

Tutulary Censorship of Elected Local Councils in Algerian Legislation: The Municipal People's Council as A Model

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Abstract:

The Algerian Legislator Enshrines the System of Tutulary Censorship of the Municipal People's Council through A Set of Mechanisms Directed at Members of Local Councils, whether Individually or Collectively. This Tutulary Censorship Manifests itself in Various Forms, including Dismissal, Suspension, or Even Permanent Expulsion from the Council. Furthermore; Supervisory Bodies Exercise their Authority over Members Collectively through the Dissolution Mechanism, despite the Legislator's Stipulation that its application be Limited to Specific Contexts and Justifiable Circumstances. The Authority of Guardianship also Extends beyond Individuals to Include All the Actions of the Municipal Council, as these Actions are Subject to Tutulary Censorship for Approval or Cancellation if They Violate Applicable Laws and Regulations.

Keywords: Tutulary Censorship, the Municipal People's Council, the Work of the People's Council, Members of the People's Council.

Introduction:

The Local Communities Form an Essential Part of the State's Structure. They are Geographical Units with a Specific Population, and their Local Affairs are Managed by an Elected Council. Based on this Role; They have acquired Various Names. They are Known as Regional Decentralization, referring to the Geographical Nature of the Region; Local Administration, due to the Scope of their Activity being Limited to the Local Level rather than the National Level; and Elected Local Councils, as They represent the Population through Elections. These Bodies exercise their Powers Independently within the Legal Framework, while remaining Subject to Tutulary Censorship by the Central Authority.

The Emergence of Decentralization as A Solution for Democracy within the State and the Embodiment of the Principle of Citizens Managing their Local Affairs within the Region and Reducing the Burden on the Central Administration may Clash with the Intervention of the Central Administration in the Work of these Bodies, known as Tutulary Censorship, where Problems arise regarding the Extent of the Independence of Local Groups while They are Subject to Tutulary Censorship.

The Importance of Tutelary Censorship of Elected Local Councils in Algeria is Evident in the Precise Definition of this Tutelary Censorship System and the Effectiveness of the Legal Frameworks Established by the Algerian Legislature. This aims to Ensure Monitoring the Performance of Local Councils while Simultaneously Guaranteeing their Effective Management. Hence; We Pose the Following Issue:

What is the Tutelary Censorship? And; What are its Mechanisms for the Municipal People's Council?

To Address this Issue; We adopted A Descriptive Approach, presenting Various Jurisprudential and Legal Definitions of the Tutelary Censorship and Delving into the Relevant Legal Texts. So; We Divided the Study into Two Topics: The First Examines the Conceptual Framework of the Tutelary Censorship, while the Second addresses its Mechanisms.

1st Topic: The Conceptual Framework of the Tutelary Censorship

In this Topic; We will address the Conceptual Framework of the Tutelary Censorship, in terms of Defining the Tutelary Censorship, and Clarifying its Characteristics and Importance.

1st Section: Definition of the Tutelary Censorship:

We will Discuss the Jurisprudential Definition and What is Stated in the Algerian Legislation.

– 1st Branch: The Tutelary Censorship in Islamic Jurisprudence:

The Tutelary Censorship is Considered a Necessary Administrative Function at Various Levels of Management; It is Not Limited to Senior Management alone, but also Includes the Lower Management. Although Local Communities Enjoy the Freedom to Manage their Local Affairs, this Does Not Exempt them from Oversight by the Central Authority. The Primary Purpose of this Oversight is to Preserve the Unity of the State, strengthen the Rule of Law, and Ensure the Protection of the Public Interest.¹ **The Tutelary Censorship is Defined as:**

- “A Legal Instrument by which the Unity of the State is Guaranteed, by Establishing a Permanent and Continuous Legal Relationship between the Independent Bodies and the Central Authority. The Tutelary Censorship System Also Guarantees the Independent Bodies their Right to Make Decisions in the Manner and within the Limits Prescribed by the Law”.²
- “It is an Administrative Organizational Association or Relationship that Defines the Legal Relationship between the Central Administrative Authorities and the Regionally or Technically Decentralized Institutions, Organizations and Administrative Bodies in the Administrative System in the State”.³
- “The Sum of Powers that the Law Establishes for A Higher Authority Over the Persons and Actions of Decentralized Bodies, with the Intention of Protecting the Public Interest”.⁴
- “The Tutelary Censorship is A Supervisory Authority Exercised by A Central or Decentralized Legal Entity Over the Actions and Members of a Decentralized Entity, with the Aim of Achieving the Public Interest”.⁵

Hence; The Administrative Tutelary System is A Legal Instrument that Guarantees the Unity of the State by Establishing a Permanent and Continuous Legal Relationship between Independent Bodies and

the Central Authority. Furthermore; the Tutelary System Ensures that Independent Bodies have the Right to Make Decisions within the Manner and Limits Prescribed by the Law.

– **2nd Branch: The Tutelary Censorship in Algerian Legislation:**

The Legislator Did Not Address a Clear or Comprehensive Definition of the Tutelary Censorship; As All National Constitutions, Charters and Laws Merely referred to It, as Article (15) of the Constitution (2016 CE) Stipulated: “The State is Based on the Principles of Democratic Organization, Separation of Powers and Social Justice. The Elected Council is the Framework in which the People Express their Will and Monitor the Work of the Public Authorities”.⁶ Article (16) of the Constitution of the Year (2020 CE) States: “The State is Based on the Principles of Democratic Representation, Separation of Powers, Guarantee of Rights and Freedoms, and Social Justice”.⁷

The Algerian National Charter of (1976 CE) Stipulated the Idea of Oversight, as Stated in One of its Paragraphs: “The Oversight Must Extend to the Actual Application of Laws, State Directives and Instructions, and Ensure Respect for the Rights of Discipline and Legitimacy, and Combat Bureaucracy and All Kinds of Administrative Slowdown”.⁸

As for the Laws (Regulations); the Municipal Law (11-10) and the Province Law (12-07) enshrined and the Idea of the Tutelary Censorship was Enshrined at the Expense of the Idea of the Administrative Tutelary.

2nd Section: Characteristics of the Tutelary Censorship:

The Administrative Tutelary is Characterized by A Number of Features, which We Summarize Below:

– **1st Branch: Censorship of an Administrative Nature:**

The Administrative Nature of the Tutelary Censorship Depends on these Actions being Issued by an Administrative Body in accordance with Formal Standards, and Generally Carried out through Administrative Decisions. This Censorship is Supposed to be Automatic on the Part of the Central Authority and Applied Comprehensively to Members and Popular Councils. In addition to Actions taken by Local Administrative Bodies through their Authority to Approve or Reject them, the Central Authority does not have the Power to Amend these Actions, Unlike the Hierarchical Authority which allows for the Amendment of Decisions and Actions taken by Subordinates. Likewise; This Censorship Differs from Judicial Censorship Issued by the Judiciary through Judicial Rulings, as the Latter is Limited to Verifying Legitimacy and is Carried out at the Request of the Concerned Parties.⁹

– **2nd Branch: The Administrative Tutelary is an Exceptional Censorship:**

The Administrative Tutelary is a Type of Exceptional Legal Censorship Exercised Only within the Bounds of the Law; It Can Only be Implemented by Virtue of an Explicit Legal Provision that Clearly Stipulates it. This is because the principle is the Independence of Local Authorities; Administrative Censorship is Considered an Exception that applies Only within the Framework of Specific Legal Texts that regulate it, according to the principle of “No Oversight without A Legal Text”.

Therefore; Texts relating to Administrative Censorship must be Interpreted Narrowly, given that they Deviate from the General Principle of the Independence of Decentralized Bodies. This Narrow Interpretation applies whether the Texts are Procedural or Substantive in Nature.¹⁰

– **3rd Branch: The Rule of Narrow Interpretation of Legal Texts:**

The Legal Texts relating to Administrative Tutelary, as an Exception to the General rule, are Subject to Strict Interpretation. Accordingly; These Texts may not be Interpreted beyond their Clear Meaning or ascribed to them Unintended Implications. They must always be Interpreted in accordance with the Explicit Intent of the Legislator, without Imposing Additional Restrictions on the Independence of Decentralized Bodies that were not Stipulated by the Legislator. Therefore; The Implicit Intent of the Legislator Cannot be relied Upon to Interpret Texts, nor Can Interpretation be applied in a manner that the Text Cannot bear.¹¹

Based on this Rule; if the Administrative Tutelary is Granted to a General Administrative Authority within the State, the Texts Cannot be Interpreted in a way that allows for the Transfer or Delegation of these Powers to Regional Governors. Such an Action would Constitute a Violation of the Rules Governing the Interpretation of Legal Texts related to the Establishment of Authorities and the Distribution of Powers.

– **4th Branch: Inadmissibility of the Tutelary Authorities Amending the Acts of Decentralized Administrative Authorities:**

The Central Administrative Authorities in Charge of Tutelary may not make any Modification, whether by Increase or Decrease, to the Decisions or Legal Acts Issued by Decentralized Administrative Authorities Upon Ratifying them, in Cases where the Law requires Obtaining the Approval of the Tutelary Authorities.

In this Context; The Powers of the Tutelary Authorities are Limited to Ratifying or Refusing Ratification without Making Any Amendments, as their Intervention in Amendments is Considered to be Replacing the Decentralized Authorities, which Contradicts the Principle of the Tutelary System.

2nd Topic: Tutelary Censorship Mechanisms Over the Municipal People's Council

This Censorship of Local Councils is Exercised under Municipal Law No. (11-10), serving as A Means to Ensure the Legitimacy of their Actions and to Maintain the Balance between Local Interests within the Framework of their Granted Autonomy. This Censorship is Exercised in Two Ways: Over the Members of the Councils themselves, and Over the Actions Taken by these Councils.

1st Section: Members Censorship:

The Censorship Over Members takes Two Forms; It is Done Individually and Collectively.

– **1st Branch: Mechanisms of Individually Censorship:**

• **Firstly: Dismissal:**

Article (45) of Law (11-10) Stipulates that: “Any Elected Member who is Absent without an Acceptable Excuse for More than Three (03) Ordinary Sessions during the Same Year Shall be Considered Automatically Resigned from the Municipal Council. In the Event that the Elected Member Fails to Attend the Hearing Session despite the Validity of the Notification;

The Council's Decision Shall be Considered to be in the Presence of the Member. The Absence Shall be Declared by the Municipal People's Council after Hearing the Elected Member Concerned, and the Governor Shall be notified accordingly".¹²

- **Secondly: Suspension:**

Suspension is Considered One of the Most Important Mechanisms for Individual Censorship of Members of Local Councils. Article (43) of the Municipal Law (11-10) Stipulates: "Any Elected Official who is Subject to Legal Proceedings for a Felony or Misdemeanor related to Public Funds or for Reasons Involving Moral Turpitude, or who is Subject to Judicial Measures that Prevent Him from Properly Continuing to Exercise His Electoral Mandate; Shall be Suspended by a Decision of the Governor Until a Final Ruling is Issued by the Competent Judicial Authority.¹³ In the Event that the Elected Member is Acquitted; He Shall Immediately Rejoin the Council to Perform His Duties, after the Member Concerned Submits the Document of the Final Decision Proving His Acquittal to the Head of the Municipal Council. If a Final Ruling of Acquittal is Issued; The Elected Member Shall Immediately Rejoin the Council to Perform His Duties."¹⁴

- **Thirdly: Expulsion:**

Article (44) of the Municipal Law (11-10) Stipulates: "Any Member of a Municipal People's Council who has been Convicted of a Final Criminal Offense for the Reasons Mentioned in Article (43) above Shall be Expelled by Force of Law from the Council. The Governor Shall Confirm this Expulsion by Decree".¹⁵

Therefore; It Can be Concluded that Suspension is A Precautionary Measure, while Expulsion is a Disciplinary and Punitive Measure that Entails a Penalty Leading to the Complete and Final Termination of Membership, for Reasons Specified by Law in Article (43). When A Member is Found Guilty by the Judiciary; They Cannot retain their Membership, as this would be Considered an Attack on the Credibility of the Municipal Council.

- **2nd Branch: Dissolution the Municipal People's Council as A Mechanism for Collective Censorship:**

The Dissolution is One of the Most Serious Censorship Mechanisms for the Legal Structure of the Council. Dissolution is A Supervisory Mechanism through which All Council Members are Removed and Stripped of their Positions;¹⁶ According to Article (46) of Law (11-10). The Grounds for Dissolution are As Follows:¹⁷

- In the Event of a Violation of Constitutional Provisions.
- In the Event of the Annulment of the Election of All Council Members.
- In the Event of the Collective Resignation of Council Members.
- When Maintaining the Council is A Source of Serious Imbalances that have been Proven in Municipal Management, or When it is of A Nature to Harm the Interests and Peace of Mind of Citizens.

- When the Number of Elected Members Falls Below an Absolute Majority, despite the Application of the Provisions of Article (41).
- In the Event of Serious Disputes among Members of the Municipal Council that Impede the Normal Functioning of Municipal Bodies, after A Formal Warning Issued by the Governor to the Council has Gone Unheeded.
- In the Event of the Merger, Consolidation, or Division of Municipalities.
- In the Event of Exceptional Circumstances that Prevent the Installation of the Elected Council.

The Municipal Council is Dissolved and Renewed by Presidential Decree Based on A Report from the Minister in Charge of the Interior; This is in accordance with Article (47) of the Same Law.¹⁸

Article (48) also addressed the Problem of the Municipal Council Not Being Vacant; That within the Ten Days Following the Dissolution, an Administrator and Assistants Shall be appointed by the Governor to Manage the Affairs of the Municipality, Until the New Council is Installed.¹⁹

Article (49) Also Stipulates that Elections to Renew the Municipal People's Council Shall be Held within A Maximum Period of Six Months, Starting from the Date of Dissolution. However; It is Not Possible under Any Circumstances to Hold these Elections in the Last Year of the Electoral Term. The Term of the New Council Shall End with the Expiration of the Remaining Period of the Electoral Term of the Elected Council that was Dissolved.²⁰

2nd Section: Censorship of the Work of the Municipal People's Council:

The Guardian Exercises Many Forms of Censorship Over the Deliberations of the Municipal Council; As Evidenced by the Municipal Law regarding Ratification, Invalidation, and Dissolution.

– 1st Branch: The Ratification (Authentication):

It takes Two Forms; Explicit or Implicit Ratification.

▪ Firstly: Implicit Ratification:

Article (56) of Law (11-10) Establishes A General Principle; The Deliberations of the Municipal People's Council become Legally Binding (21) Days after their Submission to the Wilaya (Province). During this Period; The Wali (Governor), by Virtue of His Delegated Powers, examines the Legality of these Deliberations.²¹ However; The Article Does Not Specify the Legal Instrument by which the Wali, as the Supervisory Authority, expresses His Opinion. The Governor's Relationship with Local Communities is Considered More Consultative than Strictly Censorship. Furthermore; Setting A 21-Day Deadline for A Response Grants the Municipality the Right to Implement its Deliberations Immediately Upon the Expiration of this Period, even without A Response from the Supervisory Authority. This Implicitly Indicates the Wali's Approval of those Deliberations. This Measure aims to Prevent the Municipal People's Council's Decisions from being Stalled while Awaiting Explicit Ratification.²²

▪ **Secondly: Explicit Ratification:**

The Governor may Issue a Decision to Explicitly Approve Deliberations, in accordance with Article (57) of Law (11-10), which reads As Follows: “The Following Deliberations Shall Only be Implemented after Approval by the Governor:

- Budgets and Accounts.
- Acceptance of Foreign Donations and Bequests.
- Twinning Agreements.
- Transfer of Municipal Real Estate.”.

Article (58) Further Stipulates: “When the Governor is Notified for Approval of the Cases Stipulated in Article (57) Above, and Does Not Issue His Decision within Thirty (30) Days from the Date of Filing the Deliberation with the Governorate, the Latter Shall be Considered Approved”.²³

It is Noteworthy that the Legislator Intended, through this Article, to Mitigate the Burden of the Explicit Approval Requirement and the Resulting Delays or Disruptions to Administrative Activity. In the Event that the Governor Does Not Issue His Decision within the Specified Timeframe; Explicit Ratification Automatically becomes Implicit Ratification. This means that Deliberation Can Proceed even if it Concerns One of the Topics Mentioned in Article (57) Once the Thirty-Day Period has Elapsed.

2nd Branch: Annulment (Voidness):

Annulment is A Procedure by which the Tutelary Authority Can Nullify a Decision Issued by Elected Popular Councils due to its Violation of a Legal Rule or its Infringement Upon a Public Interest. This Intervention takes Two Forms: Absolute Nullity or Relative Nullity.

▪ **Firstly: Absolute Nullity:**

Article (59) of Law No. (11-10) Concerning Municipalities Specifies the Cases that Lead to the Automatic Nullification of Deliberations. Deliberations are Automatically Nullified If:²⁴

- They are taken in Violation of the Constitution and Do Not Conform to Laws and Regulations.
- They Infringe Upon the Symbols and Emblems of the State.
- They are Not Written in Arabic.

The Governor Shall Confirm the Nullity of the Deliberation by Means of a Decision.

The Reasons Stated in Article (59) of the Aforementioned Law; The Invalidity of the Municipal People's Council's Deliberations was attributed to Ensuring Respect for the Principle of Legality and the Hierarchical Structure of the State, by Adhering to: the Constitution, the Law, the Presidential and Executive Decrees, and the Ministerial Regulatory Decisions. This was Followed by the Establishment of Specific Guidelines regarding State Symbols and Emblems, and Anything that might tarnish the Nation's Glory, its Enduring Legacy, or its illustrious Past. The Usage of Arabic was Emphasized as the Official National Language, as Stipulated in Article (53) of the Same Law: “The Deliberations and Proceedings of the Municipal People's Council Must be Conducted and Recorded in Arabic”.²⁵

▪ **Secondly: Relative Nullity:**

According to Article (60) of Law No. (11-10), the Deliberations of the Municipal People's Council are Subject to Invalidation if the Interests of the Council Members Conflict with the Interests of the Municipality. The Mayor or Any Member of the Municipal Council whose Interests Conflict with those of the Municipality, whether in their Personal Capacity, or that of their Spouse, Ascendants, Descendants Up to the Fourth Degree, or as Agents, may not attend the Deliberation addressing the Matter in Question. Failure to do so will render the Deliberation Invalid, as Determined by a Reasoned Decision from the Governor.

Any Member who Finds themselves in a Conflict of Interest must Declare this to the President of the Municipal Council. If the President of the Municipal Council is also in a Conflict of Interest; They must Declare this to the Municipal Council they Preside Over.²⁶

The President of the Municipal People's Assembly may also File either an Administrative Grievance or a Lawsuit before the Competent Authorities against the Governor's Decision Proving the Invalidity of the Deliberation or Refusal to Ratify it.²⁷

– **3rd Branch: The Governor's Authority to Replacement (Dissolution) of the Work of the Municipal People's Council:**

Article (100) of Law (11-10) regulates the Governor's Replacement (Dissolution) of the Municipality in the Field of Administrative Control. The Governor may take, with Respect to All or Some of the Municipalities of the Province, All Measures related to Maintaining Security, Cleanliness, Public Order, and the Continuity of Public Services, when the Municipal Authorities Fail to Do so, particularly regarding Electoral Processes, National Service, and Civil Status Matters.²⁸

Article (101) of the Aforementioned Law Also affirms the Governor's Authority to Replace (Dissolution) the Head of the Municipal Council after Formally Notifying Him of the Latter's Failure to Make Decisions Mandated by Laws and Regulations. This Provision is Broad and General, as the Failure of the Head of the Municipal Council to Make Decisions within His Legally assigned Responsibilities Empowers the Governor to Assume His Position.²⁹

Furthermore; Article (102) adds that the Governor has the Right to Intervene to Ensure the Budget's Approval and Implementation in the Event of a Disruption in the Municipal Council that Prevents its Vote. According to Article (186); The Governor then Convenes the Municipal Council for An Extraordinary Session to Approve the Budget.³⁰

Article (142) refers to Another Form of Administrative Replacement (Dissolution); It is represented in the Governor's Authority to Issue an Order for the Automatic Deposit of Documents in the State Archives, especially Documents of Importance, particularly in the Event of the Mayor's Failure to Carry Out the Procedures Necessary to Preserve them, especially Civil Status Records, Plans (Schemes), Land Survey Records, and Financial and Accounting Documents.³¹

Conclusion:

After Studying the Issue of Tutelary Censorship Over the Municipal People's Council, based on the Municipal Law; It Becomes Clear that the Tutelary Censorship System is Moving towards Reinforcing the Concept of Administrative Centralization at the Expense of the Independence of Local Bodies. This is Evident in the Continuous Intervention of Central Authorities, which Strengthens the Governor's Power at the Expense of the Freedom of Local Councils. Our Study Has Yielded Several Conclusions, including:

- The Tutelary Censorship remains One of the Fundamental Pillars for Regulating the Relationship between the Central Authority and Local Bodies, ensuring Respect for the Principle of Legality and Protecting Public Order.
- The Tutelary Censorship is Considered Legal Oversight, as the Guardianship Authority (Tutelary Authority) Can Only Exercise it by Virtue of a Legal Text, according to the Rule: “There is No Guardianship Except by Legal Text”.
- Decisions of the Local Body are Not Valid Until Ratified by the Tutelary Authority, which may be Explicit or Implicit.
- Oversight by Exclusion (Exclusion Censorship) may be Exercised in Cases of Criminal Conviction of Members of the Municipal People's Council.

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