Analysis and Examination of the Effects and Consequences of the Decisions of the Administrative Court of Justice on the Performance of Local Councils

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Abstract

Articles 105 and 106 of the Constitution of the Islamic Republic of Iran refer to the supervision of councils and clearly indicate that the constitutional legislator has accepted the principle of supervision over the performance of councils. However, the question is how the Administrative Court of Justice, given its supervisory authority over government officials and governmental regulations, and considering the independence of local councils from the three branches of government, can supervise the performance of councils and their members. With regard to the jurisdiction of the Administrative Court of Justice to review and annul council approvals, several legal viewpoints have been proposed. Some believe that the Administrative Court of Justice lacks jurisdiction to intervene in council approvals, whereas others maintain that the Court may review such approvals. There are also debates concerning the Court's jurisdiction to review approvals of city councils and its lack of jurisdiction over other councils. It appears that the General Board of the Administrative Court of Justice may annul council approvals. Nevertheless, the independent intervention of the Administrative Court of Justice in the matter of council approvals may be regarded as a kind of frustration of the legislator's purpose, because the legislator has established a specific mechanism for annulling approvals and has not expressly addressed the Court's intervention in this matter. Therefore, responsibility for supervising council approvals should be assigned to dispute resolution boards. The Administrative Court of Justice may, however, act as an appellate authority and the final forum for reviewing the decisions of these boards. Despite their independence and expertise, dispute resolution boards are considered quasi-judicial bodies, whereas the Administrative Court of Justice functions as a judicial and specialized authority in this field.

Keywords: effects and consequences; decisions; Administrative Court of Justice; performance of local councils

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1. Introduction

Local councils, as independent and legal institutions in the process of decision-making and management of community affairs, are separate from other branches and executive bodies. The independence of councils is considered one of the fundamental principles of their existence. On the other hand, the principle of supervision, as a key principle in public law, requires governmental authorities to be subject to oversight and control. This principle also includes the representatives of the people in local councils and their performance. Articles 105 and 106 of the Constitution refer to the issue of supervision over councils; however, no specific authority is named for this supervision, and only in the event of an objection to dissolution are councils referred to the competent court. The determination of the authority responsible for supervising the performance of councils has been left to the ordinary legislator (Agah, 2010).

In addition, Article 173 of the Constitution established the Administrative Court of Justice to hear complaints and objections by people against the conduct of government officials, while also leaving the scope of its powers to the ordinary legislator. It can clearly be stated that the legislator believes in supervision over the performance of councils; however, the question raised here is how the Administrative Court of Justice, given the independence of local councils, can supervise their actions. Can this Court annul the approvals and decisions of councils or not?

This dimension of supervision, which has received less attention from researchers, while most emphasis has been placed on the supervision of public courts over councils, constitutes the subject of this article. The purpose of this study is to examine the possibility of supervision by the Administrative Court of Justice, as an institution affiliated with the Judiciary, over the performance and decisions of local councils in cities and villages. Using library-based methods, this study seeks to answer these questions and clarify the scope and limits of the Administrative Court of Justice's supervision over councils. This examination can help councils, in addition to performing their duties, become aware of the limits of their powers and prevent supervision from being transformed into an instrument of pressure against them. It can also prevent arbitrariness by local councils and the creation of disorder through decisions made beyond legal limits (Agah, 2010).

2. Review of the Actions and Approvals of Local Councils by the Administrative Court of Justice: Supervisory Jurisdiction

Article 156 of the Constitution of the Islamic Republic of Iran recognizes the Judiciary as an independent branch, the supporter of individual and social rights, responsible for realizing justice, and entrusted with important and fundamental duties in this regard. The legislator has enumerated the following as among the duties of this branch (Abbaszadeh, 2011):

Hearing and issuing judgments concerning all types of grievances, violations, complaints, settlement of disputes, and similar matters.

- Reviving public rights and expanding justice and legitimate freedoms.
- Supervising the proper implementation of laws.
- Detecting crimes, prosecuting and punishing offenders.
- Preventing crime and rehabilitating offenders.

To achieve specific objectives, the legislator has placed certain tools and mechanisms at the disposal of the Head of the Judiciary. These tools include institutions such as public courts, the Administrative Court of Justice, the Supreme Court, the General Inspection Organization, and military courts, each of which is used according to need and context. In addition, Islamic councils at different levels operate as decision-making pillars of the country and, at the same time, are subject to the supervision of the Judiciary.

The supervision of the Judiciary over councils can be examined from several aspects. First, in cases where a judge enters the decision-making bodies of councils as a representative of the Judiciary; and second, where the Judiciary, through its institutions such as public courts and the Administrative Court of Justice, undertakes review and decision-making. This supervision is also sometimes exercised through people's complaints against councils and their decisions, while in some cases councils themselves act by filing complaints regarding violations of their rights. A noteworthy point is that the Judiciary sometimes supervises and reviews councils as legal persons and sometimes supervises their members as natural persons. These

two aspects reveal the complexity of the relationship between councils and the Judiciary and demonstrate the importance of supervision in preserving rights and administering justice.

One of the fundamental issues currently discussed in the context of laws relating to the powers of councils is the jurisdiction of judicial and quasi-judicial bodies to enter the domain of council decision-making and the possibility of reviewing, revoking, and annulling such decisions. This issue remains controversial in legal doctrine and has generated diverse views and arguments (Atryan & Ghamami, 2017).

In this discussion, we intend to examine the jurisdiction of the Administrative Court of Justice, as one of the organs of the Judiciary, in supervising the conduct and decisions of members of local councils.

Regarding the jurisdiction or lack of jurisdiction of the Administrative Court of Justice to review and annul the approvals of Islamic councils, four legal theories and viewpoints exist, each of which requires attention and examination. These theories can clarify different dimensions of the interaction between judicial institutions and councils and provide a better understanding of the position of the Administrative Court of Justice in the country's legal system.

A. Lack of Supervisory Jurisdiction of the Administrative Court of Justice over Councils

Supporters of this theory believe that the Administrative Court of Justice cannot enter into council approvals for the following reasons. First, under Article 173 of the Constitution of the Islamic Republic of Iran, the Administrative Court of Justice was established to hear people's complaints and grievances against the actions and decisions of government departments and officials. The country's Islamic councils, as local institutions and local parliaments under Article 7 of the Constitution, are among the decision-making and administrative pillars of the country and are not recognized as governmental institutions. Therefore, their decisions cannot be regarded as governmental decisions subject to the supervision of the Administrative Court of Justice.

Second, Articles 13 and 10 of the Law of the Administrative Court of Justice clearly determine the scope of the Court's authority in hearing complaints against decisions of governmental units. These articles refer to complaints against ministries, organizations, municipalities, and revolutionary institutions; accordingly, council approvals fall outside the scope of the Court's authority.

Third, if the Administrative Court of Justice has jurisdiction to review council approvals, this would reduce the validity and status of such approvals and downgrade them to the level of ordinary administrative decisions and circulars. This would, in a sense, mean transforming councils into administrative and governmental authorities, which is inconsistent with their independent nature.

Fourth, Article 105 of the Constitution emphasizes only that council approvals must not conflict with Islamic laws and ordinary laws. In fact, the legislator considers council approvals that have been reviewed in accordance with these principles and found not to be inconsistent as enforceable, and the entry of judicial authorities into this matter is contrary to public law.

Fifth, the well-known rule that "the legislator is rational and mature" also applies here. If there had been a need for judicial authorities to review council approvals, the legislator would have mentioned it. In the latest amendments to the Councils Law in 2007, only the jurisdiction of the Court concerning members deprived of membership was mentioned, and no other matter was provided for. These points indicate the lack of jurisdiction of the Administrative Court of Justice to enter into council approvals (Azadi, 2016).

B. Jurisdiction in Supervising Councils

Supporters of this theory believe that although the Law on the Organization, Duties, and Elections of Islamic Councils of the Country and the Election of Mayors has provided specific methods for reviewing council approvals and assessing their conformity with existing laws, this issue in no way prevents the jurisdiction of judicial authorities to review and annul unlawful approvals. In this regard, the Administrative Court of Justice is recognized as the appropriate judicial authority for hearing such matters (Azadi, 2016).

First, considering that part of municipal regulations derives from the approvals of city Islamic councils, pursuant to Clause 1 of Article 12 of the Law of the Administrative Court of Justice, hearing complaints and objections against these approvals falls within the jurisdiction of the General Board of the Administrative Court of Justice.

Second, although Article 12 does not explicitly refer to approvals of other councils, under legal principles, no approval under any title should conflict with enacted laws. Therefore, council approvals are not exempt from this rule, and their review must

also be conducted in the Administrative Court of Justice. Courts of justice cannot annul these approvals because, under Article 170 of the Constitution, the power to revoke approvals has not been granted to court judges; they may only refrain from enforcing approvals that conflict with the law.

Third, the Administrative Court of Justice is itself the authority for determining jurisdiction regarding submitted complaints, and in the event of a jurisdictional conflict between courts of justice and the Administrative Court of Justice, under Article 46 of the Law of the Administrative Court of Justice, the opinion of the Supreme Court is regarded as decisive. At present, the General Board of the Administrative Court of Justice considers itself competent to review approvals of city Islamic councils and has annulled the approvals of certain councils in some cases. Thus far, no jurisdictional conflict has arisen between courts of justice and the Administrative Court of Justice that would require the matter to be referred to the Supreme Court.

C. Subject-Matter Jurisdiction of the Administrative Court of Justice over City Council Approvals

Advocates of this view believe that city council approvals, because of their role in shaping municipal systems and regulations, are reviewable by the Administrative Court of Justice. By contrast, approvals of other councils, because of their lesser impact on municipal laws and operations, cannot be brought before the Court in the same manner and should be reviewed through public courts. This issue, in a sense, reflects differences in the jurisdictional status and importance of council approvals within the country's legal system and emphasizes the need to consider the legal effects of each. In fact, the review of city council approvals by the Administrative Court of Justice appears necessary because of their direct connection with municipal affairs and their impact on citizens' lives (Barzegar, 2019).

D. Judicial and Specialized Jurisdiction over Council Approvals

According to this analysis, and in view of the general jurisdiction of public courts, all council approvals can be reviewed by public courts. This is because Clauses of Articles 10 and 12 of the Law of the Administrative Court of Justice do not refer to the annulment of local council approvals by the Court. In addition, the amended note to Article 81 of the Law on the Organization, Duties, and Elections of Islamic Councils of the Country and the Election of Mayors states that each dissolved council, if objecting to the dissolution decision, may file a complaint with the competent court within one month from the date of notification of the ruling. The court is also required to review the matter urgently and issue a final judgment. These points indicate that councils and their approvals are subject to legal supervision and, in the event of a dispute, may defend their rights and refer to judicial authorities. This process, in a sense, guarantees the rights of councils and transparency in their decision-making (Savadkouhi, 2025).

Although, in the new amendments to the Councils Law, the legislator, in Note 3 of Article 82, amended on September 28, 2003, and November 18, 2007, identifies the Administrative Court of Justice as the authority competent to hear complaints by the person or persons deprived of membership by dispute resolution boards, Note to Article 81, amended on November 18, 2007, concerning the dissolution of a council following actions contrary to the prescribed duties of councils, or conduct contrary to the public interests of the country, or waste and unauthorized appropriation of collected assets, refers to the competent court as the authority for complaints, without defining the competent court. However, what most readily comes to mind from the term "court" is the public courts of justice, which are customarily called courts (Nikounahad, 2020).

An issue that has always been discussed and examined in the legal field is whether public courts of justice have the right to enter into council approvals and annul or revoke such approvals based on complaints by individuals. Under Article 26 of the Civil Procedure Code for Public and Revolutionary Courts, each court is responsible for determining its own jurisdiction to hear claims. In other words, each court must determine whether it is competent to hear the matters assigned to it.

An examination of the practice and performance of public courts in relation to the approvals of Islamic councils shows that these courts rarely intervene in such matters. In fact, the author has so far observed no judgment or decision by public courts concerning the annulment or confirmation of approvals of Islamic councils. This may indicate that courts generally have no inclination to enter this field or may refrain from reviewing such claims because of legal and structural considerations. Therefore, the current situation shows that direct supervision over council approvals does not fall within the jurisdiction of public courts, and this issue requires further attention and examination.

By examining Article 80 of the Councils Law and its related notes, the competent authorities for hearing objections and complaints relating to approvals of local councils can be divided into two main categories: first, judicial authorities; and second, non-judicial authorities. Judicial authorities include courts and institutions related to the country's judicial system that formally

and legally examine objections. These authorities seek to ensure justice and the proper implementation of laws concerning council approvals.

On the other hand, non-judicial authorities include institutions that examine these objections informally and from administrative or advisory perspectives. These authorities may include ministries, governmental organizations, and local institutions that operate to ensure supervision and evaluation of council performance.

Therefore, overall, it can be stated that these two categories of authorities address complaints and objections from different perspectives, and each plays its own particular role in the country's legal and administrative system. This classification helps provide a more precise observation and analysis of the functioning of local councils and the laws related to them (Nikounahad, 2020).

A. Non-Judicial Authority

Under amended Article 80 of the Councils Law, council approvals may be objected to for two weeks after notification. Such objection may be raised by the relevant officials on the grounds of conflict with the laws of the country or exceeding the limits of the councils' powers. If no objection is made, the approval becomes final and enforceable. If the objection raised is accepted by the council, the council is required to make the necessary amendments. Otherwise, under Article 79, the matter is referred to the relevant dispute resolution board to examine and resolve the dispute. Thus, the local council must always ensure that its decisions are adopted within the legal framework and the powers assigned to it in order to prevent problems and challenges (Agah, 2010).

B. Judicial Authority

Other persons, whether natural or legal, may refer to judicial authorities for the annulment of council approvals. In Note 2 of Article 80, added on November 18, 2007, the legislator also identifies the Central Dispute Resolution Board as the competent authority for hearing individuals' complaints against council approvals. Accordingly, individuals may, after council approvals become final, file complaints with the Central Dispute Resolution Board and other legal authorities. However, from the text of Note 1 of Article 80, it is clear that the relevant officials, including district governors, governors, and governors-general, are excluded from the right to file complaints before courts, although this restriction is removed in Note 2 of Article 80.

The question that arises is which judicial authorities are meant by "competent courts." Reliance on Articles 170 and 173 of the Constitution to establish the jurisdiction of the Administrative Court of Justice is not very acceptable, because council approvals are not recognized as governmental approvals. In fact, considering Articles 13 and 19 of the Law of the Administrative Court of Justice, the jurisdiction of the Court to hear council approvals cannot be established. It appears that the legislator has created ambiguity in determining the judicial authority for reviewing council approvals and has therefore not clearly specified it. However, considering Article 159 of the Constitution and the role of the justice system as the general authority for seeking justice, it can be concluded that what the legislator meant by "competent courts" was public courts.

In practice, public courts usually do not intervene in the annulment of council approvals, and this task has been assigned to the General Board of the Administrative Court of Justice. On the other hand, the adjudicatory process in the Administrative Court of Justice, which consists of a group of judges and judicial advisers, may have significant advantages in terms of experience and greater command of specialized laws and regulations. Under Article 12 of the Law of the Administrative Court of Justice, these approvals are reviewable by the General Board of the Court. In addition, Islamic councils may be recognized as non-governmental public institutions under the definition set out in Article 3 of the Civil Service Management Law (Barzegar, 2019).

3. Review of the Decisions of the General Board of the Administrative Court of Justice in Annulment of Council Approvals

In this regard, the General Board of the Administrative Court of Justice has proceeded to hear complaints received concerning council approvals, whether the complainant is a natural person, a private-law legal person, or a public-law legal person. A summary of the issued decisions is as follows:

3.1. Annulment of an Approval Beyond the Jurisdiction and Powers of the Shiraz City Council

Decision No. 211, dated July 2, 2006, in case class No. 84/185, concerns the complaint of Mr. Manouchehr Nabizadeh and Ms. Roya Nabizadeh, who sought annulment of the approval of the Islamic Council of Shiraz dated August 29, 2001. This approval provided for the suspension of legal duties and responsibilities on the condition that part of the people's land be transferred free of charge to the municipality to meet urban needs. Considering this matter, the General Board of the Administrative Court of Justice declared that the determination of urban land use must be carried out according to the comprehensive plan and by the Article 5 Commission of the Law Establishing the Supreme Council of Urban Planning and Architecture of Iran. Therefore, the condition of suspending responsibilities in exchange for transferring land to the municipality was deemed contrary to the law and the principle of dominion, and beyond the limits of the Executive Branch's authority to issue governmental regulations. For this reason, the Administrative Court of Justice annulled the approval of the Shiraz City Council. This decision shows that councils are treated as part of the Executive Branch and that their regulations are also considered governmental regulations. This decision emphasizes that councils cannot act beyond the limits of their legal authority and must always operate within the framework of laws and regulations in order to prevent legal problems.

3.2. Annulment of the Issuance of a Permit for the Use of Roadside Areas by the Tehran City Council

Decision No. 555, dated January 23, 2021, in case class No. 81/331, concerns the complaint of the Ministry of Roads and Transportation. This complaint sought annulment of Approval No. 142 of the Islamic Council of Tehran, which had been adopted in the session dated February 20, 2018. The subject of this approval was authorization for the exclusive use of the margins of public passages and streets by ministries, governmental agencies, and persons, accompanied by annual payments.

Considering the duties specified for councils in the 29 clauses of Article 71 of the Councils Law, the General Board of the Administrative Court of Justice concluded that this approval exceeded the powers of the Islamic Council of Tehran. Therefore, pursuant to Clause 2 of Article 25 of the Law of the Administrative Court of Justice, the approval was declared void. In fact, the Administrative Court of Justice pointed out that councils must act within the framework of their legal duties, and any approval exceeding those limits is subject to annulment. Thus, this decision demonstrates the importance of supervision over council powers and compliance with the law established for urban management.

3.3. Annulment of the Approval on Land-Use Change by the Karaj City Council

Decision No. 561, dated December 31, 2020, issued in case class No. 82/527, concerns the complaint of Mr. Ghasem Dastourianfard and Ms. Shirin Dastourianfard. This complaint was filed to annul Articles 3, 4, and 5 of Approval No. 2342/82/5, dated July 14, 2013, of the Islamic Council of Karaj. In this approval, individuals were required to transfer 50 percent of their privately owned land to provide urban service per capita as the municipality's share. The Administrative Court of Justice, relying on the principle of dominion and also citing Judgment No. 169, dated August 17, 2012, of the General Board of the Court, concluded that Articles 4 and 5 of this approval were contrary to the law and therefore declared them annulled. The Court also referred to the unlawfulness of Articles 4 and 5 of a regulation concerning the land-use change of lands located within service plans through the Article 5 Commission of the Law Establishing the Supreme Council of Urban Planning of Iran. Thus, the Court deemed the municipality's actions in this regard invalid and declared the approval void. This decision not only helps preserve individuals' ownership rights but also reflects the Court's attention to laws and regulations in the field of urban planning.

3.4. Annulment of the Approval Increasing Levies on Installed Signs in the Tehran Urban Area

Decision No. 449, dated November 27, 2015, issued in case class No. 83/324, concerns the complaint and request of the Tehran Neon and Plastic Sign Makers' Trade Union for annulment of Approval No. 16725/460/160, dated February 1, 2014, of the Islamic Council of Tehran regarding the increase of levies on installed signs in the Tehran urban area. The Court reasoned that, in implementing Article 77 of the Law on the Organization, Duties, and Elections of Islamic Councils of the Country, adopted in 1996/1997, councils may impose levies only within the framework and limits of the regulations and by-laws of the

Council of Ministers and are required to comply with them. Since the approval in question had been drafted without observing the aforementioned legal regulations, the Court proceeded to annul it.

3.5. Annulment of the Land Subdivision Approval of the Kerman City Council

Decisions Nos. 148, 147, and 146, dated June 26, 2005, issued in case classes Nos. 82/588, 83/561, and 84/174, concern the complaint and request of Mr. Fathollah Moayedi, Mr. Mohammad Dahesh, and Mr. Seyed Hamid Javadi for annulment of Directive No. 1774, dated January 8, 2002, of the Islamic Council of Kerman concerning the free acquisition of lands or receipt of their value in order to provide public urban facilities in exchange for approval of the subdivision of those lands. Due to the legislator's determination concerning the provision of urban needs in the Legal Bill on the Method of Purchasing and Acquiring Lands and Real Properties for the Implementation of Public and Development Programs, adopted in 1979/1980, and the Law Determining the Status of Properties Located in Governmental and Municipal Plans, adopted in 1988/1989, and with reference to the validity of legitimate ownership, the principle of dominion, and the provisions of the Civil Code, the directive was annulled pursuant to the second part of Article 25 of the Law of the Administrative Court of Justice.

4. Conclusion

The principle of supervision, as a fundamental principle in public law, raises the need to control governmental authorities. In this regard, supervision over councils has been recognized in the Constitution with reference to Articles 105 and 106. These articles state that council decisions must be consistent with Islamic standards and the laws of the country, and in the event of non-compliance, dissolution of the council is introduced as an enforcement guarantee. In this context, the ordinary legislator is responsible for determination and supervision. Examination of ordinary laws, including the Law on the Organization of Councils, adopted in 1996/1997 and subsequently amended, shows that supervision over councils is not limited to a single authority and includes the councils themselves, dispute resolution boards, and the three branches of government. The focus of this article is to examine the possibility of supervision by the Administrative Court of Justice over approvals of local councils in cities and villages.

In this regard, different views exist concerning the jurisdiction or lack of jurisdiction of the Administrative Court of Justice to annul approvals of Islamic councils. Some believe that councils are independent and are not subordinate to the three branches of government; therefore, their decisions cannot be annulled by the Administrative Court of Justice. This group believes that the Court's entry into reviewing council approvals diminishes their status and calls into question the validity of council independence. They also regard the legislator's failure to explicitly refer to the Court's jurisdiction to annul council approvals as a stronger reason for the Court's lack of jurisdiction.

By contrast, another group believes in the jurisdiction of the Administrative Court of Justice to hear council approvals. They argue that, under Article 170 of the Constitution and Article 13 of the Law of the Administrative Court of Justice, the General Board of the Court may annul general and unlawful council approvals. This group also believes that, although the Law on the Organization of Councils has provided a specific mechanism for reviewing and annulling approvals, because councils are linked to governmental authorities and membership appointments are issued, the Administrative Court of Justice must intervene in this matter.

Others consider the Court's jurisdiction to be limited to hearing approvals of city councils and believe that approvals of village councils, because of their lesser impact on municipal issues, cannot be raised before the Court. Another group, relying on Articles 10 and 12 of the Law of the Administrative Court of Justice and the amended note of Article 81 of the Law on the Organization of Councils, amended on November 18, 2007, assigns jurisdiction over council approvals to public courts.

From what is observed in the practical jurisprudence of the Administrative Court of Justice, it can be concluded that the General Board of the Court has jurisdiction to annul council approvals. Although this Board annuls approvals on various grounds, such as conflict with the regulations of the Council of Ministers and reliance on religious standards, the independent supervision of the Court over council approvals, despite the existence of dispute resolution boards, appears in a sense to be incorrect. Therefore, considering the specific mechanisms that the legislator has provided for annulling approvals, responsibility for supervision should be assigned to dispute resolution boards. However, the Administrative Court of Justice should be regarded as the appellate authority and final reviewing body for the decisions of dispute resolution boards. For this

reason, it is necessary that, in addition to natural and legal persons, councils should also be able to defend themselves against final annulment decisions issued by dispute resolution boards, a point that is not clearly reflected in the amended Councils Law.

Ethical Considerations

All procedures performed in this study were under the ethical standards.

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Conflict of Interest

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