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The Emergence of Federalism and its Application in Iraq under 2005 Constitution

نشأة الفدرالية وتطبيقها في العراق في ظل دستور ٢٠٠٥

Keywords: *Iraq, federalism, Constitution of 2005.*

الكلمات المفتاحية: **العراق، الفدرالية، دستور ٢٠٠٥.**

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Abstract

This paper focuses on the emergence of federalism in Iraq before 2003, its adoption and application under the State Administration Law for the transitional period 2004 and under the Constitution of 2005. It also focuses on the identification of the composition of the federal institutions in the political system in Iraq under the Constitution of 2005 as well as the method of work and imbalances in constitutional texts that organized them. This study will be conducted through doctrinal approach; data will be collected through initial and secondary legal sources by examining the contribution scholars in this field. The paper concludes that the application of federalism in Iraq was not out of the need for Iraqi people, but it came as a result of the political consensus. In addition, the shortage and the lack of clarity in the constitutional provisions relating to the organization of federal institutions had a significant impact on the work of these institutions in applying federalism properly in particular. Consequently, the work of the competent authorities should be undertaken to modify these texts so as to ensure the proper application of the Federation and its institutions in Iraq. Also, the Act of executive transactions, No. 13 of 2008, concerning Regions' Construction should be activated after the necessary amendments facilitating the process of construction new regions in Iraq.

Introduction

Over the years, the humans have looked for a regime to accept diversity in society. They have found a lot of diverse national religious communities. These communities are spread out among states. In various places of the world, the federalism is the best system in a way that it creates positive coexistence and ensures the rights of all members of the community including small minorities in a way that satisfies the majority and does not compromise their rights. During the last period, many states have been increasingly turned into federal states as a legal and political solution after the end of armed conflict. These states involve the Democratic Republic of Congo, Sudan and South Africa(1)*. Moreover, the application of the federalism varies from a state to another based on the historical, political and social circumstances in relation to each state*(2)*. The central system was used in Iraq since its establishment in 1921and it was in use until the fall of the political system by coalition forces in 2003. The central system is not compatible with the community that includes political, cultural, ethnic, national and different sectarian components. After the Second Gulf War 1991, Federalism only emerged in Kurdistan region. The rest of Iraqi regions continued to depend on the central system until the political system fell in 2003. Iraq became a federal State under the law of administration of the transitional period of 2004 and this was confirmed in the Constitution of 2005.*

This study focuses on the emergence and application of federalism in Iraq. It also focuses on the formation and work of the federal institutions under the Constitution of 2005. This study will shed the light on the significance of federalism and the way how it properly develops in Iraq.

1. The Emergence of Federalism

The emergence of federalism can be one of two methods:

First, it can be described as the formation of the union as a form of joining. Under this method, independent states can be joined together to form a federal state by means of which this state waives some of their powers in favor of the federal government. This occurs in order to achieve the goals that cannot be attained without doing such a union. These goals involve the achievement of economic security and prosperity. In this way, the federation has emerged in countries such as the United States, Switzerland, and Canada(3)*. Thus, particular factors that lead to this federal union are represented as follows:*

a) *The internal factors including one nation, religion, single doctrine, a common language, and sharing the customs and traditions*(4)*.*
b) *The external factors including facing the external threats or risks to which these states are exposed. This means that this union exists and aims at preventing an external aggression, the search for an increase in military force, or creating suitable conditions in order to build a successful economy and to improve the living conditions towards the best* (5)*.*

As for the second method, it can be described as the formation of the union through disintegration or secession. In accordance with this method, the federal union can be established by the disintegration of the unitary state into different regions. The will of these regions is to stay in the framework of the new federal state, provided that the central government should deal with the Foreign Affairs. The region, however, maintain its internal independence and has its own constitutional organization as well as its legislative, executive and judicial powers. These regions have the will to remove the dominance of the centralized government. States that have emerged in this way are the Soviet Union, Brazil, Mexico, Venezuela, Malaysia, and Nigeria (6)*. They also resort to this method of union formation because of these particular reasons:*

First, since there are vast areas, it is difficult for the centralized government to deal with the entire remote areas, particularly those that are far from the center. It is also difficult to offer the services to

people of those areas. Hence, the state resorts to change its status from a unitary state to a federal one. This division offers the development and progress to those areas with regard to manage its internal affairs without resorting to the center (7). *Second, there is the issue of diversity in the community; there are multiple components that vary in language, nationality, religion, doctrine and culture. To prevent the division of the country, there is also the presence of a tension among these components pushing the state to adopt a federal system* (8).

2. The Establishment of Federalism in Iraq

This section discusses the appearance of federalism and its application in Iraq in terms of the application in the Kurdistan region before 2003 as well as after 2003 due to the fall of the previous political system.

2.1 The Emergence of Federalism in Iraq before 2003

The federal system was not implied by the previous Iraqi constitutions to be considered as a principle to run Iraq. On the contrary, they affirmed the right of all minorities in Iraq to live in peace within the national unity. In 1925 in Article 109 and beyond that Article, the Iraqi basic law provided that administrative areas, along with its types and the competence of its staff, were determined by a law. Furthermore, the administration of municipal affairs would go with a special law under which it determined the functions of the municipal council. As a result, various laws had been already issued to control the brigades-governorates-in the thirties and forties of the last century (9).

Concerning the constitution of 1958, this constitution stated that the Arabs and the Kurds are partners in this country. This has been in accordance with Article 3 of the Constitution of 1958 that provided that "The Iraqi entity is based on the cooperation among all citizens by respecting their rights and maintaining their freedoms. The Arabs

and the Kurds are partners in this country and the Constitution decided their national rights within the Iraqi unity".

The constitution of 1963 did not tackle the issue of the division or the administration. However, it went in the same direction regarding the constitution of 1968 with the exception of its Article 77 affirming that Iraq is divided into administrative units. These units are organized and administered according to the law.

It is so important to note that the constitution of 1970 lasted valid until April 9, 2003. Under this constitution, the convention of March 11, 1970 gave the Kurds the autonomy. The convention in its tenth item stated that the Iraqi people form two main ethnic groups. These groups include the Arab and the Kurdish nationalism with the promise of establishing autonomous rule in the Kurdish areas. The Kurdish is considered to be an official language along with the Arabic language in those areas (10)*. Then, the resolution No. 247 on March 11, 1974 was issued by the Revolutionary Command Council. The Article 8 of that resolution provided "Iraq is divided into administrative units organized on the basis of decentralization and areas with Kurdish populations predominantly enjoy self-governance as determined by the law".*

Based on this amendment, the Autonomy Law No. 33 of 1974 was issued. It was also affirmed the enjoyment of the Kurdistan in the autonomous rule. The aforementioned law involved the organization of the authority in the Kurdistan area. It provided the formation of its local bodies.

A popular uprising against the regime occurred after the Second Gulf War in 1991. This made the Kurdistan area out of the control of the central government in Baghdad (11)*. The institutions were able to be constructed by the Kurdish parties and leaders away from the intervention of the central government under the international protection* (12)*. Consequently, first parliamentary elections in May 1992 were regulated. In addition, in July 1992 the first government was formulated in the region to fill the administrative void in the region in order to make a federal region as a reality after the Kurdistan National Council in October 1992 issued a decision. This*

action became as an adoption to a federal system from one side in which it determined the relationship of the region with the center under the support and recognition of the Iraqi opposition parties [13]. *Furthermore, the federal idea recently started to rise by the Kurdish forces, particularly the Democratic Party and the National Union of Kurdistan party at the conferences and seminars. These were conducted by the opposition forces out of Iraq in London conference in 2002. In the latter conference, the construction of Iraq's post Saddam Hussein was stressed the basis of democracy, pluralism, and federalism* [14].

2.2 The Application of Federalism in Iraq after 2003

Iraq was exposed to the aggression made by American-British alliance in March 20, 2003. This was ended with a military occupation of the country as well as the fall of political power in April 9, 2003[15].

Represented by the American civil governor Paul Bremer heading the Coalition of Provisional Authority who took over the rule of Iraq, the occupation authority issued the Law of the State Administration for the Transitional Period. This law agreed that the principle of federalism should be dealt as the basis for the form of the new Iraqi state. This law was referred to the governing council to be declared as a temporary constitution for the country without reference to the Iraqi people due to referendum [16].

2.2.1 Law of the State Administration for the Transitional Period 2004

This law is considered as the first constitutional document. It was issued to regulate the affairs of Iraq in the occupation stage and the following stages. It was also a turning point in the history of political and constitutional stages in Iraq. Under Law of the State Administration for the Transitional Period 2004, Iraq turns from a unitary state to a federal state; the Article 4 of that law provided "in Iraq, the system of government shall be republican, federal,

democratic, and pluralistic". The powers shall be shared between the federal government and the regional governments, governorates, municipalities, and local administrations. The federal system shall be based upon geographic and historical realities and the separation of powers. It should not be based upon origin, race, ethnicity, confession or nationality".

In Iraq, the Law of the State Administration for the Transitional Period in its Article 52 also stressed that the design of the federal system should stop the centralization of the authority to fall in the hands of the central government. This action was due to the difficulties and challenges confronted by Iraq in the past years [17]. *This gave evidence that any system did not have the ability to secure stability if the participation of all elements of Iraqi society were not involved in sharing the authority* [18].

Moreover, Article 53/a showed the recognition of the government of Kurdistan region as being the official government of the territory administered by the Kurdistan area before March 19, 2003[19]. *In this way, the control of the internal security, the police, and the right to impose taxes and fees within the region can be maintained*[20].*In the same article, the paragraph c mentioned above pointed out that the governorates that shall not be exceeded over three governorates except Baghdad and Kirkuk, outside the Kurdistan region are entitled to formulate a region. The interim government should develop a mechanism for the formation of regions on the basis that this mechanism should be given to the elected national association for the purpose of approval and consideration.*

Despite the fact that the Law of the State Administration for the Transitional Period organized the affairs of the transitional period, this law had been largely reflected in the Constitution of 2005. This means that this law can find the form of Iraq State after the occupation.

2.2.2 The Iraqi Constitution of 2005

It is crucial to indicate that the Constitution Drafting Committee [21]*prepared and formulated the constitution under the direct supervision of the National Assembly and after presenting the constitution to a popular referendum, the constitution was prepared, formulated, and approved* [22]*. The first Article of the Iraqi constitution 2005 identified the form of the State of Iraq which is considered as a federal state. For example, article 1 stated that "the Republic of Iraq is a single federal, independent and fully sovereign state in which the system of government is characterized as being republican, representative, parliamentary, and democratic. This Constitution is the legal material that guarantees the unity of Iraq".*

In the same thread, Article 117/I stated that "upon coming into effect, this constitution shall recognize the region of Kurdistan as a federal region along with its existing authorities". Further, the constitution used the term "governorates that are not organized in a region" as a reference to the Iraqi governorates except the Kurdistan region. These governorates are subject to an administrative decentralization [23]*. The Iraqi constitution of 2005 has been characterized as a constitution that joined the two systems of federalism and administrative decentralization at the same time. In Iraq, regions are only represented by the region of Kurdistan which is subject to the federal system. The governorates that are not organized in a region however work in accordance with administrative decentralization system. They practice broad administrative and financial powers. It is important to note that they are not subject to the control or the supervision of any ministerial body* [24]*.*

The powers of the federal government were exclusively determined by the Iraqi constitution of 2005. However, it would be related to the powers of the regions and governorates that are not organized in a region[25]*. Thus, the Iraqi constitution included the regions and governorates that have the same powers granted to the regions in spite of the difference of the legal center for both regions and governorates.*

3. The Federal Institutions in Iraq

Federal authorities contain the legislature, executive and judiciary authority. They practice their powers based on the principle of separation for these powers.

3.1 The legislative Branch

The legislative authority consists of the Council of Representatives and the Federation Council. The Council of Representatives is composed of a number of members representing the entire Iraqi people; they are elected by direct secret ballot by one seat per hundred thousands people out of Iraq population for four years. The Council of Representatives specializes in monitoring the performance of the executive authority, the enactment of federal laws, electing the President of the Republic, and organizing the ratification of international treaties and conventions by enacting a law with the majority of two-third members of the Council of Representatives (26).

It is crucial to indicate that the competences offered to the Council of Representatives are incompatible with the principle of separation of powers and with the features of the parliamentary system. Hence, the constitution offers priority to the legislative authority over all other constitutional institutions. The constitution does not involve the principle of monitoring and balance acquainted with the parliamentary system. Therefore, the Council of Representatives is given the monitoring authority over the actions of the executive authority. It is also given the authority to grant or withdraw confidence from the Prime Minister or a minister. It does not offer the executive authority to dissolve the Council of Representatives like what is acquainted with the parliamentary system.

According to the Federation Council, the Iraqi constitution of 2005 in Article 65 pointed out that "a legislative council shall be established under the name of "Federation Council" to include representatives from the regions and the governorates that are not organized in a region. Enacted by a two-thirds majority of the

members of the Council of Representatives, a law shall regulate the formation of the Federation Council, its membership conditions, its competencies, and all items connected with".

Additionally, Article 137 stated that "though it may be cited in this constitution, application of the provisions of the articles related to the Federation Council shall be postponed until the Council of Representatives issues a decision by a two-thirds majority vote in its second electoral term held after this constitution comes into effect."

It should be noted that the issue of the formation of the Federation Council and identification of its competences and membership conditions is left by the constitution to a law issued by the Council of Representatives. Hence, this issue is under the mercy of the Council of Representatives in terms of presence, modification or even cancelation. In this way, an imbalance in achieving the balance within the legislative authority exists; particularly the Federation Council is made up of the representatives of the regions and the provinces [(27)]*. Furthermore, concerning the Federation Council that has taken four years, the work has been deferred. In the second electoral cycle, the mechanisms of its formation and competences have not been postulated* [(28)]*. The Federation Council has formulated neither ordinary legislation nor constitutional legislation so far. For this reason, Iraq is different from any other countries that have adopted the federal system.*

3.2 The Executive Branch

Iraqi constitution of 2005 adopts the parliamentary system. The executive authority consists of the President and Cabinet. The majority of two-thirds of the members of the House of Representative elect the President of the Republic for a period of four years. This period is only renewable for two times. The President is in charge of issuing the special pardon based on a number of issues such as the recommendation from the Prime Minister, the ratification of international treaties and conventions after having the approval of the House of Representatives, the ratification of the laws issued by the House of Representatives, and the task of the Supreme Command of

the Armed Forces for the ceremonial and honorable purposes. As a result, the powers exercised by the President weaken his role in the political process because he is not granted influential powers.

As for the Cabinet, within fifteen days from the date of the presidential election, the President commissions the candidate of parliamentary bloc that has large numbers in order to form the Cabinet. The Prime Minister considers the direct executive responsible for public policy of the State and the Commander in charge of the Armed Forces [29]*. Furthermore, the Cabinet practices a number of powers such as proposing draft laws, preparing the general budget, final accounts and development plans, and issuing regulations, instructions and decisions to implement the laws*[30].

3.3 The Judicial Branch

The judicial authority is composed of the Higher Juridical Council, the Federal Supreme Court, the Federal Court of Cassation, the Public Prosecution Department, the Judiciary Oversight Commission, and other federal courts that are regulated according to the law. The Higher Juridical Council administers the affairs of judicial bodies and the supervision on the administrative judiciary. The law regulates the method of its composition and competences. In addition, the Higher Juridical Council nominates the members of the Federal Court of Cassation, the head of the Public Prosecution, and head of the Judiciary Oversight Commission. Then, it administers the nominations to parliament for their approval. As for the Federal Supreme Court, it is made up of a number of judges, experts in Islamic jurisprudence, jurists and scholars of law. Thus, a law enacted by the two-thirds majority determines their numbers and the way the court works. The court specializes in controlling the constitutionality of laws and regulations, interpretation of provisions of the Constitution, the determination in the issues that arise from the application of federal laws, decisions, regulations, instructions and procedures issued by the federal authority [31]*.It also specializes in the determination in the conflict among the federal government, government of regions, governorates, municipalities, local*

administrations, the determination in the accusations against the President and the Prime Minister, the determination in the conflict of jurisdiction between the judicial institutions of the regions and governorates that are not organized in a region[32].

4. Forming Regions in Iraq

The Iraqi federalism consists of the capital, regions, decentralized governorates, and local administrations [33]. *Moreover, the constitution recognizes and considers the Kurdistan region as a federal region with the possibility of forming an unspecified number of governorates. However, it stressed the need for the availability of the conditions for the establishment of these regions through the process of a referendum in accordance with what has been postulated by the Federal Constitution in two methods* [34].

In the case of attaining those conditions, the topic of the establishment of the region arises for a referendum in which voters in the concerned provinces determine the shift toward the formation of regions.

Furthermore, the constitution referred to the Council of Representatives the power to determine the executive procedures concerning the formation of the regions through a law passed by a simple majority of the attending members. Fulfilling, executive procedures concerning the formation of Regions No. 13 in 2008 has been issued. On the other hand, the constitution approves that each region when established has a right in founding its constitution in which the authorities of the region should be determined and the mechanism to exercise those powers in a way that is consistent with the Federal Constitution of the State [35]. *In addition, the Federal Constitution grants the regional authorities the right to exercise the legislative, executive and judicial powers according to its provisions, except those that fall within the exclusive powers of the federal government* [36].

Finally, federal government must work to activate the application of the law of the operational procedures for the formation

of the regions after doing the amendments necessary to facilitate the formation of regions in Iraq.

Conclusion

Iraq was a unitary State that adopted the centralization system. The central government practiced all powers and did not include any reference to federalism in the Iraqi constitutions since the establishment of the Iraqi state. After the fall of the political system in 2003, Iraq has become a federal state. The application of federalism headed a consensus of an opposition of political parties outside Iraq to be seen as a solution to the Kurdistan federation adopted after the Gulf War. The Constitution of 2005 stated the composition of the federal institutions (legislature, executive, and judiciary). These provisions were not clear; this affected the work of these institutions in applying federalism, in particular. As a result, there must be an amendment to these constitutional texts for better application of federalism in Iraq, in addition to the activation of Law of operational procedures in order to facilitate the formation of new regions in Iraq on a geographical basis and not on sectarian or national basis .

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(18)There is some who opposes the implementation of the federalism and democracy in Iraq during that stage on the grounds that the Iraqi people have been out from the control of a totalitarian regime and a single party; they are suffering from the effects of war, comprehensive siege, and the fall of its

political system as a result of the invasion of the country and then the occupation of Iraq. Before the occupation, the people were suffering from division and partition in which Kurdistan was semi-detached area in Iraq. After the occupation, the division has been increased. Thus, there are forces support and the occupation and called it liberation, whereas there are forces reject and resist the occupation. Hence, Iraq is not ready for democracy as well as the lack of knowledge of most of the citizens concerning the new political system implemented in Iraq.

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(19)Article 53/A of Law of the State Administration for the Transitional Period 2004 stipulated that "The Kurdistan Regional Government is recognized as the official government of the territories that were administered by the that government on 19 March 2003 in the governorates of Dohuk, Arbil, Sulaimaniya, Kirkuk, Diyala and Neneveh. The term "Kurdistan Regional Government" shall refer to the Kurdistan National Assembly, the Kurdistan Council of Ministers, and the regional judicial authority in the Kurdistan region".

(20)Article 54/A of Law of the State Administration for the Transitional Period 2004 stipulated that "The Kurdistan Regional Government shall continue to perform its current functions throughout the transitional period, except with regard to those issues which fall within the exclusive competence of the federal government as specified in this Law. Financing for these functions shall come from the federal government, consistent with current practice and in accordance with Article 25(E) of this Law. The Kurdistan Regional Government shall retain regional control over police forces and internal security, and it will have the right to impose taxes and fees within the Kurdistan region".

(21)A committee of 55 member of the National Assembly is formed for the purpose of writing a draft of the permanent constitution. Then, 25 members of the non-elected members in the National Assembly were added in order to achieve the required balance in the committee. The committee has distributed the sections of the constitution to six sub-committees in which they hold the preparation of constitutional texts and then forwarded these texts to the main committee. This procedure added the political feature on each section of the constitution due to the different political views of those sub-committees as well as the urgency in writing the draft in a way that reflected negatively on its

provisions. There are also controversial essential points began with Law of the State Administration for the Transitional Period 2004 and continued until writing the permanent draft of the constitution. These points represented the federal principle in terms of its nature and its applicability in Iraq, the name of the Iraqi state, the identity of Iraq, the division of resources and its revenues, the way how to distribute the powers among the federal government, the regions and the governorates and normalizing the situation in Kirkuk.
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(24)Article 122/First/Second/Fifth of the Iraqi Constitution 2005 stipulates that: First: The governorates shall be made up of a number of districts, sub-districts, and villages.
Second: Governorates that are not incorporated in a region shall be granted broad administrative and financial authorities to enable them to manage their affairs in accordance with the principle of decentralized administration, and this shall be regulated by law.
Fifth: The Governorate Council shall not be subject to the control or supervision of any ministry or any institution not linked to a ministry. The Governorate Council shall have independent finances.
(25)Article 110 stipulates that "The federal government shall have exclusive authorities in the following matters: First: Formulating foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; negotiating, signing, and ratifying debt policies and formulating foreign sovereign economic and trade policy.
Second: Formulating and executing national security policy, including establishing and managing armed forces to secure the protection and guarantee the security of Iraq's borders and to defend Iraq.
Third: Formulating fiscal and customs policy; issuing currency; regulating commercial policy across regional and governorate boundaries in Iraq; drawing up the national budget of the State; formulating monetary policy; and establishing and administering a central bank.
Fourth: Regulating standards, weights, and measures.
Fifth: Regulating issues of citizenship, naturalization, residency, and the right to apply for political asylum.
Sixth: Regulating the policies of broadcast frequencies and mail.
Seventh: Drawing up the general and investment budget bill.

Eighth: Planning policies relating to water sources from outside Iraq and guaranteeing the rate of water flow to Iraq and it's just distribution inside Iraq in accordance with international laws and conventions.
Ninth: General population statistics and census".
Article 115 stipulates that "All powers not stipulated in the exclusive powers of the federal government belong to the authorities of the regions and governorates that are not organized in a region. With regard to other powers shared between the federal government and the regional government, priority shall be given to the law of the regions and governorates not organized in a region in case of dispute".
(26)Article 61 stipulates that "The Council of Representatives shall be competent in the following:
First: Enacting federal laws.
Second: Monitoring the performance of the executive authority.
Third: Electing the President of the Republic.
Fourth: Regulating the ratification process of international treaties and agreements by a law, to be enacted by a two-thirds majority of the members of the Council of Representatives.
Fifth: Approving the appointment of the following:
A. The President and members of the Federal Court of Cassation, the Chief Public Prosecutor, and the President of Judicial Oversight Commission by an absolute majority, based on a proposal from the Higher Juridical Council.
B. Ambassadors and those with special grades, based on a proposal from the Council of Ministers.
C. The Iraqi Army Chief of Staff, his assistants, those of the rank of division commander and above, and the director of the intelligence service, based on a proposal from the Council of Ministers.
Sixth:
A. Questioning the President of the Republic, based on a petition with cause, by an absolute majority of the members of the Council of Representatives.
B. Relieving the President of the Republic by an absolute majority of the Council of Representatives after being convicted by the Federal Supreme Court in one of the following cases:
1-Perjury of the constitutional oath. 2-Violating the Constitution. 3-High treason.
Seventh:
A. A member of the Council of Representatives may direct questions to the Prime Minister and the Ministers on any subject within their specialty and each of them shall answer the members' questions. Only the member who has asked the question shall have the right to comment on the answer.

B. At least twenty-five members of the Council of Representatives may raise a general issue for discussion in order to inquire about a policy and the performance of the Council of Ministers or one of the Ministries and it shall be submitted to the Speaker of the Council of Representatives, and the Prime Minister or the Ministers shall specify a date to come before the Council of Representatives to discuss it.

C. A member of the Council of Representatives, with the agreement of twenty-five members, may direct an inquiry to the Prime Minister or the Ministers to call them to account on the issues within their authority. The debate shall not be held on the inquiry except after at least seven days from the date of submission of the inquiry.

Eighth:

A. The Council of Representatives may withdraw confidence from one of the Ministers by an absolute majority and he shall be considered resigned from the date of the decision of withdrawal of confidence. A vote of no confidence in a Minister may not be held except upon his request or on the basis of a request signed by fifty members after the Minister has appeared for questioning before the Council. The Council shall not issue its decision regarding the request except after at least seven days from the date of its submission.

B. 1-The President of the Republic may submit a request to the Council of Representatives to withdraw confidence from the Prime Minister.

2-The Council of Representatives may withdraw confidence from the Prime Minister based on the request of one-fifth of its members. This request shall not be submitted except after an inquiry directed at the Prime Minister and after at least seven days from the date of submitting the request.

3- The Council of Representatives may decide to withdraw confidence from the Prime Minister by an absolute majority of the number of its members.

C. The Government is deemed resigned in case of withdrawal of confidence from the Prime Minister.

D. In case of a vote of withdrawal of confidence in the Council of Ministers as a whole, the Prime Minister and the Ministers continue in their positions to run everyday business for a period not to exceed thirty days until a new Council of Ministers is formed in accordance with the provisions of Article 76 of this Constitution.

E. The Council of Representatives may question independent commission heads in accordance with the same procedures related to the Ministers. The Council shall have the right to relieve them by absolute majority.

Ninth:

A. To consent to the declaration of war and the state of emergency by a two-thirds majority based on a joint request from the President of the Republic and the Prime Minister.
B. The state of emergency shall be declared for a period of thirty days, which can be extended after approval each time.
C. The Prime Minister shall be delegated the necessary powers which enable him to manage the affairs of the country during the period of the declaration of war and the state of emergency. These powers shall be regulated by a law in a way that does not contradict the Constitution.
D. The Prime Minister shall present to the Council of Representatives the measures taken and the results during the period of the declaration of war and the state of emergency within 15 days from the date of its end".
(27)Article 65 of the Iraqi Constitution 2005.
(28)ErsinKalaycIolu, "Iraqi Constitution: A Federal Democratic Heaven or Hell?," http://sam.gov.tr/wp-content/uploads/2012/02/ErsinKalaycioglu.pdf (accessed November 13, 2014); SaharKamel Khalil, "The Legislative Power in Iraq under the 2005 Constitution- Actually, prospects and future," Political Issues (2014): 386.
(29) Articles 76, 78 of the Iraqi Constitution 2005.
(30)Article 80 stipulates that "The Council of Ministers shall exercise the following powers: First: To plan and execute the general policy and general plans of the State and oversee the work of the ministries and departments not associated with a ministry. Second: To propose bills.
Third: To issue rules, instructions, and decisions for the purpose of implementing the law.
Fourth: To prepare the draft of the general budget, the closing account, and the development plans.
Fifth: To recommend to the Council of Representatives that it approve the appointment of undersecretaries, ambassadors, state senior officials, the Chief of Staff of the Armed Forces and his deputies, division commanders or higher, the Director of the National Intelligence Service, and heads of security institutions.
Sixth: To negotiate and sign international agreements and treaties, or designate any person to do so".
(31)The administrative procedures and decisions is considered the core of the work of the administrative judiciary and not the constitutional judiciary; it is not right that the Federal Supreme Court would consider that work especially it has been organized through the State Consultative Council Law No. 65 of 1979 as amended.

HameedHannoun Khalid, Federal Authorities in Iraq Constitution of 2005, Journal of Science for Law, no. 24 (2009), 60.

(32)Articles 87-93 of the Iraqi Constitution 2005.

(33)Article 116 stipulates that "The federal system in the Republic of Iraq is made up of a decentralized capital, regions, and governorates, as well as local administrations".

(34)Article 119 of the Iraqi Constitution 2005.

(35)Article 120 stipulates that "Each region shall adopt a constitution of its own that defines the structure of powers of the region, its authorities, and the mechanisms for exercising such authorities, provided that it does not contradict this Constitution".

(36)Article 121/ First of the Iraqi Constitution 2005 stipulates that "The regional powers shall have the right to exercise executive, legislative, and judicial powers in accordance with this Constitution, except for those authorities stipulated in the exclusive authorities of the federal government".

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نشأة الفدرالية وتطبيقها في العراق في ظل دستور ٢٠٠٥

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ملخص البحث

تركز هذه الدراسة على ظهور الفيدرالية في العراق قبل عام ٢٠٠٣ واعتمادها وتطبيقها بموجب قانون إدارة الدولة للفترة الانتقالية لعام ٢٠٠٤ وبموجب دستور ٢٠٠٥. كما تركز على تحديد هوية مكون المؤسسات الاتحادية في النظام السياسي في العراق بموجب دستور عام ٢٠٠٥، وكذلك تحديد طريقة العمل وعدم التوازن في النصوص الدستورية التي تنظمها. وسيتم إجراء هذه الدراسة من خلال النهج العقائدي حيث ستجمع المعلومات من خلال المصادر القانونية الأولية والثانوية وكذلك عن طريق دراسة مساهمة الباحثون في هذا المجال.

وتخلص الدراسة إلى أن تطبيق الفيدرالية في العراق لم يكن نابعاً من حاجة الشعب العراقي، بل جاء نتيجة الإجماع السياسي. بالإضافة إلى ذلك، كان للنقص وانعدام الوضوح في الأحكام الدستورية المتعلقة بتنظيم المؤسسات الاتحادية أثر كبير على عمل هذه المؤسسات في تطبيق الفيدرالية كما يجب على وجه الخصوص. وبناء عليه، ينبغي أن تباشر السلطات المختصة العمل على تعديل هذه النصوص بما يضمن التطبيق السليم للفيدرالية ومؤسساتها في العراق. علاوة على ضرورة تفعيل قانون المعاملات التنفيذية رقم ١٣ لسنة ٢٠٠٨ المتعلق بتشييد المناطق بعد إجراء التعديلات اللازمة التي تسهل عملية بناء مناطق جديدة في العراق.