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Pathology of the Legal System of Iran's Administrative Councils from the Perspective of Nature and Competence

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Abstract

One of the most important foundations of development in any society is the administrative system and its management. It is obvious that a favorable and efficient administrative system can facilitate and lay the foundation for the realization of the goals of development programs. Today, the influence of councils in the administration of public affairs has progressed to such a point that even the decision-making responsibility is assigned to the councils that are formed alongside or within the governing organizations. Among these councils, there are high administrative councils that have various duties, responsibilities and competences in Iran's administrative system, which of course have many problems, ambiguities and problems, therefore, in recent years, the approach of reforming these councils has received attention. With this description, it is necessary to carry out the necessary pathology in this connection. Explanation and description of the nature and Competence harms of the councils "in this article with administrative purpose" and with descriptive-analytical method and using library sources and texts these results were obtained that the Supreme Administrative Councils in Iran do not have an independent legal personality and their legal status does not correspond to any of the common formulations in the civil service management law. Supreme administrative councils in Iran's legal system have various powers, including: "advisory", "supervisory", "arbitration and dispute resolution", "regulation", "policy and planning", etc.

Of course, each of these authorities also faces various problems and challenges and damages.

Keywords: *Administrative councils, nature; Competence, pathology, collective decision making.*

Introduction

The administrative system has been of special importance due to its connection with other structures and its influence on them. It is obvious that the efficiency of the transformation of the administrative system as a tool for managing and administrating the country's affairs requires various changes at different levels of the administrative system of each country, which can be made possible with effective and accurate government planning (Asghari, Mohseni 2014: 42) which, of course, every change and evolution first requires a detailed understanding of issues, challenges and problems. "administrative councils" are among the most important issues of the country's administrative system that must be examined pathologically. In this regard, it should be noted that there are many council organizations and institutions operating in the country, most of which are in the body of

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the executive branch, which has the main task of making decisions and helping to make decisions.

Collective decision-making is the pattern of exchanging thoughts and combining thoughts in a group to reach a suitable decision. Since making a decision in the public sphere has various reactions and leaves many effects in various social and economic spheres, the most appropriate way to adopt a final solution is to refer to the model of collective decision making. Therefore, in this type of decision-making, the first issue that becomes important is the need to take advantage of different people and opinions and establish appropriate mechanisms for it (Mashhadi, Faryadi 2019: 20). Usually, this method is more appropriate than the patterns based on individual decision-making, which has been considered in the form of high administrative councils in Iran and of course many other countries, because it provides the possibility of a comprehensive evaluation of the issue or problem under discussion. However, various questions and ambiguities have always been raised about the nature of administrative councils, and on the other hand, high administrative councils have had different authorities, such as "consultative authority", "supervisory competence", "trans-sectoral and intra-sectoral cultural competence ", policy-making and planning competence and… ».

Considering the numerous issues and problems and challenges that are related to the nature, status and competence of administrative councils, and the path that is actually facilitated by the "Reorganization and Assignment of Councils Resolution approved in 1401" It is necessary to diagnose these councils with a precise and scientific approach and to identify and introduce the existing issues, challenges and problems. Therefore, the main question of this article is raised around this axis, what are the most important challenges and issues related to the legal system of administrative councils from the point of view of nature and competence?

1- Pathological criteria related to the nature and competence of administrative councils

The activity of administrative councils in a favorable situation depends on the observance of criteria and in fact principles and rules, without which the activity and decision-making in executive affairs will face many problems, therefore, we will continue to examine the most important criteria in this research, that is, the criteria related to "nature and competence".

1-1 dimensions of nature

Every government prepares an independent formulation for its political organization to manage the society through the functioning of this formulation. Some of these formulations are provided in the constitution of the countries, and some others are created through ordinary laws approved by the legislative assemblies, and less important institutions are formed through the approvals of the executive branch. The formulation of the administrative system of each country is provided either in the constitution or in the ordinary laws. This formulation in the administrative system of our country was foreseen in the Public Accounts Law approved in September 1366 by the Islamic Council, so that in Articles 2, 3, 4 and 5 of this law, the administrative institutions were respectively divided into the ministry, governmental institution, and governmental company and non-governmental institutions and public institutions.

The legislator once again formulated the country's administrative system in the Civil Service Management Law approved in 1386 and defined the administrative institutions as the ministry, government institution, non-government public institution or institutions, and government company respectively in articles 1, 2, 3, and 4 of this law. And in Article 5, the title "executive agency" was presented as a comprehensive title for all ministries, governmental institutions, non-governmental public institutions, governmental companies

and all institutions for which the inclusion of the law requires mentioning or clarifying the name.

In the pathological examination of the legal nature of the organization of administrative councils, we will look for the answer to the question that these councils are located within which of these administrative system formations of the country? Does high administrative councils are ministries? Or are they governmental institutions, governmental companies, or non- governmental public institutions? What are the main challenges in the field of administrative councils? In this regard, efforts will be made to evaluate and scientifically analyze various dimensions and angles of the problem.

1-2- Competence dimensions

The widespread involvement of governments in various areas of social life has caused an increase in the number of government organizations and officials working in them, and this increase has led to the diversity of powers and Competence of the aforementioned organizations and officials; this makes the need to recognize and examine the concept of Competence and its types inevitable.

The foundation of this necessity is based on a concern that has been considered as the creator of all the concepts and requirements of public and administrative law since the beginning, the control of power within the framework of the law, for this purpose, any decision or action of a government authority, in other words, any administrative action must be prescribed by law (40). 37:1997, Harlow and Rawlings). The concept of Competence is actually a logical extension of the idea of separation of powers; A belief that is historically the achievement of the Enlightenment thinkers and includes a set of measures regarding the distribution of political power in society in order to ensure the sovereignty of the people and prevent the concentration of power and tyranny. In administrative law, this idea has been reduced to the "principle of Competence" and based on it, it is assumed that the scope of action and authority of public officials is limited to the powers granted by the legislator (Hadavand and Mashhadi 1395:110). Therefore, the Competence in administrative law determines the scope of action and activity of the administration and the channel for exercising public authority based on the rule of law principle (Mashhadi, 1391:22).

In an effort to explain the legal concept of Competence, the authors have offered definitions, some of which are mentioned below; Competence is a set of powers that the legislator has given to public officials and officials to perform certain actions and decisions at a certain time and place (Tabatabaei Motmani, 2015: 20), the legal Competence of an official to do some things, such as the Competence of the courts and the authority of a government official to prepare an official document (Jafari Langroudi, 2018, No. 3258), Competence in administrative law includes the total powers of public officials (Mashhadi, 2011: 21), Competence is qualification and legal permission given by law to administrative officials for the proper management of the administration (Aliabadi, 2013: 5). Competence is the authority and discretion that the laws and regulations governing a public organization officially grant to one or more real persons who have authority so that they can perform legal actions in the name of this organization and for this organization (Hadavand and Mashhadi, 1395:111), and according to Michel Rousset, the Competence is the type of authority that is delegated to the administrative authority by law (Rousset et Rousset, 2004:146).

By summarizing the above cases, it can be said that Competence is a legal requirement or prescription based on which the actions of public authorities and their authority are acceptable within the framework of the rule of law. The requirement or prescription of the legislator is the starting point on which the legal Competence of the administration can be separated. Explaining that the administration is basically subject to two sets of rules; First, the rules in which the administration is obliged to make a decision according to the predetermined criteria and second, the prescriptive rules based on which the

administrative authority is allowed to choose the best decision according to the conditions and necessities of the public interest. (Mashhadi, 2011: 23)

The Competence of the official or administrative authority here includes the task to be verified and the legislator assigned to the administrative to determine the existence or non-existence of a technical or specialized matter based on the needs arising from social goals and providing public services. In such situations, at the same time that the administrative authority has some margin of evaluation and the power to choose among several options, at the same time, it is confined and bound by the criteria that are explicitly stated by the legislator and seem inviolable. Therefore, based on the various functions and Competence of administrative councils, the following five dimensions can be proposed and evaluated. These dimensions include "supervisory Competence ", "trans-sectoral and intra-sectoral coordination", "policy-making and planning", "arbitration and dispute resolution" and "legislative", which will be mentioned and explained in the following.

Some people believe that monitoring is an adjunct meaning, which should always be looked for adjunct or related to it; Monitor what? Adjunct or related supervision is the actions taken by various governmental authorities and institutions (Rasakh, 2008: 15-16). These authorities and institutions in modern constitutional rights systems are made up of legislative, executive and judicial powers. These functions are for implementing and resolving disputes based on the law, therefore, any action that is firstly and directly one of the examples of the mentioned functions is included in the exercise of authority by the government authorities (Rasekh, 2008: 15-16). First, a government official or institution takes action, after that comes the turn of monitoring and controlling that action. This supervision can be during the operation or after its complete operation. (Judge Shariat Panahi, 2012: 65)

Monitoring is not done in the same way in all cases; the study of different systems in the world shows that there are different types of supervision and different criteria for it. Some types of supervision include political supervision, administrative supervision and judicial supervision.

Administrative supervision is defined in two ways; Some consider it to be judicial proceedings and believe that administrative proceedings and the rule of law are intertwined concepts; As the full realization of one is not possible without the other (Gorji, 2008: 242), in Iran's legal system, administrative proceedings are purely a judicial matter, matters such as placing the Administrative Court of Justice among the institutions of the judicial branch according to Article 173 of the Constitution of the Islamic Republic of Iran, not foreseeing a regular structural relationship with the executive branch and not assigning consultative authority to the Administrative Court of Justice also bring the same meaning to mind. The advantage of Iran's administrative judicial system can be seen in its organizational and functional independence from the executive and legislative powers as a manifestation of the separation of powers; Although such independence should not make the institution of administrative proceedings an independent component and distance it from executive and administrative realities; On the other hand, in a country like France, administrative proceedings are considered a part of the management system, in this judicial system it has two parts; First, the regulatory department (administration in its special sense) and the other, the administrative litigation department. (Gorji, 2008: 243)

Some also believe that the meaning of administrative supervision is the same as disciplinary supervision (Rasakh 34: 2008) to explain that there is a type of supervision in the laws that may be called disciplinary or administrative supervision; in this type of supervision, two goals can be pursued. On the one hand, a kind of internal and disciplinary or administrative supervision is considered; It means to review the actions of an official or institution continuously and during the performance of duties; This is in

order to ensure the performance of the set goals of the group under review, and on the other hand, one authority has the right to enter into the performance process of other authorities in line with political, financial or similar supervision; Therefore, the meaning of administrative supervision here is different from judicial supervision and administrative or disciplinary supervision has its own meaning. (Rasekh, 2008: 39)

Most of the high administrative councils in Iran's legal system have been formed with the purpose and Competence of coordination and decision-making between institutions and organizations, and in this sense they are considered trans-sectoral, because the scope of their coordination Competence goes beyond an institution and organization. Administrative organizations, including ministries, government institutions, state companies, etc., need the cooperation and assistance of other administrative organizations to perform their duties, and without their help, coordination, and cooperation, they cannot perform their duties optimally.

Regarding the consultative authority, it should be kept in mind that consultation is the basic element and component of the council institution, and in fact, the definition and concept of the council, as said, requires the element of consultation in the nature of this institution. The councils that are the arms of management and the mastermind and guide and a lever to control management. Such a council is relieved of management responsibilities. (Omid Zanjani, 1387: 74-75)

Today, in the executive and administrative system, the use of expert opinions is inevitable due to the complexity of affairs and the breadth of issues. For this reason, consultants are usually present next to executive and administrative officials. Many councils with consultative powers have been established in the ministries and institutions in the country's legal system, which help organizations and authorities in decision-making (Mohebi Anjdani, 2019: 79). In any case, the analysis of this aspect of the criteria related to the Competence of the administrative councils is necessary and essential in order to master the various aspects of the coordination and consultation Competence of the administrative councils in the first place, in relation to the necessity of creating this Competence and then its requirements, ambiguities and challenges should be addressed.

Politics has three institutional, process-oriented and normative dimensions. The institutional dimension means the political society and it indicates the activities that are carried out by governmental and non-governmental institutions in this society, such as the activities of political parties, social movements, mass media, etc. The process-oriented dimension means science of politic, which shows the formation of political will from the application of social power, and in this sense, the way to achieve power is usually the subject of investigation. But the normative aspect which is compared to the term of political policy / political principles indicates the creation of normative ideas and ideals that express the fundamental values and issues of a society for the practical achievement of these ideas and ideals. Regarding the latter meaning, it should be said that proposing something as a policy means that an official decision has been taken by giving an official permission to a practical process (Haywood, 2015: 39).

Also, "[...] the subject of political and governmental actions [...] is the decisions and plans that are raised in the society at the level of the governing body [...]" (Tabatabai Motmani, 2015: 5), such actions have a public and non-personal nature and refer to general matters that are regulated according to public interests. From the point of view of experts in management science, the nature of policy making or public policy is defined as follows: "Public policies are the principles established by competent authorities in the country and as a model and guide for the necessary actions and activities in the society."(Alvani, 2016: 22).

The science of politics is comprehensive and issues such as the preferences and demands of groups and individuals, how to make collective decisions, the position of these decisions, the pressure levers that are imposed on decision makers, the installation and

dismissal of public policy-making officials and numerous other issues of these are the things that are investigated in this science and according to the authors, it is the constitution that regulates these political activities and one of these activities is determining the form and method of the decision-making process (Baranger, 2013: 23).

From what has been said so far, we have found that policymaking or the method of creating it, is bound by the constraints of the constitution. In confirmation of this claim, the authors believe that politics without law does not exist; because the law that forms politics and binds it is under titles and values such as justice and social order. Also, another noteworthy point is that in most legal systems, the task of policymaking is one of the long-standing tasks of parliaments (legislative assemblies) or in a system such as the legal system of England (which some have called the parliamentary executive due to the relative separation of powers, the sovereignty of the parliament and the election of cabinet members by the parliament), the policy-making task is with the cabinet elected by the parliament ,based on this, it can be safely said that the exercise of authority regarding policy-making should be based on the prescription of the legislator and its implementation through a legally competent authority or authorities. (Hosseini et al., 2019: 193)

However, it should be clarified that basically what is the status of the administrative councils in the implementation of this policy, how is the application of this authority evaluated and what are the challenges, obstacles, privileges, issues and ambiguities surrounding this competence?

In order for it to be time to arbitrate and resolve the dispute between the parties of a legal relationship, it is necessary that there has been a "fight" between them. There are two types of lawsuits in which an administrative organization is a party to the lawsuit. Sometimes disputes occur between individuals or private legal entities and administrative bodies, and sometimes disputes arise between the administrative bodies themselves. (Mohebi Anjdani, 1389: 86)

If the dispute is of the first type, the hearing authority is different depending on which of the parties is the plaintiff. However, if the dispute is between administrative organizations or legal entities of public law, the constitution has entrusted the resolution of the dispute to the government board. In this regard, the principle of the constitution stipulates: "... in cases of disagreement or interference in the legal duties of government agencies, if there is no need to interpret or commentary of the law, the decision of the Council of Ministers, which is adopted on the proposal of the president, is binding.".

In implementing this principle of the constitution, the government has passed several approval letters. Among the clauses that are now implemented is: "Regulations on how to resolve disputes between executive bodies through the internal mechanisms of the executive branch, approved by the Board of Ministers on 3/16/2013." The interesting thing to note in the aforementioned regulations is that none of the high administrative councils except the Bills Commission have been introduced as a dispute resolution authority. However, some Supreme Administrative Councils have limited authority to deal with and resolve disputes between administrative bodies.

Some people, in confirming the granting of this authority to administrative councils, believe that in principle, in a system where the principle of separation of powers is accepted, judging and dealing with grievances and complaints is the responsibility of the judiciary, but should it be taken to the judicial authorities as soon as any dispute arises? It has been proven by experience that the existence of dispute resolution and arbitration authorities that prevent the filing of lawsuits in judicial authorities, both reduces the workload of the judicial system and, due to the nature of the work, accelerates the resolution of disputes. This is especially important when one side of the dispute, and sometimes both sides, is one of the government agencies, or the subject of the dispute is such that if it is handled in the judicial authorities, experts from the government agencies

must be consulted for its expertise (Hossein Alizadeh, 1378: 18). However, there are always many criticisms regarding the granting of this competence to the administrative councils, and it is necessary to analyze and recognize this aspect of the competence and to be carefully evaluated and diagnosed.

Many high administrative councils before and after the Islamic revolution of Iran, according to the laws and regulations that constitute them, have the authority to establish regulations and by-laws, and by examining the approvals of many administrative councils, it can be found that the general approvals of these institutions it lacks some inherent features of the law such as being binding, public, future-oriented, definitive, and approved by a competent authority.

Of course, the Guardian Council, in reviewing the laws approved by the Parliament, which was around the High Administrative Councils, has always objected to the authority of these councils to enact regulations and by-laws, and it is contrary to Article 85 of the Constitution (due to the delegation of legislative authority to other authorities other than the internal commissions of the parliament) and Article 138 of the Constitution (because of the membership of non-ministers in these councils). Some objectionable resolutions have been amended in order to secure the opinion of the parliament, and in some cases, the objectionable resolution has been sent to the Council for Expediency and the opinion of the parliament has been approved. In any case, in addition to the approvals of the parliament regarding the administrative councils, many of these councils have been created due to regulations other than the laws approved by the parliament, such as government regulations or the approvals of the Supreme Council of the Cultural Revolution, and the supervision of the Guardian Council has not been applied to them. Therefore, it is necessary to evaluate and analyze this aspect of the competence criteria in detail in connection with the administrative councils.

2. - Intrinsic pathology

Every government prepares an independent formulation for its political organization to manage the society through the functioning of this formulation. Some of these formulations are provided in the constitution of the countries, and others are created through the normal laws approved by the legislative assemblies, and less important institutions are formed through the approvals of the executive branch. The formulation of the administrative system of each country is provided either in the constitution or in the ordinary laws.

This formulation in the administrative system of our country was foreseen in the Public Accounts Law approved in September 1987 by the Islamic Council, so that in articles 2, 3, 4 and 5 of this law, the administrative institutions are divided respectively the ministry, governmental institution, governmental company and non-governmental public institutions. The legislator once again formulated the country's administrative system in the Civil Service Management Law approved on 29/10/2007 and defined the country's administrative institutions in articles 1, 2, 3 and 4 of the Civil Service Management Law, respectively, as ministries, governmental institutions, non-governmental public institution and a governmental company and in Article 5 of this law, the title "executive agency" is mentioned as a comprehensive title for all ministries, governmental institutions, non-governmental public institutions, governmental companies and all institutions that are required to be covered by the law (Civil Service Management Law) or The specification of the name. The definitions mentioned in articles 1 to 4 of the aforementioned law for the administrative institutions of the country are almost the same as the definitions given in the Public Accounts Law, with the difference that in the Civil Service Management Law, some things have been added to the definitions.

One of the problems of the Civil Service Management Law is the issue of repealing other laws that contradict this law. Because in Article 127 of the Civil Service Management Law, without specifying the repealed laws, the legislator has provided in general and in

the form of an implicit abolition: "All general and special laws and regulations except the law on early retirement of government employees approved 27/8/2007 Islamic Council, contrary to this law, will be canceled from the effective date of this law" (Mohebi Anjdani, 1389: 71). The administrative institutions of the country in the Civil Service Management Law are:

1- Ministry, Article 1 of ق.م.خ.ک: "Ministry is a specific organizational unit that is responsible for the realization of one or more goals of the government and is created or will be established by law and is managed by the minister."

2- Governmental institution, Article 2 of ق.م.خ.ک: "Governmental institution is a specific organizational unit that is created or will be established by law and, by having legal independence, performs part of the duties and affairs that are the responsibility of one of the three branches of forces and other legal authorities. All the organizations mentioned in the constitution are recognized as governmental institutions.

3- Non-governmental public institution, Article 3 of ق.م.خ.ک: "A non-governmental public institution is a specific organizational unit that has legal independence and is created or will be established by the approval of the Islamic Council, and more than 50% of its annual budget comes from the place of non-governmental resources and it is in charge of the duties and services that have a public aspect.

4- governmental company, Article 4 of ق.م.خ.ک: "A governmental company is an economic enterprise that, according to the law, is responsible for carrying out part of the government's undertakings, which, according to the general policies of Article 44 of the Constitution, notified by the Supreme Leader It is considered the duties of the government, created and more than 50% of its budget and stocks belong to the government.

The common feature of all these administrative institutions mentioned in the Civil Service Management Law is that all of them are established by law and the law is not out of two situations, either it is the constitution approved by the Constituent Assembly or the ordinary law that approved by the Islamic Parliament. However, it cannot be said that all the Supreme administrative councils were established by the constitution or the law approved by the Islamic Parliament, because some of them were formed by the government regulations. It is very clear that the Supreme Administrative Councils are not "Ministry", because the Ministry itself is an independent title and has many legal goals and duties, and various organizations and departments are subordinated to the Ministry. These councils are not "non-governmental public institutions" either, because unlike non-governmental public institutions, Supreme administrative councils do not have an independent legal personality and their budget is entirely provided by government sources. Supreme Administrative Councils are not "governmental companies" either, because the duties of Supreme Administrative Councils, unlike governmental companies that have managerial duties, are completely sovereign duties, duties such as policy making, planning, creating inter-departmental coordination, etc.

Moreover, unlike economical companies, the Supreme Administrative Councils do not have legal independence. Among the four administrative institutions mentioned in the Civil Service Management Law, only "Governmental Institution" remains. The question is, is it not possible to count them among the governmental institutions, considering the nature of the Supreme administrative councils' dependence on the government and administrative organizations?

In response, it should be said that according to Article 2 of ق.م.خ.ک, a government institution has the following characteristics: 1- established by law, 2- having legal independence (in other words, having a legal personality) and 3- Performing some of the duties of the three branches of power and other legal authorities. By applying these characteristics to the supreme administrative councils, we conclude that these councils are

not "governmental institutions" either, because they are not formed only by law, but some are created by government regulations. Apart from these problems, the Supreme Administrative Councils, unlike governmental institutions, do not have legal independence and legal personality. Therefore, the question remains, what is the legal nature of the organization of the Supreme Administrative Council?

For the answer, we have to refer again to the selective definition of Supreme administrative councils. Our chosen definition of Supreme administrative councils was that they are councils that are formed within the executive branch and next to the central administrative organizations and central executive bodies under the supervision of the executive branch. Therefore, according to this definition, these councils do not have an independent legal nature, but they are part of the pillars or parts of the administrative organization that are under its control. This matter has been mentioned in some of the rules and regulations of these Supreme administrative councils and they are considered as a pillar of that administrative organization. For example, in Article 5 of the Law on the Establishment of the Organization of the Medical System of the Islamic Republic of Iran, the Supreme Council of the Medical System is considered one of the pillars of that organization.

Also, in many laws and regulations regarding the formation of Supreme administrative councils, it is stipulated that the secretariat of these councils is established in one of the ministries, which is usually the ministry that the work of the council is most similar to the duties of that ministry, and this means that these councils are a pillar of ministries and government organizations.

On the other hand, we can refer to the legal nature of the organization of Supreme Councils. Supreme National Security Council is consistent with the definition of a governmental institution in Article 2 of ق.م.خ.ک, because it is formed according to the law and has legal independence. With the explanation that this council acts independently of the three branches of power in its decision-making and performs part of the duties of the three branches of power and other legal authorities.

On the other hand, regarding the nature of the Supreme Council of the Cultural Revolution, the question is, can this council not be considered as one of the institutions of the revolution? In the note below the single article approved on 16/8/1980, the Revolutionary Council has defined the institutions of the revolution as follows: "The institutions of the revolution are defined as the bodies that were created according to the needs of the era after the Islamic Revolution of Iran with the approval of the legislative authorities." Although the Supreme Council of the Cultural Revolution was created according to the needs after the Islamic Revolution, However, its establishment has not been approved by the legislative authorities after the revolution, i.e. the Revolutionary Council and the Islamic parliament, so it is not covered by the above single article. (Sharif, 2004: 325). In addition, in Article 130 of the country's Public Accounts Law, a deadline of one year has been set for matching the status of these institutions with one of the types of executive bodies defined in Articles 2 to 5, and it is stipulated under the article: With the expiration of this opportunity, they will be considered a governmental institution and will be subject to the provisions of this law regarding governmental institutions."

At the end of this speech, which was actually an assessment of the first aspect of the Supreme Administrative Councils, i.e. the nature of these councils, it is necessary to mention this important point from the writer's point of view, that basically it is not necessary to consider the nature and independent legal personality of the Supreme Administrative Councils and in such a way that It was said that these councils are often formed within organizations and institutions that themselves have a specific nature, and therefore the supreme administrative councils do not have an independent nature.

However, as said, about the few extra-Competenceal supreme councils, this situation is different and the description related to this exception was also stated.

3- Competence pathology of administrative councils

As stated, the dimensions of competence of the Supreme Administrative Councils from five perspectives: "supervisory competence", "coordination and consultation competence", "policy-making and planning competence", "arbitration and dispute resolution competence" and "legislative competence" should be taken into consideration. In the following, we will analyze separately each of these supposed competences for high administrative councils.

One of the important competence of the Supreme Administrative Councils is the supervisory competence, and as it was said, the purpose of the supervisory competence is to evaluate and control the performance of people and executive bodies, and the purpose of this supervision is to make sure whether people and executive bodies act according to predetermined policies, programs and laws or not? The result of monitoring is to prevent violations and if a violation is observed, to investigate and find solutions for it. It is obvious that continuous, extensive and correct supervision in the executive bodies will cause the health of the executive bodies and their efficiency.

The issue of "monitoring" is considered one of the most important issues in constitutional and administrative law. In the principles of the constitution of the Islamic Republic, attention has been paid to the principle of "monitoring" and various authorities and institutions have been assigned for this purpose; Institutions such as the Guardian Council, the General Inspection Organization, the Court of Administrative Justice, the Broadcasting Supervision Council, etc., are involved in supervision within the scope of their duties. Even the duties of the Islamic parliament are not limited to making laws, and one of the most important duties of this authority is its supervisory duties.

Now, examples of high administrative councils that have supervisory authority are mentioned: - According to Clause ز, Article 1 of the legal bill for the establishment of the supreme Informatics Council of the country, approved on 25/6/1980, one of the duties of this council is to "supervise the affairs of computer companies and organizations". According to Clause 14 of article 6 of the legal bill regarding the establishment of the Supreme Council of Education, one of the duties of this council is: "Providing the necessary criteria for the press and mass media of the country in terms of education and observing national and Islamic interests and monitoring the implementation of these rules with relevant organizations.

- According to Clause 2 of Article 2 of the Law on the Establishment of the Supreme Council of Industries, one of the duties of this council is: "Preparation of short-term, medium-term and long-term industrial and mineral plans based on the policy approved by the Islamic parliament and monitoring the implementation of the plan" - according to Article 1 of the Law on the Establishment of the Supreme Employment Council approved on 26/3/1998, one of the duties of this council is to monitor and follow up on how to achieve the quantitative and qualitative goals of employment in the approved programs. Also, according to Clause 1 of article 3 of the same law, the Supreme Employment Council is responsible for monitoring the performance of various institutions and organizations in the field of labor market supply and demand.

Since the purpose of supervision is to check the good implementation of laws and regulations and administrative affairs and to prevent possible violations, this supervisory competence should usually be accompanied by legal requirements, but unfortunately, there is ambiguity in the laws, regulations, bylaws and statutes of the Supreme Administrative Councils, and the responsible authorities, tools, methods, and guarantees for the implementation of this supervision have not been specified. In any case, it can be said that in the Supreme administrative councils that have supervisory competence, the

head of that council is responsible for the implementation of this duty and must provide the necessary mechanisms to carry out this supervision and be accountable to the higher authorities for the performance of this duty and submit the report of his supervisory actions to the higher competent authority and also deal with the violators legally.

Most of the Supreme administrative councils in Iran's legal system have been formed with the purpose and competence of coordination and decision-making between institutions and organizations, and in this sense they are considered trans-departmental, because the scope of their coordination competence goes beyond an institution and organization. Administrative organizations, including ministries, governmental institutions, governmental companies, etc., need the cooperation and assistance of other administrative organizations to perform their duties, and without their help, coordination, and cooperation, they cannot perform their duties optimally.

Therefore, since some decisions have a cross-departmental aspect, the public authority forms councils with coordination competence, whose main task is to create coordination between organizations and people who are somehow related to the same issue. These types of administrative councils are named coordination. For example, the following councils can be mentioned:

The country's supreme transport coordination council, the coordination and supervision council for international economic and financial cooperation, the public duty coordination council, etc.

In addition to the councils mentioned above, which have both the title of "coordination" and the purpose of their formation is to establish cross-departmental coordination, some other Supreme administrative councils also have the competence to coordinate. Some of these councils are mentioned below:

- According to Clause ز of Article 1 of the legal bill establishing the Supreme Informatics Council of the country approved on 25/6/1980, one of the duties of this council is: "Coordinating and supervising the affairs of computer companies and organizations, especially in the field of how to provide spare parts and maintenance computer equipment".

- According to the single article of the law on the establishment of the Supreme Council of Oceanography of the country approved on 11/8/1991, one of the goals of the establishment of this council is to coordinate national, specialized and international activities in the field of oceanography. - According to Article 1 of the Law on the Establishment of the Supreme Employment Council approved on 23/8/1998, one of the goals of the establishment of this council is to establish coordination between the institutions whose decisions will be effective on the supply and demand of the labor market, employment and unemployment. In addition, according to Clause 1 of article 3 of the same law, establishing coordination between the above-mentioned institutions is considered the first duty of the Supreme Employment Council.

In most of the Supreme administrative councils, the purpose, duty and competence of establishing coordination between the related institutions have been mentioned, which is limited to the mentioned cases as an example.

The important point is that the Supreme administrative councils with the coordination competence must legally perform this duty and take the necessary measures to establish cross-departmental coordination, and in case of failure to perform this duty, they will be responsible and face higher authorities, as the case may be. They are accountable. Other organizations that have been assigned duties by a Supreme Administrative Council in order to establish coordination, are required to comply with those duties.

Before dealing with consultative competence, it is necessary to explain the concepts of administrative decision-making and consultation. The decisions that the administrative

authorities take in the field of their duties are divided into two categories some administrative decisions are "case-specific" and are adopted in the form of regulations, circulars, and similar cases. Another form of administrative decisions are "personal administrative decisions" regarding a certain person or persons. Employment decrees, permits, licenses and certificates are among personal administrative decisions (Tabatabaei Motamani, 2015: 314), these types of decisions create rights and duties for people or announce a special status to them, and they are only related to issues and individuals have executive ability in special cases and cannot include general rulings. (Emamay and oStovar Sangri, 2013: 28)

Consultation is a type of Asking for an opinion that the administration officially takes before making a decision. The consultation is usually done with an authority or board such as interest groups and it should be recorded in the relevant file. In cases where consultation is explicitly provided for by the law, failure to consult will invalidate the administrative decision.

The purpose of consultation in the first place is to complete or clarify the information of the department, which is in a decision-making position. This type of consultation usually takes place with experts; but the purpose of consultation in the next place is to protect the rights and interests of people and it allows people to be able to defend their interests and rights by informed authorities before making a decision. Therefore, consultation is in accordance with the spirit of democracy, provided that the consultation is genuine and the party to the consultation is the real and elected representative of the people and reflects their thoughts and opinions. (Tabatabaei Motamani, 1392: 109)

In many countries, in order for the consultation to be guaranteed, the consultation opinion must be recorded in the case file and the file must be open to the client, however, in many cases, administrative consultations are confidential. (Previous)

For example, one of the competencies of the "Money and Credit Council" is to provide an advisory opinion. In this case, clause 5, section الف, Article 18 of the country's monetary and banking law approved in 1972 states one of the duties of the monetary and credit council: "Giving advisory opinions and recommendations to the government on the country's banking, monetary and credit issues that, in the opinion of the council, It will be effective in the economic situation and especially in the country's credit policy. Also, in clauses "ت" and "چ" of Article 2 of the Statute of the Supreme Judicial Council approved by the Board of Ministers on 16/02/2005, two consultative competence of this council are mentioned.

Some of these consultations and suggestions become laws and regulations through legal procedures. In such a way that a Supreme Council announces its advisory opinion to the board of Ministers and the board of Ministers approves that opinion and turns it into a letter of approval, or a Supreme Council may announce its advisory opinion to each of the ministers. And the mentioned minister makes it mandatory in the form of ministerial regulations.

In the comparative approach, some administrative councils of other countries have a consultative function. For example, in France, the Economic, Social and Environmental Council has a consultative function. This council is one of the consultative institutions in the French policy system, whose advisory opinion is effective in economic-social policies and trade union issues. The main task of this institution is to provide recommendations to the executive authorities and participate in drafting bills and plans in the parliament with related issues.

Some Supreme administrative councils have policy and planning competence. These policies and plans are all at the macro level due to the high position of the Supreme administrative councils. This means that each Supreme Council, depending on its name,

objectives, members and powers, has the task of policy making and macro planning of the country in a specific field.

Policy-making authority has been seen in many Supreme administrative councils before the revolution, which are often important councils in terms of their duties; a matter that has been noticed in the councils established after the revolution. For example, article one of the regulations of the Supreme Health Council of the country and the reform program in the health system approved on 25/6/2003 stipulates: The Supreme Council of Health of the country, which is referred to as the "Supreme Council" in this regulation, is established as a policy-making authority in the field of the country's health system. It is worth noting that in performing some of their duties and responsibilities, such as establishing inter-departmental and extra-departmental coordination, policy making and planning, the Supreme Administrative Councils make regulations.

What should be considered in practice regarding the competence of arbitration and dispute resolution of the Supreme Administrative Councils is that, in principle, dispute resolution and arbitration is a specialized practice and requires familiarity and mastery of legal and judicial matters, and the principles of proceedings in these commissions must be and councils, and although the presence of a judicial official may be expected in some of these councils, however, as an important and fundamental challenge, it should be considered that as much as possible, it is necessary to issue a decision and determine the legal duties of These councils should be taken away.

Basically, Supreme administrative councils are not formed for a "quasi-judicial" activity such as arbitration and dispute resolution. The proof of this claim is also the fact that in most of the laws, regulations and statutes of the Supreme Administrative Councils, the competence of hearing, dispute resolution and arbitration for these councils is not mentioned, nor the commissions and Supreme Administrative Councils that have the competence of arbitration and dispute resolution, never have judicial and quasi-judicial Competence, rather, their competence is limited to resolving disputes that arise between administrative bodies or, in very limited cases, between administrative bodies and other individual or legal persons regarding the interpretation or implementation of laws or the provisions of contracts and the like of these. Because handling administrative violations is the responsibility of dedicated administrative authorities or quasi-judicial authorities, such as the boards for handling administrative violations mentioned in the Law on Handling Administrative Violations approved in 1993 and similar authorities.

In fact, quasi-judicial authorities and special administrative courts should not be confused with Supreme administrative councils.

These authorities, which some authors have called quasi-judicial authorities, are usually formed with the participation of several members, among whom there is a lawyer member or a judge whose duty is to practically reconcile the opinions and decisions of these authorities with the laws. (Motamani, 2021: 454)

For example, we can refer to inspection boards and commissions such as tax commissions, workshop council, worker-employer dispute resolution board, article 100 commission of municipalities, etc., according to clause 2 of article 10 of the Law on Organizations and Procedures of the Court of Administrative Justice approved in 2012, decisions and final decisions of these authorities can be appealed in the Administrative Court of Justice.

Therefore, such commissions, councils, boards, etc., which are formed in administrative bodies, are special administrative authorities or quasi-judicial authorities that have quasi-judicial competence, not supreme administrative councils, because supreme administrative councils do not have such competence and only a limited number of them have the competence to resolve disputes and arbitrate.

Regarding the official responsible for following up the approvals of the supreme Administrative Councils, usually the head of each council is obliged to follow up the implementation of the approvals. In some councils, this matter has been observed, but in some other councils, a member other than the chairman of the council, whose scope of duties is most related to the tasks and goals of the council, has been made responsible for this matter. For example, according to clause 5 of Article 5 of the Statute of the Supreme Council of Iran Tourism and global Tourism approved on 15/03/1992, the Minister of Culture and Islamic Education is responsible for following up the decisions and approvals of this Council, While the chairmanship of this council is the responsibility of the first vice president. In some other supreme administrative councils, the secretary of the council has been responsible for following up on the council's decisions. For example, according to Article 11 of the Statute of the Supreme Space Council approved by the Council of Ministers on 16/02/2005, "the Secretary of the Council is required to prepare a report of the activities and actions taken regarding the Council's decisions every six months and inform the members."

It was said that many Supreme administrative councils before and after the Islamic Revolution of Iran, according to the laws and regulations that constitute them, have the competence to establish regulations and by-laws. The Guardian Council, in reviewing the laws approved by the Parliament, which was around the Supreme Administrative Councils, has always objected to the competence of these councils to enact regulations and by-laws, and it is contrary to Article 85 of the Constitution (due to the delegation of legislative authority to other authorities other than internal commissions of parliament) and the principle of the constitution (because of the membership of non-ministers in these councils). Some objectionable resolutions have been amended in order to satisfy the opinion of the parliament, and in some cases, the objectionable resolution has been sent to the Expediency Determination Forum and the opinion of the parliament has been approved. In any case, in addition to the approvals of the parliament regarding the Supreme Administrative Councils, many of these councils have been established by regulations other than the laws approved by the parliament, such as government regulations or the approvals of the Supreme Council of the Cultural Revolution, and the supervision of the Guardian Council has not been applied to them.

"In public and administrative law, the principle is that a public and administrative official is not competent, unless he is given authority by law." (Falahzadeh, 2013:19). The principle of incompetence is one of the basic principles of public law, and its meaning is that in cases where there is doubt about the legal competence of institutions, the principle of incompetence is applied. Because prescribing and expanding the scope of competence may cause the intervention of powers in each other's affairs, and this violates the principle of independence and separation of powers (aghaee Touq et al., 2019: 51). In principles 60 and 138, the basic legislator has determined the structure and body of the executive branch in three pillars and titles (President, Ministers and Council of Ministers). But in addition to the three pillars, against the constitution another fourth pillar has been created by the ordinary legislator in the legal system of the country, called administrative councils. Therefore, the fourth clause does not exist and this structure cannot be applied, that is, something called the administrative council cannot be added or subtracted from it. The basic legislature has given powers and competencies to the three branches of power and has specified the manner of distribution of political power among the three branches of power and the limits of the competence of each of them, and has also determined the influence and intervention of each of the powers on the other powers. Therefore, the principle of non- competence in the field of public law does not allow the parliament to interfere and create disturbances in the area of the powers of the executive branch without reason and without the existence of a legal text.

Conclusion

In this article, an attempt was made to analyze the legal system of administrative councils of Iran by emphasizing its nature and competence, and what can be stated as the result of this research is as follows:

In addition to common council institutions such as the legislature, local councils, etc., other councils (especially within the executive branch) have been created, and their formation and the actions they take seem to have many problems, ambiguities, challenges, and harms. ; Therefore, it is necessary to diagnose their nature and competence, decision-making process and accountability based on the specified criteria.

Every government prepares an independent formulation for its political organization to manage the society through the functioning of this formulation. Some of these formulations are provided in the constitution of the countries, and others are created through ordinary laws approved by the legislative assemblies, and less important institutions are formed through the approvals of the executive branch. The formulation of the administrative system of each country is also provided either in the constitution or in the ordinary laws. However, as stated, the supreme administrative councils in Iran do not have an independent legal personality and their legal nature does not correspond to any of the common formulations in the civil service management law.

The Supreme Administrative Councils in Iran's legal system have different and diverse competencies, including: "advisory", "supervisory", "arbitration and dispute resolution", "regulation", "policy making and planning", etc., which of course each of these competencies also face various problems, challenges and injuries. Considering that the constitution has given the authority to make regulations to the board of ministers and commissions composed of ministers, for a good model, the main approach should be to eliminate unnecessary councils, and in the case of councils whose existence is necessary, they should be deprived of the competence to make regulations and basically define a consultative role for them.

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