

Certification is a procedure in which the central authority states that a decision made by an autonomous entity may be implemented since it has not broken any law or affected the public interest. It was also regarded as a traditional method of control, allowing the supervision department to control the declarative competence of deliberative organs. (برازة وهيبة، 2018/2017، صفحة 228). The power of control in Algerian legislation is not limited to ensuring that the Council's decisions comply with the law, but also extends to researching the extent to which those decisions conform to the circumstances under which they were made and the extent to which they achieve the municipality's public interest. As already indicated, the precedent resembles ratification, cancellation, and licensing, and the Tunisian legislator has maintained only the subsequent control represented in the control of solutions.

1. Entry into force of the Council's deliberations:

The deliberations of the grassroots local councils in Algeria and Tunisia are subject to a general principle, which is the force of law after 21 days from the date of their filing in the state for the Algerian and a period of five days from the date of their publication in the Code of Local Authorities for the Tunisian legislator, and this is in implementation of the basic rule of decentralization represented in the independence of local communities, but it was stated on this principle an exception that includes the need for the guardian authority to authorize some of the deliberations of the deliberative organs to become effective, (ثابتي بوحانة، 2015/2014، صفحة 165), which is expressed by the Algerian legislator by the ratification procedure, which may be implicitly or explicitly.

a-Direct access to the deliberations of the Council:

The deliberations of the municipal people's councils shall be implemented by force of law after 21 days from the date of their filing in the state, in accordance with the text of Article 56 of Law 11_10, and thus the Algerian legislator has retracted the period of 15 days stipulated in Law 90_08, which constitutes a suspension of the deliberations of the deliberative organs for a longer period, which affects the independence of the municipality, but on the other hand, the legislator removed the ambiguity that was tainted by Article 41 of Law 90_08, which utilized unclear language since the legislation in effect. In it, he removed the words opinion and conclusion and made no mention of the Wali publishing the deliberation or conveying it to those involved, indicating that it adhered to its substance. (عمار بوضياف، صفحة 287). In this context, the Tunisian legislator deemed the local council's activity to be effective as soon as it was published in the electronic magazine of local authorities, (رضا جنيح، 2013، صفحة 144) which was five days after its publication in the Official Gazette. This censorship, codified by the Tunisian legislature, is basically judicial control, because supervision and other sorts of earlier censorship have been abandoned under the present Constitution of the Republic of Tunisia. (حسن، 2020، صفحة 53).

b-Deliberations to be ratified:

According to Article 57 of Law 11_10 on the municipality, the following debates are not to be executed until the governor approves the budgets and accounts. Foreign contributions and bequests are accepted. Agreements about twinning. Real estate ownership is transferred. This item appears to imply that the legislator's considerations included in the above-mentioned text are implicitly

confirmed by the passing of 30 days from the day they were filed in the mandate. (سعيدية حورية، 2019-2020، صفحة 331)

It should be noted that the Algerian legislator has omitted the creation of public interests and institutions among the deliberations to be ratified by the custodian, which is understood by two things, the first of which is that these deliberations become effective as soon as they are deposited in the mandate, and the second is the occurrence of the legislator in an oversight and omission of this case, which must be Correction and amendments On the other hand, the legislator included qualitative additions such as the cases of accepting gifts and wills, twinning agreements, and real property assignment. (عمار بوضياف، صفحة 288)

As for the Tunisian legislator, it does not require any visa under the previous control except with regard to decentralized cooperation and with regard to the ratification of international agreements, where these can include agreements signed by the mayor with foreign parties in various fields. (مجلة الجماعات المحلية)

The Code of Local Authorities requires the local community to commit to signing agreements with external parties in conjunction with the appropriate agencies of the Ministry in Charge of Foreign Affairs.

The latter must be recommended to the Ministry prior to ratification. By two months, the Municipal Council's choices are subject to the central authority's involvement and oversight. By combining the provisions of explicit ratification in the laws governing the grassroots local councils in Algeria and Tunisia, we record cases of proliferation in Algerian legislation, which would affect the principle of local independence, while the Tunisian legislator was limited to the case of foreign agreements, and thus the Tunisian legislator has surpassed the Algerian in reducing the role of the central authorities in the marking process, which enshrines the principle of independence.

2. Cancel the deliberations of the Council:

The Algerian lawmaker did not agree with the current legislation controlling the local grassroots community on the problem of terminating council discussions, because the Algerian legislator incorporated the process of cancellation and outlined its grounds. The 2011 Municipal Law authorized the guardian authority (the head of state) to suspend debates and distinguished between absolute and relative nullity, but the Tunisian legislature did not, as follows:

a- Absolute nullity of the deliberations of the Council:

Successive laws have given the governor the authority to cancel the deliberations of Algeria's People's Municipal Assembly, whether by contemporary legislation or cancellations, as Article 59, paragraph 01 of Law 11-10 states that the following deliberations shall be canceled by force of law. (مولاي. Deliberations taken in contravention of the Constitution and not in compliance with laws and regulations. The goal is to uphold the notion of legality and maintain the state's legal structure. Deliberations on the state's insignia and emblems. Arabic-language deliberations are not edited. The invalidity of the deliberation shall be investigated by a judgment made by the Wali, and it is highlighted that the Algerian legislator has

ignored the method for justifying the decision issued by the Wali, and it is noted that the Algerian legislator has omitted the mechanism for reasoning the decision, which reflects negatively on the principle of transparency of the decisions of the Wali and on the reasoning of the competent judicial authorities when extending their control.

b- The relative invalidity of the deliberations of the Council:

With reference to the provisions of Article 60 of Law 11_10, in order to ensure impartiality and transparency, the deliberations of the People's Municipal Assembly are subject to annulment if they affect the personal interest of any member, whether from near or far, and the wisdom in the ability to invalidate this type of deliberations is to preserve the credibility and status of the Municipal Council and to keep its members away from all suspicion, and this is to consolidate transparency and administrative work. Law 11-10 on the municipality obliges any member of the council in conflict to declare this to the chairman of the council, and if the person concerned is the chairman of the council, he must declare it before the council. This type of deliberations shall be invalidated by a reasoned decision issued by the Governor of the State in accordance with paragraph 02 of Article 60 of the same Law 11/10, and the text does not indicate a specific period of time during which the deliberation shall be attended or invalidated. Perhaps the legislator's failure to mention the period is his desire to fight all forms of corruption by all legal means, but what is wrong with the text of Article 60 is its omission of popular control. (عمار بوضياف، صفحة 292) The Algerian legislator has empowered the municipality, represented by its president, to appeal against the decisions issued by the guardian authority, and this is stipulated in article 61 of Act No. 11/10 on the municipality. (رحمانية عبد الله، صفحة 639) (2018، صفحة 639)

c- Financial and Administrative Oversight:

The Algerian and Tunisian legislators agreed to subject the financial aspect of local base communities to oversight by the competent administrative authority. However, they differed in their procedures as follows:

According to municipal law, the governor (The head of the state) has the authority to oversee the financial aspect as follows:

If the municipal council votes on an unbalanced budget, the governor returns it with comments within 15 days after receiving it to the president. The president then submits it for a second discussion in the municipal council within ten days. If the municipal council approves the budget under the specified conditions within eight days after the date of the comments, the governor automatically adjusts it.

If the municipal council fails to take necessary corrective measures, the governor is authorized to implement the budget with a deficit. The governor can authorize absorbing the deficit over two or more fiscal years.

Additionally, the governor can convene an extraordinary session of the council to approve the municipal budget when it is not voted upon due to internal disruptions within the council. If this session does not result in budget approval, the governor finalizes it.

If the president of the municipal council refuses to prepare a transfer to cover a mandatory expense or issue a collection document, the governor (head of

the state) makes a decision to replace the collection transfer of the municipal council president.(القانون 10-11)

As for the Tunisian legislator, the financial and administrative oversight has been assigned to several central bodies, which does not align with local independence. Financial oversight has been entrusted to the municipal treasurer, as confirmed by Article 187 of the Local Communities Code. The municipal treasurer is responsible for executing financial transactions and expenses. (أمانى) Additionally, oversight tasks have been assigned to the Supreme Authority for Administrative and Financial Oversight. (القانون 906 سنة 1993) This authority coordinates programs involving general oversight structures for state services and public institutions. It studies and utilizes their reports, suggesting practical measures to address deficiencies and improve management practices. Furthermore, the general inspection includes the Ministry of Local Affairs, (الأمر الحكومي عدد 951 لسنة 2016) the Chief Accountant, (القانون عدد 86 لسنة 1996) the Regional Financial Secretary, (مجلة الجماعات المحلية) and the Public Expenses Inspector. (الأمر الحكومي عدد 2878 لسنة 2012) In summary, the Tunisian legislator has subjected the financial affairs of local base communities to centralized scrutiny, indicating that the previous administrative oversight's abolition has no impact, considering the centralization of financial control and management.

Conclusion:

According to the foregoing, the Algerian legislator has subjected the local council and its members, as well as its operations, to the supervision of the authorities.

This is reinforced by allowing the council, through its president, the authority to appeal or oppose administrative court rulings.

The following demonstrates that the Algerian legislator has subjected the local council, its members, and their acts to the supervision of the supervisory authority. This is reinforced by allowing the council, through its president, the authority to appeal or dispute judgments before the Administrative Court. This applies to any judgment made by the governor (wali) that invalidates deliberations or denies permission, regardless of what the Tunisian lawmaker has done.

The Tunisian lawmaker repealed all prior control placed on local communities and praised the efficiency of their efforts after a discussion. In such situations, the supervisory authority may also turn to appropriate judicial agencies. Thus, the Tunisian legislator outperformed its Algerian counterpart in developing the norms of administrative neutrality and independence, which constitute governance at the legal level.

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