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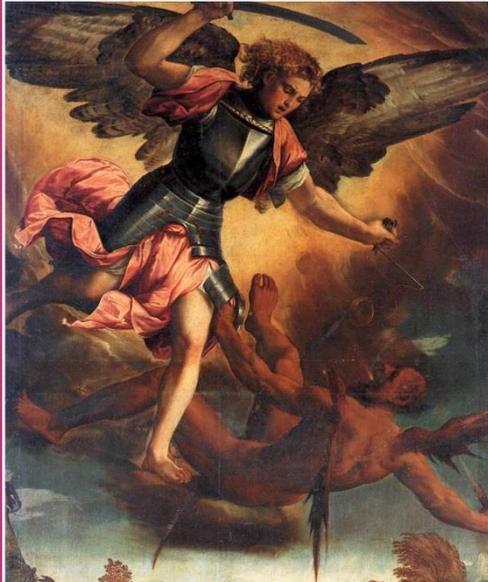
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# **Influence of the Executive Authority on Legislative Authority Under Constitution of 2005 of Republic of Iraq**

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## **Abstract**

**The executive Authority in the parliamentary system enjoys having its means to interfere in the work of the parliament, including its convening and dissolving, and the right to reject its laws. The most significant means is demanding solving the parliament. It is considered a constitutional action that shall make an unnatural end of the parliament within one elections course. This demand must be based on constitutional reasons. The aim behind the idea of a solution is to achieve a balance between the executive and legislative authorities. It is a right owned by the government in exchange for the ministerial responsibility of the legislature to withdraw confidence from the government .There is no doubt that the right to dissolve the parliament is the most serious right stated, however, the executive authority may deliberately use such right as a means to put pressure on the legislature, making it unable to cope with the government.**

## **Influencia de la autoridad ejecutiva en la autoridad legislativa según la Constitución de 2005 de la República de Iraq**

### Resumen

La Autoridad ejecutiva en el sistema parlamentario disfruta de sus medios para interferir en el trabajo del parlamento, incluida su convocatoria y disolución, y el derecho a rechazar sus leyes. El medio más importante es exigir la resolución del parlamento. Se considera una acción constitucional que hará un fin antinatural del parlamento dentro de un curso electoral. Esta demanda debe basarse en razones constitucionales. El objetivo detrás de la idea de una solución es lograr un equilibrio entre las autoridades ejecutivas y legislativas. Es un derecho propiedad del gobierno a cambio de la responsabilidad ministerial de la legislatura para retirar la confianza del gobierno. No hay duda de que el derecho a disolver el parlamento es el derecho más grave declarado, sin embargo, la autoridad ejecutiva puede usar deliberadamente tal derecho como un medio para presionar a la legislatura, haciéndola incapaz de hacer frente al gobierno.

### Introduction:

The Constitutions in the parliamentary systems frame the principle of separation of Authorities , and to establish a kind of balance between them, so as not to overwhelm one another and thus disturbs the balance in favor of one authority at the expense of others.. This issue is based on the balance between the legislative authority and the executive one . No matter the legislator tries to find ways of cooperation and monitor between the two of them , yet , there are legal and political considerations that cannot be ignored and denied, which play a major and clear role in the imbalance of the desired balance , including the Parliament having the right to control and monitor the performance of the executive authority in the government program according to which it managed to win the trust of the parliament . However, the exercise of the parliament here may be subject to effects away from the justification of this control and monitor , which may result in the dis confidence of the government depending on the means of exercising this control, but the performance of this control may be related to other purposes aimed at just overthrowing the government, and then It is in the interest of the government to put the constitution in the hands of the government through which it can face the incursion of

the parliament. In return, the parties, with the political reality they represent, may play a significant role in making the balance in favor of the executive authority, as the majority from which the government is born is fully subject to its representative, the Prime minister and this makes him the leader who imposes his will on his followers. This shall give dominance of the executive authority over the legislative one. In order for the Constitutional Legislator to maintain mutual means of influence between the two authorities under a system of flexible separation of powers, the Constitution grants supervisory means that will restore balance. One of these means, which was granted by the Constitution under parliamentary systems, is the right to dissolve the parliament. In order to shed light on this method, it is discussed in details under the constitutions of modern Iraq, namely the State Administration Law of 2004 and the Constitution of 2005 of Republic of Iraq.

Thus, through this research, the researcher shall focus on the issue of dissolution of the parliament by the government as well as the means to achieve this right.

#### Problem of the Research

The problem of the current study is the right to dissolve the parliament by the executive authority, and the extent of its use through specific measures taken by the government, as the main principle is the separation of authorities, and the appropriateness of the legislative organization to guarantees the legislative authority to exist, and how to ensure that the governing authorities respect the rules stated by the Constitutional law.

#### Significance of the Research

It is summarized as follows:

1. Reasons and guarantees of the right to dissolve the Parliament.
2. Dominance (influence) of the executive authority over the executive one.

#### Hypothesis of the Research

1. Does the government have the right to dissolve the parliament?
2. Are there any guarantees to dissolve the parliament?
3. What is the influence of the Parliament over the executive authority under the Constitution of 2005 of Republic of Iraq?

#### Research Methodology

Due to the nature of the subject and the objectives, the researcher applied the descriptive analytical method, which reflects the statement of the phenomenon to be studied.

The current research consists of two parts, the first of which is titled: “what is meant by the dissolution of the parliament?” which is divided into two chapters, and the first of which discusses the concept of dissolving the parliament. The second is to state the reasons and guarantees of the right to dissolve the parliament.

Part Two discusses the issue of dissolving the parliament in the Iraqi constitution. It is divided into two chapters, the first of which sheds more light on the role of the National Assembly in the face of the executive authority in the law of the state administration of the transitional phase. Chapter Two explains the issue of dissolving the parliament due to the dominance of the House of Representatives over the executive authority.

### Part One

What is meant by dissolution of the parliament?

Different opinions have different interpretation of the concept of dissolving the parliament. They range between a dissenting opinion, supporting one, and a third one that hangs between the previous two ones, where the view of the supporting opinion is based on the idea that the right to dissolve the parliament is on the basis that the head of state, according to the parliamentary system, is the ruler between the authorities, and his job is to maintain the balance between them. For this reason, the right of dissolution in the parliamentary system is not one of the means that is available to the President of the State, to be used at any his own will, at any time, as this right, though resorted to by the executive authority due to its dispute with the legislative authority, as in cases of automatic or self-dissolution of the Parliament, it is considered a right that is to be implemented upon the referendum of the people.

Other Opinions tend to deny the concept of dissolution and refuse not to recognize it, as they rely on the fact that the parliamentary system can be established without this concept, citing that the right of dissolution is a lethal weapon in the hands of the head of state, through which he may block the work of the Parliament, and practice prejudice against the democratic system, This constitutes an infringement on the rights of the representatives of the people, in addition to its incompatibility with the principle of separation of powers and principle of sovereignty of the nation. (3) The compromise opinion states that the use of the right of dissolution should be in certain cases, including a conflict between the Government and Parliament, and in all matters affecting the interests of the country, such as the conclusion of treaties.

### Concept of dissolving the parliament

The Constitutions usually include the term of “duration of the Parliament”, and the periods shall apply to the age of the Parliament in normal circumstances as it begins its sessions after its formation, and ends at the end of the constitutional period set for it. However, there are circumstances that may affect the life of the parliament, which may terminate its life before its term, because of its unbalanced relationship with the executive authority. Hence, the dissolution is intended to terminate the term of the parliament before the legal date for constitutional or political reasons. It is an issuance of a decree to end the life of the parliament as it represents the nation. It means that it is deprived of the parliamentary capacity and thus it may not exercise a legislative or supervisory role, and turn the representatives of the people into usual people and all their immunities, entitlements and rewards are to be ceased (5).

#### Subsection One

##### Definition of the dissolution of Parliament

The dissolution of Parliament is defined as follows : the executive authority shall terminate the term of the House of Representatives before the constitutional and legal end of its session, i.e. the immediate or accelerated termination of the legislative term.(6)

The dissolution of the parliament is more deliberative in the parliamentary system. The head of state in the presidential system does not have the right to dissolve the parliament, nor has it convened, nor the power to dissolve it and there cannot be such dissolution in the

government of the Assembly, as such Government is a government that is based on the concentration of all powers in the hands of an assembly elected by the people, with the consequent of the executive authority follows the legislative authority, because this government is a subsidiary of the Parliament .It is contrary to the logic that the follower owns the right to terminate the original as the main characteristic of the parliamentary system is the mutual influence, and the means of mutual control between the government and parliament, so as to maintain the balance between the authorities under this system.(7)

In order to dissolve the parliament, there must be are reasons for the constitution to be dissolved, including a dispute between the government and parliament and then this shall develop into a vote of no confidence

in the government, its resignation or establishment of a new government in most constitutions. Certain constitutions may grant the head of the state to dissolve the parliament, and such a situation, among other cases, is a failure to achieve the required balance between the authorities, and this is a means for the executive authority, especially the head of state, to avoid a political crisis to take place.

A prime minister may not take the decision of the resignation of his government because of a no-confidence or from one of the ministers whom the government has decided to support, but rather to the head of state to propose the dissolution of parliament, usually when the government feels right, and the majority of the council opposes it. The State dissolves the Parliament in order to arbitrate the people in the dispute that led to the withdrawal of confidence from the Government by submitting the dispute to it.(8) The dissolution in the parliamentary system means to bring the dissolution issue to the attention of the people who is in real charge and finalization of what has happened between the authorities of the State.(9)

The aim of dissolution, in the event of a no-confidence vote, is to return to the people. However, there is no justification for resorting to the people, if their support for the House of Representatives is clear and does not need evidence, in which case it is a constitutional duty for the cabinet to resign, not to request the dissolution of the parliament and the Head of State requested by this Ministry to dissolve the Council, must reject this dissolution, and forms a government that has the confidence of the parliamentary majority in agreement with the majority of the people.

The head of state is resorts to certain measures that aim at ending a crisis with the parliament because of his dismissal of a government that has the support of a parliamentary majority. In this aspect, the new parliamentary elections can be by a majority in support of his actions, and this supports his position, which may cause his resignation.(11)

#### Subsection Two

#### Legal basis for dissolving the Parliament

The principle of dissolution in the Constitution is ministerial responsibility, as the head of state in the parliamentary system is not accountable to the parliament, as the powers entrusted to it are nominal, and its role is limited to the selection of the prime minister, who is usually the majority in the parliament. It must be signed by the ministers, or by one of them. As long as the Council of Ministers in the parliamentary system exercises the powers of the executive authority, it is therefore the responsibility for the

actions of the head of state. This responsibility is two types of individual responsibility for each minister

with regard to his ministry, the collective or joint responsibility of the ministry or the whole cabinet in relation to the general policy of the state, and the responsibility here is political. If the Parliament decides the responsibility of one of the ministers, he shall have to resign. If the parliament decides the responsibility of the whole ministry, it entails its resignation in its entirety.(12).

The Ministry exercises the actual powers of the executive power in the parliamentary system of ministers under the leadership of the Prime Minister, with whom they are the Council of Ministers. The Council of Ministers in this system corresponds to the President of the Republic in the presidential system, and the ministry is usually formed by the majority party or a group of parties that have mutual understanding and similar in beliefs.

In countries adopting the bicameral system, such as Iraq, If the existing ministry and the parliament that does not support it become the majority of voters, i.e. when there is a disagreement between the government and parliament, and as the government dissolves the parliament to appoint a date for the new elections, for fear that there shall be legislative shortage. (14).

After the election of the members of Parliament, the executive authority has the right to issue a decision to convene it.(15) If the Parliament is elected for a full legislative term, it shall not hold its sessions periodically throughout the legislative term, but shall divide the legislative term into sessions of several months each. The Executive Authority shall convene the Parliament in each session and at the end of the legislative term, the Executive authority shall issue a resolution declaring the dissolution of the legislative session.(16)

The parliamentary system is based on the suspension of Parliament for a certain period, after which members return to the people to determine their election, or withdraw confidence, and the duration of parliamentary sessions as determined by the constitutions, and that parliaments are not held continuously, but have regular and extraordinary sessions with periods to rest (17).

Dissolution of Parliament represents limited control over the Parliament, since its use does not result in the loss of the Parliament as it does the dissolution. (18)

One can say that dissolving the parliament differs from postponing its

convening. Postponement is meant to suspend parliamentary sessions or a session of the parliament and is one of the means to reduce the intensity of the conflict between the government and the parliament. Here it is right to calm the dispute by postponing the parliament, to give each of them a chance to review themselves and end the dispute, the delay is usually the dissolution of the parliament, and helps to bring the points of view closer. Constitutions usually put some restrictions on the right of the government to postpone the parliament so as not to be abused. There must be explicit provisions authorizing the executive authority to this right.

If the Constitution does not mention it, it may not be resorted to even by the Council. The postponement authority shall be determined by the Constitution.

## Part Two

### Reasons and guarantees of the right to dissolve the Parliament

Parliamentary democracy is based on the selection of representatives of the people, who exercise power in the state on its behalf, in different ways in connection with the regimes of government, as it may cause several crises where there is the need to the people to ask for its opinion, as it is the owner of power, thus the option of dissolving the parliament becomes the most difficult choice facing the constitutional and political crises.

The researcher addresses two sections, as follows:

#### Section I

##### Reasons for Dissolution of the Parliament

It can be said that the right of dissolving the parliament, which is in the hands of the executive authority, is not an absolute one that one may use at any time, the way he wishes, or whenever he wants to, but it must be wisdom or justifications motivating it, provided that these justifications are legitimate, and these reasons are different, including:

First: Dispute between the government and parliament

Practically, it is one of the reasons that may cause the dissolution, therefore, certain constitutions explicitly stipulates that this reasons, such as the clash between the legislative and executive authorities, it is shown in the parliament disagreement with the government, if the former wants to deploy the latter, and the cabinet said that the parliament exceeded the limits of its powers, it may resort to the President of the State to ask him to dissolve the parliament, and submit the conflict between them to the people just to put an end to the abuse of the representatives of the people

using their rights. If the Constitution guarantees the right to withdraw confidence from the government, and depriving the latter of the right, the former is derived the right to dissolve the former, the imbalance between the legislative and executive authorities shall be lost (20).

It is obvious that if the government is deprived of the means to defend itself, there shall be uncontrolled chaos, and abound short-lived governments, and government instability, thus the right of dissolution is necessary to maintain balance in parliamentary constitutions. This right is necessary for ministerial responsibility, since the parliamentary ministry is accountable to the parliament, which has the right to overthrow it, therefore, in order to maintain balance and defend itself it must be able to dissolve the parliament and arbitrate the people in the conflict between the two of them.

Second: Disagreement with general popular satisfaction.

Dissolution of parliament may be due to disagreements between the constitutional authorities of the state, on a particular issue, whose resolution is of great importance in the life of the nation, such as the desire to make fundamental changes to the Governance system, electoral system, constitutional or political status of the State, or other matters relating to certain significant political matters affecting the higher interests of the State.

The solution would then be the referendum, and then the dissolution of Parliament in this case would be intended to solicit public opinion on some significant issues, which was undoubtedly up to the executive authority to resolve.

Third: Dispute between the Houses of Parliament

In this case, the dissolution shall be due to a dispute, or a dispute between the Houses of Parliament in States which adopt a dual parliamentary system, to the extent that it is not possible to restore consensus or response between them. The executive authority shall resort to their resolution, or to the dissolution of one of them in accordance with the Constitution. , To find out which is higher in the balance of values than the other or more valuable according to the people, and represents the majority of voters, so that the executive authority may resolve the case , if there is consensus and harmony between the two houses, by dissolving the House of Repre-

sentatives, for example, even if the outcome of the new elections support the old parliament, The other parliament would weaken its argument and its status would decrease loses its value as it shall be shown by the majority of voters who support the position of the House of Representatives (25). In this case, the dissolution aims at enabling the executive authority to achieve the political stability, since the disagreement between the two parliaments may not only impede the political and legislative life, but it can also lead to the enactment of laws that do not necessarily reflect the desire of the nation The people are the sovereign, and the source of all the state's authorities, which has the final say, giving confidence to the council, which believes that it may express its wishes and aspirations.

Fourth: Support for the parliamentary majority:

Some parliamentary systems may go to dissolve the parliament, or one of its chambers, as the case may be, in order to support the parliamentary majority, which stands for the executive authority to support in the parliament.

## Section II

### Guarantees the right to dissolve Parliament

The guarantees imposed on the President of the State of the need to dissolve the parliament in certain cases, or prevent the dissolution of the parliament in other cases, and whatever type of dissolution may be applied by the constitutional systems, it is surrounded by some guarantees that ensure its proper use, and that the executive authority does not resort to it unnecessarily, Some constitutions may often require that the dissolution order include calling voters for new legislative elections, in order to be an impediment to the Government from resorting to dissolution with the intent of escaping parliamentary oversight(27), and in order not to prolong the termination of the Parliament's term of office and the convening of the new parliament.(28)

Moreover, some constitutions stipulate that dissolution should not be repeated for the same reason, because the dissolution of Parliament is intended to refer to the people and to know their opinion on a particular subject. Constitutions explicitly stipulating this restriction do not mean that the executive authority should act otherwise, and some constitutions require the resignation of the cabinet, which signs the decree of dissolution, and the appointment of a new cabinet to oversee the elections of the new parliament. (29)

One of the substantive constraints of dissolving the parliament is the

most significant is the cause. The decree must include the reasons that led to it, so that the people can judge the legitimacy of dissolution and take it into account when holding new elections, and some constitutions adhere to this restriction.(30) The constitutions that applies the rule of not to conduct two consecutive for the same reason , shall , even indirectly , take up this obligation .(31)

There are certain formal restrictions that are guarantees of the right to dissolve the parliament, which is an advanced consultation about the decision to dissolve, as some constitutions require that the opinion of some parties or some persons themselves regarding the decision to dissolve the parliament, as well as the prohibition of dissolution of parliament at certain times as there are some constitutions that prohibit the dissolution of the parliament in a state of emergency, during which the head of state has all the powers, to face the state of crisis in the state, which makes sense, so as not to leave the door open to the executive authority to dissolve the parliament, in such periods and get rid of the oversight practiced by the parliament.(32)

#### Part Two : Dissolving the parliament in the Iraqi constitution

Parliamentary systems are based on the principle of balance between parliament and the government, through the tools of mutual control between the two of them and this is a feature of most of the constitutions. Some of these parliaments do not attach significance to the said balance, as they seek to strengthen the role of parliament in confronting the government, believing that the parliaments are representative of the people. Concentration of power has influenced in the Iraqi political ideology, which has worked to strengthen the parliaments so as to fear the emergence of strong governments. In 2003, two constitutions were issued, the first of which was the State Administration Law for the Transitional Period of 2004, and the second, the Constitution of 2005 of the Republic of Iraq.

The Role of the National Assembly in the face of executive authority in the State Administration Law of 2004

The Transitional Administrative Law of 2004 is the first constitution for Iraq after its occupation in 2003, which laid the first building block for parliamentary life and restored it with the establishment of the National Assembly, which shall be present by demonstrating its relationship with the executive authority and its inability to dissolve it as follows:

First: Establishment of the National Assembly

The Law of the State Administration for the Transitional period was keen to form an elected legislative authority, which is stated in Article (30 / a), which states that “during the transitional period, the State of Iraq shall have a legislative authority known as the National Assembly, which shall legislate laws and control the executive authority. It is also obliged to be elected in accordance with the Electoral Law and Political Parties Law, provided that women are represented by at least a quarter of its members, while achieving equitable representation of all segments of Iraqi society.” The National Assembly exercises several functions, most notably of which is drafting the permanent constitution, legislating and proposing laws, and monitoring the performance of women, Transitional Executive Authority and other terms of reference.

Second: The National Society’s connections with the Executive Authority

Under the State Administration Law, the Transitional Executive authority shall be composed of the Presidency Council and Council of Ministers. The law shall determine the relationship of the National Assembly with these bodies, through the method of composition and oversight functions.

1. The Role of the National Assembly in the Formation of the Executive Authority

The Presidency Council is composed of the National Assembly. It is composed of three members (head of state and two vice-presidents), elected by the Assembly on a single list and by a two-thirds majority, and exercises the powers entrusted to it by law. (35)

The Presidency Council shall nominate the Prime Minister unanimously and on the recommendation of the Prime Minister, and the latter shall seek the confidence of the Assembly by an absolute majority.(36)

2. The role of the National Assembly in overseeing the executive authority:

The National Assembly shall supervise the members of the executive authority, whether they are in the Presidency Council, Council of Ministers or other governmental bodies, as they may question and investigate them, request information from them and issue orders in the presence of those concerned.(37)

Third: Inability to dissolve the National Assembly:

The Law of State Administration did not include the right of the Presidency Council or the Council of Ministers to dissolve the National

Assembly, despite the powers granted to the latter in the face of the executive authority.

Recognizing the relatively short period of application of the State Administration Law, It is believed that it has put the first seed in compromising the right of dissolution, after resumption of parliamentary life, whose effect is evident in the position of the 2005 Constitution of Republic of the right to dissolve.

Chapter Two : Dissolution of parliament in constitution of 2005 of Republic of Iraq

The Law of the Transitional Administration of the State was abolished by virtue of Article (143) of the Constitution of 2005 of Republic of Iraq , which entrusted the legislative authority with two chambers: the Council of Representatives and Federation Council.(39)

The Constitution has decided on the provisions of the House of Representatives, in terms of its composition, membership, and the right of its members, its rules of procedure, sessions, electoral cycle and its powers in articles (49-64), in line with the general direction of the constitutions, in giving the total details of the Parliament. However, it has ignored this with regard to the Council of the Union, it is known that most of the parliaments of federal states (federal) that consists of two chambers, one is formed according to the population of each region or state and second ,in which the states are represented by an equal number of members, provided that they are stated in the provisions of the two chambers in the core of the constitutional document.(40)

However, the constitutional legislator in Iraq has been keen to provide the provisions of the House of Representatives, without the Federation Council, content with the following text (a legislative council called the “Council of the Union”) includes representatives of regions and governorates that are not organized in a region, and regulates its composition or conditions of membership, and terms of reference, everything related to it, by a law enacted by a two-thirds majority of the members of the Council of Representatives).The referred to law has not been issued by the House of Representatives, as it was postponed until the second electoral run , Article (137).

Whatever the case, 2005 Constitution showed an obvious influence of the House of Representatives on other bodies, including the executive authority, which negatively affected the possibility of dissolving the parliament to achieve the purposes of the dissolution. The support documents

of the domination of the House of Representatives on the executive authority, through the statement of the role of the House of Representatives in the system of government and its powers to the executive authority and exclude the possibility of dissolution shall be mentioned.

First: The Role of the Council of Representatives in the System of Government

The 2005 Constitution outlines the nature of the system of government in its first article, which states: “The Republic of Iraq is a single independent federal state with full sovereignty and its system of government is a republican, parliamentary (democratic).” From the advanced text, it is found out that the legislator has referred to the adoption of the parliamentary system, its elements, components and types, as he made the word (parliament) , between two brackets , referring to the meaning of two meanings :

First, the legislator refers to the parliamentary system in England as one of the types of systems of government based on an honorary or moral role of the head of state, with an effective role of the prime minister, as well as the exchange of control between the legislative and executive authority. (41)

The second Meaning refers to the existence of a (parliament) that is elected by the people, exercising great powers extending to all other authorities. Referring to the provisions of the Constitution, it is found that the first possibility has been cracked in several locations, especially those relating to the control of the legislative and executive powers, while The second possibility is possible, because the constitution has given the parliament wide powers, based on the assumption that the people have the right to monitor and supervise the authorities through their representatives. (42)

Second: Powers of the Council of Representatives vis-à-vis the Government:

There is no doubt that the 2005 Constitution gave the Council of Representatives broad powers over all powers, whether the executive authority or the judiciary or independent bodies, as well as legislative powers to propose, discuss and vote on laws (Article (60 / first, second), in addition to the powers related to oversight the independent bodies established by the Constitution in Articles (102-108) and Articles (135 and 136) shall have the right to question and relieve their officials by an absolute majority and the powers related to the approval of the appointment of senior positions in the judiciary such as the President.

and Members of the Court of Cassation, t Chief Public Prosecutor, and President of the Judicial Oversight Board, and approval of the declaration

of state of war, state of emergency and financial competencies such as the approval of the budget, financial statements and other jurisdictions that cannot all be mentioned here .

The Constitution has given the House of Representatives effective powers, about the executive power and appear in two aspects: the first in terms of its composition and dismissal ,and the second in terms of control.

1. The powers of the Chamber of Deputies related to the formation and dissolution of the executive authority .

Article (66) :The executive authority in Iraq shall be composed of the President and the Council of Ministers according to 2005 constitution. The President of the Republic is the Head of State and symbol of the unity of the homeland,Article (73). He is elected by the House of Representatives by a two-thirds majority of its members from among the candidates. If one of these candidates does not obtain the required majority, it shall be contested among the candidates with the highest votes in the Second Ballot, Article (70).

The Constitution granted the powers to the President of the Republic, which can be described as honorary or formal, to complement the actual powers granted to other authorities, but there is an exception mentioned in the Constitution concerning the provisions of the President of the Republic in the first electoral cycle, where the provisions of the President of the Republic were suspended and replaced by the Presidential Council, which consists of The President and his two deputies shall be elected by the House of Representatives by a two-thirds majority in a single election list. He shall take unanimous decisions and exercise effective powers, most notably of which is the right to veto in the laws of the House of Representatives,( Article 138)

The exercise of the right of veto by the Presidency Council takes the system of government in Iraq away from the description of the parliamentary system, as the veto power is the prerogative of the President of the Republic in the presidential system.(44)

The House of Representatives may question and exempt the President of the Republic by an absolute majority of its members, after being

convicted by the Federal Supreme Court, when perjuring the constitutional oath or violating the provisions of the Constitution or committing the crime of high treason. (45) There is no need for voting of the House of Representatives if The Supreme Court convicted him of the aforementioned acts by virtue of Article 94 of the Constitution, which stipulates that “the decisions of the Federal Supreme Court are strict and binding on all authorities.”

Council of Ministers is formed by the President of the Republic to nominate the candidate of the largest parliamentary bloc in the House of Representatives, and the largest parliamentary bloc, is the bloc formed after the elections of the various lists, or the bloc that entered the elections as one list, whichever is more.(46)

The Prime Minister who is in charge of nominating members of his Cabinet shall assume a maximum period of thirty days, after which he shall present the names of his Cabinet and the Ministerial agenda to obtain the confidence of the House of Representatives with an absolute majority. (Article 76)

Granting the Council of Representatives the power to form the Council of Ministers imposes the same role in its dismissal. The Council shall impeach ministers with the Prime Minister.( Article 78). He may withdraw confidence from the Government either individually if the matter concerns a Minister or in solidarity if it was a matter of the Prime Minister, since the withdrawal of confidence is considered a dismissal of the entire Cabinet (Article 61 / VIII / C).

## 2. Powers of the House of Representatives to Supervise the Executive Authority:

Wherever there is mutual control between the parliament and government, there is the parliamentary system. If the presidential system fades away, and if it is granted to the parliament without the government, the council system (the assembly) will rise.

The 2005 Constitution gave the Parliament the right to monitor the government, in all fields, the right to question and raise a general topic for discussion, questioning, and withdrawing confidence, Article 61 (VII-VIII),

without the Government having the right to determine the responsibility of Parliament and to proceed to dissolve it.

The researcher believes that the lack of budget, negates the feature of the parliamentary system from the system of government and takes off the feature of the system of parliament, thus the constitutional legislator has exaggerated granting of powers to the parliament, to the extent of strengthening and diluted the government, to the extent of its dependence, which reflected negatively the possibility of dissolving parliament. Thus, a significant means of deterring the parliament if the widespread euphoria of the authorities takes it to the path of arbitrariness in the face of individuals and authorities alike, is lost. Although the parliament represents the people in carrying out the burdens of government, it is not unlikely that it will become a burden for the people which shows with the need to specify its Responsibility and replace it with another one.

Third: Exclusion of the dissolution of the House of Representatives:

Dissolution of the Council of Representatives was not mentioned in the Constitution of 2005 except in Article 64, which stipulated that: First: The Council of Representatives shall be dissolved by an absolute majority of its members upon the request of one third of its members, or at the request of the Prime Minister, with the approval of the President of the Republic. During the period of questioning of the Prime Minister, the President of the Republic shall, upon dissolution of the House of Representatives, call for general elections in the country within a maximum period of sixty days from the date of dissolution, in which case the Council of Ministers shall be considered to have resigned and shall continue to conduct its daily matters.

Rereading the above mentioned text, It is obvious that:

The request for dissolution is presented in two ways: one third of the number of members of the House of Representatives, and second: a request from the Prime Minister to be supported with the approval of the President.

The speaker of the final word and the final decision in the dissolution is the House of Representatives, which should vote on the dissolution, by an absolute majority of its members, and the absolute majority in the second electoral cycle consists of (163) votes.

The Council shall not be dissolved during the period of questioning of the Prime Minister.

The government is considered to have resigned when the House of Representatives is dissolved and becomes a caretaker government.

It seems that the legislator has adopted a system of self-dissolution, which is based on the principle of dissolving the parliament for itself, and that the legislator has presented a unique model, different from all the previous regimes dealt with, and do not recognize that this model is a new trend in the systems of dissolution, as much as it is shy or trying to convince the possibility of dissolving the House of Representatives, the dissolution of the House of Representatives under the 2005 Constitution is practically excluded, for several reasons related to the difficulty of submitting the request for dissolution, and the absence of the interest of the executive authority of the solution, and the difficulty of voting on it, and incompatible with the gains of deputies, and we will explain those reasons respectively : First reason: Difficulty requesting dissolution:

Pursuant to Article (64), the request for dissolution shall be submitted by two sides: one third of the members of the Council of Representatives and the second by the Prime Minister, provided that it is accompanied by the President's approval.

Regarding the request for dissolution by one third of the members of the House of Representatives, despite the constitutional, political and security crises that hit the country during the first electoral run, which began in June 2006 and ended in March 2010, the desire has disappeared and the trend disappeared within the House of Representatives, to dissolve it and appeal to People's opinion (47).

With regard to the request of the Prime Minister with the approval of the President of the Republic, it seems that the legislator has weakened the authority of the Prime Minister, in this context to stop his request for approval of the President of the Republic.

Perhaps those who believe that the Constitution has taken the hands of the other hand, the post of President of the Republic in the 2005 Constitution is an honorary position, has nothing to do, and therefore the President of the Republic is not a party to the problem, which leads the Prime Minister to seek dissolution.

If we look at the constitutions of the countries that adopt the system of ministerial dissolution, we find that the head of state complies with the desire of the ministry, if asked for a solution, because it is aware of the interest envisaged by this measure, as we saw in England. Moreover, the difficulty of the approval of the President of the Republic to the point of impossibility, in the first electoral run, in which the Presidency of the three-member exercise the powers of the President unanimously, and unanimous approval of the request for a solution is not possible, in light of

the political rivalries between the constituent parts of the parliament and the government.

Therefore, the researcher proposes that the request for dissolution is to be submitted by the Prime Minister, provided that it is binding to the President of the Republic, as well as to its dissolution in accordance with the parliamentary regulations, which adopt the system of ministerial dissolution.

Second reason: the absence of the interest of the executive authority of the dissolution:

It has been mentioned earlier in the current study that the benefit to the executive authority of the dissolution is often to end the crisis with the parliament, as it invokes the opinion of the people. It either tends to the government and comes with a majority in favor of it, or leans to the dissolved parliament, and chooses a similar majority to its predecessor, either way. The government remains in place, and its existence is not linked to the resolution of the dissolution.

However, the Iraqi legislator in 2005 constitution, linked the end of the mandate of parliament to the dissolution, and the resignation of the government, and considered the Council of Ministers resigned caretaker daily, until the election of a new parliament from which a new government shall emerge.

It is noteworthy that Article (64) has prevented dissolution of the House of Representatives during the period of questioning the Prime Minister, as it is not conceivable that the Parliament voted to dissolve itself, and at the same time, it is questioning the Prime Minister. The ruling is true and justified, if the decision to dissolve the parliament in the hands of the Executive Authority, not by the House.

Third reason: the difficulty of voting by absolute majority on the dissolution :

The absolute majority is half of the total number of members of the Council of Representatives plus one, which means that the absolute majority of the House of Representatives during the first electoral run of 275 members is (138) votes, while in the second electoral run of (325) members is (163) Voice. The Constitution required the vote to dissolve by absolute majority, that this majority is exaggerated in the difficulty of achieving with the phenomenon of the frequent absence of a small number of members, in addition to the habit of parliamentary blocs to withdraw

from the sessions of the Council, if it does not like what is going on in the sessions.

Fourth Reason : Loss of Gains of Membership in the House of Representatives

Assigning the dissolution of the Council of Representatives by a resolution and terminating its mandate before its expiry date makes many members contemplate the loss of material and membership gains, which are decided by membership in the House, which has reached a high degree of exaggeration and extravagance, to criticize critics from each direction. (48)

Activation of the system of dissolving the parliament in Iraq requires the adoption of a system of ministerial dissolution, based on the ministry's binding request to the head of state.

Conclusion:

The research reached through the research a set of conclusions and recommendations as follows:

Conclusions:

The constitutional legislator adopted a system of government in the constitution of 2005 of Republic of Iraq based on the idea that granting broad powers to the House of Representatives against the government leads to the rule of democracy, but the reality in political life under this Constitution can be summarized as follows:

1. The existence of a parliament has a wide competence is not capable of exercising as I want it to be, amid the tensions and political differences between the political blocs.
2. The government is unable to perform the tasks entrusted to it to achieve the expected results, it suffers from crises from time to time, and the rulers or the holders of power under this system used to solve crises by political means, which turned the power in their view from the means of achieving the will of the people to The purpose is to reach this authority or to remain in the hands of those holding it as much as possible, and this effectively goes the right of dissolution and recourse to the opinion of the people as the source of authority and legitimacy.
3. The difference of the idea of dissolution between the State Administration Law of 2004 and the Constitution of 2005 of Republic of Iraq , where there is no explicit provision authorizing the executive authority to dissolve parliament, while the Constitution of 2005 of Republic of Iraq in 2005, allowed the right of dissolution, but restricted it to the approval

of Parliament itself.

Recommendations:

The dissolution system can be redrawn by implementing the following solutions:

1. Amend the self-dissolution of the Council of Representatives and adopt the system of ministerial dissolution based on its entrusted to the executive authority through a majority vote in Council of Ministers.
2. The dissolution request shall be from the Prime Minister and shall be accompanied by the approval of the President of the Republic.
3. Untie the constraint between dissolving the House of Representatives and dismissing the government and retaining the latter with full powers until the emergence of the new majority.
4. Building a system of government based on a balance between the powers of the parliament and the competences of the government without overwhelming each other in line with the basic idea underlying the parliamentary systems.
5. Amending the constitutional provisions on how to dissolve parliament by making it dependent on the will of the executive authority.
6. Upon dissolution of the House of Representatives, the President of the Republic shall call for general elections in the country within a maximum period of sixty days from the date of dissolution.

References :

1. Dr. Ibrahim A. Shiha, (1983) Political Systems and Constitutional Law - An Analytical Study of the Parliamentary Constitution, University House, Dr. Ahmed AbdulLatif ElSayed(1996) Head of State in the Parliamentary System, PhD Thesis, Faculty of Law, Ain Shams University,.

(48) As the total salaries of the members of the Iraqi Council of Representatives during the seven months was (81) billion Iraqi dinars, and this large figure is a great advantage prevent members of the House of Representatives to request a dissolution

See Civil Dialogue website No. 3169, 29/10/2010 - <http://www.ahewar.org/debat/show.art.asp?aid=233489>.

3. Dr. Edmond Rabat2002. , Mediator in the General Constitutional Law, Vol. 2, Vol. 3, Dar Al Elm for Millions, Beirut,

4.Dr. Raad Naji Al-Jedda, (2004.) Constitutional Developments in Iraq, 1st edition , House of Wisdom, Baghdad,

5. Dr. Ramzi AlShaer, (1970) The General Theory of Constitutional Law, Constitutional System of the United Arab Republic, Cairo Press, 1970.

6. Dr. Said El Sayed Ali, (1985) ,Basic Principles of Political Systems, Dar Al Fikr Al Arabi .

D. Suleiman AlTamawi,(1967) The Three Authorities in Contemporary Arab Constitutions and Contemporary Islamic Thought, Dar Al-Fikr Al-Arabi,

8. Dr. Abdul Fattah Hassan, (1986) Principles of the Kuwaiti Constitutional System, Dar AlNahda AlArabiya

9. Dr. Adnan Hamoudi Galilee, Political Systems (1982), Vigilance Press,

10. Dr. Adnan Ajil Obaid, (2010.) Constitutional Law, 1st edition Najaf,

11. D. Adnan Ajil Obeid,(2008)” The Fate of the Federal System in Iraq”, research published in the Journal of Comparative Law, No. 50

12. Dr. Afifi Kamel Afifi, (2002) Parliamentary Elections, Constitutional and Legal Guarantees, University Press,

13. Dr. Alaa Abdel Motaal, (2004) Dissolution of Parliament in Comparative Constitutional Systems, Dar Al-Nahda Al-Arabiya, Cairo,

14. Dr. Ali AbdulA AlSayed Ahmed, (1990) , Legal Effects and Political Functions of the Dissolution of Parliament, (No Publisher )

13 D. Faiz Aziz Asaad, (1984) , Deviation of the parliamentary system in Iraq, i 2, Al-Bustan House for Printing and Publishing, Baghdad

16. Dr. Mohsen Khalil,(1967) Political Systems and the Lebanese Constitution, Vol. 2, Dar Al-Nahda Al-Arabiya,

17. Dr.. Mohammed Jamal Al-Thunayyat, (2003) Political Systems and Constitutional Law, Dar AlThaqafa for Publishing and Distribution, Jordan,

18. Dr. Mohamed Abdel-Hamid Abu Zeid, (1993) , Parliamentary Duality and its Impact on Democracy, A Comparative and Applied Study on the Egyptian Constitutional System, A thesis submitted r to the Faculty

- of Law, Cairo University, 19. Dr. Mohamed Abdel Hamid Abu Zeid, .(1988) *Dissolution of the Parliament, Comparative Study*, Dar AlNahda Al-Arabiya
20. Dr. Mostafa Abou Zeid Fahmy,(1985) , *Egyptian Constitutional System and Constitutional Control of Laws*
21. Dr. Mustafa Kamel, *Explanation of the Constitutional Law and the Iraqi Basic Law(1984,)* ,5th edition, AlSalam Press.
22. Dr. Monther AlShawi, (2007) *Constitutional Law*, Vol. 1, 2nd Floor, Cairo
23. Dr. Nouri Latif, (1979) ,*Constitutional Law and Constitutional System in Iraq*, 2nd edition Baghdad.
24. Dr. Hisham Jamal Eldin Arafa(2008) *Guarantees of Members of Parliament*,
25. Mohamed Kadry Hassan, *Prime Minister in Contemporary Parliamentary Systems*, Ph.D. Thesis, Al-Azhar University, Cairo.
26. Cadrat (J) (1979) *Institutions Politiques et droit constitutionnel*, Tome II, Paris, 27. Redslob, (1924.) *Leregime Parelementaire*, Paris,

**Constitutions:**

1. Basic Law of the Federal Republic of Germany, 1949.
2. French Constitution of the Fifth Republic of 1958.
3. Kuwait Constitution of 1962.
4. Egypt's Constitution of 1971.
5. Lebanese Constitution of 1990.
6. Bahraini Constitution of 2002.
7. State Transitional Administration Law of 2004.
8. Constitution of the Republic of Iraq for the year 2005.
9. Egypt's Constitution of 2014.

**websites:**

1. <http://www.ahewar.org/debat/show.art.asp?aid=233489>.
2. <http://www.ahewar.org/debat/show.art.asp?aid=233489>.
3. <http://www.iraqiforum.net/vbl647.html>.





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