Officer Of Competence In The Exercising Of The Job Executive Regulations

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Abstract

Constitutional rules specify the party with inherent jurisdiction to exercise the statutory function. Where the statutory competence of this authority is embodied if the law does not authorize another administrative authority or body competent to issue its executive regulations. As a result of the legal determination of the regulatory authority competent to issue the executive regulations, this authority designated by the law shall be bound to issue the executive regulations in a manner that prevents the exercise of this jurisdiction by another authority. This authority is also bound not to act with the jurisdiction that the law has authorized it to exercise Either by assigning this jurisdiction or by delegating it to another party.

Introduction

And among the demands of constitutional texts that determined the competent authority to exercise the position It appears clear that a difference was made in the statement of the executive regulations and the Kent Regulations; Texts this is job is between two situations: Competent in the practice of these calls; It is the case of the legal determination of the regulatory authority executive and the mandatory effect of this limitation on the exercise of the registrar function by the authority that it is defined by the current law, any other body, from exercising that competence granted to it. Exclusive effects the exercise of the regulatory function, it is required that the authority designated by the law comply with the exercise of the statutory jurisdiction refrain from behaving with it. The second; is a state of non-statutory determination of the executive regulations the resulting corporeal power embodiment of texts in the body determined by the constitution as a basis for practicing this power function. Regulatory jurisdiction may be delegated by this

The research problem:

Constitutions, in their various texts, specify the authority that has original jurisdiction to draw up regulations However, this problematic ambiguity surrounding the exercise of the executive regulations. The study consists of the

In the event that the law does not specify the authority to which the statutory jurisdiction is entrusted, as well as inquire about Impact of the legal determination of the executive regulations?

Research methodology:

The nature of the study on this subject imposed on us the necessity of following the comparative approach between some systems Constitutional and legal matters pertaining to the officer in charge of exercising the executive statutory function; as such We have adopted the analytical approach to constitutional and legal texts and relevant opinions of administrative jurisprudence within a framework As far as I know, we weigh that with the available judicial applications.

Research Structure:

The subject of this study required dividing it by Two topics preceded by an introduction, followed by a conclusion that included the most important The findings and recommendations are as follows:

The first topic was examined: legal identification of the relevant executive regulations The first requirement: the mandatory nature of the legal decision to exercise the executive legal function The second requirement: the exclusive nature of the legal decision in the exercise of the executive legal function

The second topic: the absence of a legal definition for the relevant executive regulations The first requirement: restrict the authority of the Council of Ministers to delegate legal competence to work The second requirement: restrict the delegate's authority to exercise the executive legal function
The legal determination of the relevant executive regulations
Specify the competent authority to exercise the post in advance by constitutional rules; But the law is often issued with an explicit provision
Select the authority responsible for exercising the position
The executive regulations. This change in jurisdiction determines the dual nature of this following the selection; In the sense that it is of a mandatory nature on the one hand, and its exclusivity on the other hand, and this is what we will discuss.

The first look: The mandatory nature of the legal determination of the relevant regulatory authority
The obligatory aspect appears from the ordinary legislator's identification of the exercise of the regulatory function, with commitment The authority or body authorized by law exclusively to exercise the post, and this is confirmed by provisions Constitutional judiciary, which concluded that when the law was entrusted to a party
It should be done only The competence to exercise the post in France was divided between the Prime Minister - the Prime Minister.
- The President of the Republic and the ministers, as the French Constitution of 1958 determines the jurisdiction; He made it Accredited by the Prime Minister - Prime Minister -; The one who owns the original jurisdiction in an issue.

Regulations to The rule of Article 13 is based on the French Constitution, which: N sir that "runs the chief The ministers are the work of the government ... and shall ensure that laws are implemented. Under the provisions of Article 16, he will have Do not lose sight The authority to enact regulations ... and he may delegate ministers in some of his powers. "And we must a On the authority of Article (16) of the Constitution, which states: "The President of the Republic shall sign These are the president of decrees and orders that are deliberated on in the Council of Ministers ... ". Article was given to The Republic has the right to participate actively in issuing executive regulations; All right to sign the decrees
It is validated by the description Regulation, can not be college, but d I have real power exercised by a president The Republic, as confirmed by the French State Council in its ruling on the Sicard case; He decided that the right ',The signature of the President of the Republic does not extend only to the participation of the President in the procedures for issuing regulations Rather, his participation in the issuance of decrees means that he participates in the exercise of the executive regulatory authority that Owned by the Prime Minister within the limits subject to circulation in the Council of Ministers Although the President of the Republic has effective authority to issue executive regulations; Except this on The authority is not general jurisdiction in this regard. Whereas, the Prime Minister retains the general mandate in practice . The executive bylaw As for the authority of the ministers to issue executive regulations.
It is based on the constitution as well.
Where Article 19 of the French Constitution of 1958 indicated that the President of the Republic's actions signed it The Prime Minister and responsible ministers, if necessary, the term “responsible ministers” here; Ministers Those whose implementation of the executive regulations issued by the President of the , as such Republic relates to their jurisdiction Article 21 of this constitution permits the Prime Minister to delegate some of his powers to ministers and not Doubt that the executive statutory jurisdiction D is among the terms of reference that may.

The Prime Minister Delegate it to the ministers. As for Article 22 of the Constitution, it was stipulated that the actions of the Prime Minister sign it The ministers assigned to implement them, if necessary, reply to the term 
The Designated Ministers Those charged with implementing the executive regulations by means of decisions, instructions or regulations, or individual measures that They make it.As for Egypt; Article 170 of the Egyptian Constitution of 2014 specified the authority Competent in issuing executive regulations. Where it says: "The President of the Council of Ministers issues the regulations Necessary to implement laws .... and he may authorize others to issue them unless the law determines who issues the regulations
Needed to implement it. "From the formulation of the advanced article, it becomes clear to us that the Prime Minister has a unique right to the status
Executive regulations However, this does not mean that it is impossible for the executive regulations to be issued with a tool-less than a decision
The Prime Minister, or may not be issued except the Prime Minister, but rather on the contrary that; Where the Egyptian constitution permits the Prime Minister to delegate other administrative bodies that he chooses
In addition, the constitution permits the law to designate from him the body with which to exercise his zonal jurisdiction Ensure the issuance of its executive regulations.
On that; If the law is issued, it is specified building the authority in which the executive regulations are issued. So nThe aspect of compulsion in this determination appears in the obligation to abide by the rule of law, as the authority that appointed it must The law can issue its executive regulations only, And in Iraq; Article (80 / III) of the Iraqi Constitution of 2005 was granted to the Council of Ministers These are by statutory jurisdiction to the competence council to issue executive regulations. So I entrusted the article
Ministers and federal ministers also have the right to exercise the regulatory function whenever they are authorized by law So, this is the application of the methods used in issuing the executive regulations in Iraq. For laws that require implementation, there is a need to determine the authority that issues issuance to the issuance of executive regulations that are almost completely devoid of text.
Regulatory jurisdiction in Iraq is not only limited to federal ministries but alsoIndependent bodies with executive jurisdiction whenever the law grants them the power to issue its executive regulations, Bug bodies
The jurisdiction of this Federal Supreme Court in Iraq has been confirmed, and the judge does not
The jurisdiction of the Council of Ministers is empowered to issue the necessary instructions to implement the Political Parties Law No. 63 for the year 2015 to And that made it the prerogative of the Independent High Electoral Commission, Authorized The text of Article (4 / VIII) of the Law of this Commission No. 11 of 2007, which granted the High Commission The Independent Elections Authority has the power to establish regulations and instructions that keep the electoral process fairThe governorate councils that are not organized in the region also have the right to exercise the post
Executive to article text , And this is based on 7 / III (of the Provincial Law, which is not organized in Region No. 21 for the year 2008, as amended, granting the provincial council the authority to issue relevant implementing regulations
By organizing administrative and financial affairs so that it can manage its affairs in accordance with the principle of administrative decentralization and not
Contradicts the constitution and federal laws, but the right of governorate councils to issue executive regulations Limited to implementing the local legislations issued for it in the text of the article) Third, relying on 7 of the Provincial Governorates Law, Or legislation issued to regulate matters not within Exclusive powers of the federal authorities as stipulated in Article 115 of the Constitution And Article (7 / Second) of the Governorates Law, which is not organized in the region of the region .
The meaning of compulsion here does not depend on the necessity for the entity specified by the law itself to exercise The charter function grew beyond it, somehow Executive, and required by the constitutional nature of this function; It is a purely legislative function, Special reasons are called for It is practiced as an exception from the original meaning of this contract The job is original to the legislature; Because this authority is an exception, it must not match competence The original legislative and the administrative function must be exercised by the body designated by the law, including Prevents its circulation among several bodies, and the boundaries are lost.
This issue raises the question of whether it is permissible for the Prime Minister of France and the Prime Minister
Egypt and the Council of Ministers in Iraq, the exercise of the jurisdiction that n
It was previously promised The law to a specific authority, and its solutions in issuing the regulations implementing the law or amending the above Wa I released it.
I see in jurisprudence that this is permissible, based on the understanding that the legally defined regulations are derived Of ordinary legislation, while the territorial authority of the Prime Minister in France, Egypt, and Council Extended from the constitution six Ministers in Iraq directly. And since the requirements of His Highness the Constitution necessitates that he rise
What the constitution stipulates as determined by the ordinary legislator; Therefore, the constitutionally mandated statutory authority is entitled to:

Exercising the same statutory function that the law assigns to another authority and amending what it has issued. N was based on a traditional idea that the clash of legislation is always settled The truth is that I do not see this.

In favor of higher legislation in the ladder of legislative progression, it ignores the fact that the place of legal determination Authority has regulations.

Yeh. While in ordinary legislation, it is in fact based on a constitutional text; Therefore The legislator did not invent it from him, but it implemented it. The will of the constituent legislator is enshrined in constitutional rules

Whether written or customary; It seemed as if it was a constitutional mandate for the legislator to determine the authority in turn. The regulations he deems necessary for issuing regulations implementing his laws And since the original was in texts.

The constitution does not contradict, does not subvert, or contradict one another; It is not reasonable that Bond of the constitutional legislator the jurisdiction of a certain authority, and it is permitted for another authority to exercise it at the same time, for this reason, a part of the jurisprudence was of the opinion that the assignment of the territorial jurisdiction to one side, which determined the constitutional text, Explicit or referral makes his practice either. In such a way that no other party abstains from this practice, Even if it is among those specified by the same constitutional text, and this means that the jurisdiction in exercising the executive bylaw function, whether by means of the bylaws determined mainly in the constitution( A mother appointed by law possesses the same force of obligation because the source of this limitation is the constitution. Role.

The law, in this definition, is not a creation of territorial jurisdiction, but rather a disclosure of the will of authority The foundational authority in assigning this jurisdiction to it, and all that is there is a constitutional legislator, instead of enumerating it Entities authorized to exercise the statutory function, in such a way as to make the constitutional text broadly He is able to list those parties, and he chose to be brief, by authorizing did not Ordinary law proceeded to be determined, as Grants the Prime Minister, in Egypt and France, the authority to delegate. And the foregoing results in the appointment of the law to the regulatory authority, which obliges it to exercise the executive function, and it is prohibited Other than its performance, it is not permissible for the Prime Minister in France or the Prime Minister in Egypt or even

The Council of Ministers in Iraq to issue executive regulations or amend what

Previously issued by the Regulatory Authority Legally, as it is preferable to violating the constitutional text, according to the foregoing, it is appointed by the executive regulations; It also clashes with the law that established the jurisdiction; There is no contradiction here between a ministerial decision

Issued by the Prime Minister or the Council of Ministers to amend the bylaw and a ministerial decree to issue it, including The clash grew

It is conferred upon him by his decision in favor of the former. As the top gradient ladder, and between A decision issued by the Prime Minister or the Council of Ministers, and a legal text assigning jurisdiction to a body

Exactly. So she did her ritual work according to what she was authorized by law. It is closed, according to the same principle of gradation In favor of this brother

The second view : The exclusivity of the legal determination of the relevant regulatory authority

If the obligatory nature of the legal determination of the regulatory power is conducive to protecting jurisdiction

Regarding the authority designated by the law to be awarded by another hand, the exclusivity of this determination will lead To the refusal of the body to which this jurisdiction is assigned to dispose of it without controls, which is what is imposed The statutory authority appointed by law has two obligations: the first stipulates that jurisdiction may not be waived The regulations by the body authorized by the law to issue its implementing regulations; All of its competence to issue Sincerely, you can act on how the executive regulations, and as a shadow of a legislative function, are not a right Job grew You like. And the
constituent legislator entrusted her to a specific authority to practice it according to the borders. The controls set by the constitution. Which leads to the prohibition of its disembarkation under any circumstances.

The regulated legal authority refrains from delegating its competence to the second obligation; It is reported on Absolutely. That is, even if an explicit text is received, it authorizes it to delegate its jurisdiction; Whether this list is mentioned The text in the same law designated for the jurisdiction of the regulations, or came in another law; The reason for this is NN The constitutional mandate of the ordinary legislator is limited to granting him the authority to specify the authority responsible for issuing Only the executive regulations, Without being allowed to give her the authority to delegate her jurisdiction. If only The constituent legislator had intended the permissibility of the mandate, to be authorized by an explicit constitutional text. As he did in the article 21 of the French Constitution, which authorized the Prime Minister to delegate his bylaw to ministers, and Article170 of the Egyptian constitution, which authorized the Prime Minister to delegate his regulations.

It is prohibited, but the constitutional legislator is on the authority designated by the legislator to exercise the position Rey didn’t, and so did J The regulations authorize its competence to issue executive regulations even if the law stipulates that it authorizes it to practice By law, it is permissible to do so; Because the constitution did not stipulate that this is permissible. The legal text did not Create jurisdiction My list grew It reveals the constitutional text as the originator of this jurisdiction. Therefore, the limits of the constitutional text must be adhered to

The second topic: Lack of legal determination of the relevant executive regulations

When the law is silent on determining the regulatory authority in which the executive regulations are issued, these are Power is automatically embodied in France by the Prime Minister, as it is in accordance with Article 21 of the French Constitution for one year 1958, the person primarily concerned with issuing regulations implementing the laws. While the specialty is embodied The list in Egypt automatically is headed by the Prime Minister; Because he has the original jurisdiction to practice Article text) Regulatory function is based on 170 of the Egyptian constitution for the year 2014. Majal The ministers in Iraq are the owner of the job in case of non-determination.

The exclusive jurisdiction to practice this Item Three Article 80 of the Iraqi Constitution for the year 2005 Legal in accordance with the provisions of However, the question was raised about the extent of the commitment.

E. The authorities assigned to this authority This topic is in this Do it yourself. Or does it have the authority to delegate others the right to So it turns out that for these Do it? Wa Delegating her list authority, so are their rules governing her authority to delegate her list jurisdiction from E. The entities in the exercise of their jurisdiction, on the other hand?

Side? And the authority of who delegated this This is what we will try to investigate through the following demands:

The first view: Restricting the executive regulations to delegate the regulations

The French constitution has passed Vu The Prime Minister may instruct the ministers to exercise his statutory jurisdiction Article text) Based on 21 and Article 170 of the Egyptian Constitution was granted to the Prime Minister The right to authorize others to issue executive regulations. While the Iraqi constitution did not stipulate for a year 2005 that it is permissible to authorize the exercise of the statutory function; And thus does not have the Council of Ministers in Iraq The right to delegate the exercise of its jurisdiction to another party; Because the constitution did not stipulate permissibility that.

Although the mandate to exercise jurisdiction is regulated by the designated regulatory authority Constitutionally, it is permissible in Egypt and France, except that its authority to delegate its competence has grown

Not absolute. Wa This is represented in several restrictions that must be observed before proceeding with this mandate: The first is The Prime Minister of France and the Prime Minister in Egypt abstain from the mandate if specified.

The law is for the competent authority to issue its executive regulations; Because the jurisdiction is limited to these The case is in the authority designated by law to exercise the post, and the Prime Minister is not competent in France And the Prime Minister in Egypt to exercise statutory jurisdiction if the law specifies another To exercise the statutory function; If this mandate is done
It will have two effects: the first is not The constitutionality of the regulations issued by those who have been delegated, in violation of the rules of jurisdiction; It was issued by a party to me Constitutionally not competent. It is essentially issued on the basis of a false authorization. They are null and void.

The rule that what is built on falsehood is false.

The second effect: nullity of the mandate; Because saying that it is correct means violating the principle of legality, and leads to Whatever deviation from the principle of legislative progression, so that an administrative decision issued by the delegation will be authorized It promulgated it, in violation of the law that explicitly specified the regulatory authority.

As for the other officer, the effect is that the executive regulations may not be issued or amended by the authority

Others were previously authorized for publication; This is due to two things: the first is based on a major rule

In the mandate that it is not permissible To not The mandate to exercise jurisdiction is delegated Previously

a. And that In order to avoid conflict in the jurisdiction, and to avoid possible conflicts between what he practices Pain P and Z and what Performed by pain So, place it. The second issue is the legal nature of what he does Pain So, place it. It is practiced Constitutional function; The fact that the mandate is in fact based on a constitutional text, and this means that the establishment of power A situation The pain of issuing or amending the executive regulations authorized by others to issue them represents an attack on Specialization Constitutional for not So, place it. However, this jurisdiction may be exercised by the authority A situation when it meets The two conditions: The first is to cancel the authorization. The second is not to be Pain P for him has practiced Jurisdiction and jurisdiction The issued regulations The executive regulations authorized to be issued.

The second requirement: The authority delegated to it shall exercise the executive regulations

The French constitution permits the Prime Minister to delegate the exercise of his powers to the ministers He is prohibited from issuing this authorization to other administrative authorities. Because the constitution was not stipulated Just becauseOn the permissibility of that. While the Prime Minister in Egypt has the right to delegate his competence to the ministers or anyOther administrative bodies are chosen for the exercise of the statutory function; Al n the constitutional text that was authorized by the President The ministers authorize others to exercise their jurisdiction and an issue that does not specify a specific destination should mandate if issued is noted that the authority paint was delegated to it the exercise of statutory jurisdiction, as it was a lower original position Not absolute. And controls must not be crossed. On the one hand, is a ban) the growth has restricted the side Paintl was empowered to authorize others to issue the executive regulations that it was authorized to issue. And no executive regulations are null and void. The authority delegated to it shall issue the regulations executive branch issued it by itself, and in the event that it was not willing to issue regulations, it only had to refer to the original, to withdraw its undermining, and this is required by two of the main rules of delegation: the first is a ruleInability to delegate delegated powers. The second rule is that authorization must be made on the basis of the text of the same strength as the granting text for competence.

And because this mandate was made either by a decision of the MinisterThe first in France or from the Prime Minister in Egypt. The delegate may not delegate the jurisdiction ,The Commissioner is authorized by a similar decision. This cannot be achieved, on the other hand, the delegate cannot rely on the existence of legal texts authorizing him to delegate jurisdiction that has been delegated to it; For two reasons: The first is that the jurisdiction of the one who is delegated to himThe issuance of the executive regulations is not an original jurisdiction that it is. Wa AliExceptional jurisdiction, proven construction authorization issued by the regulatory authority with the original jurisdiction, as the original principle, is not permittedDelegated terms of reference. Rather, assuming that it is permissible, these legal texts give the minister “And other administrative bodies have the right to delegate in their fixed competences, according to laws and regulations as for the second reason, it is based on the principle of legislative progression, which leads to the jurisdiction of the entity is mandated to issue the executive regulations, which is constitutional jurisdiction; The source of the constitution. What a decision.

The mandate is only a disclosure of this jurisdiction. Consequently, it is not permissible to authorize it unless permitted by the text The Constitutional, which did not happen We believe that the Iraqi constitution stipulates that the Council of Ministers can be authorized to exercise its jurisdiction Other; Because this will contribute to the speedy issuance of executive regulations, especially the regulations, to the bodies with The cabinet is busy with matters of high importance.
Conclusion:
After completing the study of this research, we reached a set of results, which we can summarize as follows:
And the issuance of executive regulations in the authority
1. Embodied the original jurisdiction to exercise the post Authority by Prime Minister of France. The function is this. The constitution designated her as the basis for practicing these. And the Prime Minister of Egypt and the Council of Ministers in Iraq.
2. The regulatory authority with original jurisdiction cannot issue executive regulations in practice. Its jurisdiction if the law determines another body that is competent to issue its executive regulations; Al n selection. The law for the competent regulatory authority precludes the exercise of the regulatory function by another authority. Other than that specified by law.
3. The embodiment of the rational jurisdiction in the regulatory authority specified by the constitution as a basis for exercising this. The authority to issue executive regulations by itself in the event it is authorized. Job, you do not need to do this. The Constitution authorizes others to exercise its statutory jurisdiction; This is what was authorized by the French constitution. And the Egyptian, while the Iraqi constitution did not stipulate its permissibility. A position for its own jurisdiction by not exercising it, either by issuing the regulations or by amending them.
4. Committed to the lender. Issued by the authority authorized to issue it. After. However; The party can set up. File. Its jurisdiction is to be exercised if it revokes the mandate, provided that it is not the entity. Pain. May it be lost. Place it and Exercise the statutory jurisdiction issued by the executive regulations.
5. Those who are delegated to him to exercise the jurisdiction of the regulations are obligated to perform it himself, and not to authorize the practice. This jurisdiction to another party. Because delegated jurisdiction cannot be delegated.

Recommendations:
As for the recommendations that the study guides, they are:
1. We call upon the founding authority in Iraq to stipulate that it is permissible to authorize the exercise of jurisdiction. Regulations by the Council of Ministers in Iraq in the event that the law silences the determination of the competent authority. By issuing its executive regulations; This is because the Council of Ministers is concerned with large and subtle issues; This may result To delay issuing the necessary regulations to implement many laws for long periods.
2. We call the Council of Ministers to review the implementing regulations issued in light of the previous constitutions. The Constitution of the Republic of Iraq of 8773; In order to complete the foundations of the poor state of the law in Iraq. We also call on the ministries and other bodies entrusted by-laws to exercise the regulatory function. Enough regulations were issued to implement the lawfully. Job, and that With this.

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