

The President's Contribution to Dissolving Parliament in the Parliamentary System

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It is possible to reconcile the position of the President of the Republic with the principle of the duality of the executive branch in the parliamentary system, if it is independent of the Council of Ministers. The Iraqi constitution took the dissolution of parliament, but in the form of a ministerial solution, while adhering to that by the House of Representatives vote on it, and this is contrary to the characteristics of the parliamentary system. The constitutional legislator in Iraq did not explain the reasons for dissolving the parliament, and this is a welcome approach. The Iraqi legislator did not restrict the dissolution of the parliament by not permitting the dissolution again for the same reason or other reasonable restrictions. The role of the President of the Republic in the stage of proposing the dissolution of the Parliament is dependent on the Prime Minister submitting a request for dissolution. The role of the President of the Republic in the stage of separation in dissolving the House of Representatives depends on the members of the House itself. The Iraqi constitution lacked adequate guarantees that compel the President of the Republic to call elections during the period prescribed in the constitution.

Key words: *The president, parliament, politics.*

Introduction

Throughout the ages, political systems have conferred on granting the president of state set of specialisations that are necessary, with the goal of preserving the political system and organising the affairs of the state properly, and this matter is pronounced whether the political system is democratic or dictatorial, and whether the system followed is parliamentary, presidential or council. (Ibrahim, 1983) In the parliamentary system, which is characterised by a balance between the authorities, especially the executive and legislative

branches, granting the president of state certain powers that confirm the balance between the authorities is of such importance that there are competencies that the president of state does not enjoy, and the parliamentary system becomes distorted and defective. (Tharwat, 1994) Jurisprudence agrees that the most important jurisdiction that strikes a balance between the authorities and makes the balance equal between the legislative and executive branches is its right to dissolve parliament, that right which has become one of the most important rights of the executive in the traditional parliamentary system. (Mohsen, 1987) The research problem is that certain countries adopted the parliamentary system, but they did not grant the president of state the right to dissolve Parliament, granted this right with unacceptable restrictions that contradict the essence of the parliamentary system, or they did not grant it at all despite the claim of their constitutions that they take the parliamentary system. (Hussein, 2009) This research follows an analytical method regarding the texts of the Iraqi constitution. Discussing the necessity of achieving a balance between the executive and legislative branches in the parliamentary system is by granting the president of state the right to dissolve parliament. (Ibrahim, 2006)

Literature Review

The Position of the President of a State

a) The Suitability of the Position of President of State with the Dualism of the Executive Branch

One of the advantages of the traditional parliamentary system is that the executive authority is bilateral, as it is in the hands of the president of state who is not responsible for its actions, and ministers who are a collective body called the Council of Ministers, and are asked before Parliament, (Rafi, 2016) and thus the president of state is not unique to the executive authority, but rather is shared by the prime minister and the ministers. Hence, the parliamentary system is distinguished by the presence of two different persons at the top of the executive branch: the president of state and the head of government. The dualism of the executive authority here differs from the dual executive authority, (Suleiman, 1979) in which two matters of government are held by two individuals; the advantage of dualism remains in the parliamentary system, whether the system of government is royal or republican, and the royal government here is the government in which the president of state takes office through inheritance for a period other than specific. This is because he has the self-right in his position, which he receives by inheritance. (Souad, 2002) The president of state may be called here the king, the prince, the sultan or the czar. As for the republican government, the president of state is chosen by election to enjoy this position for a limited period in the government. Whether the president of state is a king or a republic, this president must be independent of parliament and the cabinet, and his independence from parliament requires

that his stay in his position does not depend on the will of parliament. (Mahmoud, 2001) As for his independence from the cabinet, it means the necessity to separate the personality of the president of state and the personality of the head of government; it is not permissible to combine the characteristic of the head of government and the president of state at the same time. (Rafi, 2020)

b) The Role of the President of State in the Parliamentary System

If the role of the president of state in the parliamentary system is limited in comparison to his role in the presidential system, then jurisprudence is still different about the scope of this role, widening and narrow; then there are those who decide the negativity of the president of state in the parliamentary system because his competencies in this system do not exceed maintaining a balance. (Shamran, 1969) The powers are correct, so his role here is purely literary, devoid of any real authority. Their evidence for this is that: the ministry in the parliamentary system is responsible for governance matters other than the president of state and where responsibility is the authority, and the negative role of the president of state is followed in Britain (the cradle of the parliamentary system) and France, and finally, there is an established principle represented in “the king reigns and do not judge”. (Abdel Hamid, 1999) However, jurisprudence was not recognised and criticised according to the fact that the president of state possesses some of the powers that he performs in the field of executive authority, such as the right to appoint the prime minister and dismiss ministers in addition to being the supreme guide and ruling between the authorities, not to mention that many parliamentary constitutions determine the legislative powers of the president of state. This is in addition to the right to object to laws, the right to issue them, and other specialisations, the most important of which is the dissolution of the Parliament. (Ibrahim, 1983) In light of that criticism directed at the opinion of the negative role of the president of state in the parliamentary system, some jurisprudence sees that the parliamentary system does not contradict the actual interference of the president of state in the affairs of governance, but bearing in mind that: he finds a ministry ready to take responsibility for that interference, this ministry retains the confidence of the council Parliament, and the ministers always cover the activity of the president of state, that is, briefing his intervention in a manner of secrecy before Parliament. (Abdel-Hamid, 1998)

c) Choice of a President of State

Election of the President of state through the people: The people themselves elect the President of state, whether directly or indirectly, and the people are elected in the direct manner when the voters themselves directly elect the President without any mediation, while the indirect method is when the voters first elect their representatives, then these delegates elect the president. (Abdel-Ghani, 2000) If the election of the president by the people is due

to the desire to strengthen the executive branch, this method, especially if it is direct, may lead to strengthening the position of the president of state and pave the way for his tyranny because he depends on being elected by the whole people while members of Parliament do not elect all of them, except in a limited circle, and he feels independent from the legislative authority to assign his authority directly to the sovereign people. (Hussein, 2009)

Election of the President of state through Parliament: The second way is to elect the President of state through Parliament, and this is what was adopted by the Iraqi constitution in force in 2005, which stipulated: First: The House of Representatives elects from among the candidates a president of state, by a two-thirds majority of its members. : If none of the candidates obtains the required majority, then the two candidates who obtain the highest votes are to compete, and the president who gets the majority of votes in the second ballot is declared president. Thus, the President of state in Iraq is elected exclusively by the House of Representatives without the interference or participation of the people or the Federation Council. The Constitution also requires the House of Representatives to enact a law regulating the provisions for candidacy for the post of President of state. (Tharwat, 1994) This is what actually happened despite his delay in that, as the Law on Provisions for Nomination for the President of state No. (8) for the year 2012 was issued, which indicated the announcement of the nomination for the post of President of state to be within a period of 3 days from the date of the election of the Speaker and his deputies in the new legislative session. He made it clear that those who wish to nominate and those who meet the conditions must submit their written requests accompanied by official documents proving the availability of these conditions with them (Noman, 2011); either the mechanism for announcing the candidates and the way to challenge the announcement between them, through assuming the presidency of the House of Representatives to announce the names and those whose name has not appeared, have the right to object to the Federal Court Supreme within a period not exceeding 3 days from the date of the announcement, provided that the court decides on the objection within a period not exceeding 3 days from the date of registration of the objection.

A part of the jurisprudence in Iraq has criticised the failure of the constitution to define procedural and qualitative rules in the constitution and refer that to a law, as well as neglecting the constitution for the entities (Shamran, 1969) that are entitled to submit candidates for the position: is this limited to parties participating in the elections or are parties not participating in the elections entitled to this? Does the matter apply to independent entities as well? In addition, the constitution did not clearly define the freedom of the entity to choose or nominate candidates. (Ibrahim, 2006) Some see - for the sake of strengthening the position of the President of state and finding a complete balance between him and the legislative authority on the one hand and the second pole of the executive authority on the other hand, and that Iraq is a federal country - that the vote for the position of the President of

state be by the House of Representatives and the Federation Council as well, with the participation of representatives for the regions and governorates that are not organised into a region; in addition to this is the involvement of the legislative authorities in the regions and governorates that are not organised into a region, and some also see the need for the President of state to be among the members of the Iraqi Parliament, starting from the beginning. (Rafi, 2016)

Electing the President of state in a mixed manner: In order to get rid of the faults of the previous two methods and an investment in the advantages of each, some countries went to take a compromise between them, so that the President of state is not fully independent of the parliament or is largely subject to it because he does not give the right to vote to The Parliament alone, or to the people alone permanently, and requires that both the people and the Parliament participate in its election, in two forms: (Rafi, 2020) *The first form:* This form is carried out through the election of the President of state by a special body consisting of members of Parliament and a number of delegates elected from the people so that this number is equal - the loyalty of delegates with the number of members of Parliament. (Souad, 2002) *The second form:* This form is accomplished by electing the President of state by nominating him to Parliament, and then it is presented to the people for a referendum. (Suleiman, 1979)

Dissolution of Parliament

d) Definition of dissolution of Parliament

Jurisprudence defined the dissolution of Parliament in several definitions, some of whom defined it as the right of the government to terminate the parliament's representation of the nation before the end of its natural period in accordance with the constitution. Dissolution of Parliament has been defined by some of the jurisprudence as recognition of the government in the ability to end the legal period of the House of Representatives before it is due, and some jurisprudence has known it (Abdel-Hamid, 1998) as ending the Prosecution of Parliament before the constitutionally specified date. In Iraq, some jurisprudence knew that the dissolution of Parliament was the end of its work before the end of its mandate as defined by the Constitution, and others knew that it would end the term of work of Parliament before the end of the legal period prescribed for its representation in accordance with the provisions of the Constitution. (Abdel Hamid, 1999)

e) Forms of dissolution of Parliament

The Ministerial dissolution: It is the most common solution, which is more in line with the nature of the balance between the ministry and parliament, and this solution is achieved in

the event of a persistent dispute between the ministry and parliament (Mohamed, 1961). This is because the ministry regarding this dispute does not see waiting for the possibility of the parliament moving the weapon of ministerial responsibility to bring it down, but rather it is working on the president of the state to seek to dissolve parliament and arbitrate the electorate in the dispute between the ministry and parliament. (Ibrahim, 1983)

The Presidential Dissolution: where the president of state dissolves parliament based on his personal conviction, and it is noted that the president of state doing this is fraught with risks; if the people re-elect the parliamentary majority, this means that the president's opinion is not favourable, and this leads to embarrassing the president of state and weakening his position and influence. However, is the president's right to dissolve parliament absolutely free or restricted? (Abdel-Ghani, 2000) In other words, is the president of state obligated to exercise his right to dissolve parliament for specific and specific reasons, or does he have complete freedom to do so? (Rafi, 2020) A part of the jurisprudence sees that the president is obliged not to use this right twice for the same reason, as this is considered one of the axioms of the democratic system, but another opinion believes that the president's right is absolute from every restriction as he may use it for any reason provided that he expresses it in the decision to dissolve. (Souad, 2002)

f) Reasons for dissolution of Parliament

Most constitutions did not disclose the reasons for the solution, and left that to the discretion of the political authorities, headed by the president of state and the government, but in jurisprudence, the president sees that there are reasons for a solution even if the constitutional legislator did not mention it. The right of the dissolution was found for good reasons, and it is not in vain for the president of state to dissolve Parliament (Mostafa, 2011); among these reasons is the intensification of conflict between Parliament and the government, which calls for arbitration by the nation in this ongoing conflict. (Tharwat, 1994) The reason for the solution may also be the desire of the president of state to defend his views and rights, which he believes from the point of view that the people support him, or in order to find a parliamentary majority. To ensure stability of judgment, and to prevent crises, the Ministry repeated the dissolution, especially in the case of coalition governments. To ensure that the president of state does not abuse the right to dissolve parliament, constitutions often place some of the restrictions that would allow this right to be dissolved, consistent with the spirit of the constitution and compatible with the parliamentary system. (Abdel-Ghani, 2000) Among those restrictions, for example, are what most constitutions stipulate, that the period between the end of the dissolution of the dissolved council and the convening of the new council may not be prolonged, as a certain period is specified between the two dates in order to prevent the president of the state from continuing to do so and in order to form a new parliament in the shortest possible period; some (Abdel Hamid, 1999) constitutions have

mentioned their own restrictions, including the fact that the dissolution of Parliament cannot be repeated by the President of the State for the same reason again so that the dissolution of Parliament has its value and importance and this dissolution is not as if it were a game in the hands of the President of the State, or the resignation of the ministry that signed the Decree to dissolve Parliament so that the decision is for the people, or obliging the ministers who are seeking to run the new parliamentary elections to resign, and other restrictions. (Shamran, 1969)

The Role of the President of State in Dissolving the Parliament In Accordance With the 2005 Iraqi Constitution

g) The Role of the President of State in Proposing the Dissolution of the House of Representatives And Its Restrictions

The drafters of the Iraqi constitution tried to reconcile the requirements of the parliamentary system with granting the parliament a special constitutional position among other constitutional institutions, so they deduced some constitutional rules, as the dissolution of the Iraqi parliament was addressed through the text of the constitution: (Adnan, 2011) First: The parliament is dissolved by the absolute majority of its members, based on the request of one third of its members, or a request from the Prime Minister, and with the approval of the President of state, it is not permissible to dissolve the Council during the interrogation period of the Prime Minister. Second: The President of state, upon the dissolution of the House of Representatives, (Ali, 2014) calls for general elections in the country within a maximum period of sixty days from the date of the dissolution. It is noted here that the effective Iraqi constitution limited the right of the president of state in the field of dissolving the parliament to agreeing to the request of the prime minister to dissolve the council; this means that the president of state in Iraq does not have to take the decision to dissolve on his own initiative and with his individual will, but rather at the request of the president Council of Ministers. (Hussein, 2009) This means that the effective Iraqi constitution has taken one of the forms of dissolving the parliament, which is represented in the ministerial solution without taking the other form, which is the presidential solution, and this is a defect, as the President of state may wish to dissolve the parliament with the unwillingness of the Prime Minister to do so. (Mohamed, 2007) A juristic discussion has arisen about the extent of the authority of the President of state to accept or reject the request submitted by the Prime Minister, as some see that there are two scenarios of the situation, as a review of Article (64): First indicates that his role is limited to approval without rejection, which is consistent with (Suleiman, 1979) the traditional idea of a parliamentary system, which strikes a balance between the Council of Ministers and the House of Representatives, but based on the constitutional text. The President of state has rejected the request, so whoever has the right to consent also has the right to refuse. Others believe that the president's decision to approve the dissolution of the

parliament depends on his relationship with the prime minister or the nature of the relationship of his parliamentary bloc with the prime minister's bloc. (Ibrahim, 2006) Therefore, the role of the president of state in dissolving the parliament is pivotal and influential, and not formal, as it appears at first glance. Note that the right of the president of state to propose to dissolve the House of Representatives is restricted not only by submitting an application from the Prime Minister, but also by the inadmissibility of submitting this request during the period of interrogation of the Prime Minister. (Rafi, 2020)

h) The Role of the President of State in Separating the Proposal to Dissolve the House of Representatives

The Iraqi constitution took the self-dissolution, meaning that it left the issue of deciding whether to dissolve the parliament exclusively for members of the parliament, and thus the executive authority has lost its most important weapon in the face of the legislative authority represented by dissolving the parliament. (Souad, 2002) The parliamentary system in Iraq has been distorted because of this. Some believe that the practical reality contradicts the theory in this regard, as the House of Representatives find it difficult to agree to dissolve itself. However, we see that despite the conviction that the constitution should be amended in order to be in line with the spirit of the parliamentary system, the President of state has an indirect right in this regard, represented by the presence of members of the House of Representatives who belong to the same bloc of the President within the House of Representatives, meaning that the parliamentary bloc (the republic) to which the President belongs will be its voice and its opinion will be represented in the parliament dome. (Abdel-Hamid, 1998)

The Role of the President of State after Agreeing To Dissolve the House of Representatives

After deciding on the request by members of the House of Representatives and submitted by the Prime Minister and approved by the President of state, then the President of state - and if members of the House of Representatives agree to dissolve the House - plays a necessary role which is to call for general elections in the country during a period of time (Shamran, 1969) A maximum of sixty days from the date of the solution. It seems that this role is more formal and protocol than anything else, but we wonder if the parliament was dissolved and the President of state did not call during the specified period for parliamentary elections, so what is the solution? The researcher sees here that the president of state from the constitutional point of view would be in violation of the constitution and once in the constitutional oath, legal measures must be taken against him, by the Federal Supreme Court, (Adnan, 2011). However, we will clash with the inability of this because this will lead to his removal from office through the House of Representatives, that does not exist because of the dissolution, and the researcher sees amending the constitution and considering the dissolved

assembly remaining, if the President of state does not call for elections within the period prescribed in the constitution. (Rafi, 2016)

Results & Conclusions

1. It is possible to reconcile the position of the President of the Republic with the principle of the duality of the executive branch in the parliamentary system, if it is independent of the Council of Ministers.
2. The Iraqi constitution took the dissolution of parliament, but in the form of a ministerial solution, while adhering to that by the House of Representatives who voted on it, and this is contrary to the characteristics of the parliamentary system.
3. The constitutional legislator in Iraq did not explain the reasons for dissolving the parliament, and this is a welcome approach.
4. The Iraqi legislator did not restrict the dissolution of the parliament by not permitting the dissolution again for the same reason or other reasonable restrictions.
5. The role of the President of the Republic in the stage of proposing the dissolution of the Parliament is dependent on the Prime Minister submitting a request for dissolution.
6. The role of the President of the Republic in the stage of separation in dissolving the House of Representatives depends on the members of the House itself.
7. The Iraqi constitution lacked adequate guarantees that compel the President of the Republic to call elections during the period prescribed in the constitution

Recommendations

1. The researcher proposes to involve other parties in addition to the House of Representatives in choosing the President of the Republic, in order to strengthen the position of the President of the Republic and give him a special position among the constitutional institutions.
2. Restricting the right to dissolve the House of Representatives with several restrictions makes this right protected from the futility of the tampered, and from that prevents the dissolution of the House again for the same reason.
3. Granting the President of the Republic the power to propose to dissolve the House of Representatives without the participation of the Prime Minister while maintaining the image of a ministerial solution in place without God's restrictions except those restrictions necessary for the institutions to operate in a balanced manner.
4. The President of the Republic granted the right to adjudicate the request submitted by the Prime Minister to dissolve the Council.



5. Grant the President of the Republic the right to dissolve the House of Representatives if he is forced to do so in accordance with constitutional contexts that do not disturb the balance of institutions.
6. Putting enough guarantees to prevent the President of the Republic from refusing to call for elections after the dissolution of the House of Representatives, such as if the dissolved Parliament returns to work after the end of the specified period, if the President does not call for elections in the country.



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