

ANALYTICAL STUDY OF THE ROLE OF THE HEAD OF STATE ACCORDING TO THE (2005) CONSTITUTION OF THE REPUBLIC OF IRAQ

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1447 A.H. / 2025 A.D.

ABSTRACT	KEYWORDS
According to the 2005 Iraqi Constitution, the President of the Republic plays a highly important and complex role, given his active and influential role in achieving political stability within the system of government, a role theoretically supported by the constitutional document, In practical terms, its role is demonstrated through the political agreements that occur between political blocs and parties, which are both important and challenging Due to what is happening on the political scene following the parliamentary elections for the House of Representatives, especially what occurred after the last elections in 2021, which effectively obstructed the election of the President of the Republic, this stands as an obstacle to achieving the desired stability All of this prompted us to choose this research topic with the aim of focusing on the mechanism for electing the president and its outcomes, and addressing the executive authority of the president of the republic in appointing the candidate for the position of prime minister, given the constitutional obstacles and political challenges surrounding it. In addition, the research includes the questioning of the President of the Republic in the cases specified in the texts of the Constitution, which is considered a new feature in the parliamentary system adopted by the Iraqi constitutional legislator We adopted a descriptive-analytical approach to analyze the constitutional texts related to the office of the President of the Republic and the powers he exercises, including his accountability according to the Iraqi Constitution, while citing some constitutions of countries with a parliamentary system, such as the amended Constitution of the Federal Republic of Germany in 1949 , The Italian Constitution of 1947 and the Lebanese Constitution of 1990, as amended, are discussed in two sections The first section deals with the nomination process for the presidency and the duration of the presidential term , As for the second section, we clarified the executive authority of the President of the Republic, which is represented in appointing the candidate for the position of Prime Minister, according to the constitutional and political reality of that authority In	Constitution, Iraqi Constitution, Parliament, Parliamentary System, President of the Republic, Criminal Responsibility.

addition to identifying cases where the president and related parties are responsible for accusing and prosecuting him	
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We concluded the research topic with a number of results, the most important of which is: that there are constitutional gaps related to the position of the President of the Republic and his authority to appoint the Prime Minister, which requires addressing them with constitutional mechanisms.

As for the most important proposals, they are: the necessity of adhering to the constitutional mechanisms according to the exceptional amendment, in addition to the citizens having political awareness for the success of democracy in Iraq.

Introduction

The position of the head of state under the Yemeni-Iraqi Republic system occupies a pivotal role in the exclusive Yemeni deficit, given that the system of government is dominated by consensual democracy, in addition to adopting the educational system and the executive authority's programs by virtue of the constitution's provisions.

Significance of the Study:

The primary role of the office of the President of the Republic in exercising power is in his contribution to achieving a balance between policies among the authorities, a balance that is prescribed according to the constitution and the political reality in that regard, which gives the subject a special importance that is linked between effectiveness and ambiguity.

Objective of the Study:

This research aims to study the role of the President of the Republic in the Iraqi parliamentary system, focusing on his role in maintaining the stability of the political system and promoting democratic participation. The research also seeks to understand the President's influence in this process, assess the actual executive powers granted to him within the parliamentary system, and determine their adequacy in achieving a balance of power.

Reasons and Motivations for Choosing the Topic:

There are primary and secondary reasons and motives, Among the most important reasons that led us to choose the topic of this research are the constitutional gaps and political circumstances surrounding the office of the president, and his powers, especially the executive ones, and addressing them with constitutional mechanisms consistent with a sound parliamentary system.

Research Hypothesis:

This study is based on the hypothesis that the role of the Head of State under Iraq's 2005 Constitution stems from the fundamental structure of the parliamentary system, which is characterized by the existence of two separate entities, both structurally and functionally, under the principle of dual executive authority. While this principle grants the President a formal role in exercising authority, actual governing power primarily rests with the Prime Minister and the Council of Ministers. Through

his personal influence and authority, the President contributes to maintaining the political balance among the branches of government.

Research Problem:

The task of the research problem is to answer a set of its questions:

- Does the position of President of the Republic align with the requirements of the parliamentary system in Iraq?
- Is the term of office of the President of the Republic in Iraq being applied as stipulated in the constitution, or is there a flaw in the implementation of its provisions?
- Do the executive powers granted to the President of the Republic under the Iraqi Constitution affect the stability of the system of government, or are there other problems that stand in the way of achieving that desired stability?

To address these issues, it is necessary to diagnose the flaws in the constitutional texts related to the subject of the research, in order to develop theoretical solutions that are appropriate to the requirements of the political reality imposed by the parliamentary system.

Research Methodology:

The researcher adopted the analytical and descriptive approach to analyze the texts of the 2005 Constitution of the Republic of Iraq, This approach did not prevent referencing the constitutions of other states that have adopted the parliamentary system, such as the German Constitution of 1949, the Italian Constitution of 1947, and the Lebanese Constitution of 1990 (as amended) The objective was to obtain precise and reliable results.

Structure of the Study:

To address the requirements of the research, this study is divided into two main sections:

First Section:

The mechanism for electing the President of the Republic under the Iraqi Constitution of 2005 and the duration of his term.

- First Subsection: Mechanism for electing the President of the Republic
- **Second Subsection:** Duration of the presidential term
- The study concludes with a conclusion, in which the most important findings and recommendations are presented.

Section Two: The Powers of the President of the Republic under the 2005 Iraqi Constitution

First Subsection: Executive Authority of the President of the Republic

Second Subsection: Responsibility of the President of the Republic

Section One: The Mechanism for Electing the President of the Republic under the 2005 Iraqi Constitution and the Duration of His Term

The Iraqi Constitution establishes a parliamentary system⁽¹⁾, as reflected in its provisions, which state that “The Republic of Iraq is an independent federal state, with a republican, parliamentary, and representative system of governance” (Article 1 of the Constitution).

One of the pillars of this system is the principle of dual executive authority, which, formally, relies on the existence of two structurally separate entities: the Head of State and the Prime Minister.

A defining feature of the republican system is the specification of the term of office of the Head of State, in line with the principle of peaceful transfer of power⁽²⁾ (Mohammed Bou Asha, 2000, p.119), which ensures the succession of elected leaders to power⁽³⁾ (Ali Khalifa Al-Kuwari, 2000, p.53).

Since the method of electing the President is considered the distinguishing criterion between monarchical and republican systems, and given that defining the presidential term achieves the principle of power rotation required for the functioning of a democratic system, the study focuses on these two determinants according to the Iraqi Constitution, as outlined in the following two subsections.

First Subsection: Mechanism for Electing the President of the Republic

As previously mentioned, the Iraqi Constitution adopts a parliamentary system, one of the foundations of which is that the President is elected by the Parliament, represented by the Council of Representatives, as it directly comprises representatives of the people. The Constitution explicitly includes among the powers of the Council of Representatives the election of the President of the Republic⁽⁴⁾ (Article 61 of the Constitution).

Furthermore, the nomination stage for the presidency involves specific mechanisms, as it precedes the actual electoral process. To understand the mechanism for electing the President, it is necessary first to examine the nomination process for the office and then the election process, which will be discussed in the following two subsections.

First Branch: Nomination Mechanism for the Office of the President of the Republic

The nomination stage for the presidency involves individuals expressing their interest in holding the office, provided that the candidate meets the required conditions, which are stipulated both constitutionally and legally. The Iraqi Constitution specifies the qualifications for a presidential candidate, stating that the candidate must be Iraqi by birth to Iraqi parents, fully competent, and at least forty years old. Notably, the German Constitution of 1949 also sets the minimum age at forty. The candidate must have a good reputation, political experience, and be recognized for integrity, honesty, justice, and loyalty to the homeland, and must not have been convicted of a dishonorable offense⁽⁵⁾ (see Article 68/1,2,3,4 of the Constitution).

It would have been more precise for the constitutional legislator in the last paragraph of the cited article to use the term “felony” instead of “offense,” as dishonorable offenses are generally limited to felonies. Additionally, the Constitution requires, as a condition for any sovereign office, including the presidency, that the candidate must not be subject to the de-Baathification process⁽⁶⁾ (Article 135/3).

To ensure the candidate’s loyalty and confirm his affiliation to the country, Article 18/4 obligates the candidate to renounce any acquired foreign nationality upon assuming office. Comparative

¹) Article One of the Constitution of the Republic of Iraq, 2005.

²) Mohammed Bou Asha, *The Arabs and the Future in the International Conflict*, 1st ed., Arab Publishing and Distribution House, Libya, 2000, p.119.

³) Ali Khalifa Al-Kuwari, “The Concept of Contemporary Democracy,” in a group of researchers, *Democratic Accountability in the Arab World*, 1st ed., Center for Arab Unity Studies, Beirut, 2000, p.53.

⁴) Article 61 of the Iraqi Constitution, *supra* note.

⁵) See Articles 68/1, 2, 3, 4 of the Iraqi Constitution, *supra* note.

⁶) Article 135/Third of the Iraqi Constitution, *supra* note.

constitutions often require that a certain period has elapsed since acquiring nationality for eligibility to political office—commonly five or ten years, with continuous residence during this period, a provision followed by the German Constitution⁽⁷⁾ (Par Pierre & Ander Bois, 1979, p.45).

The Constitution also stipulates that the candidate must not have participated in the suppression of the 1991 uprising, the Anfal campaign of 1988, or any other crimes against the Iraqi people⁽⁸⁾ (Article 138/3/d).

The Nomination Provisions Law No. (8) of 2012 regulates the conditions that must be met by a candidate, which essentially mirror the requirements set forth in Article 68 of the Constitution, with certain additions. These include that the candidate must possess at least a recognized university degree accredited by the Ministry of Higher Education and Scientific Research, and must not be subject to the provisions of the Accountability and Justice Law or any procedures that replace it.

After reviewing the qualifications for presidential candidacy, it is necessary to address the procedure for nomination as organized by the constitutional legislator in Article 70 of the Constitution, which follows the individual nomination system. Any person wishing to run for the presidency must submit an application to the Speaker of the Council of Representatives within a maximum period of three days from the start of the announcement of candidacy. The applications must be submitted in writing, accompanied by official documents proving that the required conditions are met, along with the candidate's curriculum vitae⁽⁹⁾ (Article 3 of the Nomination Provisions Law No. 8 of 2012).

Second Branch: Mechanism for Electing the President of the Republic

Constitutions in parliamentary republics, particularly in federal states, are keen to describe the role of the President as the guarantor of the unity of the state. This is reflected in the Iraqi Constitution, which stipulates that the President of the Republic is the Head of the Federal State of Iraq, the symbol of national unity, independence, and external sovereignty, and part of the executive authority, exercising his powers and duties in accordance with the Constitution and applicable laws⁽¹⁰⁾ (Article 67 of the Constitution).

Regarding the election mechanism, the constitutional legislator vested this authority in the Council of Representatives, as it represents the people, the sovereign entity⁽¹¹⁾ (Dr. Sarhank Hamid Saleh Al-Barzanji, 2009, p.152). The President is elected by a two-thirds majority of the total members of the Council of Representatives. If no candidate achieves the required majority in the first round, a runoff occurs between the candidates who received the highest number of votes, and the candidate who obtains a simple majority in the second round is declared President (Article 70/1-2).

The Constitution also sets a timeframe for electing the President, requiring that the election be held within thirty (30) days from the date of the first session of the Council of Representatives (Article 72/2). The Council convenes upon the call of the outgoing President by a republican decree within fifteen (15) days from the ratification of the parliamentary election results, and this period cannot be extended beyond the specified limit (Article 54).

⁷⁾ Par Pierre & Ander Bois 1979-p.45

⁸⁾ Article 138/Third/D of the Iraqi Constitution, *supra* note.

⁹⁾ (1) Article Three of the Candidacy Provisions Law No. (8) of 2012.

¹⁰⁾ See Article 67 of the Iraqi Constitution, *supra* note.

¹¹⁾ Dr. Sarhang Hamid Saleh Al-Barzanji, *Constitutional Components and the Cases of Its Defense*, 1st ed., [Place of Publication not indicated], 2009, p.152.

The elected President takes the constitutional oath as stipulated in Article 50⁽¹²⁾ (Dr. Rafea Khidr Saleh Shubr, 2012, p.84).

However, the constitutional provisions concerning the election of the President within the specified timeframes have not been adhered to in most previous parliamentary terms, the most recent being the fifth parliamentary term following the early elections of 2021. In fact, the required quorum for convening the session to elect the President of the Republic was not achieved, resulting in a political deadlock, leaving the office vacant until the President was finally elected on⁽¹³⁾ 13 October 2022 (Asst. Lecturer Hiba Neama Mansour, 2023, p.689).

Despite this, the **Supreme Federal Court** clarified the uncertainty in one of its rulings, stating that the quorum for a session of the Council of Representatives to elect the President of the Republic is **two-thirds of the total members of the Council**. The Court decided:

"The Council of Representatives shall elect the President of the Republic from among the candidates for the presidency by a two-thirds majority of the total number of members of the Council, and the quorum shall be achieved by the presence of two-thirds of the total members of the Council.

⁽¹⁴⁾(Supreme Federal Court Decision No. 16/Federal, dated 3 February 2022).

The aforementioned decision clearly determined the minimum quorum required from both a constitutional and legal perspective, as well as the number of votes required in the first round for a candidate to be elected President, which was fixed at 219 members.

Second Subsection: Duration of the Presidential Term

Constitutions in democratic republics tend to define the term of office of the Head of State through the succession of presidents. Authority, in order to derive legitimacy and enforce its legal and material power, must be accepted and recognized by society as a right exercised by the state over its citizens⁽¹⁵⁾ (Dr. Maha Abdul Latif Al-Hadithi, 1994, p.1).

Since the presidential term in a democratic republican system is generally defined constitutionally, it may end in the usual manner, but in certain special circumstances, its termination may require additional procedures. This approach is adopted by the Iraqi constitutional legislator, which necessitates clarification in the following two separate branches:

First Branch: Duration of the Presidential Term and Its Conclusion

The Iraqi constitutional legislator has set the term of the President of the Republic at four years, with the possibility of re-election for a second term only⁽¹⁶⁾ (Article 72/2). In other words, the President's term is four years, renewable once, making the maximum total duration of the presidency two electoral terms⁽¹⁷⁾ (Dr. Hamid Hanoun Khalid, 2010, p.85; ⁽¹⁸⁾Dr. Ali Youssef Al-Shukri, Dr. Mohammed Ali Al-Nasiri, & Mahmoud Al-Taie, 2008, p.125).

¹²) For further details, see Dr. Rafe' Khidr Saleh Shubber, Separation of the Executive and Legislative Powers in the Parliamentary System in Iraq, Al-Sanhouri Library, Baghdad, 2012, p.84.

¹³) Heba Ne'ma Mansour, "The Actual Suspension of the Constitution of the Republic of Iraq of 2005 and Its Relation to the Principle of Legality," *Journal of Legal Sciences*, Issue 38, No. 1, 2023, p.689.

¹⁴) Supreme Federal Court Decision No. 16/Federal, dated 3 February 2022.

¹⁵) Dr. Maha Abdul Latif Al-Hadithi, The Problem of Power Succession and Its Impact on Politics in the Third World, PhD Thesis, College of Political Science, University of Baghdad, 1994, p.1.

¹⁶) Article 72/2 of the Iraqi Constitution, supra note.

¹⁷) For further details, see Dr. Hamid Hanoun Khalid, *Political Systems*, 1st ed., Al-'Atik for Book Publishing, Cairo, 2010, p.85.

¹⁸) Dr. Ali Yousif Al-Shukri, Dr. Mohammed Ali Al-Nasiri, and Mahmoud Al-Ta'i, Studies on the Iraqi Constitution, Afaaq Foundation, Baghdad, 2008, p.125.

In contrast, some constitutions in parliamentary systems set the presidential term at five years, considering it more logical, reasonable, and flexible, allowing for a better evaluation of the President's performance during the required period⁽¹⁹⁾ (David N. Orbien, 2005, p.16).

We believe that setting the presidential term at four years, renewable only once, achieves the principle of peaceful rotation of power and provides the President with an incentive to exert effort to secure re-election, given his accumulated political experience in exercising authority and managing state affairs. Returning to the Iraqi Constitution, it is clear that the constitutional legislator has approached the principle of rotation in theory, by limiting the total presidential term to eight years.

Second Branch: Cases of Termination of the Presidential Term

To maintain the principle of power rotation, the presidential term can be extended for specified periods, ensuring the principle is respected. Consequently, the term is expected to end in line with the provisions established by the Constitution.

However, there are exceptional circumstances that may arise, leading to the same outcome—the termination of the President's tenure.

The Iraqi Constitution refers to some of these cases as follows:

1- **Expiration of the Term of the Council of Representatives:** This is a natural case recognized by the Iraqi constitutional legislator. According to **Article 72/1, second clause**, the term of the President of the Republic **ends with the conclusion of the parliamentary term**. This means that the constitutional legislator has **aligned the presidential term with that of the Council of Representatives**, so the President's term concludes at the end of the parliamentary session, i.e., **after four years**, as indicated in **Article 56/1**.

In the case of an extraordinary termination of the Council of Representatives' term, some argue that the President's term ends with the conclusion of the parliamentary session⁽²⁰⁾ (Dr. Zuhair Shukr, 1992, p.676 et seq.). This is the approach taken by the Iraqi constitutional legislator, which fixed the presidential term at four years. If the Council is dissolved before the end of its term, this does not prevent the President from completing the assumed term, as he represents an independent constitutional institution, separate from both the Parliament and the Government. Consequently, the President continues to perform his duties until the new Council of Representatives is elected and convenes, and a new President is elected within thirty (30) days from the date of the first parliamentary session⁽²¹⁾ (Article 72/2/b). The rationale behind this approach is to ensure the continuity of state institutions. However, it would have been more appropriate for the legislator to avoid constitutional vacancy by electing a new President from the date of the dissolution of Parliament, as is practiced under the Constitution of the Federal Republic of Germany of 1949.

2. **Resignation:** The Iraqi Constitution provides that the **President of the Republic may submit a written resignation to the Speaker of the Council of Representatives**, which becomes effective **seven days after its submission to the Council** (Article 75 of the Constitution). Thus, **resignation is a right of the President**, and the request is submitted to the same body responsible for electing him. However, the Constitution **requires that the resignation does not take effect until seven days have**

¹⁹) David n. orbien, constitutional and politics, Norton company, sixth edition, n.y, 2005 , p.16.

²⁰) Dr. Zuhair Shukr, The Intermediate in Constitutional Law and Political Institutions: General Theory of States and Governments, Vol. 1, University Publishing House, Beirut, Lebanon, 1992, pp.676 et seq.

²¹) Article 72/Second/B of the Iraqi Constitution, supra note.

passed from the date of submission to the Council. The resignation is **addressed to the Speaker of the Council**, who presents it to its members.

3. **Dismissal:** The President may be **dismissed by a decision of an absolute majority of the members of the Council of Representatives**, following a conviction by the **Supreme Federal Court** in any of the following cases:

Firstly: Violation of the Oath.

Secondly: Breach of the Constitution.

Thirdly: High Treason⁽²²⁾ (Article 61/6/b of the Constitution) (22).

It is noteworthy that the cases for which the President may be convicted are exhaustively listed in this article, meaning that the President cannot be convicted or dismissed for any other act or crime. It would have been preferable for the constitutional legislator to present these crimes by way of example, thereby granting the Supreme Federal Court the flexibility to convict the President for any other political or criminal act that may threaten state security and sovereignty or undermine professional honor.

4. **Vacancy of the Presidential Office for Any Reason⁽²³⁾** (Article 72/2/c of the Constitution) (23). This **general expression** used in the Constitution encompasses all situations that may lead to the termination of the President's term, such as **death or incapacity**. It would have been preferable for the legislator to provide **more detailed specifications**, for example, regarding **permanent incapacity to exercise authority**. It is well known that such situations often give rise to constitutional crises, particularly concerning who determines incapacity and who may claim it. A President may be accused of being unable to perform constitutional duties while asserting his ability to continue in office. For reference, the Lebanese Constitution specifies the presidential term as six years, and re-election is only permissible after six years have elapsed⁽²⁴⁾ (Article 49 of the Constitution) (24). This means that the Lebanese President's term is six years, renewable indirectly—a President whose first term has ended may not run for immediate re-election, but may seek the presidency again after a six-year interval, thus allowing term renewal, but only after the stipulated period.

Section Two

The Powers of the President of the Republic under the Iraqi Constitution of 2005. As previously noted, the Iraqi Constitution has adopted the parliamentary system, and it is well known that one of the main pillars of this system is the principle of dual executive authority, which is substantively based on the functional independence of both the Head of State and the Head of Government in exercising the powers entrusted to each of them. Moreover, the Head of State is inviolable and not politically accountable⁽²⁵⁾ (D. Ozbek, Adan, 2019, p. 37). The role of the Head of State is therefore symbolic in nature, and the powers exercised are formal in accordance with that principle.

However, the Iraqi constitutional legislator has vested the President with executive powers, as well as certain legislative powers, in addition to the formal powers conferred upon the President of the Republic under the provisions of the Constitution⁽²⁶⁾ (see Article 73).

In view of the fact that the powers falling within the legislative domain have not been the subject of political dispute, and since the executive powers granted to the President—particularly the authority to assign the Prime Minister to form the Council of Ministers—have faced obstacles and challenges that

²²) Article 61/Sixth/B, *ibid*.

²³) Article 72/Second/C, *ibid*.

²⁴) Article 49 of the Iraqi Constitution.

²⁵) D. Nimet Ozbek & Mohammed Ahmed Adan , The Role of Parliamentary System on Political Stability , 2019,b.37

²⁶) See Article 73.

hindered the implementation of certain constitutional provisions, and given also that the constitutional legislator has unilaterally determined the President's responsibility, attention shall therefore be focused on the executive authority of the President of the Republic and subsequently on the determination of his responsibility under the provisions of the Constitution, in accordance with the following two sections:

Section One:

The Executive Powers of the President of the Republic

As previously stated, the President of the Republic is vested with formal powers under the provisions of the Constitution, which are enumerated in Article 73, Furthermore, the president exercises actual powers, the most important and complex of which is tasking the prime minister with forming the government, given the constitutional obstacles and political challenges surrounding the constitutional text under discussion. Therefore, we have divided this requirement into two parts, as follows :-

Subsection One:

The established rule in the parliamentary system for taking a vacation is that the leader of the parliamentary majority that won the elections is tasked with forming the cabinet.

He forms the cabinet from his party or coalition that won the elections if he obtained a constitutionally mandated majority; otherwise, a broader coalition is required to reach that majority , Constitutions that adopted the parliamentary system have incorporated this rule into their constitutions, whereby the head of state, whether a king or a president, tasks one of the leading figures of the ruling party that won the elections, or the leader of the parliamentary majority, with forming the cabinet .

Returning to the Iraqi constitution, in which the legislator explicitly declared its adoption of this system, we find its deviation from that principle. This is confirmed by examining the text of Article 76, where numerous constitutional obstacles become apparent.

The first is the ambiguity of the phrase "the largest parliamentary bloc" in the first paragraph of the same article, which states: "The President of the Republic shall task the leader of the largest parliamentary bloc with forming the Council of Ministers within 15 days from the date of the election of the President of the Republic."

These demonstrations witnessed political debate regarding their content, namely the bloc of election winners or the bloc formed after the elections, which allows for resignations from the field by some blocs and political forces To gain their favor and participation in the political process, in order to satisfy the desires of this or that party, and this in turn leads to weak government performance and inevitably affects the rights and freedoms of individuals .

"The term 'largest parliamentary bloc' may refer to either: (a) the bloc that was formed before the elections through a single electoral list that entered the elections under a specific name and number and obtained the highest number of parliamentary seats; or (b) the bloc that was formed after the elections from two or more electoral lists that entered the elections under different names and numbers, and later coalesced into one unified entity within the Council of Representatives. Whichever bloc has the greater number of seats in the first session of the Council of Representatives, its nominee shall be designated by the President of the Republic to form the Council of Ministers, pursuant to Article (27)⁷⁶ of the Constitution."

(Federal Supreme Court Decision No. 25/Federal/2010, dated 25 March 2010).

²⁷) Supreme Federal Court Decision No. 25/Federal, dated 25 March 2010.

From this interpretation, it is evident that the President of the Republic may designate either the leader of the parliamentary majority that won the elections or the leader of the majority formed during the first session of the Council of Representatives to form the Council of Ministers.

However, this interpretation diverges from the established principle in the parliamentary system, which stipulates that the Head of State—whether a King or a President—must entrust the leader of the parliamentary majority that won the elections with the formation of the Council of Ministers. This principle acts as a parliamentary constraint on the Head of State in the process of forming the government⁽²⁸⁾ (see: Dr. Rafi' Khudr Salih Shubbar, op. cit., p. 57).

Furthermore, the same article presents an additional constitutional challenge, relating to the appointment of an alternative nominee if the designated Prime Minister is unable to form the government. The article stipulates that:

“The President of the Republic shall designate another nominee for the position of Prime Minister within fifteen days in the event the Prime Minister-designate fails to form the Council of Ministers within the period specified in Clause (Second) of this Article.”

The difficulty lies in the lack of clarity regarding whether this new nominee should be the nominee of the largest parliamentary bloc or one chosen directly by the President of the Republic. It is logically presumed, however, that the latter interpretation is preferable, so as to prevent any political maneuvering aimed at obstructing the formation of the government within the constitutional deadlines—especially given that Iraqi political blocs and parties operate largely through consensus-based arrangements, as will be discussed later.

Additionally⁽²⁹⁾, Article 76 fails to address the procedure to be followed if the new nominee also fails to form the government, nor does it specify the timeframe within which such formation must be completed. Nonetheless, the constitutional legislator indicates in Paragraph (Fifth) of the same article that:

“The President of the Republic shall designate another nominee to form the Council of Ministers within fifteen days if the Council of Ministers fails to obtain the confidence of the Council of Representatives.”

It is also worth noting that some constitutions adopting the parliamentary system do not require the Prime Minister to be chosen from the parliamentary majority, such as the Italian Constitution of 1947⁽³⁰⁾ (Article 92).

Subsection Two:

The Political Reality of the President's Authority to Designate the Prime Minister

There is no doubt that understanding the practical nature of this authority requires a comprehensive awareness of the actual circumstances surrounding the parliamentary elections for the Council of Representatives.

Since we have already discussed, albeit briefly, the legislative elections of previous parliamentary terms in connection with the President's term of office, it is important to note that the fifth parliamentary term differed markedly from the preceding ones. This distinction emerged from the suspension of the election of the President of the Republic, which consequently delayed the formation of the government for an entire year.

²⁸) For further details, see Dr. Rafe' Khidr Saleh Shubbar, supra note, p.57.

²⁹) Article 76/Fifth, of the Constitution.

³⁰) Article 92 of the Italian Constitution of 1947 provides: The Government of the Republic shall consist of the President of the Council of Ministers and the Ministers, who together form the Council of Ministers. The President of the Republic shall appoint the President of the Council of Ministers in coordination with them.

We will actually follow the assignment during that interim period in relation to the political reality that led to this, some of which was required of him.

To begin, it is necessary to examine the reality of the fourth parliamentary session following the resignation of the prime minister-designate, who was forced to end his term in office after a year due to the demonstrations. The House of Representatives approved this resignation (31) Minutes of the House of Representatives session No . 20 , on December 1 , 2019 .

And then the former president did not task the candidate of the agreement with getting rid of modern technology between the blocs and forms that do not occur on the candidate representing the bloc with the largest number of celebrities, which led to the use of the House of Representatives when it had its right to break the quorum of attendance and non-attendance to vote on the presidency for the position of president by the president of the republic The Federal Supreme Court confirmed this by stipulating the obligation to appoint the candidate stipulated in the first paragraph of Article 76. Consequently, the government's role became one of preparing for early elections and managing affairs, which led to the loss of individual rights and freedoms

Following the early elections in 2021, the role of the President of the Republic remained suspended for a year, as previously mentioned, due to the political forces' failure to agree on electing a president, given that political consensus was and still is the dominant factor in the political process.

This situation calls for prompt resolution through the exceptional constitutional amendment procedures provided by the Constitution, involving a revision of the pertinent constitutional provisions.

In particular, it is recommended that the threshold for electing the President of the Republic be changed from a two-thirds majority to an absolute majority. Additionally, the nomination procedure for the Prime Minister under Article 76 should be revised, substituting the phrase “the nominee of the largest parliamentary bloc” with “the winner of the elections.”

These proposed amendments aim to prevent the repetition of previous political disputes and to safeguard individuals' rights and freedoms against possible infringements.

Section Two:

The Responsibility of the President of the Republic

In parliamentary systems, the Head of State is typically regarded as inviolable and not personally accountable, meaning they generally do not bear individual responsibility for governmental actions , However, as previously noted, the constitutional legislator diverged from this principle and established that the President of the Republic is indeed accountable.

On this basis, we shall highlight the circumstances under which the President's responsibility may arise, identify the penalties or consequences applicable, and determine the authorities competent to bring charges against the President as well as those responsible for his trial.

Accordingly, this section is divided into two subsections: the first addresses the circumstances giving rise to presidential responsibility, and the second identifies the competent authorities for filing charges and conducting the trial.

Subsection One:

Circumstances Giving Rise to the Responsibility of the President of the Republic

The constitutional legislator has regulated the responsibility of the President explicitly, as provided in Article 61, Paragraph Sixth, as previously mentioned in the context of the dismissal of the President of the Republic.

Regarding the mechanism of accountability, the Council of Representatives is competent, in accordance with the above-mentioned article, to...

Sixth: Accountability of the President of the Republic upon a Reasoned Request by an Absolute Majority of the Members of the Council of Representatives.

(A) Dismissal of the President of the Republic by an Absolute Majority of the Members of the Council of Representatives, following Conviction by the Federal Supreme Court, in any of the following cases:

1. Breach of the Constitution
2. High Treason
3. These cases require detailed clarification

First: Breach of the Constitutional Oath

The constitutional legislator has obligated the President of the Republic to take the constitutional oath pursuant to Article 70, as provided for in Article 50 of the Constitution. Although the Council of Representatives is the body competent to hold the President politically accountable in the event of a breach of the constitutional oath, certain contents of that oath may give rise to criminal offenses stipulated in the Penal Code, such as the crime of undermining the independence and sovereignty of Iraq⁽³¹⁾ (Article 156 of the Iraqi Penal Code of 1969, as amended).

This case has been classified as a criminal offense under the Iraqi Penal Code within the category of crimes harmful to the public interest. The relevant provision is found among the crimes that infringe upon the external security of the State, stipulating that: "Any person who intentionally commits an act with the purpose of undermining the independence, unity, or territorial integrity of the country, or whose act is likely to lead to such an outcome, shall be punished by death."

Second: Violation of the Constitution

The violation for which the President of the Republic may be held accountable is established when the President commits any act that constitutes an explicit or implicit breach of any constitutional provision, or acts contrary to the Constitution by exercising the powers granted to him under its provisions in a manner that results in such a breach⁽³²⁾ [Mohammed Ali Salem and Ismail Ne'ma Aboud, 2008, p.159]. It may therefore be said that the constitutional violations which may be committed by the President of the Republic can be exemplified in the following cases:

The first case: When the President violates any provision of the Constitution in general, and particularly its mandatory provisions, which either prohibit the performance of a specific act that the President nevertheless undertakes, or impose upon him a certain duty that he fails to fulfill. The violation may also occur if the President contravenes the political provisions of the Constitution that regulate the relationship between him and the other public authorities, or breaches the social provisions of the Constitution that govern his relationship with individuals through those authorities.

The second case: Violation of the constitutional provisions that define the powers of the President, as set forth in Article 73 of the Constitution.

³¹) Article 156 of the Iraqi Penal Code No. 111 of 1969, as amended.

³²) Dr. Mohammed Ali Salem and Ismail Ne'ma Aboud, "Criminal Responsibility of the President of the Republic," published in Journal of the College of Education / Babel, Vol. 1, Issue 2008/4, p.159.

Third: High Treason

The constitutional legislator did not specify the nature of the high treason that may be attributed to the President of the Republic. It is believed that such treason possesses a dual nature — both political and criminal — a conclusion that can be inferred from the procedures governing accusation and trial.

As for the substantive content of high treason, a distinction must be made between two matters: the first concerns acts that do not fall within the scope of high treason, and the second concerns acts that do fall within the scope of high treason.

Concerning the first matter, it should be noted that the Constitution addresses high treason in Article 61, Sixth, in conjunction with cases of constitutional violation and breach of the constitutional oath, indicating that the concept of these two cases differs from that of high treason. Regarding the second matter, the substance of high treason is defined by acts committed by the President of the Republic that constitute a serious breach of the constitutional duties entrusted to him, as well as acts that compromise the integrity and security of the State, both domestically and internationally. Accordingly, the substantive content of high treason encompasses two categories of acts committed by the President of the Republic .

First Category: Serious Breach of Constitutional Duties

Second Category: Acts Undermining the Supreme Interests of the State

Section Two: The Competent Authority for Prosecuting and Convicting the President of the Republic

a) Regarding the accusation, the constitutional legislator intended to vest one of the legislative chambers—the Council of Representatives—with the authority to bring charges against the President, excluding the Federation Council, while granting the Supreme Federal Court the power to convict him in the constitutionally specified cases mentioned above.

Regarding the mechanism of accusation, the Council of Representatives is authorized, upon a substantiated request, to bring charges against the President by an absolute majority of its members, as stipulated in Article 61, Sixth.

In accordance with the aforementioned constitutional provision, the text of the Iraqi Council of Representatives Law No. 13 of 2018 aligns with the Constitution, as Article 28 stipulates: The Council may hold the President of the Republic accountable by an absolute majority of its members upon a substantiated request.

It is clear from the foregoing that the procedures for impeaching the President of the Republic by the House of Representatives are based on a reasoned request by an absolute majority of its members, and where the request must be reasoned, and the reasoning behind this impeachment requires stating the legal and factual considerations that led to its issuance , The reason is a formal requirement in the indictment decision, and if it is ignored, the decision is flawed and leads to its invalidity. Justification is a guarantee of the integrity of the procedures related to issuing the indictment, ensuring deliberation and careful consideration in its issuance, and also guaranteeing the identification of the legal reasons that prompted its issuance.

By mandating substantiated reasoning, the constitutional legislator ensures that the decision includes the necessary legal justifications for its issuance (Dr. Rafe' Khidr Saleh Shubber, 2014, p.36).

As for the authority competent to try the President of the Republic, the constitutional document has vested the function of convicting the President in the Supreme Federal Court. It can be said that this

Court is not specifically a court for trying the President; rather, it exercises this authority in addition to a number of other competences, as stipulated in Article 61/ Sixth.

b) The Constitution provides that: “The President of the Republic may be dismissed ... after being convicted by the Supreme Federal Court in one of the cases mentioned above.”

It is understood from this that the determination of the President of the Republic’s responsibility occurs following his conviction by the constitutional judiciary / Supreme Federal Court. It should be noted that this responsibility is of two types:

- Political responsibility, represented by dismissal or removal from office based on a decision issued by an absolute majority of the members of the Council of Representatives after his conviction by the Supreme Federal Court, as indicated in Article 61/ Sixth (b).
- **Criminal responsibility**, which, according to the provisions of the aforementioned constitutional text, requires legislation that sets forth the procedures for trying the President of the Republic. Since such legislation has not yet been enacted, this means that the procedures for politically trying the President during his term fall under political accountability, whereas procedures for trying him for other crimes, such as murder, theft, etc., fall within the jurisdiction of the ordinary judiciary.

Conclusion

At the conclusion of this modest study, the following findings can be drawn:

- There are gaps in certain constitutional provisions concerning the office of the President of the Republic, his powers, and the determination of his responsibilities under the Constitution of the Republic of Iraq of 2005.
- There are practical challenges facing the political system adopted by the Iraqi constitution, unlike other parliamentary systems, which are based on the Iraqi political system being based on political agreements.
- There is an urgent need to raise legal and political awareness among the general public and government officials regarding the powers of the President of the Republic and to define his responsibilities.

Recommendations and Proposals

Addressing the legal loopholes and practical challenges to activating the role of the President of the Republic in Iraq requires constitutional amendments in accordance with the exceptional amendment stipulated in Article 142 of the Constitution, as follows:

- 1- Amending the constitutional texts relating to the conditions of candidacy for the presidency, the mechanism of his election, and his executive powers, not to mention the texts relating to the accountability of the president, to ensure the effectiveness of the president’s role in the Iraqi political system.
- 2- Strengthening the legal and administrative frameworks to support the implementation of constitutional provisions related to the accountability of the President of the Republic.
- 3- Raising awareness among citizens about exercising their rights and defining their responsibilities to ensure justice and transparency in accountability.

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