

The Role of Administrative Actions in Fighting the Coronavirus Pandemic in Iraq

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ABSTRACT

The objective of this article is to assess the efficacy of preventive administrative actions for the containment of the coronavirus pandemic in Iraq. In particular, the article examines the extent to which administrative authorities can strike a balance between the constitutional rights of individuals and the public interest in their fight against this pandemic. Given its law-oriented nature, this article employs a qualitative, analytic research methodology. It builds on laws, constitutions, textbooks, journals and newspaper reports, as well as official publications by governments and international bodies. Specifically, it identifies administrative decisions, laws and other measures relevant to the coronavirus pandemic and proceeds to subject them to rigorous analysis. A key finding is that administrative actions can be effective in curbing the coronavirus pandemic in Iraq. However, they have two limitations. First, is the extent to which administrative procedures are subject to the principle of legality and judicial oversight. An important question is raised as to how to reconcile administrative actions meant to protect public health with constitutional rights guaranteed in Chapter II of the Iraqi constitution of 2005. Second, the formation of various committees, which issue diverse decisions to tackle the pandemic hinders coordination and consistency in decision-making. This article concludes that administrative actions would be more effective in combatting the coronavirus pandemic, if administrative authorities in Iraq remain bound by the law. It suggests that the present health situation should not be used as a justification for the abuse of authority under the pretext of public interest. To harmonise private interests protected by the law and the state's interest in preserving public health, administrative actions must be properly coordinated, fair and equitable. In this context, the Iraqi administrative judiciary must exercise greater oversight over the actions of administrative authorities.

Keywords: administrative actions; administrative authorities; Coronavirus; Iraq.

INTRODUCTION

Since ancient times, the world has experienced several pandemics, which have claimed large numbers of human lives. This can be attributed, in part, to insufficient interest in the health sector and scientific development in therapeutic medicine catering to disease treatment, compared to global advances in other areas of life. Not surprisingly, despite the overall scientific development that humanity has, so far, recorded in pandemic control, especially in developed countries, pandemics continue to constitute the first health challenge globally (Nurbaeti et al., 2021). Thus far, coronavirus cases have been reported in a total of 215 countries and territories, compelling the adoption of new measures, such as social distancing and stay-at-home (Alameri & Al-Tkhayneh, 2021). The widespread of the coronavirus and high levels of infections, as well as deaths are evidence that therapeutic

medicine and its development alone cannot provide solutions for the pandemic. As a result, countries are having to adopt other therapeutic methods and solutions to prevent or, at the very least, reduce its spread. Administrative actions and the preventive health management that accompanies them, are among the most important measures adopted by countries to curb the spread of the pandemic and ensure the maintenance of public health.

In Iraq, administrative authorities seek to maintain public order and social stability in one way or another, within the confines of the law. Administrative actions are considered to be the most important and appropriate means of discharging this function, whether under normal or exceptional circumstances. Therefore, in the case of the coronavirus pandemic, administrative authorities must take appropriate actions to contain its spread.

Under Article 3(2) of the Iraqi

Public Health Law No. 89 of 1998, the Ministry of Health is the sole organ responsible for combating, monitoring and preventing the spread of communicable diseases. Article 46(1) of the same law authorises administrative authorities associated with the Ministry of Health to enter and inspect public places for the purposes of conducting tests and detecting people infected with viruses. Pursuant to the same provision, administrative authorities also have the right to isolate infected people, impose and organise quarantine for a duration determined by them. Thus, on the basis of the Public Health Law, Iraq's Ministry of Health and associated administrative authorities have the responsibility to take preventive actions to limit the spread of coronavirus infections.

This article assesses the efficacy of preventive administrative actions in Iraq for the containment of the coronavirus pandemic. Particularly, it examines the extent to which administrative authorities can reconcile the constitutional rights of individuals with the public interest amidst the exceptional circumstances presented by the coronavirus pandemic. Relying on a qualitative research methodology involving a critical analysis of administrative decisions, laws and other measures relevant to the pandemic, this article finds that administrative actions can be effective in curbing the coronavirus pandemic in Iraq.

However, such actions face two limitations. The first relates to the extent to which administrative procedures are subject to the principle of legality and judicial oversight. A vital question is how to compel individuals to comply with administrative actions, bearing in mind the constitutional rights guaranteed in Chapter II of the Iraqi constitution of 2005. The challenge is how to reconcile individual rights guaranteed by the constitution with the state's obligation to protect public health. Second, the formation of various committees by the Iraqi Council of Ministers to address the coronavirus

pandemic limits coordination and consistency in decision-making as these committees issue diverse and often conflicting decisions.

This article concludes that, in combatting the coronavirus pandemic, Iraq's administrative authorities must remain bound by the constitution and other applicable laws. It suggests that the present health condition should not be a justification for the abuse of authority under the guise of public interest. Moreover, to integrate private interests protected by the Iraqi constitution and other relevant laws with the state's obligation to preserve public health, administrative actions must be properly coordinated, fair and equitable. In this connection, Iraq's administrative judiciary must exercise greater oversight over the actions of administrative authorities.

Administrative Actions: Conceptual Meaning

Today, in addition to its ministerial functions, the executive authority performs many other functions, which are quasi-legislative and quasi-judicial in nature. The executive imposes fines, punishments and confiscation of goods (Takwani, 2010). In line with the steadily increasing functions of government, states have begun to adopt a new philosophy adapted to the changes in society, not only in the sovereign, but also in the political, socio-economic and health realms (Upadhaya, 2009). The latter is regarded as the most critical, particularly in light of the outbreak of the coronavirus. It is clear that a wide range of government activities falls under the purview of 'administrative action,' and that administrative authority is not limited to the judicial or legislative bodies. Indeed, as explained below, the executive authority, with residuary functions, may perform legislative or judicial functions (Basu, 2019).

According to Halsbury's Laws of England, regardless of how the term, 'executive' or

'administration' is used, there is no indication that executive authority is limited exclusively to executive or administrative functions. The executive branch performs administrative functions that include issuing decisions, preparing and adapting plans, as well as issuing and cancelling licenses. It also discharges quasi-legislative functions represented by development of rules, regulations, by-laws to fix prices and so on. Likewise, the executive discharges quasi-judicial functions, such as investigation, prosecution, adjudication, as well as imposition of fines and punishment (Upadhaya, 2009).

Therefore, 'administrative action' is a comprehensive expression, in itself, which covers all of its manifestations. In fact, administration is the meeting point of three types of government functions, with the executive performing the residue of all of the functions that have not been vested in the legislature and the judiciary (Wolf, 2017).

It may thus be said that administrative action refers to any decision taken or not taken by a state organ, either a natural person or a legal entity, in the exercise of public authority, the performance of a public function or the exercise of discretion under specific legislation or the constitution. These decisions may be taken in normal or exceptional circumstances to face an emergency, such as the coronavirus pandemic, even though they may also undermine the rights and freedoms of individuals due to the misuse of administrative power or discretion (Nour, 2020).

Generally, administrative actions aim to achieve specific purposes, such as the protection of public order, health and tranquility. Public health, itself, is strictly speaking, a component of public order. Administrative actions taken in this regard are intended to protect the health of citizens from epidemics, pandemics and other infectious diseases. They are also meant to prevent the spread of diseases by preparing

the necessary procedures for vaccination, as in the case of the coronavirus pandemic, which emerged more than a year and a half ago, and continues to threaten human lives.

Administrative Actions as a First Line of Defence in the Fight Against Coronavirus Pandemic

The novel coronavirus was first discovered in Wuhan City of the Hubei territory of China (Zhu, Wei & Niu, 2020). Symptoms first appeared in a patient with inexplicable pneumonia (Zhu, Wei & Niu, 2020). However, the disease later spread steadily all over the world in December 2019. It was subsequently confirmed as the pathogen for the novel coronavirus (Cheke et al., 2020). The World Health Organisation (WHO) later labelled the coronavirus outbreak as a pandemic (BBC, 2020). In crisis times as in this pandemic, administrative actions become most important. Such actions are, at the same time, accompanied by a layer of complexity, especially when individual rights and freedoms are compromised (Davenport, 2020).

In the wake of the coronavirus crisis, the first response action adopted by states was to impose a set of administrative actions to control its spread. The process of adopting administrative actions was relative, as it varied from state to state. The most critical challenge to these actions is the extent to which they are subject to the principle of legality and committed to the preservation of individual rights and freedoms. Their nature and scope may be narrow or expansive, depending on the circumstances of a state, whether normal or exceptional (Ali, 2020). In exceptional circumstances, the closure of public places and airports, as well as the imposition of travel ban and curfew, were some of the administrative decisions taken. The pertinent question here is whether these decisions should be subject to judicial control or considered as exceptions to the rule. Since they undoubtedly affect individual rights and freedoms, they may be seen as exceptions.

In France, for example, Article L3131 of the Public Health Act No. 526 of 2009 provides that the Minister of Health can take decisions in the interest of public health. Under that provision, the Minister determines any measures to be taken, which are commensurate with existing risks. These decisions must be appropriate to spatial and temporal conditions to prevent or reduce the consequences of risks.

Similarly, in the wake of the coronavirus pandemic, the government in Morocco took a series of measures and decisions to counter its impact. A state of health emergency was declared (Qader, 2020). The Moroccan government based its decisions on the Moroccan constitution of 2011. Chapter 20 thereof stipulates that the right to life is the foremost fundamental right guaranteed by the constitution. Further, under Chapter 21, the constitution guarantees public freedoms, including the right to health, movement and property. It is well-known that the WHO has recognized the right to health as a fundamental human right (Zainudin and Zahir, M. Z. M 2021).

Another comparison can be made with Malaysia. The source of the Malaysian federal government's power to manage the coronavirus pandemic can be found in the Ninth Schedule. This comprises Item 3, which is the Federal List on Internal Security that includes public order; Item 14, relating to the Federal List on Medicine and Health and Item 7, which is the Concurrent List on Public Health, Sanitation and the Prevention of Diseases. In relation to public order, the National Security Council (NSC) is the Malaysian government agency entrusted with the national policy, management, mechanism and disaster aid. Under Directive No. 20, the NSC has the mandate to coordinate and execute appropriate actions during disasters, including pandemics. It is governed by the National Security Council Act (Act 776). In respect of health, Malaysia's Ministry of Health has responsibility for medicines and health. This mandate covers hospitals, clinics and dispensaries, among others.

Malaysia has an efficient and widespread healthcare system that can be thought of as a two-tiered system comprising a government-based universal healthcare system and a coexisting private healthcare system (Zainudin, 2021). Operating in a federal system, the Ministry of Health has health departments in all states of the country. The Ministry is divided into three levels: federal, state and district, each of which is decentralised to maximise efficiency. A structure of authority, information flow, accountability and supervision is established at each hierarchical level. This system encompasses all facets of healthcare, including preventative, promotional, curative and rehabilitative care (Thomas, Beh and Nordin, 2011).

In relation to infectious diseases, Section 2 of the Control and Prevention of Infectious Disease Act 1988 (Act 342) defines 'infectious disease' as any disease specified in the First Schedule. There are 30 diseases listed in that Schedule, such as Avian influenza, malaria and Ebola. On 9 June 2020, the Schedule was amended to include coronavirus.

ADMINISTRATIVE ACTIONS IN IRAQ

Iraq, like other countries, has been hit by the coronavirus pandemic. The impact has been severe, with high infection rates and significant levels of mortality. During the second community wave that occurred in 2021, the number of coronavirus cases continued to rise. A total of 327, 172 cases were reported through Week 14 of 2021. According to WHO, between 3 January 2020 and 2 November 2021, there were 2,065,127 confirmed coronavirus cases in Iraq, with 23,399 deaths. A total of 9,632,835 vaccine doses were administered as of 2 November 2021 (WHO, 2021).

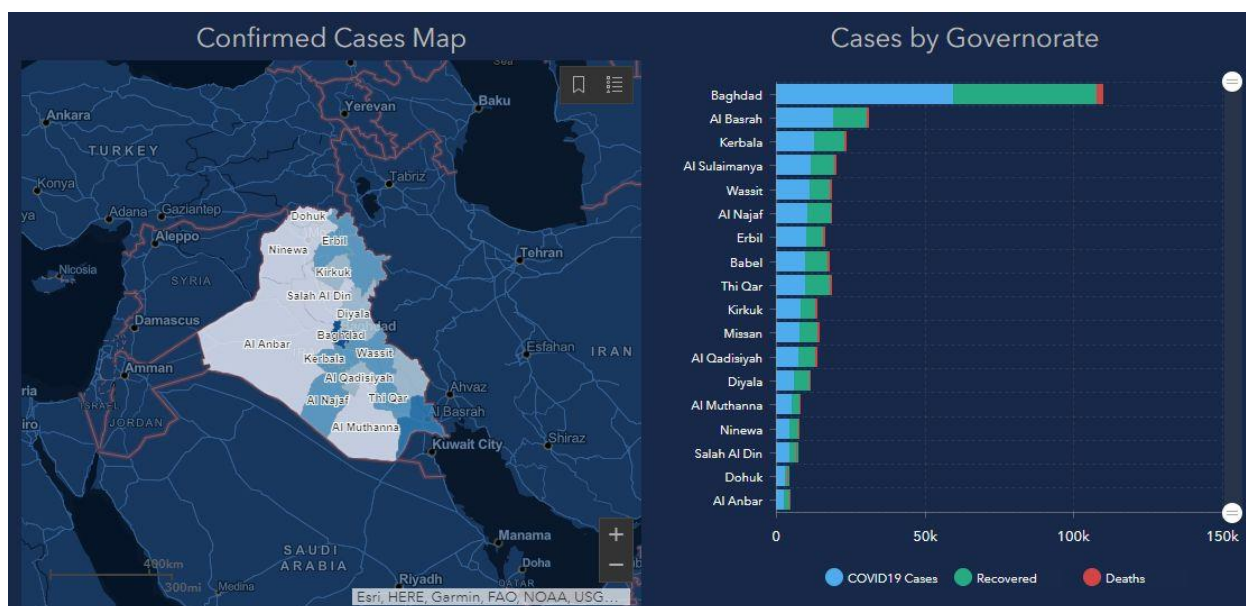


Figure 1. Confirmed Coronavirus Cases in Iraq by Governorates

Source: <https://coronavirus-covid-19-iraq-atlasgis.hub.arcgis.com>

In terms of the spatial distribution of coronavirus infections, the western and southern regions of Iraq have the highest vulnerability rates. However, Baghdad remains the pandemic's epicenter, accounting for more than half of the cases nationwide (Phadera et al., 2020). The capital city has the highest population density in Iraq. To combat the coronavirus pandemic, it is divided by the Ministry of Health into three districts namely, Karkh, Rusafa and Medical City. Between December 20 and 27, 2020, the number of coronavirus cases in Baghdad alone exceeded 1,000, out of a total of 2,276 nationwide (WHO, 2020).

Figure 1 below depicts the map of Iraq. Confirmed coronavirus cases are highlighted in blue, deaths in red and recoveries in green. It can be observed that the highest percentage of all three types of cases has, so far, been in Baghdad, owing to its larger population, as well as in several southern governorates.

Protective Measures

In response to the exceptional circumstances caused by the coronavirus pandemic, the Iraqi government has taken a range of legal and material measures to reduce the spread of infections. Article 9(c) of the Iraqi constitution gives the Prime Minister the necessary powers to manage the country's affairs in exceptional circumstances or state of emergency. Accordingly, and similar to the rest of the world, the Iraqi government has taken several actions in dealing with the pandemic. It has employed legal measures through administrative decisions and orders, which it has also sought to implement by force, where necessary. Additionally, the government has relied on health and preventive measures adopted by the Ministry of Health and its medical personnel to face the pandemic.

Legal Measures

If laws, instructions and regulations are followed strictly, there would be a decline in the number of people infected with the coronavirus. As the case of India shows, non-compliance with rules results in disastrous consequences (Ali, 2020). In late

April 2021, the number of new laboratory-confirmed coronavirus cases in India exceeded 400,000. This huge figure is terrifying (Nesteruk, 2021). In the case of Iraq, governmental measures to combat this pandemic were implemented in two phases. The first, which started at the beginning of the crisis, involved a set of general decisions that were taken under the *Diwani* Order Committee (DOC) No. 55 of 2020, chaired by the Prime Minister. They included the following measures:

1. A total curfew imposed in the capital, Baghdad, and the suspension of official working hours in all ministries, institutions, administrative authorities, local governments and non-governmental organisations, except for the security, health and authorised media sectors.
2. Empowerment of governors to impose curfews in their governorates.
3. Suspension of flights, closure of airports and suspension of movements between Iraqi provinces.

In the second phase of governmental measures, which started as the pandemic worsened, the Council of Ministers established a Higher Committee for Health and National Safety (HCHNS) on 26 March, 2020 under the Higher Committee for Health and National Safety Orders No. 35 of 2020. That decision provided for the HCHNS:

1. To be chaired by the Prime Minister and composed of several other ministers, the Secretary-General of the Council of Ministers, the Governor of the Central Bank of Iraq, the National Security Advisor, as well as other officials.
2. To have the mandate of setting out policies and adopting necessary

measures to contain the coronavirus.

3. To coordinate with the Council of Representatives (parliament), the judicial authorities and relevant international organisations.
4. To be composed of sub-committees that carry out specific tasks and linked to the HCHNS.
5. The decision also provided for the *Diwani* Order Committee to be responsible for the direct therapeutic and preventive aspects of the response measures, including the provision of health services to citizens. Also, this committee is to submit its recommendations to the Prime Minister for approval.

Moreover, the HCHNS is to continue to bear responsibility for the adoption of necessary preventive actions and the delivery of coronavirus health services, subject to the Prime Minister's approval. These 'crisis committees' were set up in all Iraqi provinces and granted broad powers. Their mission is to monitor the spread of coronavirus, prevent its transmission, as much as possible, in other areas where no cases have been recorded, and work to implement their decisions throughout Iraq (Government of Iraq, 2020).

The central committee and subcommittees have taken steps to combat the coronavirus pandemic. Those steps amount, in nature, to administrative decisions, which are, accordingly, subject to oversight by Iraq's administrative judiciary. Also, administrative actions to maintain public order, particularly the element of public health, must be reconciled with the reasons why the administration issued them and the underlying objectives. This is especially vital as there may be tension between decisions taken and the principle of legality.

Specifically, administrative decisions may restrict individual freedoms guaranteed by the Article 46 of the Iraqi constitution, which states that ‘restricting or limiting the exercise of any of the rights or liberties stipulated in this Constitution is prohibited, except by a law or on the basis of a law, and insofar as that restriction or limitation does not violate the essence of the right or freedom.’ For example, the movement control orders involving the closure of shops, schools and universities, as well as the imposition of certain fines, restrict individual freedoms.

This article argues that, in combatting the coronavirus pandemic, Iraq’s administrative authorities should strike a balance between public and private interests. The two essential elements of legality and compatibility must be integrated. Even where the legality element does not hold due to exceptional circumstances, the appropriateness element² must exist for administrative decisions to be valid. In other words, administrative decisions must be based on valid, proper, adequate and communicated reasons. In this sense, any decision taken must be the only and most appropriate one to ward off the pandemic's threat to public health.

Thus, while measures taken to curb the coronavirus pandemic may be viewed as exceptions, nevertheless, the existence of exceptional circumstances does not justify the violation of individual rights by administrative authorities.

In the above regard, it is worth noting that Iraq already has several administrative laws that are equally applicable in the coronavirus context to regulate matters, such as illnesses and sick leave of public servants. In such cases, appropriate actions can be taken under the State and Public Sector Employees Discipline Law No. 14 of 1991 and the Civil Service Law No. 24 of 1960. For example, Article 46 of the Civil Service Law provides a mechanism by which leave may be granted for a certain duration on

health grounds, with full, half or no pay.

The above laws also establish legal procedures that must precede administrative decisions so as to prevent harm to employees and protect their rights. Where a public servant is believed to have committed an unlawful act, for example, Article 10 of the State and Public Sector Employees Discipline Law mandates the formation of a three-member investigative committee comprising, at least, a lawyer to hold a fair hearing before any disciplinary sanctions can be imposed. Failure to comply with this procedure will result in the nullity of any administrative decision taken. This is an effective method to curb abuses, ensure justice for individuals and also shield administrative authorities from criticism.

Moreover, under Article 15 of the State and Public Sector Employees Discipline Law, public servants affected by sanctions imposed by administrative authorities have the right to submit a written grievance to those authorities. Where their grievances are not resolved satisfactorily, they can appeal to the administrative courts to review the administrative decisions, with the possibility of further appeal to the Supreme Administrative Court.

The above mechanisms can be translated into the coronavirus frameworks. Therefore, in grappling with the pandemic, administrative control decisions cannot simply be based on discretionary powers. Even when taken in exceptional circumstances, such decisions may still be annulled by the administrative judiciary in Iraq, if they lack the element of appropriateness, both in terms of the giving of reasons justifying their adoption and the fulfilment by those reasons of relevant conditions, such as whether they are valid, proper, adequate and communicated to affected parties.

Use of Force (Direct Implementation)

Individuals are generally bound by the legal means through which the state carries out

administrative actions, such as decisions, orders and regulations issued by administrative authorities (Takwani, 2010). Amidst the rapid spread of the coronavirus, which has directly impacted various areas of life, including education, health, agriculture and the general economy (Nair, Hunt & Jayabalan, 2021), administrative authorities in Iraq have adopted a series of decisions, instructions and orders aimed at containing the spread of the virus.

Those measures, which extend to travel bans, curfews and closure of stores, impose restrictions on individual rights and liberties. Indeed, they violate the principle of legality enshrined in the constitutions of many states, including the Iraqi constitution of 2005. Part II of this constitution guarantees the rights and freedoms of citizens. Worse still, the authorities have expanded their administrative powers, resorting to the imposition of fines, use of force and, occasionally, violence, in enforcing their decisions regarding the coronavirus pandemic under the guise of public interest.

The question then becomes whether administrative authorities in Iraq may compel individuals to comply with administrative actions, particularly decisions relating to the coronavirus pandemic, when they object to such measures to the potential jeopardy of public order and health. In Iraq, where individuals fail to abide by administrative actions, administrative authorities have the power to enforce their decisions and compel compliance. The use of force, that is, forced implementation, is viewed as integral to the performance of administrative functions. This responsibility falls on administrative authorities. They are responsible for carrying out these measures in the name of public interest, and this is one of the reasons why the permissibility of such an approach is specified in the law (Noor, 2020).

According to Article 39 of Iraq's Penal Code No. 111 of 1969, administrative actions are not considered criminal and the administration incurs no liability, if their

actions fall within legally prescribed duties. Article 40 of that law provides more details. It stipulates that there is no crime, if administrative authorities act under the following circumstances. First, if they believe that their administrative actions are fair and consistent with applicable laws and judgments, or if they believe that such actions are not beyond their powers. Second, if they take specific actions in response to orders issued by higher authorities. They are under obligation to carry out such orders.

By implication, administrative authorities must demonstrate that their actions are legal and based on reasonable grounds in the two situations alluded to above. They must also show that they did not carry out their actions until appropriate precautions were taken. In the second situation above, there is no crime, if the law forbids further deliberation on and departure from decisions issued by higher authorities. Impliedly also, administrative actions, whether issued in normal or exceptional circumstances, as presented by the coronavirus pandemic, will be subject to judicial control. As discussed above, and more extensively below, in Iraq, there is an administrative judiciary, which is a specialised judicial organ constituted by administrative courts. These courts are separate from those of the conventional judiciary. They are the competent judicial bodies vested with the jurisdiction to determine the validity of decisions issued by administrative authorities.

JUDICIAL CONTROL OVER ADMINISTRATIVE ACTIONS IN IRAQ

In Iraq, there is a State Council, which embodies the administrative judiciary. This Council performs a crucial judicial role. It consists of two judicial bodies: the administrative courts and the staff courts. The former hears grievances arising from the decisions of administrative authorities, while the latter deals with personnel disputes. Under the State Council Law No.

71 of 2017, the administrative judiciary in Iraq has the power of review in two situations: first, Article 7(4) of that law empowers the administrative and the staff courts to review decisions issued by administrative authorities when challenged by affected parties and second, Article 2(4) empowers the Supreme Administrative Court to review the decisions of both the administrative and the staff courts, when individuals appeal against them.

Grounds for Judicial Review in Iraqi Administrative Law

According to Article 7(5) of the State Council Law, there are three main grounds for judicial review in Iraq:

1. **Illegality:** where administrative actions violate laws, regulations, instructions or by-laws.
2. **Procedural impropriety:** where an administrative authority issues an order or a decision in a manner that is inconsistent with the rules of jurisdiction or that is defective in terms of form, procedure, object or reason.
3. **Irrationality or unreasonableness of administrative actions:** where an order or a decision contains an error in the application or interpretation of applicable laws, regulations, instructions or bylaws. This also covers cases where decisions are deficient in form or involve abuse, arbitrariness or a deviation in the use of power or where an administrative authority refuses or delays in making a decision or issuing a legally required order.

As for administrative actions aimed at addressing exceptional situations, such as the coronavirus pandemic, the administrative judiciary has tended to adopt the principle of proportionality by

considering the circumstances that led to the administrative decisions. However, in Iraq, the principle of proportionality applies quite differently when the country is in exceptional circumstances like the coronavirus pandemic. This is because the law grants broad powers to administrative authorities in such situations. They enjoy broad freedom in choosing appropriate measures to deal with the crisis. Thus, in this case, the administrative courts must exercise appropriate control by assessing the proportionality between the decisions taken and the seriousness of the 'exceptional' circumstances they are meant to address (Hassan, 2020).

Incontrovertibly, the coronavirus poses a public health risk. Administrative authorities must take appropriate actions to deal with it. The required decisions may be taken at two levels: first, the Ministry of Health, which takes its decisions under the Public Health Law, and second, the crisis committee established by the Iraqi Prime Minister to combat the pandemic. This article argues that the duplication of decision-making is inappropriate in a critical situation, such as the coronavirus pandemic. First, on a general level, decisions taken by each of these bodies are bound to impact individual rights and freedoms. Second, when two administrative authorities issue decisions on the same matter, the problem of overlap and jurisdictional dispute will likely arise. The administrative judiciary will then be preoccupied with two disputes. First, is the dispute between aggrieved individuals and the administration. Second, is the dispute between the administrative authorities themselves. Here again, like the proverbial 'grass' that suffers when two elephants fight, the individual will be the victim.

CONCLUSION

The great scientific advancement that humanity has so far attained in combating various pandemics stood helpless in the wake of the coronavirus. Countries across

the world recognise that this pandemic is the number one global health problem today. The spread of the virus and increase in infections and deaths provide clear evidence that therapeutic medicine and its development alone cannot grapple with this pandemic. Therefore, administrative procedures have proven to be the first response measures adopted by countries, in addition to medical and therapeutic methods. In Iraq, administrative actions have played a major role in limiting the spread of the pandemic.

However, in carrying out their administrative actions, administrative authorities, face major obstacles represented in the reluctance of individuals to comply with those measures. Further, in most cases, there is palpable inability on the part of administrative authorities to strike a balance between the constitutional rights of individuals and the public interest. Administrative procedures adopted at the beginning of the spread of the pandemic were unclear and in conflict with the Iraqi constitution of 2005, as well as related laws. Additionally, the authorisation of newly established committees under a cabinet decision for the purposes of dealing with the coronavirus pandemic contradicts the Public Health Law, which vests the Ministry of Health with the exclusive right to deal with infectious diseases. Further, Iraq's administrative judiciary has not quite performed its role in reviewing the actions of administrative authorities taken to confront the pandemic.

RECOMMENDATIONS

Based on the above findings, this article makes several recommendations. Iraq's administrative judiciary must actively perform its oversight function over the actions of administrative authorities aimed at tackling the coronavirus pandemic. It should be willing to nullify any decision that is arbitrary, unreasonable or issued in bad faith or in violation of the principle of legality. No doubt, despite its nascency,

Iraq's administrative judiciary is playing an increasingly evolving role in reviewing administrative measures in the country. In the context of the coronavirus, however, it must be more judicially active in reviewing the reasons for administrative decisions and actions.

With regard to the administrative authorities in Iraq, it is suggested that they should abide by the constitution and other relevant laws, even in the context of the coronavirus pandemic. This crisis should not be used as a justification for the abuse of authority under the pretext of the public interest. Moreover, only one authority should be charged with the responsibility of dealing with the pandemic. The formation of multiple committees to address the crisis is not only contrary to an existing law like the Public Health Law of 1998, but also creates overlap and jurisdictional conflicts that have a tendency to undermine individual rights and freedoms. Having a sole authority to handle the crisis will also facilitate the task of the administrative judiciary in discharging its oversight function over administrative decisions.

A further recommendation is that when adopting measures, such as the imposition of curfews and stay-at-home, individuals must be provided with necessities, similar to other countries that provide financial, food and other material support to their citizens. This is an obligation of the Iraqi state because administrative measures are taken to serve, rather than harm the interests of individuals. Finally, there is a need to clarify the term, 'public interest,' which remains vague, thereby leaving over-reaching powers in the hands of administrative authorities.

NOTES

¹ At the end of February 2020, WHO's Chief, Dr. Tedros Ghebreyesus, had indicated that, while the coronavirus had absolutely a pandemic potential, that did not exist yet, 'because we are not witnessing an unintended global spread.' However, being a highly contagious disease that spread rapidly and continuously from person to person in many

countries around the world at the same time, it became officially recognised as a pandemic.

² Appropriateness is an action of the administration that does not impose undue burdens or constitute more harm than is required in maintaining the public interest, that is, the balance between decisions and exceptional circumstances.

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