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The Principle of Free Administration: Between the Requirements of Autonomy and the Challenges of Implementation

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Abstract

In the context of strengthening the decentralization process and consolidating the foundations of advanced regionalization, Morocco has undertaken a series of reforms reflecting the public authorities' commitment to establishing a territorial system capable of addressing economic, political, and social challenges. These reforms also demonstrate the legislator's determination to modernize the framework of territorial governance.

Within this framework, the scope of competences of territorial collectivises has been expanded, and they have been provided with the necessary mechanisms and resources to carry out their assigned responsibilities. At the same time, the constitutional entrenchment of the principle of free administration has been established as a fundamental guarantee for strengthening the autonomy of territorial collectivises in their relationship with central authorities, as well as in decision-making and the implementation of development policies.

Undoubtedly, the principle of free administration has become a key lever for promoting local democracy, reinforcing the values of transparency and participation, and enabling territorial collectivises to assume their responsibilities and fulfil their assigned roles, particularly in meeting the challenges of territorial development.

However, the theoretical importance of this principle is contrasted by practical constraints that limit its effectiveness, notably the limited financial and human resources, overlapping competences, and the multiplicity of oversight mechanisms. In this context, a fundamental question arises regarding the nature of this principle: does it represent a genuine transformation in the distribution of power between the centre and the territories, or merely a mechanism for reorganizing territorial action within a centrally structured framework of public policies?

Keywords: Free administration principle, decentralization, advanced regionalization, territorial collectivises, territorial governance, local democracy, territorial autonomy, administrative oversight, overlapping competences, public policies, central control, territorial development.

Introduction

In the context of the transformations our country is undergoing, and against a backdrop of growing expectations and needs amongst the population, integrated and sustainable territorial development has become an urgent requirement, necessitating a review of the system of public territorial management and the adoption of approaches committed to the standards of good governance. Furthermore, the strengthening of local authorities and the granting of expanded powers to them has become an urgent requirement to support the State in meeting the challenges of sustainable development and achieving territorial balance within a framework of territorial organisation aimed at achieving an optimal redistribution of powers between the central government and the regions.

Recognising the importance of local democracy in shaping and formulating territorial policies suited to the specific characteristics and needs of the region, in responding effectively to local demands, and in bringing public services closer to the people, and acknowledging the pivotal role played by local authorities as partners and key actors in the management of territorial areas and the achievement of development in all its dimensions, The legislature has thus equipped them with an arsenal of powers and competences that have expanded since the very foundations of Morocco's decentralisation system were laid, from the enactment of the first legal text governing urban and rural local authorities (Royal Decree of 23 June 1960) to the enshrinement of advanced regionalisation in the 2011 Constitution.

The decision to adopt advanced regionalisation as an appropriate framework for spatial planning and development constituted a significant step forward in the management of public action and a key milestone in the process of modernising the relationship between the State and the other levels of local government. Furthermore, the 2011 Constitution and the three organisational laws relating to local authorities formed a cornerstone in consolidating the level of maturity reached by the experience of decentralisation in our country, which has made significant strides in its development, culminating in the recognition of local authorities' right to manage their own affairs in accordance with the principle of autonomous administration, a principle which the legislature has enshrined in the Constitution to shield it from interference and encroachments by other authorities.

Following the French model, the principle of autonomous administration has established the freedom of local authorities to manage their own affairs, to define and shape their own choices, and to manage their development programmes in an independent and democratic manner; autonomous administration symbolises the guarantee of local authorities' independence in their relationship with the central government.

There is no doubt that local self-government has become a key driver for strengthening local democracy, promoting the values of transparency and participation, equipping local authorities to shoulder the responsibilities entrusted to them and fulfil the roles assigned to them, and addressing the challenges associated with achieving local development.

Despite the importance accorded to this principle amongst the set of principles that now frame local governance, the persistence of regional disparities and the state of development indicators at the local level have led us to question whether this principle has been optimally applied and appropriately implemented in a way that would enable local authorities to effectively manage their local affairs, particularly as the aforementioned principle cannot be exercised in its full scope, given the constraints that define its limits and dimensions both at the legal and practical levels, foremost among which is the unitary form of the state, which does not permit political autonomy, in addition to other constraints imposed by the requirements of coordination, convergence and harmony in the formulation of development programmes and the harmonisation of legal and regulatory texts relating to the remit of government sectors, which sometimes overlap with the remit of local authorities, as well as the need for monitoring and evaluation to ensure the effectiveness and transparency of measures and to link responsibility with accountability.

In this article, we shall attempt to answer the following question:

Does the principle of autonomous management in Morocco represent a structural shift in the distribution of power between the centre and the regions, or is it merely a reformulation of centralised control within a decentralised framework?

Based on this question, we hypothesise that the principle of autonomous governance in the Moroccan model is founded on a framed and limited autonomy that remains subject to the logic of central control, making it more akin to a mechanism for regulating the intervention of local authorities within a centralised framework of public policy, rather than an embodiment of genuine local autonomy.

Based on the above, this article adopts an analytical approach, utilising a deconstructive method to examine the constitutional and legal framework governing the principle of free administration, alongside a comparative approach by drawing on certain aspects of the French experience, with the

aim of highlighting points of convergence and divergence. The functional approach has also been employed to examine the role of the principle in achieving regional development, whilst drawing on a critical approach to assess the limits of its application and highlight the tension between regional autonomy and the logic of centralised control.

To address the research question, the following structure will be adopted:

- Section 1: The conceptual and legal framework of the principle of free administration and its scope of application.

- Section 2: The principle of free administration between legislative and regulatory constraints and the imperatives of implementation.

Section 1: The conceptual and legal framework of the principle of free administration and its scope of application.

The principle of discretionary power, whose conceptual and legal framework we shall seek to elucidate, is a modern concept derived from French legislation and enshrined in Moroccan law as one of the most significant developments in the system of local public administration (Section 1). The status accorded to this principle within the Moroccan legislative framework has taken on particular significance in light of the enshrinement of multidimensional autonomy, which defines the scope of the principle's application (Section 2).

In this section, we shall attempt to address the origins and concept of the principle of free administration, its legal basis, and the rules of governance associated with its application.

Paragraph 1: The Origins and Conceptual Foundations of the Principle

The origins of the principle of administrative autonomy in the literature on local administrative management can be traced back to French law, which established it as a concept; However, it has not been precisely defined, despite its constitutional enshrinement and the legal protection afforded to it, the aims of which are to establish specific limits to protect the administrative powers of local authorities from interference by the State, the legislature and the judiciary.

The case law of the French Constitutional Court has played a pivotal role in defining its substance and clarifying its scope of application, and has also played a prominent role in establishing the safeguards protecting it from legislative interference.

Any attempt to understand the principle of administrative autonomy leads us to the French constitutions that laid its foundations, in particular the Constitution of the Fourth Republic, in Article 87, which stipulates that local authorities are administered freely by councils elected by direct universal suffrage, and Articles 34 and 72 of the Constitution of the Fifth Republic, revised in 2003, which stipulates in its first article that 'the principle of the free administration of local authorities is one of the fundamental principles protected by law', whilst its second article stipulates that 'local authorities are established by law and freely manage their affairs through elected councils; they enjoy regulatory powers in order to exercise their competences'.

The French constitutional legislator has also entrusted the law with the task of defining the scope of application of this principle, and the Constitutional Council with the task of protecting it from abuses by the legislative authority by raising objections to the constitutionality of laws through the procedure known as the QPC.

For its part, the Council of State has regarded it as one of the fundamental freedoms protected by the administrative judge, through the procedure for the protection of freedoms (procédure du référé-liberté), recognising its constitutional value and classifying it among the rights and freedoms whose constitutionality cannot be challenged. This principle has afforded French local authorities the freedom to take the initiative in managing their own affairs, administering their financial and human resources, and adopting their own development choices in accordance with the conditions set out in the Constitution and the law, thereby contributing to the development of decentralisation and enabling local authorities to enjoy a greater degree of autonomy from the central administration, whilst respecting the unity of the state.

In a related context, the French Constitutional Council, in its Decision No. 83-168 of 20 January 1984, held that 'free discretion' means acting freely without being subject to constraints or interference from the legislative, executive or judicial authorities in administrative operations and acts, which are subject to legal regulation and judicial review.

Section 2: The Legal Foundations of the Principle

The legal framework of the principle is one of the fundamental aspects that must be addressed in order to recognise its importance as a mechanism for meeting the challenges of

developing local authorities and transforming them into genuine centres of development.

Under Moroccan law, and within the context of a series of reforms aimed at addressing the challenges of regional disparities, achieving economic and social development, and laying the foundations for a new system of territorial organisation based on advanced regionalisation, the enshrinement of the principle of autonomous management in the Constitution and in the organisational laws governing local authorities reflects the will of political decision-makers to empower local authorities to manage their own affairs independently and to formulate their own choices, plans and development programmes.

Within the framework of modernising the local administrative system, the principle of self-governance finds its primary basis in the 2011 Constitution, where Article 136 stipulates that regional and local organisation is founded on "the principles of self-governance, cooperation and solidarity, and ensures the participation of the populations concerned in the management of their own affairs, and enhances their contribution to integrated and sustainable human development".

Following the example of its French counterpart, the Moroccan legislature has entrusted the legislative branch with the task of implementing the principle of self-governance; Chapter 146 provides for the enactment of an organic law setting out "the rules of governance relating to the proper application of the principle, as well as the oversight of the management of funds and programmes, the evaluation of activities and accountability procedures".

The principle finds its second reference in the organic laws governing local authorities, which, in their introductory section, refer to the rules of governance relating to the proper application of the principle of free administration but do not provide a precise legal definition specifying the meaning of the concept of the principle of free administration; as we find no definition other than that set out in Article 4 of the Organic Law on Regions and Article 3 of the two Organic Laws relating to local authorities and provincial and regional councils, which stipulate that "the management of local authorities' affairs is based on the principle of autonomous administration" which, by virtue thereof, empowers each local authority – within the limits of its powers as set out in the aforementioned organisational laws – to deliberate democratically and to implement its deliberations and decisions, in accordance with the provisions of these organisational laws and the legislative and regulatory texts adopted for their implementation."

The term 'freedom of administration' also appears in Article 1 of Section VIII of the three organisational laws, entitled 'Rules of governance relating to the proper application of the principle of freedom of administration', where the legislator has moved from defining the powers conferred by the principle of discretionary management upon local authorities to establishing governance rules relating to its proper application, which are reflected in particular in respect for the following general principles: ensuring **fair, sustainable and** high-quality **public services**, based on **good governance** (transparency, accountability, the rule of law), **and democratic management of councils** (deliberation, participation, participatory democracy), whilst respecting **the financial and administrative rules** governing the budget, public procurement and the civil service.

The organisational laws for local authorities, enacted in July 2015, mark a turning point in the process of consolidating the decentralisation system and establishing the principles of autonomous management, solidarity and cooperation as the fundamental pillars of local governance, Indeed, the legislator's stipulation that autonomous management be linked to the principles of good governance, solidarity and cooperation serves as a reminder that this principle does not imply complete independence; rather, its application is subject to a commitment to upholding a number of principles that ensure the quality of its implementation, and links it to the legal and territorial framework and to the rules of the system within which it operates.

Whilst French constitutional case law has enriched the concept of discretionary action and defined its parameters, both in theory and in practice, we note that, in the Moroccan context, there is no comparable case law issued by the Moroccan Constitutional Council regarding this principle.

The Principle of Discretionary Power and Its Scope of Application

The principle of self-governance represents a qualitative leap in the structure of Morocco's territorial organisation and a fundamental pillar of advanced regionalisation; it also constitutes the most recent stage in the evolution of democratic governance models for territorial units. This principle raises a fundamental issue concerning how it is enshrined in the Constitution, as well as the definition of its scope of application within the legal and institutional framework governing the work of local authorities.

The constitutional enshrinement of the principle as a form of organic and functional autonomy for local authorities.

The constitutional enshrinement of this principle marked a significant turning point in the process of strengthening administrative decentralisation in our country, as it is one of the most notable innovations of the 2011 Constitution, which bolstered the decision-making authority of local authorities and strengthened their executive powers. Following the example of the French legislature, the Moroccan legislature has adopted it as a fundamental pillar in the development of local governance and the modernisation of its mechanisms.

In this context, the enshrinement of the principle of autonomous management in the Constitution represents a genuine affirmation of the democratic management of local authority affairs and the institutional autonomy of local authorities in their relationship with the central government, by granting them a significant margin of freedom in decision-making whilst expanding their scope for initiative, whilst respecting the laws, regulations and rules in force , thereby ensuring a balance between the principle of autonomy and the requirements of state unity.

Article 138 of the Constitution stipulates that the presidents of regional councils and the presidents of other local authority councils are responsible for implementing the deliberations and decisions of these councils, and the authority of elected councils to deliberate democratically, along with their freedom to choose their own structures and make their own decisions, are among the most prominent pillars of this principle and the most significant manifestations of autonomy.

Local authority councils derive their legitimacy from the legislature's recognition that they possess legal personality and financial and administrative independence, and from the democratic mandate of the elected bodies that govern them in a manner that ensures the participation of residents in the management of their local affairs, This dual foundation constitutes a fundamental safeguard protecting these councils from any interference or encroachment by other authorities and from the tutelage of their counterparts in local authorities at other territorial levels, and grants them the legitimacy necessary to carry out their functions.

Furthermore, the democratic legitimacy of the elected councils is based on the system of direct universal suffrage, which is one of the most significant innovations of the 2011 Constitution, as set out in Article 135, which stipulates that: 'Regional and municipal councils shall be elected by direct universal suffrage'. This method of voting is regarded as a fundamental safeguard for consolidating the principles of transparency and strengthening representative democracy, as well as an effective means of involving the population in local decision-making and the formulation of local policies; it is also seen as an indicator of the legitimacy of local policies and programmes.

Furthermore, the principle of autonomous governance rests on a fundamental pillar: the institutional independence of local councils in the exercise of democratic deliberative power, and the functional independence of executive bodies linked to the freedom to implement the deliberations of these councils. Article 138 of the Moroccan Constitution stipulates the following: "The presidents of regional councils and the presidents of local councils shall implement the deliberations and decisions of these councils." Similarly, Article 101 of the Organic Law on Regions stipulates that the regional council "shall implement the deliberations and decisions of the council and take all necessary measures to that end".

Organisational and functional autonomy finds its practical expression in the granting to local authorities of a certain degree of autonomous and effective powers, which they exercise in their own right and independently of the State, However, drawing the dividing line between the powers of local authorities and those of the State raises a number of issues which have required the legislator to adopt another principle of no less importance: the principle of derivation.

This relates **to a general principle** of political philosophy which stipulates that the lowest administrative unit has jurisdiction to intervene at the local level, and that the higher unit is only entitled to intervene if the former is unable to fulfil its obligations. This principle gives priority in the exercise of powers of a local nature to the local authorities closest to the community, in their capacity as the original and primary authorities, rather than to the central government.

In addition to their own powers, and within a framework of complementarity and coordination, the constitutional legislator, pursuant to Article 140 and based on the principle of delegation, has expanded the scope of intervention of local authorities by establishing powers shared between them and the State, as well as powers transferred to them by the latter. Furthermore, the principle of decentralisation, which is also enshrined in the organic laws governing local authorities, serves as a guiding principle for the distribution of powers, authorities and competences amongst local authorities and between them and the State, and for facilitating the gradual transfer of certain central government competences to these authorities, provided that the State supplies them with the necessary financial and human resources.

Scope of application of the principle of administrative autonomy

One of the conditions for the implementation of the principle of discretionary power is to empower the heads of local authorities with the regulatory authority to enforce the law, which is defined as 'the adoption of a set of general measures necessary for the proper, regular and consistent functioning of public services by the competent authorities in accordance with the national legislation of each state' It also refers to the power to issue general regulatory rules and decisions, as well as individual policing measures consisting of authorisations, orders or prohibitions within the framework of the powers and competences conferred upon the heads of local authorities.

The regulatory authority provided for in Article 140 of the Constitution enables local authorities and their bodies to take the necessary measures and procedures to ensure the proper functioning of public services and freedom of decision-making, the authority to choose the modes of management for the public facilities under their jurisdiction, the freedom to enter into or refrain from entering into contracts, the freedom to manage financial resources, and the control of expenditure as well as the preparation and implementation of local budgets.

It also constitutes a legal means of giving effect to autonomous management, which, in its absence, remains devoid of any practical substance. Furthermore, institutional autonomy is also grounded in the power of elected councils to deliberate democratically, and in their freedom to elect their own structures, take decisions and express their will.

The powers conferred on local authorities form the backbone of their functional autonomy, as they enable them to exercise their authority to manage their local affairs independently, to take appropriate decisions and to carry out the necessary measures required for the proper functioning of public services, all within the framework of maintaining public order, with its fundamental aspects of public safety, public peace and public health.

In this context, local authorities exercise these powers through various mechanisms, including regulatory authority, which enables them to issue regulatory decisions and to implement the discretionary measures that the president is entitled to take to ensure public security; it also empowers him, where necessary, to request the use of public force from the official or his representative in order to ensure compliance with his decisions and the council's resolutions, thereby enhancing the effectiveness of local governance and enshrines the authority of the local government within the limits of the powers conferred upon it by law.

In light of the expanded powers granted to local authorities, freedom of contract stands out as one of the most important manifestations of their functional autonomy and constitutes a practical application of the principle of free administration. This freedom enables local authorities to exercise their own powers, as well as shared powers and those transferred to them or eligible for transfer, either on the State's own initiative or at its request.

This freedom also affords local authorities a degree of discretion as to whether or not to enter into contracts, and grants them the power to join or not to join consortia or groups, as well as the possibility of entering into contracts with bodies governed by public or private law, In this context, the regulatory laws have enshrined this approach in a flexible manner, recognising the possibility of establishing or joining cooperative institutions between local authorities or groups of local authorities, based on the deliberations of the elected councils.

A group of local authorities may establish public institutions with legal personality and financial autonomy to jointly manage public facilities or services, or to contribute to economic development and carry out development projects or urban planning on a scale extending beyond the boundaries of the individual local authority, It also enables inter-municipal cooperation bodies to implement development projects and programmes that exceed the financial, human and technical capacities available to their constituent municipalities.

Unlike Moroccan legislation, which left the aforementioned local authorities a degree of freedom to join or not join such bodies, the French legislature, in the Act of 16 December 2010 on the reform of the local authority system, adopted a more mandatory approach in this area, stipulating compulsory arrangements for the amalgamation of local authorities by decision of the prefect (Le préfet), whilst Law No. 991-2015 of 7 August 2015 stipulates that municipalities must be affiliated to public institutions for inter-municipal cooperation (EPCI).

This approach, under which numerous competences and powers have been transferred from local authorities, consolidated and assigned to the newly established territorial groupings, aims to prioritise the public interest by strengthening cooperation between local authorities, rationalising capabilities and resources, and improving competitiveness and integration.

In a related context, and so that local authorities may play an active role as partners in achieving integrated development, the principle of administrative autonomy, based on their own resources, enables them to contribute to the financing of public facilities, infrastructure or services that do not fall within their own remit, within the framework of a contractual agreement with the State, provided that such financing is aimed at serving the public interest.

In this context, the regulatory laws have enshrined a set of provisions reflecting the areas of application of the principle of financial autonomy, the most notable of which are:

- The financial independence of local authorities, ensuring they have a degree of autonomy in managing their resources and expenditure;
- The power to create and abolish financial posts, as well as to recruit staff and manage human resources, falls within the remit of the president;
- The power to conclude contracts and agreements;
- Drawing up the council's rules of procedure – subject to approval;
- preparing, monitoring and evaluating the local authority's work programme, the employment or regional work programme, and the regional work programme;
- Preparing the regional spatial planning scheme within the framework of general spatial planning policy guidelines.

However, whilst the 2011 Constitution and the three organic laws have enshrined, in principle, the principle of autonomy by conferring decision-making, executive and regulatory powers on local authorities, and have strengthened their institutional and functional independence in decision-making and the formulation of their general policies, whilst establishing safeguards to protect them from encroachment by other authorities, certain legal provisions continue to restrict the implementation of this principle, and this is what we shall analyse in the second section.

The Principle of Discretionary Power between Legislative and Regulatory Restrictions and the Constraints of Implementation

The 2011 Moroccan Constitution, together with the laws and regulatory texts relating to local authorities, sets out the limits to the application of the principle of administrative discretion (first requirement), which is subject to a number of practical and realistic constraints (second requirement).

a. First requirement: Limits on the application of the principle of discretion

Paragraph 1: Legislative and regulatory limits

The constitutional recognition of discretionary power forms part of the process of redefining the relationship between the State and local authorities and redistributing powers and competences between the central government and the regions, with the aim of enabling local authorities to exercise their powers freely, whilst the State exercises the right to ex post supervision and accountability for the results achieved.

In order to implement the constitutional provisions, several organisational laws have been enacted to provide a framework for this principle. These developments are significant insofar as they have provided safeguards, but they have also entailed restrictions that may curtail local financial and administrative independence. What, then, are the limits to the application of this principle? And what restrictions apply to its implementation?

Autonomy is regarded as an explicit recognition by the central authority of the territorial units' administrative and financial independence in managing their local affairs and supporting their decision-making role in drawing up development plans and projects and contributing to economic and social development, as well as in providing local services. It is also regarded as a constitutional and regulatory safeguard aimed at fortifying decentralised structures and protecting them from the overreach of the legislature and the executive, as well as from administrative interference in their affairs.

However, this recognition does not imply drawing clear-cut boundaries between the powers of each party and confining them to a separate and distinct sphere; but rather aims to increase the level of accountability of local authorities and to train them in democratic practice within a framework of harmony and integration with other stakeholders and authorities, in order to achieve the intended objectives and overcome the challenges hindering economic and social development. 'Free administration', as some French legal scholars put it, means freedom of administration and in no way implies administration free from state oversight.

Given that local authorities lack the expertise and the financial and human resources required to fulfil the development roles entrusted to them on their own, the intervention of the State—represented by the government department responsible for the interior and its representatives at the level of provinces and

prefectures—remains an unavoidable necessity in order to ensure the enforcement of the law, provide support and coordination, and establish uniform standards for the smooth running of public facilities and communal public services. This is also necessary to reduce regional disparities and the limitations on resources and managerial capacity, and to empower the most vulnerable local authorities so that they can keep pace with development.

In the same context, anyone studying the principles of local public administration adopted in Morocco might, at first glance, that the principle of autonomous governance – synonymous with independence and freedom in local decision-making – appears to contradict the unitary form of the centralised state, which requires the subordination of the autonomous will of local authorities to the central will and decision-making originating from the centre, This leads us to question the role of autonomous administration in achieving harmony and integration between public policies drawn up at the central level – on the basis of which the state's general budget is prepared – and the programmes of local authorities.

The legislator has taken note of this paradox, stipulating in the organisational laws governing local authorities that discretionary management may only be exercised within the limits of local jurisdiction and within the scope of the powers conferred upon local authorities as set out in Part Two of the aforementioned organisational laws, meaning that the authority granted to local authorities is not an original authority, as is the case in federal states, and that sovereign powers and the formulation and implementation of public policies remain the exclusive preserve of the central authorities, In other words, the recognition of the principle of freedom of action for local authorities does not mean that they are granted self-governing authority, but rather that they are afforded a certain margin of freedom in decision-making, subject to compliance with the applicable regulatory provisions.

On this basis, the 2011 Constitution enshrined, alongside the principle of autonomous governance, the principles of solidarity and cooperation as fundamental pillars of the architecture of local governance, These two principles are based on the logic of pooling efforts and mobilising resources within a contractual and participatory framework, thereby enabling the implementation of joint and integrated projects capable of achieving the desired developmental impact, particularly when preparing projects that require the cooperation of several stakeholders, and the mobilisation and involvement of various actors around objectives and programmes planned by the central authority.

In the same context, and notwithstanding the regulatory powers conferred by the legislature upon local authorities—which enable their bodies to issue decisions and resolutions and to exercise administrative policing powers in the fields of public health, hygiene, public order and road safety—the heads of local authorities cannot, in accordance with the principle of the hierarchy of legal norms, issue general decisions; nor can their councils issue resolutions that conflict with the Kingdom's fundamental principles, national legislation, regulatory texts and the provisions of international conventions ratified by the Kingdom; for the freedom derived from the principle of discretionary power is limited by the political system and the unitary form of the state. In other words, discretionary power covers only administrative competences and does not extend to legislative and sovereign powers, which remain the exclusive preserve of the State.

The regulatory laws themselves define, in many cases, the limits of the powers of the presidents of local councils to issue regulatory decisions, linking these powers to the legislative and regulatory texts currently in force or to the obtaining of an opinion from other relevant administrative authorities with jurisdiction.

For example, with regard to the Organic Law on Local Authorities, this concerns a number of powers set out in Article 100, such as granting licences for the occupation of public land without the construction of a building; monitoring neglected, abandoned or dilapidated buildings; or granting licences for the operation of facilities that are disruptive, harmful or dangerous. In addition, there is the competence to appoint personnel to positions within the local authority's administration, which cannot be exercised outside the scope of the conditions and procedures laid down in the laws and regulations currently in force, which constitute the limits of the authority's regulatory freedom.

In the same context, whether it concerns local authorities in their urban planning powers, or the powers of bodies responsible for the development of economic activity zones and land-use planning, local authorities, in the exercise of these powers, remain subject to the interventions of urban planning agencies, which, by law, play a decisive role by issuing binding opinions on planning permissions and contributing to the preparation of urban development master plans, development designs and other urban planning documents, In doing so, these agencies exercise a supervisory and forward-looking function by establishing binding reference frameworks for various urban development interventions, which limits the scope for initiative on the part of elected councils and, in practice, restricts the exercise of the

principle of free management of the territory and land-use allocation.

In the same context, Article 145 of the Constitution stipulates the central role played by governors and prefects within the Kingdom's local administrative hierarchy as representatives of the central authority in local communities, and their powers to ensure the application of the law and regulatory texts, to exercise administrative oversight in the broadest sense, endorsing decisions and resolutions; and monitoring, evaluating, assisting and supporting community leaders in the implementation of development plans and programmes, to ensure coherence, effectiveness, efficiency and the quality of services.

Paragraph 2: Forms of Oversight

The system of oversight of local authorities in Morocco has undergone gradual development as a result of constitutional and legal changes, and the political and social transformations that Moroccan society has witnessed from independence to the present day. Oversight of local authorities is considered one of the pillars of good governance within the system of local administration adopted in our country.

One of the characteristics of the oversight system for local authorities in Morocco is the diversity of its mechanisms and the fact that it is shared by numerous institutions, bodies and agencies—both central and local, formal and informal—which are distributed as follows:

- **Administrative Oversight**

Pursuant to the provisions of Article 145 of the 2011 Constitution, the governor of the province or region exercises administrative oversight over the legality of the decisions of the council president and the resolutions of the local authority. The constitutional legislator has accompanied this provision with an important safeguard: namely, that the representative of the State may not annul the decisions or deliberations of local councils by means of an administrative decision, Any dispute in this regard is referred to the Administrative Court, which acts as the final arbiter in such disputes. In other words, the law grants prefects and governors the power to appeal to the administrative courts to rule on decisions whose legality is in doubt.

As representatives of the executive authority, workers and governors exercise this form of oversight at the local level, where they oversee the coordination of public policies between the State and local authorities, and monitor the extent to which local authorities comply with the application of laws and regulations, they also have the power to challenge local authority decisions before the administrative courts in the event of a breach of applicable laws. The forms of oversight exercised by representatives of the central authority are as follows:

- **Approval of decisions**

The endorsement by the governor and the prefect is considered a mechanism of ex post oversight that curtails the application of the principle of administrative autonomy by local authorities, in accordance with the provisions of Article 118 of Organic Law 14-113, In addition, the government authority responsible for the Interior must approve decisions relating to the delegated management of public communal facilities and infrastructure, and to the establishment of local development companies.

Furthermore, the governor and the prefect must endorse the decisions issued by local councils – whether these relate to the council's budget and work programme, the organisation of the council's administration and its powers, or decisions with financial implications for expenditure and revenue, as well as those relating to decentralised cooperation agreements, decisions concerning the naming of public squares and streets, and decisions relating to the establishment and management of public facilities and roads – constitutes a form of ex post oversight entrusted by the legislature to these institutions under the organisational laws governing local authorities.

- **Challenges to the Council's Rules of Procedure**

Among the restrictions on the principle of administrative autonomy is the ex post administrative oversight exercised by the governor or the prefect, who may, within three days of the date of receipt, challenge the council's rules of procedure and decisions taken in breach of the provisions of the legislation and regulatory texts currently in force. Such a challenge shall result in the council holding a new deliberation; and if the decision is upheld, the governor shall refer the matter to the administrative court, which shall rule on the suspension of implementation as a matter of urgency within 48 hours and on the application for annulment within 30 days.

- **Request for the removal of the president or members of the local council**

Another form of oversight is a request by the employee or their representative for the president of the local authority, one of their deputies, or any member of the local councils to provide written explanations in the event that they have committed acts contrary to the ethics of public service. If the authority is

not satisfied with the explanations provided, or if the person concerned fails to provide the requested explanations within 10 days, the request for removal is referred to the competent administrative court. This procedure results in the elected representative in question being suspended from their duties until the court has ruled.

- **Exercise of the power to replace**

An official may replace the head of a local authority should the latter fail to carry out the duties entrusted to them; however, the legislator has also provided for an important safeguard in this regard, namely the requirement to obtain a court ruling on the matter.

- **Oversight by the central government**

The oversight entrusted by the legislature to the government authority responsible for home affairs over the activities of local authorities is one of the most important mechanisms for providing guidance and support. This is primarily reflected in the fact that certain strategic decisions—such as the delegated management of local public facilities and the establishment of local development companies—are subject to a prior authorisation system.

Furthermore, the organisational laws governing local authorities have granted the central government the power to issue a decision dismissing the president of the council or one of his deputies if it is established that he is residing abroad, provided that the matter is referred to it by the governor of the province or region.

The Ministry's departments also exercise administrative and financial oversight of local authorities' budgets, and may request that the General Inspectorate of Local Administration carry out an audit or financial inspection of local authorities, thereby strengthening their role in monitoring the management of local affairs.

- **Financial Oversight**

In an effort to ensure sound financial governance of local authorities, the Moroccan legislature has entrusted the task of financial oversight of the budgets of local authorities and their affiliated bodies to the Public Accounting Authority, in its capacity as financial supervisor of local authorities' finances and as their financial adviser.

Pursuant to the provisions of Royal Decree No. 1.02.25, issued on 19 Muharram 1423 (corresponding to 3 April 2002), implementing Law No. 61.99 on the definition of the responsibilities of authorising officers, auditors and public accountants, as well as the implementing decrees relating to the establishment of the public accounting system for local authorities and their affiliated bodies, public accountants exercise financial oversight functions over local authorities, and are regarded as financial auditors with regard to expenditure commitments incurred; they are also personally liable for the audit duties entrusted to them and for decisions relating to expenditure commitments, and are responsible for the legality of decisions concerning the revenue of the said local authorities.

- **Judicial oversight**

Alongside administrative and financial oversight mechanisms, the oversight exercised by the financial judiciary—represented by the Regional Audit Councils—stands out as a fundamental institutional mechanism for the protection and rational management of public funds. Within the scope of their remit, these councils undertake the tasks of auditing, investigating and examining the financial accounts of local authorities and their bodies, in accordance with the provisions of the legislation relating to financial courts.

The Regional Audit Boards exercise their oversight functions over the bodies and local authorities falling within their jurisdiction, in accordance with the financial legislation relating to the financial courts. This oversight helps to enshrine the principles of good governance and link responsibility to accountability, whilst ensuring that the principle of financial autonomy is subject to a strict framework of monitoring and evaluation, which limits the scope of local authorities' actual autonomy.

Furthermore, the application of this principle is subject to a number of constraints that limit its effective implementation, a point which we shall address in the following paragraph.

Constraints on Governance

There is no doubt that the quality of local governance requires the implementation of the principles of good governance in accordance with a new model of relations between political actors and the bodies representing central authority. The principles of governance underpinning the principle of free administration are based on ensuring equal access to public facilities, as well as the continuity and quality of their services, whilst respecting the rule of law, upholding the values of democracy and transparency, and ensuring accountability, alongside the adoption of participatory approaches based on efficiency and integrity in the management of public affairs.

This leads us to ask the following question: do we have local authorities that are sufficiently qualified to manage their local affairs as required and to exercise regulatory authority within their territorial jurisdiction in accordance with the standards and principles set out in the Constitution and regulatory frameworks?

Whilst the powers conferred on the heads of local authorities under the regulatory laws enacted in 2015 formed the cornerstone of the principle of autonomous governance—aimed at strengthening local governance mechanisms, expanding the scope and freedom of local action, and consequently reducing the administrative oversight exercised by representatives of the central authority over these local authorities— practical experience has revealed numerous shortcomings relating to the governance of local administration, which have prevented the achievement of the desired integrated development and, in many cases, have even undermined the effectiveness of state intervention in reducing regional disparities and improving citizens' living conditions.

In seeking to explain these shortcomings, it becomes clear that they are linked, in part, to the political actors' interpretation of the aforementioned principle; indeed, some political elites may perceive this principle as being to be applied in an absolute and unrestricted manner, yet this perception clashes with the reality of local governance, which is characterised by the absence of a participatory and integrated approach, and by the limited financial and human resources required for local authorities to fulfil their roles independently.

In this context, the adoption of a unilateral decision-making approach has a negative impact on the effectiveness of public interventions and leads to outcomes that are inconsistent with the objectives sought by the principle of free administration, for this principle is not based on the unrestricted freedom of initiative, but remains framed by the requirements of efficiency, effectiveness and the linking of responsibility to accountability, reflecting a relative autonomy that falls within the logic of institutional control rather than embodying genuine local autonomy.

In the same vein, the narrow political exploitation of the principle of free discretion and the insistence by some elected councils on adopting a unilateral approach to local decision-making – whether for narrow political or even personal considerations — and without taking into account a holistic and integrated perspective — is likely to result in fragmented solutions and actions that lack coherence and harmony, which negatively affects the dynamics of regional development and limits the efficiency and effectiveness of the projects carried out, It may also lead to strained relations with the administrative oversight authority and to a refusal to endorse the decisions and resolutions adopted.

Furthermore, political divisions and rifts within elected councils may—in cases where council chairpersons hold a fragile majority—hinder the adoption of crucial decisions necessary for the smooth running of local authority facilities and bodies, thereby disrupting the development projects planned by the local councils.

Furthermore, the shortage of qualified human resources, **as well as** the technical and professional expertise required for the smooth running of local services, constitutes one of the most significant constraints preventing the proper application of the principle of autonomous management, particularly given the expanding powers entrusted to local authorities.

This is because local government is considered the main executive tool for managing local affairs; consequently, any imbalance in its structure or in the training of its human resources acts as a hindrance to its effective performance, negatively affecting the effectiveness of its interventions and its contribution to development, as well as the quality of services provided to citizens.

In the same context, local public service is generally characterised, on the one hand, by its lack of appeal and the delay in issuing a motivating statutory framework; it is also characterised by the limited number of competent staff capable of assuming and implementing the expanded powers and responsibilities entrusted to local authorities, In addition, the pay and compensation system is not aligned with the requirements for valuing the role and rewarding good performance, and there is a lack of a contractual system based on targets and performance appraisal.

These imbalances reveal that the effective implementation of the principle of autonomous management remains contingent upon the fulfilment of fundamental structural conditions, foremost among which are the development of human resources and the strengthening of their managerial capacities, with the aim of enabling them to exercise their powers and utilise modern management mechanisms, including contracting and strategic planning.

The financial dimension also emerges as a decisive factor in this context; although Article 141 of the 2011 Moroccan Constitution stipulates that: 'Regional authorities and other local authorities shall have their own financial resources and financial resources allocated by the State', in practice, financial resources remain insufficient and are considered one of the main obstacles limiting the effectiveness of local

authorities in fulfilling their development roles. The principle of autonomous management cannot be effectively implemented without granting local authorities a minimum level of financial independence to exercise their powers, so that they are not dependent on the State's general budget.

Financial resources are the cornerstone that enables local authorities to design and implement development projects, meet citizens' needs, and achieve territorial justice. Financial independence is considered a guarantee of autonomous management, according to the French Constitutional Council; in its absence, this principle becomes merely a legal framework with limited impact and one that cannot be fully applied in practice.

In this context, participants in the second national debate on expanded regionalisation recommended that the state should support the regions and local authorities in order to make optimal use of borrowing as a mechanism for financing their investment programmes and addressing development challenges.

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